**PROPERTY TAX APPEAL BOARD'S DECISION**

APPELLANT: Ronald Benzschawel
DOCKET NO.: 05-01935.001-F-1 and 05-01935.002-F-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Ronald Benzschawel, the appellant, by attorney David D. Albee of Galena, Illinois, and the Jo Daviess County Board of Review.

The subject property consists of two parcels totaling 120.21 acres located in West Dundee, Derinda Township, Jo Daviess County, Illinois. Parcel number 04-000-248-03 (hereinafter referred to as "parcel 03") consisting of 41.21 acres has 15.1 acres enrolled in the Conservation Reserve Program ("CRP") of the United States Department of Agriculture through 2006 and this portion receives a farmland assessment; parcel number 04-000-332-00 (hereinafter referred to as "parcel 00") consisting of 79 acres has 27.5 acres enrolled in CRP through 2006 and this portion receives a farmland assessment. The remaining parcels 75.20 acres are timber/woodland, except for a non-active quarry of 2.41 acres on parcel 00.

The appellant appeared through counsel before the Property Tax Appeal Board for a consolidated hearing. Because of the similarity of contentions in five appeals with Attorney Albee as counsel for each, a consolidated hearing was conducted, but decisions will be rendered in the individual cases. In summary, appellant claimed that the subject tracts should be classified and assessed based on agricultural use and further presented a

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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 **Jo Daviess** County Board of Review is warranted. The correct assessed valuation of the property is:

**PARCEL NO.: 04-000-248-03:**

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| FARMLAND: | $ 235 |
| LAND: | $ 13,055 |
| RESIDENCE: | $ 0 |
| FARM BLDGS: | $ 0 |
| TOTAL: | $ 13,290 |

**PARCEL NO.: 04-000-332-00:**

| | |
|---|---|
| FARMLAND: | $ 1,662 |
| LAND: | $ 25,750 |
| RESIDENCE: | $ 0 |
| FARM BLDGS: | $ 0 |
| TOTAL: | $ 27,412 |

Subject only to the State multiplier as applicable.

PTAB/cck/5-12

legal argument contending the property was illegally assessed for the 2005 assessment year.[1]

As to the classification issue, as drawn from the Farm Appeal petition, appellant contends parcel 03 consists of 26.11 acres of woodland and 15.1 other acres for a total of 41.21 acres, all of which qualify for a farmland preferential assessment. As to parcel 00, as drawn from the Farm Appeal petition, appellant contends the parcel consists of 51.5 acres of woodland and 27.5 other acres for a total of 79 acres, all of which qualify for a farmland preferential assessment.

In support of these assertions, appellant submitted property record cards of the subject along with an enlarged aerial photograph representative of conditions on March 27, 2002 along with numerous parcel identification numbers and parcel boundary lines superimposed. Appellant also asserted that pursuant to the Jo Daviess County Comprehensive Plan, the subject property is a designated Agricultural Preservation Area and is zoned "Ag-1 General Agricultural District" (copies of county zoning data and a map, purportedly from the Comprehensive Plan, were enclosed). Appellant contends that property used for any agricultural or horticultural use or combination thereof is properly classified as farmland.

Counsel further asserts that the taxpayer's use[2] of the subject property falls within the traditional definition of "agricultural" citing People ex rel. v. City of Joliet, 321 Ill. 385 (1926) which involved the annexation of land under existing statutes. In reliance upon the aerial photograph of the subject and surrounding properties, appellant argues in the brief that comparable parcels in close proximity to the subject contain some cropland as well as some woodland. Appellant further asserts that an examination of the accompanying fourteen (14) property record cards reveals that none of these comparables has been assessed as partially "rural residential" like the subject, but instead enjoy 100% farmland assessments. In addition, appellant presented a comparison analysis prepared from data obtained from the United States Department of Agriculture. This latter chart purportedly reflects the number of "Farm Service Agency" acres held respectively in cropland and non-cropland; the chart lists fourteen (14) parcel numbers with acreage ranging from 40 to 183.88 acres and their respective "FSA" cropland and non-cropland acreage (copies of the underlying property record cards are also attached). The percentage of cropland to non cropland ranges from 0% to 63%. The two parcels comprising the subject are said to have a cropland to non cropland percentage of 33%.

