

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Northwood Estates Inc.,
Appellant,

v.

Washington County Board of Equalization
Appellee.

Case Nos. 10R-048, 10R-049, 10R-050,
10R-051, 10R-052, 10R-053, 10R-054 &
10R-055

Decision and Order Dismissing Appeals

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

The above-captioned case was called for a hearing on February 16, 2012, pursuant to an Order to Vacate Single Commissioner Designation and Amended Order for Hearing and Notice by the Tax Equalization and Review Commission (herein referred to as 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 February 16, 2012.

No one appeared on behalf of Northwood Estates Inc. Kevin Petersen, a consultant for the Taxpayer, was present at the hearing.

Edmond E. Talbot III, a Deputy County Attorney for Washington County, Nebraska, appeared as legal counsel for the Washington County Board of Equalization (herein referred to as the "County Board").

At the hearing, Mr. Talbot orally motioned to dismiss the case due to a lack of subject matter jurisdiction and due to a failure for the Taxpayer to appear.

The Commission is required by Nebraska Statutes section 77-5018 (2012 Cum. Supp.) 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.
ISSUES

1. Whether the appeal in this case was signed by a person authorized to sign appeals filed with the Commission.
2. Whether the Taxpayer appeared through an authorized representative.

II.
FINDINGS OF FACT

The Commission finds and determines that:

1. The appeal in this case was signed by Brian Morrissey, Senior Vice President. (Case File).
2. Brian Morrissey is a Vice President of Jasperstone Management.
3. The owner of the parcel whose taxable value is in dispute was Northwood Estates, Inc. on the date of the appeal
4. Jasperstone Management has not at any pertinent time had an ownership interest in the parcel whose taxable value is in dispute.
5. Jasperstone Management is not obligated to pay without reimbursement any portion of the taxes that might be levied on the taxable value of the parcel for the year 2010.
6. Kevin Peterson is a consultant for Northwood Estates Inc., but is not an officer, partner, general partner, member, manager, or other person holding similar authority or a full-time salaried employee of the entity.

III.
APPLICABLE LAW

1. Nebraska Statutes section 77-5013 (4) grants the Commission the authority to specify the requirements for the execution of an appeal or petition in the Commission Rules and Regulations.

2. An appeal form must be signed by a party, legal counsel for a party or a person authorized by law or the Commission's rules and regulations to sign an appeal. 442 Neb. Admin. Code, ch. 5, §001.04 (06/09).
3. Only a person who will be directly affected by the outcome of an appeal is one who has a real interest in the appeal or has a legal or equitable right, title, or interest in the subject of the appeal may be a party. 442 Neb. Admin. Code, ch. 2, §001.36 (06/09).
4. If a party is a corporation, limited liability company, partnership, limited partnership, or other legal entity, association, union or organization, the entity or organization may sign an appeal/petition through a director, an officer, a full-time salaried employee, member or manager of a limited liability company, or other individual authorized by law or the governing documents of the entity, association or organization. 442 Neb. Admin. Code, ch. 5, §001.05D (06/09).
5. Legal counsel for a party may sign an appeal/petition. 442 Neb. Admin. Code, ch. 5, §001.05I (06/09).
6. No person, other than a party, legal counsel for a party, or a person authorized by law or by the Commission's rules may sign an appeal/petition. 442 Neb. Admin. Code, ch. 5, §001.04 (06/09).
7. Only a person authorized to sign a pleading may appear before the Commission as a party or on behalf of a party, except as may be allowed by these rules or decisions of the Nebraska Supreme Court. (See, Chapter 5, Section 001.04). 442 Neb. Admin. Code, ch. 4, §009.10 (06/09).
8. An appellant or petitioner must be present at any hearing on the merits of an appeal or petition with or without legal counsel, to avoid dismissal or relief by default unless their presence is waived by the Commission. 442 Neb. Admin. Code, ch. 4, §009 (06/09).
9. In the case where the appellant or petitioner is a corporation, “an officer, partner, general partner, member, manager, or other person holding similar authority or a full-time salaried employee of the entity” must be present at the hearing. 442 Neb. Admin. Code, ch. 4, §009.02 (06/09).
10. “If an appellant/petitioner is not present at any hearing before the Commission within fifteen (15) minutes of a time for hearing, for which notice has been provided to the

appellant/petitioner, the Commission may enter an order dismissing the appeal/petition or order relief by default.” 442 Neb. Admin. Code, ch. 4, §009.08 (06/09).

IV. ANALYSIS

The parcel whose taxable value was appealed was, at the times relevant to this proceeding, owned by Northwood Estates Inc. Jasperstone Management’s sole interest in the parcel for which taxable value is in dispute was as a property manager. There is no evidence that Jasperstone Management, as a property manager, is a person or entity that will be directly affected by the outcome of an appeal or is one who has a real interest in the appeal, or has a legal or equitable right, title, or interest in the subject of the appeal.

There is no evidence that Brian Morrissey was, at any time pertinent to this proceeding, a director, an officer, a full-time salaried employee, member or manager of Northwood Estates Inc. or other individual authorized by law or the governing documents of Northwood Estates Inc. to sign an appeal to the Commission. Brian Morrissey, Senior Vice President of Jasperstone Management, is not a person authorized by the Commission's rules and regulations to sign an appeal on behalf of Northwood Estates Inc., the entity that owned the property or was responsible for payment of real property taxes.

There is no showing that Jasperstone Management Inc. has a sufficient interest to maintain this appeal and the appeal must be dismissed.

Further, Kevin Petersen is a consultant for Northwood Estates Inc. A consultant is not allowed by the Commission’s rules and regulations to appear on behalf of a taxpayer. The Commission’s Order to Vacate Single Commissioner Designation and Amended Order for Hearing and Notice and its rules and regulations require the presence of an authorized representative. (Case File); 442 Neb. Admin. Code, ch. 4, §009 (06/09). Both also provide that in the absence of the taxpayer or authorized representative, the County may motion for a default order and the Commission may enter an order dismissing the appeal. *Id.* Here the Taxpayer did not appear through an authorized representative. The County motioned for a default order and the Commission finds that the Taxpayer failed to appear as required in the Commission’s rules

and regulations and its Order to Vacate Single Commissioner Designation and Amended Order for Hearing and Notice.

V.

CONCLUSIONS OF LAW

1. The Commission does not have subject matter jurisdiction in this appeal because the appeal was not signed by a person authorized to sign appeals filed with the Commission.
2. The Taxpayer failed to appear at the hearing as required by the Order and Notice of Hearing and the Commission's rules and regulations.

VI.

ORDER

IT IS ORDERED THAT:

1. The appeal is dismissed.
2. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2012).
3. Each party is to bear its own costs in this proceeding.
4. This order is effective for purposes of appeal on July 10, 2013.

Signed and Sealed. July 10, 2013.

Thomas D. Freimuth, Commissioner

SEAL

Nancy J. Salmon, Commissioner