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/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.

001.01A Real Property. An appeal form or petition is requied for each parcel of real property. If a decision, action, order, or determination concerns more than one parcel of real property an appeal/petition must be filed for each parcel. See Chapter 2 §001.35 of these rules for a definition of parcel.

001.01B Personal Property An appeal form or petition is required for each taxable tangible personal property list on which a decision, action, order. or determination being appealed is based.

001.01C Other An appeal form or petition is required for each decision, action, order, or determination on which an appeal is based.

001.01~~A~~D Other Information that Documents the Decision, Action, Order, or Determination Appealed From. Other information may include, but is not limited to, ~~one~~any of the following:

001.01~~A~~D1 A copy of minutes of a Board of Equalization Meeting or other hearing or meeting which records the action, order, decision, or determination complained of;

001.01~~A~~D2 A transcript of a Board of Equalization Meeting or other hearing or meeting which records the action, order, decision, or determination complained of;

001.01~~A~~D3 Written notice which records the action, order, decision,

or determination complained of;

001.01~~A~~D4 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.

001.01~~A~~D5 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/petition is brought. See Chapter 2 §001.34 of these rules for a definition of parcel.~~ Appeals must be filed on forms approved by the Commission.

001.03A Appeal Form. Appeal Forms as approved by the Commission will be made available at the ~~county clerk's~~ County Clerk's office and/or ~~assessor's~~ the County Assessor's office for each county, at the Commission's office in Lincoln, Nebraska, and on the Commission's web site.

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.

001.04 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. An unsigned appeal or petition will not be considered unless the omission of a signature is corrected within the time required for filing. See Chapter 2 of these rules for a definition of party.

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

001.05A 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.

001.05B 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).

001.05C 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.

001.05D 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.

001.05E Trust. ~~If a party is a trustee that~~ A trustee may sign an appeal/petition.

001.05F 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.

001.05G Assessor. An Assessor may sign an appeal in his or her official capacity. Neb. Rev. Stat. §77-5007.01.

001.05H Other Persons. Any other person who is a party, including but not limited to a successor in interest, lessee, ~~licencee~~licensee, ~~any~~ bankruptcy trustee, receiver, personal representative, or any other person appointed by a Nebraska Court or a Court of the United States, may sign an appeal/petition. See Chapter 2, of these rules for definition of party.

001.05I Legal Counsel. Legal Counsel for a party may sign an appeal/petition.

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

001.07 Filing an Appeal or Petition. Properly filing an appeal/petition requires that the appeal form or petition be signed, that any required documentation be filed with the appeal/petition, that if applicable the filing fee be paid and that the filing be timely.

001.07A Appeals/Petitions Delivered in Person. Appeals/Petitions~~, with the required documentation, or Petitions and filing fee, if required,~~ can be delivered to the Commission at its office by 5:00 p.m. each business day. See Time for Filing an Appeal or Petition section 001.08 of these rules below.

001.07B Appeals/Petitions Filed by Mail. An Appeal/Petition is deemed to have been filed when the filing fee if required, 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 001.01A.

001.07C Appeals/Petitions Filed by Facsimile Transmission Prohibited. Facsimile copies of an appeal/petition will not be accepted for filing by the Commission.

001.08 Time for Filing an Appeal or Petition. Times for filing appeals are governed by statute.

001.08A 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,

001.08B 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,

001.08C 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.

001.08D Petitions. Times for filing Petitions are governed by statute.

001.08D1 Failure of Notice Petitions, Petitions pursuant to Neb. Rev. Stat. §77-202.04(2), Neb. Rev. Stat. §77-1345.01(10), or 77-1507.01 must be filed on or before December 31 of the applicable year.

001.08D2 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).

001.08E 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.

001.09 Payment of Filing Fee. The filing fee, if required, must accompany the appeal or petition. Any appeal or petition which is presented for filing without the filing fee, if required, will not be accepted for filing by the Commission and is not deemed perfected.

001.09A 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~~A filing fee paid in cash ~~which is mailed to the Commission shall~~ by mail will not 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.

001.09B 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.

001.09B1 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.

001.09B2 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.

001.09B3 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~~earlier. 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.

001.11 Refund of Filing Fee.

001.11A 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 may only be granted under the following conditions:

001.11A1 All issues raised in the appeals are identical;

001.11A2 All the parcels are contiguous; and

001.11A3 All the parcels are of the same class (agricultural, commercial, or residential).

001.11B Improved Parcels, Refund Prohibited A request that multiple filing fees paid for multiple improved parcels be refunded shall not be granted.

001.12 Filing Fee Not Required. The filing fee is not required for appeals or petitions filed by a county assessor acting in his or her official capacity, the Tax Commissioner acting in his or her official capacity, the Property Tax Administrator acting in his or her official capacity, or a county board of equalization acting in its official capacity. Neb Rev. Stat. §77-5013(3).

002 Appeals or Petitions Not Properly Perfected. If the Commission staff believes that an appeal or petition 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 if 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 and the filing fee will be retained.

003 Notice of Appeal/Petition. For each properly perfected appeal/petition the Chairperson of the Commission shall issue a "Notice of Appeal/Petition" addressed to each appellee or respondent. A copy of the appeal form and/or petition shall accompany the Notice of Appeal/Petition . Both documents shall be served on:

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 of Appeal/Petition may be served in person, by certified U.S. Mail with or without a return receipt, by fax, by e-mail, or by any other method resulting in actual notice of the appeal.

004 Intervention.

004.01 Intervention by Parties Other Than the Tax Commissioner or Property

Tax Administrator . ~~Upon the filing of an appeal/petition, any person may file a Motion for Leave to Intervene.~~

~~004.01A Copies of the motion shall be served by the person seeking intervention on all parties named in the appeal/petition.~~

~~004.01B The Commission may grant 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).~~

Persons who qualify for intervention and file timely petitions for intervention may intervene in proceedings. For all purposes of section 84–912.02 the Chairperson of the Commission is the hearing officer.

004.01A A petition for intervention shall be granted by the Chairperson of the Commission or the Vice-Chairperson of the Commission in the event of his or her absence or inability to act if:

004.01A (i) A petition is submitted in writing to the Chairperson of the Commission or the Vice-Chairperson of the Commission in the event of his or her absence or inability to act, with copies mailed to all parties named in the Chairperson's Order for Hearing and Notice of the hearing, at least five days before the hearing;

004.01A (ii) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

004.01A (iii) The Chairperson of the Commission or the Vice-Chairperson of the Commission in the event of his or her absence or inability to act, determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

004.01B The Chairperson of the Commission or the Vice-Chairperson of the Commission in the event of his or her absence or inability to act, may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of

justice and will not impair the orderly and prompt conduct of the proceedings.

004.01C If a petitioner qualifies for intervention, the Chairperson of the Commission or the Vice-Chairperson of the Commission in the event of his or her absence or inability to act. may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

004.01C (i) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

004.01C (ii) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

004.01C (iii) Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

004.01D The Chairperson of the Commission, or the Vice-Chairperson of the Commission in the event of his or her absence or inability to act at least twenty-four hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order. The Chairperson of the Commission or his or her designee may modify the order at any time, stating the reasons for the modification. The Chairperson of the Commission or his or her designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties. Neb. Rev. Stat. §84-912.02.

004.02 All parties named in the appeal or petition and ~~motion~~ petition for intervention shall be afforded an opportunity to be heard regarding the ~~motion~~ petition for intervention.

004.03 Statutory Right to Intervene by the Tax Commissioner or Property Tax Administrator. The Tax Commissioner or the Property Tax Administrator may each, 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.

004.03A A Notice of Appeal/Petition shall be served on the Tax Commissioner notifying him or her of an appeal concerning exemption or taxation of real or tangible personal property. If the Tax 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 Tax Commissioner. If the Tax 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 Tax Commissioner has waived his or her right to intervene in the appeal.

005 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 of Appeal/Petition to be issued to that person.

005.01 If the county assessor, Tax Commissioner, or Property Tax Administrator appeals a county board of equalization's final decision granting an exemption from property taxation, the person, corporation, or organization granted such exemption by the county board of equalization shall be made a party to the appeal and shall be issued a notice of the appeal by the Tax Equalization and Review Commission within thirty days after the appeal is filed. Neb. Rev. Stat. 77-202.01 (1).

005.02 If the Tax Commissioner or Property Tax Administrator appeals a decision of a county board of equalization granting or denying an exemption of real or personal property from taxation, the person, corporation, or organization granted or denied the exemption by the county board of equalization shall be made a party to the appeal and shall be issued a notice of the appeal by the Tax Equalization and Review Commission within thirty days after the appeal is filed. Neb. Rev. Stat. §77-701(4).

006 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.

006.01 Motion. Substitution ~~for~~ of a party may be requested by motion.

007 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.

008 Order for Hearing and Notice. An Order for Hearing and Notice of Hearing will be issued for a hearing on the merits of each appeal or petition unless it is dismissed or an order on the merits as agreed to by the parties has been entered.

008.01 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).

008.02 The Order For Hearing and Notice of Hearing on the merits may advise the parties of the following:

008.0~~3~~02A The type of hearing (formal or informal). See ch 2 §001.23 and §.001.27 for definitions of formal and informal hearings.

008.0~~4~~02B The date, time, and place of hearing.

008.0~~5~~02C That all parties shall be present at the hearing within 15 minutes of the scheduled time and that a default ~~judgement~~judgment may be entered against an absent party.

008.0~~6~~02D That parties may but are not required to have legal counsel.

008.0~~7~~02E The name or names of the hearing officer(s), and the name of the presiding hearing officer unless excused prior to the hearing and that the hearing may be held before a panel of the Commission or a quorum of a panel of the Commission.

008.0~~8~~02F ~~That informal hearings will be tape recorded by the Commission~~ The manner in which the hearing record will be made.

New language

~~008.09~~Renumber If the hearing is an informal hearing 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~~. If the hearing is an informal hearing that the rules of evidence applicable in the District Courts will be applied.

008.~~10~~02G That every party has the right to examine each witness who testifies for another party and the right to submit rebuttal evidence.

008.~~11~~02H The time allocated to each party for a presentation.

008.~~12~~02I The deadline for submission of exhibits to the Commission and opposing parties.

008.~~13~~02J The deadline for disclosure of the names of expert ~~witness~~witnesses and their expected testimony.

008.~~14~~02K Other information or direction as the Chairperson may determine.

008.~~15~~03 The Order for Hearing and Notice of Hearing is deemed a Notice of Hearing.

009 Recording Proceedings.

009.01 Commission Record of Proceedings. The Commission shall record all proceedings unless a court reporter is provided by the Commission or by a party requesting a formal hearing.

009.01A Retention of Recordings. When the Commission records a proceeding it shall preserve the recording 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 recordings shall not be removed from the Commission Offices unless necessary for transcription.

010 Transcription of Recordings

010.01 Requests for Transcription without an Appeal. Parties desiring a transcription of the 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).

010.02 Transcription on Appeal. See Chapter 6 of these rules

011 Recording of Proceedings Prohibited. The Commission shall record all proceedings by court reporter, tape recording or by 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~~proceeding. 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.

012 Formal Hearing.

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

012.01A Payment of Costs. The motion for formal hearing shall contain a statement that the requesting party accepts liability for the payment of fees and costs of a court reporter pending a final decision.

012.01B 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).

012.01C ~~Cost of the Court Reporter~~ Cost of the Court reporter as estimated by the Commission shall be prepaid.

012.02 Formal Hearing Procedure.

012.02A The hearing on the merits will be held before the entire Commission, rather than a panel of Commissioners.

012.02B The rules of evidence applicable in district court will be applied in the hearing. Neb Rev. Stat. §77-5016(1).

012.02C A court reporter will be retained to record the proceeding.

012.02D Fees and costs of a court reporter in a formal proceeding shall be paid by the party or parties against whom a final decision is rendered; other costs shall be allocated as the Commission may determine. Neb. Rev. Stat. §77-5016(1).

013 Pre-hearing Conference.

013.01 A pre-hearing conference may be required by the Commission.

013.02 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.

014 Motions and Objections to Motions.

014.01 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.

014.02 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 by mail at the address shown in the Commission's records. See. Ch 2 §001.08 for a sample certificate of service.

014.03 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.

014.03A Delivered in Person. A motion or an objection to a motion may be delivered to the Commission at its office on the sixth floor 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.

014.03B Mail. A motion or objection to a motion is deemed to have been filed when mailed to the Tax Equalization and Review Commission by United States Mail, postage prepaid.

014.03C 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.

014.04 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.

014.05 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 except upon a showing of prospective settlement or exceptional cause.

014.06 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 except upon a showing of exceptional cause.

014.07 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.

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

014.08A 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 within 24 hours of fax).

014.08B The Order For Hearing and Notice of Hearing on the motion may advise the parties of the following:

014.08B1 The date, time, place, and manner of hearing.

014.08B2 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.

014.08B3 The deadline for submission of exhibits to the Commission and opposing parties.

014.08B4 Other information or direction as the Chairperson may determine.

014.08B5 The Order for Hearing and Notice of Hearing on the motion is deemed a Notice of Hearing.

014.09 Consideration of a Motion. The Commission may, with or without a hearing, consider any motion or objection and grant or deny the motion.

014.10 Hearing on a Motion. The Commission may, in its sole discretion, hold a hearing on a motion 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 and subject to the rules of evidence applicable to the Commission.

014.11 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.

014.12 Motions Deemed Denied. Any motion, request, or other pleading requesting Commission action, if not heard or if 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.

015 Waiver of Hearing. The parties to an appeal or petition may request in writing that an appeal or petition be submitted for the Commission's decision without a hearing.

015.01 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.

015.02 Evidence and Argument. The parties shall submit by joint stipulation the exhibits or other evidence to be considered by the Commission. Each party shall submit any written argument the party may wish to offer.

015.03 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.

016 Subject Matter Jurisdiction. The Commission has jurisdiction to hear appeals and petitions as provided by statute.

016.01 The Commission may determine any question raised in the proceeding upon which 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),~~ Neb. Rev. Stat. §77-5016(7).

016.02 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).

016.02A The Commission may consider and find a taxable value in excess of the highest taxable value for which notice was given by the County Assessor, the County Board of Equalization, or the Property Tax Administrator if notice of a higher taxable value and the intent to offer proof in its support is given by a party. Notice of a 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.

016.03 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).

017 Personal Jurisdiction

017.01 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.

018 Conduct of a Proceeding.

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

018.01A Rulings. The presiding hearing officer shall rule on the admissibility of evidence and any motions or objections made during a hearing before the Commission.

018.01B Oaths. The presiding hearing officer is authorized to administer oaths on behalf of the Commission.

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

018.02A The proceeding is called to order.

018.02B Exhibits are offered and objections, if any, are ruled on or a ruling is reserved for testimony.

018.02C The parties are advised of any information regarding the conduct of the hearing which the presiding hearing officer may deem relevant.

018.02D Any preliminary motions are heard, and stipulations or agreed orders are entered.

018.01E Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

018.01F Presentation of Evidence.

018.01F1 Evidence shall be presented in the following order:

018.01F1a Evidence is presented by the appellant/petitioner.

018.01F1b Evidence is presented by the appellee/respondent.

018.01F1c Rebuttal evidence is presented by the appellant/petitioner.

018.01F1d Surrebuttal evidence is presented by the appellee/respondent.

018.01F2 Witnesses. With regard to each witness who testifies, the following examination may be conducted:

018.01F2a Direct examination conducted by the party who called the witness.

018.01F2b Cross-examination by the opposing party.

018.01F2c Questioning by Commissioners.

018.01F2d Redirect examination by the party who called the witness.

018.01F2e Re-cross examination by the opposing party.

018.01F2f Further questioning by Commissioners.

018.01F3 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~~ statements.

018.01F4 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 and notify the parties of that schedule and the requirements for delivery to the Commission and any opposing party.

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

019 Discovery. Discovery may be conducted in any proceeding 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.

020 Evidence.

020.01 Evidentiary Standard. The evidentiary standard varies with the type of hearing being held.

020.01A Informal Hearing. During an informal hearing the Commission may:

002.01A1 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).

002.01A2 exclude hearsay evidence. Neb. Rev. Stat §77-5016 (4)

002.01B Formal Hearing. During a formal hearing the rules of evidence applicable in the district courts will apply.

020.02 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 meanings of words and phrases as set forth in this chapter. Neb. Rev. Stat. §77-5016(3).

020.03 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. Neb. Rev. Stat. §77-5016(5).

020.03A Parties shall be notified either before or during the hearing or by reference in preliminary ~~disclosure~~reports 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).

020.04 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).

