

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

KIMMEL ORCHARD &  
VINEYARD EDUCATIONAL  
FOUNDATION, INC.,  
APPELLANT,

V.

OTOE COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

CASE NOS:

19E 0028 & 20E 0071,  
19E 0029 & 20E 0067,  
19E 0030 & 20E 0070,  
19E 0031 & 20E 0068,  
19E 0032 & 20E 0069  
& 20E 0066

DECISION AND ORDER  
AFFIRMING IN PART AND  
REVERSING IN PART THE  
DECISION OF THE OTOE  
COUNTY BOARD OF  
EQUALIZATION

**For the Appellant:**  
Timothy L Moll &  
Max L. Rodenburg,  
Rembolt Ludtke, LLP

**For the Appellee:**  
Seth W. Hawkins,  
Deputy Otoe County Attorney

These appeals were heard before Commissioners Steven Keetle and James Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property consists of five parcels of real property located in Otoe County, Nebraska and the personal property associated with

these parcels.<sup>1</sup> Each of the parcels and the personal property is owned by the Appellant, Kimmel Orchard and Vineyard Educational Trust, Inc. (Kimmel Orchard). The legal descriptions of the parcels are found at Exhibits 12:2, 13:2, 14:2, 15:2, 16:2, 17:2, 18:2, 19:2, 20:2, 21:2, and 22:2 and Property Record File (PRF) of the Subject Property is found at Exhibits 23, 24, 25 26 and 27. A listing of the personal property is found in Exhibit 38.

## II. PROCEDURAL HISTORY

Kimmel Orchards filed Exemption Applications (Form 451) with the County Assessor for tax year 2019 on February 25, 2019, and for tax year 2020 on December 2, 2019 for each of the Subject Properties.<sup>2</sup> The Otoe County Assessor (County Assessor) recommended partial exemption or denial of the exemption applications and the Otoe County Board of Equalization (the County Board) determined that the Subject Properties were not exempt or only partially exempt for tax years 2019 and 2020.<sup>3</sup> Kimmel Orchards appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission), and a hearing was held on March 2, 2022.

Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1 thorough and including 64 were admitted into evidence by stipulation of the parties. The parties also stipulated that Kimmel Orchards is the owner of all the Subject Properties and that Kimmel Orchards does not discriminate in membership or employment based on race, color, or national origin.

## III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.<sup>4</sup> When the Commission considers an appeal of a decision of a

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<sup>1</sup> The Taxpayer only appealed the exemption determinations of four of the five parcels of real property for tax year 2019.

<sup>2</sup> Exhibits 1-11.

<sup>3</sup> Exhibits 1-11.

<sup>4</sup> See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,'

county board of equalization, a presumption exists that the board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.<sup>5</sup> That presumption 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.<sup>6</sup>

The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>7</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>9</sup> The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.<sup>10</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>11</sup>

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as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>5</sup> *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

<sup>6</sup> *Id.*

<sup>7</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>8</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>9</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>10</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

#### IV. EXEMPTION LAW

The Nebraska Constitution specifies that property of the state and its governmental subdivisions used for authorized public purposes is exempt from taxation and the Legislature may classify other exempt properties “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.”<sup>12</sup> Pursuant to that Constitutional authorization, the Legislature has required the exemption of the following from property taxes:

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 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....<sup>13</sup>

Statutes exempting property from taxation are to be strictly construed, and the burden of proving the right to exemption is on the claimant.<sup>14</sup> Exclusive use means the primary or dominant use of

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<sup>12</sup> Neb. Const., Art. VIII, § 2(1).

<sup>13</sup> Neb. Rev. Stat. § 77-202(1)(d) (2014 Cum. Supp.).

<sup>14</sup> *United Way v. Douglas Cty. Bd. of Equal.*, 215 Neb. 1, N.W.2d 103(1983); *Fort Calhoun Baptist Church v. Washington Cty. Bd. of Equal.*, 277 Neb. 25, 30, 759 N.W.2d 475, 480 (2009); *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

property, as opposed to incidental use.<sup>15</sup> The exclusive use of the property is what determines the exempt status.<sup>16</sup> Further, a property owner's exemption from federal income taxation does not determine whether the owner's property is tax exempt under state law.<sup>17</sup>

There are two overriding factors Courts consider when a request for an exemption is before them. The first is that the property tax burden is necessarily shifted from the beneficiary of an exemption to others who own taxable property, and the second is that the power and right of the state to tax is always presumed.<sup>18</sup>

In addition, the Courts in Nebraska have developed several principles concerning requests for exemptions: (1) an exemption is never presumed but must be applied for;<sup>19</sup> (2) the alleged exempt property must clearly come within the provision granting the exemption;<sup>20</sup> (3) the laws governing property tax exemptions must be strictly construed;<sup>21</sup> (4) the courts must give a “liberal and not a harsh or strained construction ...to the terms ‘educational,’ ‘religious,’ and ‘charitable’ in order that the true intent of the constitutional and statutory provisions may be realized”;<sup>22</sup> and (5) this interpretation should always be reasonable.<sup>23</sup>

In accordance with Neb. Rev. Stat. §77-369, the Tax Commissioner has promulgated rules concerning the exemption of real property. The rules and regulations establish that “[t]he five mandated criteria are ownership, exclusive use, no financial gain or profit, restricted

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<sup>15</sup> *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993).

<sup>16</sup> See, *Nebraska Conf. Assn. of Seventh Day Adventists v. Bd. of Equalization*, 179 Neb. 326, 138 N.W.2d 455 (1965).

<sup>17</sup> *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

<sup>18</sup> See, e.g., *Jaksha v. State*, 241 Neb. 106, 112, 486 N.W.2d, 858, 864 (1992); *Ancient and Accepted Scottish Rite of Freemasonry v. Board of County Com'rs*, 122 Neb. 586, 241 N.W. 93 (1932).

