

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Philip Jonathan Found,
Appellant,

v.

Scotts Bluff County Board of Equalization,
Appellee.

Case No: 15H 0003

**ORDER VACATING DECISION OF
COUNTY BOARD AND GRANTING
HOMESTEAD EXEMPTION**

For the Appellant:

Philip Jonathan Found,
Pro Se

For the Appellee:

Philip M. Kelly,
Scotts Bluff County Attorney

Heard before Commissioners Keetle and Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Scotts Bluff County. The parcel is improved with a 1,724 square foot home. The legal description of the parcel is found at Exhibit 1. The property record card for the subject property is found at Exhibit 5.

II. PROCEDURAL HISTORY

The Scotts Bluff County Assessor (County Assessor) determined that the Subject Property was not exempt from taxation due to a homestead exemption for tax year 2015. Philip Jonathan Found (the Taxpayer) protested this assessment to the Scotts Bluff County Board of Equalization (the County Board) and requested that the subject property be exempt from taxation based on a homestead exemption. The County Board determined that the subject property was not exempt from taxation due to a homestead exemption for tax year 2015. (E1)

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits 1 through 28. The Commission held a hearing on June 3, 2016.

III. STANDARD OF REVIEW

The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “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.”² 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.”³

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.⁴

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

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.”⁷ The commission may also “take notice of judicially cognizable facts and in addition 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

¹ See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

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

⁷ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

it.⁸ The Commission's Decision and Order shall include findings of fact and conclusions of law.⁹

IV. ANALYSIS

A. Law

Homestead exemption applications are required to be filed annually 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.¹⁰ County assessors are required to examine each application for homestead exemption and determine, except for the income requirements, whether or not such application should be approved or rejected.¹¹ In any case when the county assessor rejects an application for exemption, he or she shall notify the applicant of such action by mailing written notice to the applicant at the address shown in the application.¹² The notice shall be mailed not later than July 31 of each year unless there is a statutory exception. The three statutory exceptions are for a change in ownership or occupancy from January 1 through August 15 or a late application authorized by the county board or permitted because of a medical condition which impaired the applicant's ability to file in a timely manner.¹³ In cases falling under an exception, the notice shall be sent within a reasonable time.¹⁴

When a county assessor rejects a homestead exemption application, the applicant may appeal to the county board of equalization within 30 days of receipt of notice.¹⁵ Nebraska law further provides that the applicant may appeal a county board of equalization's appeal determination to the Commission within thirty days after the decision.¹⁶

B. Summary of the Evidence

The Taxpayer first stated that his initial argument was that the County Assessor was required to approve or deny the Taxpayer's homestead exemption application on or before July 31, 2015,

⁸ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

⁹ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁰ See, Neb. Rev. Stat. §77-3512 (2014 Cum. Supp.).

¹¹ See, Neb. Rev. Stat. §77-3516 (2014 Cum. Supp.).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Neb. Rev. Stat. §77-3519 (Reissue 2009).

¹⁶ Neb. Rev. Stat. §77-3519 (Reissue 2009).

and that her failure to do so rendered her denial of the homestead application void. The Taxpayer went on to say that he now believed that the rejection of the homestead exemption application could be mailed after July 31, 2015. The Taxpayer alleged that he was denied due process in that he was unable to protest the 2015 assessed valuation of his property.

1. Assessed Value of the Subject Property

The Taxpayer testified that he received, on or about June 1, 2015, the notice of valuation change from the Assessor indicating that the new assessed value of his property was \$265,372 for tax year 2015.¹⁷ A protest of this valuation had to be signed and filed with the county board of equalization on or before June 30, 2015.¹⁸ The Taxpayer testified that he did not file a protest of this valuation with the County Board on or before June 30, 2015. This was the opportunity that the Taxpayer had to initiate the review of the assessed value of the Subject Property for tax year 2015 provided by law.