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[1] The Property Tax Appeal Board's jurisdiction is limited by statute to determining the correct assessment of the subject property (35 ILCS 200/16-180). Since the legal issues were raised and responded to, without deciding those matters the Board will outline its analysis of the legal matters raised.

[2] Attorney Albee indicated that he believed the disputed land was mainly woodland which was "at present" [date of hearing October 7, 2008] enrolled in the forestry program and the portion in the CRP involved the growing of tall-stem prairie grass or something similar.

As a further challenge to the assessment of the subject property, counsel argued that Jo Daviess County has failed, neglected and/or refused to identify, distinguish and assess the four types of farmland, cropland, permanent pasture, other farmland, and wasteland according to the statutorily prescribed method in violation of Section 10-125 of the Property Tax Code (35 ILCS 200/10-125). Appellant also claims this failure is contrary to the Farmland Implementation Guidelines issued by the Illinois Department of Revenue. Based on the foregoing matters, appellant claimed that his opportunity to locate and compare properties has been limited, restrained and prejudiced. Citing to People v. Holmes, 98 Ill. App. 2d 11, 17 (1968).

Lastly, in support of the improper classification of the subject property, appellant referenced a prior Property Tax Appeal Board decision contending the facts were similar to the instant matter. Appellant cited Richard Nichols, et al., Docket No. 98-132-F-1, et al. In summary, appellant contends the subject property has a similar ratio of pasture land or cropland to wasteland or timber areas, but the subject has not received the preferential farmland assessment for the entire parcel like the comparables have.

In support of the contention of law regarding the improper method of assessment, appellant's counsel submitted a five-page brief. The brief indicates the subject property was reassessed for 2005, *a non-general assessment year* [emphasis in original]. Counsel argued the notice of the subject's assessment increase was not timely mailed to the taxpayer nor was the notice of the subject's increased assessment timely published.

In support of these claims, counsel submitted the notices of revised assessment for the subject parcels dated January 18, 2006. The reason for the change as depicted was "Farmland Recalc, Prop. Class Change." Upon appeal to the Jo Daviess County Board of Review, these assessments were reduced with farmland assessments applied to the acreage enrolled in CRP and the remainder being assessed as rural residential land. Counsel also submitted copies of pages printed from the Jo Daviess County internet website labeled "2005 Real Estate Assessment Information" for the proposition that the official publication of real estate assessments for 2005 occurred in various publications throughout Jo Daviess County on January 18 and 20, 2006. It is noted that properties in Derinda Township, where the subject parcels are located, were published in Village Voices on January 18, 2006. Moreover, this "2005 Real Estate Assessment Information" from the website sets forth the deadline for filing assessment complaints with the Jo Daviess County Board of Review by February 17, 2006 for appeals from Derinda Township.

Counsel further argued the subject property was not reassessed on or before June 1, 2005, which is contrary to and in violation of Section 9-160 of the Property Tax Code (35 ILCS 200/9-160). Additionally, counsel argued in the brief that publication of the assessments was not made on or before December 31, 2005, which is

in violation of Section 12-10 of the Property Tax Code (35 ILCS 200/12-10). Counsel also argued the subject's notice of assessment change was not mailed to the taxpayer in a timely manner, which is in violation of Section 12-30 of the Property Tax Code (35 ILCS 200/12-30). Lastly, counsel contended the classification of "Rural Residential Property" has not been established by ordinance of the Jo Daviess County Board, which is in violation of Section 9-150 of the Property Tax Code (35 ILCS 200/9-150). In further support of these claims, counsel argued that the statutory provisions for publication and notice are designed for the benefit and protection of taxpayers. Moreover, these statutes are mandatory and require strict and timely compliance. In conclusion, counsel argued the failure of the Jo Daviess County assessment officials to give timely publication and notification vitiates the tax resulting from the increase in assessment. As authority for this proposition, counsel cited Andrews v. Foxworthy, 71 Ill. 2d 13, 15 Ill. Dec. 648 (1978).

