

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW  
COMMISSION**

JOHN GALT DEVELOPMENT  
LLC  
APPELLANT,

V.

LANCASTER COUNTY  
BOARD OF EQUALIZATION,  
APPELLEE.

CASE NOS: 21R 0483, 22R 680

DECISION AND ORDER  
AFFIRMING THE DECISION  
OF THE LANCASTER  
COUNTY BOARD OF  
EQUALIZATION

**I. BACKGROUND**

1. The Subject Property consists of an improved residential parcel in Lancaster County, parcel number 11-15-119-011-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$101,400 for tax years 2021 and 2022
3. John Galt Development LLC (the Taxpayer) protested these values to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$101,400 for tax years 2021 and 2022.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on March 27, 2023, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Mark Becher was present at the hearing for the Taxpayer.
8. Bret Smith (the Appraiser) was present for the County Board.

## II. APPLICABLE LAW

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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 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).

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

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer asserted that there has been no improvement to the Subject Property to justify the increase in valuation.
17. The Taxpayer asserted that the assessed value of the Subject Property is excessive given the condition of the property, which included basement water issues.
18. The Appraiser previously upgraded the condition rating of the Subject Property to 3-Average minus after an inspection in 2020. The Appraiser asserts that no change was warranted following a March 2022 inspection.
19. The Appraiser asserted that the value of the Subject Property was reduced by approximately \$19,000 due to water issues, as it was valued as if no basement existed on the property.
20. The Appraiser presented comparable properties that demonstrated that the current property value is equalized with comparable properties.
21. The Taxpayer has not presented evidence that the quality and condition ratings assigned were arbitrary or unreasonable.
22. 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.
23. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or

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<sup>7</sup> *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

unreasonable and the decisions of the County Board should be affirmed.

**IV. ORDER**

**IT IS ORDERED THAT:**

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2021 and 2022 are affirmed.
2. The taxable value of the Subject Property for tax years 2021 and 2022 is:

Land	\$ 40,000
<u>Improvements</u>	<u>\$ 61,400</u>
Total	\$ 101,400

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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 years 2021 and 2022.
7. This Decision and Order is effective on June 23, 2023.

Signed and Sealed: June 23, 2023



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James D. Kuhn, Commissioner