

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

IN THE MATTER OF THE PETITION OF)	Case Number 08CP-001
THE ANTELOPE COUNTY, NEBRASKA,)	
BOARD OF EQUALIZATION TO)	FINDINGS AND ORDER
ADJUST VALUES BY A CLASS OR)	DENYING PETITION
SUBCLASS OF REAL PROPERTY)	

The Antelope County Board of Equalization (“the County Board”) petitioned the Tax Equalization and Review Commission (“the Commission”) to adjust the value of irrigated agricultural land, dry agricultural land and grassland in Market Area 2 of Antelope County for tax year 2008.

The Commission, upon receipt of the Petition, issued an Order for Hearing and Notice of Hearing on July 25, 2008. A copy of the Order and Notice was served on the County Board. The Commission called the matter for a hearing on the merits of the Petition in the City of Lincoln, Lancaster County, Nebraska, on July 30, 2008. Commissioners Warnes, Hotz, Salmon, and Wickersham heard the petition. Commissioner Warnes presided.

**I.
ISSUE**

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 (Cum. Supp. 2006, as amended by 2008 Neb. Laws, L.B. 965, §16).

**II.
APPLICABLE LAW**

1. 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 (Cum. Supp. 2006, as amended by 2008 Neb. Laws, L.B. 965, §16).

2. The Commission must hear and act on a Petition for adjustment of value by class or subclass brought by a County Board of Equalization on or before August 10. *Id.*
3. 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 (Cum. Supp. 2006). *Id.*
4. 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 by the Board as part of the protest proceedings. Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2006, as amended by 2008 Neb. Laws, L.B. 965, §16).
5. The County 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) (Cum. Supp. 2006, as amended by 2008 Neb. Laws, L.B. 965, §16).
6. Any Commission 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)(Cum. Supp. 2006, as amended by 2008 Neb. Laws, L.B. 965, §16).
7. Any Order Adjusting Values must result in the level of value as determined for the affected class or subclass to fall at the midpoint of the acceptable range. Neb. Rev. Stat. §77-1504.01(3)(Cum. Supp. 2006, as amended by 2008 Neb. Laws, L.B. 965, §16) and Neb. Rev. Stat. §77-5023 (2007 Supp.).

8. The acceptable range for the agricultural and horticultural land class of real property, and all subclasses thereof, is 69% to 75%. Neb. Rev. Stat. §77-5023 (2)(2007 Supp.).

III. FINDINGS OF FACT

The Commission finds and determines that:

1. The *2008 Reports and Opinions of the Property Tax Administrator for Antelope County* shows that the median of the assessment to sales ratios for the Agricultural and Horticultural Land class of real property within the Antelope County was 72%. (E2:67).

IV. ANALYSIS

The County Board represented in its petition that in order for land values to be equitable and in accordance with the law, the Commission must adjust agricultural land and horticultural land values for the subclasses of irrigated, dry and grass in Market Area 2 of Antelope County, Nebraska. The Antelope County Board of Equalization alleged that there were five different sales of agricultural land and horticultural land in Market Area 2 that should not have been included in the sales roster for agricultural land and horticultural land in Antelope County because they were not arm's length transactions. (E210:2).

The County Board presented evidence and testimony about sales of five parcels of property that were included in the sales file for Antelope County and that they alleged were artificially driving up the assessment sales ratio in Market Area 2. The five parcels sold shown in Exhibit 201, page 2 are: the NW1/4 of 17-25-8, the SE1/4 of 17-25-8, the NE 1/4 of 17-25-8,

the S1/2 of 13-23-8, and the NE1/4 of 25-23-08. The County Board offered exhibits 225 and 226 “Base Stats,” prepared by the Property Assessment Division of the Department of Revenue, which showed what the level of valuation and quality of assessments would be for tax year 2008 with the removal of the five sales that the County Board argues should not have been included in the sales file. Exhibit 225 shows that with the five sales removed from the sales file the level of value indicated by the median assessment to sales ratio for the agricultural land and horticultural land class of real property in Antelope County would be 73%. Exhibit 226 also shows that the level of value indicated by the median assessment to sales ratio for the Market Area 2 subclass of the agricultural land and horticultural land class of real property in Antelope county would be 75%. The acceptable range for the agricultural land and horticultural land class of real property, and all subclasses thereof, is 69% to 75%. Neb. Rev. Stat. §77-5023 (2) (2007 Supp.). The record before the Commission demonstrates that even with the five sales the County Board removed from the sales file, the median level of assessment of the agricultural and horticultural land class of real property and Market Area 2 of the agricultural and horticultural land class of real property are within acceptable ranges as set forth by law. The Commission therefore does not need to determine if those sales should or should not be properly removed from the sales file for tax year 2008.

The County Board requested, during closing argument, a reduction in the assessed level of value for Market Area 2 of the agricultural land and horticultural land class of real property in Antelope County of 20% or 25% . The County Board did not however offer any evidence to show from where such a reduction was derived or what the impact of any reduction would be on the level of assessment of the Market Area 2 subclass agricultural land and horticultural land

class of real property or the class as a whole. The Commission may not grant a petition if the proposed adjustment results in an indicated level of taxable value that does not meet the requirements of section 77-5023 of Nebraska Statutes. See, Neb. Rev. Stat. 77-1504.01 (Cum. Supp. 2006, as amended by 2008 Neb. Laws, L.B. 965, §16). There is no evidence that application of any proposed adjustment would result in an indicated level of value at the midpoint of the acceptable range for the affected subclass or the agricultural land and horticultural land class of real property in Antelope County. The Petition must accordingly be denied.

**V.
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 (Cum. Supp. 2006, as amended by 2008 Neb. Laws, L.B. 965, §16).
2. The Board has failed to provide the evidence necessary for the Commission to issue an Order Adjusting values as requested.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The Petition of Antelope County, Nebraska, to adjust the assessed value of irrigated agricultural land, dry agricultural land and grassland in Market Area 2, is denied.
2. A copy of this Order shall be served upon the Antelope County Assessor, the Antelope

County Clerk, the Chairperson of the Antelope County Board of Equalization, and the
Antelope County Attorney, by certified mail.

Dated and sealed August 7, 2008.

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner

Wm. R. Wickersham, Commissioner

SEAL

William C. Warnes, Commissioner