

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
November 10, 2011

[CONFIRMATION]

The Committee on Revenue met at 1:30 p.m. on Wednesday, November 10, 2011, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointments. Senators present: Abbie Cornett, Chairperson; Dennis Utter, Vice Chairperson; Deb Fischer; Galen Hadley; LeRoy Loudon; Pete Pirsch and Paul Schumacher. Senators absent: Greg Adams.

SENATOR CORNETT: Since everyone is here, we're going to start a little bit early today. I'm Senator Abbie Cornett from Bellevue. To my left is Vice Chair Senator Dennis Utter from Hastings. To his left is Senator Deb Fischer from Valentine. Senator Adams had another appointment and is unable to meet today. On my far right, Senator Schumacher from Columbus will be joining us; Senator Pirsch from Omaha, Senator LeRoy Loudon from Ellsworth, and Senator Hadley from Kearney. Our research analyst today is Steven Moore and committee clerk is Matt Rathje. The pages today are Maggie Gorgen and Emily Gilmore. Before we begin the hearing, if anybody has a cell phone, please turn that to either silent or vibrate. Sign-in sheets for testifiers are on the tables by both doors and need to be completed by everyone wishing to testify. Please print and complete the form prior to coming up to testify. When you come up, could you please hand your testifier sheet to the committee clerk. There are also clipboards in the back of the room to sign in if you do not wish to testify, but would like to indicate either your support or opposition. That will open today's hearings. Today, for the agenda, we have the appointments to the TERC Board. Let me take a look here really quick. Nancy Salmon, you're recognized first. Nancy has been on the committee and this is a reappointment. [CONFIRMATIONS]

NANCY SALMON: (Exhibits 1 and 2) Good afternoon, Senator Cornett, and members of the Revenue Committee. My name is Nancy Salmon. And I'm here today to ask for you...for your confirmation to continue to serve as a commissioner on the Tax Equalization and Review Board. Since we've reorganized in July, 2011, we've continued to maintain our calendars that were previously scheduled. We have...we did at that time reschedule several of the panel hearings into single-commissioner hearings and we did begin doing single-commissioner hearings at the end of July. To date we've done approximately 50...a little over 50, actually, as of today. And of those, we've only had one that's requested a review by the panel. So as of this point, we feel like they're working very, very well. So, I just thought, maybe, I would like to update the committee on that. So far we've been happy with that procedure. And then I did hand out pamphlets to each one of you. Those are the pamphlets that explain the single-commissioner hearing. We're putting those in our orders that go out. And those are also available on the commission's Web site. So if you'd like to take a look at those. And I did just hand out one copy of the "Review of the Expanded Agricultural Land Analysis" that we had done. We did that in cooperation with the property tax. And that is also available on our Web site. We just wanted you to know that we're working hard on

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statewide equalization and cooperating with them, trying to set up a new system and see if we can't get things to roll the way we'd like. I'd be happy to answer any questions if you have any. [CONFIRMATIONS]

SENATOR CORNETT: Questions from the committee? Thank you very much, Ms. Salmon. [CONFIRMATIONS]

NANCY SALMON: Okay, thank you. [CONFIRMATIONS]

SENATOR CORNETT: The next will be the reappointment of Rob Hotz to the Tax Equalization and Review Commission. Mr. Hotz, you're recognized. [CONFIRMATIONS]

ROBERT HOTZ: (Exhibits 3 and 4) Good afternoon, Senator Cornett, and members of the committee. Thank you for taking the time to hear our confirmation hearing today. I've been with the commission, I was first appointed in 2007, as was Commissioner Salmon. And am seeking reconfirmation today and would echo some of what Commissioner Salmon said. We, as you know, LB384 earlier this year authorized the commission to conduct hearings with one commissioner, single-commissioner proceedings. And we feel like it's gone pretty successfully. We took the effort to put together the procedure to do that, to organize that in a way that we would have an order that wasn't all convoluted and lengthy...or too convoluted and lengthy and something that would be accessible for all people to be able to take a look at and read and understand. We feel like that's gone pretty well. And as Commissioner Salmon said, we've only had one request for review of single-commissioner proceedings. And the estimations of what we might have had were all over the place. There was just no way of knowing how many we might have. And we still don't know. It's just almost anecdotal at this point. We just don't know. But the numbers seem to be pretty low at this point. Otherwise with the panel hearings, we did maintain the current schedule that was a pretty heavy schedule and heavily commercial as well. And then we added in, whenever we would have things drop off by dismissal or confessions of judgment, we added in and dropped in a lot of single-commissioner proceedings. So we've actually picked up the pace quite a bit from July 1 forward. We're doing pretty well on case load management. We have, we think, about 500 cases from 2010 that have not yet been scheduled and will be scheduled in '12. That sounds two years behind, but it's not. Because, as you recall, we're talking about a January 1 date that can only be protested until June. It gets to us late in the year. And then we give notice so the parties can exchange exhibits and do things. We schedule it for hearing. You're really dealing with a January 1 to almost January 1 again. So if you're able to handle a year's worth of case load in one year; we're about 500 of, as you can see on the spreadsheet that I gave you, about 500 of 1,915 2010 cases that will carry over into 2012. Which would translate to about a fourth of the year, which would translate to about three months. So if you measure it that way, I'd say we're about three months behind of just being on top of everything. And there's been times in the past when we were farther behind than that, I think. And I think we've made some

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progress. Otherwise, we've made some administrative changes in addition to the things we've been required to do by LB384; we've made administrative changes to the way that we conduct the panel hearings, whether they're two-commissioner or three-commissioner hearings. And we've, I think, to the extent that you can take the formality out of a proceeding that's called informal, but yet it's on the schedule to be...it's in line to go to an appeal to the Court of Appeals or the Nebraska Supreme Court to the extent that you can take out the formalities, we've attempted to do that. We're also...we added a procedure where we do some prehearing conferences and require the parties in panel proceedings to do a prehearing conference report which, among other things, tells us which of the exhibits...sometimes we get 50, 60, 70 exhibits in one appeal and we ask them to consider stipulating to the receipt of exhibits just to save time, expedite the matter, narrow the issues, and do that. We feel like that's been pretty successful as well. I'd be happy to answer any questions that you may have. [CONFIRMATIONS]

SENATOR CORNETT: This is more a question of perception, this may be the first year that I've been on Revenue that I haven't received a complaint from a taxpayer, so far, since July. Do the single-commissioner hearings seem to be well received?
[CONFIRMATIONS]

ROBERT HOTZ: I'm as much of an observer...thank you for saying that, because we haven't been getting much feedback. [CONFIRMATIONS]

SENATOR CORNETT: And it's the first year I haven't gotten any. [CONFIRMATIONS]

ROBERT HOTZ: And no negative feedback is great. I love to hear that.
[CONFIRMATIONS]

SENATOR CORNETT: I was just wondering if you were getting any feedback. Does it seem the people are fairly satisfied with the system at this point...at this point?
[CONFIRMATIONS]

ROBERT HOTZ: I think that's correct. I'm as much of an observer of that, Senator Cornett, as you are, because I personally have not been involved in any of the single-commissioner proceedings. I kind of got the lion's share of the panel proceedings when we had the July 1 transition. So previously there were two lawyers who were doing those panel proceedings and sharing them and I kind of got the whole load for awhile there. Commissioner Freimuth who will be up next, has began to do those panels, as well, with me. But I think that's correct, Senator, that the feedback I'm getting, I just talked to one of the Douglas County assessor's office employees today, they were here for some hearings, and I just said, how do you like it? How are things going? What do you think? I think that we've talked in the past about one-size-fits-all that our proceedings were perceived, and I think we're too much one-size-fits-all proceedings. You took ma and pop with the smaller value property and you took the ethanol plant

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over here and you did the same proceeding for both. Single-commissioner proceedings has given us a lot of flexibility to be able to relax and make it more informal, those proceedings. And I think they're well received with both the taxpayers and with the county officials alike. [CONFIRMATIONS]

SENATOR CORNETT: I was going to say, only time is going to tell for sure; but so far I've not heard anything. I was wondering if you had. Questions from the committee? Senator Louden. [CONFIRMATIONS]

SENATOR LOUDEN: Yeah, thank you, Senator Cornett. Well, I guess, Commissioner Hotz, as I was looking over your experience here, and you have them listed from the present time clear back and I see...I don't see any listing here where you had much to do with any real estate or property values or recognizing different classifications of land or anything. Where have you picked this up so that you have that expertise in order to be a TERC commissioner? [CONFIRMATIONS]

ROBERT HOTZ: The statutes, currently, and did at the time I was first appointed, required that within the first year a commissioner with our commission needs to take a certain number of appraisal course work. And I did do that. We've done more...I've done more than is required and I have also picked up the assessor's certificate, so I have the same certificate that the county assessors have. You have to go through an exam and take the test and pass the test and so on. I picked up that assessor's certificate. And I've taken both fee appraisal classes and mass appraisal classes, both with the IAAO, the International Association of Assessing Officers, would require for mass appraisers and what Nebraska Appraisal Board would require for fee appraisers in Nebraska. I don't have a certification to do either one of those, but that's typical of TERC commissioners. One TERC commissioner is required by statute, and that's Commissioner Salmon right now, to be an appraiser, a certified appraiser. And then one commissioner is required to be an attorney. And then, right now, the third commissioner, there's no requirement to be either an attorney or an appraiser. [CONFIRMATIONS]

SENATOR LOUDEN: Okay, then, actually, you don't have any hands-on experience of being in the real estate business or being around the classification of the land, you've picked it all up by getting it out of the books, is that correct? [CONFIRMATIONS]

ROBERT HOTZ: That's correct. I was not appointed as the appraiser on TERC, as far as the statutory requirement. I was appointed, initially as, really, frankly, an additional attorney on TERC. There were already two attorney's on TERC at the time. And so I have picked up whatever I know based on the course work I've taken. And I've been involved in...to be honest, I couldn't tell you how many hundreds of hearings and the review of hundreds of appraisals and the work of assessors, and so on. [CONFIRMATIONS]

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SENATOR LOUDEN: Now I guess my last question is, as everybody wants to do something that's worthwhile in this world, I guess, and feel like you've accomplished something for the good of mankind. As a TERC commissioner, where do you...do you feel like you're accomplishing that? [CONFIRMATIONS]

ROBERT HOTZ: I feel more that way now than I ever have while I've been on the commission. When I came onto the commission there were some things being done and there was a culture that I didn't necessarily agree with all points. And I've advocated for a change at TERC and I think we're making strides and making those kinds of changes now. So I feel more in place there now than I did before. [CONFIRMATIONS]

SENATOR LOUDEN: Now what have you...what has the TERC Commission, I guess, accomplished that would make the average farmer or rancher out there feel much safer to go to sleep at night on the valuation of his land than he did here a year ago, or two years ago, or any other time? What have you...what do you feel like you have accomplished here in this period of time then? [CONFIRMATIONS]

ROBERT HOTZ: I think our responsibility under the statutes and the regs and the standards that are required to be followed by the people that work in the industry, our responsibility, I think, to the individual taxpayer, in the way that you've narrowed it, is to make sure that the...as best we can, to make sure that when we conduct a proceeding and then when we write the order and make decision regarding their property that there's as good of an understanding of the process as a person can get as a homeowner or a landowner that there's as good of an understanding of how the land was valued and assessed and how we came about making our decision; whether we affirmed what the county board has decided or whether we reversed the county board of equalization's decision. Is to communicate that well to the taxpayer, the homeowner, or the landowner, so that it is as good of an understanding as possible. I think we're doing better at that. We're always going to be able to improve at that process. [CONFIRMATIONS]

SENATOR LOUDEN: Now at the present time, ag land is being revalued about, what, every two years, three years, something like that, on a regular basis and a lot of these residential properties or commercial properties in towns all across Nebraska some of them haven't moved in valuation for five years or so. Consequently, property taxes is what supports the school systems, do you feel there's still...do you feel there's any inequality between the valuations of ag land and the valuations of, say, commercial property or residential property? [CONFIRMATIONS]

ROBERT HOTZ: Overall, that would...I could say something that would constitute some kind of an advisory opinion that a court would give, but shouldn't give, but to answer your question, statewide equalization is the great equalizer of your question. All Nebraska property, right now, under statute is required to be reappraised once every six

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years, every classification of property is. Any property in Nebraska is required to be. If any particular property or class or subclass is evaluated more often, reappraised more often, those are choices that are made in the field by those who are familiar with what's going on with sales. Statewide equalization is the great equalizer in that we look at, for every particular county all classes and subclasses, and look at those ratios of what the assessment...what the assessment is, as compared to those sale prices and look at that universe of properties that fell within that time period and look at what that ratio is. Last year we did not make any adjustments; in years past there have been adjustments.
[CONFIRMATIONS]

SENATOR LOUDEN: Okay. Thank you. [CONFIRMATIONS]

SENATOR CORNETT: Mr. Hotz, before this goes to the floor of the Legislature, could you please provide your additional education that you've received since you've been a TERC commissioner? [CONFIRMATIONS]

ROBERT HOTZ: Oh, I thought that was... [CONFIRMATIONS]

SENATOR CORNETT: I did not see it in the file. [CONFIRMATIONS]

ROBERT HOTZ: Okay, I'm sorry. I believe that was submitted to the Governor's Office and I assumed that had been passed on to the committee. [CONFIRMATIONS]

SENATOR CORNETT: I just had your...I believe that's why Senator Louden was asking what classes you've taken as an appraiser. Okay, we just have your resume. Any further questions from the committee? Oh, yes. [CONFIRMATIONS]

SENATOR UTTER: Mr. Hotz, you indicated that you're about of a...feel like you're caught up to where you're only behind about a third of a year. [CONFIRMATIONS]

ROBERT HOTZ: I think that...by that measure, that I tried to describe, yes.
[CONFIRMATIONS]

SENATOR UTTER: And how does that compare with previous years? How much progress are we making? [CONFIRMATIONS]

ROBERT HOTZ: I cannot give a real definitive answer to that. I think in the past we've felt as though we were farther behind than that. However, when at times I've heard someone say something like, well, you're five years backlogged. No, that's, to my knowledge, never been true. TERC might have been at some point more than a year behind, but I think the entire time I've been with the commission it's been more in the neighborhood of 8 to 12 months. But it's hard to measure, Senator, because the way we were doing it before, we could put on the calendar 300 or 400 hearings. The way we are

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doing it now, we can put quite a few more hearings on the calendar.
[CONFIRMATIONS]

SENATOR UTTER: Do you see that the single-commissioner hearings and the changes...the administrative changes that you've made in procedures is going to be...actually even improve where we're at today? [CONFIRMATIONS]

ROBERT HOTZ: Oh yes, definitely. [CONFIRMATIONS]

SENATOR UTTER: So eventually can we say we'll be caught up? [CONFIRMATIONS]

ROBERT HOTZ: I hope we're never to the point where we're going like this waiting for the appeals to come in, but yes, I do think that we're going to be...we're going to continue to make progress. [CONFIRMATIONS]

SENATOR UTTER: Thank you. [CONFIRMATIONS]

ROBERT HOTZ: Thank you. [CONFIRMATIONS]

SENATOR CORNETT: Further questions from the committee? We looked through the packet again that we received, so if you could just provide that, that would be great. [CONFIRMATIONS]

ROBERT HOTZ: I will. Thank you. [CONFIRMATIONS]

SENATOR CORNETT: Thank you very much. [CONFIRMATIONS]

ROBERT HOTZ: All right. [CONFIRMATIONS]

SENATOR CORNETT: Thomas Freimuth. For the committee, Mr. Freimuth is a new appointment, not a reappointment to the committee. [CONFIRMATIONS]

THOMAS FREIMUTH: Good afternoon, Senators. Thank you for your time. My name is Tom Freimuth. I'm from Omaha and I was nominated by Governor Heineman to represent the second district on the Tax Equalization and Review Commission back in June. I'm here to respectfully ask that you confirm my nomination. Just a little background about me, I know that you folks probably have my resume and some other information, but in a nutshell, I'm an attorney, proud Nebraskan, live in Omaha, raised in Crawford and Sutton and Milford. So even though I'm an "eastender" now, I think I know quite a bit about the state and very proud, as I said, to be a Nebraskan, and not just an Omaha, Nebraskan. So at any rate, and just to add to what Commissioner Salmon and Commissioner Hotz have mentioned in terms of this reorganization and some of the things we've done to work with the backlog and work with the new single-commissioner

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process, one of the things that's kind of close to me is that since I'm from Omaha and since we have a lot of appeals that come from Douglas County and Sarpy County, the plan is on singles is to do...starting in January, single commissioners up in the State Office Building in Omaha down by 13th and Farnam. So we're hoping that that will save a lot of travel time for taxpayers and also save expenses for the counties. We're hopeful that we can get the 222 2010 singles that we have on the plate possibly done. The goal is in the first quarter of 2012. So that's something to add to what Commissioner Hotz and Commissioner Salmon mentioned, as far as our efforts to get our arms around case management. We're hopeful that the Omaha hearings will help a lot. Commissioner Hotz also mentioned the prehearing orders that we're working with to try and get our arms around the voluminous material that we get on panel hearings. We're hopeful that when both sides are well represented that they can help us make the hearings as efficient as possible and take as little amount of resources as possible. Another point that I would like to make, taxpayers' insecurities are very heightened right now for a variety of reasons. And we, of course, have a lot of self-represented litigants. And I like to think that I'm very sensitive to the folks that come in without an attorney, even though I'm an attorney. I try to make them know that--please don't hold that against me that I am an attorney--and try to make folks feel as comfortable as possible. And I can say that in watching the panel hearings that we've done and knowing Rob and...knowing Commissioner Hotz and knowing Commissioner Salmon I know that they treat folks with a high level of respect and decorum. And I think that I can add to that. Also, whether they're self-represented or whether they're represented by an attorney, so. With that, again, I ask, respectively ask that you confirm my nomination and I'll open it up to questions. [CONFIRMATIONS]

SENATOR CORNETT: Senator Hadley. [CONFIRMATIONS]

SENATOR HADLEY: Thank you, Senator Cornett. Is it Mr. Friemuth?
[CONFIRMATIONS]

THOMAS FREIMUTH: Yes, that's pretty close. Thank you for being here. Now you have started already, is that correct? [CONFIRMATIONS]

THOMAS FREIMUTH: I started on July 25. [CONFIRMATIONS]

SENATOR HADLEY: How has your experience been so far? Is it...I hate to use the term "enjoyable," but a positive experience? [CONFIRMATIONS]

THOMAS FREIMUTH: Very positive. Very positive. Like I said, proud Nebraskan and honored to be asked to serve for an agency that serves the whole state of Nebraska and work with folks all across the state. And so that is positive in and of itself just what TERC does; but beyond that getting to know the staff and also Commissioner Salmon and Commissioner Hotz; excited and encouraged that we have a good team in place to

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get our arms around the reorganized format and do the best we can to serve the taxpayers and the counties. [CONFIRMATIONS]

SENATOR HADLEY: One thing I'd like to comment on, and I think Mr. Hotz made the comment, you deal all the way from the...we call it the mom and pop concern about the valuation on their house to a mega-million dollar shopping center, and they are different. And I hope all three of you keep the concern for the mom and pop, because it can be a daunting experience. We saw that in the hearings we've had recently. It is hard for mom and pop to come down to a "governmental commission" to do it. And they're not attorneys and they can't afford...economically it doesn't make sense to hire an attorney to come down for what they're dealing with. But the idea that they're treated with the respect and that we would want every citizen of Nebraska. So I commend all three of you for moving forward with that concept. We've talked a lot on the committee about that a lot times people just want someone that is willing to listen to their concern about what they have. And I hope you all have big ears for that listening. Thank you. [CONFIRMATIONS]

THOMAS FREIMUTH: We appreciate that, Senator. And just to add to my comments with respect to that, in the single-commissioner hearings, I think it's...it's very encouraged, the ones I've seen, because I've been a lawyer where I've gone before a governmental bodies where I've been like the mom and pops sometimes, not, even though I've been a lawyer, sometimes I wasn't an expert in the area. And so I've kind of felt the pain of some of the taxpayers who come in not knowing our rules myself. And so I think I can say with utmost confidence that all three of us are very sensitive to the fact that a lot of folks come before us somewhat intimidated by the State Office Building, where to park, getting in there on time, and dealing with our rules, but in the single-commissioner setting especially, I think we're really able to put folks at ease and let them just open up and tell us their story and feel like they're getting a full and fair hearing. [CONFIRMATIONS]

SENATOR HADLEY: Thank you. [CONFIRMATIONS]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [CONFIRMATIONS]

THOMAS FREIMUTH: Thank you. [CONFIRMATIONS]

SENATOR CORNETT: That will conclude today's hearings. [CONFIRMATIONS]