

MINUTES
LANCASTER COUNTY BOARD OF COMMISSIONERS
COUNTY-CITY BUILDING, ROOM 112
TUESDAY, JANUARY 6, 2015
10:30 A.M.

Advance public notice of the Board of Commissioners meeting was posted on the County-City Building bulletin board and the Lancaster County, Nebraska, web site and emailed to the media on January 2, 2014.

Commissioners present: Larry Hudkins, Chair; Brent Smoyer, Vice Chair; Deb Schorr, Roma Amundson and Jane Raybould

Others present: Kerry Eagan, Chief Administrative Officer; Gwen Thorpe, Deputy Chief Administrative Officer; Brittany Behrens, Deputy County Attorney; Dan Nolte, County Clerk; Cori Beattie, Deputy County Clerk; and Ann Taylor, County Clerk's Office

The Chair called the meeting to order at 10:34 a.m., the pledge of allegiance was recited and the location of the Nebraska Open Meetings Act was announced.

1) **SPECIAL PRESENTATIONS:**

A. Oath of Office Ceremony for County Elected Officials – The Honorable Robert R. Otte

Judge Robert Otte administered the oath of office to Bill Avery, County Commissioner; Deb Schorr, County Commissioner; Todd Wiltgen, County Commissioner; Pam Dingman, County Engineer; Troy Hawk, Clerk of the District Court; Joe Kelly, County Attorney; Joe Nigro, Public Defender; Dan Nolte, County Clerk; Andy Stebbing, County Treasurer; and Terry Wagner, Lancaster County Sheriff.

B. Lancaster County Visitors Improvement Fund Grant in the amount of \$10,000 to Star City BMX for track improvements – Josh Larson, Star City BMX Track Operator; Greg and Tammy Thimigan, Star City BMX Board Members; Jeff Maul, Lincoln Convention & Visitors Bureau Executive Director; Julie Lattimer, Lancaster County Visitors Promotion Committee Chair (See 5A for correlating item.)

Jeff Maul, Lincoln Convention & Visitors Bureau Executive Director, thanked Board members for their support of tourism in Lancaster County.

Julie Lattimer, Lancaster County Visitors Promotion Committee (VPC) Chair, said Star City BMX is requesting \$10,000 to make improvements to facility, which includes rebuilding the starting hill, installing two retaining walls, pouring additional concrete on the staging area and rebuilding the starting gate. The total project cost is \$20,000 and Star City BMX has agreed to take on half of the cost themselves. She said the VPVC recommends approval of the funding request.

Josh Larson, Star City BMX Track Operator, and Tammy Thimigan, Star City BMX Board Member, explained the improvements would increase their potential to attract the annual State Championship Finals and national events such as Gold Cup Qualifier events.

NEW BUSINESS ITEM 5A

MOTION: Smoyer moved and Schorr seconded approval of the contract. Smoyer, Schorr, Raybould, Amundson and Hudkins voted aye. Motion carried 5-0.

RETURNING TO SPECIAL PRESENTATIONS

- C. Recognition of County Commissioners Jane Raybould and Brent Smoyer for their dedicated service to the people of Lancaster County.

The Board recognized Raybould and Smoyer for their service and Amundson and Schorr presented them with clocks.

- 2) **MINUTES:** Approval of the minutes of the Board of Commissioners meeting held on Tuesday, December 16, 2014.

MOTION: Raybould moved and Smoyer seconded approval of the minutes. Schorr, Raybould, Amundson, Smoyer and Hudkins voted aye. Motion carried 5-0.

- 3) **CLAIMS:** Approval of all claims process through January 6, 2015.

MOTION: Raybould moved and Amundson seconded approval of the claims. Raybould, Amundson, Smoyer, Schorr and Hudkins voted aye. Motion carried 5-0.

NEW BUSINESS ITEM 5JJ

James Luers, an attorney representing John Honvlez, appeared and discussed the refund request (see Exhibit A). He said the land (approximately 90 acres) has been enrolled in the Federal Conservation Reserve Program (CRP) since the early 1990's. The CRP ground was initially classified as dryland. A change in federal regulations in 2009 required CRP to be characterized as grassland and not dryland. The claimant's property was not changed until 2014, as the result of the claimant protesting the tax value. Luers said the appraisal card only showed 3 acres of grassland in 2013, when it should have been 80 acres. He referenced state statutes and regulations, which state the appraiser has the obligation of correctly classifying the property. Luers said the claimant is entitled to the benefit of a correction of assessed values, as the mistaken value is the result of a clerical error of honest mistake of fact or misunderstanding. He asked that the claimant be given credit for \$4,690 (reduction of 28% for taxes in 2011, 2012 and 2013) against the 2013 and 2014 taxes owed on the property, or in the alternative, be refunded the taxes overpaid in accordance with the procedure set forth in Neb. Rev. Stat. § 77-1736.06 to determine the overpayment.

Rob Ogden, Chief Field Deputy Assessor/Register of Deeds, said the values for the two parcels were appealed to the Board of Equalization in 2014 and the corrections in the land uses were identified by the protest referee system. He said the values were recalculated at that time based on land use. Ogden said value notices were sent out every year since 2008 and said it is up to the property owner to verify the information and bring forth any changes or errors that were made in the listing. He added the information is available on the County's website.

Luers responded it is the responsibility of the Assessor to correctly inventory each parcel into its current agricultural land class, referencing Reg. Section 14 § 004.04. He clarified that the claimant is only claiming one parcel, explaining the other parcel was accurately maintained as grassland. Luers said the value on that parcel was modified after his property value protest, but it was not based on the mistake of CRP. Ogden added that other changes to that parcel were additional wasteland that was identified.

Brittany Behrens, Deputy County Attorney, noted the statutory definition of clerical error in Neb. Rev. Stat. § 77-128: *a transposition of numbers, mathematical error, computer malfunction causing programming and printing errors, data entry error, items of real property other than land identified on the wrong parcel, incorrect ownership, or certification of an incorrect valuation to political subdivisions*. She said it is the County Attorney's position that this situation does not meet the definition of a clerical error and would be more appropriately classified as a listing error. Behrens said it is important to note that the claimant did not file a property valuation protest until 2014 and when the landowner brought information forward at that time, the correction was made through the referee process. She said the only authorization that is before the Board at this time is to address whether it is a clerical error or not.

Luers said Neb. Rev. Stat. § 77-1734.01 addresses clerical errors and requiring the claimant to make their claim within three years. He said the exhibit he presented also provides case law that addresses a clerical error on honest mistakes of fact.

Behrens said the County Attorney's Office has historically taken the position that this type of error is not included in the contemplation of an honest mistake of fact in Neb. Rev. Stat. § 77-1734.01.

Luers suggested the general public was not aware of the change in federal regulations 2009. He also pointed out the Revenue Department has indicated the classification of agricultural property is supposed to be the responsibility of the Assessor.

Amundson asked when the claimant determined he was overpaying. Luers said the claimant noticed a significant increase in his property taxes and decided to protest the value of the land. He said the claimant did not realize it was taxed incorrectly until he met with the Assessor's Office and was told it was a classification error.

Ogden said the Assessor's Office reviewed aerial photographs of agricultural land following the change in 2009 and adjusted the properties they could identify as grassland.

Schorr asked whether the valuation notices that are sent to property owners show the number of acres that are in CRP and grassland. Ogden said they do not but said they do provide access to the website where they can check the information. He said the Assessor's Office would also provide a printout to the landowner, if requested. Ogden explained classification errors can frequently occur, explaining the Assessor's Office does not have access to Farm Service Agency (FSA) information and must rely on aerial photographs and drive by inspections.

Luers pointed out that the land has been taxed as CRP since 1993. Ogden explained the Assessor's Office only keeps five years of records and bases land use on aerial photographs, inspections and information from the property owner.

Hudkins asked whether the Department of Revenue gave the Assessor's Office instructions when the change was instituted in 2009 on how to deliver that information to landowners. Ogden said the change in statute was all.

Hudkins then asked whether the Assessor's Office has access to soils maps and geological surveys. Ogden said it does, adding that information is available on their website.

Raybould suggested the Assessor's Office include a disclaimer on valuation notices that it is the responsibility of the property owner to verify the information and to file property valuation appeals in a timely manner.

Schorr asked if it was determined that a property had been misclassified and more taxes were owed, would the County have the ability to recover the additional amount. Ogden said it would be corrected the next year. He said the exception would be an omitted property.

MOTION: Raybould moved and Hudkins seconded to approve the refund request.

The Chair noted the amount of the refund would likely need to be recalculated.

ROLL CALL: Raybould and Hudkins voted aye. Amundson, Smoyer and Schorr voted nay. Motion failed 3-2.

PUBLIC HEARINGS:

- A. Request to vacate SW 31st Street, south of W. Denton Road to the north lot line of Outlot I, The Bridges Addition, Lancaster County, Nebraska.

The Chair opened the public hearing.

Sara Hartzell, Planner II, Lincoln/Lancaster County Planning Department, was administered the oath. She said the street is partially located within The Bridges subdivision development and explained a portion of the SW 31st Street was dedicated to the County in 1997. Hartzell said the intent of the subdivision was to have private roadways that would be maintained by the homeowners association. She said the street, which is a County road, is within the City's three-mile zoning jurisdiction and would have to meet City requirements. Since the roadway crosses Cardwell Branch at a sharp diagonal, a culvert would have to extend well beyond the bed of the roadway. Hartzell said vacating the roadway and replatting it as a private roadway allows for more flexibility. She said all of the adjacent property owners have agreed to the vacation.

Brittany Behrens, Deputy County Attorney, was administered the oath. She submitted a copy of the real estate appraisal report prepared by County Engineering (Exhibit B), noting the appraisal amount is \$50,000. Behrens said the Board will need to decide whether to approve or deny the vacation. She said a resolution will then be brought forward as soon as practicable in the matter of determining how to dispose of the property, adding there are several options, i.e., revert to private ownership, sell the property and specify how it is to be distributed, or negotiate a sale with the petitioner.

MOTION: Schorr moved and Smoyer to begin negotiations with the petitioner.

The Chair indicated that a motion should not be made during the public hearing.

PUBLIC HEARINGS CONTINUED:

The maker of the motion and seconder withdrew their motion.

Hartzell said the Planning Commission has recommended approval of the vacation and City Council voted to approve it on November 24, 2014.

The Chair closed the public hearing.

Amundson indicated she would like additional information on options. Schorr said she does not believe beginning negotiations with the petitioner would limit the Board's options.

MOTION: Schorr moved and Amundson seconded to direct the County Attorney's Office to enter into negotiations with the petitioner but not approve the vacation at this time. Amundson, Smoyer, Schorr, Raybould and Hudkins voted aye. Motion carried 5-0.

- B. Issuance by the Hospital Authority No. 1 of Lancaster County, Nebraska, of its Healthcare Revenue Refunding Bonds (Tabitha, Inc., Project), Series 2015B, solely for purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended. (See 5B for correlating item.)

The Chair opened the public hearing.

Colleen Duncan, Gilmore & Bell, P.C., was administered the oath. She explained that a public hearing must be held to satisfy the requirements of the Internal Revenue Code for the tax-exempt status of interest on the bonds. Duncan introduced Blaine Spady of Smith Hayes Financial Services, underwriter of the bonds, and Darcie Brink, Chief Financial Officer (CFO) of Tabitha, Inc.

Hudkins inquired about Tabitha's plans.

Brink was administered the oath. She explained their intent is to refinance and refund the current bonds and said they anticipate significant interest savings. Brink said they do not have specific plans on how to use the interest savings.

The Chair closed the public hearing.

4) **NEW BUSINESS:**

- A. Lancaster County Visitors Improvement Fund Grant Contract in the amount of \$10,000 between Lancaster County (sponsor) and Star City BMX (grantee) for track improvements. Term of the contract is January 1, 2015 to July 31, 2015. (C-15-0001)

Item 5A was moved forward on the agenda.

NEW BUSINESS CONTINUED:

- B. Resolution approving the issuance, sale and delivery by Hospital Authority No. 1 of Lancaster County, Nebraska of not to exceed \$3,300,000 principal amount of its Healthcare Revenue Refunding Bonds (Tabitha, Inc., Project), Series 2015B, solely for the purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended, and related matters. (R-15-0001)

MOTION: Raybould moved and Smoyer seconded approval of the resolution. Schorr, Raybould, Amundson, Smoyer and Hudkins voted aye. Motion carried.

- C. Resolution in the matter of annual salary increases for Appointed Directors, Assistant Directors, Bailiffs, the Child Support Referee and the District Court Law Clerks. All salary increases are effective December 25, 2014. (R-15-0002)

MOTION: Smoyer moved and Amundson seconded approval of the resolution.

Gary Aldridge, 7112 South 45th Street, appeared and expressed concern regarding the impact the salary increases have on property taxes.

ROLL CALL: Amundson, Smoyer, Schorr and Hudkins voted aye. Raybould voted nay. Motion carried 4-1.

- D. Setting the salary of Tara A. Parpart, Deputy County Attorney, at \$58,834.88 effective December 30, 2014.

Joe Kelly, County Attorney, introduced Tara Parpart, Deputy County Attorney, whom he said will be starting in the Juvenile Division.

MOTION: Amundson moved and Smoyer seconded approval. Amundson, Smoyer, Schorr, Raybould and Hudkins voted aye. Motion carried 5-0.

- E. Setting the salary of Teresa J. Nutzman, Deputy Public Defender, at \$39,037 effective January 2, 2015.

