

BEFORE THE COURT OF TAX APPEALS  
STATE OF KANSAS

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BUTLER COUNTY APPRAISER

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

Docket Nos. 2008-6719-PR

AND

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

Docket No. 2008-8396-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 #3 and #4. County Exhibit #3 pertains to Docket No. 2008-6719-PR, and County Exhibit #4 pertains to Docket No. 2008-8396-EQ. Taxpayer Exhibit #1 pertains to both Docket Nos. 2008-6719-PR and 2008-8396-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  
2216 S Andover Rd, Andover, Butler County, Kansas,  
also known as Parcel ID # 008-309-32-0-00-01-007.00-0.

The subject property consists of a conventional-style home located on 3.90 acres of land classified as residential. The subject property also contains an additional 26 acres of land. The home is used for residential purposes and is not the subject of this appeal.

Prior to 2007, the 26 acres of land were classified as Agricultural. For tax year 2007, the County changed the classification of the 26 acres to Other. The County asserts that since the property is being used to support the polo horses, the property is not devoted to agricultural purposes, but devoted to recreational purposes.

The Taxpayer asserts that a portion of the 26 acres contains a non-regulation sized polo field that is Bermuda grass. The Taxpayer asserts that 15 to 20 polo games and/or practices have been played on the field. The Taxpayer further asserts that a portion of the property surrounding the polo field is brome grass that is hayed. 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 . . . plants . . . including but not limited to: Forages; grains and feeds crops . . ." 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 acreage planted to brome grass and hayed is being utilized for agricultural purposes. The Court further finds that the acreage planted to brome grass shall be calculated by the County and re-classified as agricultural and valued accordingly. With respect to the portion of the property planted to Bermuda grass, and utilized as a polo field, the Court finds that the property is not land devoted to an agricultural purpose, but is land utilized for a recreational purpose. Therefore, the Court finds that the County has appropriately classified the polo field as Other.

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 classification of the property is agricultural and 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 and re-classified as agricultural is not productive. Therefore, the Court finds no support for the Taxpayer's request for a waste value.

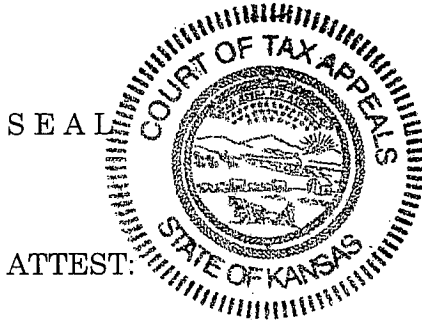
IT IS THEREFORE ORDERED that, for the reasons stated above, these are the findings and conclusions of the Court.

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



Bruce F. Larkin  
BRUCE F. LARKIN, CHIEF JUDGE

Rebecca W. Crotty  
REBECCA W. CROTTY, JUDGE

J. Fred Kubik  
J. FRED KUBIK, JUDGE

Joelene R. Allen  
JOELENE R. ALLEN, SECRETARY

CERTIFICATION

I, Joeline 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. 2008-6719-PR and 2008-8396-EQ and any attachments thereto, was placed in the United States Mail, on this 10<sup>th</sup> 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.

  
Joeline R. Allen, Secretary