

**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 DECISIONS  
OF THE HOWARD COUNTY  
BOARD OF EQUALIZATION

**For the Appellant:**

David Inman,  
NDR Corporation

**For the Appellee:**

Kathy Hirschman,  
Howard County Board Member

These appeals were heard before Commissioners Robert W. Hotz & Steven A. Keetle. Commissioner Hotz presided.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 154-acre agricultural parcel located in Howard County, Nebraska. The legal description and Property Record Files (PRF) of the Subject Property are found at Exhibits 4 and 6.

**II. PROCEDURAL HISTORY**

The Howard County Assessor determined the assessed value of the Subject Property was \$452,311 for tax year 2020 and \$442,953 for tax year 2021. NDR Corporation (the Taxpayer) protested these assessments to the Howard County Board of Equalization (the County Board) and requested taxable values of \$400,000 and \$412,953, respectively. The County Board determined the taxable value of the

Subject Property for tax year 2020 was \$452,311,<sup>1</sup> and \$442,953 for tax year 2021.<sup>2</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. The Commission held a hearing on May 30, 2023. Exhibits 1 through 15 were admitted into evidence.

### III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.<sup>3</sup> When the Commission considers an appeal of a decision of a county board of equalization, 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>4</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>5</sup>

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 2.

<sup>3</sup> See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>4</sup> *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

<sup>5</sup> *Id.*

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>6</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is overvalued.<sup>8</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.<sup>9</sup>

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>10</sup> The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.<sup>11</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>12</sup>

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<sup>6</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>7</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>8</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>9</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

<sup>10</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

#### IV. RELEVANT LAW

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>13</sup>

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.<sup>14</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>15</sup> Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.<sup>16</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>17</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>18</sup>

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska

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<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>14</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>15</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>16</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>17</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

Constitution.<sup>19</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>20</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>21</sup> Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>22</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>23</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.<sup>24</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>25</sup>

## V. VALUATION OF AGRICULTURAL LAND

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.<sup>26</sup>

Agricultural land and horticultural land, shall be divided into classes and subclasses of real property under section 77-103.01, including, but not limited to, irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots, and orchards, so that the

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<sup>19</sup> Neb. Const., art. VIII, § 1.

<sup>20</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>21</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623 (1999).

<sup>22</sup> *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>23</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>24</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

<sup>25</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>26</sup> Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

categories reflect uses appropriate for the valuation of such land according to law. Classes shall be inventoried by subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service of the United States Department of Agriculture as converted into land capability groups by the Property Tax Administrator. Land capability groups<sup>27</sup> shall be Natural Resources Conservation Service specific to the applied use and not all based on a dryland farming criterion. County assessors shall utilize soil surveys from the Natural Resources Conservation Service of the United States Department of Agriculture as directed by the Property Tax Administrator. Nothing in this section shall be construed to limit the classes and subclasses of real property that may be used by county assessors or the Tax Equalization and Review Commission to achieve more uniform and proportionate valuations.<sup>28</sup>

## **VI. FINDINGS OF FACT**

### **A. Summary of the Evidence**

David Inman offered testimony on behalf of the Taxpayer. Inman was the Secretary and Treasurer for the Taxpayer, NDR Corporation.

Inman testified the Loup River, which usually has about 1 foot of depth, flooded in March 2019 to a level of approximately 12 feet at certain points. Inman stated the Subject Property is adjacent to the Loup River. He testified the flooding was caused by an ice jam which diverted the flow of the river into a section of the Subject Property, which put approximately 40 to 50 acres underwater.<sup>29</sup> He stated the diversion also had the effect of slowing the flow of the river to a point where the silt load carried in the current fell to the bottom, depositing

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<sup>27</sup> Land Capability Groups are groups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands, and the way they respond to treatment. Land Capability Groups are determined by the Department of Revenue, Property Assessment Division based upon the dryland capability classification. Title 350 Neb. Admin. Code, Chapter 14, Section 002.41, Revised 3/15/09 (emphasis added).

<sup>28</sup> Neb. Rev. Stat. § 77-1363 (Cum. Supp. 2020).

<sup>29</sup> See Exhibit 9.

it on the Subject Property. In some portions of the Subject Property 12 to 48 inches of sand were deposited over the flooded acres.

As a result of the flooding, Inman asserted the soil type on the flooded acres has changed to a type of less productive Valentine soil. However, he conceded that a NRCS<sup>30</sup> soil re-typing had not been performed since the flooding. Instead, Inman asserted that his training as a civil engineer, and his use of his planimeter provided him enough information to determine the new soil type. Inman conceded he reached his opinion of value using values from soils in other counties, as he asserted no Valentine soils are present in Howard County for comparison.

Inman testified the productivity of the thirty affected acres was diminished to approximately one-third of what it was prior to the flood. The use prior to the flooding was as grassland. Inman asserted removal of the deposited sand would be impractical and uneconomical.

The County Board called Neal Dethlefs to testify. Dethlefs has been the Howard County Assessor for 17 years and holds the State Assessor Certificate. He was personally involved in the assessment of the Subject Property. Dethlefs did not personally inspect the area of the Subject Property at issue, and the Subject Property has not been inspected since the flooding.

Dethlefs explained assessments were based upon sales in the open market and not upon production. He used the three-year sales file to determine valuations and considered land use and soil types. Soil types came from the NRCS soil survey for the county, the land use, and Land Capability Group (LCG) codes set by the Property Tax Administrator.<sup>31</sup> Dethlefs explained he did not have the authority to change the soil

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<sup>30</sup> NRCS refers to the Natural Resources Conservation Service of the United States Department of Agriculture.

<sup>31</sup> Land Capability Groups are groups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands, and the way they respond to treatment. 350 Neb. Admin. Code § 002.41 (3/09). See also, Neb. Rev. Stat. § 77-1363 (Cum. Supp. 2020).

type assigned by the NRCS or LCG code assigned by the Property Tax Administrator to the flooded portion of the Subject Property, both of which he is required to use.

Dethlefs disputed Inman's assertion that there is no Valentine soil in Howard County. He testified some Valentine soil is located in the southeastern portion of the county. He also stated that Valentine soil in Howard County would have been assessed at the same value as the affected portion of the Subject Property due to its grouping in the same LCG.

### **B. Analysis**

As noted above, the Property Tax Administrator is charged with grouping each of the soil types provided by the NRCS into an LCG. Each County Assessor is then required to determine which soils are present on agricultural property and its current use in order to assign the correct LCG to the property.

This is exactly what Dethlefs did. As he testified, he used the soil types as reported by the NRCS to classify the Subject Property based upon its current use. More specifically, as to the flooded acres, it remained classified as grassland.

Inman's testimony that flooding in 2019 reduced the productivity of at least 30 acres of the Subject Property was not questioned. NRCS soil typing and the resulting LCG assignments take into account the productivity of different soil types for different uses.<sup>32</sup> However, as Dethlefs testified, assessments are based upon the NRCS soil typing and use, not the productivity of any specific acre on any specific parcel property.

While Inman may be trained as a civil engineer and have some familiarity with soil typing, Neb. Rev. Stat. § 77-1363 clearly directs both the Property Tax Administrator and County Assessors to classify soils based upon the NRCS standards and use. As the NRCS has not reassessed the soil on the Subject Property, the Commission finds that

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<sup>32</sup> See, Title 350 Neb. Admin. Code ch 14, §002.41 (3/09)



it was not arbitrary or unreasonable for Dethlefs to value the Subject Property based upon that most recent NRCS soil survey. Additionally, Dethlefs testimony that Valentine soils in the county would have been classified into the same LCG as the affected portion of the Subject Property and had the same value supports the determination of the County Board.

## VII. CONCLUSION

The Commission finds there is not competent evidence to rebut the presumption the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the determinations of the County Board should be affirmed.

## VIII. ORDER

IT IS ORDERED THAT:

1. The decision of the Howard County Board of Equalization determining the value of the Subject Property for tax years 2020 and 2021 are affirmed.

2. The assessed value of the Subject Property for tax year 2020 is:

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

3. The assessed value of the Subject Property for tax year 2021 is:

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

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Howard County Treasurer and the Howard County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).

5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2020 and 2021.
8. This Decision and Order is effective for purposes of appeal on June 23, 2023.<sup>33</sup>

Signed and Sealed: June 23, 2023

SEAL



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Robert W. Hotz, Commissioner

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Steven A. Keetle, Commissioner

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<sup>33</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.