

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE EQUALIZATION  
APPEALS OF TARGET CORPORATION  
FOR THE YEARS 2006 & 2007 FROM  
SHAWNEE COUNTY, KANSAS

Docket Nos. 2006-2632-EQ  
& 2007-2615-EQ

AND

IN THE MATTER OF THE EQUALIZATION  
APPEAL OF TARGET DISTRIBUTION CTR 3803  
FOR THE YEAR 2006 FROM  
SHAWNEE COUNTY, KANSAS

Docket No. 2006-8431-EQ

**ORDER ON CROSS MOTIONS**  
**FOR SUMMARY JUDGMENT**

Now the above-captioned consolidated matters come on for consideration and decision by the Board of Tax Appeals of the State of Kansas pursuant to K.S.A. 79-1609. Target Corporation ("Target") appears by its attorney of record, Scott C. Palecki of Foulston Siefkin LLP. Shawnee County appears by its attorney of record, Jim Crowl, Assistant County Counselor.

These matters are an appeal by Target from Shawnee County's assessment of *ad valorem* tax on real estate and improvements commonly known as the Target Distribution Facility, located in Shawnee County, Kansas, also known as Parcel ID# 089-147-36-0-00-01-011.07-0, along with certain personal property known as ID# 089-PP-1546600000.

The parties filed cross motions for summary judgment and submitted supporting memoranda. The parties also jointly filed an *Order Accepting Partial Stipulation of Facts* and incorporated in that order certain relevant documents. The parties' statements of uncontroverted fact in their summary judgment memoranda are based primarily on the stipulations contained in their joint *Order Accepting Partial Stipulation of Facts*. The Board heard oral argument on these cross motions for summary judgment on October 10, 2007.

**I.**  
**Uncontroverted Facts**

The Board hereby makes the following findings with regard to the statements of fact contained in the parties' respective memoranda.

In the *County's Motion for Summary Judgment*, the county sets forth nineteen (19) statements of fact with adequate support in the record. In *Target Corporation's Memorandum in Support of Motion for Summary Judgment*, Target sets forth thirty-nine (39) statements of fact with adequate support in the record. In *Target Corporation's Response in Opposition to Shawnee County's Motion for Summary Judgment*, Target sets forth four (4) additional statements of fact. The Board finds that all statements of fact in the parties' lead briefs are uncontroverted. The four (4) additional statements of fact set forth in Target's response memorandum are not material.

Following is a summary of the material uncontroverted facts:

In January 2002, representatives of Target contacted representatives of Shawnee County and the City of Topeka and advised them that Target was considering locations for a new distribution facility. The parties discussed the amount of land and the types of infrastructure improvements that would be necessary for the project. The parties also discussed possible economic incentives available to Target in the Topeka/Shawnee County area. In addition to Shawnee County, Target also was considering Olathe and Wichita as possible sites for its distribution facility.

On March 19, 2002, Shawnee County filed an eminent domain action to take property necessary to develop a suitable site for the Target distribution facility. At the time, Target had not yet announced its selection of a location for the facility. Target announced its selection of Topeka/Shawnee County for the new facility on June 13, 2002. Target selected the Topeka/Shawnee County site in large part because of the city and county's incentive package.

On June 27, 2002, pursuant to K.S.A. 79-251, the Board of County Commissioners of Shawnee County enacted HR-2002-9, a resolution "Stating the Policy and Procedures for Tax Exemptions and Incentives for Economic Development." That resolution repealed and replaced two earlier resolutions prescribing Shawnee County's policies and procedures for granting tax exemptions and incentives for economic development.

In August 2002, Target, Shawnee County, the City of Topeka, and the Growth Organization of Topeka ("GO Topeka") entered into a contract titled "Real Estate Development and Assessment Agreement" (the "Development Agreement"). The Development Agreement outlined the terms and conditions under which Target would construct and operate a distribution center in Shawnee County.

Prior to execution of the Development Agreement, Shawnee County Counselor, Richard V. Eckert, sent a memorandum to the Board of County Commissioners regarding the proposed Development Agreement. In the memorandum Mr. Eckert wrote that the “final contract is the culmination of several prior contracts, resolutions and intensive negotiations between the parties.”

