

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

SHARON L. SANDBERG,)	
Banner County Assessor,)	
)	
Appellant,)	CASE NO. 01A-158
)	
vs.)	
)	
BANNER COUNTY BOARD OF)	
EQUALIZATION,)	FINDINGS AND ORDER
)	
and)	
)	
DAVID A. WHELCHER,)	
)	
Appellees.)	

Filed October 9, 2003

Appearances:

For Sharon L. Sandberg, Banner County Assessor:	Richard A. Douglas Douglas, Kelly, Meade, P.C. P.O. Box 419 Scottsbluff, NE 69363-0419
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For the Banner County Board of Equalization:	James L. Zimmerman Sorensen, Zimmerman & Mickey, P.C. P.O. Box 1557 Scottsbluff, NE 69361
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For David A. Whelchel	No Appearances.
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Before: Commissioners Hans, Lore, Wickersham and Reynolds.
Reynolds, Chair, for the Commission.

**I.
STATEMENT OF THE CASE**

The Banner County Assessor is responsible for determining the assessed value of real property within her county. The

Assessor used the Sales Comparison Approach to value "farm home sites" within the County for tax year 2001.

David A. Whelchel owns real property within the County. The Taxpayer protested the Assessor's values to the Banner County Board of Equalization. (E7). The Board granted the Taxpayer's protest in part, and reduced the assessed value of the one-acre "farm home site" from \$5,000 to \$3,500. (E7).

The Assessor appealed each of the Board's decision to the Commission, alleging the Board's decision was arbitrary. (Appeal Form). The Board and the Taxpayer each timely filed answers. The Commission consolidated this appeal with 57 other appeals concerning the same issue. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties. The Taxpayer failed to appear at that hearing.

The Board offered to confess judgment at the hearing, agreeing that the assessed value of the one-acre "farm home site" was \$5,000 in each of the consolidated appeals.

II. ISSUE

The only issue presented in this appeal is the assessed value of the one-acre "farm home site."

III.
APPLICABLE LAW

An appellant must demonstrate by clear and convincing evidence that the county board of equalization's decision was incorrect and that the decision was either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002). An appellant, under the "unreasonable or arbitrary" standard, must adduce clear and convincing evidence that the Board either failed to faithfully perform its official duties or that the Board failed to act upon sufficient competent evidence. The Appellant, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's value was unreasonable. *Garvey Elevators v. Adams County Bd. of Equal.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

IV.
FINDINGS OF FACT

The Commission finds and determines as follows:

1. The Taxpayer owned the subject property on the January 1, 2001, assessment date. (E7).
2. The Taxpayer protested the Assessor's determinations of value on or before July 1, 2001. (E7).
3. The Board granted the protest in part, and reduced the assessed value of the one-acre "farm home site" from \$5,000 to \$3,500. (E7).
4. The Assessor timely filed an appeal of that decision.

5. The Taxpayer failed to appear at the hearing on the merits of the appeal.
6. None of the Parties adduced any evidence suggesting that the Board's decisions were correct, reasonable, and "not arbitrary."
7. None of the Parties adduced any evidence suggesting that the Board's valuation decision was reasonable.
8. The Taxpayer adduced no evidence of value.
9. The Board's only evidence of value is that the actual or fair market value of a one-acre "farm home site" in Banner County, Nebraska for tax year 2001 was \$5,000.

**V.
ANALYSIS**

Non-agricultural land must be valued for purposes of real property taxation at actual or fair market value. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2002). A "farm home site" is a tract of non-agricultural land not more than one-acre in size contiguous to a farm site which includes a habitable residence. Neb. Rev. Stat. §77-1359 (Cum. Supp. 2002).

The Assessor determined that the actual or fair market value of the one-acre "farm home site" was \$5,000. The Board granted the Taxpayer's protest in part and reduced the proposed value of that one-acre "farm home site" from \$5,000 to \$3,500.

The Assessor timely filed an appeal of that decision, and alleged that the Board's decision to grant the Taxpayer's protest in part was incorrect, unreasonable, and arbitrary, and that the Board's value (\$3,500) was unreasonable. (Appeal Form). The Board offered to confess judgment, and agreed that the actual or fair market value of a one-acre farm home site in Banner County, Nebraska, was \$5,000 for tax year 2001. (Offer to Confess Judgment).

The Commission must affirm the Board's decisions unless evidence is adduced that those decisions are incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9). An appellant must overcome this "statutory presumption" in order to prevail. An appellant must first provide clear and convincing evidence that the Board's decision is incorrect, and that the Board either failed to faithfully perform its official duties or failed to act upon sufficient competent evidence. The appellant must then demonstrate by clear and convincing evidence that the Board's values are unreasonable. *Garvey Elevators v. Adams County Bd. of Equal.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

The Board's offer to confess judgment is equivalent to a stipulation of value. A stipulation by the parties to a proceeding or by their attorneys within the scope of authority for representation of the parties, establishes the fact or facts

stipulated and binds the parties. *Ehlers v. Perry*, 242 Neb. 208, 218, 494 N.W.2d 325, 333 (1993) (Citations omitted).

The Taxpayer failed to appear, and offered no evidence refuting the value determined by the Assessor and agreed to by the Board. The Assessor's evidence, agreed to by the Board, constitutes clear and convincing evidence which overcomes the statutory presumption.

The Commission must base its decision on the record before it. Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9). The Commission must, therefore, conclude that the actual or fair market value of the non-agricultural one-acre "farm home site" was \$5,000 as of the assessment date.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and the subject matters of these appeals.
2. Non-agricultural real property must be valued at actual or fair market value. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2002). A "farm home site" is non-agricultural real property. Neb. Rev. Stat. §77-1359(3) (Cum. Supp. 2002).
3. The Assessor has satisfied her burden of persuasion. The statutory presumption is extinguished. The Board's decisions must be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Banner County Board of Equalization's decision granting the Taxpayer's protest in part is vacated and reversed.
2. The Taxpayer's real property legally described as the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, Township 18, Range 57, Banner County, Nebraska, shall be valued as follows for tax year 2001:

Land	\$ 13,755
Improvements	\$ 87,046
Total	\$100,801
3. Any request for relief by any Party not specifically granted by this order is denied.
4. This decision, if no appeal is filed, shall be certified to the Banner County Treasurer, and the Banner County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002).
5. This decision shall only be applicable to tax year 2001.

6. Each party is to bear its own costs in this matter

IT IS SO ORDERED.

Dated this 9th day of October, 2003.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Wm. R. Wickersham, Vice-Chair

Seal

Mark P. Reynolds, Chair