

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

DARNALL RANCH INC.,)	
)	
Appellant,)	Case No. 05A 225
)	
v.)	DECISION AND ORDER
)	DETERMINING TAXABLE VALUE
BANNER COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Darnall Ranch Inc. ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in a meeting room at the Hampton Inn, in the City of Scottsbluff, Scotts Bluff County, Nebraska, on August 26, 2009. Commissioners Wickersham, Warnes and Salmon were present. Commissioner Wickersham was the presiding hearing officer.

Gary Darnall, President of Darnall Ranch Inc., was present at the hearing. Robert M. Brenner appeared as legal counsel for the Taxpayer.

James L. Zimmerman, County Attorney for Banner County, Nebraska, was present 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 to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (Cum. Supp. 2008). The final decision and order of the Commission in this case is as follows.

**I.
ISSUES**

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2005, is less than taxable value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board, determining taxable value of the subject property, is unreasonable or arbitrary; and

The taxable value of the subject property on January 1, 2005.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2005, 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 the equalized taxable value of the subject property, is unreasonable or arbitrary;

Whether the equalized 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, 2005.

**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 ("the Subject Property") is described in the table below.
3. Taxable value of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Banner County Assessor, value as proposed in a timely protest, and taxable value as determined by the County Board is shown in the following table:

Case No. 05A 225

Description: All Section 21, Township 19, Range 53, Banner County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value ¹
Agricultural Land	\$193,158.00	\$189,124.00	\$193,158.00
Home Site	\$5,000.00	In Ag Land	\$5,000.00
Residence	\$106,335.00	\$52,264.00	\$106,335.00
Outbuilding	\$1,064.00	In Residence	\$1,064.00
Total	\$305,557.00	\$241,388.00	\$305,557.00

1. The meetings of the County Board held July 12 and July 22, 2005, were declared void in *Wolf v. Grubbs*, 17 Neb.App. 292, 759 N.W.2d 499 (2009). The County Board considered the Taxpayer's protest on July 12 and made its decision on July 22, 2005. (Testimony of Taxpayer's President and Form 422 in Case File). Because actions at a void meeting are of no effect, the result is that no decision was made by the County Board on the Taxpayer's protests within the time specified in section 77-1502(1) as in effect for tax year 2005. A failure to act within the time specified by law constitutes a denial of the protest. *Sumner v. Colfax*, 14 Neb 524, 16 N.W. 756 (1883). Values stated in this column are values as determined by the County Assessor.

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. The appeal was consolidated for hearing with other appeals of the Taxpayer by order of the Commission.

7. Taxable value of the subject property as of the assessment date for the tax year 2005 is:

Case No. 05A 225

Agricultural land	\$ 193,158.00
Home Site	\$ 5,000.00
Residence	\$ 95,702.00
Outbuildings	<u>\$ 1,064.00</u>
Total	<u>\$ 294,924.00.</u>

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2008).
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. “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).
5. 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).
6. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
7. 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. 2004).
8. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure." Neb. Rev. Stat. §77-1359 (1) (Reissue 2003).
9. “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.
10. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

11. The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
12. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. See *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
13. 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).
14. 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).
15. 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).
16. 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).

17. If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgement. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).
18. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006).
19. Proof that the order, decision, determination, or action appealed from was unreasonable or arbitrary must be made by clear and convincing evidence. See, e.g., *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
20. "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).
21. 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).

22. 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).
23. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb.App. 809, 638 N.W.2d, 881 (2002).
24. 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, 580 N.W.2d 561 (1998).
25. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by the county assessor, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon 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).
26. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981); *Arenson v. Cedar County*, 212 Neb. 62, 321 N.W.2d 427 (1982) (determination of equalized taxable value) *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value).

IV. ANALYSIS

The subject property is an improved parcel of agricultural land and horticultural land. (E35:10-14). There is a 1,555 square foot residence, built in 1992, with an attached 336 square foot garage on the subject property. (E35:10). The valuation of this parcel for taxation has been considered in *Darnall Ranch, Inc. v. Banner County Board of Equalization*, 2005 WL 780379 (Neb.App.) (2005) (Not Designated for Publication) (valuation for tax year 2002) and *Darnall Ranch, Inc. v. Banner County Board of Equalization*, 276 Neb. 296, 753 N.W.2d 819 (2008) (valuation for tax year 2004). A prior year's valuation is not relevant to valuation in a succeeding tax year. *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, 428 N.W.2d 201 (1988).

During the hearing on this appeal questions were asked and answers were given, without objection during the hearing, referencing various portions of Exhibit 21. Exhibit 21 had been withdrawn by the Taxpayer and was not received. The Commission has reviewed the questions asked and the answers given referencing Exhibit 21 by examining the contents of Exhibit 35, the property record file for the subject property.

The Taxpayer's President testified that the condition of the residence was fair. Condition refers to the physical state after construction of an improvement and requires an evaluation of items in need of immediate repair, those items that may be repaired or replaced at a later time and those items that will last the full economic life of the improvement. *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, 273-274. The Taxpayer's President testified that he determined the condition of the residence based on the descriptions found in Marshall and

Swift. The Marshall and Swift Residential Cost Handbook (“Marshall and Swift”) is a widely used reference work, used to estimate cost of construction. Marshall and Swift descriptions of average, fair, and poor condition from page E-6 9/2002 of the handbook set out in Exhibit 31 at page 4 are as follows:

“Average Condition - Some evidence of deferred maintenance and normal obsolescence with age in that a few minor repairs are needed, along with some refinishing. But with all major components still functional and contributing toward an extended life expectancy, effective age and utility is standard for the properties of its class and usage.

Fair Condition (Badly Worn) - Much repair needed. Many items need refinishing or overhauling, deferred maintenance obvious, inadequate building utility and services all shortening the life expectancy and increasing the effective age.

Poor Condition (Worn Out) - Repair and overhaul needed on painted surfaces, roofing, plumbing, heating, numerous functional inadequacies, substandard utilities etc. (found only in extraordinary circumstances). Excessive deferred maintenance and abuse, limited value-in-use, approaching abandonment or major reconstruction, reuse or change in occupancy is imminent. Effective age is near the end of the scale regardless of the actual chronological age.”

The Taxpayer’s President testified that the condition of the residence was affected by vibration from trucks passing by to a feedlot. He testified that the windows leaked, and the basement walls were cracked as a result of the vibration. The Taxpayer’s President also testified that there was water damage to the basement.

The Taxpayer’s President testified that the residence was within 300 yards of a feedlot with a rated capacity of 20,000 head of cattle. The Taxpayer’s President testified that due to the

proximity of the residence to the feedlot, its contribution to value should be reduced for locational depreciation. “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, 155. Nebraska’s Supreme Court in *Darnall Ranch, Inc. v. Banner County Board of Equalization*, 276 Neb. 296, 753 N.W.2d 819 (2008), that the contribution to value of the residence should be reduced for external depreciation due to proximity to the cattle feedlot. Neither the location of the feedlot or the residence has changed. The contribution to value of the residence should be reduced for external obsolescence. The remaining question is the amount of that deduction.

The Taxpayer’s President also testified that in his opinion quality of construction was fair. 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*, 3rd Edition, Appraisal Institute, 1999, 119. The Taxpayer’s President testified that he determined the quality of construction of the residence based on the descriptions found in Marshall and Swift. Descriptions of low, fair, and average quality, construction as found in Marshall and Swift are as follows:

“Residences of Low Quality are of low-cost construction and meet minimum building code requirements, interior and exterior finishes are plain and inexpensive with little or no attention given to detail. Architectural design is concerned with function, not appearance.” *Marshall & Swift Residential Cost Handbook*, pg Low-1 (6/2002).

“Fair Quality Residences of Fair Quality are frequently mass produced. Low cost production is a primary consideration. Although overall quality of materials and workmanship is below average, these houses are not substandard and will meet minimum construction requirements of lending institutions, mortgage insuring agencies and building codes. Interior finish is plain with few refinements. Design is from stock plans, and ornamentation is usually limited to the front elevation.” *Marshall and Swift*, Supra pg Fair-1.

“Average Quality Residences of Average Quality usually mass produced and will meet or exceed the minimum construction requirements of lending institutions, mortgage insuring agencies and building codes. By most standards, the quality of materials and workmanship is acceptable, but does not reflect custom craftsmanship. Cabinets, door, hardware and plumbing are usually stock items. Architectural design will include ample fenestration and some ornamentation on the front elevation.” *Marshall and Swift*, Supra pg Avg-1.

