

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

M. REED GILMORE and PRISCILLA)	
GILMORE REVOCABLE TRUST,)	CASE NO. 02R-05
ROBERT M. BRENNER and LISA D.)	02R-35
BRENNER, and DARNALL RANCH,)	02A-94
INC.,)	02A-95
)	02A-96
Appellants,)	02A-97
)	02A-98
vs.)	
)	FINDINGS AND ORDER
BANNER COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Filed January 20, 2004

Appearances:

For the Appellants; Robert M. Brenner, Esq.
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 Harrisburg, NE 69345

For the Appellee: James L. Zimmerman, Esq.
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Before: Commissioners Lore, Wickersham and Reynolds.

Reynolds, Vice-Chair, for the Commission:

**I.
STATEMENT OF THE CASE**

**A.
THE GILMORE PROPERTY**

The M. Reed and Priscilla Gilmore Revocable Trust owns a tract of land legally described as all of Section 29, Township 18, Range 54, in Banner County, Nebraska. (Case No. 02R-5: E18:1). The 640.36 acre tract of land is improved with a single-

family residence originally built in 1972. (Case No. 02R-5: E6:1). The improvements were completely remodeled and expanded, with the remodeling completed by April, 2001. The Assessor reported that the residence is a one-story home with 3,481 square feet of above-grade finished living area; a finished walk-out basement which is also 3,481 square feet in size; and an attached garage which is 890 square feet in size. (Case No. 02R-5:E18:2).

The Banner County Assessor ("the Assessor") proposed valuing the subject property in the amount of \$542,774 as of January 1, 2002 ("the assessment date"). (Case No. 02R-5: E18:1). The Assessor based her proposed value of the improvements on the Cost Approach with Cost Factors from September, 1997, an "Excellent" Quality of Construction, and a "Condition" of "Excellent." (Case NO. 02R-5: E18:2).

The Gilmores protested the residential improvement value to the Banner County Board of Equalization ("the Board"). (Case Number 02R-5: E1). The Gilmores alleged (1) the proposed value exceeded actual or fair market value and (2) the proposed value was not equalized with comparable property. (Case No. 02R-5: E:1). The Board denied the protest and the Gilmores timely appealed. (Case No. 02R-5: E1).

B.
THE BRENNER PROPERTY

Robert M. Brenner and Lisa D. Brenner own a tract of land legally described as the NE¹/₄ and the E¹/₂NW¹/₄ of Section 32, Township 19, Range 54, in Banner County, Nebraska. (Case No. 02R-35: E32:1). The 230.12 acre tract of land is improved with a single-family residence. The Brennens started construction in 1997 and construction was complete in 1999. (Case No. 02R-35: E53:4).

The Assessor reported that the residence is a ranch-style home with 2,544 square feet of above-grade finished living area; a walk-out basement which is 2,256 square feet in size; and an attached garage which is 1,020 square feet in size. (Case No. 02R-35: E32:2). The Assessor's proposed value for both land and improvements was \$265,485 as of the assessment date. (Case No. 02R-35:E32:1). The Assessor based her opinion of value for the residential improvement component on the Cost Approach using September, 1997, Cost Factors, a "Quality of Construction" of "Good" and a "Condition" of "Average." (Case No. 02R-35: E32:2).

The Brennens timely protested the proposed value of both the land and improvement components of their property to the Board. (Case No. 02R-35: E1:1). The Brennens alleged that (1) the proposed value of the land and improvements exceeded actual or fair market value and (2) the value of the improvements was not equalized with comparable property. (Case No. 02R-35: E1:2).

The Board granted the protest in part, and reduced the residential improvement value from \$217,865 to \$213,649. (Case No. 02R-35: E32:1). The Brenners timely appealed.

C.
THE DARNALL RANCH PROPERTY

Darnall Ranch, Inc., owns five separate parcels of real property in Banner County. Each of the parcels is improved. The Assessor proposed values for each of the parcels for purposes of real property taxation as of the assessment date. (Case No. 02A-94: E1 - E5).

Darnall Ranch only protested the proposed residential improvement values to the Board in its appeals. (Case No. 02A-94: E1: 1-3; E2: 1-3; E3: 1-3; E4: 1-3; E5: 1-3). Darnall Ranch alleged generally in each protest that (1) the proposed values exceeded the amounts authorized by law and (2) the proposed values were not equalized with comparable property. (Case No. 02A-94: E1 - E5). The Board denied each of the protests. Darnall Ranch, Inc., timely appealed.

D.
EVIDENCE BEFORE THE BOARD

The Taxpayers introduced the Property Tax Administrator's Audit of the Assessor's Office as evidence in proceedings before the Board. (Case Number 02R-5: E32; Case Number 02R-35: E28; Case

Number 02A-94: E49). The Audit Report concluded that (1) the last reappraisal of real property was completed in 1981 (*Audit Report* at p. 6); (2) the last "appraisal update" was completed in 2001 (*Audit Report* at p. 7); (3) 1997 Cost Factors were used for the 2001 "appraisal update" (*Audit Report* at p. 8); and (4) the Assessor's records were inaccurate and incomplete (*Audit Report* at pp. 13-15).

The Audit Report also concluded that the median of the Assessment to Sales Ratio for residential real property within the County was 60% for tax year 2002 based on six sales between July 1, 1999, and June 30, 2001. State law requires the median to fall between 92% and 100% for residential real property. Neb. Rev. Stat. §77-5023(3) (2003 Supp).

E.
APPEAL TO THE COMMISSION

The Commission served a Notice in Lieu of Summons on the Board for each of the pending appeals. The Board timely filed Answers in each appeal and the Commission then consolidated these appeals for purposes of hearing. The Commission issued an Order for Hearing and Notice of Hearing which was served on each of the Parties as shown by the Affidavit of Service.

The Commission called these appeals for hearing on June 25, 2003. The hearing was recessed at the end of the day, and reconvened on November 13, 2003. That hearing was interrupted by

technical difficulties, and was reconvened, and concluded, on January 12, 2004. Each Party was afforded the opportunity to present evidence and argument during the course of the hearing, and each Party was afforded the opportunity to cross-examine witnesses for the opposing Party.

II. ISSUES

The issues before the Commission are (1) whether the Board's decisions were incorrect and either unreasonable or arbitrary; and (2) whether the values as determined by the Board were unreasonable.

III. APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the decision of the Board was incorrect and (2) that the decision of the Board was either unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (2003 Supp.)). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) failed to act upon sufficient competent evidence in making its decision.

The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the

Board's determination of value was unreasonable. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

**IV.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Assessor failed to inspect any of the subject properties for tax year 2002.
2. The Assessor's records are inaccurate and incomplete.

**V.
ANALYSIS**

**A.
BURDEN OF PROOF**

The statutory presumption is extinguished when an assessor fails to inspect the property. *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966). The Assessor did not inspect any of the properties for tax year 2002. The statutory presumption does not apply to the Board's decisions in these appeals. The Taxpayers, however, retain the burden of demonstrating that the Board's values are unreasonable.

The residential improvement values shown on the Property Record File were calculated using the Cost Approach, as shown on

the Cost Approach Work Sheets in each appeal. (Case No. 02R-5: E18:2; Case No. 02R-35: E32:2; Case No. 02A-94: E40: 2-4; E46: 2, 4, 5, 6; E48:2-6; E42:2-3; E44:2). The Cost Factors used in the calculations were from September, 1997. The use of these out-of-date Cost Factors resulted in a median level of assessment of 60%. The acceptable range for the median of the Assessed Value to Sales Price ratio is 92% to 100%. Neb. Rev. Stat. §77-5023(3) (2003 Supp.).