MOTION: Raybould moved and Smoyer seconded approval of the salary. Smoyer, Schorr, Raybould, Amundson and Hudkins voted aye. Motion carried 5-0.

- F. Resolution in the matter of County Maintenance of Roads in Willnerd Acres generally located at S. 82nd Street and Firth Road. (R-15-0003)

MOTION: Smoyer moved and Raybould seconded approval of the resolution.

Pam Dingman, County Engineer, appeared and said the developer worked out issues of concern and said she recommends that the subdivision be taken over for maintenance.

ROLL CALL: Schorr, Raybould, Amundson, Smoyer and Hudkins voted aye. Motion carried 5-0.

NEW BUSINESS CONTINUED:

- G. Recommendation from the County Sheriff and the Purchasing Department to award a bid per Bid No. 14-279 to Anderson Ford for seven (7) 2015 Ford Utility Interceptor Vehicles. The total cost of the purchase is \$193,781. (B-15-0001)

MOTION: Smoyer moved and Amundson seconded approval of the recommendation.

Bob Walla, Assistant Purchasing Agent, appeared and said this item involved a direct purchase and said the next two items involve vehicles purchased off State of Nebraska contracts. He said vehicle purchases for the City and County were combined into one bid, which resulted in significant savings.

ROLL CALL: Raybould, Amundson, Smoyer, Schorr and Hudkins voted aye. Motion carried 5-0.

- H. Recommendation from the County Sheriff and the Purchasing Department to issue a purchase order to Lincoln Dodge, Inc., for one (1) Dodge Caravan from State of Nebraska Contract #14132 OC. The total cost of the purchase is \$21,190. (B-15-0002)

MOTION: Amundson moved and Smoyer seconded approval of the recommendation. Amundson, Smoyer, Schorr, Raybould and Hudkins voted aye. Motion carried 5-0.

- I. Recommendation from County Corrections and the Purchasing Department to issue a purchase order to Husker Auto Group for one (1) Chevrolet Express Passenger Van from State of Nebraska Contract #14157 OC. The total cost of the purchase is \$26,141. (B-15-0003)

MOTION: Smoyer moved and Schorr seconded approval of the recommendation. Smoyer, Schorr, Raybould, Amundson and Hudkins voted aye. Motion carried 5-0.

- J. Recommendation from the Purchasing Department to award a bid per Bid No. 14-273 to NMC, Inc., for mobile electric generators for emergency and non-emergency use. The cost of this purchase shall not exceed \$50,000. (B-15-0004)

MOTION: Smoyer moved and Schorr seconded approval of the recommendation.

In response to a question from Raybould, Walla said this involves rental of equipment and covers pricing in the event of a natural disaster.

ROLL CALL: Schorr, Raybould, Amundson, Smoyer and Hudkins voted aye. Motion carried 5-0.

- K. Contract between RDO Truck Centers, Lancaster County and the City of Lincoln for the annual requirements of construction and landfill equipment repair. Term of the contract is one year from the date of execution by all parties. (C-15-0002)

MOTION: Schorr moved and Smoyer seconded approval of the contract. Raybould, Amundson, Smoyer, Schorr and Hudkins voted aye. Motion carried 5-0.

NEW BUSINESS CONTINUED:

- L. Agreement with Lincoln Glass, Inc. for automatic sliding doors at the Lancaster County Treasurer's Office located at 625 North 46th Street. The County will pay \$10,750 for the products and services. (C-15-0003)

MOTION: Smoyer moved and Amundson seconded approval of the agreement. Amundson, Smoyer, Schorr, Raybould and Hudkins voted aye. Motion carried 5-0.

- M. Contract between Jacobsen Fire Equipment, Lancaster County, the City of Lincoln and the Lincoln-Lancaster County Public Building Commission for fire extinguisher inspection, testing and maintenance. Term of the agreement is four years from the date of execution by all parties. (C-15-0004)

MOTION: Raybould moved and Smoyer seconded approval of the contract. Smoyer, Schorr, Raybould, Amundson and Hudkins voted aye. Motion carried 5-0.

- N. Network provider contract with the Regional Behavioral Health Authority (Region V) for the provision of certain behavioral mental health services at the Mental Health Crisis Center. The County shall be reimbursed up to \$1,121,086 for the services. Term of the agreement is July 1, 2014 to June 30, 2015. (C-15-0005)

Behrens said the contract that was received from Region V in August reflected a decrease of approximately \$300,000 in funding. She said it was her understanding Region V would be sending the County a revised contract but said she was informed the funding would be addressed outside of the network provider contract.

Hudkins said that was not his understanding.

MOTION: Schorr moved to hold the contract.

There was no second to the motion but there was consensus to hold the contract and have further communication with Region V regarding the contract.

- O. Grant contract with Community Action Partnership of Lancaster and Saunders Counties to provide funding in the amount of \$1,000 for a tax preparation and filing service for low to moderate-income individuals in Lancaster County. Term of the contract is October 9, 2014 to October 10, 2015. (C-15-0006)

MOTION: Smoyer moved and Raybould seconded approval of the grant contract. Raybould, Amundson, Smoyer, Schorr and Hudkins voted aye. Motion carried 5-0.

- P. Agreement with Continuum Employee Assistance to provide an employee assistance program for County employees. Term of the agreement is January 1, 2015 to December 31, 2017. The County will pay Continuum \$20,196.00 per contract year. (C-15-0007)

MOTION: Raybould moved and Smoyer seconded approval of the agreement. Amundson, Smoyer, Schorr, Raybould and Hudkins voted aye. Motion carried 5-0.

NEW BUSINESS CONTINUED:

- Q. Utility Permit No. 1234 allowing Unite Private Networks to install approximately 800 feet of fiber optic communications cable from 7201 North 98th Street north along the east side of North 98th Street to Cornhusker Highway/Highway 6. There is no cost to the County. (C-15-0008)

MOTION: Amundson moved and Smoyer seconded approval of the utility permit. Smoyer, Schorr, Raybould, Amundson and Hudkins voted aye. Motion carried 5-0.

- R. A license agreement between Lancaster County and Tyrol and Kit Ehlers to construct a fence upon County property along road right-of-way adjacent to Masek's First Addition, Block 4, Lot 1, Lancaster County, Nebraska. (C-15-0009)

MOTION: Smoyer moved and Schorr seconded approval of the license agreement.

In response to a question from Raybould, Behrens said the license agreement will be filed with Register of Deeds and will run with the property.

Raybould then asked whether the County will be compensated for allowing the property owner to have the fence in the right-of-way. Behrens said that was not part of discussions. She said there are probably six of these types of agreements on record and said compensation has never been part of the granting of the license. Raybould said that might be something the Board would want to discuss in the future noting other jurisdictions have a formula for charging any property owner that may be encroaching in the right-of-way.

ROLL CALL: Schorr, Raybould, Amundson, Smoyer and Hudkins voted aye. Motion carried 5-0.

- S. Agreement with Big Rig Truck Accessories for upgrade services on the Lancaster County Sheriff's Office's military Mine Resistant Ambushed Protected (MRAP) vehicle. The County will pay \$6,983.20 for the products and services. (C-15-0010)

Terry Wagner, Lancaster County Sheriff, appeared and said the vehicle is being converted into an emergency rescue vehicle. He said no general fund monies are involved.

MOTION: Smoyer moved and Amundson seconded approval of the agreement. Raybould, Amundson, Smoyer, Schorr and Hudkins voted aye. Motion carried 5-0.

- T. Grant contract with Lincoln Public Schools for \$140,836 to fund truancy diversion programs at various Lincoln public schools. Term of the agreement is July 1, 2014 to June 30, 2015. (C-15-0011)

MOTION: Smoyer moved and Raybould seconded approval of the grant contract. Amundson, Smoyer, Schorr, Raybould and Hudkins voted aye. Motion carried 5-0.

NEW BUSINESS CONTINUED:

- U. Mini-grant contract application and award with the Nebraska Office of Highway Safety in the amount of \$7,000 for two in-car camera systems for the Lancaster County Sheriff. (C-15-0012)

MOTION: Amundson moved and Smoyer seconded approval of the application and award. Smoyer, Schorr, Raybould, Amundson and Hudkins voted aye. Motion carried 5-0.

- V. Amendment to County Contract C-14-0394 with Insight Public Sector, Inc. for computers, enterprise hardware, software and services. The amendment renews the agreement for an additional one-year term from October 1, 2014 to September 30, 2015. (C-15-0013)

MOTION: Raybould moved and Amundson seconded approval of the amendment. Schorr, Raybould, Amundson, Smoyer and Hudkins voted aye. Motion carried 5-0.

- W. Amendment to County Contract C-13-0273 with Lawmen's & Shooters' Supply, Inc. for corrections uniform accessories. The amendment provides for the price increases per Attachment A. (C-15-0014)

MOTION: Schorr moved and Raybould seconded approval of the amendment. Raybould, Amundson, Smoyer, Schorr and Hudkins voted aye. Motion carried 5-0.

- X. Amendment to County Contract C-12-0653 with Egan Supply Company for the annual supply of ice melt. The amendment provides for the price increases per Attachment A. (C-15-0015)

MOTION: Raybould moved and Smoyer seconded approval of the amendment. Amundson, Smoyer, Schorr, Raybould and Hudkins voted aye. Motion carried 5-0.

- Y. Amendment to County Contract C-13-0039 with Whitehead Oil Company for the annual supply of motor fuels. The amendment renews the agreement for an additional two-year term from January 24, 2015 to January 23, 2017. (C-15-0016)

MOTION: Raybould moved and Smoyer seconded approval of the amendment. Smoyer, Schorr, Raybould, Amundson and Hudkins voted aye. Motion carried 5-0.

- Z. Amendment to County Contract C-13-0002 with Fastenal Company for the annual supply of snowplow nuts, bolts and washers. The amendment renews the agreement for an additional one-year term from January 8, 2015 to January 7, 2016. (C-15-0017)

MOTION: Amundson moved and Smoyer seconded approval of the amendment. Schorr, Raybould, Amundson, Smoyer and Hudkins voted aye. Motion carried 5-0.

NEW BUSINESS CONTINUED:

- AA. Amendment to County Contract C-13-0571 with Hamilton Equipment Company for rental of a Bobcat S750 Skid Loader. The amendment extends the term of the agreement from December 9, 2014 to December 10, 2015. (C-15-0018)

MOTION: Raybould moved and Smoyer seconded approval of the amendment. Raybould, Amundson, Smoyer, Schorr and Hudkins voted aye. Motion carried 5-0.

- BB. Amendment to County Contract C-14-0360 with Kenwood USA Corporation for the annual supply of public safety communications equipment. The amendment renews the agreement from October 30, 2014 to March 31, 2015. (C-15-0019)

MOTION: Amundson moved and Smoyer seconded approval of the amendment. Amundson, Smoyer, Schorr, Raybould and Hudkins voted aye. Motion carried 5-0.

- CC. Amendment to County Contract C-11-0094 with Hewlett-Packard Company for computer equipment, peripherals and related services. The amendment renews the contract for an additional three-month term from January 1, 2015 to March 31, 2015. (C-15-0020)

MOTION: Raybould moved and Smoyer seconded approval of the amendment. Smoyer, Schorr, Raybould, Amundson and Hudkins voted aye. Motion carried 5-0.

- DD. Amendment to County Contract C-12-0461 with Mr. Yards and More, LLC, for the annual requirements of snow and ice removal services. The amendment adds additional City and Public Building Commission service locations. (C-15-0021)

MOTION: Amundson moved and Raybould seconded approval of the amendment. Schorr, Raybould, Amundson, Smoyer and Hudkins voted aye. Motion carried 5-0.

- EE. Amendment to County Contract C-12-0059 with Sky Copters, Inc., for the annual requirements of aerial weed control of phragmites. The amendment extends the agreement for an additional one-year term from January 31, 2015 to January 30, 2016. (C-15-0022)

MOTION: Smoyer moved and Raybould seconded approval of the amendment. Raybould, Amundson, Smoyer, Schorr and Hudkins voted aye. Motion carried 5-0.

- FF. Amendment to County Contract C-13-0272 with Alamar Uniforms for corrections uniform accessories. The amendment provides for the price increases per Attachment A. (C-15-0023)

MOTION: Amundson moved and Raybould seconded approval of the amendment. Amundson, Smoyer, Schorr, Raybould and Hudkins voted aye. Motion carried 5-0.

NEW BUSINESS CONTINUED:

GG. Amendment to County Contract C-13-0270 with Ray O'Herron Company, Inc., for corrections uniform accessories. The amendment provides for the price increases per Attachment A. (C-15-0024)

MOTION: Raybould moved and Amundson seconded approval of the amendment. Smoyer, Schorr, Raybould, Amundson and Hudkins voted aye. Motion carried 5-0.

HH. Fourth Grant Contract Addendum to County Contract C-12-0385, amending the grant contract between Lancaster County (sponsor) and Spring Creek Prairie Audubon (grantee) to extend the grant term to July 31, 2015 and to provide for partial payment of work already completed. (C-15-0025)

MOTION: Raybould moved and Smoyer seconded approval of the addendum. Schorr, Raybould, Amundson, Smoyer and Hudkins voted aye. Motion carried 5-0.

II. Request from the Joint Budget Committee to approve the Keno Human Services Prevention Fund Recommendations – Round 39 (Year 2).

MOTION: Raybould moved and Smoyer seconded approval of the request. Raybould, Amundson, Smoyer, Schorr and Hudkins voted aye. Motion carried 5-0.

JJ. Refund request from John Honvlez for overpayment of 2011, 2012 and 2013 property taxes.

Item was moved forward on the agenda.

KK. Political Subdivision Tort Claim filed against Lancaster County Corrections by Brian Gouge for lost property in the amount of \$180.

MOTION: Smoyer moved and Raybould seconded denial of the tort claim based on Corrections Director's recommendation. Smoyer, Schorr, Raybould, Amundson and Hudkins voted aye. Motion carried 5-0.

5) **CONSENT ITEMS:** These are routine business items that are expected to be adopted without dissent. Any individual item may be removed for special discussion and consideration by a Commissioner or by any member of the public without prior notice. Unless there is an exception, these items will be approved as one with a single vote of the Board of Commissioners. These items are approval of:

A. Right-of-way contract with Ronald L. and Ila M. Deinert, NW 84th and W. Adams, in the amount of \$30. (C-15-0026)

B. Receive and place on file the following monthly reports:

1. County Sheriff - November, 2014
2. County Clerk - December, 2014
3. Clerk of the District Court - December, 2014

CONSENT ITEMS CONTINUED:

- C. Setting the following public hearings for Tuesday, January 13, 2015, at 10:30 a.m., in Room 112 of the County-City Building (555 S. 10th Street, Lincoln):
1. County Text Amendment No. 14020, an amendment to Article 10 of the Lancaster County Zoning Resolution on Personal Wireless Telecommunications Facilities; and
 2. Amendment of various sections of County Resolution No. R-13-0062, procedures for the regulation of on-site wastewater treatment systems in Lancaster County, and rescinding County Resolution No. R-02-31.

MOTION: Raybould moved and Smoyer seconded approval of the consent items. Schorr, Raybould, Amundson, Smoyer and Hudkins voted aye. Motion carried 5-0.

- 6) **PUBLIC COMMENT:** Those wishing to speak on items relating to County business not on the agenda may do so at this time.

Hudkins introduced a visitor from Denmark.

7) **ANNOUNCEMENTS:**

- A. The Lancaster County Board of Commissioners will hold a staff meeting on Thursday, January 8, 2015 at 8:30 a.m., in the Bill Luxford Studio (Room 113) of the County-City Building (555 S. 10th Street, Lincoln).
- B. The Lancaster County Board of Commissioners will hold their next regular meeting on Tuesday, January 13, 2015, at 10:30 a.m., in Room 112 of the County-City Building (555 S. 10th Street, Lincoln) with the Board of Equalization immediately following.
- C. The County Commissioners can be reached at 402-441-7447 or commish@lancaster.ne.gov.
- D. The Lancaster County Board of Commissioners meeting is broadcast live. It is rebroadcast on Tuesday and Saturday on 5 City-TV, Cable Channel 5. In addition, the meeting may be viewed on the internet at lancaster.ne.gov under 5 City-TV, Video on Demand or 5 City-TV on YouTube.

8) **ADJOURNMENT**

MOTION: Smoyer moved and Raybould seconded to adjourn the Board of Commissioners meeting at 12:30 p.m. Raybould, Amundson, Smoyer, Schorr and Hudkins voted aye. Motion carried 5-0.

Dan Noite

Dan Noite
Lancaster County Clerk



MINUTES
LANCASTER COUNTY BOARD OF EQUALIZATION
COUNTY-CITY BUILDING, ROOM 112
TUESDAY, JANUARY 6, 2015
IMMEDIATELY FOLLOWING THE LANCASTER COUNTY
BOARD OF COMMISSIONERS MEETING

Advance public notice of the Board of Equalization meeting was posted on the County-City Building bulletin board and the Lancaster County, Nebraska, web site and emailed to the media on January 2, 2014.

Commissioners present: Larry Hudkins, Chair; Brent Smoyer, Vice Chair; Deb Schorr, Roma Amundson and Jane Raybould

Others present: Kerry Eagan, Chief Administrative Officer; Gwen Thorpe, Deputy Chief Administrative Officer; Brittany Behrens, Deputy County Attorney; Dan Nolte, County Clerk; Cori Beattie, Deputy County Clerk; and Ann Taylor, County Clerk's Office

The Chair called the meeting to order at 12:30 p.m., and the location of the Nebraska Open Meetings Act was announced.

- 1) **MINUTES:** Approval of the minutes of the Board of Equalization meeting held on Tuesday, December 16, 2014.

MOTION: Raybould moved and Amundson seconded approval of the minutes. Schorr, Raybould, Amundson, Smoyer and Hudkins voted aye. Motion carried 5-0.

2) **MOTOR VEHICLE TAX EXEMPTION APPLICATIONS:**

Allon Chapel SDA Church/Central States Conference
Goodwill Industries Serving Southeast Nebraska
Great Plains Annual Conference of the United Methodist Church
Madonna Rehabilitation Hospital
People's City Mission
VITAL Services, Inc.

MOTION: Smoyer moved and Raybould seconded approval of the motor vehicle tax exemption application. Raybould, Amundson, Smoyer, Schorr and Hudkins voted aye. Motion carried 5-0.

- 3) **PUBLIC COMMENT:** Those wishing to speak on items relating to County Board of Equalization business not on the agenda may do so at this time.

No one appeared for public comment.

4) **EXECUTIVE SESSION** – Pending Litigation

MOTION: Smoyer moved and Schorr seconded to enter Executive Session at 12:30 p.m. for the purpose of protecting the public interest with regards to pending litigation.

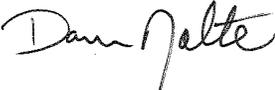
The Chair restated the motion for the record.

ROLL CALL: Amundson, Smoyer, Schorr, Raybould and Hudkins voted aye. Motion carried 5-0.

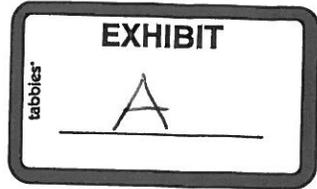
MOTION: Schorr moved and Smoyer seconded to exit Executive Session at 12:34 p.m. Raybould, Amundson, Smoyer, Schorr and Hudkins voted aye. Motion carried 5-0.

5) **ADJOURNMENT**

MOTION: Smoyer moved and Raybould seconded to adjourn the Board of Equalization meeting at 12:36 p.m. Smoyer, Schorr, Raybould, Amundson and Hudkins voted aye. Motion carried 5-0.


Dan NOITE
Lancaster County Clerk





Honvlez Claim for Reimbursement of Overpaid Property Tax

Prepared on behalf of John and Rhonda Honvlez

By:

A handwritten signature in cursive script, appearing to read "James B Luers", written over a horizontal line.

James B Luers, #15108
Wolfe, Snowden, Hurd, Luers & Ahl, LLP
Wells Fargo Center
1248 O Street, Suite 800
Lincoln, NE 68508-1424
Tel: (402) 474-1507
Fax: (402) 474-3170
Email: jluers@wolfesnowden.com

Honvlez Claim for Reimbursement of Overpaid Property Tax

- Owners of a parcel of property identified as: Parcel 03-28-400-001
- That parcel is enrolled in the Federal CRP Program and have been since approximately 1993
- Claimants have protested the tax value of the above property for 2014, and the value was reduced by 28% as the County Assessor failed to assess the value of the farm based upon the correct classification as CRP. (See attached referee report and County Commissioners Final Determination for Section 28.)
- It is the responsibility of the assessor to correctly inventory each parcel into its current agricultural land class. See Reg Section 14 § 004.04 attached.
- In 2009 the federal regulations required CRP to be characterized as grassland and not dryland and the claimants' parcel (Section 28) was never changed until 2014. See Neb. Administrative Code Chapter 14 § 004.04E and see attached 2013-2015 Lancaster County Appraisal Cards for the parcel identified above.
- The Claimants are entitled to the benefit of a correction of assessed values as the mistaken value is the result of a clerical error or honest mistake of fact or misunderstanding. See Neb. Rev. Stat. § 77-1734.01(2) attached. See also Kaapa Ethenol LLC v. Board of Supervisor, 285 Neb. 112, 825 N.W.2d 761 (2013).
- The Claimants paid taxes on Section 28 for the three year (2011-2013) period totaling \$17,108.00. Giving a reduction of 28% equals \$4,790.00. (See attached property tax information for the identified parcel.)
- The Claimants are asking this Board to give them credit for \$4,690.00 against the 2013 and 2014 taxes owed on the above property, or in the alternative, refund the taxes overpaid in accordance with the procedure set forth in Neb. Rev. Stat. § 77-1736.06. (See attached.)

INDEX

1. Referee Report for Parcel 03-28-400-001 (July 21, 2014)
2. County Commissioners Final Determination (August 5, 2014)
3. Nebraska Administrative Code, Chapter 14 § 004.04
4. Nebraska Administrative Code, Chapter 14 § 004.04E
5. Appraisal Cards for Parcel 03-28-400-001 (2013-2015)
6. Neb. Rev. Stat. § 77-1734.01(2)
7. Kaap Ethenol v. Board of Supervisor, 285 Neb. 112, 825 N.W.2d 761 (2013)
8. Property Tax Information
9. Neb. Rev. Stat. § 77-1736.06

REFEREES REPORT-FARM/RURAL PROPERTY

Protest #: 14-00157 GREEN
Parcel I.D.: 03-28-400-001-000
Appellant: John Honvlez
Situs:
Total: \$497,500

DATE OF HEARING: 27-14

Owner/Rep. Present? (circle one) YES NO

SUMMARY OF FINAL REFEREE RECOMMENDATIONS

REFEREE'S ESTIMATED PROPERTY VALUE RECOMMENDATIONS*

Change No Change to Assessor's value (Indicated above)

Land: 358313

Improvements: —

Total: 358313 (Round to nearest \$100)

REFEREE'S SIGNATURE: Marijyn Taber DATE: 7-21-14

REFEREE'S NAME (PRINT): Marijyn Taber

ACTION TAKEN BY THE REFEREE COORDINATOR

Agree: After reviewing all the data presented by the protestor, the data provided by the Assessor's office, and the analysis of the Referee, the Coordinator has determined that he/she agrees with the conclusions of the Referee.

Disagree: After reviewing all the data presented by the protestor, the data provided by the Assessor's office, and the analysis of the Referee, the Coordinator has determined that he/she disagrees with the conclusions of the Referee.

In addition to the data previously considered by the Referee, the Coordinator has also considered and/or reconsidered the following data: Removal

COORDINATOR'S ESTIMATED PROPERTY VALUE RECOMMENDATIONS*

Change No Change to Referee's value recommendations (See Above for Value Recommendations)

Land: _____

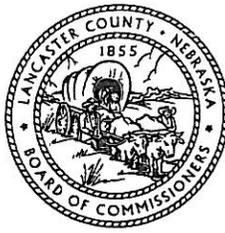
Improvements: _____

Total: 358,300 (Round to nearest \$100)

Thomas W. Kubert, MAI

COORDINATOR'S SIGNATURE: [Signature] DATE: 7-21-14

* The Referee's and Coordinator's final values are for the fee simple value of the land and improvements as listed on the property record. The final value does not consider any exemptions which may be applied by the Lancaster County Assessor's Office.



LANCASTER COUNTY BOARD OF COMMISSIONERS

Deb Schorr Larry Hudkins Roma Amundson Brent Smoyer Jane Raybould

John Honvlez
8858 W Yankee Hill Rd

8/5/2014

Denton, NE 68339

Section 28

Parcel ID: 03-28-400-001-000

Situs Address:

Legal: S28, T9, R5, 6th Principal Meridian, LOT 11 SE

Protest Number: 14-00157

Dear Property Owner/Appellant:

RE: TERC PENDING/FINAL ACTION

On August 5, 2014, the Lancaster County Board of Commissioners, acting in its capacity as the Board of Equalization, made a final determination of value with regard to your Property Valuation Protest. The Board based its final decision on data from the Assessor, data presented by you, and the Referee Coordinator, who assisted the Board in the analysis of valuation protests.

Assessor's Proposed Value:	\$497,500
Board of Equalization's Final Value:	\$358,300
Difference:	-\$139,200

*27.979%
reduction*

This concludes the review of your 2014 valuation by the Board of Equalization. The report required by Neb. Rev. Statute §77-1502, which includes the Board's decision and all documentation relating to this appeal application, is available for review at the Lancaster County Clerk's Office during normal business hours (Monday-Friday; 7:30 a.m. to 4:30 p.m.).

$$\frac{139200}{497500} = .279798$$

$$\frac{358300}{497500} = .720201$$

REG.

Nebraska Administrative Code Currentness
Revenue, Department of
Title 350: Nebraska Department of Revenue, Property Assessment Division
Chapter 14 - Agricultural Land and Horticultural Land Assessment Regulations

Neb. Admin. R. & Regs. Tit. 350, Ch. 14, § 004

004 PROCEDURES

004.01 Identification of the parcel.

004.01A All land in the state of Nebraska can be identified using the public land survey system. The entire state has been laid out in townships north of the baseline running from east to west along the Kansas-Nebraska border and ranges east and west from the 6th parallel which runs perpendicular to the baseline approximately 108 miles west of the eastern tip of the state. The parcel should be identified using the public land survey system legal description.

004.01A(1) Government lots may be identified using the appropriately assigned government lot number. Government lots are irregularly shaped lots which most often occur along the north and west sections in a township.

004.01A(2) Irregular lots may be identified using the appropriately assigned "tax lot" number.

004.01B Every county shall prepare and maintain a parcel numbering system based on the cadastral mapping program. The property identification numbering system is addressed in REG-10-004.03.

