

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

GERALD W GREEN  
REVOCABLE TRUST,  
GERALD W GREEN  
APPELLANT,

V.

MORRILL COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

CASE NO: 20A 0064

DECISION AND ORDER  
AFFIRMING THE DECISION  
OF THE MORRILL COUNTY  
BOARD OF EQUALIZATION

**For the Appellant:**

Gerald W. Green,  
Trustee

**For the Appellee:**

Travis Rodak,  
Morrill County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 472.38-acre agricultural parcel located in Morrill County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibit 4.

**II. PROCEDURAL HISTORY**

The Morrill County Assessor determined the assessed value of the Subject Property was \$180,775 for tax year 2020.<sup>1</sup> Gerald W. Green, Trustee of the Gerald W. Green Revocable Trust (the Taxpayer) protested this assessment to the Morrill County Board of Equalization

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<sup>1</sup> Exhibit 1.

(the County Board) and requested a taxable value of \$108,001.<sup>2</sup> The County Board determined the taxable value of the Subject Property for tax year 2020 was \$180,775.<sup>3</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on September 20, 2021. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1 to 4 were admitted into evidence.

### III. STANDARD OF REVIEW

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

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</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, 759 N.W.2d 464, 473 (2009).

<sup>5</sup> *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>6</sup> *Id.*

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>7</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is overvalued.<sup>9</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.<sup>10</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>11</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>12</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>13</sup>

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<sup>7</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>8</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>9</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).

<sup>10</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>11</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

#### IV. VALUATION 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>14</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 Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.<sup>15</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>16</sup>

Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.<sup>17</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>18</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>19</sup>

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.<sup>20</sup> Agricultural land and horticultural land means a parcel of land, excluding land associated with a

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<sup>14</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>15</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>16</sup> *Omaha Country Club* at 180, 829.

<sup>17</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>18</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>19</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>20</sup> Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

building or enclosed structure located on the parcel, which is primarily used 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.<sup>21</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.<sup>22</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>23</sup>

## V. EQUALIZATION 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>24</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>25</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>26</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>27</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is

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<sup>21</sup> Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

<sup>22</sup> Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).

<sup>23</sup> Neb. Rev. Stat. § 77-132 (Reissue 2018).

<sup>24</sup> *Neb. Const.*, Art. VIII, § 1.

<sup>25</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>26</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>27</sup> *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

assessed at less than the actual value.<sup>28</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 the 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>29</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>30</sup>

## VI. ASSESSMENT OF AGRICULTURAL LAND

Under Nebraska law, agricultural land and horticultural land<sup>31</sup> is a distinct class of real property and is divided into multiple subclasses.<sup>32</sup> Irrigated cropland, dryland cropland, and grassland are the most predominant use subclasses of agricultural land.

To properly assess a parcel of agricultural land, county assessors must analyze each acre of the parcel. Fundamental to this analysis is identifying soil types. The process of identifying and analyzing soil types, and their ultimate productivity when put into either irrigated cropland, dryland cropland, or grassland uses, starts with information from the United States Department Agriculture, Natural Resources Conservation Service (NRCS). The NRCS assigns each soil type with a four-digit code and provides the soil type codes to the Property Assessment Division (PAD) of the Nebraska Department of Revenue.<sup>33</sup> PAD then classifies each soil type into one of eight Land Capability Groupings (LCG) for irrigated cropland, dryland cropland, and grassland.<sup>34</sup> This soil conversion process conducted by PAD includes

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<sup>28</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty/ Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>29</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>30</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>31</sup> Hereinafter referred to as “agricultural land.”

<sup>32</sup> Neb. Rev. Stat. § 77-103.01 (Reissue 2018).

<sup>33</sup> An example of this can be seen in the third column of Exhibit 36, labeled “soil.”

<sup>34</sup> An LCG is defined as, “a grouping of various soils according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to

multiple soil types in each of these LCGs. As a result, the eight LCGs for each agricultural subclass are as follows:

Irrigated	1A1	1A	2A1	2A	3A1	3A	4A1	4A
Dry	1D1	1D	2D1	2D	3D1	3D	4D1	4D
Grass	1G1	1G	2G1	2G	3G1	3G	4G1	4G

Soils that are used for irrigated cropland are included under the designation “A.” Soils used for dryland cropland are designated with a “D,” and soils used for grassland are designated as “G.” Soils deemed to be the most productive from each subclass are classified as 1A1, 1D1, and 1G1. Soils deemed to be the least productive from each subclass are classified as 4A, 4D, and 4G. All acres used for irrigated cropland, dryland cropland, and grassland are classified under one of these LCGs. PAD provides the soil classifications for each county to each county assessor. Each county assessor is then required to utilize the soil surveys as directed by the Property Tax Administrator (PTA) of PAD.<sup>35</sup>

## VII. FINDINGS OF FACT

### A. Summary of the Evidence

The property record file (PRF) maintained by the County Assessor is included in Exhibit 4. The 472.38-acre Subject Property was assessed based upon soil types as determined by the NRCS, and LCGs as determined by PAD.<sup>36</sup> All of the acres were utilized as grassland and were classified as LCG 4G1, 4G, or 3G.<sup>37</sup> The Subject Property was in Market Area 2. The County Assessor assessed all grassland in Market Area 2, regardless of LCG classification, at \$385 per acre.<sup>38</sup>

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average management.” Title 350 Neb. Admin. Code, Chapter 14, Section 004.08E, Revised 3/15/09.

<sup>35</sup> Neb. Rev. Stat. § 77-1363 (2020 Cum. Supp.) (“County assessors shall utilize soil surveys from the Natural Resources Conservation Service of the United States Department of Agriculture as directed by the Property Tax Administrator.”).

<sup>36</sup> See, 350 NAC, Chapter 14, Section 004.08.

<sup>37</sup> Exhibit 4:39. See also, Exhibit 3:3

<sup>38</sup> 2020 Reports & Opinions of the Property Tax Administrator, Morrill County, page 28.

The per acre determination was based upon five sales.<sup>39</sup> The LCG categories for grassland were based upon ranges of forage production in terms of pounds per acre per year.<sup>40</sup>

Gerald Green testified on behalf of the Taxpayer. He asserted the assessment methodology used to determine the taxable value of the Subject Property was flawed. He also asserted the assessment ignored requirements of LB 372,<sup>41</sup> legislation passed in 2019 by the Nebraska Legislature. Green's primary contention was his belief that the Subject Property should have been assessed using an income approach rather than a mass appraisal sales comparison approach.

In relation to the assessment methodology, Green disputed the valuation of all grassland acres in Market Area 2 at \$385 per acre regardless of LCG, when the law requires grassland LCGs to be categorized based upon forage yields.<sup>42</sup> Green asserted the forage yield of the Subject Property was not considered in the assessment. Green contended NRCS data regarding forage yields of the various soil types for Market Area 2 demonstrated that the assessments for grassland should have varied significantly between the LCGs. He emphasized the contrast between the forage yields per the NRCS and the across-the-board assessment of \$385 per acre.<sup>43</sup> Green asserted this resulted in a regressive tax because the lower yielding acres were assessed at the same values as the higher yielding acres.

Green alleged the assessments were based on the legal requirements before the enactment of LB372; that the value of the dryland acres of the Subject Property was based upon dryland yields per PAD's dryland criteria. Green asserted there was no correlation between dryland yields and grassland yields in Market Area 2. Green

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<sup>39</sup> See Exhibit 3:101, Exhibit 3:102-105, Exhibit 3:106-107, Exhibit 3:108-124, and Exhibit 3:125-127.

<sup>40</sup> Exhibit 2:7, PAD Adoption of NRCS Range Production Ratings.

<sup>41</sup> Neb. Laws LB 372 (2019), codified at Neb. Rev. Stat. § 77-1363 (2022 Cum. Supp.).

<sup>42</sup> 350 NAC Ch. 14, Sec. 004.08H(9)-(16).

<sup>43</sup> Exhibit 2:18.



argued that LB 372 prevented the assessment of the Subject Property where dryland yields were used to set grassland values.

Additionally, Green emphasized the assessment methodology was flawed because it relied upon a mass appraisal model that included an insufficiently low number of grassland sales.<sup>44</sup> He argued the sales did not support the assessment of all the grassland acres of Market Area 2 at \$385 per acre. Green cited to appraisal literature stating, “[a]s a guideline, a stratum, submarket, or neighborhood in which fewer than 15 sales normally occur is too small,”<sup>45</sup> and, a report stating, “[s]ample sizes for any given stratum of less than 5 are considered absolutely unreliable...”<sup>46</sup>

Green asserted the Assessor’s use of five sales to determine the value of the Subject Property<sup>47</sup> was an insufficient number of sales, and an unreliable method to determine the value of the Subject Property.

Regarding the sales used by the Assessor, Green pointed to the PRFs indicating that two of the sales involved Conservation Reserve Program (CRP) acres, which he argued were not comparable to the Subject Property.<sup>48</sup> He asserted the LCG distribution of grassland acres of the comparables was also problematic. See 2:35 and 3:81 and 3:101-127.

In support of his contention that the Subject Property should be assessed and valued using an income approach, Green relied upon

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<sup>44</sup> See, Reports & Opinions of the Property Tax Administrator, Morrill County, April 2020, pages 26-27.

<sup>45</sup> International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 141 (2011).

<sup>46</sup> See, Exhibit 2:33.

<sup>47</sup> Exhibit 3:101-127.

<sup>48</sup> Exhibit 3:101 and Exhibit 3:106-107.

NRCS yield data for income, an estimate of expenses based upon two fee appraisals, and a capitalization rate based upon market data.<sup>49</sup>

Green's income approach data was not based upon typical market income and expenses.<sup>50</sup> His income calculation for the Subject Property was based on PAD Range Production data by LCG using NRCS average yield data.<sup>51</sup> Green's expenses were estimated as \$1.10 per acre plus a 10% management fee based on two fee appraisals. His capitalization rate of 3.95% was based in part on assessed values and were loaded with the effective tax rate. His income approach conclusion results in a value of \$108,595 for the Subject Property.

## **B. Analysis**

Of the 472.38 acres of the Subject Property, 275.49 acres of 4G and 193.05 acres of 4G1 constitute 99% of the parcel.<sup>52</sup> Of the five sales that could have been used by the Assessor, two of them had a significant amount of CRP acres, making them less comparable to the Subject Property.<sup>53</sup> The other three sales had a higher degree of comparability to the Subject Property.<sup>54</sup> In one sale, 69% of the acres of the sale were 4G1,<sup>55</sup> and in another 81% of the sale acres were 4G or 4G1 acres.<sup>56</sup> The most comparable to the Subject Property was a sale of 492.51 acres involving 427.11 acres of 4G1, or 87% of the total acres.<sup>57</sup> Including all acres and all LCGs, these three sales had average per acre market prices of \$542, \$558, and \$497 respectively. As

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<sup>49</sup> Exhibit 2:37.

<sup>50</sup> "Mass appraisal applications of the income approach begin with collecting and processing income and expense data. (These data should be expressed on an appropriate per-unit basis, such as per square foot or per apartment unit.) Appraisers should then compute normal or typical gross incomes, vacancy rates, net incomes, and expense ratios for various homogeneous strata of properties. These figures can be used to judge the reasonableness of reported data for individual parcels and to estimate income and expense figures for parcels with unreported data." International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017).

<sup>51</sup> Exhibit 2:7.

<sup>52</sup> Exhibit 3:3.

<sup>53</sup> See, Exhibit 3:101 and Exhibit 3:106-107.

<sup>54</sup> See, Exhibit 3:102-105, Exhibit 3:108-124, and Exhibit 3:125-127.

<sup>55</sup> Exhibit 3:125-127.

<sup>56</sup> Exhibit 3:108-124.

<sup>57</sup> Exhibit 3:102-105.

agricultural land is assessed at 75% of market value,<sup>58</sup> the sales would have indicated assessed values of \$407, \$418, and \$373. All three of these sales were in Market Area 2, with all grassland acres assessed at \$385, the same as the Subject Property. Based upon the evidence in the record, we find that it was not unreasonable for the Assessor to rely on these sales to determine a per acre value of all grassland in Market Area 2, regardless of LCG, at \$385 per acre. We also find that it was not arbitrary or unreasonable for the County Board to do the same.

The Assessor was not required by law to use an income approach, as Green urges.<sup>59</sup> Green's assertion that appraisal standards required the Assessor to use an income approach is also mistaken. Further, the Assessor is exempted from the requirements of the Real Property Appraiser Act.<sup>60</sup>

Green's contention that the 4G LCG category is too broad (from 500 pounds per acre, per year, to 1,500 pounds per acre, per year)<sup>61</sup> may be a legitimate public policy concern, we find its application in this appeal does not amount to a violation of the uniformity requirements of the Nebraska Constitution.<sup>62</sup> All grassland acres in Market Area 2 were assessed at the same value.

Green's income approach data was not based on typical market income and typical market expenses. Instead of indicating typical income, his calculation determined average yields. Green testified his income approach expenses were estimates based on expense data derived from appraisals of two properties other than the Subject Property.<sup>63</sup> His capitalization rate was based in part on the assessed values that he asserted were flawed when criticizing the Assessor's sales approach methodology. His income approach calculation,

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<sup>58</sup> Neb. Rev. Stat. § 77-201(2) (2022 Cum. Supp.).

<sup>59</sup> Neb. Rev. Stat. § 77-112 (2022 Cum. Supp.).

<sup>60</sup> Neb. Rev. Stat. § 76-2221(1) (2022 Cum. Supp.).

<sup>61</sup> Exhibit 2:7.

<sup>62</sup> Neb. Const. Art. VIII, Section 1.

<sup>63</sup> There was no evidence whether these appraisals resulted in appraisal reports, and no appraisal reports were offered or received in evidence.

therefore, was not based upon what was typical in the market for income or for expenses. Therefore, Green has not presented evidence that his methodology is a professionally accepted mass appraisal method. We find that Green's opinion of value derived from his income approach is not clear and convincing evidence that the County Board determination was arbitrary or unreasonable.

### **VIII. CONCLUSIONS OF LAW**

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 the reasons set forth above, the determination of the County Board should be affirmed.

### **IX. ORDER**

IT IS ORDERED THAT:

1. The decision of the Morrill County Board of Equalization determining the value of the Subject Property for tax year 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is \$180,775.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Morrill County Treasurer and the Morrill 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.
6. This Decision and Order shall only be applicable to tax year 2020.

7. This Decision and Order is effective for purposes of appeal on September 13, 2023.<sup>64</sup>

Signed and Sealed: September 13, 2023

SEAL



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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

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<sup>64</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.