In addition to the general description of quality levels, Marshall and Swift offers descriptions of elements of cost included in each level of quality’s cost calculations and the basis for modifications of those elements. The elements of cost discussed include foundation, floor structure, floor insulation, floor cover, exterior wall, roof, interior finish, heating/cooling, energy package, electrical, plumbing, built-in appliances, fireplaces, finished and unfinished basement area, porches/breezeways, garages, areas over garages and carports. See, eg., *Marshall and Swift*, Supra pg Low 2 & 3.

The Taxpayer’s President testified that he did not employ a process when making his determinations of quality and condition.

The Taxpayer's President testified that in his opinion the contribution to value made by the residence was \$51,200, the other improvements contributed \$1,064 to value and the land contributed \$189,124 to value. Total value as proposed by the Taxpayer's President was \$241,388 ($\$51,200 + \$1,064 + \$189,124 = \$241,388$).

The County Assessor inspected the residence on the subject property and determined that its condition was average and that its quality was fair +. (E35:10). The differences between the quality and condition ratings of the County Assessor and the Taxpayer's President are nothing more than differences of opinion in determinations that are subjective. Further, there is no evidence concerning the effect of the Taxpayer's characterizations of quality or condition on the contribution to value of the residence. The opinion of the Taxpayer's President is not supported by any analysis or facts. The Nebraska Supreme Court has observed that "(a)s a general rule the valuation of property for tax purposes by the proper assessing officers should not be overthrown by the testimony of one or more interested witnesses that the values fixed by such officers were excessive or discriminatory when compared with the values placed thereon by such witnesses. Otherwise no assessment could ever be sustained." *Helvey v. Dawson County Board of Equalization*, 242 Neb. 379, 387, 495 N.W.2d 261, 267 (1993).

The contribution to actual value of the residence was estimated by the County Assessor using 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; (5) 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, 128 - 129.

The cost approach is recognized as an acceptable valuation approach. Neb. Rev. Stat. §77-112 (Reissue 2003).

The County Assessor testified that cost new of all residences in Banner County for the tax year 2005, was estimated using Marshall and Swift 2003 cost tables. Cost found in the tables were applied by a computer program to data for each residence as found in the County Assessor’s records. Depreciation as affected by the effective age, quality, and condition of each residence was deducted as derived from tables developed by the County Assessor. The County Assessor testified that the described procedure was used to estimate the contribution to value of the residences on the subject property.

Using the cost approach, the County Assessor estimated the contribution to value made by the residence at \$106,335. (E35:10). The County Assessor testified that a deduction for external obsolescence of 10% was appropriate in view of the Supreme Courts decision directing a deduction for that factor. If a deduction for external obsolescence at a rate of 10% is applied, the resulting contribution to value for the residence is \$95,701 ($(\$106,335 \times .10 = \$10,634)(\$106,335 - \$10,634 = \$95,701)$). A deduction of \$55,135 from the cost basis

determined by the County Assessor is necessary to arrive at the contribution to value estimated by the Taxpayer's President ($\$106,335 - \$51,200 = \$55,135$). To achieve that deduction, excluding any consideration of adjustments that might be made for condition or quality, the external depreciation factor would be 51.86% ($\$55,135 \div \$106,335 = .5185$). There is no objective basis for either deduction. A deduction for external obsolescence based on use of the cost approach as suggested by the County Assessor is reasonable. There is no basis for the opinion of the contribution to value offered by the Taxpayer's President and, therefore no basis for determining the amount of external obsolescence. The contribution to actual value of the residence after deduction of 10% for external depreciation is \$95,701.

The contribution to actual value of the other improvements is not at issue.

The Taxpayer's President testified that the contribution to value of the land component was \$189,124. No basis for the opinion of the Taxpayer's President was presented other than a general statement that he knew the value of land in Banner County. The opinion of the Taxpayer's President is not supported by any analysis or facts. An unsupported opinion is not persuasive. See *Helvey v. Dawson County Board of Equalization*, 242 Neb. 379, 387, 495 N.W.2d 261, 267 (1993). The contribution to value of the land component for the prior year was \$189,124. (E35:9). The prior year's valuation is not relevant. *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, 428 N.W.2d 201 (1988).

The County Assessor testified that the contribution to value of improvements was determined using the cost approach. The County Assessor testified that cost new of all residences in Banner County for the tax year 2005, was estimated using Marshall and Swift 2003

cost tables. Cost found in the tables were applied by a computer program to data for each residence as found in the County Assessor's records. Depreciation, as affected by the effective age, quality, and condition of each residence, was deducted as derived from tables developed by the County Assessor. The County Assessor testified that the described procedure was used to estimate the contribution to value of the residence on the subject property. Where the evidence shows the assessed value of property has been determined by a formula in substantial compliance with the law and, which has been uniformly and impartially applied, such assessed value will not ordinarily be disturbed on appeal on evidence indicating a mere difference of opinion as to the valuation. *Greenwood Ranch v. Morrill Cty. Bd. of Equal.*, 232 Neb. 114, 439 N.W.2d 760 (1989); *Lexington Building Co., Inc. v. Board of Equalization*, 186 Neb. 821, 187 N.W.2d 94 (1971).

Exhibit 27 is a document captioned "Answers to Requests for Admissions and Interrogatory". The Taxpayer asks the Commission to give particular attention to request numbers 1, 3 and 27. Request 1 pertaining to ownership of the subject property was admitted. The Taxpayer owns the subject property. Request 3 was admitted. The County Board admitted that data collected in an appraisal which became effective was used as a basis for a determination of taxable values for the tax year 2005. The subject property was inspected by the County Assessor. Even if the data obtained in 2003 is tainted, as the Taxpayer suggests, inspection by the County Assessor obviated any connection to the data collected for the year 2003. Request for Admission 27 was also admitted. The County Board admitted that some of the data collection for the 2003 appraisal was not collected by a certified appraiser as required by USPAP or DPAT regulations. For the years 2003 and 2005 the licenser of appraisers was governed by sections 77-

2201 to 77-2250 of Nebraska Statutes. DPAT regulations pertaining to data gathering in an appraisal can be found in chapter 50 of title 250 of Nebraska's Administrative Code. A distinction is made in chapter 50 of Title 350 between an appraiser and an appraisal assistant. An appraiser means a person who estimates value and more specifically one who possesses the necessary qualifications, ability, and experience to execute or direct the estimation of value of real property. 350 Neb. Admin. Code, ch 50 §001.07 (3/2001). An appraisal assistant includes field data collector, apprentice appraiser, and appraiser trainee and shall mean a person who performs tasks of data gathering, organizing, and preparation but who does not act in the capacity of an appraiser. An appraisal assistant shall be directed by and under the supervision of a qualified appraiser or assessor and shall not be relied upon to make independent valuation judgements. 350 Neb. Admin. Code, ch 50 §001.07 (3/2001). Clearly the definitions contemplate some parts of the appraisal process being completed by someone other than a licensed appraiser.

The term USPAP refers to the Uniform Standards of Appraisal Practice as developed by the Appraisal Standards Board of the Appraisal Foundation. For the years 2002 and 2003 the applicable version was that version in existence on September 1, 2002. Neb. Rev. Stat. §77-2001 (Reissue 2003). Standard 6 of USPAP pertains to mass appraisal, development and reporting. Appraisers engaged in mass appraisal are required to ensure that the quantity and quality of the factual data that are collected are sufficient to produce credible appraisals. For real property, systems for routinely collecting and maintaining ownership, geographic, sales, income, and expense, cost, and property characteristics data should be established. *Uniform Standards of Appraisal Practice 2001 Edition*, Appraisal Foundation, 44. Property characteristics data should

be appropriate to the mass appraisal models being used. Supra at 45. The data collection program incorporates a quality control program including checks and audits of the data to ensure current and consistent records. Supra at 45. A report of a mass appraisal should describe the sources of data and the data collection and validation process. Supra at 47. The Commission can find nothing in the applicable version of USPAP requiring data collection by an appraiser.

The Taxpayer also directed the Commission's attention to Exhibit 26 and the responses to interrogatories 3, 7, 8, 9, 10, 17,21,23, 26, 27,16, 29, 36, 40, and importantly 43. Responses to interrogatories 3, 21, 23, 27, 16, 29, and 36 are not contained in Exhibit 26 or any other exhibit before the Commission. All of Exhibit 26 pertains to interrogatories asked and answered in litigation that ultimately concern compliance with open meetings laws. Issues raised in the litigation were decided by the Nebraska's Court of Appeals in *Wolf v. Grubbs*, 17 Neb.App. 292, 759 N.W.2d 499 (2009). The Court determined that the meetings of the Banner County Board and the Banner County Board of Equalization held on July 12 and 22 were void. The Taxpayer's protest pertaining to the subject property was heard on July 12 and decided on July 22, 2005. (Form 422 in Case File). Because actions at a void meeting are of no effect, the result is that no decision was made by the County Board on the Taxpayer's protests within the time specified in section 77-1502(1) as in effect for tax year 2005. A failure to act within the time specified by law constitutes a denial of the protest. *Sumner v. Colfax*, 14 Neb 524, 16 N.W. 756 (1883). The Taxpayer timely filed appeals for tax year 2005 with the Commission and it obtained jurisdiction over issues pertaining to the valuation of the subject property for taxation. Neb. Rev. Stat. §77-5013 (Cum. Supp. 2004). Interrogatories and responses to interrogatories concerning compliance with open meetings laws have no probative value in this appeal.

