

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

Steven C. Groeteke,  
Appellant,

v.

Sherman County Board of Equalization,  
Appellee.

Case No: 11A 002

Decision and Order Affirming the  
Determination of the Sherman County  
Board of Equalization

**For the Appellant:**

Steven C. Groeteke,  
Pro Se.

**For the Appellee:**

Glenn Clark,  
Deputy Sherman County Attorney.

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

**I. THE SUBJECT PROPERTY**

The Subject Property is an improved 170 acre parcel located in Sherman County, Nebraska. The legal description of the Subject Property is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 2, page 3 through 6.

**II. PROCEDURAL HISTORY**

The Sherman County Assessor determined that the assessed value of the Subject Property was \$315,070 for tax year 2011. Steven C. Groeteke (the Taxpayer) protested this assessment to the Sherman County Board of Equalization (the County Board) and requested an assessed valuation of \$240,235. The Sherman County Board determined that the assessed value for tax year 2011 was \$280,645.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on October 25, 2013.

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

### III. STANDARD OF REVIEW

The Commission's review of the determination of the 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>

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>7</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>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

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<sup>2</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). "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>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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

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

cross appeal.”<sup>9</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>10</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>11</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>12</sup> The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>13</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>14</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>15</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>16</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 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.

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<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>10</sup> Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>12</sup> *Id.*

<sup>13</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>14</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>15</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

<sup>16</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.<sup>17</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>18</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>19</sup>

Neb. Rev. Stat. §77-1359(3) states:

Farm home site means not more than one acre of land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes, and such improvements shall include utility connections, water and sewer systems, and improved access to a public road.

350 Neb. Admin., ch. 10 §001.02 states:

Farm home site shall mean one acre or less of land that is contiguous to a farm site and upon which is located a residence and necessary improvements needed for residential purposes. This land shall not be classified or assessed as agricultural or horticultural land.

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

The Taxpayer asserted that the Subject Property does not meet the statutory requirements to be defined as “farm home site” because it does not contain a residence.<sup>20</sup> The Taxpayer asserted that the definition of “single family residence” as contained in Nebraska Real Property regulations is applicable to an appropriate interpretation of the terms “home site” and “farm

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<sup>17</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

<sup>18</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>19</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-1359(3) and (4).

home site.”<sup>21</sup> He asserted that the predominant purpose test, established to determine whether an improvement should be classified as “single family residential,”<sup>22</sup> is instructive in the determination of whether the improvements on the Subject Property should be classified as a residence, and, therefore, home site or farm home site as used in Nebraska Statutes and Nebraska Real Property regulations.<sup>23</sup>

When applying the predominant purpose test, the Taxpayer asserted that a majority of the improvement located on the Subject Property is dedicated to agricultural use and the predominant use of the Subject Property is agricultural rather than residential. He stated that the original building was 36’ x 24’, and in 2009, the Taxpayer constructed an addition that is 24’ x 24’. The 2009 addition included a 24’ x 24’ garage and a 12’ x12’ living area.

In support of his assertion that the Subject Property does not contain a residence for farm home site purposes, the Taxpayer referenced an agreement between himself and Sherman County.<sup>24</sup> The Taxpayer asserted that the agreement is best interpreted as an agreement that the planned improvement was not a residence.<sup>25</sup> The Taxpayer asserted that because of the agreement, the County Board is estopped from asserting that the improvements located on the Subject Property are in fact a residence under Nebraska Statutes governing the ad valorem taxation of real property.

The Taxpayer asserted that because Nebraska Department of Roads requires roads leading to a residence to be “improved all-weather roads,” and because the road leading to the Subject Property is only a minimum maintenance road, the improvements on the Subject Property should not be classified as a residence for ad valorem tax purposes. He interprets the agreement with the County as stating that there is not a residence on the Subject Property, but if there ever was a residence, then the Taxpayer would be responsible to pay the costs of converting the minimum maintenance road to an “improved all weather road.”<sup>26</sup>

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<sup>21</sup> See, 350 Neb. Admin. Code, ch. 10 §001.05A (definition of single family residence); See also, 350 Neb. Admin., ch. 10 §001.02 and 001.02A.

<sup>22</sup> See, 350 Neb. Admin., ch. 10 §001.05A.

<sup>23</sup> See, Neb. Rev. Stat. §77-1359(3) and 350 Neb. Admin., ch. 10 §001.02A.

<sup>24</sup> See, E2:7-8 (Taxpayer and County contract).

<sup>25</sup> See, E2:7-8.

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

The Taxpayer asserted that under Nebraska Department of Roads directives, and Nebraska Statutes,<sup>27</sup> if the Subject Property did contain a residence there would be a violation of law, and that under the agreement he would be liable to pay for the improvement of the minimum maintenance road. He asserted that because no actions had been undertaken to force the Taxpayer to improve the road it is unreasonable to conclude that the improvements on the Subject Property constitute a residence for ad valorem tax purposes.

