

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

JANET L. SHAUL,)	
GARDEN COUNTY ASSESSOR,)	
)	CASE NO. 00PT-12
Appellant,)	00PT-13
)	00PT-14
vs.)	00PT-25
)	
CATHERINE D. LANG,)	FINDINGS AND ORDERS
PROPERTY TAX ADMINISTRATOR,)	
)	
Appellee.)	

Filed January 30, 2001

Appearances:

For the Appellant: Janet L. Shaul
Garden County Assessor
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For the Appellee: Michael J. Goodwillie, Esq.
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Before: Commissioners Edwards, Hans and Reynolds
Reynolds, Chairman, for the Commission

SUMMARY OF DECISION

The Commission vacates and reverses the decisions of the Property Tax Administrator regarding inclusion in the 2001 Qualified Agricultural Sales Roster for Garden County certain agricultural sales. The Commission accordingly grants the Assessor's request that these four sales be excluded as the sales are not "arm's-length transactions."

NATURE OF THE CASE

Janet L. Shaul, the Garden County Assessor ("the Assessor") made an initial determination that two sales of agricultural real property within Garden County should not be used in the Qualified Agricultural Sales Roster for Garden County for tax year 2001 ("the Roster"). The Assessor made an initial determination that one sale should be used in the Roster, but only with an adjustment. Finally, the Assessor did not make a determination as to whether one sale of agricultural real property should be used in the Roster. Later the Assessor determined that all four sales of agricultural real property should be included in the Roster, but only if an adjustment was applied to the sale price in each transaction. The Department of Property Assessment and Taxation ("the Department") determined that all of the sales should be included in the Roster, and further that no adjustment to the sales prices should be allowed. The Assessor filed protests of these determinations with the Property Tax Administrator. The Property Tax Administrator denied the four protests, from which decisions the Assessor appeals.

I.

EVIDENCE BEFORE THE COMMISSION

The Commission took notice of the following documents as authorized by Neb. Rev. Stat. §77-5016(5) (2000 Cum. Supp.) without objection: the Commission's case file for Case No. 00PT-

12; the Case Files for Case Numbers 00PT-13; 00PT-14; 00PT-15; 00PT-16; 00PT-17; 00PT-18; 00PT-19; 00PT-20; 00PT-21; 00PT-22; 00PT-23; 00PT-24; 00PT-25; 00PT-26; 00PT-27; 00PT-28; 00PT-29; and 00PT-30; which were consolidated with Case Number 00PT-12 for purpose of hearing; the Nebraska Constitution; the Nebraska State Statutes and the amendments to those statutes; *Title 442, Nebraska Administrative Code* (the Tax Equalization and Review Commission's Rules and Regulations); the *1999 Reports and Opinion of the Property Tax Administrator for Garden County*; the *2000 Reports and Opinion of the Property Tax Administrator for Garden County*; the *2000 Formal Plan of Equalization*; the *2001 Formal Plan of Equalization*; the *2000 Problem Area Report of the Property Tax Administrator*; the *2000 Equalization Proceedings*; the *Nebraska Agricultural Land Valuation Manual* (2000); the *Nebraska Assessor's Reference Manual* (2000); four standard reference works published by the International Association of Assessing Officers: *Property Assessment Valuation, Second Edition* (1996); *Property Appraisal and Assessment Administration* (1990); *Glossary for Property Appraisal and Assessment* (1998); and *Mass Appraisal of Real Property* (1999); the *Dictionary of Real Estate Appraisal, 3rd Ed.*, Appraisal Institute (1993); *The Dictionary of Real Estate Appraisal, 3rd Ed.*, Appraisal Institute (1993); *The Appraisal of Real Estate, 11th Ed.*, Appraisal Institute (1996); the *Uniform Standards of Professional Appraisal Practice* (2000);

Black's Law Dictionary, 6th Ed., West Publishing Company (1990); and the Soil Survey for Garden County.

The Commission also received certain exhibits and testimony during the course of the hearing.

**II.
ISSUES BEFORE THE COMMISSION**

Neb. Rev. Stat. §77-5015 (2000 Cum. Supp.) requires that the issues before the Commission be identified "as soon as practicable." The Commission's jurisdiction is limited to those issues presented to the Property Tax Administrator and those issues sufficiently related in content and context to be deemed the same question at both levels. See, e.g., *Arcadian Fertilizer v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 505, 583 N.W.2d 353, 357 (1998). The issue before the Commission therefore, is the Assessor's allegation that these four sales of agricultural real property should be included in the Qualified Agricultural Sales Roster for Garden County for tax year 2001, but only if an adjustment is applied to the sale price of each transaction.

**III.
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) (2000 Cum. Supp.). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016(5) (2000 Cum. Supp.).

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

A.
PROCEDURAL FINDINGS

1. That the Assessor made an initial determination in Case Number 00PT-12 that the sale should not be used in the Roster. (E21:5). That this sale is incorrectly listed on the Appeal Form as being found in the records of the Garden County Register of Deeds Office at Book 33, Page 328. That this sale in fact is found at Book 32, Page 328. (E1; E21:5).
2. That the Assessor later determined that this sale should be included in the Roster but only if the sale price was adjusted by Twenty-Five Dollars (\$25) per acre to account for the fact that the buyer was acquiring adjoining land. (E1:2).
3. That the Department determined that this sale should be used in the Roster. (E21:5).
4. That the Department further determined that this sale, for which the sale price was adjusted by \$2,000 for "Non-Real

Property," should be used without adjustment in the Roster.
(E21:5).

5. That the Assessor timely filed a protest of those determinations with the Property Tax Administrator. (E1:2).
6. That the Property Tax Administrator denied this protest.
(E1:1).
7. That the Assessor initially determined that in Case Number 00PT-13, the sale which is found in the records of the Garden County Register of Deeds Office at Book 32, Page 370, should not be included in the Roster for Garden County, Nebraska, for tax year 2001. (E21:8).
8. That the Assessor later determined that this sale should be included in the Roster, but only if the sale price was adjusted by Twenty-Five Dollars (\$25) per acre to account for the fact that the buyer was acquiring adjoining land.
(E2:2).
9. That the Department determined that this sale should be used in the Roster. (E21:8).
10. That the Department further determined that this sale should be used without adjustment in the Roster. (E21:8).
11. That the Assessor timely filed a protest of those determinations with the Property Tax Administrator. (E2:2).
12. That the Property Tax Administrator denied this protest.
(E2:1).

13. That the Assessor initially determined that in Case Number 00PT-14, the sale which is found in the records of the Garden County Register of Deeds Office at Book 32, Page 372, should be included in the Roster for Garden County, Nebraska, for tax year 2001, but only if the sale price was adjusted by Twenty-Five Dollars (\$25) per acre to account for the fact that the buyer was acquiring adjoining land. (E21:9).
14. That the Department determined that this sale should be used in the Roster. (E21:9).
15. That the Department further determined that this sale should be used without adjustment in the Roster. (E21:9).
16. That the Assessor timely filed a protest of those determinations with the Property Tax Administrator. (E3:2).
17. That the Property Tax Administrator denied this protest. (E3:1).
18. That in Case Number 00PT-25, the Assessor made no initial determination as to the usability in the Roster of the sale which is found in the records of the Garden County Register of Deeds Office at Book 33, Page 157. (E21:49).
19. That later the Assessor determined that this sale should be used in the Roster, but only if the sale price was adjusted by Twenty-Five (\$25) per acre to account for the fact that the buyer was acquiring adjoining land. (E14:2).

20. That the Department determined that this sale should be used in the Roster. (E21:49).
21. That the Department further determined that this sale should be used without adjustment in the Roster. (E21:49).
22. That the Assessor timely filed a protest of those determinations with the Property Tax Administrator. (E14:2).
23. That the Property Tax Administrator denied this protest. (E14:1).
24. That the Assessor timely filed appeals of these decisions with the Commission. (Appeal Forms).

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the Assessor is the duly elected, qualified and acting County Assessor in and for Garden County, Nebraska.
2. That the Assessor made her ultimate determinations regarding the usability of these four agricultural sales pursuant to her official duties.
3. That in each of the four appeals, the underlying transaction concerned the sale of certain agricultural real property located in Garden County, Nebraska.