<sup>19</sup> *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 398, 603 N.W.2d 447, 453 (1999).

<sup>20</sup> *Nebraska State Bar Foundation v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 4, 465 N.W.2d 111, 114 (1991).

<sup>21</sup> *Nebraska Annual Conference of United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 416, 499 N.W.2d 543, 547 (1993).

<sup>22</sup> *Lincoln Woman's Club v. City of Lincoln*, 178 Neb. 357, 363, 133 N.W.2d 455, 459 (1965).

<sup>23</sup> *Id.* (citing, *Young Men's Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921)).

alcoholic liquor sales, and prohibited discrimination. The property must meet all five criteria for the exemption to be allowed.”<sup>24</sup>

## V. SUMMARY OF THE ISSUES

The Legislature has imposed five requirements to entitle real property to be exempt from taxation.<sup>25</sup> Two of the requirements are affirmative ones: the property must be (1) owned by an educational or charitable organization; and (2) be used exclusively for educational or charitable purposes. The other three requirements are negative: the property must not be (3) used for financial gain or profit to either the owner or user; (4) used for the sale of alcoholic liquors for more than 20 hours per week; and (5) owned or used by an organization that discriminates.

The parties have stipulated that Kimmel Orchard is an educational or charitable organization that owns the Subject Property, and that Kimmel does not discriminate as owner or user. The three remaining issues are (a) whether the subject property is used for financial gain or profit to Kimmel, (b) the extent of the Subject Property that is used for the sale of alcoholic liquors for more than 20 hours per week, and (c) whether the Subject Property is used exclusively for educational or charitable purposes.

To the extent the Subject Property is used for financial gain or profit or for the sale of alcoholic liquors, the charitable use of the property is irrelevant. The Commission will therefore address these issues first as conclusions on the negative restrictions control over any decision on the use of property.<sup>26</sup>

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<sup>24</sup> 350 Neb. Admin. Code, ch. 40, § 005.01 (7/3/2013).

<sup>25</sup> Neb. Rev. Stat. § 77-202(1)(d) (Reissue 2018).

<sup>26</sup> Cf. *Bethesda Found. v. Buffalo Cty. Bd. of Equal.*, 263 Neb. 454, 458-59, 640 N.W.2d 398, 402-03 (2002).

## VI. FINDINGS OF FACT AND ANALYSIS

Kimmel Orchards was incorporated in 2012 under the Nebraska Non-Profit Corporation Act as a Public Benefit Corporation.<sup>27</sup> Under these articles Kimmel Orchards:

[s]hall be operated exclusively for charitable, scientific, and educational purposes as described in Section 501(c)(3) of the Internal Revenue Code of 1986 (“Code”), including, but not limited to the education of the general public with regard to the development, maintaining and marketing of agricultural products, such as specialty forestry products, viticulture, agritourism, land-use methods, food processing, marketing and monitoring of long-term educational/research programs. The corporation shall also, from time to time, collaborate with state and local educational organizations, such as the University of Nebraska, to develop educational and research programs in the areas of agriculture, viticulture, entrepreneurship, business development and leadership that will benefit the State of Nebraska, the global community and its citizens.<sup>28</sup>

Kimmel Orchard owns five parcels of real property and the personal property used in connection with its operation of the five parcels of real property in Otoe County. Altogether the Subject Properties contain orchards, vineyards, the former Kimmel home, Apple Barn, U-Pick Facility, Kimmel Pavilion, Kimmel Education Center, pollinator playground, a second house and garage, as well as land used to grow various crops. The Subject Properties are used for agricultural education research, historic preservation, and wholesome family experiences<sup>29</sup>, as well housing for interns. The County Board

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<sup>27</sup> Exhibit 29.

<sup>28</sup> Exhibit 29:2.

<sup>29</sup> Exhibit 52:1.

determined that the historic Kimmel residence and the acre of land that it sits upon on the Kimmel House parcel to be exempt from taxation in tax years 2019 and 2020. The County Board determined that the homestead, garage, and acre of land that those improvements sit upon on the Stoll Property should be exempt from real property taxation for tax years 2019 and 2020. The Commission will not disturb those determinations. The County Board also found that the Kimmel Education Center on the Main Parcel should be exempt from real property taxation, the Commission will not disturb that determination either other than to find that the Kimmel Education Center's valuation is 23.12% percent of the total improvements value for the Main Parcel<sup>30</sup>, and that therefore 23.12% of the value of the land component of the Main Parcel or \$88,767 would be exempt from real property taxation as well.<sup>31</sup>

#### **A. Financial Gain or Profit**

The undisputed testimony presented at the hearing shows that directors of Kimmel Orchard were paid the sum of \$500 per meeting for their services as directors and to cover any expenses incurred to attend the board meetings. The total amount paid in director fees was \$12,000 in 2019 and \$9,000 in 2020.<sup>32</sup> The County Board asserts that a \$500 payment to its board members for each board meeting they attend constitutes a part of Kimmel Orchard's income or profit. Kimmel Orchard contends that these payments are in no way a distribution of earnings or income but are reasonable compensation to the directors for their time and expense in participating in the board meetings.

Kimmel Orchard is incorporated under the Nebraska Nonprofit Corporation Act as a Public Benefit Corporation.<sup>33</sup> Under the Nebraska

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<sup>30</sup>  $\$235,950$  (value of Kimmel Education Center)  $\div$   $\$1,020,370$  (total improvement value) = 23.12%. See Exhibit 61:67 for total improvement value and Exhibit 61:70 for value of Kimmel Education Center).

