

**MINUTES
LANCASTER COUNTY BOARD OF EQUALIZATION
TUESDAY, DECEMBER 2, 2008
COUNTY COMMISSIONERS HEARING ROOM, ROOM 112
FIRST FLOOR, COUNTY-CITY BUILDING
IMMEDIATELY FOLLOWING THE REGULAR BOARD OF COMMISSIONERS
MEETING**

Commissioners Present: Bob Workman, Chair
Bernie Heier, Vice Chair
Larry Hudkins
Deb Schorr
Ray Stevens

Others Present: Kerry Eagan, Chief Administrative Officer
Dan Nolte, County Clerk
Cori Beattie, Deputy County Clerk
Tom Fox, Deputy County Attorney
Norm Agena, County Assessor/Register of Deeds

The location announcement of the Nebraska Open Meetings Act was given and the meeting was called to order at 11:55 a.m..

- 1) **MINUTES: Approval of the minutes of the Board of Equalization meeting held on Tuesday, November 25, 2008.**

MOTION: Heier moved and Stevens seconded approval of the minutes of the Board of Equalization meeting held on November 25, 2008. Hudkins, Stevens, Schorr, Heier and Workman voted aye. Motion carried.

- 2) **MOTOR VEHICLE TAX EXEMPTION APPLICATIONS:**

**Gates of Praise
MOSAIC (2 exemption applications)
Pius X High School
School Sisters of Christ the King
Trinity United Methodist Church**

MOTION: Hudkins moved and Schorr seconded approval of motor vehicle tax exemptions for Gates of Praise, MOSAIC (2 applications), Pius X High School, School Sisters of Christ the King and Trinity United Methodist Church. Schorr, Hudkins, Heier, Stevens and Workman voted aye. Motion carried.

3) **RECONSIDERATION OF NOTICE OF PROPOSED CHANGE IN EXEMPTION STATUS FOR 2008:**

Nebraska School Activities Association

Mike Thew, Chief Deputy County Attorney, submitted a copy of an email from Dr. James Tenopir, dated December 1, 2008, indicating he would be unable to attend the meeting, but reiterating his previous positions (Exhibit 1). Submitted by Thew was a copy of Title 350, Chapter 40, Sections 001 through 011 of the Nebraska Administrative Code (Exhibit 2).

Thew stated the Nebraska Administrative Code consists of regulations adopted by the Nebraska Property Tax Administrator. He stated Title 350, Chapter 40, Sections 001 through 011 deal specifically with tax exemptions. Thew referred to the following pages in the Administrative Code:

- * Page 3, Section 002.02 - "Property tax exemptions are to be strictly construed and burden of proof is on the party . . ."
- * Page 4, Section 005.01 - The five element test discussed at the previous hearing held on November 25, 2008.
- * Page 5, Section 005.03 - "Exclusive Use means the property must be used exclusively for religious, educational, charitable purposes. . .". "For purposes of this regulation, the term exclusive use shall mean the predominant or primary use of the property as opposed to an incidental use."
- * Page 5, Section 005.03A - "Property which is vacant and unused for any purpose shall not be entitled to an exemption."
- * Page 10, Reg-40-007, Section 007.01: Property Transfers or Use Conversions During Tax Year

Thew referred to *American Province of the Servants of Mary Real Estate Corporation v. Douglas County* which stated that the operative date for determining whether a property is entitled to an exemption is levy day. He explained that once the determination is made as to whether the property is exempt or not, the status remains in place for the entire year. Thew stated the question is what was the primary use as of levy day.

They also referred to *Corporation of the Episcopal Church of Utah v. Utah State Tax Commission*. He stated the court determined that property for future development or for sale is a use. He said Nebraska School Activities Association property was for sale and was being actively marketed. They advised the Board of Equalization that storing files at the location is an incidental use to the primary/dominant use which was marketing it for sale. He referred to a similar case, *Dominican Nuns v. City of LaCrosse*, where the religious order moved to another location, but retained some property at the exempt location. It was determined by the court that retaining the exempt property was not a sufficient use; the activities which formed the basis for the exemption moved to the new location and the fact that some of the property was left behind was not sufficient to extend the exemption.

MOTION: Hudkins moved and Schorr seconded to concur with the recommendation of the County Assessor/Register of Deeds to remove the tax exempt status for 2008 on Nebraska School Activities Association property located at 8230 Beechwood Drive, Lincoln, Lancaster County, Nebraska. Heier, Schorr, Stevens, Hudkins and Workman voted aye. Motion carried.

4) **ADJOURNMENT:**

MOTION: Heier moved and Hudkins seconded adjournment of the Board of Equalization meeting at 12:15 p.m.. Schorr, Stevens, Hudkins, Heier and Workman voted aye. Motion carried.

Dan Nolte
County Clerk