4. That each of the sales occurred during a three-year time frame beginning July 1, 1997, and ending June 30, 2000. *(Directive 00-5)*.
5. That the Qualified Agricultural Sales Roster for Garden County is the database upon which the Property Tax Administrator performs statistical analyses including but not limited to ratio studies and measures of central tendency. *(Directive 00-5)*.
6. That these ratio studies and measures of central tendency, along with other information submitted by the Property Tax Administrator to the Commission, form the basis for the *Reports and Opinions of the Property Tax Administrator for Garden County*.
7. That this Report, along with any other evidence submitted by the Garden County Assessor, the Garden County Board of Equalization, and other interested persons, will constitute the information upon which the Commission determines the level of assessment and the uniformity and proportionality of assessments for purposes of taxation for the Agricultural Class of property for tax year 2001.
8. That the Roster is also utilized by the Assessor to set the assessed value of agricultural real property throughout Garden County for tax year 2001.
9. That the question of whether these four agricultural sales

should be included in the Roster for Garden County for tax year 2001 must be resolved in accordance with state law and in accordance with professionally accepted mass appraisal methodology.

10. That in Case Number 00PT-12, the buyer had been leasing the subject property from the seller "for years." (E21:5). Further that there is no evidence that the property had ever been listed for sale "on the open market." Finally, that the buyer owned adjoining land. (E21:5).
11. That the buyer is an employee of the Assessor's Office. That this individual confirmed the information set forth on Exhibit 21, Page 5.
12. That the Assessor's proposed adjustment in the amount of Twenty-Five Dollars per acre is based on a quote attributed to the Property Tax Administrator in a newspaper article. That an adjustment based solely on a quote attributed to another is not evidence which is based on "the market," and therefore fails to meet professionally accepted mass appraisal methodologies.
13. That since the transaction fails to satisfy the requirements of a transaction which culminates in "market value," and since the record contains no evidence from which an appropriate adjustment could be deduced, the transaction

must be excluded from the Roster for Garden County for tax year 2001.

14. That in Case Number 00PT-13 there is no evidence that the property had ever been listed for sale "on the open market." That the buyer owned adjoining land. (E21:8).
15. That the Department's own evidence establishes that the seller believed there was a cloud on the title. (E21:8).
16. That the Assessor's proposed adjustment in the amount of Twenty-Five Dollars per acre is based on a quote attributed to the Property Tax Administrator in a newspaper article. That an adjustment based solely on a quote attributed to another is not evidence which is based on "the market," and therefore the proposed adjustment fails to satisfy professionally accepted mass appraisal methodologies.
17. That since the transaction fails to satisfy the requirements of a transaction which culminates in "market value," and since the record contains no evidence from which an appropriate adjustment could be deduced, the transaction must be excluded from the Roster for Garden County for tax year 2001.
18. That in Case Number 00PT-14, there is no evidence that the property had ever been listed for sale "on the open market." That the buyer owned adjoining land. (E21:9).

19. That the Assessor's proposed adjustment in the amount of Twenty-Five Dollars per acre is based on a quote attributed to the Property Tax Administrator in a newspaper article. That an adjustment based solely on a quote attributed to another is not evidence which is based on "the market," and therefore the proposed adjustment fails to satisfy professionally accepted mass appraisal methodologies.
20. That since the transaction fails to satisfy the requirements of a transaction which culminates in "market value," and since the record contains no evidence from which an appropriate adjustment could be deduced, the transaction must be excluded from the Roster for Garden County for tax year 2001.
21. That in Case Number 00PT-25, the buyer had been leasing the property "for years." (E21:49). That there is no evidence that the property had ever been listed for sale "on the open market." Finally, that the buyer owned adjoining land. (E21:49).
22. That the sale price, according to the buyer, included \$15,000 worth of "personal property" in the form of "concrete laterals;" and also did not include "fee simple title" to the property, since 50% of the mineral interest rights were reserved to the seller. (E14:3). That neither

the Department nor the Property Tax Administrator gave any weight to any of these factors. (E14:1).

