

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

NDR CORPORATION
APPELLANT,

CASE NOS: 20A 0020 & 21A
0142

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 Property consists of an agricultural parcel in Howard County, parcel number 470849378.
2. The Howard County Assessor (the Assessor) assessed the Subject Property at \$452,311 for tax year 2020 and \$442,953 for tax year 2021.
3. NDR Corporation (the Taxpayer) protested these values to the Howard County Board of Equalization (the County Board) and requested assessed values of \$400,000 for tax year 2020 and \$412,953 for tax year 2021.
4. The County Board determined that the taxable value of the Subject Property was \$452,311 for tax year 2020 and \$442,953 for tax year 2021.
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. David L. Inman 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 a flood in 2019 deposited an estimated 40,000 cubic yards of sand and debris across 30 acres of the Subject Property that changed his soil types. The Taxpayer is not a soil scientist; however, he was a Civil Engineer and has worked with soil and dirt for a number of years and is considered competent to offer his professional opinion on this subject.
17. The Taxpayer suggests that four of his previous soil types; Ord Loam, Tryon Series, Inavale Fine and Inavale Series have all been changed to Valentine Series soil type after the flood. The Taxpayer stated he personally dug out soil samples from the four affected soil type areas. Samples of what the soil type should have been were provided to the Commission as well as a sample of what is now the predominant soil type.
18. The Taxpayer looked to Arthur County for values of the Valentine Series soil as much of Arthur County is made up of the Valentine Series soil type, and estimated the value to be

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).

between \$150 to \$350 per acre for the 30 acres that were flooded.

19. The Assessor stated he is tasked with valuing all agricultural land in Howard County uniformly. The Assessor stated the value of a certain type of soil in Arthur County would have no bearing on the value of that same soil type in Howard County. The Assessor asserted that sales and sale prices of river ground in Howard County have been on the increase regardless of if they had been affected by the 2019 flood or not. The Assessor stated he could not change the soils on a parcel of land.
20. To properly assess a parcel of agricultural land, county assessors must analyze each acre of the parcel. Fundamental to this analysis is identifying soil types. The process of identifying and analyzing soil types, and their ultimate productivity when put into either irrigated cropland, dryland cropland, or grassland uses, starts with information from the United States Department Agriculture, Natural Resources Conservation Service (NRCS). The NRCS assigns each soil type with a four-digit code and provides the soil type codes to the Property Assessment Division (PAD) of the Nebraska Department of Revenue. PAD then classifies each soil type into one of eight Land Capability Groupings (LCG) for irrigated cropland, dryland cropland, and grassland.⁹ This soil conversion process conducted by PAD includes multiple soil types in each of these LCGs.
21. The Taxpayer did not produce evidence at the hearing to indicate that the NRCS had assigned a different soil type or different four-digit code to the Subject Property's soil.
22. 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.

⁹ An LCG is defined as, "a grouping of various soils according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to average management." Title 350 Neb. Admin. Code, Chapter 14, Section 004.08E, Revised 3/15/09.

23. 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 Property for tax years 2020 and 2021 are affirmed.
2. The taxable value of the Subject Property for tax years 2020 and 2021 is:

2020

Land	\$452,311
<u>Improvements</u>	<u>\$0</u>
Total	\$452,311

2021

Land	\$442,953
<u>Improvements</u>	<u>\$0</u>
Total	\$442,953

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.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax years 2020 and 2021.
7. This Decision and Order is effective on February 13, 2023.

Signed and Sealed: February 13, 2023



James D. Kuhn, Commissioner