

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

DARNALL RANCH INC.,)	
)	
Appellant,)	Case No. 05A 227
)	
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:

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Description: All Section 32, Township 19, Range 53, Banner County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value ¹
Agricultural Land	\$106,659.00	\$106,780.00	\$106,659.00
Home Site	\$8,400.00	In Ag Land	\$8,400.00
Residence	\$186,409.00	\$105,956.00	\$186,409.00
Farm Site	\$2,350.00	In Ag Land	\$2,350.00
Outbuilding	\$12,195.00	In Residential	\$12,195.00
Total	\$316,013.00	\$212,736.00	\$316,013.00

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. (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:

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Agricultural land	\$ 106,659.00
Farm Site	\$ 2,350.00
Home Site	\$ 8,400.00
Residences	\$ 168,633.00
Outbuildings	\$ 12,195.00
Total	<u>\$ 298,237.00.</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. (E25:13-44). Improvements include four residences and various shed, barns, and grain bins (E37).

During the hearing on this appeal questions were asked and answers were given, without objection, referencing various portions of Exhibit 23. Exhibit 23 had been withdrawn by the Taxpayer and was not received. The Commission has reviewed the questions asked and the answers given referencing Exhibit 23 by examining the contents of Exhibit 37, the property record file for the subject property.

Both the Taxpayer's President and the County Assessor testified and gave their opinion concerning the quality and condition of the residences on the subject property.

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 residences 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 which are 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.”

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 residences based on the descriptions found in Marshall and Swift. Descriptions of low quality, fair quality, and average quality, construction as found in the 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.

“House A” (Parents House)

	Taxpayer’s President	County Assessor
Quality	Average	Average +
Condition	Average	Average
Contribution to value	\$63,500	\$104,261

Additional description by the Taxpayer’s President: Built in 1958 no changes since built; Roof is original; Fixtures are dated; The basement has water problems and the walls are water stained; Windows in the basement are original and leak water and dirt; Two car detached garage with breeze way to house; Brick or stone veneer on the front of the home; Vinyl siding in areas not covered with brick or stone veneer.

Additional description by the County Assessor: Wood shakes on the roof and 11 fixtures indicating good quality;. Floors are carpeted; There are wood cabinets in kitchen;. Drywall interiors.

“House B” (Gary’s House)

	Taxpayer’s President	County Assessor
Quality	Average	Average
Condition	Average	Good
Contribution to value	\$30,626	\$58,013

Additional description by the Taxpayer’s President: One part of residence was built about 1900 and moved five miles to its present site; Additions have been made to both the basement and the first floor living area; Part of the basement has a dirt floor; There are water problems in the

basement. Mice and snakes have been found in the basement; The foundation is poor because local rock was used for aggregate; Linoleum on the floor and laminated counter tops in kitchen; Additional description by the County Assessor: 12 Fixtures, patio door; and wood cabinets in kitchen. Appearance is good. Well maintained.

“House C” (Bunk House)

	Taxpayer’s President	County Assessor
Quality	Fair to Poor	No Rating Flat Value
Condition	No Opinion	No Rating Flat Value
Contribution to value	with house D \$11,830	\$865

Additional description by the Taxpayer’s President: Used for single men working as hired hands; Next to calving pen.

Additional description by the County Assessor: Valued for salvage

“House D” (Bunk House)

	Taxpayer’s President	County Assessor
Quality	Fair to Poor	Fair
Condition	No Opinion	Average
Contribution to value	with house C \$11,830	\$24,135

Additional description by the Taxpayer’s President: Used for single men working as hired hands; 9 X 12 mud room does not have heat.

Additional description by the County Assessor: Interior was rebuilt after fire and mud room was added at that time.

The opinion of the Taxpayer's President is not supported by an 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 County Assessor testified that the contribution to value of improvements was determined using the cost approach. The cost approach is an accepted method for mass appraisal. Neb. Rev. Stat. §77-112 (Reissue 2003). 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*, 2nd Ed., International Association of Assessing Officers, 1996, 128 - 129. 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.

The Taxpayers President testified that a 900 head cattle feed lot and a calving pen used in the winter are adjacent to the residences on the subject property. Proximity to a livestock feeding operation may be the basis for a reduction in value. *Livingston v. Jefferson County Board of Equalization*, 10 Neb.App. 934, 640 N.W.2d 426 (2002). The County Assessor testified that a 10% deduction for external obsolescence was appropriate for a residence located near a cattle feedlot with the capacity to feed 20,000 head. The feed lot affecting the contribution to value of the improvements on the subject property is smaller. The Taxpayer's President testified that there are odors and flies from the feed lot affecting the subject property. There is also evidence that the feed lot is small enough that it does not require regulatory approval. A 10% deduction for external obsolescence is appropriate for residences A, B, and D on the subject property due to the feedlot's proximity. The contribution to value of Residence C is salvage value. Salvage value would not be reduced. The resulting contributions to value of the residences A, B, and D are as follow;

Residence A Replacement Cost New Less Physical Depreciation \$104,261 (E37:14), 10% External Obsolescence \$10,426 ($\$104,261 \times .10 = \$10,426$), Replacement Cost New Less all Depreciation \$93,835 ($\$104,261 - \$10,426 = \$93,835$).

Residence B Replacement Cost New Less Physical Depreciation \$58,013 (E37:15), 10% External Obsolescence \$5,801 ($\$58,013 \times .10 = \$5,801$), Replacement Cost New Less all Depreciation \$52,212 ($\$58,013 - \$5,801 = \$52,212$).

Residence C Replacement Cost New Less Physical Depreciation \$24,135 (E37:16), 10% External Obsolescence \$2,414 ($\$24,135 \times .10 = \$2,414$), Replacement Cost New Less all Depreciation \$21,721 ($\$24,135 - \$2,414 = \$21,721$).

The contribution to value of all residences is \$168,633 ($\$93,835 + \$52,212 + \$21,721 + \$865 = \$168,633$).

Exhibit 27 is a document captioned "Answers to Requests for Admissions and Interrogatory." The Taxpayer asks the Commission to give particular attention to requests number 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 repaired by the Taxpayer in the year 2004. The subject property was inspected by the County Assessor. Data used for the year 2005 was determined by the inspection. Even if the data obtained in 2003 is tainted, as the Taxpayer suggests, the inspection, and revaluation of the subject property for the tax year 2005 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 appraiser 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.

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.
4. The Taxpayer has not 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 227

Agricultural land	\$ 106,659.00
Farm Site	\$ 2,350.00
Home Site	\$ 8,400.00
Residence	\$ 168,633.00
Outbuildings	\$ 12,195.00
Total	<u>\$ 298,237.00.</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.