BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

DOROTHY M. BARTELS
APPELLANT,

V.

CHASE COUNTY BOARD OF EQUALIZATION,
APPELLEE

AND,

TERRY BILKA,
APPELLEE.

CASE NO: 21A 0425

DECISION AND ORDER REVERSING THE DECISION OF THE CHASE COUNTY BOARD OF EQUALIZATION

For the Appellant:
Alexis L. Davidson,
Goodwin Siegfried, LLP

For the Appellee:
Rory Roundtree
Deputy Chase County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is an agricultural parcel located in Chase County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 69.

II. PROCEDURAL HISTORY

The Chase County Assessor determined that the assessed value of Parcel Number 150010591 was $531,121 for tax year 2021. Terry Bilka (the Taxpayer) protested these assessments to the Chase County Board of Equalization (the County Board) and requested taxable values of $284,412. The County Board determined that the taxable values of the Subject Properties for tax year 2021 were $431,522.[1]

[1] Exhibit 40.

The Chase County Assessor, Dorothy M. Bartels (the Assessor), appealed these determinations of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a consolidated hearing on September 20, 2022. Commissioner Hotz presided. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. Exhibits 1 through 313, 315 through 324, and 327 through 334 were admitted into evidence. Exhibits 314, 325, 326, 335, 336, and 337 were not admitted into evidence.

These appeals were consolidated into a single hearing with multiple other appeals involving landowners of other agricultural parcels. The evidence received was the same in all appeals.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.[2] 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.[3]

> That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.[4]

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.[5] Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.[6]

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[2] 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, 759 N.W.2d 464, 473 (2009).

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

[4] *Id.*

[5] Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.[7] 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.[8]

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.[9] 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.[10] The Commission's Decision and Order shall include findings of fact and conclusions of law.[11]

IV. RELEVANT LAW

A. Actual Value

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.[12]

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

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[7] 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).
[8] *Bottorf v. Clay County Bd. of Equal.,* 7 Neb.App. 162, 580 N.W.2d 561 (1998).
[9] Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).
[10] Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).
[11] Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).
[12] Neb. Rev. Stat. § 77-112 (Reissue 2018).

approach.[13] Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.[14] 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.[15] All real property in Nebraska subject to taxation shall be assessed as of January 1.[16] All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.[17]

B. Valuation of Agricultural Land

> Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.[18] Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, 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.[19]

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.[20] Under Neb. Rev. Stat. § 77-1359:

> (2)(a) 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.
>
> (b) Agricultural or horticultural purposes includes the following uses of land:
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> (i) 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

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[13] Neb. Rev. Stat. § 77-112 (Reissue 2018).
[14] *Omaha Country Club* at 180, 829.
[15] Neb. Rev. Stat. § 77-131 (Reissue 2018).
[16] See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).
[17] Neb. Rev. Stat. § 77-201(1) (Reissue 2018).
[18] Neb. Rev. Stat. § 77-201(2) (Reissue 2018).
[19] Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).
[20] Neb. Rev. Stat. § 77-132 (Reissue 2018).

(ii) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production…[21]

C. Equalization

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 Constitution.[22] Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.[23] 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.[24] 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.[25] 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.[26] 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.[27] There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.[28]

V. FINDINGS OF FACT AND ANALYSIS

A. The Conservation Reserve Enhancement Program (CREP)

The Conservation and Reserve Enhancement Program (CREP) is a subcomponent of the United States Department of Agriculture Farm Service Agency Conservation Reserve Program. The CREP program was established to promote conservation goals, including achieving a net water savings by reducing the use of

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[21] Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).
[22] *Neb. Const.,* Art. VIII, § 1.
[23] *MAPCO Ammonia Pipeline v. State Bd. of Equal*., 238 Neb. 565, 471 N.W.2d 734 (1991).
[24] *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).
[25] *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).
[26] *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).
[27] *Newman v. County of Dawson,* 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).
[28] *Id.* at 673, 94 N.W.2d at 50.

irrigation on cropland. CREP is a voluntary program in which agricultural producers enter a contract with the federal government for ten to fifteen years to remove acres of irrigated land from agricultural production. Additional prerequisites requiring crop and irrigation history are also required to enter into the program. [29]

In consideration for this removal from production, the producer is paid an annual rental payment for those acres based upon the irrigated cropland rental rate, as well as additional payments under specific situations. Further, when certain requirements are met, the producer may be allowed to hay or graze livestock on the CREP acres. However, if a producer wishes to disenroll CREP acres from the program, the producer will be required to pay back the funds received for that CREP contract term. The Parties have stipulated that the Subject Properties are subject to a CREP contract for tax year 2021.

B. Summary of the Evidence

The Subject Properties at issue involve two parcels enrolled in a CREP contract.

The Chase County Assessor, Dorothy Bartels, was called to testify. Bartels has held office as the Chase County Assessor for twenty-five years. Bartels stated that she re-assesses all agricultural land in Chase County every year based upon qualified sales in the three previous years.

For the 2021 tax year, Bartels stated that no qualified sales of CREP land occurred within the applicable three-year period, and so a separate market valuation could not be provided for CREP acres. Bartels asserted that a 2019 sale of CREP acres used by the County Board to support its valuation calculations was not, in fact, a qualified sale that could be used in any market analysis, as the sales-to-assessment ratio was 28.44%, which is very low; and that none of the parties to the transactions returned the verification paperwork. She said her disqualification of the sale was reviewed by the Property Assessment Division (PAD), and PAD agreed it should not be included in the sales file.

Bartels stated that the Subject Properties were initially entered into CREP contracts in 2005 for 15-year terms, which ended in 2020. At the end of the initial contract term, Bartels sent letters to the Taxpayer requesting a report from the taxpayers as to the status of CREP contracts, and that if no verification was received, the Subject Properties would be valued in 2021 as irrigated land. No status report was received from the Taxpayer during the applicable time period.

[29] *See* 7 C.F.R. §§ 1410.1 – 1410.90 (2020).

Bartels also testified that the 2021 CREP contracts provided a greater payment to the Taxpayer compared to the prior CREP contracts.

Bartels stated that in performing her 2021 market analysis of agricultural land in Chase County, there were 44 sales, of which 19 involved irrigated land. As a result of this analysis, she determined that the value of irrigated land was $3,650 per acre for land with a soil classification of 1A or 1A1.[30] Bartels stated that all land that had been enrolled in the original 2005 CREP contracts had either been re-enrolled in CREP or had been returned to irrigated production.

Bartels testified that she valued the CREP acres in Chase County for the 2021 tax year as irrigated acres because ground enrolled in CREP must be certified irrigated acres to be eligible to enroll in the program. Additionally, without relevant sales data for CREP acres, and no relevant sales data demonstrating a market value for CREP acres under the new CREP contracts, no market subclass could be established based upon the sales comparison approach. Bartels stated that a cost approach would not provide a proper indication of value for the Subject Properties.

As for an income approach, Bartels investigated this possibility, but felt that she would require further guidance and assistance from the Nebraska Department of Revenue's Property Assessment Division before implementing an income approach on CREP land, as her calculations showed a potential assessment of $5,141 per CREP acre. Thus, Bartels asserts that she assigned all irrigated acres in Chase County at the $3,650 per acre value regardless of how those acres were managed by the Taxpayer.[31]

Bartels testified that she valued the Subject Properties as irrigated acres (irrigable land) regardless of whether the Taxpayer had removed irrigation pivots, or taken any other action to practically prevent irrigation, because the CREP contracts require the Taxpayer to retain the irrigation certification throughout the CREP contract to continue to receive CREP payments.[32] Additionally, she notes

[30] A lower valuation of $3,550 was calculated for soil classifications 2A and 2A1. A value of $3,445 was calculated for soil classifications 3A, 3A1, 4A, and 4A1. *See* Exhibit 313.
[31] The affect of the Taxpayer's management decisions on the actual value of the land is discussed further below.
[32] Irrigable Lands are lands having soil, topographic, drainage, and climatic conditions favorable for irrigation and located in a position where a water supply is or can be made available…. Irrigable land as defined in REG 14-002.38 may be considered a sub-classification. The value of the land should reflect the current market value recognized for other similarly situated land that has the potential to be irrigated but is not currently irrigated. Title 350 NAC Chapter 14, Sections 002.38 and 006.04C(2).

that, with the exception of Hitchcock County, all other counties in the West-Central District value CREP acres the same as irrigated acres.[33]

Bartels testified sales older than the three-year window could not be used because all of those sales were made under the older CREP contracts, which provided a lesser compensation amount per each CREP-enrolled acre.

