

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

NORMAN H. AGENA, LANCASTER)	
COUNTY ASSESSOR,)	
)	CASE NO 07SV-152
Appellant,)	
)	DECISION AND ORDER REVERSING
v.)	THE DECISION OF THE LANCASTER
)	COUNTY BOARD OF EQUALIZATION
LANCASTER COUNTY BOARD OF)	
EQUALIZATION AND JEANNE L.)	
KALKWARF & BONNIE J. BESSLER,)	DEFAULT JUDGMENT
)	
Appellees.)	
)	

The above-captioned case was called for a hearing on the merits of an appeal by Norman H. Agena, Lancaster 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 October 7, 2009, pursuant to an Order for Hearing and Notice of Hearing issued July 31, 2009. Commissioners Wickersham and Salmon were present. Commissioner Wickersham was the presiding hearing officer. Commissioner Warnes was excused from participation by the presiding hearing officer. Commissioner Hotz was absent. The appeal was heard by a quorum of a panel of the Commission.

The presence of Norman H. Agena at the hearing was waived. Michael E. Thew, a Deputy County Attorney for Lancaster County, appeared as legal counsel for the County Assessor.

No one appeared on behalf of the Lancaster County Board of Equalization.

Neither Jeanne L. Kalkwarf or Bonnie J. Bessler ("the Taxpayers") were present at the hearing. No one appeared as legal counsel for the Taxpayers.

The Commission took statutory notice and received exhibits.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2008) 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 Taxpayers are the owners of record of certain real property described as Lots 30 & 92 SE Section 22, Township 10, Range 5, in Lancaster County, Nebraska ("the subject property").
2. Prior to March 19, 2007, the County Assessor made a determination that the subject property should be disqualified for use of special valuation.
3. The Taxpayers protested that determination.
4. The County Board reversed the determination of the County Assessor.
5. The County Assessor appealed the County Board's decision to the Commission.
6. The County Board and the Taxpayers were served with Notices in Lieu of Summons and answered those Notices.
7. An Order for Hearing and Notice of Hearing issued on July 31, 2009, set a hearing of the County Assessor's appeal for October 7, 2009, at 1:00 p.m. CDST.

8. An Affidavit of Service, which appears in the records of the Commission, establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
(Case File).
9. Each of the parties has been afforded an opportunity to present evidence and argument as provided by Neb. Rev. Stat. §77-5015 (Cum. Supp. 2008).
10. The Taxpayers failed to appear at the hearing.
11. The County Board failed to appear at the hearing.
12. The County Board consented to entry of an order in favor of the County Assessor.
13. The Order for Hearing and Notice of Hearing issued by the Commission states in Paragraph 2 that if a party fails to appear at the hearing, the Commission may enter an order in favor of the opposing party.
14. The County Board's consent to entry of a judgement in favor of the County Board is evidence that the decision of the County Board was unreasonable or arbitrary.
15. The County Assessor moved for an order of default judgment.
16. The County Assessor's motion for an Order of Default Judgment should be granted.

II.
CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission is authorized to enter default judgments by Neb. Rev. Stat. §77-5015 (Cum. Supp. 2008).
3. The County Board's decision was arbitrary or unreasonable.

**III.
ORDER**

IT IS ORDERED THAT:

1. The motion of the County Assessor for a Default Judgment is granted.
2. The decision of the County Board determining that the subject property was eligible for special valuation is vacated and reversed.
3. The subject property was not eligible for special valuation as of the assessment date, January 1, 2007.
4. This decision, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2008).
5. Any request for relief, by any party, which is not specifically provided for by this order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This decision shall only be applicable to tax year 2007.
8. This order is effective for purposes of appeal October 21, 2009.

Signed and Sealed. October 21, 2009.

Wm. R. Wickersham, Commissioner

Nancy J. Salmon, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2008), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.