

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

IN THE MATTER OF EQUALIZATION
OF VALUE OF REAL PROPERTY
WITHIN CUSTER COUNTY,
NEBRASKA,
FOR TAX YEAR 2015

COUNTY NUMBER 21

FINDINGS AND ORDER ADJUSTING
VALUE

APPEARANCES FOR THE COUNTY:

Connie Braithwaite, County Assessor for Custer County
Steven Bowers, County Attorney for Custer County
Glenn Clark, Deputy County Attorney for Custer County

SUMMARY

The following findings of fact, conclusions of law, and order are issued pursuant to a motion adopted by a majority of the Commission. The Tax Equalization and Review Commission, as part of its equalization proceedings held pursuant to Neb. Const. art. IV, §28 and Neb. Rev. Stat. §77-5022 *et. seq.* (2014 Cum. Supp.) finds that the level of value of certain real property in Custer County for tax year 2015, fails to satisfy the requirements of the Nebraska Constitution and law. The Commission therefore orders an adjustment to the value of certain real property within Custer County.

**I.
REPORT AND OPINION
OF THE PROPERTY TAX ADMINISTRATOR**

Custer County (“County”), as required by Neb. Rev. Stat. §77-1514 (2014 Cum. Supp.), timely filed its Abstract of Assessment for 2015. The Property Tax Administrator (“Administrator”), based on that abstract and other information available to the Administrator, has filed certain statistical and narrative reports with the Nebraska Tax Equalization and Review

Commission (“Commission”) and further has certified the Administrator's opinion regarding the level of value and the quality of assessment of real property in Custer County for tax year 2015, as required by Neb. Rev. Stat. §77-5027 (2014 Cum. Supp.).

II. REVIEW OF ASSESSMENT PRACTICES

The level of value for any class or subclass of real property is indicated by its median assessment/sales ratio unless that ratio is deemed unreliable, the sample from which the ratio is drawn is not representative of the class or subclass, or the level of value has been determined based on other generally accepted mass appraisal techniques

III. APPLICABLE LAW

1. The Commission is required to meet annually to equalize the assessed value and special value of all real property as submitted by the county assessors on the abstracts of assessment and equalize the values of real property which is valued by the state. Neb. Rev. Stat. §77-5022 (2014 Cum. Supp.).
2. An assessment/sales ratio is a tool used under professionally accepted mass appraisal methods to measure and evaluate the level and uniformity of assessed values. The ratio is determined by dividing the assessed value of a parcel of real property by the sales price of that parcel. The assessment/sales ratio is expressed in terms of a percentage. 442 Neb. Admin. Code, ch. 9, §002.02 (06/11).
3. The Commission is required to raise or lower the valuation of a class or subclass of real property as necessary to achieve equalization. Neb. Rev. Stat. §77-5027 (2014 Cum. Supp.).

4. To achieve equalization the Commission is required to increase or decrease the value of a class or subclass of real property in any county or taxing authority or of real property valued by the state so that all classes or subclasses of real property in all counties fall within an applicable acceptable range. Neb. Rev. Stat. §77-5023(1) (Reissue 2009).
5. An applicable acceptable range is the percentage of variation from a standard for valuation as measured by an established indicator of central tendency of assessment. Neb. Rev. Stat. §77-5023(2) (Reissue 2009).
6. The median has been adopted by the Commission as the preferred established indicator of central tendency. 442, Neb. Admin. Code, ch. 9, §004 (06/11).
7. The applicable acceptable ratio range for the median of the assessment/sales ratios is from 69% to 75% of actual or fair market value for the class and subclasses of agricultural land and horticultural land not receiving special valuation pursuant to Neb. Rev. Stat. §77-1344; 69% to 75% of special valuation for the class and subclasses of agricultural land and horticultural land receiving special valuation pursuant to Neb. Rev. Stat. §77-1344; and 92% to 100% of actual or fair market value for all other classes and subclasses of real property. Neb. Rev. Stat. §77-5023(2) (Reissue 2009).
8. Whether or not the level of value determined by the Commission falls within the applicable acceptable range may be determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques. Neb. Rev. Stat. § 77-5023(5) (Reissue 2009).
9. If the Commission makes an initial determination that the level of value of a class or subclass of real property within a county fails to satisfy the requirements of section 77-5023, the Commission is required to issue a notice to the county for a hearing, on five days' notice, at

which legal representatives of the county and interested persons may show why an adjustment should not be made. Neb. Rev. Stat. §77-5026 (Reissue 2009).

10. Any increase or decrease of value shall cause the level of value determined by the commission to be at the midpoint of the applicable acceptable range. Neb. Rev. Stat. §77-5023(3) (Reissue 2009).
11. Any decrease or increase to a subclass of property shall also cause the level of value determined by the Commission for the class from which the subclass is drawn to be within the applicable acceptable range. Neb. Rev. Stat. §77-5023(4) (Reissue 2009).
12. An increase or decrease to the value of a class or subclass of real property in Custer County may only be made after a hearing held not less than five days after mailing notice of the hearing to the county clerk, county assessor, and the chairperson of the county board for Custer County unless notice is waived by a legal representative of the County. Neb. Rev. Stat. §77-5026 (Reissue 2009).
13. The Property Tax Administrator annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and the overall compliance with assessment requirements for each major class of real property subject to the property tax in each county. The comprehensive assessment ratio studies shall be developed in compliance with professionally accepted mass appraisal techniques and shall employ such statistical analysis as deemed appropriate by the Property Tax Administrator, including measures of central tendency and dispersion. The comprehensive assessment ratio studies shall be based upon the sales file as developed in subsection (2) of this section and shall be used by the Property Tax Administrator for the analysis of the level of value and quality of assessment for purposes of section 77-5027 and by the Property Tax Administrator

in establishing the adjusted valuations required by section 79-1016. Such studies may also be used by assessing officials in establishing assessed valuations. Neb. Rev. Stat. §77-1327(3) (2014 Cum. Supp.).

14. On or before nineteen days following the final filing due date for the abstract of assessment for real property pursuant to section 77-1514, the Property Tax Administrator shall prepare and deliver to the Commission and to each county assessor his or her annual reports and opinions. For any county with a population of at least one hundred fifty thousand inhabitants according to the most recent Federal Decennial Census, the reports and opinions shall be prepared and delivered on or before fifteen days following such final filing due date. Neb. Rev. Stat. §77-5027(2) (2014 Cum. Supp.).
15. The annual reports and opinions of the Property Tax Administrator shall contain statistical and narrative reports informing the commission of the level of value and the quality of assessment of the classes and subclasses of real property within the county and a certification of the opinion of the Property Tax Administrator regarding the level of value and quality of assessment of the classes and subclasses of real property in the county. Neb. Rev. Stat. §77-5027(3) (2014 Cum. Supp.).

IV. EVIDENCE BEFORE THE COMMISSION

The Commission may consider and utilize the provisions of the Constitution of the United States, the Constitution of Nebraska, the laws of the United States, the laws of Nebraska, the Code of Federal Regulations, the Nebraska Administrative Code, any decision of the several courts of the United States or the State of Nebraska, and the legislative history of any law, rule, or regulation, without making the document a part of the record. The Commission may without

inclusion in the record consider and utilize published treatises, periodicals, and reference works pertaining to the valuation or assessment of real or personal property or the meaning of words and phrases if the document is identified in the Commission's rules and regulations.

Neb. Rev. Stat. §77-5016(3) (2014 Cum. Supp.). The Commission pursuant to statute has identified various published treatises, periodicals and reference works for its consideration and utilization. 442 Neb. Admin. Code, ch. 5, §32 (06/11). The Commission heard testimony and received exhibits. No information or evidence, except that permitted by law, may be considered.

Neb. Rev. Stat. §77-5016(3) (2014 Cum. Supp.). The Commission may evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge.

Neb. Rev. Stat. §77-5016(5) (2014 Cum. Supp.).

V. PROCEDURAL

1. A statistical and narrative report informing the Commission of the level of value and the quality of assessments of the classes and subclasses of real property for Custer County and certifying the opinion of the Property Tax Administrator regarding the level of value and the quality of assessment of real property in Custer County, for the tax year 2015 was timely received by the Commission. (E21).
2. The level of value for any class or subclass of real property is indicated by its median assessment/sales ratio unless that ratio is deemed unreliable, the sample from which it is drawn is not representative of the class or subclass, or the level of value has been determined by the Property Tax Administrator based on other generally accepted mass appraisal techniques.

3. The Commission's Order to Show Cause and Notice of Hearing dated April 20, 2015 proposing an adjustment to the level of value of real property in Custer County was mailed to the County Clerk, County Assessor, and Chairperson of the County Board for Custer County on April 20, 2015.
4. A hearing on the Commission's order proposing an adjustment was held on April 29, 2015.

VI. FINDINGS OF FACT

The Commission finds and determines the following concerning classes and subclasses of real property in Custer County:

RESIDENTIAL CLASS OF REAL PROPERTY AND ITS SUBCLASSES

1. The level of value indicated by the median for the residential class of real property is 94% of actual or fair market value as shown by the Reports and Opinions of the Property Tax Administrator. (E21:6).
2. The statistical studies of the level of value are reliable and representative of the level of value for the residential class of real property.
3. The level of value for the residential class of real property as indicated by the median is within the applicable acceptable range set by state law as determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques.

Valuation Grouping 1, subclass of residential property

1. The level of value indicated by the median for the Valuation Grouping 1, subclass of the residential class of real property is 87.46% of actual or fair market value, the COD is 32.88,

and the PRD is 116.75 as shown by the Reports and Opinions of the Property Tax Administrator. (E21:28).

