

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Duane C. Wiesen,
Appellant,

v.

Lancaster County Board of Equalization
Appellee

Case No: 11A-149

Decision Dismissing the Appeal
for Want of Jurisdiction

For the Appellant:
Duane C. Wiesen

For the Appellee:
Michael E. Thew
Deputy Lancaster County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon

A jurisdictional show cause hearing was held on January 12, 2012. Duane C. Wiesen (Appellant) appeared at the hearing before the Commission. Michael E. Thew, Deputy Lancaster County Attorney, appeared telephonically on behalf of the Lancaster County Board of Equalization. The Commission received one exhibit. (E1). The Commission also took notice of its case file for the purpose of determining personal and subject matter jurisdiction.

I. STANDARD OF REVIEW

Section 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when it is timely filed, the filing fee is timely received and thereafter paid, and a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.¹ Any person having a right to appeal may petition the Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value or special value of real property for that year if a failure of notice prevented timely filing of a protest or appeal provided for in §§77-1501 to 77-1510.² Parties cannot confer subject matter jurisdiction on a

¹ See, Neb. Rev. Stat. 77-5013 (2010 Cum. Supp.)

² See, Neb. Rev. Stat. 77-1507.01 (Reissue 2009).

tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

II. ANALYSIS

On September 8, 2011, the Appellant filed an appeal of a determination of the Lancaster County Board of Equalization which he signed as a “non-owner of property.” (Case File). The Appellant attached a final determination for a parcel of property in which he testified that he did not have an ownership interest in for tax year 2011 (Subject Property).

In order to appeal the assessed valuation of a parcel a person must have standing to be a party to that appeal.⁴ Standing is a jurisdictional component of a party's case because only a party who has standing may invoke the jurisdiction of a court or tribunal.⁵ In order to have standing to invoke a tribunal's jurisdiction, one must have some legal or equitable, right, title, or interest in the subject of the controversy.⁶ It is not sufficient to have a general interest common to a member of the public.⁷ The evidence before the Commission establishes that the Appellant does not have any right, title, or interest in the Subject Property. While the Nebraska Supreme Court has held that a taxpayer may appeal a decision of the taxpayer's county board of equalization if the decision is to lower the actual or fair market value of the property of another,⁸ the evidence before the Commission indicates that the Lancaster County Board of Equalization did not lower the assessed valuation of the Subject Property for tax year 2011.

III. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeal.

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁴ Title 442, Neb. Admin. Code ch 2, §001.36 (6/11).

⁵ See, *Spring Valley IV Joint Venture v. Nebraska State Bank of Omaha*, 269 Neb. 82, 85, 690 N.W.2d 778,782 (2005).

⁶ *Douglas County Board of Commissioners v. Civil Service Commission*, 263 Neb. 544, 549, 641 N.W.2d 55, 60 (2002)(Citations omitted).

⁷ See, *Hagan v. Upper Republican Natural Resources District*, 261 Neb. 312, 316, 622 NW2d 627, 630 (2001).

⁸ See, *Ryan v. Douglas County Bd. of Equalization*, 199 Neb. 291, 258 N.W.2d 626 (1977)

IV. ORDER

IT IS ORDERED THAT:

1. The petition in Case No. 11A-149 is dismissed.
2. Each party is to bear its own costs in this proceeding.
3. This order is effective on March 23, 2012

Signed and Sealed: March 23, 2012

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner