

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

SHARON L. SANDBERG,)	
Banner County Assessor,)	CASE NO. 01A-179
)	
Appellant,)	
)	
vs.)	FINDINGS AND ORDER
)	
BANNER COUNTY BOARD OF)	
EQUALIZATION, et al.,)	
)	
and)	
)	
SCOTT D. DELCAMP and LITA F.)	
DELCAMP,)	
)	
Appellees.)	

Filed October 9, 2003

Appearances:

For Sharon L. Sandberg, Banner County Assessor:	Richard A. Douglas, Esq. Douglas, Kelly, Meade, P.C. P.O. Box 419 Scottsbluff, NE 69363-0419
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For the Banner County Board of Equalization:	No Appearances
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For Scott D. Delcamp and Lita F. Delcamp:	Lita F. Delcamp 3410 County Road 69 Harrisburg, NE 69345
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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 non-

agricultural real property within the County for tax year 2001. The Assessor, using the Sales Comparison Approach, determined the actual or fair market value of one-acre "farm home sites" was \$5,000 as of the January 1, 2001, assessment date.

Scott D. Delcamp and Lita F. Delcamp own real property within the County. The real property includes a one-acre "farm home site." The Taxpayer protested the Assessor's proposed values to the Banner County Board of Equalization. (E28:1). 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. (E28:1; E28:2).

The Assessor appealed the Board's decision to reduce the value of the one-acre "farm home sites" to the Commission, alleging the Board's decisions were arbitrary. (Appeal Form). The Board and Taxpayer each timely filed an answer.

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.

**II.
ISSUE**

The only issue presented in this appeal is the actual or fair market 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:

A.
PROCEDURAL FINDINGS

1. The Taxpayer owned the subject property on the January 1, 2001, assessment date. (E28:1).
2. The Taxpayer protested the Assessor's determinations of value on or before July 1, 2001. (E28:1).
3. The Taxpayer alleged that the proposed value exceeded actual or fair market value and was not equalized with comparable property. (E28:1).
4. The Board granted the Taxpayer's protest in part, and reduced the assessed value of each of the one-acre "farm home sites" on the subject property from \$5,000 to \$3,500. (E28:2).
5. The Assessor timely filed an appeal of the decision. (Appeal Form).
6. The Commission consolidated this appeal with 57 other appeals for purposes of hearing.

B.
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The Assessor valued all one-acre "farm home sites" within the County at \$5,000 for 2001.
2. 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.

3. None of the Parties adduced any evidence suggesting that the Board's decisions were correct, reasonable, and "not arbitrary."
4. None of the Parties adduced any evidence suggesting that the Board's valuation decision was reasonable.
5. The Taxpayer requested that the 2001 assessed value be rolled back to the tax year 2000 value.

V. ANALYSIS

A. THE STATUTORY PRESUMPTION AND VALUE

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 valued all one-acre "farm home sites" within Banner County at \$5,000 for 2001. The Taxpayer protested the Assessor's proposed values to the Board. The Board reduced the assessed value of the Taxpayer's one-acre "farm home site" from \$5,000 to \$3,500. (E28:1; E28:2). The Board also reduced the assessed value of all other "farm home sites" where taxpayers

filed protests except one. (E28:4). The remaining one-acre "farm home sites" within the County which were not protested have an assessed value of \$5,000 for tax year 2001.

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 for each "farm home site") was unreasonable. (Appeal Form). The Board did not appear at the hearing before the Commission. [The Board filed an Offer to Confess Judgement which cannot, and is not, considered as evidence in this appeal. Neb. Rev. Stat. §77-1510.01 (Reissue 1996)].

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 testified generally concerning her acquisition of the subject property. This testimony, summarized, includes the following: the Taxpayer acquired the property and built the

house in 1998; the land was acquired in a private sale; the price paid for the land did not represent actual or fair market value; her request that the assessed value be rolled back to the 2000 assessed value (\$104,785); and the allegation that assessed values in Banner County were not equalized with comparable properties. (E63).

The Taxpayer requested that the assessed value be rolled back to the 2000 assessed value. The prior year's assessment is not relevant to a subject year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). The Taxpayer's request is not relevant, and does not constitute evidence of actual or fair market value.

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.

B.
EQUALIZED VALUES OF THE SUBJECT PROPERTY

The Taxpayer alleges that assessments within Banner County were not equalized. Taxes must be levied uniformly and proportionately under Article VIII, of the Nebraska Constitution.

"(1) Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution . . . (4) the Legislature may provide that agricultural land and horticultural land, as defined by the Legislature,

shall constitute a separate and distinct class of property for purposes of taxation and may provide for a different method of taxing agricultural land and horticultural land which results in values that are not uniform and proportionate with all other real property and franchises but which results in values that are uniform and proportionate upon all real property within the class of agricultural land and horticultural land.
. . . "

Equalization is the process of ensuring that all taxable properties are placed on the assessment rolls at a uniform percentage of actual value. *Cabela's, Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb.App. 582, 635, 597 N.W.2d 623, 597 (1999). The burden of proof is on the complaining Taxpayer to establish a lack of equalization. *Collier v. Logan County*, 169 Neb. 1, 6, 97 N.W.2d 879, 884 (1959). Here the Taxpayer failed to adduce any evidence of actual or fair market value for either her property or that of any other property. The Taxpayer, without evidence of actual or fair market value, or some other standard for comparison to actual value, cannot establish a lack of equalization. *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999); *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 588 N.W.2d 190 (1999).

The Commission must conclude that the actual or fair market value of the Taxpayer's one-acre "farm home site" (\$5,000) is equalized with comparable property.

**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 Board of Equalization's decision to reduce the actual or fair market value of the one-acre "farm home site" from \$5,000 to \$3,500 is vacated and reversed.
2. The Taxpayer's real property legally described as the E½SE¼ of Section 10, Township 19, Range 53, Banner County, Nebraska, shall be valued as follows for tax year 2001:

Land	\$ 9,915
Improvements	\$ 99,484
Total	\$109,399
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

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Mark P. Reynolds, Chair