

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

BERNARD AND CAROL
WREDE TRUST,
APPELLANT,

V.

MADISON COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 20C 0108

DECISION AND ORDER
REVERSING THE DECISION
OF THE MADISON COUNTY
BOARD OF EQUALIZATION

For the Appellant:

Bernard Wrede, Trustee of the
Bernard and Carol Wrede Trust

For the Appellee:

Joseph Smith,
Madison County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a 14.98-acre commercial parcel located in Norfolk, Madison County, Nebraska, improved with 382 intermodal shipping containers (Storage Units) used for personal property storage. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Madison County Assessor (the County Assessor) determined the assessed value of the Subject Property was \$1,315,369 for tax year

2020.¹ The Bernard and Carol Wrede Trust (the Taxpayer) protested this assessment to the Madison County Board of Equalization (the County Board) and requested a taxable value of \$478,730. The County Board determined the taxable value of the Subject Property for tax year 2020 was \$1,000,000.²

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on June 26, 2023. Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission. Exhibits 1-4 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission’s review of the County Board’s determination is de novo.³ When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.⁴ The first involves a presumption 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.⁵ That presumption remains until there is competent evidence to the contrary

¹ The land component of the Subject Property was assessed at a value of \$100,253 (Exhibit 2:1); the office building was assessed at \$93,085 (Exhibit 2:3); the Storage Units were assessed at \$1,035,322 (Exhibit 2:5); and the paving was assessed at a value of \$86,709 (Exhibit 2:6). The Taxpayer’s Property Valuation Protest, Form 422, indicated a protested total land and building assessment of \$2,020,591 (Exhibit 1), but nothing in the record supported that assessment amount.

² Exhibit 1.

³ 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,’ 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).

⁴ *Pinnacle Enters., Inc. v. Sarpy Cty. Bd. of Equalization*, 320 Neb. 303, 309, 27 N.W.3d 1, 6 (2025). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

⁵ *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6 (quoting *Cain v. Custer Cty. Bd. of Equal.*, 315 Neb. 809, 818, 1 N.W.3d 512, 521 (2024)). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus.*, 231 Neb. at 654-55, 437 N.W.2d at 502).

presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary.⁶

The second burden of proof requires that from that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented.⁷ The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁸

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.⁹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁰

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹¹ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.¹²

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.¹³ The Commission may consider all

⁶ *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6.

⁷ *Id.* See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

⁸ *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6. See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

⁹ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

¹⁰ *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6; *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹¹ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value) *abrogated on other grounds by Potts v. Bd. of Equalization*, 213 Neb. 37, 328 N.W.2d 175 (1982)); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

¹² *Wheatland Indus., LLC v. Perkins Cty. Bd. of Equalization*, 304 Neb. 638, 935 N.W.2d 764 (2019) (quoting *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb. App. 162, 168, 580 N.W.2d 561, 566 (1998)).

¹³ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

questions necessary to determine taxable value of property as it hears an appeal or cross appeal.¹⁴ 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.¹⁵ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁶

IV. RELEVANT LAW

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹⁷

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.¹⁸ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁹ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.²⁰ All real property in

¹⁴ *Id.*

¹⁵ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁸ *Id.* (citing Neb. Rev. Stat. § 77-1371).

¹⁹ *Omaha Country Club*, 11 Neb. App. at 180, 645 N.W.2d at 829.

²⁰ Neb. Rev. Stat. § 77-131 (Reissue 2018).

Nebraska subject to taxation shall be assessed as of January 1.²¹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²²

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.²³ “Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.”²⁴ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁵ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.²⁶ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.²⁷ If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.²⁸ There

²¹ See Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

²² Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

²³ Neb. Const., art. VIII, § 1.

²⁴ *Lancaster Cty. Bd. of Equalization v. Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁵ *Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623, (1999).

