

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dinnel Green Valley Farm Inc.,

Case Nos: 17A 0007, 17A 0008, 17A 0009

Duane Dinnel,

Case No.17A 0010

Sands Estate Inc.,

Case No. 17A 0011

Neva K. Molzer,

Case Nos. 17A 0014, 17A 0015

Maddux Ranch Company Trust,

Case Nos. 17A 0079, 17A 0080, 17A 0081,
17A 0082, & 17A 0083

Bentz Valley, Inc. Trust,

Case Nos. 17A 0084, 17A 0085,
& 17A 0086

Maddux Family Limited Partnership Trust,

Case Nos. 17A 0087, 17A 0088,
& 17A 0089

Terry C. Balka

Case No. 17A 0123

Appellants,

v.

Decision and Order Affirming the
Determination of the Chase County
Board of Equalization
and
Order Denying Motion for Costs

Chase County Board of Equalization,
Appellee.

For the Appellants:

Lindsay E. Pedersen,
Attorney for Appellants

For the Appellee:

Rory J. Roundtree,
Deputy Chase County Attorney

These appeals were heard before Commissioners Steven A. Keetle and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Properties are 19 agricultural and horticultural parcels located in Chase County, Nebraska. The legal descriptions of the Subject Properties are found at Exhibits 1 through 19. The Property Record Files (PRF) for the Subject Properties are found in Exhibits 20 through 24.

II. PROCEDURAL HISTORY

The Chase County Assessor (the Assessor) determined that the assessed value of the Subject Property in Case No. 17A 0007 was \$573,382 for tax year 2017. Dinnel Green Valley Farm Inc. (hereafter referred to collectively with the other Appellants as the Taxpayers) protested this assessment to the Chase County Board of Equalization (the County Board) and requested an assessed valuation of \$511,882. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$573,507.¹

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0008 was \$765,992 for tax year 2017. The Taxpayers protested this assessment to the County Board and requested an assessed valuation of \$734,912. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$766,054.²

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0009 was \$298,605 for tax year 2017. The Taxpayers protested this assessment to the County Board and requested an assessed valuation of \$279,943. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$298,644.³

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0010 was \$63,400 for tax year 2017. Duane Dinnel (hereafter referred to collectively with the other Appellants as the Taxpayers) protested this assessment to the County Board and requested an assessed valuation of \$55,036. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$63,417.⁴

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0011 was \$227,470 for tax year 2017. Sands Estate, Inc. (hereafter referred to collectively with the other Appellants as the Taxpayers) protested this assessment to the County Board and requested an assessed valuation of \$197,950. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$227,529.⁵

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0014 was \$443,844 for tax year 2017. Neva K. Molzer (hereafter referred to collectively with

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 3.

⁴ Exhibit 4.

⁵ Exhibit 5.

the other Appellants as the Taxpayers) protested this assessment to the County Board and requested an assessed valuation of \$381,655. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$443,969.⁶

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0015 was \$871,989 for tax year 2017. The Taxpayers protested this assessment to the County Board and requested an assessed valuation of \$747,857. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$872,242.⁷

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0079 was \$645,306 for tax year 2017. Maddux Ranch Company Trust (hereafter referred to collectively with the other Appellants as the Taxpayers) protested this assessment to the County Board and requested an assessed valuation of \$634,531. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$645,328.⁸

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0080 was \$842,655 for tax year 2017. The Taxpayers protested this assessment to the County Board and requested an assessed valuation of \$831,290. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$819,197.⁹

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0081 was \$106,160 for tax year 2017. The Taxpayers protested this assessment to the County Board and requested an assessed valuation of \$93,516. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$106,186.¹⁰

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0082 was \$472,912 for tax year 2017. The Taxpayers protested this assessment to the County Board and requested an assessed valuation of \$466,910. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$452,904.¹¹

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0083 was \$406,195 for tax year 2017. The Taxpayers protested this assessment to the County

⁶ Exhibit 6.

⁷ Exhibit 7.

⁸ Exhibit 8.

⁹ Exhibit 9.

¹⁰ Exhibit 10.

¹¹ Exhibit 11.

Board and requested an assessed valuation of \$367,622. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$406,275.¹²

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0084 was \$440,331 for tax year 2017. Bentz Valley, Inc., Trust (hereafter referred to collectively with the other Appellants as the Taxpayers) protested this assessment to the County Board and requested an assessed valuation of \$415,337. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$440,382.¹³

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0085 was \$438,054 for tax year 2017. The Taxpayers protested this assessment to the County Board and requested an assessed valuation of \$371,536. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$438,189.¹⁴

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0086 was \$584,861 for tax year 2017. The Taxpayers protested this assessment to the County Board and requested an assessed valuation of \$533,299. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$479,976.¹⁵

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0087 was \$1,177,359 for tax year 2017. Maddux Family Limited Partnership Trust (hereafter referred to collectively with the other Appellants as the Taxpayers) protested this assessment to the County Board and requested an assessed valuation of \$1,609,911. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$1,177,578.¹⁶

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0088 was \$289,937 for tax year 2017. The Taxpayers protested this assessment to the County Board and requested an assessed valuation of \$251,414. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$290,016.¹⁷

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0089 was \$325,855 for tax year 2017. The Taxpayers protested this assessment to the County

¹² Exhibit 12.

¹³ Exhibit 13.

¹⁴ Exhibit 14.

¹⁵ Exhibit 15.

¹⁶ Exhibit 16.

¹⁷ Exhibit 17.

Board and requested an assessed valuation of \$305,530. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$325,895.¹⁸

The Assessor determined that the assessed value of the Subject Property in Case No. 17A 0123 was \$527,302 for tax year 2017. Terry C. Bilka (hereafter referred to collectively with the other Appellants as the Taxpayers) protested this assessment to the County Board and requested an assessed valuation of \$478,053. The Chase County Board determined that the taxable value of the Subject Property for tax year 2017 was \$527,402.¹⁹

The Taxpayers 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. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits 1-24. The Parties offered additional exhibits and testimony during the course of the hearing. Exhibits 25 through 29, 36, and 39 through 41 were received, but exhibits 30 through 35, 37, and 38 were not received, for the reasons described on the record. The Commission held a hearing on June 25, 2018, with Commissioner Keetle presiding.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.²⁰ 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."²¹

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

¹⁸ Exhibit 18.

¹⁹ Exhibit 19.

²⁰ 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).

²¹ *Brenner* at 283, 811.

showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.²²

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.²³ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.²⁴

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.²⁵ 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.²⁶

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.”²⁷ 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.”²⁸ The Commission’s Decision and Order shall include findings of fact and conclusions of law.²⁹

IV. VALUATION LAW

Under Nebraska law,

[a]ctual 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

²² *Id.*

²³ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

²⁴ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

²⁵ 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).

²⁶ *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

²⁷ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

²⁸ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

²⁹ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

full description of the physical characteristics of the real property and an identification of the property rights valued.³⁰

“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.”³¹ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”³² 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.³³ All real property in Nebraska subject to taxation shall be assessed as of January 1.³⁴ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.³⁵

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). Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.³⁶

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”³⁷

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.³⁸

³⁰ Neb. Rev. Stat. §77-112 (Reissue 2009).

³¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

³² *Omaha Country Club* at 180, 829.

³³ Neb. Rev. Stat. §77-131 (Reissue 2009).

³⁴ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

³⁵ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

³⁶ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

³⁷ Neb. Rev. Stat. §77-132 (Reissue 2009).

³⁸ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

“Government Programs Land which is voluntarily enrolled in the Conservation Reserve Program (CRP, 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.”³⁹

“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.”⁴⁰ “This 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.”⁴¹

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.”⁴²

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. 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.”⁴³

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.”⁴⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁴⁵ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative

³⁹ Title 350, NAC Ch. 14, §004.04E (3/09)

⁴⁰ Title 350, NAC Ch. 14, §006.04, §006.04C, and §006.04C(3) (3/09)

⁴¹ Title 350, NAC Ch. 14, §006.04C(3) (3/09)

⁴² Title 350, NAC Ch. 50, §001.19.

⁴³ Neb. Rev. Stat. §77-1371 (Cum. Supp. 2014).

⁴⁴ *Neb. Const.*, Art. VIII, §1.

