

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

CHRISTOPHER FEUERBACH  
REVOCABLE TRUST,  
APPELLANT,

V.

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

CASE NO: 23R 0562

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

**I. BACKGROUND**

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 2317790002.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$142,900 for tax year 2023.
3. Christopher Feuerbach Revocable Trust (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 \$142,900 for tax year 2023.
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 February 6, 2024, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Chris Feuerbach was present at the hearing for the Taxpayer.
8. James Morris with the County Assessor's Office (the 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>

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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 Subject Property is a residential parcel improved with an 812 square foot ranch style residence constructed in 1900 (Building 1) and a second 610 square foot structure constructed in 1956 (Building 2).
17. The Taxpayer alleged that the increase in assessed value of the Subject Property from the prior assessed value was unreasonable or arbitrary.
18. The Taxpayer presented the determinations of the County Board reducing the value of the Subject Property following protests in prior assessment years.
19. The County Board presented the Property Record File (PRF) for the Subject Property. The PRF contains information about the characteristics of the Subject Property and information regarding the qualified sales that occurred in the economic area of the Subject Property. This information was used to determine the value attributed to each of the residential properties in the area, including the Subject Property.
20. The PRF for the Subject Property indicates that the market area where the Subject Property is located was reappraised for tax year 2024.

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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).

21. The assessed value for real property may be different from year to year according to the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>10</sup>
22. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>11</sup>
23. The Taxpayer alleged that the assessed value of Building 1 on the Subject Property should be reduced based on its characteristics and condition.
24. The Taxpayer stated that Building 1 was heated by a heating oil furnace supplied by two external oil tanks. There is no gas line to the property. Building 1 has vermiculite insulation and asbestos duct wrap. It needs new windows, work to stabilize the floors, and work to address soil moisture in the crawl space. It needs to be repainted. Taxpayer presented internal and external photographs of Building 1 in support of this testimony.
25. The Taxpayer provided estimates for removing and replacing the heating oil furnace, removing the vermiculite and asbestos, replacing the windows, stabilizing the floors, addressing the soil moisture in the crawl space, and repainting Building 1.
26. The County Appraiser stated that the County Assessor was aware of the heating oil furnace, which was an unusual feature. Replacing vermiculite and asbestos, stabilizing floors, and addressing soil moisture are not unusual for a building constructed in 1900.
27. The County Appraiser stated that the identified characteristics of Building 1, including the listed modifications and repairs, were accounted for in the condition rating of fair.

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<sup>9</sup> *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); *see also* Neb. Rev. Stat. § 77-1502 (Reissue 2018).

<sup>10</sup> *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *De Vore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

<sup>11</sup> Neb. Rev. Stat §77-1301 (Reissue 2018).

28. The Taxpayer did not present information to show that the County Assessor's condition rating of fair for Building 1 on the Subject Property was unreasonable or arbitrary.
29. The estimates for work to stabilize the floors and deal with soil moisture in the crawl space show that 337 square feet of "basement" referenced in the PRF is instead "crawl space."
30. Correcting the PRF for these 337 square feet of crawl space lowers the amount of basement square footage and reduces the assessed value of Building 1 by \$3,595<sup>12</sup> resulting in an assessed value of \$50,695<sup>13</sup> for Building 1.
31. The Taxpayer alleged that Building 2 was not a residence but rather a garage and storage outbuilding.
32. The Taxpayer stated that Building 2 did not have electrical service and that the city had denied permits to have electrical service hooked up. The Taxpayer stated that Building 2 did not have water service, sewer service, heating, or air conditioning. Taxpayer stated that Building 2 did not have a bathroom or any other plumbing fixtures. The Taxpayer presented internal and external photographs of Building 2 in support of these assertions.
33. The Commission finds that Building 2 is a garage and storage building.
34. Using the information available from the PRF, the assessed value of Building 2 using the PSF of the garage space to determine the base value would result in an assessed value of \$21,598<sup>14</sup> for Building 2.
35. The Commission finds that the assessed value of the improvement component of the Subject Property is \$72,300<sup>15</sup> for tax year 2023. The assessed value of the land component of the

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<sup>12</sup> 337 sq ft x \$31.79 (psf of Basement) = \$10,731 - \$7,265 (67.81% depreciation) = \$3,466 x 1.0371 (NBHD adjustment) = \$3,595

<sup>13</sup> \$62,021 (Building 1 value from PRF) - \$3595 = \$50,695

<sup>14</sup> 610 sq ft + 286 sq ft = 896 sq ft x \$45.35 (psf for garage) = \$40,634 - \$19,809 (48.75% depreciation) = \$20,825 x 1.0371 NBHD adjustment = \$21,598.

<sup>15</sup> \$50,695 (Building 1) = \$21,598 (Building 2) = \$72,300 (rounded for total improvement value)

Subject Property is \$26,600. The total assessed value of the Subject Property is \$98,900 for tax year 2023.

36. 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.
37. 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 2023 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$26,600
<u>Improvements</u>	<u>\$72,300</u>
Total	\$98,900

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 2023.

7. This Decision and Order is effective on February 7, 2025.

Signed and Sealed: February 7, 2025



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Steven A. Keetle, Commissioner