

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Western Hospitality LLC,
Appellant,

v.

Scotts Bluff County Board of Equalization,
Appellee.

Case No. 20C 0051

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Tax Equalization and Review Commission (the TERC) held a jurisdictional show cause hearing on September 30, 2020. Appellant (Western Hospitality) appeared telephonically. David Eubanks, Scotts Bluff County Attorney, appeared telephonically on behalf of the Scotts Bluff County Board of Equalization (the County Board). The TERC took notice of its case files, received evidence, and heard argument regarding its jurisdiction to hear this appeal.

II. APPLICABLE LAW

The TERC obtains jurisdiction over an appeal when the TERC has the authority to hear the appeal, the appeal 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 When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.² 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.³

III. FINDINGS OF FACT

On August 14, 2020, Western Hospitality filed an appeal with the TERC along with the required filing fee. The appeal included a copy of a Form 425, which is the form prescribed by

¹ Neb. Rev. Stat. § 77-5013 (Reissue 2018).

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

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

the Tax Commissioner for filing reports of destroyed real property with a county board of equalization pursuant to Neb. Rev. Stat. §§ 77-1307 through 77-1309. On this form, Western Hospitality asserted that the COVID-19 pandemic had destroyed its property (a hotel) by reducing the property's profitability. The form was submitted to the County Board for consideration on or about July 8, 2020.

The County Board did not fill in the blanks reserved for the assessed value of the subject property on the Form 425. Instead, the form made reference to an attached letter. The letter, dated July 27, 2020, stated that the "form" was "denied," because the "claim ... does not meet minimum requirements set by Nebraska State Statute." The letter further advised Western Hospitality that it could file an appeal with the TERC if it disagreed with the County Board's determination.

IV. ANALYSIS

In 2019, the legislature adopted Neb. Rev. Stat. §§ 77-1307 through 77-1309, which set forth a procedure for modifying the assessment of real property destroyed by a natural disaster after the normal assessment date. Those statutes create a process under which a property owner files a report using a form (i.e., the Form 425 used in this case) with the county assessor and the county clerk.⁴ The county board then adjusts the assessed value of the property to its value on the date it suffered the property damage.⁵ If the property owner is not satisfied with the county board's new assessment, the property owner may file a protest with the county board.⁶ The county board's decision on that protest may then be appealed to the TERC.⁷ The statutes do not provide an alternative procedure to follow if the county board rejects the report instead of adjusting the assessed value of the subject property. Western Hospitality followed the statutes up to the point at which the County Board denied its report, effectively setting the assessed value of the Subject Property at the same level as before the filing of the report, but it did not protest that denial to the County Board.

We find that the County Board was in error when it advised Western Hospitality that it could appeal the County Board's denial of the report directly to this Commission. However, it is well established under Nebraska law that jurisdiction cannot be created by waiver, estoppel, consent,

⁴ Neb. Rev. Stat. § 77-1308(1) (Supp. 2019).

⁵ Neb. Rev. Stat. § 77-1309(1) (Supp. 2019).

⁶ Neb. Rev. Stat. § 77-1309(3) (Supp. 2019).

⁷ Id.

or conduct of the parties.⁸ For that reason, the County Board's statement in its letter dated July 27, 2020, that Western Hospitality could appeal to TERC cannot give us jurisdiction over this appeal.

The TERC is an agency which has only the powers conferred upon it by the Legislature.⁹ A property owner's right to appeal to the TERC does not arise until after the County Board makes a decision on a protest of the assessed value determined by the County Board, but Western Hospitality did not file a protest. Instead, it appealed the County Board's decision to reject its report of destroyed real property directly to the TERC. The TERC does not have jurisdiction to hear the appeal because it does not have the statutory authority to hear the appeal.

V. CONCLUSION

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

THEREFORE IT IS ORDERED:

1. The above captioned appeal is dismissed with prejudice.
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 Scotts Bluff County Treasurer, and the officer charged with preparing the tax list for Scotts Bluff County as follows:

Heather Hauschild
Scotts Bluff County Treasurer
1825 10th St.
Gering, NE 69341

Amy Ramos
Scotts Bluff County Assessor
1825 10th St.
Gering, NE 69341

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

SIGNED AND SEALED: October 6, 2020

Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner

⁸ *Creighton*, supra.

⁹ Id. at 921, 102.