

**BEFORE THE COURT OF TAX APPEALS
STATE OF KANSAS**

IN THE MATTER OF THE
EQUALIZATION APPEAL OF
MOORE, CECIL DEAN & CAROL A.
FOR THE YEAR 2010 IN
SUMNER COUNTY, KANSAS

Docket No. 2010-7614-EQ

ORDER ON RECONSIDERATION

Now the above-captioned matter comes on for consideration and decision by the Court of Tax Appeals of the State of Kansas. The Court conducted a hearing in this matter on July 29, 2011. Cecil Dean and Carol A. Moore, Taxpayer/Owner, appeared with Philip Unruh, Attorney. Sumner County, Kansas ('County') was represented by John Potucek, Attorney, and Della Rowley, County Appraiser. The Court admitted County Exhibit # 1 and 2, and Taxpayer Exhibit # 1 through 17.

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 proper appeal has been filed pursuant to K.S.A. 79-1609, and a petition for reconsideration has been filed pursuant to K.S.A. 74-2426 and K.S.A. 77-529. The tax year in issue is 2010. The subject matter of this appeal is as follows:

Real estate known as located at
1898 W. 10th Ave., Sumner County, Kansas,
also known as Parcel ID# 096-183-07-0-00-00-004.00-0.

The subject property is an 80.70 acre tract of land located in Sumner County, Kansas. For tax year 2010, the County classified the property as "other." The Taxpayer originally requested the property be classified as "agricultural" land. In its original decision on this matter, the Court denied the Taxpayer's request for a change in classification, finding the subject property was not devoted to the production of plants, animals or horticultural products. The Taxpayer requested and the Court granted reconsideration of this decision.

The Taxpayer requests the subject property be classified as a vacant lot. Dean Moore, Taxpayer, presented photographs of the subject property and County appraisal documentation indicating the disparity of taxes when comparing the subject property to neighboring parcels. Mr. Moore testified there has been no

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hunting or recreational use of the subject property since 2006.

A mobile home was previously situated on the subject property. However, the mobile home was destroyed in a fire that occurred numerous years ago. During the period the mobile home was on the property, the land immediately surrounding the mobile home was classified as "residential" and the remaining land was classified as "agricultural." After the mobile home was destroyed, the County classified the entire parcel as "agricultural." In recent tax years, the County began reviewing properties classified as "agricultural" to determine whether they have been properly classified. The County classified the subject property as "other" after determining it did not fit into any of the other constitutionally defined classifications. In support of this classification, the County specifically referenced a document entitled, "Questionnaire for Agricultural Property Owners" completed in 2002 by E. Gladys Moore, a prior owner of the property and relative of the Taxpayer. Ms. Moore indicated on the questionnaire that the property was purchased, "so my son and grandson would have a place to hunt and fish." County Exhibit 2, p. 6. The County acknowledged the subject parcel contained no improvements in tax years 2008 and beyond.

The issue before the Court is the classification of the subject property. Therefore, pursuant to K.S.A. 79-1609, the burden of production is on the Taxpayer. Article 11, Section 1 of the Kansas Constitution provides classifications for purposes of assessment:

"Class 1 shall consist of real property. Real property shall be further classified into seven subclasses. Such property shall be defined by law for the purpose of subclassification and assessed uniformly as to subclass at the following percentages of value:

- (1) Real property used for residential purposes including multi-family residential real property and real property necessary to accommodate a residential community of mobile or manufactured homes including the real property upon which such homes are located : 11 1/2%
- (2) Land devoted to agricultural use which shall be valued upon the basis of its agricultural income or agricultural productivity pursuant to section 12 of article 11 of the constitution : 30%
- (3) Vacant lots : 12%
- (4) Real property which is owned and operated by a not-for-profit organization not subject to federal income taxation

pursuant to section 501 of the federal internal revenue code,
and which is included in this subclass by law : 12%

- (5) Public utility real property, except railroad real property
which shall be assessed at the average rate that all other
commercial and industrial property is assessed : 33%
- (6) Real property used for commercial and industrial purposes
and buildings and other improvements located upon land
devoted to agricultural use : 25%
- (7) All other urban and rural real property not otherwise
specifically subclassified : 30%”

The Taxpayer has requested the subject property be classified as a “vacant lot” – the third subclassification of real estate in Article 11, Section 1 of the Kansas Constitution. K.S.A. 79-1439 mirrors the language in the constitution. Further, K.S.A. 79-1459 provides clarification of several of the subclasses; however, this statute provides no definition for “vacant” or “vacant lots.”

There are well-established rules of statutory and constitutional construction applicable to tax matters. The right to tax is penal in nature, and this right must be strictly construed in favor of the taxpayer. *See J.G. Masonry, Inc. v. Department of Revenue*, 235 Kan. 497, 500, 680 P.2d 291 (1984). Tax statutes will not be extended by implication beyond the clear import of the language employed therein, and their operation will not be enlarged so as to include matters not specifically embraced. *Director of Taxation v. Kansas Krude Oil Reclaiming Co.*, 236 Kan. 450, 455, 691 P.2d 1303 (1984). Where there is reasonable doubt as to the meaning of a taxing act, it will be construed most favorably to the taxpayer. *National Cooperative Refinery Ass'n v. Board of McPherson County Comm'rs*, 228 Kan. 595, 597, 618 P.2d 1176 (1980).

Further, a constitutional provision is not to be narrowly or technically construed, but its language should be interpreted to mean what the words imply to men of common understanding. *State, ex rel. Frizzell v. Highwood Service, Inc.*, 205 Kan. 821, Syl. ¶ 4, 473 P.2d 97 (1970). A constitutional provision should not be interpreted in any refined or subtle sense, but should be held to mean what the words imply to the common understanding of men. *State v. Sessions*, 84 Kan. 856, Syl. ¶ 1, 115 Pac. 641 (1911). When interpreting the constitution, each word must be given due force and appropriate meaning. *State, ex rel., v. Hines*, 163 Kan. 300, 304, 182 P.2d 865 (1947).

The issue presented to the Court is whether the subject property is a vacant lot. BLACK'S LAW DICTIONARY 1388 (5th ed. 1979) which defines “vacant” as

“empty ... unoccupied.” WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1301 (1983) defines “vacant”, in regard to property, as “not lived in” or “not put to use.” Photographs of the subject property indicate it is raw undeveloped land. Further, it is undisputed that there are no improvements on the subject property for the instant tax year. Dean Moore testified that there have been no hunting or recreational activities on the property since 2006. Therefore, the subject property is vacant property.


However, we note the Kansas Constitution and K.S.A. 79-1439 require that a parcel be a vacant lot. BLACK'S LAW DICTIONARY 853 (5th ed. 1979) defines “lot” as “[a] share; one of several parcels into which property is divided. Any portion, piece, division or parcel of land... A lot is commonly one of several other contiguous parcel of land making up a block.” The record evidence indicates the subject parcel has not been platted or divided and, therefore, is not a lot as required for the “vacant lot” classification. “In construing statute, it is presumed that legislature understood meaning of words it used and intended to use them.” See State ex rel. Stephan v. Board of County Com'rs of Seward County, 254 Kan. 446, 866 P.2d 1024, Syl. ¶¶ 6 and 7 (1994). Based thereon, the Court concludes that the Taxpayer's request for a “vacant lot” classification is denied.

IT IS THEREFORE ORDERED that, for the reasons stated above, the subject property shall be classified and assessed as “other” for the 2010 tax year.

This is a final order of the Court of Tax Appeals and constitutes final agency action. Any party choosing to appeal this order must do so by filing a petition for judicial review within 30 days from the date of certification of this order. See K.S.A. 77-613(c). The petition for judicial review shall be filed with the Kansas Court of Appeals. See K.S.A. 2010 Supp. 74-2426(c)(2). The Court of Tax Appeals shall not be a party to the petition for judicial review but shall receive service of a copy of the petition. Pursuant to K.S.A. 2010 Supp. 77-529(c), any party choosing to petition for judicial review of the Court's decision is hereby notified that the Secretary of the Court of Tax Appeals is to receive service of the petition for judicial review.

IT IS SO ORDERED

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BRUCE F. LARKIN, CHIEF JUDGE

ATTEST:



J. FRED KUBIK, JUDGE



TREVOR C. WOHLFORD, JUDGE

JOELENE R. ALLEN, SECRETARY

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 No. 2010-7614 EQ and any attachments thereto, was placed in the United States Mail, on this 14th day of February, 20 12, addressed to:

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

Joelene R. Allen, Secretary