

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

IN THE MATTER OF THE
EQUALIZATION APPEAL OF
REGNIER FAMILY LIMITED
PARTNERSHIP II FOR THE YEAR
2015 IN JOHNSON COUNTY,
KANSAS

Docket No. 2015-2535-EQ

SUMMARY DECISION

Now the above-captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas. The Board conducted a hearing in this matter on March 8, 2016. The Taxpayer, Regnier Family Limited Partnership II, appeared by Jerry Chatam, Tax Representative. Johnson County, Kansas (the "County") appeared by Kathryn D. Myers, Attorney. The tax year in issue is 2015.

The subject property is parcel of land located in Leawood, Kansas that is approximately 16 acres in size. For the 2015 tax year, the subject property has a mixed use classification and a total valuation of \$676,660, which includes approximately 13 acres of land classified as agricultural use land and valued at \$3,660, as well as approximately 3 acres of land classified as vacant land and valued at \$673,000. The Taxpayer challenges the classification of the vacant land contending that this land is agricultural use waste land.

The Board rules that the evidentiary burden is on the Taxpayer. It is undisputed that the entire parcel is subject to an agricultural farm lease. The County submits that the land classified as vacant was previously a home site and the home was demolished as of the 2015 assessment date. The County further submits that there are certain underground utilities, a driveway, and a stand of trees remaining on the area currently classified as vacant.

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:

...

- (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%.”

The issue herein is whether the County has properly classified the subject property as a mixed use property. The situation has been contemplated by State of Kansas, Division of Property Valuation (herein “PVD”) which, pursuant to K.S.A. 79-1401, 79-1402, and 79-1404, has general supervision over Kansas County Appraisers. In *PVD Directive #99-038*, dated February 24, 2000, which provides, in pertinent part, as follows:

“If real property is used for more than one purpose, it may have more than one classification. If specific portions of the real property cannot be identified as being used for specific purposes, then the real property should be classified based upon its predominate use. The county has the discretion to determine the appropriate level of detail needed for classification purposes. However, we encourage efficient use of local resources.”

Further, on May 15, 2013, PVD issued a memorandum titled *Classification of Non-Production Land with a Single Agricultural Operation* to all Kansas Appraisers addressing the issue of whether a county appraiser should apply a mixed use classification to address non-productive land in an agricultural parcel that indicated, in pertinent part, as follows:

“Based on the foregoing, all land within the boundaries of a single agricultural operating unit is to be classified as land devoted to agricultural use unless clearly defined areas within those boundaries are primarily used for recreational, commercial or residential purposes. The presumption is that the non-productive areas of an operating unit, devoted to the production of crops and animals is also land devoted to agricultural use. Such presumption may be overcome only by establishing that such land contains areas actively

and routinely used for recreational, commercial or residential purposes.

The non-use of a portion of a commercial building does not lead to a mixed use classification, even though the non-used area can be clearly identified. Rather the classification is based on the devoted and primary use of the property. The same theory should be applied to land devoted to agricultural use. Non-use of portions of a parcel, or of contiguous parcels, devoted to agricultural use does not in and of itself warrant a split classification for the agricultural use parcel. It is recognized that there will be situations where areas on a contiguous agricultural tract are clearly intended to be non-agricultural. Land clearly and primarily used for recreational or residential purposes should not be classified as land devoted to agricultural use. A mixed use classification may be used where the intended non-agricultural use is manifest.”

Although PVD directives and memoranda are not binding upon this Board, they are instructive and generally consistent with K.S.A. 79-1476, which provides a definition for agricultural use land. The May 15, 2013 memorandum directs that Kansas County Appraisers, in regard to an operating unit that is devoted to agricultural use, presume that any non-productive areas of the operating unit are also devoted to agricultural use. This presumption can only be overcome by evidence establishing that such non-productive areas are actively and routinely used for recreational, commercial, or residential purposes.

