BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

BRYAN J. MCCORMICK, PERKINS COUNTY ASSESSOR, Appellant,	)	Case No. 98CA-7
vs.	)	FINDINGS AND ORDERS
CATHERINE D. LANG, PROPERTY TAX ADMINISTRATOR, Appellee.	)	

Filed April 16, 1998

Appearances:

For the Appellant: Bryan J. McCormick
Perkins County Assessor
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Grant, NE 69140

For the Appellee: Michael J. Goodwillie
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Lincoln, NE 68509-8929

Before: Commissioners Edwards, Hans and Reynolds

Reynolds, Chairman, for the Commission:

SUMMARY OF DECISION

The Commission, based on an Offer to Confess Judgement, reverses the decision of the Property Tax Administrator which directed that a particular sale of real property be included, in an unadjusted form, in the 1998 Qualified Agricultural Land Sales Data Base for Perkins County.

NATURE OF THE CASE

The Perkins County Assessor ("Assessor") filed a protest with the Property Tax Administrator challenging her decision to include a particular sale of real property in the 1998 Qualified Agricultural Land Sales Data Base for Perkins County. The County Assessor contended that the sale, if included, should be adjusted, since the property was substantially improved after it was sold. The Property Tax Administrator denied the protest, from which decision Assessor appealed. After the appeal had been filed the Property Tax Administrator filed an Offer to Confess Judgement.

DUTIES OF THE PARTIES

The question of whether a sale of real property should be included in the 1998 Qualified Agricultural Land Sales Data Base for Perkins County is governed by Neb. Rev. Stat. §77-1371 (Reissue 1996). As provided in that statute, the Property Tax Administrator may also issue guidelines for assessing officials to use in determining what constitutes a comparable sale.

County Assessors of the State of Nebraska are required to follow the rules, regulations, directives, and orders of the Property Tax Administrator pursuant to Neb. Rev. Stat. §77-378 (Reissue 1996). County Assessors of the State of Nebraska are also required to abide by the rules, regulations, and instructions adopted, promulgated, and issued by the Property Tax Administrator. Neb. Rev. Stat. §77-425 (1997 Supp.). The Property Tax Administrator has issued Directive 97-3, which requires a County Assessor to protest on or before January 9, 1998, the adjustment, qualification, or non-qualification of any sale in the sales file. (Directive, at p. 2.) The deadline for protesting the inclusion or exclusion of sales from the 1998 Sales File was

extended by the Property Tax Administrator to March 1, 1998. (Letter of Property Tax Administrator dated January 30, 1998.)

EVIDENCE BEFORE THE COMMISSION

The Commission, for the purposes of deciding this case, takes judicial notice of Case File 98CA-7; the *Nebraska Assessor's Reference Manuals*, Volumes 1 and 2; the *Nebraska Agricultural and Horticultural Land Valuation Manual;* the Nebraska Constitution; the Nebraska State Statutes; Title 442 of the Administrative Code (Tax Equalization and Review Commission's Rules and Regulations); the standard reference work *Property Assessment Valuation, Second Edition*; the standard reference work *Property Appraisal and Assessment Administration*; and the standard reference work *Glossary for Property Appraisal and Assessment*.

ANALYSIS

A sale described as "Sale Number 95202, Book 54, Page 289" was a sale of certain agricultural real property located in Perkins County, Nebraska. The sale involved 321.96 acres of agricultural land on September 13, 1995. The sales price was $72,000. The assessed value prior to the sale as determined by the Property Tax Division was $89,620. The Assessor's Remarks on the Sales Roster Corrections Form indicates that the property was "Substantially improved subsequent to sale . . . Sale Price was $72,000. Current value is $65,912 (for land - subsequent improvement value removed). The ratio works out to 91.54%, not the 136.48% as recorded on the roster." There were apparently two sales involved, one numbered 95202, and a second at

Location ID No. 14721. The Remarks Field for the 1998 Qualified Agricultural Land Sales Data Base for Perkins County sale states "Is now substantially improved with a house that will go on value in 97. Added value for improved house of $1.4264 in 97." The principal sale of approximately 321.96 acres consisted of 227.94 acres of dry land. 77.28 acres of grass. 5.25 acres of home site. 8.67 acres of shelter belt or roads and 2.83 acres of waste land. The Property Tax Division has determined that 80% of the fair market value of Perkins County dryland ranged from a low of $165 per acre for 4D. to a high of $555 for 1D. (There is no land classified as 1D1 Dry Land in Perkins County.) (*1997 Agricultural Land Valuation Manual*. p. 168.) This would indicate a range in fair market value of $206.25 per acre to $693.75 per acre. The sale price of $72.000 apparently included $23.708 worth of improvements. With the value of the improvements included. the assessment/sales ratio is $136.48%. Without that factor the assessment/sales ratio is 91.54%. The Assessor alleged on the appeal form filed with the Commission that ". . . if we subtract the improvement value of $23.708 from the total assessed value of $89.620 leaves $65.912 land assessment. . . Assessor asks for the sale to be removed from the sales file. . ."

