

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

TONY FULTON, TAX
COMMISSIONER,

AND

RUTH SORENSEN,
PROPERTY TAX
ADMINISTRATOR,
APPELLANT(S),

V.

SHERIDAN COUNTY BOARD
OF EQUALIZATION,

AND

HIGHLAND BOWLING CLUB
APPELLEE(S).

CASE NO: 20E 0019

DECISION AND ORDER
REVERSING THE DECISION
OF THE SHERIDAN COUNTY
BOARD OF EQUALIZATION

For the Appellants:

Debra L. Williams,
Attorney, Property Assessment
Division

For Sheridan County:

Jamian Simmons,
Deputy Sheridan County
Attorney

For Highland Bowling Club:

Mick Dubs, President,
Highland Bowling Club

This appeal was heard before Commissioners Steven Keetle and James Kuhn. Commissioner Keetle presided.

I. THE SUBJECT PROPERTY

The Subject Property consists of improvements on a residential parcel located in Sheridan County, Nebraska. The Subject Property is a bowling alley owned by the Highland Bowling Club. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 16.

II. PROCEDURAL HISTORY

The Highland Bowling Club (The Taxpayer) filed an Exemption Application (Form 451) with the Sheridan County Assessor (County Assessor) for Tax year 2020.¹ The County Assessor recommended approval of the exemption application and the Sheridan County Board of Equalization (the County Board) determined that the Subject Property was exempt for tax year 2020.² Tony Fulton, Tax Commissioner and Ruth Sorensen, Property Tax Administrator (collectively the Department) appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission).

The Commission held a hearing on October 6, 2022. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference report, as ordered by the Commission. Exhibits 1 through 32 were admitted into evidence by stipulation of the Parties.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.³ When the Commission considers an appeal of a decision of a

¹ Exhibit 1

² Exhibit 1

³ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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

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.⁴ 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.⁵

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.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

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.⁸ The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.⁹ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁰

IV. EXEMPTION LAW

The Nebraska Constitution specifies that property of the state and its governmental subdivisions used for authorized public purposes is exempt from taxation and the Legislature may classify other exempt

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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁴ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁷ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

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

⁹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

properties “owned by and used exclusively for agricultural and horticultural societies and property owned and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user.”¹¹ Pursuant to that Constitutional authorization, the Legislature has required the exemption of the following from property taxes:

Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin... For purposes of this subdivision charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons....¹²

Statutes exempting property from taxation are to be strictly construed, and the burden of proving the right to exemption is on the claimant.¹³ Exclusive use means the primary or dominant use of property, as opposed to incidental use.¹⁴ The exclusive use of the property is what determines the exempt status.¹⁵ Further, a property

¹¹ Neb. Const., Art. VIII, § 2(1).

¹² Neb. Rev. Stat. § 77-202(1)(d) (2014 Cum. Supp.).

¹³ *United Way v. Douglas Cty. Bd. of Equal.*, 215 Neb. 1, N.W.2d 103(1983); *Fort Calhoun Baptist Church v. Washington Cty. Bd. of Equal.*, 277 Neb. 25, 30, 759 N.W.2d 475, 480 (2009); *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁴ *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993).

¹⁵ See, *Nebraska Conf. Assn. of Seventh Day Adventists v. Bd. of Equalization*, 179 Neb. 326, 138 N.W.2d 455 (1965).

owner's exemption from federal income taxation does not determine whether the owner's property is tax exempt under state law.¹⁶

There are two overriding factors Courts consider when a request for an exemption is before them. The first is that the property tax burden is necessarily shifted from the beneficiary of an exemption to others who own taxable property, and the second is that the power and right of the state to tax is always presumed.¹⁷

In addition, the Courts in Nebraska have developed several principles concerning requests for exemptions: (1) an exemption is never presumed but must be applied for;¹⁸ (2) the alleged exempt property must clearly come within the provision granting the exemption;¹⁹ (3) the laws governing property tax exemptions must be strictly construed;²⁰ (4) the courts must give a “liberal and not a harsh or strained construction ...to the terms ‘educational,’ ‘religious,’ and ‘charitable’ in order that the true intent of the constitutional and statutory provisions may be realized”;²¹ and (5) this interpretation should always be reasonable.²²

In accordance with Neb. Rev. Stat. §77-369, the Tax Commissioner has promulgated rules concerning the exemption of real property. The rules and regulations establish that “[t]he five mandated criteria are ownership, exclusive use, no financial gain or profit, restricted

¹⁶ *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

¹⁷ 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).

