

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

High Bar Properties, LLC,
Appellant,

v.

Lancaster County Board of
Equalization,
Appellee.

Case No. 23C 1689

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on January 9, 2024 at 11:00 AM before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided. Reed Devall, a Member of High Bar Properties, LLC (the Taxpayer) appeared telephonically. Daniel J. Zieg, Deputy Lancaster County Attorney, appeared telephonically on behalf of the Lancaster 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.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

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

adopted a resolution to extend the deadline for hearing protests under Neb. Rev. Stat. § 77-1502.² 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.³ 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.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

Reed Devall testified he is a member of High Bar Properties LLC. Devall stated he purchased the Subject Property in 2021 and converted its prior residential use to a potential commercial use. A Certificate of Occupancy was issued July 14, 2022. After receiving a notice from the Lancaster County Assessor that the valuation as of January 1, 2023, was \$169,000, Devall filed a protest with the Lancaster County Board of Equalization on June 1, 2023, disputing the valuation of the Subject Property. A copy of the protest is included within the case file. After filing the protest, Devall stated he waived the opportunity for a protest hearing. The County Board ultimately decided no change to the value of the Subject Property was warranted. Devall admitted he received notice of the County Board's decision but opted not to appeal that decision to the Commission pursuant to Neb. Rev. Stat. § 77-1510 (Reissue 2018).

After the time to file an appeal had tolled, Devall stated he contacted county officials and questioned whether the correct square footage was used to assess the Subject Property. On or about October 5, 2023, the County Assessor's office conducted an on-site inspection of

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

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

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).

the Subject Property. Devall testified to his belief that the County Assessor determined the correct square footage was different from their records, and that the County Assessor updated the Property Record File (PRF) to reflect the correct square footage for subsequent assessments. A copy of the updated PRF is included in the case file.

Following the inspection, Devall requested to appear before the Lancaster County Board of Equalization to request a “clerical error correction” to the 2023 assessment and apply the corrected square footage and amend the 2023 tax liability for the Subject Property accordingly. After a County Board meeting on November 7, 2023, the County Board denied the “assessment correction” request and sent notice of that denial on November 9, 2023

IV. ANALYSIS

“Jurisdiction is the inherent power or authority to decide a case.”⁶ The Commission only has 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.⁷

An appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.⁸ “[I]f the [body] from which an appeal was taken lacked jurisdiction, then the appellate [tribunal] acquires no jurisdiction. And when an appellate [tribunal] is without jurisdiction to act, the appeal must be dismissed.”⁹

Devall requested what he termed a “clerical error” correction for tax year 2023 asserting the square footage used in making the 2023 assessment was incorrect. Devall argues the permits issued following a

⁶ *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

⁷ See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

⁸ See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

⁹ *Carlos H. v. Lindsay M.*, 283 Neb. 1004 (2012).

remodel of the Subject Property prior to 2023 show the correct square footage. Further, he argues the October 2023 inspection by the County Assessor, and subsequent correction to the PRF, demonstrate the 2023 assessment was patently incorrect, and the failure of the County Assessor to input the correct square footage amounts to a clerical error which the County Board had authority to correct.

The correction of clerical errors related to property assessments is governed by statute.¹⁰ Neb. Rev. Stat. § 77-1507(1) states in relevant part “[t]he county board of equalization may meet at any time for the purpose of assessing any omitted real property that was not reported to the county assessor pursuant to section 77-1318.01 and for correction of clerical errors as defined in section 77-128 that result in a change of assessed value.” Neb. Rev. Stat. § 77-128 defines a clerical error as the “transposition of numbers, mathematical error, computer malfunction causing programming and printing errors, data entry error, items of real property other than land identified on the wrong parcel, incorrect ownership, or certification of an incorrect valuation to political subdivisions.”¹¹

Here, there is no indication the square footage applied to the 2023 assessment of the Subject Property was the result of a clerical error as that term is defined in statute. Instead, the Commission finds the square footage discrepancy to be properly characterized as a lack of updated information in the PRF as maintained by the County Assessor for tax year 2023. The proper recourse for a taxpayer in such situations is the protest and appeal processes set forth in Neb. Rev. Stat. §§ 77-1502 and 77-1510. Devall began that process when he filed the Protest on June 1, 2023. But, after receiving notice of a protest hearing, Devall chose to waive that right. Further, after receiving notice of the County Board decision on the protest, Devall did not file a timely appeal with the Commission.

¹⁰ Neb. Rev. Stat. § 77-1507 (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-128 (Reissue 2018).

Regarding the appeal that was filed by Devall on November 20, 2023, even assuming incorrect information regarding the square footage of the Subject Property as of January 1, 2023, was utilized by the County Assessor, as Devall asserts, the statutory criteria to be considered a clerical error under Neb. Rev. Stat. § 77-128 is not met. There is no evidence in the record that the disputed error involved a transposition of numbers, a mathematical error, a computer malfunction causing programming and printing errors, a data entry error, items of real property other than land identified on the wrong parcel, incorrect ownership, or certification of an incorrect valuation to political subdivisions. With the record before us, we are aware of no other statutory authority the County Board had to make its determination of November 9, 2023.

Therefore, the Commission finds the County Board had no authority on November 9, 2023, to make any determination regarding the 2023 assessment of the Subject Property. Rather, the County Board should have dismissed the request for lack of authority. Since the County Board lacked authority to make its decision, the Commission determines it does not have jurisdiction over the appeal or petition of the decision of the County Board.

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 Lancaster County Treasurer, and the officer charged with preparing the tax list for Lancaster County as follows:

Rachel Garver
Lancaster County Treasurer
555 S 10th St, Rm 102
Lincoln, NE 68508

Dan Nolte
Lancaster County Assessor
555 S 10th St, Rm 102
Lincoln, NE 68508

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

SIGNED AND SEALED: January 17, 2024



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner