

Dear Rep. Schwartz,

On Monday, HB 2735 is coming up for a hearing. I understand the background for this bill stems from two taxpayers in Marshall County. I have been asked to provide you with further information, so that you can make a better informed decision. Of course, tax policy is entirely up to the Kansas Legislature. It is only my role to provide you information that you may find useful.

The Union Pacific Railroad railbanked their line from Marysville, North to the Nebraska state line. Due to a BOTA ruling in 2007 (In the Matter of the Protests of Kanza Rails-Trails Conservancy, Inc., No. 2007-723-PR through 2007-785-PR), the landowner is responsible for taxes on the "railroad right-of-way" as they are the fee simple owner. On January 1, 2009, the property subject to the right-of-way was a long, narrow strip of land covered with grass and brush that was largely surrounded by cropland. The property had been subject to creosol, compaction and rock for years, and would not produce true to its soil type even if farmed. Therefore, I followed Division of Property Valuation guidelines and classed and valued the land as Agricultural Land--Waste at \$10 per acre (this averaged around \$.36 per acre in taxes). The Division of Property Valuation guidelines on agricultural use value -- wasteland can be found at <http://ksrevenue.org/pdf/agwaste.pdf>.

Despite the low taxes, thirty-two (32) landowners, represented by R. Deryl Edwards of Joplin, Missouri, paid their 2009 taxes under protest. From this appeal, I realized the government-imposed restrictive use of the property as a recreational trail placed a burden on the underlying landowners that could be recognized under K.S.A. 79-503a(j). So, during the informal appeal process, I assigned a fair market value of \$0. From an appraisal perspective, I believed the narrow strip of land that was undeveloped as of January 1, 2009 had no value to the underlying property owners. They could not farm it; furthermore, its use as a public recreational trail caused them some inconvenience at the time due to litter and vandalism.

Once the taxes were lowered to \$0, only two (2) landowners of the undeveloped, narrow strip of land subject to the railbanked right-of-way appealed to the Kansas Court of Tax Appeals (COTA). Over the course of many hearings, COTA granted the taxpayers request for a value of \$4000 per acre on the fee simple interest in property subject to the railroad right-of-way. The Taxpayer expressly testified before COTA that they wanted the value of the property in their own hands to be \$0, but the taxes in the hands of the trail to be \$4,000 or more per acre. COTA did not separate out the right-of-way from the entire fee simple interest, likely due to the definition of a taxpayer in K.S.A. 79-1460 and the definition of real property in K.S.A. 79-102 (entire fee simple interest). The taxpayer was worse off for their appeal.

The county did ask for reconsideration from COTA to place the original value of \$10 per acre or \$0 on the property. We were denied reconsideration, but COTA has granted a limited reconsideration on the taxpayers request that the court erred and that the right-of way should be taxed as a public utility property pursuant to KSA 79-5a01. Briefs and oral arguments before COTA will be held within the next few months. This property was not an operating railroad on January 1, 2009, the date at issue in the 2009 protest.

As of this date, no supplemental tax has been issued on the COTA original ruling, as we are awaiting the final results of the hearings. It is my hope that the taxpayers will not have to pay an unreasonable amount for having a trail run through their property.

Today, unlike the date at issue in the 2009 tax appeal, the trail is developed and cared for. It is used regularly by the public and strongly endorsed by the local governing bodies as well as the medical community.

I appreciate your interest in wanting more facts on this matter. I would be happy to answer any questions you might have regarding this case.

Sincerely,

Janet Duever, RMA

Marshall County Appraiser