23. That the Assessor's proposed adjustment in the amount of Twenty-Five Dollars per acre does not appear to be based on "the market," and therefore the proposed adjustment fails to satisfy professionally accepted mass appraisal methodologies.
24. That since the transaction fails to satisfy the requirements of a transaction which culminates in "market value," and since the record contains no evidence from which appropriate adjustments could be deduced, the transaction must be excluded from the Roster for Garden County for tax year 2001.
25. That the record contains clear and convincing evidence which require the exclusion of these four sales from the Roster.
26. That from the entire record before it, the Commission finds and determines that these four sales should be excluded from the Qualified Agricultural Sales Roster for Garden County for tax year 2001.
27. That therefore the decisions of the Property Tax Administrator to deny the protests were both unreasonable and arbitrary.
28. That therefore the decisions of the Property Tax Administrator must be vacated and reversed.

**IV.
ANALYSIS**

**A.
STATUTORY PROVISIONS**

Nebraska state statutes provide that ". . . all real property in this state, not expressly exempt therefrom, shall be subject to taxation and shall be valued at its actual value." Neb. Rev. Stat. §77-201 (2000 Cum. Supp.). The statutes also provide that:

"Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach; (2) income approach; and (3) cost approach." Neb. Rev. Stat. §77-112 (2000 Cum. Supp.).

The county assessor is required to value real property which is subject to taxation in accordance with the constitution and state law, as well as the rules, regulations, manuals, and directives of the Property Tax Administrator. Neb. Rev. Stat. §77-1330(3) (2000 Cum. Supp.). The Property Tax Administrator, in order to evaluate the level, the uniformity and the proportionately of assessments as made by the county assessor, is, in turn, required to issue "comprehensive assessment ratio studies" on an annual basis. Neb. Rev. Stat. §77-1327(2) (2000

Cum. Supp.). These assessment ratio studies are performed on sales which are contained in a database which is known as the "Sales Roster" or "Sales File." Rosters for each major class of property (residential, commercial, and agricultural) are prepared annually and provided to the county assessors. (Directive 5).

The question of whether a particular sale should be included in the Roster, and the question of whether the price paid for the real property in that sale, may be affected by the provisions of Neb. Rev. Stat. §77-1371 (2000 Cum. Supp.). This statute provides in pertinent part that:

"When using comparable sales in any method of determining actual value provided in section 77-112, the following guidelines shall be considered in determining what constitutes a comparable sale: . . .

(3) For sales of agricultural or horticultural land as defined in section 77-1359, whether a premium was paid to acquire nearby property. Land within one mile of currently owned property shall be considered nearby property. . . ."

The threshold issue raised by this statute is whether it applies to sales being considered for inclusion or for adjustment in the Qualified Sales Roster. The Nebraska Supreme Court has 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 Court has also held that:

"[The][c]omponents of a series or collection of provisions pertaining to the same subject matter which are in pari materia may be conjunctively considered so that different provisions are consistent, harmonious, and sensible. Where possible, effect should be given to all provisions of a statute or regulation."

Elsome v. Elsome, 257 Neb. 889, 900, 601 N.W.2d 537, 545 (1999). (Citations omitted).

The Commission has been unable to identify either binding or persuasive judicial precedents which address whether the provisions of Neb. Rev. Stat. §77-1371(2000 Cum. Supp.) apply to sales which may be included in the Sales Roster. Under these circumstances, the Commission has an affirmative obligation to apply the statute in accordance with its own understanding of it. See, e. g., *State v. Moore*, 250 Neb. 805, 819, 553 N.W.2d 120, 132 (1996).

The question of whether Neb. Rev. Stat. §77-1371(2000 Cum. Supp.) applies to those sales which may be included in the Sales File is resolved by reference to Neb. Rev. Stat. §77-1372 (2000 Cum. Supp.) which provides:

"All transactions of real property for which the statement required in section 76-214 is filed shall be available for development of a sales file for analysis of level of value and quality of assessment for purposes of section 77-5027 and for use by assessing officials in establishing assessed valuations. All transactions with stated consideration of more than one hundred dollars or upon which more than one dollar and seventy-five cents in documentary stamp taxes are paid shall be considered sales. All sales shall be deemed to be arm's length transactions unless determined to be otherwise. The Department of Property Assessment and Taxation shall not overturn a determination made by a county assessor regarding the qualification of a sale unless the department reviews the sale and determines through that review that the determination made by the county assessor is incorrect."