<sup>31</sup> See, the example found in Title 350 Neb. Admin Code ch. 40 §005.04B (7/3/2013)

<sup>32</sup> Exhibit 36.

<sup>33</sup> Exhibit 29:2



Nonprofit Corporation Act a Public Benefit Corporation may only make distributions upon dissolution.<sup>34</sup> A “[d]istribution means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.”<sup>35</sup> With this prohibition the Nebraska Nonprofit Corporation Act still provides that “[A] board of directors may fix the compensation of directors.”<sup>36</sup> The Nebraska Nonprofit Corporation Act clearly allows the compensation of directors without allowing distributions.

In *United Way v. Douglas Cty. Bd. of Equal.*<sup>37</sup> the Court relied upon the Nebraska Nonprofit Corporation Act<sup>38</sup> for the definition that “a not-for-profit corporation as a ‘corporation no part of the income of which is distributable to its members, directors or officers.’”<sup>39</sup> The Court in *United Way* “deduced” the rule to be that the no financial gain or profit requirement for property exemption purposes is controlled by whether any “part of the income from the property is distributed to the owner’s or user’s members, directors, or officers, or to private individuals.”<sup>40</sup> Because *United Way* was “burdened by that restriction on the distribution of its income, and there is no evidence that it has violated the statute in that respect,” the requirement was satisfied.<sup>41</sup>

Kimmel Orchard is “burdened” by the distribution of the Nebraska Nonprofit Corporation Act like the *United Way*. Based on this the Commission concludes that the compensation of members of the board of directors for participating in the board meetings does not constitute

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<sup>34</sup> Neb. Rev. Stat. §21-19,127-19,128 (Reissue 2022)

<sup>35</sup> Neb. Rev. Stat. § 21-1914(10) (Reissue 2022).

<sup>36</sup> Neb. Rev. Stat. § 21-1979 (Reissue 2022).

<sup>37</sup> 215 Neb. 1, 4, 337 N.W.2d 103, 105 (1983).

<sup>38</sup> (Reissue 1977)

<sup>39</sup> *United Way v. Douglas Cty. Bd. of Equal.*, 215 Neb. 1, 4, 337 N.W.2d 103, 105 (1983). The Act was entirely revised in 1996 and, subsequently, this definition is no longer enumerated. Currently, the relevant section reads “a corporation shall not make any distributions.” Neb. Rev. Stat. § 21-19,127 (Reissue 2022).

<sup>40</sup> *United Way v. Douglas Cty. Bd. of Equal.*, 215 Neb. 1, 4, 337 N.W.2d 103, 106 (1983).

<sup>41</sup> *United Way v. Douglas Cty. Bd. of Equal.*, 215 Neb. 1, 4, 337 N.W.2d 103, 106 (1983).

use of the Subject Property for financial gain or profit for purposes of property tax exemption.

The County Board seems to imply that compensation in the amount of \$500 per board meeting is an amount that rises above a reasonable amount, which makes it a distribution of income or profit. The Commission finds no evidence in the record to support that conclusion.

### **B. Used for the Sale of Alcoholic Liquors**

In order to qualify for exemption:

The property must not be used for the sale of alcoholic liquors for more than 20 hours per week. Property (or portions of property) used for selling alcoholic liquors include all areas in which alcoholic liquors are normally sold, served, or consumed. For purposes of determining whether alcoholic liquor is sold in excess of 20 hours per week, a reasonable average for the tax year may be used.<sup>42</sup>

Kimmel concedes that a small portion of the Main property is used as a wine-tasting room that should not be exempt from taxation. This separate and distinct use portion is composed of 900 square feet in the Apple Barn.<sup>43</sup> The County Board asserts that Kimmel has not met its burden to establish the wine-tasting room as a separate and distinct area.

Separate and distinct use portions may have a differing exempt status from other separate and distinct use portions on the same parcel.<sup>44</sup>

The burden of showing entitlement to a tax exemption must be clearly established by the applicant.<sup>45</sup> The Taxpayer has presented, and conceded, that 900 sq. ft. are clearly used for the sale of alcoholic

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<sup>42</sup> 350 Neb. Admin. Code, ch. 40, § 005.06 (7/3/2013).

<sup>43</sup> See, Exhibit 49:1.

<sup>44</sup> 350 Neb. Admin. Code, ch. 40, § 005.03A (7/3/2013).

<sup>45</sup> See *Platte River Crane Trust v. Hall Cty. Bd. of Equal.*, 298 Neb. 970, 974-75, 906 N.W.2d 646, 651 (2018); *Watson v. Cowles*, 61 Neb. 216, 217, 85 N.W. 35, 35 (1901) (taxpayer is affirmatively required).

liquors.<sup>46</sup> Ernest Weyeneth, President and CEO of the Kimmel Orchard and Vineyard Educational Foundation, testified that at times alcoholic liquors are consumed outside of the Apple Barn but that activity is for much less than 20 hours per week. Weyeneth testified that the sale of wine and hard cider is limited to the 900 square foot corner of the retail store section of the Apple Barn indicated on Exhibit 49. The uncontroverted evidence is that the sale of alcoholic liquors for more than 20 hours per week is limited to 900 square feet in the retail store portion of the Apple Barn. These 900 square feet, and the corresponding amount of land,<sup>47</sup> are subject to taxation for tax years 2019 and 2020.

### **C. Exclusive Use**

The remaining question before the Commission is the exclusive use of the portions of the Subject Property not previously exempted by the County Board or used for the sale of alcoholic liquors for more than twenty hours a week. To do this we must more closely look at the five parcels that make up the Subject Property and the real property used in their operation.

