

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

DAN PITTMAN, SARPY COUNTY ASSESSOR,)	
)	
Appellant,)	Case No. 07SV-101
)	
v.)	DECISION AND ORDER
)	DISMISSING APPEAL
)	AFTER SHOW CAUSE HEARING
SARPY COUNTY BOARD OF EQUALIZATION)	
)	
and)	
)	
LUCILLE STARR,)	
)	
Appellees.)	

The above-captioned case was called for a hearing on August 8, 2008, pursuant to an Order To show Cause (Jurisdiction Untimely Filing) issued to Dan Pittman Sarpy County Assessor ("the Assessor") by 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 August 1, 2008. Commissioners Wickersham and Salmon were present. Commissioner Wickersham presided at the hearing. Commissioner Warnes was excused from participation by the presiding hearing officer. The appeal was to have been heard by a panel of three commissioners pursuant to 442 Neb. Admin. Code, ch. 4, §11 (10/07). Commissioner Hotz was absent. The appeal was heard by a quorum of the panel.

William J. Bianco appeared by telephone as legal counsel for the Assessor.

No one appeared on behalf of the Sarpy County Board of Equalization ("the County Board").

Lucille Starr ("the Taxpayer") was present by telephone without legal counsel.

The Commission took statutory notice and heard argument.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.
ISSUES**

Whether the appeal in this case was timely filed.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The appeal in this case was initially filed with the Commission on June 19, 2007. (Case File).
2. The appeal was mailed June 18, 2007.
3. The Sarpy County Board of Equalization took final action on the protest of Lucille Starr seeking special valuation for a parcel of land in Sarpy County as of January 1, 2007, on May 16, 2007.

**III.
APPLICABLE LAW**

1. The Commission has jurisdiction when an appeal is timely filed and other conditions imposed by statute are met. Neb. Rev. Stat. §77-5013 (1)(b) (Cum Supp. 2006).

2. An appeal 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 for filing. Neb. Rev. Stat. §77-5013 (2) (Cum Supp. 2006).
3. An action of the county board of equalization approving or disqualifying land for special valuation may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 within 30 days after the decision. Neb. Rev. Stat. §77-1345.01(9) and Neb. Rev. Stat. §77-1347.01(2) (Cum. Supp. 2006).
4. “The absence of subject matter jurisdiction may be raised at any time by any party... .” *Cincinnati Ins. Co. v. Becker Warehouse, Inc.*, 262 Neb. 746, 752, 635 N.W.2d 112, 118 (2001), citing *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, 260 Neb. 905, 620 N.W.2d 90 (2000).

IV. ANALYSIS

On May 16, 2007, the County Board voted to approve application of special valuation to a parcel held by Lucille Starr. The motion stated that approval was based on the recommendation of the County Assessor. That basis for the motion was erroneous. On June 12, 2007, the County Board acted to correct its May 16 motion by deletion of the words "as recommended by the County Assessor." The second action did not change the substance of the prior motion, that is, approval of the application of special valuation.

If a Taxpayer protests denial of an application for special valuation, a county board of equalization must decide the protest within 30 days after filing of the protest. Neb. Rv. Stat. §77-1345.01(7). If a Taxpayer protests disqualification of a parcel for special valuation, a

county board of equalization must decide the protest within 30 days after filing of the protest. Neb. Rev. Stat. §77-1347.01(2) (Cum. Supp. 2006). A county board of equalization may reconsider an action taken within the time designated for making a final decision. *Washington County Board of Equalization v. Rushmore Borglum Ministries, Inc.*, 11 Neb. App. 377, 650 N.W.2d 504 (2002). A protest filed after May 12, 2007, could have been reconsidered at the June 12, 2007, meeting of the County Board. The filing date of the protest is unknown. Facts necessary to find jurisdiction will not be presumed. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 583 N.W.2d 353 (1998)(Citations omitted). '[T]he doctrine of presumptions in favor of the regularity of proceedings in courts of general jurisdiction does not apply to courts or tribunals of inferior or limited jurisdiction who act in a judicial capacity, but as to such courts or tribunals the facts necessary to confer jurisdiction must affirmatively appear upon the face of the record. *Olsen v. Grosshans*, 160 Neb. 543, 71 N.W.2d 90 (1955), See, also, *Shambaugh v. Buffalo County*, 133 Neb. 46, 274 N.W. 207 (1937). The authority of the County Board to reconsider its decision of May 16, 2007 has not been proven, there is therefore no basis for considering the June 12, 2007, action as affecting the date for filing an appeal.

The motion approved on June 12, 2007, does not change the substance of the motion made on May 16, 2007. A fair reading of the June 12, 2007, motion is that it was intended to correct the minutes of the May 16, 2007, meeting. The final action of the County Board was taken on May 16, 2007. An appeal of the County Board's decision had to be mailed on or before June 15, 2007. The appeal filed bears a signature date of June 14, 2007, but was not mailed until June 18, 2007. The appeal was not timely filed and should be dismissed.

**V.
CONCLUSIONS OF LAW**

1. The Commission does not have subject matter jurisdiction in this appeal because it was not timely filed.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The appeal is dismissed.
2. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
3. Each party is to bear its own costs in this proceeding.
4. This order is effective for purposes of appeal on August 15, 2008.

Signed and Sealed. August 15, 2008.

Wm. R. Wickersham, Commissioner

Nancy J. Salmon, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.