⁴⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.⁴⁶ 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.⁴⁷ 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.⁴⁸ 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.⁴⁹ The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁵⁰ 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].”⁵¹ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁵²

VI. EVIDENCE AND ANALYSIS

Each of the nineteen parcels appealed include acres that were under 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. For tax year 2017, the Parties agree that CREP acres have a unique value, as compared to other agricultural and horticultural property. The Parties also agree that all CREP acres in Chase County are classified correctly as CREP acres for tax year 2017. Additionally, the Parties agree on the way comparable sales should be used to calculate the value of CREP acres: when a parcel that contains CREP acres is sold, the value of the non-CREP acres should be extracted from the purchase price based on their current assessed values, and the remaining amount of the sales price is the value attributable to the CREP acres. The parties

⁴⁶ *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).

⁴⁷ See, *Cabela's Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁴⁸ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁴⁹ *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).

⁵⁰ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁵¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁵² *Id.* at 673, 94 N.W.2d at 50.

disagree as to which sales to use in this calculation, as well as the classification/value of some of the non-CREP acres on the sold properties.

The Assessor determined the assessed value of CREP acres using six sales with sales dates ranging from December 5, 2012, to July 12, 2016, that contained CREP acres. Because agricultural and horticultural land is to be assessed at 75% of market value,⁵³ for each of the six sales the Assessor determined the market value of the non-CREP acres by dividing the assessed values on the Property Record File (PRF) for the year of the sale by 75% to determine 100% market values and subtracting that from the sales price. The Assessor then divided that amount by the number of CREP acres to determine the sales price per acre of the CREP acres on each parcel. Using this methodology, the Assessor determined that the sales prices for the CREP acres on each of the six comparable parcels were: \$5,947, \$4,943, \$4,698, \$4,306, \$4,053, and \$3,982. Because there are an even number of sales, the median of these sales prices per acre is the average of the middle two sales or \$4,502.⁵⁴ The Assessor determined that she should multiply this number by 72% because she had not yet determined what the assessed level of value for agricultural and horticultural land in Chase County would be and this was the midpoint of the acceptable range of assessed values for a class or subclass.⁵⁵ Multiplying the sales price per acre by 72% resulted in an assessed value per acre of \$3,240, which was applied to all CREP acres in Chase County for tax year 2017.

The Taxpayers protested the determinations of the Assessor and requested that CREP acres be assessed at \$2,748 per acre.⁵⁶ At the hearing before the Commission, the Taxpayers indicated that they were now requesting that CREP acres be assessed at \$2,758 per acre based on additional research and calculations that had been done regarding the sale properties since the protest hearing before the County Board. The Taxpayers presented the testimony of Duane Dinnel regarding the value of CREP acres. Dinnel indicated that he manages farms in Chase County and has been involved in the sales of property as either a buyer or seller in Chase, Hayes, Dundy, and Hitchcock counties in Nebraska as well as sales in Kansas. He has been involved in approximately 20 property transactions in the last 5 years and has been involved in agricultural land transactions since the early 70's. Dinnel stated that most CREP contracts in Chase County

⁵³ See, Neb. Rev. Stat. §77-201 (2016 Cum. Supp.).

⁵⁴ $(\$4,698 + \$4,306)/2 = \$4,502$.

⁵⁵ See, Neb. Rev. Stat. §77-5023 (Reissue 2009).

⁵⁶ E1-19.

were entered into in 2005 for periods of ten or fifteen years. For the term of the CREP contract, the owners agreed to suspend their water rights, maintain grass cover, and not graze or hay the land in exchange for an annual payment, but that at the end of the term the water rights and ability to use the land were restored to the owner. Property owners could terminate their CREP contracts but they must repay the CREP payments with interest, penalties, and grass seeding costs plus interest; those costs became more prohibitive the longer a CREP contract remained in force.

Dinnel testified that he only used three sales of CREP property in developing his opinion of value because they were the only sales to occur in the three years between October 1, 2013 and September 30, 2016. Dinnel testified that, in his opinion, using sales outside this time period to value CREP acres would result in assessed values that were not equalized with other classes of agricultural and horticultural land that used only sales within this time frame to determine value. Dinnel also stated that sales in December of 2012 occurred at the peak of agricultural and horticultural land values and that in his opinion, they would drastically skew the assessed value of CREP acres if used. Additionally Dinnel testified that he allocated the value of the non-CREP acres on the sale properties prior to removing their value from the sale price based not on the information contained on the PRF, but on other information regarding Conservation Reserve (CRP) contracts and water rights.

The Taxpayers offered the parcel in Exhibit 27 (the Seward sale) which sold in December of 2013. Dinnel testified that in his opinion 47.95 acres of the Seward sale that are under CRP contract should be classified as dryland cropland rather than as grassland as indicated on the PRF, based on FSA records and soil maps of this property. Dinnel testified that this opinion was based on the requirement that acres had to be actively farmed to be eligible to be enrolled in the CRP program. By reallocating these acres as dryland cropland rather than as grassland, Dinnel figured that the market value of the CREP acres on the Seward sale should be \$3,830 per acre rather than \$3,982 as determined by the Assessor.

The Taxpayers offered the parcel in Exhibit 28 (the Gloy sale) which sold in March of 2015. Dinnel testified that 44 acres of this property which were under CRP contract at the time of sale also were certified irrigated acres. Dinnel was part of the group that purchased the property in the Gloy sale and he testified that because these CRP acres were also certified irrigated acres, he felt they were worth the same as CREP acres. Because of this Dinnel only removed the value of

9.3 dryland cropland acres from the purchase price and allocated the remainder of the purchase price to the CREP and CRP with certified irrigated acres as if they were all CREP acres. By reallocating these acres as CREP rather than as grassland or dryland cropland Dinnel figured that the market value of the CREP acres on the Gloy sale should be \$3,510 per acre rather than the \$4,698 as determined by the Assessor.

Using these two sales as well as a third sale Dinnel determined that the sales prices for the CREP acres on each of the three comparable parcels were: \$4,007, \$3,830 and \$3,510, the median of these three sales being \$3,830. Dinnel testified that he multiplied this number by 72% which resulted in an assessed value per acre of \$2,758 which should be applied to all CREP acres on the Subject Properties for Tax year 2017.

At the protest hearings, the County Board determined the assessed value of CREP acres on the Subject Properties should be \$3,241 per acre.⁵⁷ The County Board removed the 30 acre sale that occurred in July of 2016 (the Ough sale) from the array of sales used by the Assessor as not typical for Chase County Agricultural Sales.⁵⁸ The County Board used the sales prices for the CREP acres on each of the five comparable parcels as determined by the Assessor which were: \$5,947, \$4,943, \$4,698, \$4,306, and \$3,982, the median of these five sales being \$4,698. The County Board multiplied this number by 69% (as opposed to the 72% used by the Assessor), which was the level of value for agricultural and horticultural land in Chase County for tax year 2017 as determined by the Property Tax Administrator.⁵⁹

A. Number of Sales

The Assessor testified that she did use sales from a three year sales period from October 1, 2013, to September 30, 2016, to determine the assessed values for non-CREP agricultural and horticultural real property in Chase County for tax year 2017. There were 23 irrigated land sales, 10 dryland cropland sales, and 15 grass sales in this three year period.⁶⁰ For the 2017 assessment year there were only three sales of agricultural and horticultural real property that contained CREP acres in the three year period from October 1, 2013, to September 30, 2016. The Assessor expanded her sales period by one year and increased the number of sales to six. The Taxpayers allege that the County is limited to using three years of sales to determine value for CREP acres.

⁵⁷ E25:14.

⁵⁸ E25:14.

⁵⁹ E25:10 & 14, See, *2017 Reports and Opinion of the Property Tax Administrator for Chase County*, p 15.

⁶⁰ See, *2017 Reports and Opinion of the Property Tax Administrator for Chase County*, p 25, 80% MLU by Market Area.

The Taxpayers further allege that there were no other classes of property that used sales from outside the study period, and to do so with CREP acres would result in unequal assessments.