The Taxpayer argues that the instructions on the back of the form 458 allow him to file a protest of his 2015 assessed value after June 30, 2015. The language on the back of the form 458 refers to the property assessment protest process described above and does not give the Taxpayer the right to file a protest of the assessed value of his property after June 30, 2015. The record before the Commission in this matter does not demonstrate a set of facts that would allow the Taxpayer to protest the assessed value of the Subject Property as determined by the Assessor after June 30, 2015.

2. Homestead Exemption

Homestead exemption applications are required to be filed annually 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.¹⁹ The Taxpayer's Form 458 Homestead Exemption Application was filed with the Assessor's office on April 28, 2015.²⁰ The Taxpayer therefore timely filed his Homestead Exemption Application for tax year 2015.

In cases where the homestead exemption is denied, the county assessor is required by law to mail notice of that rejection by July 31.²¹ In this case, the required notice was sent to the

¹⁷ See Neb. Rev. Stat. 77-1315 (2014 Cum. Supp.), see also Exhibit 4.

¹⁸ Neb. Rev. Stat. 77-1502(1)(2014 Cum. Supp.).

¹⁹ See, Neb. Rev. Stat. §77-3512 (2014 Cum. Supp.).

²⁰ Exhibit 3.

²¹ Neb. Rev. Stat. §77-3516 (2014 Cum. Supp.).

Taxpayer on October 23, 2015.²² Therefore, the Taxpayer did not receive the notice of rejection from the County Assessor by the statutorily required deadline.

The County Board argues that the following language contained in the rules and regulations of the Nebraska Department of Revenue, Property Assessment Division, which is different than the language found in statute, allows the Assessor to mail the notice after the statutorily required date of July 31:

The notice must be mailed no later than July 31, except in cases of a medical condition pursuant to Neb. Rev. Stat. §77-3514.01, or a change in ownership or occupancy from January 1 through August 15, or *other cases when the homestead exemption should not be granted*, in which case the notice must be sent within a reasonable time.²³

The Assessor testified that when a homestead exemption application is filed, her office only reviews the application to be sure that the age and occupancy requirements are met.²⁴ The Assessor testified that the practice of her office is to wait and mail out the notice of the rejection of the homestead exemption applications until October after the Assessor has received the roster and knows the county's maximum allowable value for exemption. The testimony and argument presented by the County Board and County Assessor allege that the Assessor would be unable to approve or reject a homestead application prior to July 31 because the Assessor does not know all of the information required to determine if the applicant meets all of the requirements to receive an exemption until after that date. Specifically, in this appeal the Assessor alleged that she did not know if the assessed value of the Taxpayer's homestead exceeded the maximum value allowed to receive a homestead exemption in Scotts Bluff County. The facts in this case indicate otherwise.

A county assessor is required to determine the values of residential property in their county on or before March 19 of each year. The evidence demonstrates that the Taxpayer was provided a notice of the assessed value of his property on or about June 1, 2015. The Taxpayer did not protest this assessed value, but even if he had protested it the County Board would have had to hear and take action on all protests on or before July 25. The assessed value for the Taxpayers homestead, as well as all other residential properties in Scotts Bluff County, had to be set no later

²² Exhibit 1.

²³ Title 350, Neb. Admin. Code ch. 45, §005.02 (7/13) *emphasis added*.

²⁴ See Exhibit 3.

than July 25, 2015. The Assessor therefore had all of the information she needed to determine if the assessed value of the Taxpayer's homestead exceeded the maximum value allowed to receive a homestead exemption in Scotts Bluff County prior to the July 31, 2015 deadline for mailing the notice of rejection. The Assessor is not required to certify this information to the Property Tax Administrator until August 10 of each year, but the Assessor did so on August 3, 2015, and could have done this by July 25, 2016, or possibly earlier.²⁵

As noted earlier in this order, the statutes allow for the mailing of the assessors notice of rejection "within a reasonable time" after July 31 for three reasons: change of ownership or occupancy, late application authorized by the county board, or permitted because of a medical condition. The rules and regulations of the Nebraska Department of Revenue, Property Assessment Division explicitly state only two of these reasons, medical condition and change of ownership or occupancy. Therefore, it could be reasonably interpreted that the late application authorized by the county board is the situation where the "other cases when the homestead exemption application should not be granted" language applied. In the present case however, there was not a late application approved by the county board for the Taxpayer. The language of the Rules and Regulations of the Nebraska Department of Revenue, Property Assessment Division do not allow for the late mailing of a notice of rejection of homestead exemption application to the Taxpayer in the present case.