¹⁸ *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 398, 603 N.W.2d 447, 453 (1999).

¹⁹ *Nebraska State Bar Foundation v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 4, 465 N.W.2d 111, 114 (1991).

²⁰ *Nebraska Annual Conference of United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 416, 499 N.W.2d 543, 547 (1993).

²¹ *Lincoln Woman's Club v. City of Lincoln*, 178 Neb. 357, 363, 133 N.W.2d 455, 459 (1965).

²² *Id.* (citing, *Young Men's Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921)).

alcoholic liquor sales, and prohibited discrimination. The property must meet all five criteria for the exemption to be allowed.”²³

V. SUMMARY OF THE ISSUES

The parties have stipulated that the three unresolved issues in this appeal are (a) whether the Subject Property is owned by a charitable organization, (b) used for financial gain or profit to either the owner or user, and (c) whether the Subject Property is used exclusively for charitable or educational purposes.

VI. FINDINGS OF FACT AND ANALYSIS

The Subject Property is a bowling alley located in Ellsworth, Nebraska. The Subject Property is improvements on leased land that is owned by the Highland Bowling Club. The Highland Bowling Club does not own the land on which the Subject Property is located, and the land is not part of this appeal.

The Department called Mr. Mick Dubs, the President of Highland Bowling Club who offered testimony regarding the Highland Bowling Club and the use of the Subject Property. The Highland Bowling Club (alternately the Club) is the successor to the Highland Gun Club which was started to “give the ranchers something to do.” Dubs testified that he was unaware of any establishing documents for the Club or any documents indicating that it was a 501(3)(c) entity under the internal revenue code. The Club does have officers and a bank account.²⁴

The Subject Property is an old barracks from the Alliance air base brought to its current location. There are three bowling lanes and two ball returns but during the relevant times the Subject Property had no pin setting machines. The lane portion of the building is not insulated. There are 12 elevated seats for an audience and benches and stands for the bowlers. There is an area with 15 to 20 tables, restrooms, and a storage room. The Club has a lease for the ground on which the Subject

²³ 350 Neb. Admin. Code, ch. 40, § 005.01 (7/3/2013).

²⁴ See, Exhibits 4-15, 18, 29

Property is located that charges no rent if the Subject Property is used for recreation or community use.

Dubs testified that 2020 was not a typical year for the club as no dues were collected and the Subject Property was only used for one branding dinner due to COVID restrictions. In a typical year the Club collects dues from its members and, depending on the number of teams, the club has bowling two or three nights a week from Labor Day through sometime in March. The Subject Property has been used for bowling by the Boy Scouts, youth groups, and members for no charge. The Subject Property is available for community use at a minimal charge of \$2.00 per hour, the amount determined to be necessary to cover the cost of the heat and lights for the Subject Property. Recounting a previous year Dubs stated that the Subject Property was used by the community 11 times by non-members and two times for private member events. Dubs testified that the Club holds an annual red pin bowling night with proceeds going to a charity and that the club offers up to 4 educational scholarships. Dubs stated that these fundraising activities have been going on as long as he has been a member of the Club.

Dubs stated that the Club has not generated a profit as it has spent more money on operations, scholarships, or donations to charitable organizations than it has brought in, but that he has loaned money to the Club in an effort to acquire pin setting machines.

Highland Bowling Club applied for a real property exemption as a charitable organization, indicating that the Subject Property was used for charitable and educational purposes. The Department argues that the Club is not a charitable organization as defined by Nebraska Statute and that operates for financial gain or profit. The Department further argues that the social and mental benefits conferred by the Club's activities are incidental to its primary purpose as a bowling

alley and the operation of any business, for profit or not, would provide similar benefits.

Charitable Organization

Neb. Rev. Stat §77-202(1)(d) provides that “[f]or purposes of this subdivision, charitable organization includes an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons and a fraternal benefit society organized and licensed under sections 44-172 to 44-10,109[.]”²⁵ The Nebraska Supreme Court has held that a tax exemption for charitable use is allowed because those exemptions benefit the public generally and the organization performs services which the state is relieved pro tanto from performing.²⁶ The record before the Commission is that the Highland Bowling Club has no establishing documents setting forth the purpose of the Club. The testimony at the hearing was that the Club was established to “give the ranchers something to do” first as a gun club and then as a bowling club as indicated by the name the Club went by at the applicable timeframe. The current purpose of the Highland Bowling Club is to operate as a club centered on the activity of bowling. No evidence was adduced at the hearing to demonstrate that a bowling club was an activity exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons and does not perform a service which the state is relieved pro tanto from performing. For these reasons, the Commission finds that the Highland Bowling Club is not a charitable organization under Neb. Rev. Stat. §77-202(1)(d).

Financial Gain or Profit

Next, we consider whether the Highland Bowling Club operate the Subject Property for financial gain or profit to the organization or its

²⁵ Neb Rev Stat §77-202(1)(d) (Reissue 2018)

²⁶ See, *Platte River Whooping Crane Manic. Trust, Inc v Hall Cty. Bd. Of Equalization*, 298 Neb 970, 976, 906 N.W.2d 646, 651 (2018) (citing *Bethesda Found. v. Buffalo Cty. Bd. of Equal.*, 263 Neb. 454, 640 N.W.2d 398 (2002))

members. The Highland Bowling Club has no organizational documents and has not shown that it was or is a 501(3)(c) entity under the Internal Revenue Code. The Club has shown that has been unprofitable, but it has also not shown that it has any limitations on the distribution of profits or property of the Club to any of its members, such as those required to be a 501(3)(c) entity under the internal revenue code. For these reasons, the Commission cannot find that the Subject Property is not operated for the financial gain or profit of either the Highland Bowling Club or its members.

Charitable or Educational Use

As noted above, it is the exclusive use of the property that determines tax exempt status, and “exclusive use” means the primary or dominant use the property, as opposed to the incidental use.²⁷ The evidence before the Commission is that the primary use of the Subject Property is for league bowling two to three nights a week during the bowling season. The annual “red pin” bowling event and use of club funds to provide scholarships as well as the gratis use of the Subject Property for bowling by educational or charitable organizations is incidental to the primary use of the Subject Property for league bowling. The Commission finds that the Highland Bowling Club’s use of the Subject Property for bowling does not constitute a charitable or educational use.

In summary, the Subject Property does not meet any of the three criteria for a property tax exemption that the Commission is reviewing in this matter. It has not been shown that the Subject Property is (a) owned by a charitable organization, (b) not used for the financial gain or profit to either the owner or user, and (c) used exclusively for charitable or educational purposes. The Department has proven by clear and convincing evidence that the decision of the County Board granting the exemption relied upon an incorrect interpretation of the

²⁷ *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993). See, *Nebraska Conf. Assn. of Seventh Day Adventists v. Bd. of Equalization*, 179 Neb. 326, 138 N.W.2d 455 (1965).

statutory requirements, and was thus unreasonable *per se*. The decision of the County Board must be reversed.

VII. 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 determination of the County Board is vacated and reversed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decision of the Sheridan County Board of Equalization determining the value of the Subject Property is exempt from taxation for tax year 2020 is vacated and reversed.
2. The Subject Property is not exempt from real property taxation for tax year 2020, and shall be placed on the tax roll for tax year 2020.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sheridan County Treasurer and the Sheridan County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018)
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2020.

7. This Decision and Order is effective for purposes of appeal on December 13, 2023.²⁸

Signed and Sealed: December 13, 2023

SEAL



Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner

²⁸ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.