The Subject Properties can be generally described as follows: The Main Property parcel (the Main Property) which consists of 74.32 acres and the primary buildings used in connection with Kimmel Orchard's operations including the Kimmel Education Center, the Apple Barn<sup>48</sup>, the U-Pick facility, and the Kimmel Pavilion. There is also a Pollinator Playground, apple orchard and vineyard located on this parcel.<sup>49</sup> The Kimmel House parcel (the Kimmel House) which consists of 6.4 acres and contains the former historic Kimmel residence, the remaining acres being used as an orchard and for related purposes.<sup>50</sup> There is a strip of land (the Strip of Land) which consists of 0.85 acres that would be part of the Main Property but is designated as a separate parcel for

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<sup>46</sup> See Exhibit 49; Appellant's Closing Argument.

<sup>47</sup> See, the example found in Title 350 Neb. Admin Code ch 40 §005.04B (7/3/2013).

<sup>48</sup> 900 square feet of which is the wine tasting room and not exempt.

<sup>49</sup> Case Nos 19E 0030 & 20E 0070.

<sup>50</sup> Case Nos 19E 0028 & 20E 0071.

tax purposes because it is located in Section 31 while the Main Property is in Section 36.<sup>51</sup> The Main Property, the Kimmel House, and the Strip of Land are directly contiguous to each other. The Camp Orchard parcel (Camp Orchard) consists of 14.35 acres of land located just north of the Main Property which contain an orchard and is used to grow various other crops.<sup>52</sup> The Stoll parcel (the Stoll Property) is less than a mile from the Main Property and consists of 17 acre containing a homestead and 14 tillable acres being used to develop a high-density apple orchard.<sup>53</sup>

The Main parcel, in addition to the exempted Kimmel Education Center, contains the apple barn, within which is the taxable wine tasting room, and U-Pick facility. The U-Pick facility allows visitors to pay an admission to gain access to the orchard on the main parcel to pick their own apples for purchase. In addition to the wine tasting room the apple barn contains a shop and restaurant which allows visitors to purchase products grown on the Subject Property or made with products grown on the Subject Property, as well as products provided by outside vendors. Exhibits in the apple barn and signage in the orchard and U-Pick facility discuss the growing and processing of the crops grown on the Subject Property. The Main Parcel also contains a pollinator playground, a pollinator themed playground open to all visitors with educational signage and an interactive application associated with the playground equipment. There is also a pavilion located on the Main Parcel that can be rented out by the general public and is used by the Taxpayer for other activities. The land in the Camp Orchard and the Strip of Land are used in the same manner as the growing space on the Main Parcel. The land surrounding the Kimmel home on the Kimmel House parcel is used for developing orchard space and growing other produce. The land surrounding the Stoll homestead

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<sup>51</sup> Case No 20E 0066.

<sup>52</sup> Case No. 19E 0032 & 20E 0069.

<sup>53</sup> Case No. 19E 0029 & 20E 0067.

on the Stoll Property is used for growing produce and is being developed into a high-density orchard.

Kimmel Orchard applied for tax exemption for the entire Subject Property as being used for educational or charitable uses. The Taxpayer offered the testimony of several witnesses discussing activities that take place on the parcels that make up the Subject Property. The Main Property is open to the public during the growing season and educational tours and activities that take place on the Main Property and Camp Orchard parcels. There was testimony regarding activities coordinated with the University of Nebraska extension service and the Girl Scouts, as well as the Bee Lab program of the University of Nebraska. The majority of the land is used for agricultural operations which the Taxpayer alleges are geared to research regarding the best means to grow produce and related crops. These crops are sold to the public either directly from the orchards or in the apple barn located on the Subject Property. Mr. Ernie Weyenth, President of Kimmel Orchards testified that its mission is to provide education and historic preservation as part of a family friendly experience for the public. Mr. Weyenth testified that the biggest attraction on the Subject Properties is the U-Pick facility.

In its closing argument, the Taxpayer seeks a *charitable* exemption from property tax for the Subject Property.<sup>54</sup> In its Exemption Applications, the taxpayer claims the property uses are both educational and charitable.<sup>55</sup>

The educational and charitable uses are not “distinct and mutually exclusive,” rather, when “the conditions of the exemption have been strictly complied with, irrespective as to the matter of proportion which any one of these distinctive purposes may bear to the others,” the property is exempt.<sup>56</sup> Therefore, while the use of the property may not

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<sup>54</sup> Appellant’s Closing Argument 8-10.

<sup>55</sup> Exhibits 12–22.

<sup>56</sup> *Lincoln Woman’s Club v. Lincoln*, 178 Neb. 357, 364, 133 N.W.2d 455, 460 (1965) (quoting *Ancient and Accepted Scottish Rite v. Board of County Commissioners*, 122 Neb. 586, 595, 241 N.W. 93, 967 (1932)).

be exclusively educational, nor exclusively charitable, it will still be exempt if collectively the Subject Property is exclusively used for educational and charitable purposes.<sup>57</sup>

The principal issue is the extent that a charitable organization can *use* property for noncharitable purposes, even when the property supports the charitable organization’s charitable purpose.

Accordingly, the Commission’s decision relies on the separate and distinct use portions of the Subject Property and distinguishing their exclusive use from their incidental use(s).

In *Oea Senior Citizens [I]*,<sup>58</sup> the Court articulated that even when a property meets all the other statutory requirements, incidental uses are not sufficient to entitle a taxpayer to an exemption.<sup>59</sup> Even though there was “no doubt that some use and purpose was charitable and all of it highly worthy and commendable,” it did not “necessarily follow that in any true sense the use was exclusively charitable.”<sup>60</sup>

The Court explained: “In this it is not difficult to perceive that the operations of the [corporation] included worthy charitable aspects but it may not well be said that this ownership and use was exclusively charitable.”<sup>61</sup> The Court found it pertinent that each occupant was charged at cost—still less than fair market value—of the goods and services provided.<sup>62</sup> The corporation’s 501(c)(3) status was irrelevant as the Court pointed out “that the actions and findings of federal administrative agencies may not be regarded as effective in the

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<sup>57</sup> Neb. Rev. Stat. § 77-202(1)(d) (Cum. Supp. 2020) (emphasis added).

<sup>58</sup> *County of Douglas v. Oea Senior Citizens, Inc.*, 172 Neb. 696, 706, 111 N.W.2d 719, 724–25 (1961).

<sup>59</sup> *Id.*

<sup>60</sup> *County of Douglas v. Oea Senior Citizens, Inc.*, 172 Neb. 696, 706, 111 N.W.2d 719, 725 (1961).

<sup>61</sup> *Id.* at 707, 111 N.W.2d at 725.

<sup>62</sup> *Id.*

determination of the meaning of the words contained in the Nebraska Constitution and the Nebraska statutes.”<sup>63</sup>

Subsequently, these findings were reaffirmed in *Oea Senior Citizens [III]*,<sup>64</sup> where the Court, again, found a housing facility for the aged used by a non-profit corporation was not entitled to a charitable use exemption. The Court found that the facility’s “operations were the same as many privately operated homes for the elderly for profit.”<sup>65</sup>

It held that “[i]t is neither the incidental use of the property nor the character of the owner which controls.”<sup>66</sup> “Even though an enterprise may be operated at a very moderate cost or even at cost, and for the good of humanity, it is not solely by virtue of those facts a charitable institution within the meaning of our law.”<sup>67</sup>

It is prudent that the *Oea Senior Citizens* cases are viewed in light of *Good Samaritan*<sup>68</sup> and the *Bethesda*<sup>69</sup> cases. *Good Samaritan* and *Bethesda I* and *II* concerned nursing homes, which were determined to be exempt like hospitals, rather than a housing facility for the aged.<sup>70</sup>

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<sup>63</sup> *Id.* at 710, 111 N.W.2d at 727.

<sup>64</sup> *Oea Senior Citizens, Inc. v. County of Douglas*, 186 Neb. 593, 600, 185 N.W.2d 464, 468 (1971).

<sup>65</sup> *Id.*

<sup>66</sup> *Oea Senior Citizens, Inc. v. County of Douglas*, 186 Neb. 593, 600, 185 N.W.2d 464, 468 (1971).

<sup>67</sup> *Oea Senior Citizens, Inc. v. County of Douglas*, 186 Neb. 593, 602-03, 185 N.W.2d 464, 469-70 (1971).

<sup>68</sup> *Evangelical Lutheran Good Samaritan Soc’y v. County of Gage*, 181 Neb. 831, 151 N.W.2d 446 (1967).

<sup>69</sup> *Bethesda Found. v. Buffalo Cty. Bd. of Equal.* [*Bethesda I*], 263 Neb. 454, 640 N.W.2d 398 (2002); *Bethesda Found. v. County of Saunders* [*Bethesda II*], 200 Neb. 574, 264 N.W.2d 664 (1978).

<sup>70</sup> Judge Newton’s concurrence provides the most explicit terms:

This is not a philanthropic or charitable promotion. It is, in essence, an attempt by a group of private citizens, namely teachers, to provide a retirement home *for themselves* in their later years. True they do admit others, but only when the Manor is not fully occupied by the teachers who promoted it, and then for the obvious purpose of securing the maximum income. In what respect does it differ from a cooperative apartment project? If the active teachers in Omaha were to enter into such a venture to provide housing for themselves, could it be seriously contended that because it was a nonprofit venture it was therefore charitable in nature? I think not.

*Oea Senior Citizens, Inc. v. County of Douglas*, 186 Neb. 593, 605contd, 185 N.W.2d 464, 470 (1971)

The Court explicitly distinguished *Good Samaritan in Oea Senior Citizens II* on those grounds.

In *Harold Warp*,<sup>71</sup> the Court found a motel and campground to be exempt. The relevant facts, as determined by the court, were (1) that the museum was operated exclusively for educational purposes and (2) that the primary purpose of both the motel and the campground was to provide lodging for museum patrons.<sup>72</sup> These facts were undisputed.

*Harold Warp* articulated that the examination is whether the subject property is “reasonably necessary to the educational mission.”<sup>73</sup> The court found the museum was “unusual, if not unique,” because its collection was extensive and could not be viewed in a single day, and that it was situated in a relatively small community which had no public lodging facilities.<sup>74</sup>

The Court’s opinion suggests that its entire conclusion was based on these unique facts by citing the motel and campground’s conceded primary purpose: “to lodge patrons of the Museum.”<sup>75</sup> After confirming that the record supported such a concession, the court then proceeded to rely upon the IRS’s finding that the *income* from the motel and campground were exempt because the improvements were substantially related even though it was “not controlling on any of the issues in [the] case.”<sup>76</sup>

Ultimately, the court found: “The issue is not whether ‘lodging’ is an educational use in an abstract sense, but, rather, whether these *specific* lodging facilities were reasonably necessary to accomplish the educational purpose of the Foundation in the operation of its museum.”<sup>77</sup> The museum itself was undisputedly established as having

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<sup>71</sup> *Harold Warp Pioneer Village Found. v. Ewald*, 287 Neb. 19, 844 N.W.2d 245 (2013).

<sup>72</sup> *Harold Warp Pioneer Village Found. v. Ewald*, 287 Neb. 19, 22, 844 N.W.2d 245, 247–48 (2013).

<sup>73</sup> *Harold Warp Pioneer Village Found. v. Ewald*, 287 Neb. 19, 25, 844 N.W.2d 245, 249 (2013).

<sup>74</sup> *Harold Warp Pioneer Village Found. v. Ewald*, 287 Neb. 19, 25, 844 N.W.2d 245, 249 (2013).

<sup>75</sup> *Harold Warp Pioneer Village Found. v. Ewald*, 287 Neb. 19, 25, 844 N.W.2d 245, 250 (2013).

<sup>76</sup> *Harold Warp Pioneer Village Found. v. Ewald*, 287 Neb. 19, 26, 844 N.W.2d 245, 250 (2013).

<sup>77</sup> *Harold Warp Pioneer Village Found. v. Ewald*, 287 Neb. 19, 26-27, 844 N.W.2d 245, 250 (2013) (emphasis added).



been for the exclusive purpose of education and, because of the unusual—if not unique—circumstances, the motel and campground were necessary to that purpose. Thus, the property was for a charitable use.

Most recently, the Court provided that the Platte River Whooping Crane Maintenance Trust was exempt. Unlike the present issue before the Commission and the cases discussed *supra*, the question in *Platte River*, was whether a conservation trust was a charitable organization under §77-202(1)(d).<sup>78</sup> To that end, the case does not expressly govern.

However, the Court proceeded to analyze the use of the subject property. In cursory fashion, it found that the use was exclusively for charitable purposes.<sup>79</sup> The relevant facts—which are ultimately distinguishable from Kimmel—were:

- (1) *Thousands* of people visit its property each year;
- (2) The people observe the crane migration, learn about the prairie, and interact with nature;
- (3) *Free* public tours are provided during crane season;<sup>80</sup>
- (4) The property is *open year round at no charge* to the public;
- (5) The property’s large network of public trails are used for exercise by the public;
- (6) Students, researchers, and scientists perform scientific research on the property *every week*;
- (7) The Trust performs its *own* research and has *published* more than 30 articles in the past decade—all of which are available to the public for *free*;

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<sup>78</sup> *Platte River Whooping Crane Maint. Tr., Inc. v. Hall Cty. Bd. of Equal.*, 298 Neb. 970, 971, 906 N.W.2d 646, 648 (2018).

<sup>79</sup> *Platte River Whooping Crane Maint. Tr., Inc. v. Hall Cty. Bd. of Equal.*, 298 Neb. 970, 978, 906 N.W.2d 646, 652 (2018).

<sup>80</sup> It is probably prudent to mention that public charitable foundations typically survive on charging admission and other fundraising activities, so the free and no charge nature of the conservation trust may not actually be relevant.

(8) The revenue generating cattle grazing served *as part of* the habitat management program.

It is the exclusive use of property which determines its exempt character, as distinguished from the use of the income from the property that determines whether it is exempt from taxation.<sup>81</sup> “If an organization is organized under section 501(c)(3) of the Internal Revenue Code, it will not necessarily be exempt from Nebraska property taxes.”<sup>82</sup> For example:

**Use of Property.** A qualifying organization owns agricultural land on which it plans to build at some future date. In the interim, the land is rented to a farmer who plants and harvests crops on the land. No exemption is allowed for the land because it is used for nonexempt purposes and the use is not incidental. The use of the income by the organization for exempt purposes will not qualify the land for a property tax exemption. It is the use of the property that qualifies it for an exemption.<sup>83</sup>

“The term ‘exclusively’ means the primary or dominant use of the property is controlling in determining whether the property is exempt from taxation.”<sup>84</sup> “No exemption for a portion of the property is allowed where the exempt and nonexempt uses are commingled and the property, when considered as a whole, is not used exclusively for exempt purposes.”<sup>85</sup> For example:

**Incidental Use.** A qualifying organization conducts bingo games in the basement of its buildings two nights per week. Although conducting bingo games is not an exempt

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<sup>81</sup> *Berean Fundamental Church Council, Inc. v. Bd. of Equalization*, 186 Neb. 431, 434, 183 N.W.2d 750, 752 (1971); *Union College v. Board of Equalization*, 183 Neb. 579, 162 N.W.2d 772 (1968); *Nebraska Conf. Assn. Seventh Day Adventists v. Board of Equalization*, 179 Neb. 326, 138 N.W.2d 455 (1965).

<sup>82</sup> 350 Neb. Admin. Code, ch. 40, § 005.03B(3) (7/3/2013).

<sup>83</sup> 350 Neb. Admin. Code, ch. 40, § 005.04G (7/3/2013).

<sup>84</sup> *Platte River Crane Trust v. Hall Cty. Bd. of Equal.*, 298 Neb. 970, 975, 906 N.W.2d 646, 651 (2018); 350 Neb. Admin. Code, ch. 40, § 005.03 (7/3/2013).

<sup>85</sup> 350 Neb. Admin. Code, ch. 40, § 005.03A (7/3/2013).

use, the use of the property for bingo is incidental, and the predominant use of the building remains exempt. No apportionment of the property is required, and the entire building is exempt.<sup>86</sup>

**Exclusive Use.** A qualifying organization owns a building, which is used for its office space, and leases a portion of the building to a private law firm. The portion leased to the private law firm is not used exclusively for exempt purposes and is not eligible for an exemption.<sup>87</sup>

Kimmel does not meet the requirements of an educational organization in its own right.<sup>88</sup> Thus, the analysis, which Kimmel properly identifies in its closing argument, must be limited to Kimmel’s charitable uses—which includes its mental benefits. “‘Mental’ means ‘intellectual,’ which in turn means, among other things, engaged in creative literary, artistic, or scientific labor.”<sup>89</sup> The following are various facts in the record that may help identify separate and distinct portions of the parcel by distinguishing exclusive charitable uses of the Subject Property from incidental charitable uses.

#### *Kimmel’s Teaching Hours*

The Taxpayer introduced the number of teaching hours for 2018.<sup>90</sup> The total indicates 1,865.39 hours of teaching and 1,328 attendees for all programs in 2018 (a daily average of 3.64 attendees).<sup>91</sup> The teaching hours are calculated by multiplying the length of the educational program by the number of attendees. For example, the program named

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<sup>86</sup> 350 Neb. Admin. Code, ch. 40, § 005.04D (7/3/2013).

<sup>87</sup> 350 Neb. Admin. Code, ch. 40, § 005.04E (7/3/2013).

<sup>88</sup> Neb. Rev. Stat. § 77-202(1)(d) (Cum. Supp. 2020) ([E]ducational 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.)

<sup>89</sup> *Platte River Crane Trust v. Hall Cty. Bd. of Equal.*, 298 Neb. 970, 976, 906 N.W.2d 646, 651 (2018) (citation omitted).

<sup>90</sup> See Exhibit 48.

<sup>91</sup> Exhibit 48:1.

“Douglas/Sarpy MG” had 160 attendees totaling 480 teaching hours. Presumably, the program was 3 hours in length.

A calendar year contains a total of 2,080 work hours for a single employee.<sup>92</sup> The amount of total teaching hours the Taxpayer conducted in 2018, 1,865.39, is less than a single full-time employee’s work hours—even one who receives two weeks of vacation. The one-day three-hour Douglas/Sarpy MG program mentioned above constituted 25.73% of the total teaching hours of Kimmel for 2018.

Additionally, the “teaching” programming includes programs such as “5 S of wine tasting,” “Intern training,” “Ernie nephew tour,” “Ernie’s sister,” and “wine night.”<sup>93</sup>

In 2019, the record shows the Taxpayer conducted educational programs only from February 9 through May 2 for the calendar year.<sup>94</sup> These programs served 404 attendees for a total of 916 teaching hours.<sup>95</sup> Albeit, the 2019 calendar year was interrupted by the COVID-19 pandemic.

In contrast, the Apple Barn/Orchard Retail Store is open 9:00 a.m.–5:00 p.m. Wednesday thru Sunday starting April 1st, 2021.<sup>96</sup> Assuming the Apple Barn is open for only two quarters of the calendar year, two retail hours would exceed the teaching hours if two patrons are in the store at all times, which converts to 96 patrons spending ten minutes a day in store.

#### *Kimmel’s Research Contributions*

Further, most of the programming is sponsored by other organizations.<sup>97</sup> In an article about “the work of Judy Wu-Smart, Ph.D., assistant professor and extension specialist in the Department

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<sup>92</sup> 40 hours x 52 weeks.

<sup>93</sup> Exhibit 48:1.

<sup>94</sup> Exhibit 48:2.

<sup>95</sup> *Id.*

<sup>96</sup> See banner throughout Exhibit 56. (The hours during tax year 2019 and 2020 could not be located in the record)

<sup>97</sup> Exhibit 48:1; Exhibit 63:2.

of Entomology and the University of Nebraska-Lincoln,” Kimmel’s role in such projects was laid bare:

Kimmel Orchard not only provides space for the Bee Lab’s apiaries (and fruit trees with pollen for those bees), but [t]he [Kimmel] Charitable Foundation also awarded the lab a \$100,000 grant in 2020. Wu-Smart made careful use of that gift, pairing it with funds from her own resources to present a virtual Bee Fun Day, a Girl Scout workshop and, most importantly, fund two graduate students and their research projects.<sup>98</sup>

Kimmel “only provides space.” The Charitable Foundation (not Kimmel) awarded the grant to Wu-Smart who presented the virtual Bee Fun Day, a Girl Scout workshop and funded research projects. The question is whether these parcels are reasonably necessary to the charitable use. If the same research was conducted on commercial land, the use of the commercial property would, presumably, not be converted to a charitable one. It seems reasonable that Kimmel’s provision of the space for the research should be considered on its unusual and unique factors that are irreplaceable by other noncharitable alternatives.

Some of Kimmel’s articles and publications<sup>99</sup> read more like advertisements than educational pieces. For example: *Apple Cider Q&A*,<sup>100</sup> *Kimmel’s Homemade Strawberry Slushies*,<sup>101</sup> *Challenges of Growing Fruits*,<sup>102</sup> *Tart vs Sweet Cherries*,<sup>103</sup> *Blackberry Season is*

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<sup>98</sup> Exhibit 63:2 (emphasis added).

<sup>99</sup> Exhibit 56.

<sup>100</sup> Exhibit 56:16–18.

<sup>101</sup> Exhibit 56:26–27 (“[W]e have decided to release a new strawberry slushie with honey and apple cider in our store!”).

<sup>102</sup> Exhibit 56:28 (“Continue reading this week’s blog to learn which crops won’t be available, which ones will be in limited quantities, and why this occurs.”); Exhibit 56:29 (“[W]e still have other products to enjoy! Our wonderful Kimmel wines, delicious homemade apple donuts, and apple cider are available!”).

<sup>103</sup> Exhibit 56:30 (“This year, the select amount of cherries produced will be harvested by our employees and frozen for purchase in our retail store. They are sold by the quart for \$5.50, 5 lb. bags for \$20, and 10 lb. bags for \$35.”).

Here!<sup>104</sup> The *Intern Highlight*<sup>105</sup> contains statements from the season's three interns, which contain the following highlights:

- (1) "As the Business and Marketing intern, I am tasked with running our Instagram account and posting weekly on our Facebook page. . . . I create educational videos once a week *about things going on at the orchard and what produce will be in season next*. Also, I often create signs for the Apple Barn and assist with updating the official website." . . . "With this internship I have gained knowledge on how to run social media . . . and experience working retail in the Apple Barn."
- (2) Education and Food Safety Intern: "I have helped organize an create food safety document *to ensure Kimmel's food safety plan* is up to date. . . . Finally, I often help out in the Apple Barn making cookies, assisting guests, and helping out where ever is needed!"

That is how two of the three interns qualified their internships. The third intern's quotations align with Kimmel's charitable mission and purpose and suggest more of a charitable use.

Ultimately, the separate and distinct use portions are the critical component to the Commission's conclusions. The parts of the Subject Property where education or research is the exclusive use should not affect the parts where it is the incidental use.

### ***Indications of Noncharitable Use***

The Taxpayer introduced the curriculum vitae of Vaughn E. Hammond.<sup>106</sup> The exhibit shows that Hammond has not conducted any educational presentations since 2011.<sup>107</sup> Hammond's curriculum vitae indicates a profit motive as one of Hammond's key achievements was his instrumentality "in the implementation of converting grape crop

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<sup>104</sup> Exhibit 56:34 ("For a select few weeks, the Apple Barn will be selling limited amounts of blackberries. They can be purchased by the quart for \$8.00.").

<sup>105</sup> Exhibit 56:36-38.

<sup>106</sup> Exhibit 47.

<sup>107</sup> Exhibit 47:4-12.

into a value-added product—wine, which resulted in a dramatic increase of revenue.”<sup>108</sup>

Kimmel’s 2019 Profit & Loss<sup>109</sup> indicated the following top seven income sources (excluding grant income)”

Sales – Gift Shop Food	\$311,760.88
Food Sales – Retail Fruit/Veg	\$309,617.61
Food Sales – Restaurant	\$223,455.01
Sales – Liquor – Wine	\$118,244.78
U-Pick Admissions	\$44,717.50
Miscellaneous	\$38,422.59
Sales – Liquor – Other	\$26,021.44

Excluding grant income, Kimmel’s gross income for 2019 was \$1,108,864.39, resulting in gross profits of \$704,450.59.

The main use of the Subject Property is the preservation of the Kimmel residence and historic apple barn and the operation of the U-Pick facility. While these are part of a “wholesome family experience” the operation of a roadside produce stand and U-Pick orchard are not a charitable use under the statutes.

In *Platte River*, the Court considered whether the Trust was a charitable *organization*: “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.”<sup>110</sup> But while the organization’s status and the use of the subject property may be closely related, Kimmel still bears the

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<sup>108</sup> Exhibit 47:2.

<sup>109</sup> Exhibit 36:1.

<sup>110</sup> *Platte River Crane Trust v. Hall Cty. Bd. of Equal.*, 298 Neb. 970, 976, 906 N.W.2d 646, 651 (2018).

burden of showing that the Subject Property is used exclusively for charitable purposes.

Unlike *Platte River*, *Harold Warp*, and their predecessors, the issue here is not simply how much of the subject property is used for the tax-exempt purpose. The primary issue is whether the *purpose* for owning the property and the *intended* use control when the actual *exclusive* use differs.

It is undisputed that the Taxpayer is a charitable organization whose primary purpose furthers education, preservation, and research. The land is *intended* to be, and is in part, utilized for research and educational purposes. The Taxpayer has shown that the property is used for educational programming and research. But facilitating a use—potentially even one that would not be otherwise possible—does not transform an incidental use into an exclusive use.

A charitable purpose is not a charitable use. Revenue generation does not transform a charitable use into a noncharitable use, nor does revenue generation transform a noncharitable use into a charitable use. “Charitable revenue” does not control, nor does the charitable purpose of the organization. The Nebraska Constitution imposes a use requirement, not a mere ownership requirement. The determination rests in the character of the property’s use.

The Taxpayer did not present evidence regarding the use of the personal property associated with the use of the real property appealed other than a 2019 list of personal property.<sup>111</sup> Without evidence of the use of the personal property the Commission is unable to determine the exclusive use of the personal property to determine if it is exempt from taxation.

The record is devoid of clear and convincing evidence that the education or research conducted on the property is the Subject Property’s exclusive use. The record is also devoid of clear and

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<sup>111</sup> Exhibit 38.



convincing evidence that a charitable use is the exclusive use of the entirety of the Subject Property.

The Taxpayer has failed to clearly establish that the educational and charitable uses of the Subject Property are more than incidental.

## **VII. CONCLUSION**

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the County Board is affirmed in part and vacated and reversed in part.

## **VIII. ORDER**

IT IS ORDERED THAT:

1. The decisions of the Otoe County Board of Equalization denying the exemption of the Subject Property in Cases No. 19E 0031 & 20E 0068, 19E 0032 & 20E 0069 & 20E 0066 for tax years 2019 and 2020 are affirmed.
1. The decisions of the Otoe County Board of Equalization determining that a portion of the Subject Property in Cases No. 19E 0028 & 20E 0071, 19E 0029 & 20E 0067 is exempt from taxation and a portion of the Subject Property in Cases No. 19E 0028 & 20E 0071, 19E 0029 & 20E 0067 remain on the tax roll for tax years 2019 and 2020 are affirmed.
2. The decisions of the Otoe County Board of Equalization determining that a portion of the Subject Property in Cases No. 19E 0029 & 20E 0067 is exempt from taxation and a portion of the Subject Property in Cases No. 19E 0029 & 20E 0067 remain on the tax roll for tax years 2019 and 2020 are affirmed except

that \$88,767 of value, representing 23.12% of the value of the land component is exempt from real property taxation.

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Otoe County Treasurer and the Otoe County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018)
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax years 2019 and 2020.
7. This Decision and Order is effective for purposes of appeal on September 8, 2023.<sup>112</sup>

Signed and Sealed: September 8, 2023

SEAL



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Steven A. Keetle, Commissioner

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James D. Kuhn, Commissioner

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<sup>112</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.