

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

|                         |   |                            |
|-------------------------|---|----------------------------|
| G. JEFF WELLER,         | ) |                            |
|                         | ) |                            |
| Appellant,              | ) | Case No. 09R 816           |
|                         | ) |                            |
| v.                      | ) | DECISION AND ORDER FINDING |
|                         | ) | JURISDICTION OVER APPEAL   |
| DOUGLAS COUNTY BOARD OF | ) |                            |
| EQUALIZATION,           | ) |                            |
|                         | ) |                            |
| Appellee.               | ) |                            |

The above-captioned case was called for a hearing on an Order to Show Cause (Filing Defect) why the appeal by G. Jeff Weller ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission") should not be dismissed. 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 11, 2010, pursuant to an Order to Show Cause (Filing Defect) issued January 21, 2010. Commissioner Warnes, Vice-Chairperson of the Commission was the presiding hearing officer. Commissioner Wickersham, Chairperson of the Commission was absent. Commissioner Warnes as Vice-Chairperson acting in the absence of the Chairperson designated, Commissioners Warnes, Salmon and Hotz as a panel of the Commission to hear the appeal. Commissioner Hotz was excused. Commissioner Salmon was present. The appeal was heard by a quorum of a panel of the Commission.

G. Jeff Weller participated in the hearing by telephone. No one appeared as legal counsel for the Taxpayer.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, participated in the hearing by telephone, as legal counsel for the Douglas County Board of Equalization ("the County Board").

The Commission took statutory notice and heard testimony.

The Commission noted that the owner of the subject property is G. Jeff Weller.

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. 2008). The final decision and order of the Commission in this case is as follows.

### **I. ISSUES**

Whether the appeal should be dismissed for failure to timely file required documentation.

### **II. FINDINGS OF FACT**

The Commission finds and determines that:

1. An appeal was mailed to the Commission and received on November 23, 2009. (Case File).
2. The appeal in this case was filed based on an action of the County Board pursuant to Section 77-1502 of Nebraska Statutes.
3. Douglas County has adopted a resolution extending the date for hearing protests pursuant to Section 77-1502 of Nebraska Statutes.

### **III. APPLICABLE LAW**

1. The Commission obtains jurisdiction over an appeal when it is timely filed, the filing fee is timely received and thereafter paid and 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. Neb. Rev Stat. §77-5013 (Cum. Supp. 2008).

2. The documentation required by Section 77-5013 of Nebraska Statutes is deemed timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the commission, on or before the date specified by law for filing the appeal.
3. An appeal from an action of a county board of equalization pursuant to section 77-1502 of Nebraska Statutes must be filed on or before August 24, or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under Section 77-1502. (Supp. 2009).
4. “Any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value or special value of real property for that year, if a failure to give notice prevented timely filing of a protest or appeal provided for in sections 77-1501 to 77-1510.” Neb. Rev. Stat. §77-1507.01 (Supp. 2009).
5. 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).

#### **IV. ANALYSIS**

The Taxpayer testified that he did not receive notice of the County Board’s determination of value on the subject property in time to file a timely appeal to the Tax Equalization and

Review Commission by September 10, 2009, under Neb. Rev. Stat. §77-1501 to 77-1510. The Taxpayer testified that he moved from one residence to another and had asked that the U.S. Postal service forward his mail. He testified that some of the mail addressed to his old address did reach him at the new address, but not the County Board's determination of his 2009 valuation. The Taxpayer testified that he did not receive notice of the County Board's determination until he inquired with the Douglas County Assessor's Office, and it was not until he requested a copy be sent to him that he did receive a copy at his new address. The copy received by the Taxpayer of the determination of the County Board's determination had initially been addressed to the Taxpayer's old address and that old address had been scratched out and the new address of the Taxpayer inserted. The notice did not arrive until after the deadline for filing an appeal with the Commission.

The County did not provide evidence of mailing the County Board's determination of value following the protest hearing and the Commission finds that there is not a presumption of mailing. The Commission finds that the Taxpayer did not receive timely notice of the determination of the County Board. The Taxpayer filed an appeal under Neb. Rev. Stat. §77-5107.01, which allows for a deadline of December 31. The Taxpayer's appeal arrived at the Commission's office on November 23, 2009, and is found to be timely filed. The Commission does have jurisdiction.

## **V. CONCLUSIONS OF LAW**

1. The Commission does have subject matter jurisdiction in this appeal.

## **VI. ORDER**

**IT IS ORDERED THAT:**

1. The caption of this appeal is reformed to reflect the interest of G. Jeff Weller.
2. The appeal in Case No. 09R 816 shall be set for hearing on the merits before the Commission.
3. Each party is to bear its own costs in this proceeding.

**Signed and Sealed** February 24, 2010.

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Nancy J. Salmon, Commissioner

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William C. Warnes, 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.**