020.05 Testimonial Evidence.

020.05A Testimony: How Taken and Procured. Testimony of witnesses may be taken in four modes: (1) deposition; (2) oral examination; (3) affidavit, ~~and~~ or(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~~ motions provided for in Chapter 12 of these rules.

020.05B Witnesses to be Sworn. All witnesses giving testimony at any proceeding shall make an oath or affirmation to tell the truth under penalties of perjury.

020.05C Opportunity to Cross Examine. Every party has the right to cross examine witnesses who testify.

020.06 Documentary Evidence

020.06A 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.

020.06B 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.

020.07 Non-Documentary Evidence.

020.07A 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.

020.07B ~~Electronic~~ Video Exhibits and Depositions. ~~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.~~ Video exhibits and video depositions may be submitted on either videotape or a write protected 3½ inch DVD or CD. If submitted on videotape the proponent shall provide at their expense the appropriate equipment for playback. DVD's or CDs shall be created in a manner which will allow playback on standard DVD-Video or CD players and the format used to create the DVD or CD, e.g. mpeg, .avi, .mov, etc., must be stated on the DVD of DVD. If a DVD or CD is presented which is not able to be played back on the Commission's DVD-Video or CD equipment, the proponent of the exhibit or deposition shall provide at their expense the appropriate equipment for playback.

020.07C Audio ~~or Video Recordings~~ Exhibits and Depositions. ~~All audio or video recordings shall be accompanied by a printed and legible transcription of the audio portion of the recording~~.

Audio exhibits and depositions may be submitted on an a write protected Audio CD or CD-R in either .mp3 or .wav format. If another type of audio recording is presented the proponent of the exhibit or deposition shall provide at their expense the appropriate equipment for playback.

020.08 Rebuttal Evidence. Every party has the right to submit rebuttal evidence. Neb. Rev. Stat. 77-5016(4).

020.08A 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).

020.09 Required Evidence.

020.09A 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.

020.09B 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.

020.10 Disclosure of Evidence.

020.10A Documentary and Photographic Evidence. Each party shall deliver to each opposing party one complete and legible copy of all documentary and photographic exhibits that the party intends to offer at the hearing. The original and four complete and legible copies of a documentary or photographic exhibit delivered to an opposing party shall be delivered to the Commission.

020.10B Other Tangible Evidence. 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.

020.10C 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.

020.10D 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 cause shown or agreement of the parties.

020.11 Exhibit and Exhibit Page Numbering

020.11A Exhibit Numbers The Commission will ~~assign a number to each exhibit delivered to it and~~ attach an exhibit sticker to each exhibit. 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.

020.11B Exhibit Page Numbers Each page of 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 or the exhibit is delivered by a county board of equalization. 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.

020.11C 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.

020.11D Exhibits submitted by a County Board of Equalization County Boards of Equalization may submit numbered and paginated exhibits. The first Exhibit number assigned to Exhibits submitted by the County Board of Equalization, except in consolidated cases, will be two. In consolidated cases the first Exhibit number assigned to Exhibits of the County Board of Equalization will be the number of consolidated appeals plus one. A cover page is not paginated unless it is signed, or if it contains an opinion, information supporting an opinion, an explanation of an opinion or facts that will be relied on for any purpose. The style for identification of an Exhibit and pagination in use by the Commission is Ex : placed in the lower right hand corner of each page. If that style cannot be replicated any other style that conveys the essential information in a concise, easily located, and readable manner is acceptable.

020.12 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.

020.13 Objections to Evidence. The Commission may exclude evidence based on objection from an opposing party or based on its own motion.

020.13A Evidentiary Rulings. The presiding hearing officer shall rule on the admissibility of testimony and exhibits.

020.13B 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.

021 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).

022 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).

023 Rehearing.

023.01 Motion by a Party. 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 within ten (10) calendar days of the date that the Decision and Order was filed. 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. The filing of a Motion for Rehearing tolls the thirty-day (30 day) appeal period provided by Neb. Rev. Stat. §77-5019, pursuant to Neb. Rev. Stat. §77-5005(5).

023 .02 Commission The Commission may at any time prior to issuance of its order and decision issue an order for rehearing.

024 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, *Washington County Board of Equalization v. Rushmore Borglum Ministries, Inc*., 11 Neb. App. 377, 650 N.W.2d 504 (2002).

025 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).

026 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.

