

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Twin Cities Development Association, Inc.,
Appellant,

v.

Scotts Bluff County Board of Equalization,
Appellee.

Case No: 13C 809 & 13C 810

**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 March 3, 2014. Rawnda R. Pierce, Executive Director of Twin Cities Development Association, Inc. (the Taxpayer) appeared telephonically at the hearing before the Commission. Amy Ramos, Scotts Bluff County Assessor, appeared telephonically on behalf of the Scotts Bluff County Board of Equalization. The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction.

II. LAW

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 If a failure to give notice prevented a taxpayer from filing a timely protest with the Commission, “any person otherwise having a right

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

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

to appeal” may petition the Commission on or before December 31 of the year in question.³ 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.⁴

The County Assessor is required to give notice of a change in valuation to owner of record as of May 20 by first class mail sent to the owner of record’s last known address.⁵

III. EVIDENCE

Rawnda R. Pierce, Executive Director of the Taxpayer, testified that the Taxpayer is a 501(c)(4) and only owns the Subject Property, and that Western Nebraska Housing Opportunities, a 501(c)(3) operated out of the same office, owns the properties listed in the Taxpayer’s letter dated August 23, 2011.⁶ She testified that the two entities have different boards of directors but that the staff and address is the same for both entities.

The Taxpayer purchased the Subject Property to be used as its new home office. She testified that the purchase and transfer was very public, that the Taxpayer held extensive open houses during the transition of the office, and that the local media outlet ran several stories on the move. Pierce claimed that Amy Ramos knew that the Taxpayer had changed offices and that employees of the County Assessor’s Office had been through the Subject Property for purposes of reevaluation. Pierce stated that the Taxpayer provided a written notice for several properties, and that the letter contained the appropriate contact information for the Taxpayer’s new home office. She also stated that the Taxpayer had filed a change of address with the United States Postal Office. Additionally, she stated that the Taxpayer had sent letters with each bill paid for three months after the purchase indicating that the home office had changed addresses.

Pierce contended that the foregoing was sufficient notice to the County Assessor, but even so, three years after the purchase, the notice of change in valuation was not sent to new address. She asserted that the Taxpayer only discovered that they had not received the notice after an internal review of property tax statements.

³ Neb. Rev. Stat. §77-1507.01 (Reissue 2009).

⁴ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁵ Neb. Rev. Stat. §77-1315 (2012 Cum. Supp.).

⁶ See, E2:9.

She asserted that the inclusion of the current home address in the letterhead was sufficient notice for the County Assessor's Office. The Taxpayer asserted that if they had only wanted to change the mailing address for the properties owned by Western Nebraska Housing Opportunities then it would have used letterhead for Western Nebraska Housing Opportunities instead of its own letterhead.⁷ Pierce asserted that because she had previously spoken with an employee of the County Assessor's Office, and because the Taxpayer only owns the Subject Property, she assumed that the letter, captioned with the Taxpayer's letterhead, would be sufficient to notice the change in location.

Pierce indicated that no other writing was presented to the County Assessor prior to tax year 2013 protests. Pierce asserted that returned mail due to a lack of forwarding address should require the County Assessor to review. She stated that the Taxpayer received the 2010, 2011, and 2012 tax bills at the new address, but did not receive the 2013 change in valuation notice and 2013 tax bill. Pierce testified that she was unaware of whether the received tax bills were sent to the old address and forwarded to the Subject Property by the United States Postal Service or whether they were addressed to the Subject Property.

Amy Ramos, the Scotts Bluff County Assessor, asserted that the County Assessor had received a letter dated August 23, 2011, from the Taxpayer informing her of a change of address for specific parcels of real property owned by Western Nebraska Housing Opportunities.⁸ Ramos indicated that she was unaware of any phone call in 2011 from the Taxpayer. She testified that the County Assessor's Office policy requires that a change of address be in writing and signed. The County Assessor will accept a written change of address regardless of the formality of the document.

Ramos further testified that it was the policy of the County Assessor not to make assumptions about the mailing addresses of real property owners. Ramos asserted that the change of address policy was necessary to ensure that any change of address is documented with evidence of who requested the change of address and when. She testified that this protected the County Assessor's Office from becoming involved in disputes between owners of real property; including, but not limited to, any divorce proceedings. Ramos indicated that the County

⁷ See, E2:10.

⁸ See, E2:10.

Assessor's Office does not call and follow up with all address inquiries because it is the responsibility of the Taxpayer to ensure that the mailing address on file with the County Assessor is accurate. She testified that thus, while the purchase of the Subject Property was a public event, the address was not changed without specific written notice. She testified that she was unaware of any mail sent the Taxpayer's old address which had been returned by the USPS, but if the mail came back with a forwarding address from the USPS the County Assessor would not have researched the address of the owner because of the foregoing policies.

Ramos further testified that County Assessor's Office employees had inspected the Subject Property, but that these employees have no authority or access to change addresses. She testified that the only way to change an address with the County Assessor was by providing a signed written change of address. She asserted that the 2011 and 2012 tax bills were sent to the old address, thus the Taxpayer should have been aware at that the address on file with the County Assessor's Office had not changed.

Ramos testified that the address was not changed in the County's system until after the 2013 change in valuation notices had been sent. She contended that if the tax bills were received for 2011 and 2012 at the new address that she would assume that it was a result of a forward by the United States Postal Service. She additionally asserted that there were no 2011 or 2012 notices of change of values because the values had not changed for the Subject Property.

IV. ANALYSIS

The Taxpayer asserted that the County Assessor failed to provide notice of a change in actual value of the Subject Property. On December 23, 2013, the Commission received an envelope containing a petition to determine the actual or special value of real property located in Scotts Bluff County for tax year 2013.⁹ The deadline for filing a protest of the assessed value of real property for tax year 2013 was on or before June 30.¹⁰ The deadline for filing appeals of determination of the Scotts Bluff County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009) for tax year 2013 was 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

⁹ Case File.

¹⁰ See, Neb. Rev. Stat. 77-1502 (2012 Cum. Supp.)

under section 77-1502.¹¹ The County Board did not adopt a resolution extending the deadline for hearing protests, so the filing deadline for tax year was August 24, 2013.¹² Any person otherwise having a right to appeal may petition the Commission, on or before December 31 of each year, to determine the actual value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal as provided for in Neb. Rev. Stat. §§77-1501 to 77-1510.¹³ An appeal or petition 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.¹⁴

“Jurisdiction is the inherent power or authority to decide a case.”¹⁵ The Commission only has that “authority” which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act.¹⁶ Nebraska statute requires the County Assessor to send notice of a change in valuation for real property to the owner of record’s last known address.¹⁷ This issue in this case is whether constructive notice to the County Assessor is sufficient to satisfy the requirement that the County Assessor have knowledge of a new address, or whether the County Assessor may require actual written notice to implement a change of address.

In *Reed v. County of Hall*, 199 Neb. 134, 256 N.W.2d 861 (1977), the Nebraska Supreme Court addressed a case with similar facts.¹⁸ In *Reed*, the Taxpayer was in the process of constructing a new sub-development.¹⁹ As phases of the project were completed the ownership of real property was conveyed or the owner’s attempted to convey, the real property to different entities.²⁰ During the conveyances, the Taxpayer failed to appropriately convey title of some

¹¹ Neb. Rev. Stat. §77-1510 (Reissue 2009).

¹² Case File.

¹³ See, Neb. Rev. Stat. 77-1507.01 (Reissue 2009).

¹⁴ Neb. Rev. Stat. 77-5013(2) (2012 Cum. Supp.).

¹⁵ *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

¹⁶ See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

¹⁷ Neb. Rev. Stat. §77-1315 (2012 Cum. Supp.).

