

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

Robert L. Koop,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 12R 410 & 13R 549

Decision and Order Affirming the  
Determination of the Douglas  
County Board of Equalization

1. A Single Commissioner hearing was held on January 13, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Robert L. Koop (the Taxpayer) was present at the hearing.
3. Larry Thomsen, Appraiser for Douglas County Assessor’s Office was present for the Douglas County Board of Equalization (the County).
4. The Subject Property (Subject Property) is rural parcel containing 13.99 acres of Agricultural Land and improved with a 2,204 square foot ranch dwelling, with a legal description of: Pt SW ¼ NW ¼, W 548.56 S 1240.91 Ft exc pt for HW, 8-16-10, Douglas County, Nebraska.

**Background**

5. The Douglas County Assessor assessed the Subject Property at \$170,290 for tax year 2012 and \$184,520 for tax year 2013.
6. The Taxpayer protested these values to the Douglas County Board of Equalization and requested an assessed value of \$146,600 for tax year 2012 and \$153,300 for tax year 2013.
7. The Douglas County Board of Equalization determined that the assessed value of the Subject Property was \$170,290 for tax year 2012 and \$184,520 for tax year 2013.
8. The Taxpayer appealed these determinations of the County to the Tax Equalization and Review Commission (the Commission).

**Issues & Analysis**

9. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>1</sup> “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based

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<sup>1</sup> See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”<sup>2</sup>

10. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”<sup>3</sup> That presumption “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. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”<sup>4</sup>
11. 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.<sup>5</sup>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
13. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>7</sup>
14. “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.”<sup>8</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>9</sup> 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.<sup>10</sup>
15. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.<sup>11</sup> 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

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<sup>2</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>8</sup> *Neb. Const.*, Art. VIII, §1.

<sup>9</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>10</sup> *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).

<sup>11</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

uniformity.<sup>12</sup> 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.<sup>13</sup>

16. The Taxpayer asserted that the Subject Property was not equalized with three properties approximately 2 ½ miles from the Subject Property. He provided a map showing the Subject Property and the three alleged comparable properties. He also had Web shot pages from the internet showing the 2012 valuation placed on the alleged comparable properties by Douglas County. He asserted that there were no differences in the four properties except for soil types.
17. The Taxpayer asserted that the Subject Property had been seeded to red clover in 2012 after flooding had destroyed the brome crop. He also asserted that the three comparable properties had brome grass planted on them.
18. The Appraiser stated that agricultural land was valued by use. He noted that the Subject Property is valued as dry cropland and waste. There was no evidence provided to the Commission how the alleged comparable properties were valued.
19. The Commission notes that statements at the hearing indicated that the alleged comparable properties were planted with grass and not red clover. Red clover is considered a crop and a dryland agricultural use. Conversely, brome grass is considered a grass and a grassland agricultural use. The Commission finds that the alleged comparable properties are not truly comparable to the Subject Property because the type of vegetation and use are different.
20. The Taxpayer did not dispute the valuation of the dwelling or buildings located on the parcel.
21. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
22. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

## ORDER

### IT IS ORDERED THAT:

1. The Decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax years 2012 and 2013, is Affirmed.
2. The taxable value of the Subject Property for tax year 2012 is:

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<sup>12</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>13</sup> *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).

Land	\$ 58,290
<u>Improvements</u>	<u>\$112,000</u>
Total	\$170,290

3. The taxable value of the Subject Property for tax year 2013 is:

Land	\$72,520
<u>Improvements</u>	<u>\$112,000</u>
Total	\$184,520

4. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2012.
8. This Decision and Order is effective on January 22, 2014.

Signed and Sealed: January 22, 2014

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Nancy J. Salmon, Commissioner