Bartels stated that the only other county that potentially had CREP sales was Hitchcock County, but when Bartels contacted the Hitchcock County Assessor, that Assessor stated that no CREP sales had occurred during the three-year sales period. Bartels also checked the state sales file and was unable to find any qualified CREP sales in the relevant market period.

The Frontier County Assessor, Regina Andrijeski, appeared on behalf of the Appellant. Andrijeski has held that position for sixteen years. During the same time, she has also been employed as an auctioneer and real estate broker. Andrijeski holds the State Assessor's Certificate and also holds a Real Estate Agent license. She also serves as the President of the West-Central District Assessor's Association.

Andrijeski testified how Frontier County assessed CREP acres by performing market analysis every year to determine whether there are enough qualified sales of CREP acres to support a separate market valuation for CREP. If there are not enough qualified sales, Andrijeski assesses CREP acres at the same value as irrigated land. She noted that she would value CREP acres differently from irrigated acres only if the market supports a different valuation. Andrijeski testified that CREP acres rarely sell in Frontier County, and that most Assessors in the West-Central District face a similar problem of few and infrequent sales of CREP acres to support a separate valuation from irrigated acres. Andrijeski recalled that the most recent sale of CREP acres in Frontier County was several years ago and at that time there was not much difference between the sale price of the CREP acres and the irrigated acres.

Andrijeski also stated that before water rights could be sold in Frontier County's Natural Resources District (NRD) an owner must first provide certain information to the NRD. Further, the buyer must contact the NRD to identify where the water rights will be transferred, and the sale must ultimately be approved by the NRD.

The Appellant called Duane Dinnel, Chase County Commissioner, to testify. Dinnel has been a Chase County Commissioner since 2021. Dinnel is not trained as an appraiser; however, he has experience as a buyer and seller of land in Chase

[33] Exhibit 313.

County, including CREP acres, but did not own any land enrolled in the CREP program in Chase County at the time of his testimony.

Dinnel explained that the County Board based its decision to reduce the assessed value of CREP acres in Chase County to $2,655 per acre based upon the prior year valuations of CREP and irrigated acres. Dinnel also stated that the Commission's prior 2015 and 2017 orders set the value of CREP acres, that the following years' valuation of CREP and irrigated acres maintained a similar ratio of assessed value between CREP and irrigated acres, and that his calculations supported the assignment of a $2,655 per acre value to all CREP acres protested to the Chase County Board.[34]

Dinnel did not know whether the County Board had the authority to overturn the County Assessor's disqualification of the 2019 sale discussed above. Dinnel did concede that the 2019 sale was prior to the enrollment of those acres into a CREP contract that began in 2020 or 2021.

Directive 09-4[35] directs county assessors to identify and track sales of acres enrolled in government programs, including CREP, and to adjust the assessed valuations based upon those tracked sales. Dinnel asserted that land enrolled in the CRP program was previously assessed based upon a certain percent value compared to dryland cropland assessment and that assessment of CREP acres should be similarly assessed.

Per Dinnel, the 2019 sale was the only sale presented to the County Board during the initial protest hearings. He said the County Board heard testimony from one of the buyers and presented affidavits from the seller and the sales agency as to why the sale should be considered a qualified sale. Dinnel did not know whether the remaining CREP payments for the land involved in that sale would go to the buyer or the seller under the contract, but did state that in his experience, the CREP payments typically go to the buyer of the land but did not know whether any contractual provision in the land contract would require the buyers to repay the CREP payments back to the sellers.

