

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

VALLEY REALTY COMPANY,	)	
	)	
Appellant,	)	CASE NO. 06C-324
	)	
vs.	)	AMENDED
	)	FINDINGS AND ORDER DISMISSING
CUSTER COUNTY BOARD OF	)	APPEAL FOR WANT OF JURISDICTION
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"). 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 November 21, 2006, pursuant to an Order to Show Cause and Notice of Hearing (Jurisdiction Untimely filing) issued December 4, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Lawrence M. Magdovitz, President of Valley Realty Company, appeared by teleconference. The Custer County Board of Equalization ("the County Board") appeared, by teleconference, through legal counsel, Ms. Tami Kay Schendt, County Attorney, for Custer County, Nebraska. The Commission took statutory notice heard testimony and argument.

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.

**I.  
FINDINGS**

The Commission finds and determines that:

1. Valley Realty Company ("the Taxpayer") is the owner of record of certain real property described in the appeal as Lot 17, Block 44, Original Town of Oconto, Custer County Nebraska("the subject property").
2. The Taxpayer's appeal was received by the Commission in its mail on August 31, 2006. (Case File)
3. No postmark appears on the envelope in which the appeal was delivered. (Case File).
4. The Taxpayer's initial mailing was returned pursuant to 443 Neb. Admin. Code Ch5 §001.06 (01/05). (Case File)
5. The Taxpayer filed again and requested a hearing to determine whether the Taxpayer's initial filing was timely. (Case File)
6. An Order to Show Cause and Notice of Hearing (Jurisdiction Untimely Filing) was issued by the Commission on December 4, 2006, directing the Taxpayer to show why the appeal should not be dismissed for want of jurisdiction.

**II.  
APPLICABLE 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) (Cum. Supp 2006).

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. The Commission obtains jurisdiction over an appeal when the appeal, 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 and the filing fee is timely received and thereafter paid. Neb. Rev. Stat. §77-77-5013 (Cum. Supp 2006).
4. Appeals from County Board of Equalization decisions made pursuant to section 77-1502 must be filed on or before August 24 of each year. Neb. Rev. Stat. 77-1510 (Cum. Supp. 2006).
5. An appeal is timely filed if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission on or before the filing deadline. Neb. Rev. Stat. §77-5013 (Supp. 2006).
6. The Taxpayer's appeal form is dated August 25, 2006. (Case File)
7. The Taxpayer's check issued for payment of the filing fee is dated August 28, 2006. (Case File).
8. The envelope in which the appeal was delivered to the Commission does not bear a postmark. (Case File)

**III.  
ANALYSIS**

The issue presented in this proceeding is whether or not the Commission has jurisdiction to hear the appeal of the Taxpayer when the appeal was not timely filed by the Taxpayer. The Taxpayer offered no evidence that an appeal to the Commission was mailed on or before August 24, 2006. The evidence is that the appeal form was signed on August 25, 2006, that the check for payment of the filing fee was signed on August 28, 2006 and that the envelope in which the appeal was delivered to the Commission did not bear a postmark. The Commission concludes the Taxpayer's appeal as received on August 31, 2006, was not timely filed and should be dismissed. Neb. Rev. Stat. 77-5013 (Cum. Supp. 2006).

**IV.  
CONCLUSIONS OF LAW**

1. The Commission does not have jurisdiction.

**V.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

1. The Appeal of Valley Realty Company concerning the taxable valuation of Lot 17, Block 44, Original Town of Oconto, Custer County Nebraska is dismissed for want of jurisdiction.

2. This decision, if no appeal is timely filed, shall be certified to the Custer County Treasurer, and the Custer County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2003).
3. Each party is to bear its own costs in this matter.

**IT IS SO ORDERED.**


Dated January 12, 2007.



  
Wm. R. Wickersham, Commissioner

  
Robert L. Hans, 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 IN NEBRASKA REVISED STATUTE §77-5019 (Cum. Supp. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.**

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

VALLEY REALTY COMPANY,	)	
	)	
Appellant,	)	Case No. 06C-324
	)	
v.	)	CERTIFICATE OF FINAL
	)	DECISION AND ORDER
CUSTER COUNTY BOARD OF	)	
EQUALIZATION,	)	
	)	
Appellee.	)	

The undersigned being the duly qualified, appointed and acting Chairperson of the Tax Equalization and Review Commission, does hereby certify that an order of the Commission determining taxable value in the above captioned Appeal was entered by the Commission on January 12, 2007, and mailed to the Custer County Treasurer and the officer charged with the duty of preparing the tax list for the County as follows:

Sheri Bryant  
Custer County Treasurer  
431 S 10th Ave  
Broken Bow, NE 68822

and

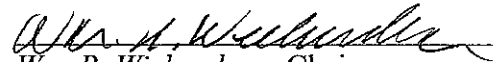
Connie Braithwaite  
Custer County Assessor  
431 S 10th Ave  
Broken Bow, NE 68822

as required by Neb. Rev. Stat. §77-5018 (Reissue 2003). I further certify that the order and decision of the Commission denying relief is now final and that no corrections to records are required by the Commission's order.

SIGNED AND SEALED February 16, 2007.

*Seal*



  
Wm. R. Wickersham, Chairperson  
Tax Equalization and Review Commission