Although appellant did not appear to testify at the hearing with regard to the use of the subject property, appellant's brief concluded that the "subject property easily falls within the definition of a 'farm.'" Based on the foregoing evidence, the appellant requested the subject parcels be afforded a farmland classification in accordance with the 2004 assessment amounts, or, in the alternative, based on the legal argument, the assessments be returned to the amounts established in the previous general assessment cycle.

The board of review submitted "Board of Review Notes on Appeal" wherein the subject's assessments were disclosed for parcel 03 consisting of $235 for farmland and $13,055 for other land and for parcel 00 consisting of $1,662 for farmland and $25,750 for other land. The board of review was of the opinion that, other than the acreage enrolled in the CRP, the property's primary use was not for farming purposes and that it was assessed accordingly. Thus, the board of review requested confirmation of the subject's assessments. In further response to the appellant's appeal, the board of review presented numerous exhibits along with a letter addressing the issues raised by the appellant's brief.

Exhibit A contained copies of the property record cards for the subject parcels along with color aerial photographs dated April 5, 2007.

Exhibit B is a partial listing of the public notice published in the Village Voices newspaper dated the week of January 18 - January 24, 2006. Among the matters contained in the publication is the "Official Publication of Real Estate Assessments for 2005 Notice to Taxpayer."

Among the parcels set forth on page 2 of Exhibit B are parcels 03 and 00. Also included in Exhibit B were copies of the Notices of Revised Assessment for the subject parcels previously submitted

by appellant. The board of review highlighted that these notices state:

> Assessment protests MUST BE FILED on the proper form, with the Jo Daviess County BOARD OF REVIEW'S OFFICE, NO LATER THAN 30 consecutive days after the date of the publication of assessments (February 17, 2006). Failure to meet this deadline will jeopardize your right to appeal to the Board of Review. [Capitalization in original].

It is further noted that there is no dispute in this proceeding, as reflected in the "Board of Review Notes on Appeal," appellant did file a complaint before the board of review and did appear before the board of review upon proper notice.

Exhibit C is a copy of the results of a sales ratio study from the Illinois Department of Revenue showing the three-year median level of assessments for Jo Daviess County for 2004 was 31.94%. The postmark on the envelope indicated this document was mailed to the Jo Daviess County Chief County Assessment Official (CCAO) on November 7, 2005. The board of review further explained that since the county did not receive the sales ratio study until November 2005, it was not possible to finish the 2005 assessments and publish by December 31, 2005. In support of the legality of the notices issued, the board of review included a copy of Section 26-5 of the Property Tax Code (35 ILCS 200/26-5) as Exhibit D which in pertinent part states, "[a]n assessment completed beyond the time limits required by this Code shall be as legal and valid as if completed in the time required by law."

In response to the appellant's classification arguments, the board of review presented Exhibit E, a copy of the definition of farm from Section 1-60 of the Property Tax Code (35 ILCS 200/1-60), and Exhibit F, a copy of guidelines from the Illinois Real Property Appraisal Manual concerning "idle land" which is not put into use as a qualified farm due to a management decision and that such idle land should be assessed at market value according to its highest and best use. In the letter, the board of review acknowledged that 42.6 acres of the two subject parcels which are enrolled in CRP through 2006 have been assessed as farmland, but the balance of the acreage has been assessed at market value.

Next, in the letter and Exhibits G through Q, the board of review addressed thirteen of the fourteen comparables[3] suggested by the appellant with color aerial photographs and Farmland Valuation Cards for the respective parcels and, in some cases, adjoining properties. In summary, the board of review in its letter set forth the total acreage for each property, the acreage that is cropland/pasture, and how, in most instances, either the individual parcel or consideration of adjoining acreage results in 51% or more of the land being utilized for farming purposes. The township assessor is responsible for checking the use of the

[3] No responsive data was provided to parcel number 43-04-000-261-00.

acreage determined to qualify for a farmland assessment. Upon questioning by the Hearing Officer, the board of review representative further expounded that if, for instance, timber areas as displayed on the Farmland Valuation Card had cattle running through it that acreage would be treated as pastureland. Thus, for example, the fact that Exhibit M of 80 total acres has only 30.96 acres characterized as cropland does not mean that the remaining acres have been improperly characterized as other types of farmland.

