

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE EQUALIZATION  
APPEALS OF SUMNER COUNTY APPRAISER/  
FARMERS COOPERATIVE GRAIN ASSOC.  
FOR THE YEAR 2004 FROM  
SUMNER COUNTY, KANSAS

Docket Nos. 2004-8646-EQ  
& 2004-8647-EQ

ORDER

Now the above-captioned matters come on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

This Board conducted a hearing in these matters on August 9, 2006. The Board has jurisdiction of the subject matter and the parties as equalization appeals have been filed pursuant to K.S.A. 79-1609. After considering all of the evidence and arguments presented, the Board finds and concludes as follows.

The subject matter of these tax equalization appeals is described as follows:

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Real estate and improvements commonly known as  
534 East Parallel, Conway Springs, Sumner County, Kansas,  
also known as Parcel ID# 096-058-34-0-30-15-006.00-0; and

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Real estate and improvements commonly known as  
112 S. Lincoln Street, Belle Plaine, Sumner County, Kansas,  
also known as Parcel ID# 096-111-02-0-10-19-001.00-0.

The Taxpayer, Farmers Cooperative Grain Association, appeared by Victor W. Miller, Attorney. The County appeared by Michael A. Montoya, Attorney; Della Rowley, County Appraiser; and Dennis Vogan, Witness. The Board admitted County Exhibits #1 and #2 and Taxpayer Exhibit #1. The Taxpayer's objection to the admission of County Exhibits #1 and #2 is noted. At the conclusion of the hearing, the Board allowed the parties thirty (30) days to provide legal briefs addressing the K.S.A. 79-1460 issue. On September 11, 2006, the Board received Sumner County's Brief Addressing the Application of K.S.A. 79-1460.

For tax year 2004, the County originally valued the Conway Springs commercial property at \$846,360 and the Belle Plaine property at \$751,380. There is an agricultural

use value of \$460 included in the Conway Springs property that is not at issue. The Taxpayer appealed the valuations to the Small Claims Division of the Board of Tax Appeals. The tax year 2003 commercial valuations "CU" were \$585,820 and \$326,640, respectively. See County Exhibits #1 and #2. The Small Claims Hearing Officer found that the County provided an insufficient amount of documentation to justify an increase in valuation for 2004. The County appealed the decisions to the regular division of the Board.

Della Rowley, Sumner County Appraiser, stated that the County utilized the CAMA (computer assisted mass appraisal) cost approach to originally value the subject properties for tax year 2004. To value the elevators, Ms. Rowley applied a grade factor to the bushel capacity. Ms. Rowley graded both elevators as "C" grades, "Good concrete built in the 1950's and good steel built in the 1970's," with a value of \$0.35 per bushel. See County Exhibits #1 and #2. The County utilized the same methodology in valuing both properties. The County actually used the CAMA cost approach to value the land and some improvements, but did not utilize the CAMA cost approach to value the elevators. The County did not calculate a replacement cost new or depreciation for the elevators. The "800" field on County Exhibits #1 and #2 are conclusions of value for the elevators. Ms. Rowley stated that she relied upon a guide or manual written by Dennis Vogan to develop the grade values, but she did not provide the guide or manual to the Taxpayer or to the Board.

Further, Ms. Rowley explained that Taxpayer Exhibit #1 is the information she provided to the Taxpayer in response to its request for documentation used to value the property. The first paragraph of Taxpayer Exhibit #1 provides that "We took elevators that we had sales on, and took these sales as depreciated value. Then we took the new construction cost added physical and economical depreciation to the new cost. The physical depreciation was based on the age life method and this is based on a 50 year life. The economic depreciation was based on average depreciation." Ms. Rowley admitted that this was not the valuation procedure followed in these cases. She was unable to produce documents to support the method outlined in her response and was unsure whether the documentation exists.

In June of 2005, Dennis Vogan, Certified General Appraiser in the State of Kansas, prepared appraisals of the subject properties as of January 1, 2004. See County Exhibits #1 and #2. Mr. Vogan utilized the three approaches to value: the cost approach, income approach, and sales comparison approach. Mr. Vogan's testimony at the hearing was that the value of Conway Springs property should be \$931,500 and the Belle Plaine property should be \$544,100. The County requests that the Board adopt the opinions of value of Mr. Vogan due to his specialized knowledge.

The Taxpayer and the County identify different central issues in these appeals. The County outlines the issue before the Board as a question of which party presented the best

evidence to arrive at values for the subject properties. The County contends that the Taxpayer failed to provide any evidence relating to value, and as a result, the County's recommended values should be adopted. In contrast, the Taxpayer frames the issue as whether the County complied with K.S.A. 79-1460(a)(1). The Taxpayer contends that the County did not comply with the statute, and as a result, the 2004 valuations should not be increased from 2003.

The Board reasons that the preliminary question to be considered is the K.S.A. 79-1460(a)(1) issue. Subsequently, if the issue is resolved that the County did satisfy K.S.A. 79-1460(a)(1), the second question to be considered is the appropriate valuation based upon the evidence presented at the hearing.

The Taxpayer requests that the tax year 2004 values be lowered to the 2003 values because the county appraiser did not make documentation available to the Taxpayer to support an increase in valuation pursuant to K.S.A. 79-1460(a)(1). The County argues that all of the documentation utilized to arrive at the valuations of the subject property was available on January 1, 2004. The County asserts that the county appraiser testified as to the manner in which CAMA was utilized and testified as to the manner in which the County determined the grade and applied calculations pursuant to the appraisal guide for elevators. (See County Brief, p.4) The County asserts that this documentation was available to the Taxpayer pursuant to K.S.A. 79-1460.

K.S.A. 79-1460(a) provides in part that:

The county appraiser shall notify each taxpayer in the county annually on or before March 1 for real property and May 1 for personal property, by mail directed to the taxpayer's last known address, of the classification and appraised valuation of the taxpayer's property, except that, the valuation for all real property shall not be increased unless: (1) The record of the latest physical inspection was reviewed by the county or district appraiser, and documentation exists to support such increase in valuation in compliance with the directives and specifications of the director of property valuation, and such record and documentation is available to the affected taxpayer; . . . .

K.S.A. 79-505 provides in part that:

(a) The director of property valuation shall adopt rules and regulation or appraiser directives prescribing appropriate standards for the performance of appraisals in connection with ad valorem taxation in this state. Such rules and regulations or appraiser directives shall require, at a minimum:

- (1) That all appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the appraisal standards board of the appraisal foundation . . . ; and
- (2) that such appraisals shall be written appraisals.

K.S.A. 79-504(b) defines “written appraisal” as:

[A] written statement used in connection with the activities of the division of property valuation or a county appraiser that is independently and impartially prepared by a county appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information. Appraisals produced by the computer assisted mass appraisal system prescribed or approved by the director of property valuation shall be deemed to be written appraisals for the purposes of this act.

K.S.A. 79-1460(a)(1) includes two requirements that must be satisfied in order for a county appraiser to increase the valuation of real property. The Board finds that these two requirements must be satisfied at the time of the mailing of the valuation notice. The first requirement is that “[t]he record of the latest physical inspection was reviewed by the county or district appraiser, and documentation exists to support such increase in valuation in compliance with the directives and specifications of the director of property valuation.” The Board notes that the statute requires that the documentation “exist” at the time of the notice of increased valuation. The second requirement is that “such record and documentation is available to the affected taxpayer.”

