

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Buss Partnership/Rodney S. Buss
DOCKET NO.: 05-00752.001-F-1
PARCEL NO.: 11-04-400-006

The parties of record before the Property Tax Appeal Board are Buss Partnership/Rodney S. Buss, the appellant, and the Lake County Board of Review.

The subject property consists of a 19.77-acre parcel located in Libertyville, Libertyville Township, Illinois from which a nursery landscaping business has operated since 1977. In summary, the property consists of a single-family dwelling with homesite, outbuildings, farmland and wasteland (.15-acres).

The appellant appeared before the Property Tax Appeal Board claiming that a larger portion of the subject tract should be classified and assessed based on agricultural use (farmland), thereby reducing the size of the 1.78-acre tract currently classified as homesite down to a .5-acre homesite. In support of this contention, appellant submitted several aerial and ground-level photographs, receipts for plants and provided testimony at the hearing that portions of the area currently classified as homesite have been used for farming purposes for several years prior to 2005.

An aerial photograph of the homesite area in dispute on page 4 of appellant's prepared materials clearly depicts a large wooded area encircling the dwelling on three sides; it is this "mulched propagation area" which appellant contends is erroneously classified as homesite. In testimony, appellant described that as of 1989 the entire area surrounding the dwelling was mowed lawn. He further testified that this forested area around the dwelling is known as a remnant forest consisting of many old oak, black cherry and hickory trees. After having lost a number of large trees in that area, appellant consulted with an arborist in an effort to curtail the loss of these old growth trees.

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds no change in the assessment of the property as established by the Lake County Board of Review is warranted. The correct assessed valuation of the property is:

FARMLAND	HOMESITE	RESIDENCE	OUTBUILDINGS	TOTAL
\$574	\$38,458	\$76,652	\$69,353	\$185,037

Subject only to the State multiplier as applicable.

PTAB/cck/11-20

The arborist advised appellant to stop propagating grass beneath these trees and to instead put down mulch. Appellant also testified that the arborist had advised that placing mulch down instead of grass in the remnant forest would both stop the death of the oak trees and it would also cause some regeneration in that acorns would find a place to germinate. In about 2000 appellant testified that the area had a large crop of acorns from these oak trees. In an effort to nurture these acorns, the entire area was re-mulched to further cover the acorns and as a consequence, appellant testified that these scattered acorns took hold such that about 500 seedling oaks are now (in 2007) from 18-inches to 36-inches in height.

Among the appellant's photographs is one which depicts an open area just west of the dwelling on the edge of mature trees, a grassy area and shrubs surrounding the dwelling with a scattered array of oak seedlings, each apparently with a wooden stick and a protective plastic shield tube, in no particular row or alignment. Another set of smaller photographs depicts rows of smaller shrubs as part of the nursery juxtaposed with the scattered oak seedling plantings in the distance.

Appellant contends that these oak seedlings are a crop just like the rows of cultivated plants depicted and therefore farming activity as appellant believes these locally grown and cultivated oak tree seedlings will have a marketplace in the future, particularly since, historically, oaks grown in the local area tend to more readily survive than imported oak trees. Appellant also testified that for a reforestation project he believes you are better off starting with small things, but their clients may not want to have twenty oaks in their yard and instead would want to have two or three oaks.

Another photograph submitted by appellant depicts a mature-tree wooded area east of the dwelling which is interspersed with more immature trees with tape-wrapped trunks (eight arrows drawn on the photo detail the tree specimens depicted). Appellant's documentation also includes purchase receipts for a total of 126 plants dating from 1998 until 2002 concerning red oak, redbud, white oak, and other species which appellant contends were installed in these disputed areas surrounding the dwelling. In testimony, appellant indicated that beginning in about 1998 he and his brother began planting redbud trees in this remnant forest area based on the theory that redbud trees would thrive in the dappled sunlight beneath these old growth oak trees. They planted 30 redbud trees that year. Then in 1999, they planted 60 red oak trees; in 2000, more redbud trees were planted; they also planted some white oak and then more redbud trees which were doing very well. Appellant further testified that they continue to mulch the area every three to four years and they have

continued to plant additional trees from time to time in these areas surrounding the dwelling.

The appellant claimed these trees, such as redbuds, oak, cherry, witchhazel and red oak, could be harvested and sold from its retail nursery located elsewhere on the premises if the tree met the needs and desires of the client (i.e., the nursery would have the tree "in stock"); appellant noted that clients typically do not walk the property and select a particular tree. However, on examination by the hearing officer as to some of the larger trees depicted in the photograph on page 6 of appellant's evidence, appellant could not say when, or if ever, for instance, the redbud tree noted in that photograph would be sold to a client of the landscaping business; it might be sold or as part of managing the area, it or another tree might be cut down if the trees are too crowded. As to the oaks planted in this portion of the disputed area, appellant testified that they could be sold now or they could be "lined out" and allowed to become larger trees, but appellant and his brother have not yet decided what to do with them.

