

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

PHILLIP A. CALLAHAN,	)	
	)	
Appellant,	)	Case No 09R-811
	)	
v.	)	FINDINGS AND ORDER FINDING
	)	JURISDICTION OVER APPEAL
CASS COUNTY BOARD OF	)	
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 January 5, 2010, at 1:30 p.m., pursuant to an Amended Order to Show Cause and Notice of Hearing issued December 23, 2009.

Commissioners Hotz and Warnes were present. Commissioner Salmon was excused.

Commissioner Wickersham was absent. Commissioner Warnes presided at the hearing.

Phillip A. Callahan ("the Taxpayer") appeared, by teleconference. The Cass County Board of Equalization ("the County Board") appeared, by teleconference; by and through legal counsel, Nathan B. Cox, Cass County Attorney. The Commission took statutory notice, received exhibits, and heard testimony.

**I.  
ISSUES**

Whether the Appeal of the Taxpayer was timely filed.

**II.  
FINDINGS OF FACT**

1. The Taxpayer is the owner of record of certain residential real property described in the appeals (“the subject property”).
2. The Taxpayer’s Appeal was filed by mail in an envelope showing a postmark of October 7, 2009, and received in the Commission’s office on October 8, 2009.
3. An Amended Order to Show Cause and Notice of Telephonic Hearing (Jurisdiction) was issued by the Commission on December 23, 2009, directing the Taxpayer to show why its appeal should not be dismissed for want of jurisdiction.

**III.  
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 Section 77-5016 (3). Neb. Rev. Stat. § 77-5016(3) (Cum. Supp. 2008).
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 905 (2000).
3. The Commission obtains jurisdiction over an appeal when the appeal, 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 and the filing fee is timely received and thereafter paid. Neb. Rev. Stat. §77-5013 (Cum. Supp. 2008).

4. At the hearing, the County stipulated that the determination of valuation by the County Board of Equalization was under Neb. Rev. Stat. §77-1504. (Cum. Supp. 2008).
5. The Commission finds that the appeal was timely filed as required by Neb. Rev. Stat. §77-1504. (Cum. Supp. 2008).

#### **IV. ANALYSIS**

The Taxpayer's appeal arrived to the Commission on October 8, 2009. This arrival date would be a late filing if the appeal was being made pursuant to Neb. Rev. Stat. §77-1502. (Supp. 2009); however, the filing date would have been timely if the appeal was pursuant to Neb. Rev. Stat. §77-1504. (Cum. Supp. 2008). It was not clear on the face of the complaint which statute was applicable to the appeal. At the hearing, the County stipulated that the determination of valuation by the County Board of Equalization was made pursuant to Neb. Rev. Stat. §77-1504. (Cum. Supp. 2008). The Commission finds that the appeal was timely filed and the Commission has jurisdiction of this appeal.

#### **V. CONCLUSIONS OF LAW**

That the Commission has jurisdiction over the subject matter of the above captioned appeal.

**VI.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

1. That this appeal shall be set for a hearing on the merits before the Commission.
2. That each party be provided with a copy of this order.

**IT IS SO ORDERED.**

Dated: January 15, 2010.

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William C. Warnes, Commissioner

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Robert W. Hotz, Commissioner

**SEAL**