

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

Doug Ewald, Tax Commissioner & Ruth  
Sorenson, Property Tax Administrator,  
Appellants,

v.

Box Butte County Board of Equalization &  
Friends Of Carhenge,  
Appellees.

Case No: 12E 001

Decision Affirming the County Board of  
Equalization

**For the Appellant:**

Jonathan D. Cannon,  
Attorney for Appellants.

**For the Appellee:**

Dennis King,  
Special County Attorney for  
Box Butte County.

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 10-acre parcel located in Box Butte County improved with a gift shop. The parcel includes Carhenge, which is a sculpture consisting of cars that is designed to replicate Stonehenge in England. The parcel also includes the Car Art Reserve, which features several sculptures made of cars and/or car parts (Carhenge and the Car Art Reserve at times herein are collectively referred to as “Carhenge”).

The legal description of the parcel is found at Exhibit 1. The Property Record File for the Subject Property is found at Exhibits 5 and 6.

**II. PROCEDURAL HISTORY**

Friends of Carhenge, a nonprofit organization that owns the Subject Property, filed an Exemption Application (Form 451) for the Subject Property for tax year 2012 with the Box Butte County Assessor on November 18, 2011.<sup>1</sup> The Box Butte County Assessor determined that the Subject Property was exempt from ad valorem taxes for tax year 2012.<sup>2</sup> The Box Butte County

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<sup>1</sup> E1:1 and E4:6.

<sup>2</sup> E1:1.

Board of Equalization (herein referred to as the “County Board”) determined that the Subject Property was exempt from ad valorem taxes for tax year 2012.<sup>3</sup> Pursuant to Nebraska Statutes sections 77-202.04, 77-701, and 77-5007, Doug Ewald, Tax Commissioner, and Ruth Sorenson, Property Tax Administrator, protested the County Board’s decision to the Tax Equalization and Review Commission (herein referred to as the “Commission”) and requested that the Commission find the Subject Property subject to ad valorem property taxes.

Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of all exchanged Exhibits numbered 1 through 9. Exhibits 10 through 12 were offered and received during the hearing. The Commission held a hearing on July 17, 2012.

### III. STANDARD OF REVIEW

The Commission’s review of the determination of the County Board is de novo.<sup>4</sup> “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.”<sup>5</sup> 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.”<sup>6</sup>

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.<sup>7</sup>

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

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<sup>3</sup> E1:3.

<sup>4</sup> 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).

<sup>5</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>6</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>7</sup> *Id.*

arbitrary.<sup>8</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>9</sup>

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.”<sup>10</sup> The Commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>11</sup>

#### 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.”<sup>12</sup> The following property shall be exempt from property taxes:

Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subject or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public...<sup>13</sup>

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<sup>8</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>9</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>10</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

<sup>12</sup> Neb. Const., Art. VIII, § 2.

<sup>13</sup> Neb. Rev. Stat. § 77-202(1)(d) (2012 Cum. Supp.).

“Statutes exempting property from taxation are to be strictly construed, and the burden of proving the right to exemption is on the claimant...”<sup>14</sup>

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.<sup>15</sup> “It is the exclusive use of the property that determines the exempt status.”<sup>16</sup> 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 separate entities.”<sup>17</sup> Under subsection (1)(d) of Nebraska Statutes section 77-202, a property owner's exemption from federal income taxation does not determine whether the owner's property is tax exempt under state law.<sup>18</sup>

Nebraska Courts consider two key factors for property tax exemption purposes. Those factors are: (1) the property tax burden is necessarily shifted from the beneficiary of an exemption to others who own taxable property; and (2) the power and right of the state to tax is always presumed.<sup>19</sup>

In addition, Nebraska Courts have developed several principles concerning requests for exemptions: (1) an exemption is never presumed;<sup>20</sup> (2) the alleged exempt property must clearly come within the provision granting the exemption;<sup>21</sup> (3) the laws governing property tax exemptions must be strictly construed;<sup>22</sup> (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;”<sup>23</sup> and (5) this interpretation should always be reasonable.<sup>24</sup>

The Tax Commissioner and Property Tax Administrator may appeal a determination by the county board of equalization granting an exemption for real or tangible personal property.<sup>25</sup> The Tax Commissioner and Property Tax Administrator may intervene in any such appeal when,

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<sup>14</sup> *Fort Calhoun Baptist Church v. Washington Cty. Bd. of Equal.*, 277 Neb. 25, 30, 759 N.W.2d 475, 480 (2009) quoting *United Way v. Douglas Cty. Bd. of Equal.*, 215 Neb. 1, N.W.2d 103(1983).

<sup>15</sup> *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993).

<sup>16</sup> See, *Nebraska Conf. Assn. of Seventh Day Adventists v. Bd. of Equalization*, 179 Neb. 326, 138 N.W.2d 455 (1965).

<sup>17</sup> *Fort Calhoun Baptist Church v. Washington County Board of Equalization*, 277 Neb. 25, 33, 759 N.W.2d 475, 481-82 (2009).

<sup>18</sup> *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

<sup>19</sup> 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).

<sup>20</sup> *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 398, 603 N.W.2d 447, 453 (1999)

<sup>21</sup> *Nebraska State Bar Foundation v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 4, 465 N.W.2d 111, 114 (1991)

<sup>22</sup> *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)

<sup>23</sup> *Lincoln Woman's Club v. City of Lincoln*, 178 Neb. 357, 363, 133 N.W.2d 455, 459 (1965)

<sup>24</sup> *Id.* (citing, *Young Men's Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921)).

<sup>25</sup> Neb. Rev. Stat. §77-202.04 (2012 Cum. Supp.).

in his or her discretion, he or she deems appropriate.<sup>26</sup> Friends of Carhenge has been made a party to the appeal and has been issued a notice of the appeal pursuant to Nebraska Statutes section 77-202.04.<sup>27</sup>

### **B. Summary of Issues**

The Appellant asserts that the Subject Property is not entitled to an exemption from ad valorem taxes for the reasons that: (1) the Subject Property is not owned by an educational organization pursuant to Nebraska Statutes section 77-202 (1)(d); and (2) the Subject Property is not used exclusively for educational purposes pursuant to Nebraska Statutes section 77-202 (1)(d).<sup>28</sup>

### **C. Evidence Summary**

The main feature of the Subject Property is a sculpture erected in 1987 by Jim Reinders that consists of 38 cars.<sup>29</sup> By design “Carhenge is a replica of Stonehenge, England’s ancient alignment of stones that chart the phases of the sun and the moon.”<sup>30</sup>

The Subject Property includes the Car Art Reserve, which features several sculptures made of cars and/or car parts that were erected by various artists after 1987.<sup>31</sup> The Subject Property also includes a parking lot and a seasonal gift shop that contains an area for souvenir sales.<sup>32</sup>

The Subject Property is owned by Friends of Carhenge, a nonprofit organization established in 1989 to preserve and promote Carhenge and to provide for the safety and education of visitors.<sup>33</sup> The Friends of Carhenge organization has “added a paved parking lot, picnic tables, and an educational display board” to the Subject Property.<sup>34</sup>

Sandy McCarthy, a Box Butte County Commissioner<sup>35</sup> and a member of the Board of Directors of Friends of Carhenge, testified on behalf of Friends of Carhenge. Ms. McCarthy testified that educational information concerning Carhenge is accessible via the internet and brochures available to visitors.

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<sup>26</sup> *Id.*

<sup>27</sup> Neb. Rev. Stat. §77-202.04 (2012 Cum. Supp.).

<sup>28</sup> Neb.Rev.Stat. §77-202 (1)(d) (2012 Cum. Supp.).

<sup>29</sup> E12:8.

<sup>30</sup> E12:16.

<sup>31</sup> Page 10 of Exhibit 12 depicts four Car Art Reserve sculptures, together with descriptions.

<sup>32</sup> E7. The Commission notes that the pictures of the gift shop found at Exhibit 7 depict the presence of a small building nearby. The evidence is unclear regarding the purpose of this small building.

<sup>33</sup> See, E4:6, E10:2, E12:9.

<sup>34</sup> E12:8. The Commission also notes that Exhibit 7, page 1 depicts an educational display board.

<sup>35</sup> Ms. McCarthy, a member of the County Board during the 2012 tax year, recused herself from consideration of Friends of Carhenge’s exemption application. See, E1:3.

A sample brochure and screen-shots of the Carhenge internet website were offered to explain the Subject Property's educational aspects. The website states that "Carhenge appeals to persons of all ages who are interested in history, astronomy, unusual art forms, cars, and adventure!"<sup>36</sup> The brochure includes the subject header "School without walls" and proceeds to state as follows:

Carhenge celebrated its 25<sup>th</sup> anniversary at sunrise of the summer solstice. Nearly 100 students learned the connection Carhenge has with Stonehenge of England. Students learned about all the car art located at the site. Carhenge made a great location to teach how England's early modern man used the stones of Stonehenge along with shadows and light to understand his place in our solar system. And how car art is a form of expression for some artist.<sup>37</sup>

Noting that many historians "believe Stonehenge was an important burial site," the brochure provides background regarding the concept of Carhenge as a burial ground for older model "gas-guzzlers" manufactured in the United States that confronted stiff competition in the 1980s from foreign automakers.<sup>38</sup> The brochure also includes an illustration regarding the use of Carhenge and Stonehenge as sundials.<sup>39</sup>

The website describes "The Four Seasons" Car Art Reserve sculpture, which is inspired by Vivaldi's Four Seasons and consists of four Fords arranged to depict the four cycles of Nebraska's wheat crop production.<sup>40</sup> The website also describes "The Carnastoga" Car Art Reserve sculpture, which symbolizes the "Wagon" used by Box Butte County settlers.<sup>41</sup> The website further depicts Car Art Reserve sculpture "Dino," a dinosaur replica, and "The Spawning Salmon."<sup>42</sup>

Ms. McCarthy testified that a summer solstice event occurs on the Subject Property in replication of the original Stonehenge summer solstice events. She stated that she considered this activity on the Subject Property historical.

Ms. McCarthy also testified that staff answers questions by Carhenge visitors regarding items displayed on the Subject Property. In this regard, she stated that most instruction from staff occurs in the gift shop, and that Friends of Carhenge annually hires students from the area to

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<sup>36</sup> E12:16.

<sup>37</sup> E10:1.

<sup>38</sup> E10:3.

<sup>39</sup> E10:4.

<sup>40</sup> E12:8,10.

<sup>41</sup> E12:10.

<sup>42</sup> E12:10.

provide information to Carhenge visitors. She stated that the students provide information concerning the history and meaning of Carhenge, including its comparison to Stonehenge.

Ms. McCarthy further testified that Carhenge does not offer regular courses of instruction or set a curriculum, and that students hired to provide information to visitors do not receive certificates or college credit for their work. She also stated that Carhenge is not an accredited academic institution, but that schools in the area bring students to the Subject Property for field trips.

The Commission received Exhibit 11 in evidence during the hearing, which is a letter signed by two individuals involved in the kindergarten through fourth grade summer school program in Alliance, Nebraska. The letter outlines educational benefits provided to area students by Carhenge volunteers during visits to the Subject Property, including “connections to another part of the world” via discussion of Stonehenge in England. Ms. McCarthy testified that the authors of Exhibit 11 are Alliance grade school teachers.

Michelle Robinson, the County Assessor, testified that she recommended that the County Board accept Friends of Carhenge’s application for exemption because the Subject Property benefitted the community by generating tourism and educating the public. The Assessor further testified that there was no fee for entrance to Carhenge, and that she would not classify the attraction as an amusement park. She also stated that activities on the Subject Property include oral education regarding the Nebraska Panhandle and the production and use of pamphlets relating to Carhenge.

#### **D. Analysis & Findings**

For purposes of meeting the property tax exemption requirements of Nebraska Statutes section 77-202(1)(d), it is uncontested that Friends of Carhenge is a nonprofit organization and that the Subject 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.” Therefore, the determination of the tax exempt status of the Subject Property is dependent upon a determination of: (1) whether the parcel was owned by an educational organization; and (2) whether the parcel was used exclusively for an educational purpose.

## 1. Educational Organization Ownership

Nebraska Statutes section 77-202(1)(d) defines an educational organization as follows:

...(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. [Emphasis added.]