2. The statistical studies of the level of value and the quality of assessments are reliable and representative of the level of value and the quality of assessments for the Valuation Grouping 1, subclass of the residential class of real property.
3. The level of value for the Valuation Grouping 1, subclass of the residential class of real property is not within the applicable acceptable range set by state law as determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques.
4. The level of value of the Valuation Grouping 1, subclass of the residential class of real property in the County fails to satisfy the requirements of Neb. Rev. Stat. §77-5023(2) (Reissue 2009).
5. An increase in the amount of 10% must be made in order to bring the level of value indicated by the median for the Valuation Grouping 1, subclass of the residential class of real property to the midpoint of the applicable acceptable range as determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques as required by Neb. Rev. Stat. §77-5023 (Reissue 2009). (E21:41).
4. If an increase in the amount of 10% is ordered, the level of value indicated by the median for the Valuation Grouping 1, subclass of residential class of real property, determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques, will be 96% of actual or fair market value. (E21:39).
5. If an increase in the amount of 10% is ordered for the Valuation Grouping 1, the level of value indicated by the median for the of residential class of real property, determined to a

reasonable degree of certainty relying upon generally accepted mass appraisal techniques, will be 97% of actual or fair market value. (E21:35).

COMMERCIAL CLASS OF REAL PROPERTY AND ITS SUBCLASSES

1. The Property Tax Administrator did not state an opinion regarding the level of value or the quality of assessments for the class or subclasses of commercial real property because the information available was an insufficient basis for opinion. (21:6).
2. No basis for the formation of an opinion concerning the level of value or the quality of assessments for the class or a subclass of commercial real property has been presented to the Commission.
3. No increase or decrease by a percentage of the value of the commercial class of real property or a subclass thereof is supported by clear and convincing evidence.

AGRICULTURAL LAND AND HORTICULTURAL LAND CLASS OF REAL PROPERTY NOT RECEIVING SPECIAL VALUATION

1. The level of value indicated by the median for the agricultural land and horticultural land class of real property not receiving special valuation is 72% of actual or fair market value as shown by the Reports and Opinions of the Property Tax Administrator. (E21:6).
2. The statistical studies of the level of value are reliable and representative of the level of value for the agricultural land and horticultural land class of real property not receiving special valuation.
3. The level of value for the agricultural land and horticultural land class of real property not receiving special valuation as indicated by the median is within the applicable acceptable

range set by state law as determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques.

4. The level of value for each subclass of the agricultural land and horticultural land class of real property not receiving special valuation is either within the applicable acceptable range, the number of sales for a subclass are insufficient to provide a reliable statistical study of the subclass, the median assessment/sales ratio has been determined to be unreliable, or an adjustment by a percentage of value is not appropriate based on the record before the Commission.
5. No increase or decrease by a percentage for the value of the agricultural land and horticultural land class of real property not receiving special valuation, or a subclass thereof, is necessary .

VII. VOTE

The Findings and Order of the Commission were approved unanimously by a vote of the Commission after a motion and discussion at the hearing.

VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over Custer County and the subject matter of this order.
2. An adjustment to the level of value of real property in Custer County is required by law.

IX. ORDER

IT IS THEREFORE ORDERED THAT:

1. No adjustment by a percentage by the Commission shall be made to level of value for the residential class of real property in the County, excepting an adjustment to a subclass, for tax year 2015.

2. The level of value for the Valuation Grouping 1, subclass of the residential class of real property in the County shall be adjusted by an increase in the amount of 10% of the subclass so that the level of value indicated by the median of the subclass will be 96%. The ordered adjustment shall be made to all land and improvements however classified or coded within the Valuation Grouping 1, subclass of the residential class of real property as shown in the County's 2015 abstract of assessment.
3. No adjustment by a percentage by the Commission shall be made to level of value for the commercial class of real property or a subclass thereof in the County for tax year 2015.
4. No adjustment by a percentage by the Commission shall be made to the level of value for the agricultural land and horticultural land class of real property not receiving special valuation in the County, or a subclass thereof for tax year 2015.
5. These Findings and Orders shall be served on the Property Tax Administrator of the State of Nebraska via personal delivery, the Custer County Assessor via Certified United States Mail, return receipt requested, the Custer County Clerk, the Chairperson of the Custer County Board and the Custer County Attorney via First Class United States Mail sufficient postage paid, on or before May 15, 2015, as required by Neb. Rev. Stat. §77-5028 (Reissue 2009).
6. On or before June 5, 2015, the Custer County Assessor shall recertify the County Abstract of Assessment to the Property Tax Administrator, which Abstract shall reflect that the ordered adjustments have been made as required by Neb. Rev. Stat. §77-5029 (Reissue 2009).
7. The Property Tax Administrator shall audit the records of the Custer County Assessor to determine whether this Order was implemented, as required by Neb. Rev. Stat. §77-5029 (Reissue 2009).

8. On or before August 1, 2015, the Property Tax Administrator shall certify to the Commission that this Order either was or was not implemented by Custer County, as required by Neb. Rev. Stat. §77-5029 (Reissue 2009).
9. This order is effective the date it is signed and sealed.

SIGNED AND SEALED May 1, 2015.

Robert W. Hotz, Commissioner

Thomas D. Freimuth, Commissioner

Nancy J. Salmon, Commissioner