

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

HOWARD A. AND ARDITH A.)	
FRERICHS,)	
)	CASE NO 05C-077
Appellant,)	
)	DECISION AND ORDER AFFIRMING
v.)	DISMISSING APPEAL ON
)	STIPULATION
KEITH COUNTY BOARD OF)	(JURISDICTION)
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Howard A. and Ardith A. Frerichs to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Hampton Inn, 200 Platte Oasis Parkway, North Platte, Nebraska, on June 28, 2006, pursuant to a Notice and Order for Hearing issued March 8, 2006. The hearing was convened at 11:50 a.m. by consent of the parties Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Howard A. and Ardith A. Frerichs, ("the Taxpayer") were not present at the hearing. Neil E. Williams legal counsel for the Taxpayers appeared by telephone.

The Keith County Board of Equalization ("the County Board") appeared through legal counsel, Jeffrey M. Eastman, County Attorney for Keith County, Nebraska.

The Commission took statutory notice and heard the stipulation of the parties.

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.
FINDINGS**

The Commission finds and determines that:

1. The protest heard by the County Board was filed by Lyle Maley. (Case File)
2. Lyle Maley does not have an interest in the subject property. (Case File).
3. The appeal in this case was by Howard A. and Ardith A. Frerichs. (Case File)
4. The parties stipulated that the Commission does not have subject matter jurisdiction to hear the appeal.

**II.
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties to this appeal.
2. “The absence of subject matter jurisdiction may be raised at any time by any party or by the court sua sponte.” *Cincinnati Ins. Co. v. Becker Warehouse, Inc.*, 262 Neb. 746, 752, 635 N.W.2d 112, 118 (2001), citing *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, 260 Neb. 905, 620 N.W.2d 90 (2000).
3. “In order to have standing to invoke a tribunal’s jurisdiction, one must have some legal or equitable, right, title, or interest in the subject of the controversy.” *Douglas County Board of Commissioners v. Civil Service Commission*, 263 Neb. 544, 549, 641 N.W.2d 55, 60 (2002)(Citations omitted).
4. The purpose of a standing inquiry is to determine whether one has a legally protectable interest or right in the controversy that would benefit by the relief to be granted. *Mutual*

Group U.S. v. Higgins, 259 Neb. 616, 611 N.W.2d 404 (2000), *Hawkes v. Lewis*, 255 Neb. 447, 586 N.W.2d 430 (1998).

5. Standing is a jurisdictional component of a party's case because only a party who has standing may invoke the jurisdiction of a court. *Governor's Policy Research Office v. KN Energy*, 264 Neb. 924, 652 N.W.2d 865 (2002); *Miller v. City of Omaha*, 260 Neb. 507, 618 N.W.2d 628 (2000).
6. If the County Board of Equalization did not have jurisdiction to hear the protest the Commission does not have jurisdiction to hear an appeal from the Board's decision. *State v. McArthur*, 12 Neb. App 657, 685 N.W.2d 733 (2004).
7. A County Board of Equalization is required to give notice to the owner of property if it is considering an increase in value. *Brown v. Douglas County*, 98 Neb. 299, 152 N.W.2d 545 (1915).

III DISCUSSION

The statute governing the filing of protests does not require that a person filing a protest have standing or be a real party in interest. Neb. Rev. Stat. §77-1502 (Cum. Supp 2004). Principles of standing require however that a party have some legally protectable interest that would be benefitted. *Mutual Group U.S. v. Higgins*, 259 Neb. 616, 611 N.W.2d 404 (2000), *Hawkes v. Lewis*, 255 Neb. 447, 586 N.W.2d 430 (1998). There is no showing that Lyle Maley is a taxpayer who would be affected by the valuation assigned to the Taxpayer's property. (Case File). Jurisdiction may not be presumed. *Arcadian Fertilizer, L.P. v. Sarpy County Bd.*

of Equal., 7 Neb. App. 499, 583 N.W. 353, (1998). The County Board did not have jurisdiction to consider the protest filed by Lyle E. Maley. In addition there is no evidence that the Taxpayers' had notice that the County Board of Equalization was considering any change to the valuation of the subject property. (Case File). Notice had been given to the Taxpayers by the State Assessor for Keith County by notice dated May 31, 2005 that taxable value would be increased for the tax year 2005, and that taxable value of their property for the tax year 2005 would be \$224,595.00. (Case File). There is no evidence that the Taxpayers' protested taxable value as stated in the May 31, 2005 notice. The County Board's decision to increase taxable value above \$224, 595.00, taxable value as stated in the notice given by the State Assessor for Keith County, was based on the protest of a third party without standing. The decision of the Keith County Board of Equalization is without effect and taxable value of the subject property for tax year 2005 should be \$224,595.00.

**V.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2005, is reversed.
2. Taxable value of the subject property for the tax year 2005 is \$224,595.00.
3. This decision, if no appeal is timely filed, shall be certified to the Keith County Treasurer, and the Keith County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).

4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2005.
7. This order is effective for purposes of appeal July 3, 2006.

Signed and Sealed. July 3, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

William C. Warnes, Commissioner

SEAL

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.