The Development Agreement contains various provisions concerning the Target distribution facility, including among other things provisions governing acquisition and conveyance of the land, public improvement work, construction of the facility, creation and retention of jobs, and property tax exemption provisions. Particularly relevant provisions of the Development Agreement are set forth below.

Section 7.1 of the Development Agreement, titled “Creation of Jobs,” provides in pertinent part as follows:

[Target] acknowledges that no later than one (1) year after the Opening Date defined herein, [Target] currently plans to create a minimum of Six Hundred and Fifty (650) Full-Time Equivalent Jobs.... If [Target] fails to achieve the aforementioned number of jobs described in this section by the first anniversary of the Opening Date, the County [sic] shall not be in default hereunder but [Target] shall pay the County the sum of Four Thousand Dollars (\$4,000) for each job fewer than Six Hundred Fifty (650) Full-Time Equivalent Jobs created....

Section 7.2 of the Development Agreement, titled “Retention of Jobs,” provides in pertinent part as follows:

[Target] agrees to retain the number and type of Full-Time Equivalent Jobs described in subsection 7.1 for a period of nine (9) years following the initial (1) year period described in subsection 7.1. If [Target] fails to retain the requisite number of Full-Time Equivalent Jobs during the ten (10) year period, [Target] shall not be in default hereunder but [Target] shall pay the County the sum of Four Thousand Dollars (\$4,000) per year for each job not so retained after the initial one (1) year period....

Section 9 of the Development Agreement, titled “Property Tax Exemption,” provides as follows:

In the event [Target] has fully performed its obligations under the Agreement in all material respects and has not defaulted beyond cure, the County agrees that [Target] may apply to the County for an exemption from taxation of real and personal property as may be provided by Shawnee County Home Rule Resolution No. HR-2002-9. The tax exemption shall be available for the first assessment year after the construction of the distribution facility is complete. The exemption from *ad valorem* taxation shall be in the amount of one hundred percent (100%) for a ten-(10) year period of the appraised valuation of buildings, land, and

tangible personal property of [Target] in connection with the Facility. [Target] understands that the tax exemption can only be favorably recommended by the County and that the tax exemption must be independently approved by the Kansas State Board of Tax Appeals, and that County warrants that it shall cooperate fully in assisting [Target] in obtaining this tax exemption.

Subsection 13.1 of the Development Agreement, titled “Termination,” provides in pertinent part as follows:

This Agreement shall terminate without further action on the tenth anniversary of the opening of the Facility....

Section 24 of the Development Agreement, titled “Amendments,” provides as follows:

This Agreement may be amended only by the written agreement of the parties and executed with the same formalities as this Agreement.

Upon execution of the Development Agreement, Target commenced construction of the new facility. Target began operations at the new facility on June 1, 2004.

Target filed with Shawnee County its “Standard Application for Property Tax Exemption for Economic Development” on January 18, 2005. In its application, Target requested an exemption for the years 2005 through 2014. As required by K.S.A. 79-251, the exemption application process included a cost-benefit analysis, which estimated that Target would create 930 jobs in the first year and 1,008 new jobs over the next ten years.

On March 9, 2005, the Shawnee County Clerk issued a memorandum to the Board of County Commissioners stating that the County Counselor had reviewed Target’s application for completeness and eligibility and found the application to be in order. On April 7, 2005, the county’s Administrative Review Committee unanimously recommended that the county grant Target the exemption it sought in its January 2005 application.

On April 25, 2005, the Board of County Commissioners enacted Resolution No. 2005-69, titled “A Resolution Exempting Certain Property Owned by Target Corporation from *Ad Valorem* Taxation for Economic Development Purposes, Pursuant to Shawnee County Home Rule Resolution No. HR-2002-9.”

Resolution No. 2005-69 contains, among other thing, findings of fact that the property at issue would be “used exclusively for the purposes specified in Article 11, Section 13 of the Kansas Constitution,” that the “business is not relocating from one county to another within this state,” and that the “exemption-incentive shall be in the amount of one hundred percent (100%) tax abatement of the real estate, improvements,

and personal property [situated on the facility site] as long as Target continues to meet the requirements of this resolution.”

Additionally, Resolution No. 2005-69 states that Target shall have the exemption-incentive provided Target meets five eligibility requirements. The focus of this appeal is the requirement that Target would maintain six hundred (600) positions to accommodate operation of the facility.

The 2005 resolution states that Shawnee County did not guarantee that Target would receive an exemption-incentive of any amount for any or all years for which it was eligible. The resolution states that eligibility “shall be determined annually” and that failure to meet the eligibility requirements set forth in the resolution in a given year “shall result in no exemption-incentive being granted for that year.”

On May 9, 2005, the Shawnee County Appraiser forwarded Target’s exemption application to BOTA with the recommendation that Target’s requested exemption be granted. On June 10, 2005, BOTA issued an order granting Target’s exemption pursuant to Article XI, Section 13 of the Kansas Constitution.

Every year since the exemption was granted, Shawnee County has required Target to reapply for the exemption. Target has reapplied for the exemption each year but maintains that it is not required to do so.

On January 17, 2006, Target filed a written request and a one hundred dollar (\$100.00) fee with Shawnee County seeking renewal of its exemption for the 2006 tax year. In February 2006, there were two meetings between Shawnee County staff and Target representatives. At one of the meetings, Hans Carttarr of Target indicated that Target’s job numbers were low due to technological changes at the facility. Mr. Carttarr also explained that because of these changes, Target could operate its facility with fewer employees than anticipated and at substantial savings to Target. At one of the meetings, Mr. Carttarr also provided Shawnee County information concerning the total number of annual hours worked by Target employees at the facility in the preceding tax year. This information was provided to the Board of Shawnee County Commissioners during its public meeting to determine whether to renew Target’s exemption for the 2006 tax year.

After its review of Target’s job retention numbers, Shawnee County denied Target’s renewal request and placed the Target facility back on the tax rolls. Shawnee County sent Target valuation notices for the property. Target timely appealed the county’s valuation notices.

On September 27, 2006, Target made a payment to Shawnee County in the amount of \$396,000 as remittance for Target’s failure to attain or maintain at least 650 jobs in the period between July 1, 2005 and June 30, 2006.

Target has paid Shawnee County both the first and second-half installments of the 2006 *ad valorem* property tax for the subject property.

## II. Analysis

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. K.S.A. 60-256(c); *Mitzer v. State Dept. of SRS*, 257 Kan. 258, 260, 891 P.2d 435 (1995). The purpose of summary judgment is to eliminate delay in legal disposition where there is no real issue of material fact. *Timi v. Prescott State Bank*, 220 Kan. 377, 386, 553 P.2d 315 (1976). Because this appeal involves the interpretation of a written contract – which is a legal determination – this appeal is particularly suited for summary judgment.

Shawnee County contends the Board should uphold the *ad valorem* assessments of the Target distribution facility for the tax years in issue because the county has both the right and obligation to perform an annual review of Target's exemption. According to the county, upon review of the exemption in 2006, it decided not to renew Target's exemption after determining that Target had failed to retain 600 jobs at the Target facility. This job retention obligation, the county argues, is a strict requirement for continuing eligibility for its exemption under Shawnee County Resolution No. 2005-69. Shawnee County requests that the Board defer to the county's determination that Target is no longer eligible for the exemption and hold as a matter of law that the county's assessments for the tax years in issue are valid.

Target contends that Shawnee County's assessment is unauthorized and unlawful because the assessment unilaterally countermanded a 100 percent, 10-year exemption granted by this Board in June 2005. According to Target, the job retention obligations in the 2005 resolution, (which is the crux of this dispute), cannot be reconciled with the terms of the Development Agreement. Alternatively, Target argues that even if the job retention obligations in the 2005 resolution can be reconciled with the terms in the Development Agreement, Target has in fact complied with the 2005 resolution's job retention obligations. Target maintains that it has satisfied all conditions for continuing exemption eligibility and that under no circumstances should the exemption have been revoked by Shawnee County. Target requests that the Board rule as a matter of law that its exemption continues to be in effect and that the subject assessments are void.

The general framework for analyzing these consolidated appeals is as follows. First, the Board must determine whether Shawnee County had the authority to require annual reviews of Target's exemption. If Shawnee County had the authority to require annual reviews, the Board must then determine what terms and conditions governed review of Target's job retention obligations. Next the Board must determine whether the affirmative defenses of modification or waiver operate to adjust the rights and obligations

of the parties. Finally, the Board must determine what effect, if any, the 2005 BOTA exemption order had on the parties' rights and obligations under the Development Agreement.

