

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

BUSTER PROPERTIES LLC  
APPELLANT,

CASE NO: 22C 0629

V.

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

DECISION AND ORDER  
REVERSING THE DECISION  
OF THE DOUGLAS COUNTY  
BOARD OF EQUALIZATION

**I. BACKGROUND**

1. The Subject Property is an improved commercial parcel in Douglas County, parcel number 0610020000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$252,400 for tax year 2022.
3. Buster Properties LLC (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$252,400 for tax year 2022.
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 May 22, 2023, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Neal Finken was present at the hearing for the Taxpayer.
8. Micaela Larsen with the County Assessor's Office (County 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>

---

<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 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 alleged that the characteristics of the Subject Property used for assessment purposes are incorrect.
17. The Subject Property is being assessed entirely as office space. The Taxpayer presented the floor plans of the Subject Property used as office space and retail space, indicating which areas are used for office space, retail space, or common area.
18. The Taxpayer presented the Property Record File (PRF) for the Subject Property and for a nearby commercial building being used as a real estate office and hair salon with residential apartments in the basement (Taxpayer's Comparable).
19. The Taxpayer stated that he had been inside the ground floor of the Taxpayer's Comparable and it was used and finished similarly to the Subject Property but was being assessed as mixed retail, with lower income and expenses than the model used to assess the Subject Property.
20. The County Appraiser indicated that commercial properties are valued using income models and the factors that go into the models are different depending on the location within the county and the use.
21. The County Appraiser stated that the County Assessor's office typically does not break out the different uses of square footage in a single property as they do not typically have sufficient

---

<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).

information to determine which space is being used for which use.

22. The PRF for the Taxpayer's Comparable shows that a different valuation model was being used for areas that had a different use by floor. The PRF for the Taxpayer's Comparable does not, however, indicate which portions of the area designated as retail space were used as retail space and which portions were used as office space.
23. The Commission finds that based on the documents and statements presented regarding the use and finishes of the Subject Property that it has sufficient information to value the different portions of the Subject Property using the different income models for different uses.
24. The Taxpayer presented a spreadsheet that calculated the square footage used for office space and mixed retail and allocated the common area proportionally between the two. Using the models for office space and as mixed retail space contained in the PRF's presented by the Taxpayer and 1,574 square feet valued as office space and 1,171 valued as mixed retail would result in an assessed value of \$210,050 for tax year 2022.
25. The Commission finds that the assessed value of the Subject Property for tax year 2022 is \$210,050.
26. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
27. The Taxpayer has 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 vacated.

#### IV. 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 2022 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2022 is: **\$210,050.**
3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas 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 2022.
7. This Decision and Order is effective on June 23, 2023

Signed and Sealed: June 23, 2023



\_\_\_\_\_  
Steven A. Keetle, Commissioner