

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

HIGH PLAINS TRUST,	)	
	)	
Appellant,	)	CASE NO. 06H-1
	)	
vs.	)	FINDINGS AND ORDER DISMISSING
	)	APPEAL FOR WANT OF JURISDICTION
CHEYENNE COUNTY BOARD OF	)	
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 November 21, 2006, pursuant to an Order to Show Cause and Notice of Hearing (Jurisdiction Authority to File Appeal) issued November 8, 2006. Commissioners Wickersham, Warnes, and Hans were present. Commissioner Wickersham presided at the hearing.

High Plains Trust ("the Taxpayer") did not appear with legal counsel. Mae E. Leslie, Manager of the Taxpayer appeared, by teleconference, at the hearing. The Cheyenne County Board of Equalization ("the County Board") appeared, by teleconference, through legal counsel, Mr. Paul Schaub County Attorney, for Cheyenne County, Nebraska. The Commission took statutory notice, received and heard testimony.

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 appeal as Lot 46, Sidney Valley View Addition, Sidney, Cheyenne County, Nebraska (“the subject property”).
2. The Taxpayer’s appeal was signed by Mae E. Leslie, Manager. (Case File).
3. An Order to Show Cause and Notice of Hearing (Authority to File Appeal) was issued by the Commission on November 8, 2006, directing the Taxpayer to show why the captioned appeal should not be dismissed.

## **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 Commissions rules and regulations or Neb. Rev. Stat. §77-5016(3) (Supp 2005).
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. The Commission obtains jurisdiction over an appeal when the appeal, 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 and the filing fee is timely received and thereafter paid. Neb. Rev. Stat. §77-77-5013 (Cum. Supp 2004).

4. The Commission has authority to promulgate rules and regulations necessary to regulate persons and proceedings within the commission's jurisdiction and authority. Neb.. Rev. Stat. 77-5021. (Reissue 2003).
5. The Commission's rules and regulations limit those persons who may file an appeal. 442 Neb. Admin. Code, ch 5 §001.02 (01/05).
6. The Commission's rules require that a person signing in a representative capacity is required to furnish to the Commission documentation of the relationship to the party and authority to act on behalf of the party. 442 Neb. Admin. Code, ch 5 §001.02E1 (01/05).

### **III. ANALYSIS**

The issue presented in this proceeding is whether or not the Commission has jurisdiction to hear the appeal of the Taxpayer. The subject property is held by a trustee. (E2:9). The trustee is Alice Jean Logan ( E2:9). There is no evidence that Mae E. Leslie has any authority to act on behalf of the Trustee to file an appeal with the Commission. Whatever authority Mae E. Leslie may have as "manager" is unknown and the Commission will not speculate. A great deal of testimony was taken at the hearing that pertained to the basis for the County Assessors recommendation to reject the application for homestead exemption filed on behalf of the trust or trustee. In general that testimony concerned compliance with the requirements of Neb. Rev. Stat.

77-3503. An application for homestead exemption shall be signed by the owner of the property who qualifies for exemption. Neb. Rev. Stat. §77-3511 (Reissue 2003). When property is held by a trustee a beneficiary-occupant may be deemed to be an owner. Neb. Rev. Stat. §77-3503 (Reissue 2003). A beneficiary-occupant must meet one of three conditions to be deemed an owner. Neb. Rev. Stat. §77-3503 (Reissue 2003). The three conditions are having 1) a specific right to occupy the stated premises as stated in the trust instrument; 2) the right to amend or revoke the trust to obtain such power of occupancy or of title; 3) the power to withdraw the homestead premises from the trust and place the record title in the occupant's name. Neb. Rev. Stat. §77-3503 (Reissue 2003). The required showing may be made through a copy of the trust instrument or a memorandum. Neb. Rev. Stat. §77-3503 (Reissue 2003). The evidence in this case is that when advised of the requirements of section 77-3503 that May E. Leslie furnished a memo to the County Board which is now marked as Exhibit 2 page 9. Exhibit 2 page 9 shows that Mae E. Leslie is a beneficiary occupant, that she controls 100 units of the trust, and is the manager of the trust checking account. There is no showing in the memo that Mae E. Leslie, as a beneficiary-occupant of the subject property, meets any of the statutory requirements necessary to be deemed an owner. Because the application was not signed by an owner the County Board did not have jurisdiction to consider the complaint filed with it and therefore the Commission does not have jurisdiction to consider an appeal from its decision. See, e.g. *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956). The Commission must order dismissal of the appeal.

**IV.  
CONCLUSION OF LAW**

The Commission does not have jurisdiction over the Taxpayer's appeal.

**V.  
ORDER**

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

1. The appeal of Mae E. Leslie Manager High Plains Trust is dismissed for want of jurisdiction.
2. This decision, if no appeal is timely filed, shall be certified to the Cheyenne County Treasurer, and the Cheyenne 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 November 22, 2006.

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Wm. R. Wickersham, 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 LW IN NEBRASKA REVISED STATUTE §77-5019 (Supp. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.**