

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

IN THE MATTER OF THE PETITION)	Case Number 04CP-3
OF KEITH COUNTY, NEBRASKA, TO)	
ADJUST VALUES BY A CLASS OR)	FINDINGS AND ORDER
SUBCLASS)	DENYING PETITION
)	

Filed August 6, 2004

Appearances: Jeffrey M. Eastman, Esq.
Keith County Attorney
P.O. Box 29
Ogallala, NE 69153

Catherine D. Lang, Esq.
Property Tax Administrator
and State Assessing Official for Keith County
1033 "O" Street, Suite 600
Lincoln, NE 68508-3686

**I.
STATEMENT OF THE CASE**

The Keith County Board of Equalization ("the Board") petitioned the Tax Equalization and Review Commission ("the Commission") to adjust the values of certain classes of real property within Keith County ("the County") for tax year 2004. The Board's Petition requested that the Commission's Order Adjusting Values dated May 10, 2004, be reversed. The Board alleged in its Petition that the failure to make the proposed adjustments would result in assessed values which are not equitable and in accordance with the law. (Petition, pp. 1 - 3).

The Property Tax Administrator filed the *2004 Report and Opinion for Keith County* ("the Report") on April 7, 2004. (E51:115). The Report established that the median of the

assessment to sales ratios for the rural residential subclass of real property within the County was 85.25%; the Coefficient of Dispersion ("COD") was 25.74%; and the Price Related Differential ("PRD") was 112.60. (E51:26). Each of these statistics are outside of the acceptable range. Neb. Rev. Stat. §77-5023(2) (2003 Supp., as amended by 2004 Neb. Laws, L.B. 973, §64). Title 442, Neb. Admin. Code, Chapter 9, Reg. 008.06C. (12/03). Title 442, Neb. Admin. Code, Chapter 9, Reg. 008.06B. (12/03).

The Report also established that the median of the assessment to sales ratios for the suburban subclass of commercial real property within the County was 90.68%; the COD was 27.10%; and the PRD was 85.84. (E51:31). Each of these statistics are outside of the acceptable range. Neb. Rev. Stat. §77-5023(2) (2003 Supp., as amended by 2004 Neb. Laws, L.B. 973, §64). Title 442, Neb. Admin. Code, Chapter 9, Reg. 008.06C. (12/03). Title 442, Neb. Admin. Code, Chapter 9, Reg. 008.06B. (12/03).

The Report also established that the median of the assessment to sales ratios for the rural subclass of commercial real property within the County was 78.88%; the COD was 86.18%; and the PRD was 183.80. (E51:31). Each of these statistics are outside of the acceptable range. Neb. Rev. Stat. §77-5023(2) (2003 Supp., as amended by 2004 Neb. Laws, L.B. 973, §64). Title 442, Neb. Admin. Code, Chapter 9, Reg. 008.06C. (12/03). Title 442, Neb. Admin. Code, Chapter 9, Reg. 008.06B. (12/03).

The Commission therefore ordered a 12.61% increase in the level of assessment for the rural residential subclass; a 5.87% increase in the level of assessment for the suburban commercial subclass; and a 21.70% increase in the level of assessment for the rural commercial subclass of real property within the County. *Findings and Order Adjusting Values*, May 10, 2004.

The Board heard and considered approximately 1,100 protests during proceedings held in 2004 pursuant to Neb. Rev. Stat. §77-1502, *et seq.* (Reissue 2003). Twelve to eighteen of these protests concerned commercial property assessed values. Copies of those protests were not made a part of the record before the Commission.

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 5, 2004. The Board appeared at the hearing through Jeffrey M. Eastman, Esq., the Keith County Attorney. 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.

The Board withdrew its First Cause of Action at the commencement of the hearing.

**II.
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. 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. There were 56 parcels of suburban commercial real property within the County as of the January 1, 2004, assessment date. (E51:47).
2. There were 10 sales of suburban commercial real property within the three year period ending June 30, 2003. The State Appraiser for Keith County testified that two of the sales should not have been included as Suburban Commercial sales. No evidence was adduced of the level of assessment for this subclass before Commission action if the two sales were excluded as recommended by the State Appraiser for Keith County. There is also no evidence of the level of assessment for this subclass after Commission action if the two sales were excluded as recommended by the State Appraiser for Keith County.
3. The Board adduced no evidence of the impact on the level of assessment for the suburban subclass of the Commercial Class of real property if the proposed adjustment was implemented for tax year 2004.
4. The Board adduced no evidence of the impact on the level of assessment for the rural subclass of the Commercial Class of real property if the proposed adjustment was implemented for tax year 2004.

5. The Board adduced no evidence of the impact on the level of assessment for the entire Commercial Class of real property if the requested adjustments were implemented for tax year 2004.

V.
ANALYSIS

The Board must demonstrate by clear and convincing evidence 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(1) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §34). Any Order Adjusting Values must result in the median falling 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); Neb. Rev. Stat. §77-5023(3) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §64).

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). The Commission's authority concerning a petition filed pursuant to Neb. Rev. Stat. §77-1504.01 is limited to issuing orders

adjusting values which (1) promote more uniform and proportionate assessments; and (2) which result in a median level of assessment which falls at the midpoint of the acceptable range. There is no evidence that the proposed adjustments would satisfy either element of the statute. The Petition must accordingly be denied.

**VI.
CONCLUSIONS OF LAW**

1. 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).
2. 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).
3. 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).
4. Any 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).

5. Any Order Adjusting Values must result in the median of the assessment to sales ratios falling within the median 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).
6. 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 Keith County, Nebraska, to reduce the assessed value of suburban and rural commercial properties within the County is denied.
2. A copy of this Order shall be served forthwith upon the State Assessment Manager for Keith County, the Keith County Clerk, the Chairperson of the Keith County Board, and the Keith County Attorney, by certified mail as required by Neb. Rev. Stat. §77-5028 (Reissue 2003).
3. Keith 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