

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

IN THE MATTER OF THE PROTEST
OF WOLKEN, JOSEPH P &
CLAUDETTE J TTEES TRUST FOR
THE YEAR 2023 IN ANDERSON
COUNTY, KANSAS

Docket No. 2024-969-PR

Parcel ID Number: 002-028-33-0-00-00-002.01-0

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 September 16, 2024. The Taxpayer, Wolken, Joseph P & Claudette J Ttees Trust, appeared by Joseph Wolken and Myron Wolken. Anderson County, Kansas (the "County") appeared by Mark Wilson, Appraiser. The State of Kansas, Division of Property Valuation ("PVD") appeared by Ted Smith, Attorney, and Zoe Gehr, Appraiser. The tax year in issue is 2023.

The Board has jurisdiction of the subject matter and the parties, as a protest has been properly and timely filed pursuant to K.S.A. 79-2005.

The subject consists of 114 acres of agricultural use pastureland located near Greeley, Kansas that has a 2023 agricultural use value of \$21,170.

The Taxpayer challenged the property's agricultural use valuation and the County's decision not to apply an additional negative influence factor for flooding. Myron Wolken testified on behalf of the Taxpayer and submitted that the recent construction of a bridge caused a creek that crosses the property to flood more frequently than before. He argued that flooding has brought in invasive weeds, caused fungus to grow on the fescue that grows on the property, and reduced the land's agricultural productivity. Mr. Wolken stated that the flooding is so prolific that a fence cannot be maintained on the parcel. He also stated that the hay grown on the property is so toxic that it cannot be sold for animal consumption, and that certain supplements must be fed to the Taxpayer's animals to allow them to consume the hay.

Mark Wilson, Anderson County Appraiser, appeared as a witness for the County. Mr. Wilson testified that he appraised the subject in accordance with PVD guidelines using soil types and corresponding agricultural usage values provided by

PVD. Mr. Wilson submitted that the soil types applied to the subject have frequent flooding characteristics and, therefore, no additional flooding adjustment was appropriate. Mr. Wilson acknowledged that PVD has a *Frequent Flooding Verification Form*, but that it was not applicable to the subject parcel.

Zoe Gehr, PVD Agricultural Use Coordinator, appeared as a witness for PVD. Ms. Gehr testified that she reviewed the County's agricultural use valuation and did not observe anything incorrect. Ms. Gehr testified that she participated in creating the *Frequent Flooding Verification Form* along with Natural Resources Conservation Service (NRCS), State soil scientists, and pasture/rangeland conservationists. Ms. Gehr stated that the subject property was not eligible for a frequent flooding influence because it is used as pasture land. She explained PVD's rationale for excluding pasture land from the influence factor, stating that native grass is regenerative and does not need to be replanted after it is flooded. She further submitted that atypical or chronic flooding has no impact on pastureland's regenerative properties.

Ms. Gehr testified that the three primary Natural Resources Conservation Service (NRCS) Soil mapping units for the subject are 8151 Lanton Silty Clay Loam, Occasionally Flooded; 8201 Osage Silty Clay Loam, Occasionally Flooded; and 8302 Verdigris Silt Loam, Occasionally Flooded. She stated that PVD has no authority to disregard those soil mapping units, and that only NRCS can change the designation. She explained that if flooding so strongly impacts land that the soil type is been altered, the NRCS can come out to test the land and possibly re-evaluate the assigned soil type. Ms. Gehr stated that she was willing to work with the Taxpayer to request that NRCS review the subject's assigned soil types to determine if they should be changed for future tax years.

K.S.A. 79-1476 provides, in pertinent part, as follows:

“[v]aluations shall be established for each parcel of land devoted to agricultural use upon the basis of the agricultural income or productivity attributable to the inherent capabilities of such land in its current usage under a degree of management reflecting median production levels in the manner hereinafter provided. A classification system for all land devoted to agricultural use shall be adopted by the director of property valuation using criteria established by the United States department of agriculture soil conservation service.

...

Productivity of land devoted to agricultural use shall be

determined for all land classes within each county or homogeneous region based on an average of the eight calendar years immediately preceding the calendar year which immediately precedes the year of valuation, at a degree of management reflecting median production levels.”

Here, Taxpayer essentially argues the County failed to account for the parcel’s reduced agricultural productivity due to the negative impacts of frequent flooding.

The Board rules that the evidentiary burden is on the County. The evidence presented by the County and PVD, which was undisputed, indicates the subject property was valued in accordance to State guidelines for valuation of agricultural use property. The testimony before the Board further established that the soil types currently assigned to the property incorporate occasional or frequent flooding in the corresponding use value assigned to that soil type. Finally, the testimony before the Board established that the “frequent flooding influence” is uniformly not applied to pasture land or soil types that are designated as frequently flooded. Because the record evidence indicates the subject property was properly valued in accordance with State statute and PVD guidelines, the Board finds the County’s value should be sustained.

IT IS THEREFORE ORDERED that, for the reasons stated above, the agricultural use value for tax year 2023 is \$21,170.

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 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 (3) days for mailing pursuant to statute). The Parties should note that, pursuant to K.S.A. 74-2426(c)(4)(A), in regard to any petition for review of the Board’s order filed in the Kansas Court of Appeals, for purposes of such an appeal, the Board’s order shall become final only after the issuance of a full and complete opinion.

Rather than filing a petition for reconsideration, any aggrieved party may request, within 21 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 (allowing an additional three (3) days for mailing pursuant to statute).

Rather than filing a petition for reconsideration or a request for a full and

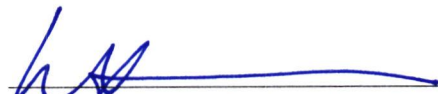
complete opinion, any Taxpayer has the right to appeal this order of the Board by filing a petition with the district court pursuant to K.S.A. 74-2426(c)(4)(B), and amendments thereto. Said petition for judicial review must be filed within 30 days from the date of certification of this order. See K.S.A. 77-613(b) and (c), and amendments thereto 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 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




KRISTEN D. WHEELER, CHAIR


VIRGINIA A. POWELL, MEMBER


DEVIN SPRECKER, 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. 2024-969-PR and any attachments thereto, was placed in the United States Mail, on this 26th day of SEPTEMBER, 2024, addressed to:

Joseph P Wolken
Claudette J Wolken
PO Box 67
Greeley, KS 66033

Mark Adam Wilson, Anderson County Appraiser
Anderson County Courthouse
100 E 4th Ave
Garnett, KS 66032-1595

James Campbell, Anderson County Co Counselor
511 Neosho St
Burlington, KS 66839


Dena M McDaniel, Anderson County Treasurer
Anderson County Courthouse
100 E 4th Ave Rm 2
Garnett, KS 66032-1596

And a copy was placed in capitol complex building mail, addressed to:

Director of Property Valuation
Kansas Department of Revenue
300 SW 29th St.
PO Box 3506
Topeka, KS 66601-3506

Ted E. Smith, Attorney
Legal Services Bureau
Kansas Department of Revenue
109 SW 9th St.
Topeka, KS 66612

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


Joelene R. Allen, Secretary