As to the subject two parcels comprising 120.21 acres, only 42.6 acres are enrolled in CRP. Therefore, from the board of review's perspective the appellant does not have 51% or more of the acreage in farm use and does not qualify to receive the farmland assessment on the entire 120.21 acres.

In Exhibit R, the board of review presented color aerial photographs and accompanying property record cards for twelve properties within Derinda Township which have timber and have been assessed at market value. The board of review presented these similar timber tracts which have been valued at market value as evidence that the appellant has been assessed equitably. The board further noted revaluing property from farmland to non farm property is an ongoing process occurring over several years. It further noted that several of the appellant's comparables are scheduled to be checked for 2006.

For its Exhibit S, the board of review presented a grid analysis of eight vacant land sales in Derinda Township along with applicable property record cards and real estate transfer declaration sheets. The properties ranged in size from 27.62 to 239.05 acres. The sales occurred between January 2003 and January 2005 for prices ranging from $100,450 to $970,000 or from $2,500 to $4,235[4] per acre. The board of review presented sales of rural property to substantiate the value of the appellant's property.

In closing the board of review requested confirmation of the subject's assessments.

As written rebuttal filed through counsel, appellant contended that awaiting the three-year median level of assessments for Jo Daviess County in 2004 was no excuse for not completing the 2005 assessments in a timely manner. In support of this proposition, appellant cited several cases and an Illinois Attorney General Opinion. As to this aspect of the response, appellant reiterated that the failure of the Jo Daviess County assessment officials to give timely publication and notification vitiates the tax resulting from the increase in assessment.

As a further rebuttal, appellant contends there is a bald-faced lack of uniformity in the assessment process and within the

[4] The board of review acknowledged that Sale #3 included six farm buildings sold at salvage value.

assessment jurisdiction with regard to the treatment of the reassessment of the subject property in 2005 in Derinda Township as compared to appellant's comparables also located in Derinda Township, none of which have been assessed as "rural residential" land. Appellant contends the board of review has admitted as much from its statement "[r]evaluing property from farmland to non farm property has been an ongoing process for several years. Several of the appellant's comparables are scheduled to be checked for 2006."

As a final issue on rebuttal, appellant contends he has been denied equal protection and due process in that the mere ability to have a hearing after a decision has been made is not sufficient where the decision maker, the Chief County Assessment Official (CCAO), has a personal pecuniary interest. Appellant contends this interest of the CCAO arises from the statutory provisions providing for 50% reimbursement of the CCAO's salary as well as payment of a "bonus" if the sales ratio statistics fall within a certain range. Counsel further addresses issues of discovery and denial of document production.[5] As to document production matters in the written rebuttal, appellant asserts that he sought a list of "permanent index numbers of parcels re-classified from farmland to non-farmland." The official response was that no independent list or report exists other than actual property record cards themselves. Appellant argued that from those property record cards alone, appellant cannot ascertain the acreage assigned as cropland, permanent pasture, other farmland, and wasteland.

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. There are three issues before the Board: (1) whether the subject property is properly classified, (2) legal arguments regarding the publication and notification of real estate assessments in Jo Daviess County for the 2005 non-quadrennial assessment year, and (3) if the land is misclassified, uniformity of assessments.

There is no dispute between the parties that the land enrolled in CRP is entitled to farmland assessment and has been so assessed. The classification issue raised by appellant in this matter concerns only the remaining acreage of 41.21 acres. The Property Tax Appeal Board notes that the subject's prior classification and assessment has no bearing on its classification and assessment as of January 1, 2005, the assessment year for the instant appeal. Section 9-175 of the Property Tax Code provides in part:

> The owner of property on January 1 in any year shall be liable for the taxes of that year. (35 ILCS 200/9-175).

[5] See also appellant's formal subpoena request filed with the Board, the board of review's response, and the ruling from the Property Tax Appeal Board set forth in a letter dated August 13, 2007.

