

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

APOSTOLIC ASSEMBLY OF
THE FAITH IN CHRIST
JESUS,
APPELLANT,

V.

HALL COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

CASE NOS: 20E 0099

DECISION AND ORDER
DISMISSING THE DECISION
OF THE HALL COUNTY
BOARD OF EQUALIZATION

I. BACKGROUND

1. The Subject Property includes two adjacent parcels in the city of Grand Island, in Hall County, Nebraska. One parcel is a vacant lot. The other parcel includes a church building. The parcel numbers are 400097001 and 400097028.
2. On December 5, 2019, the Apostolic Assembly of the Faith in Christ Jesus (the Assembly) filed an exemption application for a religious exemption for both parcels, for tax year 2020.
3. The Hall County Assessor (the County Assessor) recommended an approval of the exemption application for all both parcels on December 5, 2020.
4. On February 18, 2020, the Hall County Board of Equalization (County Board) approved the application for exemption for both parcels.
5. There is no record of any appeal that was made of the County Board's February 18, 2020, decision.

6. Subsequent to the February 18, 2020, decision of the County Board, the Church filed another exemption application.¹ The application was filed on April 13, 2020.
7. The County Assessor, on April 15, 2020, recommended approval of the application for the parcel included the church building but recommended a denial of the exemption application for the other parcel consisting of a vacant lot.
8. On June 23, 2020, the County Board approved the exemption application only for the parcel with the church building.
9. On July 22, 2020, the Church appealed the County Board's June 23, 2020, decision to the Tax Equalization and Review Commission (the Commission).
10. A Single Commissioner hearing was held on May 26, 2022, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
11. Sergio Urbina appeared on behalf of the Assembly. Sarah Carstensen, County Attorney, and Kristi Wold, County Assessor, were present for the County Board.

II. APPLICABLE LAW

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.²
13. The Commission's review of a determination of the County Board of Equalization is de novo.³

¹ The record contains no explanation for why the Church would file another application after its first application was approved.

² Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

³ 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). "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, 759 N.W.2d 464, 473 (2009).

14. 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.”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. 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.”⁵
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
17. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸
18. (1) Any organization or society seeking a tax exemption provided in subdivisions (1)(c) and (d) of section [77-202](#) for any real or tangible personal property, except real property used for cemetery purposes, shall apply for exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is sought on forms prescribed by the Tax Commissioner.... The county assessor shall examine the application and recommend either taxable or exempt for the real property or

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

⁵ *Id.* at 283-84.

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

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁸ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

tangible personal property to the county board of equalization on or before March 1 following....

(2) 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. ...*⁹

19. The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁰

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

20. The Assembly's application for exemption dated December 5, 2019, was timely filed.

21. The Decision of the County Board regarding the December 5, 2019, exemption application dated February 18, 2020, granted property tax exemption for both parcels and was not timely appealed.

22. The April 13, 2020, exemption application, because it was filed after December 31, 2019, would have required the filing of a waiver request per the requirements of statute.¹¹

23. The record in these proceedings contains no written waiver request, or any grant of the waiver of the exemption filing requirements pursuant to Neb. Rev. Stat. § 77-202.01(2).

24. Even if a written waiver had been granted by the County Board, the Assembly's exemption application dated April 13, 2020, was not statutorily authorized because such a waiver is permitted under Neb. Rev. Stat. § 77-202.01 only when the applicant "fails to file an exemption application on or before December 31."¹² As noted above,

⁹ Neb. Rev. Stat. § 77-202.01 (Reissue 2018) [emphasis added].

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

¹¹ Neb. Rev. Stat. § 77-202.01 (Reissue 2018).

¹² Neb. Rev. Stat. § 77-202.01(2) (Reissue 2018).

- the Assembly had filed an exemption application for the same property on December 5, 2020.
25. In the absence of a written waiver request and grant of the waiver, the recommendation made by the County Assessor on April 15, 2020, was not authorized by law.
 26. In the absence of a written waiver request and grant of the waiver, the Decision of the County Board dated June 23, 2020, was also not authorized by law.
 27. Since the County Board Decision was not authorized, the Commission does not have authority to consider the appeal filed by the Assembly on April 13, 2020.
 28. Therefore, the Commission should dismiss the appeal dated July 22, 2020.

IV. ORDER

IT IS ORDERED THAT:

1. The decision of the County Board of Equalization on June 23, 2020, was not statutorily authorized and therefore is void.
2. The decision by the County Board on February 18, 2020, approving the exemption application for both parcels was not timely appealed and is undisturbed by this Decision and Order.
3. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall 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 on July 12, 2024.

Signed and Sealed: July 12, 2024



Robert W. Hotz, Commissioner