Dinnel confirmed that at the County protest hearings, some Taxpayers alleged that they had sold their future water rights to the NRD to be concluded at the end of the current CREP contract, but that the water rights were still intact as of tax year 2021. Dinnel noted that several of those Taxpayers received payment from the

[34] Ex. 332.
[35] Ex. 328. The Directive was issued by the Property Tax Administrator under the authority of Neb. Rev. Stat. Section 77-1330(1).

NRD for the water rights but acknowledged the CREP requirement that certified water rights remain intact throughout the life of the contract.

Dinnel stated that the only practical use of CREP acres is as grassland. Though during drought years, a CREP landowner may be allowed under the contract to engage in limited grazing and haying operations. Dinnel stated that there is a duty for the landowner to maintain the acres, including preventing noxious weeds from growing, and reseeding grass during the contract.

C. Analysis

The Commission must first address whether competent evidence has been adduced to overcome the presumption that the County Board faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.

As Dinnel's testimony demonstrates, the valuation of the Subject Properties determined by the County Board was based primarily upon the 2020 valuation of CREP acres, as well as a 2019 sale of land, which included CREP acres, but was ultimately disqualified from analysis for the reasons stated above. We find this approach to valuation is not one of the three approaches to value identified in Neb. Rev. Stat. § 77-112 (Reissue 2018). In contrast, as explained below, the approach used by the County Assessor in setting the value of the Subject Properties was a professionally accepted mass appraisal method.

Bartels relied upon the sales approach to develop the valuation of irrigated acres in Chase County. Bartels' evidence effectively rebuts the evidence adduced by the County Board and the Taxpayer. For these reasons, the Commission finds that the presumption in favor of the County Board's action has been rebutted by competent evidence.

The Commission must then decide the reasonableness of the valuation fixed by the County Board; a question of fact based upon all the evidence presented. The Assessor argues that the County Board's decision should be overturned, and a valuation of the Subject Properties set at the level of irrigated acres based upon soil classification because the Subject Properties maintain certified water rights, which is a requirement for enrollment into the CREP program. Without enough qualified sales to support a separate market valuation for CREP acres, the Assessor argues

that assessment of the Subject Properties based upon their land capability groups (LCG)[36] designation is proper.

The County Board argues that the Subject Properties should not be valued as irrigated cropland because the CREP contracts expressly forbid the Taxpayer from irrigating the Subject Properties. However, this inability to irrigate the CREP acres is a contractual obligation, rather than one based upon zoning or other laws or regulations. Thus, the water rights appurtenant to the Subject Properties are not altered, and the Subject Properties retain their certified water rights.

It is important to note that prior to entering into the CREP contract the Taxpayer made a management decision regarding the production of the land. Would the land produce more income if left as irrigated and assessed and taxed as irrigated? Or, would it be more beneficial to enter into the CREP contract, use the land as dryland, and collect CREP payments? Presumably, this was the economic consideration made by the Taxpayer. And it was only after the Taxpayer entered into the CREP contract, including its requirement that the land not be irrigated, that the County Board and the Taxpayer assert that the land should be assessed as dryland.

The County Board also argues that Department of Revenue's regulations and directives favor a separate valuation for CREP acres. Title 350 Neb. Admin. Code, Chapter 14, § 004.04E states in relevant part:

> 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.

Here, Bartels properly classified the Subject Properties as CREP acres by assigning an LCG code such as "4A1CR, 2ACR or 4ACR" as appropriate.[37] This classification complies with the demands of the regulation. However, when determining the proper valuation for the Subject Properties, the regulation directs assessors to make adjustments to reflect the local market. 350 Neb. Admin. Code,

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[36] Commonly known as LVG (land valuation groupings) "Land Capability is the suitability of land for use of producing a crop or crops without permanent damage. Land Capability Classification is a system for showing the suitability of soils for most kinds of field crops. These are determined by the Natural Resources Conservation Service. 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. Title 350 NAC Sections 002.39-002.41.

[37] Exhibits 189, 195.

Chapter 14, § 006.04C(3) similarly states that CREP acre values "should be based on the current market value for land subject to similar restrictions and similar payments."

Nothing in statute or regulation expressly requires CREP acres to be valued separately from irrigated acres. Instead, the regulation directs assessors to adjust the valuation of CREP acres to reflect the local market for similar property. The regulation does not prescribe a starting method of valuation for CREP acres, only that any valuation be adjusted to reflect the local market for similar property.

Bartels testified that agricultural land sales in all three subclasses used in the 2021 assessment indicated an increase in value from the tax year 2020 assessment. This demonstrates that simply carrying forward the valuation of CREP acres from 2020, as the County Board did, would not be the best indicator of current value for the Subject Properties, as the valuation of all other agricultural parcels had shown an increase in valuation, and the CREP contract payments had increased significantly under the renewed CREP contracts. Therefore, the underlying basis for the 2020 valuations has substantially changed such that using prior sales outside of the Assessor's three-year valuation window for tax year 2021 would not yield relevant assessment information for tax year 2021.

The Nebraska Supreme Court has held that the appraisal of real estate is not an exact science.[38] The Court has also recognized that in tax valuation cases, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy.[39] The Commission finds that the Assessor has demonstrated that her method of assessing value of the Subject Properties and CREP acres in Chase County is the better indicator of value than the County Board's methodology.

As noted above, enrollment of qualified acres in CREP represents an economic management decision on the part of the landowner. It is undisputed that all acres enrolled in CREP must be irrigable acres. These irrigable acres, prior to entry into CREP, could have been used in the production of commodity crops. Per the record, such acres are valued, in 2021, at irrigated values based upon a comparison of sales of similar acres in a three-year window prior to tax year 2021.

Entry of certain acres, including the Subject Properties, into CREP, did not change the fundamental nature of those acres. The water rights appurtenant to the land were not altered as a result of entry into CREP. CREP entry or re-enrollment

[38] *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).
[39] *Firethorn Inv. v. Lancaster Cty. Bd. of Equal.*, 261 Neb. 231, 240, 622 N.W.2d 605, 611 (2001).

did not require the Taxpayer to sell off or otherwise terminate their rights to irrigate their land.

Instead, entry into CREP represents an economic decision by the Taxpayer as to how to best manage those acres. At the heart of the matter, each Taxpayer must weigh whether the benefits of a guaranteed per-acre CREP payment over the lifetime of the CREP contract, as well as any potential cost-savings on time, labor, and other agricultural inputs outweighs any potential profit from raising irrigated commodities on the same parcel and any expenditures required to comply with the contract. Each Taxpayer must also decide whether the benefit of CREP payments outweigh contractual restrictions on the use of the parcel.

To be clear, the Commission is not asserting that placing parcels into CREP does not affect the value of that parcel if it were exposed for sale to the open market. As the only recent sale in Chase County involving CREP acres in 2019 was disqualified, there are no recent sales specifically involving CREP acres, and accordingly, no local market to provide a sufficient basis on which to adjust the valuation of CREP acres in Chase County. Furthermore, no sales of CREP acres have occurred since the new, higher-paying CREP contracts came into force. Any such adjustment would be based solely upon speculation and would therefore be arbitrary and unreasonable.

The evidence received, including the evidence offered by the County Assessor, is clear and convincing evidence that the County Board's valuation of the Subject Properties was arbitrary or unreasonable.

VI. 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 determinations of value were arbitrary or unreasonable.

For the reasons set forth above, the decisions of the County Board should be vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Chase County Board of Equalization determining the value of the Subject Properties for tax year 2021 are vacated and reversed.
2. The assessed value of the Subject Properties for tax year 2021 are:

Parcel ID 150010591	**Land**	**$ 531,121**
	Improvements	**$ 0**
	Total	**$ 531,121**[40]

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 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2021.
7. This Decision and Order is effective for purposes of appeal on February 9, 2023.[41]

Signed and Sealed: February 9, 2023

_____
Robert W. Hotz, Commissioner

SEAL

_____
James D. Kuhn, Commissioner

[40] Exhibit 67.
[41] 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.