

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

CHARLES B. BOETEL,)	
)	
Appellant,)	CASE NO. 05C-018
)	
vs.)	FINDINGS AND ORDER
)	DISMISSING APPEAL WITHOUT
DOUGLAS COUNTY BOARD OF)	PREJUDICE
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing pursuant to an Order to Show Cause entered by the Tax Equalization and Review Commission ("the Commission"), issued on June 5, 2006, as amended August 2, 2006. The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on August 11, 2006, Commissioners Wickersham, Lore, Warnes, and Hans were present. Commissioner Wickersham presided.

Charles B. Boetel ("the Taxpayer"), appeared by teleconference. The Douglas County Board of Equalization ("the County Board") appeared, by teleconference, through legal counsel. Mr. James Thibodeau, a Deputy County Attorney for Douglas County Nebraska. The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003) to state its final decision, with findings of fact and law, on the record or in writing. The order of the Commission is as follows.

PROCEDURAL FINDINGS

1. The Taxpayer is the owner of record of certain real property described in the appeal as IRR S 169.3 W 180 Ft Lot L & -EX IRR N 91.3 E 115 and W 185.4 Douglas County Nebraska at 6636 Military Ave. Omaha, (“the subject property”).
2. An Order to Show Cause and Notice of Telephonic Hearing (Jurisdictional Authority of the Appellee) was issued by the Commission on June 5, 2006, and amended on August 2, 2006, directing the Taxpayer to show why his appeal should not be dismissed for want of jurisdiction.

SUBSTANTIVE FINDINGS

1. Filings with the Taxpayer’s appeal did not include a copy of the final decision, order, determination, or other information disclosing the final decision of the Douglas County Board of Equalization.
2. The Taxpayer alleged in his appeal that no final decision, order, determination, or action was taken by the Douglas County Board of Equalization on his protest concerning the subject property.
3. The Taxpayer alleged that the “paper work was lost by the Board of Equalization”.

CONCLUSIONS OF LAW

1. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commission’s rules and regulations or Neb. Rev. Stat. §77-5016(3) (Reissue 2003, as amended by 2004 Neb. Laws L.B. 973, §51).

2. 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. *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).
3. '[T]he doctrine of presumptions in favor of the regularity of proceedings in courts of general jurisdiction does not apply to courts or tribunals of inferior or limited jurisdiction who act in a judicial capacity, but as to such courts or tribunals the facts necessary to confer jurisdiction must affirmatively appear upon the face of the record. *Olsen v. Grosshans*, 160 Neb. 543, 71 N.W.2d 90, (1955), See, also, *Shambaugh v. Buffalo County*, 133 Neb. 46, 274 N.W. 207, (1937).
4. Anyone wishing to rely on a lost document must prove delivery and content of the document with clear and convincing evidence. *Kuenzli v. Kuenzli*, 150 Neb. 855, 36 N.W.2d (1949).
5. Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved. *Nelson v. Nelson*, 267 Neb. 362, 674 N.W.2d 473 (2004).

ANALYSIS

This proceeding is the Commission's second jurisdictional hearing in this case. The appeal filed in this case alleges that a protest was filed with the Douglas County Board of Equalization concerning property at 6636 Military Ave. in Omaha, Nebraska, but the "paper work was lost by Board of Equalization". At the hearing the Taxpayer and his wife both testified

generally that on June 8, 2005, that they had gone to the Douglas County Court House to meet with a referee to provide information in support of the Taxpayer's protest. The meeting date and time were established by a telephone appointment made by the Taxpayer's wife. An appointment schedule was produced by the County Board showing the scheduled appointment. (E1). No other written confirmation of the meeting was provided to the Commission. On arrival at the Courthouse the Taxpayer and his wife picked up paper work from a clerk. It is not disputed that the paperwork was a form 422 Property Valuation Protest. The Taxpayer and his wife did not recall details concerning the paperwork. A form 422 Property Valuation Protest, signed by the Taxpayer on June 8, 2005, was received as evidence. (E2). The form 422 Property Valuation Protest received by the Commission does not, however, pertain to property at 6636 Military Ave. in Omaha. Exhibit 2 pertains only to property at 6917 Military Ave. The Taxpayer and the Taxpayer's spouse testified that the typewritten portions of Exhibit 2 had been prepared by the County. The Taxpayer and his wife meet with Jerry Morrison, the referee, after completing the paperwork by writing their reason for the protest in the appropriate block, signing, and attaching items including photos of both properties with address noted on the back. County records show that the Taxpayer was to meet with a referee on June 8, 2005, at 8:45 AM. (E2). A number appears in the right hand column on the line for the appointment. That number 14-2218-0000 corresponds with the property identification number for the Taxpayer's property at 6917 Military Ave. (E2). The County produced the affidavit of Gage R. Cobb, an administrative assistant to the Douglas County Clerk/Comptroller for Douglas County, Nebraska, stating that the appointment made by the Taxpayer was for the purpose of discussing only the property at 6917 Military Ave. (E3). The affidavit also asserts that the only protest filed by the Taxpayer

pertained to 6917 Military Ave. The form 422 Property Valuation Protest received by the Commission indicates that it is in three parts and that the pink copy is for the Taxpayer. (E2). The Taxpayer's spouse testified that they did not keep the pink copy. The Commission did not receive testimony from Jerry Morrison, the referee, or the County employee or official who provided paperwork to the Taxpayer.

The only evidence that a protest was filed concerning property at 6636 Military Ave. is the testimony of the Taxpayer and his wife. The evidence is that corroboration of their testimony would not have been impossible. A form 422 Property Valuation Protest as submitted to the Commission shows that the form is prepared with a copy intended for the Taxpayer (E2). The person who assisted the Taxpayer and his wife at the County Courthouse was not called as a witness. The referee with whom the Taxpayer and his wife met at the Courthouse was not called as a witness. Either or both persons might have corroborated the Taxpayer's version of events in some or all respects. Photographs with addresses on the back were not received as evidence. The copies of photographs submitted with the appeal form are one sided. The backs of the photographs might have supported the Taxpayer's contention that two properties were discussed with the referee. While evidence could perhaps have been produced to support the Taxpayer's position it was not. The County produced an appointment sheet showing that a meeting had been arranged to discuss property at 6917 Military Ave. In addition, the County produced evidence that it had no record of a protest concerning 6636 Military Ave. The Commission can reach two conclusions. First, the Taxpayer's intention was to protest two parcels. Second that the Taxpayer accepted partially prepared paperwork from the County as part of the protest process. The Taxpayer has not, however, shown by clear and convincing evidence that a protest

was in fact filed with the Douglas County Board of Equalization concerning property located at 6636 Military Ave.

ORDER

IT IS THEREFORE ORDERED THAT:

1. The appeal of Charles B. Boetel as captioned above is dismissed.
2. This order is entered without prejudice of further proceedings to determine whether the Commission has jurisdiction.

Signed and Sealed. August 18, 2006

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

William C. Warnes, Commissioner

Robert L. Hans, Commissioner

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