

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

GAYLE L. BRUNICK,  
APPELLANT,

V.

DAKOTA COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

CASE NO: 22H 0493

DECISION AND ORDER  
AFFIRMING THE DECISION  
OF THE DAKOTA COUNTY  
BOARD OF EQUALIZATION

**For the Appellant:**

Gayle L. Brunick,  
Pro Se

**For the Appellee:**

Kim Watson  
Deputy Dakota County Attorney

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

**I. THE SUBJECT PROPERTY**

The Subject Property is a ten-acre parcel improved with a 1,392 square foot doublewide and two sheds, located in Dakota County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 4.

**II. PROCEDURAL HISTORY**

The Dakota County Assessor (County Assessor) determined that the homestead exemption application for the Subject Property was incomplete for tax year 2022, as of the filing deadline. Gayle L. Brunick (the Taxpayer) attempted to submit the completed application to the Dakota County Board of Equalization (the County Board) via the Dakota County Clerk. The County Board ultimately determined that

the homestead exemption application for Subject Property for tax year 2022 should be denied as being untimely filed.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on June 27, 2023. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1 through 7 were admitted into evidence.

### III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.<sup>2</sup> 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.<sup>3</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>4</sup>

The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order,

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<sup>1</sup> Exhibit 1.

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

<sup>4</sup> *Id.*

decision, determination, or action was unreasonable or arbitrary.<sup>5</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>9</sup>

#### **IV. HOMESTEAD EXEMPTION LAW**

The Commission has the power and duty to hear and determine appeals of decisions of any county board of equalization granting or rejecting an application for a homestead exemption.<sup>10</sup>

Neb. Rev. Stat. § 77-3508 provides, in relevant part:

(1)(a) All homesteads in this state shall be assessed for taxation the same as any other property, except that there shall be exempt from taxation, on any homestead described in subdivision (b) of this subsection, a percentage of the exempt amount as limited by section 77-3506.03.

...

Neb. Rev. Stat. § 77-3510 provides, in part:

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<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>8</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>9</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>10</sup> Neb. Rev. Stat. § 77-5007(7) (Reissue 2018).

On or before February 1 of each year, the Tax Commissioner shall prescribe forms to be used by all claimants for homestead exemption or for transfer of homestead exemption. Such forms shall contain provisions for the showing of all information which the Tax Commissioner may deem necessary to (1) enable the county officials and the Tax Commissioner to determine whether each claim for exemption under sections 77-3506, 77-3507, and 77-3508 should be allowed and (2) enable the county assessor to determine whether each claim for transfer of homestead exemption pursuant to section 77-3509.01 should be allowed. It shall be the duty of the county assessor of each county in this state to furnish such forms, upon request, to each person desiring to make application for homestead exemption or for transfer of homestead exemption. The forms so prescribed shall be used uniformly throughout the state, and no application for exemption or for transfer of homestead exemption shall be allowed unless the applicant uses the prescribed form in making an application.

Neb. Rev. Stat. § 77-3512 (Cum. Supp. 2022) states:

It shall be the duty of each owner who wants a homestead exemption under section 77-3506, 77-3507, or 77-3508 to file an application therefor with the county assessor of the county in which the homestead is located after February 1 and on or before June 30 of each year. Failure to do so shall constitute a waiver of the exemption for the year, except that:

- (1) The county board of the county in which the homestead is located may, by majority vote, extend the deadline for an applicant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year;
- (2) An owner may file a late application pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the owner's ability to file the application in a timely manner; and
- (3) An owner may file a late application pursuant to section 77-3514.01 if he or she includes a copy of the death certificate of a

spouse who died during the year for which the exemption is requested.

## **V. FINDINGS OF FACT**

### **A. Summary of the Evidence**

#### **1. Testimony of Gayle Brunick**

Gayle Brunick offered her own testimony. Brunick stated her homestead exemption on the Subject Property for prior years had been approved. However, for tax year 2022, Brunick stated she was in a rush to collect the required application forms, and in her haste, mistakenly failed to send all of the required forms. Brunick conceded that only the Schedule I attachment was filed on June 29.<sup>11</sup> She asserts that she sent completed Form 458 by fax to the Dakota County Clerk on July 20, 2022, after the June 30, 2022, statutory deadline.<sup>12</sup> Brunick seeks equitable relief.

#### **2. Testimony of Melissa Collins**

The County Board called Melissa Collins to testify. Collins had been the Deputy Dakota County Assessor for five years and held the State Assessor's Certificate.

Collins testified she mailed the Form 458 and Schedule I forms to Brunick. Collins also mailed a reminder letter on June 10, 2022, to all prior homestead exemption applicants.<sup>13</sup> She stated Brunick had called the Assessor's Office on June 29, 2022, to inquire what forms were needed to file for tax year 2022. Collins informed Brunick that both Form 458 and Schedule I were required to be filed prior to June 30, 2022.

Collins stated the Schedule I form was received on July 5, 2022, postmarked June 29, 2022. Collins noted that the County Board did

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<sup>11</sup> Exhibits 7:3-4.

<sup>12</sup> Neb. Rev. Stat. § 77-3512 (Cum. Supp. 2022).

<sup>13</sup> Exhibit 7:1.

not extend the deadline for homestead exemption applications for 2022, and therefore Collins was required to send a rejection notice.<sup>14</sup>

### **B. Analysis**

Nebraska Revised Statutes § 77-3512 requires a taxpayer requesting a homestead exemption to file a completed application with the county assessor after February 1 and on or before June 30 of each year.

There are three situations provided in the statute which would allow for a late filing to be accepted. The County Board may extend the deadline for an applicant, provided an extension was not granted the prior year. An applicant may file late if documentation is provided of a medical condition which prevented timely filing. Lastly, an applicant may file late if a copy of the death certificate for a spouse who died in that year is provided.<sup>15</sup>

It is not disputed by either party that Brunick's application for homestead exemption was incomplete on or before the June 30, 2022, deadline. Nothing in the record before the Commission establishes that any of the three deadline exceptions provided in statute apply in this matter.

The Commission does not have equitable power or authority to direct the County Board to accept a filing which did not comply with the statutory filing requirements.<sup>16</sup> As an administrative agency, the Commission has only the jurisdiction and authority provided to it by statute.<sup>17</sup>

## **VI. CONCLUSIONS OF LAW**

The Commission finds there is not competent evidence to rebut the presumption the County Board faithfully performed its duties and had

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<sup>14</sup> Exhibit 7:2.

<sup>15</sup> Neb. Rev. Stat. § 77-3512 (Cum. Supp. 2022).

<sup>16</sup> The Commission has not had equitable power since Neb. Rev. Stat. § 77-1511 was repealed in 2001. See Laws 2001, LB 465, § 12.

<sup>17</sup> See *Village at North Platte v. Lincoln Cty. Bd. of Equal.*, 292 Neb. 533, 873 N.W.2d 201 (2016).

sufficient competent evidence to make its determination. The Commission also finds there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For the reasons set forth above, the determination of the County Board should be affirmed.

**VII. ORDER**

IT IS ORDERED THAT:

1. The decision of the Dakota County Board of Equalization rejecting the homestead exemption application for the Subject Property for tax year 2022, is affirmed.
2. This Decision and Order, if no appeal is timely filed, shall be certified to the Dakota County Treasurer and the Dakota 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 Decision and Order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This Decision and Order shall only be applicable to tax year 2022.
6. This Decision and Order is effective for purposes of appeal on August 30, 2023.<sup>18</sup>

Signed and Sealed: August 30, 2023

SEAL



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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

<sup>18</sup> 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.