BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John Engbrecht, Appellant, v. Chase County Board of Equalization, Appellee.	Case Nos: 15A 123, 15A 124 & 15A 125 Decision and Order Reversing the Decisions of the Chase County Board of Equalization

For the Appellant:
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The appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Properties are 3 agricultural parcels located in Chase County, Nebraska. The legal descriptions of the Subject Properties are found at Exhibits 16, 17, and 18 respectively. The Property Record Cards for the Subject Properties are found at Exhibits 30:9, 30:15, and 30:21 respectively.

II. PROCEDURAL HISTORY

With respect to Case No. 15A 0123, the Chase County Assessor determined that the assessed value of the Subject Property was $443,622 for tax year 2015.[1] John Engbrecht (the Taxpayer) protested this assessment to the Chase County Board of Equalization (the County Board) and requested an assessed valuation of $250,000.[2] The Chase County Board determined that the taxable value for tax year 2015 was $443,622.[3]

With respect to Case No. 15A 0124, the Chase County Assessor determined that the assessed value of the Subject Property was $246,588 for tax year 2015.[4] The Taxpayer protested this

[1] Exhibit 16.
[2] Exhibit 16.
[3] Exhibit 16.
[4] Exhibit 17.

assessment to the Chase County Board and requested an assessed valuation of $145,000.[5] The Chase County Board determined that the taxable value for tax year 2015 was $246,588.[6]

With respect to Case No. 15A 0125, the Chase County Assessor determined that the assessed value of the Subject Property was $706,507 for the tax year 2015.[7] The Taxpayer protested this assessment to the Chase County Board and requested an assessed valuation of $405,000.[8] The Chase County Board determined that the taxable value for tax year 2015 was $706,507[9]

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to certain facts and to the receipt of exchanged exhibits. The Commission held a consolidated hearing including 23 parcels owned by multiple taxpayers on June 8, 2016.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.[10] 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."[11]

> 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.[12]

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[5] Exhibit 17.
[6] Exhibit 17.
[7] Exhibit 18.
[8] Exhibit 18.
[9] Exhibit 18.
[10] See, Neb. Rev. Stat. §77-5016(8) (2014 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).
[11] *Brenner v. Banner Cty. Bd. Of Equal*., 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).
[12] *Id*.

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.[13] Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.[14]

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.[15] 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.[16]

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."[17] 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."[18] The Commission's Decision and Order shall include findings of fact and conclusions of law.[19]

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 full description of the physical characteristics of the real property and an identification of the property rights valued.[20]

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[13] Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).
[14] *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).
[15] Cf. *Josten-Wilbert Vault Co. v. Board of Equalization 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 Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).
[16] *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).
[17] Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).
[18] Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).
[19] Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).
[20] Neb. Rev. Stat. §77-112 (Reissue 2009).

"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."[21] The Courts have held that "[a]ctual value, market value, and fair market value mean exactly the same thing."[22] 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.[23] All real property in Nebraska subject to taxation shall be assessed as of January 1.[24] All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.[25]

> 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.[26]

"Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section."[27] 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.[28]

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

[21] Neb. Rev. Stat. §77-112 (Reissue 2009).
[22] *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
[23] Neb. Rev. Stat. §77-131 (Reissue 2009).
[24] See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)
[25] Neb. Rev. Stat. §77-201(1) (Reissue 2009).
[26] Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).
[27] Neb. Rev. Stat. §77-132 (Reissue 2009).
[28] Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

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."[29]

"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." "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."[30]

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."[31]

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."[32]

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."[33] Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.[34] 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.[35] 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.[36] Uniformity requires that whatever methods are used to determine actual or taxable value for various

[29] Title 350, NAC Ch. 14, §004.04E.
[30] Title 350, NAC Ch. 14, §006.04, §006.04C, and §006.04C(3).
[31] Title 350, NAC Ch. 50, §001.19.
[32] Neb. Rev. Stat. §77-1371 (Cum. Supp. 2014).
[33] *Neb. Const.*, Art. VIII, §1.
[34] *MAPCO Ammonia Pipeline v. State Bd. of Equal*., 238 Neb. 565, 471 N.W.2d 734 (1991).
[35] *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).
[36] See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

classifications of real property that the results be correlated to show uniformity.[37] 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.[38] The constitutional requirement of uniformity in taxation extends to both rate and valuation.[39] 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]."[40] "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."[41] "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."[42]

