

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

City of Laurel,
Appellant,

v.

Cedar County Board of Equalization,
Appellee.

Case No. 20E 0126

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on January 26, 2021. Keelan Holloway appeared telephonically on behalf of the City of Laurel. Nicholas Matney, Cedar County Attorney, appeared telephonically on behalf of the Cedar County Board of Equalization (the County Board). The Commission took notice of its case files, received evidence, and heard argument regarding its jurisdiction to hear this petition.

II. APPLICABLE LAW

The Commission obtains jurisdiction over an appeal or petition when the Commission has the authority to hear the petition, the petition is timely filed, and the filing fee is timely received and thereafter paid.¹ An appellate tribunal, such as the Commission, cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.² If the body from which an appeal was taken lacked jurisdiction, then the appellate tribunal acquires no jurisdiction. When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.³ 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.⁴

Neb. Rev. Stat. § 77-202 provides, in part:

(1) The following property shall be exempt from property taxes:

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

² See, e.g., *Lane v. Burt Cty. Rural Pub. Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

³ *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

⁴ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

(a) Property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivision for a public purpose. *****

Neb. Rev. Stat. §77-202.11 provides, in part:

(1) Leased public property, other than property leased for a public purpose as set forth in subdivision (1)(a) of section 77-202, shall be taxed or exempted from taxation as if the property was owned by the leaseholder. The value of the property shall be determined as provided under section 77-201.

(2) On or before January 31 each year, the state and each governmental subdivision shall provide to the appropriate county assessor each new lease or preexisting lease which has been materially changed which went into effect during the previous year and a listing of previously reported leases that are still in effect. * * * * *

Neb. Rev. Stat. § 77-202.12 provides:

(1) On or before March 1, the county assessor shall send notice to the state or to any governmental subdivision if it has property not being used for a public purpose upon which a payment in lieu of taxes is not made. Such notice shall inform the state or governmental subdivision that the property will be subject to taxation for property tax purposes. The written notice shall contain the legal description of the property and be given by first-class mail addressed to the state's or governmental subdivision's last-known address. If the property is leased by the state or the governmental subdivision to another entity and the lessor does not intend to pay the taxes for the lessee as allowed under subsection (4) of section 77-202.11, the lessor shall immediately forward the notice to the lessee.

(2) The state, governmental subdivision, or lessee may protest the determination of the county assessor that the property is not used for a public purpose to the county board of equalization on or before April 1. The county board of equalization shall issue its decision on the protest on or before May 1.

(3) The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission on or before June 1. The Tax Commissioner in his or her discretion may intervene in an appeal pursuant to this section within thirty days after notice by the Tax Equalization and Review Commission that an appeal has been filed pursuant to this section.

Title 350 Neb. Admin. Code, Ch. 15 provides, in part:

003.12 When the assessor makes a change in the tax status of the property, notice shall be sent to the owner of record. The owner or lessee may protest such change in tax status to the county board of equalization within thirty days after the date of the notice. Decisions of the county board of equalization on protests must be made within thirty days after the date the protest was filed. * * * * *

003.18 If failure to give notice pursuant to REG-15-003.11C, REG-15-003.11C(2), REG 15-003.12, REG- 15-003.12A, REG-003.14A, REG-15-003.14B, REG-15-003.15B and REG-15-003.16A prevented the timely filing of a protest or appeal, an owner, agent or the lessee that is responsible for paying the property taxes pursuant to Neb. Rev. Stat. Section 77-202.11 and has a right to protest or appeal may petition the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013, on or before December 31 of the year in which the notice

should have been sent, for a determination of the taxability, the actual valuation or the special valuation assessment. * * * * *.⁵

004.01 On or before March 1, the assessor shall review all property owned by the state and the various governmental subdivisions within the county and make a determination of what property is not being used for or being developed for a public purpose as of January 1. All property determined not used for or being developed for a public purpose and not specifically exempted by statute, shall be assumed taxable for property tax purposes and valued pursuant to REG-15-004.01.

004.02 On or before January 31 each year, the state and each governmental subdivision shall provide the appropriate assessor a legal description of its recently leased property or a copy of each new lease or preexisting lease, which has been substantially changed and was in effect on January 1 of the current year. 004.02A On or before January 31, in subsequent years, the state and each governmental subdivision shall also provide the appropriate assessor a listing of previously reported leases that are still in effect and have not been materially changed. 004.03 On or before March 1, the assessor shall send written notice to each state agency and governmental subdivision when he or she finds that the entity owns property that is not being used or developed for a public purpose, and upon which no in lieu of tax is paid. * * * * *.

004.11 Any state agency, governmental subdivision or the lessee having a right to protest or appeal may petition the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013 on or before December 31 of the year in which the notice should have been sent, for a determination of the actual value, or special value because a failure to give notice pursuant to REG-15-004.03, REG-15-004.05B, REG-15-004.07 and 15-004.09B prevented the timely filing of a protest or appeal. * * * * *.⁶

Neb. Rev. Stat. § 18-2137 provides, in part:

The property of a [Community Development Authority] is declared to be public property used for essential public and governmental purposes and shall be exempt from all taxes. Whenever such authority shall purchase or acquire real property pursuant to the Community Development Law, the authority shall annually, so long as it shall continue to own such property, pay out of its revenue to the State of Nebraska, county, city, township, school district, or other taxing subdivision in which such real property is located, in lieu of taxes, a sum equal to the amount which such state, county, city, township, school district or other taxing subdivision received from taxation from such real property during the year immediately preceding the purchase or acquisition of such real property by the authority. The county board of equalization may, in any year subsequent to the purchase or acquisition of such property by the authority, determine the amount that said authority shall pay out of its revenue to the State of Nebraska and its several governmental subdivisions in lieu of taxes, which sum shall be as justice and equity may require, notwithstanding the amount which the state and its governmental subdivisions may

⁵ The Department of Revenue cites Neb. Rev. Stat. §§ 77-202.11, R.R.S. 2003, 77-202 and 77-5013, R.S. Supp., 2006 and 77-202.12, 77-702 and 77-5007, R.S. Supp., 2007 as the statutory authority for this regulation.

⁶ The Department of Revenue cites Neb. Rev. Stat. §§ 49-1202, and 49-1203, R.R.S. 2004, 77-202.11, R.R.S. 2003, 77-202, 77-1315, 77-1502 and 77-5013, R.S. Supp., 2006 and 77-202.12, 77-702 and 77-5007. R.S. Supp., 2007 as the statutory authority for this regulation.

have received from taxation during the year immediately preceding the purchase or acquisition of such property. * * * * *.⁷

III. FINDINGS OF FACT

The Subject Property in this appeal is an agricultural parcel in Cedar County. The parcel was owned by a private party until August 2019 when it was sold to the City of Laurel Community Redevelopment Agency (the CRA). The Subject Property was subject to property taxation for tax year 2019. In September 2019, an employee of the Cedar County Assessor's Office sent an email to Christine Rasmussen, the City's Economic Development Coordinator. The email included inquiries about the use of the parcel and other information about its assessment and tax status, but Rasmussen did not receive the email. The Assessor did not issue a notice of intent to tax the Subject Property to the City or the CRA.

The assessed value of the Subject Property changed from 2019 to 2020, so the County Assessor issued a notice of valuation change card to the CRA. Rasmussen received the card on or about May 29, 2020. The card explained how to file a protest with the County Board if the property owner disagreed with the new assessed value. The CRA did not file a protest of the new assessed value. The CRA did not make a payment in lieu of tax for the Subject Property for tax year 2020.

IV. ANALYSIS

"The right of appeal in this state is clearly statutory[.] ... And if these statutes create such a right, the mode and manner of appeal is statutory and such jurisdiction can only be conferred in the manner provided by statute."⁸ The Commission has only the powers conferred upon it by the Legislature, and it does not have the power to apply equitable principles in jurisdictional matters.⁹ Accordingly, in order for the Commission to have jurisdiction over these appeals, there must be a clear statutory right to appeal.

⁷ Neb. Rev. Stat. § 18-2137 (2018 Cum. Supp.).

⁸ *Boone County Bd. of Equalization v. Nebraska Tax Equalization and Review Com'n.*, 9 Neb.App. 298, 302, 611 N.W.2d 119, 123, (Neb.App 2000), citing *Lydick v. Johns*, 185 Neb. 717, 719, 178 N.W.2d 581, 582-83 (1970) (quoting *Peck v. Dunlevey*, 184 Neb. 812, 172 N.W.2d 613 (1969)).

⁹ *Creighton*, 260 Neb. at 921, 620 N.W.2d at 102 (2000).

The CRA asserted that it is both a governmental subdivision and an Authority as defined by the Community Development Law.¹⁰ In the absence of any evidence or argument to the contrary, we assume that these assertions are correct.

Property owned by the CRA is, by law, “public property used for essential public and governmental purposes and shall be exempt from all taxes.”¹¹ A payment in lieu of taxes, calculated on the basis of the amount received by the taxing subdivision in the year proceeding the acquisition of the property, must be made. We find no statutory authority for a county assessor to assess property owned by the CRA.¹² It follows that there is no statutory process for the CRA to protest or appeal an assessor’s decision to assess taxable value. Additionally, because the Subject Property was taxed in 2019, the requirement found in 350 Neb. Admin. Code, Ch. 15 § 003.12, that the Assessor provide notice of a change in the taxable status does not apply.

The CRA is a political subdivision.¹³ Assuming the laws relating to governmental subdivisions apply to the CRA,¹⁴ Neb. Rev. Stat. § 77-202.12 would have required the Assessor to send notice to the CRA if the CRA “ha[d] property not being used for a public purpose upon which a payment in lieu of taxes is not made.” But § 77-202.12 does not provide for a right to petition the Commission if that notice is not given.¹⁵ 350 Neb. Admin. Code Ch. 15 § 004.03 contains the same notice requirement. 350 Neb. Admin. Code Ch. 15 § 004.11 provides that “Any ... governmental subdivision ... having a right to protest or appeal may petition the Tax Equalization and Review Commission ... on or before December 31 of the year in which the notice should have been sent, *for a determination of the actual value, or special value* because a failure to give notice pursuant to [§ 004.03] prevented the timely filing of an appeal or petition.” (emphasis added.) However, the CRA is not seeking a determination of “actual value or special value” of the property; it is seeking a determination of taxability. A determination of taxability is

¹⁰ See Neb. Rev. Stat. §§ 18-2101 through 18-2105. The appeal in this case was signed by an attorney as “Legal Counsel for the City of Laurel, Nebraska,” and the reason for appeal listed on the appeal form characterizes the City as the owner of the Subject Property. It appears from the record that the owner of the parcel is the CRA.

¹¹ Neb. Rev. Stat. § 18-2137 (2018 Cum. Supp.).

¹² Under the Department of Revenue’s regulations, property of a state or governmental subdivision will be subject to assessment for property taxes if a written agreement is not obtained as to the payment in lieu of tax. 350 Neb. Admin. Code, Ch. 41 § 008. It is not clear whether this section would apply to the CRA since a more specific section, 350 Neb. Admin. Code, Ch. 41, § 009, applies to Community Development Authorities.

¹³ Neb. Rev. Stat. § 18-2107 (2018 Cum. Supp.).

¹⁴ The Nebraska Supreme Court applied Neb. Rev. Stat. §§ 77-202.11 and 77-202.12 to a public power district in *Conroy v. Keith County Bd. of Equal. and Central Nebraska Public Power and Irrigation District.*, 288 Neb. 196, 846 N.W.2d 634 (2014). A public power district is similar to a community development authority in that more specific statutory or constitutional provisions apply to their taxation than the laws of general applicability found at Neb. Rev. Stat. § 77-202 *et seq.*

¹⁵ To be clear, no property owned by the CRA will ever meet the standards that trigger the notice requirement, because any property owned by the CRA is, by law, used for a public purpose. Neb. Rev. Stat. § 18-2137 (2018 Cum. Supp.).

explicitly included among the items that can be the subject of a petition under § 003.18, but it is not listed among the items that can be the subject of petitions under § 004.11.

The Commission has only that authority which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act.¹⁶ None of these sources provides the authority for the CRA to petition the Commission regarding the lack of notice of taxable status for the Subject Property.

V. CONCLUSION

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

THEREFORE IT IS ORDERED:

1. The 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 Cedar County Treasurer, and the officer charged with preparing the tax list for Cedar County as follows:

Jean Wiebelhaus
Cedar County Treasurer
PO Box 105
Hartington, NE 68739

Donald Hoelsing
Cedar County Assessor
PO Box 668
Hartington, NE 68739

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

SIGNED AND SEALED: February 2, 2021

Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner

¹⁶ See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).