

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

RUSHMORE BORGLUM MINISTRY, INC.,	)	
	)	
Appellant,	)	CASE NO. 01E-257
	)	02E-185
vs.	)	03E- 59
	)	
WASHINGTON COUNTY BOARD OF EQUALIZATION,	)	FINDINGS AND ORDER
	)	
Appellee.	)	

Filed December 22, 2003

Appearances:

For the Appellant: Jim R. Titus, Esq.  
Morris & Titus Law Firm, P.C.  
P.O. Box 81849  
Lincoln, NE 68501

For the Appellee: Edmond E. Talbot, III, Esq.  
Washington County Attorney  
P.O. Box 466  
Blair, NE 68008

Before: Commissioners Hans, Lore, Wickersham and Reynolds.

Reynolds, Chair, for the Commission:

**I.  
STATEMENT OF THE CASE**

Dr. Lonnie Hofer is an ordained minister of the Fellowship of Evangelical Bible Churches. (E11:1). Dr. Hofer attends the Community Bible Church of Ralston, where he has been an Elder for fifteen years. Dr. Hofer operates his own ministry, "Living for Eternity." Dr. Hofer has sole control of Living for Eternity. Living for Eternity does not have parishioners. The Living for

Eternity Ministry is a "parachurch" serving residents of the former Soviet Union.

Rushmore Borglum Ministry, Inc., ("Rushmore Borglum") is a non-profit corporation organized under the laws of South Dakota. Rushmore Borglum is an organization qualified as exempt from federal income taxation under provisions of the federal Internal Revenue Service Code. (E6:1). Rushmore Borglum is also exempt from Nebraska Sales and Use Taxes. (E5:1 - 2).

Rushmore Borglum's three incorporators are all members of the Duane Pankratz family. (E4:10). Duane Pankratz is president of Rushmore Borglum Ministry, Inc., and is one of it's major contributors. Rushmore Borglum ministers to residents of and visitors to Keystone, South Dakota. Rushmore Borglum Ministry, Inc., owns vacant land in South Dakota and is associated with a museum and gift shop in Keystone, South Dakota. Rushmore Borglum Ministry among other things buys and sells art.

Dr. Hofer is a Vice-President and a Director of Rushmore Borglum. Dr. Hofer is also the only full-time paid employee of Rushmore Borglum. There is no relationship between Rushmore Borglum Ministry, Inc., and the Fellowship of Evangelical Bible Churches or the Community Bible Church of Ralston.

Rushmore Borglum purchased a 10.13 acre site in Washington County, Nebraska, for \$28,000, on September 29, 1998. (E7). Dr. Hofer advised Rushmore Borglum to purchase the property. The

property is located in a rural residential subdivision developed by Dr. Hofer's brother-in-law. Dr. Hofer's brother-in-law is a resident of that subdivision, as is Dr. Hofer's mother-in-law and father-in-law.

Dr. Hofer applied for and obtained a building permit listing himself as the owner of the subject property on July 31, 1998.

(E42:1 - 2). The Building Permit listed the purpose of the improvements as a "s-f" ("single family") residence. (E42:1; E42:2). The approved Building Permit authorized Dr. Hofer to erect a new four bedroom house with a fully finished basement with an attached two-car garage on the property. Dr. Hofer estimated the value of these improvements to be \$255,000.

(E42:1). The approved Building Permit also authorized Dr. Hofer to erect a detached office and garage on the property. Dr. Hofer estimated the value of these improvements to be \$40,000.

(E42:2). Construction of the residence was completed on December 17, 1998. A handwritten note on the printed "Building Permit Detail" which is neither signed nor dated purports to change the "owner" of the improvements to Rushmore Borglum. (E42:3).