On examination by the hearing officer, appellant was unable to testify as to how many plants have been harvested from the area in dispute over the last nine years as no such location specific records are maintained. Notably, not until specifically asked by the hearing officer did the appellant even affirmatively contend that plants from the disputed area had actually been harvested and sold. In fact, in response to the question, appellant was extremely vague and summary. He asserted that "plants" have been sold to customers from the disputed areas; he could not specify what, when, to whom or for how much the "plants" were sold.

In the course of his testimony, appellant cited to Illinois Department of Revenue "guidelines" as to the definition of a homesite as being "a part of the farm parcel used for residential purposes and includes the lawn and land on which the residence and garage are situated." Appellant also referred to the requirements of Bulletin 810 issued by the Illinois Department of Revenue which requires assessors to use aerial maps and photography to determine farm acreage, rather than assigning an arbitrary number of acres.

For purposes of this appeal, appellant testified that he measured the area around the dwelling with a Rolotape measuring wheel making a distinction between lawn areas as homesite area and mulched areas as not part of the homesite. Thus, appellant asserted based upon his measurements that the footprint of the dwelling, a portion of the dairy barn which contains an apartment, two mowed lawn areas, some of the parking, septic field and some of the road access to the dwelling totaled 21,780

square feet of land area or about .5-acre. (Depicted in Exhibit C of appellant's rebuttal submission).

In conclusion, appellant argued that the area in dispute should be deemed to be part of the farmland because it is not used by the appellant for any other purpose; for instance, there is no swimming pool, swing set or barbeque grill in the disputed area. He noted that the neighboring properties to the north, south and west are part of the Lake County Forest Preserve District which the appellant and his family visit frequently and thus simply walk across the disputed area to enter. Based on this evidence, the appellant requested re-classification of the disputed homesite area as farmland along with a reduced farmland assessment for that portion of the property.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment was disclosed. Among the documentation submitted by the board of review was a black and white aerial photograph of the subject property which depicts rows of plantings in an area delineated as cropland. In contrast, the wooded area surrounding the dwelling on three sides has no such planting pattern. The board of review also presented testimony from an on-site inspection of the property to support its contention of the correct classification of the disputed land. Based on its evidence and testimony presented, the board of review was of the opinion that the area in dispute was not primarily agricultural in nature and therefore should more appropriately be deemed to be part of the dwelling homesite. As such, the board of review requested confirmation of the subject's assessment.

Board of review member Gunta Hadac was called by the board of review to testify regarding a field visit she made along with the deputy township assessor as a result of the appellant's original appeal before the Lake County Board of Review. Documentation filed by the board of review indicates the visit occurred in January 2006. As a consequence of that field visit, the board of review adjusted its measurements and classifications of various parts of the subject parcel. Despite these adjustments, however, appellant maintains the contentions made previously regarding the area in dispute.

As to the area in dispute, Hadac testified that she observed the homesite to have different ground types, soils and plants around the dwelling. Along the roadway to the east of the dwelling, she observed a swale area which contained larger oak trees (pictured on page 6 of the appellant's evidence). While Hadac recalled observing one redbud with a wrap on the trunk, she did not observe anything being harvested or grown for the business and believed the area to be primarily used for drainage. Also, given the size of this redbud and from her experience in dealing with

mature trees, she did not believe that particular redbud could be removed without disturbing the surrounding mature trees. Furthermore, she testified that the plantings in the area appeared to be a natural part of the landscape rather than plantings ready to be harvested; from her observation, these plantings would serve the purpose as buffering areas, providing some amount of privacy to the dwelling from persons coming up the drive of the landscaping business.

To the south of the dwelling, Hadac observed a slightly higher elevation area of older trees, grass and bushes, but no plantings that she observed that were incubating outside of a "normal yard." Directly to the west of the dwelling, Hadac observed a concentrated landscaped area, but farther to the west of the dwelling the area appeared to be dry and lying fallow; she did not observe any plantings or anything being incubated or harvested as part of a farm site, except that there were plants that had protection around them. When shown the photograph on page 7 of appellant's evidence, Hadac noted that on her visit she did not observe as many oak seedlings with protective sheaths as shown in the photograph. Moreover, in this western area there was no evidence of any activity of harvesting; it appeared to be pristine. There were weeds and other plants growing around this area so that it did not appear to Hadac that there was any activity in this area of the property; nothing reflected that it was similar to harvesting in rows like other parts of the subject property.

On cross-examination by the appellant, Hadac acknowledged that there were "some" potential nursery plants growing in the disputed area. On further cross-examination, she noted that there was no threshold number or density in order for a particular area of land to qualify as a nursery.

