

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

NODO Condos II LLC,  
Appellant,

v.

Douglas County Board of  
Equalization,  
Appellee.

Case No. 23C 1485

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

**THE COMMISSION FINDS AS FOLLOWS:**

**I. PROCEDURAL HISTORY**

The Commission held a jurisdictional show cause hearing on November 13, 2023 at 11:15 AM. Shaun James appeared telephonically on behalf of the Taxpayer. Jennifer D. Chrystal-Clark, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas 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 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.<sup>1</sup> 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

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<sup>1</sup> Neb. Rev. Stat. § 77-5013 (Reissue 2018).

Neb. Rev. Stat. § 77-1502.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

### III. FINDINGS OF FACT

The parties stipulated to the receipt of testimony of Kayleigh Burley, given in an earlier proceeding.<sup>6</sup> Burley assisted James in preparing the appeal form and gathering the appeal materials. Burley testified she was unaware of the requirement to include a copy of the Douglas County Board of Equalization decision in the appeal filing and mistakenly omitted it from the filing.

### IV. ANALYSIS

On September 12, 2023, the Commission received an envelope, postmarked September 8, 2023, containing an appeal of the determination of the Douglas County Board of Equalization made pursuant to Neb. Rev. Stat. § 77-1502. The envelope did not contain a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from as required by Neb. Rev. Stat. § 77-5013(1)(d).

The deadline for filing the appeal for tax year 2023 was on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-

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<sup>2</sup> Neb. Rev. Stat. § 77-1510 (Reissue 2018).

<sup>3</sup> See, e.g., *Lane v. Burt Cty. Rural Pub. Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

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

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

<sup>6</sup> Ms. Burley testified on November 13, 2023, in Case No. 23C 1484, *SNH LTF Properties LLC v. Douglas County Board of Equalization*.

1502.<sup>7</sup> The Douglas County Board did adopt a resolution extending the deadline for hearing protests. However, as September 10, 2023 fell on a Sunday, the filing deadline was extended to September 11, 2023.<sup>8</sup>

The appeal materials are timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the Commission, or received by the Commission on or before the date specified by law for filing the appeal.<sup>9</sup> The envelope received on September 12, 2023, did not contain a copy of the appealed decision. The appealed decision was later faxed to and received by the Commission on September 19, 2023. Therefore, the Commission determines the appeal was not timely filed and perfected.

## V. CONCLUSION

The Commission 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 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 H02  
Omaha, NE 68183

Walt Peffer  
Douglas County Assessor  
1819 Farnam St, 4th Floor  
Omaha, NE 68183

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<sup>7</sup> Neb. Rev. Stat. § 77-1510 (Reissue 2018).

<sup>8</sup> Neb. Rev. Stat. § 49-1203 (Reissue 2021).

<sup>9</sup> Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

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

**SIGNED AND SEALED:** November 17, 2023



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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner