

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

IN THE MATTER OF:)	
)	06CP-1
)	
THE PETITION OF BOONE COUNTY,)	FINDINGS AND ORDER
NEBRASKA, TO ADJUST VALUES BY)	DENYING PETITION
A CLASS OR SUBCLASS)	
)	
)	

The above-captioned case was called for a hearing on the merits of a Petition to the Tax Equalization and Review Commission ("the Commission") by the Boone County Board of Equalization. The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, and by video conference at a site in room 112 of the Maclay Building at Northeast Community College, on August 9, 2006, pursuant to a Notice and Order for Hearing issued July 26, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

The Boone County Board of Equalization ("Board") appeared through Henry Thieman, its Chairperson.

The Commission took statutory notice, received exhibits and heard testimony.

**I.
NATURE OF THE PROCEEDING**

The Property Tax Administrator determined that the level of assessment for the Unimproved Agricultural Class of Property in Boone County, Nebraska was 74.45% based on sixty-three sales. (E6:40). The Property Tax Administrator reported that the level of assessment for the agricultural class of property in Agricultural Market Area 2 of Boone County was 73.98% based on two sales. (E6:41). The Property Tax Administrator also reported that the level of

assessment for the Grassland subclass of agricultural real property was 70.79% based on the sales of 10 parcels with 95% or more grassland in the parcel. The acceptable range for assessment to sales ratio for agricultural real property is 74% to 80%. Neb. Rev. Stat. §77-5023 (Cum. Supp 2005). The Commission did not order any adjustment to a class or subclass of real property in Boone County as a part of its review and consideration of the level of assessment in the County for the year 2006. The Boone County Board of Equalization petitioned for an adjustment in Agricultural Market Area 2, to the 4G subclass of grassland.

II. FINDINGS OF FACT

The Commission finds and determines from the record before it that:

1. The Board timely filed its petition on July 26, 2006.
2. The effect on the level of assessment for agricultural land and horticultural land within Agricultural Market Area 2 of an adjustment to the value of 4G land within Agricultural Market Area 2, as proposed by the County Board of Equalization or only 4G land with “Valentine soils” as proposed by witnesses who appeared in support of the adjustment is not in evidence.
3. The effect on the level of assessment for the Grassland subclass of agricultural land and horticultural land within Agricultural Market Area 2 of an adjustment to the value of 4G land within Agricultural Market Area 2, as proposed by the County Board of Equalization or only 4G land with “Valentine soils” as proposed by witnesses who appeared in support of the adjustment, is not in evidence.
4. The unadjusted level of assessment for all unimproved agricultural land and horticultural land within Boone County falls within the acceptable range set by statute. (E6:38).

III. APPLICABLE LAW

1. Unless the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502, after completion of its actions and based upon the hearings conducted pursuant to sections 77-1502 and 77-1504, a county board of equalization may petition the Tax Equalization and Review Commission to consider an adjustment to a class or subclass of real property within the county. Petitions must be filed with the commission on or before July 26.

The commission shall hear and take action on a petition filed by a county board of equalization on or before August 10. Hearings held pursuant to this section may be held by means of video-conference. 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. At the hearing the commission may receive testimony from any interested person.

After a hearing the commission shall, within the powers granted in section 77-5023, enter its order based on evidence presented to it at such hearing and the hearings held pursuant to section 77-5022 for that year. The order shall 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 affected. When issuing an order to adjust a class or subclass of real property, the commission may exclude individual properties from that order whose value has already been adjusted by a county board of equalization in the same manner as the commission directs in its order. On or before August 10 of each year, the commission shall send its order by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board.

The county assessor shall make the specified changes to each item of property in the county as directed by the order of the commission. In implementing such order, the county assessor shall adjust the values of the class or subclass that is the subject of the order. For properties that have already received an adjustment from the county board of equalization, no additional adjustment shall be made applying the commission's order, but such an exclusion from the commission's order shall not preclude adjustments to those properties for corrections or omissions. The county assessor of the county adjusted by an order of the commission shall recertify the abstract of assessment to the Property Tax Administrator on or before August 20. (Neb. Rev. Stat. §77-1504.01(Cum. Supp. 2005)

2. The acceptable range for assessment to sales ratio for agricultural real property is 74% to 80%. Neb. Rev. Stat. §77-5023 (2)(Cum. Supp 2004).
3. Any increase or decrease shall cause the indicator of central tendency of assessment utilized by the commission to be at the midpoint of the applicable range. Neb. Rev. Stat. §77-5023 (3) (Cum. Supp 2004).
4. Any decrease or increase to a subclass of property shall also cause the indicator of central tendency utilized by the commission for the class from which the subclass is drawn to be within the applicable range. Neb. Rev. Stat. §77-5023 (4) (Cum. Supp 2005).

IV. ANALYSIS

The Board's evidence included the testimony of three witnesses and several Exhibits. The Chairperson of the County Board of Equalization testified that the Board sought a 7.69% reduction in value for the 4G subclass of Grassland in Agricultural Market Area 2. The resulting value would be \$300.00 per acre.

Two witnesses appeared and testified that the value assigned to the 4G subclass of grassland in Agricultural Market Area 2 should be \$265.00 in the "Sandhill portion" of

Agricultural Market Area 2. A separate agricultural market area designated as Sandhill may exist in the county or "Sandhill" may be a subclass of agricultural land and horticultural land within Agricultural Market Area 2. Because the distinctions are not material to the Commission's analysis, reference will be made to Sandhill portion of Agricultural Market Area 2. Testimony of one witness shows that the value of grassland in Agricultural Market Area 2 and in particular the Sandhill portion is affected by drought, the fragile nature of the land, a desire for good husbandry on the part of owners and production capacity.

One witness offered evidence in support of his opinion that the actual value of Valentine sand soils in the Sandhill portion of Agricultural Market Area 2 was \$265.00. The witness testified that he was unable to find comparable sales of grassland with Valentine sand soils in any county near Boone County on which to base an estimate of actual value and therefore did not have an opinion based on comparable sales.

Evidence of actual value using an income approach was presented. (E250:4). The income approach can be used as a mass appraisal technique to determine actual value of a class or subclass of property. Neb. Rev. Stat. §77-112 (Reissue 2003). Two methods, net income divided by a capitalization rate and gross income divided by a capitalization rate, are commonly employed when the income approach is used to develop an opinion of actual value for mass appraisal purposes. *Mass Appraisal of Real Property*, International Association of Assessing Officers, p 132, (1999). The method illustrated in the evidence is the use of net income divided by a capitalization rate. (E250:4). Use of that method requires an estimate of gross income, expenses and net income from market data. *Mass Appraisal of Real Property*, International Association of Assessing Officers, p 20, (1999). There are numerous methods for gathering the required information. *Supra* p.58. The evidence is that the income and expense information provided was the opinion of the proponent based on experience. An opinion that is unsupported or unverified by reviewable data, or reviewable methods for gathering the data is not a sufficient basis for Commission action.

The only other evidence of actual value for Valentine soils presented was the assessed value of 4G land in other Counties. The evidence shows that land in the 4G subclass of grassland has been assigned a value of \$265.00 by Wheeler County bordering Boone County's Agricultural Market Area 2 on the west and by Antelope County bordering Boone County's Agricultural Market Area 2 on the North. One witness testified that lands with Valentine sand soils are classified as 4G and that it is the value of Valentine sand soils which should concern the Commission. Two Valentine sand soils are present in the Boone County, Valentine fine sand rolling (VaC) and Valentine loamy fine sand undulating. (Vb). *Soil Survey of Boone County Nebraska*, U.S. Department of Agriculture Soil Conservation Service p.9 (1972). The witness testified that the Valentine soils with which he was concerned do not have a clay base and cannot be adapted to other uses as readily as other soils which might also be contained in the 4G subclass. Seven types of Valentine soil are found in Wheeler County. *Soil Survey of Wheeler County Nebraska*, U.S. Department of Agriculture Soil Conservation Service, p.134 (1988). Five types of Valentine soils are found in Antelope County. *Soil Survey of Antelope County Nebraska*, U.S. Department of Agriculture Soil Conservation Service, p.11(1978). It is obvious that soil types within the subclass of 4G grassland determined on a county wide basis for Wheeler County as were its values may not be similar to the soil type brought to the Commission's attention. Agricultural Market Area 2 in Antelope County is extensive. (E2:02A page 2). The area encompassed by Agricultural Market Area 2 in Antelope County includes several types of Valentine soil. *Soil Survey of Antelope County Nebraska*, U.S. Department of Agriculture Soil Conservation Service (1978). The evidence presented to the Commission is insufficient for the Commission to conclude in this instance that the value assigned to 4G land in Wheeler or Antelope County reflects the same soil types as the Valentine soil in the Sandhill portion of Agricultural Market Area 2 in Boone County as urged by the witnesses and that the values determined by one county based on factors and soil types applicable to it are transferable to another. The Commission also notes that in addition to the discussion above that adjustments

to the actual value of a subclass could not be used to determine actual value of a subclass unless there was only one soil type in the subclass or the proportion of one soil type to others in the subclass could lead to the conclusion the actual value was influenced by only one component of the subclass.

Evidence was presented showing the values assigned by the Assessors in Boone, Wheeler and Antelope Counties to various subclass of grassland as shown in the following table derived from Exhibit 250 page 2.

	Boone	Wheeler	Antelope
3G1	\$325	\$455	\$825
3G	\$325	\$425	\$550
4G1	\$325	\$350	\$325
4G	\$325	\$265	\$265.

The evidence is that to obtain comparability with neighboring counties that it would be necessary to increase the values assigned to several subclasses of grassland and that there are disparities between values assigned to various subclasses in all three counties. The Boone County Board of Equalization's petition does not seek to increase the value of any subclass.

There is no evidence of the effect of the adjustments proposed by the Boone County Board of Equalization or the witnesses on the level of assessment of agricultural land and horticultural land in Agricultural Market Area 2 of Boone County or the Sandhill portion of that market area. The Commission cannot act without that evidence. In addition, the evidence in support of Commission action indicates that multiple actions including increases in value to several subclasses would be necessary to meet the stated objective of witnesses. No one has petitioned for increases in value and the Commission does not believe it can act outside the scope of the petition.

**V.
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Boone County Board of Equalization and the subject matter of this Petition.
2. The Board is required to show that a failure to make the proposed adjustment would result in values that are not equitable or in accordance with law. Neb. Rev. Stat. §77-1504.01 (Supp 2005). The Board has failed to meet that burden of proof.
3. The Commission can only act within the limits prescribed by section 77-5023. Neb. Rev. Stat. §77-1504.01 (Supp 2005). The Board has not shown that an adjustment by the Commission would result in levels of assessment prescribed by section 77-5023.
4. The County Board has not shown that failure to make the proposed adjustment would result in values that are not equitable and in accordance with the law.
5. The Board's petition must be denied.

**VI.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Boone County Board of Equalization's Petition to Adjust Values by a Class or Subclass specifically to adjust the value of 4G Grassland in Market Area 2 is denied.
2. Any other request for relief by the Boone County Board of Equalization not specifically granted by this order is denied.
3. This decision, if no appeal is filed, shall be certified to Boone County Clerk, the Boone County Assessor, the Boone County Attorney, and the Chairperson of the Boone County Board.

4. This decision shall only be applicable to tax year 2006.

Dated August 10, 2006.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Wm. R. Wickersham, Commissioner

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William C. Warnes, Commissioner