

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Victoria L. Bauer,

Michael S. Bauer,
Appellants,

v.

Hitchcock County Board of Equalization,
Appellee.

Case Nos. 16A 0245, 16A 0246

Case No. 16A 0247

Amended Decision and Order Reversing the
Decisions of the Hitchcock County Board of
Equalization

For the Appellant:

David Watermeier,
Morrow, Poppe, Watermeier & Lonowski

For the Appellee:

D. Eugene Garner,
Hitchcock County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property includes three agricultural parcels in Hitchcock County, Nebraska. The legal description of the Subject Property is found at Exhibits 1, 2 and 3. The property record cards for the Subject Property are found at Exhibits 4:2, 5:2, and 6:2.

II. PROCEDURAL HISTORY

The Hitchcock County Assessor (the County Assessor) determined that the assessed value of the Subject Property in Case No. 16A 0245 was \$212,210 for tax year 2016. Victoria L. Bauer (the Taxpayer) protested this assessment to the Hitchcock County Board of Equalization (the County Board) and requested an assessed valuation of \$195,505. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$212,210.¹

In Case No. 16A 0246, the County Assessor determined that the assessed value of the Subject Property was \$112,670 for tax year 2016. The Taxpayer protested this assessment to the

¹ Exhibit 1:1.

County Board and requested an assessed valuation of \$108,360. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$112,670.²

In Case No. 16A 0247, the County Assessor determined that the assessed value of the Subject Property was \$176,040 for tax year 2016. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$157,235. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$176,040.³

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). On June 1, 2017, the Commissioner Nancy J. Salmon conducted a single commissioner hearing in each case,⁴ and on June 12, 2017, the Commission issued an order reversing the decision of the County Board in each case. On July 5, 2017, the County Board made timely application for rehearing of all three appeals before a panel of the Commission.⁵ The Commission vacated the orders issued on June 12, 2017, and held a consolidated *de novo* hearing on the appeals before a panel of the Commission on November 16, 2017, with Commissioner Hotz presiding. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged Exhibits 1, 2, 3, 7, 8, 9, 13 through 19, and portions of Exhibits 4, 5, and 6. The remaining portions of Exhibits 4, 5, and 6 were admitted in the course of the hearing. Exhibits 10, 11, 12, and 20, offered by the Taxpayer, were previous Orders of the Commission, including the June 12, 2017 orders previously vacated. The Commission took judicial notice of the orders that had not been vacated. Because the hearing before the panel of Commissioners constitutes a *de novo* review, the vacated orders were not considered in reaching this decision.

On September 6, 2018, the Commission issued a Decision and Order in this matter. On September 13, 2018, the Commission issued this Amended Decision and Order pursuant to Neb. Rev. Stat. §77-5018(2) (2016 Cum. Supp.), to modify its findings to correct an obvious error, specifically: property sold to an individual named Seward was incorrectly described

² Exhibit 2:1.

³ Exhibit 3:1.

⁴ See Neb. Rev. Stat. §77-5015.02 (2016 Cum. Supp.). The hearing was conducted by Commissioner Nancy J. Salmon.

⁵ See Neb. Rev. Stat. §77-5005(4) (2016 Cum. Supp.).

as a Seward County property. This amendment does not substantially change the findings or order.

III. STANDARD OF REVIEW

The Commission's review of a determination of the County Board of Equalization is de novo.⁶ 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."⁷

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.⁸

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.⁹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁰

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹¹ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.¹²

⁶ See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *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 (2009).

⁷ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁸ *Id.*

⁹ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

¹⁰ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹¹ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. Of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

¹² *Bottof v. Clay Cty. Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

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.”¹³ The commission may also “take notice of judicially cognizable facts and in addition 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.”¹⁴ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁵

IV. VALUATION 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.¹⁶

“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 section 77-1371, (2) income approach, and (3) cost approach.”¹⁷ The Courts have held that “Actual value, market value, and fair market value mean exactly the same thing.”¹⁸ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁹ All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁰ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²¹

¹³ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

¹⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁸ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

²⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

²¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009).²² “Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²³

Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

(a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

(b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land.²⁴

Government Programs Land which is voluntarily enrolled in the

... Conservation Reserve Enhancement Program (CREP) ... or any other programs may require separate market analysis. The land should be classified at its current use such as grassland or timbered grassland; however, the values for land enrolled in government program acres should be adjusted to reflect the local market for similar property.²⁵

“Conservation Reserve Enhancement Program (CREP) ... lands which have been enrolled in a federally or state funded program that encourages the development of specific conservation practices in exchange for a guaranteed or contracted annual payment” may need to have land use adjustments “to achieve proportionate market value.” Such land “is to be classified at its current use; usually grassland uses. The value for this land should be based on the current market value for land subject to similar restrictions and similar payments.”²⁶

Market analysis is “a study of general real estate market conditions that affect the competitive supply, demand, and prices for particular types of facilities or properties.”²⁷

Comparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.

²² Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²³ Neb. Rev. Stat. §77-132 (Reissue 2009).

²⁴ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

²⁵ Title 350, NAC Ch. 14, §004.04E.

²⁶ Title 350, NAC Ch. 14, §006.04, §006.04C, and §006.04C(3).

²⁷ Title 350, NAC Ch. 50, §001.19.

When using comparable sales in determining actual value of an individual property under the sales comparison approach, the guidelines of Neb. Rev. Stat. §77-1371 shall be considered in determining what constitutes a comparable sale.²⁸

V. EQUALIZATION LAW

“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 this Constitution.”²⁹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³⁰ 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.³¹ In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.³² 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.³³ 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.³⁴ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁵ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”³⁶ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³⁷

²⁸ Neb. Rev. Stat. §77-1371 (2014 Cum. Supp.).

²⁹ *Neb. Const.*, Art. VIII, §1.

³⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582, 597 N.W.2d 623, (1999).

³² See, *Cabela's Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582, 597 N.W.2d 623 (1999).

³³ *Banner Cty. v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁴ *Equitable Life v. Lincoln Cty. 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).

³⁵ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³⁶ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁷ *Id.* at 673, 94 N.W.2d at 50.

VI. SUMMARY OF THE EVIDENCE

The Subject Property in these appeals involves three parcels. The first, in Case No. 16A 0245, consists of 157.97 acres. The second parcel, in Case No. 16A 0246, consists of 81.63 acres. The third parcel, in Case No. 16A 0247, consists of 164.78 acres.

Each of these three parcels includes acres that were under a contract with the Conservation Reserve Enhancement Program (CREP) administered by the United States Department of Agriculture Farm Service Agency. The only disputed issue in these appeals is the taxable value of the CREP acres.

Ronald Bauer, one of the owners of the Subject Property, testified that as of January 1, 2016, the effective date for tax year 2016 assessments, each of the three parcels was subject to a CREP contract. In Case No. 16A 0245, he testified that 77.15 acres were subject to the terms of a CREP contract. In Case No. 16A 0246, he testified that 40.84 acres were subject to a CREP contract. In Case No. 16A 0247, he testified that 45.9 acres were subject to a CREP contract. Bauer also testified about the restrictions placed on the land by the terms of the CREP contracts, which included no irrigation, no haying or grazing in the earlier years of the contract periods, and no harvesting of crops. The County Board did not dispute the number of acres subject to the CREP contracts or the validity of those agreements.

Each party offered evidence with regard to comparable properties. The Taxpayer presented evidence of the sales of five parcels in Hitchcock County in order to determine the market value of the Subject Property.³⁸ Each sale occurred during the three-year period prior to the effective date of January 1, 2016.³⁹ For purposes of clarity, the sales will be referenced in the table below according to the name of the grantee:

³⁸ Exhibit 13.

³⁹ October 1, 2012 to September 30, 2015. See Title 350, NAC Ch. 12, §003.07A(3), Rev. 3/15/09.

Grantee	Date of Sale	CREP Acres	Total Acres Sold
Harders	November 14, 2012	48.0	88.0
Bauer	September 27, 2013	45.9	164.78
Licht	October 16, 2015	130.0	196.87
Stagemeyer	October 29, 2015	62.5	169.5
Walters	December 15, 2015	71.37	155.29

The County Board presented evidence of the same five sales in Hitchcock County, plus one in Red Willow County and one **additional sale in Hitchcock County (referred to as “Seward,” the name of the grantee)**, in order to determine the market value of the Subject Property.⁴⁰ The two additional sales offered by the County Board are listed in the table below:

Grantee/County	Date of Sale	CREP Acres	Total Acres Sold
Seward	July 10, 2013	291.8 ⁴¹	344.51
Red Willow County	November 1, 2012	70.07	102.11

The Taxpayer called two additional witnesses: Marlene Bedore and Duane Dinnel. Both Bedore and Dinnel were familiar with agricultural land, and particularly CREP land, in Hitchcock County. Bedore was a Property Manager with Golden Plains Realty and has previously been the Hayes County Assessor, the Hitchcock County Assessor, and a Property Tax Liaison for the Nebraska Department of Revenue. Dinnel has owned and managed agricultural land subject to CREP contracts in Hitchcock County and has been involved in 40 to 50 agricultural land transactions in the area since 1989.

