

760. The Commission, in order to save the Parties the time and expense of traveling to the City of Lincoln, Lancaster, County, Nebraska, for a hearing which could not be scheduled until October, 2003, issued an Order to Show Cause. This Order proposed that the Commission amend its June 13, 2002, order and set a deadline for the Parties to object. No objections were filed by any Party to the proposed order.

Neb. Rev. Stat. §77-5018 (2001 Supp.) requires that every final decision and Order entered by the Commission which is adverse to a party be stated in writing or on the record and be accompanied by findings of fact and conclusions of law. The Commission heard and considered the evidence and argument offered by counsel. Thereafter it entered its Findings of Fact, Conclusions of Law, and a Final Order on the merits of the appeals on the record. Those matters, in substance, are set forth below:

I. STANDARD OF REVIEW

The Taxpayer, in order to prevail, is required to demonstrate by clear and convincing evidence that either: (1) the County Board of Equalization failed to faithfully perform its official duties; or (2) that the County Board of Equalization failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130,

136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the County was unreasonable. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

I.
ISSUES BEFORE THE COMMISSION

Neb. Rev. Stat. §77-5016(7) (2001 Supp.) provides that the Commission's jurisdiction is limited to those questions raised before the County Board of Equalization and to those issues sufficiently related in content and context to be deemed the same question at both levels. *Arcadian Fertilizer v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 505, 583 N.W.2d 353, 357 (1998). The Parties stipulated that the only issues before the Commission are:

1. Whether the use of market areas by the Dawes County Assessor and the Dawes County Board of Equalization for the purposes of taxation is a valuation methodology authorized by law.
2. Whether the individual Appellants' property was fairly and proportionally equalized pursuant to law.

(E212).

II.
FINDINGS OF FACT

1. The Taxpayers are the owners of record of certain agricultural real property located in "Market Area 2" of Dawes County, Nebraska.
2. Agricultural and horticultural land is to be valued at 80% of actual or fair market value. Neb. Rev. Stat. §77-201(2) (2000 Cum. Supp.).
3. State law in 2001 authorized the use of market areas for the valuation of agricultural and horticultural land. Neb. Rev. Stat. §77-103.01 (2001 Supp.) (Effective date April 5, 2001). Neb. Rev. Stat §77-1363 (2001 Supp.) (Effective date April 5, 2001).
4. The Taxpayers, between June 1, 2001 and July 1, 2001 timely filed protests concerning proposed valuations of their property, and requested that the subject properties be valued in amounts similar to those properties in the other market areas of the County. (E1-E74).
5. A "market area" is defined as "an area with defined characteristics within which similar properties are effectively competitive in the minds of buyers and sellers with other comparable property in the area." Title 350 Neb. Admin. Code, Chapter 14, Reg. 002.046.
6. "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 on the soils, the risk of damage when they are used for ordinary field crops, grasslands and woodlands, and the way they respond to treatment. Land Capability Groups are a determination of the Department of Property Assessment and Taxation based upon the dryland capability group." Title 350 Neb. Admin. Code, Chapter 14, Reg. 002.40.

7. Land Capability Group "4G" is valued in the amount of \$125 per acre in Market Area 2; \$75 per acre in Market Area 1; \$70 per acre in Market Area 3; and \$200 per acre in Market Area 4.
8. "Farm Site" is defined as "the portion of land within a parcel which has been coded as agricultural under Property Parcel Type. Farm site includes the land directly associated with improvements that are agricultural or horticultural in nature including any uninhabitable or unimproved farm house site. This land shall not be classified as agricultural or horticultural land and does not include a home site." Title 350. Neb. Admin. Code, Chapter 10, Reg. 001.03.
9. "Farm Sites" are valued at \$2,000 per acre in Market Area 2; \$1,000 per acre in Market Area 1; \$1,000 per acre in Market Area 3; and \$2,000 in Market Area 4. (E177).

10. "Farm Home Sites" are defined as "one acre or less of land upon which is located a residence and necessary improvements needed for human habitation and is contiguous to a farm site." Title 350, Neb. Admin. Code, Chap. 14, Reg. 005.01A.
11. "Farm Home Sites" are valued at \$7,500 per acre in Market Area 2; \$4,000 per acre in Market Area 1; \$4,000 in Market Area 3; and \$7,500 in Market Area 4.
12. The Board denied each of the protests as to the land component of the subject property. (E1 - E74).
13. Thereafter, the Taxpayers timely filed appeals of the Board's decisions to the Commission. (Appeal Forms).

**III.
CONCLUSIONS OF LAW**

**A.
JURISDICTION**

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (2001 Supp.).

B.

Each of the Parties has been afforded the opportunity to present evidence and argument as required by Neb. Rev. Stat. §77-5015 (Cum. Supp. 2002)

C.

Pursuant to the Supreme Court's decision in *Edna P. Fisher, et. al., v. Dawes County Board of Equalization*, No. A-02-760 (2003), the decision of the Dawes County Board of Equalization must be vacated and reversed as to each of the subject properties.

**IV.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Orders of the Dawes County Board of Equalization setting the assessed values of the subject properties in each of the consolidated appeals for tax year 2001 are vacated and reversed.
2. The agricultural land component of the subject property in each of the consolidated appeals shall be valued for purposes of real property taxation as follows:

Each acre of each of the Taxpayers' agricultural real property located in Dawes County, Nebraska, shall be valued using the lowest per acre Land Capability Group value in the County as those values were determined by the Assessor for tax year 2001. That those values are as follows, as shown on Exhibit 177 (attached):

<u>LVG</u>	<u>Value</u>
1A	\$ 580

2A1	\$ 480
2A	\$ 380
3A1	\$ 360
3A	\$ 340
4A1	\$ 260
4A	\$ 220
1D1	\$ 300
1D	\$ 250
2D1	\$ 250
2D	\$ 240
3D1	\$ 225
3D	\$ 160
4D1	\$ 160
4D	\$ 140
1G	\$ 260
2G1	\$ 210
2G	\$ 200
3G1	\$ 125
3G	\$ 90
4G1	\$ 75
4G	\$ 70
4GA	\$ 260
WASTE	\$ 10
HOMESITE	\$4000
BLDG SITE	\$1000
<10 ACRES	\$ 500
>10 ACRES	\$ 500

3. any request for relief not specifically granted by this order is denied.

4. This decision, if no appeal is filed, shall be certified to the Dawes County Treasurer, and the Dawes Count Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (2001 Supp.).
5. This decision shall only be applicable to tax year 2001.
6. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

Signed and sealed this 5th day of August, 2003.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

SEAL

Mark P. Reynolds, Chair