In rebuttal, appellant testified that the predominant area of plantings in the disputed area is directly east of the residence (depicted on page 6 of appellant's evidence). He also noted that in the area to the south of the dwelling efforts had failed at growing both serviceberry and propagation of oaks. To the west of the dwelling, appellant contended that the area was densely packed with oak seedlings beneath the mature oak trees as reflected in the photographs submitted, although appellant noted the photographs were probably taken around August 2006.

In closing argument, appellant contended that the evidence established that the disputed area has been used for nursery plants. Moreover, he asserted that there was no agenda when the planting began in 1998; rather, only once the county modified its historical treatment of the size of the homesite due to Bulletin 810 did appellant contest the classification of the property in light of these historic plantings. In summary, appellant noted

that this activity in the disputed area is consistent with the nursery and landscaping business engaged in on other parts of the property.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds that the area in dispute of the subject property is not entitled to a farmland classification and a reduction in the subject's assessment is not warranted.

Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) defines "farm" in part as:

... any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, **plant or tree nurseries**, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming. ...
[Emphasis added.]

Here, the primary issue is whether the disputed areas of the subject parcel are used primarily for agricultural purposes as required by Section 1-60 of the Property Tax Code. In Senachwine Club v. Putnam County Board of Review, 362 Ill. App. 3d 566 (3rd Dist. 2005), the court stated that a parcel of land may be classified as farmland provided that those portions of the property so classified are used solely for agricultural purposes, even if the farm is part of a parcel that has other uses. Citing Kankakee County Board of Review, 305 Ill. App. 3d 799 at 802 (3rd Dist. 1999). The Board finds that in order to receive a preferential farmland assessment, the property at issue must meet this statutory definition of a "farm" as defined above in the Property Tax Code.

Additionally, to qualify for an agricultural assessment, the land must be farmed for at least two years preceding the date of assessment. (35 ILCS 200/10-110). Testimony did reveal that the disputed property has been planted since 1998 or thereabouts with a variety of plantings both by introduction of new species and by aiding natural growth of acorns from the existing old growth oak trees. The Board finds that, while there has been some effort at planting and encouraging tree growth in the disputed areas within two years prior to the assessment date at issue, the appellant

failed to establish that any intensive, deliberate or ongoing farming activity was being performed in these areas. Instead, the existing remnant forest surrounding the instant dwelling appears to be more in the nature of a buffer zone for the dwelling both from the business aspects on the property and the property lines on the west and south. Any tree planting done within this disputed area appears to be incidental to its primary use of maintaining the old growth trees and maintaining this buffer zone.

The Board further finds the addition of mulch to assist in the germination of acorns which dropped from old growth oaks does not constitute an ongoing active farming of the disputed land, particularly where the appellant made reference to efforts at reforestation in his testimony. There was insufficient evidence of activity associated with cultivating, pruning, digging up, potting, or transporting these trees in what might be termed farming activity. The board of review's presentation of testimony was clear that these areas appeared to be undisturbed. Additionally, the appellant provided no unbiased witnesses to testify that they had observed farming activity in the disputed areas. In contrast, the member of the board of review testified that, while she saw plantings that could be sold, she did not observe anything akin to farming activity in the disputed areas around the dwelling. A parcel of property may properly be classified as partially farmland, provided those portions of property so classified are used solely for the growing and harvesting of crops. Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill. App. 3d 872, 875, 448 N.E.2d 3, 6 (3rd Dist. 1983).

Within the definition of "farm," the Property Tax Code provides that:

For purposes of this Code, "farm" does not include property which is primarily used for residential purposes even though some farm products may be grown or farm animals bred or fed on the property incidental to its primary use. (35 ILCS 200/1-60)

Even without "farming" activity, there also was insufficient evidence that one single planting from the disputed area has been harvested or sold for profit as part of the appellant's landscaping or nursery business which again suggests a lack of farming activity.

The focus of appellant's argument was basically that nothing of the nature of the ground in the disputed area establishes it as being part of the appellant's homesite for recreational or outdoor use and enjoyment; it was not part of his "lawn." However, the mere fact that the disputed area is not used by the

appellant for actual recreational purposes does not automatically transform the area into agricultural use. Instead, the question before the Property Tax Appeal Board is what of the nature of the ground in the disputed area makes it fall within the definition of farmland?

On this record, there is nothing in the record to distinguish the instant activities of the appellant on the disputed land from a mere plan to reforest the area as opposed to creating additional cropland for use by the business. The Board finds the evidence submitted by the appellant fails to establish that the land in the disputed areas is being used solely for the growing and harvesting of plants or trees. Thus, the Board finds that the appellant's evidence and testimony has failed to adequately establish the area in dispute as being appropriate for a farmland classification under the Property Tax Code.

The Property Tax Appeal Board finds that the disputed area of the subject property is not entitled to a farmland classification and no change in the classification of the subject's farmland assessment is necessary.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.



Chairman



Member



Member



Member



Member

DISSENTING: _____

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: December 7, 2007



Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing

complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.