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BUTLER COUNTY APPRAISER

BEFORE THE COURT OF TAX APPEALS
STATE OF KANSAS

IN THE MATTER OF THE PROTEST
OF CARNEY, MICHAEL D.
FOR THE YEAR 2007
IN BUTLER COUNTY, KANSAS

Docket Nos. 2008-6718-PR

AND

IN THE MATTER OF THE
EQUALIZATION APPEAL OF
CARNEY, MICHAEL D.
FOR THE YEAR 2008
IN BUTLER COUNTY, KANSAS

Docket No. 2008-8397-EQ

ORDER

Now the above-captioned matters come on for consideration and decision by the Court of Tax Appeals of the State of Kansas. The Court conducted a hearing in these matters on April 24, 2009. The Taxpayer, Michael Carney, appeared by Scott Palecki, Attorney; Charles Curran, Attorney; and Michael Carney. The County appeared by Norman Manley, County Counselor; and Elysa Lovelady, Appraiser. The Court admitted Taxpayer Exhibit #1 and County Exhibits #1 and #2. County Exhibit #1 pertains to Docket No. 2008-6718-PR, and County Exhibit #2 pertains to Docket No. 2008-8397-EQ. Taxpayer Exhibit #1 pertains to both Docket Nos. 2008-6718-PR and 2008-8397-EQ. At the conclusion of the hearing, the Court left the record open for the parties to submit cases that they believed may be applicable to this matter, as well as a letter-sized copy of a demonstrative map presented at the hearing. The additional information has been received by the Court and is incorporated herein.

After considering all of the evidence and arguments presented, the Court finds and concludes as follows:

The Court has jurisdiction of the subject matter and the parties, as a tax protest has been properly and timely filed pursuant to K.S.A. 2008 Supp. 79-2005; and an equalization appeal has been properly and timely filed pursuant to K.S.A. 2008 Supp. 79-1609.

The subject matter of this tax protest and equalization appeal is as follows:

Real estate and improvements known as
15464 SW 120th St, Andover, Butler County, Kansas,
also known as Parcel ID # 008-309-32-0-00-01-046.00-0.

The subject property consists of a manufactured home located on 1.2 acres of land classified as residential. The subject property also contains an additional 39.30 acres of land and numerous sheds and outbuildings. The manufactured home is used for residential purposes and is not the subject of this appeal.

Prior to 2007, the 39.30 acres of land and the outbuildings were classified as Agricultural. For tax year 2007, the County changed the classification of the 39.30 acres to Other. The County asserts that since the property is being used to house and train polo horses, the property is not devoted to agricultural purposes, but devoted to recreational purposes.

The Taxpayer asserts that the 39.30 acres of land and the sheds and outbuildings are utilized to raise, house and train horses. The Taxpayer asserts that he owns 14 of the horses kept on the property and an additional 5 horses are year-round borders on the property. The Taxpayer asserts that of the 14 horses he owns, two are older horses no longer used for polo matches, two are used for breeding and the remaining are either being trained for polo play or are currently utilized for playing polo. The Taxpayer requests that the classification of the property be returned to Agricultural. The Taxpayer further requests that the portion of the property located in a flood plain be valued as waste land.

K.S.A. 2008 Supp. 79-1439 sets forth the classification of property. The Court finds that K.S.A. 2008 Supp. 79-1439(b)(1)(B) provides a separate classification for "land devoted to agricultural use. . . ." K.S.A. 2008 Supp. 79-1476 defines "land devoted to agricultural use" as "land . . . which is devoted to the production of . . . animals . . . including but not limited to . . . horses" K.S.A. 2008 Supp. 79-1476 further provides that "[l]and devoted to agricultural use shall not include those lands which are used for recreational purposes"

The Court finds that the subject property is utilized to produce horses. The sheds are utilized to shelter the horses, while the grass land is used as pasture for the horses. The Court further finds that while some of the horses may ultimately be utilized for recreational or hobby purposes, K.S.A. 79-1476 does not restrict the use of the horses, but the use of the land. Therefore, the Court concludes that the 39.30 acres shall be reclassified and valued as agricultural land.

With respect to the Taxpayer's request for the property located in the flood plain to be considered waste land, the Court finds that property should only be considered waste land if the property is nonproductive. In the instant matter, the Taxpayer has not presented any evidence to demonstrate that the portion of the property in the flood plain is not productive. Therefore, the Court finds no support for the Taxpayer's request for a waste value.

IT IS THEREFORE ORDERED that, for the reasons stated above, the classification of the 39.30 acres shall be agricultural.

IT IS FURTHER ORDERED that the appropriate officials shall correct the county's records to comply with this Order, re-compute the taxes owed by the taxpayer and issue a refund for any overpayment.

Any party to this action who is aggrieved by this decision may file a written petition for reconsideration with this Court as provided in K.S.A. 2008 Supp. 77-529. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Court's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Court of Tax Appeals, Docking State Office Building, Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. A copy of the petition, together with any accompanying documents, shall be mailed to all parties at the same time the petition is mailed to the Court. Failure to notify the opposing party shall render any subsequent order voidable. The written petition must be received by the Court within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute). If at 5:00 pm on the last day of the specified period the Court has not received a written petition for reconsideration of this order, no further appeal will be available.

IT IS SO ORDERED

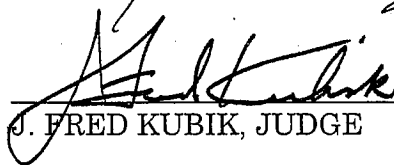
THE KANSAS COURT OF TAX APPEALS

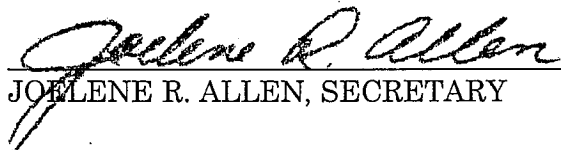


~~DISSENTING~~

BRUCE F. LARKIN, CHIEF JUDGE


REBECCA W. CROTTY, JUDGE


J. FRED KUBIK, JUDGE

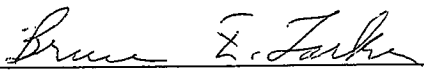

JOYLENE R. ALLEN, SECRETARY

DISSENT

I respectfully dissent from the majority decision in these matters. Highly summarized, the majority opinion indicates that the Taxpayer's 19 horses are used as follows: 10 horses are being trained for or are currently used for polo play, 5 horses are year-round boarders, 2 horses are older and not used, and the remaining 2 horses are used for breeding.

The agricultural use classification is for land which is *devoted* to the *production* of animals or horticultural products. See K.S.A. 2008 Supp. 79-1476. Said statute contains specific language excluding property whose primary purpose is recreational from its definition of "land devoted to agricultural use." Such property is excluded even though it may produce plants and animals previously listed in the statute. See *Board of County Com'rs v. Smith* 18 Kan.App.2d 662, 669, 857 P.2d 1386 (1993).

The Taxpayer has the burden of production in appeals of property classification. See K.S.A. 2008 Supp. 79-2008. Based on the facts contained in the record, I do not find that the subject property meets the statutory requirements for agricultural use classification. The subject property is not *devoted* to the *production* of animals as only 2 of the 19 horses are used for breeding. I cannot find that boarding and training horses for polo play can be construed as the "production" of animals. Further, given the record evidence, I find that the primary purpose of the subject property is recreational in nature. For the foregoing reasons, I conclude that the Taxpayer has not presented persuasive evidence that the County's present classification for the subject property is in error.



BRUCE F. LARKIN, CHIEF JUDGE

CERTIFICATION

I, Joelene R. Allen, Secretary of the Court of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket Nos. 2008-6718-PR and 2008-8397-EQ and any attachments thereto, was placed in the United States Mail, on this 22nd day of June, 2009, addressed to:

Michael Carney
8100 E 22nd St N Bldg 1900
Wichita, KS 67226-2319


Scott Palecki, Attorney
Charles Curran, Attorney
Foulston Siefkin LLP
1551 N Waterfront Pkwy, Ste 100
Wichita, KS 67206-4466

Elysa Lovelady, Butler County Appraiser
Butler Co Courthouse
205 W Central
El Dorado KS 67042

Norman Manley, Butler County Counselor
Davis and Manley
116 N Star St
El Dorado KS 67042

Ruth Fechter, Butler County Treasurer
Butler Co Courthouse
205 W Central
El Dorado KS 67042-2106

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka,
Kansas.


Joelene R. Allen, Secretary