NEBRASKA ADMINISTRATIVE CODE

TITLE 442, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 5

TAX EQUALIZATION AND REVIEW COMMISSION

RULES OF PRACTICE AND PROCEDURE FOR HEARINGS

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NEBRASKA ADMINISTRATIVE CODE

TITLE 442 — TAX EQUALIZATION AND REVIEW COMMISSION

CHAPTER 5 — RULES OF PRACTICE AND PROCEDURE FOR HEARINGS

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Title 442 — Tax Equalization and Review Commission Chapter 5

CHAPTER 5 RULES OF PRACTICE AND PROCEDURE FOR HEARINGS

001 Commencement of the ~~Appeal~~Appeal/Petition Process.

001.01 Appeal Form Required. A signed Appeal Form with a copy of the decision, action, order or determination appealed from or other information that documents the decision, action, order, or determination must be filed for each decision, action, order or determination appealed.

001.~~02~~01A ~~Real Property Valuation or Taxation Appeals~~ Other Information that Documents the Decision, Action, Order, or Determination Appealed From. Other information may include, but is not limited to, one of the following:

001.01A1 A copy of minutes of Board of Equalization Meeting or other hearing or meeting which records action, order, decision, or determination complained of;

001.01A2 A transcript of Board of Equalization Meeting or other hearing or meeting which records action, order, decision, or determination complained of;

001.01A3 Written notice which records the action, order, decision, or determination complained of;

001.01A4 If notification of the action, order, decision, or determination complained of is not required to be provided to a party with standing to appeal to the Commission, the party may offer a written statement setting forth the decision, action, order, or determination appealed from, the person or body making the decision, action, order or determination and the date the decision, action, order or determination was made. Any party offering a written statement setting forth the decision, action, order, or determination shall as soon as is practicable present

documentation which shows the decision, action, order, or determination appealed from.

001.01A5 A Form 422, or other notice completed by the county clerk or county assessor setting forth the action taken by the county board of equalization.

001.02 Other Appeal Form Information. An appeal form must contain the following information:

001.02A Name, Address, and Daytime Telephone Number for the Appellant. (where the Appellant or Legal Counsel for the Appellant may be reached by the Commission).

001.02B Reasons for the appeal.

001.03 Appeal/Petition Forms. An Appeal Form or Petition is required for each parcel of real property for which an ~~appeal~~appeal/petition is brought. See Chapter 2 §001.3~~5~~4 of these rules for a definition of parcel.

001.0~~2~~3A Appeal Form~~: Availability.~~ Appeal Forms as approved by the Commission will be made available at the county clerk's office and/or assessor's office for each county, and the Commission's office in Lincoln, Nebraska.

001.03B Form of a Petition A petition is a pleading and subject to the rules concerning the form and content of pleadings. See Chapter 4, §001.02 of these rules. A petition must identify the property to which it pertains.

001.0~~3~~4 Appeal/Petition Form, Signature Required. An Appeal Form or Petition must be signed by a party, legal counsel for a party, or a person authorized by law or these rules. See Chapter 2 of these rules for a definition of party.

001.0~~4~~5 Categories of Persons Who May Sign an Appeal/Petition. Persons who are parties and may sign an appeal/petition can be identified as follows:

001.0~~4~~5A Property Owner. A property owner may sign an

appeal/petition concerning that owner's property. Neb. Rev. Stat. §§ 77-202.04, 77-1345.01(5), 77-1507.01, 77-1502, 77-1504 and 77-1510

001.0~~4~~5B Taxpayers. Any taxpayer in a county may file an appeal of a final decision of that county's board of equalization reducing the taxable value of the property of another taxpayer.

EXPLANATORY STATEMENT

The Nebraska Supreme Court has held that "Any taxpayer may appeal from an order of a county board of equalization sustaining another taxpayer's complaint that his property has been assessed too high." *Ryan v. Douglas Cty. Bd. of Equal.*, 199 Neb. 291, 294, 258 N.W.2d 626, 627 (1977).

001.0~~4~~5C Natural Person. If a party is a natural person, that person or the "guardian" or "conservator" or "next friend" (as those terms are defined in Nebraska State Law and Nebraska Supreme Court decisions) of that person may sign a petition/appeal.

001.05C1 Family Member If the medical condition of the appellant/petitioner (due to age, accident or illness) prevents the appellant/petitioner from signing a member of the appellant's/petitioner's family who has a power of attorney from the appellant/petitioner may sign . For purposes of this subsection "member of the family" shall mean parents and children, grandparents and grandchildren of every degree, brothers and sisters, uncles, aunts, nieces and nephews.

001.05C2 Documentation of Medical Condition. In order to comply with this subsection of these rules an appellant/petitioner who cannot sign due to a medical condition must additionally provide the Commission documentation of the condition, such as a written statement signed by the appellant's/petitioner's doctor, declaring that a medical condition prevents the appellant/petitioner from signing.

001.0~~4~~5D Legal Entity. If a party is a corporation, limited liability

company, partnership, limited partnership, or other legal entity, association, union or organization, the entity or organization may sign an appeal/petition through a director, an officer, a full-time salaried employee, member or manager of a limited liability company, or other individual authorized by law or the governing documents of the entity, association or organization.

001.0~~4~~5E Trust. If a party is a trustee that trustee may sign an appeal/petition.

001.0~~4~~5F Elected Officials, Political Subdivisions, Governmental Agencies and Officers. If a party is an elected official, director, officer or other official of a political subdivision or government agency the elected official, director, officer, or other official may sign an appeal/petition if authorized by law, or applicable rules, practices or procedures.

001.0~~4~~5G Assessor. An Assessor may sign an appeal in his or her official capacity. Neb. Rev. Stat. §77-5007.01.

001.0~~4~~5H Other Persons. Any other person who is a party including but not limited to a successor in interest, lessee, licencee, any bankruptcy trustee, receiver, personal representative or any other person appointed by a Nebraska Court or a Court of the United States, ~~that person~~ may sig~~h~~n an appeal/petition. See Chapter 2, of these rules for definition of party.

001.0~~4~~5I Legal Counsel. Legal Counsel for a party may sign an appeal/petition.

~~001.04J Signing an Appeal/Petition Prohibited. No person, other than a party, legal counsel for a party, or a person authorized by law or by these rules may sign an appeal/petition.~~

~~001.04K~~06 Class Actions. No person may sign an appeal/petition on behalf of a class or subclass of property owners.

001.0~~5~~7 Filing an Appeal or Petition

001.0~~5~~7A Appeals/Petitions Delivered in Person. Appeals with the required documentation or Petitions and filing fee can be

delivered to the Commission at its office in the State Office Building in the Southeast corner of the ground floor by 5:00 p.m. each business day. The State Office Building is at 301 Centennial Mall South, one block north of the State Capitol Building, in Lincoln, Nebraska. See Time for Filing below.

001.0~~5~~7B Appeals/Petitions Filed by Mail. An Appeal/Petition is deemed to have been filed when the filing fee, the signed Appeal Form (see Chapter 2), with required documentation or Petition are mailed to the Commission at its office in Lincoln, Nebraska, by United States Mail, postage prepaid. See Time for Filing below and required documentation in this chapter at section 00~~2~~1.0~~2~~1A.

001.0~~5~~7C Appeals/Petitions Filed by Facsimile Transmission Prohibited. Facsimile copies of an appeal/petition will not be accepted for filing by the Commission.

001.0~~6~~8 Time for Filing an Appeal or Petition~~.~~. Times for filing ~~is~~appeals are governed by statute~~ and the date a decision, action, order or determination becomes final~~.

001.0~~6~~8A 77-1502 Appeals of decisions made pursuant to Neb. Rev. Stat. §77-1502 must be filed on or before August 24 unless the protest hearing deadline has been extended. The protest hearing deadline can be extended by a County Board of Equalization in a County having a population of more than 100,000 as of the last federal decennial census. If the deadline for hearing protests has been extended an appeal from a decision on the protest must be filed on or before September 10. Neb. Rev. Stat. 77-1510

001.0~~6~~8B 77-1504 Appeals of decisions made pursuant to Neb. Rev. Stat. §77-1504 must be filed on or before October 15, unless the protest hearing deadline has been extended. The protest hearing deadline can be extended by a County Board of Equalization in a County having a population of more than 100,000 as of the last federal decennial census. If the deadline for hearing protests has been extended an appeal from a decision on the protest must be filed on or before

October 30. Neb. Rev. Stat. 77-1504

001.0~~6~~8C Other Appeals. All appeals except those for which a specific appeal date has been specified by statute must be filed within thirty days of the date of the decision, action, order, or determination appealed from.

001.0~~6~~8D Petitions. ~~The time~~Times for filing Petitions ~~is~~are governed by statute.

001.0~~6~~8D1 Failure of Notice Petitions Petitions pursuant to Neb. Rev. Stat. §77-202.04(2) or 77-1507.01 must be filed on or before December 31 of the applicable year.

001.0~~6~~8D2 County Petition. Petitions pursuant to Neb. Rev. Stat. §77-1504.01 must be filed on or before July 26th of each year. (See Chapter 9).

001.0~~6~~8E Weekend or Holiday. If a filing deadline is on a weekend or state or federally recognized holiday, the next business day becomes the filing deadline. See, Neb. Rev. Stat. §49-1203.

001.0~~7~~9 Payment of Filing Fee. The filing fee must accompany the appeal or petition. Any appeal or petition which is presented for filing without the filing fee will not be accepted for filing by the Commission and is not deemed perfected.

001.0~~7~~9A Method of Payment. The filing fee shall be paid in United States funds. Payment shall be made by cash, check, money order, certified check, or other guaranteed funds. Cash shall only be accepted when personally presented at the Office of the Commission. No filing fee paid in cash which is mailed to the Commission shall be accepted. The Commission accepts no liability for cash sent through the United States mail, or any other non-personal means of delivery of cash.

001.0~~7~~9B Dishonored Check. If the filing fee is paid in the form of a check, and the check is dishonored, then the appeal or petition shall be deemed to be an appeal or petition for which no fee has been received.

001.0~~7~~9B1 Returned Check Fee. Any party making payment of a filing fee by check which is dishonored and returned shall be responsible for a returned check or returned automated clearing house debit transaction fee as determined by the State Treasurer.

001.0~~7~~9B2 Notice of Dishonor. The person proposing filing of the appeal or petition shall be notified of the dishonor if the filing deadline has not expired. The person filing the appeal or petition shall have no right to perfect the appeal or petition by paying the filing fee after the filing deadline has passed.

001.0~~7~~9B3 Redemption of Payment. If the deadline for filing the appeal or petition has not yet passed at the time of dishonor, the person filing the appeal or petition shall be allowed an opportunity to redeem the check. The opportunity to redeem the dishonored check shall, under no circumstances, exceed seven (7) calendar days from the date the State Treasurer receives notice of dishonor of the check, or until the filing deadline has passed, whichever is less. Redemption of a check shall include payment of any returned check or returned automated clearing house debit transaction fee.

001.10 Receipt for Funds. The Commission shall cause a receipt to be issued for the amount of the filing fee. The receipt may be incorporated into that part of the Appeal Form returned to the appellant as acknowledgment of the filing of the appeal. A receipt shall be prepared and delivered for the filing fee paid for filing a petition. Two signatures of Commission staff must appear on the receipt for any funds received in cash.

001.~~08~~11 Refund of Filing Fee.

001.~~08A~~11A Unimproved Parcels A party bringing appeals regarding the valuation or exemption of multiple unimproved parcels, may request that they be consolidated and that filing fees paid be refunded so that only a single filing fee is retained by the Commission for the consolidated appeals. A request for consolidation and refund of filing fees for appeals pertaining to

unimproved parcels ~~shall~~may only be granted under the following conditions:

001.~~08A1~~11A1 All issues ~~shall be~~are identical for all unimproved parcels; and

001.~~08A2~~11A2 All unimproved parcels ~~shall be~~are contiguous; and

001.~~08A3~~11A3 All unimproved parcels ~~shall be~~are located in the same market area, neighborhood, or other defined homogeneous area. ~~If unimproved parcels are residential (whether urban, suburban or rural) or commercial those parcels shall be located in the same block.~~

001.~~08A4~~11A4 All unimproved parcels ~~must be~~are of the same class (agricultural, commercial, or residential); and,

001.~~08A5~~11A5 All unimproved parcels ~~must be~~are of the same subclass.

~~001.08A6 No hearing shall be held on the request for consolidation. The Chairperson shall consider the request in light of the requirements set forth above, the number of cases pending before the Commission, and any other matters the Chairperson may deem appropriate in determining the disposition of the request. Neb. Rev. Stat. §77-5015.~~

001.~~8B~~11B Improved Parcels Refund Prohibited A request that multiple filing fees paid for multiple improved parcels be refunded shall not be granted.

~~001.09~~002 Appeals or Petitions Not Properly Perfected. ~~The Commission lacks jurisdiction over appeals or petitions which are filed out of time or which otherwise fail to comply with Neb. Rev. Stat. §77-5013. The Commission shall therefore return all submitted documentation and any filing fee(s) submitted with appeals which are not properly perfected. The Commission shall retain copies of all documents,~~

~~including the filing fee and envelope, returned to the person filing the documents.~~

~~001.09A If the person filing the documents returns the filing fee and requests in writing that an appeal which is not properly perfected be heard by the Commission,~~If the Commission ~~shall hold a Show Cause Hearing on the issue of jurisdiction.~~

~~001.09A1 Failure to Resubmit Filing Fee. The Commission shall, without a hearing, deny all requests~~staff believes that an appeal or petition ~~which is not~~ may be unperfected, legal counsel for the Commission will by letter advise the appellant or petitioner that he or she may request a hearing to determine whether the appeal or petition is perfected or withdraw the appeal or petition. If a hearing is not requested within 30 days of the date of the letter or the appeal or petition is withdrawn the Commission staff will return all documents delivered to the Commission with any filing fee paid and, retain a copy of all returned documents. If a hearing is requested all documents will be filed and the filing fee will be retained.

003 Notice in Lieu of Summons. For each properly perfected ~~be heard by the Commission, if the required filing fee is not submitted for each parcel.~~

~~001.09B The Commission shall not refund the filing fee of any appeal or petition for which a Show Cause Hearing is held.~~

~~002 Contents of the Appeal.~~

~~002.01 The appeal form~~appeal/petition the Chairperson of the Commission shall ~~be filed with the following information:~~

~~002.01A Name, Address, and Daytime Telephone Number for the Appellant. (where the Appellant or Legal Counsel for the Appellant may be reached by the Commission).~~

~~002.01B Name, Address, and Daytime Telephone Number for the party whose action, order, determination, or decision is being~~

~~appealed (e.g. _____County Board of Equalization) and if an individual their title (e.g. Property Tax Administrator).~~

~~002.01C Reasons for the appeal.~~

~~002.01D Documentation of the decision, action, order or determination appealed from.~~

~~002.02 Documentation of the Decision, Action, Order, or Determination Appealed From.~~issue a "Notice in Lieu of Summons" addressed to each appellee or respondent A copy of the appeal form and/or petition shall accompany the Notice in Lieu of Summons. Both documents shall be served on: ~~decision, action, order, or determination appealed from or any other documentation which shows the decision, order, determination, or action appealed from must be filed with an appeal. Documentation may include, but is not limited to, one of the following:~~

~~002.02A A copy of minutes of Board of Equalization Meeting or other hearing or meeting which records action, order, decision, or determination complained of;~~

~~002.02B A transcript of Board of Equalization Meeting or other hearing or meeting which records action, order, decision, or determination complained of;~~

~~002.02C Written notice which records the action, order, decision, or determination complained of;~~

~~002.02D If notification of the action, order, decision, or determination complained of is not required to be provided to a party with standing to appeal to the Commission, the party may offer a written statement setting forth the decision, action, order, or determination appealed from, the person or body making the decision, action, order or determination and the date the decision, action, order or determination was made. Any party offering a written statement setting forth the decision, action, order, or determination shall as soon as is practicable present documentation which shows the decision, action, order, or determination appealed from.~~

~~002.02E A Form 422, or other notice completed by the county clerk or county assessor setting forth the action taken by the county board of equalization.~~

~~003~~

003.01 Each appellee or respondent or their legal counsel, and when the Tax Commissioner has a statutory right to intervene on the Tax Commissioner.

003.02 The Notice in Lieu of Summon may be served in person, by certified U.S. Mail with or without a return receipt, by fax, by e-mail, or any other method resulting in actual notice of the appeal.

004 Answering the Petition/Appeal.

004.01 Answer with 30 days. An appellee/respondent shall have thirty (30) days from date of service of the Notice in Lieu of Summons issued by the Commission within which to answer. The answer shall be deemed filed when the envelope which contains the Answer to the petition or appeal bears a postmark (see Chapter 2, §001.4~~2~~0) establishing that the envelope was mailed not later than thirty (30) days from receipt of the Notice in Lieu of Summons issued by the Commission.

004.02 Service of Answer. The appellee/respondent shall serve a copy of the answer on the appellant/petitioner, and any other parties to the appeal. The appellee/respondent may serve a copy of the answer on the Commission, appellant/petitioner, or other parties by facsimile or telecopier. If served by facsimile, the original shall be placed in the United States mail, postage prepaid, within twenty-four (24) hours of service by facsimile.

EXPLANATORY STATEMENT

~~Note~~ PLEASE NOTE THAT~~: A~~ an answer is a pleading. See, Chapter 2, §001.39 and Chapter 4, §001.02 of these rules.

004.03 Failure to Answer Within Thirty (30) Days. If an appellee or respondent fails to answer or otherwise plead, within thirty (30) days of service of the Commission's Notice in Lieu of Summons, leave may be granted to file an answer out of time, a Default Judgement may entered or the defaulting party may be barred from further participation in the appeal or petition.

00~~4~~5 Intervention.

00~~4~~5.01 Intervention by Parties Other Than the ~~Property~~ Tax ~~Administrator~~Commissioner. Upon the filing of an appeal/petition, any person may file a Motion for Leave to Intervene.

00~~4~~5.01A Copies of the motion shall be served by the person seeking intervention on all parties named in the appeal/petition.

~~004.01B The motion shall show good cause why intervention should be allowed.~~

00~~4~~5.01~~C~~B The Commission may grant ~~the~~a Motion to Intervene if it is shown that the intervenor has a direct and legal interest of such character that the intervenor will lose or gain by the direct operation and legal effect of the decision that might be made by the Commission. *In re Change of Name of Davenport*, 263 Neb. 614, 641 N.W.2d 379 (2002).

00~~4~~5.02 All parties named in the appeal or petition and motion shall be afforded an opportunity to be heard regarding the motion.

~~004.03 After the hearing on the Motion for Leave to Intervene the Commission shall issue an order granting or denying the motion within ten (10) days. Copies of the decision shall be provided to all interested parties and to the prospective intervener.~~

~~004.04~~005.03 Statutory Right to Intervene by ~~Property~~the Tax ~~Administrator~~Commissioner. The ~~Property~~ Tax ~~Administrator~~Commissioner may, in his or her discretion, intervene in an appeal by any person from a county board of equalization concerning exemption or taxation of real or tangible personal property. Neb. Rev. Stat §77-202.04 and Neb. Rev. Stat. §77-202.12.

00~~4~~5.0~~4~~3A A Notice in Lieu of Summons shall be served on the ~~Property~~ Tax ~~Administrator~~Commissioner notifying him or her of an appeal concerning exemption or taxation of real or tangible personal property. If the ~~Property~~ Tax ~~Administrator~~Commissioner exercises his or her statutory right

to intervene, written notice of the same shall be served on the Commission and all parties within thirty (30) days of receipt of the notice by the ~~Property~~ Tax ~~Administrator~~Commissioner. If the ~~Property~~ Tax ~~Administrator~~Commissioner does not give notice of a determination to exercise his or her statutory right to intervene, the Commission may make Findings of Fact and Conclusions of Law determining that the ~~Property~~ Tax ~~Administrator~~Commissioner has waived his or her right to intervene in the appeal.

~~004.05 The decision of the Commission on a Motion to Intervene shall not be a "final order" for appeal purposes until the Commission issues it's final order in the appeal or petition.~~

~~005~~

006 Joinder of Other Persons to an Appeal. If the Commission determines that a "person" (as that term is defined in these Rules) not named in an appeal should be made a party to the proceedings, the Chairperson shall cause a Notice in Lieu of Summons be issued to that person. ~~The provisions of sections 007.03 through 007.06 of this chapter are applicable to such notice.~~

00~~6~~7 Substitution of a Party. An appeal or petition shall not be dismissed by reason of the death or other disability of a party or by the transfer of any interest in property during its pendency. Neb. Rev. Stat. §77-5016.09.

00~~6~~7.01 Motion Substitution for a party may be requested by motion.

~~007 Duties of the Commission Upon Receipt of the Appeal/Petition.~~

~~007.01 Receipt for Funds. Upon receipt of an appeal form, a copy of the decision, action, order, or determination appealed from and filing fee, or a petition with the filing fee the Commission shall cause a receipt to be issued to the appellant for the amount of the filing fee and a case file to be opened. The receipt may be incorporated into that part of the Appeal Form returned to the appellant as acknowledgment of the filing of the appeal. A receipt shall be prepared and delivered for the filing fee paid for filing a petition. Two signatures of Commission staff must appear on the receipt for any funds received in cash.~~

~~007.02 Case File. A copy of the receipt and the original appeal or petition shall be placed in the case file. All other pleadings, correspondence, records of Commission communication with the parties and orders pertaining to the appeal or petition shall also be placed in the case file.~~

~~007.03 Notice in Lieu of Summons. The Chairperson of the Commission shall issue a "Notice in Lieu of Summons" addressed to each appellee or respondent. A copy of the appeal form and/or petition shall accompany the Notice in Lieu of Summons. Both documents shall be served on:~~

~~Each appellee or respondent or their legal counsel, through the United States Postal Service by certified mail, a return receipt may be requested;~~

~~Each appellant or petitioner through regular United States Postal Service mail.~~

~~When required a Notice in Lieu of Summons may be served on the Property Tax Administrator either by delivery of a copy of the Notice in Lieu of Summons to the offices of the Property Tax Administrator or through the United States Postal Service by certified mail, a return receipt may be requested.~~

~~007.04 Answer Without Leave. An appellee or respondent may file a written answer with the Commission within thirty (30) days from the date of service of the Notice in Lieu of Summons without leave of the Commission.~~

~~007.05 Failure to Answer Within Thirty (30) Days. If an appellee or respondent fails to answer or otherwise plead, within thirty (30) days of service of the Commission's Notice in Lieu of Summons, the Chairperson shall issue an Order to Show Cause and a Notice of Hearing to each appellee or respondent who has failed to timely answer, to show cause why leave should be granted to file an answer or a Default Judgement entered.~~

~~007.06~~

008 Consolidation of Cases for Hearing . Whenever the Chairperson determines that two or more cases from the same county involve the same or substantially similar issues as well as the same or similar property classes or subclasses, the Chairperson may issue an order consolidating the cases for hearing. Two or more parties maintaining appeals or petitions may by motion request that their cases be consolidated for hearing. A cross-appeal will be consolidated for hearing with all other appeals of the same decision, action, order or determination. Consolidation of cases for hearing does not eliminate the requirement for separate filing fees.

~~007.07~~

009 ~~Scheduling the~~Order for Hearing and Notice. ~~The Chairperson shall issue a~~ An Order for Hearing and Notice of Hearing ~~scheduling~~will be issued for a hearing on the merits of ~~an~~each appeal or petition unless it is dismissed or an order on the merits as agreed to by the parties has been entered.

00~~7~~9.0~~7A~~1 The Order for Hearing and Notice of Hearing on the merits may be mailed to each of the parties by regular United States mail, postage prepaid, Certified United States mail, postage prepaid, or by facsimile (original to follow by mail).

00~~7~~9.0~~7B~~2 The Order For Hearing and Notice of Hearing on the merits may advise the parties of the following:

00~~7~~9.~~07B1~~03 The type of hearing (formal or informal).

00~~7~~9.~~07B2~~04 The date, time, and place of hearing.

00~~7~~9.~~07B3~~05 That all parties shall be present at the hearing within 15 minutes of the scheduled time and that a default judgement may be entered against an absent party

00~~7~~9.~~07B4~~06 That parties may but are not required to have legal counsel.

00~~7~~9.07~~B5~~ The name or names of the hearing officer(s), and the name of the presiding hearing officer unless excused prior to the hearing.

0079.~~07B6~~08 That informal hearings will be tape recorded by the Commission.

0079.~~07B7~~09 That although the formal rules of evidence will not be used during an informal hearing, the presiding hearing officer has the right to, and may, pursuant to Neb. Rev. Stat. §77-5016, admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs, exclude evidence that is incompetent, irrelevant, immaterial, and unduly repetitious and give effect to the rules of privilege recognized by law but shall not otherwise be bound by the usual common law or statutory rules of evidence except during a formal hearing.

0079.~~07B8~~10 That every party has the right to examine each witness who testifies for another party and the right to submit rebuttal evidence.

0079.~~07B9~~11 The time allocated to each party for a presentation.

0079.~~07B10~~12 The deadline for submission of exhibits to the Commission and opposing parties.

0079.~~07B11~~13 The deadline for disclosure of the names of expert witness and their expected testimony.

0079.~~07B12~~14 Other information or direction as the Chairperson may determine.

0079.~~08~~15 ~~Notice of Hearing. An~~The Order for Hearing and Notice of Hearing is deemed a Notice of Hearing.

~~008~~010 ~~Duties of the~~ Recording Proceedings.

010.01 Commission ~~Regarding Any~~Record of Proceedings.

~~008.01~~ The Commission shall ~~tape~~ record all proceedings unless a court reporter is provided by the Commission or by a party requesting a formal hearing.

~~008~~010.01A Retention of Recordings. When the Commission ~~tape~~ records a proceeding it shall preserve the recording ~~for the sole purpose of later transcription if necessary for appeal purposes. Original recordings shall be preserved~~ according to the Tax Equalization and Review Commission Record Retention Schedule as filed with the Secretary of State. The Commission shall maintain the recordings in its care and custody, and the ~~tapes~~recordings shall not be removed from the Commission Offices unless necessary for transcription.

011 Transcription of Recordings

0~~08~~11.01~~B~~ Requests for Transcription without an Appeal. Parties desiring a transcription of the ~~tape~~ recording shall make such request in writing. If the cost of the transcription is estimated to be more than fifty dollars ($50) the Commission shall require the party requesting the transcription to furnish a deposit for the estimated cost of the transcription. Neb. Rev. Stat. §84-712(3)(d).

~~008.02~~ 011.02 Transcription on Appeal. See Chapter 6 of these rules

012 Recording of Proceedings Prohibited. The Commission shall record all proceedings held under Chapters 4 and 5 of these Rules by court reporter, tape recording or such recording device as the Commission may deem necessary to preserve a record of the proceeding for purposes of appeal. The Commission's recording shall be the official record of a proceedings. No other recording is allowed. Video cameras, still cameras, photographic equipment of any kind, or audio tape recorders, or other recording devices shall not be permitted in the hearing room during a proceeding, other than those approved by the Commission for its official record keeping.~~, giving due consideration to its budgetary constraints, attempt to hold hearings on a regional, if not local, basis.~~

~~009 Request for a Formal Hearing and Objection.~~

~~009.01 Request~~

013 Formal Hearing.

013.01 Motion for Formal Hearing. Any party to an appeal filed under Neb. Rev. Stat. ~~section 77-5007~~§77-5007 may request a formal hearing by motion.

~~009.01A The request shall be made in writing in a separate pleading or written document clearly indicating its purpose as a request for a formal hearing.~~

~~009.001B The original request for a formal hearing, with a certificate of service, shall be served upon the Commission and copies on all other parties to the appeal not more than thirty (30) days after the appeal is filed. If delivered by facsimile, the original shall be placed in the United States mail, postage prepaid, within twenty-four (24) hours of delivery by facsimile.~~

~~009.01C The request~~

013.01A Payment of Costs. The motion for formal hearing ~~shall show good cause why the motion should be granted.~~

~~009.01D The request~~ shall contain a statement that the requesting party accepts liability for the payment of ~~costs incurred and upon any appeal or review, including the cost of court reporting services which the requesting party shall procure for the hearing~~fees and costs of a court reporter pending a final decision. Fees and costs of a court reporter shall be paid by the party or parties against whom a final decision is rendered and all other costs shall be allocated as the Commission may determine. Neb. Rev. Stat. §77-5016(1).

~~009.02 Objection to Request for a Formal Hearing. Any party may object in writing to a request for a formal hearing. That objection, with an affidavit or certificate of service, shall be filed with the Commission within five (5) calendar days of the date that the request for formal~~

~~hearing is filed. The objecting party shall serve a copy of the objection upon all parties of record. If delivered by facsimile, the original shall be placed in the United States mail, postage prepaid, within twenty-four (24) hours of delivery by facsimile.~~

~~009.03 Consideration by the Commission The Commission, at its discretion, shall determine if it is in the interest of justice that a formal hearing be held. The Commission may deny the request for a formal hearing even if the opposing party does not object to the request. If both parties join in the request for a formal hearing,~~

013.01B Cost of the Court Reporter Cost of the Court reporter as estimated by the Commission shall be prepaid ~~enter an order granting the request. The order and decision shall not be considered a final decision for purposes of appeal.~~

~~010 Duties of the Commission Regarding a Formal Hearing.~~

~~010.01 Formal hearings shall be held at such location(s) as the Chairperson in his or her discretion may determine.~~

~~010.02 A formal hearing shall be set for not less than sixty (60) days from the date of the Order of Formal Hearing.~~

~~010.03 The Order of~~

013.02 Formal Hearing ~~shall cause~~Procedure.

013.02A The hearing on the ~~case to~~merits will be ~~assigned to~~held before the entire Commission, rather than a panel of Commissioners.

01~~0~~3.0~~4~~2B The ~~Commission shall be bound by the~~ rules of evidence applicable in district court will be applied in ~~any formal~~the hearing ~~held by the Commission~~. Neb Rev. Stat. ~~77-5016~~§77-5016(1)

01~~0~~3.~~05~~02C A court reporter will be retained to record the proceeding.

013.02D All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered. Neb. Rev. Stat. §77-5016(1).

01~~1~~4 Pre-hearing Conference.

01~~1~~4.01 A pre-hearing conference may be required by the Commission.

01~~1~~4.02 Resolved and unresolved issues determined as fully as possible, the identification of exhibits that may be received without objection, objections, if any, to other exhibits, a statement of all matters that may aid in the simplification of the presentation of the evidence or aid in the ultimate disposition of the appeal and other information as may be ordered by the Commission shall be included in a report of the conference to be provided to the Commission.

~~012 Pre-hearing Motions~~

~~012.01 Requirements. Motions~~

015 Motions and Objections to Motions

015.01 Form Motions and objections to motions are pleadings and subject to the rules concerning the form and content of pleadings. See Chapter 4, §001.02 of these rules.

015.02 Service Each motion or objection to a motion must be served on opposing parties or their legal counsel by its proponent and a certificate of that service be included with a filing of the motion or objection. A motion or an objection to a motion may be served by personal delivery, fax if the original is mailed or delivered personally within twenty four (24 hours of the facsimile transmission, or mail at the address shown in the Commission's records. See. Ch 2 §001.09 for a sample certificate of service

015.03 Filing Each motion or objection to a motion must be filed with the Commission. Filing of a motion or objection and its certificate of service with the Commission may be made by personal delivery, fax or mail.

015.03A Delivered in Person. A motion or an objection to a motion may be delivered to the Commission at its office in the State Office Building in the Southeast corner of the ground floor by 5:00 p.m. each business day. The State Office Building is at 301 Centennial Mall South, one block north of the State Capitol Building, in Lincoln, Nebraska.

015.03B Mail. A motion or objection to a motion is deemed to have been filed when mailed to the Tax Equalization and Review Commission, Box 94732, Lincoln, Nebraska, 68509 by United States Mail, postage prepaid.

015.03C FAX Any motion or objection to a motion may be filed with the Commission by facsimile if the original is mailed or delivered to the Commission within twenty-four (24) hours of the facsimile transmission.

01~~2~~5.0~~2~~4 Request for Stay. A party may request a stay of scheduling a hearing at any time prior to an Order for Hearing and Notice of Hearing being issued. A Motion for Stay received after that date will be deemed a Motion to Continue.

01~~2~~5.0~~3~~5 Motion to Continue. A Motion to Continue a hearing shall be filed at least seven (7) business days prior to the date set for hearing~~. A Motion to Continue may be filed within seven (7) days of a hearing upon showing of~~ except upon a showing of prospective settlement or exceptional cause.

01~~2~~5.0~~4~~6 Other Motions. Motions other than Motions for Stay or Continuance must be filed not less than ten (10) business days prior to a scheduled hearing~~.~~

~~012.05 Filing by Facsimile. Any pre-hearing motion or objection to a pre-hearing motion may be filed with the Commission and served on all other parties by facsimile if the original and copies of the objection are mailed to the Commission and all other parties within twenty-four (24) hours of the facsimile transmission.~~

~~012.06~~ ~~Objections to Pre-Hearing~~ except upon a showing of exceptional cause.

015.07 Objections to Motions. If an opposing party objects to the granting of a Motion, the objection shall be filed within five (5) business days of the date the Motion was served on them as shown in the certificate of service or within one (1) business day prior to the scheduled hearing on the merits if the Motion is mailed less than seven (7) days prior to the hearing date.

015.08 Order for Hearing on a Motion. If a hearing on a motion is deemed necessary and order for hearing and notice of hearing on the motion will be issued by the Chairperson of the Commission.

015.08A The Order for Hearing and Notice of Hearing on the motion may be mailed to each of the parties by regular United States mail, postage prepaid, Certified United States mail, postage prepaid, or by facsimile (original to follow by mail).

015.08B The Order For Hearing and Notice of Hearing on the motion may advise the parties of the following:

015.08B1 The date, time, place and manner of hearing.

015.08B2 That all parties shall be present at the hearing within 15 minutes of the scheduled time and that a default order may be entered against an absent party.

015.08B3 The deadline for submission of exhibits to the Commission and opposing parties.

015.08B4 Other information or direction as the Chairperson may determine.

015.08B5 The Order for Hearing and Notice of Hearing on the motion is deemed a Notice of Hearing.

01~~2~~5.0~~7~~9 Consideration of a ~~Pre-Hearing~~ Motion. The Commission may with or without a hearing consider any motion ~~and~~or objection~~s~~ and grant or deny the ~~M~~motion.

01~~2~~5.~~08~~10 Hearing~~s~~ on a Motion~~s~~. The Commission may in its sole discretion, hold a hearing on a motion~~s~~ by telephone or video conference. Nothing in this section shall be construed to require a telephone or video hearing. Hearings on motions are subject to these rules for conduct of a hearing ~~on the merits except as otherwise provided~~ and subject to the rules of evidence applicable to the Commission.

~~012.09~~015.11 Delivery of an Order for Hearing on a Motion or Order after Consideration of a Motion. An order for hearing on a motion or an order after consideration of the motion may be mailed, faxed, or e-mailed to the parties by the Commission. A return receipt may be requested if mailed or e-mailed. A fax log may be also be maintained as proof of delivery.

015.12 Motions Deemed Denied. Any motion, request or other pleading requesting Commission action, if not heard or an order without hearing is not issued within 30 days of the date upon which the motion, request or other pleading was filed with the Commission, is deemed to have been denied.

01~~3~~6 Waiver of Hearing. The parties to ~~any proceeding~~an appeal or petition may request in writing that an appeal or petition be submitted for the Commission's decision without a hearing.

01~~3~~6.01 Written Waiver by Each Party Required. Each party to the appeal or petition wishing to submit a matter for decision without a hearing shall submit a written waiver of the rights afforded by Neb. Rev. Stat. §77-5016(4). If any party fails to submit a written waiver, the Commission shall deny the request.

01~~3~~6.02 Evidence and Argument. The ~~written request to submit the matter for the Commission's decision shall be accompanied by (1) any~~parties shall submit by joint stipulation the exhibits or other evidence to be considered by the Commission ~~and (2)~~. Each party shall submit any written argument ~~each~~the party may wish to offer. ~~Evidence may be~~

~~offered in any form authorized by Chapter 5, Section 18 of these rules.~~

~~013.03 Waiver of Objection to Evidence of Opposing Party. The parties, by filing the written request to submit the matter for the Commission's decision, need not stipulate or agree to the admissibility, relevance or weight to be afforded any of the evidence offered by the opposing party. If no stipulation is entered the parties shall be deemed to have waived any objection to all of the evidence offered by an opposing party. If the Commission determines that any or all of the offered evidence is improper pursuant to Neb. Rev. Stat. §77-5016(1), the Commission shall note that fact in the decision, and shall not consider any of the improper evidence in reaching a decision on the merits of the appeal or petition.~~

01~~3~~6.0~~4~~3 Time Matter is Deemed Submitted. The matter shall be deemed to be submitted for the Commission's decision as of the day and time the request, waiver, and evidence are filed with the Commission.

01~~4~~7 Subject Matter Jurisdiction. The Commission has jurisdiction to hear appeals and petitions as provided by statute

01~~4~~7.01 The Commission ~~has no jurisdiction over questions not~~may determine any question raised in the proceeding~~s~~ upon which ~~the~~an order, decision, determination, or action appealed from is based. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 583 N.W.2d 353 (1998),

017.02 The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal. Neb. Rev. Stat. § 77-5016(7).

017.02A The Commission may consider and find a taxable value in excess of any taxable value for which notice was given by the County Assessor, the County Board of Equalization, or the Tax Commissioner (or Property Tax Administrator before July 1, 2007) if notice of the higher taxable value and the intent to offer proof in its support is given by a party. Notice of the higher taxable value and the intent to prove that taxable value

must be served on all other parties and the Commission no later than the date for an initial exchange of evidence as set forth in a Commission Order for Hearing and Notice of Hearing on the merits. Notice of a higher taxable value and intent to offer proof in its support is a pleading and shall be served as a motion or objection to a motion as provided in section 15 of this chapter. If the Commission determines either on a motion or its own initiative based on evidence presented at a hearing on the merits that a notice of intent to prove a higher value was not given in good faith it may tax all costs of opposing parties to the party giving notice of a higher value and intent to offer proof of that higher value.

0147.023 If the board, agency or person which made a decision, order, or determination or took an action that is appealed to the Commission lacked subject matter jurisdiction, then the Commission cannot acquire subject matter jurisdiction. See, *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 583 N.W.2d 353 (1998), *Bartlett v. Dawes County Bd. of Equalization* 259 Neb. 954, 613 N.W.2d 810 (2000), *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 810 (2000), *Falotico v. Grant County Bd. of Equal.*, 262 Neb. 292 (2001).

~~015 Order of the Hearing.~~

~~015.01~~

018 Personal Jurisdiction

018.01 Lack of Personal Jurisdiction. Objections to the jurisdiction of the Commission over a party shall be made by filing a motion to dismiss for lack of personal jurisdiction. A party making such a motion shall designate the specific defects upon which the party relies. If no objection to the jurisdiction of the Commission is made prior to the hearing on the merits or at any other time appearances at a hearing before the Commission are made, personal jurisdictional defects are waived. If a motion to dismiss for lack of personal jurisdiction is overruled, the objection to the Commission's jurisdiction must be renewed in order to preserve the issue for purposes of appeal.

019 Conduct of a Proceeding.

019.01 Presiding Hearing Officer Each proceedings before the Commission will be conduced by a presiding hearing officer.

019.01A Rulings The presiding hearing officer shall rule on the admissibility of evidence and any motions or objections made during a hearing before the Commission.

019.01B Oaths The presiding hearing officer is authorized to administer oaths on behalf of the Commission.

019.02 The presiding hearing officer may conduct any hearing before the Commission as follows:

01~~5~~9.0~~1~~2A The ~~hearing~~proceeding is called to order~~ by the presiding hearing officer~~. -

019.02B Exhibits are offered and objections, if any, are ruled on or a ruling is reserved for testimony.–

019.02C The parties ~~shall be~~are advised of any information regarding the conduct of the hearing which the presiding hearing officer may deem relevant. –

019.02D Any preliminary motions are heard, and stipulations or agreed orders are entered.

01~~5~~9.01~~B~~E Each party may~~, as determined by the presiding hearing officer,~~ be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

01~~5~~9.01~~C~~F Presentation of Evidence.

01~~5~~9.01~~C~~F1 Evidence shall be presented in the following order:

01~~5~~9.01~~C~~F1a Evidence is presented by the appellant/petitioner.

0159.01CF1b Evidence is presented by the appellee/respondent.

0159.01CF1c Rebuttal evidence is presented by the appellant/petitioner.

0159.01CF1d Surrebuttal evidence is presented by the appellee/respondent.

0159.01CF2 Witnesses. With regard to each witness who testifies, the following examination may be conducted:

0159.01CF2a Direct examination conducted by the party who called the witness.

0159.01CF2b Cross-examination by the opposing party.

0159.01CF2c Questioning by Commissioners.

0159.01CF2d Redirect examination by the party who called the witness.

0159.01CF2e Re-cross examination by the opposing party.

0159.01CF2f Further questioning by Commissioners.

0159.01CF3 Closing Statements. After the evidence is presented, each party shall have the opportunity to make a closing statement. Closing statements shall be made in the same order as the presentation of evidence. The presiding hearing officer may request that the parties submit briefs in addition to or in lieu of closing arguments.

0159.01CF4 Briefs. One or more of the Parties may request the opportunity to file briefs at any time before the matter is submitted for the Commission's decision. The presiding hearing officer may in his or her sole discretion, deny or

grant the request. If granted, the presiding hearing officer shall set a briefing schedule, notify the parties of that schedule and requirements for delivery to the Commission and any opposing party.

0159.02 Each Party at a proceeding, or the Party's legal counsel has the right to be heard according to law.

0620 Discovery. Discovery may be conducted in any matterproceeding pending before the Commission in accordance with the rules for discovery set forth in Chapter 12 of these rules. Orders issued by the Commission regarding discovery may be enforced in the district courts. See Neb. Rev. Stat. §77-5011.

017 021 Evidence.

017021.01 Evidentiary Standard. The Commission may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs excluding incompetent, irrelevant, immaterial and unduly repetitious evidence and shall give effect to the privileges rules of evidence in Neb. Rev. Stat. §27-501 to 27-513 but shall not otherwise be bound by the usual common law or statutory rules of evidence except during a formal hearing. Neb. Rev. Stat. 77-5016(1).

017021.02 Statutory Materials. The Commission may consider and utilize the provisions of the Constitution of the United States, the Constitution of Nebraska, the laws of the United States, the laws of Nebraska, the Code of Federal Regulations, the Nebraska Administrative Code, any decision of the several courts of the United States or the state of Nebraska, and the legislative history of any law, rule, or regulation, without making the document a part of the record. The Commission may without inclusion in the record consider and utilize published treatises, periodicals, and reference works pertaining to the valuation or assessment of real or personal property or the meaning of words and phrases as set forth in Cthis chapter 5 of these Rules. Neb. Rev. Stat. §77-5016(3).

~~017~~021.03 Statutory Notice. The Commission may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge or statistical information regarding general levels of assessment within a county or a class or subclass of real property within a county and measures of central tendency within such county or classes or subclasses within such county which have been made known to the Commission.

~~017~~021.03A Parties shall be notified either before or during the hearing or by reference in preliminary ~~reports~~disclosure or otherwise of the material so noticed. The parties shall thereafter be afforded an opportunity to contest the facts so noticed. Neb. Rev. Stat. §77-5016(5).

~~017~~021.04 Evaluation of Evidence. The commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it. Neb. Rev. Stat. §77-5016(5).

~~017~~021.05 Testimonial Evidence.

~~017~~021.05A Testimony: How Taken and Procured. Testimony of witnesses may be taken in four modes: (1) deposition; (2) oral examination; (3) affidavit, and (4) videotape of an examination conducted prior to the time of hearing for use at the hearing in accordance with procedures provided by the laws of the State of Nebraska. Evidence by affidavit shall be limited to proof of service of a notice or other process, publication of a required notice, in support of motions for a stay, continuance or dismissal, procedural motions~~-~~ or a motion provided for in Chapter 12 of these rules.

~~017~~021.05B Witnesses to be Sworn. All witnesses giving testimony at any proceeding shall ~~first be placed under~~make an oath or affirmation to tell the truth under penalties of perjury ~~by the presiding hearing officer or other person authorized by law to administer oaths and affirmations.~~

~~017~~

021.05C Opportunity to Cross Examine. Every party has the right to cross examine witnesses who testify.

~~017~~021.06 Documentary Evidence

~~017~~021.06A Documentary evidence may be received in the form of copies, excerpts or by incorporation by reference. Copies must be legible and true and accurate representations of the original.

~~017~~021.06B Materials in Books, Papers or Documents. Relevant portions of books, papers, or documents shall be plainly designated and distinguished from all irrelevant portions before the relevant materials may be offered into evidence. Where irrelevant material in a book, paper, or document is voluminous so as to encumber the record, the book, paper or document must be marked for identification and relevant material read into the record or the relevant material indexed and designated for consideration. Upon the discretion of the presiding hearing officer, a true copy of the relevant matter may be received as an exhibit, provided copies are delivered to all parties to a matter and all parties are afforded an opportunity to examine the book, paper, or document, and to offer into evidence in like manner other portions thereof, if found to be material and relevant.

~~017~~021.07 Non-Documentary Evidence.

~~017~~021.07A Photographs. Photographs may be provided to the Commission and other parties if the subject of the photograph is clearly set forth and the subject is available for inspection and photographing by the other parties to the proceeding.

~~017~~021.07B Electronic Exhibits. In order for the contents of an electronic exhibit to be considered, the contents of the exhibit must be printed legibly in ink on paper.

~~017~~021.07C Audio or Video Recordings. All audio or video recordings shall be accompanied by a printed and legible transcription of the audio portion of the recording.

~~017.08 Additional Evidence - At the conclusion of a hearing the presiding hearing officer may allow or require additional evidence to be submitted.~~

~~017~~021.0~~9~~8 Rebuttal Evidence. Every party has the right to submit rebuttal evidence. Neb. Rev. Stat. 77-5016(4).

~~017~~021.0~~9~~8A Rebuttal Evidence Defined. Rebuttal evidence consists of written or documentary evidence that tends to explain, contradict or disprove evidence offered by an opposing party. *State v. McLemore*, 261 Neb. 452, 623 N.W.2d 315 (2001).

~~017~~021.~~10~~08 Required Evidence–

~~017~~021.~~10A~~09A County. In any appeal from a county board of equalization concerning real property, the County shall deliver five (5) complete and legible copies of the Property Record File for the property described in the appeal to the Commission and one (1) copy to each party. If the appeal concerns valuation of real property, the Property Record File shall include the Property Record Card, worksheets, all supporting documents which establish the value of the property described in the appeal for the tax year at issue, and the property valuation protest form (Form 422) or similar document and materials maintained by the County pursuant to Neb. Rev. Stat. §77-1502(4). If the appeal concerns exemption of real property from taxation, copies of the form 451, or 451A, shall be provided to the Commission and the opposing party or parties.

~~017~~021.~~10B~~09B Comparable Properties. Any party utilizing comparable properties as evidence of value or for purposes of demonstrating equalization or a lack of equalization shall provide complete and legible copies of the County Assessor's Property Record File for those comparable properties for the tax year at issue.

~~017~~021.1~~1~~0 Disclosure of Evidence

~~017~~021.1~~1~~0A Documentary~~,~~ and Photographic ~~and other Tangible~~ Evidence. Each party shall deliver to each opposing party one complete and legible copy of all documentary~~,~~ and photographic ~~and other tangible evidence~~exhibits that the party intends to offer at the hearing. The original and four complete and legible copies of ~~the evidence~~a documentary or photographic exhibit delivered to an opposing party shall be delivered to the Commission.

021.10B Other Tangible Evidence ~~which has not been delivered as required by this rule within the time provided for in an Order for Hearing will not be received at the hearing in the absence of good cause shown or agreement of the parties.~~

~~017.11B~~. Each party shall notify any opposing party of their intention of offering a physical exhibit that is not a document or photograph and make the item available for inspection not less 25 days prior to a hearing on the merits.

021.10C Expert Witnesses. Each party shall deliver to the Commission an original and to each opposing party one legible copy of a written list of every expert, if any, they might call as a witness, a copy of any documents or other information that the expert might refer, and a statement of the substance of each expert witness's testimony.

021.10D Failure to Disclose. Exhibits which have not been delivered as required by this rule within the time provided for in an Order for Hearing will not be received at the hearing in the absence of good cause shown or agreement of the parties. Testimony of an expert witness whose identity, reference documents, and the substance of their expected testimony has not been disclosed in accordance with this rule within the time prescribed in an Order for Hearing will not be received at the hearing in the absence of good~~l~~ cause shown or agreement of the parties.

~~017~~021.1~~2~~1 ~~Numbering of~~ Exhibit~~s~~ and Exhibit ~~p~~Page ~~numbers~~Numbering

~~017~~021.1~~2~~1A Exhibit Numbers ~~A~~The Commission will assign a number ~~will be assigned~~ to each exhibit delivered to ~~the Commissions~~it and attach an exhibit sticker ~~attached to it~~. ~~A~~The exhibit sticker will show a docket number and page number identifying the case, an exhibit number, the number of pages in the exhibit, and the date of hearing ~~will be placed on the exhibit sticker~~.

~~017~~021.1~~2~~1B Exhibit ~~p~~Page Numbers Each page of ~~an exhibit~~a document delivered to the Commission will be numbered by the Commission unless the exhibit is a fee appraisal prepared for a hearing and the appraisal has been numbered as provided in the following section. Page numbers will be assigned by the Commission in sequential arabic numbers commencing with the number one (1). A cover page may be excluded unless signed or if it contains an opinion, information supporting an opinion, or an explanation of an opinion. Blank pages or tab pages that do not contain an opinion, information supporting an opinion, or an explanation of an opinion may be excluded.

~~017~~021.1~~2~~1C Page Numbering of Fee Appraisals. Each fee appraisal performed in preparation for a hearing before the Commission shall bear sequential arabic numbers commencing with the number one (1). A cover page may be excluded unless signed or if it contains an opinion, information supporting an opinion, or an explanation of an opinion. Blank pages or tab pages that do not contain an opinion, information supporting an opinion, or an explanation of an opinion may be excluded.

~~017~~ 021.1~~3~~2 Custody of Exhibits The Commission shall keep all original exhibits in its care and custody, unless required for purposes of appeal to a court of appropriate jurisdiction as herein provided. Original exhibits may be returned to the Party who offered the

exhibit upon request, so long as the time for final appeal of the decision has expired and the final decision has been certified by the Commission.

~~017~~ 021.1~~4~~3 Objections to Evidence. The Commission may exclude evidence based on objection from an opposing party or based on its own motion.

~~017~~ 021.1~~4~~3A Evidentiary Rulings. The presiding hearing officer shall rule on the admissibility of testimony and exhibits ~~and may admit or deny the receipt of those items into evidence.~~

~~017.14B~~.

021.13B Offer of Proof. After the Commission has sustained an objection or otherwise excluded evidence, the aggrieved party may make an offer of proof. An offer of proof is a presentation of evidence showing the substance of the testimony or other evidence the aggrieved party would be able to produce if not precluded by the Commission's ruling excluding the evidence, consisting of three parts: (1) the evidence itself, (2) an explanation of the purpose for which it is offered (relevance), and (3) an argument supporting admissibility. An offer of proof may be made to preserve the evidence on the record for purposes of appeal.

0~~18~~22 Motion to Dismiss During a Hearing: Procedure. When the Commission considers a motion to dismiss at the close of the appellant/petitioner's evidence, the Commission must assume all relevant evidence presented by the nonmoving party is true, and grant the nonmoving party all favorable and reasonable inferences that may be drawn from the evidence; assessing the credibility of the evidence on such a motion is inappropriate. *See e.g. Kohl's Department Stores v. Douglas County Board of Equalization,* 10 Neb. App. 809, 638 N.W.2d 877 (2002), *Bottorf v. Clay County Bd. of Equalization*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

0~~19~~23 Standard of Review In all appeals, excepting those arising under Neb. Rev. Stat. §77-1606, if the appellant/petitioner presents no evidence to show that the order, decision, determination or action appealed from is incorrect, the Commission shall deny the appeal. If the appellant/petitioner presents any evidence to show that the order, decision, determination, or action appealed from is incorrect, such order, decision, determination or action shall be affirmed unless evidence is adduced establishing that the order, decision, determination or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(8).

~~020 Tampering with Commission Records. Evidence that anyone has tampered with the tape recordings, files or other records of the Commission will be referred to the Attorney General's office.~~

~~021 Recording of Hearings Prohibited. The Commission shall record all hearings held under Chapters 4 and 5 of these Rules by court reporter, tape recording or such recording device as the Commission may deem necessary to preserve a record of the hearing for purposes of appeal. This recording shall be the official record of such proceedings. Video cameras, still cameras, photographic equipment of any kind, or audio tape recorders, or other recording devices shall not be permitted in the hearing room during a hearing, other than those approved by the Commission for its official record keeping.~~

~~022~~024 Motion for Rehearing. Any party to a proceeding heard by a panel of Commissioners may file a Motion for Rehearing with the full Commission for a rehearing of the proceeding~~. The Motion for Rehearing must be filed~~ within ten (10) calendar days of the date that the Decision and Order was filed.~~ The motion must show good cause why the motion should be granted, and must be accompanied by a certificate of service.~~ No hearing shall be held on the motion. The Motion for Rehearing must be approved by a majority of the Commissioners holding office at the time the Motion is filed.~~ Within ten (10) business days of receipt of the Motion the Commission shall notify the party(s) of the disposition of the motion.~~ The filing of a Motion for Rehearing ~~shall~~ tolls the thirty-day (30 day) appeal period provided by Neb. Rev. Stat. §77-5019, pursuant to Neb. Rev. Stat. §77-5005(5).

02~~2~~4.0~~2~~1 Presentation of Evidence and Argument. A rehearing shall be conducted in the same manner as an initial hearing.

02~~2~~4.02A At the rehearing before the full Commission the Parties may stipulate to the receipt by the Commission of all evidence and argument prepared in the initial hearing, in addition to evidence and argument presented at the rehearing.

02~~3~~5 Reconsideration of Merits on the Commissions Own Motion. The Commission may, on its own motion, reconsider an order and decision until an aggrieved party files an appeal or the statutory appeal period expires. See, *Brockbrader v. Dept. of Public Institutions*, 220 Neb. 17, 367 N.W.2d 721 (1985).

026 Corrections to Findings and Order. The Commission may, on its own motion, modify or change its findings or orders, at any time before an appeal and within ten days after the date of such findings or orders, for the purpose of correcting any ambiguity, clerical error, or patent or obvious error. The time for appeal shall not be lengthened because of the correction unless the correction substantially changes the findings or order. Neb. Rev. Stat. 77-5018(2) (Cum. Supp. 2006).

02~~4~~7 Affidavits of Service Prepared by the Commission. Whenever the Commission desires to provide proof of service as to any document, pleading, order, or notice, the Commission may do so by filing an Affidavit of Service in the case file.

~~025~~ 028 ~~Form of a~~ Decision and Order. ~~Ever~~Every substantive action of the Commission adverse to a party shall be entered as a decision and order of the Commission.

02~~5~~8.01 The Commission may issue a decision and order on the record, or in written form. -

028.02 When the Commission issues a decision and order on the record, the Commission shall file a written recitation of that decision and order in the form of a "Docket Entry."

~~025.02 The Commission may also issue a decision and order in the form of a "Docket Entry" when the decision is one of stipulation, agreed settlement, consent order, default, or other informal disposition.~~

~~025~~028.03 The Chairperson of the Commission may issue any docket entry under seal.

~~025.04~~ ~~When the Commission takes any matter under advisement after a hearing on the merits, the Commission shall issue a written~~028.04 Any decision and order ~~containing~~must contain "Findings of Fact" and "Conclusions of Law." Neb. Rev. Stat. §77-5018.

02~~5~~8.05 A decision and order is ~~final~~effective when ~~adopted~~signed by a majority of the Commissioners who participated in the decision. All Commissioners who participate in a decision shall sign a decision and order indicating their agreement or disagreement.

02~~5~~8.05A Copies of the "Decision and Order" may be signed by the use of a signature stamp, if the original which is kept in the Commission's case file bears the original signature of a Commissioner or Commissioners.

~~025.06~~ ~~Whenever the parties stipulate to the underlying facts of an appeal or agree to a confession of judgment made by the appellee, or a confession of judgment in part by the appellee, the parties shall submit written pleadings which recite the agreement, and are signed by all parties. The parties shall also submit a proposed Decision and Order to the Commission which disposes of all issues before the Commission and to which all parties agree as to both form and content. That proposed Decision and Order, which may be modified as appropriate, or a separate Decision and Order conforming to its terms shall be signed by a majority of the Commission, sealed with the Commission seal, and a copy shall be provided to each of the parties. When so signed, sealed, and entered in the records of the Commission, that Decision and Order shall constitute a final order.~~

~~025.07~~ 028.06 Mailing to Parties/Legal Counsel. A copy of any Decision and Order, whether in the form of a Docket entry or otherwise, shall be delivered or mailed to each party or his or her legal counsel. Neb. Rev. Stat. 77-5018.

02~~6~~9 Exemption Hearings. If the appeal concerns a decision of a county board of equalization that a property is, in whole or in part, exempt or not exempt from taxation, the Commission shall only determine the tax-exempt status of the property.

02~~6~~9.01 Exemption Granted by County Affirmed by the Commission . If the Commission determines that property found to be exempt, in whole or in part, from property taxation by a county board of equalization should be exempt from property taxation the Commission shall issue an Order affirming the decision of the county board of equalization.

02~~6~~9.02 Exemption Granted by the County Reversed by the Commission. If the Commission determines that property found to be exempt, in whole or in part, from property taxation by a county board of equalization was improperly exempted from property taxation, the ~~Commission~~ shall issue an Order reversing the decision of the county board of equalization and directing the county board of equalization to determine the taxable value of the property utilizing the procedures for omitted property. Neb. Rev. Stat §77-5016 (10) (11)

029.03 The Commission shall not direct a determination of the taxable value of the property if the Parties stipulate to such value during the course of the hearing before the Commission. Neb. Rev. Stat. §77-5016 (10) (11)

02~~6~~9.02A Contents of Order. Any order to determine value issued pursuant to this subsection shall require the county board of equalization to:

02~~6~~9.02A1 Assess such property using procedures for assessing omitted property; and

02~~6~~9.02A2 Determine such taxable value within ninety days after issuance of the Commission's Order; and further

02~~6~~9.02A3 To apply interest at the rate provided by law, but no penalty, to the taxable value as of the date the Commission order was issued or the date the taxes were delinquent, whichever is later. Neb. Rev. Stat. 77–5017 (2).

