

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Millennium Rail LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos. 20C 0327 & 20C 0328

ORDER ON JURISDICTION

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on October 21, 2020, at 4:00 p.m. Curtis Frazier and Robin Fish appeared telephonically on behalf of Millennium Rail LLC (Appellant). Jennifer D. Chrystal-Clark, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). Without objection from either party, the Commission extended the scope of the hearing to also address Case No. 20C 0327, another appeal filed by Appellant. The Commission took notice of its case files, received evidence, and heard argument regarding its jurisdiction to hear this appeal.

II. APPLICABLE LAW

The Commission obtains jurisdiction over an appeal when the Commission 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 Any action of the County Board pursuant to Neb. Rev. Stat. § 77-1502 may be appealed to the Commission in accordance with Neb. Rev. Stat. § 77-5013 on or before August 24, or on or before September 10 if the County Board has adopted a resolution to extend the deadline for hearing protests under Neb. Rev. Stat. § 77-1502.²

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

² Neb. Rev. Stat. § 77-1510 (Reissue 2018).

Neb. Rev. Stat. § 77-5013(3) provides, in part:

(a) For each appeal or petition regarding the taxable value of a parcel of real property, the filing fee shall be:

(i) Forty dollars if the taxable value of the parcel is less than two hundred fifty thousand dollars;

(ii) Fifty dollars if the taxable value of the parcel is at least two hundred fifty thousand dollars but less than five hundred thousand dollars;

(iii) Sixty dollars if the taxable value of the parcel is at least five hundred thousand dollars but less than one million dollars; or

(iv) Eighty-five dollars if the taxable value of the parcel is at least one million dollars[.]³

When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.⁴

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.⁵

III. FINDINGS OF FACT

The County Board extended the protest hearing deadline for 2020.⁶

On September 9, 2020, the Commission received an envelope containing two completed appeal forms signed by Curtis Frazier, two decisions of the County Board, and a check for \$100. The County Board decisions indicated that the value of the parcel involved in Case No. 20C 0327 was \$4,150,800, and the value of the parcel involved in Case No. 20C 0328 was \$815,200. The Commission informed the Appellant that it would apply \$85 of the \$100 paid for filing fees to Case No. 20C 0327, which was thus properly filed; the Commission also informed Appellant that additional filing fees of \$45 were due for Case No. 20C 0328. On September 16, 2020, the Commission received an additional check for \$45 in an envelope postmarked September 14, 2020.

The evidence adduced at the hearing showed that Frazier and Fish are both employees of Appellant's parent company, WATCO Co. LLC (WATCO). Fish testified that WATCO had recently begun performing some tax protest functions in-house, and the underpayment of filing fees was an oversight. Frazier advised the Commission that he preferred that the portion of the

³ Neb. Rev. Stat. § 77-5013(3), LB 4 (Feb. 12, 2020).

⁴ *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

⁵ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁶ Case file.

filing fees timely received be applied to 20C 0327 if the Commission had the authority to take jurisdiction over only one of the two appeals.

IV. ANALYSIS

The County Board extended the protest hearing deadline, so the deadline for filing appeals with the Commission was September 10, 2020. The parcel in Case No. 20C 0327 was valued by the County Board at \$4,150,800; the filing fee for this parcel was \$85. The parcel in Case No. 20C 0328 was valued by the County Board at \$815,200; the filing fee for this parcel was \$60. Appellant submitted only \$100 prior to the filing deadline. In accordance with Appellant's expressed preference, we apply \$85 of the filing fee that was timely received to Case No. 20C 0327. The full filing fee required for the commission to have jurisdiction over Case No. 20C 0328 was neither mailed nor received until after the filing deadline. Therefore, the Commission determines that it has jurisdiction over Case No. 20C 0327 but it does not have jurisdiction over Case No. 20C 0328.

V. CONCLUSION

The Commission has jurisdiction to hear Case No. 20C 0327. The Commission does not have jurisdiction to hear Case No. 20C 0328.

THEREFORE IT IS ORDERED:

1. Case No. 20C 0327 shall be scheduled for a hearing on the merits.
2. Case No. 20C 0328 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 Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

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

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

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

SIGNED AND SEALED: November 2, 2020

Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner