

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

ROBERT G. HINRICHS,)	
)	
Appellant,)	Case No. 07R-007
)	
v.)	DECISION AND ORDER
)	DISMISSING THE APPEAL
CLAY COUNTY BOARD OF)	(STANDING)
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Robert G. Hinrichs ("the Appellant") to the Tax Equalization and Review Commission ("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 October 3, 2008, pursuant to an Order for Hearing and Notice of Hearing issued May 8, 2008. Commissioners Wickersham, Salmon, and Hotz were present. Commissioner Wickersham was the presiding hearing officer. Commissioner Warnes was excused from participation by the presiding hearing officer. The appeal was heard by a panel of three commissioners pursuant to 442 Neb. Admin. Code, ch. 4, §011 (10/07).

Robert G. Hinrichs was present at the hearing without legal counsel.

Ted S. Griess, County Attorney for Clay County, Nebraska, was present as legal counsel for the Clay County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-

5018 (Cum. Supp. 2006). The final decision and order of the Commission in this case is as follows.

**I.
ISSUES**

The Appellant has asserted that actual value of the subject property as of January 1, 2007, is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining actual value of the subject property is unreasonable or arbitrary; and

The actual value of the subject property on January 1, 2007.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The parcel of real property to which this appeal pertains ("the Subject Property") is described in the table below.
2. Actual value of the subject property placed on the assessment roll as of January 1, 2007, ("the assessment date") by the Clay County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

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Description: Manufactured Home on Leased Land, Clay County, Nebraska.

	Assessor Notice Value	Appellant Protest Value	Board Determined Value
Land	\$Not Applicable	\$Not Applicable	\$Not Applicable
Improvement	\$36,595.00	\$23,635.00	\$36,595.00
Total	\$36,595.00	\$23,635.00	\$36,595.00

3. An appeal of the County Board's decision was filed with the Commission.
4. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
5. An Order for Hearing and Notice of Hearing issued on May 8, 2008, as amended by an Order issued on June 20, 2008, set a hearing of the appeal for October 3, 2008, at 11:00 a.m. CDST.
6. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
7. Actual value of the subject property as of the assessment date for the tax year 2007 is:

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Land value \$Not Applicable

Improvement value \$36,595.00

Total value \$36,595.00

**III.
APPLICABLE LAW**

1. 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).
2. 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.*

IV. ANALYSIS

The subject property is a 28 x 52 Shult manufactured home. Two free standing decks are associated with the residence.

The Appellant testified that a manufactured home sold in Hastings, Adams County, Nebraska, was comparable to the subject property. The proposed comparable sold for \$35,000 on May 24, 2007. (E7:1). The taxable value of the subject property as determined by the County Board is \$36,595.00. The Commission cannot however reach the issue of taxable value.

The subject property is an improvement placed on privately-held leased land. The taxation of improvements on privately held leased land is governed by sections 77-1375 and 77-1376 of Nebraska Statutes. Improvements on leased land, other than leased public lands are to be assessed to the owner of the leased lands unless before March 1 a request specifically stating that improvements on the land are the property of the lessee is filed with a county assessor. Neb. Rev. Stat. §77-1376 (Reissue 2003).

The Commission is required to determine whether the Appellant has standing. 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.* In this appeal a form signed by William T. Hinrichs as owner of O.T. Blk 7 Lots 12-17 Clay County, the land on which the mobile home that is the subject property in this appeal is situated, filed a form with the County Assessor for Clay County requesting that the mobile home be taxed to its owners Robert and Shirley Hinrichs. (E15:5). The form was filed on May 11, 2007. (E15:5). Nebraska law requires filing of a statement that improvements on leased private land are property of the tenant before March 1. Neb. Rev. Stat. §77-1376 (Reissue 2003). There is no evidence of a prior filing. There is no evidence that Robert G. Hinrichs, the Appellant, is responsible for payment of any real property taxes that might be levied against the subject property for the tax year 2007. Without responsibility for payment of taxes Robert G. Hinrichs cannot be benefitted or burdened by the decision of the Commission determining taxable value. The Appellant does not have standing and the Commission does not have jurisdiction. The appeal must be dismissed.

**V.
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties to this appeal.
- 2.. The Appellant does not have standing to maintain this appeal.

**VI.
ORDER**

IT IS ORDERED THAT:

1. This appeal is dismissed for reasons stated.

2. This decision, if no appeal is timely filed, shall be certified to the Clay County Treasurer, and the Clay County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
3. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This decision shall only be applicable to tax year 2007.
6. This order is effective for purposes of appeal on October 9, 2008.

Signed and Sealed. October 9, 2008.

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner

Wm R. Wickersham, Commissioner

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