

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

Fairfield West Preservation,  
LLC,  
Appellant,

Case No. 25C 1308

v.

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

Lancaster County Board of  
Equalization,  
Appellee.

**THE COMMISSION FINDS AS FOLLOWS:**

**I. PROCEDURAL HISTORY**

The Commission held a jurisdictional show cause hearing on March 17, 2026, at 1:00 pm by telephone conference call. Brian P. Morrissey appeared telephonically on behalf of Fairfield West Preservation, LLC (the Taxpayer). Jennifer D. Chrystal-Clark, 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 and heard argument regarding its jurisdiction to hear this appeal.

**II. APPLICABLE LAW**

The Commission's jurisdiction over an appeal is derived from statute.<sup>1</sup> 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

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<sup>1</sup> *Village at North Platte v. Lincoln Cty. Bd. of Equal.*, 292 Neb. 533, 540, 873 N.W.2d 201, 207 (2016).

action appealed from, is timely filed.<sup>2</sup> The requirements of Neb. Rev. Stat. § 77-5013(1) are mandatory and jurisdictional.<sup>3</sup> When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.<sup>4</sup>

### III. FINDINGS OF FACT

On September 15, 2025, the Commission received an envelope, postmarked September 10, 2025, containing a cover letter, the Taxpayer’s appeal form, payment in the amount of \$85 for a filing fee, and a print copy of an email from the Lancaster County Clerk’s office to the Taxpayer’s counsel dated July 7, 2025 (July Email). The Taxpayer’s envelope contained no final decision, order, determination, or action of the County Board.<sup>5</sup> The Taxpayer contended in its appeal form that the value of the property at issue (Subject Property) is excessive and it is not equalized with other parcels.<sup>6</sup>

In the July Email, the County Clerk informed the Taxpayer of a telephone referee hearing in the Taxpayer’s protest proceeding before the County Board.<sup>7</sup> That referee hearing was scheduled for July 10, 2025, at 12:45 p.m.<sup>8</sup> In the July Email, the County Clerk’s office also informed the Taxpayer that the County Board “will take final action on value recommendations on August 7, 2025.”<sup>9</sup> Notably, the County Clerk also informed the Taxpayer they would be “notified by mail of

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<sup>2</sup> Neb. Rev. Stat. § 77-5013(1) (Cum. Supp. 2024). See also *Mid Am. Agri Prods. v. Perkins Cty. Bd. of Equalization*, 312 Neb. 341, 349, 979 N.W.2d 95, 100-01 (2022) (the Commission’s jurisdiction over an appeal is derived from § 77-5013).

<sup>3</sup> *Widtfeldt v. Tax Equalization & Review Comm’n*, 15 Neb. App. 410, 415, 728 N.W.2d 295, 300 (2007).

<sup>4</sup> *Main St. Props. LLC v. City of Bellevue*, 318 Neb. 116, 128 13 N.W.3d 911, 922 (2024); *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012). See also *Mid Am. Agri Prods.*, 312 Neb. at 350, 979 N.W.2d at 101.

<sup>5</sup> Case file.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* A referee proceeding is authorized by Neb. Rev. Stat. § 77-1502.01.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* In the Appellant’s brief, in the Background section, paragraph 4, Appellant states, “[t]he Board made a final determination regarding Appellant’s property valuation protest on August 7, 2025.

the Board’s decision.”<sup>10</sup> The Appellant filed its appeal of the County Board’s decision, as noted above, on September 10, 2025.

On November 17, 2025, the Taxpayer filed a “Motion for Determination of Jurisdiction” (Taxpayer’s Motion) in the captioned appeal.<sup>11</sup> In the Taxpayer’s Motion, the Taxpayer acknowledges neither the decision of the County Board nor any copy thereof was included in the Taxpayer’s envelope.<sup>12</sup> The Taxpayer also stated in the Taxpayer’s Motion that the July Email was attached to the appeal through an “inadvertent clerical error” rather than the County Board’s final decision.<sup>13</sup>

The Commission set a jurisdictional show cause hearing for March 17, 2026, to determine whether it has jurisdiction over the captioned appeal. No additional evidence was presented at the jurisdictional hearing. At the jurisdictional hearing, the Taxpayer argued the July Email is sufficient “other information that documents the decision, order, determination, or action appealed from” under section 77-5013(1)(d).

#### IV. ANALYSIS

The Taxpayer’s appeal form and filing fee were timely filed.<sup>14</sup> The Taxpayer does not dispute that no copy of the decision, order, determination, or action of the County Board was submitted with the Taxpayer’s appeal form.<sup>15</sup> Rather, the Taxpayer asserts the inclusion of the July Email constitutes “other information that documents the decision, order, determination, or action appealed from” pursuant to Neb. Rev. Stat. § 77-5013(1)(d).<sup>16</sup> We disagree. The plain language of

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* (Taxpayer’s Motion).

<sup>12</sup> See *id.* (Taxpayer’s Motion at 2, ¶ 5).

<sup>13</sup> *Id.* (Taxpayer’s Motion at 2, ¶ 6).

<sup>14</sup> The County Board adopted a resolution extending the deadline for hearing protests for 2025 valuations (Case File), making September 10, 2025, the filing deadline for appeals from Lancaster County for tax year 2025. See Neb. Rev. Stat. § 77-1510 (Reissue 2018).

<sup>15</sup> See Case File (Taxpayer’s Motion at 2, ¶ 6).

<sup>16</sup> *Id.*

section 77-5013(1)(d) requires documentation of a decision, order, determination, or action by the County Board for the Commission to take jurisdiction.

The Taxpayer contends the July Email and appeal form are sufficient “other information” under section 77-5013(1)(d) to confer jurisdiction upon the Commission. Specifically, the Taxpayer argues that the word “action” as used in section 77-5013(1)(d) means a proceeding before the County Board as a whole, as opposed to a “decision, order, [or] determination.” Alternatively, the Taxpayer contends the combination of the appeal form and July Email satisfy the requirements of 77-5013(1)(d) by showing the Taxpayer had a protest before the County Board which later made a determination adverse to the Taxpayer. For the reasons stated below, the Taxpayer’s appeal filings are insufficient to confer jurisdiction upon the Commission under section 77-5013(1).

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.”<sup>17</sup> “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.”<sup>18</sup>

“When interpreting a statute, effect must be given, if possible, to all the several parts of a statute; no sentence, clause, or word should be rejected as meaningless or superfluous if it can be avoided.”<sup>19</sup> An appellate [body] must look to the statute's purpose and give to the

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<sup>17</sup> *County of Webster v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 751, 766, 896 N.W.2d 887, 898 (2017).

<sup>18</sup> *Id.*

<sup>19</sup> *Inland Ins. Co. v. Lancaster Cty. Bd. of Equalization*, 316 Neb. 143, 149, 3 N.W.3d 354, 359 (2024)

statute a reasonable construction which best achieves that purpose, rather than a construction which would defeat it.”<sup>20</sup>

The language of section 77-5013(1)(d) is plain, clear, and unambiguous. In the absence of a copy of a county board’s decision, order, determination, or action on a valuation protest, the party appealing to the Commission must timely file “other information *that documents* the decision, order, determination, or *action appealed from*.”<sup>21</sup> Section 77-5013(1)(d) required the Taxpayer to timely provide documentation of the County Board’s decision, order, determination, or action on the Taxpayer’s protest for the Commission to take jurisdiction over the Taxpayer’s appeal.

The Taxpayer argued in its brief and at the jurisdictional hearing that “action” in section 77-5013(1)(d) refers to the protest proceeding as a whole and that the July Email is sufficient “other information that documents” the action of the County Board to give the Commission jurisdiction over the Taxpayer’s appeal.<sup>22</sup> The Taxpayer further argued that to require documentation of the substance of the County Board’s decision is to obliterate the “other information” alternative to a copy of that decision from the statutory language. These arguments misstate the jurisdictional requirement in section 77-5013(1)(d) by conflating the Taxpayer’s “action” in bringing a protest proceeding *before* the County Board with the *County Board’s action* in that proceeding.

It is only the County Board’s decision, order, determination, or action in a protest proceeding that is “appealed from” under section 77-5013(1)(d).<sup>23</sup> That decision, order, determination, or action, not the mere existence of the protest proceeding, creates the right to appeal to the Commission under statute. “Any *action of the county board of equalization* pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-

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<sup>20</sup> *Id.*

<sup>21</sup> Neb. Rev. Stat. § 77-5013(1)(d).

<sup>22</sup> See Case File (Taxpayer’s Hearing Brief received March 17, 2026).

<sup>23</sup> Neb. Rev. Stat. § 77-5013(1)(d).

5013[.]”<sup>24</sup> Section 77-1510 must be read in *pari materia* with section 77-5013(1) because both sections are on the same subject: appeals of valuation decisions. The Court of Appeals has specifically read the language “action of the county board” in section 77-1510 as requiring a final order to perfect an appeal to the Commission.<sup>25</sup> Reading sections 77-1510 and 77-5013(1)(d) together, the Taxpayer was required to timely file some “other information that documents” the substance of the County Board’s final action in its protest in order to perfect its appeal to the Commission. Indeed, on the face of the Taxpayer’s appeal form, it is the action of the County Board setting the value of the Subject Property that the Taxpayer appealed.<sup>26</sup>

Other sections of the Tax Equalization and Review Commission Act use the same listed terms as section 77-5013(1)(d) to describe a county board’s final decision, order, determination, or action.<sup>27</sup> More importantly, section 77-5013 itself uses “action” to mean a final action in subparagraph (2):

A petition, an appeal, or the information required by subdivision (1)(d) of this section is timely filed and the filing

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<sup>24</sup> Neb. Rev. Stat. § 77-1510 (Reissue 2018) (emphasis added). See also *Lincoln Cty. Bd. of Equalization v. W. Tabor Ranch Apartments, LLC*, 314 Neb. 582, 589, 991 N.W.2d 889, 896 (2023) (“Property owners may protest a county assessor's determination of actual value under these methods to the county board of equalization. The *county board of equalization's decision* may then be appealed to TERC.”) (emphasis added); *McClellan v. Bd. of Equalization*, 275 Neb. 581, 586, 748 N.W.2d 66, 71 (2008) (citing Comp. Stat. § 5045 (1903), then citing § 77-1510 (1943)) (“Section 77-1510 has, since its enactment in 1903, provided a specific mode of direct appeal from any *action of a board* of equalization.”) (emphasis added); *Phelps Cty. Bd. of Equalization v. Graf*, 258 Neb. 810, 813, 606 N.W.2d 736, 739 (2000) (“Section 77-1510 provides that appeals are to be taken from any *action of a county board* of equalization to TERC[.]”) (emphasis added).

<sup>25</sup> *Wash. Cty. Bd. of Equalization v. Rushmore Borglum Ministries, Inc.*, 11 Neb. App. 377, 650 N.W.2d 504 (2002) (citing Neb. Rev. Stat. § 77-1510 (Cum. Supp. 2000) (“To perfect an appeal to the TERC, one must file his or her notice of appeal within 30 days of the Board's final order”).

<sup>26</sup> Case file.

<sup>27</sup> See, e.g., Neb. Rev. Stat. § 77-5016(8) and (9) (Reissue 2018) (“The commission may determine any question raised in the proceeding upon which an *order, decision, determination, or action appealed from* is based. If the appellant presents any evidence to show that the *order, decision, determination, or action appealed from* is incorrect, such order, decision, determination, or action shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary[.] (emphasis added).

fee, if applicable, is 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 or petition. If no date is otherwise provided by law, then an appeal shall be filed within thirty days after the *decision, order, determination, or action appealed from is made*.<sup>28</sup>

An “action” can only be “made,” for purposes of appeal, by the decision, order, determination, or action of a county board.

The Commission’s regulations, which have the effect of statutory law, also address the requirements for perfecting appeals to the Commission.<sup>29</sup> Each of the listed examples of what may constitute “other information” as used in section 77-5013(1) are some form of documentation which includes the substance of the final action of a county board of equalization.<sup>30</sup>

We therefore see no reason to construe “action,” as used in section 77-5013(1)(d) to mean anything other than a final action of the County Board. Moreover, the “other information” alternative to a copy of a final decision appealed from still requires other information *that documents the decision, order, determination, or action appealed from*.[.]<sup>31</sup> The Taxpayer did not include anything that documents the County Board’s decision, order, determination, or action with its appeal filing. The July Email is merely a notice which shows only that a referee hearing was scheduled. And that notice was given prior to the county board’s decision, order, determination, or action. It is a tautology that notice given prior to a hearing cannot constitute documentation of the decision, order, determination, or action taken at the conclusion of the hearing. As such, the July Email cannot be “other

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<sup>28</sup> Neb. Rev. Stat. § 77-5013(2) (Cum. Supp. 2024) (emphasis added).

<sup>29</sup> *Widtfeldt*, 15 Neb. App. at 415, 728 N.W.2d at 300.

<sup>30</sup> Title 445 Neb. Admin. Code ch 5, § 001.01 (06/2021).

<sup>31</sup> Neb. Rev. Stat. § 77-5013(1)(d).

information that documents” the County Board’s decision, order, determination, or action.

Further, if the “action as a whole” brought by a taxpayer were appealable, a protesting taxpayer need not wait for the county board of equalization to do anything. The Taxpayer could simply file a protest, then immediately appeal the action to the Commission. This would have the effect of rendering the requirements of a county board of equalization to hear a protest and then make a decision, order, determination, or action meaningless.

Because the plain language of both sections 77-1510 and 77-5013(1)(d) unambiguously required the Taxpayer to include some “other information that documents” the County Board’s decision, order, determination, or action appealed from, and because the Taxpayer did not timely submit any such other information to the Commission, the Commission lacks jurisdiction over the appeal.

## 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. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. § 77-5018.

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

**SIGNED AND SEALED: May 15, 2026.**

*SEAL*



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Steven A. Keetle, Commissioner

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Robert W. Hotz, Commissioner