02~~6~~9.02B Any determination of the taxable value of the property made by a county board of equalization pursuant to an order ~~in~~pursuant to this subsection ~~026.02A~~ may be appealed to the

Commission within thirty (30) days of the board's decision. Neb. Rev. Stat. §77-5013 (3).

0269.03 Exemption Denied by County. If the Commission determines that property found to be subject, in whole or in part, to property taxation by a county board of equalization should be subject to property taxation the Commissioner shall issue an Order affirming the decision of the county board of equalization. If the Commission determines that property found to be, in whole or in part, subject to property taxation by a county board of equalization should be exempt from taxation, the Commission shall issue an Order reversing the decision of the county board of equalization.

0~~27~~30 Show Cause Hearings Appeals/Petitions~~-~~. The Chairperson may issue an Order to Show Cause ~~when: a hearing has been requested pursuant to Chapter 5 section 001.07A of these rules; upon a failure to timely answer as provided in Chapter 5 Section 007.05 of these rules; jurisdiction of the Commission is not apparent; or~~why a proposed order should not be entered when he or she determines that a proposed order should be considered by the Commission.

0~~27~~30.01 Order for Hearing and Notice of Hearing. ~~The Chairperson shall issue a~~An Order to Show Cause and Notice of Hearing which shall direct the Parties to be present in person or by telephone on the hearing date at the time and in the manner shown, to show cause why the Commission should not enter an Order as proposed in the Order to Show Cause and Notice of Hearing. ~~The Commission may hold~~

030.02 Service of Order to Show Cause ~~Hearings by telephonic conference call~~and Notice of Hearing. A copy of the Order to Show Cause and Notice of Hearing shall be served on all Parties through the United States Postal Service by certified mail, postage prepaid, a return receipt may be requested.

~~027.01A~~

030.02A Refusal of Service. If delivery of service by certified mail, postage prepaid, is refused by the party to whom service is directed, a reasonable attempt at service is deemed to have been made.

030.02B Inability to Serve. If service by certified mail, postage prepaid is returned by the United States Postal Service as undeliverable or as unclaimed, a reasonable attempt at service is deemed to have been made.

030.03 If a party to a proceeding at a Show Cause Hearing does not appear within fifteen (15) minutes of the time for hearing ~~does not appear~~, the proposed order may be issued if the record demonstrates that notice has been provided to the party against whom the Order to Show Cause is issued, or a reasonable attempt to provide notice has been issued.

~~027.01A1 Refusal of Service. If delivery of service by certified mail, postage prepaid, is refused by the party to whom service is directed, a reasonable attempt at service is deemed to have been made.~~

~~027.01A2 Inability to Serve. If service by certified mail, postage prepaid is returned by the United States Postal Service as undeliverable or as unclaimed, a reasonable attempt at service is deemed to have been made.~~

~~027.02~~
030.04 The parties, at the Show Cause Hearing, shall be afforded an opportunity to show cause, through evidence and argument, why the proposed order should or should not be entered by the Commission.

0~~27~~30.0~~3~~5 The provisions of this rule are not applicable to show cause hearings held pursuant to Chapter 9, Equalization Duties, of these rules

0~~28~~31 Videoconferencing and Teleconferencing.

0~~28~~31.01 Videoconferencing. The Commission may conduct an informal hearing on the merits of an appeal/petition or other proceedings via ~~videoconference~~video conference.

0~~28~~31.01A Attendance at ~~Videoconference~~Video conference Hearing. Parties, counsel and witnesses may appear at any videoconference site.

0~~28~~31.01B Formal Hearings. The Commission shall not conduct a formal hearing via ~~videoconference~~video conference.

0~~28~~31.01C Objection to ~~Videoconference~~Video conference. An objection to the use of videoconferencing for conduct of a hearing must be made by motion pursuant to Chapter 5, §01~~2~~5 of these rules.

0~~28~~31.02 Teleconferencing. The Commission may conduct hearings, other than a hearing on the merits, via telephone conference. The Commission shall not conduct any hearings on the merits of an appeal/petition via telephone conference call.

0~~28~~31.01C Objection to Teleconference. An objection to the use of teleconferencing for conduct of a hearing must be made by motion pursuant to Chapter 5, §012 of these rules.

~~029~~032 Laws, Published Treatises, Periodicals, and Reference Works.

~~029~~032.01 Laws. The Commission may consider and utilize the following during the course of any hearing or proceeding or as part of its decision making process: *the Constitution of the United States and its Amendments; the Constitution of the State of Nebraska and its Amendments; the laws of the United States and any amendments thereto; the laws of the State of Nebraska and any amendments thereto; the Code of Federal Regulations and any amendments thereto; the Nebraska Administrative Code and any amendments thereto; any decision of the several courts of the United States, whether state or federal; and the legislative history of any law, rule, or regulation.* Neb. Rev. Stat. §77-5016(3).

~~029~~032.02 Published Treatises. The Commission may consider and utilize the following published treatises ~~or reference works~~ pertaining to the valuation or assessment of real or personal property during the course of any hearing or proceeding or as part of its decision making process: ~~the *Nebraska Agricultural Land Valuation Manual,* revised annually;~~ the *Nebraska Assessor's Reference Manual* revised annually; the *Reports and Opinions of the Property Tax Administrator* for each of the 93 Counties, published annually, the Commission's annual

Statewide Equalization Proceedings; *the Soil Survey for each of the 93 counties of the State of Nebraska as published by the United States Department of Agriculture or its subdivisions; the quarterly editions of the Marshall Swift Residential Cost Handbook*; *the quarterly editions of the Marshall Valuation Service; Dollars and Cents of Shopping Centers*, published annually by the Urban Land Institute*; Property Assessment Valuation*, Second Edition, International Association of Assessing Officers, (1996); *Property Appraisal and Assessment Administration*, International Association of Assessing Officers, (1990); *Mass Appraisal of Real Property*, International Association of Assessing Officers, (1999); *Issues Confronting Properties Affected by Contamination or Environmental Problems*, International Association of Assessing Officials, (2002), *The Valuation of Subsidized Housing*, International Association of Assessing Officials (2003), *The Appraisal of Real Estate*, Twelfth Edition, Appraisal Institute, (2001); *Appraisal of Residential Properties*, Appraisal Institute, 3rd Edition, (1999); *The Appraisal of Rural Property*, Second Edition, Appraisal Institute, (2000); *Income Property Valuation*, Dearborn Financial Publishing, Inc., (1994); *Shopping Center Appraisal and Analysis*, Appraisal Institute, (1993); *Analysis and Valuation of Golf Courses and Country Clubs*, by Arthur E. Gimmy, MAI, & Buddie A. Johnson, Appraisal Institute, (2003); *Standard on the Valuation of Properties Affected by Environmental Contamination*, International Association of Assessing Officers, (2001); *Standard on Ratio Studies,* International Association of Assessing Officers (1999); *Standard on Mass Appraisal of Real Property*, International Association of Assessing Officials 2002; *Nebraska Farm Real Estate Market Developments,* published annually by Nebraska Cooperative Extension Office; and the *Uniform Standards of Professional Appraisal Practice*, published annually by the Appraisal Foundation. Neb. Rev. Stat. §77-5016(3)

~~029~~032.03 Reference Works. The Commission may consider and utilize the following reference works pertaining to the meaning of words and phrases: *The Dictionary of Real Estate Appraisal*, Third Edition (1993) and Fourth Edition (2002), Appraisal Institute; ~~*Glossary for Property Appraisal and Assessment, International Association of Assessing Officers, (1997);*~~ *Black's Law Dictionary*, Sixth Edition, West Publishing, (1990); *Webster's Third New International Dictionary*, Merriam-

Webster, Inc., (2002). Neb. Rev. Stat. §77-5016(3). Neb. Rev. Stat. §77-5016(3).

~~029~~032.04 Other Published Treatises, Periodicals, and Reference Works. Nothing in this section shall prevent the Commission from making other published treatises, periodicals or reference work pertaining to the valuation or assessment of real or personal property or the meaning of words and phrases or other evidence of which it desires to avail itself a part of the record in any hearing or proceeding as appropriate. Neb. Rev. Stat. §77-5016(3).

03~~0~~3 Personal Conduct Before the Commission. Any person present for any proceeding before the Commission as a party, counsel, or witness, or in any other capacity, including spectator, shall conduct themselves with civility and courtesy. The presiding hearing officer shall require all persons present at a proceeding to refrain from manifesting by words or conduct, bias or prejudice against parties, witnesses, counsel, or others based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status unless relevant to the proceeding. See, Neb. Rev. Stat. § 77-5021.

03~~0~~3.01 Exclusion from the Hearing Room. The Presiding Hearing Officer may exclude any person from a proceeding when that person is disrupting the proceeding.