

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

IN THE MATTER OF THE PETITION OF)	Case Number 12CP-001
THE KEARNEY COUNTY, NEBRASKA,)	
BOARD OF EQUALIZATION TO)	FINDINGS AND ORDER
ADJUST VALUES BY A CLASS OR)	DENYING PETITION
SUBCLASS OF REAL PROPERTY)	

The Kearney County Board of Equalization (“the County Board”) petitioned the Tax Equalization and Review Commission (“the Commission”) to adjust the value of all real property on which there are trade fixtures known as grain legs in Kearney County for tax year 2012.

The Commission, upon receipt of the Petition of Kearney County on July 23, 2012, issued an Order for Hearing and Notice of Hearing on July 25, 2012. A copy of the Order and Notice was served on the Kearney County Clerk, County Assessor, and Chairperson of 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 August 1, 2012. Commissioners Freimuth, Hotz, and Salmon heard the petition. Commissioner Salmon 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.¹

**II.
LAW**

1. Petitions concerning adjustments to the level of assessment of real property must be filed

¹ Neb. Rev. Stat. §77-1504.01 (2011 Supp.).

- on or before July 26.²
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 10.³
 3. After a hearing the Commission shall, within the powers granted in section 77-5023, enter its order based on the evidence presented to it at such hearing and the hearings held pursuant to section 77-5022 for that year.⁴
 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.⁵
 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.⁶
 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.⁷
 7. Any Order Adjusting Values must result in the level of value as determined for the

² Neb. Rev. Stat. §77-1504.01 (2011 Supp.).

³ Id.

⁴ Id.

⁵ Id.

⁶ Neb. Rev. Stat. §77-1504.01(2) (2011 Supp.).

⁷ Neb. Rev. Stat. §77-1504.01(3)(2011 Supp.).

affected class or subclass to fall at the midpoint of the acceptable range.⁸

8. The acceptable ratio range for the median of the "Assessment-Sales Ratio" is from 69% to 75% of actual or fair market value for the class and subclasses of agricultural land and horticultural land not receiving special valuation pursuant to Neb. Rev. Stat. §77-1344; 69% to 75% of special valuation for the class and subclasses of agricultural land and horticultural land receiving special valuation pursuant to Neb. Rev. Stat. §77-1344; and 92% to 100% of actual or fair market value for all other classes and subclasses of real property.⁹

III. ANALYSIS

The County Board represented in its petition that in order for property values in Kearney County to be equalized, the Commission must adjust all real property on which there are trade fixtures known as grain legs in Kearney County, Nebraska. The Kearney County Board of Equalization alleged that the County Board removed the value of the grain legs from the real property assessment of all parcels that filed a protest. The County Board further alleged that in order to maintain equalization the Commission must issue an order taking the same action for the parcels for which a protest was not filed.

The County Board presented evidence and testimony about the action taken by the County Board during the protest hearings held pursuant to Neb. Rev. Stat. §77-1502.

Additionally, the Commission received testimony and exhibits from interested persons regarding the assessment of real property involving trade fixtures known as grain legs in Kearney

⁸ Neb. Rev. Stat. §77-1504.01(3) (2011 Supp.) and Neb. Rev. Stat. §77-5023 (Reissue 2009).

⁹ Neb. Rev. Stat. §77-5023(2) (Reissue 2009).

County.

The County Board requested that the Commission remove the assessed value of the property known as grain legs from the real property assessment rolls in Kearney County. The County proposed that the Commission designate all property known as grain legs a subclass of real property and reduce the value of that subclass by 100%, or that in the alternative the Commission designate the property known as grain legs to be personal property and order that it be removed from the real property assessment rolls and moved onto the personal property rolls. As a basis for its request, the County alleges that the property known as grain legs are trade fixtures, considered personal property under Nebraska Law.¹⁰

The authority of the Commission does not extend to the Commission having the power to create a subclass of property when exercising its statewide equalization function.¹¹ Therefore, the Commission couldn't lawfully designate the property known as grain legs a subclass. Additionally the Commission's power to make adjustments to the level of value of a class or subclass when considering a County Petition are limited to those powers granted in section 77-5023 of the Nebraska Statutes.¹² There is no evidence demonstrating that the adjustments proposed by the County Board could be made by the Commission while remaining in compliance with the requirements for adjustments set forth in Neb. Rev. Stat. §77-5023 (Reissue 2009).

The Petition must accordingly be denied.

¹⁰ See, Neb. Rev. Stat. §77-105 (2011 Supp.)

