UNL's Livestock Environmental Issues Committee
Includes representation from UNL, Nebraska Department of Environmental Quality, Natural Resources Conservation Service, Natural Resources Districts, Center for Rural Affairs, Nebraska Cattlemen, USDA Ag Research Services, and Nebraska Pork Producers Association.

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Property Valuation May Be Reduced by Proximity to Livestock Operation

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In Nebraska, land and buildings are valued at their fair market value for purposes of property taxation. Residential and commercial real estate is valued at 92-100% of actual value (i.e. farm market value) and agricultural real estate is valued at 74-80% of actual value. NRS 77-5023(3). Fair market value for property tax valuation purposes may be determined by (1) comparative sales, (2) income or (3) cost. NRS 77-112. In *Livingston v Jefferson County Board of Equalization*, 10 Neb App 934 (2002), the Nebraska Court of Appeals ruled that the county board of equalization erred in not considering a rural residence s proximity to a swine farrowing facility in determining the residence s valuation.

The taxpayer started a swine farrowing operation in 1990. In 1999 the taxpayer built a house approximately 3/4 of a mile from his farrowing facility at a cost of $328,649. In 2000 the county valued the house (excluding the land) at $399,321. The taxpayer objected to this valuation for three reasons. First, the house was approximately 3/4 of a mile from a swine farrowing facility with 5,200 sows. Second, the tax payer had obtained an easement to apply hog manure to cropland across the road from the house. Third, the house was not served by a public road but by a private road that at times could be used only with a four-wheel drive vehicle. The taxpayer s appraiser discounted the value of the house (based on comparable sales) by 30% for livestock odors and 10% for its remote location.

The county board of equalization refused to modify its property valuation, and the county was upheld by the state Tax Equalization and Review Commission (TERC). Both the county and TERC refused to consider the effects of livestock odors and the residence s remote location as being factors that would affect the property s market value.

Normally there is a legal presumption that county officials have properly valued property for property tax purposes. A county board of equalization need not present evidence regarding its valuation. In this case, the Court of Appeals concluded that the taxpayer had successfully overcome this legal presumption that the county s valuation was correct. The court determined that it was reversible error for the county and

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TERC to refuse to consider the effects of the swine facility, the manure easement, and the house s remote location on its property value. The fact that the swine facility was owned by the taxpayer did not mean that the nearness of the swine facility could not be a factor in determining the residence s property value.

The court also ruled that the county board of equalization and TERC erred in refusing to consider whether the taxpayer had overbuilt, i.e. spent more on his residence than he could realistically expect to receive if the house were sold. The taxpayer testified that he would be lucky to receive $200,000 for the house (which probably was accurate, given its remote location and the swine odors). The court quoted an example where a house costing $150,000 and built in a neighborhood where the average house was worth $75,000, would likely have a property value of less than its $150,000 cost because the house was overbuilt (or too expensive) for the neighborhood.

The county failed to produce any evidence (1) that the taxpayer s house was not overbuilt and (2) that the swine odors would not affect the property value. The court of appeals ruled that (1) failure to consider whether the house was overbuilt and (2) failure to consider the impact of hog odors on property value were reversible error. The court noted that these factors certainly would come into play when the house was sold, and would certainly influence the price paid after negotiations between a willing buyer and a willing seller. The court quoted Nebraska livestock nuisance decisions as proof that the presence of hog odors could affect what a willing buyer would be willing to pay for the house, given the presence of hog odors. The court ordered the county to consider the impacts of hog odors and remote location in valuing the taxpayer s property.

It was arbitrary for the [county] Board and TERC to ignore the effect that the hearby hog facility would have on the house s fair market value in the ordinary course of trade. No reasonable fact finder could conclude that in the real estate marketplace, a potential buyer would not notice, and react economically, to having a large hog facility very nearby while living in a remote location.

Commentary. It will be interesting to see whether this decision encourages taxpayers living near livestock facilities to seek property tax reductions due to the impact of livestock odors on the value of their residence. The Nebraska Sierra Club is holding workshops on how to take advantage of this court ruling. Clearly many livestock producers who live near their feeding operations could be in a position to seek a lower property valuation due to livestock odors. Taxpayers seeking lower property valuations due to livestock odors would as a minimum need a property valuation from a licensed appraiser regarding the impact of livestock odors on the residence property value.