

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION
2019 STATEWIDE EQUALIZATION PROCEEDINGS**

IN THE MATTER OF THE PETITION OF)	Case Number 19CP 0001
THE CHEYENNE COUNTY,)	
NEBRASKA, BOARD OF)	FINDINGS AND ORDER
EQUALIZATION TO ADJUST VALUES)	DENYING PETITION
TO A SUBCLASS OF REAL PROPERTY)	

The Cheyenne County Board of Equalization (the County Board) petitioned the Tax Equalization and Review Commission (the Commission) to make a downward adjustment to the assessed value of gravel pits in Cheyenne County for the 2019 tax year. The County Board asserted that the current assessed value for gravel pits in Cheyenne County is \$3,500 per acre, and that value should be lowered to \$1,000 per acre.

The Commission received the petition on July 15, 2019, and issued an Order for Hearing and Notice of Hearing on July 22, 2019. A copy of the Order and Notice was served on the Cheyenne County Clerk, the Cheyenne County Assessor, the Chairperson of the County Board, the Tax Commissioner, and the Property Tax Administrator.

The Commission held a hearing on the petition in Lincoln, Nebraska, on August 6, 2019. Commissioners Robert W. Hotz, James D. Kuhn, and Steven A. Keetle heard the petition. Commissioner Hotz presided. Paul Schaub, Cheyenne County Attorney, appeared on behalf of the County Board.

I. ISSUES

1. Whether failure to make the requested adjustment would result in values which are not equitable and in accordance with the law.¹
2. Whether an order adjusting values may be issued.²

II. LAW

1. Petitions concerning adjustments to the level of assessment of real property must be filed on or before July 26.³

¹ Neb. Rev. Stat. § 77-1504.01(2) (Reissue 2018).

² Id., Neb. Rev. Stat. § 77-5023 (Reissue 2018).

³ Neb. Rev. Stat. § 77-1504.01(1) (Reissue 2018).

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 10.⁴
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.⁵
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.⁶
5. 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.⁷
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.⁸
7. Any increase or decrease shall cause the level of value determined by the Commission to be at the midpoint of the applicable acceptable range.⁹
8. Any decrease or increase to a subclass of property shall also cause the level of value determined by the Commission for the class from which the subclass is drawn to be within the applicable acceptable range.¹⁰
9. The acceptable range for the median of the assessed-to-sales ratio for agricultural and horticultural land is 69% to 75% of actual value.¹¹

⁴ Neb. Rev. Stat. § 77-1504.01(2) (Reissue 2018).

⁵ Neb. Rev. Stat. § 77-1504.01(3) (Reissue 2018).

⁶ Id.

⁷ Neb. Rev. Stat. § 77-1504.01(2) (Reissue 2018).

⁸ Neb. Rev. Stat. § 77-1504.01(3) (Reissue 2018).

⁹ Neb. Rev. Stat. § 77-5023(3) (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5023(4) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5023(2) (Reissue 2018).

III. ANALYSIS

1. Whether failure to make the requested adjustment would result in values which are not equitable and in accordance with the law.

Deputy Cheyenne County Assessor Jessica Brown testified on behalf of the County Board. She testified that Cheyenne County classifies gravel pits as agricultural property with a land classification grouping (LCG) of 824. She testified that all gravel pits in Cheyenne County are currently assessed at \$3,500 per acre. This value is based on a single sale that took place in 2014, when a gravel pit sold for \$5,000 per acre. Based on this sale, gravel pits were valued at \$5,000 per acre before being reduced to \$3,500 per acre due to the County Assessor's belief that \$5,000 per acre was excessive.

The County Assessor consulted with assessors from neighboring counties to develop a list of the values at which those counties assessed gravel pits for tax year 2019.¹² According to this list, gravel pits are valued at \$300 per acre by Banner County, \$1,500 per acre by Keith County, \$1,000 per acre by Kimball County, and \$1,320 per acre (active) or \$2,130 per acre (inactive) by Lincoln County. Ms. Brown testified that she did not know how these counties arrived at the values placed on the gravel pits or how they classified gravel pits.

The County Board did not offer any evidence of sales of property containing gravel pits in Cheyenne County or any of the neighboring counties other than the testimony of the Deputy Assessor. Without some explanation of the methodology used by the neighboring counties to determine the value of their gravel pits, we are not persuaded that the list of values constitutes a reliable indicator of value for Cheyenne County. The County Board has not demonstrated that \$3,500 per acre is a value not in accordance with law, nor has it demonstrated that \$1,000 per acre is an accurate reflection of the actual value of gravel pits in Cheyenne County.

2. Whether an order adjusting values may be issued.

As noted above, Neb. Rev. Stat. § 77-5023(3) requires that any increase or decrease shall cause the level of value determined by the commission to be at the midpoint of the applicable acceptable range. Neb. Rev. Stat. § 77-5023(4) requires that any decrease or increase to a subclass of property also cause the level of value for the class from which the subclass is drawn

¹² See Ex. 146.

to be within the applicable acceptable range. The County Board offered no evidence to show that the requested adjustment would result in a level of value at the midpoint of the applicable acceptable range; nor did it offer evidence that the decrease would cause the level of value for the class from which the subclass is drawn to be within the applicable acceptable range. Accordingly, the County Board has not established that the adjustment requested in its petition meets the statutory requirements.

For the foregoing reasons, the petition of the County Board must be denied.

IV. CONCLUSIONS OF LAW

1. Failure to make the requested adjustment would not result in values which are not equitable and in accordance with the law.
2. An order adjusting values may not be issued.

V. ORDER

IT IS ORDERED THAT:

1. The Petition of the Cheyenne County Board of Equalization to adjust the assessed values of gravel pits within Cheyenne County, Nebraska, is denied.
2. A copy of this Order shall be served upon the Cheyenne County Assessor by certified mail, and upon the Cheyenne County Clerk, the Chairperson of the Cheyenne County Board of Equalization, and the Cheyenne County Attorney, by regular mail.

SIGNED AND SEALED August 7, 2019.

Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

Steven A. Keetle, Commissioner