

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

JOHN GALT DEVELOPMENT,  
LLC  
APPELLANT,

V.

LANCASTER COUNTY  
BOARD OF EQUALIZATION,  
APPELLEE.

CASE NO: 24C 0268

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 10-25-241-001-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$797,500 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 \$797,500 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. Matt Cartwright (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 a three-story apartment complex with 15 residential units, built in 1974 with 3,201 square feet, with an investment class rating of 3, and an income model rating of average minus (3).
17. The Taxpayer stated that the Subject Property's value is arbitrary or unreasonable due to sewer issues present at the property as of January 1, that are in need of a difficult and costly repair.
18. The Taxpayer stated that the property was purchased sight unseen for \$900,000.
19. The Taxpayer provided three pictures of the property showing the exterior, a floor drain with water surrounding it, and a bathroom with a damaged ceiling.
20. The Taxpayer stated that the sewer issue caused excess water above the bathroom pictured, which damaged the ceiling.
21. The Appraiser attested that the income model rating of average minus (3) accounts for the conditional issues of the property and

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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).

the sewer situation as the rest of the property is in well-kept condition as detailed in the Property Record File notes.

22. The Appraiser stated that the income model used on the Subject Property is being applied to all income producing properties with the same classification and model rating according to professionally accepted mass appraisal methods, and was developed using data analyzed from comparable properties, sold within the time period of October 1, 2023, and September 30, 2023.<sup>9</sup>
23. The Taxpayer did not provide any information to quantify that the property ratings determining value were arbitrary or unreasonable.
24. 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.
25. 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	\$ 90,000
<u>Improvements</u>	<u>\$707,500</u>
Total	\$797,500

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<sup>9</sup> 350 Neb. Admin. Code, ch. 17, § 003.05A (7/5/2017).

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