027 Decision and Order. Every substantive action of the Commission adverse to a party shall be entered as a decision and order of the Commission.

027.01 The Commission may issue a decision and order on the record, or in written form.

027.02 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."

027.03 The Chairperson of the Commission may issue any docket entry under seal.

027.04 Any decision and order must contain "Findings of Fact" and "Conclusions of Law." Neb. Rev. Stat. §77-5018.

027.05 A decision and order is effective ~~when signed by a majority of the Commissioners who participated in the decision~~ on the date stated in the order. All Commissioners who participate in a decision shall sign a decision and order indicating their agreement or disagreement.

027.05A 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.

027.06 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.

027.07 Within seven days of issuing a decision and order, the Commission shall electronically publish such decision and order on a web site maintained by the Commission that is accessible to the general public. The full text of final decisions and orders entered after a hering by the Commission or a panel of commissioners shall be published on the web site. Final decisions and orders that are entered (a) on a dismissal by the appellant or petitioner, (b) on a default order when the appellant or petitioner failed to appear, or (c) by agreement of the parties may be published in a summary manner identifying the parties, the case number, and the basis for the final decision and order.

028 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.

028.01 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.

028.02 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 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)

028.03 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)

028.02A Contents of Order. Any order to determine value issued pursuant to this subsection shall require the county board of equalization to:

028.02A1 Assess such property using procedures for assessing omitted property; and

028.02A2 Determine such taxable value within ninety days after issuance of the Commission's Order; and further

028.02A3 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).

028.02B Any determination of the taxable value of the property made by a county board of equalization pursuant to an order pursuant to this subsection may be appealed to the Commission within thirty (30) days of the board's decision. Neb. Rev. Stat. §77-5013 (3).

028.03 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~~ Commission 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.

029 Show Cause Hearings Appeals/Petitions. The Chairperson may issue an Order to Show Cause why a proposed order should not be entered when he or she determines that a proposed order should be considered by the Commission.

029.01 Order for Hearing and Notice of Hearing. 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.

029.02 Service of Order to Show Cause 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.

029.02A 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.

029.02B 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.

029.03 If a party to a proceeding at a Show Cause Hearing does not appear within fifteen (15) minutes of the time for hearing, 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.

029.04 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.

029.05 The provisions of this rule are not applicable to show cause hearings held pursuant to Chapter 9, Equalization Duties, of these rules

030 Videoconferencing and Teleconferencing.

030.01 Videoconferencing. The Commission may conduct an informal hearing on the merits of an appeal/petition or other proceedings via video conference.

030.01A Attendance at Video conference Hearing. Parties, counsel and witnesses may appear at any videoconference site.

030.01B Formal Hearings. The Commission shall not conduct a formal hearing via video conference.

030.01C Objection to Video conference. An objection to the use of videoconferencing for conduct of a hearing must be made by motion pursuant to Chapter 5, §015 of these rules.

030.02 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.

030.01C Objection to Teleconference. An objection to the use of teleconferencing for conduct of a hearing must be made by motion pursuant to Chapter 5, §015 of these rules.

031 Laws, Published Treatises, Periodicals, and Reference Works.

031.01 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; the legislative history of any law, rule, or regulation; and Nebraska Attorney General Opinions.* Neb. Rev. Stat. §77-5016(3).

031.02 Published Treatises. The Commission may consider and utilize the following published treatises 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 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*, Thirteenth Edition, Appraisal Institute, (2001); *Appraisal of Residential Properties*, Appraisal Institute, 4th Edition, (2007); *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~~2009); *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 (~~2001~~2007); *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; *Uniform Standards of Professional Appraisal Practice*, published annually by the Appraisal Foundation; and Valuation and Market Studies for Affordable Housing, Appraisal Institute, 2003. Neb. Rev. Stat. §77-5016(3)

031.03 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*, Fourth Edition (2002), Appraisal Institute; *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).

031.04 Other Published Treatises, Periodicals, and Reference Works.

031.04A Wood, 548 T.M. Hobby Losses. Neb. Rev. Stat. §77-5016 (3)

031.05 Statutory Notice in General. The Commission, as provided by statute, may take statutory notice of 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).

032 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.

032.01 Exclusion from the Hearing Room. The Presiding Hearing Officer may exclude any person from a proceeding when that person is disrupting the proceeding.