

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

IN THE MATTER OF THE PETITION )	Case Number 04CP-2
OF SALINE COUNTY, NEBRASKA, TO )	
ADJUST VALUES BY A CLASS OR )	FINDINGS AND ORDER
SUBCLASS )	DENYING PETITION
)	

Filed August 5, 2004

Appearances: Tad Eickman, Esq.  
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**I.  
STATEMENT OF THE CASE**

The Saline County Board of Equalization ("the Board") petitioned the Tax Equalization and Review Commission ("the Commission") to adjust the values of certain subclasses of commercial real property within Saline County ("the County") for tax year 2004. The Board's Petition requested that the Commission "roll back the 2004 valuations of all commercial property valuations in Wilber, Nebraska, and Friend, Nebraska, in Saline County, Nebraska to the 2003 valuations." (Petition at p. 1).

The Property Tax Administrator filed the *2004 Report and Opinion for Saline County* ("the Report") on April 7, 2004. (E76:106). The Report establishes that for 2004 the Saline County Assessor ("the Assessor") increased the value of

commercial land and improvements in Friend by 30%, and also increased the value of commercial land and improvements in Wilber by 25%. (E76:53). The Property Tax Administrator concluded that after Assessor action the median of the assessment to sales ratio for the Commercial Class of real property within the County was 95% as of January 1, 2004. (E76:32). The Property Tax Administrator based this determination on the sales of 41 qualified sales of commercial real property within the County between July 1, 2000 and June 30, 2003. (E76:32).

The Commission, based on this evidence, concluded that the assessment to sales ratio for the Commercial Class of real property fell within the acceptable range of value established in Neb. Rev. Stat. §77-5023(3) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §64). The Commission's Order noted that the Coefficient of Dispersion ("COD") for the Commercial Class of property was 19.16. (E76:32). The COD was within the acceptable range as defined by Title 442, Neb. Admin. Code, Chapter 9, Reg. 008.06C. (12/03). The Commission's Order also noted that the Price Related Differential ("the PRD") for the Commercial Class of real property was 105.33. (E76:32). The PRD was outside of the acceptable range. Title 442, Neb. Admin. Code, Chapter 9, Reg. 008.06B. (12/03).

The Report notes that after Assessor action for tax year 2004 the assessment to sales ratio for the "Assessor Location: Friend" was 96.38, the COD was 16.84, and the PRD was 97.78.

This analysis was based on 10 qualified sales which occurred between July 1, 2000, and June 30, 2003. (E76:32). The Report further notes that after Assessor action for tax year 2004 the assessment to sales ratio for the "Assessor Location: Wilber" was 96.02, the COD was 25.89, and the PRD was 107.07. This analysis was based on 8 qualified sales which occurred between July 1, 2000, and June 30, 2003. (E76:32). Although the level of assessment for the two subclasses of commercial real property were within the acceptable range required by law, the COD and the PRD were outside of the acceptable range.

The Property Tax Administrator offered, and the Commission received without objection, Exhibit 558, which demonstrates that the data base for analysis of commercial sales in Saline County as used by the Property Tax Administrator to produce Exhibit 76, page 32, was unchanged as of August 3, 2004.

The Commission's Order issued after the initial equalization proceedings pertaining to commercial real property in Saline County concluded 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 (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §64). The Commission concluded that no order adjusting values should be issued for the commercial class of real property within the County for tax year 2004. (Order at p. 7).

The Board received 55 protests of commercial property values from the City of Friend out of a total of 95 commercial property records. The Assessor, on review of the protested values, recommended various changes. The Board consistently adopted 2003 values as the 2004 values. The Board adopted these values whether the 2003 assessed values were higher, lower, or equal to the values recommended by the Assessor. The Board in only four instances took no action. (E350: 1, 30, 31, 35).

The Commission, upon receipt of the Petition, issued an Order for Hearing and Notice of Hearing on July 27, 2004. A copy of the Order and Notice was served on the Board. The Commission called the matter for a hearing on the merits of the Petition in the City of Lincoln, Lancaster County, Nebraska, on August 3, 2004. The Board appeared at the hearing through Tad Eickman, Esq., the Saline County Attorney. Catherine D. Lang, Esq., the Property Tax Administrator, appeared personally at the hearing. Commissioners Hans, Lore, Reynolds and Wickersham heard the Petition. Chairman Wickersham served as the Presiding Hearing Officer.

## **II. ISSUES**

The only issue before the Commission is whether failure to make the requested adjustment would result in values which are not equitable and in accordance with the law. Neb. Rev. Stat.

§77-1504.01 (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34).

