

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Epworth Village, Inc.,
Appellant,

v.

York County Board of Equalization,
Appellee.

Case No: 18E 0055

**DECISION AND ORDER REVERSING
THE DETERMINATION OF THE YORK
COUNTY BOARD OF EQUALIZATION**

For the Appellant:

Epworth Village, Inc.,
Margaret Donovan, CEO

For the Appellee:

Christopher Johnson,
York County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a parcel of real property located in York County. The parcel is improved with a building currently used as a childcare and educational facility. The legal description and property record card for the Subject Property are found at Exhibit 2.

II. PROCEDURAL HISTORY

On or about June 28, 2018, Epworth Village, Inc. (Epworth Village) filed an Exemption Application for the Subject Property.¹ The York County Assessor (the County Assessor) recommended to the York County Board of Equalization (the County Board) that the Subject Property be found not exempt from taxation for tax year 2018.² The York County Board determined that the subject property was not exempt from taxation and denied the application.³

Epworth Village appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on November 5, 2019, with Commissioner Hotz presiding. Exhibits 1 through 11 were admitted without objection.

¹ Exhibit 1.

² Id.

³ Id.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.⁴ This means a new hearing and not merely new findings of fact based upon a previous record.⁵ When the Commission considers an appeal of a decision of a county board of equalization, 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.⁶ 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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸ Statutes exempting property from taxation are to be strictly construed, and the burden of proving the right to exemption is on the claimant.⁹ The power and right of the state to tax is always presumed.¹⁰

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.¹¹ The Commission may take notice of judicially cognizable facts, take notice of general, technical, or scientific facts within its specialized knowledge, and utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.¹² The Commission's Decision and Order shall include findings of fact and conclusions of law.¹³

IV. EXEMPTION

A. Law

Nebraska law sets forth five requirements that must be met in order for an exemption from property taxes to be allowed:

⁴ 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).

⁵ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁶ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ *Fort Calhoun Baptist Church v. Washington Cty. Bd. of Equal.*, 277 Neb. 25, 30, 759 N.W.2d 475, 480 (2009) (citations omitted).

¹⁰ See, e.g., *Jaksha v. State*, 241 Neb. 106, 112, 486 N.W.2d, 858, 864 (1992); *Ancient and Accepted Scottish Rite of Freemasonry v. Board of County Com'rs*, 122 Neb. 586, 241 N.W. 93 (1932).

¹¹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

- (1) The property must be owned by an educational, religious, charitable, or cemetery organization;
- (2) The property must be used exclusively for religious, educational, charitable, or cemetery purposes;
- (3) The property must not be used for financial gain or profit to either the owner or user;
- (4) The property must not be used for the sale of alcoholic liquors for more than 20 hours per week; and
- (5) The property must not be owned or used by an organization that discriminates in membership or employment based on race, color, or national origin.¹⁴

In this statutory context, “exclusive use” means the primary or dominant use of property, as opposed to incidental use.¹⁵ It is the exclusive use of the property that determines the exempt status.¹⁶ The property need not be used solely for one of the four categories of exempt use, but may be used for a combination of exempt uses.¹⁷ The fact that income is generated as a result of an exempt use of the property does not make the property taxable.¹⁸ Property is not used for financial gain or profit to either the owner or user if no part of the income from the property is distributed to the owners, users, members, directors, or officers, or to private individuals.¹⁹

B. Facts & Analysis

Epworth Village is a non-profit organization originally established in 1889 as an orphanage called Mothers’ Jewels Home under the auspices of the United Methodist Women. The organization has provided charitable services to children and families continuously for 130 years, although the organizational structure and the nature of the services provided have evolved with the needs of the community. In the 1950s or 1960s,²⁰ the organization adopted its current name and non-profit corporate structure. Epworth Village’s mission is to provide comprehensive,

¹⁴ Neb. Rev. Stat. § 77-202(1)(d) (Reissue 2018), restated for simplicity. A more detailed iteration of the test can be found in the regulations of the Department of Revenue, at 350 Neb. Admin. Code, Ch. 40 §§ 005.01 to 005.07 (2013).

¹⁵ See *Harold Warp Pioneer Village v. Ewald*, 287 Neb. 19 (2013).

¹⁶ *Id.*

¹⁷ 350 Neb. Admin. Code, Ch. 40, § 005.03 (2013); see also *Bethesda Foundation v. County of Saunders*, 200 Neb. 574, 264 N.W.2d 664 (1978).

¹⁸ See, e.g., *Nebraska Annual Conference of United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 499 N.W.2d 543, (1993); 277 Neb. 25, 759 N.W.2d 475 (2009); *Platte River Whooping Crane Maintenance Trust, Inc., v. Hall County Bd. of Equal.*, 298 Neb. 970, 906 N.W.2d 646 (2018); 350 Neb. Admin. Code, Ch. 40 § 005.05 (2013).

¹⁹ *Id.*

²⁰ CEO Margaret Donovan testified that this change occurred in the late 1950s or early 1960s. The copy of the Articles of Incorporation offered into evidence is dated 1969; see Exhibit 3.

family-centered services that bring hope and light to children, youth, and families across Nebraska in a compassionate and caring manner. Epworth Village currently provides services including agency-sponsored foster care, service and support for foster families, and community based in-home family services. These services are aimed at enabling permanent placement for children with foster families, as well as providing resources and education to parents to reduce the need for placement of children in foster care.

In the course of providing these services, Epworth Village determined that the city of York had a shortage of childcare and early childhood education available for low-income families. Beginning in fall 2017, Epworth Village engaged in renovations to repurpose the Subject Property from a group home and educational facility to a childcare center; the renovation was largely complete by April 2018.²¹ Epworth Village operates the childcare center under the name Little Jewels Child Care & Enrichment Center (Little Jewels).

The rates for childcare at Little Jewels are intentionally set slightly below the rate set by the Nebraska Department of Health and Human Services for state childcare subsidies, enabling parents who qualify for the subsidies to have their children attend without any out-of-pocket expenses.²² However, Epworth Village also wanted to make its childcare service available to middle-income community members who do not qualify for the subsidies based on income; these families can pay for the childcare directly out of pocket. No family is charged more than the subsidy rate, which is set at 60% of the cost of childcare according to a survey of rates throughout Nebraska. The rates charged by Little Jewels are within the range charged by other childcare facilities in York County.

Childcare at Little Jewels includes evidence-based early childhood education for all children who attend, with the goal of preparing the children to enter kindergarten on equal footing with children who attended preschool. This education is tailored to the age of the children involved and includes social development, physical development (such as gross and fine motor skills), cognitive development, and language development.²³ Lead and assistant teachers meet licensure requirements of the Nebraska Department of Education, and the center participates in the department's Step Up to Quality program; this requires staff to engage in double the annual

²¹ The Subject Property was exempt for tax year 2017, Exhibit 2:4.

²² See Exhibit 10:5 for the DHHS subsidy rates, Exhibit 2:24 for Little Jewels rates.

²³ Exhibit 2:23.

training required to retain licensure for childcare. Little Jewels also provides educational opportunities and community resources for the parents of children enrolled in the childcare.

The parties stipulated on the record that the Subject Property is owned by a charitable organization, that the property is not used to sell alcoholic liquor, and that Epworth Village does not engage in prohibited discrimination. The remaining issues are whether the property is used exclusively for exempt purposes and whether the property is used for financial gain or profit. The County Assessor testified that she determined the Subject Property was not exempt because Epworth Village does not provide childcare and related educational services for free; instead, it charges the state (through the subsidies) or the parents (through the out-of-pocket payments) for the services provided. The County Assessor reasoned that, since the rates charged by Little Jewels were within the range charged by other childcare facilities in the county, allowing the property tax exemption gave Little Jewels an unfair competitive advantage over the providers that did not receive an exemption.

We are satisfied that Epworth Village's use of the property satisfies the exclusive use requirement. As explained by Epworth Village's witnesses, the decision to provide high quality childcare and early childhood education at a cost below available subsidies was in response to a need in the community and is targeted toward at-risk, low-income, and middle-income families. Furthermore, the care itself is only one element of the services provided; it is intrinsically linked to both the early childhood education and the education and resources for parents provided by Epworth Village. This combination of charitable and educational purposes is fully consistent with Epworth Village's historic mission. Although the evidence shows that at least some childcare facilities in York County charge similar rates, the Nebraska Supreme Court has ruled that it is the exclusive use of property that is dispositive on the issue of exemption, and not the market rate for the services provided.²⁴

There is no support in law for the County Assessor's view that receipt of income in exchange for services provided rules out a property tax exemption. As stated in numerous court decisions and the regulations of the Department of Revenue, the fact that income is generated as a result of

²⁴ See *Fort Calhoun Baptist Church v. Washington Cty. Bd. of Equal.* In *Fort Calhoun*, this Commission determined that a lease of property from a church to a school was not exempt because the lease was at or above market value. The Nebraska Supreme Court reversed our decision, explaining, "It is the exclusive use of the property that governs the exemption, and not the market value of the lease." 277 Neb. at 32, 759 N.W.2d at 481.

an exempt use of the property does not make the property taxable.²⁵ Property is not used for financial gain or profit to either the owner or user if no part of the income from the property is distributed to the owners, users, members, directors, or officers, or to private individuals.²⁶ Multiple witnesses for Epworth Village testified that the income from the property fails to cover the expense of providing the services, and moreover, that no part of the income from the property is distributed to the owners, users, members, directors, or officers, or private individuals.

Under the regulations of the Department of Revenue, exclusive use of property includes ongoing construction of a building or improvement that, when complete, will be used exclusively for exempt purposes.²⁷ Demolition of existing structures to prepare the property for its exempt use may also be considered an exempt use of the property.²⁸ Because the renovation which occurred from fall 2017 until approximately April 2018 was undertaken for the purpose of bringing the Subject Property to its current exempt use, we find that the Subject Property was exempt for the entire tax year 2018.

V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the decision of the County Board should be vacated and reversed.

VI. ORDER

IT IS ORDERED THAT:

1. The subject property is exempt from taxation for tax year 2018.

²⁵ See, e.g., *Nebraska Annual Conference of United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 499 N.W.2d 543, (1993); *Fort Calhoun Baptist Church v. Washington Cty. Bd. of Equal.*, 277 Neb. 25, 759 N.W.2d 475 (2009); *Platte River Whooping Crane Maintenance Trust, Inc., v. Hall County Bd. of Equal.*, 298 Neb. 970, 906 N.W.2d 646 (2018); 350 Neb. Admin. Code, Ch. 40 § 005.05 (2013).

²⁶ *Id.*

²⁷ 350 Neb. Admin. Code, Ch. 40 § 005.03B(4) (2013).

²⁸ *Id.*

2. This decision and order, if no appeal is timely filed, shall be certified to the York County Treasurer and the York County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
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 2018.
6. This order is effective for purposes of appeal on November 25, 2019.²⁹

Signed and Sealed: November 25, 2019

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

²⁹ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018), other provisions of Nebraska Statute and Court Rules.