

BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION

LOWELL R. ISKE,)	Case No. 98E-4
)	
Appellant,)	
)	
and)	
)	
CATHERINE D. LANG, PROPERTY)	
TAX ADMINISTRATOR,)	
)	
Intervenor,)	
)	
vs.)	ORDER
)	
BELLEVUE ROD & GUN CLUB, and)	
SARPY COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellees.)	

The Nebraska Tax Equalization and Review Commission ("Commission") called the above-captioned case for a hearing on the merits of the appeal in the city of Lincoln, Nebraska, on December 10, 1998, pursuant to an Amended Notice of Hearing dated November 19, 1998.

Lowell R. Iske, the Sarpy County Assessor, ("Assessor") appeared personally but was not represented by counsel. The Property Tax Administrator appeared through counsel at the hearing. The Sarpy County Board of Equalization ("County") appeared through counsel, and the Bellevue Rod & Gun Club also appeared through various members of said club and through counsel. During the hearing the Commission took judicial notice of certain information, and each of the parties was afforded the opportunity to present evidence and argument. Each of the parties was also afforded the opportunity to cross-examine witnesses of the opposing party or parties as required by law.

NEB. REV. STAT. § 77-5018 (1998 Cum. Supp.) requires that every final decision and order entered by the Commission which is adverse to a party be stated in writing or on the record and be accompanied by findings of fact and conclusions of law.

From the record and evidence presented, the Commission finds and determines as follows:

FINDINGS OF FACT

1. The Appellee, Bellevue Rod & Gun Club, ("Club") is the owner of record of Tax Lot B2B, located in Section 27, Township 13 North, Range 13 East of the 6th P.M., Sarpy County, Nebraska, ("Subject Property").
2. The Subject Property consists of 42.8 acres, more or less. The Subject Property has seven buildings consisting of one remodeled clubhouse, one older clubhouse, two bath houses, garages for storage, one trapshoot house, one trapshoot range, and one rifle range. The Subject Property also has a caretaker's residence which does not receive the exemption. There are two small lakes or ponds used for fishing. Only small fishing boats, trolling fishing motors, or canoes are allowed. There is also an area for camping with hookups for RVs. The entrance is a keyed gate which is run electronically. All members have unlimited access to the Subject Property; however, members may be precluded from using some portions of the Subject Property when scheduled events are in progress.
3. The Club timely filed an Application for exemption from real property taxes for the tax year 1998. The Assessor recommended to the County that the exemption application be denied.
4. The County approved a 75 percent reduction of the tax due.
5. The Assessor timely filed an appeal to the Commission challenging the decision of the County.

6. Prior to the date of the hearing, the Commission granted the motion of the Property Tax Administrator to intervene.

7. The Subject Property is not owned by an educational organization, that is, an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects, or a museum or historical society operated exclusively for the benefit and education of the public.

8. The Subject Property is not owned by a religious organization, that is, an organization whose purpose is the dedication to or profession of a sectarian creed and belief in divine or super human power or powers to be obeyed and worshiped or the furtherance and enrichment of spiritual faith involving a code of ethics and a spiritual philosophy.

9. The Subject Property is not owned by a charitable organization, that is, an organization operated exclusively for the mental, social, or physical benefit of the public or an indefinite number of persons.

10. The Subject Property is not owned by a cemetery organization, that is, an organization whose purpose it is to maintain areas formally set apart for the internment of the human dead.

11. The religious, educational, charitable, or cemetery use is not the predominant or exclusive use of the Subject Property. Any such use of the Subject Property is an incidental and commingled use.

12. The Subject Property is not used for financial gain or profit.

13. The Subject Property is not used to sell alcoholic liquor more than 20 hours per week.

See NEB. REV. STAT. § 77-1737 (Reissue 1996).

14. The Subject Property is not owned or used by an organization which discriminates in membership or employment based on race, color, or national origin.

15. From the record before the Commission, the Assessor and the Intervenor have established by a preponderance of the evidence that the decision of the County was unreasonable and arbitrary.

16. The decision of the County to exempt any part of the Subject Property from real property taxation for the tax year 1998 is not supported by the evidence.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.

2. Nebraska state statutes provide:

The following property shall be exempt from property taxes . . . (c) Property owned by educational, religious, charitable, or cemetery organizations 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 20 hours per week, (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 organizations shall mean an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects, or a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization shall mean an organization operated exclusively for the purpose of the mental social or physical benefit of the public or an indefinite number of persons.

See NEB. REV. STAT. § 77-202(1)(c) (1998 Cum. Supp.)

3. Tax exemption provisions are to be strictly construed. See Metropolitan Utilities Dist. of Omaha v. Balka, 252 Neb. 172, 560 N.W.2d 795 (1997).

4. An applicant seeking exemption has the burden of establishing the exemption. See Nebraska State Bar Foundation v. Lancaster County Barbara D. Culbertson, PLS. of Equal., 237 Neb. 1, 465 N.W.2d 111, (1991).

5. The rules and regulations promulgated by the Property Tax Administrator, pursuant to NEB. REV. STAT. § 77-202.06 (1998 Cum. Supp.), direct that a five part summary test is prescribed for determining eligibility for educational, religious, charitable, and cemetery property tax exemptions. The five mandated criteria are ownership, exclusive use, no financial gain or profit, restricted alcoholic liquor sales, and prohibitions against discrimination. The property must meet all five of the criteria for the exemption to be allowed. See Title 316, Nebraska Administrative Code, Chapter 42, Reg. 006.

6. Under the above five part test, the property must be owned by an educational, religious, charitable, or cemetery organization, as those terms are defined in the regulations. See Title 316, Nebraska Administrative Code, Chapter 42, Reg. 006.01.

7. The property must be used exclusively for religious, educational, charitable, or cemetery purposes. The property need not be used solely for one of the four categories of exempt use but may be used for a combination of the exempt uses. The term "exclusive use" means the "predominant or primary use." See Title 316, Nebraska Administrative Code, Chapter 42, Reg. 006.02.

8. No exemption is permitted for a portion of the property where exempt or nonexempt uses are commingled and the property is not used exclusively for exempt purposes. See Title 316, Nebraska Administrative Code, Chapter 42, Reg. 006.02.

9. The Club has failed to establish that the Subject Property satisfies the ownership test and exclusive use test as set forth above for the tax year 1998.

10. The Subject Property, therefore, does not qualify for exemption from real property taxation under the applicable laws and rules and regulations governing the exemption of real property from taxation.

11. There is a presumption that the County Assessor has performed his or her duties according to law. See Josten-Wilbert Vault Co. v. Board of Equalization, 179 Neb. 415 (1965).

12. NEB. REV. STAT. § 77-202.06 (1998 Cum. Supp.) provides that the Commission may review and reverse any decision of the County Board of Equalization granting tax exempt status for real property.

13. As a matter of law, the action of the County Board of Equalization was unreasonable and arbitrary.

14. The County Board of Equalization was without statutory authority to approve a 75 percent reduction of the "tax due".

15. In the event the action of the County Board of Equalization is interpreted as exempting 75 percent of the Subject Property valuation from taxation, the Commission must, based on the record, conclude as a matter of law that the decision of the County Board of Equalization to grant the Club's request for tax exempt status for the tax year 1998 was both unreasonable and arbitrary.

16. The decision of the County Board of Equalization must be vacated and reversed.

ORDER

1. The Order of the County Board of Equalization granting real property tax exempt status to the Subject Property for the tax year 1998 is vacated and reversed.

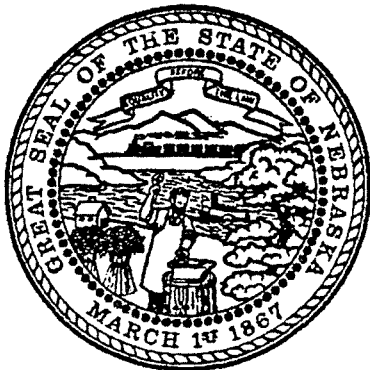
2. The Club's real property, legally described as Tax Lot B2B, located in Section 27, Township 13 North, Range 13 East of the 6th P.M., Sarpy County, Nebraska, more commonly known as the Bellevue Rod & Gun Club, shall be returned to the tax rolls of Sarpy County and valued for the purposes of taxation as determined by the County Assessor in the total amount of Two Hundred Ten Thousand Six Hundred Ninety-nine Dollars (\$210,699.00).

3. If no appeal is filed, this decision shall be certified within thirty days to the Sarpy County Treasurer, and the Sarpy County Treasurer, pursuant to NEB. REV. STAT. § 77-202.06 (1998 Cum. Supp.) and § 77-1511 (Reissue 1996).

4. This decision shall only be applicable to tax year 1998.

5. Each party is to bear its own costs in this matter.

SIGNED AND SEALED this 31st day of December, 1998.



Janet L. Edwards

Janet L. Edwards, Commissioner

Robert L. Hans

Robert L. Hans, Commissioner