

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Frontier Livestock Ogallala, LLC,
Appellant,

Case Nos: 16C 0010 & 16C 0012

v.

Order for Dismissal

Keith County Board of Equalization,
Appellee.

Background

1. The Subject Properties are two unimproved parcels which are contiguous to a warehouse store which was subject to a separate appeal (Case No. 16C 0011). The legal description for the property contained in Case No. 16C 0010 is Lot 2, Ogallala Industrial Addition, Keith County, Nebraska. The legal description for the property contained in Case No. 16C 0012 is Lot A, Jehorek’s Replat, 3.01 Ac., Keith County, Nebraska.
2. The Keith County Assessor (the County Assessor) assessed the Property described in Case No. 16c 0010 at \$26,650 and the Property described in Case No. 16C at \$18,910 for tax year 2016.
3. The Taxpayer protested these values to the Keith County Board of Equalization (the County Board). In filing its protest with the County Board, the Taxpayer included the two parcels comprising the Subject Properties and also a third parcel described in Case No. 16C 0011.
4. The County Board determined that the taxable values of the Subject Properties were \$26,650 and \$18,910 respectively for tax year 2016.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on May 31, 2017, at the Hampton Inn, North Platte, Nebraska, before Commissioner Nancy J. Salmon.
7. Robert W. Myers was present at the hearing on behalf of the Taxpayer.
8. Randy Fair, Keith County Attorney, was present for the County Board.

Standard of Review

9. Prior to consideration of these appeals, the Commission must determine that it has jurisdiction over the appeals.¹ Parties cannot confer subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or

¹ Neb. Rev. Stat. §77-1510 (Reissue 2009).

conduct of the parties.² “Jurisdiction is the inherent power or authority to decide a case.”³ 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.⁴ An appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.⁵ “[I]f the [body] from which an appeal was taken lacked jurisdiction, then the appellate [tribunal] acquires no jurisdiction. And when an appellate [tribunal] is without jurisdiction to act, the appeal must be dismissed.”

Analysis

10. It appears that the County Assessor recommended to the County Board that the Taxpayer’s Protest be rejected because it had filed its protest for three different parcels on one Property Valuation Protest form 422. Although the County did not file a motion to dismiss for jurisdictional reasons, the Commission notes that *Neb. Rev. Stat. § 77-1502(1)* states: “For protests of real property, a protest shall be filed for *each* property (emphasis added).” An appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.⁶ “[I]f the [body] from which an appeal was taken lacked jurisdiction, then the appellate [tribunal] acquires no jurisdiction. And when an appellate [tribunal] is without jurisdiction to act, the appeal must be dismissed.”⁷
11. The record clearly indicates that the Taxpayer did not file a separate protest for each parcel as required by law. Although he did file separate appeals for each parcel with the Commission, that fact does not alter the lack of jurisdiction on the part of the County Board. The Commission does not have jurisdiction to hear the above captioned appeals.

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeals are dismissed with prejudice.
2. Each party is to bear its own costs in this matter.

SIGNED AND SEALED: June 14, 2017

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

³ *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

⁴ See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

⁵ See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

⁶ See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

⁷ *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 1013, 815 N.W.2d 168, 175 (2012).

Seal

Nancy J. Salmon, Commissioner