

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

Tony Fulton, Tax Commissioner, and  
Ruth Sorensen, Property Tax Administrator,  
Appellants,

v.

Hall County Board of Equalization,  
Appellee,

and

Third City Archers, Inc.,  
Appellee.

Case No: 18E 0054

Decision and Order Vacating and Reversing  
the Decision of the Hall County Board of  
Equalization

**For the Appellants:**

Scott Shaver,  
Counsel to the Property Tax Administrator

**For the Board of Equalization:**

Sarah Carstensen,  
Deputy Hall County Attorney

**For Third City Archers:**

David Walker, Sean McGee, and Jim Lott,  
*pro se.*

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn

**I. THE SUBJECT PROPERTY**

The Subject Property is a parcel located in Hall County. The parcel is improved with a 7,992 square foot storage warehouse, remodeled and re-purposed as an indoor archery range. The legal description and property record card for the Subject Property can be found at Exhibit 9.

**II. PROCEDURAL HISTORY**

Third City Archers, Inc. filed an application for exemption from property taxes with the Hall County Assessor (the County Assessor). The Hall County Board of Equalization (the County Board) determined that the Subject Property was exempt from taxation for tax year 2018. Tony Fulton, Tax Commissioner, and Ruth Sorensen, Property Tax Administrator (the Department) appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on August 23, 2019. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the

Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged Exhibits 2 through 9; Exhibit 1 was also admitted in the course of the hearing.

### III. STANDARD OF REVIEW

The Commission's review of a determination of a county board of equalization is de novo.<sup>1</sup> 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>2</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>3</sup> In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based.<sup>4</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>5</sup>

### IV. EXEMPTION

On May 18, 2018, Third City Archers filed an application for exemption with the County Assessor.<sup>6</sup> Third City Archers did not file a written request for a waiver of the statutory December 31, 2017 deadline for exemption applications with the County Board. The County Assessor approved the exemption application on May 18, 2018.<sup>7</sup> The County Board took up the application at a meeting on July 10, 2018, and voted to approve the application and assess a penalty, as required by statute.<sup>8</sup>

Neb. Rev. Stat. § 77-202.01(2) provides, in relevant part:

Any organization or society which fails to file an exemption application on or before December 31 may apply on or before June 30 to the county assessor. The organization or society shall also file in writing a request with the county board of equalization for a waiver so that the county assessor may consider the application for exemption. The county board of equalization shall grant the waiver upon a finding that good cause exists for the failure to make application on or before December 31. When the waiver is granted, the county assessor shall examine the application and

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<sup>1</sup> See Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

<sup>2</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>3</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>4</sup> Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

<sup>5</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

<sup>6</sup> Exhibit 3:4.

<sup>7</sup> Id.

<sup>8</sup> Exhibit 2:3. See Neb. Rev. Stat. § 77-202.01(2).

recommend either taxable or exempt for the real property ... to the county board of equalization[.]<sup>9</sup>

Third City Archers and the County Board both concede that the application was filed after the December 31, 2017 deadline. They further concede that no waiver request was filed, and no waiver was granted by the County Board prior to the County Assessor's recommendation of approval and the County Board's decision to grant the application.

In *Village at North Platte v. Lincoln County Board of Equalization*, the Nebraska Supreme Court considered an appeal from this Commission. The taxpayer in that case had failed to provide a statement of the reason for its valuation protest, as required by statute, and the Lincoln County Board dismissed the protest. On appeal to the Commission, we found that we lacked jurisdiction over the appeal. The Court affirmed the Commission's decision:

Section 77-1502(2) prevented the Board from reaching the merits of the taxpayer's protest. County boards of equalization can exercise only such powers as are expressly granted to them by statute, and statutes conferring power and authority upon a county board of equalization are strictly construed. Because the taxpayer's protest did not include a reason for the requested change, the Board did not have authority to do anything other than dismiss the protest. ...

A tribunal may have subject matter jurisdiction in a matter over a certain class of case, but it may nonetheless lack the authority to address a particular question or grant the particular relief requested. Because the taxpayer's protest failed to include a reason for its requested change in valuation, the statute mandated that the Board dismiss the protest. The Board therefore lacked authority to reach the merits of the valuation of the property.<sup>10</sup>

This appeal presents similar factual and legal issues. Neb. Rev. Stat. § 77-202.01(2) requires the filing of the waiver request by the taxpayer, and the granting of that waiver by the county board upon a determination that good cause exists for the late filing, as a prerequisite for the county assessor's consideration of any application for tax exempt status filed after the deadline. Because Third City Archers failed to file the waiver request, the County Board did not consider whether good cause existed for the late filing, and did not grant the waiver. Because the County Board did not grant the waiver, the County Assessor did not have the authority to consider the application, and the County Board lacked statutory authority to take any action except to dismiss the application when it took the application up on July 10. Accordingly, lacking the statutory

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<sup>9</sup> Neb. Rev. Stat. § 77-202.01 (Reissue 2018).

<sup>10</sup> *Village at North Platte v. Lincoln Cty. Bd. of Equal.*, 292 Neb. 533, 539-540, 873 N.W.2d 201, 206 (2016) (citations omitted).

authority to grant the application under the circumstances described above, the County Board's decision to grant the application was arbitrary and unreasonable.

Because we conclude that the County Board lacked authority to consider the merits of the exemption application, it is inappropriate for us to consider whether the property meets the requirements of Neb. Rev. Stat. § 77-202 for tax exemption.<sup>11</sup>

## V. CONCLUSION

The Department has produced clear and convincing evidence that the decision of the County Board was arbitrary or unreasonable. The County Board lacked the statutory authority to grant Third City Archers' application for exemption. The decision of the County Board must be vacated and reversed.

Since, as a result of this Decision and Order, the Subject Property should be taxable for tax year 2018, and since the parties did not stipulate to such taxable value during the hearing before the Commission, the county board should determine the taxable value of the parcel pursuant to Neb. Rev. Stat. §77-1507 within ninety days after the date of this Decision and Order, and should otherwise comply with the requirements of that statute.

## VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Hall County Board of Equalization determining the value of the Subject Property for tax year 2018 is vacated and reversed.
2. The Subject Property is not exempt from taxation for tax year 2018.
3. The Hall County Board of Equalization shall, within ninety days after the date of this Decision and Order, determine the taxable value of the Subject Property for tax year 2018.
4. This Decision and Order, if no appeal is timely filed, shall be certified to the Hall County Treasurer and the Hall County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2018).

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<sup>11</sup> "Because the Board lacked authority to hear the taxpayer's property valuation protest on the merits of the valuation, the Commission likewise lacked authority to do so." *Village at North Platte* at 541.

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 shall only be applicable to tax year 2018.
8. This Decision and Order is effective for purposes of appeal on October 23, 2019.

Signed and Sealed: October 23, 2019

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Robert W. Hotz, Commissioner

SEAL

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James D. Kuhn, Commissioner