

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

IN THE MATTER OF THE PETITION OF )	Case Number 15CP-001
THE KEARNEY COUNTY, NEBRASKA, )	
BOARD OF EQUALIZATION TO )	FINDINGS AND ORDER
ADJUST VALUES BY A CLASS OR )	DENYING PETITION
SUBCLASS OF REAL PROPERTY )	

The Kearney County Board of Equalization (“the County Board”) petitioned the Tax Equalization and Review Commission (“the Commission”) to adjust the value of the Subclass of accretion ground in Kearney County for tax year 2015.

The Commission, upon receipt of the Petition of the County Board on July 21, 2015, issued an Order for Hearing and Notice of Hearing on July 22, 2015. A copy of the Order and Notice was served on the Kearney County Clerk, County Assessor, County Attorney, Chairperson of the County Board, and the Property Tax Administrator. The Commission called the matter for a hearing on the merits of the Petition in the City of Lincoln, Lancaster County, Nebraska, on July 28, 2015. Commissioners Freimuth, Hotz, and Salmon heard the petition. Commissioner Salmon presided at the hearing. The Commission received exhibits 168 through 182, as well as testimonial evidence and argument presented by the County Board in support of its petition. Additionally the County Board requested leave to present additional evidence after the conclusion of the presentation of its petition at the July 28, 2015 hearing. The Commission thereafter received two additional Exhibits, 183 and 184, submitted by the County Board on August 3, 2015.

**I.  
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.<sup>1</sup>

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<sup>1</sup> Neb. Rev. Stat. §77-1504.01 (2014 Cum. Supp.).

## II. LAW

1. Petitions concerning adjustments to the level of assessment of real property must be filed on or before July 26.<sup>2</sup>
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.<sup>3</sup>
3. After a hearing the Commission shall, within the powers granted in section 77-5023, enter its order based on the evidence presented to it at such hearing and the hearings held pursuant to section 77-5022 for that year.<sup>4</sup>
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.<sup>5</sup>
5. The County 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.<sup>6</sup>
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.<sup>7</sup>
7. Any Order Adjusting Values must result in the level of value as determined for the affected

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<sup>2</sup> Neb. Rev. Stat. §77-1504.01(1) (2014 Cum. Supp.).

<sup>3</sup> Neb. Rev. Stat. §77-1504.01(2) (2014 Cum. Supp.).

<sup>4</sup> Neb. Rev. Stat. §77-1504.01(3) (2014 Cum. Supp.).

<sup>5</sup> Neb. Rev. Stat. §77-1504.01(3) (2014 Cum. Supp.).

<sup>6</sup> Neb. Rev. Stat. §77-1504.01(2) (2014 Cum. Supp.).

<sup>7</sup> Neb. Rev. Stat. §77-1504.01(3) (2014 Cum. Supp.).

class or subclass to fall at the midpoint of the acceptable range.<sup>8</sup>

8. Any decrease or increase to a subclass of property shall 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.<sup>9</sup>
9. The acceptable ratio range for the median of the “Assessment-Sales Ratio” is from 69% to 75% of actual or fair market value for the class and subclasses of agricultural land and horticultural land not receiving special valuation pursuant to Neb. Rev. Stat. §77-1344; 69% to 75% of special valuation for the class and subclasses of agricultural land and horticultural land receiving special valuation pursuant to Neb. Rev. Stat. §77-1344; and 92% to 100% of actual or fair market value for all other classes and subclasses of real property.<sup>10</sup>
10. Whether or not the level of value determined by the commission falls within the acceptable range or at the midpoint of an acceptable range may be determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques.<sup>11</sup>

### **III. ANALYSIS**

The County Board represented in its petition that in order for property values in Kearney County to be equalized, the Commission must adjust the assessed value of the entire subclass of accretion ground in Kearney County, Nebraska to a per acre value of \$875. In support of this request the County Board asserted the following:

1. There are insufficient arm’s length transactions in the open market to justify the increase in value of accretion ground from \$875 per acre in tax year 2014 to \$3,000 per

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<sup>8</sup> Neb. Rev. Stat. §77-1504.01(3) (2014 Cum. Supp.) and Neb. Rev. Stat. §77-5023 (Reissue 2009).

<sup>9</sup> Neb. Rev. Stat. §77-5023(4) (Reissue 2009)

<sup>10</sup> Neb. Rev. Stat. §77-5023(2) (Reissue 2009).

<sup>11</sup> Neb. Rev. Stat. §77-5023(5) (Reissue 2009).

