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SUMNER CO. APPRAISER

BEFORE THE COURT OF TAX APPEALS  
STATE OF KANSAS

IN THE MATTER OF THE PROTEST  
OF YOUNG, RUSSELL D. & SHERRI L.  
FOR THE YEAR 2009 IN  
SUMNER COUNTY, KANSAS

Docket No. 2010-1714-PR

ORDER

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 June 21, 2010. The Taxpayer Russell D. Young appeared. The County appeared by John Potucek, Attorney; Lori Walta, Deputy County Appraiser; and Zoe Gehr, Witness. The Court admitted Taxpayer Exhibit #1 and County Exhibit #1.

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. 2009 Supp. 79-2005.

The subject matter of this tax protest is as follows:

Real estate known as  
Parcel ID# 096-201-11-0-00-00-006.00-0.

The subject property is an 80.5 acre tract of land located in Sumner County, Kansas. Prior to tax year 2009, the County classified the subject property entirely as agricultural land. For tax year 2009, the County originally classified the entire property as "other" believing that the property was used for recreational purposes. After the informal meeting, the County classified 23.0 acres as agricultural land and valued it according to its use value.

The Taxpayer explains that he has a tenant on the parcel producing corn and hay and that he files a farm tax return. He asserts that there is no recreational or hunting use of the property. The Taxpayer asserts that the canopy and river should be treated as "waste" with a \$10.00 agricultural use value citing the Division of

MR  
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Property Valuation (PVD) Memorandum, Identification of Non-Production (Waste)  
Land Within the Agricultural Classification, June 30, 1998.

The County asserts that during a conversation in December 2008 the Taxpayer told a staff member that he purchased the property for a tax write-off and possibly some hunting. The County believed that the Taxpayer was not farming the parcel and changed the classification to "other." Upon receipt of evidence of some agricultural use by a tenant and physical inspections of the property, the County returned 23.0 acres to the agricultural classification. The other 57.5 acres remained in the "other" classification with a market value of \$51,460, or \$895 per acre. The County asserts that the median sale price of similar properties per acre was \$895.

The issue before the Court is the classification of the subject property. Therefore, pursuant to K.S.A. 2009 Supp. 79-2005, the burden of production is on the Taxpayer.

"Land devoted to agricultural use" shall be classified as agricultural land and valued upon the basis of its agricultural income or agricultural productivity pursuant to Section 12 of Article 11 of the Kansas Constitution. See Kan. Const. Art. XI, § 1. K.S.A. 2009 Supp. 79-1476 provides, in pertinent part, as follows:

"land devoted to agricultural use" shall mean and include land, regardless of whether it is located in the unincorporated area of the county or within the corporate limits of a city, which is devoted to the production of plants, animals or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products. Land devoted to agricultural use shall not include those lands which are used for recreational purposes, other than that land established as a controlled shooting area pursuant to K.S.A. 32-943, and amendments thereto, which shall be deemed to be land devoted to agricultural use, suburban residential acreages, rural home sites or farm home sites and yard plots whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing definition.

All other urban and rural real property not otherwise specifically subclassified in the Kansas Constitution, Art. XI, § 1 and K.S.A. 2009 Supp. 79-1439 is assessed at 30% of its fair market value. This is commonly referred to as the "other" classification.

Real property is classified according to its use on January 1 of each year. For property such as agricultural land, which has seasonal uses, the classification should be based annually upon the overall use during the prior year. See Division of Property Valuation (PVD) Directive #99-038.

The "waste" land designation is an identification of non-productive land within the agricultural classification. One must first conclude that the property is devoted to agricultural use and is properly classified as agricultural land before determining its use value based upon soil type or waste designation. "If the land is not used for agricultural purposes it should not be classified as agricultural." PVD Memorandum, Identification of Non-Production (Waste) Land Within the Agricultural Classification, June 30, 1998.

Therefore, the question is whether the County has properly classified the subject property as a mixed use property with both an "agricultural" classification and an "other" classification. The answer to this question is highly dependent upon the specific facts of each case. Real property with more than one purpose may have more than one classification if the specific portions can be identified. If specific portions cannot be identified as being used for specific purposes, then the real property should be classified based upon its predominant use. See Division of Property Valuation (PVD) Directive #99-038.

The evidence, including the aerial map, shows that approximately 23.0 acres is clearly devoted to agricultural use and the County has classified it as agricultural land. However, the remaining 57.5 acres consists of a river, sandbar and trees. Based upon the evidence presented, this area is not being used for any purpose.

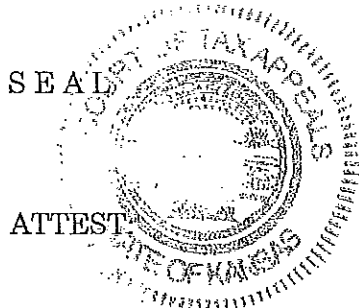
Under the facts presented, less than a third of the subject parcel is being used for agricultural purposes. The predominant portion of the parcel, 57.5 acres, is not devoted to the production of plants, animals or horticultural products. The parcel is capable of being delineated by acreage based upon use, or in this case, non-use. This case is distinguishable from a situation where a large parcel of land predominantly farmed or grazed also includes a small area of unproductive land which may be considered agricultural waste land. The Court concludes that the classification of the 57.5 acres as "other" is appropriate in this particular case. In addition, the Court concludes that the sales evidence presented by the County supports the current market value of the "other" classified land.

IT IS THEREFORE ORDERED that, for the reasons stated above, the County's current classifications and appraised values are sustained.

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. 2009 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

Fred Kubik  
FRED KUBIK, JUDGE

Joelene R. Allen  
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. 2010-1714-PR and any attachments thereto, was placed in the United States Mail, on this 12<sup>th</sup> day of August, 2010, addressed to:

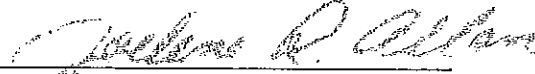
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John Potucek, Attorney  
601 N Washington  
Wellington, KS 67152

Carolyn Heasty, Sumner County Treasurer  
Sumner County Courthouse  
501 N Washington  
Wellington, KS 67152-4090

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

  
Joelene R. Allen, Secretary