

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

Thomas L. Hilt Revocable Trust,  
Thomas L. Hilt, Trustee,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 17R 0085, 18R 0061 & 19R 0302

Decision and Order Affirming the  
Determinations of the Douglas County  
Board of Equalization

**For the Appellant:**

Douglas W. Ruge,  
Attorney at Law

**For the Appellee:**

Jennifer D. Chrystal-Clark,  
Deputy Douglas County Attorney

These appeals were heard before Commissioners Steven Keetle and James Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located in Douglas County. The parcel is improved with a 7,868 square foot ranch style home. The legal description of the parcel and the property record card for the Subject Property for each of the tax years are found at Exhibits 4 (2017), 5 (2018) and 6 (2019).

**II. PROCEDURAL HISTORY**

The Douglas County Assessor determined that the assessed value of the Subject Property was \$1,531,000 for tax year 2017 (Case No. 17R 0085), \$1,425,000 for tax year 2018 (Case No. 18R 0061), and \$1,425,000 for tax year 2019 (Case No. 19R 0302). Thomas L. Hilt Revocable Trust (the Taxpayer) protested these assessments to the Douglas County Board of Equalization (the County Board) and requested assessed valuations of \$1,000,000 (Case No. 17R 0085), \$1,236,000 (Case No. 18R 0061), and \$997,500 (Case No. 19R 0302). The County Board determined that the taxable value of the Subject Property was \$1,425,000 for all three tax years.<sup>1</sup>

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<sup>1</sup> E1-E3.

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on March 2, 2020. Prior to the hearing, the parties exchanged exhibits and submitted a Report of Pre-Hearing Conference, as ordered by the Commission. In the Report of Pre-Hearing Conference, the parties stipulated to the receipt of exchanged Exhibits 1-8.

### III. STANDARD OF REVIEW

The Commission’s review of the determination by a county board of equalization is de novo.<sup>2</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>3</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>4</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>5</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

The Taxpayer must introduce competent evidence of the actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>7</sup> The County Board need

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<sup>2</sup> See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>3</sup> *Brenner* at 283, 811.

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. 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 Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes the County Board's valuation was unreasonable or arbitrary.<sup>8</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 consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>9</sup> The Commission may take notice of judicially cognizable facts, 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>10</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>11</sup>

#### IV. VALUATION

##### A. Law

Under Nebraska law,

Actual 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>12</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>13</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>14</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>15</sup> All real property in Nebraska subject to taxation shall be assessed as of

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<sup>8</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>9</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>10</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>13</sup> *Id.*

<sup>14</sup> *Omaha Country Club* at 180, 829.

<sup>15</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

January 1.<sup>16</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>17</sup>

## **B. Summary of the Evidence**

The Taxpayer's evidence involved multiple references to the Commission's findings of fact in a decision on the 2010 and 2011 assessed values of the Subject Property. A decree fixing the value of property under a prior assessment is not admissible to prove value under a subsequent assessment, and a prior year's assessment is not relevant to a subsequent year's valuation.<sup>18</sup> The matter now before the Commission is the 2017, 2018 and 2019 assessed values of the Subject Property. The County Board has presented the Property Record File (PRF) for each of these tax years and the testimony of an appraiser, which demonstrate that the county has reappraised the Subject Property since 2011. The Commission must evaluate the 2017, 2018 and 2019 appeals based on the record developed in these appeals. We will not consider determinations made in a different proceeding based on a different evidentiary record. For these reasons, the Commission gave its order adjusting the 2010 and 2011 assessments of the Subject Property no weight in reviewing the assessments for tax years 2017, 2018 and 2019.

The County Board called Stan Mlotek to testify regarding the determination of the value of the Subject Property by the County Assessor's Office. Mr. Mlotek has been employed by the Douglas County Assessor's office for eight years as a Real Estate Specialist, tasked with working on complex properties, special valuation accounts, and a portion of residential accounts. Mr. Mlotek has been a licensed real estate appraiser since 1984 and has held a real estate broker's license since 1979. Mr. Mlotek testified that the Douglas County Assessor's Office utilized a cost approach to valuing residential properties for the tax years at issue and that, due to the unique nature of the Subject Property within the market area, the cost approach was the most accurate method of determining its value. Mr. Mlotek further testified that the County Assessor's Office has been denied access to the Subject Property to verify its characteristics other than being allowed to view the "garage basement" area which the Taxpayer alleged was measured incorrectly.

