

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

SHARON L. SANDBERG,	)	
Banner County Assessor,	)	CASE NO. 01A-181
	)	
Appellant,	)	
	)	
vs.	)	FINDINGS AND ORDER
	)	
BANNER COUNTY BOARD OF	)	
EQUALIZATION, et al.,	)	
	)	
and	)	
	)	
FLYING BEE BEEFMASTER RANCH,	)	
L.L.C.,	)	
	)	
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 Flying Bee Beefmaster Ranch L.L.C.:	Louise Kinnaman 6755 County Road 42 Bayard, NE 69334
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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 value of one-acre "farm home sites" was \$5,000 as of the January 1, 2001, assessment date.

Flying Bee Beefmaster Ranch, L.L.C., owns real property within the County. The real property includes two one-acre "farm home sites." The Taxpayer protested the Assessor's proposed values to the Banner County Board of Equalization. (E30:1). The Board granted the Taxpayer's protest in part, and reduced the assessed value of each of the one-acre "farm home sites" from \$5,000 to \$3,500. (E30:1; E30:2).

The Assessor appealed each of the Board's decisions concerning the value of the one-acre "farm home site" to the Commission, alleging the Board's decisions were arbitrary. (Appeal Form). The Board and Taxpayer each 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. The Board alleged in its offer that the actual or fair market value of a one-acre "farm home site" in Banner County was \$5,000 for tax year 2001.

**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. (E30:1).

2. The Taxpayer protested the Assessor's determinations of value on or before July 1, 2001. (E30:1).
3. The Board granted the 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. (E30:2).
4. The Assessor timely filed and appeal of the decision. (Appeal Form).
5. The Commission consolidated these appeals with 57 other appeals for purposes of hearing.

**B.**  
**SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. The Parties present at the hearing stipulated and agreed that the actual or fair market value of the two "farm home sites" which share the same utilities and services on the subject property was \$6,500 as of the January 1, 2001.

**V.**  
**ANALYSIS**

**A.**  
**THE STATUTORY PRESUMPTION**

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 for each "farm home site") was unreasonable. (Appeal Form).

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 Parties stipulated that the actual or fair market value of the two one-acre "farm home sites" which shared a single set of well and utilities was \$6,500 as of the January 1, 2001, assessment date. The Commission must, therefore, conclude the actual or fair market value of the two one-acre "farm home sites" was \$6,500 as of the January 1, 2001, 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 Parties' stipulation satisfies the 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 Board of Equalization's decision to reduce the actual or fair market value of each of the one-acre "farm home sites" from \$5,000 to \$3,500 is vacated and reversed.
2. The Taxpayer's real property legally described as the N $\frac{1}{2}$  less a ten-acre tract in the W $\frac{1}{2}$ NE $\frac{1}{4}$ ; and the SE $\frac{1}{4}$ ; and the E $\frac{1}{2}$ SW  $\frac{1}{4}$  in Section 27, Township 20, Range 53, Banner County, Nebraska, shall be valued as follows for tax year 2001:

Land	\$115,155
Improvements	\$ 67,720
Total	\$182,875
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 9<sup>th</sup> day of October, 2003.

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*Robert L. Hans, Commissioner*

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*Susan S. Lore, Commissioner*

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*Wm. R. Wickersham, Vice-Chair*

**Seal**

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*Mark P. Reynolds, Chair*