

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

FRANK IMPLEMENT COMPANY,)	
)	
Appellant,)	CASE NO. 04C-173
)	
vs.)	
)	
SCOTTS BLUFF COUNTY BOARD OF)	FINDINGS AND FINAL ORDER
EQUALIZATION,)	DISMISSING APPEAL FOR WANT
)	OF PROSECUTION AND FOR FAILURE
)	TO APPEAR
Appellee.)	

SUMMARY OF DECISION

Frank Implement Company appealed the Scotts Bluff County Board of Equalization's order denying the Taxpayer's 2004 valuation protest. The Taxpayer, however, failed to appear for the hearing on the merits of its appeal. The Board accordingly moved to dismiss the Taxpayer's appeal for want of prosecution and for failure to appear.

**I.
ISSUE**

The only issue before the Commission is whether the Board's Motion to Dismiss the Taxpayer's appeal for want of prosecution and for failure to appear should be granted.

**II.
STATEMENT OF THE CASE**

The Taxpayer owns a five acre tract of land legally described as Part of the S $\frac{1}{2}$ SE $\frac{1}{4}$ (N & E OF HWY) in Section 30, Township 22, Range 54, Scotts Bluff County, Nebraska. (E9:11).

The tract of land is improved with two commercial buildings. The value of these improvements is not at issue. (E1:1).

The Scotts Bluff County Assessor determined that the subject property's land component had an actual or fair market value of \$47,250 as of the January 1, 2004, assessment date. (E1:1). The Taxpayer timely protested that determination and alleged that the land component's actual or fair market value was \$15,000. (E1:1). The Scotts Bluff County Board of Equalization ("the Board") denied the protest. (E1:1).

The Taxpayer appealed the Board's decision on August 24, 2004. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission issued an Order for Hearing, a Notice of Hearing, and an Amended Notice of Hearing, copies of which were served on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Scottsbluff, Scotts Bluff County, Nebraska, on September 28, 2005. The Taxpayer failed to appear at the hearing, and no one appeared on the Taxpayer's behalf. The Board appeared through Douglas Warner, Esq., Acting Scotts Bluff County Attorney. Commissioners Hans, Lore, and Reynolds heard the appeal. Commissioner Wickersham was excused from the proceedings. Commissioner Reynolds served as the presiding officer.

III.
APPLICABLE LAW

The Commission is authorized by law to promulgate rules and regulations. Neb. Rev. Stat. §77-5021 (2003 Supp.). The Commission's rules require that the Taxpayer appear at the hearing on the merits of the appeal. 442 Neb. Admin. Code, ch. 4, §011.01I. (1/2005). If the Taxpayer fails to appear, the Commission may dismiss the Taxpayer's appeal. Neb. Rev. Stat. §77-5015 (Cum. Supp. 2004). *See also*, 442 Neb. Admin. Code, ch. 4, §011.01I.

IV.
FINDINGS OF FACT

The Commission finds and determines that:

1. The Taxpayer is the owner of record of the subject property.
2. The Taxpayer was given actual, personal notice of the day and time of hearing.
3. Taxpayers are required to personally appear at hearings. 442 Neb. Admin. Code, ch. 4, §011.01 (1/2005).
4. The Order for Hearing notified the Taxpayer that if the Taxpayer failed to appear the Commission could enter an order dismissing his appeal.
5. The Taxpayer failed to appear, and no one appeared on behalf of the Taxpayer at the hearing.

6. The Board's counsel and witnesses appeared to defend the Board's decision.

V.
CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and the subject matter of this appeal.
2. Each of the parties has been afforded an opportunity to present evidence and argument as required by Neb. Rev. Stat. §77-5015 (Cum. Supp. 2004).
3. The Commission is authorized to issue default orders. Neb. Rev. Stat. §77-5015(Cum. Supp. 2004).
4. The appropriate remedy when an appellant fails to appear after having had reasonable notice of the day and time for hearing is to dismiss the appeal for failure to appear and for want of prosecution.
5. This appeal must be dismissed for failure to appear and for want of prosecution.
6. Furthermore, since the deadline for filing appeals to the Commission for tax year 2004, has passed, this appeal must be dismissed with prejudice.

**VI.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Board's Motion to Dismiss is granted, and this appeal is dismissed with prejudice.
2. The Taxpayer's real property legally described as Pt S $\frac{1}{2}$ SE $\frac{1}{4}$ (N & E OF HWY) of Section 30, Township 22, Range 54, Scotts Bluff County, Nebraska, shall be valued as follows for tax year 2004, as determined by the Scotts Bluff County Board of Equalization:

Land	\$ 47,250
Improvements	\$898,736
Total	\$945,986
3. Any request for relief by any Party not specifically granted by this Order is denied.
4. This decision, if no appeal is filed, shall be certified to the Scotts Bluff County Treasurer, and the Scotts Bluff County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
5. Each party is to bear its own costs in this matter.

6. This decision shall only be applicable to tax year 2004.

IT IS SO ORDERED.

Dated this 29th day of September, 2005.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

SEAL

Mark P. Reynolds, Vice-Chair

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 APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW. SEE NEB. REV. STAT. §77-5019 (REISSUE 2003, AS AMENDED BY 2005 NEB. LAWS, L.B. 15, §11). IF A PETITION IS NOT TIMELY FILED, THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.