A. Did Shawnee County have the authority to require annual review of Target's economic development exemption?

K.S.A. 79-251 prescribes the procedure governing property tax exemptions for economic development under Section 13, Article 11 of the Kansas Constitution. The statute provides that prior to granting such exemptions, the board of county commissioners (or other governing body, as the case may be) must develop and adopt official policies and procedures for granting such exemptions. K.S.A. 79-251(a). These policies and procedures must include requirements for cost-benefit and fiscal impact analyses of each exemption prior to its granting. *Id.* They also must include a procedure for "monitoring the compliance of a business receiving an exemption with any terms or conditions established by the governing body for the granting of the exemption." *Id.*

As required by K.S.A. 79-251(a), Shawnee County enacted Resolution No. HR-2002-9 on June 27, 2002. The resolution is titled "Stating the Policy and Procedures for Tax Exemptions and Incentives for Economic Development." The resolution, among other things, set up initial exemption review procedures, established standards for conducting the statutory cost benefit-analysis, and authorized an administrative review committee to carry out initial negotiations with potential exemption applicants. The resolution also provided that any exemption granted by Shawnee County would be subject to "annual review and determination" by the Shawnee County Board of County Commissioners to ensure that ownership and use of the property and any other qualifying criteria of the business for exemption continued to exist.

It is clear that, pursuant to K.S.A. 79-251(a), Shawnee County had the authority to develop and adopt official policies and procedures for monitoring Target's compliance with any terms or conditions of Target's economic development exemption. Shawnee County exercised that authority by enacting HR-2002-9. Also, notably, section 9 of the Development Agreement specifically states that Target could apply for any exemption under Shawnee County Home Rule Resolution No. HR-2002-9. That resolution specifically established an annual review process. The Board finds that Shawnee County had the authority to require annual review and renewal of Target's economic development exemption pursuant to K.S.A. 79-251(a) and HR-2002-9.

B. What are the terms and conditions governing Shawnee County's review of job retention at the Target facility?

The basis of Shawnee County's revocation of the exemption is its contention that Target failed to meet the terms and conditions governing job retention set forth in Shawnee County Resolution No. 2005-69. Shawnee County contends that the job retention requirements in the 2005 resolution are effective notwithstanding the terms governing job retention set out in the 2002 Development Agreement. Target disagrees, contending that all terms and conditions concerning job retention and the exemption status of the facility were negotiated, agreed upon, and set out comprehensively by the parties in the Development Agreement.

The express intent of the parties with regard to job retention and exemption status, as set out in the Development Agreement, is paramount. If the written language of the Development Agreement is unambiguous, there is no room for rules of construction. *Kansas Public Employees Retirement System v. Russell*, 269 Kan. 228, 236, 5 P.3d 525 (2000). A basic rule of contract law is that parties to a contract are permitted to choose the terms by which they are bound. *See Squires v. Woodbury*, 5 Kan. App. 2d 596, 598, 621 P.2d 443 (1980), *rev. denied* 229 Kan. 671 (1981). Where the parties' relationship is clearly defined in a written contract, there is no room to apply legal theory that might have existed but for the written contract. *Boos v. Nat'l Fed'n of State High School Assoc.*, 20 Kan. App. 2d 517, 523, 889 P.2d 797 (1995).

Whether ambiguity exists in a written contract is a legal determination. *Weber v. Tillman*, 259 Kan. 457, 476, 913 P.2d 84 (1996). Ambiguity exists in a written contract where the provisions are of doubtful or conflicting meaning as gleaned from a natural and reasonable interpretation of the text. *Id.* In the instant appeal, the parties agree that the contract is unambiguous; they are, however, in stark disagreement as to its meaning. Ambiguity does not exist merely because the parties disagree on how the text of the contract should be interpreted. *See Jones v. Reliable Security, Inc.*, 29 Kan. App. 2d 617, 627, 28 P.3d 1051 (2001). The Board finds that the Development Agreement is unambiguous and must therefore be interpreted on its face; there is no basis for this Board to engage in rules of construction.

Under the Development Agreement, the parties clearly state that Target “**plan[ned]** to create a minimum of Six Hundred Fifty (650) Full-Time Equivalent Jobs” with certain specified wage and benefit requirements. *See* Development Agreement § 7.1 (emphasis provided). If Target failed to bring its job creation plan to fruition by the first anniversary date of the facility's opening, the parties agreed that Target would “**not be in default**” but would be required to pay Shawnee County \$4,000 per job multiplied by the number of jobs by which Target missed the mark. *See id.* (emphasis provided). The parties refer to these payments as “claw-back” payments.

Section 7.2 of the Development Agreement prescribes identical parameters for job retention throughout the remaining life of the exemption and stipulates that Target's failure to meet the job retention obligations would be subject to claw-back payments and would **not constitute default** under the Development Agreement.

The job retention obligations in the 2005 resolution plainly conflict with the bargain the parties formalized under the 2002 Development Agreement. In the 2005 resolution, the obligations are expressed as an absolute eligibility requirement; yet nowhere in the 2002 Development Agreement did the parties allow for the retention of any number of jobs to be a requirement for continuing exemption eligibility. Instead, the Development Agreement contains a stipulated consequence for Target's failure to meet its job retention obligations – claw-back payments – and the contract also clearly renounces any basis for a claim of default based on job retention shortfalls.

The Board finds that the job retention obligations contained in the 2005 resolution – which are expressed as an absolute condition of continuing exemption eligibility – cannot be reconciled with the job retention covenants contained in the 2002 Development Agreement. Through the Development Agreement the parties acknowledged unequivocally that claw-back payments, not exemption forfeiture, would be the consequence of Target's falling short of its anticipated job retention levels.

C. Do the affirmative defenses of modification or waiver apply?

Shawnee County suggests that even if the parties acknowledged in the Development Agreement that there would be no forfeiture of the exemption based on job retention shortfalls, passage of the 2005 resolution effectively modified the 2002 contract or operated as a waiver of Target's right to enforce that contract as written.

Modification of a written contract requires a meeting of the minds, or mutual assent. *Idbeis v. Wichita Surgical Specialists, P.A.*, 279 Kan. 755, 774, 112 P.3d 81 (2005). One party to a contract cannot unilaterally modify the terms of a contract. *Fast v. Kahan*, 206 Kan. 682, 684, 481 P.2d 958 (1971). In this case, the Development Agreement itself contains a specific provision prescribing how the contract could be modified. Section 24 provides that the contract may be amended only by the written agreement of the parties and executed with the same formalities as the Development Agreement. Based on the uncontroverted facts, the Board finds the parties did not mutually assent to a modification of the agreement and did not amend the agreement in accordance with § 24 of the agreement. There was no modification of the terms of the Development Agreement.

The Board also finds, under the uncontroverted facts, that Target did not waive its right to challenge Shawnee County's decision to revoke the exemption for the tax years in question. Waiver, as it relates to contract law, implies that a party has voluntarily and intentionally renounced or surrendered a known right or has done something that is inconsistent with that right. *Stratmann v. Stratmann*, 6 Kan. App. 2d. 403, 410, 628 P.2d 1080 (1981). The continued recognition of a contract as binding by one party after the other party's breach acts as a waiver of the breach. *See* 17A AM. JUR. 2D, *Contracts* § 714 (database updated 2007).

In this case, the uncontroverted facts provide no basis for Shawnee County to assert a waiver defense. While the contents of the 2005 resolution were of public record shortly after the resolution was passed, Shawnee County did not place the property back on the tax rolls until March 2, 2006. Target timely appealed the tax after receiving its tax bill. Before the property was placed back on the tax rolls, Target had a reasonable expectation that Shawnee County would honor the terms of the Development Agreement and accept claw-back payments for any job retention shortfalls. Shawnee County breached the Development Agreement, not when it attempted unilaterally to modify the terms of the contract, but when it placed the property back on the tax rolls.<sup>1</sup> Target promptly objected to the county's actions by appealing the tax.

