

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

JOHN GALT DEVELOPMENT,  
LLC  
APPELLANT,

V.

LANCASTER COUNTY  
BOARD OF EQUALIZATION,  
APPELLEE.

CASE NO: 24C 0263

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

**I. BACKGROUND**

1. The Subject Property is an improved commercial parcel in Lancaster County, parcel number 10-28-200-028-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$1,428,800 for tax year 2024.
3. John Galt Development, LLC (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$1,330,600 for tax year 2024.
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 December 16, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Mark Becher was present at the hearing for the Taxpayer.
8. Jeff Johnson (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>

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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).

13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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 an improved commercial lot with a multi-tenant office building containing 23,100 square feet. There is 55,000 square feet of asphalt and 25,000 square feet of concrete on the lot containing 8.08 acres.
17. The Taxpayer stated that the valuation of the Subject Property is arbitrary or unreasonable alleging there have been no changes in the market since the 2023 valuation was reversed by order of the Tax Equalization and Review Commission, and while the same deferred maintenance at the property exists.
18. The Taxpayer stated that a deferred maintenance sewer issue creates a detriment to the property and therefore, negatively affects the valuation.
19. The Appraiser stated that the valuation was adjusted at the time of protest to reflect a lower value based on a change to the conditional rating from average plus to average minus to take into account the condition issues with the Subject Property discovered as part of the 2023 valuation appeal. There was also a change to the industrial valuation model from 2023 to 2024,

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<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).

<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).

and a reflection of the new concrete paving added in 2023. The new opinion of value resulted in a reduction of \$98,100 from the initial January 1, 2024, valuation.

20. The Taxpayer stated that the use of the concrete paving is to house storage containers but is currently under litigation with the City of Lincoln. The Taxpayer alleged if the concrete slab cannot be used as originally intended, the valuation of the property is negatively impacted.
21. The Taxpayer did not provide information to quantify a different valuation for the concrete slab.
22. The Taxpayer did not provide information to quantify that an adjustment to the condition from average plus to average minus is arbitrary or unreasonable.
23. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>9</sup>
24. The assessed value for real property may be different from year to year according to the circumstances. <sup>10</sup>For this reason, a prior year's assessment is not relevant to the subsequent year's valuation. <sup>11</sup>
25. The Appraiser attested that a change in the industrial income valuation model for the Subject Property's neighborhood was implemented for 2024. As such, the income model used was adjusted according to typical income and typical expenses for like properties, and an updated capitalization rate was applied based on the market data collected from sales between October 1, 2021, and September 30, 2023.<sup>12</sup>
26. The Appraiser attested that each industrial property classified with the same investment class will have the same income model applied for uniformity according to professionally accepted mass appraisal methods.

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<sup>9</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>10</sup> *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

<sup>11</sup> *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

<sup>12</sup> 350 Neb. Admin. Code, ch. 17, § 003.05A (7/5/2017).

27. 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.
28. 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.

**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 2024 is affirmed.
2. The taxable value of the Subject Property for tax year 2024 is:

Land	\$ 782,000
<u>Improvements</u>	<u>\$ 548,700</u>
Total	\$1,330,700

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 year 2024.
7. This Decision and Order is effective on January 23, 2025.

Signed and Sealed: January 23, 2025




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Jackie S. Russell, Commissioner