

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

IN THE MATTER OF:)	
)	03CP-3
)	
THE PETITION OF MADISON)	FINDINGS AND ORDER
COUNTY, NEBRASKA, TO ADJUST)	DENYING PETITION
VALUES BY A CLASS OR SUBCLASS)	
)	
)	

Filed August 6, 2003

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Before: Commissioners Lore, Wickersham and Reynolds.

Reynolds, Chair, for the Commission.

SUMMARY OF DECISION

The Madison County Board of Equalization ("the Board") filed a Petition with the Tax Equalization and Review Commission ("the Commission"). The Board's Petition requested that the subclass of Irrigated Agricultural Land in Market Area 1 be reduced by eight-percent (8%) and that the subclass of Irrigated Agricultural Land in Market Area 3 be increased by ten percent (10%). The Commission, based on the record before it, denies the prayer for relief and dismisses the Petition.

I.
NATURE OF THE CASE

The Property Tax Administrator determined that the level of assessment for the Agricultural Class of Property in Madison County, Nebraska was 77% based on 70 sales. (E461:920). The Property Tax Administrator reported that the level of assessment for the agricultural class of property in Agricultural Market Area 1 of Madison County was 80.02%; the level of assessment for Agricultural Market Area 2 was 76.02%; and the level of assessment for Agricultural Market Area 3 was 77.62%. (E461:920). The Property Tax Administrator also reported that the level of assessment for the Dry Land subclass of agricultural real property was 78.51%; the level of assessment for the Grass Land subclass of agricultural real property was 62.90%; and the level of assessment for the Irrigated Land subclass of agricultural real property was 83.12%. (E461:921). The acceptable range for assessment to sales ratio for agricultural real property is 74% to 80%. Neb. Rev. Stat. §77-5023 (Cum. Supp. 2002, as amended by 2003 Neb. Laws., L.B. 291, §13).

The Commission adopted these findings as part of its final order during the 2003 Equalization Proceedings. (E461:903 - 913). The Commission noted in the final order the problems with assessed values for the Agricultural Class of real property. The Commission concluded from the evidence before it at that hearing that the problems could not be resolved by a percentage adjustment to a class or subclass. (E461:910).

The Board filed a Petition requesting the Commission reduce the level of assessment of Irrigated Agricultural Real Property by eight percent (8%) in Market Area 1, and increase the level of assessment of Irrigated Agricultural Real Property by ten percent (10%) in Market Area 3.

The Board adduced the testimony of the Deputy Madison County Assessor in support of its request. The Deputy Assessor testified that there were no sales of Irrigated Land in Market Area 3 between July 1, 1999 and June 30, 2002. The Deputy Assessor also testified that the purpose of the requested adjustment for Market Area 3 was to return the per acre assessed values to the 2002 levels.

The Board also adduced Exhibits 473 through 481.

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 adjustments 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 record before it that:

1. The Board's proposed order adjusting values would move the level of assessment for Agricultural Market Area 1 from 80.02% (E461:920) to 81.75% (E481:4).
2. The Board's proposed order would move the level of assessment for the Irrigated Land subclass of agricultural real property from 83.12% (E461:921) to 81.75% (E481:5).
3. The Board's purpose in proposing the Market Area 3 adjustment was to return the per acre assessed values to the 2002 levels. The proposed adjustment does not accomplish the stated purpose. (E476).

4. There were no sales of irrigated land in Market Area 3 between July 1, 1999, and June 30, 2002. The proposed adjustment therefore cannot be reflected on the Sales Profile. There is no other evidence demonstrating the impact of the Board's proposed order on the level of assessment or quality of assessments for Market Area 3.

VI. ANALYSIS

A. 2003 EQUALIZATION PROCEEDINGS

The Property Tax Administrator filed the *2003 Report and Opinion for Madison County* ("the Report") on April 7, 2003. (E224:1). The Commission concluded that the median of the assessment to sales ratios for the agricultural class of real property within the County was 77% based on the Report. (E461:909).

The Commission based its determination on the sale of 70 parcels of agricultural real property within Madison County between July 1, 1999, and June 30, 2002. (E461:920). Only 95% of the "qualified" sales were used for the purposes of determining the median of the assessment to sales ratios. (E461:920). The top and bottom 2.5% of sales were excluded from the statistical study. (E461:920). 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 77% 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 agricultural class of property in Madison County for tax year 2003. (E461:910). The Commission's Order did note that the reported Coefficient of Dispersion ("COD") for the agricultural class of property was 22.46. (E461:909). The COD was outside the acceptable range as defined by 442 Neb. Admin. Code, ch. 9, §008.06C.

The Commission's Order specifically determined from the record before it at that time 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)." (E461:910). The Commission concluded that no order adjusting values should be issued for the agricultural class of real property within Madison County for tax year 2003. (E461:910).

B.
THE BOARD'S PETITION

The Board filed its petition on July 25, 2003. The Commission issued an Order for Hearing the day it received the Petition. The matter was scheduled for hearing on the merits of the Petition in the City of Lincoln, Lancaster County, Nebraska,

on the August 5, 2003, at 9:00 o'clock a.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 Joseph M. Smith, Esq., the Madison County Attorney. Mr. Smith was accompanied by Ms. Judy Bickley, Deputy Madison County Assessor. Both of these individuals participated in the hearing from Norfolk 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 Deputy Assessor, 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.