VI. SUMMARY OF THE EVIDENCE

Duane Dinnel testified on behalf of multiple taxpayers in the consolidated hearing. Dinnel stated that he had been a resident of Chase County for 66 years, had actively farmed in the County from 1971 to 1989, and had been managing property in Chase County since 1989. Dinnel testified that from 2011 to 2015 he had been involved as buyer or seller in 15 to 20 agricultural land transactions in Chase, Hitchcock, and Dundy Counties and that he had been involved in approximately 50 agricultural land transactions in his lifetime.

Dinnel testified that three of the properties owned by John Engbrecht in 2015 included acres that were under Conservation Reserve Enhancement Program (CREP) contracts between the owner of the land and the United States Department of Agriculture (USDA). Dinnel testified that the assessment of land under these CREP contracts was the sole issue in each and all of the appeals in the consolidated hearing.

Concerning his knowledge and experience in regard to issues relating to the value of CREP acres, Dinnel testified to his familiarity with the rules and procedures of the natural resources

[37] *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).
[38] *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).
[39] *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).
[40] *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).
[41] *Id.* at 673, 94 N.W.2d at 50.
[42] Neb. Rev. Stat. §77-1371 (Reissue 2009).

districts in the areas of the parcels,[43] aspects of water rights, and CREP contract terms and provisions. Dinnel explained that most CREP contracts in Chase County were executed in 2005 and that there were 929 total acres under CREP contracts in Chase County in 2015. Dinnel stated that the CREP contracts in Chase County were for 10 or 15 year terms, required that the land not be irrigated, required the landowner to plant certain grasses, and prohibited the harvesting or grazing of grasses. Under the contracts, landowners were paid monthly. The terms of the CREP contracts allowed a landowner to "buy out" the contract, paying back all annual payments with interest, plus penalties and grass seed costs with interest.

Dinnel testified that there were five sales of agricultural parcels in Chase County that should be analyzed for purposes of comparison with the 23 parcels that were the subject of the consolidated hearing.[44] These alleged comparable parcels sold in calendar years 2012 and 2013, and comprised 17% of the total CREP acres in Chase County. Dinnel testified to his familiarity with these parcels and the 23 Subject Parcels, stating that they shared similar topography and use. Dinnel also testified regarding similar properties containing CREP acres that sold in Dundy County and Hitchcock County in calendar years 2011 to 2014.[45] An aerial map of the Subject Properties in Chase County, as well as each of the alleged comparable properties in Chase, Dundy, and Hitchcock Counties was received as Exhibit 57.

Dinnel stated that the properties in Chase County and Dundy County were in the Upper Republican Natural Resources District (the URNRD) and the properties in Hitchcock County were in the Middle Republican Natural Resources District (the MRNRD). Dinnel explained that each resources district had similar water rights and restrictions regarding land use and that these rights and restrictions became a non-issue for CREP acres because the CREP contracts prohibited the use of irrigation. Dinnel concluded that because the comparable CREP properties and the 23 subject properties had similar topography, use, and water restrictions, they should have no per acre value difference even though they were in different resources districts.

[43] The Upper Republican Natural Resources District (URNRD) and the Middle Republican Natural Resources District (MRNRD).
[44] See, Exhibits 58-62.
[45] See, Exhibits 64-71.

Dinnel also asserted that the County Assessor was in error to value Chase County CREP acres at the same value per acre as irrigated acres in Chase County. He also disagreed with the Assessor's use of the sales in Exhibits 58 to 62 as qualified irrigated sales for tax year 2015.[46]

Dorothy Bartels, the Chase County Assessor, testified that she assessed all CREP acres for tax year 2015 as irrigated land because she believed, at the time of the assessment, that 80% or more of the acres of each parcel including CREP acres was irrigated. Bartels stated that she would have utilized qualified sales of CREP properties where the sales occurred between October 1, 2011 and September 30, 2014 for tax year 2015. She testified that for purposes of tax year 2015, she was unaware that there were any parcels in the County that were subject to a CREP contract. She stated that for purposes of identifying CREP properties, she sent a letter to producers February 10, 2015, to be used in her analysis for tax year 2016.

VII. ANALYSIS

There is sufficient evidence to conclude that the Subject Properties had acres that were under the terms of a CREP contract on the effective date of January 1, 2015.[47] As such, those acres should have been assessed and classified at their current use as of that date.[48] Therefore, in order to determine the appropriate value for the CREP acres, the Commission must first determine whether there is sufficient market data to determine its value. The value "should be based on the current market value for land subject to similar restrictions and similar payments."[49]

The Commission has reviewed the alleged comparable CREP parcels in Exhibits 58 to 71 and finds that there is evidence of sales of CREP properties that not only had "similar restrictions and similar payments," but also had similar topography and use as compared to the Subject Properties. The Commission further finds that the parcels in Exhibit 58, 64, and 66 to 71 should not be used as CREP sales, but that the sales of CREP land in Exhibits 59 to 62 should be analyzed as comparable CREP sales of parcels with similar restrictions and similar payments as the Subject Properties, and which sales and condition of sales constitute sufficient market data to determine the value of the Subject Properties, as explained below.

[46] See, Exhibit 33:36-41
[47] Exhibit 16, Exhibit 17, Exhibit 18,Exhibit 30, Exhibit 49, Exhibit 50, Exhibit 51.
[48] See, Title 350, NAC Ch. 14, §006.04, §006.04C, and §006.04C(3).
[49] Title 350, NAC Ch. 14, §006.04, §006.04C, and §006.04C(3).

A. Parcels Not Deemed Comparable In Chase County

The Taxpayer offered the parcel in Exhibit 58 as a comparable CREP sale from Chase County. This property may not be included as a comparable because at the date of the sale no portion of the parcel was subject to the terms of a CREP contract. The CREP contract was cancelled May 16, 2012.[50] The sale occurred on October 31, 2012.[51] Therefore, the buyer paid a price that did not reflect similar restrictions and similar payments as compared to the Subject Properties.

The Taxpayer also offered the sale of the parcel in Exhibit 66 as a comparable Hitchcock County CREP sale. This sale may not be included because the transfer was between relatives involving family corporations or partnerships.[52] Typically, such a sale is not deemed to be a qualified sale.[53] Therefore, the sale should not be included among the sales to determine any market. It may also not be used as a comparable sale for the reasons given below regarding the parcels in Exhibits 64, and 67 to 71.

B. Parcels Outside of Chase County Deemed Not Comparable

Dinnel testified that the alleged comparable parcels from Dundy County and Hitchcock County were not presumptively incomparable by virtue of their location outside of the boundaries of Chase County. As someone who had been involved in Chase County farm-related activities since 1971, including from 2011 to 2015 being involved as buyer or seller in 15 to 20 agricultural land transactions in Chase, Hitchcock, and Dundy Counties, he opined that the CREP sales in each of the three counties should effectively be considered to be in the same market.

Dorothy Bartels disagreed with this assertion. She testified that the agricultural land and horticultural land markets for Chase County and Hitchcock County were "completely different." She also testified that she did not verify whether any of the alleged comparable properties used by the Taxpayer from Hitchcock County were or should be qualified sales.

[50] See, Exhibit 33:7.
[51] See, Exhibits 33:3 and 58:1.
[52] See, Exhibit 66:1.
[53] See, Neb. Rev. Stat. §77-1371(5) (Cum. Supp., 2014).

After our analysis of the evidence, we agree that the agricultural land and horticultural land markets for Chase County as compared to Hitchcock County and Dundy County were significantly different.[54] For example, irrigated land in Chase County at the land capability group (LCG)[55] of 1A was assessed at $4,444 for tax year 2015, whereas similar 1A land in Hitchcock County was assessed at $3,300 per acre, and similar 1A land in Dundy County was assessed at $2,944 per acre.[56] Given that the nature of the CREP contracts at issue in these appeals primarily involves irrigated land that was then converted to CREP grass land, it is instructive to compare the respective irrigated land markets. In other words, the Commission's analysis includes answering the question: if CREP contract land were converted back to irrigated land, what would the market in that tax jurisdiction bear for the irrigated land? Based upon that analysis, we conclude that the CREP properties that sold in Hitchcock County and Dundy County are not comparable to the Subject Property in Chase County, where comparable irrigated land was selling at $1,000 per acre more than in Hitchcock County and Dundy County during the relevant time period.

C. Parcels Found To Be Comparable In Chase County

At the hearing, the County Assessor testified that she considered the sale of the Chase County parcel in Exhibit 59 to not be a qualified sale to use as a comparable because the use of the property had substantially changed.[57] The parcel sold on December 5, 2012,[58] After the sale, on December 13, 2012, the buyer cancelled the CREP contract and under the terms of the contract would have been required to "buy out" the contract, paying back all annual payments with interest, plus penalties and grass seed costs with interest.[59] There is sufficient evidence, therefore, that the price the buyer paid contemplated the value of the parcel as restricted under the terms of the CREP contract. The Commission therefore finds that the sale should be used as a comparable to the Subject Property.

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[54] See, 2015 Reports & Opinions for Chase County, page 21 (http://www.terc.ne.gov/2015/R&O_PDFs/15Chase.pdf).
[55] A land capability group is "a grouping of various soils according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to average management." Title 350, Chapter 14, Section 004.08E, Rev 3/15/09.
[56] Assessed values in Hitchcock County and Dundy County were based upon sales of properties in those respective tax jurisdictions. See, 2015 Reports & Opinions for Dundy County (http://www.terc.ne.gov/2015/R&O_PDFs/29Dundy.pdf) and 2015 Reports & Opinions for Hitchcock County (http://www.terc.ne.gov/2015/R&O_PDFs/44Hitchcock.pdf).
[57] See, Title 350, NAC Ch. 12, §002.10. "Non-qualified sale shall mean a sale which has been identified through the sales verification process as a non-arm's length transaction, or where the property as assessed is substantially different in it's [sic]characteristics then [sic] from the property as it was when sold."
[58] See, Exhibits 33:9 and 59:2.
[59] Per Dinnel testimony.

The Taxpayer offered the parcel in Exhibit 60 as a comparable CREP sale. This Chase County parcel sold on December 28, 2012,[60] while under the terms of a CREP contract.[61] The County Assessor testified that she did not qualify the sale as a comparable sale because it had been a judicially ordered sale.[62] However, according to the Sales Verification Questionnaire, the buyer learned about the sale through a broker/realtor,[63] the property had been available to other potential purchasers, it was on the market for 30 days, and it was sold at auction.[64] Based upon the evidence presented, the Commission finds that this sale should be used as a comparable to the Subject Property.

The Taxpayer also offered the parcel in Exhibit 61 as a comparable CREP sale. This Chase County parcel sold on December 28, 2012,[65] while under the terms of a CREP contract.[66] The County Assessor testified that she did not qualify the sale as a comparable sale because it had been a "forced" sale.[67] However, according to the Real Estate Transfer Statement, the sale was made through a real estate agent,[68] and according to the Sales Verification Questionnaire, the property had been available to other potential purchasers, and it was sold at auction.[69] Based upon the evidence presented, the Commission finds that this sale should be used as a comparable to the Subject Property.

The Taxpayer also offered the parcel in Exhibit 62 as a comparable CREP sale. This Chase County parcel sold on December 23, 2013,[70] while under the terms of a CREP contract.[71] The County Assessor testified that even though the sale was part of a §1031 exchange, she qualified the sale as an arm's length sale and as a comparable sale. According to the Real Estate Transfer Statement, the sale was made through a real estate agent.[72] Based upon the evidence presented, the Commission finds that this sale should be used as a comparable to the Subject Property.

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[60] Exhibits 33:18 and 60:1.
[61] Exhibit 60:10.
[62] See, Exhibit 33:23, paragraphs 9 and 12. The County Assessor may have been relying upon Neb. Rev. Stat. §77-1371(4).
[63] See, Exhibit 33:22, paragraph 3.
[64] See, Exhibit 33:23, paragraphs 4, 6, and 7.
[65] Exhibits 33:12 and 61:1.
[66] Exhibit 61:10.
[67] See, Exhibit 33:9, paragraph 9 and 12. The County Assessor may have been relying upon Neb. Rev. Stat. §77-1371(4).
[68] See, Exhibit 33:12, paragraphs 10 and 17.
[69] See, Exhibit 33:16, paragraphs 4 and 7.
[70] Exhibits 33:24 and 62:1.
[71] Exhibit 62:16.
[72] See, Exhibit 33:24, paragraphs 10 and 17.

D. Value of the Comparable Parcels

Therefore, the sales of the parcels in Exhibits 59-62 constitute the evidence the Commission relies upon to determine the value of CREP land in Chase County for tax year 2015. We have analyzed these sales and find that the market value of CREP land in Chase County for tax year 2015 should be $4,625 per acre. We reach that conclusion by analyzing the sales of each of the properties as follows:

The sales price of the parcel in Exhibit 59 was $577,000 for 153.06 acres.[73] The combined market value of dry land and irrigated land was $17,679.[74] Thus, the amount of the sales price to be attributed to the CREP acres was $559,321.[75] The number of CREP acres was 129.9.[76] Therefore, the estimated sales price of the CREP acres was $4,306/acre.[77]

The sales price of the parcel in Exhibit 60 was $849,000 for 160 acres.[78] The combined value of dry land, irrigated land, and personal property was $78,322.[79] Thus, the amount of the sales price to be attributed to the CREP acres was $770,678.[80] The number of CREP acres was 129.6.[81] Therefore, the estimated sales price of the CREP acres was $5,947/acre.[82]

The sales price of the parcel in Exhibit 61 was $675,000 for 160 acres.[83] The combined market value of dry land and personal property was $51,648.[84] Thus, the amount of the sales price to be attributed to the CREP acres was $623,352.[85] The number of CREP acres was 126.1.[86] Therefore, the estimated sales price of the CREP acres was $4,943/acre.[87]

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[73] Exhibit 59:2.
[74] The market value of dry land was $15,479 ($11,609 / .75). Exhibit 59:3. The market value of irrigated land was $2,200 (1.1acres x @1,500 per acre / .75). Exhibit 59:3. $15,479 + $2,200 = $17,679.
[75] $577,000 - $17,679 = $559,321.
[76] Exhibit 59:7-8.
[77] $559,321 / 129.9 acres = $4,306/acre.
[78] Exhibit 60:1.
[79] The market value of dry land was $4,014 ($3,011 / .75). Exhibit 60:2. The market value of the irrigated land was $48,000 (24 acres x $1,500 per acre / .75). Exhibit 60:2. The market value of the personal property was $26,308. Exhibit 60:1. $9,600 + $4,014 + $60,000 + $26,308 = $99,922. $4,014 + $48,000 + $26,308 = $78,322.
[80] $849,000 - $77,679 = $770,678.
[81] Exhibit 60:5-6.
[82] $770,678 / 129.6 acres = $5,947/acre.
[83] Exhibit 61:1-2.
[84] The market value of dry land was $25,660 ($19,245 / .75). Exhibit 61:2. The market value of the personal property was $25,988. Exhibit 61:1. $25,560 + $25,988 = $51,648.
[85] $675,000 - $51,648 = $623,352.
[86] Exhibit 61:5-6.
[87] $623,352 / 126.1 acres = $4,943/acre.

The sales price of the parcel in Exhibit 62 was $1,250,000 for 452.51 acres.[88] The combined market value of grassland and dry land was $67,205.[89] Thus, the amount of the sales price to be attributed to the CREP acres was $1,182,795.[90] The number of CREP acres was 297.[91] Therefore, the estimated sales price of the CREP acres was $3,982/acre.[92]

Therefore, the estimated sales prices of the CREP acres of the four comparable parcels were $4,306, $5,947, $4,943, and $3,982 per acre. The median of these sales prices per acre is the average of the middle two sales, or $4,625.[93] Since the County Assessor assessed all agricultural land and horticultural land at 72% of market value, we multiply $4,625 by .72 to determine the taxable value of the CREP acres to be $3,330 per acre. Therefore, based upon the estimated sales prices of the CREP acres of these four comparable properties during the relevant time period, we find that the taxable value of the CREP acres of the Subject Property is $3,330 per acre.

E. Taxable Value of the Subject Properties

In Case No. 15A 0123, the Subject Property consisted of 104.43 acres,[94] of which 83.4 acres were subject to the CREP contract.[95] The CREP contract also pertained to the property described in Case Nos. 15A 0124 and 15A 0125. Based upon the Property Record Card for tax year 2015,[96] and the findings above, the Commission finds that the taxable value of the Subject Property is as follows:

1A Irrigated land ($4,445 x 9.19 acres)	$ 40,850
2A Irrigated land ($4,445 x .70 acres)	$ 3,112
4A1 Irrigated land ($4,190 x 1.91 acres)	$ 8,003
4A Irrigated land ($4,190 x 5.48 acres)	$ 22,961
Road ($0 x 3.75 acres)	$ 0
CREP Acres ($3,330 x 83.40 acres)	$ 277,722
Total Value	**$ 352,648**

[88] Exhibit 62:1.
[89] The market value of the grassland was $50,764 ($38,073 / .75 = $50,764). Exhibit 62:3. The market value of dry land was $16,441 ($12,331 / .75) Exhibit 62:3. $50,764 + $16,441 = $67,205.
[90] $1,250,000 - $67,205 = $1,182,795.
[91] Exhibit 62:11.
[92] $1,136,790 / 297 acres = $3,28/acre.
[93] ($4,306 + $4,943) / 2 = $4,625.
[94] Exhibit 30:9
[95] Exhibit 49:6
[96] Exhibit 30:9

In Case No. 15A 0124, the Subject Property consisted of 59.10 acres,[97] of which 40.9 acres were subject to the terms of a CREP contract.[98] As noted above, the CREP contract also pertained to the property described in Case Nos. 15A 0123 and 15A 0125. Based upon the Property Record Card for 2015,[99] and the findings above, the Commission finds that the taxable value of the Subject Property for tax year 2015 is as follows:

2A1 Irrigated land ($4,445 x 1.54 acres)	$ 6,845
2A Irrigated land ($4,445 x 1.50 acres)	$ 6,668
3A1 Irrigated land ($4,445 x .97 acres)	$ 4,312
4A Irrigated land ($4,190 x 11.29 acres)	$ 47,305
Road ($0 x 2.9 acres)	$ 0
CREP Acres ($3,330 x 40.9 acres)	$136,197
Total Value	**$201,327**

In Case No. 15A 0125, the Subject Property consisted of 285.28 acres,[100] of which 172.7 acres were subject to the terms of a CREP contract.[101] Again, the Commission notes that the CREP contract also referred to the property described in Case Nos. 15A 0123 and 15A 0124. Based upon the Property Record Card for tax year 2015,[102] and the findings above, the Commission finds that the taxable value of the Subject Property for tax year 2015 is as follows:

Grassland ($525 x 107.58 acres)	$ 56,480
Road ($0 x 5.00 acres)	$ 0
CREP Acres ($3,330 x 172.7 acres)	$ 575,091
Total Value	**$ 631,571**

VIII. 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

[97] Exhibit 30:15
[98] Exhibit 50:6
[99] Exhibit 30:15
[100] Exhibit 30:21
[101] Exhibit 51:8
[102] Exhibit 30:21

determinations. The Commission also finds that there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the determinations of the County Board should be Vacated and Reversed.

IX. ORDER

IT IS ORDERED THAT:

1. The decisions of the Chase County Board of Equalization determining the taxable value of the Subject Property for tax year 2015 are vacated and reversed.[103]
2. The taxable value of the Subject Property in Case No. 15A 0123 for tax year 2015 is $352,648.
3. The taxable value of the Subject Property in Case No. 15A 0124 for tax year 2015 is $201,327.
4. The taxable value of the Subject Property in Case No. 15A 025 for tax year 2015 is $631,571.
5. 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 (2014 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 2015.

[103] 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.

9. This Decision and Order is effective for purposes of appeal on January 23, 2017.[104]

Signed and Sealed: January 23, 2017

_____
Robert W. Hotz, Commissioner

_____
Nancy J. Salmon, Commissioner

[104] Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.), and other provisions of Nebraska Statutes and Court Rules.