

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

John D. Walters,  
Appellant,

v.

Hitchcock County Board of Equalization,  
Appellee.

Case Nos: 14A 118, 14A 119, 14A 120,  
14A 121, 14A 122 & 14A 123

Decision and Order Affirming the  
Determination of the County Board in Cases  
No. 14A 118, 14A 119, 14A 120,  
14A 121, 14A 122

And

Decision and Order Vacating and Reversing  
the Determination of the County Board in  
Case No. 14A 123

**For the Appellant:**  
John D. Walters,  
Pro Se

**For the Appellee:**  
D. Eugene Garner,  
Hitchcock County Attorney

The appeals were heard before Commissioners Keetle and Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property consists of six parcels containing approximately 772 total acres located in Hitchcock County, Nebraska. The legal description of the Subject Property is found at Exhibits 1-6. The property record cards for parcels of the Subject Property are found at Exhibit 7 page 12, Exhibit 8 page 13, Exhibit 9 page 15, Exhibit 10 page 12, Exhibit 11 page 12, and Exhibit 12 page 9.

**II. PROCEDURAL HISTORY**

The Hitchcock County Assessor determined that the assessed value of the parcel of the Subject Property found in Case No. 14A-118 was \$167,130 for tax year 2014. John D. Walters (the Taxpayer) protested this assessment to the Hitchcock County Board of Equalization (the County Board) and requested an assessed valuation of \$131,300. The Hitchcock County Board determined that the assessed value for tax year 2014 was \$169,080.<sup>1</sup>

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<sup>1</sup> Exhibit 1.

The Hitchcock County Assessor determined that the assessed value of the parcel of the Subject Property found in Case No. 14A-119 was \$229,915 for tax year 2014. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$148,015. The County Board determined that the assessed value for tax year 2014 was \$252,780.<sup>2</sup>

The Hitchcock County Assessor determined that the assessed value of the parcel of the Subject Property found in Case No. 14A-120 was \$523,705 for tax year 2014. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$324,205. The County Board determined that the assessed value for tax year 2014 was \$520,965.<sup>3</sup>

The Hitchcock County Assessor determined that the assessed value of the parcel of the Subject Property found in Case No. 14A-121 was \$166,045 for tax year 2014. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$114,445. The County Board determined that the assessed value for tax year 2014 was \$166,795.<sup>4</sup>

The Hitchcock County Assessor determined that the assessed value of the parcel of the Subject Property found in Case No. 14A-122 was \$248,215 for tax year 2014. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$187,200. The County Board determined that the assessed value for tax year 2014 was \$256,450.<sup>5</sup>

The Hitchcock County Assessor determined that the assessed value of the parcel of the Subject Property found in Case No. 14A-123 was \$189,400 for tax year 2014. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$186,800. The County Board determined that the assessed value for tax year 2014 was \$236,995.<sup>6</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and the parties stipulated to the receipt of exchanged exhibits. The Commission held a hearing on June 7, 2017.

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<sup>2</sup> Exhibit 2.

<sup>3</sup> Exhibit 3.

<sup>4</sup> Exhibit 4.

<sup>5</sup> Exhibit 5.

<sup>6</sup> Exhibit 6.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>7</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>8</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>9</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 arbitrary.<sup>10</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>11</sup>

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>12</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>13</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. The commission may

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<sup>7</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "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." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>8</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>9</sup> *Id.*

<sup>10</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

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

<sup>12</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>13</sup> *Botdorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”<sup>14</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>15</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>16</sup>

## IV. VALUATION

### A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>17</sup>

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”<sup>18</sup> The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>19</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>20</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>21</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>22</sup>

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009).  
Agricultural land and horticultural land means a parcel of land which is primarily used

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<sup>14</sup> Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

<sup>15</sup> Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

<sup>16</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>17</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>18</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>19</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>20</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>21</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

<sup>22</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.<sup>23</sup>

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”<sup>24</sup>

Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

- (a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and
- (b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land.<sup>25</sup>

Government Programs Land which is voluntarily enrolled in the

... Conservation Reserve Enhancement Program (CREP) ... or any other programs may require separate market analysis. The land should be classified at its current use such as grassland or timbered grassland; however, the values for land enrolled in government program acres should be adjusted to reflect the local market for similar property.”<sup>26</sup>

“Conservation Reserve Enhancement Program (CREP) ... lands which have been enrolled in a federally or state funded program that encourages the development of specific conservation practices in exchange for a guaranteed or contracted annual payment” may need to have land use adjustments “to achieve proportionate market value.” “This land is to be classified at its current use; usually grassland uses. The value for this land should be based on the current market value for land subject to similar restrictions and similar payments.”<sup>27</sup>

Market analysis is “a study of general real estate market conditions that affect the competitive supply, demand, and prices for particular types of facilities or properties.”<sup>28</sup>

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<sup>23</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

<sup>24</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>25</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

<sup>26</sup> Title 350, NAC Ch. 14, §004.04E.

<sup>27</sup> Title 350, NAC Ch. 14, §006.04, §006.04C, and §006.04C(3).

<sup>28</sup> Title 350, NAC Ch. 50, §001.19.

Comparable sales “are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value. When using comparable sales in determining actual value of an individual property under the sales comparison approach” the guidelines of Neb. Rev. Stat. §77-1371 “shall be considered in determining what constitutes a comparable sale.”<sup>29</sup>

## V. EQUALIZATION LAW

### A. Law

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”<sup>30</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>31</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>32</sup> In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.<sup>33</sup> Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>34</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>35</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>36</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere

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<sup>29</sup> Neb. Rev. Stat. §77-1371 (Cum. Supp. 2014).

<sup>30</sup> *Neb. Const.*, Art. VIII, §1.

<sup>31</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>32</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>33</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>34</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>35</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>36</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

error of judgment [sic].”<sup>37</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>38</sup>

## VI. SUMMARY OF THE EVIDENCE

The Taxpayer testified that all of the parcels that make up the Subject Property contained acres enrolled in the Conservation Reserve Enhancement Program (CREP) or Environmental Quality Incentives Program (EQIP) federal government programs. The Taxpayer testified that CREP and EQIP acres had a lower value than other grassland or other agricultural and horticultural acres. The Taxpayer testified that his opinion of the market value for CREP or EQIP acres in Hitchcock County was \$1,950 per acre, which would be adjusted to \$1,294 for agricultural and horticultural land which is to be valued at 75% of market value. Walton testified that his opinion was based primarily on two sales of agricultural and horticultural land in Hitchcock County which occurred in 2011 and 2012. The Taxpayer was not a party to the sales upon which he based his opinion of value for CREP and EQIP acres. While the Taxpayer offered testimony regarding these sales, the Property Record Files (PRF) were not received into evidence. Without the Property Record Files the Commission is unable to evaluate the differences between the two sales and their comparability to the Subject Property for use in determining value of CREP or EQIP acres or the value of the Subject Property.

The Taxpayer offered a list of sales of property that he alleged demonstrated that sales of land containing CREP or CRP acres sold for less than their assessed values and supported his opinion of value for CREP and EQIP acres.<sup>39</sup> Walters did not prepare this list of sales and the Property Record Files for these parcels of property were not in the record before the Commission. Without the Property Record File the Commission is unable to determine the impact that the CREP or CRP acres had on the assessed values or the sales prices or evaluate the characteristics of the sold parcels and their comparability to the Subject Property for use in determining value of CREP or EQIP acres or the value of the Subject Property.

The record before the Commission indicates that after the Taxpayer filed his appeals the County Assessor in office at the time reviewed the GIS and NRD maps to verify acres assigned to each Land Classification Group (LCG) and updated the acre count and LCG assignments

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<sup>37</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>38</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>39</sup> Exhibit 13:18

accordingly.<sup>40</sup> This verification and adjustment of acres resulted in different assessed values for each of the subject properties as demonstrated in the “2014 Before Protest” Property Record File and the “2014 After Protest” Property Record File presented for each parcel of the Subject Property.<sup>41</sup> After the then County Assessor’s review there was not a difference in the assessed value between land enrolled in CREP or EQIP and land not enrolled in these government programs.<sup>42</sup>

For the parcel of the Subject Property found in Case No. 14A-123 the Taxpayer testified that he did file a protest to the County Board for tax year 2014, however the Taxpayer testified that he withdrew the protest at the hearing before the County Board. There are two copies of the Form 422 Property Valuation Protest form for this parcel.<sup>43</sup> The Taxpayer testified that he did not complete any portion of the Form 422 below his signature line. On one of these versions of the Form 422 in the box labeled Basis for Action Taken (County Board of Equalization Chairperson) there is a handwritten note that says “Asked to withdraw Protest at Hearing.”<sup>44</sup> The Commission finds that the Taxpayer withdrew the protest to the County Board for the parcel of the Subject Property found in Case No. 14A-123. That however the other copy of the Form 422 indicates that the County Board took action on the Taxpayer’s Protest and changed the value of the parcel of the Subject Property found in Case No. 14A-123 to \$236,995 for tax year 2014.<sup>45</sup> The testimony indicated that this was the copy of the Form 422 mailed to the Taxpayer after he appeared before the County Board and withdrew his appeal. The Taxpayer filed his appeal of this determination of the County Board to the Tax Equalization and Review Commission on August 22, 2014.<sup>46</sup> The County Board was notified of this appeal of this determination to the Tax Equalization and Review Commission on September 15, 2014.<sup>47</sup> The County Board then attempted to adjust or reconsider the assessed value of the parcel of the Subject Property in October of 2014.<sup>48</sup>

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<sup>40</sup> Exhibit 1-6, Exhibit

<sup>41</sup> Exhibit 7:12-15, Exhibit 8:13-14, Exhibit 8:15-20, Exhibit 10:12-14, Exhibit 11:12-15, Exhibit 12:9-13.

<sup>42</sup> Exhibit 7:12-15, Exhibit 8:13-14, Exhibit 8:15-20, Exhibit 10:12-14, Exhibit 11:12-15, Exhibit 12:9-13.

<sup>43</sup> See, Exhibit 12 pages 2 and 14 and Exhibit 18 pages 9 and 14.

<sup>44</sup> Exhibit 12 page 14 and Exhibit 18 page 14.

<sup>45</sup> Exhibit 12 page 2 and Exhibit 18 page 9.

<sup>46</sup> See Case file Case No. 14A 123.

<sup>47</sup> See Case file Case No. 14A 123.

<sup>48</sup> Exhibit 18:16



“Jurisdiction is the inherent power or authority to decide a case.”<sup>49</sup> In order to take action regarding a valuation protest there must be a valuation protest before the County Board. The record demonstrates that the Taxpayer dismissed or withdrew his protest at the hearing before the County Board. Because there wasn’t a protest before the County Board its action adjusting value on the property in Case No. 14A-123 must be vacated and reversed. Additionally, while the courts have held that county boards have the authority to reconsider their opinions, the court concluded that those decisions must be reconsidered before the “aggrieved party files an appeal or the statutory appeal period has expired.”<sup>50</sup> Because the County Board had no authority to adjust or reconsider their action after the Taxpayer had filed his appeal to the Tax Equalization and Review Commission their action that action is void. Therefore the Commission finds that the assessed value of the parcel of the Subject Property found in Case No. 14A-123 must be the assessed value as originally determined by the County Assessor for tax year 2014: \$\$189,400.

## **VII. 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 determinations in Cases No. 14A 118, 14A 119, 14A 120, 14A 121, and 14A 122. The Commission also finds that there is not clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable in Cases No. 14A 118, 14A 119, 14A 120, 14A 121, and 14A 122.

In Case No. 14A 123 the Commission finds that the County Board had no authority to take action on the Taxpayer’s protest after he withdrew it, and the County Board’s subsequent attempt to reconsider their action was void.

For all of the reasons set forth above, the determinations of the County Board in Cases No. 14A 118, 14A 119, 14A 120, 14A 121, and 14A 122 should be Affirmed and the determination of the County Board in Case No. 14A 123 should be Vacated and Reversed.

## **VIII. ORDER**

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<sup>49</sup> *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

<sup>50</sup> See, *City of Omaha v. Wade*, 1 Neb.App. 1168, 1172, 510 N.W.2d 564, 567 (1993)

IT IS ORDERED THAT:

1. The decisions of the Hitchcock County Board of Equalization determining the value of parcels of the Subject Property in Cases No. 14A 118, 14A 119, 14A 120, 14A 121, and 14A 122 for tax year 2014 is affirmed.<sup>51</sup>
2. The decision of the Hitchcock County Board of Equalization determining the value of the parcel of the Subject Property in Case No. 14A 123 for tax year 2014 is vacated and reversed.<sup>52</sup>
3. The assessed valued of the parcels that make up the Subject Property for tax year 2014 are:

Case No. 14A-118:	\$169,080
Case No. 14A-119:	\$252,780
Case No. 14A-120:	\$520,965
Case No. 14A-121:	\$166,795
Case No. 14A-122:	\$256,450
Case No. 14A-123:	\$189,400

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Hitchcock County Treasurer and the Hitchcock County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.)
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2014.
8. This Decision and Order is effective for purposes of appeal on July 21, 2017.

Signed and Sealed: July 21, 2017

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Steven A. Keetle, Commissioner

<sup>51</sup> Assessed 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, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

<sup>52</sup> Assessed 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, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

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 (2016 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.