BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Doug Ewald, Tax Commissioner & Ruth Sorensen, Property Tax Administrator, Appellants, v. Kearney County Board of Equalization & Harold Warp Pioneer Village Foundation, Appellees.	Case No: 11E 002 Decision Reversing the Kearney County Board of Equalization

For the Appellants:
Jonathan D. Cannon,
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For the Appellees:
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Heard before Commissioners Thomas D. Freimuth and Robert W. Hotz.

I. THE SUBJECT PROPERTY

The Subject Property consists of campgrounds owned by Harold Warp Pioneer Village Foundation (Pioneer Village) located in Minden, Kearney County, Nebraska. In addition to the campgrounds, Pioneer Village owns and operates a museum and motel adjacent to the Subject Property. The legal description of the parcel is found at Exhibit 1, page 1. The Property Record File for the Subject Property is found at Exhibit 10.

II. PROCEDURAL HISTORY

Pioneer Village filed a Statement of Reaffirmation of Tax Exemption (Form 451A) for the Subject Property for tax year 2011 with the Kearney County Assessor on November 24, 2010.[1] The Kearney County Assessor determined that the Subject Property was not exempt from ad valorem taxes for tax year 2011.[2] The Kearney County Board of Equalization (County Board) determined that the Subject Property was exempt from ad valorem taxes for tax year 2011. [3] Pursuant to Nebraska Statutes §§77-202.04, 77-701, and 77-5007, Doug Ewald, Tax Commissioner & Ruth Sorensen, Property Tax Administrator, appealed the County Board's

[1] E1:1.
[2] E14.
[3] E1:2.

decision to the Tax Equalization and Review Commission (Commission) and requested that the Commission find the Subject Property subject to ad valorem property taxes.

Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of all exchanged exhibits except Exhibit 7. Exhibit 7 was offered and received during the hearing. The Commission held a hearing on December 19, 2011.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board is de novo.[4] When the Commission considers an appeal of a decision of a 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."[5]

> 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. 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. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.[6]

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.[7] Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.[8]

While the Nebraska Supreme Court has held that "[a]n exemption from taxation is never presumed[,]"[9] it has also held that the presumption in favor of the County Board's decision remains even when a decision of the County Board to grant an exemption is appealed.[10] [11] In instances where the County Board has determined that the subject property is exempt, if the

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[4] See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).
[5] *Brenner v. Banner Cty. Bd. Of Equal*., 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).
[6] *Id.*
[7] Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).
[8] *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).
[9] *Indian Hills Community Church v. County Bd. of Equal.*, 226 Neb. 510, 517, 412 N.W.2d 459, 464 (1987).
[10] *Pittman v. Sarpy Cty. Bd. of Equal*., 258 Neb. 390, 398, 603 N.W.2d 447, 453 (1999).
[11] The Nebraska Supreme Court has held that the standard of review has not been changed by the Legislature. See *Brenner v. Banner Cty. Bd. Of Equal*., 276 Neb. 275, 753 N.W.2d 802 (2008).

presumption is rebutted, the burden shifts to the applicant to prove its entitlement to the exemption.[12]

"If the appeal concerns a decision by the county board of equalization that property is, in whole or in part, exempt from taxation, the decision to be rendered by the commission shall only determine the exemption status of the property. The decision shall not determine the taxable value of the property unless stipulated by the parties according to subsection (2) of § 77-5017."[13]

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."[14] The Commission may also "take notice of judicially cognizable facts and in addition 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 standard of review for the Commission for cases appealed by the Tax Commissioner and Property Tax Administrator from a county board of equalization was brought into question by the Appellants. The Appellants asserted that the determination of the main issue involved the interpretation of the Tax Commissioner's rules and regulations, and that under *Capital City Telephone v. Dept. of Revenue*,[16] the Appellants' interpretation of the applicable rule or regulation must be given deference unless proved to be plainly erroneous or inconsistent. The Commission finds that the determination of the taxable status of the Subject Property is not dependent upon the interpretation of the Tax Commissioner's rules and regulations, and that the Appellant's assertion is not applicable.

IV. EXEMPTION

A. Law

The Nebraska Constitution specifies that property of the state and its governmental subdivisions used for authorized public purposes is exempt from taxation and permits the Legislature to 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

[12] *Pittman*, at 399, 603 N.W.2d at 454.
[13] Neb. Rev. Stat. §77-5016(10) (2012 Cum. Supp.).
[14] Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).
[15] Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).
[16] 264 Neb. 515, 650 N.W.2d 467 (2002).

profit to either the owner or user."[17] The following property shall be exempt 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 educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subject or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education.[18]

"Statutes exempting property from taxation are to be strictly construed, and the burden of proving the right to exemption is on the claimant.[19]

In reference to subsection (1)(d) of Nebraska Statutes § 77-202, exclusive use means the primary or dominant use of property, as opposed to incidental use.[20] "It is the exclusive use of the property that determines the exempt status."[21] Under subsection (1)(d) of Nebraska Statutes § 77-202, a property owner's exemption from federal income taxation does not determine whether the owner's property is tax exempt under state law.[22]

The Courts have spoken of two overriding factors to be considered when a request for an exemption is before them. Those factors are: the property tax burden is necessarily shifted from the beneficiary of an exemption to others who own taxable property, and that the power and right of the state to tax is always presumed.[23]

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;[24] (2) the alleged exempt property must clearly come within the provision granting the exemption;[25] (3) the laws

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[17] Neb. Const., Art. VIII, § 2.
[18] Neb. Rev. Stat. § 77-202(1)(d) (2012 Cum. Supp.).
[19] *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).
[20] *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993).
[21] See, *Nebraska Conf. Assn. of Seventh Day Adventists v. Bd. of Equalization*, 179 Neb. 326, 138 N.W.2d 455 (1965).
[22] *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal*., 237 Neb. 1, 465 N.W.2d 111 (1991).
[23] 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).
[24] *Pittman v. Sarpy Cty. Bd. of Equal*., 258 Neb. 390, 398, 603 N.W.2d 447, 453 (1999).
[25] *Nebraska State Bar Foundation v. Lancaster Cty. Bd. of Equal*., 237 Neb. 1, 4, 465 N.W.2d 111, 114 (1991).

governing property tax exemptions must be strictly construed;[26] (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";[27] and (5) this interpretation should always be reasonable.[28]

In accordance with Nebraska Statute § 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 alcoholic liquor sales, and prohibited discrimination. The property must meet all five criteria for the exemption to be allowed."[29]

The Tax Commissioner and Property Tax Administrator may appeal a determination by the county board of equalization granting an exemption for real or tangible personal property.[30] Harold Warp Pioneer Village Foundation has been made a party to the appeal and has been issued a notice of the appeal pursuant to Neb. Rev. Stat. §77-202.04 (2012 Cum. Supp.).

B. Summary of Stipulations & Issues

The parties have stipulated that: (1) Pioneer Village is an educational organization as defined by Nebraska Statutes; (2) the Subject Property is not used exclusively for religious, charitable, or cemetery purposes; (3) the Subject Property is not used for financial gain or profit for Pioneer Village; (4) the Subject Property is not used for the sale of alcoholic liquors more than 20 hours per week; and (5) Harold Warp Pioneer Village is not an organization which discriminates in membership or employment based on race, color, or national origin. The parties have agreed that the sole issue to be determined by the Commission is whether the Subject Property is used exclusively for educational purposes.

The Commission finds that the parties have not stipulated according to Nebraska Statutes § 77-5017(2) for the Commission to determine the taxable value of the Subject Property. The Commission's decision is therefore limited to determining the exemption status of the Subject Property.

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[26] *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).
[27] *Lincoln Woman's Club v. City of Lincoln*, 178 Neb. 357, 363, 133 N.W.2d 455, 459 (1965).
[28] *Id.* (citing, *Young Men's Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921)).
[29] 350 Neb. Admin. Code, ch. 40, § 005.01 (2009).
[30] Neb. Rev. Stat. §77-202.04 (2012 Cum. Supp.).

C. Summary of Evidence

The Appellants elicited testimony from Linda Larsen, the Kearney County Assessor. Ms. Larsen opined that the primary use of the campgrounds is lodging and is therefore not eligible for tax exemption.

Appellants also elicited testimony from Kenneth Sanders, campgrounds property manager for the previous 11 months. He testified that the campgrounds on the Subject Property compete with a campground facility eight miles away.

Mr. Sanders further testified that 95.8% of the people who stay at the motel and campgrounds also attend the museum, and that while there is a separate payment for lodging at the campgrounds ($26 per night, exclusive of sales and lodging tax), one complimentary ticket to the museum valued at $11.66 (including tax) is provided with the rental of a campsite. Conversely, he testified that if a ticket to the museum is purchased first the campsite rate is discounted. Mr. Sanders testified that the campgrounds do not receive an exemption from sales and lodging tax.

Marshall Nelson, General Manager of the Pioneer Village museum for 11 years, testified that 30% of museum visitors stay more than one day. Referencing pages 28 through 30 of Exhibit 12, Mr. Nelson further testified that the revenue generated by the motel and campgrounds is necessary to meet payroll and other expenses of Pioneer Village.

Roy John Nelson, Chairman of the Kearney County Board of Equalization, testified that he has been a resident of Minden for most of his life dating back to 1955, and that he voted in favor of the exemption because he felt that the fact that 95.8% of the motel and campgrounds guests visited the museum indicated that the predominant use of the campgrounds was for educational purposes. He testified that the absence of other lodging facilities in Minden made the motel and campgrounds necessary for the operation of the museum, and that he did not believe any lodging facilities other than Pioneer Village's motel and campgrounds could survive in Minden.

Roy John Nelson also testified that use of lodging facilities in the City of Kearney is actually favored by many families with children that visit Pioneer Village's museum. He stated that travel to and from lodging facilities in communities surrounding Minden is not an impediment for purposes of visiting Pioneer Village, stating that "30 miles for someone to drive and stay today is nothing."

Roy John Nelson further testified that the construction of Interstate 80 in the mid-1960s significantly altered Minden's traffic patterns and commercial activity. In this regard, he stated that Highways 6 and 34 pass through Minden, and that Pioneer Village flourished prior to the construction of Interstate 80. He also testified that commercial activity in Minden has significantly decreased since the construction of Interstate 80. Finally, he testified that commercial activity in Minden, with the exception of Pioneer Village, does not generate traffic off of the Highway 10 exit that leads from Interstate 80.

Harold Warp, Chairman and President of Harold Warp Pioneer Village Foundation, testified that the museum opened in 1948 and currently has over 50,000 exhibits. He testified that the campgrounds were established in the late 1960s, and that they do not compete with lodging facilities in the area.

Mr. Warp also testified that the construction of Interstate 80, together with increased gas prices in the mid-1970s and the recent economic crisis, reduced commercial activity in Minden in general and lowered traffic to Pioneer Village in particular. He further testified that Highway 10, which leads to Pioneer Village from Interstate 80, does not involve significant commercial activity for purposes of generating traffic to Minden.

Mr. Warp also referred to Exhibit 6, which is an Internal Revenue Service letter to Pioneer Village dated August 18, 1983. This Exhibit 6 letter, which generally grants Pioneer Village exemption from income tax under Internal Revenue Code § 501(c)(3), states as follows with respect to whether the motel and campground should be subject to unrelated trade or business income tax under Internal Revenue Code § 513(a):

> Your operation of the restaurant, motel, campground and snack shop is for the purpose of enabling your visitors to remain long enough to take in the full extent of your educational exhibits, the purpose for your exemption. Because there are not facilities of this type within a reasonable proximity to your exhibit, the time a visitor could or would spend would be sharply curtailed, i.e., to approximately half a day, yet it takes a full day or more to appreciate all your historical and educational presentation. Making it possible for visitors to get a full measure of the educational aspects is substantially related to the accomplishment of your exempt purpose. The fact that less than five percent of the receipts from these activities is from non-visitors indicates that these activities are not conducted on a scale that is larger than reasonably necessary for the support of the exempt purposes.
>
> Accordingly, the operations of the restaurant, motel, campground, and snack shop are substantially related to the accomplishment of your exempt purposes and would not constitute unrelated trade or business with the meaning of § 513(a) of the code.

D. Summary of Appellants' Argument

The Appellants assert that the primary use of the campgrounds is for lodging rather than educational, thereby subjecting the Subject Property to property tax.[31] In support of this assertion, the Appellants cite the following in pertinent part:

1. The campgrounds are separate from the museum and "not a part of the actual educational experience."[32]
2. The campgrounds are "open to the general public…, and patrons of the museum are not required to stay at the campgrounds…"[33]
3. "Although it may be shown that the campgrounds ……provide[s] a service to the museum, as well as the general public, it is a mere convenience rather than a part of the educational experience.[34]
4. Employees of Pioneer Village do not live on the Subject Property.[35]
5. Museum attendees do not receive educational certification.[36]
6. Absence of recordkeeping regarding educational training.[37]
7. Nebraska case law establishes a high standard for purposes of determining that property used for lodging is exempt.[38]
8. While 95.8% of motel and campgrounds guests also visit the museum, only 30% of all museum guests stay at the motel or campgrounds.[39]
9. Evidence "that the income from the motel and campgrounds is being used to support the museum does not have any bearing on whether the exclusive use is for educational purposes."[40]
10. Absence of lodging tax exemption.[41]
11. Competition with surrounding lodging facilities.[42]

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[31] Appellants' Brief, January 9, 2012, page 9.
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.* at 10.
[36] *Id.* at 11.
[37] *Id.*
[38] *Id.*
[39] *Id.* at 16.
[40] *Id.*
[41] *Id.* at 19.
[42] *Id.*

E. Summary of Appellees' Argument

The Appellees argue the following in asserting that the campgrounds are used exclusively for educational purposes and therefore exempt from property tax:

1. The motel and campgrounds "are an integral and necessary part" of Pioneer Village because they are the only lodging options in Minden, and the closest motel facilities "are at least 15 to 35 miles away."[43]
2. 95.8% of the visitors staying at the motel and campgrounds attended the museum.[44]
3. The campgrounds are used to conduct educational programs and special functions, for which there is no space in the museum.[45]
4. The campgrounds routinely host vintage camping groups that conduct seminars on maintenance of vintage campers, and attendees frequent the museum's motor home collection.[46]
5. Because it is not possible to visit all the exhibits in the museum in one day, it is necessary for the 30% of the museum's visitors who wish to view all the exhibits to return a second day.[47]
6. The motel and campgrounds are "beneficial and reasonably necessary to the operation of the Harold Warp Pioneer Village Foundation," as required by Nebraska case law relating to lodging facilities.[48]
7. "It is not the purpose of the Pioneer Village to lodge members of the public." Rather, the "motel and campgrounds are only a means to assist in accomplishing the purpose of the Pioneer Village in educating the public by granting to those members of the public interested in immersing themselves in all of the exhibits, the full benefit of their admission."[49]
8. The "use of the motel and campgrounds by persons not attending the museum is incidental."[50]

[43] Appellee County Board's Brief, February 3, 2012, page 6.
[44] *Id.*
[45] *Id.* at 7, referencing Exhibit 8.
[46] *Id.* at 7-8, referencing Exhibit 8.
[47] Appellee Pioneer Village's Brief, February 6, 2012, page 5.
[48] *Id.* at 7-8.
[49] *Id.* at 9-10.
[50] *Id.* at 11.

F. Findings & Conclusions

The Commission has reviewed Nebraska case law briefed by Appellants and Appellees and finds *Doane College v. County of Saline* controlling.[51] In *Doane College*, the Appellant was a nonprofit, religious and educational institution located in Crete, Nebraska.[52] At issue for property tax exemption purposes were two properties, including the official residence of the president of the college and faculty housing units consisting of two apartment buildings located on the campus.[53]

The president was required to occupy the official residence under his employment contract.[54] Beyond this occupancy arrangement, the Court stated as follows in pertinent part with respect to the residence:

> In addition to being the living quarters of the president of the college, the president's house is the center for the reception of new faculty members, foreign visitors, the trustees, and their families. It is used as housing for prospective faculty members and foreign visitors on their visits to the campus and it is used extensively for student group meetings and conferences, senior receptions, and freshmen orientation receptions. The president uses one room for a library and a study where he carries on his work outside of his regular office hours.[55]

In light of these considerations, the Court found that the president's residence was necessary to the discharge of his duties and not just a "matter of personal convenience and advantage."[56] Therefore, the Court held that the primary or dominant use of the president's home was for educational purposes and thereby exempt from property tax.[57]

With respect to the faculty housing, the Court noted that these units were rented to new members of the faculty at fair market value during their first two to three years of employment.[58] No faculty members were required to live in the housing, and their salaries were not affected by their place of residence. Only faculty members were allowed to live in the housing units.[59]

The Court found that the housing units were constructed with the use of endowment funds "to relieve a critical housing situation in Crete" and "to give the college a competitive advantage

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[51] *Doane College v. County of Saline*, 173 Neb. 8, 112 N.W.2d 248 (1961).
[52] *Id.* at 10-11, 112 N.W.2d at 250.
[53] *Id.* at 11, 112 N.W.2d at 250.
[54] *Id.*
[55] *Id.*
[56] *Id.* at 12, 112 N.W.2d at 250.
[57] *Id.*
[58] *Id.* at 12-13, 112 N.W.2d at 250-51.
[59] *Id.* at 12-13, 112 N.W.2d at 251.

with other schools in attracting and employing new members of the faculty."[60] Noting that the income generated from this arrangement "is considered to be endowment income and is placed in the current operational fund," the Court further found that the "housing units yield a reasonable amount of income and the college intends to keep charging rent after the amount of endowment funds originally invested in the units has been recovered."[61]

The Court found that this financing arrangement did not mean that the faculty housing units were "owned or used for financial gain or profit to either the owner or user."[62] The Court held, however, that this finding "alone is not sufficient to bring the property within the exemption provisions of our law."[63] Although the faculty housing units were not used for financial gain, the Court further stated that "[t]here is a distinction between the use of the property and the use of the income therefrom."[64]

The Court further considered Doane College's assertion that the faculty housing was necessary for the operation of the school.[65] The Court noted the following assertions by Doane College in this regard:

> [M]embers of the faculty counsel with the students in their homes and that student consultation, training, and organization meetings are held there; that the close relationship between the students and faculty is an important characteristic of the training available at a college such as Doane College and is an intregal part of the scholastic program; and that the housing units are necessary in order for Doane College to maintain a satisfactory faculty and administration.[66]

In response to these assertions, the Court determined that Doane College was "in the housing business" and in competition with other similar privately owned properties.[67] Thus, although the Court noted that it was beneficial for Doane College to construct the faculty housing, it held that the use of the "units for educational purposes was incidental, or remote and not direct, and that the primary or dominant use of this property was not for educational purposes."[68]

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[60] *Id.* at 13, 112 N.W.2d at 251.
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.* at 13-14, 112 N.W.2d at 251.
[66] *Id.*
[67] *Id.* at 14, 112 N.W.2d at 251-52.
[68] *Id.*

The Appellees assert that the campgrounds are most like the president's house in *Doane College*.[69] The Appellants, on the other hand, assert that the campgrounds are like the faculty housing in *Doane College*.[70]

The Commission finds that the campgrounds are most like the faculty housing in *Doane College*. While the campgrounds provide direct benefits to Pioneer Village and the public in the form of increased revenue and convenient lodging, the educational purpose is incidental to other purposes. Therefore, the Commission finds that the use of the campgrounds for educational purposes is incidental, or remote and not direct, and that the primary or dominant use of this property is not for educational purposes.

With respect to the Appellees' assertions that there are no other motels or lodging facilities in Minden to accommodate museum patrons, the Commission finds *Doane College* to be further instructive. The Court found that faculty housing was constructed with endowment funding in an effort to resolve a "critical housing situation" in the locality, and that the income from this arrangement was placed in Doane College's operational fund. [71] Under these circumstances, the Court found that the faculty housing units were not owned or used for financial gain or profit by the owner.[72] Nonetheless, the Court held that these findings were "not sufficient to bring the property within the exemption provisions of our law."[73]

With respect to the Appellants' assertion that the campgrounds are in competition with taxable businesses, the Commission is mindful of the adverse economic consequences associated with the construction of Interstate 80 on communities such as Minden that are located on Highways 6 and 34, and that this factor at least in part is causative in terms of Pioneer Village's dominance of the local lodging market. Similar to *Doane College*, however, wherein the Court held that the faculty housing competed with privately owned property even in the case of evidence of a housing shortage, the Commission finds that the campgrounds are in competition with taxable businesses in surrounding communities.

The Commission acknowledges that the vintage camper events at the campgrounds add to the educational experience of an overnight trip to the museum. The Commission has also given weight to the other uses of the campgrounds referenced in Exhibit 8 that Appellees assert support

[69] Appellee County Board's Brief, February 3, 2012, page 7.
[70] Appellants' Brief, January 9, 2012, page 11.
[71] *Doane College v. County of Saline*, 173 Neb. 8, 13, 112 N.W.2d 248, 251-52
[72] *Id.*
[73] *Id.*

educational purposes. Similar to the faculty housing in the *Doane College* case, however, the Commission finds that these educational uses are incidental to the primary purpose of providing lodging.

The Appellees assert that the motel and campgrounds are "integral and necessary" to the operation of Pioneer Village because they are the only lodging options in Minden, and the closest lodging facilities are several miles away.[74] The Appellees also assert that the campgrounds are "beneficial and reasonably necessary" to the operation of Pioneer Village as required by Nebraska case law relating to lodging facilities, for the reason that the facility maximizes the ability of the museum's visitors who wish to view all of the exhibits to return two or more days.[75] The Commission has weighed the evidence adduced in support of these assertions by Appellees. The Commission has also weighed evidence that 70% of Pioneer Village's visitors do not use the motel or campgrounds, together with testimony by County Board Chairman Roy John Nelson that travel to and from lodging facilities in surrounding communities is not an impediment and is actually favored by many families with children. The Commission is not persuaded that the campgrounds are "integral and necessary" or "reasonably necessary" for property tax exemption purposes.

The Appellees also argue that the Internal Revenue Service income tax exemption letter found at Exhibit 6 supports the property tax exemption for the campgrounds. Under subsection (1)(d) of section 77-202 of Nebraska Statutes, a property owner's exemption from federal income taxation does not determine whether the owner's property is tax exempt under state law.[76] Moreover, the *Doane College* Court held that "[t]here is a distinction between the use of the property and the use of the income therefrom."[77] The Commission has weighed the Internal Revenue Service exemption letter as indicia of the use of the Subject Property. The Commission is not, however, persuaded that the use of the campgrounds is exclusively for educational purposes.

Finally, Appellants contend that the campgrounds could fulfill its lodging purpose without the educational components referenced in Exhibit 8, but that conversely it could not fulfill its purpose to provide necessary lodging to museum guests without improvements necessary to

[74] Appellee County Board's Brief, February 3, 2012, page 6.
[75] Appellee Pioneer Village's Brief, February 6, 2012, page 9-10.
[76] *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).
[77] *Doane College v. County of Saline*, 173 Neb.8, 13, 112 N.W.2d 248, 251.

operate a campground.[78] At issue, however, is not the potential use of the Subject Property in the absence of such educational components, but the actual use of the property as of January 1, 2011, and whether that use constituted an exclusive educational purpose.

For all of the reasons cited above, the Commission finds that the Subject Property is not exempt from tax for tax year 2011.

V. 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 the applicant for the exemption has failed to prove its entitlement to the exemption. The Commission further 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 decision of the County Board is Vacated and Reversed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Kearney County Board of Equalization determining the Subject Property exempt from ad valorem property taxes for tax year 2011 is vacated and reversed.[79]
2. The Subject Property is not exempt for tax year 2011.
3. This decision and order, if no appeal is timely filed, shall be certified to the Kearney County Treasurer and the Kearney County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2011.

[78] Appellants' Brief, January 9, 2012, pages 18-19.
[79] Exemption status, as determined by the county board of equalization, was based upon the evidence at the time of the exemption application 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 exemption application proceeding.

7. This order is effective for purposes of appeal on February 1, 2013.

Signed and Sealed: February 1, 2013.

Thomas D. Freimuth, Commissioner

SEAL

Robert W. Hotz, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.