

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Larry Clark,
Appellant,

v.

Stanton County Board of Equalization,
Appellee.

Case No: 18A 0130

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION, BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on November 6, 2018, with Commissioner Hotz presiding. Larry Clark (the Taxpayer) appeared at the hearing. The Stanton County Board of Equalization (the County Board) did not appear. Without objection, the Commission took notice of its case files in the above captioned appeal as well as Case Nos. 18A 0124 through 18A 0129 for the purpose of determining personal jurisdiction and subject matter jurisdiction in this appeal. Exhibit 1 was offered and admitted without objection. The Commission received evidence and heard argument regarding its jurisdiction to hear this appeal.

II. STANDARD OF REVIEW

The Commission obtains jurisdiction over an appeal when the appeal form is timely filed, the filing fee is timely received and thereafter paid, and a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.¹ An appellate tribunal, such as the Commission, cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.² If the body from which an appeal was taken lacked jurisdiction, then the appellate tribunal acquires no jurisdiction. When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.³ Parties cannot confer subject matter jurisdiction on a tribunal

¹ See Neb. Rev. Stat. §77-5013 (2016 Cum. Supp.).

² See, e.g., *Lane v. Burt Cty. Rural Pub. Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956), *Village at North Platte v. Lincoln County Board of Equalization*, 292 Neb. 533, 873 N.W.2d 201 (2016).

³ *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 815 N.W.2d 168 (2012).

by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.⁴

III. FACTS AND ANALYSIS

On August 20, 2018, the Taxpayer filed seven appeals with the Commission; it is undisputed that the appeals were timely filed with the requisite fees and supporting documents. In Case No. 18A 0130, however, it appears that the County Board took no action on the underlying protest due to flaws in the execution of the protest form.⁵ Specifically, the protest form filed with the County Clerk (Form 422) indicated that the protest applied to Parcel ID number (PID) 0002142.00, with a legal description of W 1/2 SW 12-23-1 Elkhorn Precinct, 80 acres.⁶ It was subsequently typed on the Protest form that the County Assessor indicated that this was the “[w]rong parcel number and legal description,” and that there was “[n]o W 1/2 SW 12-23-1.” The statutory requirement for filing a protest is that, “If the property is real property, a description adequate to identify each parcel shall be provided . . . If the protest does not contain or have attached the . . . applicable description of the property, the protest *shall* be dismissed by the county board of equalization.”⁷

At the hearing, witnesses for the Taxpayer acknowledged that the PID and legal description on the protest form filed with the County Clerk were incorrect, and testified that the Taxpayer had intended to protest the valuation of PID 0002146.00, with a legal description of N 1/2 SW 12-23-1, Elkhorn Precinct, 80 acres. We are aware of no bright line test in statute or case law for what constitutes an “adequate description of the property,” but on this record, we cannot conclude that the description provided by the Taxpayer was adequate to identify the parcel for which the Taxpayer intended to file a protest. As a result, the County Board lacked jurisdiction to act on the protest as filed, and the Commission lacks the jurisdiction to hear the appeal in Case No. 18A 0130.

⁴ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁵ A copy of the Form 422 delivered to the county is found at Exhibit 1. Subsequent references to the form are references to that exhibit.

⁶ Exhibit 1.

⁷ Neb. Rev. Stat. §77-1502 (2016 Cum. Supp.). Emphasis added.

Despite our determination that we lack jurisdiction to resolve the appeal in Case No. 18A 0130, we note that the parcel with a legal description of N 1/2 SW 12-23-1, Elkhorn Precinct, 80 acres, is the subject of the appeal in Case No. 18A 0127.⁸ The parties should note that an appeal on the valuation of the parcel in question in Case No. 18A 0127 will be scheduled for a hearing on the merits and is still proceeding.

IV. CONCLUSION

The Commission does not have jurisdiction to reach the merits of the appeal filed by the Taxpayer in Case No. 18A 0130, and the appeal therefore must be dismissed.

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.
2. As required by Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.), this decision, if no appeal is filed, shall be certified within thirty days to the Stanton County Treasurer, and the officer charged with preparing the tax list for Stanton County as follows:

Cheryl Wolverton
PO Box 895
Stanton, NE 68779

Sandra Zoubek
PO Box 385
Stanton, NE 68779

3. Each party is to bear its own costs in this matter.

SIGNED AND SEALED: November 9, 2018

Seal

Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner

⁸ Case File, 18A 0127.