

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

CELEBRATION COVENANT CHURCH,)	
)	
Appellant,)	Case No 06E-005
)	
v.)	DECISION AND ORDER REVERSING
)	THE DECISION OF THE SARPY
SARPY COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Celebration Covenant Church ("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 18, 2006, pursuant to an Order for Hearing and Notice of Hearing issued September 29, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Douglas L. Ferguson, Pastor, and Jeffrey D. DeRuiter, as Vision Team and Administrative Team Leader of the Taxpayer, were present at the hearing. No one appeared as legal counsel for the Taxpayer.

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

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 1, Harvest Acres, 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 Amended Order for Hearing and Notice of Hearing issued on September 29, 2006, set a hearing of the appeal for December 18, 2006, at 1:00 p.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...(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 VIII 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. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. 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....” 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 was acquired by the Taxpayer on May 25, 2005. (E6:12). An application for exemption based on use of the parcel as a church site was filed on December 22, 2005. (E2:2). The subject property was undeveloped as of January 1, 2006.

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.

A prayer service was conducted on the subject property on October 30, 2005. (E20:1). Prayer crosses were placed on the subject property and individuals attached prayers or wishes on the prayer crosses. A fund raising campaign in which ownership of the subject property was a tangible symbol of progress was conducted during the year 2005. Visits to the site by the Taxpayer's members were an aid to designing the church which the Taxpayer hoped to build

and obtaining financial pledges or contributions for construction. The fund raising campaign concluded on November 13, 2005. (E6:1). The Taxpayer issued requests for proposals on November 15, 2005. (E6:15). Responses to the request for proposal were due December 20, 2005. (E6:15). Three responses were received. As of the date of the Taxpayer's application for exemption it is reasonable to conclude that the Taxpayer was committed, by votes of its membership and a successful fund-raising campaign, to construction of a church on the subject property to the exclusion of all other uses. The Taxpayer's use of the subject property from the date of acquisition was exclusively as a site for construction of a church. If construction of a church had commenced as of the application date that would be deemed sufficient evidence of an exclusive use to support grant of an exemption. 350 Neb. Admin Code, Ch 40, §005.04H (05/05). In this case evidence of the preclusion of uses other than a religious use is less tangible, but no less compelling. The commitment of the Taxpayer as of the date of its application for exemption was well beyond hopes, aspirations, plans, or unrealistic expectations. The Taxpayer was committed to the construction of a church on the subject property to the preclusion of all other uses.

The levy date for the tax year 2006 was October 15, 2006. Neb. Rev. Stat. §77-1601 (Reissue 2003). The Assessor was required to make a determination on the Taxpayer's application for exemption by February 1, 2006. Neb. Rev. Stat. §77-202.01 (Reissue 2003). The County Board was required to make a determination on the Taxpayer's application for exemption by June 1, 2006. Neb. Rev. Stat. §77-202.02 (Supp 2006). The Supreme Court has held that a determination of taxable status should be made as of the levy date. *American Province of the Servants of Mary Real Estate Corporation v. Douglas County* 147 Neb. 485, 23

N.W.2d 714, (1946). In this case the Taxpayer had broken ground for its church construction on August 13, 2006, well before the levy date and on that basis the subject property qualifies for the exemption it claimed. 350 Neb. Admin Code, Ch 40, §005.04H (05/05).

The County Board of Equalization or the County Assessor may not have had the advantage of the evidence presented to the Commission. The County Board of Equalization and the Assessor could not have had knowledge of events occurring after their determinations. The Commission proceeding was *de novo* as permitted by statute. Neb. Rev. Stat. §77-5016 (Supp 2006). Based on the evidence presented to it the Commission concludes that the decision of the County Board was unreasonable and should be reversed.

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 adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable and the decision of the County Board should be vacated and reversed.

VI. ORDER

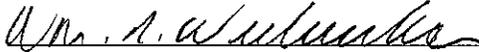
IT IS THEREFORE ORDERED THAT:

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

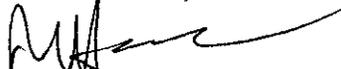
2. The subject property is exempt from taxation for the tax year 2006.
3. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
4. Any request for relief, by any party, which is 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 2006.
7. This order is effective for purposes of appeal December 27, 2006.

Signed and Sealed. December 27, 2006.




Wm. R. Wickersham, Commissioner


Susan S. Lore, Commissioner


Robert L. Hans, Commissioner


William C. Warnes, 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.