Based on the uncontroverted facts, the Board finds as a matter of law that Target's conduct cannot reasonably be construed as a voluntary and intentional renouncement or surrendering of its rights under the Development Agreement. Irrespective of the language of the 2005 resolution, there is no evidence that Target said or did anything that was inconsistent with the position it has maintained throughout this appeal – that its job retention obligations were not an absolute condition of the exemption but were instead covenants, the breach of which would result in stipulated claw-back payments.

The county also points to evidence of Target's "course of performance" (conduct after execution of the Development Agreement) to suggest that Target somehow waived its contract rights or modified the Development Agreement. The Board finds that course of performance evidence is of no consequence here because the Development Agreement is not ambiguous. *See generally Fourth Nat'l Bank & Trust v. Mobil Oil*, 224 Kan. 347, 582 P.2d 236 (1978) (terms of contract are unaffected by parties' subsequent conduct when contract is not ambiguous.)

Under the uncontroverted facts, the 2005 resolution did not effectively modify the Development Agreement. There also is insufficient factual support for Shawnee County's affirmative defense of waiver.

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<sup>1</sup> Passage of the 2005 resolution, which conflicted with the 2002 Development Agreement, could conceivably have been an anticipatory repudiation on the part of Shawnee County. Nevertheless, even if the resolution were characterized as such, Target still would have had the option either to accept the repudiation and treat it as an immediate breach or wait until an actual breach occurred.

D. What effect, if any, did the 2005 BOTA exemption order have on the parties' rights and obligations under the Development Agreement?

Shawnee County argues, in effect, that because the 2005 BOTA order exempting the Target facility references the 2005 resolution, the job retention requirements set forth in the 2005 resolution should trump those set forth in the Development Agreement. Further, the county argues that because Target failed to seek reconsideration of the BOTA order, Target's right to object to the county's actions are now foreclosed. The county's argument is not persuasive.

As Shawnee County points out, it is not this Board's role to make prudential determinations concerning economic development or to review a county's political decision to grant or deny an exemption. This Board serves the limited role of ensuring that exemption applications comply with Kansas law.

In this case, the Board exercised its limited authority by reviewing Target's exemption application – which was not contested by Shawnee County – and making specific findings that both Target and the county had satisfied all conditions for the exemption as set forth in the Kansas Constitution and K.S.A. 79-251. While the BOTA exemption order does specifically reference Shawnee County's 2005 resolution, that reference merely acknowledges that the 2005 resolution stated legally satisfactory findings of fact. It is erroneous to suggest that this Board's 2005 exemption order merged or extinguished all rights and obligations under the Development Agreement or somehow sanctioned Shawnee County's unilateral attempt to modify the agreement. The 2005 BOTA exemption order does not operate to foreclose the parties' contractual rights and obligations under the Development Agreement.

### **III. Conclusion**

While Shawnee County does have the authority to perform annual reviews of Target's tax exemption, the scope of those reviews is circumscribed by the terms of the Development Agreement. In the Development Agreement, the parties specifically agreed that Target's failure to meet its job retention obligations would trigger claw-back payments, not an event of default resulting in forfeiture of the exemption.

Target has remitted payment of all claw-back payments due and owing under the Development Agreement. Thus, based on the uncontroverted facts, the Board finds Target to be in material compliance with all terms and conditions governing job retention at the Target facility. The Board finds and concludes as a matter of law that Shawnee County had no justification or authority to place the subject property back on the tax rolls for the tax years in question. It has long been held that municipalities may not use their legislative authority to relieve themselves of their obligations under contract, whether by unilaterally modifying the contract terms or rescinding the agreement, unless the rights to

modify or rescind are expressly reserved in the contract itself. *See W.M. Mills v. City of Osawatomie*, 59 Kan. 463, 468, 53 P. 470 (1898). Shawnee County did not expressly reserve the right to unilaterally modify, amend or rescind the Development Agreement.

Shawnee County's assessment of *ad valorem* taxes against the subject property for the tax years in question was improper because the property should have remained exempt from taxation under Article 11, Section 13 of the Kansas Constitution and K.S.A. 79-251 during that period.

Target's Motion for Summary Judgment is hereby granted and Shawnee County's Motion for Summary Judgment is hereby denied. Shawnee County is ordered to remit all necessary refunds to comply with this order.

Any party to this appeal who is aggrieved by this decision may file a written petition for reconsideration with this Board as provided in K.S.A. 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 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