

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

JIM'S RIB HAVEN INC.,)	
)	
Appellant,)	Case No. 09C 513
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
DOUGLAS COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	(Filing Defect)
)	
Appellee.)	

The above-captioned case was called for a hearing on an Order to Show Cause (Filing Defect) why the appeal by Jim's Rib Haven Inc. ("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 January 20, 2010, pursuant to an Order to Show Cause (Filing Defect) issued December 31, 2009. Commissioners Wickersham and Hotz were present. Commissioner Wickersham was the presiding hearing officer. Commissioner Warnes was excused from participation by the presiding hearing officer. Commissioner Salmon was absent. The appeal was heard by a quorum of a panel of the Commission.

Lois Y. Thompson, President of Jim's Rib Haven Inc., 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 Jim's Rib Haven Inc.

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 on September 10, 2009 and received on September 11, 2009. (Case File).
2. Documentation of the decision, order, determination or action appealed from was not received with the appeal. (Case File).
3. Documentation of the decision, order, determination, or action appealed from specified by Section 77-5013 (3) of Nebraska Statutes has not been received. (Case file).
4. The appeal in this case was filed based on an action of the County Board pursuant to Section 77-1502 of Nebraska Statutes.
5. 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. 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's President testified that she had asked unnamed employees of Douglas County to provide her with the documents necessary to appeal a decision of the County Board to

the Commission. The Taxpayer had received notice of the County Board's decision but that notice was not filed with the appeal. Section 77-5013 requires that a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from be timely filed to perfect an appeal. (Cum. Supp. 2008). The final date for filing of the required documentation in this case was September 10, 2009. A copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from was not timely filed with the Commission. The requirements of section 77-5013 have not been met and cannot be waived by the Commission. The Commission does not have jurisdiction.

**V.
CONCLUSIONS OF LAW**

1. The Commission does not 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 Jim's Rib Haven Inc.
2. The appeal in Case No. 09C 513 is dismissed.
3. Each party is to bear its own costs in this proceeding.

Signed and Sealed January 28, 2010.

Robert W. Hotz, Commissioner

Wm. R. Wickersham, 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.