

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

ROBERT M. BRENNER AND LISA D. BRENNER,	)	
	)	
Appellant,	)	Case No 04R-111
	)	
v.	)	DECISION AND ORDER AFFIRMING
	)	THE DECISION OF THE BANNER
	)	COUNTY BOARD OF EQUALIZATION
BANNER COUNTY BOARD OF EQUALIZATION,	)	
	)	
Appellee.	)	

The above-captioned case was called for a hearing on the merits of an appeal by Robert M. Brenner and Lisa D. Brenner ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Hampton Inn, Scottsbluff, Scotts Bluff County, Nebraska. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Robert M. Brenner and Lisa D. Brenner, were present at the hearing.

James L. Zimmerman, County Attorney for Banner County, Nebraska, appeared as legal counsel for the Banner County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.  
ISSUES**

The Taxpayer has asserted that actual value of the subject property as of January 1, 2004, is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining actual value of the subject property was unreasonable or arbitrary; and

The actual value of the subject property on January 1, 2004.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2004, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining taxable value of the subject property was unreasonable or arbitrary;

Whether the taxable value of the subject property was determined by the County Board in a manner and an amount that is uniform and proportionate as required by Nebraska's Constitution in Article VIII §1; and

The equalized taxable value of the subject property on January 1, 2004.

**II.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.

- 2. The parcel of real property to which this appeal pertains is described as NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$  Banner County, Nebraska, ("the subject property").
- 3. Actual value of the subject property placed on the assessment roll as of January 1, 2004, ("the assessment date") by the Banner County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

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Description: NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , Banner County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$ 44,317.00	\$50,517.00	\$ 44,317.00
Home Site	\$ 5,000.00	\$included in ag land	\$ 5,000.00
Residence	\$220,374.00	\$186,000.00	\$220,374.00
Farm Site	\$ 1,200.00	\$included in ag land	\$ 1,200.00
Outbuilding	\$ 12,419.00	\$ 12,419.00	\$12,419.00
Total	\$283,310.00	\$248,936.00	\$283,310.00

- 4. An appeal of the County Board's decision was filed with the Commission.
- 5. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
- 6. Actual value of the subject property as of the assessment date for the tax year 2004 is:

Agricultural land	\$ 44,317.00
Farm Site	\$ 1,200.00
Home Site	\$ 5,000.00
Residence	\$220,374.00

Outbuildings	<u>\$ 12,419.00</u>
Total	<u><u>\$283,310.00.</u></u>

**III.  
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998).
2. “Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2003).
3. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Neb. Rev. Stat. §77-112 (Reissue 2003).

4. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).
5. “Actual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
6. Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2003).
7. All taxable real property, with the exception of qualified agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2006).
8. Qualified agricultural land and horticultural land shall be valued for purposes of taxation at eighty percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Cum. Supp. 2006).
9. Qualified agricultural land and horticultural land means land which is primarily used for the production of agricultural or horticultural products, including wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products. Land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. Land enrolled in a federal or state program in which payments are

received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land. Land that is zoned predominantly for purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land. Neb. Rev. Stat. §77-1359 (1) (Reissue 2003).

10. Agricultural or horticultural products include grain and feed crops; forages and sod crops; animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and fruits, vegetables, flowers, seeds, grasses, trees, timber, and other horticultural crops. Neb. Rev. Stat. §77-1359 (2) (Reissue 2003).
11. No residential, commercial, industrial, or agricultural building or enclosed structure or the directly associated land or site of the building or enclosed structure shall be assessed as qualified agricultural or horticultural land. Neb. Rev. Stat. §77-1361 (2) (Reissue 2003).
12. “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.” *Neb. Const.*, art. VIII, §1
13. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).
14. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show

- uniformity. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).
15. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value. *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).
  16. The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).
  17. In the evaluation of real property for tax purposes, where buildings and improvements are taxable as a part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser. *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981).
  18. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
  19. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the

- contrary. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
20. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987) (citations omitted)
  21. The Commission can grant relief only if there is clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006). and e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
  22. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
  23. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).
  24. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).

25. “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 Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581, (1999).
26. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).
27. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of her property was not fairly and proportionately equalized or that valuation placed upon her property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
28. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981).

