

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

WEST BELLEVUE CONGREGATION OF)		
JEHOVAH'S WITNESSES,)		
)	Case No 06E-008
Appellant,)		
)	DECISION AND ORDER AFFIRMING
v.)		THE DECISION OF THE SARPY
)	COUNTY BOARD OF EQUALIZATION
SARPY COUNTY BOARD OF)		
EQUALIZATION,)		
)	
Appellee.		

The above-captioned case was called for a hearing on the merits of an appeal by West Bellevue Congregation of Jehovah's Witnesses ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on December 19, 2006, pursuant to an Order for Hearing and Notice of Hearing issued October 19, 2006. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Morton E. Scott, Secretary of the Taxpayer was present at the hearing. Aaron F. Smeall appeared as legal counsel for the Taxpayer.

The Sarpy County Board of Equalization ("the County Board") appeared through legal counsel, Nicole O'Keefe, a Deputy County Attorney for Sarpy County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.
ISSUES**

The Taxpayer has asserted that the subject property should be exempt from taxation.

The issues on appeal related to that assertion are:

Was the decision of the County Board denying an application for exemption of the subject property from taxation unreasonable or arbitrary?

Is the subject property exempt from taxation?

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has an interest, sufficient to maintain this appeal, in a parcel of real property described as Lot 2 Blue Ridge Replat II of Lot 115 Blue Ridge, Sarpy County, Nebraska. That parcel is the ("subject property").
2. An application for exemption of the subject property from taxation was filed by the Taxpayer.
3. The Assessor recommended disapproval.
4. The Assessor's recommendation was affirmed by the County Board
5. An Order for Hearing and Notice of Hearing issued on October 19, 2006, set a hearing of the appeal for December 19, 2006, at 9:00 a.m. CST.
6. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998).
2. “Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 4, of this Constitution or any other provision of this Constitution to the contrary: (1) The property of the state and its governmental subdivisions shall constitute a separate class of property and shall be exempt from taxation to the extent such property is used by the state or governmental subdivision for public purposes authorized to the state or governmental subdivision by this Constitution or the Legislature. To the extent such property is not used for the authorized public purposes, the Legislature may classify such property, exempt such classes, and impose or authorize some or all of such property to be subject to property taxes or payments in lieu of property taxes except as provided by law; (2) the Legislature by general law may classify and exempt from taxation property 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....” *Neb. Const*, Art VIII § 1
3. Section 1 of Art VII of Nebraska's Constitution, providing for tax exemption of certain property, is not self-executing, but requires action by the Legislature to carry such

constitutional provision into effect. *Indian Hills Comm. Ch. v. County Bd. of Equal.*, 226 Neb. 510, 412 N.W.2d 459 (1987).

4. “(1) The following property shall be exempt from property taxes:...(d) 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.” Neb. Rev. Stat. §77-202 (Supp 2005).
5. In reference to subsection (1)(d) of Nebraska Statutes section 77-202, exclusive use means the primary or dominant use of property, as opposed to incidental use. *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993)
6. Subsection (1)(d) of Nebraska Statutes section 77-202 contains a two-tier approach to property tax exemption: the first tier involves the nature, character, or status of a property owner, and the second tier concerns the use of the property. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).
7. To be tax exempt, property must (1) be owned by an organization designated in subsection (1)(d) of Nebraska Statutes section 77-202; (2) be used exclusively for at least one of the purposes specified in subsection (1) (d) of Nebraska Statutes section 77-202; and (3) not be (a) owned or used for financial gain to the property owner or user,

- (b) used more than 20 hours per week for sale of alcoholic liquors, or (c) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).
8. Statutes exempting property from taxation are to be strictly construed, property must come clearly within the statutory provisions granting such exemption, and the burden of proving the right to the exemption is upon the claimant. *United Way v. Douglas Co. Bd. of Equal.*, 215 Neb. 1, 337 N.W.2d 103 (1983).
 9. A liberal and not a harsh or strained construction is to be given to the terms 'educational,' 'religious,' and 'charitable' in order that the true intent of the constitutional and statutory provisions may be realized. The interpretation should always be reasonable. *Young Men's Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921).
 10. The burden of proof is upon one claiming property to be exempt from taxation to establish that its predominant use is for one of the purposes set out in this section. *OEA Senior Citizens, Inc. v. County of Douglas*, 186 Neb. 593, 185 N.W.2d 464 (1971)
Berean Fundamental Church Council, Inc. v. Board of Equalization, 186 Neb. 431, 183 N.W.2d 750 (1971).
 11. Under subsection (1)(d) of section 77-202 of Nebraska Statutes, a property owner's exemption from federal income taxation does not determine whether the owner's property is tax exempt under state law. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

12. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
13. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action 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. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
14. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987) (citations omitted)
15. The Commission can grant relief only if the Taxpayer establishes by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
16. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).

17. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion.
Phelps Cty. Bd. of Equal. v. Graf, 258 Neb 810, 606 N.W.2d 736, (2000).
18. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).

IV. DISCUSSION

The subject property is an undeveloped lot lying adjacent to a parcel with a building used for religious services of the Taxpayer. The subject property is used intermittently and infrequently for overflow parking. The subject property was acquired in July of 2003. (E4:1). A listing agreement for sale of the subject property was entered into on January 1, 2004. (E4:3). The evidence is that the listing agreement has been continuously in effect from that date to the date of hearing. The evidence is that the subject property was acquired for the purpose of its sale and application of the proceeds to a loan obligation of the Taxpayer. An exemption from taxation cannot be granted unless the owner of the property is qualified and the owner's use is a permitted use without a prohibited. use. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991). In this appeal it is only necessary to determine whether the predominate use of the subject property is a permitted use. The evidence and representations of the Taxpayer are that the predominate use of the subject property is as an asset for sale and reduction of debt. If the predominate use of property to generate income that use does not qualify the property for exemption even if the income is used

for an exempt purpose. See, *Doane College v. County of Saline*, 173 Neb. 8, 112 N.W.2d 248, (1961). The production of income as the result of the conduct of a predominate use that is an exempt purpose does not disqualify property. *Nebraska Conf. Assn. Seventh Day Adventists v. County of Hall*, 166 Neb. 588, 90 N.W.2d 50 (1958). The evidence in this appeal is that the predominate use of the property is for the production of income separate from the conduct of any other use of the property. The decision of the County Board should be affirmed.

**V.
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The Taxpayer has not adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary, and the decision of the County Board should be affirmed.

**VI.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decision of the County Board determining that the subject property is taxable as of the assessment date January 1, 2006, are affirmed.

2. This decision, 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 (Supp. 2005).
3. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This decision shall only be applicable to tax year 2006.
6. This order is effective for purposes of appeal December 20, 2006.

Signed and Sealed. December 20, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

SEAL

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.