We disagree. Expanding the sales period is a professionally accepted method of increasing sample size for mass appraisal.⁶¹ The Nebraska Statutes and Nebraska Administrative Code do not have a set period for sales to be used by assessors in establishing the assessed values for real property. The Nebraska Administrative Code does have standard study periods for sales to be used by the Property Tax Administrator in *measuring* the levels of value and quality of assessments for the annual Reports and Opinions.⁶² However, nothing in the Nebraska Administrative Code requires an assessor to use only sales from these measurement study periods set forth for each of the classes of property when determining assessed values. There is also nothing in the Nebraska Administrative Code or Nebraska Statutes that requires that the same sales period be used for all real property. In fact, professionally accepted mass appraisal techniques state that the sales period need not be the same for all classes of property.⁶³ The Taxpayers' allegations that only sales from the three year study period may be used in determining values, that the same sales period must be used for all classes and subclasses of property, and that a failure to do so would result in dis-equalization, are without merit.

The Taxpayers allege that the consideration of the three additional sales by the County is unnecessary because the Nebraska Supreme Court held in *Firethorn* that a single sale may in some instances provide evidence of market value.⁶⁴ What the Court in *Firethorn* held was that a single sale should not be excluded just because it is a single sale, but the fact that there was only a single sales goes to the weight of the evidence.⁶⁵ In the present cases the Commission does not have to determine if a single sale is sufficient as the Parties are offering three to six sales of property containing CREP acres to consider when determining the value of CREP acres.

The Taxpayers allege that the three sales from December of 2012 should not be considered because they were from the peak of the agricultural and horticultural sales price boom. While

⁶¹ *Mass Appraisal of Real Property*, Gloudemans, International Association of Assessing Officers (1999) p. 249.

⁶² These study periods are: 1) two years between October 1 and September 30 ending the year prior to the assessment year for residential properties; and 2) three years between October 1 and September 30 ending the year prior to the assessment year for commercial, agricultural and horticultural, and special valuation properties. Title 350 Neb. Admin. Code ch 17 §003.05 (7/17). This same section of the Nebraska Administrative Code indicates that the Department of Revenue Property Assessment Division may use a longer or shorter study period for measurement based on its own information or information provided by the assessor, and that the assessor may disagree with the study period. Title 350 Neb. Admin. Code ch 17, §§003.05E & 003.05F (7/17).

⁶³ *Fundamentals of Mass Appraisal*, Gloudemans & Almy, International Association of Assessing Officers (2011) p. 237.

⁶⁴ *Firethorn Inv., v. Lancaster Cty. Bd. of Equal.*, 261 Neb. 231, 622 N.W.2d 605 (2001).

⁶⁵ *Firethorn* at 241, 612.

the three sales have two of the higher per acre values for CREP after the value of non-CREP acres are removed, their ratio of CREP to non-CREP acres and dryland to grass is also different. Assessed values for the irrigated cropland, dryland cropland, and grassland subclasses have been increasing since 2012 and have continued to increase in each subsequent year.⁶⁶ There are always going to be high sales and low sales and that is why the median of a group of sales is the preferred as it is less affected by the size of extreme values.⁶⁷ Mr. Hogsett, Chase County Commissioner and lifetime Chase County farmer, testified that he was familiar with the sales prices of agricultural and horticultural land in Chase County and that while sales prices were increasing in 2012 sales prices have just started to come down recently. The Taxpayers have not demonstrated that the three sales from December of 2012 should be excluded from consideration.

When reviewing the valuation protests for the Subject Properties the County Board excluded one of the six sales utilized by the Assessor as atypical of the agricultural and horticultural market in Case County when determining the assessed value of CREP acres. The County Board offered correspondence from Bryan Hill, an appraiser with the Nebraska Department of Revenue, Property Assessment Division, to Dinnel. Hill indicated that the Ough sale was coded as not typical of the market, and that “30 acre tracts are ... usually not typical of a ‘farm’ or ‘ranch’ sale.”⁶⁸ The County Board cited to Directive 16-3 issued by the Department of Revenue concerning Comparable Sales which indicates that agricultural and horticultural sales of less than 40 acres are included in a group of sales with special conditions.⁶⁹ The Assessor testified that the Department of Revenue Property Assessment Division did not use the Ough sale when measuring the level of assessment of agricultural and horticultural land in Chase County.

The Taxpayers have not demonstrated that the determination of the County Board to utilize five sales rather than the three sales proposed by the Taxpayers or the six sales utilized by the Assessor was unreasonable or arbitrary.

The Commission notes that the Taxpayers indicated that there has been a CREP sale in Chase County that occurred after September 30, 2016, but neither party provided that sale as part of the record for the Commission to analyze.

⁶⁶ 2017 Reports and Opinion of the Property Tax Administrator for Chase County, p. 30.

⁶⁷ The Median is “[a] measure of central tendency; the value of the middle item in an uneven number of items arranged or arrayed according to size or the arithmetic average of the two central items in an even number of items similarly arranged; a positional average that is not affected by the size of extreme values.” Appraisal Institute, *The Dictionary of Real Estate Appraisal*, p.180 (4th ed. 2002).

⁶⁸ E25:51

⁶⁹ See E25:52-54.

B. Allocation of Acres

The Taxpayer alleges that the value for the non-CREP acres used by the Assessor and County Board on the Seward and Gloy sales was incorrect.

With regard to the Seward sale, the Taxpayers offered CRP contracts that indicate that 47.95 acres of the Seward sale were under Conservation Reserve Program (CRP) contract.⁷⁰ Dinnel testified that in order for an acre of agricultural or horticultural land to be enrolled in CRP it had to be farmed; in other words, grassland or pastureland could not be enrolled. Subsequent to enrollment in the CRP program, acres are converted to grassland. Dinnel testified that because these CRP acres are taken out of production, the value of these acres as dryland cropland, rather than as grassland, should be removed from the sale price when determining the value of CREP acres. The Taxpayers did not produce any sales to support Dinnel's contention that the market value of CRP acres would be the same as that of dryland cropland. Additionally, the CRP contracts provided indicate that these acres were placed in the CRP program and removed from production years before their sale dates and that these CRP restrictions remain in place for years after.⁷¹ So at the time of the purchase these acres were already enrolled in the CRP program and were being used as grassland.

The rules and regulations regarding the assessment of CRP land indicate that it 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.⁷² The Assessor testified that based on sales of CRP acres in Chase County CRP acres are classified as grassland and are valued at the same price per acre as grassland acres. The Taxpayer has failed to demonstrate that the method used by the Assessor and (by adoption) the County Board to remove the market value of the non-CREP acres on the Seward sale for purposes of determining the value of CREP acres was unreasonable or arbitrary.

Dinnel testified that the Gloy sale is a unique sale in that 44.4 acres are enrolled in the CRP program and were still certified as irrigated acres. Dinnel testified CRP acres that were still certified as irrigated acres was unusual because typically acres that were certified as irrigated are placed in the CREP program, as the annual payments are greater than in the CRP program. Dinnel alleged that because of these CRP acres that were also certified irrigated acres that the

⁷⁰ E27:6-13

⁷¹ E27:6-13

⁷² See, Title 350 Neb. Admin. Code ch 14 §004.04E (3/09)

value of these acres should be the same as the CREP acres. In support of this allegation, the Taxpayers offered additional documents and testimony indicating transfers back and forth between the purchasers of the Gloy sale. Ultimately, Dinnel testified that he calculated the value of CREP acres by treating these CRP acres with water rights as CREP acres to determine the market value of \$3,510 per acre for the CREP acres on the Gloy sale.

The Assessor indicated that she utilized the information provided on the Form 521 Real Estate Transfer Statement as well as the information returned with the Sales Verification Questionnaire to determine the number of CREP and CRP acres on the Gloy sale.⁷³ The Assessor testified that this was the first time that the Assessor's office was made aware that there were CREP and CRP acres on the Gloy sale, and this allocation was used by the Assessor when determining the market value of CREP acres on the Gloy sale.⁷⁴

The Nebraska Supreme Court has held that the appraisal of real estate is not an exact science.⁷⁵ The Court has recognized that in tax valuation cases, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy.⁷⁶ The Commission finds and determines that the Taxpayer has failed to demonstrate that Dinnel's opinion of the way to allocate the value of the acres on the Gloy sale for purposes of determining the value of CREP acres is a more precise method than the County Board's. The circumstances regarding the transfer of water rights between parcels and the transfer of interests in the Gloy property after the sale do not clearly demonstrate that the value of the 44.4 CRP acres with certified irrigated acres is the same as CREP for purposes of determining the value of CREP acres. The action of the Assessor and County Board utilizing the Gloy sale for purposes of determining the market value of the CREP acres is not unreasonable or arbitrary.