#### **IV. ANALYSIS**

The subject property is an improved parcel of agricultural land and horticultural land. The improvements on the subject property are a residence and outbuildings. The protest filed by the Taxpayers raised issues concerning contributions to actual value of the subject property

made by its various components; the residence, the land classified as shelter belt, the land classified as a home site, the land classified as a farm site, and the outbuildings. The protests also raised issues concerning the equalized taxable value of the parcel.

The only evidence of a contribution of a component to the actual value of the subject property presented by the Taxpayers at the hearing on the merits of their appeal pertains to the residence. The residence was built over a two year period ending in 1998. (E13:1-6).

Construction cost of the home when new was between \$200,000.00 and \$204,000.00 The residence is a one story residence with a 2,244 square foot basement and a two car attached garage. (E30:5). The basement contains two bedrooms, a bathroom, a furnace and a water heater.

The County Board's determination of the contribution to value made by the residence is calculated through use of a computer program known as Terra Scan. The program implements use of the cost approach. The Cost Approach includes 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*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, pp. 128 - 129.

Terra Scan calculates a replacement cost new for an improvement as derived from cost tables developed by Marshall & Swift. (E30:5). Replacement cost new as calculated by the program is then reduced by depreciation to arrive at an estimate of an improvement’s contribution to value. (E30:5). Depreciation as determined based on tables or schedules developed for use by the Banner County Assessor is then deducted. (E30:5) The contributions to value of site improvements and the taxable value of land are then added to arrive at taxable value of a parcel. (E30:5).

Data used to estimate the contribution to value made by the Taxpayers’ residence was obtained in 2002 and used for the first time in the tax year 2003. The Taxpayers argue that the data collection for use in the Terra Scan program as implemented in the year 2003 was so poor that any estimate of a contribution to value derived from that data is unreliable and that any decision of the County Board made based on that data was unreasonable and arbitrary.

The evidence is that the only disagreement of the Taxpayer regarding the data shown on the valuation printout for the residence on the subject property is the quality rating. In the context of a building’s description, quality refers to the character of construction and the materials used in the original work. *Appraising Residential Properties*, 3<sup>rd</sup> Edition, Appraisal Institute, 1999, pg.119. The *Marshall and Swift Residential Cost Handbook* describes indicators that can be used to determine the quality of construction of a residence. *See eg. Marshall & Swift Residential Cost Handbook*, pgs Avg-1 through 8 and Good-1 through 14 (6/2002). The

County Board had rated the quality of the residence on the subject property as average +. (E30:5). The Assessor testified that she had inspected the residence and that a quality rating of average+ was appropriate because the residence has indicators of a home with average quality construction and some indicators of a residence of a higher quality of construction. The Taxpayer's Appraiser testified that in her opinion the quality rating for the residence on the subject property should be average. The evidence is that the residence has a cathedral ceiling in the great room, 13 plumbing fixtures, tile floors, wood shake shingles, and other features of a residence of above average quality construction. The Taxpayer's Appraiser testified that a determination of the quality of construction for a building is somewhat subjective and that different appraisers could reach different conclusions. The Commission is allowed to utilize its experience and technical expertise in the evaluation of the evidence presented to it. Neb. Rev. Stat. §77-5016 (Supp 2004). The Commission determines that the residence on the subject property is not of average quality as proposed by the Taxpayers and their appraiser

One of the Taxpayers testified that the contribution to value of the residence could be determined using the cost approach without use of Terra Scan. Using Marshall & Swift cost tables the Taxpayer found costs for an "average quality" residence with the attributes of the subject property. Once an aggregate of those costs was reached, the Taxpayer subtracted physical depreciation and "locational" depreciation of 5% to arrive at a contribution to actual value of \$186,000.00.

"Locational" obsolescence is caused by changes external to property such as neighborhood changes, environmental or use changes, legislation, etc. 350 Neb. Admin Code ch 50 §001.04 (03/04). Economic depreciation is the 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) *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, pp. 155. The Commission understands that the Taxpayers' "locational" depreciation is equivalent to economic depreciation. The only basis described by the Taxpayer for the deduction of economic depreciation was its application in prior years. The evidence is not sufficient to allow deduction of economic depreciation or to determine the appropriate amount of the deduction if allowed.

The Taxpayer based her calculation of replacement cost new of the residence based on a home of average quality construction versus the average+ quality rating of the County Board. The quality rating matters because a higher quality building costs more to construct than a lower quality building. That cost differential is reflected in the Marshall and Swift cost tables. See, e.g. *Marshall & Swift Residential Cost Handbook*, pgs Avg-19 and Good-15 (12/2001). The base cost as shown on those pages for construction of a 2,000 square foot one story residence with stud framed construction with masonry veneer and average quality is \$54.71 per square foot, the base cost to construct the same residence of good quality is \$72.54 per square foot. *Id.* The Taxpayer also testified that various aspects of her calculations were in doubt.

If the Taxpayer's deduction for economic depreciation is not taken the result is a contribution to value of \$195,000 ( $\$186,000 \div .95 = \$195,000$ ).

Whatever adjustment would be made to the Taxpayer's calculations based on a quality rating of average + would necessarily make the result even closer to the County Board's determination.

The Taxpayer testified that the result of her cost approach calculations was very close to the construction cost of \$200,000 to \$204,000. Construction cost as described by another Taxpayer did not include the cost of blue prints or the services of a general contractor. Both of those costs are included in Marshall and Swift cost estimates. *Marshall & Swift Residential Cost Handbook*, pg 2 (6/2000). In addition evidence of construction costs is not determinative of actual value. *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 582 N.W.2d 631, (1998).

Evidence presented by the Taxpayers concerning the contribution to value attributable to the residence on the subject property is not persuasive.

The County Assessor testified that after an inspection, her opinion of the contribution to value made by the residence as of January 1, 2004, was \$200,734, as determined by the County Board.

The Taxpayers also asserted that taxable value of the subject property is not “equalized” with the taxable value of other parcels. The Nebraska Constitution mandates that “taxes be levied by valuation uniformly and proportionately”. Article VII, Section 1. That phrase is often cited as requiring equalization of values. The Constitution does not require use of a particular value standard or valuation method. A value standard is imposed by statute. Neb. Rev. Stat. 77-201 (Supp. 2004) The standard is actual value. *Id.* Actual value is defined as fair market value. Neb. Rev. Stat. 77-112 (Reissue 2003). The methods which may be used to determine actual or fair market value are also prescribed by statute. Neb. Rev. Stat. 77-112 (Reissue 2003). The sales comparison approach, income approach or cost approach and other approaches using professionally accepted mass appraisal techniques may be used. *Id.* The

quoted constitutional provision affects implementation of the statutes by recognizing two different aspects of valuation. The uniformity requirement is a recognition that different methods for determining value exist and may be used. Professionally accepted appraisal practices recognize the problem and allow for a reconciliation of methods before an estimate of value is given in an appraisal report. The Constitution likewise allows a reconciliation of methods so long as there is a reconciliation to a common standard, i.e. actual value. *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 252, 411 N.W.2d 35, 45 (1987),

The second component is proportionality. Proportion is defined as “the relation of one part to another or to the whole with respect to magnitude, quantity or degree: relative size: ratio a proper or equal share, a portion or share of an actual or implied whole having a size or value relative to other proportions or shares”. *Websters Third International Dictionary*, 1993, p. 1819. For example if A is the taxable value determined for a tract of real property and B is actual or fair market value of that parcel, what is the proportion of A to B? The Constitutional question raised is whether or not the resulting proportion of Y to Z is the same as A to B if Y is the taxable value for a comparable parcel of real property, and Z its fair market value. The Constitutional requirement of proportionality is met if all property subject to the standard is valued at the same level, i.e. 50%, of actual or fair market value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

The Taxpayer submitted one “comparable” from which the Commission can begin an analysis of equalization from the aspect of proportionality. The “comparable” is described in Exhibit 40 as of tax years 2005 and 2006. The tax year at issue in this proceeding is 2004. Whether there are material differences between the “comparable” as described by the county

assessor for the year 2004 versus 2005 or 2006 is unknown. The following is a tabulation of characteristics of the “comparable” for the tax year 2005 (Exhibit 40 pages 6 through 10), and the subject property for the tax year 2004 (Exhibit 30 pages 6 through 16).

	“Comparable”	Subject
Condition	Average	Average
Type	Single Family	Single Family
Quality	Average	Average+
Ext Wall #1	100% Masonry Veneer	100% Masonry Veneer
Base Area	3,175	2,544
Total Area	3,175	2,544
Style	100% One- Story	100% One-Story
Roofing	Comp-Shingle	Wood-Shake
HVAC	100% Baseboard-HW	47% Baseboard-Elect and 53% Warm&Cool- Air
Crawl Area	2655	
Basement Area	520	2,244
Min Finish		898
Rec Finish		
Part Finish		1,122 <sup>1</sup>
Fixtures	13	13
Bedrooms	4	2
Bathrooms	3	1.5
Garage type	Attached	Attached
Garage area	625	1020
Year built	1976	1998

<sup>1</sup> Testimony of the Taxpayers indicates that the extent of partition finish in the basement may be greater than shown on the County Records.

“Comparable” properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 70 - 76.

The Commission concludes that the subject property and the “comparable” are not comparable. There is no evidence before the Commission that taxable value of the subject property is not the same proportion of actual value as is the taxable value of comparable property.

The Taxpayers’ evidence may also be understood as a claim that taxable value of the residence was not uniformly determined. The County Assessor testified that taxable value of the residence on the subject property was derived from use of a computer program generally known as Terra Scan. The program is provided by a vendor and the Marshall and Swift cost tables it uses in each county are those specified by the user. For the tax year in question the cost tables are those as of June 2001. (E39:13). A Taxpayer testified that she was unable to locate cost tables as of June 2001. Specific cost table for June 2001 may not exist. The practice of Marshall & Swift is to issue quarterly adjustment factors. *See eg. Marshall & Swift Residential Cost Handbook*, pgs F 1 through 14 (/2001). The adjustment factors have to be applied to a base cost to derive a cost as of a given quarterly date.

The Taxpayers evidence is that on one occasion the County Assessor stated that taxable value of the residence on the subject property had been determined on the basis of ownership. A Taxpayer testified that it is possible to affect the calculations of the Terra Scan program through the introduction of various data elements. A Taxpayer testified that all of the data elements used by the program were not disclosed on the valuation printouts. No evidence was presented however concerning variances between data collected as shown on a valuation printout and actual characteristics of an improvement.

One of the Taxpayers testified that the numbers derived from Marshall and Swift cost tables as used by the county could not be replicated through tables found on pages of a published Marshall and Swift Residential Cost Handbook. Based on the information in the record and the Marshall and Swift Residential Cost Handbook, the Commission has not been able to reconstruct a contribution to value of the residence on the subject property as calculated by the Terra Scan program. No evidence was presented however, concerning variances between data used as shown on a valuation printout and actual characteristics of the residence excepting the disputed quality rating. Nor was evidence presented concerning other factors that might have affected a calculation using the Terra Scan program. The Taxpayers invite the Commission to consider the impact of unknown, but allegedly deliberately inaccurate data elements, on use of the Terra Scan computer program. That the Commission will not do.

The evidence does not support a finding that the decision of the County Board was unreasonable or arbitrary.

Finally, even if all of the allegations of the Taxpayers are believed, there is no evidence on which the Commission could grant relief. The Taxpayers' only evidence of actual value for the subject property is a flawed application of the cost approach and there is no evidence of "equalized" taxable value.

## **V. CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.

3. The Taxpayer has not adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

**VI.  
ORDER**

**IT IS ORDERED THAT:**

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2004, is affirmed.
2. Actual value of the subject property for the tax year 2004 is:

Agricultural land	\$ 44,317.00
Farm Site	\$ 1,200.00
Home Site	\$ 5,000.00
Residence	\$220,374.00
Outbuildings	<u>\$ 12,419.00</u>
Total	<u>\$283,310.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Banner County Treasurer, and the Banner County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.

6. This decision shall only be applicable to tax year 2004.
7. This order is effective for purposes of appeal on June 27, 2007.

**Signed and Sealed.** June 27, 2007.

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Wm. R. Wickersham, Commissioner

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Susan S. Lore, Commissioner

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William C. Warnes, Commissioner

**SEAL**

**ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.**