

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

DANNY L. PITTMAN SARPY COUNTY)
ASSESSOR,)
)
Appellant,)

v.)

SARPY COUNTY BOARD OF)
EQUALIZATION)

and)

BELLEVUE ROD AND GUN CLUB,)

Appellees.)

BELLEVUE ROD & GUN CLUB)

Appellant)

v.)

SARPY COUNTY BOARD OF)
EQUALIZATION)

Appellee)

Case No 06E-007

DECISION AND ORDER REVERSING
THE DECISIONS OF THE SARPY
COUNTY BOARD OF EQUALIZATION

Case No. 06E-009

DECISION AND ORDER DENYING
RELIEF

The above-captioned cases were called for a hearing on the merits of appeals by Danny L. Pittman, Sarpy County Assessor ("the Assessor") and Bellevue Rod and Gun Club ("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 February 13, 2007, pursuant to an Order for Hearing and Notice of Hearing issued December 5, 2006. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Danny L. Pittman, was present at the hearing. William J. Bianco appeared as legal counsel for the Assessor

Donovan Ruffner, Secretary of the Taxpayer was present. Frank F. Pospishil appeared as legal counsel for the Taxpayer.

No one appeared on behalf of 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 (Cum. Supp. 2006) 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 the consolidated cases is as follows.

I. ISSUES

The Assessor on appeal asserts that the subject property should be taxable.

The Taxpayer on appeal asserts that the subject property is wholly exempt from taxation. The issues on appeal related to that assertion are:

Was the decision of the County Board granting a 50% 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 a sufficient interest in the parcel of real property described as Tax Lot B2B Section 27, Township 13, Range 13, Sarpy County, Nebraska ,("subject property") to maintain its appeal in Case No. 06E-009.
2. The Assessor may maintain the appeal in Case No 06E-007 pursuant to section 77-202.04 of Nebraska Statutes.
3. An application for a continuing exemption of the subject property from taxation was filed by the Taxpayer.
4. The Assessor recommended disapproval.
5. The Assessor's recommendation was not affirmed by the County Board
6. The Property Tax Administrator was served with a Notice in Lieu of Summons and did not exercise the statutory right to intervene in either case.

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in each of the above captioned appeals is over issues raised during the county board of equalization proceedings on the appealed decision. *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 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 (d) (Cum. Supp 2006).

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. Regarding "mental" benefit of the public in subsection (1)(d) of section 77-202 of Nebraska Statutes as one of the requisite purposes of a charitable organization, "mental"

means "intellectual," which means, among other things, engaged in creative literary, artistic, or scientific labor. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

12. Relative to a charitable organization, "an indefinite number of persons" in subsection (1)(d) of this section means a group of persons with a common characteristic, that is, a class, uncertain in number and composed from the public at large or a community. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).
13. "The word "charitable" has been held to mean something more than mere alms-giving or the relief of poverty and distress and it has been given a significance broad enough to include practical enterprises for the good of humanity operated at a moderate cost to those who receive the benefits." *Lincoln Woman's Club*, 178 Neb. 357, 363-64, 133 N.W.2d 455, 460, (1965).
14. A tax exemption for charitable use is allowed because those exemptions "benefit the public generally and the organization performs services which the state is relieved pro tanto from performing." *United Way v. Douglas Co. Bd. of Equal.*, 215 Neb. 1, 3, 337 N.W.2d 103, 105 (1983).
15. 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).

16. Vacant space is exempt from taxation if it is intended for a charitable use, the dominant use of the property as a whole is for exempt purposes and the condition under which it is held preclude its use for non exempt purposes. *United Way of Douglas Co. Bd. Of Equal.*, 215 neb. 1, 337 N.W.2d 103 (1983).
17. Lease of property by a qualified organization to a qualified organization for substantially less than its fair rental value is a use of the property for an exempt purpose. *United Way of Douglas Co. Bd. Of Equal.*, 215 neb. 1, 337 N.W.2d 103 (1983).
18. A portion of a parcel may be taxable while another portion is exempt. *Y.M.C.A. v. Lancaster County*, 106 neb. 105, 182 N.W. 593 (1921)
19. 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).
20. 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).
21. 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)

22. The Commission can grant relief only if there is clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
23. "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).
24. 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).
25. 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. ANALYSIS

The subject property consists of 42.08 acres of land with improvements. (E20:2).

Improvements on the property are a club house, a caretaker's residence, rest rooms, a tool shed, concrete slabs, a deck, utility buildings and other miscellaneous items. (E20:2). There are two ponds on the subject property. (E21).

The County Board granted an exemption for 50% of assessed value of the subject property. (E19:1). The decision of the County Board does not indicate which portions of the

subject property are considered exempt. *See, Y.M.C.A. v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921). If the order of the County Board is applied to the whole of the property 50% is not a predominate portion for purposes of either of the two inquiries, organizational character or actual use of the subject property that are required by section 77-202 of Nebraska Statutes. The County Board's decision was arbitrary or unreasonable and should be reversed.

The Commission is required by the appeal of the Taxpayer to determine whether an exemption in whole or part should be granted.

The Taxpayer is organized as a nonprofit corporation pursuant to the laws of Nebraska. (E7:1). The purposes of the Taxpayer as found in its Articles of Incorporation are to promote the common good and general welfare of the metropolitan area of Bellevue and its surrounding communities, by (i) providing supervised facilities for the development of good rifle and shotgun marksmanship, instruction in the safe handling and proper care of firearms, and other related activities for the benefit of the public, and (ii) encouraging and stimulating interest in fishing, hunting, camping, and other outdoor activities, in each case for the benefit of the public and its members, as permitted under the Nebraska Nonprofit Corporation Act. (E7:16). The Nebraska Nonprofit Corporation Act allows a corporation organized under those provisions to engage in any lawful activity unless a more limited purpose is set forth in the articles of incorporation. Neb. Rev. Stat. 77-21-1927 (Reissue 1997). The provisions of the Taxpayer's Articles of Incorporation limit its activities to those stated.

An owner of exempt property is required to be an educational, religious, charitable or cemetery organization or an organization for the exclusive benefit of a qualified organization. Neb. Rev. Stat. 77-202 (1)(d) (Supp 2005). The Taxpayer stipulated that it is not a religious

organization. An educational organization is one that (A) is 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. Neb. Rev. Stat. 77-202 (1)(d) (Supp 2005). An organization is characterized not only by what it does but what it is permitted or directed to do by its governing documents. The only evidence that the Taxpayer in its governing documents is an educational organization is the provision in its Articles of Incorporation providing for development of good rifle and shotgun marksmanship, instruction in the safe handling and proper care of firearms, and other related activities for the benefit of the public. The Taxpayer as furtherance of noted provision in its Articles of Incorporation allows students involved in an extracurricular activity to use the subject property without charge. There is insufficient evidence that the Taxpayer is an educational organization as defined in section 77-202 of Nebraska Statutes.

A charitable organization is one which is 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 (d) (Cum. Supp 2006). The term “mental” and the phrase “indefinite number of persons” have been defined by Nebraska’s Supreme Court. The Taxpayer’s Articles on Incorporation expressly provide that its sole purposes are to provide certain activities for the benefit of the public. While arguably the stated purposes of the Taxpayer may have mental, social or physical benefits the evidence does not show that the benefits are in fact available to the public. The evidence is that the subject property is open to its members at all times. The

subject property is only open to others for events approved or provided by the Taxpayer or as a guest of a member. Exhibit 10 shows that out of 365 days in a year that only on a limited number are there any events that might be open to the public or for public benefit. Frequent uses of the subject property as shown in Exhibit 10 (Non Public Use and Administrative) are for the Taxpayer's own meeting which are not open to the public or private rentals which are also not open to the public.

The Taxpayer is exempt from income taxation. (E4:1). Exemption from taxation is based on the Taxpayer's status as a civic league or organization. (E4:1 and E8:1). That status does not, however, determine whether the Taxpayer is an owner qualified to hold exempt property pursuant to section 77-202 of Nebraska Statutes. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

An educational or charitable organization as defined in Nebraska Statutes must be created and operated exclusively for educational or charitable purposes. The term exclusively means predominately so that incidental purposes or operations would not affect eligibility. See *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993). The Taxpayer is operated predominately for purposes associated with its membership and cannot be deemed a qualified organization. The Commission is not required to inquire into specific uses of the subject property to determine whether any part of the subject property might be used exclusively for a qualified use.

The subject property is taxable for the year 2006. The Taxpayer and the Assessor stipulated that the full taxable value of the subject property for the year 2006 is \$327,220.

**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 Assessor has adduced sufficient, clear and convincing evidence that the decision of the County Board was unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.
4. The Taxpayer is not an educational, religious, or charitable organization as defined in section 77-202 of Nebraska Statutes and the subject property is not therefore eligible for exemption from taxation.

**VI.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decision of the County Board determining that the subject property is 50% taxable as of the assessment date January 1, 2006, is vacated and reversed.
2. The subject property is subject to tax for the tax year 2006.
3. Taxable value of the subject property for the tax year 2006 is \$327,220.00.
4. No relief is granted on the appeal of Bellevue Rod and Gun Club in Case No. 06E-009.
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 (Cum. Supp. 2006).

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 February 22, 2007.

Signed and Sealed. February 22, 2007.

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 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.