The Board generally denied the Taxpayers' protests, making only a minor adjustment in Case Number 02R-35 by reducing the value of the improvements from \$217,865 to \$213,649. (Case Number 02R-35: E32:1). The Board's decisions were based on the Assessor's methodology and values. The Assessor, however, had not inspected the subject property. The Property Tax Administrator's Audit conclusions concerning errors in record keeping are supported by the Taxpayers' testimony both before the Board and before the Commission. The Assessor and the Board were served with copies of the Audit prior to the Board's equalization proceedings, yet the Board took no action to correct these errors for tax year 2002.

B.
THE COST APPROACH

Assessors are required to use professionally accepted mass appraisal methods in valuing real property. Neb. Rev. Stat. §77-

112 (Cum. Supp. 2002). The Cost Approach is a professionally accepted mass appraisal methodology. Neb. Rev. Stat. §77-112 (Cum. Supp. 2002). The Cost Approach, under professionally accepted mass appraisal methodologies, has six steps:

“(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.” *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, pp. 128 - 129.

The Assessor, in a number of instances in these appeals, failed to properly implement the Cost Approach when valuing the subject real property residential improvements for tax year 2002.

C.
EQUALIZATION

The Taxpayers allege that the residential improvement component of their property was not equalized with comparable property.

"Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when

compared with valuation placed on other similar property is grossly excessive.”

Cabela's Inc. v. Cheyenne County Bd. of Equalization, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999). Where the discrepancy is not the result of an error of judgment but is a deliberate and intentional discrimination systematically applied the Taxpayer's right to relief is clear.

“The right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.”

Kearney Convention Center v. Buffalo County Board of Equalization, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).

The Property Tax Administrator's Audit and the Assessor's Assessment to Sales Ratio Study were based on the sale of six residential properties within a two-year period. The Assessor testified that there are 400 parcels of residential real property within Banner County. There is no evidence that six sales in a

two-year period provides a statistically valid base for conclusions regarding the level of assessment. There is no evidence that these six sales were comparable to any of the residential improvements at issue in these appeals.

When the Assessor was asked if all residential real property within the County was valued using the same methodology, the Taxpayers objected. The objection was sustained. In the absence of this evidence, neither the Audit report nor the Assessor's Ratio Study establish by clear and convincing evidence that there is a lack of equalization.

D.
VALUE OF THE GILMORE'S HOUSE

I.
TAXPAYER'S EVIDENCE

The Board determined that the actual or fair market value of the Gilmores' property was \$542,774 for tax year 2002. (Case Number 02R-5: E18:1). The Gilmores allege this amount exceeds actual or fair market value and that the value is not equalized with comparable property. (Case No. 02R-5: E18:1).

The Board's value is based on the Assessor's application of the Cost Approach. (Case No. 02R-5: E18:2). The first step in valuing improvements under the Cost Approach requires an accurate determination of Replacement Cost New. Replacement Cost New, in turn, requires an accurate determination of the size of the

improvements and the use of accurate costs per unit of construction.

The Assessor's records show the Gilmore's property is a single-story residence with 3,481 square feet of above-grade finished living area. The home is built into the side of a hill, with part of the home above-grade on the back side of the house. All of the front side of the house is above-grade. Cost per unit of construction for below-grade improvements may vary significantly from cost per unit of construction for above-grade improvements. In this appeal, for example, the Assessor used costs for above-grade improvements of \$92.02 per square foot, while costs for below-grade improvements was \$36.50 per square foot. (Case Number 02R-5: E:18:2). The Assessor's records show both the main floor and the "basement" of the Gilmores' house as having an area of 3,481 square feet. (Case Number 02R-5: E18:2).

The Gilmores and their Appraiser testified that the living room is on the lower level, and that living room is open to the ceiling of the second level. The lower level also includes an unfinished area, which according to the Assessor's records is finished.

The Taxpayer adduced Exhibits 6 and 7 in support of the allegation that the Assessor's records are incorrect. However, these exhibits do not reflect the actual design and layout of the improvements as of the assessment date. There is, for example,

no front door shown on the diagram; the Taxpayer testified that the circular staircase shown has been removed; and, among other things, the dining room wall as shown on Exhibit 6 does not exist.

Neither Party adduced clear and convincing evidence of the dimensions, design and layout of the home. The size of the residential improvements cannot be determined from the record before the Commission. Given the Assessor's failure to inspect the property, and the discrepancies in size of the improvements reported on the Property Record File, proper application of the Cost Approach isn't possible.

The Assessor's records show the "Quality of Construction" was "Excellent" and the "Condition" was also "Excellent." (Case No. 02R-5: E18:2). Both of these factors have a significant impact on Replacement Cost New. (Compare *Marshall-Swift Residential Cost Handbook*, 9/97, Replacement Cost New for Excellent Quality of Construction and for Very Good Quality of Construction.)

The Taxpayer adduced the testimony of a Certified General Appraiser licensed by the State of Nebraska ("the Taxpayer's Appraiser. The Taxpayer's Appraiser testified originally that the "Quality of Construction" was "Good" and the "Condition" was "Good" to "Very Good." The Board failed to adduce any evidence rebutting this testimony. Nothing in the record supports a

determination of an "Excellent" "Quality of Construction" or a "Condition" of "Excellent" for the Gilmore's house. The Taxpayer, however, failed to adduce evidence quantifying the impact on Replacement Cost New.

The Gilmores also allege the Assessor failed to account for external depreciation. The Gilmores and their Appraiser offered testimony that the improvements are "grossly overbuilt" for Banner County. The Taxpayer therefore alleged that a 50% depreciation factor should be attributed to the subject property based on rural location in Banner County, Nebraska.

"External Obsolescence is loss in value as a result of an impairment in utility and desirability caused by factors external to the property (outside the property's boundaries) and is generally deemed to be incurable."

Property Assessment Valuation, 2nd Ed., International Association of Assessing Officers, 1996, pp. 155. Overbuilt improvements are recognized as a source of external obsolescence in Nebraska.

Forney v. Box Butte County Bd. of Equalization, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998). The taxpayer bears the burden of demonstrating the amount of external obsolescence or the impact on actual or fair market value by clear and convincing evidence. *Id.* The Taxpayer adduced no evidence in support of a

depreciation factor of 50% for the improvements to the subject property.

ii.

VALUE OF THE GILMORE'S HOUSE

The Taxpayer bears the burden of proof. The Taxpayer, after demonstrating that the Board's decision was incorrect and either unreasonable or arbitrary, must then demonstrate that the Board's value was unreasonable. The Taxpayer, as perhaps the most critical element of a successful appeal, must then adduce clear and convincing evidence of actual or fair market value. Failure to do so results in decisions faulting the Board's value, but no change in that value. *See, e.g., DeBruce Grain v. Otoe Cty. Bd. of Equal.*, 7 Neb.App. 688, 584 N.W.2d 837 (1998).

The house value cannot be directly determined from the Cost Approach, since 1997 Cost Factors for "Good" rather than "Excellent" "Quality of Construction" for houses greater than 3,000 square feet in size are not in the record. There is no evidence of comparable properties which have sold. There is no evidence from which an indication of value could be determined under the Income Approach.

The Board's evidence is not credible. The Taxpayer's only evidence of value consists of Mr. Gilmore's testimony. That testimony consists of testimony that \$195,000 was "an acceptable value." Later, the testimony changed and the owner testified

that the house was worth \$190,000, but that he wouldn't sell it for that price. Other testimony included statements that the owner couldn't remember how much he had invested in the subject property but that the "base cost" of the construction contract was \$368,000.

Mr. Gilmore also requested that his house be valued at its 2001 level of value before the 20% increase. The house, however, was only 75% complete in 2001, and valued accordingly. Mr. Gilmore acknowledges this fact. The assessed value of the house for 2001 as determined by the Assessor was \$454,450. (Case Number 02R-5: E18:1). The Assessor added 20% to all residential improvements in Banner County for tax year 2002, including Mr. Gilmore's house. (Case Number 02R-5: E19:1). The Assessor's final determination of value, including the 20% adjustment, was \$545,350. (Case Number 02R-5: E18:1; E19:1). Mr. Gilmore protested this value, and the Board granted the protest. The Board determined that the equalized value of the 75% complete house was \$195,173. (Case Number 02R-5: E18:1). This value, adjusted for 100% completion, establishes an equalized value of \$260,230 as of the assessment date. [$\$195,173 \div 75\% = \$260,230$].

The Commission has no authority to remand this appeal for further proceedings to the Banner County Board of Equalization. The record presented is inadequate and contradictory. Under these circumstances, the Commission is compelled to find that the

actual or fair market value of the subject property was \$260,230 as of the January 1, 2002, assessment date.

The Taxpayer requested that the assessed value of the subject property be equalized with comparable properties. The burden of demonstrating a lack of equalization is on the Taxpayer. The Taxpayer adduced no evidence of comparable property. In fact, the record demonstrates that the subject property is unique in Banner County. The Taxpayer's request for equalization must accordingly be denied.

E.
VALUE OF THE BRENNERS' PROPERTY

The Brenners' property includes 230.12 acres of land valued at \$44,600, a "Feeder Barn" valued at \$2,237, a "Material Storage Shed" valued at \$783, and a house valued at \$213,649. (Case Number 02R-35: E32: 1-7).

The Brenners failed to adduce clear and convincing evidence concerning the actual or fair market value of the land component of their property, although the value of the home site was at issue in this appeal. The Board determined that the value of the land component, including the disputed value of the home site, was \$44,600 as of the assessment date. (Case No. 02R-35: E32:1). The Taxpayer failed to offer clear and convincing evidence disputing this record. The Commission must therefore conclude that the value of the land component was \$44,600.

Ms. Brenner, one of the owners of the property, holds a certificate to serve as a county assessor. She testified that the Material Storage Shed should be valued at \$230 and the Feeder Barn be valued at \$1,100, for a total of \$1,330. The Board did not refute this testimony. The two sheds were valued at \$1,500 by Board for tax year 2001. (Case No. 02R-35: E32:1). There is no evidence that these structures appreciated in value between 2001 and 2002. From this limited record the Commission, for the same reasons set forth earlier, must conclude that the actual or fair market value of the outbuildings was \$1,330.

Ms. Brenner also testified that the actual or fair market value of the property, including both land and improvements, was \$200,000 to \$204,000. This testimony indicates that the owners opinion of value was between \$154,070 and \$158,070 for the house. [$\$200,000 - \$44,600$ (land) - $\$1,330$ (sheds) = $\$154,070$]. An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). The owner's opinion of value is significantly different from the Board's determination of value, \$213,649. (Case No. 02R-35: E32:1).

The differences of opinion are attributable to several factors. Ms. Brenner alleged that the 2002 value incorrectly listed the size of a porch; incorrectly listed the size of

covered porch; and improperly valued the house using a "Good" "Quality of Construction" and a "Good" "Condition." (Case No. 02R-35: E32:2). The Brenner's adduced the testimony of a Certified General Appraiser licensed by the State of Nebraska. The Taxpayer's Appraiser testified that the "Quality of Construction" was only "Average." The Board adduced no evidence to refute this testimony. The Commission, from this record, must conclude that the "Quality of Construction" and "Condition" were both "Average." This difference reduces the per square foot Cost Factors when calculating Replacement Cost New, and would impact the Replacement Cost New Less Depreciation. The impact on value cannot be deduced from the record.

The Board's value for tax year 2002 (\$213,649) was higher than the value for 2001 (\$186,063). (Case No. 02R-35: E32:1). The Assessor valued the house for 2001 at \$245,685. This value was based on an "Average" "Quality of Construction" and an "Average" "Condition." This value also included a 20% adjustment factor applied to the Replacement Cost New Less Depreciation. (Case No. 02R-35: E32:1). The value before the 20% adjustment was \$196,548. ($\$245,685 - 20\% (\$49,137) = \$196,548$). The Brenner's protested this decision, and the Board set the value at \$186,063, or 25% less than the amount recommended by the Assessor. (Case No. 02R-35: E32:1). This value is less than

other residential real property within the County which had the 20% adjustment in 2001.

The Board's 2002 value used a "Quality of Construction" of "Good" for reasons which the Board failed to adequately explain. (Case No. 02R-35: E32:9).

The Board's value for the house in 2001 (\$186,063) is still higher than Ms. Brenner's opinion of value. An owner of real property in a valuation appeal has an interest in the outcome of the proceedings. In this appeal, the owner's opinion of value for the house (\$154,070 to \$158,070) is not supported by sales of comparable properties or any evidence of value under any of the professionally recognized approaches to value. The Taxpayer's Appraiser offered no opinion of value for any of the properties under appeal. Under these circumstances, the Board's 2001 determination of value is the most credible evidence of value contained in the limited record before the Commission.

The Commission, again for the reasons set forth above, must find from the record before it that the value of the house was \$186,063 as of the January 1, 2002 assessment date.

Ms. Brenner also testified that the value of the property (\$200,000 to \$204,000) including both land and improvements, must be reduced to \$130,000 to equalize the assessed value with comparable property. The Taxpayer's failed to adduce clear and convincing evidence that their property was assessed at a higher

level than comparable property. The Taxpayers have failed to satisfy their burden of proof in this regard, and that request must be denied.

F.
VALUE OF THE DARNALL RANCH, INC. PROPERTY

Ms. Emile Darnall is the Secretary of Darnall Ranch, Inc. Ms. Darnall completed and filed the protest in each of the appeals concerning Darnall Ranch, Inc. (Case No. 02A-94: E1 - E5). Mr. Darnall is the President of the Corporation. He testified concerning the value of residential improvements in each of the Darnall Ranch, Inc., appeals.

I.
CASE NUMBER 02A-94

Mr. Darnall testified regarding the value of the residential improvements located on a tract of land legally described as All of Section 22, Township 19, Range 53. The residential improvements consist of: a 528 square foot "bunkhouse" valued at \$6,117 (E40:2); a 1,108 square foot modular home described as a Windsor or a Falcon mobile home valued at \$5,967 (E40:3); and a 1,094 square foot house valued at \$20,052 (E18:3). The Board's determination of value for the residential improvements totals \$32,136. (Case No. 02A-94: E1; E17:1).

Mr. Darnall testified the actual or fair market value of the residential improvements was \$11,700. Mr. Darnall specifically testified that the actual or fair market value of the 528 square foot bunkhouse was \$2,000; the actual or fair market value of the 1,108 square foot house was \$3,000; and the actual or fair market value of the 1,094 square foot house was \$6,700. The Board offered no evidence refuting the owner's opinion of value. The Commission, from the limited record before it, must conclude that the actual or fair market value of the residential improvement component of this property was \$11,700 as of the assessment date.

ii.

CASE NUMBER 02A-95

Darnall Ranch owns an improved tract of land in Case Number 02A-95. The residential improvements consist of: a house valued at \$79,402 (E46:2); another house ("Gary's House") valued at \$50,861 (E46:4); "the old bunkhouse" valued at \$6,517 (E46:5); and the "hired man's house" which was valued at \$7,480. [This house was burned in August, 2002, but was intact as of the assessment date. (E46:6).] The Board's determination of value for these residential improvements totals \$144,260.

The record includes Mr. Darnall's testimony that the actual or fair market value of the 1,861 square foot house was \$63,500; the actual or fair market value of the 1,608 square foot house was \$30,626; the value of "the old bunkhouse" was \$2,000; and the

actual or fair market value of the "hired man's house" was \$2,000, for a total of \$98,126.

The Board offered no evidence refuting the owner's opinion of value. The Commission must therefore conclude that the equalized value of the residential improvement component of this property was \$98,126 as of the assessment date.

The Taxpayer requested that this value be equalized with the level of assessment of comparable property. The Taxpayer, however failed to adduce any evidence of a lack of equalization, and its request must accordingly be denied.

iii.
CASE NUMBER 02A-96

Darnall Ranch owns an improved tract of land in Case Number 02A-96. The residential improvements consist of an Aragorn modular home with an actual or fair market value of \$8,602 (E48:2); a 1973 Great Northern modular home with an actual or fair market value of \$3,513 (E48:3); a 1,201 square foot home valued at a salvage value of \$1,048 (E48:4); a 1981 Marlette Trailer valued at zero (E48:5); and a 1971 Great Northern modular home valued at \$3,491 (E48:6), for a total of \$16,654.

Mr. Darnall testified that the actual or fair market value of the Aragorn modular home was \$6,882; the value of the 1973 Great Northern modular home was \$2,000; the value of the 1,201 square foot home was zero; the value of the 1981 Marlette modular

home was zero; and the value of the 1971 Great Northern modular home was \$2,000, for a total of \$10,882. The Board offered no evidence refuting the owner's opinion of value. The Commission must therefore conclude that the value of the residential improvement component of this property was \$10,882 as of the assessment date.

The Taxpayer requested that this value be equalized with the level of assessment of comparable property. The Taxpayer, however failed to adduce any evidence of a lack of equalization, and its request must accordingly be denied.

iv.
CASE NUMBER 02A-97

Darnall Ranch owns an improved tract of land in Case Number 02A-97. The residential improvement consists of a house valued at \$69,969 (E42:2). Mr. Darnall testified the actual or fair market value of this house was \$58,307. The Board offered no evidence refuting the owner's opinion of value. The Commission must therefore conclude that the actual or fair market value of the residential improvement component of this property was \$58,307 as of the assessment date.

The Taxpayer requested that this value be equalized with the level of assessment of comparable property. The Taxpayer, however failed to adduce any evidence of a lack of equalization, and its request must accordingly be denied.

v.
CASE NUMBER 02A-98

Darnall Ranch owns an improved tract of land in Case Number 02A-98. The residential improvement consists of a house valued at \$132,050. (E44:2). The 2001 value of this house, before the 20% increase, was \$126,945. (E44:6). This value includes accrued depreciation of 11.0%. (E44:6).

Mr. Darnall testified that this value should be reduced to \$51,200 due to the proximity of a "feed lot" under the holding of *Livingston v. Jefferson County Bd. of Equalization*, 10 Neb.App. 934, 640 N.W.2d 426 (2002). The Taxpayer's allegation, if granted, would require an additional 40% external or economic depreciation factor. The Taxpayer failed to adduce any clear and convincing evidence in support of his allegation. That request must be denied.

The Commission concludes that the actual or fair market value of the residential improvement component of this property was \$126,945 as of the assessment date.

The Taxpayer requested that this value be equalized with the level of assessment of comparable property. The Taxpayer, however failed to adduce any evidence of a lack of equalization, and its request must accordingly be denied.

VI.
CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and over the subject matter of this appeal.
2. The Commission is required to affirm the decision of the Board unless evidence is adduced establishing that the action of the Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (2003 Supp.).
3. The Board is presumed to have faithfully performed its official duties in determining the actual or fair market value of the property. The Board is also presumed to have acted upon sufficient competent evidence to justify its decision. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests on the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).
4. The statutory presumption is extinguished when an assessor fails to inspect the property. *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 580, 144 N.W.2d 161, 169 (1966).