There appears to be no issue regarding whether the record of the latest physical inspection was reviewed by the county appraiser. Based upon the evidence in the record, the Board finds that the following documentation existed at the time of the valuation notice and was available to the Taxpayer:

1. “How we arrived at Values on Elevators” one-page document (Taxpayer Exhibit #1);
2. “Grain Elevator Grades” one-page chart (Taxpayer Exhibit #1 and County Exhibits #1 and #2);
3. “Grain Elevator Data Spreadsheet 2004” one-page document showing valuation data of grain elevators in the county (Taxpayer Exhibit #1);
4. CAMA commercial and industrial valuation system three-page document for PIN 096-058-34-0-30-15-006.00-0 (County Exhibit #1);
5. “2004 Grain Elevator Statistical Data” two page document for PIN 096-058-34-0-30-15-006.00-0 (County Exhibit #1);

6. CAMA commercial and industrial valuation system two-page document for PIN 096-111-02-0-10-19-001.00-0 (County Exhibit #2); and
7. "2004 Grain Elevator Statistical Data" two page document for PIN 096-111-02-0-10-19-001.00-0 (County Exhibit #2).

Although Ms. Rowley testified that an appraisal guide or manual written by Mr. Vogan was utilized to some degree in developing the values enumerated on the "Grain Elevator Grades" chart, the guide or manual was not made available to the Taxpayer. Further, the purported guide or manual was not presented to the Board for consideration.

The next question is whether this existing documentation supports an "increase in valuation in compliance with the directives and specifications of the director of property valuation." The Board recognizes that the County utilized its CAMA cost system to value the land and some improvements on the subject properties. However, the primary component of value for each property is the grain elevators. The County did not utilize the CAMA cost approach to value the elevators. For tax year 2004, the County applied a per bushel value based upon the grade of the property as evidenced by a chart Ms. Rowley prepared and provided to the Taxpayer. In the Board's opinion, the County's one-page grade chart alone does not support an increase in valuation without any evidence regarding the methodology and underlying data utilized to arrive at such values per bushel. There is insufficient evidence to determine whether the County's analysis of relevant data and valuation methodologies are in compliance with the directives and specifications of the director of property valuation. Without the presentation of any evidence used to develop the chart, the Board cannot find that the County's documentation supports an increase in value pursuant to K.S.A. 79-1460(a)(1).

This case is distinguishable from many appeals in that the subject elevators were not originally valued by the County with the assistance of the CAMA system. K.S.A. 79-505(a) requires that all county appraisals be performed in accordance with generally accepted appraisal standards and be in writing. Further, K.S.A. 79-504(b) provides that appraisals produced by a county's CAMA system are deemed to be written appraisals. The County's one-page chart utilized to originally value the elevators, the primary component of value in these matters, is not a part of the CAMA system. The County's administrative step of adding one line at the bottom of the CAMA cost approach document in field "800" does not make the underlying elevator analysis an "appraisal produced by the computer assisted mass appraisal system" pursuant to K.S.A. 79-504(b). The County did not provide evidence of its "analysis of relevant market information" used to develop the elevator valuation chart as required by K.S.A. 79-504(b).

The Board notes that fee appraisals prepared after the valuation date with an effective date of January 1 are generally admissible evidence that may be considered in determining fair market value. However, Mr. Vogan's appraisals in this case were prepared after the valuation date, and as a result, they did not exist and were not available

to the Taxpayer at the time of the valuation notice. The Board finds that such appraisals are not relevant to the specific K.S.A. 79-1460(a)(1) question presently before the Board. The Board concludes that the County's documentation in existence at the time of the valuation notice must at least satisfy the requirements of K.S.A. 79-1460(a)(1) in order for the Board to subsequently reach the consideration of documentation prepared after the mailing of the valuation notice, such as Mr. Vogan's appraisals, to determine market value.

The Board finds that substantial evidence in light of the record as a whole supports the conclusion that the documentation in existence and available to the Taxpayer at the time of the valuation notices does not support increased valuations. The Board finds that the County did not satisfy the requirements of K.S.A. 79-1460(a)(1) in order to increase the valuations for tax year 2004. Since the County failed to satisfy K.S.A. 79-1460(a)(1), the Board concludes that the commercial valuations "CU" for tax year 2004 shall remain at the tax year 2003 valuations of \$585,820 for the Conway Springs property and \$326,640 for the Belle Plaine property.

IT IS THEREFORE ORDERED BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS that, for the reasons stated above, the appraised commercial values for tax year 2004 are \$585,820 for the Conway Springs property and \$326,640 for the Belle Plaine property.

Any party to these appeals who is aggrieved by this decision may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, 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: Secretary, Board of Tax Appeals, DSOB Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. A copy of the petition, together with all accompanying documents submitted, shall be mailed to all parties at the same time the petition is mailed to the Board. Failure to notify the opposing party shall render any subsequent order voidable. The written petition must be received by the Board within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute if the Board serves the order by mail). If at 5:00 pm on the last day of the specified period the Board has not received a written petition for reconsideration, this order will become a final order from which no further appeal is available.

IT IS SO ORDERED

THE BOARD OF TAX APPEALS

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IN THE MATTER OF THE EQUALIZATION  
APPEALS OF SUMNER COUNTY APPRAISER/  
FARMERS COOPERATIVE GRAIN ASSOC.  
FOR THE YEAR 2004 FROM  
SUMNER COUNTY, KANSAS

Docket Nos. 2004-8646-EQ  
& 2004-8647-EQ

ORDER DENYING RECONSIDERATION

Now the above-captioned matters come on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

The Board notes that Ms. Rowley's testimony was that the documents identified as Taxpayer Exhibit #1 were the documents she provided to the Taxpayer in response to Mr. Miller's request for documentation used to value the grain elevators. She did not attach a copy of the guide to the three-page response identified as Taxpayer Exhibit #1. She never provided the guide to the Taxpayer. She did not bring a copy of the guide to the hearing. In addition, PVD Directive #98-036 is a list of manuals and guides promulgated by the Director of Property Valuation under the authority of K.S.A. 79-505. A grain elevator guide is not listed.

The County asserts that the guide did exist at the time of valuation and it was available to the Taxpayer. The Board finds that the evidence presented at the hearing does not support this contention. Although Ms. Rowley testified that a guide or manual existed, the evidence shows that the County did not disclose to the Taxpayer that a guide was utilized. Further, PVD Directive #98-036 does not list a grain elevator guide, so a constructive notice argument fails. Even if the Board were to find that a guide was available to the Taxpayer, the next question under K.S.A. 79-1460(a)(1) is whether the available documentation including the guide supports an increase in valuation. Without any evidence as to the guide's content, the Board cannot conclude that it supports an increase in valuation.

Upon review of the County's Petition for Reconsideration and the Taxpayer's Response to Petition for Reconsideration, the Board finds that no evidence or arguments are offered that would persuade the Board that the original order should be modified or that reconsideration should be granted. Therefore, the Board concludes that the Order as originally issued should be, and is hereby, sustained.

IT IS, THEREFORE, BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS, CONSIDERED AND ORDERED that, the above-captioned Petition for Reconsideration should be, and the same is hereby, denied.

This order constitutes final agency action. Any party choosing to petition for judicial review of the Board's decision 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(c), and amendments thereto. The Kansas Court of Appeals has jurisdiction over all property appraised and assessed by the director of property valuation, excise, income, or inheritance taxes assessed by the director of taxation, and all tax exemptions. See K.S.A. 74-2426, and amendments thereto. The District Court in the County where the subject property is located has jurisdiction over all tax protests, grievances, and equalizations. See K.S.A. 74-2426, and amendments thereto. Pursuant to K.S.A. 77-529(c), and amendments thereto, any party choosing to petition for judicial review of the Board's decision is hereby notified that the Secretary of the Board of Tax Appeals is to receive service 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.

IT IS SO ORDERED

THE BOARD OF TAX APPEALS