

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Express Properties of Indiana Inc.,
Appellant,

v.

Dawson County Board of Equalization,
Appellee.

Case No. 20C 0054

**DECISION & ORDER FOR
DISMISSAL WITH PREJUDICE**

For the Appellant:

Terry Jessen,
Pro se

For the Appellee:

Katherine K. Kuhn,
Dawson County Attorney

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

I. BACKGROUND

The Subject Property is a commercial parcel located in Dawson County. The parcel is improved with a 22,816 square foot Howard Johnson hotel. The legal description and property record card for the Subject Property are found at Exhibit 4.

II. APPLICABLE LAW

The statutes relating to destroyed real property were first enacted in 2019 and are found at Neb. Rev. Stat. §§ 77-1307 through 77-1309. Neb. Rev. Stat. § 77-1307 contains general provisions and definitions. Neb. Rev. Stat. § 77-1308 provides, in part:

(1) If real property becomes destroyed real property during the current assessment year, the property owner shall file a report of the destroyed real property with the county assessor and county clerk of the county in which the property is located on or before July 15 of the current assessment year. The report of destroyed real property shall be made on a form prescribed by the Tax Commissioner.

...

(3) The county board of equalization shall consider any report of destroyed real property received pursuant to this section, and the assessment of such property shall be made by the county board of equalization in accordance with section 77-1309.

Neb. Rev. Stat. § 77-1309 provides in part:

(1) If the county board of equalization receives a report of destroyed real property pursuant to section 77-1308, the county board of equalization shall adjust the assessed value of the destroyed real property to its assessed value on the date it suffers significant property damage.

(2) The county board of equalization may meet on or after June 1 and on or before July 25, or on or before August 10 if the board has adopted a resolution to extend the deadline for hearing protests under section 77-1502, for the purpose of considering the assessed value of destroyed real property pursuant to this section. . . .

(3) The county board of equalization shall give notice of the assessed value of the destroyed real property to the record owner or agent at his or her last-known address. Protests of the assessed value proposed for destroyed real property pursuant to this section shall be filed with the county board of equalization within thirty days after the mailing of the notice. . . . Within seven days after the county board of equalization's final decision, the county clerk shall mail to the protester written notice of the decision. . . .

(4) The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commission within thirty days after the board's final decision.

The right of appeal in Nebraska is purely statutory.¹ An administrative agency such as the Commission is limited in authority to those powers granted to it by statute.² The Commission's jurisdiction over an appeal is derived from statute.³ The Commission "has the power and duty to hear and determine appeals of any decision of any county board of equalization."⁴

Before reaching the legal issues presented for review, and even if no party has raised the issue, the Commission has the duty to determine whether it has jurisdiction over the matter before it.⁵ A tribunal such as the Commission may have subject matter jurisdiction over a certain class of case, but it may nonetheless lack the authority to address a particular question or grant the particular relief requested.⁶ The Commission, in the absence of jurisdiction, must dismiss a pending appeal as a matter of law.⁷

¹ *Loyd v. Family Dollar Stores of Neb., Inc.*, 304 Neb. 883, 888, 937 N.W.2d 487, 491 (2020).

² *In re Interest of Kamille C. & Kamiya C.*, 302 Neb. 226, 233, 922 N.W.2d 739, 746 (2019).

³ *Village at North Platte v. Lincoln Cty. Bd. of Equal.*, 292 Neb. 533, 540, 873 N.W.2d 201, 206-207 (2016).

⁴ *Id.* at 540, 873 N.W.2d at 207 (citing Neb. Rev. Stat. § 77-5007).

⁵ See *In re Application of Northeast Neb. Pub. Power Dist.*, 300 Neb. 237, 246, 912 N.W.2d 884, 891 (2018).

⁶ *Village at North Platte* at 541, 873 N.W.2d at 207.

⁷ See *Davis v. Moats*, 308 Neb. 757, 768, 956 N.W.2d 682, 691 (2021).

The Commission gives statutory language its plain and ordinary meaning and will not look beyond the statute to determine the legislative intent when the words are plain, direct, and unambiguous.⁸ Components of a series or collection of statutes pertaining to a certain subject matter are in pari materia and should be conjunctively considered and construed to determine the intent of the Legislature, so that different provisions are consistent, harmonious, and sensible.⁹

III. FACTS AND ANALYSIS

A. Summary of the Evidence

Terry Jessen is the president of Express Properties of Indiana Inc., the Taxpayer, which is the owner of the Subject Property. On June 30, 2020, the Taxpayer filed a Property Valuation Protest, Form 422, with the County Clerk.¹⁰ On or about July 3, 2020, the Taxpayer filed a Form 425, Report of Destroyed Real Property, with the County Clerk.¹¹ Form 425 is the form prescribed by the Tax Commissioner for a taxpayer to report significant property damage to real property as a result of a calamity after January 1 and before July 1 of the current assessment year. It is designed to serve as both a property owner's report of destroyed real property and as notice of the County Board's decision on the assessed value of the property.¹² The Taxpayer's Form 425 stated that the COVID-19 pandemic "has greatly reduced the market value of this hotel property, by at least 25%," and requested a 25% reduction in the assessed value of the Subject Property.¹³ The Taxpayer did not report any physical damage to the Subject Property.

The County Board held a hearing relating to the Subject Property on July 22, 2020. Jessen was present at the hearing. At the hearing, he withdrew the valuation protest for the Subject Property filed on the Form 422, Property Valuation Protest, pursuant to Neb. Rev. Stat. § 77-1502.¹⁴ Instead, while at the hearing, Jessen requested that the County Board take up the report of destroyed real property, filed on Form 425, which the County Board apparently had received before that date.¹⁵

⁸ *County of Webster v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 751, 766, 896 N.W.2d 887, 898 (2017).

⁹ *Id.*

¹⁰ Exhibit 3.

¹¹ Exhibit 1.

¹² See Exhibit 1.

¹³ Exhibit 1.

¹⁴ The Form 422, completed and signed by Jessen but not completed by the County Board, is Exhibit 3:1.

¹⁵ An audio recording of the County Board's proceeding, Exhibit 14, suggests that one of Jessen's employees had filed a Form 425 sometime before the proceeding, and Jessen brought a different Form 425 with a similar request for

Accordingly, on July 22, 2020, the County Board proceeded with the hearing on the report of destroyed real property, and documented its decision on the report on July 23, 2020.¹⁶ That decision is recorded on the Form 425, which indicates a land value of \$38,038, an improvement value of \$1,321,174, and a total value of \$1,359,212.¹⁷ These three values are written in each of two adjacent columns labeled “Current Year Assessed Value” and “Reassessment Value.” Below these values is the comment, “Form 425 does not apply.” The County Board’s decision, recorded on the Form 425, was mailed to Jessen on July 27, 2020.¹⁸ Jessen received the form within a week after July 27, 2020, but he did not file a protest of the County Board’s decision on the Form 425 with the County Board. Instead, he filed the present appeal with the Commission on August 17, 2020.

B. Analysis

Although the Commission has the power to hear and determine appeals of any decision of any county board of equalization, its jurisdiction over an appeal is derived from statute.¹⁹ Powers and authority can be exercised only when they are expressly granted.²⁰ Thus, even if statutes grant the Commission general subject matter jurisdiction over a class of cases, e.g., appeals of County Board decisions, we do not have jurisdiction over any particular appeal if the statutes specify a process by which a particular appeal is to be perfected and that process was not followed.

Neb. Rev. Stat. §§ 77-1308 and 77-1309 set forth a process under which a property owner files a report of destroyed real property with the county clerk and the county assessor.²¹ The county board then considers the assessed value of the destroyed real property and gives notice of that value to the property owner.²² The property owner may then file a protest of the assessed value with the county board within thirty days of the mailing of the notice.²³ “The action of the

relief with him to the hearing. To the extent we can determine from the recording, it is the Form 425 filed by Jessen’s employee that was taken up by the County Board and used to record its decision.

¹⁶ Exhibit 1.

¹⁷ Exhibit 1.

¹⁸ Exhibit 1.

¹⁹ *Village at North Platte*, 292 Neb. at 540, 873 N.W.2d at 206-207.

²⁰ *Id.* at 539, 873 N.W.2d at 206.

²¹ Neb. Rev. Stat. § 77-1308(1) (Supp. 2020).

²² Neb. Rev. Stat. § 77-1309(2), (3) (Supp. 2020).

²³ Neb. Rev. Stat. § 77-1309(3) (Supp. 2020).

county board of equalization *upon a protest filed pursuant to this section* may be appealed to the Tax Equalization and Review Commission within thirty days after the board’s final decision.”²⁴

The statutes do not specify what a county board should do if a property owner files a report but no change to the assessed value is appropriate. In this case, the County Board entered a “Reassessment Value” that was identical to the previous assessed value, along with the comment that “Form 425 does not apply.” Neb. Rev. Stat. § 77-1309 expressly authorizes property owners who disagree with a county board of equalization’s initial decision on a report of destroyed property to file a protest of the decision with the county board of equalization. But that protest, and a subsequent decision of the county board, must occur before appealing that final decision to this Commission.

That did not happen in this case. Instead of filing a protest with the County Board, the Taxpayer filed an appeal to the Commission. That appeal was premature because the Taxpayer had not protested the County Board’s decision and under Neb. Rev. Stat. § 77-1309(4), it is the action of the county board of equalization “upon a protest” that may be appealed to the Commission. Consequently, we find that the Commission lacks jurisdiction to hear the merits of the appeal. When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.²⁵

IV. CONCLUSIONS OF LAW

The appeal should be dismissed because the Commission does not have jurisdiction to hear the merits of the appeal.

V. ORDER

IT IS ORDERED:

1. The appeal is dismissed with prejudice.
2. This Decision and Order, if no appeal is timely filed, shall be certified to the Dawson County Treasurer and the Dawson County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
3. Each party is to bear its own costs in this proceeding.

²⁴ Neb. Rev. Stat. § 77-1309(4) (Supp. 2020) (emphasis added).

²⁵ See *Davis v. Moats*, 308 Neb. 757, 768, 956 N.W.2d 682, 691 (2021).

4. This Decision and Order is effective for purposes of appeal on August 18, 2021.²⁶

Signed and Sealed: August 18, 2021

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

²⁶ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Revised Statutes and Court Rules.