Both Bedore and Dinnel testified that it was their opinion that the five sales offered by the Taxpayer were comparable properties for determining the value of the Subject Property. Both also reviewed the sales of the **Seward property and Red Willow County property** offered by the County Board. Bedore stated that she did not believe that these two sales were comparable properties to the Subject Property.

⁴⁰ Exhibit 4.

⁴¹ The Taxpayer asserted, per the testimony of Duane Dinnel, that only 116 acres were CREP acres.

With respect to the **Seward property**, she did not think that the sale was comparable because the property was primarily purchased for its water rights. The buyer bought the land as CREP property but bought it with the intention of buying out of the CREP contract. With respect to the Red Willow County property, she reviewed the sale and talked to both the buyer and the seller. She stated the location and characteristics are very different from the Subject Property. She also learned that it was a private sale and a cash deal. Moreover, the final sale price included three new Dodge pickup trucks. In addition, the CREP contract was close to coming to an end. Ultimately, she concluded that it was not an arm's length transaction and should be excluded as a comparable property.

Dinnel also testified based on his personal knowledge of the Red Willow County property that the County Assessor's records regarding the CREP acres on that property were wrong. The Property Record Card indicated that there were 291.8 CREP acres while Dinnel testified that it was 116 acres. The County Board did not rebut this testimony.

The County Board called two witnesses on its behalf. The first was Sarah Scott. Scott is employed at the Nebraska Department of Revenue, Property Assessment Division, and is a Senior Tax Specialist. She is familiar with the Subject Property and the property in Hitchcock County and its surrounding area. The second witness called was Terra Riggs, the Hitchcock County Assessor.

Both Scott and Riggs testified that it was their opinion that the first sale listed, the Harders transaction, was not a comparable property for the Subject Property. They both testified that there was a house on the property that differentiated it from the Subject Property and that it was not a sale on the open market. They each also testified as to the opinion that the valuation of the Subject Property was correct.

VII. ANALYSIS

Property under a CREP contract may require a separate market analysis. The land subject to such contracts should be classified at its current use, but the value should be adjusted to reflect the local market for similar property.⁴² For example, land that is subject to a CREP contract and

⁴² Title 350, NAC Ch. 14 §004.04E.

being used as grassland should be classified as grassland and valued according to local market values of similar land with similar restrictions. Therefore, the central issue for the Commission to determine is the value of the Subject Property’s CREP acres. The Commission finds that the value of CREP acres “should be based on the current market value for land subject to similar restrictions and similar payments,” and there is sufficient market data to determine this value.⁴³

In these appeals, the Commission received evidence of the sales of seven properties that could potentially be used as comparable properties. Based upon the evidence discussed above, the Commission finds that the following four sales are comparable properties for the purposes of valuation of the Subject Property:

Grantee	Date of Sale	CREP Acres	Total Acres Sold
Bauer	September 27, 2013	45.9	164.78
Licht	October 16, 2015	130.0	196.87
Stagemeyer	October 29, 2015	62.5	169.5
Walters	December 15, 2015	71.37	155.29

The Commission further finds that the following three sales are not comparable to the Subject Property for the reasons explained below:

Grantee/County	Date of Sale	CREP Acres	Total Acres Sold
Harders	November 14, 2012	48.0	88.0
Seward	July 10, 2013	291.8	344.51
Red Willow County	November 1, 2012	70.07	102.11

The Harders sale: Riggs, the County Assessor, testified that the Harders sale was not an arm’s length transaction and that the buyer’s motivation skewed the price paid. She said that the sale resulted from the buyer advertising in a local newspaper an interest in looking for an acreage with a house and outbuilding. She opined that the resulting price paid did not reflect a market value for CREP acres. Riggs’ testimony was not rebutted by the Taxpayer and was competent

⁴³ Title 350, NAC Ch. 14, §006.04, §006.04C, and §006.04C(3).

and persuasive. Based upon the evidence presented, the Commission finds that the Harders sale is not comparable for determining the taxable value of the Subject Property.

The **Seward sale**: The evidence received indicates that the records regarding the number of CREP acres involved in the sale of the property are incorrect. Duane Dinnel testified to his personal knowledge that the number of CREP acres involved in the sale was 116 rather than 291.8. The County Board did not offer any evidence to rebut this testimony. Because of this discrepancy, the Commission is unable to determine the value of the CREP acres in that sale and will not deem the sale to be a comparable.

The Red Willow County sale: Bedore testified that the sale was not an arm's length transaction and that the sale price included the purchase of three new pickup trucks. She also testified that the purchase was made near the end of the CREP contract term, and that the Red Willow property was in a different market area from the Subject Property. Bedore's testimony regarding the Red Willow sale was not rebutted by the County Board. The Commission therefore finds that the Red Willow sale should not be included as a comparable to the Subject Property in these proceedings.

A. Taxable value of CREP acres for tax year 2016

The Commission will determine the taxable value of the CREP acres of the Subject Property for tax year 2016 using the four comparable property sales presented as evidence and discussed above. For each of these four comparable properties, the Commission first identified the assessed values of the non-CREP acres as indicated in the Property Record Card. These values were not disputed by the parties. Because the assessed value of agricultural land was 71% of its market value for Hitchcock County for 2016,⁴⁴ these values were then divided by .71 to determine the amount of the sale price to be attributed to the non-CREP acres. The amount of the sale price attributed to the non-CREP acres was then subtracted from the sale price. The remaining amount

⁴⁴ Agricultural land and horticultural land shall be valued at 75% of its actual value. Neb. Rev. Stat. §77-201(2). In its tax year 2016 annual review of classes and subclasses of property (commonly known as Statewide Equalization, the Commission made an adjustment to the grassland subclass of agricultural and horticultural land values in Hitchcock County pursuant to Neb. Rev. Stat. §77-5023. That adjustment resulted in the median ratio of the agricultural class for Hitchcock County for tax year 2016 to be at 71%. In order to achieve equalization within the class of agricultural land and horticultural land in Hitchcock County for tax year 2016, the Commission will apply 71% in its current analysis.

was attributed to the CREP acres.⁴⁵ The amount of the sale price attributed to the CREP acres was then multiplied by .71 to determine the taxable value of the CREP acres.

As a result, the Commission was left with the following per acre sales data for the CREP acres in the comparable properties:

Grantee	CREP Acres	Per Acre Value
Bauer	45.9 ⁴⁶	\$1,421
Licht	130.0	\$1,773
Stagemeyer	62.5	\$1,338
Walters	71.37	\$2,454

Using these four values, the Commission finds that the median of the four values is the best indicator of the assessed value of the CREP acres of the Subject Property for tax year 2016. Therefore, the median is \$1,597 per acre for the CREP acres.⁴⁷

B. Valuation of the Subject Property for tax year 2016

The Commission therefore finds, based on the evidence presented in these appeals, that the CREP acres of the Subject Property should have an equalized value of \$1,597 per acre. We further find that the CREP acres in each of these appeals were unreasonably assessed at \$2,106 per acre. Therefore, the Commission finds that the assessed value of each parcel of the Subject Property should be reduced by \$509 per CREP acre.

The effect on the valuations of each parcel of the Subject Property is reflected below:

⁴⁵ These amounts were the only amounts in dispute in these appeals.

⁴⁶ The number of CREP acres indicated at Exhibit 4:155 in the Property Record File is 49.5. The number of CREP acres as indicated in the CREP contract at Exhibit 4:10-11, is 45.9, consistent with the testimony of the owner, Ronald Bauer. The Commission relies upon the latter sources.

⁴⁷ The median is the arithmetic average of the two central items in an even number of items arranged or arrayed according to size. Title 442, NAC Ch. 9, §002.13. In this case, the two central items are \$1,421 and \$1,773. The average of those two values is \$1,597, the median of the four values.

Case No.	Board Determined Total Value	CREP Acres	Adjustment	Taxable Value
16A 0245	\$212,210	77.15	(\$39,269)	\$172,941
16A 0246	\$112,670	40.84	(\$20,788)	\$ 91,882
16A 0247	\$176,040	45.9 ⁴⁸	(\$23,363)	\$152,677

VII. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.⁴⁹

For all of the reasons set forth above, the determinations made by the County Board of Equalization should be vacated and reversed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decision of the Hitchcock County Board of Equalization determining the value of the Subject Property for tax year 2016 is vacated and reversed.
2. In Case No. 16A 245, the taxable value of the Subject Property for tax year 2016 is \$172,941.
3. In Case No. 16A 246, the taxable value of the Subject Property for tax year 2016 is \$91,882.
4. In Case No. 16A 247, the taxable value of the Subject Property for tax year 2016 is \$152,677.

⁴⁸ See n. 45, *supra*.

⁴⁹ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

5. This Decision and Order, if no appeal is timely filed, shall be certified to the Hitchcock County Treasurer and the Hitchcock County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax year 2016.
9. This Decision and Order is effective for purposes of appeal on September 6, 2018.⁵⁰

Signed and Sealed: September 13, 2018

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

⁵⁰ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.