

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

T.M. HOLDINGS LTD.
APPELLANT,

CASE NO: 20A 0253

V.

DECISION AND ORDER OF
DISMISSAL

DAKOTA COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

For the Appellant:

James Martin, Director
T.M. Holdings Ltd.,

For the Appellee:

Kim Watson,
Deputy Dakota County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a 115.04 acre parcel improved with a 9,600 square foot airplane hangar and an asphalt runway located in Dakota County, Nebraska. The legal description of the Subject Property is found at Exhibit 1.

II. PROCEDURAL HISTORY

The Dakota County Assessor (County Assessor) determined that the assessed value of the Subject Property was \$318,480 for tax year 2020.¹ T.M. Holdings Ltd. (the Taxpayer) protested this assessment to the Dakota County Board of Equalization (the County Board) and requested a taxable value of \$182,155.² The County Board determined that the taxable value of the Subject Property for tax year 2020 was

¹ Exhibit 3:18. Notice of this assessment was dated May 29, 2020.

² Exhibit 3:1. The protest form filed by the Taxpayer was dated June 26, 2020.

\$182,155.³ Neither the Taxpayer nor the County Assessor filed an appeal of the County Board decision.

Subsequent to the County Board decision, the County Assessor sent another Notice of Valuation to the Taxpayer on August 5, 2020.⁴ In this notice, the assessment of the Subject Property was \$303,830. The Taxpayer protested this assessment to the County Board and again requested a taxable value of \$182,155.⁵ There is no record in these proceedings that the County Board took any action regarding this protest. Having received no notice of a protest proceeding, or any decision of the County Board in relation to the August 5, 2020, notice of assessment from the County Assessor, the Taxpayer filed an appeal on October 7, 2020, with the Tax Equalization and Review Commission (the Commission).⁶

The Commission first held a jurisdictional show cause hearing on November 9, 2020. After finding that the County Board's failure to provide notice of its decision on the August 13, 2020, protest prevented timely filing of an appeal by the Taxpayer, the Commission found that it had jurisdiction to hear the appeal as a petition, as authorized by Neb. Rev. Stat. § 77-1507.01. The Commission also concluded

Our determination that the Commission has jurisdiction over Appellant's petition does not preclude an eventual decision that the Notice of Valuation Change issued on August 5, 2020, was void from the beginning due to improper procedure or a lack of statutory authority to take such an action. The absence of subject matter jurisdiction may be raised at any time by any party, or by an appellant tribunal of its own accord.⁷

The Commission held a hearing on the merits on September 13, 2021. Prior to the hearing, the parties exchanged exhibits as ordered by the

³ Exhibit 3:6. The County Board decision was made July 13, 2020, and notice of that decision was mailed to the Taxpayer on July 28, 2020.

⁴ Exhibit 3:9.

⁵ Exhibit 3:10. The protest form filed by the Taxpayer was dated August 13, 2020.

⁶ See, Case File.

⁷ See, e.g., *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

Commission. Exhibits 1 to 7, and pages 1-4, 10-11, and 14-15 of Exhibit 8 were admitted into evidence. Pages 5-9 and 12-13 of Exhibit 8 were not admitted into evidence.

III. FINDINGS OF FACT

As noted in the Procedural History above, the decision of the County Board on July 13, 2020, was not appealed. Therefore, in this Decision and Order, as explained below, the Commission will not disturb that decision of the County Board.

This appeal relates instead to the subsequent Notice of Valuation by the County Assessor on August 5, 2020, and the fact that the record in this proceeding includes no evidence of any County Board action in relation to the County Assessor's August 5, 2020, notice.

On or before June 1, 2020, the County Assessor was required to notify the Taxpayer if the property had been assessed at a value that is different than in the prior year.⁸ Once that assessment was completed for tax year 2020, and notice was given to the Taxpayer by June 1, 2020, the "valuation of any real property shall not be changed by the county assessor ... except by action of the Tax Equalization and Review Commission or the county board of equalization..."⁹

However, under some circumstances, Nebraska laws permit changes to the assessment after the June 1 notice, but the August 5, 2020, notice by the County Assessor did not meet the criteria of any of those statutes.

For example, pursuant to Neb. Rev. Stat. § 77-1315.01, if a county assessor determines that a property has been undervalued or overvalued, "the county assessor shall report to the county board of equalization any overvaluation or undervaluation..." To be undervalued or overvalued means "any taxable real property that is

⁸ Neb. Rev. Stat. § 77-1315(2).

⁹ Neb. Rev. Stat. § 77-1315.01.

assessed by the county assessor but has a taxable value lower or higher than other taxable property with which it is required to be equalized.”¹⁰ Nothing admitted in this appeal indicates that the County Assessor made any such report to the County Board of an undervaluation or overvaluation in relation to the August 5, 2020, Notice of Valuation to the Taxpayer. Under Nebraska law, an assessment may also be changed when property was omitted, or not included in the assessment notice by June 1. Omitted property is “any taxable real property that was not assessed on March 19” and included in the notice by June 1.¹¹ In this appeal, nothing in the record suggests that the August 5, 2020, notice was issued because property had been omitted. Therefore, the Commission concludes the August 5, 2020, Notice of Valuation was not authorized by law.

Christy Abts, the current Dakota County Assessor, testified that her understanding of the reason why the previous County Assessor sent the August 5, 2020, Notice of Valuation was related to correspondence from Ruth Sorensen, the Property Tax Administrator (PTA) of the Property Assessment Division of the Nebraska Department of Revenue. Exhibit 5 is a copy of an email dated June 5, 2020, from Sorensen that was received by the County Assessor. In the email, Sorensen encouraged county assessors to work with her staff to determine whether corrections could be presented to county boards that would be viewed as overvalued property. This email was sent after the June 1, 2020, deadline for county assessors to send notices of assessment to taxpayers. The record in this appeal is unclear as to what the County Assessor did in relation to the communication from Sorensen.

We conclude that the August 5, 2020, assessment notice was not authorized by law and is therefore null and void. Since we find that the assessment notice is void, the County Board’s inaction in relation to the protest by the Taxpayer has no effect and there is no County Board

¹⁰ Neb. Rev. Stat. § 77-124.

¹¹ Neb. Rev. Stat. § 77-123.

decision to review. Our authority in this context is to review decisions of the County Board.¹² Since the August 5, 2020, notice of assessment by the County Assessor is null and void, and there is no decision to review under this record, we should dismiss the appeal.

IV. CONCLUSIONS OF LAW

For the foregoing reasons, the Commission therefore finds that the August 5, 2020, Notice of Valuation is null and void, and there is therefore no decision of the County Board to review. As such, the Taxpayer's appeal should be dismissed. As noted above, the County Board decision dated July 13, 2020, should not be disturbed by this Decision and Order.

V. ORDER

IT IS ORDERED THAT:

1. The Notice of Valuation dated August 5, 2020, is null and void.
2. The decision of the Dakota County Board of Equalization, dated July 13, 2020, is not disturbed by this Decision and Order.
3. The appeal of the Taxpayer is dismissed.
4. This Decision and Order, if no appeal is timely filed, shall be certified to the Dakota County Treasurer and the Dakota County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2020.

¹² Neb. Rev. Stat. § 77-5007.

8. This Decision and Order is effective for purposes of appeal on February 14, 2023.¹³

Signed and Sealed: February 14, 2023

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

¹³ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.