004.02 Identification of the rights to be appraised.

004.02A The assessor is to value all the rights that may legally be owned, including the rights to sell, lease, use, gift, enter, or refuse to do anything are considered to be the rights being appraised for property tax purposes.

004.02B Rights in other than the surface estate are to be valued and assessed separately to the owner of those rights when they have been severed from the surface rights. See, Mineral Interest Regulation, Chapter 13, procedures for assessing mineral interests.

004.03 Date of assessment is as of January 1 of the current assessment year. The assessor shall complete the assessment process for all real property on or before March 19 of each year, prior to filing of the county's abstract of assessment.

004.04. Classes of agricultural and horticultural land. The assessor is responsible for an accurate inventory of each parcel into its current agricultural and horticultural land class.

004.04A Irrigated Cropland.

004.04B Dryland Cropland.

004.04C Grassland.

004.04D Wasteland.

004.04E Government Programs Land which is voluntarily enrolled in the Conservation Reserve Program (CRP), Conservation Reserve Enhancement Program (CREP), Environmental Quality Incentives Program (EQIP), the Stewardship Incentive Program, the Tree Assistance Program, the Water Bank Program, or any other programs may require separate market analysis. The land should be classified at its current use such as grassland or timbered grassland; however, the values for land enrolled in government program acres should be adjusted to reflect the local market for similar property.

004.04F Intensive Use Areas: Agricultural or horticultural land which has been designed for intensive uses such as feedlots, nurseries, vineyards, sod farms, and orchards should be valued in a separate category. A separate land classification for these intensive use areas shall be determined. Intensive use areas must be valued independently from rural farmsites. Land not directly associated with buildings in these instances would be assessed at seventy-five (75) percent of value as determined by a market study.

004.04G Forestland and Shelterbelt Areas: Include natural and planted stands of trees and/or shrubs where livestock grazing is not practiced or possible. Areas where grazing occurs will be classified as timbered grassland. This includes any natural stands of timber. Planted forests include areas planted for windbreaks, shelterbelts, wildlife habitat, wood products, and living snowfence. Areas that include a combination of both planted and natural forests will be in this classification. Trees planted for nursery stock, tree farms, orchards, and other horticultural purposes will be categorized and analyzed separately to determine their value.

004.05 Accretion Land: Includes land that has been formed by alluvial deposits associated with a body or stream of water. The State of Nebraska is unique in its recognition of the riparian rights of individuals to own land lying under water. Accretion land can be classified into any agricultural use category.

004.05A In counties adjoining rivers which represent the state boundary, the county surveyor shall survey the land adjoining the river before June 1, 1960, and at least once within each five-year period thereafter.

004.05B In counties with rivers which are not state boundaries, the county surveyor shall cause a survey of lands believed to be altered by adjoining bodies of water when ordered by the county board of equalization or requested by the Property Tax Administrator.

004.05C A report of such survey findings of changes in land areas or a certificate of the opinion that the acres as noted on the current tax lists have not changed due to actions of adjoining bodies of water shall be filed with the assessor.

004.06 Classification of agricultural land in Nebraska requires that there be a set of complete and accurate maps or digital imageries that reflect the location, identification, and inventory of all parcels of land within every jurisdiction. The general procedures used in these regulations require that the counties have their soils classified by parcel, soil, and land use. If the soils have not been counted in a county, the county needs to have the following items available:

004.06A Up-to-date aerial photographs or digital imageries of the entire county.

004.06B Supplemental land valuation records, to inventory the acres of every soil type by land use for every parcel.

004.06C The current soil conversion legend prepared by the Department of Revenue, Property Assessment Division that reflects the land capability groups by dryland soil type.

LANCASTER COUNTY REAL PROPERTY INFORMATION

Parcel ID: 03-28-400-001-000

A-Active

Tax Year: 2013

Run Date: 12/22/2014 12:01:41 PM

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OTHER BUILDINGS AND YARD IMPROVEMENTS

COMPONENTS

Occupancy	MSCI	Rank	Qty	Yr Blt	Area	Perim	Hat	Dimen	St	Phvs	RCN	%Dep	RCNLD	%Cmp	Code	Units	Pct	Size	Oth	Rank	Year
											0		0								

AGRICULTURAL LAND

AGRICULTURAL LAND SUMMARY

Ag Type	Ag Acres	Soil Unit	LCG	Govt Prog	Adj Code	Base Rate	Adj Rate	Ag Value
D-Dryland	1.92	7,231	1D			5,000	5,000	9,605
D-Dryland	16.46	7,684	2D			4,500	4,500	74,057
D-Dryland	0.47	7,774	2D			4,500	4,500	2,097
D-Dryland	10.80	7,232	2D1			4,500	4,500	48,618
D-Dryland	0.04	7,890	2D1			4,500	4,500	180
D-Dryland	42.25	7,227	3D1			4,000	4,000	169,000
D-Dryland	22.65	7,503	3D1			4,000	4,000	90,604
D-Dryland	24.91	7,270	4D1			3,500	3,500	87,196
D-Dryland	3.09	7,507	4D1			3,500	3,500	10,801
D-Dryland	15.27	7,614	4D1			3,500	3,500	53,431
D-Dryland	0.46	7,616	4D1			3,500	3,500	1,617
G-Grassland/Pasture	0.19	7,684	2G			3,000	3,000	555
G-Grassland/Pasture	0.39	7,232	2G1			3,000	3,000	1,170
G-Grassland/Pasture	0.08	7,227	3G1			2,500	2,500	193
G-Grassland/Pasture	0.52	7,503	3G1			2,500	2,500	1,295
G-Grassland/Pasture	0.21	7,620	4G			2,000	2,000	420
G-Grassland/Pasture	1.27	7,270	4G1			2,000	2,000	2,534
G-Grassland/Pasture	0.37	7,507	4G1			2,000	2,000	734
G-Grassland/Pasture	0.89	7,616	4G1			2,000	2,000	1,786
W-Waste	5.69	7,227	W			1,000	1,000	5,690
W-Waste	0.21	7,231	W			1,000	1,000	206
W-Waste	4.09	7,232	W			1,000	1,000	4,089
W-Waste	2.43	7,270	W			1,000	1,000	2,432
W-Waste	0.02	7,620	W			1,000	1,000	21
W-Waste	1.97	7,774	W			1,000	1,000	1,970
W-Waste	0.01	7,890	W			1,000	1,000	13

Category	Acres	Category	100% Value
Total Aq Acres	156.64	Total Aq	570,313
Drv	138.32	Drv	547,205
Grass	3.91	Grass	8,687
Irrigated	0.00	Irrigated	0
Waste	14.42	Waste	14,421
Homesite	0.00	75% Aq	427,734
Farmsite	0.00		
Commercial Site	0.00	100% Aq Per	3,641
RROW	0.00	Acre Value	
Total Acres	156.64		

COMMENTS

LANCASTER COUNTY APPRAISAL CARD

Parcel ID: 03-28-400-001-000

Tax Year: 2014

Run Date: 12/30/2014 10:41:05 AM

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OTHER BUILDINGS AND YARD IMPROVEMENTS COMPONENTS

Occupancy MSCI Rank Qty Yr Blt Area Perim Hgt Dimensions Stories Phys %Comp Code Units Pct Size Oth Rank Year

AGRICULTURE

Ag Type	Ag Acres	Soil Unit	LCG	Govt Prog	Adj Code	Category	Acres
D-Dryland	1.92	Judson silt loam, 2 to 6 percent slopes	1D				
D-Dryland	11.74	Wymore silty clay loam, 3 to 6 percent slo	2D				
D-Dryland	0.47	Colo-Nodaway silty clay loams, frequently	2D				
D-Dryland	22.86	Burchard clay loam, 6 to 11 percent slope	3D1				
D-Dryland	11.54	Pawnee clay loam, 3 to 6 percent slopes,	3D1				
D-Dryland	3.09	Pawnee clay loam, 6 to 11 percent slopes	4D1				
D-Dryland	0.64	Steinauer clay loam, 6 to 11 percent slope	4D1				
D-Dryland	0.02	Steinauer loam, 6 to 11 percent slopes	4D1				
G-Grassland/Pasture	4.90	Wymore silty clay loam, 3 to 6 percent slo	2G				
G-Grassland/Pasture	11.19	Judson fine sandy loam, 2 to 6 percent slo	2G1				
G-Grassland/Pasture	0.04	Zook silt loam, occasionally flooded	2G1				
G-Grassland/Pasture	19.46	Burchard clay loam, 6 to 11 percent slope	3G1				
G-Grassland/Pasture	11.63	Pawnee clay loam, 3 to 6 percent slopes,	3G1				
G-Grassland/Pasture	0.21	Steinauer clay loam, 20 to 40 percent slo	4G				
G-Grassland/Pasture	26.17	Dickinson fine sandy loam, 6 to 11 percer	4G1				
G-Grassland/Pasture	0.37	Pawnee clay loam, 6 to 11 percent slopes	4G1				
G-Grassland/Pasture	14.62	Steinauer clay loam, 6 to 11 percent slope	4G1				
G-Grassland/Pasture	1.34	Steinauer loam, 6 to 11 percent slopes	4G1				
W-Waste	5.69	Burchard clay loam, 6 to 11 percent slope	W				
W-Waste	0.21	Judson silt loam, 2 to 6 percent slopes	W				
W-Waste	4.09	Judson fine sandy loam, 2 to 6 percent slo	W				
W-Waste	2.43	Dickinson fine sandy loam, 6 to 11 percer	W				
W-Waste	0.02	Steinauer clay loam, 20 to 40 percent slo	W				
W-Waste	1.97	Colo-Nodaway silty clay loams, frequently	W				
W-Waste	0.01	Zook silt loam, occasionally flooded	W				

Total Aq Acres	156.61
Dry	52.27
Grass	89.93
Irrigated	0.00
Waste	14.41
Homesite	0.00
Farmsite	0.00
Commercial Site	0.00
RROW	0.00
Total Acres	156.61

ENTRANCES

LANCASTER COUNTY REAL PROPERTY INFORMATION

Parcel ID: 03-28-400-001-000

A-Active

Tax Year: 2015

Run Date: 12/22/2014 12:04:51 PM

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OTHER BUILDINGS AND YARD IMPROVEMENTS

COMPONENTS

Occupancy	MSCI	Rank	Qty	Yr Blt	Area	Perim	Hgt	Dimen	St	Phvs	RCN	%Depr	RCNLD	%Cmp	Code	Units	Pct	Size	Oth	Rank	Year
											0		0								

AGRICULTURAL LAND

AGRICULTURAL LAND SUMMARY

Ag Type	Ag Acres	Soil Unit	LCG	Govt Prog	Adj Code	Base Rate	Adj Rate	Ag Value	Category	Acres	Category	100% Value
D-Dryland	1.92	7,231	1D			5,850	4,388	8,424	Total Aq Acres	156.61	Total Aq	477,750
D-Dryland	11.74	7,684	2D			5,265	3,949	46,354	Drv	52.27	Drv	188,861
D-Dryland	0.47	7,774	2D			5,265	3,949	1,840	Grass	89.93	Grass	158,644
D-Dryland	22.86	7,227	3D1			4,680	3,510	80,242	Irrigated	0.00	Irrigated	0
D-Dryland	11.54	7,503	3D1			4,680	3,510	40,502	Waste	14.41	Waste	10,808
D-Dryland	3.09	7,507	4D1			4,095	3,071	9,475	Homesite	0.00	75% Aq	358,313
D-Dryland	0.64	7,614	4D1			4,095	3,071	1,978	Farmsite	0.00		
D-Dryland	0.02	7,616	4D1			4,095	3,071	46	Commercial Site	0.00	100% Aq Per	3,051
G-Grassland/Pasture	4.90	7,684	2G			3,000	2,250	11,027	RROW	0.00	Acre Value	
G-Grassland/Pasture	11.19	7,232	2G1			3,000	2,250	25,175	Total Acres	156.61		
G-Grassland/Pasture	0.04	7,890	2G1			3,000	2,250	88	COMMENTS			
G-Grassland/Pasture	19.46	7,227	3G1			2,500	1,875	36,493				
G-Grassland/Pasture	11.63	7,503	3G1			2,500	1,875	21,797				
G-Grassland/Pasture	0.21	7,620	4G			2,000	1,500	317				
G-Grassland/Pasture	26.17	7,270	4G1			2,000	1,500	39,257				
G-Grassland/Pasture	0.37	7,507	4G1			2,000	1,500	551				
G-Grassland/Pasture	14.62	7,614	4G1			2,000	1,500	21,929				
G-Grassland/Pasture	1.34	7,616	4G1			2,000	1,500	2,012				
W-Waste	5.69	7,227	W			1,000	750	4,267				
W-Waste	0.21	7,231	W			1,000	750	154				
W-Waste	4.09	7,232	W			1,000	750	3,065				
W-Waste	2.43	7,270	W			1,000	750	1,820				
W-Waste	0.02	7,620	W			1,000	750	16				
W-Waste	1.97	7,774	W			1,000	750	1,476				
W-Waste	0.01	7,890	W			1,000	750	10				

West's Revised Statutes of Nebraska Annotated
Chapter 77. Revenue and Taxation
Article 17. Collection of Taxes

Neb.Rev.St. § 77-1734.01

77-1734.01. Refund of tax paid; claim; verification required; county board approval

Currentness

(1) In the case of an amended federal income tax return or whenever a person's return is changed or corrected by the Internal Revenue Service or other competent authority that decreases the Nebraska adjusted basis of the person's taxable tangible personal property, the county treasurer shall refund that portion of the tax paid that is in excess of the amount due after the amendment or correction.

(2) In case of payment made of any property taxes or any payments in lieu of taxes with respect to property as a result of a clerical error or honest mistake or misunderstanding, on the part of a county or other political subdivision of the state or any taxpayer, the county treasurer to whom the tax was paid shall refund that portion of the tax paid as a result of the clerical error or honest mistake or misunderstanding. A claim for a refund pursuant to this section shall be made in writing to the county treasurer to whom the tax was paid within three years after the date the tax was due or within ninety days after filing the amended return or the correction becomes final.

285 Neb. 112

Supreme Court of Nebraska.

KAAPA ETHANOL, L.L.C., appellee,

v.

The BOARD OF SUPERVISORS OF KEARNEY COUNTY, Nebraska, and the County of Kearney, Nebraska, appellants.

No. S-12-035. | Jan. 25, 2013.

Synopsis

Background: Taxpayer filed petition in error after county board of supervisors denied refund for personal property taxes, which taxpayer sought on the basis that they were paid as the result of an honest mistake or misunderstanding. The District Court, Kearney County, Stephen R. Illingworth, J., sustained petition. County appealed.

[Holding:] The Supreme Court, Stephan, J., held that taxpayer could obtain no relief for its mistake of law in considering ethanol processing equipment as personal property, rather than real property.

Reversed and remanded with directions.

West Headnotes (8)

[1] Administrative Law and Procedure



Administrative Law and Procedure



supported by evidence in general

Administrative Law and Procedure



questions

In reviewing an administrative agency decision on a petition in error, both the district court and the appellate court review the decision to determine whether the agency acted within

its jurisdiction and whether sufficient, relevant evidence supports the decision of the agency.

Cases that cite this headnote

[2] Appeal and Error



Dependent on Whether Questions Are of Law or of Fact

Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court.

1 Cases that cite this headnote

[3] Taxation



payment in general

The general common-law rule is that taxes voluntarily paid cannot be recovered; the rule's purpose is to discourage litigation and give stability to taxing authorities in conducting their affairs.

Cases that cite this headnote

[4] Taxation



of fact

Taxes paid under a mistake of fact are considered involuntary and thus recoverable under the common-law rule; a mistake of fact is an error or want of knowledge as to a fact, past or present, or such belief in the past or present existence as a fact of that which never existed, or such real and honest forgetfulness of a fact once known, as that the true recollection or knowledge of the fact, or of its existence or nonexistence, would have caused the taxpayer to refrain from making the payment.

Cases that cite this headnote

[5] Taxation

Review

Voluntary

Mistake



of law

Taxes paid under a mistake of law are considered voluntary at common law and cannot be recovered unless the Legislature has enacted a statute authorizing recovery; a mistake of law is a mistake as to the legal consequences of an assumed state of facts, which occurs where a person is truly acquainted with the existence or nonexistence of the facts, but is ignorant of or comes to an erroneous conclusion as to their legal effect.

Cases that cite this headnote

[6] **Taxation**



payment in general

Taxation



of law

Taxation



of fact

Taxpayer could obtain no relief for its mistake of law in considering ethanol processing equipment as personal property, rather than real property, under statute that allowed relief for clerical error or honest mistake or misunderstanding; statute was not intended to change common law rule that taxes voluntarily paid could not be recovered. West's Neb.Rev.St. § 77-1734.01.

Cases that cite this headnote

[7] **Statutes**



or strict construction

Statutes which effect a change in the common law are to be strictly construed.

Cases that cite this headnote

[8] **Statutes**

Mistake



literal, or clear meaning of statute; ambiguity

Generally, a statutory construction which changes an express common-law rule should not be adopted unless the plain words of the statute compel it.

Cases that cite this headnote

Plain,

****762 Syllabus by the Court**

***112 1. Administrative Law: Appeal and Error.** In reviewing an administrative agency decision on a petition in error, both the district court and the appellate court review the decision to determine whether the agency acted within its jurisdiction and whether sufficient, relevant evidence supports the decision of the agency.

Mistake 2. Statutes: Appeal and Error. Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court.

Mistake 3. Taxation. The general common-law rule is that taxes voluntarily paid cannot be recovered.

4. Taxation: Words and Phrases. Taxes paid under a mistake of fact are considered involuntary and thus recoverable under the common-law rule that taxes voluntarily paid cannot be recovered. A mistake of fact is an error or want of knowledge as to a fact, past or present, or such belief in the past or present existence as a fact of that which never existed, or such real and honest forgetfulness of a fact once known, as that the true recollection or knowledge of the fact, or of its existence or nonexistence, would have caused the taxpayer to refrain from making the payment.

5. Taxation: Legislature: Statutes: Words and Phrases. Taxes paid under a mistake of law are considered voluntary at common law and cannot be recovered unless the Legislature has enacted a statute authorizing recovery. A mistake of law is a mistake as to the legal consequences of an assumed state of facts, which occurs where a person is truly acquainted with the existence or nonexistence of the facts but is ignorant of or comes to an erroneous conclusion as to their legal effect.

6. **Statutes.** Statutes which effect a change in the common law are to be strictly construed.

7. **Statutes: Intent.** Generally, a statutory construction which changes an express common-law rule should not be adopted unless the plain words of the statute compel it.

Attorneys and Law Firms

Charles W. Campbell, of Angle, Murphy & Campbell, P.C., L.L.O., York, for appellants.

Justin R. Herrmann and Daniel L. Lindstrom, of Jacobsen, Orr, Lindstrom & Holbrook, P.C., L.L.O., Kearney, and William E. Peters, of Peters & Chunka, P.C., L.L.O., Lincoln, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, McCORMACK, MILLER–LERMAN, and CASSEL, JJ.

Opinion

STEPHAN, J.

*113 Kaapa Ethanol, L.L.C. (Kaapa), sought a refund from Kearney County, Nebraska, of a portion of its 2006 personal property taxes, alleging the taxes were paid as the result of an “honest mistake or misunderstanding.”¹ The Board of Supervisors of Kearney County (Board) denied the refund, and Kappa filed a petition in error with the district court for Kearney County. That court sustained the petition in error and ordered Kearney County to refund \$480,411.50. The Board and Kearney County filed this timely appeal, and **763 we granted their petition to bypass the Nebraska Court of Appeals. We reverse.

BACKGROUND

NEBRASKA PROPERTY TAX LAW

In Nebraska, real property is taxed based upon its value as of January 1 of each year, as determined by each county assessor.² The assessor then submits a real property tax bill to each taxpayer.³ Taxation of personal property also involves the county assessor, but only indirectly. Nebraska requires the owner of personal property to compile a list of all its tangible personal property having a tax situs in Nebraska.⁴ The list must be on a form prescribed by Nebraska's Tax

Commissioner and must be filed as a personal property tax return by the owner of the personal property on or before May 1 of each year.⁵ The county assessor then reviews all personal property tax returns and changes the reported valuation of any item of personal property to conform to net book value.⁶ The assessor also adds any omitted personal property and assigns *114 net book value to it.⁷ Any valuation added to a personal property tax return or added through the filing of a personal property tax return after May 1 but on or before July 31 is subject to a penalty of 10 percent of the tax due on the value added.⁸ Any valuation added to a personal property tax return or added through the filing of a personal property return on or after August 1 is subject to a penalty of 25 percent of the tax due on the value added.⁹

FACTS

Kaapa owns and operates an ethanol plant located in Kearney County. On April 28, 2006, Kaapa filed its 2006 personal property tax return, reporting a total taxable value of approximately \$24.5 million. Several items listed on the return were used by the plant in processing grain into ethanol; these items are generally referred to in the record as “processing equipment.”

Kaapa's 2006 return was prepared by Shana Dahlgren, Kappa's chief financial officer. Dahlgren testified that prior to filing the return, she consulted with several sources to help her determine whether the processing equipment was real or personal property. Specifically, Dahlgren consulted with the Property Tax Administrator for Nebraska's Department of Property Assessment and Taxation and two licensed real estate appraisers with experience appraising ethanol plants in Nebraska. These sources advised Dahlgren that the processing equipment was personal property. Dahlgren also reviewed the personal property tax returns of other Nebraska ethanol plants and concluded that those plants categorized similar equipment as personal property. Based on this information, Dahlgren included the processing equipment as personal property on Kaapa's 2006 property tax return.

Dahlgren also filed Kaapa's personal property tax returns in 2003, 2004, 2005, and 2007. She testified that she treated the processing equipment as personal property in each of those *115 years as well. The county assessor, however, treated the **764 processing equipment as real property from 2003 forward.

The differing treatment of the processing equipment by Kaapa and the county assessor in tax years 2003, 2004, and 2005 was resolved by settlement between Kaapa and Kearney County. In 2006 and 2007, no settlement was reached. But in 2007, Kaapa protested both its personal property return and the assessor's real property valuation.¹⁰ After Kearney County denied both of the 2007 protests, Kaapa appealed to Nebraska's Tax Equalization and Review Commission (TERC).¹¹ On June 25, 2009, TERC held that the processing equipment was properly classified as real property in 2007, and ordered Kearney County to refund Kaapa the 2007 personal property taxes it paid on the processing equipment. We affirmed in a memorandum opinion filed on March 10, 2010, in cases Nos. S-09-707 and S-09-717.

In 2006, the year at issue in this case, Kaapa did not settle with Kearney County and did not protest its personal property return. It did, however, protest the 2006 real property assessment. Dahlgren explained that Kaapa did not protest the 2006 personal property tax return, because it received the county assessor's valuation of its real property for 2006 after the May 1 deadline to protest the personal property tax return. According to Dahlgren, she therefore did not know until after May 1 that the assessor's 2006 real property valuation included the processing equipment. The assessor testified that she reviewed Kaapa's 2006 personal property tax return before finalizing Kaapa's 2006 real property valuation. According to the assessor, she could not determine from the face of the 2006 personal property tax return whether items of processing equipment she categorized as real property were also being valued by Kaapa as personal property. The assessor requested and received additional information from Kaapa on this issue, but was still unable to determine that any items of processing equipment were listed on both tax assessments. *116 The assessor therefore included the processing equipment in the real property valuation.

Kaapa did not amend its 2006 personal property return after receiving the assessor's 2006 real property assessment.¹² But as noted, it did timely protest the 2006 real property assessment. The Board denied the protest, and on September 18, 2007, TERC affirmed. In doing so, TERC determined that the processing equipment was properly taxed as real property in 2006. TERC's opinion did not address or resolve any double taxation issues related to Kaapa's 2006 personal property return. Kaapa appealed from TERC's decision but later dismissed the appeal.

In December 2008, Kaapa filed a claim for a tax refund with the Kearney County treasurer pursuant to § 77-1734.01, arguing it paid taxes on the processing equipment in 2006 twice because it was taxed as both real and personal property. Kaapa contended that because TERC, in addressing Kaapa's 2006 real property protest, found the processing equipment was properly classified as real property, Kaapa's listing of the equipment as personal property and payment of personal property taxes on it in 2006 was the result of an "honest mistake or misunderstanding," **765 and that thus, it was entitled to a refund of the personal property taxes so paid. The Kearney County treasurer found no refund was due. Kaapa asked the Board to review the treasurer's finding, and the Board conducted an evidentiary hearing. The Board ultimately determined that because no "agreeable solution" could be reached, Kaapa was not entitled to the refund.

Kaapa then filed a petition in error in the district court.¹³ After reviewing the evidence, that court reversed the decision of the Board. The court found that Kaapa had paid the 2006 personal property taxes on the processing equipment as the result of an "honest mistake or misunderstanding" and was entitled to a refund under § 77-1734.01. The Board and Kearney County timely appealed, and we granted their petition to bypass the Court of Appeals.

***117 ASSIGNMENT OF ERROR**

The Board and Kearney County assign, restated and consolidated, that the district court erred in finding Kaapa was entitled to a refund of the 2006 personal property taxes it paid on the processing equipment.

STANDARD OF REVIEW

[1] In reviewing an administrative agency decision on a petition in error, both the district court and the appellate court review the decision to determine whether the agency acted within its jurisdiction and whether sufficient, relevant evidence supports the decision of the agency.¹⁴

[2] Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court.¹⁵

ANALYSIS

Kaapa's refund claim is based on the premise that Kaapa paid 2006 taxes on the processing equipment twice because the equipment was classified as personal property by Kaapa and as real property by the county assessor. Kaapa asserts that because TERC ultimately held that the equipment was properly classified as real property, Kaapa committed an "honest mistake or misunderstanding" when it listed the same property as personal property, and thus should receive a refund under § 77-1734.01. That statute provides in pertinent part:

In case of payment made of any property taxes or any payments in lieu of taxes with respect to property as a result of a clerical error or honest mistake or misunderstanding, on the part of a county or other political subdivision of the state or any taxpayer, the county treasurer to whom the tax was paid shall refund that portion of the tax paid as a result of the clerical error or honest mistake or misunderstanding. A claim for a refund pursuant to this section shall be made in writing to the county treasurer to *118 whom the tax was paid within three years after the date the tax was due....

... This section may not be used to challenge the valuation of property, the equalization of property, or the constitutionality of a tax.

[3] [4] [5] [6] The general common-law rule is that taxes voluntarily paid cannot be recovered. **766¹⁶ The rule's purpose is to discourage litigation and give stability to taxing authorities in conducting their affairs.¹⁷ Taxes paid under a mistake of fact are considered involuntary and thus recoverable under the common-law rule.¹⁸ A mistake of fact is

an error or want of knowledge as to a fact, past or present, or such belief in the past or present existence as a fact of that which never existed, or such real and honest forgetfulness of a fact once known, as that the true recollection or knowledge of the fact, or of its existence or nonexistence, would have caused the taxpayer to refrain from making the payment.¹⁹

Taxes paid under a mistake of law are considered voluntary at common law²⁰ and cannot be recovered unless the Legislature has enacted a statute authorizing recovery.²¹ A

mistake of law is "a mistake as to the legal consequences of an assumed state of facts, which occurs where a person is truly acquainted with the existence or nonexistence of the facts but is ignorant of or comes to an erroneous conclusion as to their legal effect."²²

The mistake which Kaapa claims to have made with respect to its 2006 taxes is clearly one of law, because the error was with respect to whether the processing equipment legally was real or personal property. Thus, the threshold question in this *119 appeal is whether § 77-1734.01 is merely a codification of the common-law rule or whether it alters the common-law rule and authorizes recovery of taxes paid pursuant to an error of law.²³ Specifically, does the statutory phrase "clerical error or honest mistake or misunderstanding" constitute the Legislature's expression that a taxpayer can recover in Nebraska for taxes paid based on an error of law?

[7] [8] In resolving this issue, we are mindful that statutes which effect a change in the common law are to be strictly construed.²⁴ Generally, a construction which changes an express common-law rule should not be adopted unless the plain words of the statute compel it.²⁵ Here, the phrase "clerical error or honest mistake" clearly refers to errors of fact. The term "misunderstanding" is less clear; it could perhaps include a misapprehension or misapplication of law. But because the language of the statute does not plainly reveal that the Legislature intended to expand the common-law rule, we must conclude that it did not.

Additionally, we note that § 77-1734.01 is included in chapter 77, article 17, of the Nebraska Revised Statutes, which bears the title "Collection of Taxes." Also contained in article 17, immediately following § 77-1734.01, is Neb.Rev.Stat. § 77-1735 (Reissue 2009), which provides a procedure whereby a taxpayer may obtain a refund of property tax payment based upon a claim **767 that a tax "is illegal for any reason other than the valuation or equalization of the property." The existence of this separate statute governing refunds of certain taxes paid based on mistakes of law further supports the conclusion that the Legislature intended § 77-1734.01 to apply only to refunds resulting from errors of fact. Accordingly, we conclude that § 77-1734.01 is merely a codification of the common-law rule. Because Kaapa paid the 2006 personal property taxes based upon a mistake of law, § 77-1734.01 affords it no relief. *120 The district court erred in ordering Kearney County to refund the \$480,411.50.

We acknowledge that this construction of § 77-1734.01 leads to the harsh result of double taxation in this case. But a contrary construction would have led to the harsh result of Kearney County's being required to refund tax receipts which it collected and has long since paid over to other taxing authorities within its jurisdiction. In the end, we can only interpret the existing statute under our established principles, as we have done here. If the Legislature wishes to provide broader relief to taxpayers under similar circumstances in the future, it has the power to enact a statute or statutes specifically providing such relief.

CONCLUSION

For the reasons discussed, we reverse the judgment of the district court and remand the cause with directions to reinstate the order of the Board denying Kaapa's claim for a refund.

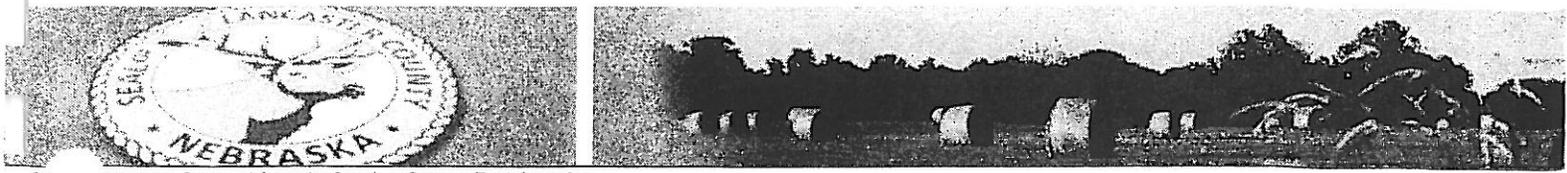
REVERSED AND REMANDED WITH DIRECTIONS.

Parallel Citations

825 N.W.2d 761

Footnotes

- 1 Neb.Rev.Stat. § 77-1734.01(2) (Reissue 2009).
- 2 See, generally, Neb.Rev.Stat. § 77-1301 (Reissue 2009).
- 3 *Id.*
- 4 Neb.Rev.Stat. § 77-1201 (Reissue 2009).
- 5 Neb.Rev.Stat. § 77-1229(1) (Reissue 2009).
- 6 Neb.Rev.Stat. § 77-1233.04 (Reissue 2009).
- 7 *Id.*
- 8 *Id.*
- 9 *Id.*
- 10 See Neb.Rev.Stat. § 77-1502 (Reissue 2009).
- 11 See Neb.Rev.Stat. § 77-1510 (Reissue 2009).
- 12 See Neb.Rev.Stat. § 77-1230 (Reissue 2009).
- 13 See Neb.Rev.Stat. § 25-1901 (Reissue 2008).
- 14 *Banks v. Housing Auth. of City of Omaha*, 281 Neb. 67, 795 N.W.2d 632 (2011); *Fleming v. Civil Serv. Comm. of Douglas Cty.*, 280 Neb. 1014 792 N.W.2d 871 (2011).
- 15 *Connelly v. City of Omaha*, 284 Neb. 131, 816 N.W.2d 742 (2012); *Engler v. State*, 283 Neb. 985, 814 N.W.2d 387 (2012).
- 16 *Satterfield v. Britton*, 163 Neb. 161, 78 N.W.2d 817 (1956).
- 17 See *Texas Nat. Bank of Baytown v. Harris Cty.*, 765 S.W.2d 823 (Tex.App.1988).
- 18 85 C.J.S. *Taxation* § 1058 (2010).
- 19 *Id.* at 115.
- 20 72 Am.Jur.2d *State and Local Taxation* § 972 (2012).
- 21 *Satterfield v. Britton*, *supra* note 16.
- 22 85 C.J.S., *supra* note 18, § 1057 at 114-15.
- 23 See, generally, *Satterfield v. Britton*, *supra* note 16.
- 24 *Alisha C. v. Jeremy C.*, 283 Neb. 340, 808 N.W.2d 875 (2012).
- 25 See *In re 2007 Administrations of Appropriations of Niobrara River Waters*, 283 Neb. 629, 820 N.W.2d 44 (2012).



County Treasurer » Property Information Search » Property Tax Information

Andy Stebbing Lancaster County Treasurer Property Tax Information

Tax Year: 2014 Roll: Real Estate Parcel: 03-28-400-001-000

Owner: HONVLEZ, RHONDA K
 Owner Address: . PO BOX 207 City: DENTON , NE 68339
 Situs Address: 999999 **NO SITUS** ST City: LINCOLN

Tax District: 0094 RURAL Tax Rate: 1.7716680 %
 Property Class: A2 AGUNIMPROVED

Legal Description: S28, T9, R5, 6TH PRINCIPAL MERIDIAN, LOT 11 SE

Tax Sale: No
 Assignment: No Special Assessment: No

Property Payment Calculator

Payment Date:

		Tax Amount	Tax Due	Int Due	Penalty Due	Fees Due	Total Due	Tax Paid	Int Paid	Penalty Paid	Fee Paid	Total Paid
2014	First Half	\$3,045.78	3,045.78	0.00	0.00	0.00	\$3,045.78	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2014	Second Half	\$3,045.78	3,045.78	0.00	0.00	0.00	\$3,045.78	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2014	Full	\$6,091.56	6,091.56	0.00	0.00	0.00	\$6,091.56	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2013												
2013	First Half	\$3,772.10	0.00	0.00	0.00	0.00	\$0.00	\$3,772.10	\$20.26	\$0.00	\$0.00	\$3,792.36
2013	Second Half	\$3,772.10	3,772.10	219.92	0.00	0.00	\$3,992.02	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2013	Full	\$7,544.20	3,772.10	219.92	0.00	0.00	\$3,992.02	\$3,772.10	\$20.26	\$0.00	\$0.00	\$3,792.36
Total							\$10,083.58					

Property Tax History

Year	Owner	Tax Value	Tax Credit	Tax Amount	Paid Tax	Paid Int	Paid Fee	Owed Tax+Fee	Tax Sale
2014	HONVLEZ, RHONDA K	358,300	256.34	6,091.56	0.00	0.00	0.00	6,091.56	No
2013	HONVLEZ, RHONDA K	427,700	282.18	7,544.20	3,772.10	20.26	0.00	3,772.10	No
2012	HONVLEZ, RHONDA K	309,900	221.64	4,886.04	4,886.04	132.12	0.00	0.00	No
2011	HONVLEZ, RHONDA K	295,700	222.70	4,678.78	4,678.78	260.18	0.00	0.00	No
2010	HONVLEZ, CLARENCE & SHIRLEY	226,400	178.68	3,562.32	3,562.32	185.32	0.00	0.00	No
2009	HONVLEZ, CLARENCE W & SHIRLEY	226,400	186.14	3,571.48	3,571.48	210.93	0.00	0.00	No
2008	HONVLEZ, CLARENCE W & SHIRLEY	180,943	155.94	2,835.44	2,835.44	154.41	0.00	0.00	No
2007	HONVLEZ, CLARENCE W & SHIRLEY	151,929	126.54	2,403.32	2,403.32	128.12	0.00	0.00	No
2006	HONVLEZ, CLARENCE W & SHIRLEY	162,058	0.00	2,681.86	2,681.86	137.46	0.00	0.00	No
2005	HONVLEZ, CLARENCE W & SHIRLEY	134,403	0.00	2,262.00	2,262.00	123.18	0.00	0.00	No

[Back to Search List](#) • [New Search](#)

West's Revised Statutes of Nebraska Annotated
Chapter 77. Revenue and Taxation
Article 17. Collection of Taxes

Neb.Rev.St. § 77-1736.06

77-1736.06. Property tax refund; procedure

Currentness

The following procedure shall apply when making a property tax refund:

(1) Within thirty days of the entry of a final nonappealable order, an unprotested determination of a county assessor, an unappealed decision of a county board of equalization, or other final action requiring a refund of real or personal property taxes paid or, for property valued by the state, within thirty days of a recertification of value by the Property Tax Administrator pursuant to section 77-1775 or 77-1775.01, the county assessor shall determine the amount of refund due the person entitled to the refund, certify that amount to the county treasurer, and send a copy of such certification to the person entitled to the refund. Within thirty days from the date the county assessor certifies the amount of the refund, the county treasurer shall notify each political subdivision, including any school district receiving a distribution pursuant to section 79-1073 or 79-1073.01 and any land bank receiving real property taxes pursuant to subdivision (3)(a) of section 19-5211, of its respective share of the refund, except that for any political subdivision whose share of the refund is two hundred dollars or less, the county board may waive this notice requirement. Notification shall be by first-class mail, postage prepaid, to the last-known address of record of the political subdivision. The county treasurer shall pay the refund from funds in his or her possession belonging to any political subdivision, including any school district receiving a distribution pursuant to section 79-1073 or 79-1073.01 and any land bank receiving real property taxes pursuant to subdivision (3)(a) of section 19-5211, which received any part of the tax or penalty being refunded. If sufficient funds are not available or the political subdivision, within thirty days of the mailing of the notice by the county treasurer if applicable, certifies to the county treasurer that a hardship would result and create a serious interference with its governmental functions if the refund of the tax or penalty is paid, the county treasurer shall register the refund or portion thereof which remains unpaid as a claim against such political subdivision and shall issue the person entitled to the refund a receipt for the registration of the claim. The certification by a political subdivision declaring a hardship shall be binding upon the county treasurer;

(2) The refund of a tax or penalty or the receipt for the registration of a claim made or issued pursuant to this section shall be satisfied in full as soon as practicable and in no event later than five years from the date the final order or other action approving a refund is entered. The governing body of the political subdivision shall make provisions in its budget for the amount of any refund or claim to be satisfied pursuant to this section. If a receipt for the registration of a claim is given:

(a) Such receipt shall be applied to satisfy any tax levied or assessed by that political subdivision next falling due from the person holding the receipt after the sixth next succeeding levy is made on behalf of the political subdivision following the final order or other action approving the refund; and

(b) To the extent the amount of such receipt exceeds the amount of such tax liability, the unsatisfied balance of the receipt shall be paid and satisfied within the five-year period prescribed in this subdivision from a combination of a credit against taxes anticipated to be due to the political subdivision during such period and cash payment from any funds expected to accrue to the political subdivision pursuant to a written plan to be filed by the political subdivision with the county

treasurer no later than thirty days after the claim against the political subdivision is first reduced by operation of a credit against taxes due to such political subdivision.

If a political subdivision fails to fully satisfy the refund or claim prior to the sixth next succeeding levy following the entry of a final nonappealable order or other action approving a refund, interest shall accrue on the unpaid balance commencing on the sixth next succeeding levy following such entry or action at the rate set forth in section 45-103;

(3) The county treasurer shall mail the refund or the receipt by first-class mail, postage prepaid, to the last-known address of the person entitled thereto. Multiple refunds to the same person may be combined into one refund or credit. If a refund is not claimed by June 1 of the year following the year of mailing, the refund shall be canceled and the resultant amount credited to the various funds originally charged;

(4) When the refund involves property valued by the state, the Tax Commissioner shall be authorized to negotiate a settlement of the amount of the refund or claim due pursuant to this section on behalf of the political subdivision from which such refund or claim is due. Any political subdivision which does not agree with the settlement terms as negotiated may reject such terms, and the refund or claim due from the political subdivision then shall be satisfied as set forth in this section as if no such negotiation had occurred;

(5) In the event that the Legislature appropriates state funds to be disbursed for the purposes of satisfying all or any portion of any refund or claim, the Tax Commissioner shall order the county treasurer to disburse such refund amounts directly to the persons entitled to the refund in partial or total satisfaction of such persons' claims. The county treasurer shall disburse such amounts within forty-five days after receipt thereof; and

(6) If all or any portion of the refund is reduced by way of settlement or forgiveness by the person entitled to the refund, the proportionate amount of the refund that was paid by an appropriation of state funds shall be reimbursed by the county treasurer to the State Treasurer within forty-five days after receipt of the settlement agreement or receipt of the forgiven refund. The amount so reimbursed shall be credited to the General Fund.

Credits

Laws 1991, LB 829, § 15; Laws 1992, LB 1063, § 138; Laws 1992, 2nd Sp. Sess., LB 1, § 111; Laws 1993, LB 555, § 1; Laws 1995, LB 490, § 167; Laws 2007, LB 334, § 82; Laws 2008, LB 965, § 18, eff. April 15, 2008; Laws 2010, LB 1070, § 3, eff. April 6, 2010; Laws 2013, LB 97, § 19, eff. Oct. 1, 2013.

Notes of Decisions (3)

Neb. Rev. St. § 77-1736.06, NE ST § 77-1736.06
Current through End of 2014 Regular Session

EXHIBIT

tabbles

B

Real Estate Appraisal Report

RECEIVED

DEC 18 2014

**LANCASTER COUNTY
CLERK**

**County Owned Right-of-Way
SW 31st Street
West Denton Rd to W. Covered Bridge Dr.
Lancaster County, NE.**

**James J. Shotkoski
General Certified Appraiser**

LANCASTER
COUNTY

Pamela L. Dingman, P.E.
County Engineer

ENGINEERING

DEPARTMENT

Kenneth D. Schroeder, R.L.S.
Deputy County Surveyor

December 16, 2014

Mr. Kerry Eagan
Chief Administrative Officer
Lancaster County Board of Commissioners

Re: Appraisal Report
Resolution No. R-14-0067
Vacation of SW 31st Street -W. Denton Rd. to W. Covered Bridge Dr.
Lancaster County, NE.

Dear Mr. Eagan:

This appraisal assignment is the result of a request from Mr. Ken Schroeder, Lancaster County Engineer's Office, to provide an estimate of value for the vacation of the above described real estate.

In response to your request, I have conducted the required investigation, inspected the subject property and gathered the necessary data, and made certain analysis that has enabled me to form an opinion of the "Fee Simple" market value to the above referenced property.

The following appraisal report is a Restricted Appraisal Report of sixty-foot (60') of platted right-of-way comprising SW 31st Street from West Denton Road on the north to W. Covered Bridge Dr. on the south.

The restricted appraisal report is designed for client use only and limits the use of the appraisal to only the client's use. The reader is advised that the rationale for how the appraiser arrived at the opinions and conclusions set forth in this report may not be properly understood without additional information in the appraiser's file.

Based on the inspection of the property and investigation and analyses undertaken, I have estimated the Fee Simple Market Value of the 21,344 SF (0.49 Ac.) of developable right-of-way as of December 5, 2014, to be:

FIFTY THOUSAND (\$ 50,000.00) DOLLARS

It is the intent of this report to fully comply with the requirements of the Uniform Standards of Professional Appraisal Practice "USPAP", the State of Nebraska Real Estate Appraisal Board. The appraisal assignment was not based on a requested minimum valuation, specific valuations, or the approval of a loan. Neither my engagement to make this appraisal (or any future appraisal to this client), nor any compensation therein, are contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

Respectfully submitted,



James J. Shotkoski
Right-of-Way Manager

SUMMARY OF FACTS AND CONCLUSIONS

Type of Property:	Unimproved Platted County Roadway
Location:	SW 31 st –W. Denton Road to W. Covered Bridge Dr. Lancaster County, NE.
Legal Description:	Sixty-foot (60') of platted right-of-way comprising SW 31 st Street from the southerly right-of-way line of West Denton Road to the northerly right-of-way line of W. Covered Bridge Dr. adjacent to Block One (1) Whispering Pines 3 rd Addition, and Outlot "A" and Lot Six (6), Block One (1), The Bridges Addition and Outlot "E" and Lot One (1), Block Three (3), The Bridges Addition, all of which is located in parts of the Northeast Quarter (NE ¼) and Northwest Quarter (NW ¼) of Section Twenty (20), Township Nine (9) North, Range Six (6) East of the 6 th Principal Meridian, Lancaster County, State of Nebraska.
Property Rights:	Fee Simple Estate
Owner of Record:	Lancaster County 575 South 10 th Street Lincoln, NE. 68528
Client:	Lancaster County Engineering Dept. 444 Cherrycreek Rd., Bldg. "C" Lincoln, NE. 68528
Function of the Appraisal:	The function of this report is to estimate the market value of unimproved SW 31 st Street County Roadway
Appraisal Format:	Restricted Appraisal Report. A Restricted Appraisal Report is for client use only and limits the use of the report to only the client. The reader is warned that the rationale for how the appraiser arrived at the opinions and conclusions set forth in this report may not be understood properly without additional information in the appraiser's work file.
Intended Use:	Estimate of Value for Disposition of Unimproved County Owned Right-of-Way
Neighborhood:	The subject neighborhood is generally described as the Residential Development known as The Bridges. This development is exclusively single-family residential development consisting of approximately thirty-seven (37) platted residential lots. The subject neighborhood is bounded on the north by W. Denton Road and on the east by SW 27 th Street and on the west by SW 40 th Street and is landlocked on the south by agricultural development.

SUMMARY OF FACTS AND CONCLUSIONS (Continued)

Site Description: The subject site is a sixty-foot strip of platted SW 31st Street extending from the southerly right-of-way line of W. Denton Road to the northerly right-of-way line of W. Covered Bridge Drive. The subject site has an estimated total available site area of approximately 29,229 SF (0.671 Ac), more or less. The subject site contains approximately 7,884 SF (0.181 Ac.) within a delineated floodplain or floodway hazard area. Development within this area is severely restricted or prohibited within this delineated area. As such, the developable building subject site area is reduced to approximately 21,244 SF (0.49 Ac.), more or less.

Zoning: The area is zoned for AGR, Agricultural -Residential Use and is within the three mile zoning jurisdiction of the City of Lincoln. As such, the site is development is governed by the City of Lincoln. Surrounding land usages are exclusively residential development within the Bridges Subdivision. Approximately 7,885 SF (0.181 Ac.) is within a delineated floodway and the balance of 21,344 SF (0.49 Ac.) is considered to be the developable portion of the subject site.

Improvements: The site is currently vacant and is used as common area for the abutting Bridges Subdivision.

Highest and Best Use: Given the restrictive impact imposed by either the floodplain or floodway delineations, which bisects the subject site into two parcels, I consider one of the highest and best uses for the subject site, as vacant, to be its current usage as green space for the surrounding residential development. In addition, I consider one of the highest and best uses for the subject site, as improved, to also be for common area green space for the surrounding residential development.

Scope of the Appraisal: This appraisal is written utilizing a Restricted Appraisal Report Format, and is dated as of December 5, 2014. The appraiser did not physically inspect the site, and the appraisal is generated from information available through the Lancaster County Register of Deeds and County Assessor's Offices.

Indications of Value:

Land Value Estimate \$ 50,000
Final Indication of Value: \$ 50,000

Date of Appraisal: The effective date of the appraisal is as of December 5, 2014.

SEC. 20, T9N R6E

W. DENTON RD

50'

50'

60'

WHISPERING PINES
3RD ADDITION

BLOCK 1

OUTLOT 'E'

Area of proposed
vacation

SW 31ST ST
(PUBLIC STREET)

THE BRIDGES
ADDITION

BLOCK 3

OUTLOT 'A'

