

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

TONY FULTON, TAX
COMMISSIONER AND RUTH
SORENSEN, PROPERTY TAX
ADMINISTRATOR,
DEPARTMENT OF REVENUE
APPELLANT,

V.

SARPY COUNTY BOARD OF
EQUALIZATION,

AND,

FIRST BAPTIST CHURCH
APPELLEES.

CASE NO: 22E 0956

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

For the Appellant:

Nathan Kinport,
Attorney, Department of Revenue

For the Appellee Sarpy County:

No Appearance.

For the Appellee First Baptist Church:

No Appearance.

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

I. THE SUBJECT PROPERTY

The Subject Property is an improved parcel located in the city of Plattsmouth, Sarpy County, Nebraska with a legal description of Lot 83 Leawood Oaks II.¹

II. PROCEDURAL HISTORY

The Sarpy County Board of Equalization determined the Subject Property was exempt from property tax for tax year 2022.² 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 May 28, 2024. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. Exhibits 1-3 were admitted into evidence at the hearing without objection.

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 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

¹ Exhibit 1:2.

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 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).

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

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

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is overvalued.⁸ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.⁹

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. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.¹⁰ 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

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

⁹ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

¹⁰ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

evaluation of the evidence presented to it.¹¹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹²

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 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.”¹³ 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....¹⁴

¹¹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹³ Neb. Const., Art. VIII, § 2(1).

¹⁴ Neb. Rev. Stat. § 77-202(1)(d) (2014 Cum. Supp.).

Statutes exempting property from taxation are to be strictly construed, and the burden of proving the right to exemption is on the claimant.¹⁵

V. FINDINGS OF FACT

Dan Pittman was called to testify on behalf of the Department of Revenue. Pittman has been the Sarpy County Assessor (County Assessor) since 1999. He holds the State Assessor's Certificate and is a licensed appraiser. In his role as County Assessor, Pittman testified his duty was to review permissive exemption applications (Form 451) for completeness as well as make a recommendation to the County Board whether to approve, approve in part, or deny the application.

Pittman stated the First Baptist Church submitted a Form 451 seeking a permissive exemption for the Subject Property. The Form 451 was signed by the applicant on July 6, 2022.¹⁶ Pittman noted the Form 451 was date-stamped by his office as being received on August 18, 2022.¹⁷ He was unaware of any waiver having been filed with the application.

Pittman recommended the County Board deny the application, citing Regulation 40-007.01 requiring permissive exemption applications for each tax year to be received on or before July 1. Contrary to Pittman's recommendation, the County Board voted to reject Pittman's recommendation on one motion and voted to grant the permissive exemption application in a subsequent motion.¹⁸

VI. ANALYSIS

The application procedure for permissive property tax exemptions is governed by Neb. Rev. Stat. § 77-202.01. Such applications must be submitted "to the county assessor on or before December 31 of the year

¹⁵ *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).

¹⁶ Exhibit 2.

¹⁷ *Id.*

¹⁸ Exhibit 3.

preceding the year for which the exemption is sought...”¹⁹ If an organization does not file their exemption application on or before December 31 of the prior year, that organization “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.”²⁰

Here, the Form 451 submitted by the Taxpayer indicates they are seeking an exemption for the 2022 tax year.²¹ It was signed by a representative of the Taxpayer on July 6, 2022, and received by the office of the County Assessor on August 18, 2022. Both the date of signing and the date of receipt are well past the June 30, 2022, deadline for receipt of applications even if a waiver had been submitted by the Taxpayer.

Turning to the County Board’s motions, Neb. Rev. Stat. § 77-202.02 states:

The county board of equalization, between February 1 and June 1 after a hearing on ten days’ notice to the applicant and the publication of notice as provided in section 77-202.01, and after considering the recommendation of the county assessor and any other information it may obtain from public testimony, shall grant or withhold tax exemption for the real property or tangible personal property on the basis of law and of regulations promulgated by the Tax Commissioner. For applications accepted after approval of a waiver pursuant to section 77-202.01, the county board of

¹⁹ Neb. Rev. Stat. § 77-202.01(1) (Cum. Supp. 2022).

²⁰ Neb. Rev. Stat. § 77-202.01(2) (Cum. Supp. 2022).

²¹ Exhibit 2.

equalization shall hear and certify its decision on or before August 15.

Here, the Form 451 was not received by the County Assessor until August 18, three days after the latest date the County Board could have acted on timely-filed applications with a waiver.

“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.”²² Because the timeframe for the County Board to consider exemption applications is specifically limited, the Commission finds the County Board had no authority to do anything in relation to the Taxpayer’s application other than to dismiss it for untimely filing. The Commission finds the County Board’s approval of the Taxpayer’s exemption application to be void and of no effect.

VII. CONCLUSION

Since the County Board had no authority to act on the exemption application because it was not properly filed in accordance with the law, the Commission likewise has no authority to act on the exemption application.

For the reasons set forth above, the determination of the County Board granting a permissive exemption should be held to be null and void and the exemption application should be denied.

²² *Cargill Meat Solutions v. Colfax Cty. Bd. of Equal.*, 290 Neb. 726, 738, 861 N.W.2d 718, 727 (2015).

VIII. ORDER

IT IS ORDERED THAT:

1. The decision of the Sarpy County Board of Equalization granting permissive exemption from property tax for the Subject Property for tax year 2022 is null and void.
2. The Subject Property is not exempt from real property taxation for tax year 2022 and shall be placed on the tax roll for tax year 2022.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer and the Sarpy 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 2022.
7. This Decision and Order is effective for purposes of appeal on June 3, 2024.²³

Signed and Sealed: June 3, 2024

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

²³ 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.