

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

IN THE MATTER OF:)	03CP-1
)	
THE PETITION OF SHERMAN)	FINDINGS AND ORDER
COUNTY, NEBRASKA, TO ADJUST)	DENYING PETITION
VALUES BY A CLASS OR SUBCLASS)	
)	
)	

Filed August 6, 2003

Appearances: Mark L. Eureka, Esq.
 Sherman County Attorney
 P.O. Box 621
 Loup City, NE 68853-0621

Catherine D. Lang, Esq.
Property Tax Administrator
1033 "O" Street, Suite 600
Lincoln, NE 68508-3686

Before: Commissioners Hans, Lore, Wickersham and Reynolds.

Reynolds, Chair, for the Commission.

SUMMARY OF DECISION

The Sherman County Board of Equalization ("the Board") filed a Petition with the Tax Equalization and Review Commission ("the Commission"). The Board's Petition requested a twenty-percent (20%) reduction in the level of assessment of all agricultural dwellings, refinements to the home, and garages within Sherman County. The Commission, based on the record before it, denies the prayer for relief and dismisses the Petition.

I.
NATURE OF THE CASE

The State Assessment Administration Manager ("the Assessing Official") for Sherman County, Nebraska, determined that there were approximately 467 parcels of "agricultural dwellings and garages" in Sherman County for tax year 2003. (E246:7). The Assessing Official further determined that this real property had an actual or fair market value of approximately \$18,162,637. (E246:7).

The Board heard approximately 90 protests filed by Taxpayers pursuant to Neb. Rev. Stat. §77-1502 (Cum. Supp. 2002) in 2003. Thirty of these 90 protests challenged the State Assessing Official's determination of actual or fair market value of the agricultural dwellings and garages. The Board also received two decisions from the Commission concerning the actual or fair market value of certain real property located in Sherman County for tax year 2002. (*Landon v. Sherman Cty. Bd. of Equal.*, 02R-79, and *Kowalski v. Sherman Cty. Bd. of Equal.*, 02R-81). (E469; E470). The Board filed a petition to adjust values by a class or subclass based on these 30 protest hearings, the two decisions issued by the Commission for tax year 2002, and an analysis prepared by the State Appraiser for Sherman County.

The Board requested the Commission reduce the level of assessment of agricultural dwellings and garages by twenty-percent (20%). *Petition* at 1. The Board adduced the testimony of the Assessing Official, and the testimony of the State

Appraiser for Sherman County, in support of its request. The Board also adduced Exhibits 462 through 471.

II. APPLICABLE LAW

The law applicable to petitions filed by a county board of equalization is found in Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, § 2):

"(1) After completion of its actions and based upon the hearings conducted pursuant to sections 77-1502 and 77-1504, a county board of equalization may petition the Tax Equalization and Review Commission to consider an adjustment to a class or subclass of real property within the county. Petitions must be filed with the commission on or before July 26.

"(2) The commission shall hear and take action on a petition filed by a county board of equalization on or before August 10. Hearings held pursuant to this section may be held by means of videoconference. Hearings conducted pursuant to this section shall be in the manner prescribed in section 77-5026. The burden of proof is on the petitioning county to show that failure to make an adjustment would result in values that are not equitable and in accordance with the law.

"(3) After a hearing the commission shall enter its order based on evidence presented to it at such

hearing and the hearings held pursuant to section 77-5022 for that year. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or any corrections or adjustments to be made to the class or subclass of real property affected. When issuing an order to adjust a class or subclass of real property, the commission may exclude individual properties from that order whose value has already been adjusted by a county board of equalization in the same manner as the commission directs in its order. On or before August 10 of each year, the commission shall send its order by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board.

"(4) The county assessor shall make the specified changes to each item of property in the county as directed by the order of the commission. In implementing such order, the county assessor shall adjust the values of the class or subclass that is the subject of the order. For properties that have already received an adjustment from the county board of equalization, no additional adjustment shall be made applying the commission's order, but such an exclusion from the commission's order shall not preclude adjustments to those properties for corrections or omissions. The county assessor of the county adjusted

by an order of the commission shall recertify the abstract of assessment to the Property Tax Administrator on or before August 20."

**III.
ISSUE BEFORE THE COMMISSION**

The only issue is whether failure to make the proposed adjustment would result in values that are not equitable and in accordance with the law.

**IV.
STANDARD OF REVIEW**

The Board, in order to prevail, is required to demonstrate by clear and convincing evidence that failure to make an adjustment would result in values that are not equitable and in accordance with the law. Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2002, as amended by 2003 Neb. Laws., L.B. 291, §2).

**V.
FINDINGS OF FACT**

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-

5016(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).

The Commission finds and determines from the pleadings and the record before it that:

1. The Assessing Official determined that there were approximately 467 parcels of real property containing agricultural dwellings and garages in Sherman County for tax year 2003. (E246:7).
2. The Assessing Official determined that the actual or fair market value of these agricultural dwelling parcels was \$18,162,637. (E246:7).
3. The Board requested a twenty-percent (20%) reduction in the assessed value of this subclass of real property. The Board's request would reduce the assessed value of the agricultural dwelling and garages subclass by approximately \$3,632,527.
4. The Board based its request in part on two Commission decisions concerning assessed values for tax year 2002. (E469; E470). Neither of those decisions demonstrate that agricultural dwellings and garages as a class are overvalued in Sherman County for tax year 2003.
5. The Board's request for relief is also based in part on eight sales of agricultural dwelling and garage properties. These sales were used as the starting point for an analysis which ultimately concluded that the assessed values of

agricultural dwellings and garages exceeded actual or fair market value.

6. The Assessing Official re-priced agricultural dwellings and garages in 2002. Agricultural outbuildings have not been re-priced since 1987.
7. The County failed to adduce any evidence that assessed values of agricultural outbuildings reflect actual or fair market value.
8. The Assessing Official's analysis which concluded that agricultural dwellings and garages are overvalued relied on the outdated values of agricultural outbuildings.
9. The Board adduced no other evidence of actual or fair market value of the agricultural dwellings, refinements, or garages.

VI. ANALYSIS

A. 2003 EQUALIZATION PROCEEDINGS

The Property Tax Administrator filed the *2003 Report and Opinion for Sherman County* ("the Report") on April 7, 2003.

(E246:1). The Commission concluded that the median of the assessment to sales ratios for the residential class of real property within the County was 100% based on the Report.

(E461:1291).

The Commission based its determination on the sale of 80 residential real properties within Sherman County between July 1,

2000, and June 30, 2002. (E246:60). Only 95% of the "qualified" sales were used for the purposes of determining the median of the assessment to sales ratios. (E246:60). The top and bottom 2.5% of sales were excluded from the statistical study. (E246:50). These sales were excluded to eliminate "outliers" from improperly affecting the statistical study.

The Commission, based on the evidence presented, concluded that an assessment to sales ratio of 100% fell within the acceptable range of values established in Neb. Rev. Stat. §77-5023(3) (Cum. Supp. 2002). The Commission therefore determined no action should be taken regarding the residential class of property in Sherman County for tax year 2003. (E461:1292). The Commission's Order did note that the reported Coefficient of Dispersion ("COD") for the residential class of property was 27.28. (E461:1291). The Commission's Order also noted that the Price Related Differential ("the PRD") was 122.33. (E461:1291). The COD was outside the acceptable range as defined by 442 Neb. Admin. Code, ch. 9, §008.06C. The PRD was also outside of the acceptable range as defined by 442 Neb. Admin. Code, ch. 9, §008.06B.

The Commission's Order specifically determined that "the problems shown by the statistical studies are not problems which can be resolved by an adjustment to a class or subclass of real property as required by Neb. Rev. Stat. §77-5028 (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §13)." (E461:1292). The Commission concluded that no order adjusting values should be

issued for the residential class of real property within Sherman County for tax year 2003. (E461:1292).

B.
THE BOARD'S EQUALIZATION PROCEEDINGS

The Board heard and considered approximately 90 protests during proceedings held in 2003 pursuant to Neb. Rev. Stat. §77-1502, *et seq.* Thirty of those protests were for agricultural dwellings and garages. Copies of those protests were not made a part of the record before the Commission.

The Board also received two decisions from the Commission concerning the actual or fair market value of certain real property located in Sherman County. (*Landon v. Sherman County Bd. of Equal.*, 02R-79, and *Kowalski v. Sherman Cty. Bd. of Equal.*, 02R-81). (E469; E470).

The Board filed a petition to adjust values by a class or subclass based on these 30 protest hearings, the two decisions issued by the Commission for tax year 2002, and the analysis prepared by the Assessing Official. The Board's petition alleged that agricultural dwellings, refinements to the home and garages are overvalued for tax year 2003.

C.
THE BOARD'S PETITION

The Commission issued an Order for Hearing on July 24, 2003, upon receipt of the Petition. The matter was scheduled for hearing on the merits of the Petition in the City of Lincoln,

Lancaster County, Nebraska, on the 4th day of August, 2003, at 1:00 o'clock p.m. by video conference. Video conference proceedings are specifically authorized by Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2002, as amended by 2003 Neb. Laws., L.B. 291, §2) and Neb. Rev. Stat. §77-5022 (Cum. Supp. 2002, as amended by 2003 Neb. Laws., L.B. 291, §12).

The Board appeared at the hearing through Mark L. Eurek, Esq., the Sherman County Attorney. Mr. Eurek was accompanied by Mr. Eldon Kieborz, Chair of the Sherman County Board of Equalization. Both of these individuals participated in the hearing from Kearney by videoconference. Ms. Catherine D. Lang, Esq., the Property Tax Administrator, appeared personally at the hearing site in Lincoln.

The Commission, during the course of the public hearing, afforded the Board, the Assessing Official, the State Appraiser, the Chair of the County Board of Equalization, and other interested persons the opportunity to present evidence and argument. The Board, the Property Tax Administrator, the Commissioners and other interested persons were also afforded the opportunity to ask questions of witnesses who testified.

D.
THE BOARD'S EVIDENCE

The Board's evidence included the testimony of three witnesses and eleven documents. The Board contends that the evidence presented establishes (1) that the assessed value of

agricultural dwellings, refinements to the home, and garages exceed actual or fair market value; and (2) that a twenty-percent (20%) reduction in the assessed value of those properties would promote more uniform and proportionate assessments.

The Board contends first that two Commission decisions support the requested relief. Each of the decisions referred to concerned assessed values for tax year 2002. The prior year's values are usually not relevant to the subsequent year's values. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

The Commission tried to correlate the 2003 assessed values for farm residences and garages with the 2002 values which were the subject of the two Commission decisions. The Board offered evidence that the analysis of assessed values for agricultural dwellings and garages is not included in the Residential Profiles. The level and quality of assessments for this subclass cannot be determined from the 2002 or the 2003 *Reports and Opinion of the Property Tax Administrator*.

The Board also failed to explain how two decisions, involving a total of two agricultural residential properties out of 467, demonstrate that an entire class of property is overvalued.

The Board finally contends that a statistical analysis of the sale of certain property supports the relief requested. Exhibit 463 describes eight sales which occurred between December

10, 1999 (Sale 3) and December 28, 2002 (Sale 1). (E463:1). Each of the transactions involved the purchase and sale of agricultural dwellings and garages.

The State Appraiser for Sherman County prepared Exhibit 472, a statistical analysis of these eight sales. This analysis concludes that the Coefficient of Dispersion ("COD") for the eight referenced sales was 997.26 and the Price Related Differential ("PRD") was 807.84. The acceptable range for the COD is twenty or less, and the acceptable range for the PRD is 98 to 103. 442 Neb. Admin. Code, ch. 9, §008.06 (2003).

This analysis does not justify a change in the assessed values of agricultural dwellings and garages. The assessed values of agricultural dwellings and garages cannot be changed based on an analysis where (1) sales are drawn from a three-year time frame, rather than the two-year period used for all other residential property in the State of Nebraska; and (2) an assumption that the actual or fair market value of the agricultural outbuildings is correct, when the record establishes that those values have not been changed since 1987.

The data underlying the analysis was obtained by adjusting the assessed value of the agricultural land component to 100% of market value. That value, and the assessed value of the agricultural outbuildings, was subtracted from the sale price, yielding in theory the actual value of the agricultural dwelling and garage. The assessed value of the agricultural dwelling and garage was divided by the sales price less the value of the land

and outbuildings. This process yielded unusual results, such as the negative \$15,557 value for the house and garage in Sale Number 3. (E463:1).

Limiting the sales to the time frame used for all other residential property, July 1, 2000 through June 30, 2002, left five sales. Those sales, arrayed from the lowest ratio of assessed value to sales price to the highest, results in the following:

<u>Sale Number:</u>	<u>Assessment to Sales Ratio:</u>
4	54.69%
1	58.81%
7	176.32%
2	770.19%
8	4,209.86%

Eliminating the three "old" sales does nothing to improve the quality of the sales array. The problem with using the outdated values for the agricultural outbuildings component permeates the entire analysis. The results of this analysis is neither clear nor convincing evidence that agricultural dwellings, refinements, and garages are overvalued as a class of real property.

There is no clear and convincing evidence implementing the requested reduction would improve the uniformity or proportionality of assessments within Sherman County for tax year 2003. Put another way, in the language of the statute, there is no evidence that failure to implement the requested reduction

would result in values that are not equitable and in accordance with the law.

The Board has failed to satisfy the burden of persuasion. The Board's prayer for relief must therefore be denied. The Board's petition must also be dismissed.

VII. CONCLUSIONS OF LAW

The Commission concludes as a matter of law that:

1. A petition to adjust values by a class or subclass must be filed with the Commission. Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2002, as amended by 2003 Neb. Laws., L.B. 291, § 2).
2. The Board filed a Petition with the Commission on July 22, 2003. This Petition was filed on or before July 25, 2003, and was, therefore, timely filed pursuant to Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2002, as amended by 2003 Neb. Laws., L.B. 291, §2).
3. The Commission has jurisdiction over the Sherman County Board of Equalization and the subject matter of this Petition.
4. The Board's evidence does not rise to the level of clear and convincing evidence that failure to make the proposed adjustment would result in values that are not equitable and in accordance with the law.

5. The Board's prayer for relief must accordingly be denied and the Petition must be dismissed.

**VIII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Sherman County Board of Equalization's prayer for relief, a twenty-percent reduction in the assessed value of agricultural residences and garages, is denied.
2. The Sherman County Board of Equalization's Petition to Adjust Values by a Class or Subclass is dismissed.
3. Any other request for relief by the Sherman County Board of Equalization not specifically granted by this order is denied.
4. This decision, if no appeal is filed, shall be certified to Sherman County Clerk, the State Assessing Official for Sherman County, the Sherman County Attorney, and the Chairperson of the Sherman County Board.

5. This decision shall only be applicable to tax year 2003.

IT IS SO ORDERED.

Dated this 6th day of August, 2003.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Wm. R. Wickersham, Vice-Chair

Seal

Mark P. Reynolds, Chair