Initially the Property Tax Appeal Board finds the appellant's legal arguments concerning publication and notification of real estate assessments for the 2005 non-quadrennial assessment year are without merit. (See also Footnote 1). The appellant claimed the subject property was not reassessed on or before June 1, 2005, which is in violation of Section 9-160 of the Property Tax Code. (35 ILCS 200/9-160). Section 9-160 of the Property Tax Code provides in part:

> Valuation in years other than general assessment years. On or before June 1 in each year other than the general assessment year, in all counties with less than 3,000,000 inhabitants, . . . , the assessor shall list and assess all property which becomes taxable and which is not upon the general assessment, and also make and return a list of all new or added buildings, structures or other improvements of any kind, the value of which had not been previously added to or included in the valuation of the property on which such improvements have been made, specifying the property on which each of the improvements has been made, the kind of improvement and the value which, in his or her opinion, has been added to the property by the improvements. (35 ILCS 200/9-160).

The appellant further argued assessments in Jo Daviess County were not published until January 18, 2006, eighteen days after the last day to publish assessments of December 31, according to and in violation of Section 12-10 of the Property Tax Code. (35 ILCS 200/12-10). Section 12-10 of the Property Tax Code provides in part that:

> Publication of assessments; counties of less than 3,000,000. . . . In years other than years of a general assessment, the chief county assessment officer shall publish a list of property for which assessments have been added or changed since the preceding assessment, together with the amounts of the assessments, except that publication of individual assessment changes shall not be required if the changes result from equalization by the supervisor of assessments under Section 9-210, or Section 10-200, in which case the list shall include a general statement indicating that assessments have been changed because of the application of an equalization factor and shall set forth the percentage of increase or decrease represented by the factor. The publication shall be made on or before December 31 of that year, and shall be printed in some public newspaper or newspapers published in the county. In every township or assessment district in which there is published one or more newspapers of general circulation, the list of that township shall be published in one of the newspapers. (35 ILCS 200/12-10).

Furthermore, appellant's counsel argued the notice of assessment change was not mailed to the taxpayer in a timely manner, which is in violation of Section 12-30 of the Property Tax Code. (35 ILCS 200/12-30). Section 12-30 of the Property Tax Code provides in part that:

> Mailed notice of changed assessments; counties of less than 3,000,000. In every county with less than 3,000,000 inhabitants, in addition to the publication of the list of assessments in each year of a general assessment and of the list of property for which assessments have been added or changed, as provided above, a notice shall be mailed by the chief county assessment officer to each taxpayer whose assessment has been changed since the last preceding assessment, . . . (35 ILCS 200-12-30).

Counsel also argued the statutory provisions for publication and notice are designed for the benefits and protection of taxpayers. The statutes are mandatory and require strict and timely compliance. Counsel argued that failure of timely publication and notification vitiates the tax resulting from the increase in assessment. As authority for these legal claims, appellant placed reliance upon Andrews v. Foxworthy, 71 Ill. 2d 13, 15 Ill. Dec. 648 (1978). This case involved a tax objection claiming the taxes were void because no timely publication of increase in assessments had been given. The Board finds the facts in Andrews are somewhat analogous to the facts in the instant appeal. Andrews involved the failure of the supervisor of assessments to timely publish assessment changes in a non-quadrennial year in accordance with Section 103 of the Revenue Act of 1939 (Ill. Rev. Stat., ch. 120, ¶527). Like Andrews, the 2005 assessment year for Derinda Township was a non-quadrennial year in the general assessment cycle. However, the Property Tax Appeal Board finds that counsel misplaced reliance on Andrews, which held that a 1972 publication of assessments was not done in a timely manner; that decision was limited to that particular case. The Board also finds there are other statutory provisions and long standing case law that negate counsel's arguments. People v. Holmstrom, 8 Ill. 2d 401 (1956); North Pier Terminal Co. v. Tully, 62 Ill. 2d 540 (1976); People ex rel. Costello v. Lerner, 53 Ill. App. 3d 245 (5th Dist. 1977); Schlenz v. Castle, 84 Ill. 2d 196 (1981). Furthermore, Section 26-5 of the Property Tax Code provides:

> Failure to complete assessment in time. An assessment completed beyond the time limits required by this Code shall be as legal and valid as if completed in the time required by law. (35 ILCS 200/26-5).

