

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

HARVEY VARENHORST,)	
)	
Appellant,)	Case No. 10R 849
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
OTOE COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	(Filing Defect)
)	(Untimely Filing)
Appellee.)	

The above-captioned case was called for a hearing on Order to Show Cause (Filing Defect) why the appeal by Harvey Varenhorst ("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 24, 2011, pursuant to an Order to Show Cause (Filing Defect) issued December 14, 2010 and amended January 5, 2011. Commissioner Wickersham, Chairperson of the Commission, was the presiding hearing officer. Commissioner Warnes was absent. Commissioner Wickersham, as Chairperson, designated Commissioners Wickersham, 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.

Harvey Varenhorst appeared by telephone. No one appeared as legal counsel for the Taxpayer.

David J. Partsch, County Attorney for Otoe County, Nebraska, participated in the hearing by telephone, as legal counsel for the Otoe County Board of Equalization ("the County Board").

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 (Reissue 2009). The final decision and order of the Commission in this case is as follows.

I. ISSUES

Whether the appeal was timely filed.

Whether a copy of the decision, action, order, or determination or information that documented the decision, action, order, or determination appealed from was timely filed.

II. FINDINGS OF FACT

The Commission finds and determines that:

1. The appeal captioned above and the required filing fee October 18, 2010. (Case File).
2. The envelope in which the appeal, filing fee, and documentation was delivered is postmarked October 14, 2010. (Case File).
3. Documentation of the decision, order, determination or action appealed from was not received with the appeal. (Case File)
4. A copy of the decision action order, or determination appealed from was received on January 24, 2010. (E4:3).
5. The appeal in this case was filed based on an action of the County Board pursuant to section 77-1502 of Nebraska Statutes.

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 (Reissue 2009).
2. An appeal 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. Neb. Rev Stat. §77-5013 (Reissue 2009).
3. 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.
4. 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.
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

A County Board may determine that property is undervalued or overvalued and give notice of a proposed value to a Taxpayer. Neb. Rev. Stat. §77-1504 (Reissue 2009). An appeal mailed on October 14 would be timely if the decision of the County Board had been made pursuant to section 77-1504 of Nebraska Statutes. The Taxpayer filed a protest with the County Board on June 25, 2010. (E4:3). The County Board considered the protest and made its decision on July 23, 2010. (E4:3). A copy of the decision was mailed to the Taxpayer on July 29, 2010. (E4:3). The protest was from value as determined by the County Assessor. (E2:8). All of the evidence is consistent with a protest filed pursuant to section 77-1502 of Nebraska Statutes. The applicable appeal filing date from decisions made on protests filed pursuant to section 77-1502 is August 24, 2010. The appeal was mailed on October 14, 2010 and received on October 18, 2010. The appeal was not timely filed.

The appeal, even if timely filed, was incomplete because neither a copy of the action, order, decision, or determination appealed from nor other documentation of the action, order, decision, or determination appealed from was timely filed. The required documentation was received on January 24, 2011 after either the August 24 filing deadline or the October 15, filing deadline. The Taxpayer testified that he was advised that the applicable filing date was October 15. Even if timely filing could be excused, failure to timely file the necessary documentation requires dismissal of the appeal.

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 in Case No. 10R 849 is dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed February 2, 2011.

Nancy J. Salmon, Commissioner

Wm. R. Wickersham, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (REISSUE 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.