

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

TERRY R. DIECKER,	)	
	)	
Appellant,	)	CASE NO. 06R-214
	)	
vs.	)	DOCKET ENTRY FINDINGS AND
	)	ORDER DISMISSING APPEAL FOR
ADAMS COUNTY BOARD OF	)	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 February 26, 2007, pursuant to an Order to Show Cause and Notice of Hearing (Jurisdictional Authority of the Commission) issued February 22, 2007. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Terry R. Diecker ("the Taxpayer") appeared, without legal counsel. The Adams County Board of Equalization ("the County Board") appeared, by teleconference, through legal counsel, Mr. Charles Hamilton, a Deputy County Attorney, for Adams County, Nebraska. The Commission took statutory notice, received exhibits and 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.

The final decision and order of the Commission in this case was stated on the record and is memorialized by this Docket Entry Findings and Order Dismissing Appeal for want of Jurisdiction.

**I.  
FINDINGS**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described in the appeal as Lots 1 & 2, Block 1, Lewis Subdivision, City of Hastings, Adams County Nebraska, (“the subject property”).
2. The Taxpayer’s appeal was received by the Commission on August 23, 2006. (Case File)
3. An Order to Show Cause and Notice of Hearing (Jurisdictional Authority of the Commission) was issued by the Commission on February 22, 2007, directing the Taxpayer to show why the appeal should not be dismissed for want of jurisdiction.
4. The protest of the Taxpayer to the Adams County Board of Equalization did not contain a description of the property to which the protest pertained or reasons for the protest. (E1).
5. The County Board acted on the Taxpayer’s protest on July 25, 2006. (E1).

**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. If the board, agency or person which made a decision, order, or determination or took an action that is appealed to the Commission lacked subject matter jurisdiction, then the Commission cannot acquire subject matter jurisdiction. See, *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 583 N.W.2d 353 (1998), *Bartlett v. Dawes County Bd. of Equalization* 259 Neb. 954, 613 N.W.2d 810 (2000), *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 810 (2000), *Falotico v. Grant County Bd. of Equal.*, 262 Neb. 292 (2001).
4. “Each protest shall be signed and filed in triplicate with the county clerk of the county where the property is assessed. The protest shall contain or have attached a statement of the reason or reasons why the requested change should be made and a description of the property to which the protest applies. If the property is real property, a description of each parcel shall be provided. If the property is tangible personal property, a physical description of the property under protest shall be provided. If the protest does not contain or have attached the statement of the reason or reasons for the protest or the description of the property, the protest shall be dismissed by the county board of equalization.” Neb. Rev. Stat. 77-1502 (2) (Cum. Supp. 2006).

### III. CONCLUSIONS OF LAW

1. The Commission does not have jurisdiction over the subject matter of the Taxpayer’s appeal

2. The Commission does have jurisdiction over the parties.


**IV.  
ORDER**

**THE ORDER OF THE COMMISSION IS THAT:**

1. The appeal of Terry R. Diecker, concerning Lots 1 & 2, Block 1, Lewis Subdivision, City of Hastings, Adams County Nebraska, is dismissed for want of jurisdiction.
2. This decision, if no appeal is timely filed, shall be certified to the Adams County Treasurer, and the Adams County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2003).
3. Each party is to bear its own costs in this matter.
4. This decision shall only be applicable to tax year 2006.

Dated February 26, 2007



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

**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 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.**