²⁶ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁷ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁸ *Pinnacle Enters.*, 320 Neb. at 309–10, 27 N.W.2d at 6 (quoting *Moser*, 312 Neb. at 767, 980 N.W.2d at 619). See also *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49–50 (1959) (Citations omitted).

must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁹

“For purposes of Chapter 77 and any statutes dealing with taxation, unless the context otherwise requires, the definitions found in Sections 77-102 to 77-132 shall be used.”³⁰

“Real property” shall mean: (1) All land; (2) All buildings, improvements, and fixtures, except trade fixtures;... (4) Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used, for residential, office, commercial, agricultural, or other similar purposes, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business.³¹

“Building” means, “an improvement to real property enclosing a space within its walls and usually, but not necessarily, covered by a roof and designed for habitation, shelter, storage, business, trade, or manufacture.”³²

“Improvement” means, “any addition made to real property, amounting to more than a repair, such as sidewalks, streets, sewers, or utilities.”³³

“Fixtures” means any item of property that is annexed or physically attached to or incorporated into the real property; appropriated to the use of the real property to which it is annexed (if the property is a necessary or useful addition to the real property to which it is annexed, then it has been appropriated to the use or purpose of the real

²⁹ *Moser*, 312 Neb. at 775, 980 N.W.2d at 624) (quoting *Newman*, 167 Neb. at 672, 94 N.W.2d at 50).

³⁰ Neb. Rev. Stat. § 77-101.

³¹ Neb. Rev. Stat. § 77-103 (Cum. Supp. 2020). See also Title 350 Neb. Admin. Code ch 10, § 002.18 (10/2014) (“Real property means all land, buildings, fixtures other than trade fixtures, improvements, certain mobile homes, cabin trailers and similar property, mineral interests, and all privileges pertaining to real property.”).

³² Title 350 Neb. Admin. Code ch 10, § 002.18A (10/2014).

³³ Title 350 Neb. Admin. Code ch 10, § 002.18D (10/2014).

property); and intended to be annexed to the real property (intention is inferred from the nature and extent of the annexation and appropriation, unless the owner of the real property provides documentation that the intention is otherwise).³⁴

“Trade fixtures” means “machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the real property is owned or leased...”³⁵

“Personal property” includes “all property other than real property and franchises.”³⁶

“Tangible personal property” includes “all personal property possessing a physical existence, but excluding money.”³⁷ Tangible personal property also includes trade fixtures, such as machinery and equipment used directly in commercial, manufacturing or processing activities conducted on real property regardless of whether the real property is owned or leased.³⁸

“[A] rule or regulation of an administrative agency is generally treated like a statute, because properly adopted and filed regulations have the effect of statutory law.”³⁹

³⁴ Title 350 Neb. Admin. Code ch 10, § 002.18B (10/2014).

³⁵ Neb. Rev. Stat. § 77-105 (Reissue 2018). See also Title 350 Neb. Admin. Code ch 10, § 002.24 (10/2014). (“Trade fixture means an item of machinery or equipment, used in commercial, manufacturing, or processing activities. The degree of attachment does not influence the classification of the machinery or equipment as real property. Trade fixtures are items of personal property which are placed upon or affixed to real property for the sole purpose of carrying on a trade or business.”).

³⁶ Neb. Rev. Stat. § 77-104 (Reissue 2018). See also Title 350 Neb. Admin. Code ch 20, § 001.01 (03/2009).

³⁷ Neb. Rev. Stat. § 77-105 (Reissue 2018).

³⁸ *Id.* See also Title 350 Neb. Admin. Code ch 20, § 001.01A (03/2009).

³⁹ *Cent. Platte Nat. Res. Dist. v. Neb. Dep’t of Nat. Res. (In re Application A-19594)*, 315 Neb. 311, 322, 995 N.W.2d 655, 667 (2023).

V. FINDINGS OF FACT AND ANALYSIS

A. Testimony of Bernard Wrede

Bernard Wrede testified he was the owner of the Subject Property. He asserted that for every year prior to tax year 2020 the Storage Units on the Subject Property had been taxed as personal property. Wrede explained there were 386 separate Storage Units of various sizes.⁴⁰ He said each storage unit had a wooden floor and swinging doors at only one end. Wrede said none of the Storage Units had electricity. Each Storage Unit was set on concrete footings but was not attached to the footings or to the ground. The area between the Storage Units was paved for access and parking.

Wrede testified he rented the Storage Units to private individuals for storage of personal property. No Storage Unit was used by a renter as a residence or for any commercial uses. Wrede asserted the Storage Units should be classified as personal property, not real property, and their value should be determined accordingly.

B. Testimony of Jeff Hackerott

Jeff Hackerott was the elected County Assessor for Madison County at all times relevant to this appeal. He held the State Assessor Certificate and had previously been a licensed appraiser. He had served as the County Assessor for 19 years.

Hackerott asserted he relied upon the analysis of the Nebraska Supreme Court in *Vandenberg v. Butler County Bd. of Equalization*⁴¹ to determine the classification of the Storage Units should be as real property improvements and not as personal property. When classifying the office building and the Storage Units as real property, Hackerott determined the total assessed value to be \$1,315,369.⁴² However, he testified that assessment was based upon a calculation that there were

⁴⁰ Wrede testified the Storage Unit sizes varied, including 10x10, 8x10, 8x20, and others.

⁴¹ 281 Neb. 437, 796 N.W.2d 580 (2011).

⁴² See Footnote 1 above.

405 Storage Units located on the parcel. Hackerott provided a correction in his testimony that the number of Storage Units on the Subject Property as of the assessment date of January 1, 2020, was 382. As a result, he offered a revised opinion of value for the Subject Property of \$995,036, assuming the correctness of classifying the Storage Units as real property. Hackerott offered an alternative opinion of value for the Subject Property of \$280,047 if the Storage Units are deemed by the Commission to be properly classified as personal property.

C. Analysis

1. Valuation of the Land

Neither party disputed the valuation of the land component of the Subject Property. The assessment of the land was \$100,253, the County Board determination of that component of the Subject Property was also \$100,253 and the Taxpayer offered no evidence to dispute that value.⁴³

2. Office Building and Paving

Likewise, neither the classifications nor valuations of the office building and paving located on the Subject Property were disputed by the Taxpayer.

3. Are the Storage Units on the Subject Property Real Property or Personal Property?

The only issue in dispute in this appeal is the classification and valuation of the storage units. The County Assessor asserted that the Storage Units should be classified as real property. The record does not reveal the basis for the County Board's determination other than its statement that, "[c]onsideration given to the valuation requested by

the protestor.”⁴⁴ The Taxpayer’s requested valuation is based upon his assertion the Storage Units are personal property. To determine the appropriate classification of the Storage Units for purposes of taxable value, we must give thorough consideration to the applicable statutory and regulatory language. We initially turn to whether the Storage Units qualify as real property, as the County Assessor has asserted. We first note that for purposes of property valuation, the Storage Units cannot be both real property and personal property. They must be one or the other since personal property is defined as, “all property other than real property.”⁴⁵

We first address whether the Storage Units should be classified as real property. Real property includes “all buildings, improvements, and fixtures.”⁴⁶ We consider each in turn.

a. Are the Storage Units Buildings?

According to Section 77-103(2), all buildings are real property. The term “buildings” is not defined in Section 77-103 or in Sections 77-102 to 77-132. The Nebraska Department of Revenue’s applicable regulations (Rules & Regulations) define a building as, “an improvement to real property enclosing a space within its walls and usually, but not necessarily, covered by a roof and designed for habitation, shelter, storage, business, trade, or manufacture.”⁴⁷ “Building” is further defined as “[a] structure with walls and a roof, esp. a permanent structure.”⁴⁸

The function of the Storage Units as organized and aligned on the Subject Property by the Taxpayer is to provide a secure, weatherproof, and accessible space for renters to store their personal belongings. In this respect, the Storage Units (intermodal shipping containers) function no differently than they would if they were built from

⁴⁴ Exhibit 1.