The uses to which the sales file is put are: first, to measure an assessor's performance in determining the assessed

value of real property; and second, to determine actual value or fair market value.

The assessor, in determining value, must comply with the provisions of state law which hold that non-agricultural real property shall be valued at actual or fair market value. Neb. Rev. Stat. §77-201(1) (2000 Cum. Supp.). Agricultural real property shall be valued at 80% of actual or fair market value. Neb. Rev. Stat. §77-201 (2) (2000 Cum. Supp.). Actual value or fair market value must, in turn, be determined using professionally accepted mass appraisal methodologies. Neb. Rev. Stat. §77-112 (2000 Cum. Supp.). Therefore the sales which are used in the Sales File or Sales Roster (which is, in turn, used to set or determine "market value") must reflect "market value." The provisions of Neb. Rev. Stat. §77-1371 (2000 Cum. Supp.) therefore do apply to sales which are to used in the Sales File.

B.
REGULATORY PROVISIONS

The Department of Property Assessment and Taxation has promulgated rules and regulations which adopt definitions. The Department defines "actual value" as follows:

"Actual value shall mean the market value or fair market value of property in the ordinary course of trade. It is the most probable price expressed in terms of money that a property will bring if exposed

for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. Actual value may be determined using professionally accepted mass appraisal methods, including but not limited to the (1) sales comparison approach, taking into account factors such as location, zoning, and current functional use, (2) income approach, and (3) cost approach. Such methods should consider factors including but not limited to location, zoning, current functional use and highest and best use."

Title 350, Neb. Admin. Code, Chapter 10, Reg. 001.15; Title 350, Neb. Admin. Code, Chapter 11, Reg. 002.01D; Title 350, Neb. Admin. Code, Chapter 12, Reg. 002.09; Title 350, Neb. Admin. Code, Chapter 14, Reg. 002.03; Title 350, Neb. Admin. Code, Chapter 50, Reg. 001.01; and Title 350, Neb. Admin. Code, Chapter 80, Reg. 002.01.

The rules and regulations of the Department also provide a definition of the term "qualified sale:"

"Qualified sale shall mean a sale which the selling price is an arm's length transaction between a willing buyer and willing seller in the ordinary course of

business in which the consideration is market value, or a non-qualified sale which has been adjusted to reflect the current market value."

Title 350, Neb. Admin. Code, Chapter 12, Reg. 002.13. These rules and regulations, of course, have the same force and effect as law. *Alexander v. J. D. Warehouse*, 253 Neb. 153, 568 N. W. 2d 892 (1997).

The definition of "market value," under both the professionally accepted mass appraisal definition and the definition adopted by the Property Tax Administrator, explicitly requires that "a reasonable time is allowed for exposure in the open market."

It should be noted here that although the Department's Rules and Regulations attempt to define the terms "arm's-length transaction" and "market value" as two different concepts, the concepts are inextricably linked under professionally accepted mass appraisal methodologies.

The Rules and Regulations of the Property Tax Administrator also address the collection, review and use of information which is used in the creation of the Sales File. *Title 350, Neb Admin. Code, Chapter 12.* The collection of information which becomes part of the Sales File is also governed by a directive issued by the Property Tax Administrator. [This Directive is found in the *Assessors Reference Manual*, under the tab marked "Directives,"

and is entitled *Responsibilities of the County or State Assessor and the Department of Property Assessment and Taxation in the Development of the Real Property Sales File for Assessment Year 2001* ("the Directive"). (Directive 00-5, issued August 14, 2000.)]

County assessors, pursuant to Neb. Rev. Stat. §77-5007(2000 Cum. Supp.) and the Directive, have the right to challenge the inclusion, exclusion, or adjustment of sales which are used in the Qualified Sales Roster. (*The Directive*, pp. 7 - 8). The Property Tax Administrator has also promulgated rules and regulations governing protests of sales which may be included in the Qualified Sales Roster. *Title 350, Neb. Admin. Code, Chapter 12.*

C.

PROFESSIONALLY ACCEPTED MASS APPRAISAL DEFINITIONS

The term "arm's-length transaction" is also defined under professionally accepted mass appraisal methodologies. The phrase is a 'term of art' which is defined as:

"A sale between two unrelated parties, both seeking to maximize their positions from the transaction."

Mass Appraisal of Real Property, IAAO (1999), p. 350. The existence of an arm's-length transaction is fundamental to a determination that the sale price represents "market value." The

phrase "market value" is another 'term of art' in appraisal and assessment practices. The phrase is defined as:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (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 in United States dollars or in terms of financial arrangements comparable thereto; and, (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, 2nd Ed., International Association of Assessing Officers, 1996, p. 19.

Correct application of these definitions is essential under professionally accepted mass appraisal methodologies. Only those

sales in which the consideration represents "market value" should be used in order to set values or measure the level, uniformity and proportionality of assessments. The importance of using appropriate sales in the database cannot be overstated.

"Sales data are needed for specifying and calibrating valuation models and for sales ratio studies. The reliability of any valuation model or sales ratio study depends on the quantity and quality of its data. Sales data must be collected, edited, and adjusted to obtain valid indicators of market value."

Property Appraisal and Assessment Administration, International Association of Assessing Officers (1990), p. 133.

"Sales screening" the process used to determine whether particular sale should be used in the Sales File.

"Sales must be screened to identify sales that require adjustment or are not indicative of market value. In general, sales fall into seven categories: **Market Value Sales (Single Parcel) . . . Multiple Parcel Sales. . .**

Non-Arm's Length Sales Such sales should not be used in ratio studies. Some typical examples are *Sales involving courts, governmental entities, or public utilities. . . Sales involving charitable, religious, or educational institutions. . . Sales in which a financial institution is the buyer. . . Sales between*

relatives or corporate affiliates. . . Sales of convenience. . . Estate sales. . . **Partial Interest**

Sales . . . Land Contracts . . . Trades . . . Outliers.

Property Appraisal, Id. at pp. 136 - 138. (Emphasis in original). See also *Mass Appraisal of Real Property*, International Association of Assessing Officers (1999), pp. 52 - 55.

In sum, "Sales that do not represent open-market, arm's-length transfers should not be used in ratio studies." *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers (1996), p. 305. The Nebraska Supreme Court has taken the same position since at least 1966. *Equitable Life Assur. Soc. Of U.S. v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 63, 425 N.W.2d 320, 323 (1988). (Citations omitted.)

**D.
THE "PRESUMPTIONS"**

The Department's Rules and Regulations are drafted in such a fashion that there is a "presumption" created under which any given sale is deemed appropriate for inclusion in the Qualified Sales Roster unless the Assessor "proves" otherwise. This "presumption" is clear when the Department's Rules and Regulations are read *in pari materia*. The Department's regulations provide that:

"All Real Estate Transfer Statements, Forms 521, filed with the Department of Revenue by the register of deeds with consideration stated or documentary stamp tax paid will be entered into the sales file database."

Title 350, Neb. Admin. Code, Chapter 12, Reg. 003.01. The regulations also provide that:

"The assessor may indicate numerically on the sales worksheet their opinion as to whether the sale is qualified or non-qualified for inclusion in the determination of the level of value or quality of assessment in the county. If the assessor recommends that the sale is not qualified, the reasons for the non-qualification shall be stated on the sales worksheet n (sic) addition to the numeric code.

Additionally, the assessor shall state with whom the sales information was verified."

Title 350, Neb. Admin. Code, Chapter 12, Reg. 003.02C. The net effect of these provisions is to create an inference that a sale is the result of an arm's length transaction **and** that the sale price represents market value unless the assessor proves otherwise. As noted above, these provisions have the force and effect of law. *J. D. Warehouse, supra.*

There is another "presumption" which must also be considered. It is a well-settled principle of law that the

decision of an assessing official is presumed to be correct. This presumption dates back to at least 1889. See, e.g., All presumptions are in favor of the action of the officer, unless the acts done appear to be unlawful. *Burton v. Cave*, 26 Neb. 186, 41 N.W. 1099 (1889).