The Taxpayer's overriding assertion is that the term "residence" should be interpreted the same for all statutes, sections of the Department of Revenue's rules and regulations, his agreement with the Sherman County, and the Nebraska Department of Roads' directives.

### **C. Analysis**

#### **1. Farm Home Site**

In order to be classified as farm home site under the Subject Property must have "an inhabitable residence and improvements used for residential purposes[.]"<sup>28</sup> The statute indicates that the necessary improvements for residential purposes include "utility connections, water and sewer systems, and improved access to a public road[.]"<sup>29</sup> The statute does not define "residence."<sup>30</sup> Nothing in the statute requires that the residence or improvements are being actively used as a residence, but instead that the Subject Property has located on it an inhabitable residence and necessary improvements to allow the use of the residence.<sup>31</sup>

The Taxpayer asserted that the improvements on the Subject Property should not be defined as a residence because people infrequently occupy the dwelling. This assertion may be characterized as an assertion that in order to be a residence, the improvement must also function as someone's domicile. A domicile is defined generally as, "That place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning."<sup>32</sup>

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<sup>27</sup> See, Neb. Rev. Stat. §39-2103(8).

<sup>28</sup> Neb. Rev. Stat. §77-1359(3) (Reissue 2009).

<sup>29</sup> Neb. Rev. Stat. §77-1359(3) (Reissue 2009).

<sup>30</sup> Neb. Rev. Stat. §77-1359(3) (Reissue 2009).

<sup>31</sup> Neb. Rev. Stat. §77-1359(3) (Reissue 2009).

<sup>32</sup> *Black's Law Dictionary*, Sixth Edition, West Publishing, pg. 484 (1990).

If the Commission were to adopt the predominant purpose test as suggested by the Taxpayer it would essentially add an additional element to the statutory definition of farm home site. Instead of only requiring a residence to be present on the Subject Property, the statute would then require that the inhabitable residence also be predominantly used for residential purposes. If the predominant purpose test were adopted all dwellings which were unoccupied for a period of time would lose their status as a residences. When determining the actual value of property the highest and best use of a property, and not the current use, is a driving factor. If the predominant purpose test were adopted for purposes of ad valorem taxation, properties which remained vacant as a result of pending sale, foreclosure, or use as a vacation home would no longer be classified as residences. This is inconsistent with Nebraska Statutes and general appraisal principles, and would fundamentally change the definition of farm home site.

The *Glossary for Property Appraisal and Assessment* defines a residence as, “A dwelling place, whether or not it constitutes a domicile.”<sup>33</sup> This definition allows for an improvement to be classified as a residence even though there is not someone consistently living within the improvement, and without consideration to the total area of the improvement dedicated to residential use. This definition does not add any new requirements to the statutory definition of farm home site.<sup>34</sup> This reasonable definition of “residence” indicates that the County Board was not arbitrary or unreasonable.

The burden on the Taxpayer is to prove by clear and convincing evidence that the County Board was unreasonable or arbitrary.<sup>35</sup> A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds.<sup>36</sup> “A decision is arbitrary when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion.”<sup>37</sup> The Taxpayer does not meet the burden by showing a mere difference of opinion.<sup>38</sup>

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<sup>33</sup> International Association of Assessing Officials, *Glossary for Property Appraisal and Assessment*, pg 121 (1997). Other definitions of residence are available for the Commission to consider. Black’s Law dictionary provides several definitions of residence including, “a dwelling house[.]” *Black’s Law Dictionary*, Sixth Edition, West Publishing, pg 1309 (1990).

<sup>34</sup> See, Neb. Rev. Stat. §77-1359(3) (Reissue 2009).

<sup>35</sup> *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 283-284, 276 N.W.2d 802, 811 (2008) (quoting *Ideal Basic Indus v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

<sup>36</sup> See, *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 401-02, 603 N.W.2d 447, 455-56 (1999).

<sup>37</sup> *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000) (citations omitted).

<sup>38</sup> See, *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008) (quoting *Bumgarner v. County of Valley*, 208 Neb. 361, 366, N.W.2d 307, 310 (1981)).

The Taxpayer supplied an alternative definition of residence. However, the Taxpayer must prove through clear and convincing evidence that the County Board's determination was unreasonable and arbitrary.<sup>39</sup> The preferred definition of residence as used for assessment purposes supports the County Board's determination.<sup>40</sup> The inclusion of this definition in a generally accepted appraisal glossary is strong evidence that reasonable minds would arrive at the same conclusion as the County Board, and that such opinion is grounded in the facts and build on a firm basis.

The Commission finds that there is a residence located on the Subject Property. The Taxpayer's agreement with the County clearly states that it is agreeing to allow the Taxpayer to construct "a farm office and a dwelling."<sup>41</sup> This agreement was signed in 2003.<sup>42</sup> The Taxpayer testified that later, in 2009, new additions to the improvements were made. The tax year at issue is 2011.<sup>43</sup> Even if the Taxpayer's assertions are correct that there was not a residence located on the Subject Property in 2003 when the agreement was signed, his own testimony indicates that he made changes to the improvements since that time.

## **2. Improved Access**

The Taxpayer asserted that during some periods of time each year the public road leading to the Subject Property is impassable. During these periods he is required to transverse across his neighbor's property by use of a four wheel drive vehicle to reach the residence. The Taxpayer asserted that because of this, the access from the public road to the residence does not meet the definition of improved access necessary to establish a farm home site.<sup>44</sup>

Nebraska Statutes require improved access to a public road in order for a parcel to be considered farm home site.<sup>45</sup> The term "improved access" is not defined by current Nebraska law. However, the Taxpayer does not assert that there is no improved access to the public road, but that the public road is impassable at some time making the improved access to the public road useless. There is no evidence to indicate that the public road is not impassable during

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<sup>39</sup> See, *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 283-284, 276 N.W.2d 802, 811 (2008) (quoting *Ideal Basic Indus v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

<sup>40</sup> See, International Association of Assessing Officials, *Glossary for Property Appraisal and Assessment*, pg 121 (1997).

<sup>41</sup> E2:8.

<sup>42</sup> See, E2:8.

<sup>43</sup> See, Case File.

<sup>44</sup> See, Neb. Rev. Stat. §77-1359(3) (Reissue 2009).

<sup>45</sup> See, *Id.*

certain times of the year, or that this requires the Taxpayer to access the Subject Property through less conventional routes instead of using his improved access, however, improved access does exist. The level of maintenance of the public road may affect the value of the parcel, but it is undisputed that improved access to a public road exists.

Additionally, while the level of maintenance of the public road may affect the value of the Subject Property, the Taxpayer never made this assertion, nor did he provide any sales or other data to support the assertion. Even if the level of maintenance of the public road was affecting the actual value of the Subject Property, this impact would need to be meaningfully quantified in order to provide clear and convincing evidence that the County Board's determination was unreasonable or arbitrary. All such evidence is missing in this case.

### **3. Taxpayer's Agreement with Sherman County**

The Taxpayer asserted that Nebraska Department of Roads' directives require that roads leading to a residence be reclassified and improved with an all-weather road. The Taxpayer additionally asserted that his agreement with the County would require him to pay for the improvement of the road if he had constructed a residence on the Subject Property.<sup>46</sup> The Taxpayer reasoned that the improvements on the Subject Property could not be classified as a residence, because the County would have either improved the public road, or required that he improve the public road. He further asserted that the agreement asserted that the improvements on the Subject Property do not constitute a residence, and that the County is, therefore, estopped from arguing anything to the contrary for tax purposes.

As noted above, it is possible for the term "residence" to have multiple meanings. It is also possible that the definition of residence as used in Nebraska Department of Roads' directives and in the agreement between Sherman County and the Taxpayer is significantly different than the definition of residence as used in the statutory definition of farm home site. The Commission has no authority to interpret the meaning of the agreement between the Taxpayer and the County.<sup>47</sup> Even if the definition in the directives, agreement, and statute were identical, the

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<sup>46</sup> See, E2:7-8.

<sup>47</sup> See generally, *Falotico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492 (2001).

Commission does not have equitable authority.<sup>48</sup> Estoppel is an equitable argument that the Commission has no authority to apply.<sup>49</sup>

Additionally, just because a party has failed to enforce the provisions of an agreement does not mean that the agreement has not been violated. Parties to agreements may determine not to enforce provisions of an agreement which they possess a legal right to enforce. There was no evidence presented to the Commission indicating the specific improvements that the County agreed to allow the Taxpayer to construct. There was additionally no evidence of whether the construction in 2009 was part of these considered improvements or not.

## 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 Taxpayer is denied.

## VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Sherman County Board of Equalization determining the value of the Subject Property for tax year 2011 is affirmed.<sup>50</sup>
2. The assessed value of the Subject Property for tax year 2011 is \$280,645.

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<sup>48</sup> See, *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Com'n*, 260 Neb. 905, 921, 620 N.W.2d 90,102 (2000). See also, *In re 2007 Administration of Appropriations of the waters of the Niobrara River. Jack Bond and Joe McClaren Ranch v. Nebraska Public Power District and Department of Natural Resources*, 283 Neb. 629, 820 N.W.2d 44 (2012) (quoting *Stoneman v. United Neb. Bank*, 254 Neb. 477, 492, 577 N.W.2d 271, 281 (1998)).

<sup>49</sup> *In re 2007 Administration of Appropriations of the waters of the Niobrara River. Jack Bond and Joe McClaren Ranch v. Nebraska Public Power District and Department of Natural Resources*, 283 Neb. 629, 820 N.W.2d 44 (2012) (quoting *Stoneman v. United Neb. Bank*, 254 Neb. 477, 492, 577 N.W.2d 271, 281 (1998)).

<sup>50</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.

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sherman County Treasurer and the Sherman County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
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 2011.
7. This Decision and Order is effective for purposes of appeal on July 2, 2014.

Signed and Sealed: July 2, 2014

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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.