

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

IN THE MATTER OF THE PETITION OF)	Case Number 19CP 0002
THE HOLT COUNTY, NEBRASKA,)	
BOARD OF EQUALIZATION TO)	FINDINGS AND ORDER
ADJUST VALUES TO A SUBCLASS OF)	DENYING PETITION
REAL PROPERTY)	

The Holt County Board of Equalization (the County Board) petitioned the Tax Equalization and Review Commission (the Commission) to make a downward adjustment of 50% to the assessed value of wasteland acres in Holt County for the 2019 tax year; in the alternative, the County Board requested a downward adjustment of 41.68% to the assessed value of wasteland acres in Holt County. The County Board also requested that 21 parcels identified in its petition be excluded from any order the Commission might issue because they had already received relief during the County Board’s protest proceedings.

The Commission received the petition on July 24, 2019, and issued an Order for Hearing and Notice of Hearing on July 25, 2019. A copy of the Order and Notice was served on the Holt County Clerk, the Holt 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 1, 2019. Commissioners Robert W. Hotz, James D. Kuhn, and Steven A. Keetle heard the petition. Commissioner Hotz presided. Brent Kelly, Holt County Attorney, appeared telephonically 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

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

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

- on or before July 26.³
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 increase or decrease 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

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

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

In the course of the hearing, the County Board conceded that its proposed 50% reduction to the assessed value of wasteland acres would result in values outside the required statutory ranges. Accordingly, we deny this request without further discussion.

The County Board also requested that 21 parcels identified in its petition be excluded from any order the Commission might issue reducing waste acre assessed valuation. The evidence adduced at the hearing shows that these parcels were granted relief by the County Board by having some acres previously classified as grassland reclassified as sand. The Commission is only authorized to exclude individual properties from an order adjusting value when their “value has already been adjusted by a county board of equalization in the *same manner as the Commission directs in its order.*”¹² The County’s petition requests that the Commission reduce the assessed value of wasteland, not reclassify grassland acres as sand. Accordingly, exclusion of these parcels is inappropriate and the County Board’s request to that effect should be denied.

We now turn to the County Board’s proposed 41.68% reduction on wasteland in Holt County. Wasteland is included within the general class of agricultural land and horticultural land.¹³ Wasteland includes land that cannot be used economically and is not suitable for agricultural or horticultural purposes. Such land types include but are not limited to blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify as wasteland the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes.¹⁴

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

The Holt County Assessor, Timothy Wallinger, testified on behalf of the County Board. He testified that all waste acres in Holt County are currently assessed at \$500 per acre. He

¹² Neb. Rev. Stat. § 77-1504.01(3), emphasis added.

¹³ 350 Neb. Admin. Code, Ch. 14 § 002.05.

¹⁴ 350 Neb. Admin. Code, Ch. 14 § 002.54.

testified that his analysis of four sales which occurred between March 2017 and July 2018 showed that the market value of waste acres within the county was \$405 per acre. He further explained that 72% is the midpoint of the acceptable statutory range for the median of the assessed-to-sales ratio for agricultural land, and 72% of \$405 is \$291.60 per acre. The County's proposed adjustment of 41.68% is designed to result in a reduction from the current assessed value of \$500 per acre for wasteland acres to \$291.60 per acre.

Mr. Wallinger testified that his determination of the actual value of wasteland within Holt County was based on four sales. However, the exhibits produced by the County Board demonstrate that one of these sales was used to determine the actual value for sandy soil (\$1,000) and two were used to determine the actual value for loamy soil (\$1,300), both of which were present in the fourth sale.¹⁵ The \$405 figure was derived from a single sale of two parcels totaling 478.53 acres. Mr. Wallinger subtracted \$262,070 (262.07 acres sandy soil × \$1,000 per acre) and \$13,195 (10.15 acres loamy soil × \$1,300 per acre) from the total sale price of \$359,000. He then divided the difference, \$83,735, by the number of wasteland acres on the parcel (206.31) to produce his result of \$405 per acre of wasteland.¹⁶

We are not persuaded that this methodology for determining the actual value of wasteland acres is reliable and reflects professionally accepted mass appraisal methods. Moreover, four sales is not a statistically representative sample in a county that had 117 arm's-length agricultural sales over the relevant three-year study period. The County Board has not demonstrated that failure to make the requested adjustment would result in values which are not equitable and in accordance with the law.

2. Whether an order adjusting values may be issued.

As noted above, 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 to be within the applicable acceptable range. Mr. Wallinger testified that adjusting the value of waste acres to \$291.60 per acre would result in a median assessed-to-sales ratio of 72% for the subclass of wasteland, and a median assessed-to-sales ratio of 70.05% for the class of

¹⁵ Ex. 140.

¹⁶ Id.

agricultural land and horticultural land, which is within the acceptable range of 69% to 75%.

Sarah Scott, an employee of the Department of Revenue, Property Assessment Division (Department), testified at the hearing. The County Board requested that Ms. Scott prepare a statistical profile of the 117 Holt County sales used by the Department to develop the 2019 Reports and Opinions of the Property Tax Administrator, adjusted to show the reduction proposed by the County Board.¹⁷ According to Ms. Scott's analysis, making the adjustment requested by the County Board would result in a median assessed-to-sales ratio of 68.29% for the class of agricultural and horticultural land, which is outside of the acceptable range.¹⁸

According to both witnesses, the difference between the analyses was attributable to the fact that Mr. Wallinger's analysis included data from four sales which were not included in the Department's analysis. Mr. Wallinger testified that, after he had compiled the sales for the relevant three-year study period,¹⁹ he discussed and agreed to the disqualification of certain sales with a liaison from the Department.²⁰ Neither witness was able to specify which sales were included in Mr. Wallinger's analysis but not in the statistic provided by the Department.

According to the 2019 Reports and Opinions for Holt County, "The statistical reports are developed using the statewide sales file that contains *all transactions* as required by Neb. Rev. Stat. § 77-1327. From this sales file, the [Property Assessment] Division prepares a statistical analysis comparing assessments to sale prices *for arm's-length sales*" (emphasis added).²¹ We infer that the four sales were disqualified because the Department determined that they did not constitute arm's-length transactions. Mr. Wallinger testified that he accepted the validity of the Department's methodology excluding the four sales. On that basis, we find that the County Board's proposed adjustment would most likely result in a median assessed-to-sales ratio of 68% for the class of agricultural and horticultural land. Accordingly, the County Board has not established that the adjustment requested in its petition meets the statutory requirements for adjustment by the Commission.

¹⁷ The analysis prepared by Ms. Scott and the Department was received as Exhibit 144.

¹⁸ Under the Commission's rules, rounding is used to determine whether or not an indicator of central tendency is within or at the midpoint of a prescribed range; any number greater or less than X.50 will be rounded to the nearest whole number. 442 Neb. Admin. Code, Ch. 9 § 006.

¹⁹ October 1, 2015, through September 30, 2018.

²⁰ Neb. Rev. Stat. § 77-1327(2) provides a procedure for the disqualification of sales that are not arm's length transactions from use in the annual comprehensive assessment ratio studies performed by the Property Tax Administrator.

²¹ Ex. 45:4.

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

SIGNED AND SEALED August 6, 2019.

Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

Steven A. Keetle, Commissioner