

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

DORIS L. SEELEY,)	
)	
Appellant,)	Case No 06H-002
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE CASS COUNTY
CASS COUNTY BOARD OF)	BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Doris L. Seeley ("the Taxpayer") 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 August 3, 2007, pursuant to an Order for Hearing and Notice of Hearing issued May 18, 2007. Commissioners Wickersham, Warnes, and Salmon were present. Commissioner Wickersham presided at the hearing.

Constance J. Rankin, Conservator Estate of Doris L. Seeley, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Nathan B. Cox, County Attorney for Cass County, Nebraska, appeared as legal counsel for the Cass County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits 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**

The Taxpayer has asserted that the homestead of Doris L. Seeley should be eligible for relief from taxation as a homestead. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining that actual value of the property as shown on the assessment rolls of Cass County for which a homestead exemption was sought rendered the property ineligible for relief is unreasonable or arbitrary.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. The parcel of real property to which this appeal pertains is described as Lot 26, Cedar Lakes, in Cass County, Nebraska, ("the subject property").
3. Actual value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Cass County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

Description: Lot 26, Cedar Lakes, Cass County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 90,547.00	\$ 54,604.00	\$ 86,235.00
Improvement	\$192,243.00	\$166,639.00	\$183,089.00
Total	\$282,790.00	\$221,243.00	\$269,324.00

4. An application for homestead exemption on the basis that the owner of property was over age 65 and disabled was filed with the Cass County Assessor. (E13:5).
5. Subsequent to a determination of actual value by the County Board, the County Assessor notified the Taxpayer that the homestead application had been rejected. (E13:7).
6. A protest of the County Assessor's rejection of the homestead application was filed with the County Board . (E13:6).
7. The protest of the County Assessor rejection of the homestead application was denied. (E13:4).
8. An appeal of the County Board's decision to affirm the County Assessor's rejection of the homestead application was filed with the Commission.
9. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
10. An Order for Hearing and Notice of Hearing issued on May 18, 2007, set a hearing of the appeal for August 3, 2007, at 9:00 a.m. CDST.
11. 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.

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998).

2. An owner of a homestead who is sixty five years of age or older before January 1 of each year may be eligible for relief from taxation pursuant to section 77-3507 of Nebraska Statutes. Neb. Rev. Stat. §77-3505 (Reissue 2003).
3. The maximum value of property eligible under section 77-3507 is one hundred fifty percent of the average assessed value of single family residential property in the claimants county of residence as determined in section 77-3506.02 or ninety five thousand dollars whichever is greater. Neb. Rev. Stat. §77-3502.02 (1) (Reissue 2003).
4. An owner of a homestead who have a permanent physical disability and have lost all mobility such as to preclude locomotion without the regular use of a mechanical aid or prostheses, and individuals who have undergone amputation of both arms above the elbow or who have a permanent partial disability of both arms in excess of seventy five percent may be eligible for relief from taxation pursuant to section 77-3508 of Nebraska Statutes. Neb. Rev. Stat. §77-3505 (Reissue 2003).
5. The maximum value of property eligible under section 77-3508 is one hundred seventy five percent of the average assessed value of single family residential property in the claimants county of residence as determined in section 77-3506.02 or one hundred ten thousand dollars whichever is greater. Neb. Rev. Stat. §77-3502.02 (2) (Reissue 2003).
6. For homesteads valued at or above the maximum value, the exempt amount shall be reduced by ten percent for each two thousand five hundred dollars of value by which the homestead exceeds the maximum value and any homestead which exceeds the maximum value by twenty thousand dollars or more is not eligible for any exemption under section 77-3507 to 77-3509. Neb. Rev. Stat. §77-3506.03 (Reissue 2003).

7. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
8. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
9. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987) (citations omitted)
10. The Commission can grant relief only if there is clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See, Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006), and e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
11. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).

12. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion.
Phelps Cty. Bd. of Equal. v. Graf, 258 Neb 810, 606 N.W.2d 736, (2000).
13. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).

IV. ANALYSIS

The appeal in this case is from the County Board's affirmation of the County Assessor's denial of a homestead exemption application. (E13:4). The homestead application was denied because the value of the property exceeded the limits on value set by statute. (E13:5). The County Board's determination to affirm the County Assessor's rejection of the homestead application was appealed. (Case File Appeal Form). The County Board had in a prior proceeding determined actual value of the subject property. (E13:1 and 2). That decision was not appealed. (E13:5). Because the actual value determination of the County Board was not appealed the Commission cannot now consider a different actual value.

The evidence in this appeal is that actual value of the subject property as of January 1, 2006 was \$269,324.00. (E13:2). Based on applicable law the maximum value of a residence for which a homestead exemption could be granted was one hundred seventy five percent of the average assessed values of residences in Cass County, plus \$20,000. See, Neb. Rev. Stat. §§77-3502.02 (2) and 77-3506.03 (Reissue 2003). The average assessed value of single family residential property in Cass County for the tax year 2006 was \$122,827. (E13:5). The

maximum value eligible for homestead exemption was \$234,950 $(\$122,827 \times 1.75) + \$20,000 = \$234,947.25$). Actual value of the subject property as determined by the County Board exceed the statutory limit and a homestead exemption could not have been lawfully granted for the tax year 2006.

The Commission does note that homestead value limitations have increased for the tax year 2007.

V. CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The Taxpayer has not adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the County Board rejecting an application for application of sections 77-3501 through 77-3529 of Nebraska Statutes, (Homestead Exemption) is affirmed.
2. This decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).

3. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This decision shall only be applicable to tax year 2006.
6. This order is effective for purposes of appeal on August 8, 2007.

Signed and Sealed. August 8, 2007.

Wm. R. Wickersham, Commissioner

Nancy J. Salmon, Commissioner

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 CONTAINED IN NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.