

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

Kelsey Marie Culjat,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 19R 0360

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

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

**I. PROCEDURAL HISTORY**

The Commission held a jurisdictional show cause hearing on October 15, 2019. Kelsey Marie Culjat (the Taxpayer) appeared telephonically. Jennifer D. Chrystal-Clark, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). The Commission took notice of its case file, received evidence, and heard argument regarding its jurisdiction to hear this appeal.

**II. STANDARD OF REVIEW**

The Commission obtains jurisdiction over an appeal when (a) the Commission has the power or authority to hear the appeal; (b) an appeal is timely filed; (c) the filing fee is timely received and thereafter paid, and (d) 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.<sup>1</sup> Parties cannot confer subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.<sup>2</sup>

**III. ANALYSIS**

The purpose of the hearing conducted on October 15, 2019, was to resolve the issue of whether the Commission has the power or authority to hear the Taxpayer's appeal. The pertinent facts are not in dispute. The Taxpayer purchased the Subject Property on or about July 15, 2019.

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<sup>1</sup> Neb. Rev. Stat. § 77-5013 (Reissue 2018).

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

In the course of making the purchase, she learned that the assessed value had been increased from the prior year. The previous owner of the property, the Seller, did not file a protest of the property assessment with the County Board. The Taxpayer's real estate agent suggested that she file an appeal with the Commission even though no protest had been filed with the County Board.

Real property in Nebraska is assessed as of January 1 of each year.<sup>3</sup> In counties with a population of at least one hundred and fifty thousand inhabitants (i.e., Douglas, Lancaster, and Sarpy), the county assessor must provide notice of preliminary valuations to real property owners on or before January 15.<sup>4</sup> Between January 15 and March 1, in those most populous counties, the county assessor must provide property owners an opportunity to meet with the assessor or a designated representative to explain the basis for the valuation and accept any relevant information provided by the property owner.<sup>5</sup> On or before March 19 or March 25, depending upon population, the county assessor or county clerk must make up an assessment roll of the taxable real property in the county.<sup>6</sup> On or before June 1, in addition to the notice of preliminary valuation sent in January, the county assessor must notify the owner of record as of May 20 of every item of real property which has been assessed at a different value than in the previous year.<sup>7</sup>

After the assessment roll is complete, taxpayers may file property valuation protests until June 30.<sup>8</sup> The county board of equalization may hear these protests any time between June 1 and July 25, and the most populous counties can extend the deadline for hearing protests until August 10.<sup>9</sup> On or before August 2 or August 18 (for counties that extended the protest hearing deadline), the county clerk must mail written notice of the county board's decision to the protester.<sup>10</sup> The actions of the county board on these protests may be appealed to this

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<sup>3</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>4</sup> Neb. Rev. Stat. § 77-1301(2) (Reissue 2018).

<sup>5</sup> Neb. Rev. Stat. § 77-1311(6) (Reissue 2018).

<sup>6</sup> Neb. Rev. Stat. § 77-1303(1) (Reissue 2018).

<sup>7</sup> Neb. Rev. Stat. § 77-1315(2) (Reissue 2018).

<sup>8</sup> Neb. Rev. Stat. § 77-1502(1) (Reissue 2018).

<sup>9</sup> Id.

<sup>10</sup> Neb. Rev. Stat. § 77-1502(6) (Reissue 2018).

Commission on or before August 24 or on or before September 10 (for counties that extended the protest hearing deadline).<sup>11</sup>

Accordingly, in any given tax year, the Douglas County Assessor (the Assessor) must provide a property owner notice of preliminary valuation by January 15, and must also provide whoever was owner of record on May 20 with notice of any valuation change by June 1. By the time the Taxpayer became the owner of the Subject Property, both the time for the required notices and the time to file a protest had passed. Because no protest was filed, the County Board did not issue any decision on the value of the subject property.

Jurisdiction is the inherent power or authority to decide a case.<sup>12</sup> This Commission only has that authority which is specifically conferred upon it by the laws of the State of Nebraska.<sup>13</sup> The types of appeals the Commission can hear are listed at Neb. Rev. Stat. § 77-5007; these include any decision of any county board of equalization, but they do not include direct appeals from the valuations set by county assessors. There is one limited exception: a person otherwise having a right to appeal may petition the commission if a failure to give notice prevented timely filing of a protest or appeal.<sup>14</sup> However, in this case, because the Taxpayer did not become the owner of the Subject Property until July 15, 2019, the required notices should have been provided to the previous owner, and the Taxpayer is not claiming that the Assessor failed to provide those notices. The Taxpayer's appeal is beyond the Commission's statutory authority to hear appeals. Therefore, the Commission determines that it does not have jurisdiction to hear the appeal.

#### **IV. CONCLUSION**

The Commission does not have jurisdiction to hear the above captioned appeal.

#### **ORDER**

#### **IT IS THEREFORE ORDERED THAT:**

1. The above captioned appeal is dismissed with prejudice.

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<sup>11</sup> Neb. Rev. Stat. § 77-1510 (Reissue 2018).

<sup>12</sup> *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

<sup>13</sup> *See, e.g., Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

<sup>14</sup> Neb. Rev. Stat. § 77-1507.01 (Reissue 2018).

2. As required by Neb. Rev. Stat. § 77-5018 (Reissue 2018), this decision, if no appeal is filed, shall be certified within thirty days to the Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

Diane Battiato  
Douglas County Assessor  
1819 Farnam St., Ste H09 Civic Center  
Omaha, NE 68183-1000

John Ewing  
Douglas County Treasurer  
1819 Farnam St., Rm H03  
Omaha, NE 68183

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

**SIGNED AND SEALED:** October 21, 2019

Seal

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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner