

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Prayer Center,
Appellant,

v.

Nuckolls County Board of Equalization,
Appellee.

Case Nos: 12E 040, 12E 041, 12C 014, 12R
031, 13E 003, 13E 003, 13C 013, & 13R
025

Order Reversing the Denial of Exemption in
Case Nos. 12E 041, 12E 042, 13E 003, &
13E 004

And

Order Dismissing Case Nos. 12C 014, 12R
031, 13C 013, & 13R 025 as Moot

For the Appellant:

Ron Hasley, Chairman,
Prayer Center, Pro Se.

For the Appellee:

Timothy Schmidt,
Nuckolls County Attorney.

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon. Commissioner Freimuth writing for the Commission, Commissioner Salmon concurring.

I. THE SUBJECT PROPERTY

The Subject Property consists of two parcels located in Nelson, Nuckolls County, Nebraska. One parcel is improved with a 19,212 square foot structure previously used as a nursing home for several decades (this improved parcel is at issue in appeals 12E 040, 12C 014, 13E 004, and 13C 014), and the other parcel is an adjacent unimproved lot (this unimproved parcel is at issue in appeals 12E 041, 12R 031, 13E 003, and 13R 025). The legal description and Property Record Card for the improved parcel are found at Exhibit 15, pages 7 through 20 for tax year 2012, and Exhibit 16, pages 3 through 15 for tax year 2013.¹ The legal description and Property Record Card for the unimproved parcel are found at Exhibit 9, pages 4 through 6 for tax year 2012, and Exhibit 10, pages 2 through 3 for tax year 2013.²

¹ The legal description of the improved parcel is: Wheelers Sub Outlots 18-21 Lots 1, 2, 3, 4, 7, 8, 9, 10 & N 30', Lot 5 & 11 Blk 47. See, E16:3.

² The legal description of the unimproved parcel is: OT Nelson Lots 7, 8, 9 Blk 41. See, E11:7.

II. PROCEDURAL HISTORY

The Nuckolls County Assessor denied an exemption application and determined that the Subject Property was subject to taxation for tax years 2012 and 2013.³ The Appellant (herein referred to as the “Prayer Center”) protested this determination to the Nuckolls County Board of Equalization (herein referred to as the “County Board”) and requested that the Subject Property be exempted from taxation for tax years 2012 and 2013.⁴ The County Board determined that the Subject Property was not exempt for tax years 2012 and 2013.⁵

The Nuckolls County Assessor determined that the assessed value of the portion of the Subject Property subject to appeal in case numbers 12C 014 and 13C 013 was \$164,400 for tax years 2012 and 2013.⁶ The Prayer Center protested these assessments to the County Board and requested an assessment of \$4,000 for tax years 2012 and \$4,125 for tax year 2013.⁷ The County Board determined that the assessed value of this parcel was \$164,400 for tax years 2012 and 2013.⁸

The Nuckolls County Assessor determined that the assessed value of the portion of the Subject Property subject to appeal in case number 12R 031 was \$1,500 for tax year 2012 and \$1,550 in case number 13R 025 for tax year 2013.⁹ The Prayer Center protested these assessments to the County Board and requested an assessment of \$500 for tax year 2012 and \$375 for tax year 2013.¹⁰ The County Board determined that the assessed value of this parcel was \$1,500 for tax year 2012 and \$1,550 for tax year 2013.¹¹

The Prayer Center appealed the decisions of the County Board regarding both the exempt status of the Subject Property and the assessed value of the Subject Property to the Tax Equalization and Review Commission (herein referred to as the “Commission”). The Commission consolidated these appeals for a single hearing to take evidence and argument in both the exemption appeal and the valuation appeals. The parties held a Pre-Hearing Conference, as ordered by the Commission, and exchanged exhibits prior to the hearing. The Commission held a consolidated evidentiary hearing on June 9, 2014.

³ E2, E3, E6, E7.

⁴ E2, E3, E6, E7.

⁵ E2, E3, E6, E7.

⁶ E1 and E5.

⁷ E1 and E5.

⁸ E1 and E5.

⁹ E4, E8.

¹⁰ E4, E8.

¹¹ E4, E8.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.¹² "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."¹³ 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."¹⁴

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.¹⁵

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.¹⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁷

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."¹⁸ 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

¹² 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).

¹³ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

¹⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹⁵ *Id.*

¹⁶ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁸ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

it.¹⁹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.²⁰

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 profit to either the owner or user.”²¹ 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. Form 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.²²

“Statutes exempting property from taxation are to be strictly construed, and the burden of proving the right to exemption is on the claimant.”²³

In reference to subsection (1)(d) of Nebraska Statutes section 77-202, exclusive use means the primary or dominant use of property, as opposed to incidental use.²⁴ “It is the exclusive use of the property that determines the exempt status.”²⁵ The Constitution and the statutes do not require that the ownership and use must be by the same entity. Ownership and use may be by

¹⁹ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

²⁰ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

²¹ Neb. Const., Art. VIII, § 2.

²² Neb. Rev. Stat. § 77-202(1) (d) (2012 Cum. Supp.).

²³ *Fort Calhoun Baptist Church v. Washington Cty. Bd. of Equal.*, 277 Neb. 25, 30, 759 N.W.2d 475, 480 (2009) (citations omitted).

²⁴ See, *Harold Warp Pioneer Village v. Ewald*, 287 Neb. 19 (2013).

²⁵ *Id.*

separate entities.”²⁶ 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.²⁷

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.²⁸

In addition, the Courts in Nebraska have developed several principles concerning requests for exemptions: (1) an exemption is never presumed;²⁹ (2) the alleged exempt property must clearly come within the provision granting the exemption;³⁰ (3) the laws governing property tax exemptions must be strictly construed;³¹ (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[;]”³² and (5) this interpretation should always be reasonable.³³

B. Overview of the Evidence in Case Nos. 12E-041, 12E-042, 13E-003 and 13E-004

The Prayer Center purchased the Subject Property for \$4,500 in October 2010.³⁴ Prior to the Prayer Center’s purchase, the Subject Property served as a nursing home in Nelson since its construction in the early 1960s.³⁵ The Subject Property’s assessment for tax years 2009 through 2010, prior to the Prayer Center’s purchase, was \$411,600.³⁶ The County valued the Subject Property as a storage warehouse in the amount of \$164,400 for tax years 2011 through 2013.³⁷

²⁶ *Fort Calhoun Baptist Church v. Washington County Board of Equalization*, 277 Neb. 25, 33, 759 N.W.2d 475, 481-82 (2009).

²⁷ *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

²⁸ 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).

²⁹ *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 398, 603 N.W.2d 447, 453 (1999).

³⁰ *Nebraska State Bar Foundation v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 4, 465 N.W.2d 111, 114 (1991).

³¹ *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).

³² *Lincoln Woman’s Club v. City of Lincoln*, 178 Neb. 357, 363, 133 N.W.2d 455, 459 (1965).

³³ *Id.* (citing, *Young Men’s Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921)).

³⁴ See, E 9:12, E23:2 (TERC Final Order Case Nos. 11E 020, 11C 001, and 11C 002 dated June 19, 2013).

³⁵ See, E13:9.

³⁶ E13:6.

³⁷ See, E13:6, E13:9.

The County Board denied the Prayer Center's exemption application for the Subject Property for tax year 2011.³⁸ The Commission affirmed this denial in Case No. 11E-020 based on the absence of evidence of exempt use for tax year 2011.³⁹

The Prayer Center's Form 451 Exemption Application for tax year 2012 states that the County Assessor's recommended temporary disapproval of the exemption "pending more questions" on January 24, 2012.⁴⁰ This Exemption Application for tax year 2012 also indicates that the County Board disapproved the exemption on May 21, 2012, without written comments.⁴¹

The Prayer Center's Form 451 Exemption Application for tax year 2013 states that the County Assessor recommended disapproval of the exemption on January 28, 2013.⁴² This Exemption Application for tax year 2013 also indicates that the County Board disapproved the exemption on April 22, 2013, without written comments.⁴³

Ron Hasley, Chairman of the Prayer Center, testified at the hearing. He testified that the Prayer Center provided the County Board with sufficient documents, information, and testimony to support its exemption application for the Subject Property for tax years 2012 and 2013. His testimony asserted that the County Board imposed a higher burden on the Prayer Center as compared to other religious and charitable organizations that were granted exempt status for tax years 2012 and 2013.

Hasley asserted that the Subject Property supported the Prayer Center's exempt purpose by providing outreach associated with the Prayer Center's exempt activities in Gage County, Nebraska. He testified that the Subject Property accomplished the Prayer Center's outreach programs by providing the following: (1) a meeting location for visitors to participate in outreach activities, including religious events, worship services, and fellowship; and (2) a community garden location where food is produced for consumption during outreach activities.

Hasley testified that the area he describes as "habitational" consists of guest rooms that are used to house abused women, individuals requiring temporary housing for a few days, and traveling ministers passing through or preaching in the area. He asserted that the guest rooms are not used as residences, but are mostly used for weekend stays, or over-night stays associated

³⁸ See, E23:2 (TERC Final Order Case Nos. 11E 020, 11C 001, and 11C 002 dated June 19, 2013).

³⁹ See, E23:1-12 (TERC Final Order Case Nos. 11E 020, 11C 001, and 11C 002 dated June 19, 2013).

⁴⁰ E13:1 and E14:1.

⁴¹ E13:1 and E14:1.

⁴² E11:1 and E12:1.

⁴³ E11:1 and E12:1.

with religious events. He asserted that the Prayer Center does not charge money for these housing services, but does accept donations. He testified that one exception involved Virgil Nability, who stayed for approximately six months to assist with the Creation Museum and participate with youth activities.

Mr. Hasley asserted that religious meetings at the Subject Property continue to occur biweekly.

Susan M. Rogers, the Nuckolls County Assessor, testified on behalf of the County Board. She testified that she recommended denial of the Prayer Center's exemption application for tax years 2012 and 2013 because interior inspection access has not been granted. She also testified that all of the churches in the County exempt from taxation have granted interior inspection access.

Ms. Rogers further testified that the Prayer Center's exemption application for tax year 2012 in part was denied because a significant portion of the information submitted by the Prayer Center related to its tax exempt activities in Beatrice, Gage County, Nebraska. Ms. Rogers' testimony indicates that her concern regarding the Prayer Center's Gage County information is based on the following: (1) Beatrice is a significant distance from the Subject Property's location in Nuckolls County; and (2) the Prayer Center's tax exempt activities in Beatrice are not relevant to the Subject Property's tax exempt status in Nuckolls County.

Ms. Rogers further asserted that the Subject Property's utility services were not functional between July 2013 and October 2013.

Danny K. Corman, a member of the County Board, also testified at the hearing. He testified that he voted against the Prayer Center's exemption application for tax years 2012 and 2013 because the County Assessor has not conducted an interior inspection of the Subject Property.

Darrel L. Stanard, the contract appraiser for the Nuckolls County Assessor, also testified on behalf of the County Board. He testified regarding valuation of the Subject Property.

C. Summary of Tax Year 2012 Exemption Evidence (Case Nos. 12E-041 & 12E-042)

The Prayer Center submitted 58 photographs found at Exhibit 18 in support of its assertion that the use of the Subject Property is for religious, charitable, or educational purposes for tax

years 2012 and 2013.⁴⁴ The photographs depict various activities that occurred on the Subject Properties from July 12, 2011, to August 9, 2013.

Activities that occurred inside the improvements located on the Subject Property in appeals 12E 040, 12C 014, 13E 004, and 13C 014 prior to January 1, 2012, include: (1) a New Year's Praise Service;⁴⁵ and (2) a potluck dinner.⁴⁶ Additionally, prior to January 1, 2012, community gardening activity occurred on the unimproved parcel that is at issue in 12E 041, 12R 031, 13E 003, and 13R 025.⁴⁷

Exhibit 22 received in evidence by the Commission is a 51-page packet submitted by the Prayer Center in support of its exemption for tax year 2012. Exhibit 13 received in evidence by the Commission is a 68-page packet submitted by the County regarding the Prayer Center's exemption application for tax year 2012. Exhibits 13 and 22 contain many pertinent documents regarding the chain of events surrounding the Prayer Center's exemption application for tax year 2012 including the following:⁴⁸

1. An exemption application for Community United Church of Christ approved by the County Board for tax year 2008 received by the Prayer Center on December 20, 2011, which together with Mr. Hasley's testimony indicates that the Nuckolls County Assessor provided as an application guide for tax year 2012;⁴⁹
2. A "Nuckolls County Permissive Tax Exemption Application Questionnaire" (herein sometimes referred to as "Exemption Application Questionnaire") completed by the Prayer Center for tax year 2012 and received by the County Assessor on January 12, 2012, which indicates that the Subject Property is used for educational, religious, or charitable purposes and that events are open to the public;⁵⁰

⁴⁴ Exhibit 18 is a compact disk. The Commission notes that the date of the activity depicted on each of the 58 photographs included on the compact disk can be accessed by right-clicking on each photograph.

⁴⁵ E18 photo captioned "New Year's Praise Service" taken 12/31/2011.

⁴⁶ E18 photo captioned "Potluck" taken 12/31/2011.

⁴⁷ E18 photo captioned "2011 Community Garden" taken 7/12/2011.

⁴⁸ The Commission notes that Exhibit 22 page 1 sets forth a Prayer Center document entitled "The Plan of Salvation" for exemption support purposes.

⁴⁹ E22:2. Form 451 Exemption Application by Community United Church of Christ approved by the County Board on February 19, 2008. Handwritten notes on this document indicate that the Prayer Center received it from the County Assessor on December 20, 2011, presumably as an application guide. The response on this document to the request for information regarding use of the property is as follows: "The church is used for Sunday worship services and other services as needed, for Sunday school classes, youth meetings, women groups for Bible."

⁵⁰ See, E13:3-5. In general, the responses on the Exemption Application Questionnaire indicate that the Prayer Center uses the Subject Property for religious, educational and charitable purposes.

3. The Prayer Center's Exemption Application Questionnaire received by the County Assessor on January 12, 2012, references Mr. Hasley's Affidavit indicating that the Subject Property is used for "expanded outreach" and for "(a) religious, educational and charitable purposes; (b) daily devotions and prayer requests, worship services; (c) charitable contributions to missionaries, evangelists, guest speakers, gospel concerts, and educational seminars; (d) habitational support for the mental, social, and physical benefit of the public; [and] (e) creation science education center[;]"⁵¹
4. The Prayer Center's Exemption Application Questionnaire received by the County Assessor on January 12, 2012, also references Mr. Hasley's separate Affidavit regarding the Prayer Center's acquisition of an additional building in Beatrice, Gage County, Nebraska, to further its outreach efforts for religious, educational, and charitable purposes;^{52 53}
5. Beatrice Area Chamber of Commerce listing of Beatrice churches that includes the Prayer Center, which the County Assessor apparently received either with the Exemption Application Questionnaire on January 12, 2012, or with the Exemption Application stamped as received on December 27, 2011;⁵⁴
6. Excerpts from the *Locomotive Gazette* newspaper dated April 12, 2012, April 19, 2012, and August 9, 2012, which set forth advertisements for concerts at the Subject Property;⁵⁵

⁵¹ E13: 26, E22:7, Ron Hasley Notarized Affidavit dated December 26, 2011. This document states that Mr. Hasley is "the co-founder of the Prayer Center, a religious and charitable organization, [sic] that was established in the month of May, in the year of our Lord, 2002. Prayer Center is currently located at its original address 123 N. 3rd St., Beatrice, Nebraska."

⁵² See, E22:10. The Commission notes that Mr. Hasley's Affidavits found at E13:26, E22:7 and E22:10 indicate the address of the Prayer Center's original and existing location is 123 North 3rd St., Beatrice, Gage County, Nebraska (the "3rd St. location"). According to the Form 451A found at E12:7 and E20:19, the Gage County Board of Equalization approved the Prayer Center's exemption application for tax years 2012 and 2013 for its 3rd St. location in Beatrice. According to Mr. Hasley's Affidavit found at E22:10, together with review of E12:9, E12:15 and E12:19, the Prayer Center purchased property in December 2011 in Beatrice located at 1019 N. 6th St. (the "6th St. location") to expand its outreach programs beyond the 3rd St. location. According to the Form 451 found at E13:44, the Gage County Board of Equalization approved the Prayer Center's exemption application for tax year 2012 for the outreach programs conducted at its 6th St. location in Beatrice.

⁵³ The Commission notes that the Exemption Application Questionnaire received by the County Assessor on January 12, 2012, also references Prayer Center co-founder Fernando Bartels' Notarized Affidavit dated May 12, 2011, found at Exhibit 13 pages 24 - 25. This document states that Mr. Bartels, a United States citizen residing in Paraguay, South America, is the "the co-founder of the Prayer Center that was established in the month of May 2002 which is currently located at its original address 123 N. 3rd St., Beatrice, Nebraska." Mr. Bartels' Affidavit discusses his role with the Prayer Center and outlines the activities that further its religious, educational and charitable purposes, including the provision of bilingual ministry information to the Hispanic population. His Affidavit also states that he engaged in the day-to-day operations and services of the Prayer Center for four years, and that he "currently resides in South America in order to establish a missionary outreach and educational facility in Paraguay with assistance from the Prayer Center."

⁵⁴ E13:23, E22:9; See also, E13:1, E13:3.

⁵⁵ E22:47-49.

7. Exhibit 13 pages 34 – 36 sets forth minutes derived from the County Board’s hearing on April 23, 2012, regarding consideration of tax exemption applications. These minutes provide that the County Board approved 34 tax exemption applications at this meeting, including 24 for religious organizations, but unanimously voted to “temporarily deny” the Prayer Center’s appeal for tax year 2012 for the reason that “more information is needed[;]”⁵⁶
8. Letter from the Nuckolls County Clerk to Mr. Hasley dated April 24, 2012, which states that the County Board adopted the County Assessor’s recommendation “to temporarily deny the Tax Exemption status for the Prayer Center as they would like to have a meeting to ask for additional information to support your request for tax exemption.” This letter further requests the presence of Mr. Hasley at a meeting of the County Board scheduled on May 21, 2012;⁵⁷
9. Letter from Nuckolls County Assessor Susan M. Rogers to Mr. Hasley dated May 14, 2012, in response to his letter the previous day providing Mr. Hasley with questions contemplated for review at the County Board hearing scheduled on May 21, 2012;⁵⁸ and
10. Mr. Hasley’s Affidavit dated May 21, 2012, indicating the Subject Property is used for: (1) religious and charitable purposes; (2) daily devotion and prayer requests; and (3) charitable contributions to missionaries, evangelists, guest speakers, gospel concerts, and educational seminars.⁵⁹

D. Summary of Tax Year 2013 Exemption Evidence (Case Nos. 13E-003 & 13E-004)

The photographs found at Exhibit 18 in support of the Prayer Center’s assertion that the use of the Subject Property is for religious, charitable, or educational purposes for tax year 2013 depict various activities that occurred on the Subject Property from July 12, 2011, to August 9, 2013.

⁵⁶ E13:34-36. At this meeting, the Prayer Center is the only religious organization that did not receive exemption application approval by the County Board for tax year 2012.

⁵⁷ E22:24.

⁵⁸ E22:27. This letter sets forth the following questions: “(a) What specific use has been made of the properties, in Nuckolls County, listed on the exemption application? (b) “What activities take place at the Nelson location and how frequent are the activities?” (c) “Do you have residents at the facility and if so how many, and do they pay rent or what are the arrangements for them to be allowed to stay?” and (d) “Will interior inspection of the property, by the staff, agents, or contract personnel of the Assessor’s office be permitted?”

⁵⁹ E22:31-32. Ron Hasley Notarized Affidavit dated May 21, 2012.

Activities that occurred inside the improvements located on the Subject Property in appeals 12E 040, 12C 014, 13E 004, and 13C 014 between January 1, 2012, and January 1, 2013, include: (1) a Christmas lighting;⁶⁰ (2) Community Service Project (Neighbor to Neighbor);⁶¹ (3) a Cooking Class;⁶² (4) a Fellowship Dinner;⁶³ (5) a Fellowship Night;⁶⁴ (6) Fireside Services;⁶⁵ (7) Meeting in Worship Center;⁶⁶ (8) Monday Morning Coffee;⁶⁷ (9) Spring Gospel Concert;⁶⁸ (10) Summer Gospel Concert;⁶⁹ (11) Thanksgiving in Worship Center;⁷⁰ (12) Youth Activities;⁷¹ (13) Youth Ag Class;⁷² (14) Youth Camp;⁷³ and (15) Youth Night Out.⁷⁴ The Prayer Center also submitted pictures of the interior of the Subject Property's facility taken between January 1, 2012, and January 1, 2013.⁷⁵

Exhibit 18 includes photographs depicting the following activities inside the Subject Property's improvements after January 1, 2013: (1) Bicycle Ministry;⁷⁶ (2) Clothing Ministry;⁷⁷ (3) Community Clean-up Ministry;⁷⁸ (4) Community Clean-up;⁷⁹ (5) Family Fun Day Gospel Concert;⁸⁰ (6) PHC Bicycle Ministry;⁸¹ (7) PHC Clothing Ministry;⁸² (8) Prayer Carrell;⁸³ (9) Prayer Center Schedule;⁸⁴ (10) Valentine's Banquet;⁸⁵ and (11) Winter Fest.⁸⁶ The Prayer Center

⁶⁰ E18 photo captioned "Christmas Lighting" taken 1/1/2012.

⁶¹ E18 photo captioned "Community Service Project (Neighbor to Neighbor)" taken 5/4/2012.

⁶² E18 photo captioned "Cooking Class" taken 11/10/2012.

⁶³ E18 photo captioned "Fellowship Dinner" taken 6/30/2012.

⁶⁴ E18 photo captioned "Fellowship Night" taken 7/23/2012.

⁶⁵ E18 photo captioned "Fireside Services" taken 5/20/2012.

⁶⁶ E18 photo captioned "Meeting in Worship Center" taken 6/23/2012.

⁶⁷ E18 photo captioned "Monday Morning Coffee" taken 2/6/2012.

⁶⁸ E18 photo captioned "Spring Gospel Concert" taken 4/22/2012.

⁶⁹ E18 photo captioned "Summer Gospel Concert" taken 8/10/2012.

⁷⁰ E18 photo captioned "Thanksgiving in Worship Center" taken 11/22/2012.

⁷¹ E18 photo captioned "Youth Activities" taken 5/27/2012.

⁷² E18 photo captioned "Youth Ag Class" taken 4/30/2012.

⁷³ E18 photo captioned "Youth Camp" taken 10/22/2012.

⁷⁴ E18 photo captioned "Youth Night Out" taken 5/20/2012.

⁷⁵ See, E18 photos with the following captions: "Community Kitchen" taken 5/13/2012; "Fitness Center" taken 4/30/2012; "God's Creations" taken 4/28/2012; "Guest Room (2)" taken 5/13/2012; "Prayer Center Facility" taken 5/13/2012; "Prayer Center Facility (2)" taken 5/13/2012; "Prayer Center Kitchen" taken 4/28/2012; "Prayer Center Literature & Brochures" taken 8/10/2012; "Prayer Center Literature Table" taken 4/22/2012; "Prayer Center Parking Lot" taken 4/22/2012; "Solarium Room" taken 11/10/2012; "Student Study Office" taken 4/30/2012; "Youth Rec Center" taken 5/27/2012.

⁷⁶ E18 photo captioned "Bicycle Ministry" taken 7/15/2013.

⁷⁷ E18 photo captioned "Clothing Ministry" taken 7/15/2013.

⁷⁸ E18 photo captioned "Community Clean-up Ministry" taken 4/26/2013.

⁷⁹ E18 photo captioned "Community Clean-up" taken 5/13/2013.

⁸⁰ E18 photo captioned "Family Fun Day Gospel Concert" taken 7/4/2013.

⁸¹ E18 photo captioned "PHC Bicycle Ministry" taken 8/9/2013.

⁸² E18 photo captioned "PHC Clothing Ministry" taken 8/9/2013.

⁸³ E18 photo captioned "Prayer Carrell" taken 7/15/2013.

⁸⁴ E18 photo captioned "Prayer Center Schedule" taken 7/3/2013.

⁸⁵ E18 photo captioned "Valentine's Banquet" taken 2/14/2013.

⁸⁶ E18 photo captioned "Winter Fest" taken 2/3/2013.

also submitted pictures of the interior of the Subject Property's facility taken after January 1, 2013.⁸⁷

As indicated previously, community gardening activity occurred on the unimproved parcel that is at issue in 12E 041, 12R 031, 13E 003, and 13R 025 for tax year 2012 purposes. For tax year 2013 purposes, Exhibit 18 sets forth photographs depicting a continuation of community gardening activity on the unimproved parcel.⁸⁸

Exhibit 20 received in evidence by the Commission is a 31-page packet submitted by the Prayer Center in support of its exemption for tax year 2013. Exhibit 12 received in evidence by the Commission is a 63-page packet submitted by the County regarding the Prayer Center's exemption application for tax year 2013. Exhibits 12 and 20 contain many pertinent documents regarding the chain of events surrounding the Prayer Center's exemption application for tax year 2013 including the following:

1. An Exemption Application Questionnaire completed by the Prayer Center for tax year 2013 and received by the County Assessor on January 7, 2013, which indicates that the Subject Property is used for religious, charitable purposes and educational purposes, and that events are open to the public;⁸⁹
2. Prayer Center co-founding member Fernando Bartels' Notarized Affidavit dated January 11, 2013, indicating that he traveled from South America in December 2012 to the County Assessor's Office in Nelson in an attempt to resolve the exemption issue, and general statements that the Subject Property is used for religious, charitable, and educational purposes;⁹⁰

⁸⁷ See E18 photos captioned: "Administrative Office" taken 7/15/2013; "Community Clean-Up Flyer" taken 4/25/2013; "Creation Library" taken 6/12/2013; "Creation Science Museum" taken 6/12/2013; "Guest Room" taken 7/15/2013; "Missionary Office" taken 7/15/2013; "Museum Description" taken 7/3/2013; "Music Room" taken 7/15/2013. "Restroom" taken 7/15/2013; "Science room" taken 6/12/2013. "Study Carrel" taken 7/15/2013; "Topical Therapy Room" taken 7/15/2013; "Worship Center" taken 4/24/2013.

⁸⁸ E18 photos captioned "2012 Community Garden" taken 6/7/2012 and "2013 Community Garden" taken 5/15/2013.

⁸⁹ E20:16-18 submitted by the Prayer Center to the Nuckolls County Assessor on January 7, 2013. The Prayer Center's responses to this Exemption Application Questionnaire regarding use of the Subject Property refer to Affidavits executed by Prayer Center co-founders Mr. Hasley and Fernando Bartels. The Exemption Application Questionnaire includes a statement by the Prayer Center indicating that the Subject Property is open to the general public. The Commission also notes that Exhibit 20 contains the following documents submitted by the Prayer Center in support of its 2013 exemption application: (1) front and back copies of the Prayer Center's card found at Exhibit 20 page 1, which lists addresses in Beatrice and Nelson, and which references the following: "Retreat & Conference Center; Emergency Lodging; Biblical Resources; Prayer Ministry; [and] Missionary Support;" (2) the Prayer Center's document entitled "The Plan of Salvation" found at Exhibit 20 page 2; and (3) Beatrice Area Chamber of Commerce listing of Beatrice churches, which includes the Prayer Center, found at Exhibit 20 page 3.

⁹⁰E11:20 – 22.