In response to questioning regarding whether Friends of Carhenge qualified as an educational organization for purposes of exempting the Subject Property from ad valorem taxes under Nebraska Statutes section 77-202(1)(d)(B), Ms. McCarthy testified that the organization was not a “historical society,” but that Carhenge may be a “museum” dependent upon the definition of that word. Ms. McCarthy read the definition of “museum” found in section 51-702(6) of Nebraska’s Museum Property Act during the hearing and testified that Friends of Carhenge and Carhenge met that definition.<sup>43</sup> Specifically, Ms. McCarthy testified that for purposes of section 51-702(6) Friends of Carhenge is an “institution located in Nebraska operated by a nonprofit corporation ... primarily for educational, scientific, historic preservation, or aesthetic purposes...which owns, borrows, cares for, exhibits, studies, archives, or catalogs property.”

With respect to satisfying the definition of a “museum” under Nebraska Statutes section 77-202(1)(d)(B) and section 51-702(6) of the Museum Property Act, Ms. McCarthy further testified that Friends of Carhenge was not a member of the Nebraska Museums Association, and that Carhenge was not categorized as a museum with the State Historical Society or the Nebraska Department of Roads. She also stated that a difference between a traditional museum and Carhenge is that the sculptures on the Subject Property are not enclosed.

Ms. McCarthy opined that Carhenge is a “landmark” or a “park” under the definition of “museum” set forth in Nebraska Statutes section 51-702(6). She testified, however, that Carhenge is not a “monument” under the section 51-702(6) definition of the word museum because monuments are usually made of stone. Ms. McCarthy stated that Carhenge was not registered as a park or landmark with the U.S. National Park Service or the U.S. Geological Survey.

Ms. McCarthy testified that Carhenge was not administered by Box Butte County or the City of Alliance, and that these entities have not undertaken formal actions to establish the Subject

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<sup>43</sup> Neb. Rev. Stat. § 51-702(6) (Reissue of 2010).

Property as a museum under Nebraska Statutes section 51-501, which governs the establishment of a museum by local governmental subdivisions.<sup>44</sup> She also testified that the residents of Box Butte County have not voted to establish Carhenge as a museum under Nebraska Statutes section 51-502, which also governs the establishment of a museum by local governmental subdivisions.

Ms. McCarthy's testimony indicates that the Friends of Carhenge organization does not qualify as an educational organization under Nebraska Statutes section 77-202(1)(d)(A) set forth above. The Commission finds, however, that the Friends of Carhenge organization meets the definition of a museum under Nebraska Statute section 77-202(1)(d)(B).<sup>45</sup>

The Commission finds that Nebraska Statutes section 77-202(1)(d)(B) does not require systematic instruction or regular course work. Additionally, while this statute does not define the word museum, the Commission finds useful guidance in this regard from Nebraska's Museum Property Act.

Nebraska Statutes section 51-702(6) defines the word museum for purposes of the Museum Property Act:

Museum means an institution located in Nebraska and operated by a nonprofit corporation or public agency, primarily for educational, scientific, historic preservation, or aesthetic purposes, and which owns, borrows, cares for, exhibits, studies, archives, or catalogs property. Museum includes, but is not limited to, historical societies, historic sites or landmarks, parks, monuments, libraries, and zoos.

While not controlling, the Commission finds that the Museum Property Act definition of the word museum is instructive. Although it is true that the laws governing property tax exemptions must be strictly construed,<sup>46</sup> the Commission 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,"<sup>47</sup> and this interpretation should always be reasonable.<sup>48</sup> The Commission finds that the definition of museum in the Museum Property Act is reasonable, liberal, and instructive. The Commission notes that while this

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<sup>44</sup> Neb. Rev. Stat. § 51-501 (Reissue of 2010)

<sup>45</sup> As indicated previously, Ms. McCarthy testified that Friends of Carhenge was not a "historical society." In contrast, however, she testified that a summer solstice event occurs on the Subject Property in replication of the original Stonehenge event, and that she considered this activity historical. Therefore, the evidence is in conflict in terms of whether Friends of Carhenge is a qualifying educational organization as a "historical society" under Nebraska Statutes section 77-202(1)(d)(B).

<sup>46</sup> *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).

<sup>47</sup> *Lincoln Woman's Club v. City of Lincoln*, 178 Neb. 357, 363, 133 N.W.2d 455, 459 (1965)

<sup>48</sup> *Id.* (citing, *Young Men's Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921)).

definition lists types of entities and objects that qualify as a museum, it is not comprehensive and therefore does not preclude inclusion of the Subject Property.

