

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

IN THE MATTER OF THE PROTEST  
OF VAIL, MARVIN L. FOR THE  
YEAR 2011 IN MIAMI COUNTY,  
KANSAS

Docket No. 2014-7308-PR

**FULL AND COMPLETE OPINION**

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 April 21, 2015. The Taxpayer, Vail, Marvin L., was represented by Nicholas Porto, Attorney. Miami County, Kansas (the "County") was represented by David Heger, Miami County Attorney. County Exhibits 1 and 2, and Taxpayer Exhibits A through D were admitted into evidence.

The Board issued a *Summary Decision* on this matter on May 4, 2015 and, on May 14, 2015, the Taxpayer requested a Full and Complete Opinion.

After considering all of the evidence and arguments presented, the Board finds and concludes as follows: The Board has jurisdiction of the subject matter and the parties, as a tax protest has been properly and timely filed pursuant to K.S.A. 2014 Supp. 79-2005. The tax year in issue is 2011. The subject matter of this tax protest is as follows:

Real estate and improvements known as  
W. 239th St, Miami County, Kansas,  
also known as Parcel ID # 061-072-04-0-00-00-003.00-0.

*Hearing Evidence*

The subject property is a 79.60 acre parcel of land located in the Northwest part of Miami County, near Hillsdale Lake. For the 2011 tax year, the property was classified as vacant land and appraised at \$252,310. For tax years 2007 to 2010, the property was classified as agricultural use property. The Taxpayer challenged the assigned classification of the subject property asserting that the property is devoted to agricultural endeavors and, as such, should be classified in its entirety as agricultural use land.

Marvin L. Vail, Taxpayer, and Dennis Crownover, witness, presented sworn testimony regarding the subject property and its uses. Crownover is a full-time farmer who farms land in Johnson, Franklin, Douglas and Miami counties. Crownover owns 160 acres of land adjacent to the subject property.

The Taxpayer purchased the property in 2008. Prior to his acquisition, the previous owner ran cattle on the property. A hay mowing contract executed April 1, 2010 and re-executed April 10, 2014 retained Dennis Crownover to mow hay from the subject property. (Crownover testified that the contract was re-executed so it could be notarized for the County Appraiser.) The hay mowing contract requires Crownover to bale hay from the property at no charge to the Taxpayer. Crownover is allowed to keep any hay baled from the subject property in exchange for his mowing services.

The Taxpayer presented documentation listing the amounts and costs of , and other additions used on both the subject and other land owned by Crownover. Crownover first took 25 bales of brohm and fescue hay from the property in calendar year 2011. Due to a drought conditions there was little, if any, hay to bale from the property for calendar years 2012 and 2013. Crownover specifically estimated that approximately 25% of the subject property, two open areas at the southwest and northeast corners of the subject parcel, is hayed as the property is heavily populated with trees and creeks. See County Exhibit No. 2.

Jana Hight, Miami County Deputy Appraiser, appeared and testified regarding the County's classification of the subject property. Hight testified each year it sends out agricultural questionnaire with its valuation notices and it has not received an agricultural questionnaire or any correspondence from any owners of the subject property since 2007. Hight, further, testified that the County inspected the subject property and did not observe any agricultural use occurring on the property. Hight submitted that the first time it was presented any evidence insdicating there was any agricultural activities occurring on the subject property was in April 2014 during a valuation hearing.

#### *Applicable Law and Board Conclusions*

##### Classification

The Taxpayer challenges the classification of portions of the subject land. K.S.A. 2014 Supp. 79-2005 provides, in regard to the determination of value of the subject residential property or commercial use property under certain circumstances, the County has the duty to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of

such determination. Further, no presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination. This evidentiary burden, however, extends only to issues relating to valuation. The dispute herein concerns the classification of the subject property. Therefore, the instant Taxpayer shall have the burden to initiate the production of evidence on the issue of whether the land in dispute is properly classified.

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%

K.S.A. 79-1439(b)(1) was later enacted and follows the constitutional provision verbatim. Thus – under both the constitutional and statutory provisions – agricultural use real property is valued not at its fair market value, but based upon its agricultural productivity (commonly referred to as “use value”).

K.S.A. 2014 Supp. 79-1476 defines “land devoted to agricultural use” as follows:

“[L]and 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 . . . 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. . . .

It is the role of this Board to provide an impartial venue for the resolution of tax disputes. The Board hears the parties' arguments and weighs all of the evidence in accordance with the Kansas Administrative Procedures Act (KAPA) and the code of civil procedure. See K.A.R. 94-5-1. The Board must render decisions based on substantial competent evidence in light of the record as a whole, *see* K.S.A. 77-621(c), and must decide cases solely on the evidence presented. *See* K.S.A. 77-526(d).

The sole controversy herein concerns what activities were, or were not, occurring on the property for tax year 2011. The Board finds the sworn testimony and documentation from both the Taxpayer and Farmer Crownover is the best evidence of the activity occurring on the property as of the January 1, 2011 assessment date. Further, the County presented no evidence controverting the Taxpayer's witnesses. Relying on these sworn statements, the Board finds and concludes that 25% of the subject property – the two open areas of the subject parcel designated by Farmer Crownover on County Exhibit No. 2 at the southwest and northeast corners of the subject parcel - is land devoted to agricultural use. Based thereon, the Board concludes that this 25% of the subject property should be classified (and valued) as agricultural use land and the balance of the subject property should remain classified and valued as vacant land.

IT IS THEREFORE ORDERED that, pursuant to the Board's finding and conclusions set forth above, 25% of the property as designated by farmer Crownover herein shall be classified and valued as agricultural use land.

IT IS FURTHER ORDERED THAT the balance (75%) of the subject property shall remain classified and valued as vacant land.

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 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

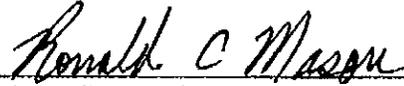
specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to the Secretary of the Board of Tax Appeals. The written petition must be received by the Board within 15 days of the certification 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.

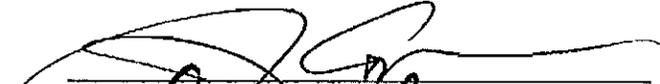
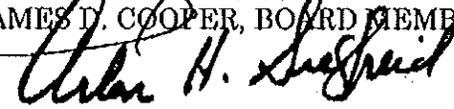
The address for the Secretary of the Board of Tax Appeals is Board of Tax Appeals, Eisenhower State Office Building, 700 SW Harrison St., Suite 1022, Topeka, KS 66603. A party filing any petition shall also serve a complete copy of the petition on all other parties.

IT IS SO ORDERED

THE KANSAS BOARD OF TAX APPEALS

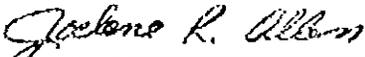


RONALD C. MASON, BOARD MEMBER

JAMES D. COOPER, BOARD MEMBER

ARLEN SIEGFREID, MEMBER *PRO TEM*



JOELENE R. ALLEN, SECRETARY

CERTIFICATION

I, Joeline 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. 2014-7308-PR and any attachments thereto, was placed in the United States Mail, on this 6<sup>th</sup> day of August, 2015, addressed to:

Marvin Vail  
1405 W 8th St  
Edgerton, KS 66021

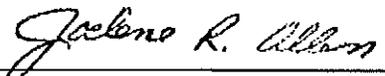
Nicholas Porto, Attorney  
The Porto Law Firm  
1600 Baltimore Ave Ste 200A  
Kansas City, MO 64108

Stephanie O'Dell, Miami County Appraiser  
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201 S Pearl Ste 100  
Paola, KS 66071

David Heger, Miami County County Counselor  
201 S Pearl, Ste 200  
Paola, KS 66071-1074

Gayla Shields, Miami County Treasurer  
Miami County Courthouse  
201 S Pearl Ste 103  
Paola, KS 66071-1777

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

  
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Joeline R. Allen, Secretary