

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Schwinn Homes, LLC.,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 13R 930, 13R 931, and 13R 932

**ORDER FOR DISMISSAL WITH
PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on January 16, 2014. James Gregory Schwinn appeared telephonically at the hearing before the Commission as the Managing Member of Schwinn Homes, LLC (The Taxpayer). John M. Watson, Deputy Lancaster County Attorney, appeared telephonically on behalf of the Lancaster County Board of Equalization (the County Board). The Commission took notice of its case files for the purpose of determining personal jurisdiction and subject matter jurisdiction.

II. STANDARD OF REVIEW

Section 77-5013 of the Nebraska Statutes provides that 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.¹ Any action of the County Board of Equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 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 77-1502.² Parties cannot confer subject matter

¹ See, Neb. Rev. Stat. 77-5013 (2012 Cum. Supp.).

² Neb. Rev. Stat. §77-1510 (Reissue 2009).

jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

III. ANALYSIS

On September 12, 2013, the Commission received three appeals of determinations of the County Board made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009).⁴ The deadline for filing appeals of these determinations for tax year 2013 was on or before September 10, 2013, because the County Board had adopted a resolution to extend the deadline for hearing protests under section 77-1502.⁵ An appeal to the Commission is 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.⁶ In this case, the appeals were hand-delivered to the Commission on September 12, 2013.⁷ An envelope included with the appeals was postmarked September 7, 2013, however this envelope is also marked “Return to Sender” for additional postage.⁸ The evidence and testimony offered at the hearing indicate that the envelope was returned by the Postal Service to the Taxpayer on September 11, 2013, due to the insufficient postage.⁹ The envelope was then hand-delivered to the Commission on September 12, 2013.¹⁰

Based on this evidence and testimony, prior to the appeal deadline of September 10, 2013, the appeals were not placed in the United States mail, postage prepaid, because there was insufficient postage on the envelope, and not received by the commission. Therefore, the Commission determines that the appeal was not timely filed.

IV. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeals.

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁴ See, Case Files.

⁵ Neb. Rev. Stat. §77-1510 (Reissue 2009).

⁶ Neb. Rev. Stat. 77-5013(2) (2012 Cum. Supp.).

⁷ See, Case Files.

⁸ See, Case Files.

⁹ E1

¹⁰ See, Case File, E1

V. ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeals are dismissed with prejudice.
2. This decision, if no appeal is filed, shall be certified within thirty days to the Lancaster County Treasurer, and the officer charged with preparing the tax list for Lancaster

County as follows:

Norman Agena
555 S 10th St. Rm 102
Lincoln, NE 68508

Andy Stebbing
555 S 10th St. Rm 102
Lincoln, NE 68508

as required by Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

3. Each party is to bear its own costs in this matter.

SIGNED AND SEALED January 30, 2014

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner