

NEW

34  
5-22-2019 5-8-2019

File with Your County Assessor on or Before December 31

### Exemption Application

for Tax Exemption on Real and Personal Property by Qualifying Organizations

Read instructions on reverse side.

FORM 451

Failure to properly complete or timely file this application will result in a denial of the exemption.

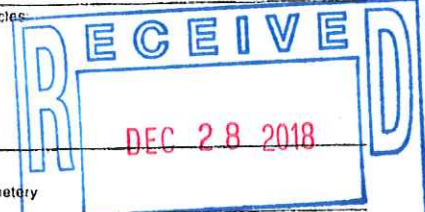
Name of Organization <b>Fremont Airboat Club</b>		County Name <b>Dodge</b>	Tax Year <b>2019</b>
Name of Owner of Property <b>Fremont Airboat Club</b>		State Where Incorporated <b>Nebraska</b>	
Street or Other Mailing Address of Applicant <b>PO Box 1015</b>		Total Actual Value of Real and Personal Property <b>\$ 107,738</b>	Parcel ID Number <b>270102487 &amp; 270102445</b>
City <b>Fremont</b>	State <b>Nebraska</b>	Zip Code <b>68026</b>	Contact Name <b>Ken Troost</b>
Email Address <b>krtroost@yahoo.com</b>		Phone Number <b>402-689-0199</b>	

Type of Ownership

Agricultural and Horticultural Society     Educational Organization     Religious Organization     Charitable Organization     Cemetery Organization

Name	Title of Officers, Directors, or Partners	Address, City, State, Zip Code
Brian Ranslem	President	2711 Big Island Road Fremont, Ne. 68025
Kenneth R Troost	Sec / Treas.	2538 N Birdie Ave. Fremont, Ne. 68025

Legal description of real property and general description of all depreciable tangible personal property, except licensed motor vehicles.  
TL 16 & 17 1.85A (.5A River) 12 17 8 and TL18 1.5A (.2A River) 21 17 8



Property described above is used in the following exempt category (please mark the applicable boxes)

Agricultural and Horticultural Society     Educational     Religious     Charitable     Cemetery

Give a detailed description of the use of the property. Non-Profit corporation formed to maintain an educational program(s). Boater safety courses yearly. SWAC education course all done at no cost to participants. Promote safe boating among members and the general public. The club is used to study and preserve the fishing of the Platte River with the cooperation of the University of Nebraska, Lincoln. We also help with water rescue with the cooperation of Fremont Fire Dept and Sherriff's Dept. Latest being this fall for dog and person rescue off the bluff south side of river. We also offer a Scholarship each year to graduating seniors. All monies brought in are used solely for these educational and charitable activities along with maintaining the club property. Our official web site is www.fremontairboatclub.org

All organizations, except for an Agricultural and Horticultural Society, must complete the following questions.

Is all of the property used exclusively as described above?  YES     NO

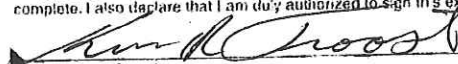
Is the property used for financial gain or profit to either the owner or owner or organization making exclusive use of the property?  YES     NO

Is a portion of the property used for the sale of alcoholic beverages?  YES     NO

If Yes, state the number of hours per week \_\_\_\_\_

Is the property owned or used by an organization which discriminates in membership or employment based on race, color, or national origin?  YES     NO

Under penalties of law, I declare that I have examined this exemption application and, to the best of my knowledge and belief, it is correct and complete. I also declare that I am duly authorized to sign this exemption application.

sign here  Sec. / Treas. 12/28/2018  
Authorized Signature Title Date

Retain a copy for your records.

#### For County Assessor's Recommendation

Approval     Approval of a Portion     Denial

COMMENTS: *Denied Jan 2019. Doesn't meet requirements. in NE statute 77-202. Denial also based on TERC decision Case # 06E-007 re: Bellevue Rod & Gun Club*

Signature of County Assessor Debbie Churchill Date 4-11-2019

#### For County Board of Equalization Use Only

I declare that to the best of my knowledge and belief, the determination made by the County Board of Equalization is correct pursuant to the laws of the State of Nebraska

Approved     Approval of a Portion     Denied

COMMENTS: \_\_\_\_\_

Signature of County Board Member \_\_\_\_\_ Date \_\_\_\_\_

County Clerk: A legible copy of this form showing the final decision of the County Board of Equalization must be delivered electronically to the Nebraska Department of Revenue within seven days after the Board's decision.

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

DANNY L. PITTMAN SARPY COUNTY )  
ASSESSOR, )

Appellant, )

v. )

SARPY COUNTY BOARD OF )  
EQUALIZATION )

and )

BELLEVUE ROD AND GUN CLUB, )

Appellees. )

BELLEVUE ROD & GUN CLUB )

Appellant )

v. )

SARPY COUNTY BOARD OF )  
EQUALIZATION )

Appellee )

Agenda Item # \_\_\_\_\_  
Date 5-8-2019

Case No 06E-007

DECISION AND ORDER REVERSING  
THE DECISIONS OF THE SARPY  
COUNTY BOARD OF EQUALIZATION

Case No. 06E-009

DECISION AND ORDER DENYING  
RELIEF

The above-captioned cases were called for a hearing on the merits of appeals by Danny L. Pittman, Sarpy County Assessor ("the Assessor") and Bellevue Rod and Gun Club ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on February 13, 2007, pursuant to an Order for Hearing and Notice of Hearing issued December 5, 2006. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Danny L. Pittman, was present at the hearing. William J. Bianco appeared as legal counsel for the Assessor

Donovan Ruffner, Secretary of the Taxpayer was present. Frank F. Pospishil appeared as legal counsel for the Taxpayer.

No one appeared on behalf of the Sarpy County Board of Equalization (“the County Board”).

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in the consolidated cases is as follows.

## **I. ISSUES**

The Assessor on appeal asserts that the subject property should be taxable.

The Taxpayer on appeal asserts that the subject property is wholly exempt from taxation. The issues on appeal related to that assertion are:

Was the decision of the County Board granting a 50% exemption of the subject property from taxation unreasonable or arbitrary?

Is the subject property exempt from taxation?

**II.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the parcel of real property described as Tax Lot B2B Section 27, Township 13, Range 13, Sarpy County, Nebraska ,("subject property") to maintain its appeal in Case No. 06E-009.
2. The Assessor may maintain the appeal in Case No 06E-007 pursuant to section 77-202.04 of Nebraska Statutes.
3. An application for a continuing exemption of the subject property from taxation was filed by the Taxpayer.
4. The Assessor recommended disapproval.
5. The Assessor's recommendation was not affirmed by the County Board
6. The Property Tax Administrator was served with a Notice in Lieu of Summons and did not exercise the statutory right to intervene in either case.

**III.  
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in each of the above captioned appeals is over issues raised during the county board of equalization proceedings on the appealed decision. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998).

2. “Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 4, of this Constitution or any other provision of this Constitution to the contrary: (1) The property of the state and its governmental subdivisions shall constitute a separate class of property and shall be exempt from taxation to the extent such property is used by the state or governmental subdivision for public purposes authorized to the state or governmental subdivision by this Constitution or the Legislature. To the extent such property is not used for the authorized public purposes, the Legislature may classify such property, exempt such classes, and impose or authorize some or all of such property to be subject to property taxes or payments in lieu of property taxes except as provided by law; (2) 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....” *Neb. Const*, Art VIII § 1
3. Section 1 of Art VIII of Nebraska's Constitution, providing for tax exemption of certain property, is not self-executing, but requires action by the Legislature to carry such constitutional provision into effect. *Indian Hills Comm. Ch. v. County Bd. of Equal.*, 226 Neb. 510, 412 N.W.2d 459 (1987).
4. “(1) 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. 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 subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons....” Neb. Rev. Stat. §77-202 (d) (Cum. Supp 2006).

5. 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. *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993)
6. Subsection (1)(d) of Nebraska Statutes section 77-202 contains a two-tier approach to property tax exemption: the first tier involves the nature, character, or status of a property owner, and the second tier concerns the use of the property. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).
7. To be tax exempt, property must (1) be owned by an organization designated in subsection (1)(d) of Nebraska Statutes section 77-202; (2) be used exclusively for at

least one of the purposes specified in subsection (1) (d) of Nebraska Statutes section 77-202; and (3) not be (a) owned or used for financial gain to the property owner or user, (b) used more than 20 hours per week for sale of alcoholic liquors, or (c) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991)

8. Statutes exempting property from taxation are to be strictly construed, property must come clearly within the statutory provisions granting such exemption, and the burden of proving the right to the exemption is upon the claimant. *United Way v. Douglas Co. Bd. of Equal.*, 215 Neb. 1, 337 N.W.2d 103 (1983).
9. A liberal and not a harsh or strained construction is to be given to the terms 'educational,' 'religious,' and 'charitable' in order that the true intent of the constitutional and statutory provisions may be realized. The interpretation should always be reasonable. *Young Men's Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921).
10. The burden of proof is upon one claiming property to be exempt from taxation to establish that its predominant use is for one of the purposes set out in this section. *OEA Senior Citizens, Inc. v. County of Douglas*, 186 Neb. 593, 185 N.W.2d 464 (1971)  
*Berean Fundamental Church Council, Inc. v. Board of Equalization*, 186 Neb. 431, 183 N.W.2d 750 (1971).
11. Regarding "mental" benefit of the public in subsection (1)(d) of section 77-202 of Nebraska Statutes as one of the requisite purposes of a charitable organization, "mental"

means "intellectual," which means, among other things, engaged in creative literary, artistic, or scientific labor. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

12. Relative to a charitable organization, "an indefinite number of persons" in subsection (1)(d) of this section means a group of persons with a common characteristic, that is, a class, uncertain in number and composed from the public at large or a community. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).
13. "The word "charitable" has been held to mean something more than mere alms-giving or the relief of poverty and distress and it has been given a significance broad enough to include practical enterprises for the good of humanity operated at a moderate cost to those who receive the benefits." *Lincoln Woman's Club*, 178 Neb. 357, 363-64, 133 N.W.2d 455, 460, (1965).
14. A tax exemption for charitable use is allowed because those exemptions "benefit the public generally and the organization performs services which the state is relieved pro tanto from performing." *United Way v. Douglas Co. Bd. of Equal.*, 215 Neb. 1, 3, 337 N.W.2d 103, 105 (1983).
15. 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. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).



16. Vacant space is exempt from taxation if it is intended for a charitable use, the dominant use of the property as a whole is for exempt purposes and the condition under which it is held preclude its use for non exempt purposes. *United Way of Douglas Co. Bd. Of Equal.*, 215 neb. 1, 337 N.W.2d 103 (1983).
17. Lease of property by a qualified organization to a qualified organization for substantially less than its fair rental value is a use of the property for an exempt purpose. *United Way of Douglas Co. Bd. Of Equal.*, 215 neb. 1, 337 N.W.2d 103 (1983).
18. A portion of a parcel may be taxable while another portion is exempt. *Y.M.C.A. v. Lancaster County*, 106 neb. 105, 182 N.W. 593 (1921)
19. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
20. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action 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. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
21. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions

governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987) (citations omitted)

22. The Commission can grant relief only if there is clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
23. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
24. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).
25. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).