The record does not establish what weight, if any, the presumption which is afforded by Nebraska Supreme Court decision, and which is specifically recognized in Neb. Rev. Stat. §77-1372(2000 Cum. Supp.), was given by either the Department or the Property Tax Administrator.

E.

EXPOSURE ON THE OPEN MARKET

The *Uniform Standards of Professional Appraisal Practice*, 2000, ("USPAP") address both "fee" appraisals (Standards 1 through 5) and "mass" appraisal (Standard 6). The *Statement on Appraisal Standards No. 6*, explains the concept of "reasonable exposure time." The *Statement* provides:

"Reasonable exposure time is one of a series of conditions in most market-value definitions. . . Exposure time is different for various types of property and under various market conditions. It is noted that the overall concept of reasonable exposure encompasses not only adequate, sufficient and

reasonable time but also adequate, sufficient and reasonable effort."

USPAP, Id., at p. 80.

The Department's Rules and Regulations, when read *in pari materia*, also establish that the question of whether a sale is the result of an "arm's-length transaction," and the question of whether the sale price represents "market value," can only be determined on a case-by-case basis.

**F.
ADJUSTMENTS UNDER
PROFESSIONALLY ACCEPTED MASS APPRAISAL METHODOLOGIES**

Adjustments can only be determined on a case-by-case basis as well. Professionally accepted mass appraisal methodologies do allow for an adjustment to sales price for sales which are used for purposes of comparison or for ratio studies.

"Perhaps the most important aspect of market analysis is location. Property values for otherwise similar parcels can vary substantially due to location. During market analysis, one should include location as an independent variable in cross tabulations, breakdowns and the like. This will reveal patterns in values due to location and aid in model specification. Three basic ways to analyze location in mass appraisal model building are multiple models based on geographic

stratification, multiple models based on cluster analysis, and a single model with location adjustments."

Mass Appraisal of Real Property, International Association of Assessing Officers (1999), pp. 118 - 119. (Emphasis added).

The idea that sale prices must be adjusted finds support in case law. The Nebraska Court of Appeals, based on Supreme Court precedent, has consistently held that "cost" does not necessarily equal "market value." See, e.g., *Forney v. Box Butte County Bd. of Equalization*, 7 Neb. App. 417, 424, 582 N. W. 2D 631, 637, (1998).

Professionally accepted mass appraisal methodologies specifically address concerns regarding agricultural land.

"Agricultural land models are possible where sufficient sales permit. Independent variables should relate to soil type or productivity, location, and other significant attributes."

Mass Appraisal, Id., p. 140. (Emphasis added).

Adjustments necessary under the Sales Comparison Approach can only be made if there is evidence to support the adjustment. This evidence is always derived from "the market." The same principle applies to the use of sales in the Roster. *Mass Appraisal of Real Property*, International Association of Assessing Officers (1999), p. 80.

The matter is of more than academic concern. The Supreme Court of the State of Nebraska noted in instance that:

"As we see it, the sales assessment ratio as compiled in this case was nothing more than the application of a statistical method to a mass of raw, unchecked and uncertain information."

Carpenter v. State Bd. of Equal. & Assessment, 178 Neb. 611, 624, 134 N.W.2d 272, 280 (1965). The Department has taken great lengths to improve the quality of the information which goes into the Sales File or Roster. The question now arises whether the proposed adjustment will be in keeping with the Department's efforts to improve the quality of the information which goes into the Roster, and the reliability of the Assessment-Sales Ratios.

The Assessor's evidence in support of her Twenty-Five Dollar (\$25) per acre "adjustment" for "adjoining land" is based on a quote attributed to the Property Tax Administrator in a newspaper article. There is no evidence that this quote, even if true, is derived from the market.

Both Neb. Rev. Stat. §77-1372 (2000 Cum. Supp.) and professionally accepted mass appraisal methodologies prefer that all sales be deemed qualified, as noted above. If the transaction is not qualified, adjustments may often be made to the sale price to bring the sale price to "market value." However, where there is no basis from which an adjustment may be

made, an unqualified sale cannot be transformed into a qualified sale.

G.
THE FOUR SALES

The record clearly demonstrates that none of the four sales were ever listed on the "open market." And, each of the sales had additional features which are problematic. In Case Number 00PT-12, not only did the buyer own adjoining land, but the buyer had been leasing the purchased property for years, and the seller "wanted to be fair," as opposed to wanting to "maximize" the seller's position. In Case Number 00PT-13, the Department's own information establishes that "She took it because her aunt had grassland that the neighbors had been using for years and did not know it belonged to seller. Seller thought there might be a problem getting the land back." (E21:8). Again, the buyer and seller are not typically motivated, as required by a transaction where the sale price represents "market value." In Case Number 00PT-14, the Department's own information states that the buyer paid "to (sic) much" for the adjoining land. (E21:9). Finally, in Case Number 00PT-25, again the seller wanted to negotiate a "fair" price for the tenant who had leased the property for years and who also owned adjoining property.

The record clearly demonstrates that the parties to these transactions were not typically motivated. The record

demonstrates in particular that none of the transactions were ever listed on the open market, and further that the buyers were owners of adjoining property, and in many cases had leased the property for an extended period of time prior to purchase. Under the applicable provisions of state law, the Department's own rules and regulations, and professionally accepted mass appraisal methods, these sales fail to qualify as "arm's-length transactions" where the price paid reflects "market value." These four sales must therefore be excluded from the Qualified Agricultural Sales Roster for Garden County for tax year 2001.

**V.
CONCLUSIONS OF LAW**

**A.
JURISDICTION**

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007(11) (2000 Cum. Supp.).

**B.
STANDARD OF REVIEW**

The Commission is required to hear this appeal:
"as in equity and without a jury and determine *de novo* all questions raised before the . . . Property Tax Administrator which relate to the liability of the property to assessment or the amount thereof. The commission shall affirm the action taken by the . . .

Property Tax Administrator unless evidence is adduced establishing that the action of the . . . Property Tax Administrator was unreasonable or arbitrary."

Neb. Rev. Stat. §77-5016(7) (2000 Cum. Supp.). The Nebraska Supreme Court, in construing similar language drawn from Neb. Rev. Stat. §77-1511 (Reissue 1996), has determined that the burden of persuasion imposed on the Assessor is by "clear and convincing evidence." *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

C.
SUBSTANTIVE CONCLUSIONS OF LAW

The Commission, from the entire record before it, concludes as a matter of law that it has jurisdiction over both the parties and the subject matter of this appeal.

VI.
ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the decision of the Property Tax Administrator which denied each of the Garden County Assessor's four protests is vacated and reversed.
2. That the Property Tax Administrator is directed to exclude from the Qualified Agricultural Sales Roster for Garden County for tax year 2001 the following described sales of

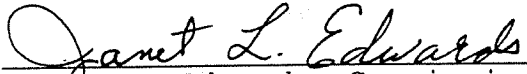
agricultural real property, and further said sales are not to be used in any ratio studies or measures of central tendency for agricultural real property within Garden County:

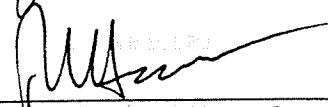
<u>Case Number</u>	<u>Book/Page</u>	<u>Sale Date</u>	<u>Roster</u>
00PT-12	32/328	12/15/1997	Agricultural
00PT-13	32/370	03/19/1998	Agricultural
00PT-14	32/372	12/23/1997	Agricultural
00PT-25	33/157	12/29/1999	Agricultural

3. That these decisions, if no appeal is filed, shall be certified to the Garden County Assessor, and the Property Tax Administrator, pursuant to Neb. Rev. Stat. §77-5016(7) (2000 Cum. Supp.).
3. That these decisions shall only be applicable to tax year 2001.
4. That each party is to bear its own costs in these matters.

IT IS SO ORDERED.

Dated this 30th day of January, 2001.


 Janet L. Edwards, Commissioner


 Robert L. Hans, Commissioner


 Mark P. Reynold, Chairman

