

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

ERIC C. SWENSON,	)	
	)	
Appellant,	)	CASE NO. 06OP-002
	)	
vs.	)	FINDINGS AND ORDER DISMISSING
	)	PETITION FOR WANT OF
DOUGLAS COUNTY BOARD OF	)	JURISDICTION
EQUALIZATION,	)	
	)	
Appellee.	)	

The above-captioned case was called for a hearing pursuant to an Order to Show Cause entered 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 February 12, 2007, pursuant to an Order to Show Cause and Notice of Hearing (Jurisdictional Authority of the Commission) issued January 25, 2007. Commissioners Wickersham, Lore, Warnes, and Hans were present. Commissioner Wickersham presided at the hearing.

Eric C. Swenson ("the Taxpayer") appeared by telephone, without legal counsel. The Douglas County Board of Equalization ("the County Board") appeared, by teleconference, through legal counsel, Ms. Kristin M. Lynch, a Deputy County Attorney, for Douglas County, Nebraska. The Commission took statutory notice, received an exhibit and heard testimony and 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. The Taxpayer is the owner of record of certain real property described in the petition as 5162 Jones Street, Lot 000015, Block 00005, Lockwood Addition, Omaha, Douglas County Nebraska (“the subject property”).
2. The Taxpayer’s petition was received by the Commission on December 29, 2006. (Case File)
3. An Order to Show Cause and Notice of Hearing (Jurisdictional Authority of the Commission) was issued by the Commission on January 25, 2007, directing the Taxpayer to show why the appeal should not be dismissed for want of jurisdiction.

## **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. A County Assessor is required to give notice of a change in taxable value if the change in value is made before March 19 of each year. Neb. Rev. Stat. 77-1315 (Supp. 2005).
4. A County Board is required to act on a protest filed pursuant to section 77-1502 of Nebraska Statutes on or before July 25 of each year unless the deadline for hearing protests has been extended. Neb. Rev. Stat. §77-1502 (Supp. 2005).
5. The county clerk is required to mail notice to the protestor of a County Board's decision on a protest filed pursuant to section 77-1502. Neb. Rev. Stat. §77-1502 (Supp 2005).
6. Any person otherwise having the right to file an appeal with the Commission may petition the Commission for a determination of actual value of real property if a failure to give notice prevented timely filing of an appeal provided for in sections 77-1501 to 77-1507 of Nebraska Statutes. Neb. Rev. Stat. §77-1507.01 (Cum. Supp. 2006).

### **III. ANALYSIS**

The issue presented in this proceeding is whether or not the Commission has jurisdiction to hear the Petition of the Taxpayer. The Taxpayer alleges that the County failed to give notice as required by section 77-1315 of Nebraska Statutes and that a failure to give the notice required by section 77-1315 of Nebraska Statutes prevented a protest of taxable value as determined by the County Assessor. The Taxpayer further alleges that the failure to give the notice required by section 77-1315 of Nebraska Statutes prevented an appeal to the Commission.

Regardless of its caption the appeal filed by the Taxpayer contains allegations sufficient for it to be considered a "petition" filed pursuant to section 77-1507.01 of the Nebraska Statutes.

The first alleged basis for the Taxpayer's petition is a failure of the County Assessor to give notice of a valuation change as required by section 77-1315 of Nebraska Statutes. Section 77-1315 of Nebraska Statutes requires the assessor to determine prior to March 19 of each year whether taxable value of a parcel should be raised, lowered, or remain unchanged when compared to taxable value determined for the previous tax year. If taxable value is raised or lowered when compared to the previous year's taxable value, notice of that change must be given prior to June 1 of each year. Neb. Rev. Stat. §77-1315 (Supp. 2005). If taxable value is not changed by the assessor, no notice is required. Taxable value of the subject property for the tax year 2005 was disputed. The Taxpayer had appealed the County Board's determination of taxable value to the Commission. The Taxpayer and the County Board reached an agreed taxable value and that agreement was approved by the Commission on July 14, 2007. (E1). The County Assessor did not prior to March 19, 2006, change taxable value of the subject property on the assessment rolls. No notice was required pursuant to section 77-1315 of Nebraska Statutes. A failure to give a notice that was not required is not a basis for a petition pursuant to section 77-1507.01 of Nebraska Statutes.

The alleged second basis for the Taxpayer's petition is the County Board's failure to give notice after proceedings on a protest. The petition fails on that basis for two reasons: first no protest was filed; and secondly an appeal of a decision on a protest filed pursuant to section 77-1502 of Nebraska Statutes must be made in accordance with section 77-1510 of Nebraska Statutes. Neb. Rev. Stat. 77-1510 (Cum. Supp. (2004)). Section 77-1507.01 by its plain terms is not however applicable to an appeal pursuant to section 77-1510 of Nebraska Statutes. A petition based on a failure to give notice of actions under section 77-1502 of Nebraska Statutes

that would become the basis for an appeal under section 77-1510 of Nebraska Statutes must be dismissed.

**IV.  
CONCLUSIONS OF LAW**

1. The Commission does not have jurisdiction over the subject matter of the Taxpayer's petition.

**V.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

1. The Petition of Eric C. Swenson, concerning the taxable valuation of 5162 Jones Street, Lot 000015, Block 00005, Lockwood Addition, Omaha, Douglas County Nebraska, is dismissed for want of jurisdiction.
2. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2003).
3. Each party is to bear its own costs in this matter.

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

**IT IS SO ORDERED.**

Dated February 15, 2007.

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Wm. R. Wickersham, Commissioner

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Susan S. Lore, Commissioner

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Robert L. Hans, Commissioner

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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.**