

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

S & T LIVESTOCK,)	
)	
Appellant,)	CASE NO. 06C-308
)	
vs.)	FINDINGS AND ORDER DISMISSING
)	APPEAL FOR WANT OF JURISDICTION
CHASE COUNTY BOARD OF EQUALIZATION,)	
)	DENYING MOTION TO SUBSTITUTE A
Appellee.)	PARTY OR FOR JOINDER
)	
)	DENYING MOTION TO INTERVENE
)	

The above-captioned case was called for a hearing pursuant to an Order for Hearing a Motion filed by the Chase County Board of Equalization to Quash Appellant’s Interrogatories, a Motion filed by Sun Prairie, A Partnership for Leave to Intervene, and a Motion filed by S & T Livestock for Leave to Substitute Appellant, or in the alternative for Joinder of Sun Prairie, a Partnership as Party. The hearing was held in the Hearing Room of the Tax Equalization and Review Commission (“Commission”) on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on March 13, 2007, pursuant to an Amended Order issued March 8, 2007. Commissioners Wickersham, Lore, and Warnes were present. Commissioner Wickersham presided at the hearing.

James F. Cann appeared by telephone as legal council for S & T Livestock (“S & T”) and Sun Prairie, a Partnership (“Sun Prairie”). The Chase County Board of Equalization (“the County Board”) appeared, by telephone, through legal counsel, Mr. Arlan G. Wine, County Attorney, for Chase County, Nebraska. The Commission took statutory notice, received exhibits and heard argument.

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003) to state its final decision, with findings of fact and law, on the record or in writing.

I. FINDINGS

The Commission finds and determines that:

1. Sun Prairie is the owner of record of certain real property which can be identified through its property identification number 150103190. That property is located in Chase County Nebraska, and will be referred to as (“the subject property”).
2. The Chase County Assessor gave notice of a change in the valuation of the subject property for the tax year 2006. (E2)
3. Sun Prairie filed a protest with the County Board of the value contained in the County Assessor’s notice. (E3).
4. The County Board denied the protest. (E1).
5. S & T filed an appeal of the County Board’s decision. (Case file)

II. APPLICABLE LAW

1. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commission’s rules and regulations or Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2006).

2. 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).
3. An administrative agency is a governmental authority, other than a court and other than a legislative body, which affects rights of private parties through either adjudication or rulemaking. (Citations omitted). *Hoiengs v. County of Adams*, 245 Neb. 877, 892, 516 N.W.2d 223, 236 (1994).
4. 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. See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 554 N.W.2d 778 (1996). If the board, agency or person which made a decision, order, or determination or took an action that is appealed to the Commission lacked subject matter jurisdiction, then the Commission cannot acquire subject matter jurisdiction. See, *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 583 N.W.2d 353 (1998), *Bartlett v. Dawes County Bd. of Equalization* 259 Neb. 954, 613 N.W.2d 810 (2000), *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 810 (2000), *Falotico v. Grant County Bd. of Equal.*, 262 Neb. 292 (2001).
5. Standing is fundamental to jurisdiction and may be raised at any time. *Smith v. City of Papillion*, 270 Neb. 607, 705 N.W.2d 584 (2005).

6. An appellant is required to have a personal stake in the outcome of an appeal that would warrant an exercise of jurisdiction and the commission's remedial powers on behalf of an appellant. *Id.*

III. ANALYSIS

An issue presented in this proceeding is whether or not the Commission has jurisdiction to hear the appeal of S & T. The evidence is that the subject property consists of improvements on leased land. The leased land is owned by S & T and the improvements comprising the subject property are owned by Sun Prairie. An election to have the improvements taxed as the property of Sun Prairie was filed with the Chase County Assessor's office. (E5). The parties stipulated that S & T could not be liable for payment of any tax that might be levied on the value of the subject property. Standing is fundamental to jurisdiction and may be raised at any time. *Smith v. City of Papillion*, 270 Neb. 607, 705 N.W.2d 584 (2005). An appellant is required to have a personal stake in the outcome of an appeal that would warrant an exercise of jurisdiction and the commission's remedial powers on behalf of an appellant. *Id.* There is no evidence that S & T has a sufficient interest in the subject property to maintain this appeal.

S & T contends that Sun Prairie or in the alternative an assignee of Sun Prairie Whitestone Farms, LLP, A North Dakota Limited Liability Partnership ("Whitestone Arms") should be substituted as a party. It is clear that if Sun Prairie becomes a party that it has standing and that the appeal of S & T is validated or revived. *New Light v. Wells Fargo Alarm Services*, 252 Neb. 958, N.W.2d 777 (1997). The Court in *New Light* also held that a statute allowing for amendment of pleadings should be liberally construed and substitution of parties allowed if

substitution does not create a new cause of action. *New Light Supra*. The statute applied by the New Light Court has been repealed. 2002 Neb. Laws, L.B. 876, §92. Sun Prairie argues that current law should be applied in a manner consistent with the holding in New Light. The Commission is unaware of any basis for determining that rules of pleadings as promulgated by the Nebraska Supreme Court for use by the courts of Nebraska pursuant to section 25-801.01 of Nebraska Statutes are applicable to the Commission. The Commission has not been granted authority to allow amendments to pleadings and has no authority to grant S & T's motion for substitution on the basis of rules applicable to the Courts of Nebraska..

The Commission is an administrative agency and for purposes of this appeal has only the powers conferred on it by statute. *Hoiengs v. County of Adams*, 245 Neb. 877, 892, 516 N.W.2d 223, 236 (1994). The Commission has been granted authority to allow substitution of parties in the event of a death, disability, or the transfer or any interest in property during the pendency of an appeal. Neb. Rev. Stat. §77-5016.09 (Cum. Supp. 2006). Section 77-5016.09 of Nebraska Statutes was effective prior to the date the appeal in this proceeding was filed. The provisions of the statute are mirrored in the Commission's rules and regulations. 442 Neb. Admin. Code, ch. 5, § 006 (01/07). Rules and regulations of the Commission did not contain provisions for substitution prior to January of 2007. There is no evidence that section 77-5016.09 of Nebraska Statutes is applicable in this appeal.

S & T seeks joinder of Sun Prairie as a necessary party in its appeal or in the alternative Whitestone Farms. The Commission's rules and regulations allow joinder of other persons to an appeal if the Commission determines that a person not named in a appeal should be made a party.

442. Neb. Admin. Code, ch. 4, § 011.06 (01/05). As noted above S & T does not have standing. There is no appeal in which Sun Prairie could join.

Whitestone Farms may have some liability, as an assignee or tenant, for payment of any tax that might be levied against the interest of Sun Prairie. The interest of Whitestone Farms cannot however be any greater than the interest of Sun Prairie. Whitestone Farms may not be substituted as a party or joined as a party in this proceeding for reasons noted concerning Sun Prairie.

Sun Prairie asserts that it has a right to intervene. The Commission has authority to adopt and promulgate rules and regulations necessary to regulate persons and proceedings within the Commission's jurisdiction and authority. Neb. Rev. Stat. §77-5021 (Reissue2003). An intervener is defined in the Commission's rules and regulations as "a person natural or otherwise, with a right or interest affected by a proceeding before the Commission, who voluntarily interposes in an action or other proceeding with the consent of the Commission." 442 Neb. Admin. Code, ch. 5, § 001.28 (01/05). The Commission may grant a request for leave to intervene if there is good and sufficient cause to grant a request for intervention. 442 Neb. Admin. Code, ch. 4, § 011.05 (01/05). There are several reasons for denial of Sun Prairie's request for leave to intervene. First, Sun Prairie's rights or interests cannot be affected by further proceeding in this appeal because it is dismissed. Further Sun Prairie cannot claim now that it has a right to intervene in a proceeding when it chose not to file its own appeal. Failure to file an appeal from a decision on its own protest is evidence of either abandonment of its rights or that its rights or interests are not compelling enough to grant a request for leave to intervene in this proceeding.

**IV.
CONCLUSIONS OF LAW**

The Commission does not have jurisdiction over the subject matter of the appeal in this proceeding.

**V.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The Motion of the County Board to Quash Appellant's Interrogatories which was deemed to be a Motion to Dismiss is granted.
2. The appeal of S & T Livestock, concerning the taxable value of property described as Prop Id. 150103190 in Chase County Nebraska, is dismissed for want of jurisdiction.
3. The Motion of Sun Prairie, a Partnership seeking leave to Intervene is denied
4. The Motion of S & T Livestock, seeking leave to Substitute Appellant, or in the Alternative for Joinder of Sun Prairie, a Partnership or for substitution or joinder of its assignee Whitestone Farms LLP, A North Dakota Limited Liability Partnership as Party is denied.
5. This decision, if no appeal is timely filed, shall be certified to the Chase County Treasurer, and the Chase County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2003).
6. Each party is to bear its own costs in this matter.

7. This decision shall only be applicable to tax year 2006.

IT IS SO ORDERED.

Dated March 20, 2007.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

William C. Warnes, Commissioner

SEAL

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW IN NEBRASKA REVISED STATUTE §77-5019 (Cum. Supp. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.