

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

SHARON L. SANDBERG,)	
Banner County Assessor,)	
)	
Appellant,)	CASE NO. 01A-176
)	
vs.)	
)	
BANNER COUNTY BOARD OF)	
EQUALIZATION,)	FINDINGS AND ORDER
)	
and)	
)	
ARTHUR D. ALEXANDER, Trustee,)	
)	
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 Arthur D.
Alexander, Trustee: No Appearances

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.

The Arthur D. Alexander Living Trust owns real property within the County. The Taxpayer protested the Assessor's values to the Banner County Board of Equalization. (E25:1). 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. (E25:1; E25:2).

The Assessor appealed the Board's decision to the Commission, alleging the Board's decision was arbitrary. (Appeal Form). The Board timely filed an answer. The Taxpayer filed an answer out of time.

The Commission, after the answer date, 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 Board, prior to the hearing on the merits of the appeal, offered to confess judgment at the hearing, The Board agreed with the Assessor in its offer that the actual or fair market value of the one-acre "farm home site" in Banner County was \$5,000 was \$5,000 in each of the consolidated appeals.

II. ISSUE

The only issue 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. (E25:1).
2. The Taxpayer protested the Assessor's determinations of value on or before July 1, 2001. (E25:1).
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. (E25:2).
4. The Assessor timely filed an appeal of that decision.

5. The Commission consolidated this appeal with 57 other appeals.
6. The Assessor valued all one-acre "farm home sites" within the County at \$5,000 for 2001.
7. The Board reduced the assessed value of one-acre "farm home sites" from \$5,000 to \$3,500 in all but one of the fifty-seven protests filed for 2001. (E28:4). The one-acre "farm home sites" within the County which were not protested have an assessed value of \$5,000 for tax year 2001.
8. None of the Parties adduced any evidence suggesting that the Board's decisions were correct, reasonable, and "not arbitrary."
9. None of the Parties adduced any evidence suggesting that the Board's valuation decision was reasonable.
10. The Taxpayer adduced no evidence of value.

**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 one-acre "farm home sites" was \$5,000 in Banner County for 2001. The Board reduced the proposed value of the Taxpayer's one-acre "farm home site" from \$5,000 to \$3,500. The Assessor timely appealed the Board's decision, and alleged that the Board's decision was incorrect, unreasonable, and arbitrary, and that the Board's value (\$3,500) was unreasonable. (Appeal Form).

The Assessor testified without objection that she valued all one-acre "farm home sites" within Banner County at \$5,000 for 2001. The Assessor determined in this appeal that the actual or fair market value of the Taxpayer's one-acre "farm home site" was \$5,000.

The uncontroverted evidence establishes that the Board reduced the assessed value of one-acre "farm home sites," including the Taxpayer's, from \$5,000 to \$3,500 in all but one of the fifty-seven protests filed for 2001. (E28:4). The one-acre "farm home sites" within the County which were not protested all have an assessed value of \$5,000 for the same year.

The Taxpayer failed to adduce any evidence of actual or fair market value for the subject property. The Taxpayer also failed to adduce any evidence of the actual or fair market value of the one-acre "farm home site." The Board failed to adduce any evidence. [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). That offer cannot, and is not, considered as evidence in this hearing. Neb. Rev. Stat. §77-1510.01(Reissue 1996).]

The Commission, in an informal proceeding, may "admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs." Neb. Rev. Stat. §77-5016(1) (Cum. Supp. 2002). The Commission, as the finder of fact, determines the weight to be given the Assessor's testimony.

The Assessor's uncontroverted evidence establishes that the Board's decision was incorrect, and both unreasonable and arbitrary. The Assessor testified without objection to the basis for her opinion of value. Neither the Board nor the Taxpayer adduced any evidence supporting the Board's decision to reduce the assessed value from \$5,000 to \$3,500. The Board's valuation decision is therefore unreasonable.

The uncontroverted evidence satisfies the Assessor's burden of persuasion and extinguishes the statutory presumption. The only issue remaining is the actual or fair market value of the one-acre "farm home site." 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 Assessor, without objection, adduced the only evidence of actual or fair market value for the one-acre "farm home site." The Commission must, therefore, conclude that the actual or fair market value of

the 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's uncontroverted evidence establishes the Board's decision was incorrect, and both unreasonable and arbitrary.
4. The Assessor's uncontroverted evidence establishes the Board's valuation decision was unreasonable.
5. The Assessor has satisfied the burden of persuasion. The statutory presumption is extinguished. The Board's decision 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 all of Section 9, Township 17, Range 53, Banner County, Nebraska, shall be valued as follows for tax year 2001:

Land	\$ 73,610
Improvements	\$ 73,919
Total	\$147,529

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