

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

IN THE MATTER OF:	)	
	)	03CP-2
	)	
THE PETITION OF PIERCE COUNTY,	)	FINDINGS AND ORDER
NEBRASKA, TO ADJUST VALUES BY	)	DENYING PETITION
A CLASS OR SUBCLASS	)	
	)	
	)	

Filed August 6, 2003

Appearances: Duane Dean  
Pierce County Assessor  
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Before: Commissioners Lore, Wickersham and Reynolds.  
Reynolds, Chair, for the Commission.

**SUMMARY OF DECISION**

The Pierce County Board of Equalization ("the Board") filed a Petition with the Tax Equalization and Review Commission ("the Commission"). The Board's Petition requested that the subclass of agricultural land enrolled in the United States Department of Agriculture Farm Service Agency's Conservation Reserve Program be reduced by three and seven-tenths percent (3.7%). The Commission, based on the record before it, denies the prayer for relief and dismisses the Petition.

**I.**  
**NATURE OF THE CASE**

The Property Tax Administrator determined that the level of assessment for the Agricultural Class of Property in Pierce County, Nebraska was 77% based on 50 sales. (E461:1090). The acceptable range for the median of the assessment to sales ratios for agricultural real property is 74% to 80%. Neb. Rev. Stat. §77-5023 (Cum. Supp. 2002, as amended by 2003 Neb. Laws., L.B. 291, §13).

The Commission adopted these findings as part of its final order during the 2003 Equalization Proceedings. (E461:1078 - 1084).

The Board filed a Petition requesting the Commission reduce the level of assessment of land enrolled in the United States Department of Agriculture Farm Services Agency's Conservation Reserve Program ("CRP") be reduced by three and seven-tenths percent (3.7%). The program is generally described in 7 CFR Part 1410.

The Pierce County Assessor testified in support of the Petition. The Pierce County Assessor testified that the request was based on two sales of land enrolled in CRP. The first property sold for \$144,000. (E483:1). The assessed value of that property was \$110,635. (E483:2). The assessment to sales ratio for this transaction is 76.83%. The acceptable range for the assessment to sales ratio is 74% to 80%. Neb. Rev. Stat. §77-5023(3) (Cum. Supp. 2002). The assessed value of the property

which is the subject of this transaction satisfies the requirements of state law.

The second transaction relied on by the Board is the sale and purchase of three quarters of land in Section 22, Township 27 North, Range 3 West. The three tracts of land sold for a total of \$400,000. (E484; E485). The total assessed value of these three tracts was \$342,845. (E486; E487; E488). The assessment to sales ratio for this transaction was 85.71%. This ratio exceeds the limits set by statute. Neb. Rev. Stat. §77-5023(3) (Cum. Supp. 2002).

The Board also adduced Exhibits 482 through 488.

## **II. APPLICABLE LAW**

The law applicable to petitions filed by a county board of equalization is found in Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, § 2):

“(1) 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.

“(2) 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 videoconference. Hearings conducted pursuant to this section shall be in the manner prescribed in section 77-5026. 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.

“(3) After a hearing the commission shall 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.

“(4) 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."

**III.  
ISSUE BEFORE THE COMMISSION**

The only issue is whether failure to make the proposed adjustments would result in values that are not equitable and in accordance with the law.

**IV.  
STANDARD OF REVIEW**

The Board, in order to prevail, is required to demonstrate by clear and convincing evidence that failure to make an adjustment would result in values that are not equitable and in accordance with the law. Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2002, as amended by 2003 Neb. Laws., L.B. 291, §2).

**V.  
FINDINGS OF FACT**

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016(5) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).

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

1. The Board's only evidence supporting the proposed order adjusting values is the purchase and sale of three-quarters of a section of land. The land was enrolled in CRP. After sale the property use was converted to irrigated land.
2. The Board's adduced no evidence demonstrating the impact of the Board's proposed order.

**VI.  
ANALYSIS**

**A.  
2003 EQUALIZATION PROCEEDINGS**

The Property Tax Administrator filed the *2003 Report and Opinion for Pierce County* ("the Report") on April 7, 2003. (E235:1). The Commission concluded that the median of the

assessment to sales ratios for the agricultural class of real property within the County was 77% based on the Report.

(E461:1082).

The Commission based its determination on the sale of 50 parcels of agricultural real property within Pierce County between July 1, 1999, and June 30, 2002. (E461:1090). Only 95% of the "qualified" sales were used for the purposes of determining the median of the assessment to sales ratios.

(E461:1090). The top and bottom 2.5% of sales were excluded from the statistical study. (E461:1090). These sales were excluded to eliminate "outliers" from improperly affecting the statistical study.

The Commission, based on the evidence presented, concluded that an assessment to sales ratio of 77% fell within the acceptable range of values established in Neb. Rev. Stat. §77-5023(3) (Cum. Supp. 2002). The Commission therefore determined no action should be taken regarding the residential class of property in Pierce County for tax year 2003. (E461:1082).

**B.**  
**THE BOARD'S PETITION**

The Board filed its petition on July 25, 2003. The Commission issued an Order for Hearing the day it received the Petition. The matter was scheduled for hearing on the merits of the Petition in the City of Lincoln, Lancaster County, Nebraska, on August 5, 2003, at 11:00 o'clock a.m. by video conference.

Video conference proceedings are specifically authorized by Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2002, as amended by 2003 Neb. Laws., L.B. 291, §2) and Neb. Rev. Stat. §77-5022 (Cum. Supp. 2002, as amended by 2003 Neb. Laws., L.B. 291, §12).

The Board appeared at the hearing through Duane Dean, the Pierce County Assessor. Mr. Dean was accompanied by Mr. Marvin Elwood, Jr., Chair, Pierce County Board of Equalization. Both of these individuals participated in the hearing from Norfolk by videoconference. Mr. Michael J. Goodwillie, Esq., Legal Counsel for the Department of Property Assessment and Taxation appeared personally at the hearing site in Lincoln.

The Commission, during the course of the public hearing, afforded the Board, the Assessor, and other interested persons the opportunity to present evidence and argument. The Board, the Legal Counsel for the Department of Property Assessment and Taxation, the Commissioners and other interested persons were also afforded the opportunity to ask questions of witnesses who testified.

**C.**  
**THE BOARD'S EVIDENCE**

The Board's evidence included testimony that one protest was filed for tax year 2003 concerning the assessed value of agricultural land enrolled in CRP. The Assessor testified that no other protests alleged that the assessed value of land enrolled in CRP exceeded 80% of actual or fair market value.



The Board's evidence also included the sale and purchase of two parcels of land which were enrolled in CRP. The first property sold for \$144,000. (E483:1). The assessed value of that property was \$110,635. (E483:2). The assessment to sales ratio for this transaction is 76.83%. The acceptable range for the assessment to sales ratio is 74% to 80%. Neb. Rev. Stat. §77-5023(3) (Cum. Supp. 2002). The assessed value of the property which is the subject of this transaction satisfies the requirements of state law.

The second transaction relied on by the Board is the sale and purchase of three quarters of land in Section 22, Township 27 North, Range 3 West. The three tracts of land sold for a total of \$400,000. (E484; E485). The total assessed value of these three tracts was \$342,845. (E486; E487; E488). The assessment to sales ratio for this transaction was 85.71%. This ratio exceeds the limits set by statute. Neb. Rev. Stat. §77-5023(3) (Cum. Supp. 2002). The Assessor testified that after purchase, the owner converted the use of the land from grassland enrolled in CRP to irrigated land. This change in use was accomplished by installing three pivots on the land.

The Board adduced no evidence of the change in use on the price paid for the three tracts of land. The Board adduced no other evidence in support of its petition.

The first purchase and sale does not support the Board's requested adjustment. The assessment to sales ratio establishes that the assessed value of land enrolled in CRP satisfies the

level of value required by state law. Neb. Rev. Stat. §77-5023(3) (Cum. Supp. 2002).

The second transaction, consisting of two sales, is the only evidence which might support the Board's proposed adjustment. The Commission determined that the level of assessment of agricultural land was 77% based on fifty sales which occurred between July 1, 1999, and June 30, 2002. (E461:1090). The assessment to sales ratio for this second transaction was 85.71%. (E484 - E488). The transaction included two sales. The first sale concerned the NE $\frac{1}{4}$  and the NW $\frac{1}{4}$  of Section 22, Township 27 North, Range 3 West. (E484). The purchaser paid \$360,000 for a total of 320 acres of land. (E485; E486). The purchase paid \$1,125 per acre for the land. ( $\$360,000 \div 320 \text{ acres} = \$1,125 \text{ per acre}$ ). The assessed value of these two tracts of land, if valued as grass land, was \$243,075. ( $\$125,430 + \$117,645 = \$243,075$ ). (E485; E486). The assessment to sales ratio for this part of the transaction was 67.52%. ( $\$243,075 \div \$360,000 = 67.52\%$ ). This level of assessment is below the minimum required by statute. Neb. Rev. Stat. §77-5023(3) (Cum. Supp. 2002). This part of the transaction indicates that the property was undervalued, not overvalued.

The second part of the transaction concerned the purchase of the SW $\frac{1}{4}$  of the same section. The price paid by the purchaser was \$40,000 for 160 acres. (E485; E488). The price paid was \$250 per acre. ( $\$40,000 \div 160 \text{ acres} = \$250 \text{ per acre}$ ). The assessed value of this parcel, if valued as grass, was \$99,770. (E488).

The assessment to sale ratio for this transaction is 249.42%. (\$99,770 ÷ \$40,000 = 249.42%). This level of assessment is three times the maximum allowed by law. Neb. Rev. Stat. §77-5023(3) (Cum. Supp. 2002). The Assessor testified he didn't know why the purchaser only paid \$40,000 for this tract.

The Board contends its evidence supports the proposed adjustment. Only one protest was filed for tax year 2003 concerning the level of assessment of land enrolled in CRP. Two of the three sales relied on by the Board do not establish that CRP land is overvalued. The third sale appears to be atypical. The Board failed to adduce any evidence establishing the impact of the proposed adjustment on the level or quality of assessments for the agricultural class of real property within Pierce County for tax year 2003. The Board has failed to meet its burden of persuasion. The Board's prayer for relief must therefore be denied. The Board's petition must also be dismissed.

## **VII. CONCLUSIONS OF LAW**

The Commission concludes as a matter of law that:

1. A petition to adjust values by a class or subclass must be filed with the Commission. Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2002, as amended by 2003 Neb. Laws., L.B. 291, § 2).
2. The Board filed a Petition with the Commission on July 25, 2003. This Petition was filed on July 25, 2003, and was

timely filed pursuant to Neb. Rev. Stat. §77-1504.01 (Cum. Supp. 2002, as amended by 2003 Neb. Laws., L.B. 291, §2).

3. The Commission has jurisdiction over the Pierce County Board of Equalization and the subject matter of this Petition.
4. The Board has failed to adduce clear and convincing evidence 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 prayer for relief must accordingly be denied and the Petition must be dismissed.

**VIII.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:**

1. The Pierce County Board of Equalization's prayer for relief, that the level of assessment of agricultural land enrolled in CRP be reduced by three and seven-tenths percent (3.7%), is denied.
2. The Pierce County Board of Equalization's Petition to Adjust Values by a Class or Subclass is dismissed.
3. Any other request for relief by the Pierce County Board of Equalization not specifically granted by this order is denied.
4. This decision, if no appeal is filed, shall be certified to Pierce County Clerk, the Pierce County Assessor, the Pierce

County Attorney, and the Chairperson of the Pierce County Board.

5. This decision shall only be applicable to tax year 2003.

**IT IS SO ORDERED.**

Dated this 6<sup>th</sup> day of August, 2003.

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*Susan S. Lore, Commissioner*

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*Wm. R. Wickersham, Vice-Chair*

**Seal**

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*Mark P. Reynolds, Chair*