

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Daniel A. Meints,
Appellant,

v.

Gage County Board of Equalization,
Appellee.

Case No: 17H 0002

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: East 60' of Lots 7 & 8 Block 52, Beatrice Original, Gage County.
2. On or about June 30, 2017, Daniel A. Meints (the Taxpayer) filed an application for a Homestead Exemption with the Gage County Assessor (the County Assessor).
3. The County Assessor denied the Homestead Exemption for 2017 on the basis that the Taxpayer resided elsewhere.
4. The Taxpayer protested the denial of the Homestead Exemption to the Gage County Board of Equalization (the County Board) and requested to be granted the Homestead Exemption.
5. The County Board determined the Taxpayer was not eligible for the Homestead Exemption for tax year 2017.
6. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
7. A Single Commissioner hearing was held on October 18, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
8. The Taxpayer and his attorney, Terry Barber, were present at the hearing.
9. Patti Milligan, the County Assessor, was present for the County Board.

Applicable Law

10. The Commission's review of the determination of the County Board of Equalization is de novo.¹

¹ See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "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 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." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

11. In an appeal of a decision of a county board of equalization to grant or deny an exemption, the burden of proof is upon the party claiming property to be exempt from taxation to demonstrate that the property is eligible for exemption.²
12. Statutes exempting property from taxation are to be strictly construed, property must come clearly within the statutory provisions granting such exemption, and the burden of proving the right to exemption is upon the party claiming the exemption.³
13. For the purpose of exemption from taxation, “Homestead” means “(1) a residence or mobile home, and the land surrounding it, not exceeding one acre, in this state actually occupied as such by a natural person who is the owner of record thereof from January 1 through August 15 in each year[.]”⁴
14. Under the Nebraska Administrative Procedure Act, the term “Guidance Document” means “any statement developed by an agency which lacks the force of law but provides information of direction of general application to the public to interpret or implement statutes or such agency’s rules or regulations. A guidance document is binding on an agency until amended by the agency. A guidance document shall not give rise to any legal right or duty or be treated as authority for any standard, requirement, or policy.”⁵
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁶

Findings of Fact & Conclusions of Law

16. The Subject Property was rendered uninhabitable in September 2014 by a fire.
17. In April 2016, the Taxpayer took out a permit to repair the Subject Property, but the permit expired after six months with repairs incomplete, and the Subject Property has been uninhabitable since the date of the fire. The Taxpayer has not occupied the Subject Property since 2014. The parties agree that the Taxpayer has intended to complete the repairs at all material times.
18. The Taxpayer asserts that he qualifies for Homestead Exemption as owner and occupant of the Subject Property. The Taxpayer provided an Information Guide for Nebraska Homestead Exemption (Information Guide), which appears to be a guidance document of the Nebraska Department of Revenue.⁷ The Information Guide states, “This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue until amended.”
19. The second page of the Information Guide, under the “Homestead” heading, states, “In the event of a natural disaster rendering the residence or mobile home uninhabitable, the

² *OEA Senior Citizens, Inc. v. Cty. Of Douglas*, 186 Neb. 593, 185 N.W.2d 464 (1971).

³ *United Way v. Douglas Cty. Bd. of Equal.*, 215 Neb. 1, 337 N.W.2d 103 (2983).

⁴ Neb. Rev. Stat. §77-3502 (Reissue 2009). See also 350 Nebraska Administrative Code Ch. 45.002.06.

⁵ Neb. Rev. Stat. §84-901(5) (2017 Supp.).

⁶ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

⁷ See Neb. Rev. Stat. §84-901 (2017 Supp.).

displaced applicant is still eligible if the applicant intends to rebuild or repair the homestead.” The Taxpayer contends that he is eligible for Homestead Exemption on the basis that the Taxpayer intends to repair the Subject Property.

20. The Assessor denied the Homestead Exemption due to the Taxpayer marking on his Form 458 (Nebraska Homestead Exemption Application or Certification of Status) that he does not currently occupy this residence.
21. The Commission is unaware of (and has been unable to find) any Nebraska statute or regulation creating an exception to the occupancy requirement of Neb. Rev. Stat. §77-3502 on the basis of natural disaster, as described by the Information Guide. As noted above, a guidance document “shall not give rise to any legal right or duty or be treated as authority for any standard, requirement, or policy.”
22. Statutes exempting property from taxation are to be strictly construed. Language in the Information Guide cannot give rise to a legal right to an exemption if that language contradicts the plain language of the relevant statute.
23. The statute governing homestead exemptions specifies that the homestead must be “actually occupied” by the person claiming the exemption. It is undisputed that the Taxpayer has not actually occupied the Subject Property since 2014.
24. The decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the Taxpayer was not eligible for Homestead Exemption for tax year 2017 is affirmed.
2. This Decision and Order, if no further action is taken, shall be certified to the Gage County Treasurer and the Gage County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
3. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
4. Each Party is to bear its own costs in this proceeding.
5. This Decision and Order shall only be applicable to tax year 2017.
6. This Decision and Order is effective on October 31, 2018.

Signed and Sealed: October 31, 2018

James D. Kuhn, Commissioner