

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

JAMES A. FRANZLUEBBERS  
APPELLANT,

CASE NO: 23R 1559

V.

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

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

**I. BACKGROUND**

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 2118660113.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$528,800 for tax year 2023.
3. James A. Franzluebbers (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 \$528,800 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 October 11, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. James Franzluebbers was present at the hearing for the Taxpayer.
8. Michael Lunkwitz (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 alleged that the land value of the Subject Property is arbitrary and unreasonable in comparison to other lots in the neighborhood.
17. The Subject Property is an improved, residential parcel with lot size of 42,107 square feet which is valued at \$98,300 for 2023, or a price per square foot (PPSF) of \$2.33.
18. The Taxpayer provided Property Record Files (PRF) for five properties located within the same Land Economic Area (LEA) for a land value comparison.
19. The Appraiser stated that the properties submitted by the Taxpayer were properties that were awarded new valuations by the County Board through the protest process. There was no additional information as to the reasoning behind the new valuations for each property submitted on their respective PRFs.
20. The Appraiser attested that there was no land revaluation conducted for 2023 for the Subject Property LEA.
21. After review of the PRFs submitted by the Taxpayer, the Commission finds that the County Board has erred by placing arbitrary land valuations on individual properties within the Subject Property LEA that are neither consistent with each other, nor with the Subject Property. While there were two vacant land parcels that received a reduced PPSF of \$1.58 for lot

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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).

sizes of 31,363 SF to 35,642 SF and hold little weight for the Commission, there were three improved residential parcels with lot sizes and land values of the following: 36,200 SF at \$1.58 PPSF, 45,959 SF at \$1.80 PPSF, and 52,100 SF at \$1.58 PPSF that show dis-equalized lot values within the LEA.

22. Therefore, the Commission finds that the Subject Property with a lot size of 42,107 SF should be reduced from \$2.33 PPSF to \$1.58 PPSF for 2023.
23. 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.
24. 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                | \$ 66,529        |
| <u>Improvements</u> | <u>\$430,500</u> |
| Total               | \$497,029        |

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 October 31, 2024.

Signed and Sealed: October 31, 2024



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Jackie S. Russell, Commissioner