3. A letter from the County Assessor dated April 8, 2013, requesting an inspection of the Subject Property;⁹¹
4. A response from the Prayer Center to the County Assessor denying access for inspection dated April 22, 2013, and stating that Fernando Bartels had traveled from South America in an attempt to resolve the matter;⁹²
5. Exhibit 11 pages 24 – 26 sets forth minutes derived from the County Board’s hearing on April 22, 2013, regarding consideration of tax exemption applications. These minutes provide that the County Board denied the Prayer Center’s application after considering a written statement submitted by Mr. Hasley at the hearing, which is found at Exhibit 11 pages 17 – 18. Mr. Hasley’s statement contains the following information in support of the application for exempt status for tax year 2013: (1) summary of the Prayer Center’s activities at the Subject Property in Nuckolls County; (2) summary of the Prayer Center’s exempt activities in Gage County; (3) summary of the Prayer Center’s activities in South America; (4) reference to a December 2012 trip by Prayer Center co-founding member, Fernando Bartels, from South America to the County’s offices in Nelson to attempt to visit with the Nuckolls County Assessor regarding exemption issues; and (5) parameters regarding inspection of the Subject Property.⁹³

E. Exemption Analysis

The Prayer Center has the burden of showing that the County Board’s determinations denying tax exempt status for the Subject Property for tax years 2012 and 2013 are unreasonable or arbitrary. The only issue before the Commission is whether use of the Subject Property is for an exempt purpose.

The Prayer Center provided testimony and pictures indicating that both Subject Property parcels were used during the relevant time periods for religious, charitable, or education activities. The pictures depict activities occurring at the Subject Property from July 12, 2011, through August 9, 2013. These pictures are consistent with assertions by the Prayer Center’s

⁹¹ See, E20:20.

⁹² See, E20:21-22.

⁹³ E11:17-18. The Commission notes that Fernando Bartels' Affidavit found that Exhibit 11 pages 20 – 22 contains detail regarding his December 2012 trip from South America to visit the County Assessor regarding the Subject Property's exemption application, together with information in support of the application.

witness that the Subject Property is predominantly used for religious, charitable, or educational purposes. Additionally, the evidence supports the Prayer Center's assertion that it has continuously used the Subject Property for these same religious, charitable, or educational purposes throughout tax years 2012 and 2013.⁹⁴

It is possible that the Prayer Center does not provide worship services at the Subject Property as frequently as other religious organizations. It is also possible that the worship services provided at the Subject Property are not as traditional as those provided by other religious organizations. These factors, however, are irrelevant because the Nebraska Supreme Court has expressly rejected reasoning that an organization seeking a tax exemption based on religious use must demonstrate that it is a sectarian organization, or that it teaches similar doctrine as other present day sectarian organizations.⁹⁵

In this case, the County Board provided no rebuttal evidence indicating that the Subject Property was used for anything other than religious, education, or charitable purposes. No one with personal knowledge testified that anything but religious, charitable, or educational activities were conducted at the Subject Property for tax years 2012 and 2013 purposes. The evidence indicates that the Prayer Center's predominant use of the Subject Property involves religious, charitable or educational activities that are open to the public.

The County asserted that it required an inspection of all properties prior to granting an exemption. With respect to this assertion, the Commission has reviewed Nebraska Statutes, case law, and the Nebraska Department of Revenue's Regulations. The Commission finds no authority that requires an interior inspection in order to obtain tax exempt status.

Of course, an interior inspection of the Subject Property could resolve doubts concerning its use. The County Assessor and County Board have requested an interior inspection on multiple occasions since the Prayer Center's acquisition of the Subject Property in October 2010. The Prayer Center has responded to these requests with documentation outlining inspection parameters. For whatever reason, the efforts by County officials and the Prayer Center to coordinate an inspection have not been successful.

⁹⁴ See, E22:3-6 "Nuckolls County Permissive Tax Exemption Application Questionnaire" completed by the Prayer Center for tax year 2012; See also, E20:16-18 "Nuckolls County Permissive Tax Exemption Application Questionnaire" completed by the Prayer Center for tax year 2013.

⁹⁵ *Ancient and Accepted Scottish Rites of Freemasonry v. Board of County Commissioners*, 112 Neb. 586, 594, 241 N.W. 93, 96 (1932).

The Commission is mindful that the evidence indicates that all religious organizations in Nuckolls County other than the Prayer Center have granted interior inspection access for purposes of obtaining tax exempt status. The Commission is also mindful that the Subject Property's previous use as a nursing home for several decades constituted an important part of the community, and that the County Assessor specifically questioned the Prayer Center regarding use of the Subject Property for income producing housing purposes. The Commission further recognizes that in this and similar situations the County may have an increased incentive to ensure that all other properties are treated similarly to the Subject Property as a part of the exemption process, and that an improper exemption is not granted.