C. THE BOARD'S EVIDENCE

The Board's evidence included the testimony of one witness and a number of documents. The Board's evidence establishes assessed values of the irrigated subclass of agricultural real property exceeds 80% of actual or fair market value. The Board contends that an eight-percent (8%) reduction in the assessed

value of irrigated land in Market Area 1 and a ten-percent (10%) increase in assessed values of irrigated land in Market Area 3 would promote more uniform and proportionate assessments.

The median "assessment to sales ratio" for sales of irrigated land during the three-year time frame in Madison County was 83.12%. (E461:921). The median is defined as

"A measure of central tendency. The value of the middle item in an uneven number of items arranged or arrayed according to size; the arithmetic average of the two central items in an even number of items similarly arranged; a positional average that is not affected by the size of extreme values."

Glossary for Property Appraisal and Assessment, International Association of Assessing Officers, 1997, p. 86.

The Board contends its evidence supports the relief requested. Exhibit 481, pages 4 and 5, demonstrates that if the proposed adjustment to Market Area 1 is implemented, the median for Market Area 1 will increase from 80.02% (E461:920) to 81.75% (E481:4). The proposed adjustment will cause the median to move from within the acceptable range to outside the acceptable range.

The median of the assessment to sales ratio for the subclass of irrigated land for the entire County, if the proposed adjustment is implemented, will fall from 83.12% (E461:921) to 81.75% (E461:5). The proposed adjustment will move the median of this subclass closer to the acceptable range. The proposed

adjustment will not move the median of this subclass to within the acceptable range.

The COD is a measure of uniformity of assessments. The acceptable range for the COD is 20 or less. 442 Neb. Admin. Code, ch. 9, §008.06B (2003). The COD for the entire agricultural class of real property, before the proposed adjustment, was 22.46. (E461:920). The COD for the entire class of agricultural real property, after the proposed adjustment, will be 25.05. (E481:4). An Order implementing the proposed change would adversely impact the uniformity of assessments.

The Price Related Differential ("PRD") is a measure of the proportionality of assessments. The acceptable range for the PRD is 98 to 103. 442 Neb. Admin. Code, ch. 9, §008.06 (2003). The PRD for the entire class of agricultural real property before the proposed change is 101.14. (E461:920). This is within the acceptable range. The PRD after the proposed change is 106.99 for the entire class of agricultural real property. (E481:4). This is outside of the acceptable range. An Order implementing the proposed change would adversely impact the proportionality of assessments.

The Board's stated purpose in proposing the Market Area 3 adjustment was to return the per acre assessed values to the 2002 levels. The proposed adjustment does not accomplish the stated purpose. (E476). There were no sales of irrigated land in Market Area 3 between July 1, 1999, and June 30, 2002. The proposed adjustment therefore cannot be reflected on the Sales

Profile. There is no other evidence demonstrating the impact of the Board's proposed order for Market Area 3 on level of assessment or quality of assessments.

**D.
CONCLUSION**

The evidence demonstrates that the proposed adjustments to Market Area 1 do not improve the uniformity and proportionality of assessments. There is no evidence establishing the impact of the Market Area 3 adjustment. The evidence does establish that the proposed adjustment to Market Area 3 does not meet the Board's stated objectives. The Board has failed to meet its 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 25, 2003. This Petition was filed on July 25, 2003, and was 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 Madison County Board of Equalization and the subject matter of this Petition.
4. The level of assessment for all classes and subclasses of agricultural and horticultural land within Madison County (76.94%), and the level of assessment for each of the three Agricultural Market Areas in Madison County for tax year 2003 (Market Area 1 - 80.02%; Market Area 2 - 76.02%; and Market Area 3 - 77.62%) falls within the acceptable range set by statute. [E461:920, Neb. Rev. Stat. §77-5023(3) (Cum. Supp. 2002, as amended by 2003 Neb. Laws., L.B. 291, §13)].
5. The level of assessment for the irrigated land subclass of agricultural real property in Madison County (83.12%) falls outside of the acceptable range set by statute. (E481:2)
6. The level of assessment for the grass land subclass of agricultural real property in Madison County (62.90%) also falls outside of the acceptable range set by statute. (E481:2).
7. The Board's proposed adjustments fail to improve the level or quality of assessments for the agricultural class of real property for tax year 2003.
8. 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.

9. 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 Madison County Board of Equalization's prayer for relief, an eight percent (8%) decrease in the level of assessment for the irrigated subclass of agricultural real property in Market Area 1, and a ten percent (10%) increase in the level of assessment for the irrigated subclass of agricultural real property in Market Area 3, is denied.
2. The Madison County Board of Equalization's Petition to Adjust Values by a Class or Subclass is dismissed.
3. Any other request for relief by the Madison County Board of Equalization not specifically granted by this order is denied.
4. This decision, if no appeal is filed, shall be certified to Madison County Clerk, the State Assessing Official for Madison County, the Madison County Attorney, and the Chairperson of the Madison County Board.

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

IT IS SO ORDERED.

Dated this 6th day of August, 2003.

Susan S. Lore, Commissioner

Wm. R. Wickersham, Vice-Chair

Seal

Mark P. Reynolds, Chair