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<sup>16</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>18</sup> *DeVore v. Bd. of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988), *Kohl's Department Stores v. Douglas County Board of Equalization*, 10 Neb.App. 809, 814, 638 N.W.2d 877, 881-882 (2002).

For tax year 2017 the Douglas County Assessor's office determined the characteristics of the Subject Property from an external inspection. Utilizing those characteristics and a Computer Assisted Mass Appraisal (CAMA) system that incorporated the current Marshall & Swift Valuation Service data, the County Assessor's Office determined the replacement cost new of the Subject Property. The County Assessor's Office then used depreciation data derived from the market to determine the replacement cost new less depreciation (RCNLD) for the Subject Property. Mr. Moltek testified that, based on the inspection, he would classify the Subject Property as an "excellent" quality of construction; however, the County Assessor's Office utilized the lower "very good" classification. Mr. Mlotek reviewed the pictures of the Subject Property that the Taxpayer offered to show a lower condition classification, but testified that the items depicted were ordinary maintenance items. Such items would relate to condition rather than quality of construction.<sup>19</sup> Mr. Mlotek conceded that the brick pointing and bowing post in the garage basement were extraordinary items that would require approximately \$4,500 to correct. The county's assessment model does not apply depreciation for functional obsolescence due to any alleged super adequacy of size. Instead, the model accounts for the size of the Subject Property by applying a multiplier of 88.8%.<sup>20</sup>

Mr. Mlotek testified that for tax years 2018 and 2019 the County Assessor's Office did not reinstate the value indicated by the cost approach, but instead carried over the value determined by the County Board during the 2017 protest process as a "reconciled value."<sup>21</sup> In Mr. Mlotek's opinion, the actual value of the Subject Property for all three tax years at issue was \$1,531,000, which was the value determined by the County Assessor's Office prior to the County Board's 2017 action reducing the assessed value to \$1,425,000.

Thomas L. Hilt, trustee of the Thomas L. Hilt Revocable Trust testified on behalf of the Taxpayer. Mr. Hilt is not a licensed appraiser, but he has been involved in the construction business. Mr. Hilt alleged that the County Board failed to correctly determine the characteristics of the Subject Property and did not apply the correct types and amounts of depreciation, which resulted in an assessed value that is greater than the Subject Property's actual value.

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<sup>19</sup> The condition of the property was rated "good," as opposed to very good or excellent, for all three tax years in issue. E4:4, E5:4, E6:4.

<sup>20</sup> E8:1.

<sup>21</sup> E5:6, E6:9.

Hilt testified that he designed and built the Subject Property himself for a cost of \$1,057,000 and that he and his wife moved in after completion for Thanksgiving in 2009.<sup>22</sup> Mr. Hilt presented photographs, tables and testimony regarding the materials used in the construction of the Subject Property including the framing, veneer, plumbing, carpeting and tile.<sup>23</sup> Mr. Hilt did not break down the costs he incurred during the construction of the Subject Property and the Commission is unable to determine if these costs were typical for the market. The Commission cannot determine if the value of work performed by Mr. Hilt and his wife in the design and construction of the Subject Property were included in these costs or if discounts he was able to obtain on labor and materials were accounted for.

The Taxpayer alleged that the materials used in the construction of the Subject Property including the framing, veneer, plumbing, carpeting and tile were not those that would be found in a property with a quality rating of very good. Mr. Hilt provided excerpts from a National Building Cost Manual and other sources, as well as his determination of the quality of components that were utilized in the construction of the Subject Property.<sup>24</sup> Mr. Hilt also alleged that the plumbing, heating, electrical systems, fixtures and finish were substandard throughout the Subject Property and offered unsworn statements to support these allegations.<sup>25</sup>

The Taxpayer next alleged that the condition rating of the Subject Property should be average rather than good as determined by the County Assessor's Office. Mr. Hilt provided testimony and photographs of portions of the interior of the Subject Property to support this allegation.<sup>26</sup>

Quality and condition ratings are determinations made by professionals in the fields of assessment or appraisal of real property. Mr. Mlotek is a licensed professional in those fields and Mr. Hilt is not, so the opinion of Mr. Mlotek carries more weight on those issues. The Commission finds that the Taxpayer has failed to prove by clear and convincing evidence that the County Assessor's determinations of quality and condition were unreasonable, arbitrary, or incorrect.

Mr. Hilt prepared two reports regarding the value of the Subject Property, both of which resulted in a total value of \$1,331,857 as of December 26, 2019.<sup>27</sup> Mr. Hilt, although not an

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<sup>22</sup> The sales history of the Subject Property indicates that the Subject Property was purchased by the Taxpayer in November of 2009 for \$1,057,103 from Jennifer R. Wilkins et al. E4:3.

<sup>23</sup> E7:89-95.

<sup>24</sup> E7:16-17.

<sup>25</sup> E7:20,21,96-97.

<sup>26</sup> E7:89-101.

<sup>27</sup> E7:18-19.

appraiser, testified that he prepared these reports using Marshall and Swift Residential Cost Approach software, which he was certified to use. Mr. Mlotek testified that he contacted Marshall and Swift to determine the certification available for their software and was informed that no certification was available. These reports use a quality rating of good/very good which, based on the evidence before the Commission, is not the correct rating for the Subject Property, and therefore the Commission gives the reports no weight.

The Taxpayer argues that the county used the incorrect measurements of the room under the attached garage when valuing the Subject Property. The PRF offered by the County Board contains account notes that show the County Assessor's Office measured this space in 2018 and determined that it should be 1,386 square feet in area.<sup>28</sup> The PRF for tax year 2017, however, shows that the county used 1,584 square feet for the area of this room when determining the assessed value for tax year 2017.<sup>29</sup>

The Taxpayer also alleges that the county failed to apply the correct physical and functional depreciation to the Subject Property. Mr. Hilt offered a portion of a single page of an appraisal report for a different property, which indicated that functional and external value loss may have been attributed to that property based on the business and entertainment nature of the floor plan and the size of that property relative to other homes in the area.<sup>30</sup> The Commission gives no weight to this document because it is for a different property and does not disclose the name or qualifications of the author, method of valuation, location, date of value or other basic foundational information.

The Commission finds that Mr. Hilt's testimony, even when combined with the exhibits presented, is not persuasive. The testimony of Mr. Mlotek, combined with the account notes from the Assessor's Office, indicate two errors in the 2017 assessment of the Subject Property: the area of the garage basement and an allowance for the cost to repair the support beam. These items would only reduce the assessed value of the improvements by \$9,300,<sup>31</sup> which would result in a higher value than the \$1,300,000 determined by the County Board.

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<sup>28</sup> E6:6.

<sup>29</sup> E4:7.

<sup>30</sup> E7:31.

<sup>31</sup> Using the numbers found in Exhibit 4 page 8.  $1,584 \text{ sq ft} - 1386 = 198 \text{ square feet}$ ,  $198 \text{ square feet} \times 26.86 \text{ per square foot} = \$5,318.28$  Replacement Cost New.  $\$5,318.28 \times 3.23\% \text{ depreciation} = \$171.78$  depreciation.  $\$5,318.28 - \$171.78 = \$5,146.22$  Replacement Cost New Less Depreciation.  $\$5,146.22 \times .93 \text{ Neighborhood Adjustment} = \$4,785.98$  value for incorrect square footage measurement, rounded to \$4,800. Mr. Mlotek testified that \$4,500 should be allowed to repair the support beam. When added together these two amounts would reduce the assessed value determined by the assessor by \$9,300.

Mr. Hilt alluded multiple times to behavior and actions taken to discriminate against the Taxpayer but offered no evidence to support those allusions.