Similarly, Section 26-10 of the Property Tax Code states:

> Informality in assessments or lists. An assessment of property or charge for taxes thereon, shall not be considered illegal on account of any informality in

> making the assessment, or in the tax lists, or on account of the assessments not being made or completed within the time required by law. (35 ILCS 200/26-10).

Additionally, Section 26-15 of the Property Tax Code provides:

> Failure to deliver collector's books on time. Any failure to deliver the collector's books within the time required by this Code shall in no way affect the validity of the assessment and levy of taxes. In all cases of failure, the assessment and levy of taxes shall be held to be as valid and binding as if the books had been delivered at or within the time required by law. (35 ILCS 200/26-15).

In light of these statutory provisions, the Property Tax Appeal Board finds all three of these provisions afore-mentioned are controlling and cure any error in the late publication of the 2005 assessments in Jo Daviess County. Furthermore, in Golf Trust of America v. Soat, 355 Ill. App. 3d 333 (2nd Dist. 2005), the court upheld assessment of taxes despite a multitude of alleged irregularities in the assessment procedure and practice and in particular, alleged failures in the publication of assessment lists, citing with approval the savings provisions of the Property Tax Code found at Section 21-185 (35 ILCS 200/21-185). Section 21-185 of the Property Tax Code provides:

> Cure of error or informality in assessment rolls or tax list or in the assessment, levy or collection of the taxes. No assessment of property or charge for any of the taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax list without name, or in any other name than that of the rightful owner. No error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof. Any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of the taxes, or any omission or defective act of any other officer or officers connected with the assessment or levying of the taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court, or by the person (in the presence of the court) from whose neglect or default it was occasioned. Where separate advertisement and application for judgment and order of sale is made on account of delinquent special taxes or special assessments in all cities, villages and incorporated

> towns in counties with 3,000,000 or more inhabitants, and in cities, villages and incorporated towns in other counties in which the county board by resolution has extended the time in which the return, required in Section 20-100, may be made, the procedure shall, in all respects, be the same as in this section prescribed, except that there shall be 2 separate judgments and orders for sale, one on account of delinquent special taxes and special assessments and the other on account of delinquent general taxes. (35 ILCS 200/21-185).

In this matter, the Property Tax Appeal Board finds that the board of review submitted a copy of the newspaper and copies of the notices of revised assessment which were mailed to the taxpayer, marked herein as Exhibit B. After reviewing the publication and notification evidence, the controlling statutes, and applicable case law, the Property Tax Appeal Board finds all publications and notifications of the subject's changed assessment were proper. Thus, the Property Tax Appeal Board finds the documentation in this record satisfies the notification and publication requirements as enumerated in Sections 12-10, 12-30, 26-5, 26-10, and 26-15 of the Property Tax Code (35 ILCS 200/12-10, 12-30, 26-5, 26-10, and 26-15).

Moreover, the Board finds the rights to be heard to challenge the subject's assessments or to even object to the taxes were available and have been afforded to this taxpayer. Based on this record, including the reduction in assessment for 2005 granted by the board of review upon initial appeal, the Property Tax Appeal Board further finds the appellant in this appeal was in no way injured, nor was his right to due process violated.

One of the assertions raised by appellant concerned lack of due process due to the potential payment of a "bonus" to the CCAO if certain sales ratio statistics are achieved as determined by the Illinois Department of Revenue (35 ILCS 200/4-20). In support of this proposition, appellant cited Tumey v. State of Ohio, 273 U.S. 510 (1927). The Board finds the case in Tumey concerned a mayor acting as "judge" who also in essence was the party issuing the citation. First, where the appeal of the assessment is had before the Jo Daviess County Board of Review, there is no evidence in this matter that the CCAO was the decision maker in any hearing. Second, the jurisdiction of the Property Tax Appeal Board is limited to determining the correct assessment of the subject parcel and does not have the authority to determine if the appellant's due process rights prior to the instant *de novo* hearing were violated. Moreover, there is case law directly on point in Golf Trust of America v. Soat, 355 Ill. App. 3d 333, 341 (2nd Dist. 2005), the court stated:

> [The CCAO] had no pecuniary interest in the proceedings. There was no evidence that she would personally suffer financially if she did not meet the goals of section 4-20. In addition, she is required by

> statute to assess the property in Jo Daviess County at 33 1/3 % of the fair cash value. The state's reimbursement to the county in the event that Miller does her statutory duty as supervisor of assessments does not create a conflict of interest or a bias on her part. Objectors' argument would lead to the invalidity of every assessment in a county receiving such statutory compensation because the assessor performed his statutory duty. This is absurd, and we find no error here.