¹⁸ The Court in *Reed* was interpreting a previous version of Neb. Rev. Stat. §77-1315. See, *Reed v. County of Hall*, 199 Neb. 134, 137-139, 256 N.W.2d 861, 863-864 (1977) (citing Neb. Rev. Stat. §77-1315 (Reissue 1943)). Neb. Rev. Stat. §77-1315 has changed multiple times over the last seventy years. However, the applicable language in the version of statute reviewed by the Court in *Reed* and the current applicable language of Neb. Rev. Stat. §77-1315 are identical: “Such notice shall be given by first-class mail, addressed to such owner’s last-known address.” *Reed v. County of Hall*, 199 Neb. 134, 137-139, 256 N.W.2d 861, 863-84 (1977) (citing Neb. Rev. Stat. §77-1315 (Reissue 1943)); See also, Neb. Rev. Stat. §77-1315 (2012 Cum. Supp.).

¹⁹ See, *Reed v. County of Hall*, 199 Neb. 134, 135-137, 256 N.W.2d 861, 862-863 (1977).

²⁰ See, *Reed v. County of Hall*, 199 Neb. 134, 135-137, 256 N.W.2d 861, 862-863 (1977).

items of real property.²¹ Because the conveyance had not been sufficient to pass legal title, the County Assessor sent notice to the last known address of the registered agent of owning company.²² However, the registered agent had moved offices and was no longer at the old address.²³ While the Court held that the County Assessor's notice was insufficient on other grounds, it also reasoned that County Assessor's Office was only required to obtain address information from documents filed with that office, and that where an entity failed to record a change of address with the County Assessor's Office, a notice sent to an old address was sufficient.²⁴ The Commission finds the Court's reasoning in *Reed* instructive.

The Commission finds no requirement in law that the County Assessor's Office change an address for any reason other than actual notice by appropriately filed document. The only documents available for review were the Form 521 for the transfer of the Subject Property to Twin Cities Development Association, Inc., and the letter sent August 23, 2011. The Form 521 lists the old address for the Taxpayer.²⁵ The letter sent to the County Assessor's Office on August 23, 2011, indicated that the properties affected by the change of address were listed in the letter.²⁶ The list did not include the Subject Property. The Commission finds that while the Taxpayer intended to communicate that the Subject Property's address should be changed as well, a reasonable and understandable interpretation of the letter would not have conveyed the intended meaning.

The Commission finds that the notice sent by the County Assessor was sufficient under Nebraska law. The Commission finds that because the County Assessor's notice was sufficient, that the Taxpayer was required to file a protest with the County Board by June 30, 2013,²⁷ and then file an appeal to the Commission by August 24, 2013.²⁸ The uncontroverted facts are that the Taxpayer did not file a protest with the County Board by June 30, 2013. The Commission finds that it does not have jurisdiction over these appeals.

²¹ See, *Reed v. County of Hall*, 199 Neb. 134, 135-137, 256 N.W.2d 861, 863-864 (1977).

²² See, *Reed v. County of Hall*, 199 Neb. 134, 138-139, 256 N.W.2d 861, 864 (1977).

²³ See, *Reed v. County of Hall*, 199 Neb. 134, 138-139, 256 N.W.2d 861, 864 (1977).

²⁴ See, *Reed v. County of Hall*, 199 Neb. 134, 139, 256 N.W.2d 861, 864 (1977) ("We have no hesitancy in saying that if the notice had been sent to the registered agent at that address, which was the last-known address, there would be no question of notice.).

²⁵ See, E1:13.

²⁶ See, E2:9.

²⁷ See, Neb. Rev. Stat. §77-1502(1) (2012 Cum. Supp.).

²⁸ Neb. Rev. Stat. §77-1510 (Reissue 2009).

V. CONCLUSION

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

ORDER

IT IS THEREFORE ORDERED THAT:

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

County as follows:

Amy Ramos
1825 10th St.
Gering, NE 69341

Gwen Greeley
1825 10th St.
Gering, NE 69341

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 July 2, 2014

Seal

Thomas D. Freimuth, Commissioner

Nancy J. Salmon, Commissioner