

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 20R 0355

**DECISION AND ORDER
AFFIRMING THE DECISION OF THE
SARPY COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property is a residential parcel improved with a 950 square foot split level residence with a legal description of Lot 3 The Meadows Replat VIII, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$141,506 for tax year 2020.
3. Bel Fury Investments Group LLC (the Taxpayer) protested this value to the Sarpy County Board of Equalization (the County Board), requesting a taxable value of \$117,491 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$141,506 for tax year 2020.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 17, 2021, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Arielle Bloemer, legal counsel, and Scott W. Bloemer were present at the hearing for the Taxpayer.
8. Andrea Gosnold-Parker, Deputy Sarpy County Attorney, and Larry Houlten and Shane Grow with the Sarpy County Assessors Office (County Appraisers) were present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission’s review of a determination of the County Board of Equalization is de novo.²

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier

11. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴
12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

1. The Taxpayer alleged that the value of the Subject Property should be reduced to account for the Condition of the Subject Property as of the assessment date.
2. The Taxpayer presented a Property Evaluation Report (PER) prepared by Connie Watson, a contractor and construction estimator employed by the Taxpayer, indicating that \$8,500 of repairs were needed on the exterior of the Subject Property. Included with the PER were photographs of the exterior of the Subject Property showing the condition of the fence, deck, shed, soffit, garage door, and siding.
3. The PER was dated June 22, 2020, but the Taxpayer stated that the condition of the Subject Property as described in the PER was the same as on the assessment date at issue.
4. The Taxpayer argued that the value of the Subject Property should be reduced by the costs to repair and replace the items in the PER.
5. The County Board presented the Property Record File (PRF) for the Subject Property. The PRF contains information about the characteristics of the Subject Property.

trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.” *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019, 759 N.W.2d 464, 473 (2009).

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

6. The PRF shows that the Subject Property has a condition rating of average.
7. The County Board presented a narrative from the Sarpy County Appraiser that inspected the property. This narrative indicates that the Subject Property was inspected in March of 2021, and at that time it was noted that the upper deck was in such condition that the appraiser that reviewed the property indicated that additional depreciation should be added, however it was discovered that the basement finish was of a higher quality than listed on the PRF. The narrative report indicates that if the additional depreciation were applied to the deck and the additional basement finish were accounted for then the overall assessed value of the Subject Property would be higher for tax year 2020.
8. The County Board did not present information to demonstrate the impact on the assessed value of the Subject Property if the additional depreciation were applied to the deck and the additional basement finish were added to the Subject Property.
9. The Taxpayer has not presented information to demonstrate that the condition rating of average for the Subject Property was arbitrary or unreasonable or that this condition rating did not account for the condition of the Subject Property as of the assessment date.
10. The Taxpayer alleged that the per square foot assessed value of the Subject Property was not equalized with other comparable properties.
11. The Taxpayer notes that the Nebraska Court of Appeals held in *Scribante* that “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”⁹
12. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
13. The Taxpayer presented the PRF for five properties located near the Subject Property, all of which are split entry properties.
14. The Subject Property is at least ten years newer than the five properties presented by the Taxpayer and has a higher condition rating than all but one. Within this group of properties, the Subject Property has a structure cost in line with the others but has more additional amenities such as a basement outside entry, fireplace, deck and patio combination.
15. The Commission finds that the differences in the per square foot assessed values between the Subject Property and the five properties presented as comparable properties by the Taxpayer are due to differences in the characteristics of the properties such as age, condition, and amenities such as a garage, basement finish, decks, patios, fireplaces etc.
16. The County Board presented the PRF for three split-level properties located near the Subject Property that sold recently along with their real estate transfer statements.
17. The County Board presented the PRF for three other split-level properties located near the Subject Property to show uniform assessment methodology was applied by the

⁹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

County.

18. The County Board presented a listing of all valid sales in the neighborhood of the Subject Property and a listing of all assessed values of residential properties in the same market area as the Subject Property.
19. The Taxpayer has not demonstrated that the valuation of similarly situated properties were set at materially different levels entitling the Subject Property to a reduction assessed value under the court's determination in *Scribante*.
20. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
21. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 24,000
<u>Improvements</u>	<u>\$117,506</u>
Total	\$141,506

3. This Decision and Order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2020.
7. This Decision and Order is effective on September 23, 2022.

Signed and Sealed: September 23, 2022

Steven A. Keetle, Commissioner