BLOCK 1

W. COVERED BRIDGE DR
(PRIVATE ROADWAY)

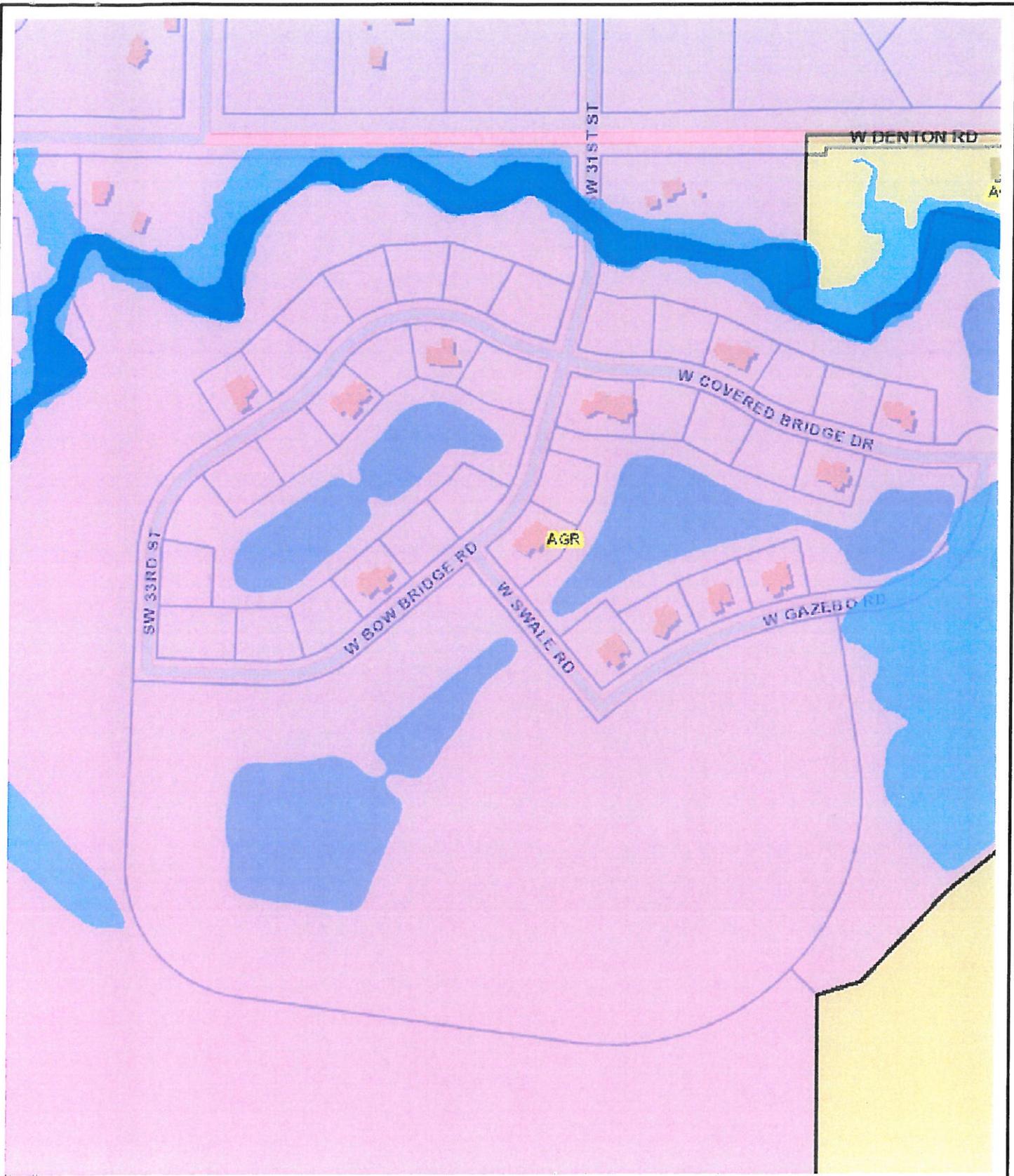
BLOCK 4

BLOCK 2

W. BOW BRIDGE RD

Lincoln
3-mile

Lincoln



Lancaster County/City of Lincoln GIS Map

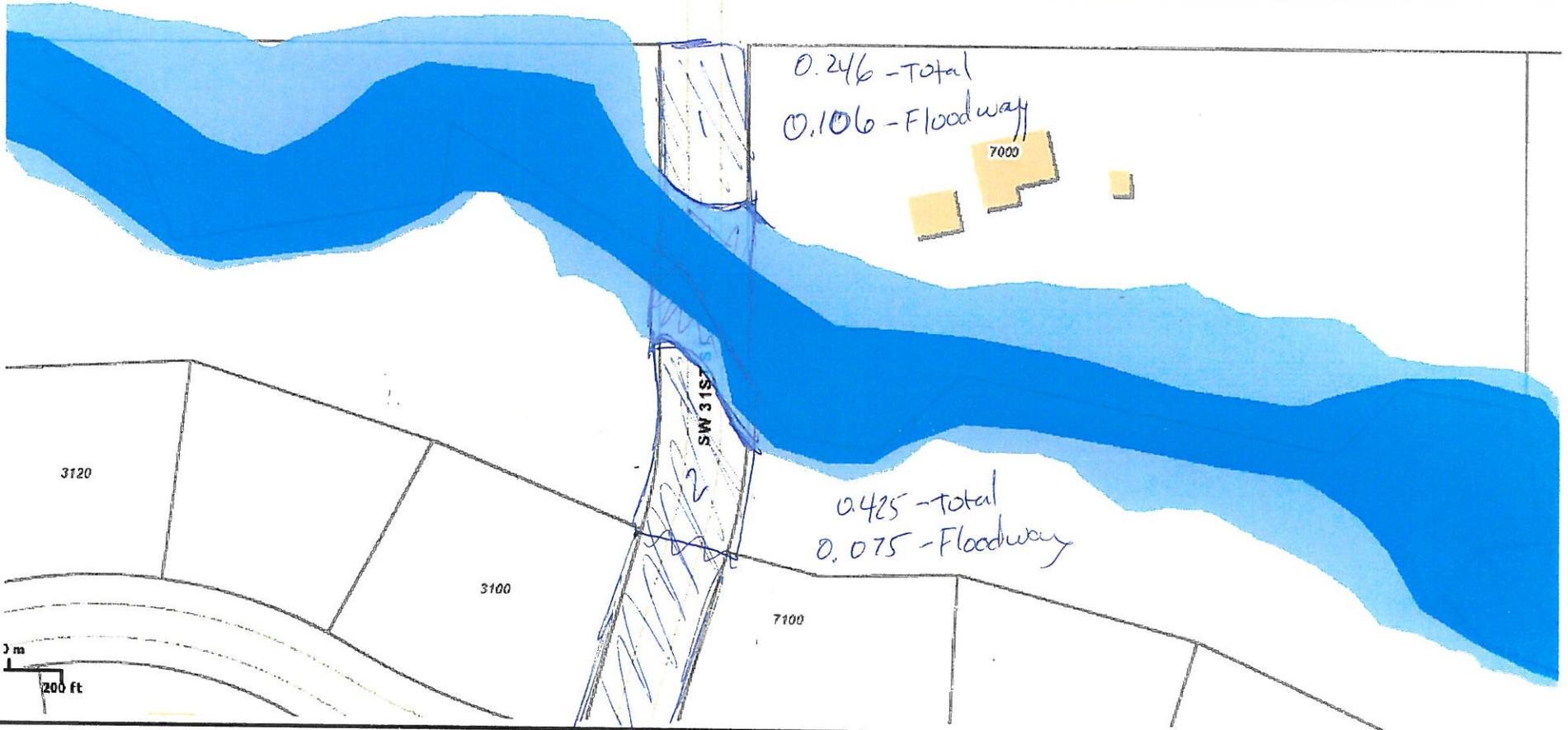
ZONING MAP



Printed: Dec 15, 2014

DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email ags@lincoln.ne.gov and you will be directed to the appropriate department.

V RD

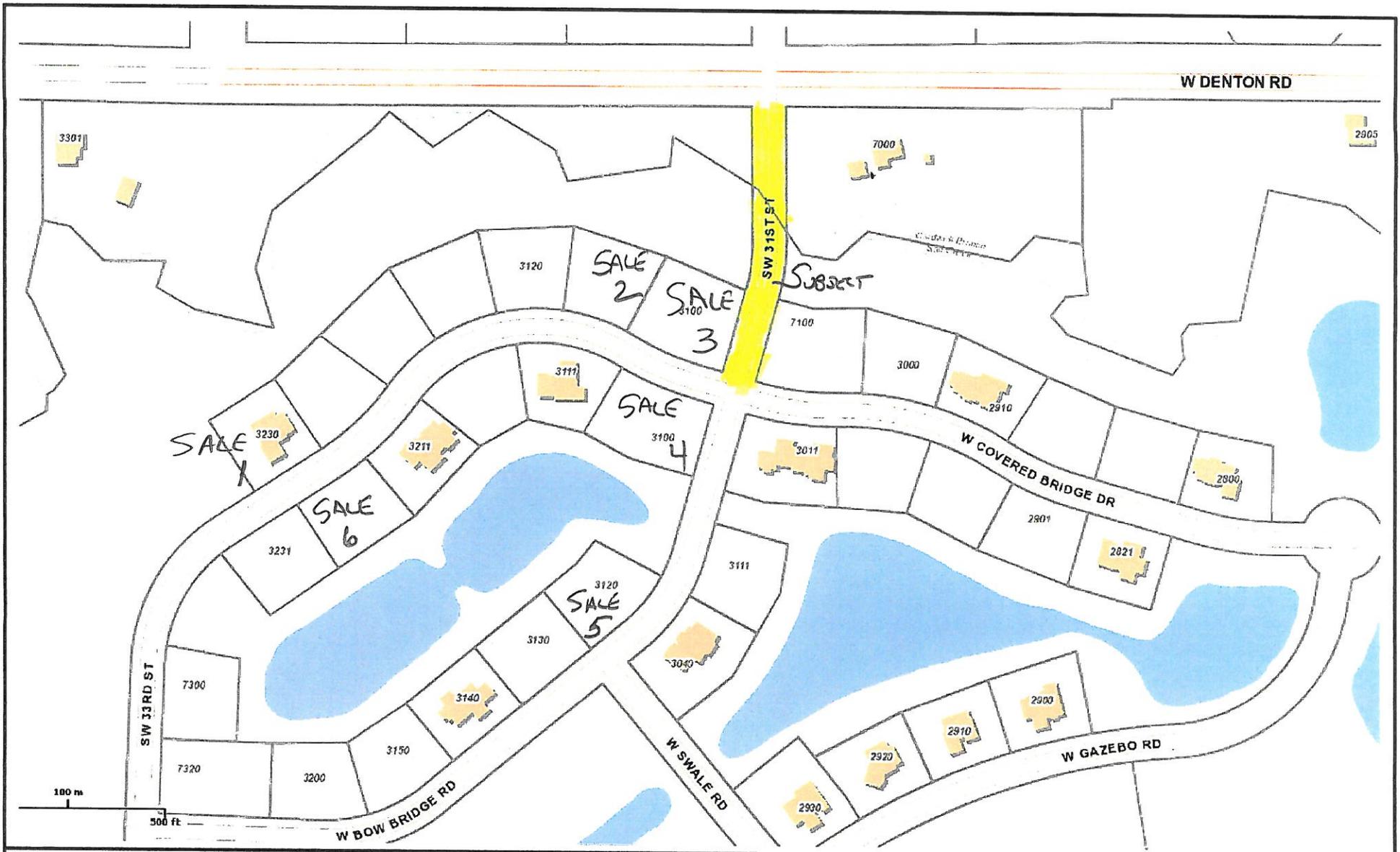


Lancaster County/City of Lincoln GIS Map

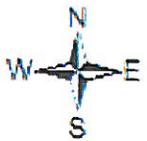


Printed Nov 18, 2014

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Lancaster County/City of Lincoln GIS Map



Printed Dec 02, 2014

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Land Valuation (Continued)

The preceding land sales are summarized as follows:

Sale	Location	Date	Consideration	Tract Size SF	\$/SF	Zoning
1	3230 W. Covered Bridge	2012	\$ 78,000	21,103	\$ 3.70	AGR
2	3110 W. Covered Bridge	2013	\$ 75,000	20,976	\$ 3.58	AGR
3	7101 SW 31 st St.	2014	\$ 85,000	26,085	\$ 3.25	AGR
4	3101 W. Covered Bridge	2014	\$ 117,500	26,228	\$ 4.48	AGR
5	3120 W. Bow Bridge Rd.	2014	\$ 117,500	20,913	\$ 5.62	AGR
6	3221 W. Covered Bridge	2014	\$ 116,000	20,894	\$ 5.55	AGR
Subject	SW 31 st St.			21,244		AGR/FP

The above sales range in size from a low of 20,913 SF to a high of 26,228 SF with an arithmetic mean of 19,367 SF, compared to the subject site's developable site area of 21,244 SF. The prices paid per square foot vary from a low of \$ 3.25/SF to a high of \$ 5.62/SF with an arithmetic mean of \$ 4.36/SF and a weighted average is \$ 4.32/SF (\$ 589,000 Total Consideration by 136,199 Total SF).

In the process of estimating a market value for the subject site, the preceding sales must first be analyzed to identify significant differences between the elements of comparison and make adjustments either positive or negative for those differences.

In the process of estimating a market value for the site, the items considered to warrant adjustments are property rights conveyed by the sale, terms and conditions of the sale, the financing surrounding the sale, and finally any physical adjustments for size, location, access and the functional utility or developmental usage of the subject site.

Each of the above sales involved the transfer of the fee simple estate and do not require any further adjustments for property rights conveyed.

Each of the above sales are considered to have been "arm's length" transactions and being knowledgeable and well-informed buyers. As such, each of these sales do not require any further adjustments for conditions of the sale or motivations by either the buyer or seller.

Each of the above is considered to have been a cash sale, or have been adjusted for financing and do not require any further adjustments for below market or special financing adjustments.

In adjusting for changing market conditions over the past two years, an analysis of the above sales indicates a fairly active market for residential lots within this subdivision within the last two years. Utilizing a "matched-pairs" analysis of Comparable Sales 1 and 5 indicates a straight-line increase in value over the previous two year period to be in excess of twenty percent (20%) per year. Based on this analysis, Comparable Sales 1 and 2 each require upward adjustments of twenty percent (20%) per year to adjust for changing market conditions/time, relative to that of the subject site. Each of the remaining sales occurred in 2014, are considered to be sufficiently recent, in terms of the date of the sale to the effective date of the appraisal, and as such the above sales do not require any further adjustments for time or changing market conditions, relative to that of the date of the appraisal.

Land Valuation (Continued)

The next step is to make adjustments for physical characteristics and differences. The subject is the norm and the sales are adjusted accordingly toward the subject with sales which are considered to be inferior requiring upward adjustments; and conversely, sales which are considered to be superior requiring downward adjustments toward the subject.

The underlying real estate principle governing the adjustments is the larger the size of the unit of comparison, the smaller the price paid per unit of value, and conversely, the smaller the size of the unit of value, the higher the price paid per unit of value, all other valuation considerations being equal. The subject site is considered the norm, and sales are adjusted according utilizing the above mentioned real estate principle.

In adjusting for size, the subject site contains a total gross available site area of 29,229 SF (0.671 Acres); however, approximately 7,884 SF (0.181 Ac.) is located within a delineated floodplain or floodway. As such, this portion of the subject site is considered to be severely restricted or undevelopable, and the total developable site area is reduced to 21,244 SF (0.49 Ac.), more or less. Each of the above sales are considered to be sufficiently comparable to the developable portion of the subject site, and utilizing the above real estate principle, require only minor adjustments, relative to that of the subject site for this consideration.

The next adjustment is for location and takes into consideration the marketability of the comparable sale, relative to that of the subject site. The above sales are located in newer single-family developments and are considered comparable to that of the subject site. Each of the above sales are considered to be sufficiently comparable to the developable portion of the subject site, and utilizing the above real estate principle, require only minor adjustments, relative to that of the subject site for this consideration.

The next adjustment is for the functional use or functional utility of the comparable sales, relative to that of the subject site. The developable portion of the subject site is bisected by the floodplain or floodway and severs the developable building site into two separate parcels. As such, each of the above sales are fully developable lots and are considered superior to the subject site for access and functional utility or use, and require downward adjustments toward the subject site to account for this consideration. The magnitude of the adjustment not well-documented from an analysis of the sales; however, for purposes of this report, I will use a downward adjustment of fifty percent (50%) for each of the comparable sales toward the subject site to account for these considerations associated with the functionality or use of the site.

Land Valuation (Continued)

The above adjustments considered for the sales are reflected on the following adjustment grid. An adjustment factor greater than one indicates the subject is superior; and an adjustment factor less than one indicates the subject is inferior.

UNIMPROVED SALES ADJUSTMENT GRID

Attribute	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6
Prop. Rights	1.00	1.00	1.00	1.00	1.00	1.00
Condition	1.00	1.00	1.00	1.00	1.00	1.00
Financing	1.00	1.00	1.00	1.00	1.00	1.00
Time	1.40	1.20	1.00	1.00	1.00	1.00
Size	1.00	1.00	1.00	1.00	1.00	1.00
Location	1.00	1.00	1.00	1.00	1.00	1.00
Functionality	<u>0.50</u>	<u>0.50</u>	<u>0.50</u>	<u>0.50</u>	<u>0.50</u>	<u>0.50</u>
Composite	0.70	0.60	0.50	0.50	0.50	0.50
Unadj. \$/SF	\$ 3.70	\$ 3.58	\$ 3.25	\$ 4.48	\$ 5.62	\$ 5.55
Composite	<u>0.70</u>	<u>0.60</u>	<u>0.50</u>	<u>0.50</u>	<u>0.50</u>	<u>0.50</u>
Adjust. \$/SF	\$ 2.59	\$ 2.15	\$ 1.63	\$ 2.24	\$ 2.81	\$ 2.78

Arraying the above sales in linear fashion, results in the adjusted sales ranging from a low of \$ 1.63/SF to a high of \$ 2.81/SF. Based on the analysis of the above sales, with emphasis on each of the arrayed sales, I am of the opinion the market value of the developable portion of the subject site, as of December 5, 2014, to be \$ 2.50/SF. This results in the following indication of value for the developable portion of the subject site to be:

$$21,244 \text{ SF @ } \$ 2.50/\text{SF} = \$ 53,110$$

Call It: \$ 50,000

CERTIFICATION

I certify that, to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analysis, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no personal or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of his report or to the parties involved with this assignment.
- my engagement in this assignment was not contingent upon developing or reporting predetermined results.
- my compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction of value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have made a personal inspection of the property that is the subject of this report.
- no one provided significant real property appraisal assistance to the person signing this certification.



James J. Shotkoski
General Certified Appraiser
Nebraska CG-920233