¹¹ Dodge County Bd. Of Equal. v. Nebraska Tax Equal. and Review Comm., 10 Neb.App, 927, 688, 639 N.W.2d 683, 932 (2002).

¹² Neb. Rev. Stat. §77-1504.01 (Reissue 2009).

**IV.
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the subject matter of this Petition. Neb. Rev. Stat. §77-1504.01 (2011 Supp.).
2. The Board has failed to provide the evidence necessary for the Commission to issue an Order Adjusting values as requested.

**V.
ORDER**

IT IS ORDERED THAT:

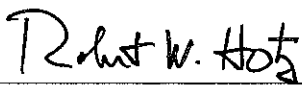
1. The Petition of Kearney County, Nebraska, to adjust the assessed value of real property on which there are trade fixtures known as grain legs in Kearney County, is denied.
2. A copy of this Order shall be served upon the Kearney County Assessor by certified mail, and upon the Kearney County Clerk, the Chairperson of the Kearney County Board of Equalization, and the Kearney County Attorney, by regular mail.

Dated and sealed August 3, 2012.





Nancy J. Salmon, Commissioner



Robert W. Hotz, Commissioner

Commissioner Freimuth, Dissenting.

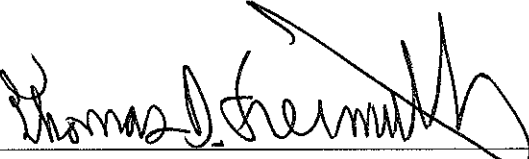
I respectfully dissent. I find that the Kearney County Board of Equalization adduced sufficient evidence to permit the Commission to order equalization relief for 70 taxable parcels

by removing grain legs valued at approximately \$1.5 Million from the approximate \$1 Billion total real property valuation in the County.

Kearney County's Petition is attached hereto as Exhibit A. The Petition succinctly demonstrates why failure of the Commission to order a "correction" in this matter "would result in values that are not equitable" for purposes of Neb. Rev. Stat. §77-1504.01 (2011 Supp.).

The hearing record on the Petition further establishes that 70 total parcels within the County's agricultural and commercial classes would not be equalized with a commercial property if the Commission does not grant the relief requested. The record also supports the County's assertion that the Commission has the power under Neb. Rev. Stat. §77-5023 (Reissue 2009) to order a correction for purposes of Neb. Rev. Stat. §77-1504.01.

Taxpayers deserve the utmost consideration and respect, especially in the current national environment of heightened concern regarding excessive government spending. I applaud the Kearney County Board of Equalization for its effort to obtain equalization relief for 70 taxable parcels under tight statutory deadlines.


Thomas D. Freimuth, Commissioner

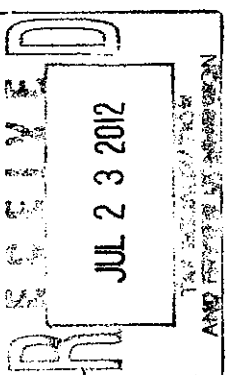
**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

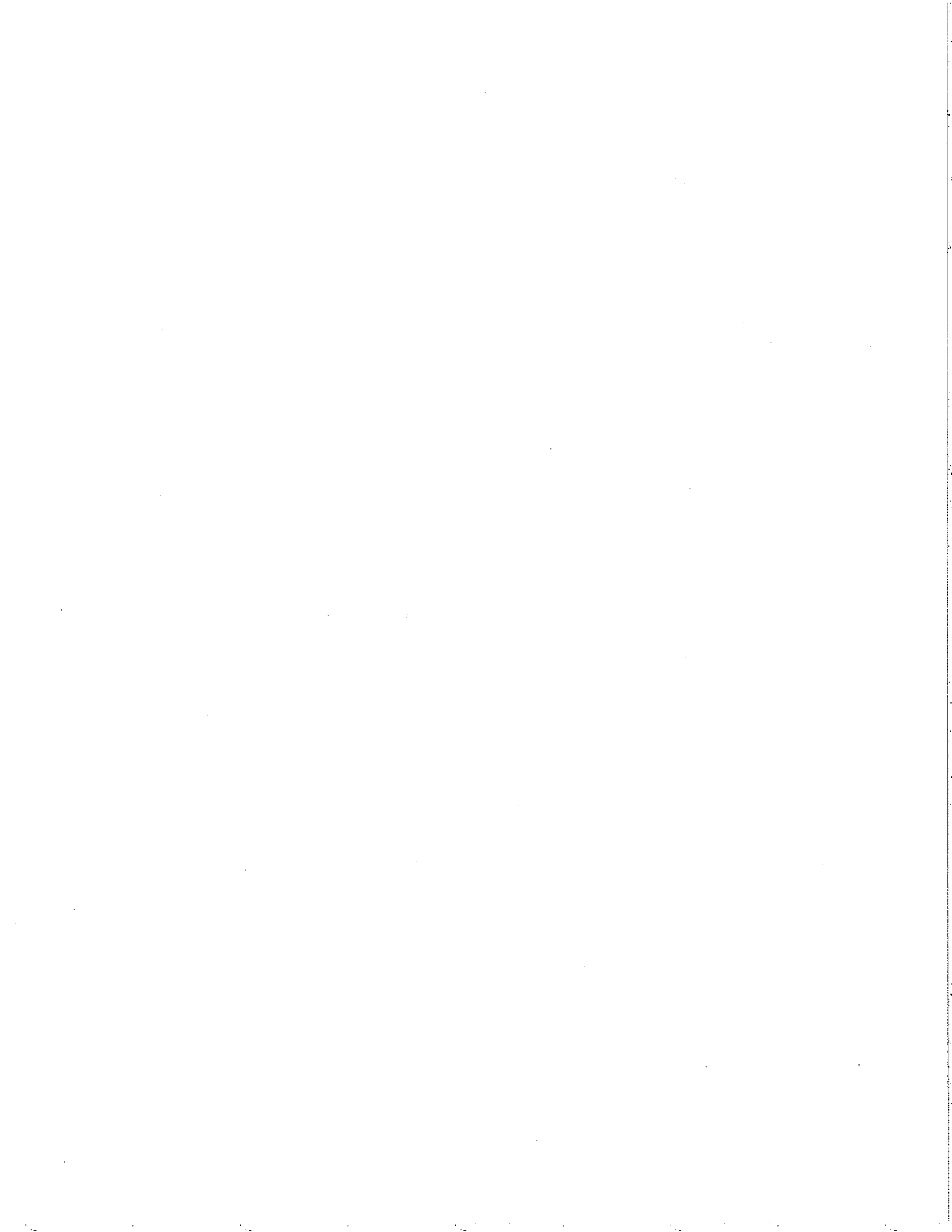
IN RE: EQUALIZATION OF)	PETITION FOR ADJUSTMENT TO
SUBCLASS OF REAL PROPERTY)	CLASS OR SUBCLASS OF REAL
WHICH HAS GRAIN LEGS ON IT)	PROPERTY, to-wit: PROPERTY
)	THAT INCLUDES GRAIN LEGS

NOW COMES the Board of Equalization of Kearney County, Nebraska and respectfully petitions the Nebraska Tax Review and Equalization Commission to adjust a class or subclass of property within the County, to wit, all real property on which there are trade fixtures known as grain legs in Kearney County, Nebraska, for the reason that the values of said property are not equalized. In support of this Petition, the Kearney County Board of Equalization respectfully shows the Commission as follows:

1. The Kearney County Assessor mailed out property valuations for 2012 and as part of those valuations, the trade fixtures known as grain legs were included in the valuation of real property.
2. One of the properties, KAPPA Ethanol Plant, that had a real property valuation including the grain legs, filed a protest with the Kearney County Board of Equalization.
3. During this protest hearing, KAPPA presented a TERC decision, Case No. 10C-016, *The Scoular Company v. Chase County Board of Equalization*, in which TERC determined that grain legs are, in fact, trade fixtures and therefore personal property and should not be included in the valuation of real property.
4. As a result of this protest hearing and the TERC decision in *Scoular*, the Kearney County Board of Equalization had the grain legs removed from the real property value of KAPPA.
5. There are several other properties in Kearney County that include grain legs, other than KAPPA, none of the other property owners filed for a protest hearing.
6. Therefore, there continues to be multiple properties in Kearney County that have a real property valuation that includes the value of the grain legs.
7. As a result of the adjustments made on appeals by the Kearney County Board of Equalization, the valuation of all properties including grain legs are not equalized.

Exhibit A

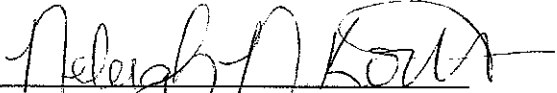




WHEREFORE, the Board of Equalization of Kearney County, Nebraska requests the Nebraska Tax Equalization and Review Commission to equalize the valuation for the class or subclass of property consisting of properties with grain legs by removing the value of said grain legs.

Dated: July 18, 2012

THE BOARD OF EQUALIZATION OF
KEARNEY COUNTY, NEBRASKA

By 
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