

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Pine Creek Development, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17C 0571, 17C 0572, 17C 0573,
17C 0574

**ORDER FOR DISMISSAL WITH
PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on January 25, 2018. Pine Creek Development, LLC (the Taxpayer), appeared telephonically at the hearing before the Commission and was represented by Donald L. Bassler, Managing Partner. Shakil A. Malik, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). Without objection, the Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction. The Commission received evidence and heard argument regarding its jurisdiction to hear these appeals.

II. STANDARD OF REVIEW

Neb. Rev. Stat. § 77-1507.01 provides that any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with Neb. Rev. Stat. § 77-5013, on or before December 31 of each year, to determine the actual or special value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal. Any action of the County Board pursuant to Neb. Rev. Stat. § 77-1502 may be appealed to the Tax Equalization and Review 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. § 77-1502.¹ Parties cannot confer

¹ Neb. Rev. Stat. § 77-1510 (Reissue 2009).

subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.²

III. ANALYSIS

On December 6, 2017, the Commission received four envelopes from the Taxpayer, each containing a completed appeal form contesting the 2017 valuation determination as set by the County Board, a check for the \$25 filing fee, and a written statement indicating that the appeal was being submitted pursuant to 350 NAC 10 § 003.08, which is the Department of Revenue's regulation referencing Neb. Rev. Stat. § 77-1507.01. The 2017 deadline for filing property valuation appeals was September 11, 2017, for real property located in Douglas County.³ Because the appeals were received after the filing deadline, the Commission lacks jurisdiction over the appeals unless the Taxpayer proves that the County Board's failure to give notice of its determinations prevented the Taxpayer from filing timely appeals of the determinations.

The Taxpayer presented evidence of alleged irregularities and errors in the County Board's assessment process, as well as evidence that it had sought to resolve these irregularities by working with the County Board after the protest hearings rather than through appeals to the Commission. However, the Taxpayer's managing partner testified that he received notice of the County Board's decision on the value of his property around August 8, 2017. Historically, the Commission has granted petitions filed pursuant to Neb. Rev. Stat. § 77-1507.01 in circumstances where the petitioner provided satisfactory evidence that a county board actually failed to provide the required notice.⁴ The evidence in this case shows that the County Board complied with the notice requirements. Even if irregularities and errors occurred during the assessment process, as alleged by the Taxpayer, the record contains no evidence that those errors prevented the Taxpayer from filing timely appeals when it received notice of the County Board's determinations. Therefore, the Commission finds that the Taxpayer received proper notice of the County Board's determinations in this matter and was not prevented from filing timely appeals.

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

³ Case File, see also Neb. Rev. Stat. § 49-1203. (Reissue 2010).

⁴ See, e.g., *Cain v. Custer County Board of Equalization*, 291 Neb. 730, 868 N.W.2d 334 (2015).

IV. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeals.

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeals are dismissed with prejudice.
2. 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:

Diane Battiato
1819 Farnam Stre. Ste H09 Civic Center
Omaha, NE 68183-1000

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

as required by Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).

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

SIGNED AND SEALED: January 30, 2018.

Seal

Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner