

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

5X5, LLC
APPELLANT,

CASE NOS: 20A 0006 & 20A
0007

V.

HOWARD COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Properties consists of two agricultural parcels in Howard County, parcel numbers 470499369 (A) and 470499377 (B).
2. The Howard County Assessor (the County Assessor) assessed the Subject Property at \$582,959 (A) and \$499,731 (B) for tax year 2020.
3. 5x5, LLC (the Taxpayer) protested these values to the Howard County Board of Equalization (the County Board) and requested assessed values of \$381,760 (A) and \$298,250 (B) for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$582,959 (A) and \$499,731 (B) for tax year 2020.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on October 21, 2022, at Grand Island Police Department, 111 Public Safety Drive, Grand Island, Nebraska, Community Building 2nd Floor, before Commissioner James D. Kuhn.

7. Bruce Lux was present at the hearing for the Taxpayer.
8. Neal Dethlefs (the Assessor) 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 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
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."³ 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."⁴
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.⁵

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

² 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).

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.* at 283-84.

⁵ 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.⁶
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.⁷
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer stated the Subject Properties have poor soils and are poor production ground. The Taxpayer stated only one irrigation pivot can be utilized at a time as there is not enough water available to operate both irrigation pivots at the same time. The Taxpayer stated that not all the corners of the pivots are able to be farmed. The Taxpayer asserted the Assessor is not accurate with the number of acres present on the Subject Properties.
17. The Taxpayer provided photos showing excessive water runoff in the roadway ditches and on part of the Subject Property (A). The Taxpayer stated the water and high vegetation make farming parts of the property impossible in some years. The Taxpayer stated the income capability of the Subject Properties isn't close to the current assessment values.
18. The Assessor stated he is not valuing agricultural land using the income approach. The Assessor stated he is using a sales analysis of sold properties in Howard County to value agricultural properties. The Assessor stated he is valuing the

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁷ *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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

same number of acres that were signed and certified by the Taxpayer with the FSA (Farm Service Agency).

19. The Assessor is valuing the Subject Properties using professionally accepted mass appraisal methods as required by Nebraska law.⁹
20. 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.
21. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2020 are affirmed.
2. The taxable value of the Subject Properties for tax year 2020 is:

Parcel 470499369

Total \$582,959

Parcel 47049937

Total \$499,731

3. This Decision and Order, if no further action is taken, shall be certified to the Howard County Treasurer and the Howard 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.

⁹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2020.
7. This Decision and Order is effective on February 10, 2023.

Signed and Sealed: February 10, 2023



James D. Kuhn, Commissioner