

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

FIRST UNITED  
PRESBYTERIAN CHURCH,  
APPELLANT,

V.

HALL COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

CASE NO: 20E 0100

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

**I. BACKGROUND**

1. The Subject Property includes three contiguous parcels in the city of Wood River, in Hall County, Nebraska. One of the parcels includes a church building.
2. On December 9, 2019, the First United Presbyterian Church (the Church) filed an exemption application for a religious exemption for all three parcels for tax year 2020.
3. The Hall County Assessor (the County Assessor) recommended a denial of the exemption application on December 12, 2020.
4. On February 18, 2020, the Hall County Board of Equalization (County Board) granted the application for exemption for all three parcels.
5. No appeal 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.<sup>1</sup> The application was filed on June 25, 2020.
7. The County Assessor, on June 25, 2020, recommended approval of the application for two of the three parcels, but recommended a denial of the exemption application for parcel number 400315688, consisting of a vacant lot.
8. On July 7, 2020, the County Board approved the exemption application for the same two parcels.
9. On July 22, 2020, the Church appealed the County Board's July 7, 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. Brad Jepsen, Susan Jepsen, Pam Dubbs, and Beth Fotinos were present at the hearing for the Church.
12. Sarah Carstensen, County Attorney, and Kristi Wold, County Assessor, were present for the County Board.

## II. APPLICABLE LAW

13. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>2</sup>
14. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>3</sup>

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<sup>1</sup> The only explanation for why the Church would file another application after its first application was approved is reference to a letter from the Nebraska Department of Revenue to the County Board "requesting that the Board of Equalization revisit this request." Case File.

<sup>2</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>3</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). "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

15. 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.”<sup>4</sup> 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.”<sup>5</sup>
16. 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>6</sup>
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>
18. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>8</sup>
19. (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

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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).

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

<sup>5</sup> *Id.* at 283-84.

<sup>6</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

<sup>8</sup> *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).

and recommend either taxable or exempt for the real property or 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. ...*<sup>9</sup>

20. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>10</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

21. The Church's application for exemption dated December 9, 2019, was timely filed.
22. The Decision of the County Board regarding the December 9, 2019, exemption application dated February 18, 2020, granted property tax exemption for all three Subject Properties and was not timely appealed.
23. The June 25, 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.<sup>11</sup>
24. 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).
25. Even if a written waiver had been granted by the County Board, the Church's exemption application dated June 25, 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

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

<sup>10</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-202.01 (Reissue 2018).

exemption application on or before December 31.”<sup>12</sup> As noted above, the Church had filed an exemption application for the same property on December 9, 2020.

26. In the absence of a written waiver request and grant of the waiver, the recommendation made by the County Assessor on June 25, 2020, was not authorized by law.
27. In the absence of a written waiver request and grant of the waiver, the Decision of the County Board dated July 7, 2020, was also not authorized by law.
28. Since the County Board Decision was not authorized, the Commission does not have authority to consider the appeal filed by the Church on July 22, 2020.
29. 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 July 7, 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 all three 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.

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<sup>12</sup> Neb. Rev. Stat. § 77-202.01(2) (Reissue 2018).

6. This Decision and Order shall only be applicable to tax year 2020.
7. This Decision and Order is effective on July 11, 2024.

Signed and Sealed: July 11, 2024



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Robert W. Hotz, Commissioner