The County Assessor testified that taxable value of agricultural land and horticultural land in Banner County for the tax year 2005 was determined in a multi step process. A soil survey has been prepared for Banner County. *Soil Survey of Keith County, Nebraska*, United States Department of Agriculture, Natural Resources Conservation Service, 1994. The soil survey describes soil types and maps their location within the county. An agricultural land and horticultural land manual is issued by the Property Tax Administrator for the classification of agricultural land. Neb. Rev. Stat. §77-1361 (Reissue 2003). The agricultural land and horticultural land manual is to divide those lands into categories and subclasses based on soil classification. Neb. Rev. Stat. 77-1362 (Reissue 2003). The soil conversion table is prescribed by a directive issued by the Property Tax Administrator. Directive 99-8 Property Tax Administrator (1999). The County Assessor testified that each qualified sale of agricultural land and horticultural land is analyzed to determine the average value of the land classifications found in the sold parcels. Once the values of various land classifications are determined, those values are applied to acres of land for each classification found in a sold parcel. The resulting value is compared to its sale price. A ratio of assessed value to sale price is determined for each sale based on the proposed value. The assessment to sale ratios are then analyzed to determine if the level of value indicated by the ratios meets the standards set by law. The County Assessor testified that for the year 2005 the requirements of law were met by the values she developed and used for each classification of land. A value for each classification of land in a parcel was determined as the number of acres of a classification found in a parcel multiplied by the per acre value assigned to that classification. The value of each parcel was then determined as the sum of the values assigned to each classification of land found within the parcel. The County Assessor

also testified that the values developed for each classification of land were used for the valuation of all agricultural land and horticultural land in the Banner County for tax year 2005.

There is no evidence that taxable value of the subject property is not equalized with other similar parcels.

Many issues were raised in the proceeding before the Commission. In the final analysis two facts are determinative. The opinion of the Taxpayer is unsupported. The opinion of the County Assessor is derived from uniformly applied mass appraisal techniques. Where the evidence shows the assessed value of property has been determined by a formula in substantial compliance with accepted methodology, which has been uniformly and impartially applied, such assessed value will not ordinarily be disturbed on appeal on evidence indicating a mere difference of opinion as to the valuation. See *Greenwood Ranch v. Morrill Cty. Bd. of Equal.*, 232 Neb. 114, 439 N.W.2d 760 (1989); *Lexington Building Co., Inc. v. Board of Equalization*, 186 Neb. 821, 187 N.W.2d 94 (1971).

On appeal the Commission may consider all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2008). The Taxpayer stated numerous basis for relief in its protest to the County Board. The Commission has considered the evidence presented to it and the issues raised by that evidence.

The County Board's failure to take lawful action on the Taxpayer's protest rendered the result arbitrary or unreasonable. After weighing the evidence the Commission has determined that the most reasonable estimate of actual and equalized taxable value for the subject property is taxable value as determined by the County Assessor.

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 adduced sufficient, clear and convincing evidence that the action of the County Board is unreasonable or arbitrary.

**VI.
ORDER**

IT IS ORDERED THAT:

1. Taxable value, for the tax year 2005, of the subject property is:

Case No. 05A 225

Agricultural land	\$ 193,158.00
Home Site	\$ 5,000.00
Residence	\$ 95,702.00
Outbuildings	<u>\$ 1,064.00</u>
Total	<u>\$ 294,924.00.</u>

2. 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. 2008).

3. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This decision shall only be applicable to tax year 2005.
6. This order is effective for purposes of appeal on November 19, 2009.

Signed and Sealed. November 19, 2009.

Nancy J. Salmon, Commissioner

William C. Warnes, Commissioner

Wm R. Wickersham, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.