## V. EQUALIZATION

### 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 [the Nebraska] Constitution.”<sup>32</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>33</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>34</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>35</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>36</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>37</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>38</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that the valuation placed on his [or her] property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.”<sup>39</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>40</sup>

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<sup>32</sup> *Neb. Const.*, Art. VIII, §1.

<sup>33</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>34</sup> *MAPCO; Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>35</sup> *Cabela's Inc.*

<sup>36</sup> *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>37</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>38</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>39</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>40</sup> *Id.* at 673, 94 N.W.2d at 50.



## **B. Summary of the Evidence**

The Taxpayer alleged that the assessed value of the land component was not equalized with other comparable properties and did not conform to prior Commission decisions regarding the Subject Property. The Taxpayer requested that the land component of the Subject Property (Lot 40) be valued the same as the land component of the lot next to the Subject Property (Lot 41). The Taxpayer points to a determination of fact from the Commission's order regarding the 2010 and 2011 assessments of the Subject Property. For the reasons explained above, our decision in these appeals must be based on the evidence received in these appeals, not on evidence received or decisions made in other appeals and past tax years.

The 2017 PRF for the Subject Property indicates that the County Assessor conducted a detailed review of land values and revalued the land component of residential properties in Douglas County for tax year 2017. Mr. Mlotek testified that Lot 40 was superior lot to Lot 41 and therefore should be assessed at a higher amount. Both lots are located adjacent to a golf course with views of greens and tee boxes and are similar in size but Lot 41 has a more irregular shape and a smaller amount of "golf course frontage," allowing less back yard area than Lot 40.<sup>41</sup> The Taxpayer alleged that another lot, Lot 30, was superior to Lot 40, based on its location on a cul-de-sac and golf course frontage. Mr. Mlotek testified that the smaller size and irregular shape of Lot 30 make it inferior to Lot 40. The Commission finds that, based on the characteristics used to revalue the land components in Douglas County as of tax year 2017 and the evidence presented in this hearing, the land component of the Subject Property (Lot 40) is superior to the other lots presented. The Taxpayer has not demonstrated that the value of the land component is not equalized with other comparable properties.

The Taxpayer alleged that the assessed value of the improvements on the Subject Property were not equalized with the assessed values of the improvements on other comparable properties. Mr. Mlotek testified that none of the properties offered as comparable properties by the Taxpayer were comparable to the Subject Property due to the Subject Property's size and unique set of features. The Subject Property is improved with a 7,868 square foot ranch style property located in the Indian Creek (Estates) Subdivision. By the Taxpayer's own admission, the Subject Property is more than twice as large as any other ranch style property in the subdivision and

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<sup>41</sup> An aerial map of these lots is shown at E8:2.

more than 2,000 square feet larger than the next largest residence in the subdivision.<sup>42</sup> The properties not located in the Indian Creek (Estates) subdivision offered as comparable to the Subject Property differ from the Subject in style of construction, location, age, quality, condition, etc., and are thus not truly comparable to the Subject Property.<sup>43</sup>

## VI. 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. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions determining the value of the Subject Property were arbitrary or unreasonable.

For all of the reasons set forth above, the appeals of the Taxpayer are denied.

## VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax years 2017, 2018 and 2019 are affirmed.<sup>44</sup>
2. The taxable value of the Subject Property for tax years 2017, 2018 and 2019 is:

Land	\$ 125,000
<u>Improvements</u>	<u>\$1,300,000</u>
Total	\$1,425,000
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
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.

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<sup>42</sup> E7:27-29.

<sup>43</sup> Appellate courts have affirmed the Commission's finding that properties were not similar when the record supports such a determination, see *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>44</sup> Taxable 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.

6. This Decision and Order shall only be applicable to tax years 2017, 2018, and 2019.
7. This Decision and Order is effective for purposes of appeal on March 1, 2021.<sup>45</sup>

Signed and Sealed: March 1, 2021

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Steven A. Keetle, Commissioner

SEAL

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James D. Kuhn, Commissioner

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<sup>45</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.