

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

NORMAN H. AGENA, LANCASTER)	
COUNTY ASSESSOR,)	
)	CASE NO 07SV-052
Appellant,)	
)	DECISION AND ORDER REVERSING
v.)	THE DECISION OF THE LANCASTER
)	COUNTY BOARD OF EQUALIZATION
LANCASTER COUNTY BOARD OF)	
EQUALIZATION AND JACK & TERESA)	
SWAGERTY,)	DEFAULT JUDGMENT
)	
Appellees.)	

The above-captioned case was called for a hearing on the merits of an appeal by Norman H. Agena, Lancaster County Assessor, ("the County Assessor") 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 April 3, 2009, pursuant to a Notice and Order for Hearing issued February 6, 2009. Commissioners Wickersham and Hotz were present. Commissioner Wickersham was the presiding hearing officer. Commissioner Warnes was excused from participation by the presiding hearing officer. A panel of three commissioners was created pursuant to 442 Neb. Admin. Code, ch. 4, §011 (10/07). Commissioner Salmon was absent. The appeal was heard by a quorum of a panel of the Commission.

The County Assessor was not present. Michael Thew, a Deputy County Attorney for Lancaster County, Nebraska, was present as legal counsel for the County Assessor. Presence of the County Assessor was waived on the motion of his legal counsel.

Neither Jack nor Teresa Swagerty ("the Taxpayer") were present at the hearing. No one appeared as legal counsel for the Taxpayer.

No member of the Lancaster County Board of Equalization ("the County Board") appeared as directed by the Commission's order for hearing. No one appeared on behalf of the County Board.

The Commission took statutory notice and received exhibits as provided by the parties.

The County Assessor moved for a default judgment.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) to state its final decision 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. FINDINGS

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as Lot 6 NE Section 7, Township 11, Range 5, in Lancaster County, Nebraska ("the subject property").
2. The County Assessor made a determination that the subject property should be disqualified for use of special valuation.
3. The Taxpayer protested that determination to the County Board.
4. The County Board reversed the determination of the County Assessor.
5. An appeal of the County Board's decision was filed with the Commission by the County Assessor.

6. The County Board and the Taxpayer were served with Notices in Lieu of Summons and answered those Notices.
7. An Order for Hearing and Notice of Hearing issued on February 6, 2009, set a hearing of the Taxpayer's appeal for April 3, 2009, at 9:00 a.m. CDST.
8. 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. (Case File).
9. Each of the parties has been afforded an opportunity to present evidence and argument as provided by Neb. Rev. Stat. §77-5015 (Cum. Supp. 2008).
10. The County Board and the Taxpayer failed to file any exhibits with the Commission.
11. The County Board and the Taxpayer failed to appear at the hearing.
12. The Order for Hearing and Notice of Hearing issued by the Commission states in Paragraph 2 that if a party fails to appear at the hearing, the Commission may enter an order in favor of an opposing party.
13. The Lancaster County Board of Equalization filed a Consent to Entry of Order in Favor of Appellant.
14. The Consent to Entry of Order in Favor of Appellant is clear and convincing evidence that the County Board's that decision was arbitrary or unreasonable.
15. The County Assessor moved for an order of default judgment.
16. The County Assessor's motion for an Order of Default Judgment should be granted.

II.
CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this appeal.

2. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016 (7) (Cum. Supp. 2008).
3. The Commission is authorized to enter default judgments by Neb. Rev. Stat. §77-5015 (Cum. Supp. 2008).
4. The decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.

III. ORDER

IT IS ORDERED THAT:

1. The motion of the County Assessor for a Default Judgment is granted.
2. The decision of the County Board determining that the subject property was eligible for special valuation is vacated and reversed.
3. The subject property was not eligible for special valuation as of the assessment date, January 1, 2007.
4. This decision, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2008).
5. Any request for relief, by any party, which is not specifically provided for by this order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This decision shall only be applicable to tax year 2007.

8. This order is effective for purposes of appeal May 20, 2009.

Signed and Sealed. May 20, 2009.

Wm. R. Wickersham, Commissioner

Robert W. Hotz, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2008), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.