

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

IN THE MATTER OF THE PETITION) Case Number 04CP-1
OF SHERIDAN COUNTY, NEBRASKA,)
TO ADJUST VALUES BY A CLASS OR) FINDINGS AND ORDER
SUBCLASS) DENYING PETITION
)

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I.
STATEMENT OF THE CASE

The Sheridan County Board of Equalization ("the Board") petitioned the Tax Equalization and Review Commission ("the Commission") to adjust the assessed values of all irrigated agricultural land within Sheridan County ("the County") for tax year 2004. The Board's Petition requested that the Commission order the 2004 assessed values be rolled back to the 2003 assessed values for the affected subclass.

The Property Tax Administrator filed the *2004 Report and Opinion for Sheridan County* ("the Report") on April 7, 2004. (E81:114). The Report establishes that the median of the assessment to sales ratios for the agricultural class of real property within the County was 77%. (E81:35). The Property Tax Administrator based this determination on 44 sales of

agricultural real property within the County between July 1, 2000 and June 30, 2003. (E81:35).

The Commission, based on this evidence, concluded that the assessment to sales ratio fell within the acceptable range of values established in Neb. Rev. Stat. §77-5023(3) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §64). The Commission therefore determined that no action should be taken regarding the agricultural class of real property in the County for tax year 2004. The Commission's Order noted that the Coefficient of Dispersion ("COD") for the agricultural class of property was 20.90. (E81:35). The COD was not within the acceptable range as defined by Title 442, Neb. Admin. Code, Chapter 9, Reg. 008.06C. (12/03). The Commission's Order also noted that the Price Related Differential ("the PRD") was 107.62. (E81:35). The PRD was also outside of the acceptable range. Title 442, Neb. Admin. Code, Chapter 9, Reg. 008.06B. (12/03). The Commission's Order concluded that for the agricultural class of real property "the problems shown by the statistical studies are not problems which can be resolved by an adjustment to a class or subclass of real property as required by Neb. Rev. Stat. §77-5028 (Reissue 2003). The Commission therefore concluded that no order adjusting values should be issued for the agricultural class of real property within the County for tax year 2004. (E81:35).

The Commission, upon receipt of the Petition, issued an Order for Hearing and Notice of Hearing on July 27, 2004. A copy

of the Order and Notice was served on the 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 4, 2004. The Board participated in the hearing by videoconference from Chadron, Nebraska, and appeared through Dennis D. King, Esq., Special Appointed Counsel for the Sheridan County Board of Equalization. Catherine D. Lang, Esq., the Property Tax Administrator, appeared personally at the hearing. Commissioners Hans, Lore, Reynolds and Wickersham heard the matter. Chairman Wickersham served as the Presiding Hearing Officer.

II. ISSUES

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 (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34).

III. APPLICABLE LAW

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 (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34). The Commission must hear and act on the Petition on or before August 10. *Id.* 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 (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §64). 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.

**IV.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Board adduced no evidence of the percentage adjustments necessary to roll the assessed values for the irrigated subclass of agricultural back to the 2003 values.
2. The Board adduced no evidence of the impact of proposed adjustment on the level of assessment for the irrigated subclass of real property.
3. The Board adduced no evidence of the impact of the proposed adjustment on the level of assessment for the agricultural class of real property.
4. No single adjustment by a percentage would return all irrigated land assessed values to the 2003 level of assessment.

**V.
ANALYSIS**

The Board must demonstrate by clear and convincing evidence that failure to make the requested adjustment would result in values that are not equitable and in accordance with the law. Neb. Rev. Stat. §77-1504.01(2) (2003 Supp., as amended by 2004 Neb. Laws, L.B. 973, §34). The Board adduced evidence of the 2004 assessed values for each irrigated Land Valuation Group and evidence of the requested values for each irrigated Land Valuation Group. (E551; E552). The Board also failed to adduce any evidence of the results applying the 2003 assessed values to individual irrigated Land Valuation Groups for 2004. There is no evidence that application of the proposed adjustment would result in the median of the assessment to ratios falling at the midpoint of the acceptable range for the affected subclass.

State law requires that the Commission act within the powers granted in Section 77-5023. Neb. Rev. Stat. §77-1504.01(3) (2003 Supp., as amended by 2004 Neb. Laws, L.B. 973, §34). State law further provides that an order adjusting values shall "cause the indicator of central tendency of assessment utilized by the Commission to be at the midpoint of the applicable acceptable range." Neb. Rev. Stat. §77-5023(3) (2003 Supp., as amended by 2004 Neb. Laws, L.B. 973, §64). There is no evidence that any adjustment would satisfy the requirements of law. The Petition must accordingly be denied.

VI.
CONCLUSIONS OF LAW

1. The Commission only has that "authority" which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act. See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).
2. Jurisdictional statutes are to be strictly construed. *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 920, 620 N.W.2d 990, 102 (2000).
3. The Commission has jurisdiction over the Board and over the subject matter of this Petition. Neb. Rev. Stat. §77-1504.01(Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34).
4. The 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) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34).
5. 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) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34).

6. Any Order Adjusting Values must result in the median of the assessment to sales ratios for the affected class or subclass to fall at the midpoint of the acceptable range. Neb. Rev. Stat. §77-1504.01(3) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34) and Neb. Rev. Stat. §77-5023 (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §64).
7. The acceptable range for the agricultural class of real property, and all subclasses thereof, is 74% to 80%. Neb. Rev. Stat. §77-5023 (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §64).
8. The Board has failed to provide the evidence necessary for the Commission to issue an Order Adjusting values as requested. The Petition must accordingly be denied.

VII.
ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Petition of Sheridan County, Nebraska, to reduce the assessed value of all irrigated land within the County is denied.
2. A copy of this Order shall be served forthwith upon the Sheridan County Assessor, the Sheridan County Clerk, the

Chairperson of the Sheridan County Board, and the Sheridan County Attorney, by certified mail as required by Neb. Rev. Stat. §77-5028 (Reissue 2003).

3. Sheridan County or any other political subdivision aggrieved by this Order shall be entitled to judicial review in the Court of Appeals as provided by Neb. Rev. Stat. §77-5019 (Reissue 2003).
4. Any Petition for Judicial Review shall be filed within thirty days after the date of this Order.

IT IS SO ORDERED.

Dated this 6th day of August, 2004.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Mark P. Reynolds, Vice-Chair

SEAL

Wm. R. Wickersham, Chair