At the hearing, Ms. McCarthy testified that the Subject Property could be classified as a museum. Additionally, her uncontested testimony was that Friends of Carhenge is a nonprofit institution located in Nebraska "...primarily used for educational, scientific, historic preservation, or aesthetic purposes...which owns, borrows, cares for, exhibits, studies, archives, or catalogs property."<sup>49</sup>

The Appellants assert that the Subject Property is not a museum for the following reasons: (1) Friends of Carhenge was not a member of the National Museum Association and was not listed as a museum with the State Historical Society; and (2) Carhenge is not operated by a governmental entity or established under Nebraska Statute sections 51-501 to 51-513 as a museum.<sup>50</sup> The Commission finds, however, that these assertions do not control whether Friends of Carhenge meets the definition of an educational organization as a museum under Nebraska Statutes section 77-202(1)(d)(B). Rather, the Commission finds that governmental subdivisions do not have the exclusive power to establish and maintain a museum under the Nebraska Statutes, and that a nonprofit organization such as Friends of Carhenge is enabled to own and operate a museum under Nebraska Statutes section 51-702(6) of the Museum Property Act.

The Commission finds that the Subject Property is best categorized as an outdoor museum with exhibits, including Carhenge and the Car Art Reserve. Therefore, the Commission finds that Friends of Carhenge is an educational organization under Nebraska Statutes section 77-202(1)(d)(B).

## **2. Exclusive Educational Use**

The final question is whether the Subject Property was used exclusively for an educational purpose under Nebraska Statutes section 77-202(1)(d). Exclusive use means the primary or dominant use of property, as opposed to incidental use.<sup>51</sup> "It is the exclusive use of the property that determines the exempt status."<sup>52</sup>

The Appellants assert that the Subject Property does not meet the exclusive educational use requirement because Carhenge, the Car Art Reserve, the educational display pictured at page 1 of

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<sup>49</sup> As indicated previously, at the hearing McCarthy read the definition of "museum" found in the Museum Property Act Nebraska Statutes section 51-702(6) and testified that the Carhenge met that definition.

<sup>50</sup> Neb. Rev. Stat. § 51-501, *et seq.* (Reissue of 2010).

<sup>51</sup> *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993).

<sup>52</sup> See, *Nebraska Conf. Assn. of Seventh Day Adventists v. Bd. of Equalization*, 179 Neb. 326, 138 N.W.2d 455 (1965).

Exhibit 7, the gift shop, and the parking lot occupy only two acres of the 10-acre parcel. Just as hallways and lawns do not change the predominant use of an enclosed museum, the existence of open space on the Subject Property does not change the predominant use of the parcel. The evidence summarized in section IV(C) of this Order sets forth the only evidence of the use of the Subject Property. Therefore, the Commission finds that it is reasonable to construe the remaining area of the Subject Property as used for the enjoyment and viewing of Carhenge and the Car Art Reserve. Indeed, it seems reasonable that open space surrounding the sculptures on the Subject Property would be necessary to preserve the annual summer solstice event and to provide proper viewing of a large outdoor exhibit.

The Commission finds that the primary and dominant use of the Subject Property is educational, specifically general education of the public concerning Carhenge. The Commission further finds that all other uses on the Subject Property are incidental to the educational use.

## **V. CONCLUSION**

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Tax Commissioner and Property Tax Administrator is denied and the decision of the County Board is Affirmed.

## **VI. ORDER**

IT IS ORDERED THAT:

1. The decision of the Box Butte County Board of Equalization determining that the Subject Property is exempt for tax year 2012 is affirmed.<sup>53</sup>
2. The Subject Property is exempt from taxation for tax year 2012.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Box Butte County Treasurer and the Box Butte County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

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<sup>53</sup> Exemption status, value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, the parties were permitted to submit evidence that may not have been considered by the County Board at the protest proceeding.

4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2012.
7. This Decision and Order is effective for purposes of appeal on September 5, 2013.

Signed and Sealed: September 5, 2013.

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Thomas D. Freimuth, Commissioner

**SEAL**

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Nancy J. Salmon, Commissioner

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