- acre in tax year 2015.
2. The value of accretion ground in surrounding counties supports the County Board's request not to increase the value of accretion ground in tax year 2015.
    - a. Hall County values accretion ground at \$100 per acre if usually submerged in water and \$1,000 per acre if used for hunting purposes.
    - b. Adams County values accretion ground at \$470 per acre.
    - c. Buffalo County values accretion ground at \$2,000 per acre.
  3. The County Board asserts that the majority of accretion ground in Kearney County has no valuable use and should be valued more closely to the value of waste land acres.

The value of waste land acres in Kearney County is \$45 for tax year 2015.
  4. For tax year 2015, the value of grassland in Kearney County is \$1,300 per acre.

Dryland acres are valued at \$1,500 to \$3,000 per acre.<sup>12</sup>

During the protest hearings held pursuant to Neb. Rev. Stat. §77-1502, the County Board reduced the value of accretion ground on ten parcels of property where protests of valuation were filed with the County Board of the forty-one total parcels that contain accretion ground in Kearney County.<sup>13</sup>

When taking action on a County Petition filed with the Commission pursuant to Neb. Rev. Stat. §77-1540.01, the Commission's power to make adjustments to the level of value of a class or subclass when considering a County Petition are limited to those powers granted in section 77-5023 of the Nebraska Statutes.<sup>14</sup> The Commission reviewed the evidence and testimony presented by the County Board as well as the evidence presented at the hearings held pursuant to

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<sup>12</sup> See, Case File

<sup>13</sup> E176, E177.

<sup>14</sup> Neb. Rev. Stat. §77-1504.01 (Reissue 2009).

Neb. Rev. Stat. §77-5022, as allowed by law. There is no evidence demonstrating that the adjustment proposed by the County Board would cause the level of value of the subclass of accretion ground to be at the midpoint of the applicable acceptable range as required by Neb. Rev. Stat. §77-5023(3).<sup>15</sup> There is also not sufficient evidence demonstrating that the adjustments proposed by the County Board could be made by the Commission while causing the level of value of the class of property from which the subclass of accretion ground is drawn to remain within the applicable acceptable range as required by Neb. Rev. Stat. §77-5023(4).<sup>16</sup>

The Petition must accordingly be denied.

#### **IV. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the subject matter of this Petition. Neb. Rev. Stat. §77-1504.01 (2014 Cum. Supp.).
2. The County Board has failed to provide the evidence necessary for the Commission to issue an Order Adjusting values as requested.

#### **V. ORDER**

##### **IT IS ORDERED THAT:**

1. The Petition of County Board of Kearney County, Nebraska, to adjust the value of the Subclass of accretion ground in Kearney County for tax year 2015, is denied.

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<sup>15</sup> Neb. Rev. Stat. §77-5023 (Reissue 2009)

<sup>16</sup> See, Neb. Rev. Stat. §77-5023 (Reissue 2009)

2. A copy of this Order shall be served upon the Kearney County Assessor by certified mail, and upon the Kearney County Clerk, the Chairperson of the Kearney County Board of Equalization, and the Kearney County Attorney, by regular mail.

**Dated and sealed** August 10, 2015.

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Nancy J. Salmon, Commissioner

SEAL

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Robert W. Hotz, Commissioner

**Commissioner Freimuth Dissenting:**

I would find that the Kearney County Board of Equalization (“BOE”) provided sufficient evidence to permit the Commission to order equalization relief for 31 taxable parcels in Kearney County along the Platte River by lowering accretion land from \$3,000 per acre to \$875 per acre for tax year 2015. In the alternative, based on the hearing record, I would find that the BOE provided sufficient evidence to permit the Commission to order equalization relief for 41 taxable parcels in Kearney County along the Platte River by lowering accretion land from \$3,000 per acre to \$813 per acre for tax year 2015.<sup>17</sup>

The Kearney County Assessor increased the valuation of accretion land on 41 agricultural parcels along the Platte River from \$875 in tax year 2014 to \$3,000 for tax year 2015. The BOE

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<sup>17</sup> According to Exhibit 183, there are 41 parcels of real property in Kearney County that contain 1,712.71 acres of accretion land for tax year 2015. The total assessed value of these acres at \$3,000 per acre is \$5,138,130. The total assessed value of these 1,712.71 acres at \$875 per acre is \$1,498,621, resulting in a total adjustment of \$3,639,509 (\$5,138,130 - \$1,498,621 = \$3,639,509). This total proposed adjustment represents only .18% of Kearney County’s \$2,009,066,568 valuation base for tax year 2015 (\$3,639,509/\$2,009,066,568 = .0018).

