

SEP 18 1999

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

IN THE MATTER OF:

THE PETITION OF HOLT COUNTY,  
NEBRASKA, TO ADJUST VALUATIONS  
BY A CLASS OR SUBCLASS

CASE NO. 99CP-5

FINDINGS AND ORDER  
DENYING PETITION

Filed August 10, 1999

Appearances:

Gary Olberding  
Chairman, Holt County Board of Equalization  
P. O. Box 329  
O'Neill, NE 68763

**SUMMARY OF DECISION**

The Holt County Board of Equalization ("Board") filed a Petition requesting that the Tax Equalization and Review Commission ("Commission") order a twenty-seven percent (27%) valuation decrease to rural Holt County homes for tax year 1999 "due to the sale data prompting such increase not being produced by sales of comparable properties." Based on the entire record before the Commission, the Commission denies the County's request for relief contained in the Petition since the relief requested constitutes a collateral attack of the Commission's Order of April 22, 1999; that the Petition constitutes a collateral attack of the decision of the Property Tax Administrator in creating the *1999 Qualified Sales File* for Holt County; and for failure to meet the statutory burden of proof as to the cause of action alleged in the Amended Petition.

**I.  
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) (1998 Cum. Supp.). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (1998 Cum. Supp.) From the pleadings and the evidence contained in the record before it, the Commission finds and determines as follows:

1. That the Board's Petition is in fact a request to decrease the assessed value of agricultural dwellings.
2. That the Holt County Assessor ("Assessor") does not classify residential improvements on farms ("agricultural dwellings") as residential property. That therefore none of the residential statistical studies of the Property Tax Administrator would establish the median indicated level of value for this subclass of property.
3. That the Holt County Assessor ("Assessor") testified that agricultural dwelling values have not been appraised since 1978. That no County update has been made to these agricultural dwelling values since 1978, although all other residential property valuations were updated in 1987, and the Marshall Swift Residential Cost Manual costing figures applied to all other residential property were updated in 1995.
4. That there are 4,077 parcels of residential real property within the County. (E124:21). That there are 1,607 agricultural dwelling parcels within the County. (E124:18). That there were approximately 12 protests filed with the Board for tax year 1999 for agricultural dwelling property. That most agricultural dwelling parcels which were protested were adjusted.

5. That the Assessor and the Chairman of the Board both admitted that the requested 27% decrease in the assessed value of agricultural dwelling parcels would create inequities within the residential class of property. Further that the effect of such an adjustment is to reverse this Commission's Order of April 22, 1999, requiring a 37% increase in the assessed value of all rural residential parcels.
6. That from the record before the Commission, a 37% decrease in the assessed value of agricultural dwelling parcels would result in assessed values which are substantially below actual or fair market value.
7. That no evidence has been adduced which would establish that failure to make the requested adjustment would result in values that are not equitable and in accordance with the law.

#### **STANDARD OF REVIEW**

Neb. Rev. Stat. §77-1504.01 (1998 Cum. Supp.), as amended by 1999 Neb. Laws, L. B. 140, §1, establishes that "The burden of proof is on the petitioning county which must show that failure to make an adjustment would result in values that are not equitable and in accordance with the law."

#### **CONCLUSIONS OF LAW**

"Equalization" is defined as "the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value, . . . The purpose of equalization is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax." *County of Adams v. State Bd. of Equal. and Assessment*, 252 Neb. 847, 850, 566 N. W. 2d 392, 395 (1997).

The State Constitution requires that assessments be uniform and proportionate. Neb. Const. Art. 8, Section 1. Petitioner has failed to meet its burden of proof. The relief requested in the Board's Petition must therefore be denied, and the Petition be dismissed.

**ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, as follows:

1. That the relief requested in the Petition is denied.
2. That the Petition be, and it hereby is, dismissed with prejudice.


**IT IS SO ORDERED.**

Dated this 10<sup>th</sup> day of August, 1999.



  
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Mark P. Reynolds, Chairman

  
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Janet L. Edwards, Commissioner

  
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Robert L. Hans, Commissioner