Following the guidance of the above-quoted PVD directive and memorandum, a County appraiser should therefore assume any non-productive areas of an operating unit are devoted to the production of crops and animals unless there is evidence such areas are actively and routinely used for recreational, commercial, or residential purposes. At instant, there is no evidence that the approximately 3 acres of the subject parcel currently classified as vacant is used primarily or even incidentally for any other purposes. The Board finds no evidence indicating a manifest non-agricultural use of this area. Based on these findings – noting again that it is undisputed that the vast majority of the subject property is used for agricultural purposes and, further, that the entire parcel is subject to a farm lease – the Board concludes that the subject property in its entirety should be classified as agricultural use land with the 3 acres challenged herein being classified as agricultural use waste. In addition, it was uncontroverted at hearing that agricultural use waste land is valued at \$10 per acre. *See Taxpayer Exhibit # 1, p. 1.* Based thereon, the Board concludes that the subject property shall have a total

agricultural use value of \$3,690.

IT IS THEREFORE ORDERED that, for the reasons stated above, for the 2015 tax year the subject property should be classified in its entirety as agricultural use land and have an agricultural use value of \$3,690.

IT IS FURTHER ORDERED that the appropriate County officials shall correct their records to comply with this order, re-compute the taxes owed by the Taxpayer, and issue a refund for any overpayment. This order is a summary decision pursuant to K.S.A. 74-2426(a), and amendments thereto.

Any party who is aggrieved by this order may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, and amendments thereto. See K.S.A. 74-2426(b), and amendments thereto. 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 Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to the Secretary of the Board of Tax Appeals. The written petition must be received by the Board within 15 days of the certification date of this order (allowing an additional three days for mailing pursuant to statute).

Rather than filing a petition for reconsideration, any aggrieved person has the right to appeal this order of the Board by filing a petition with the court of appeals or the district court pursuant to K.S.A. 74-2426(c)(4)(A), and amendments thereto. Any person choosing to petition for judicial review of this order must file the petition with the appropriate court within 30 days from the date of certification of this order. See K.S.A. 77-613(b) and (c) and K.S.A. 74-2426(c), and amendments thereto. Pursuant to K.S.A. 77-529(d), and amendments thereto, any party choosing to petition for judicial review of this order is hereby notified that the Secretary of the Board of Tax Appeals is to receive service of a copy of the petition for judicial review. Please note, however, that the Board would not be a party to any judicial review because the Board does not have the capacity or power to sue or be sued. See K.S.A. 74-2433(f), and amendments thereto.

Rather than filing a petition for reconsideration or appealing this order, any aggrieved party may request, within 14 days of receiving this order, a full and complete opinion be issued by the Board pursuant to K.S.A. 74-2426(a), and amendments thereto.

The address for the Secretary of the Board of Tax Appeals is Board of Tax Appeals, Eisenhower State Office Building, 700 SW Harrison St., Suite 1022, Topeka, KS 66603. A party filing any written request or petition shall also serve a complete copy of any written request or petition on all other parties. Please be

advised that the administrative appeal process is governed by statutes enacted by the legislature and no further appeal will be available beyond the statutory time frames.

IT IS SO ORDERED

THE KANSAS BOARD OF TAX APPEALS




RONALD C. MASON, CHAIR


JAMES D. COOPER, BOARD MEMBER


DEVIN SPRECKER, BOARD MEMBER


JOELENE R. ALLEN, SECRETARY

CERTIFICATION

I, Joelene R. Allen, Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket No. 2015-2535-EQ and any attachments thereto, was placed in the United States Mail, on this 11th day of March, 2016, addressed to:

Otto Westerfeld
Regnier Family Limited Partnership II
3705 W 95th St
Leawood, KS 66206-2036

Jerry W Chatam, Tax Representative
JW Chatam and Associates Inc
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Overland Park, KS 66213

Paul A Welcome, Johnson County Appraiser
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111 S Cherry, Ste 3200
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Thomas G Franzen, Johnson County Treasurer
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111 S Cherry St Ste 1500
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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka,
Kansas.


Joelene R. Allen, Secretary