reduced the Kearney County Assessor's tax year 2015 notice valuation for accretion land to \$875 per acre with respect to 10 of these 41 parcels for which valuation protests were filed by the June 30, 2015, protest deadline.<sup>18</sup> The BOE's Petition seeks to equalize the assessed value of the accretion acres contained in the remaining 31 parcels with these adjusted parcels for tax year 2015.<sup>19</sup>

The BOE's assertion that the Commission has the power under Neb. Rev. Stat. §77-5023 (Reissue 2009) to order an equalization adjustment for purposes of Neb. Rev. Stat. §77-1504.01 (2014 Cum. Supp.) in this case is strongly supported by the record. The BOE's supporting documentation in this regard is set forth at Exhibits 167 through 184 of the Commission's 2015 Equalization Proceedings (these Exhibits can be accessed on the Commission's website). The BOE's Petition and its supporting evidence in the form of testimony by members of the BOE and Exhibits 167 through 184 demonstrate why failure of the Commission to order an adjustment in this matter would result in values that are not equitable for purposes of Neb. Rev. Stat. §77-1504.01 (2014 Cum. Supp.).

The record indicates that accretion land along the Platte River is subject to significant and substantial non-agricultural influences. For instance, in support of her \$3,000 per acre notice valuation for tax year 2015, the record indicates that the Kearney County Assessor relied in substantial part on sales of accretion land to the Platte River Recovery Implementation Program ("PRRIP").<sup>20</sup>

The PRRIP focuses its efforts on the portion of the Platte River that runs from Dawson County, Nebraska to Chapman, Nebraska, which is located in Merrick County a few miles northeast of

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<sup>18</sup> See, Neb. Rev. Stat. §77-1502(1) (2014 Cum. Supp.)

<sup>19</sup> See, Case File (Petition), E176, E177.

<sup>20</sup> See, E174, E175, E178.

Grand Island (Hall County). The record indicates the following tax year 2015 accretion land values for the area covered by the PRRIP: (1) Dawson County - \$875 per acre; (2) Buffalo County - \$450 special value (southern border includes Platte River); (3) Kearney County - \$3,000 per acre for 31 parcels, \$875 for 10 parcels (Platte River constitutes northern border); and (4) Hall County - \$100 per acre submerged, \$1,000 non-submerged.<sup>21</sup>

The Kearney County Assessor did not appear at the hearing before the Commission on July 28, 2015, in order to defend her \$3,000 per acre notice valuation of accretion land for tax year 2015. Additionally, the BOE operated under a tight statutory filing deadline in this case.<sup>22</sup> Under these circumstances where 31 taxpayers are profoundly impacted from both an inter-county and intra-county equalization standpoint, failure to grant the equalization adjustment requested by the BOE begs the question why the Commission exists as currently structured.

Finally, I note that L.B. 808, which was enacted in 2006, removed agricultural zoning language from the definition of land that can qualify for special valuation treatment.<sup>23</sup> Accordingly, beyond tax year 2015, Taxpayers in Kearney County are eligible to apply for special valuation treatment to address the impact of sales transactions that involve non-agricultural influences under Neb. Rev. Stat. §§77-1343 – 1348 (Reissue 2009 & Cum. Supp. 2014).

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Thomas D. Freimuth, Commissioner

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<sup>21</sup> See, E180 & hearing testimony. It is also this Commissioner's understanding that Douglas County values accretion land at \$50 per acre for tax year 2015.

<sup>22</sup> See, Neb. Rev. Stat. §77-1504.01(1) (2014 Cum. Supp.) (BOE subject to July 26, 2015 Petition filing deadline with respect to equalization adjustments identified as a part of the annual protest hearing process that starts after the June 30<sup>th</sup> protest filing deadline). Under Neb. Rev. Stat. §77-1504.01(2), the Commission is required to take action on the BOE's Petition by August 10, 2015.

<sup>23</sup> 2006 Neb. Laws 808, §§ 27 - 28 (amending Neb. Rev. Stat. §§ 77-1343 – 77-1344). I note that L.B. 808, Sec. 5, incorporated agricultural zoning language in Neb. Rev. Stat. §§ 19-2428 – 2431, but it does not appear that this language continues to require farmland to be in an area zoned for agricultural or horticultural use for purposes of the special valuation statutes found at Neb. Rev. Stats. §§ 77-1343 – 1348.