5. An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
6. "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive." *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

7. Where the discrepancy is not the result of an error of judgment but is a deliberate and intentional discrimination systematically applied the Taxpayer's right to relief is clear. "The right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law." *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).
8. Overbuilt improvements are recognized as a source of external obsolescence in Nebraska. The taxpayer bears the burden of demonstrating the amount of depreciation or the impact on actual or fair market value by clear and convincing evidence. *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998).
9. The proximity of a feedlot is recognized as a source of external obsolescence in Nebraska. The taxpayer bears the burden of quantifying the amount of depreciation or the

impact on actual or fair market value by clear and convincing evidence. *Livingston v. Jefferson County Bd. of Equalization*, 10 Neb.App. 934, 640 N.W.2d 426 (2002)

10. The Board's decisions to deny the Taxpayer's protests were unreasonable and arbitrary.
11. The Board's determinations of value were unreasonable.
12. The Board's decisions must be vacated and reversed.
13. The actual or fair market value of the Gilmores' house in Case Number 02R-5, was \$260,230 as of the assessment date.
14. The actual or fair market value of the Brenner's real property, Case Number 02R-35, was \$231,993 as of the assessment date. [Land \$44,600 + Sheds \$1,330 + House \$196,063 = \$231,993].
15. The equalized value of the Darnall Ranch, Inc., residential improvements in Case Number 02A-94 was \$13,253 as of the assessment date.
16. The equalized value of the Darnall Ranch, Inc., residential improvements in Case Number 02A-95 was \$98,126 as of the assessment date.
17. The equalized value of the Darnall Ranch, Inc., residential improvements in Case Number 02A-96 was \$10,882 as of the assessment date.

18. The equalized value of the Darnall Ranch, Inc., residential improvements in Case Number 02A-97 was \$58,307 as of the assessment date.
19. The equalized value of the Darnall Ranch, Inc., residential improvements in Case Number 02A-98 was \$126,945 as of the assessment date.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The orders of the Banner County Board of Equalization setting the assessed value of the subject properties for tax year 2002 are vacated and reversed.
2. In Case Number 02R-5, the Gilmore's real property legally described as All of Section 29, Township 18, Range 54, in Banner County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$ 63,445
Residential Improvements	\$260,230
Other Improvements	\$ -0-
Total	\$323,675
3. In Case Number 02R-35, the Taxpayer's real property legally described as the NE $\frac{1}{4}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 2, Township 19, Range 54, in Banner County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$ 44,600
Improvements	\$186,063
Other Improvements	\$ 1,330
Total	\$231,993

4. In Case Number 02A-94, the Taxpayer's real property legally described as All of Section 22, Township 19, Range 53, in County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$229,540
Residential Improvements	\$ 11,700
Other Improvements	\$140,183
Total	\$381,423

5. In Case Number 02A-95, the Taxpayer's real property legally described as All of Section 32, Township 19, Range 53, in Banner County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$101,935
Residential Improvements	\$ 98,126
Other Improvements	\$ 8,529
Total	\$208,590

6. In Case Number 02A-96, the Taxpayer's real property legally described as All of Section 32, Township 19, Range 53, in Banner County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$70,505
Residential Improvements	\$10,882
Other Improvements	\$ 8,529
Total	\$89,916

7. In Case Number 02A-97, the Taxpayer's real property legally described as the S½SE¼ of Section 13, Township 19, Range 54, in Banner County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$31,195
Residential Improvements	\$58,307
Other Improvements	\$ -0-
Total	\$89,502

8. In Case Number 02A-98, the Taxpayer's real property legally described as All of Section 21, Township 19, Range 53, in Banner County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$181,700
Residential Improvements	\$126,945
Other Improvements	\$ 1,180
Total	\$309,825

9. Any request for relief by any Party not specifically granted by this Order is denied.

10. 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) (2003 Supp.).
11. These decisions shall only be applicable to tax year 2002.
12. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

Dated this 20th day of January, 2004.

Susan S. Lore, Commissioner

Mark P. Reynolds, Vice-Chair

Seal

Wm. R. Wickersham, Chair