### **III. APPLICABLE LAW**

Petitions concerning adjustments to the level of assessment of real property must be filed on or before July 26. Neb. Rev. Stat. §77-1504.01 (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34). The Commission must hear and act on the Petition on or before August 10. *Id.* The Commission must base its orders on the evidence adduced during the hearing concerning the Petition and on that evidence adduced during the hearings held pursuant to Neb. Rev. Stat. §77-5022 (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §64). The Commission may issue an order adjusting values by a percentage, and may exclude individual properties from the order adjusting values if the assessed values of those individual properties have already been adjusted in the same manner by the Board as part of the protest proceedings. Neb. Rev. Stat. §77-1504.01(4) (2003 Supp., as amended by 2004 Neb. Laws, L.B. 973, §64).

### **IV. FINDINGS OF FACT**

The Commission finds and determines that:

1. The last reappraisal for the Commercial Class of real property within the County occurred in 1993. (E76:70).

2. The median of the assessment to sales ratios for commercial real property in Friend and Wilber fell within the acceptable range after Assessor action for tax year 2004.
3. The Board granted 53 of the 57 commercial protests filed regarding commercial real property values in the Cities of Friend and Wilber. The Board, in revaluing the 53 protested properties, used the 2003 assessed values which were lower than the values applied by the Assessor for 2004.
4. The Petition, if granted, would result in a level of assessment of 76.13% for the City of Friend. (E76:45).
5. The Petition, if granted, would result in a level of assessment of 78.88% for the City of Wilber. (E76:45).

**V.  
ANALYSIS**

The Board must demonstrate by clear and convincing evidence that failure to make the requested adjustment would result in values that are not equitable and in accordance with the law. Neb. Rev. Stat. §77-1504.01 (2003 Supp., as amended by 2004 Neb. Laws, L.B. 973, §34). The uncontroverted evidence establishes that granting the Petition would result in a level of assessment of 76.13% for the City of Friend and 78.88% for the City of Wilber. (E76:45). The acceptable range for the median of the assessment to sales ratio for the Commercial Class of Property is 92% to 100%. Neb. Rev. Stat. §77-5023(2) (2003 Supp., as amended

by 2004 Neb. Laws, L.B. 973, §64). Granting the Petition would result in a level of assessment which is outside of the acceptable range set by law for Friend and Wilber.

The proposed action would result in assessments where some commercial properties are valued using 2003 values (Friend and Wilber) while all other commercial properties are valued using 2004 values. The City of Crete, for example, had a 10% increase in assessed values over 2003. The assessed value for this subclass of commercial property is not addressed in the Board's Petition. The Board also failed to adduce any evidence of the proposed adjustment's effects on the level of assessment for the entire class of commercial property.

The Commission only has that "authority" which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act. *See, e.g., Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996). The Commission has no authority to grant a Petition which would result in assessed values which are contrary to law. The Petition must accordingly be denied.

**VI.**  
**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Board and over the subject matter of this Petition. Neb. Rev. Stat. §77-1504.01(Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34).
2. The Board bears the burden of proof of demonstrating that failure to make the requested adjustment would result in values which are not equitable and in accordance with the law. Neb. Rev. Stat. §77-1504.01(2) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34).
3. Jurisdictional statutes are to be strictly construed. *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 920, 620 N.W.2d 990, 102 (2000).
4. The Commission only has the authority to grant a Petition within the powers granted by Neb. Rev. Stat. §77-5023 (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §64). Neb. Rev. Stat. §77-1504.01(3) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34). *County of Douglas v. Nebraska Tax Equalization and Review Commission*, 262 Neb. 578, 590, 635 N.W.2d 413, 422 (2001).
5. Any Order Adjusting Values must 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. Neb. Rev. Stat. §77-1504.01(3) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34).

6. Any Order Adjusting Values must result in the indicator of central tendency of assessment utilized by the Commission to fall within the acceptable range. Neb. Rev. Stat. §77-1504.01(3) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34) and Neb. Rev. Stat. §77-5023 (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §64). The measure of central tendency utilized by the Commission is the median of the assessment to sales ratio.
7. The Petition, if granted, would result in assessed values which are contrary to law.
8. The Petition must accordingly be denied.

**VII.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

1. The Petition of Saline County, Nebraska, to reduce the assessed value of commercial properties within the Cities of Friend and Wilber in Saline County is denied.
2. A copy of this Order shall be served forthwith upon the Saline County Assessor, the Saline County Clerk, the Chairperson of the Saline County Board, and the Saline

County Attorney, by certified mail as required by Neb. Rev. Stat. §77-5028 (Reissue 2003).

3. Saline County or any other political subdivision aggrieved by this Order shall be entitled to judicial review in the Court of Appeals as provided by Neb. Rev. Stat. §77-5019 (Reissue 2003).
4. Any Petition for Judicial Review shall be filed within thirty days after the date of this Order.

**IT IS SO ORDERED.**

Dated this 5<sup>th</sup> day of August, 2004.

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*Robert L. Hans, Commissioner*

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*Susan S. Lore, Commissioner*

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*Mark P. Reynolds, Vice-Chair*

**SEAL**

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*Wm. R. Wickersham, Chair*