#### IV. ANALYSIS

The subject property consists of 42.08 acres of land with improvements. (E20:2).

Improvements on the property are a club house, a caretaker's residence, rest rooms, a tool shed, concrete slabs, a deck, utility buildings and other miscellaneous items. (E20:2). There are two ponds on the subject property. (E21).

The County Board granted an exemption for 50% of assessed value of the subject property. (E19:1). The decision of the County Board does not indicate which portions of the

subject property are considered exempt. *See, Y.M.C.A. v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921). If the order of the County Board is applied to the whole of the property 50% is not a predominate portion for purposes of either of the two inquiries, organizational character or actual use of the subject property that are required by section 77-202 of Nebraska Statutes. The County Board's decision was arbitrary or unreasonable and should be reversed.

The Commission is required by the appeal of the Taxpayer to determine whether an exemption in whole or part should be granted.

The Taxpayer is organized as a nonprofit corporation pursuant to the laws of Nebraska. (E7:1). The purposes of the Taxpayer as found in its Articles of Incorporation are to promote the common good and general welfare of the metropolitan area of Bellevue and its surrounding communities, by (i) providing supervised facilities for the development of good rifle and shotgun marksmanship, instruction in the safe handling and proper care of firearms, and other related activities for the benefit of the public, and (ii) encouraging and stimulating interest in fishing, hunting, camping, and other outdoor activities, in each case for the benefit of the public and its members, as permitted under the Nebraska Nonprofit Corporation Act. (E7:16). The Nebraska Nonprofit Corporation Act allows a corporation organized under those provisions to engage in any lawful activity unless a more limited purpose is set forth in the articles of incorporation. Neb. Rev. Stat. 77-21-1927 (Reissue 1997). The provisions of the Taxpayer's Articles of Incorporation limit its activities to those stated.

An owner of exempt property is required to be an educational, religious, charitable or cemetery organization or an organization for the exclusive benefit of a qualified organization. Neb. Rev. Stat. 77-202 (1)(d) (Supp 2005). The Taxpayer stipulated that it is not a religious

organization. An educational organization is one that (A) is operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. Neb. Rev. Stat. 77-202 (1)(d) (Supp 2005). An organization is characterized not only by what it does but what it is permitted or directed to do by its governing documents. The only evidence that the Taxpayer in its governing documents is an educational organization is the provision in its Articles of Incorporation providing for development of good rifle and shotgun marksmanship, instruction in the safe handling and proper care of firearms, and other related activities for the benefit of the public. The Taxpayer as furtherance of noted provision in its Articles of Incorporation allows students involved in an extracurricular activity to use the subject property without charge. There is insufficient evidence that the Taxpayer is an educational organization as defined in section 77-202 of Nebraska Statutes.

A charitable organization is one which is operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons. Neb. Rev. Stat. §77-202 (d) (Cum. Supp 2006). The term “mental” and the phrase “indefinite number of persons” have been defined by Nebraska’s Supreme Court. The Taxpayer’s Articles on Incorporation expressly provide that its sole purposes are to provide certain activities for the benefit of the public. While arguably the stated purposes of the Taxpayer may have mental, social or physical benefits the evidence does not show that the benefits are in fact available to the public. The evidence is that the subject property is open to its members at all times. The

subject property is only open to others for events approved or provided by the Taxpayer or as a guest of a member. Exhibit 10 shows that out of 365 days in a year that only on a limited number are there any events that might be open to the public or for public benefit. Frequent uses of the subject property as shown in Exhibit 10 (Non Public Use and Administrative) are for the Taxpayer's own meeting which are not open to the public or private rentals which are also not open to the public.

The Taxpayer is exempt from income taxation. (E4:1). Exemption from taxation is based on the Taxpayer's status as a civic league or organization. (E4:1 and E8:1). That status does not, however, determine whether the Taxpayer is an owner qualified to hold exempt property pursuant to section 77-202 of Nebraska Statutes. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

An educational or charitable organization as defined in Nebraska Statutes must be created and operated exclusively for educational or charitable purposes. The term exclusively means predominately so that incidental purposes or operations would not affect eligibility. See *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993). The Taxpayer is operated predominately for purposes associated with its membership and cannot be deemed a qualified organization. The Commission is not required to inquire into specific uses of the subject property to determine whether any part of the subject property might be used exclusively for a qualified use.

The subject property is taxable for the year 2006. The Taxpayer and the Assessor stipulated that the full taxable value of the subject property for the year 2006 is \$327,220.

**V.  
CONCLUSIONS OF LAW**

- 1 The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The Assessor has adduced sufficient, clear and convincing evidence that the decision of the County Board was unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.
4. The Taxpayer is not an educational, religious, or charitable organization as defined in section 77-202 of Nebraska Statutes and the subject property is not therefore eligible for exemption from taxation.

**VI.  
ORDER**

**IT IS THEREFORE ORDERED THAT:**

1. The decision of the County Board determining that the subject property is 50% taxable as of the assessment date January 1, 2006, is vacated and reversed.
2. The subject property is subject to tax for the tax year 2006.
3. Taxable value of the subject property for the tax year 2006 is \$327,220.00.
4. No relief is granted on the appeal of Bellevue Rod and Gun Club in Case No. 06E-009.
2. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).

3. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This decision shall only be applicable to tax year 2006.
6. This order is effective for purposes of appeal February 22, 2007.

**Signed and Sealed.** February 22, 2007.

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Wm. R. Wickersham, Commissioner

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Susan S. Lore, Commissioner

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Robert L. Hans, Commissioner

**SEAL**

**ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.**

5-8-19  
(SN)

844 N.W.2d 245 (2013)

287 Neb. 19

**HAROLD WARP PIONEER VILLAGE FOUNDATION, appellant,**

v.

**Doug EWALD, Tax Commissioner, et al., appellees.**Nos. S-13-129, S-13-165.**Supreme Court of Nebraska.**

Filed December 13, 2013.

246 \*246 Daniel L. Aschwege, of Knapp, Fangmeyer, Aschwege, Besse &amp; Marsh, P.C., for appellant.

Jon Bruning, Attorney General, and Jonathan D. Cannon, Special Assistant Attorney General, for appellees Doug Ewald and Ruth Sorensen.

Heavican, C.J., Wright, Connolly, Stephan, McCormack, Miller-Lerman, and Cassel, JJ.

Stephan, J.

The Harold Warp Pioneer Village Foundation (Foundation) owns and operates the Pioneer Village Museum in Minden, Nebraska. The Foundation also owns and operates a nearby motel and campground; both are used primarily by museum visitors. For many years, the museum, the motel, and the campground have all been granted property tax exemptions. When the Kearney County Board of Equalization granted the exemptions for 2011, state tax officials appealed to the Nebraska Tax Equalization and Review Commission (TERC), contending the motel and campground were not entitled to exemptions. TERC agreed, and the Foundation has appealed from those determinations. We conclude that the motel and campground are beneficial to the museum and reasonably necessary to further its educational mission and are therefore entitled to property tax exemptions.

## BACKGROUND

The Foundation is a Nebraska nonprofit corporation which owns and operates the museum. The museum is an educational institution designed to preserve history and technology for future generations. The museum displays approximately 50,000 exhibits in 28 buildings on 20 acres of land. A museum patron wishing to view every exhibit offered would need to visit the museum every day for more than 1 week. Approximately 30 percent of museum patrons spend more than 1 day viewing the exhibits.

The Foundation also owns and operates an 88-room motel and a campground located near the museum. The campground offers sites for recreational vehicles and tents. The motel and campground are open to the public, but their primary purpose is to lodge patrons of the museum. Of the 17,072 guests of the motel and campground in 2010, only 4.2 percent did not attend the museum. There are no other lodging facilities in Minden or Kearney County suitable to accommodate museum patrons. The closest campground is 12 miles away, and the closest motel is approximately 20 miles away. Without the revenue generated by the motel and campground, the museum would not have sufficient funds to continue its operations.

247 The Foundation applied for and was granted property tax exemptions for the museum, the motel, and the campground every year from 1984 to 2010. In 2011, the Foundation again applied for these \*247 property tax



exemptions. The county assessor recommended an exemption be granted for the museum but denied exemptions for the motel and campground. However, the board granted all three exemptions.

Doug Ewald, the Nebraska Tax Commissioner, and Ruth Sorensen, the Nebraska Property Tax Administrator, perfected appeals to TERC. One appeal challenged the exemptions for the motel, and another appeal challenged the exemption for the campground. TERC conducted a consolidated hearing and ultimately determined that because the motel and campground were not used exclusively for educational purposes, neither was entitled to tax exemptions under Nebraska law.<sup>[1]</sup> The Foundation filed timely appeals, which we consolidated for briefing and oral argument.

## ASSIGNMENTS OF ERROR

The Foundation assigns that TERC erred in finding that (1) the motel and campground were not used exclusively for educational purposes, (2) competent evidence was presented to rebut the presumption that the board faithfully performed its duties and had sufficient competent evidence to make its determinations, and (3) the board's decision was arbitrary or unreasonable.

## STANDARD OF REVIEW

Appellate courts review decisions rendered by TERC for errors appearing on the record.<sup>[2]</sup> When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.<sup>[3]</sup>

An appellate court reviews questions of law arising during appellate review of decisions by TERC de novo on the record.<sup>[4]</sup>

## ANALYSIS

The property tax exemption at issue in these cases is governed by § 77-202. With certain exceptions not applicable to this case, the statute provides that property in Nebraska "owned by" an educational organization "for the exclusive benefit" of that organization is exempt from property tax if it is "used exclusively for educational" purposes.<sup>[5]</sup> An educational organization includes "a museum or historical society operated exclusively for the benefit and education of the public."<sup>[6]</sup> "Exclusive use" means the predominant or primary use of the property as opposed to incidental use.<sup>[7]</sup>

248 The relevant facts summarized above are not in dispute. The parties agree that the museum is operated exclusively for educational purposes. They also agree that the primary purpose of both the motel and the campground is to provide lodging for museum patrons. But the parties disagree as to whether the motel and campground are "used exclusively" for educational purposes so as to be entitled to property tax exemptions.

The Foundation argues that because approximately 95 percent of the motel and campground guests are museum patrons, the motel and campground are used exclusively to further the educational purposes of the museum. In essence, the Foundation concedes that the motel and campground are not educational in and of themselves. But it argues that they should be considered to be used for educational purposes because they are beneficial to the museum and reasonably necessary to support its operation, which is an educational purpose. In other words, the Foundation asks us to view the entire global structure of its operation as one integrated body that exclusively promotes educational purposes.

On the other hand, the Tax Commissioner and the Property Tax Administrator ask us to focus more narrowly on the use of the motel and campground. They contend that because these facilities are used only for lodging, which itself is not an educational use, any incidental benefit they may have to the museum is not sufficient to exempt them from property taxation.

TERC concluded on the basis of the undisputed facts that the Foundation was not entitled to exemptions for the motel and campground. Under our standard of review, we must decide whether this determination "conforms to the law."<sup>[8]</sup> In the context of this case, we regard this as a question of law which we review de novo on the record.<sup>[9]</sup>

TERC found our 1961 decision in *Doane College v. County of Saline*<sup>[10]</sup> to be "controlling." In that case, Doane College applied for tax-exempt status for two separate facilities located on its campus. One was a residence reserved for the college president, and the other was an apartment complex located on campus and provided for the exclusive use of new faculty. The county board determined that neither property was tax exempt. Doane College appealed to the district court — this was prior to the existence of TERC — and that court determined that the president's residence was exempt but the faculty apartments were not.

Doane College then appealed to this court. We affirmed the judgment of the district court. In doing so, we found various factors supporting the exemption for the president's residence, including that the president was required to live in the residence; that the residence was used as a reception area for faculty, foreign visitors, and trustees; and that the residence was used for various student gatherings. We also noted that one room of the residence was used as the president's library and office. We held that this evidence demonstrated that the residence was used exclusively for educational purposes, because the primary or dominant use of the property was for education, and that thus, the president's residence was exempt from property taxation.

249 We concluded that the faculty apartments were not exempt, reasoning they were located on the main campus and were rented at fair market value to new faculty \*249 who were permitted but not required to reside there. We noted that more than two-thirds of the faculty resided elsewhere. And we reasoned that although faculty residing in the apartments sometimes met with students there, any educational use of the faculty apartments was remote, and that their primary or dominant use was not for educational purposes. We also specifically noted that the apartments were in direct competition with privately owned property for renters.

As in *Doane College*, the issue in this case is not whether the Foundation uses its property for an educational purpose, but, rather, how much of its property is used for that purpose. Two cases decided by this court after *Doane College* provide the proper analytical framework for resolving this issue. *Lariat Boys Ranch v. Board of Equalization*<sup>[11]</sup> involved a contiguous 1,000-acre tract owned by a nonprofit corporation which operated it as a "ranch home" for "indigent and wayward boys." The property owner contended that the entire tract was used for this purpose and was therefore exempt. The county, on the other hand, contended that the exemption should be limited to the 5 acres on which the boys' residences and school building were located. The county argued that the remaining land, most of which was used for grazing and farming, should not be exempt. We held that the entire tract was exempt because it was reasonably needed to promote the nonprofit's educational goals and was not excessive for that purpose. We noted that the determination of which facilities were reasonably necessary to carry out the educational goals of an entity should be undertaken on a case-by-case basis.

We again addressed the issue of whether specific property should be included within an exemption granted to a nonprofit corporation in *Immanuel, Inc. v. Board of Equal.*<sup>[12]</sup> In that case, it was undisputed that the property owner was entitled to tax exemptions for its hospital and hospital grounds because they were used for charitable purposes. The hospital built a childcare facility on its campus for the exclusive use of its employees in order to promote recruitment and retention of professional employees. The hospital appealed from a denial of its application for tax exemption for the childcare facility. This court determined the childcare facility was entitled to the requested exemption. Distinguishing *Doane College*, upon which the county relied, we held that the childcare

facility directly benefited the hospital by alleviating staffing problems and thus aided the primary nursing care to patients, and was therefore "reasonably necessary for the operation of the hospital."<sup>[13]</sup>

Based upon the reasoning of *Lariat Boys Ranch and Immanuel, Inc.*, it is clear that our inquiry in this case cannot be narrowly focused on whether the overnight lodging provided by the Foundation's motel and campground is an educational purpose, as the Tax Commissioner and Property Tax Administrator contend. Rather, we must undertake a broader examination of whether those lodging facilities are reasonably necessary to the educational mission of the Foundation's museum, based upon the specific facts presented here.

250 The record reflects that the museum is unusual if not unique because of the combination of two factors. First, the museum \*250 houses an extensive public collection which cannot be viewed in a single day, thus creating a demand for convenient, nearby lodging for those visitors who wish to spend more than 1 day viewing the museum's exhibits. Second, the museum is situated in a relatively small community which has no public lodging facilities other than those offered by the Foundation.

The Tax Commissioner and Property Tax Administrator concede in their brief that the primary purpose of the Foundation's motel and campground "is to lodge patrons of the Museum."<sup>[14]</sup> The record reflects that the properties are being used predominantly for that purpose. Although the motel and campground are open to the public, they are utilized primarily by visitors to the museum. In each of the years from 1990 through 2010, at least 95.5 percent of the persons who stayed at the motel and campground were museum visitors. A significant majority of these were persons who did not reside in Nebraska. In 2010, all of the campground guests and 99.9 percent of the motel guests were from outside Kearney County. It was estimated that 30 percent of these museum visitors viewed exhibits for more than 1 day; those who did and wished to stay overnight in Minden had to utilize the Foundation's motel or campground.

The record includes a letter from the Internal Revenue Service dated August 18, 1983, granting the Foundation's request for exemption from federal income tax under § 501(c)(3) of the Internal Revenue Code. Although this document is not controlling on any of the issues in this case, it is instructive in its characterization of the relationship between the Foundation's museum, motel, and campground. In determining that the motel and campground were not an "unrelated trade or business" that would be subject to income tax notwithstanding the fact that they are owned by an exempt entity, the Internal Revenue Service stated:

Your operation of the ... motel [and] campground ... is for the purpose of enabling your visitors to remain long enough to take in the full extent of your educational exhibits, the purpose of 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 presentations. *Making it possible for visitors to get a full measure of the educational aspects is substantially related to the accomplishment of your exempt purposes.*

(Emphasis supplied.) Although this characterization of the relationship of the museum and the Foundation's lodging facilities was made more than 30 years ago, it reflects the relationship that existed in 2011 as reflected in the record in these cases.

On the basis of that record, we conclude that TERC erred in determining that the Foundation was not entitled to exemptions for its motel and campground properties. The issue is not whether "lodging" is an educational use in an abstract sense, but, rather, whether these specific lodging facilities were reasonably necessary to accomplish the educational purpose of the Foundation in the operation of its museum. Just as the grazing and farming lands were reasonably necessary to the charitable and educational purposes of the boys' ranch in *Lariat Boys Ranch* and the childcare facility was reasonably necessary to accomplish the charitable purposes of the hospital in *Immanuel*,

251 *Inc.*, the operation \*251 of the motel and campground by the Foundation is reasonably necessary to the accomplishment of its educational mission.

Because we conclude that TERC erred as a matter of law in vacating and reversing the decisions of the board, we need not consider the Foundation's remaining assignments of error.

## CONCLUSION

For the reasons discussed, we reverse TERC's decisions which vacated and reversed the decisions of the board, and we remand each cause to TERC with directions to affirm the board's decision granting property tax exemptions to the Foundation for its motel and campground properties for the tax year 2011.

REVERSED AND REMANDED WITH DIRECTIONS.

[1] See Neb.Rev.Stat. § 77-202(1)(d) (Supp. 2011).

[2] Neb.Rev.Stat. § 77-5019(5) (Cum.Supp. 2010); *Krings v. Garfield Cty. Bd. of Equal.*, 286 Neb. 352, 835 N.W.2d 750 (2013). See *Bethesda Found. v. Buffalo Cty. Bd. of Equal.*, 263 Neb. 454, 640 N.W.2d 398 (2002).

[3] *Lozier Corp. v. Douglas Cty. Bd. of Equal.*, 285 Neb. 705, 829 N.W.2d 652 (2013); *Schuyler Apt. Partners v. Colfax Cty. Bd. of Equal.*, 279 Neb. 989, 783 N.W.2d 587 (2010).

[4] *Lozier Corp. v. Douglas Cty. Bd. of Equal.*, supra note 3.

[5] § 77-202(1)(d).

[6] § 77-202(1)(d)(B).

[7] See, 350 Neb. Admin. Code, ch. 40, § 005.03 (2013); *Fort Calhoun Bapt. Ch. v. Washington Cty. Bd. of Eq.*, 277 Neb. 25, 759 N.W.2d 475 (2009); *Bethesda Found. v. Buffalo Cty. Bd. of Equal.*, supra note 2.

[8] *Lozier Corp. v. Douglas Cty. Bd. of Equal.*, supra note 3; *Schuyler Apt. Partners v. Colfax Cty. Bd. of Equal.*, supra note 3.

[9] *Id.*

[10] *Doane College v. County of Saline*, 173 Neb. 8, 112 N.W.2d 248 (1961).

[11] *Lariat Boys Ranch v. Board of Equalization*, 181 Neb. 198, 199, 147 N.W.2d 515, 516 (1966).

[12] *Immanuel, Inc. v. Board of Equal.*, 222 Neb. 405, 384 N.W.2d 266 (1986).

[13] *Id.* at 411, 384 N.W.2d at 270.

[14] Brief for appellees at 6.

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5-8-19  
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**PLATTE RIVER WHOOPING CRANE MAINTENANCE TRUST, INC., appellant,**  
**v.**  
**HALL COUNTY BOARD OF EQUALIZATION, appellee.**

No. S-17-389.

**Supreme Court of Nebraska.**

Filed February 9, 2018.

Appeal from the Tax Equalization and Review Commission. Reversed and remanded with directions.

Jordan W. Adam, Omaha, of Fraser Stryker P.C., L.L.O., for appellant.

Timothy L. Moll, Lincoln, of Rembolt Ludtke, L.L.P., for appellee.

Heavican, C.J., Miller-Lerman, Cassel, Stacy, Kelch, and Funke, JJ.

648 \*648 ***Syllabus by the Court***

1. Taxation: Judgments: Appeal and Error. Appellate courts review decisions rendered by the Tax Equalization and Review Commission for errors appearing on the record.
2. Judgments: Appeal and Error. When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.
3. Taxation: Statutes: Appeal and Error. The meaning of a statute is a question of law, and a reviewing court is obligated to reach its conclusions independent of the determination made by the Tax Equalization and Review Commission.
4. Taxation: Charities. A tax exemption for charitable use is allowed because those exemptions benefit the public generally and the organization performs services which the state is relieved pro tanto from performing.

Kelch, J.

## **NATURE OF CASE**

The issue presented is whether the Platte River Whooping Crane Maintenance Trust, Inc. (Crane Trust), is a charitable organization within the meaning of Neb. Rev. Stat. § 77-202(1)(d) (Cum. Supp. 2014).

## **BACKGROUND**

### **APPLICATION FOR EXEMPTION**

649 The Crane Trust is a nonprofit corporation dedicated to conserving and protecting \*649 the natural habitat for whooping Cranes, sandhill Cranes, and other migratory birds along the Platte River in central Nebraska. For the last decade, the Hall County Board of Equalization (Board) granted a charitable tax exemption under § 77-202(1)(d) to various properties owned by the Crane Trust. In December 2014, the Crane Trust sought a property tax exemption for six additional parcels of land (Subject Properties). The Subject Properties consist of 829.68 acres of land and carry a property tax liability of approximately \$22,000 for 2015, the tax year in question. At that time, the Board denied the Crane Trust's application for a property tax exemption for the Subject Properties. There is no explanation in the record as to why the Board granted tax exemption to some of the Crane Trust's properties, but not to the Subject Properties.

The Crane Trust appealed to the Nebraska Tax Equalization and Review Commission (TERC). A hearing was held, during which the Crane Trust presented evidence about its educational efforts, contributions to the scientific community, and other benefits to the public. The evidence was largely undisputed.

## EVIDENCE PRESENTED AT HEARING

The Crane Trust presented evidence showing that its conservation efforts benefit the thousands of people who visit its property each year to observe the crane migration, learn about the prairie, and interact with nature. The Crane Trust provides free public tours during crane season, and its property is open year round at no charge to the public. The Crane Trust also has a large network of public trails, which are used by the public for exercise and for an annual cross-country race for a local high school.

Students, researchers, and scientists from all across the country visit the Crane Trust to perform scientific research on the Subject Properties every week. The Crane Trust also performs research on the land and has published more than 30 articles in the past decade, which are available to the public for free. Some of the articles come from research that the Crane Trust performed on the Subject Properties in 2015.

The Crane Trust also provides educational activities to teach the public about habitat and conservation. It posts informational signs along its trails and hosts a program for public schools in which students visit its property every month to study the plants, wildlife, insects, and habitat with the help of a Crane Trust biologist.

The evidence also showed that a portion of the Subject Properties was leased to a farming operation for cattle grazing, for which the Crane Trust received \$9,300. The Crane Trust's chief executive officer testified that the lease money was not distributed to its members, directors, officers, or anyone else and that the cost of managing the Subject Properties far exceeded the amount of lease money. The chief executive officer testified that the cattle grazing was part of the Crane Trust's habitat management program — that the grazing and hoof compaction on the soil provides a natural disturbance on the grassland that helps promote and sustain different species on the parcels, cycle nutrients on the prairie, open up the grassland for the crane to use, and keep invasive species of plants at bay.

## TERC AFFIRMS BOARD'S DENIAL OF EXEMPTION

650 Following the hearing, TERC affirmed the Board's decision to deny tax exemption to the Subject Properties. It stated that the issue was whether the term "charitable organization" in the relevant statute was broad enough to include an organization devoted to protecting natural habitat. It \*650 concluded that although the Crane Trust provides educational, scientific, and recreational benefits to the public, Nebraska courts have limited charitable exemptions to "traditional charitable enterprises providing relief [to] the poor and distressed." Therefore, it concluded that the policy question of whether to expand the definition to include conservation efforts must be left to the Legislature.

TERC found that the Crane Trust provided some level of mental, social, and physical benefits to the public, but ultimately determined that it was not a charitable organization because § 77-202(1)(d) has never been applied to conservation groups or activities.

The Crane Trust now appeals from TERC's decision.

## ASSIGNMENT OF ERROR

The Crane Trust assigns that TERC erred in affirming the Board's decision to deny tax exemption for the Subject Properties for the 2015 tax year.

## STANDARD OF REVIEW

Appellate courts review decisions rendered by TERC for errors appearing on the record.<sup>[1]</sup> When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.<sup>[2]</sup> The meaning of a statute is a question of law, and a reviewing court is obligated to reach its conclusions independent of the determination made by the Tax Equalization and Review Commission.<sup>[3]</sup>

## ANALYSIS

The Nebraska Constitution authorizes the Legislature to exempt from taxes "property owned and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user."<sup>[4]</sup> Pursuant to this authority, the Legislature adopted a statute that exempts 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.<sup>[5]</sup>

The parties stipulated that the Subject Properties were not used for the sale of alcohol and were not owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. Furthermore, the Crane Trust applied for exemption as a charitable organization; it does not argue that it qualifies as an educational, religious, or cemetery organization. Thus, the issues are limited.

651 \*651 For Crane Trust to be entitled to a property tax exemption for its six parcels, it must show (1) that the parcels are owned by a charitable organization; (2) that the parcels are used exclusively for educational; religious, charitable, or cemetery purposes; and (3) that the parcels were not owned or used for financial gain or profit to either the owner or user. TERC concluded that the Crane Trust failed to show the parcels were owned by a charitable organization and thus did not address the other two requirements.

## NATURE OF ORGANIZATION

In concluding that the Crane Trust was not a charitable organization, TERC noted that the Supreme Court has never held that a conservation group may fit within the definition of "charitable organization" under § 77-202. While true, we have also never considered it.

Section 77-202(1)(d) provides that a "charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons." Applying this statutory language, TERC acknowledged that the Crane Trust's conservation efforts provided mental, social, and physical benefits to the public, but concluded, without explanation, that the Subject Properties were not operated exclusively for those purposes.

We conclude that TERC's finding that the Crane Trust did not operate exclusively for the public's benefit is not supported by the evidence. The term "exclusively" means the primary or dominant use of the property is controlling in determining whether the property is exempt from taxation.<sup>[9]</sup> And as TERC noted, the Crane Trust adduced considerable evidence of its efforts to provide educational, scientific, and recreational benefits to the general public. The evidence shows that the Crane Trust's efforts to protect the natural habitat for migratory birds ensures that the public can continue to enjoy and learn about that habitat and birds and wildlife thereon.

Additionally, the evidence shows that the Crane Trust is engaged in numerous endeavors to educate the public about the habitat, the wildlife on the habitat, and conservation in general. The Crane Trust's land, including the Subject Properties, is also open for and subject to scientific study. While the Board argues that the evidence discussed in this paragraph is irrelevant, because the Crane Trust is not applying for exemption as an educational organization, we disagree. We find this evidence relevant to whether the Crane Trust is providing a mental benefit to the public. "[M]ental" means "intellectual," which in turn means, among other things, "engaged in creative literary, artistic, or scientific labor."<sup>[7]</sup>

After reviewing the evidence, we conclude that the Crane Trust operated exclusively for the purpose of the mental, social, or physical benefit of the public.