The home on the subject property contains 2,056 square feet on the ground level. The 2,016 square foot basement is approximately 80% finished. (E24:2; E26:2; E27:2). Dr. Hofer, his wife and his two daughters live in the four-bedroom house. There is one guest bedroom. Two bedrooms are located in the

basement, as is Dr. Hofer's office. Dr. Hofer and his wife entertain "visitors" as outlined in his Affidavit. (E19). Visitors during 2002 included 207 "supporters, potential supporters or other ministry related guests." (E19:5). Dr. Hofer and his wife also hosted 95 overnight visitors. (E19:5). On five or six occasions in 2003 there was more than one overnight visitor, which resulted in one or both of Dr. Hofer's daughters yielding their bedrooms as sleeping quarters for the convenience of the visitors. Nothing in or on the subject property distinguishes that property from any other \$300,000 single-family residence. Dr. Hofer's federal income tax returns show that the home has a finished living area of 4,000 square feet, and reports that 13.6% of this area is exclusively used for his business. (E48:12).

The land component of the subject property is 10.13 acres in size. The subject property has a detached office/garage. The structure is designed as an office for Dr. Hofer and as a garage for a recreational vehicle, trailer, and audio-visual equipment. (E42:2). The recreational vehicle and trailer stored in the garage are owned by Rushmore Borglum and are licensed in South Dakota, but have not been used by Dr. Hofer except sporadically for the past three years. Dr. Hofer started construction of the detached office/garage in 1998, but has yet to have that construction completed.

The subject property also has facilities for Dr. Hofer's daughter's horse which is boarded on the land. The remaining land component is devoted to lawn, a driveway and a "tree-area." The "tree area" is used occasionally by visitors for walks. The Assessors records show the remaining 8.13 acres in the parcel are undeveloped. (E24:4, E26:4, E27:4).

Dr. Hofer applied for a religious exemption for the subject property on behalf of Rushmore Borglum for tax years 2001, 2002 and 2003. (E38; E37; E36). The Washington County Assessor ("the Assessor") recommended disapproval of each application. (E38; E37; E36). The Board denied Rushmore Borglum's requested exemption for each tax year. (E38; E37; E36).

Rushmore Borglum's Treasurer timely filed an appeal of the 2001 decision. Dr. Hofer as Vice-President of Rushmore Borglum timely filed an appeal of the 2002 and 2003 decisions on behalf of Rushmore Borglum. Rushmore Borglum contends that the subject property should be granted a permissive exemption based on qualifying ownership and use. The Board disagrees.

The Commission issued an Order for Hearing and Notice of Hearing setting the matters for hearing on the merits of the appeals. The appeals were called for hearing on December 16, 2003, in the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, as required by the Notice for Hearing. Rushmore Borglum Ministry, Inc., appeared through

Dr. Lonnie Hofer, its Vice-President, and through counsel, Jim Titus, Esq. The Washington County Board of Equalization appeared through Edmond E. Talbot, III, Washington County Attorney.

The Parties stipulated during the course of the hearing that the exhibits which were offered and received applied to each year's application for exemption. The Parties further stipulated that for the purpose of hearing and deciding the appeals the provisions of Title 442, Neb. Admin. Code, effective June 3, 2003, should be deemed effective for each of the tax years at issue. The Parties also stipulated that the provisions of Title 350, Neb. Admin. Code, effective April, 2003, should be deemed effective for each of the tax years at issue. The Commission, based on these stipulations, entered an order consolidating the appeals for purposes of hearing and decision.

Finally, the Board stipulated and agreed on the record that the subject property is:

- a. owned by a religious organization.
- b. the subject property is not used to sell alcoholic liquor more than twenty hours per week.
- c. the subject property is not owned or used by an organization which discriminates in membership or employment based on race, color, or national origin.

The Parties also stipulated and agreed that if the Commission found the property to be taxable, the actual or fair

market value of the subject property for the purposes of Neb. Rev. Stat. §77-5017(2) (Cum. Supp. 2002), was:

- a. \$299,850 for tax year 2001. (E21:1).
- b. \$299,850 for tax year 2002. (E21:1).
- c. \$320,390 for tax year 2003. (E21:1).

## **II. ISSUES**

The issues are (1) whether the property is exclusively or predominantly used for religious purposes; and (2) whether the property is used for financial gain or profit; and (3) whether a subjective or objective standard should be used in determining qualification under these statutory tests.

## **III. APPLICABLE LAW A. BURDEN OF PROOF**

An applicant seeking exemption from real property taxes is required to demonstrate by clear and convincing evidence (1) that the decision of the Board was incorrect and (2) that the decision of the Board was either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (2003 Supp.). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or

(2) failed to act upon sufficient competent evidence in making its decision. The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's decision to deny the requested exemption was unreasonable. *Pittman v. Sarpy County Bd. of Equal.*, 258 Neb. 390, 398 - 399, 603 N.W.2d 447, 453 - 454 (1999).

**B.**  
**EXEMPTION OF PARSONAGES**

Exemptions from taxation are governed by Nebraska's Constitution and implementing statutes. "The Legislature by general law may classify and exempt from taxation property owned by and used exclusively for agricultural and horticultural societies and property owned and used exclusively for educational, religious, charitable or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user." *Art. VIII, Nebraska Constitution*, §2(2).

The Constitutional provision has been implemented as follows: "The following property shall be exempt from property taxes: ... (d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for



educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin." Neb. Rev. Stat. §77-202 (1)(d) (Cum. Supp. 2002).

Parsonages are subject to additional tests. A parsonage (1) owned by a church (2) where the parsonage is an essential part of the church; and (3) where the parsonage houses a pastor who is engaged in full-time ministerial work; and (4) where the parsonage is provided to the pastor for the convenience of the church and parishioners; and (5) where the parsonage serves numerous religious purposes, is property used exclusively for religious purposes and is exempt from taxation. *Neb. Annual Conf. of the United Methodist Church v. Scotts Bluff Co. Bd. of Equal.*, 243 Neb. 412, 419, 499 N.W.2d 543, 548 (1993).

#### **IV. FINDINGS OF FACT**

The Commission finds and determines that:

1. Title to the subject property is vested in Rushmore Borglum Ministry, Inc. (E7:1).
2. Rushmore Borglum Ministry, Inc. is a religious organization whose purpose is the dedication to or profession of a

- sectarian creed and belief in a divine or superhuman power or powers to be obeyed or worshiped as that term is defined in Title 350, Neb. Admin. Code, Ch. 40, §005.01b (04/2003).
3. One of the incorporators of Rushmore Borglum Ministries, Inc., Duane Pankratz, is its president and a major contributor.
  4. Rushmore Borglum ministered during the years at issue to the residents of and visitors to Keystone, South Dakota.
  5. Rushmore Borglum's ministry in Keystone, South Dakota, is separate from the "Living for Eternity" ministry conducted by Dr. Hofer.
  6. No evidence was adduced establishing that Rushmore Borglum is authorized to do business in the State of Nebraska as required by Neb. Rev. Stat. §21-19,146 (Reissue 1997).
  7. There is no clear or convincing evidence that the subject property is essential to the Rushmore Borglum ministry, either in terms of Rushmore Borglum's day-to-day activities, or in terms of Rushmore Borglum's ministry to the residents of and visitors to Keystone, South Dakota.
  8. Dr. Hofer is not engaged full-time in ministering to the residents of or visitors to Keystone, South Dakota.
  9. There is no clear or convincing evidence that the subject property is provided to Dr. Hofer for the convenience of Rushmore Borglum.

10. There is no clear or convincing evidence that the subject property is provided to Dr. Hofer for the convenience of those ministered to by Rushmore Borglum in Keystone, South Dakota.
11. There is no clear or convincing evidence that the subject property is used for numerous Rushmore Borglum religious purposes.
12. Dr. Hofer travels once a year to the former Soviet Union with his wife, and two or three more times each year without his wife. Dr. Hofer's activities in the former Soviet Union are under the auspices of the "Living for Eternity" ministry.
13. Dr. Hofer characterized himself as an employee of Rushmore Borglum. No written contract of employment exists and Dr. Hofer's "compensation," which includes a housing allowance, varied considerably from year to year. (E44; E45; E46)
14. Dr. Hofer testified that utilities, taxes, and insurance for the subject property were his responsibility. (E19:4 - 9)
15. Taxes due for the year 2000 were paid by Rushmore Borglum.
16. Living for Eternity is not a corporation and is not a 501(c)(3) organization.
17. Living for Eternity maintains a bank account held jointly with Rushmore Borglum utilizing Rushmore Borglum's tax identification number. Donations to Living for Eternity are

deposited to that account and expenses of Dr. Hofer are paid from that account at Dr. Hofer's direction.

18. There is no clear or convincing evidence that the subject property is essential to Living for Eternity's ministry, either in Living for Eternity's day-to-day activities, or to the overall scheme to minister to residents of the former Soviet Union.
19. While the subject property is owned by Rushmore Borglum, Dr. Hofer's ministry is separate and distinct from Rushmore Borglum's, although supported in part by Rushmore Borglum.
20. Living for Eternity does not own the subject property. Living for Eternity does not provide the subject property to Dr. Hofer for its convenience. Living for Eternity does not provide the subject property for the convenience of the residents of the former Soviet Union.
21. The subject property is primarily and predominantly used as a single-family residence for Dr. Hofer and his family.

**V.**  
**ANALYSIS**

**A.**  
**OVERVIEW**

Tax exemption provisions must be strictly construed. *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). Those provisions cannot be extended by construction. *Id.* The burden of proof is on the party seeking the exemption. *Id.*

State law provides that property owned by educational, religious, charitable, or cemetery organizations and used exclusively for educational, religious, charitable, or cemetery purposes is exempt from real property taxation when: the property is not owned or used for financial gain or profit to either the owner or user; and is not used for the sale of alcoholic liquors for more than twenty hours per week; and is not owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. Neb. Rev. Stat. §77-202(1)(c) (Cum. Supp. 2002).

A "religious" organization is one whose purpose is the dedication to or profession of a sectarian creed and belief in divine or superhuman 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. Title 350, Neb. Admin. Code, Ch. 40, §005.01. (04/2003).

A residence, in order to qualify for exemption under the "religious purpose" exemption, must be an essential part of the church's day-to-day activities and the overall purpose of the church and must be owned by the church. The "parsonage" must also (1) house a pastor engaged in full-time ministerial work; and (2) must be provided to him for the convenience of the church and parishioners, and which parsonage serves numerous other religious purposes." *Id.* at 417 - 418, 547 - 548. This test has been restated as a regulation:

"The regulation provides that an officer or employee of an organization seeking exemption is required to reside in the residence as part of his or her employment and for the convenience of the organization. The property must be used for the convenience of the organization and its members to such a degree that the property is an integral part of the organization. The use of the property as a residence must be incidental to the use of the property as part of the organization's mission."

Title 350 Neb. Admin. Code, Ch. 40, §005.03B(1) (04/2003). The regulations further provide:

"In the case of property that is separate from the main structure of the organization, the relative proximity

may be considered in establishing that the property is used for exempt purposes, but, exclusive exempt use of the property must be proved."

Title 350 Neb. Admin. Code, Ch. 40, §005.03B(2) (04/2003).

**B.**  
**THE APPLICABLE STANDARD**

Exemptions from real property taxation shift the tax burden from owners of exempted property to other property owners. Consequently, exemptions are to strictly construed. An applicant seeking exemption of real property from taxation bears the burden of proof. *Pittman, supra*. One element of the burden of proof is the production of "clear and convincing evidence." *Pittman, supra*.

Rushmore Borglum alleges its evidence demonstrates the property qualifies for exemption from real property taxation. All of its evidence in the form of direct testimony is that of Dr. Hofer. Much of Rushmore Borglum's documentary evidence was prepared by Dr. Hofer. Dr. Hofer is an interested party who would benefit from exemption.

The burden of proof in an exemption proceeding cannot be satisfied solely by evidence adduced by a single witness who is directly interested and partial and who would personally benefit from the requested exemption.

**C.**  
**IS THE PROPERTY EXCLUSIVELY OR PREDOMINANTLY  
USED FOR RELIGIOUS PURPOSES?**

Real property may be exempted from real property taxation if ownership and use qualify for exemption under the Nebraska Constitution and Nebraska state law. A private residence, in order to qualify for exemption under the "religious purpose" exemption, must be an essential part of the church's day-to-day activities and the overall purpose of the church. *Nebraska Annual Conference of United Methodist Church, supra.*

Rushmore Borglum ministers to the residents of and the visitors to Keystone, South Dakota. There is no evidence that the subject property is essential to Rushmore Borglum, either in terms of Rushmore Borglum's day-to-day activities or to Rushmore Borglum's overall ministry. The Living for Eternity ministry of Dr. Hofer, while supported by Rushmore Borglum, is independent of Rushmore Borglum.

Dr. Hofer alleges that as an employee of Rushmore Borglum he is required to live on the subject property as a condition of employment and for the convenience of Rushmore Borglum. When asked for documentation of these allegations Dr. Hofer testified that information appears in Rushmore Borglum's corporate minutes. These minutes were not made a part of the record for any of the three tax years at issue. This fact is particularly problematic



since Dr. Hofer's "compensation" seems to vary considerably from year to year. (E44; E45; E46).

Dr. Hofer testified that the subject property was selected because it was central to the area of his ministry in 1998. Dr. Hofer also testified that Rushmore Borglum owned real estate in Keystone, South Dakota. A residence had been located on the South Dakota property but had been removed. He also testified that the emphasis of his ministry has changed. Dr. Hofer's Living for Eternity ministry for the past three years has focused on annual trips to the former Soviet Union and activities in that region of the world.

Dr. Hofer testified that it was necessary to train teams for these activities, and that the teams were trained on the subject property. He also testified that teams were trained in Lincoln and Omaha for the convenience of the participants. Dr. Hofer testified that the subject property is used for bible study and hosting donors or potential donors for Living for Eternity ministry. There is no evidence that these activities make ownership of the subject property a necessity for Rushmore Borglum. While some contributions may have been garnered on the subject property the vast majority of Rushmore Borglum's contributions came from elsewhere. (E44, 45, 46).

The record does establish that Dr. Hofer ministers to the residents of the former Soviet Union. Dr. Hofer's activities,

under the name of "Living for Eternity Ministry," takes him to the former Soviet Union three or four times a year.

Dr. Hofer has the financial support of Rushmore Borglum backing his ministry. Dr. Hofer characterizes this financial backing as "salary" and a "housing allowance." The Commission had the opportunity to observe Dr. Hofer and evaluate his credibility. Dr. Hofer's characterization of the financial backing as "salary" and "housing allowance" is not credible. Dr. Hofer's uncontroverted testimony is that his ministry, Living for Eternity, is separate and distinct from that of Rushmore Borglum. Dr. Hofer is no doubt grateful for Rushmore Borglum's assistance. This assistance allows Dr. Hofer the opportunity and the ability to follow his conscience and travel to foreign countries three or four times each year as his personal ministry. But Dr. Hofer's "Living for Eternity" is neither a 501(c)(3) organization nor a corporation. One person is neither a "church" nor a "religious organization." Dr. Hofer's membership in the Community Bible Church of Ralston for the past fifteen years highlights the fact that neither Rushmore Borglum nor Living for Eternity is a church.

The evidence also establishes that Dr. Hofer has little if any relationship to Rushmore Borglum's day-to-day activities. As a director, he attends one board of directors meeting each year, and other meetings "as necessary." No evidence was adduced

regarding any day-to-day duties performed for or on behalf of Rushmore Borglum, or of attendance at more than one board of directors meeting each year.

There is no doubt that Rushmore Borglum condones and supports Dr. Hofer's activities on the subject property. These activities may be within the scope of Rushmore Borglum's Articles of Incorporation. Whether these activities are within the scope of the Bylaws is not known as that document was not made a part of the record.

The Commission must, however, determine whether both ownership and occupancy of the property are necessary to the ministry of Rushmore Borglum. The Commission concludes that it is not. The "tree area" is seldom used for any purpose. The RV and trailer stored in the garage are only sporadically used. The balance of the subject property is used by Dr. Hofer as his residence and for activities of Living for Eternity. (Although Dr. Hofer receives support from Rushmore Borglum, Dr. Hofer's activities in his Living for Eternity ministry are independent of and are not directed by Rushmore Borglum.) Dr. Hofer occupies and uses the subject property as a matter of choice rather than of necessity.

**D.**

**IS THE PROPERTY USED FOR FINANCIAL GAIN OR PROFIT?**

Dr. Hofer testified that Living for Eternity ministry has a separate bank account, held jointly with Rushmore Borglum, and that Living for Eternity ministry uses Rushmore Borglum's tax identification number. Some of Dr. Hofer's expenses are reimbursed by Rushmore Borglum, some are reimbursed by Living for Eternity from the separate account. Dr. Hofer deducts expenses on his federal income taxes for "Elder Expenses" when the Community Bible Church of Ralston doesn't support him. The evidence concerning these matters does not rise to the level of clear and convincing evidence that the property is not used for financial gain or profit.

Dr. Hofer also testified his wife conducts for-profit activities on the subject property. Any direct or indirect benefit to Rushmore Borglum of her activities is unknown. Any benefit to Living for Eternity would be indirect. The burden of proof is on the applicant. Rushmore Borglum has failed to demonstrate by clear and convincing evidence that the subject property is not used for financial gain or profit.

**E.**

**CONCLUSION**

Rushmore Borglum has failed to establish by clear and convincing evidence that the subject property qualifies for

exemption under the Nebraska Constitution and applicable state law. Rushmore Borglum has also failed to establish that any of the Board's decisions were either unreasonable or arbitrary. Those decisions must accordingly be affirmed.

**VI.  
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Parties and over the subject matter of these appeals.
2. The Commission is required to affirm the Board's decision unless evidence is adduced establishing that the action of the Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (2003 Supp.).
3. Tax exemption provisions are to be strictly construed. *Metropolitan Utilities Dist. of Omaha v. Balka*, 252 Neb. 172, 560 N.W.2d 795 (1997).
4. Tax exempt status under the federal Internal Revenue Service Code is not determinative for tax exemption under Nebraska law. *Nebraska State Bar Foundation v. Lancaster County Bd. Of Equal.*, 237 Neb. 1, 10, 465 N.W.2d 111, 118 (1991).
5. The Applicant has the burden of establishing the exemption. *Nebraska State Bar Foundation v. Lancaster County Bd. Of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).
6. 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." Title 350, Nebr. Admin. Code, Chapter 40, reg. 005.03 (04/2003).

7. No exemption is permitted for a portion of the property where exempt and non-exempt uses are commingled and the property is not used exclusively for exempt purposes. Title 350, Nebr. Admin. Code, Chapter 40, Reg. 005.03. (04/2003).
8. Rushmore Borglum failed to establish by clear and convincing evidence that the Board's decisions to deny the exemption applications for tax year 2001, 2002 and 2003 were unreasonable.
9. Rushmore Borglum failed to establish by clear and convincing evidence that the subject property is used exclusively or predominantly for religious purposes.
10. Rushmore Borglum failed to establish by clear and convincing evidence that the subject property is not used for financial gain or profit.
11. The Washington County Board of Equalization's decisions to deny the requested exemptions for tax years 2001, 2002, and 2003 must be affirmed.
12. If the Commission determines exempted property to be taxable, the Commission must remand the appeal to the county

board of equalization to determine taxable value of the property unless the parties stipulate to such taxable value during the hearing before the commission. Neb. Rev. Stat. §77-5017(2) (2003 Supp.).

**VII.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

1. A Protective Order is hereby issued regarding Dr. and Mrs. Hofer's 2000, 2001 and 2002 federal income tax returns. Those documents are hereby sealed against inspection for any reason other than for purposes of judicial review.
2. The Washington County Board of Equalization's decisions denying the requested exemptions for the subject property for tax years 2001, 2002 and 2003 are affirmed.
3. The Taxpayer's real property legally described as part of Tax Lot 1 together with part of the NW $\frac{1}{4}$ , all in Section 23, Township 17N, Range 12E of the 6<sup>th</sup> P.M., Washington County, more commonly known as 3631 Hidden Acres Lane, Fort Calhoun, Nebraska, shall be valued as follows for tax year 2001:

Land	\$ 24,845
Improvements	\$275,005
Total	\$299,850
4. The Taxpayer's real property legally described as part of Tax Lot 1 together with part of the NW $\frac{1}{4}$ , all in Section 23,

Township 17N, Range 12E of the 6<sup>th</sup> P.M., Washington County, more commonly known as 3631 Hidden Acres Lane, Fort Calhoun, Nebraska, shall be valued as follows for tax year 2002:

Land                   \$ 24,845

Improvements       \$275,005

Total                   \$299,850

5. The Taxpayer's real property legally described as part of Tax Lot 1 together with part of the NW $\frac{1}{4}$ , all in Section 23, Township 17N, Range 12E of the 6<sup>th</sup> P.M., Washington County, more commonly known as 3631 Hidden Acres Lane, Fort Calhoun, Nebraska, shall be valued as follows for tax year 2003:

Land                   \$ 37,370

Improvements       \$283,020

Total                   \$320,390

6. Any request for relief by any Party not specifically granted by this Order is denied.
7. This decision, if no appeal is filed, shall be certified to the Washington County Treasurer, and the Washington County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (2003 Supp.).
8. This decision shall only be applicable to tax years 2001, 2002 and 2003.



9. Each Party is to bear its own costs in this matter.

**IT IS SO ORDERED.**

Dated this 22nd day of December, 2003.

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Susan S. Lore, Commissioner

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Wm. R. Wickersham, Vice-Chair

**Seal**

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Mark P. Reynolds, Chair

**CONCURRENCE AND DISSENT**

I must respectfully dissent in part with the majority opinion, although I concur in the result. Contrary to the majority opinion, I would find that the property is predominantly used for religious purposes, to wit: the furtherance of Christianity in the former Soviet Union and as a base for Dr. Hofer's ministry in the Midwest and Canada. However, I must respectfully dissent as to the ownership test. The subject property is owned by Rushmore Borglum. The Washington County Board of Equalization stipulated that Rushmore Borglum Ministry, Inc., is a religious organization. A stipulation is not necessarily binding on the finder of fact: the Courts have held

that a stipulation does not deprive the finder of fact of its ability to weigh the evidence. In fact, a stipulation leaves the factfinder free to consider the weight and credibility which must be accorded the stipulated evidence in the same manner as the factfinder would weigh any other evidence. *Reiser v. Coburn*, 255 Neb. 655, 664, 587 N.W.2d 336, 342 (1998). The Rushmore Borglum income statements for the three years in question indicate an average profit of \$65,000. (E44; E45; E46). The summer ministry expense was \$2,342 one year (E44) and zero in the other two years. (E45; E46). Testimony was that the summer ministry of Rushmore Borglum was associated with a gift shop. The record no longer appears to establish by clear and convincing evidence that Rushmore Borglum is a non-profit religious organization. I would accordingly affirm the decision of the Washington County Board of Equalization for each of the tax years at issue, but not for the reasons adopted by the majority.

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*Robert L. Hans*, Commissioner