The use of a specific sale in a sales data base is governed by Neb. Rev. Stat. §77-1371 (Reissue 1996.) The statute provides, among other things, that:

> "When using comparable sales in any method of determining actual value . . the following guidelines shall be *considered* in determining what constitutes a comparable sale. . . " (Emphasis added.)

Some interpretation of this statute is necessary. The Nebraska Supreme Court has often held that statutory construction is a simple task. The Court has held "In construing a statute, it is presumed that the Legislature intended a sensible rather than an absurd result. . . Statutory language is to be given its plain and ordinary meaning. . ." *Metropolitan Utilities Dist. v. Twin Platte Natural Resources Dist.*, 250 Neb. 442, 451, 550 N.W.2d 907, 913 (1996). The Supreme Court has also held that "As a general rule, in the construction of statutes, the 'shall' is considered mandatory and inconsistent with the idea of discretion." *Loup City Public Schools, School Dist. No. 1 of Sherman County v. Nebraska Dept. of Revenue*, 252 Neb. 387, 393, 562 N. W. 2d 551, 555 (1997). Here the plain and ordinary meaning of the statute is that the listed Sections are *guidelines* which the Property Tax Administrator is required to *consider*. The statutory language does not therefore constitute a mandate under which the Property Tax Administrator is required to exclude a sale merely because one test is satisfied, or that the Property Tax Administrator is required to include a sale merely because none of the listed factors are applicable. The Property Tax Administrator, of course, has the discretion to include or exclude sales based on all the circumstances surrounding a sale, so long as the decision is based on statutory provisions or adopted, promulgated, and issued guidelines.

Given the rules of statutory construction set forth above, the intent of this statute must also be understood as holding that the guidelines are but one test which must be considered in conjunction with "professionally accepted mass appraisal methods." (Neb. Rev. Stat. §77-112 (1997 Supp.) Those methods hold that, before a sale may be used as an indicator of market value, the sale must meet the following criteria:

"1. Buyer and seller are typically motivated.

"2. Both parties are well informed or well advised, and acting in what they consider their best interests.

"3. A reasonable time is allowed for exposure in the open market.

"4. Payment is made in terms of cash. . . or in terms of financial arrangements comparable thereto.

"5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

Property Assessment Valuation, Second Edition, p. 100.

Neb. Rev. Stat. §77-1371 (Reissue 1996) also states "The Property Tax Administrator may issue guidelines for assessing officials for use in determining what constitutes a comparable sale. Guidelines shall take into account the factors listed in this section and other relevant factors as prescribed by the Property Tax Administrator." The Property Tax Administrator has issued Directive 97-3. The Directive provides that:

"On or before December 19, 1997, the Property Tax Division shall mail to each county assessor a qualified sales roster and a non-qualified sales roster. The county assessor shall review these rosters for the purpose of filing protests to the adjustments, qualification, or non-qualification of any sale in the sales file. The

> protest shall be made on the Sales File Protest Form supplied by the Property Tax Division."

(Directive at p. 2.) If the County Assessor wishes to challenge the status of a particular sale, then the burden is upon the County Assessor to prove by a preponderance of the evidence that the decision of the Property Tax Administrator is unreasonable or arbitrary.

In this particular sale, the property was substantially improved after the sale due to the construction of a house on part of the land. The Property Tax Administrator has instructed County Assessors that

> "The valuation of agricultural land for assessment purposes requires a diverse knowledge of market influences on agricultural land, and the application of that knowledge in the assessment process. General knowledge of the following subjects and their influences on land values are key elements in the agricultural land assessment process: 1. Understanding of the typical farming or ranching practices in the area. 2. *Evidence of any trends toward other uses*. 3. Land use. . . The subjects mentioned above are also some of the principal factors affecting the market value of land. The market approach to value is based on the principle that an informed purchaser would pay no more for a property than the cost of acquiring another property *with the same functional use*. . . " (Emphasis added.)

(1997 *Agricultural Land Valuation Manual*, p. 73.)

Here, the use to which part of the property was put will change dramatically. When a residence is constructed on agricultural land, the Assessor is required to separately value the structure, related improvements, and a "home site" which must consist of at least one acre of land. *1997 Agricultural Land Valuation Manual*, p. 68. This real property must be valued at market value, unlike agricultural and horticultural land, which must be valued at 80% of market value. Neb. Rev. Stat. §77-201(2) (1997 Supp.) Such change in use may, therefore, result in a sale which does not a "comparable sale" under the Sales Comparison Approach to value.

The Commission must also note that the Property Tax Administrator has broad discretion in her measurement of the level and quality of assessments. The 1998 Qualified Agricultural Land Sales Data Base for Perkins County contains a column heading labeled "Assessor Adjusts." The Commission therefore concludes that the Property Tax Administrator has the discretion to allow assessor's to make adjustments to the sale price and/or the assessed value of each sale. Those adjustments may be critical since the assessed value and the sale price are the basis of the assessment/sales ratio. That ratio forms the basis of the statistical studies by which the level and quality of assessments are measured.

The Property Tax Administrator, by filing the Confession of Judgment, has agreed in this case with the Assessor that the sale at issue, for one or more of the reasons set forth above, does not constitute a "comparable sale," and therefore the sale at issue should be adjusted as requested by the Perkins County Assessor.

FINDINGS OF FACT

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016 (3) (1997 Supp.). The Commission may, however, evaluate the evidence presented utilizing it's experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (1997 Supp.).

From the pleadings and the evidence contained in the record before it, the Commission finds and determines as follows:

1. That the sale described as Sale Number 95202, Book 54, Page 289, was a sale of agricultural land which included approximately 321.96 acres of land which sold for $72,000, or an average of $446 per acre.
2. That the Assessment/Sales Ratio was 136.48%.
3. That the sale was primarily for agricultural use. The use of the land, however, was changed as a result of the sale by the addition of certain improvements to the property.
4. That the Property Tax Division determined for tax year 1997 that the fair market value of dry land ranged from a low of $165 per acre to a high of $555 per acre, depending upon the Dry Land Valuation Group.
5. That the Property Tax Administrator determined that the sale should be included in the 1998 Qualified Agricultural Land Sales Date Base for Perkins County in an unadjusted form.

6. That the Assessor protested that decision to the Property Tax Administrator.

7. That the Property Tax Administrator denied the protest.

8. That the Assessor timely filed an appeal of that decision to the Commission.

9. That the Property Tax Administrator has offered to confess judgment.

10. That therefore the assessed value of the subject property prior to the sale should be adjusted as requested by the Perkins County Assessor.

JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (1997 Supp.).

STANDARD OF REVIEW

The Commission must affirm the decision of the Property Tax Administrator unless the Assessor demonstrates by a preponderance of the evidence that the decision made by the Property Tax Administrator was not governed by reason, was absurd, exceeded the bounds of reason or moderation, or was made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion. Title 442, Nebraska Administrative Code, Chapter 5, Section 018. *See also Harrison Square v. Sarpy Cty. Bd. Of Equal.*, 6 Neb. App. 454 (1998).

CONCLUSIONS OF LAW

First. from the record before it. the Commission concludes as a matter of law that it has jurisdiction over both the parties and the subject matter of this appeal. The Commission further concludes as a matter of law that. pursuant to Title 442. Nebraska Administrative Code. the Appellant is required to establish by a preponderance of the evidence that the decision of the Property Tax Administrator was unreasonable or arbitrary. Finally. the Commission must. for the reasons set forth above hereby does conclude as a matter of law that from the record before the Commission that the Appellant has met his burden of proof. and therefore the decision of the Property Tax Administrator to include Sale Number 95202. found at Book 54. Page 289. in the 1998 Qualified Agricultural Land Sales Data Base for Perkins County in an unadjusted form should be vacated and reversed.

ORDER

IT IS THEREFORE ORDERED. ADJUDGED AND DECREED as follows:

1. That the decision of the Property Tax Administrator which denied the Perkins County Assessor's protest as to Sale Number 95202, Book 54. Page 289. is vacated and reversed.
2. That Sale Number 95202. Book 54. Page 289, is to be adjusted in the 1998 Qualified Agricultural Land Sales Data Base for Perkins County as follows: the "Assessed Total Value" shall be changed from $89.620 to $65.912, thereby yielding as Assessment/Sales Ratio of 91.54% for this sale.

3. That each party is to bear its own costs in this matter

IT IS SO ORDERED.

Dated this 17th day of April. 1998.

Mark P. Reynolds. Chairman

Janet L. Edwards

Janet L. Edwards. Commissioner

Robert L. Hans. Commissioner

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