

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

IN THE MATTER OF THE PETITION OF )	Case Number 17CP-003
THE CUSTER COUNTY, NEBRASKA, )	
BOARD OF EQUALIZATION TO )	FINDINGS AND ORDER
ADJUST VALUES BY A CLASS OR )	DENYING PETITION
SUBCLASS OF REAL PROPERTY )	

The Custer County Board of Equalization (“the County Board”) petitioned the Tax Equalization and Review Commission (“the Commission”) to adjust residential property within the Village of Callaway in Custer County, Nebraska, for the 2017 tax year.

The Commission received the Petition of Custer County on July 26, 2017 and issued an Order for Hearing and Notice of Hearing on July 28, 2017. A copy of the Order and Notice was served on the Custer County Clerk, Custer County Assessor, Chairperson of the County Board, Nebraska Tax Commissioner, and Property Tax Administrator.

The Commission called the matter for a hearing on the merits in the Tax Equalization and Review Commission Hearing Room, Sixth Floor of the Nebraska State Office Building, 301 Centennial Mall South, in the City of Lincoln, Lancaster County, Nebraska, on August 9, 2017. Commissioners Keetle and Hotz heard the petition. Commissioner Hotz 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.<sup>1</sup>

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<sup>1</sup> Neb. Rev. Stat. §77-1504.01 (2016 Cum. Supp.).

## II. LAW

1. Petitions concerning adjustments to the level of assessment of real property must be filed on or before July 26.<sup>2</sup>
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.<sup>3</sup>
3. After a hearing, the Commission shall, within the powers granted in Neb. Rev. Stat. §77-5023, enter its order based on the evidence presented to it at such hearing and the hearings held pursuant to Neb. Rev. Stat. §77-5022 for that year.<sup>4</sup>
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.<sup>5</sup>
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.<sup>6</sup>
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.<sup>7</sup>

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<sup>2</sup> Neb. Rev. Stat. §77-1504.01(1) (2016 Cum. Supp.).

<sup>3</sup> Neb. Rev. Stat. §77-1504.01(2) (2016 Cum. Supp.).

<sup>4</sup> Neb. Rev. Stat. §77-1504.01(3) (2016 Cum. Supp.).

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. §77-1504.01(2) (2016 Cum. Supp.).

<sup>7</sup> Neb. Rev. Stat. §77-1504.01(3) (2016 Cum. Supp.).

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.<sup>8</sup>
8. The acceptable range for the median of the “Assessment-Sales Ratio” for residential property is 92% to 100% of actual value.<sup>9</sup>

### III. ANALYSIS

The County Board presented evidence and testimony at the hearing regarding the valuation of residential property within the Village of Callaway in Custer County. It argues that the assessed values set were not done in accordance with the law and were not equitable. The County Board alleged the “mean” and “median” were used interchangeably and that the Coefficient of Dispersion (COD) and the Price Related Differential (PRD) of the assessments of residential property within the Village of Callaway were not within the acceptable range.

The County Board offered the testimony of Connie Braithwaite, the Custer County Assessor. She stated she assessed residential property in the Village of Callaway for 2017, as indicated by Valuation Grouping 2 in the Reports and Opinions of the Property Tax Administrator for tax year 2017.<sup>10</sup> She also stated that in 2014, she did a reappraisal of the residential property for Valuation Grouping 2. Beginning in tax year 2014, the Assessor assigned 30% economic depreciation to all residential properties in Valuation Grouping 2. Beginning in tax year 2017, she reduced the amount of economic depreciation applied to all residential property in the Village of Callaway from 30% to 10% rather than do another reappraisal. The Assessor testified that without this reduction to the economic depreciation applied to all residential property in the Village of

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<sup>8</sup> Neb. Rev. Stat. §77-1504.01(3) (2016 Cum. Supp.); Neb. Rev. Stat. §77-5023(3) (Reissue 2009).

<sup>9</sup> Neb. Rev. Stat. §77-5023(2) (Reissue 2009).

<sup>10</sup> Exhibit 21, page 22

Callaway the Assessment-Sales ratio for that subclass would have been below the low end of the acceptable range of 92%. With the 10% economic depreciation, the level of value of all residential property in the Village of Callaway was 99.26%, based on 32 sales.<sup>11</sup>

Matthew Eggleston, one of the Commissioners on the County Board of Equalization, also testified on behalf of the County Board. He testified regarding 33 residential sales in the Village of Callaway which occurred during the applicable two year time frame for residential assessments. He calculated the median of those 33 sales at 99%.

The Commission's authority to act on a county petition in the statewide equalization process is limited to those powers granted in *Neb. Rev. Stat. §77-5023*.<sup>12</sup> Included is the power to increase or decrease the value of a class or subclass of real property.<sup>13</sup> The evidence in this proceeding is that the assessment of Valuation Grouping 2 is within the acceptable range, and the Commission does not have authority to make any adjustment.

Therefore, the County Board has failed to introduce sufficient evidence demonstrating that failure to make the adjustments proposed would result in values which are not equitable and in accordance with the law.<sup>14</sup>

The Petition must accordingly be denied.

#### **IV. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the subject matter of this Petition.<sup>15</sup>
2. The County Board has failed to provide the evidence necessary for the Commission to issue an Order Adjusting values as requested.

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<sup>11</sup> Exhibit 21, page 22

<sup>12</sup> Neb. Rev. Stat. §77-1504.01 (2016 Cum. Supp.).

<sup>13</sup> Neb. Rev. Stat. §77-5023(2) (Reissue 2009).

<sup>14</sup> Neb. Rev. Stat. §77-5023 (Reissue 2009); *Dodge Cty Bd. Of Equalization v. Nebraska Tax Equal. & Rev. Comm.*, 10 Neb.App. 927, 639 N.W.2d 683 (2002).

<sup>15</sup> Neb. Rev. Stat. §77-1504.01 (2016 Cum. Supp.).

**V. ORDER**

**IT IS ORDERED THAT:**

1. The Petition of the Custer County Board of Equalization to adjust the assessed value of residential property within the Village of Callaway in Custer County, Nebraska, is denied.
2. A copy of this Order shall be served upon the Custer County Assessor by certified mail, and upon the Custer County Clerk, the Chairperson of the Custer County Board of Equalization, and the Custer County Attorney, by regular mail.

**SIGNED AND SEALED** August 10, 2017.

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Steven A. Keetle, Commissioner

SEAL

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Robert W. Hotz, Commissioner