The taxpayer's burden to show the valuation to be unreasonable is not met by showing a mere difference of opinion. Rather, the taxpayer must establish the valuation placed upon the property when compared with valuations placed on other similar property is grossly excessive and is a result of arbitrary or unreasonable action.⁷⁷ With regards to the time of sale or the

⁷³ E25:28-45

⁷⁴ E25:32

⁷⁵ *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

⁷⁶ *Firethorn* at 240, 611.

⁷⁷ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447, (2013).

allocation of acres the Taxpayer has failed to demonstrate that the action of the County Board in determining the assessed value of CREP acres was unreasonable or arbitrary.

C. Request for Costs

The Commission has the statutory authority to assess costs of an appeal as it deems just.⁷⁸ The Nebraska Administrative Code contains some guidelines for assessment of cost against a party which include a failure to comply with an Order for Hearing and Notice of Hearing issued by the Commission,⁷⁹ failing to appear for a duly noticed hearing,⁸⁰ and undertaking action that was frivolous or dilatory.⁸¹ The record before the Commission does not demonstrate that the County Board has failed to comply with the exchange of exhibit, pre-hearing conference and pre-hearing conference report requirements of the Order for Hearing and Notice of Hearing. The County Board did not fail to appear at the duly noticed hearing. While the record before the Commission contains an implication that there were documents requested that were not provided, that implication rests on both the Taxpayers as well as the County and is far from grounds for the Commission to assess costs. The Commission finds that an assessment of the Taxpayers' costs incurred against the County Board should not be made.

VII. CONCLUSION

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

For all of the reasons set forth above, the appeals of the Taxpayers are denied.

VIII. ORDER

IT IS ORDERED THAT:

⁷⁸ See, Neb. Rev. Stat §77-5016(12) (Reissue 2012)

⁷⁹ Title 442 Neb. Admin. Code, ch 4, §004.02A1 (6/11)

⁸⁰ Title 442 Neb. Admin. Code, ch 4, §004.02A2 (6/11)

⁸¹ Title 442 Neb. Admin. Code, ch 4, §004.02A3 (6/11)

1. The decisions of the Chase County Board of Equalization determining the value of the Subject Property for tax year 2017 are affirmed.⁸²
2. The assessed values of the Subject Property for tax year 2017 are:

Case No. 17A 0007

Land: \$573,507

Case No. 17A 0008

Land: \$766,054

Case No. 17A 0009

Land: \$298,644

Case No. 17A 0010

Land: \$ 63,417

Case No. 17A 0011

Land: \$227,529

Case No. 17A 0014

Land: \$435,168

Improvements: \$ 8,801

Total: \$443,969

Case No. 17A 0015

Land: \$872,242

Case No. 17A 0079

Land: \$629,365

Improvements: \$ 15,963

Total: \$645,328

Case No. 17A 0080

Land: \$790,424

Improvements: \$ 28,773

Total: \$819,197

Case No. 17A 0081

Land: \$106,186

⁸² 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.

Case No. 17A 0082

Land: \$446,947
Improvements: \$ 5,957
Total: \$452,904

Case No. 17A 0083

Land: \$405,495
Improvements: \$ 780
Total: \$406,275

Case No. 17A 0084

Land: \$440,296
Improvements: \$ 86
Total: \$440,382

Case No. 17A 0085

Land: \$438,189

Case No. 17A 0086

Land: \$479,976

Case No. 17A 0087

Land: \$1,177,578

Case No. 17A 0088

Land: \$284,847
Improvements: \$ 5,169
Total: \$290,016

Case No. 17A 0089

Land: \$325,895

Case No. 17A 0123

Land: \$527,402

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Chase County Treasurer and the Chase County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.)
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 2017.
7. This Decision and Order is effective for purposes of appeal on November 30, 2018.

Signed and Sealed: November 30, 2018

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

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.