652 TERC found, and the Board argues, that the Legislature did not intend for conservation groups to be considered a "charitable organization" under § 77-202(1)(d). Although we appreciate TERC's deference to the Legislature, we respectfully disagree. A tax exemption for charitable use is allowed because those exemptions benefit the public generally and the organization performs services which the state is relieved pro tanto from performing.<sup>[8]</sup> 652 In Neb. Rev. Stat. § 37-803 (Reissue 2016) of the Nongame and Endangered Species Conservation Act, the Legislature declared that the "state shall assist in the protection of [certain] species of wildlife and wild plants which are determined to be threatened or endangered" and that "it is the policy of this state to conserve species of wildlife for human enjoyment" and other purposes. Because the Legislature views the conservation of endangered species as a policy of the state, and conservation groups like the Crane Trust relieve the state of that burden, we conclude that the Legislature intended for those groups, provided they otherwise meet "charitable organization" criteria, to be considered "charitable organizations" under § 77-202(1)(d).

Our decision is supported by several other states' interpretations of similar statutes. For example, in *Francis Small Heritage v. Town of Limington*,<sup>[9]</sup> the Maine Supreme Judicial Court held that a conservation group qualified as a charitable organization because the organization less-ened the burdens of the government by assisting the state in achieving its conservation policy goals. The Maine court concluded that the Legislature enunciated a strong public policy in favor of conservation when it declared in a section of its Natural Resources Protection Act that the state's wetlands and wildlife habitat are "resources of state significance" and that they benefit the state's citizens.<sup>[10]</sup>

And in *Turner v. Trust for Public Land*,<sup>[11]</sup> a Florida court concluded that a conservation group qualified as a charitable organization because there was "little question that conservation serves a public purpose" where Florida's state constitution provided that it was "the policy of the state to conserve and protect its natural resources



and scenic beauty..." A number of other states, using rationale similar to that in *Francis Small Heritage and Turner*, have also concluded that conservation organizations may qualify as charitable organizations.<sup>[12]</sup>

## USE OF SUBJECT PROPERTIES

In addition to showing that the Subject Properties are owned by a charitable organization, the Crane Trust must also show that the Subject Properties are used exclusively for educational, religious, charitable, or cemetery purposes.<sup>[13]</sup>

In this case, the Crane Trust's status as a charitable organization and its use of the Subject Properties are closely related issues. For this reason, the parties largely repeat their arguments or incorporate them by reference. For the same reasons that we found the Crane Trust qualified as a charitable organization, we find that the Subject Properties were used exclusively for charitable purposes.

## FINANCIAL GAIN OR PROFIT

653 Finally, the Crane Trust must show that the Subject Properties were not owned or used for financial gain or profit to either the owner or user. The Board \*653 argues that the Subject Properties were used for financial gain or profit solely because the Crane Trust entered into a lease agreement for cattle grazing with a farming operation for \$9,300. However, the fact that income is generated as a result of an exempt use of the property does not make the property taxable.<sup>[14]</sup> Property is not used for financial gain or profit to either the owner or user if no part of the income from the property is distributed to the owners, users, members, directors, or officers, or to private individuals.<sup>[15]</sup>

Here, the evidence showed that the lease money was not distributed to its owners, users, members, directors, officers, or anyone else, and that the cost of managing the Subject Properties far exceeded the amount of lease money. Although there was some evidence that the cattle grazing furthered the Crane Trust's habitat management program, even if it did not, the use of the land for cattle grazing was incidental to the Crane Trust's primary purpose of conserving and protecting the natural habitat for migratory birds and wildlife for the public's benefit. We therefore conclude that the Subject Properties were not owned or used for financial gain or profit to either the owner or user.

Because the Subject Properties meet the requirements for a charitable tax exemption under § 77-202(1)(d), we conclude that they are entitled to exemption for the tax year in question. We therefore reverse TERC's decision and remand the cause for an order in accordance with this opinion.

## CONCLUSION

For the reasons set forth above, we reverse TERC's decision and remand the cause for TERC to enter an order that the Subject Properties are entitled to a property tax exemption under the provisions of § 77-202(1)(d).

REVERSED AND REMANDED WITH DIRECTIONS.

Wright, J., not participating.

Cassel, J., dissents.

[1] *Cain v. Custer Cty. Bd. of Equal.*, 291 Neb. 730, 868 N.W.2d 334 (2015).

[2] *Id.*

[3] *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, 260 Neb. 905, 620 N.W.2d 90 (2000).

[4] Neb. Const. art. VIII, § 2.

[5] § 77-202(1)(d).

[6] See Fort Calhoun Bapt. Ch. v. Washington Cty. Bd. of Eq., 277 Neb. 25, 759 N.W.2d 475 (2009).

[7] Neb. State Bar Found. v. Lancaster Cty. Bd. of Equal., 237 Neb. 1, 15, 465 N.W.2d 111, 120 (1991).

[8] Bethesda Found. v. Buffalo Cty. Bd. of Equal., 263 Neb. 454, 640 N.W.2d 398 (2002).

[9] Francis Small Heritage v. Town of Limington, 98 A.3d 1012 (Me. 2014).

[10] *Id.* at 1020.

[11] Turner v. Trust for Public Land, 445 So.2d 1124, 1126 (Fla. App. 1984).

[12] See, New England Forestry v. Board of Assessors, 468 Mass. 138, 9 N.E.3d 310 (2014); Pecos River Open Spaces, Inc. v. Cnty. of San Miguel, 2013 NMCA 029, \_\_\_ P.3d \_\_\_ (2013); Little Miami v. Kinney, 68 Ohio St. 2d 102, 428 N.E.2d 859 (1981); Mohonk Trust v. Assessors, 47 N.Y.2d 476, 392 N.E.2d 876, 418 N.Y.S.2d 763 (1979).

[13] See Lincoln Woman's Club v. City of Lincoln, 178 Neb. 357, 133 N.W.2d 455 (1965).

[14] Neb. Unit, Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal., 243 Neb. 412, 499 N.W.2d 543 (1993).

[15] Fort Calhoun Bapt. Ch., *supra* note 6.

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