

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

DAN PITTMAN, SARPY COUNTY	)	
ASSESSOR,	)	
	)	Case No 07SV-097
Appellant,	)	
	)	DECISION AND ORDER
v.	)	DISMISSING THE
	)	APPEAL FOR WANT OF
SARPY COUNTY BOARD OF	)	JURISDICTION
EQUALIZATION	)	
	)	
and	)	
	)	
RICHARD & MARY ANN JANSEN,	)	
	)	
Appellees.	)	
	)	

The above-captioned case was called for a hearing on the merits of an appeal by Dan Pittman, Sarpy County Assessor ("the County Assessor") to 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 August 1, 2008, pursuant to an Order for Hearing and Notice of Hearing issued May 22, 2008. Commissioners Wickersham, Salmon, and Hotz were present. Commissioner Warnes was excused from participation by the presiding hearing officer. The appeal was heard by a panel of three commissioners pursuant to 442 Neb. Admin. Code, ch. 4, §011 (10/07). Commissioner Wickersham was the presiding hearing officer.

Dan Pittman Sarpy County Assessor was present. William J. Bianco appeared as legal counsel for the County Assessor.

No one appeared on behalf of the Sarpy County Board of Equalization ("the County Board").

Patrick J. Sullivan was present as legal counsel for Richard & Mary Ann Jansen.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006). The final decision and order of the Commission in this case is as follows.

**I.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The County Assessor is authorized by law to appeal decisions of the County Board of Equalization. *Phelps County Board of Equalization v. Graf*, 258 Neb. 810, 606 N.W.2d 736 (2000).
2. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to be an Appellee.

**III.  
APPLICABLE LAW**

1. Prior to March 19 of each year, the county assessor may determine that land no longer qualifies for special valuation pursuant to sections 77-1344 and 77-1347. Neb. Rev. Stat. §77-1347.01 (Cum. Supp. 2006)(effective prior to March 8, 2007).
2. If land is deemed disqualified, the county assessor shall send a written notice of the determination to the applicant or owner within fifteen days after his or her determination,

- including the reason for the disqualification. §Neb. Rev. Stat. §77-1347.01 (Cum. Supp. 2006)(effective prior to March 8, 2007).
3. A protest of the county assessor's determination may be filed with the county board of equalization within thirty days after the mailing of the notice. Neb. Rev. Stat. §77-1347.01 (Cum. Supp. 2006)(effective prior to March 8, 2007).
  4. The county board of equalization shall decide the protest within thirty days after the filing of the protest. The county clerk shall, within seven days after the county board of equalization's final decision, mail to the protester written notification of the board's decision. Neb. Rev. Stat. §77-1347.01 (Cum. Supp. 2006)(effective prior to March 8, 2007).
  5. The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the date of the decision. Neb. Rev. Stat. §77-1347.01 (Cum. Supp. 2006)(effective prior to March 8, 2007).
  6. At any time, the county assessor may determine that land no longer qualifies for special valuation pursuant to sections 77-1344 and 77-1347. Neb. Rev. Stat. §77-1347.01 (Supp. 2007)(effective on and after March 8, 2007).
  7. If land is deemed disqualified, the county assessor shall send a written notice of the determination to the applicant or owner within fifteen days after his or her determination, including the reason for the disqualification. Neb. Rev. Stat. §77-1347.01 (Supp. 2007)(effective on and after March 8, 2007).

8. A protest of the county assessor's determination may be filed with the county board of equalization within thirty days after the mailing of the notice. Neb. Rev. Stat. §77-1347.01 (Supp. 2007)(effective on and after March 8, 2007).
9. The county board of equalization shall decide the protest within thirty days after the filing of the protest. The county clerk shall, within seven days after the county board of equalization's final decision, mail to the protester written notification of the board's decision. Neb. Rev. Stat. §77-1347.01 (Supp. 2007)(effective and after March 8, 2007).
10. The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the date of the decision. Neb. Rev. Stat. §77-1347.01 (Supp. 2007)(effective on and after March 8, 2007).
11. Subject matter jurisdiction of the Commission in this appeal is over issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353 (1998).
12. Parties cannot confer subject matter jurisdiction upon a judicial tribunal by either acquiescence or consent, nor may subject matter jurisdiction be created by waiver, estoppel, consent, or conduct of the parties. *Kuhlmann v. City of Omaha*, 251 Neb. 176, 556 N.W.2d 15 (1996).
13. The absence of subject matter jurisdiction may be raised at any time by any party or by the court sua sponte. *County of Sherman v. Evans*, 252 Neb. 612, 564 N.W.2d 256 (1997). *Crabb v. Bishop Clarkson Memorial Hospital*, 256 Neb. 756, 591 N.W.2d 756, (1999).

14. '[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).

#### IV. ANALYSIS

A notice of disqualification for special valuation was addressed to the Taxpayer by the County Assessor. (E6:1). There is no evidence that the notice of disqualification was timely mailed. The only evidence that a protest based on notice of disqualification was filed is a County Board decision on May 17, 2007. It is possible that all of the time frames specified in statute: mailing of a notice of disqualification within 15 days of a county assessor's determination that a parcel is not qualified for special valuation; a protest filed within 30 days of the date the notice was mailed; and a county board decision within 30 days of filing a protest, were met in this appeal. It is also possible that one or more of the time frames was missed, there is simply no proof of either compliance or failure to comply. A failure of a County Board to make a decision within the time required by law may be deemed a denial of a protest. *Sumner v. Colfax County*, 14 Neb. 524, 16 N.W. 756 (1883). In this case evidence of a timely decision by the County Board is necessary to show whether denial or affirmance is the appealable issue. The statute requires filing of a protest within 30 days of mailing a notice of disqualification. Neb. Rev. Stat.

§77-1347.01 (Cum. Supp 2006 or Supp. 2007). A failure of the Taxpayer to timely file a protest would deprive the County Board of jurisdiction. The Commission cannot have jurisdiction if the County Board did not have jurisdiction. See, e.g. *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956). A lack of proof of compliance does not satisfy the requirements of law. See, *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).

**V.  
CONCLUSIONS OF LAW**

1. The Commission does not have subject matter jurisdiction in this appeal.

**VI.  
ORDER**

**IT IS ORDERED THAT:**

1. The appeal is dismissed with prejudice.
2. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
3. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each party is to bear its own costs in this proceeding.

5. This order is effective for purposes of appeal on October 1, 2008.

**Signed and Sealed.** October 1, 2008.

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Wm. R. Wickersham, Commissioner

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Nancy J. Salmon, Commissioner

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Robert W. Hotz, Commissioner

**SEAL**

**APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**