The Commission notes, however, that the Exemption Application Questionnaires submitted by the Prayer Center for tax years 2012 and 2013 include a statement indicating that the Subject Property is open to the general public.⁹⁶ Additionally, the Commission has adopted discovery rules which permit a party to seek an inspection of property if necessary.⁹⁷ In other words, the County Board could have petitioned the Commission for a subpoena to require an inspection. The County Board has not sought a discovery order allowing inspection of the Subject Property.

The failure of the Prayer Center to consent to an inspection is not determinative regarding this appeal. A failure to consent to an inspection is, like the failure of the County Board to seek a Commission ordered inspection, evidence to be weighed in the final determination of the appeal.

The Commission also notes that a residence owned for the use of an officer or employee of a qualifying organization may be exempt.⁹⁸ Additionally, the Nebraska Supreme Court has held that a religious organization's use of a structure to further its outreach to the poor or to help accomplish its mission, even if rent is collected, does not negate the real property's tax exempt status.⁹⁹

While the Gage County Board of Equalization's determination that other real property owned by the Prayer Center in Gage County is not determinative of the exempt status of the Subject Property, the evidence in this case supports the Prayer Center's assertion that the Subject Property's predominant use is to further its religious, charitable, and educational outreach efforts

⁹⁶ E13:5, E11:6.

⁹⁷ See, 442 Neb. Admin. Code ch. 12 (06/09).

⁹⁸ See, 350 Neb. Admin. Code, ch. 40, 005.04A (07/13).

⁹⁹ See, *Young Women's Christian Association of Lincoln v. City of Lincoln*, 177 Neb. 136, 128 N.W.2d 600 (1964).

that are based in Beatrice, Gage County, Nebraska,. Thus, the Commission finds that the County Board's decisions denying the Prayer Center's exemption applications for tax years 2012 and 2013 are arbitrary and unreasonable.

Further, because the Commission finds that the Subject Property should be exempt from taxation, the Commission does not determine the actual value of the Subject Property for Case Nos. 12C 014, 12R 031, 13C 013, and 13R 025. A case is moot when "it seeks to determine a question which does not rest upon existing facts or rights, in which the issues presented, are no longer alive."¹⁰⁰ The actual value of the Subject Property is moot, because the Taxpayer incurs no tax obligation for the Subject Property for tax years 2012 and 2013.

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 denial of exemption determinations. The Commission also finds that there is clear and convincing evidence that the County Board's decisions denying the Prayer Center's exemption applications for tax years 2012 and 2013 were arbitrary or unreasonable. The Prayer Center has demonstrated that the Subject Property should be exempt from taxation for tax years 2012 and 2013.

For all of the reasons set forth above, the decisions of the County Board denying the Prayer Center's exemption applications for the Subject Property for tax years 2012 and 2013 in Case Nos. 12E 040, 12E 041, 13E 003, and 13E 004 are Vacated and Reversed.

The Commission finds that Case Nos. 12C 014, 12R 031, 13C 013, and 13R 025 are moot and should be dismissed.

¹⁰⁰ See, *In re Trust Created by Nabity*, 289 Neb. 164, 175-76 (2014) (citing *In re Estate of Jeffrey B.*, 268 Neb. 761, 688 N.W.2d 135 (2004)).

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Nuckolls County Board of Equalization to deny the exemption application in Case Nos. 12E 041, 12E 042, 13E 003 and 13E 004 for tax years 2012 and 2013 are vacated and reversed.¹⁰¹
2. The decisions of the Nuckolls County Board of Equalization determining the taxable value of the Subject Property for tax years 2012 and 2013 in Case Nos. 12C 014, 12R 031, 13C 013 and 13R 025 are dismissed as moot.
3. The Subject Property is exempt from taxation for tax years 2012 and 2013.
4. This Decision and Order, if no appeal is timely filed, shall be certified to the Nuckolls County Treasurer and the Nuckolls County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
5. Any request for relief, by any party, which is not specifically provided for by this order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This decision shall only be applicable to tax years 2012 and 2013.
8. This order is effective for purposes of appeal on October 22, 2014.

Signed and Sealed: October 22, 2014.

Thomas D. Freimuth, Commissioner

SEAL

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 Statute and Court Rules.

¹⁰¹ Assessed value, as determined by the County Board of Equalization, 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.

Nancy J. Salmon, concurring in the result, but on separate reasoning,

I concur that the evidence presented by the Taxpayer, including the photographs of activities at the Subject Property, the testimony of witnesses, and statements in exhibits supported by testimony at the hearing or other documents, except affidavits, constitutes clear and convincing evidence that the Subject Property should be exempt from real property taxes for tax years 2012 and 2013.¹⁰² I concur with the majority's analysis and conclusion, but do not give any weight to statements in affidavits that were not supported by testimony at the hearing or by statements in exhibits other than affidavits.

Nancy J. Salmon, Commissioner

¹⁰² See, E18 photographs of Subject Property taken in 2011, 2012, and 2013.