The remaining issue is the effect of the County Assessor's failure to mail timely notice to the Taxpayer. The Courts in Nebraska have consistently voided actions of county boards when there was a failure to follow mandatory notice statutes. In *Rosenberry v. Douglas County*, the Nebraska Supreme Court held that a county assessor did not have authority to increase the assessed value of a property unless the taxpayer received appropriate notice.²⁶ The Court reasoned that it was mandatory under the applicable Nebraska Statute that a county assessor or county board of equalization provide notice of an increased assessment of property taxes to the taxpayer. Similarly, in *Gamboni v. County of Otoe*, the Nebraska Supreme Court held that

²⁵ The record before the Commission does not indicate when the Scotts Bluff County Board of Equalization completed its review of property valuation protests filed pursuant to Neb. Rev. Stat. §77-1502 but the County Board could have heard and decided the protests prior to the last date for the County Board to take action for tax year 2015 would have been July 25, 2015.

²⁶ 123 Neb. 803, 244 N.W. 398 (1932)

where a county assessor provides notice of a valuation increase, but does not include all of the requisite information, then the increased valuation is void.²⁷

This line of reasoning has been extended in cases involving the timely mailing of notice. In *Falotico v. Grant County Board of Equalization*, the Grant County Board of Equalization failed to send notice of its determination within 7 days as required by statute²⁸. The taxpayer filed his appeal to the Commission late and the Nebraska Supreme Court determined that the Commission did not have jurisdiction. The increased assessment was held void because the taxpayer did not have an effective path for appealing the merits of the determination.

In *Darnall Ranch, Inc., v. Banner County Board of Equalization*, the Nebraska Supreme Court held that the Banner County Board of Equalization had violated the Open Meeting Acts concerning the taxpayer's petition to the county board of equalization²⁹. The Court reasoned that because the taxpayer no longer had an avenue of appeal available the increased assessment was void.

As the above cases show, the Nebraska Supreme Court and Court of Appeals have determined that the appropriate remedy is to void the county's assessment when there is a failure to follow a mandatory provision of statute. This includes a failure to provide appropriate notice of a county board determination or an increase in taxation by a county assessor. The courts concluded that because the taxpayer had lost its access to review, the increased assessment was void.³⁰

V. CONCLUSION

The Commission finds that the because the Assessor failed to provide the Taxpayer with the required notice of rejection of homestead exemption, her action denying the exemption is void and the County Boards affirmance of that action is also void. The Taxpayer's Homestead Exemption should be granted.

²⁷ 159 Neb. 417, 67 N.W.2d 489 (1954) disapproved on other grounds

²⁸ 262 Neb. 292, 631 N.W.2d 492 (2001)

²⁹ 280 Neb. 655, 789 N.W.2d 26 (2010)

³⁰ The adoption of Nebraska Statutes section 77-1507.01, would change the outcome in some of the prior cases but there is no equivalent to this statute regarding Homestead Exemptions.

VI. ORDER

IT IS ORDERED THAT:

1. The denial of the homestead exemption for the property which is the subject of this appeal by the Scotts Bluff County Assessor and Scotts Bluff County Board of Equalization is void.
2. The homestead exemption for the property which is the subject of this appeal shall be granted for tax year 2015.
3. This decision and order, if no appeal is timely filed, shall be certified to the Scotts Bluff County Treasurer and the Scotts Bluff County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2015.
7. This order is effective for purposes of appeal on August 31, 2016.

Signed and Sealed: August 31, 2016.

Steven A. Keetle, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.