⁴⁵ Neb. Rev. Stat. § 77-104 (Reissue 2018). Title 350 Neb. Admin. Code ch 20, § 001.01 (03/2009).

⁴⁶ Neb. Rev. Stats. §§ 77-103(1) and (2) (Cum. Supp. 2020).

⁴⁷ Title 350 Neb. Admin. Code ch 10, § 002.18A (10/2014).

⁴⁸ Black’s Law Dictionary 242 (11th ed. 2019).

standard building materials. Since we find just below that the Storage Units are “improvements,” we also find that the Storage Units are “buildings,” under Section 77-103(2), because they are an “improvement” to the real property (the land) enclosing a space within its walls and designed and functioning as a shelter for personal belongings being stored by renters.

b. Are the Storage Units Improvements?

According to Section 77-103(2), all improvements are real property. The term “improvements” is also not defined in Sections 77-102 to 77-132. However, the Rules & Regulations define improvements as, “any addition made to real property, amounting to more than a repair, such as sidewalks, streets, sewers, or utilities.”⁴⁹

We find the Storage Units are improvements because they function as an addition to the Subject Property that is substantially more than a repair, sidewalk, street, sewer, or utility. Without the Storage Units, none of the personal belongings would be able to be stored on the Subject Property in a secure or weatherproof manner.

c. Are the Storage Units Fixtures?

According to Section 77-103(2), all fixtures are real property. Again, the term “fixtures” is not defined in Sections 77-102 to 77-132. However, Rules & Regulations define “fixtures” as,

any item of property that is annexed or physically attached to or incorporated into the real property; appropriated to the use of the real property to which it is annexed (if the property is a necessary or useful addition to the real property to which it is annexed, then it has been appropriated to the use or purpose of the real property); and intended to be annexed to the real property (intention is inferred from the nature and extent of the annexation and appropriation, unless the owner of the real property provides documentation that the intention is otherwise).⁵⁰

⁴⁹ Title 350 Neb. Admin. Code ch 10, § 002.18D (10/2014).

Since we have found that the Storage Units are real property because they are buildings and improvements, and buildings, improvements, and fixtures are all real property, we need not consider whether they are fixtures, as contemplated by Section 77-103(2).

d. Are the Storage Units Trade Fixtures?

Finally, since Section 77-103(2) contains an exception for “trade fixtures,” we must consider whether the Storage Units are “trade fixtures.” According to Section 77-103(2), real property does not include trade fixtures, which are deemed to be personal property.⁵¹ The term “trade fixtures” is defined in Section 77-105 as “machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the real property is owned or leased...”

The Rules & Regulations define a “trade fixture” as,

an item of machinery or equipment, used in commercial, manufacturing, or processing activities. The degree of attachment does not influence the classification of the machinery or equipment as real property. Trade fixtures are items of personal property which are placed upon or affixed to real property for the sole purpose of carrying on a trade or business.”⁵²

In order to qualify as a trade fixture, and be deemed personal property, the Storage Units first must be considered either machinery or equipment. As explained below, we find that the Storage Units are neither machinery nor equipment and, therefore, we conclude the Storage Units are not “trade fixtures.”

⁵¹ Neb. Rev. Stat. § 77-103(2) (Cum. Supp. 2020) (“Real property shall mean ... (2) All buildings, improvements, and fixtures, except trade fixtures); Neb. Rev. Stat. § 77-104 (Reissue 2018) (“The term personal property includes all property other than real property and franchises.”).

⁵² Title 350 Neb. Admin. Code ch 10, § 002.24 (10/2014).

The term “machinery” is not defined in Section 77-105 or in Sections 77-102 to 77-132.⁵³ It is also not defined in the applicable Rules & Regulations. “Machinery” is commonly defined as, “the working parts of a machine.”⁵⁴ Black’s Law Dictionary defines “machine” as “[a] device or apparatus consisting of fixed and moving parts that work together to perform some function.”⁵⁵ And “machine” is also commonly defined as, “an assemblage of parts that transmit forces, motions, and energy one to another in a predetermined manner.”⁵⁶ The storage containers have no fixed and moving parts that work together as a machine to transmit any force, motion, or energy. Therefore, we find that the Storage Units are not machinery.

We next turn to whether the Storage Units are “equipment.” The term “equipment” is also not defined in Section 77-105, in Sections 77-102 to 77-132, or in any applicable Rules & Regulations. “Equipment” is commonly defined as, “the implements used in an operation or activity.”⁵⁷ Black’s Law Dictionary defines “equipment” as “[t]he articles or implements used for a specific purpose or activity.”⁵⁸ Finally, the Uniform Commercial Code defines “equipment” as, “goods other than inventory, farm products, or consumer goods.”⁵⁹ The Storage Units are not implements used in an operation or activity. They function as a receptacle for the purpose of the storage of personal property owned by tenants. Without clear statutory or regulatory language directing a different conclusion, we find that the Storage Units are not “equipment.”

Even assuming *arguendo* that the Storage Units could properly be classified as either machinery or equipment under Section 77-105, in

⁵³ “Manufacturing machinery and equipment” and “agricultural machinery and equipment” are or were (at all times relevant) defined at Neb. Rev. Stat. § 77-2701.47(1) (Reissue 2018) and Neb. Rev. Stat. § 77-2704.36 (Reissue 2018) respectively, but the units clearly do not fall under either of these definitions.

⁵⁴ Webster’s Collegiate Dictionary 697 (10th ed. 1998).

⁵⁵ Black’s Law Dictionary 1138 (11th ed. 2019).

⁵⁶ Webster’s Collegiate Dictionary 697 (10th ed. 1998).

⁵⁷ Webster’s Collegiate Dictionary 392 (10th ed. 1998).

⁵⁸ Black’s Law Dictionary 678 (11th ed. 2019).

⁵⁹ UCC 9-102(33).

order to qualify as a “trade fixture” the Storage Units must also be “*used* in commercial, manufacturing, or processing activities.”⁶⁰

When analyzing the *use* requirement of Section 77-105, we look to what specific activity is being conducted. The Nebraska Supreme Court has provided guidance for this analysis: “[t]he statutory language [of Section 77-105] clearly focuses on the activity being conducted ..., not who is conducting that activity.”⁶¹ In the instant case, the activity being conducted is the storage of personal property by a renter of the Storage Unit. We find, therefore, that since the use is personal, and not “directly” for “commercial, manufacturing, or processing activities,” the Storage Units are not “trade fixtures” under Section 77-105.

e. Are the Storage Units Personal Property?

Since we have found above that the Storage Units are real property under Section 77-103(2), and not “trade fixtures” under Sections 77-103 and 77-105, and since personal property is defined as, “all property other than real property,”⁶² we must conclude that the Storage Units are not personal property.

VI. CONCLUSION

We find Hackerott’s testimony regarding the actual value of the Subject Property was competent evidence to rebut the presumption of correctness of the County Board’s taxable value determination of \$1,000,000 and clear and convincing evidence that the County Board determination was arbitrary or unreasonable.

Therefore, the Commission finds 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 there is clear and convincing evidence that the County Board’s decision was arbitrary or

⁶⁰ Emphasis added.

⁶¹ *Vandenberg*, 281 Neb. at 441, 796 N.W.2d at 583.

⁶² See Neb. Rev. Stat. § 77-104 (Reissue 2018).

unreasonable.⁶³

For the reasons set forth above, the determination of the County Board should be vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Madison County Board of Equalization determining the value of the Subject Property for tax year 2020 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$100,253
<u>Improvements</u>	<u>\$894,783</u>
Total	\$995,036

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Madison County Treasurer and the Madison County Assessor, pursuant to Neb. Rev. Stat. § 77-5018.
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 year 2020.

⁶³ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

7. This Decision and Order is effective for purposes of appeal on March 30, 2026.⁶⁴

Signed and Sealed: March 30, 2026.

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁶⁴ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 and other provisions of Nebraska Statutes and Court Rules.