Again, while the Board's jurisdiction is limited, the Property Tax Appeal Board finds no merit in appellant's assertion that the manner in which the property record cards have been maintained in Jo Daviess County violates the provisions of Section 10-125 of the Property Tax Code (35 ILCS 200/10-125) because the four types of classifications are not specified on the cards. As is evident by the board of review's Exhibits G through Q, the assessing officials maintain Farmland Valuation Cards by parcel identification number which distinguish the acreage deemed to be homesite, cropland, permanent pasture, other farmland, wasteland and include additional categories of public road, timber and water. The Board finds that nothing within the provisions of Section 10-125 of the Property Tax Code (35 ILCS 200/10-125) mandates that these types of farmland determinations be set forth on the property record cards themselves.

Appellant asserted the classification of property as "rural residential" was illegal and violated Section 9-150 of the Property Tax Code (35 ILCS 200/9-150). That section of the Property Tax Code states:

> Classification of property. Where property is classified for purposes of taxation in accordance with Section 4 of Article IX of the Constitution and with such other limitations as may be prescribed by law, the classification must be established by ordinance of the county board. If not so established, the classification is void. (35 ILCS 200/9-150).

For instance, Cook County has a "Real Property Assessment Classification Ordinance." The Property Tax Appeal Board finds that the reference to the disputed subject property as being "rural residential" was not a classification of property, but merely nomenclature to distinguish it from farmland in this particular instance. Assessing officials can legitimately assess rural property, which does not qualify for an agricultural preferential assessment, as "rural residential." By so classifying or categorizing the disputed acreage as "rural residential," the board of review and/or assessing officials did not establish a new class of property, but merely established a vehicle to be used for assessing rural property which is not used for agricultural purposes. The Board finds the characterization of the disputed lands as "rural residential" was not in violation of any provisions of the Property Tax Code.

Given the foregoing analysis, the Property Tax Appeal Board finds Jo Daviess County Assessment Officials properly revised and corrected the subject's 2005 assessment in a non-quadrennial assessment year as appeared to be just pursuant to Section 9-75 of the Property Tax Code (35 ILCS 200/9-75). See also Albee v. Soat, 315 Ill. App. 3d 888 (2nd Dist. 2000).

A particular parcel's classification and assessment is established as of the first day of January of each assessment year. The Property Tax Appeal Board further finds Section 9-75 of the Property Tax Code provides that the township assessor may in any year, revise and correct an assessment as appears to be just. (35 ILCS 200/9-75). Section 9-75 of the Property Tax Code provides:

> The chief county assessment officer of any county with less than 3,000,000 inhabitants, or the township or multi-township assessor of any township in that county, may in any year revise and correct an assessment as appears to be just. Notice of the revision shall be given in the manner provided in Sections 12-10 and 12-30 to the taxpayer whose assessment has been changed. (35 ILCS 200/9-75).

The Board finds Section 9-75 of the Property Tax Code (35 ILCS 200/9-75) clearly grants power to the chief county assessment officer and the township assessor to revise and correct individual assessments as appears to be just. In addition, Section 9-205 of the Property Tax Code grants the township assessor the authority to equalize assessments by stating:

> When deemed necessary to equalize assessments between or within townships or between classes of property, or when deemed necessary to raise or lower assessments within a county **or any part thereof to a level prescribed by law**, changes in individual assessments **may be made by a township assessor** or chief county assessment officer, under Section 9-75, by application of a percentage increase or decrease to each assessment. (35 ILCS 200/9-205).

Based on these factors, the Property Tax Appeal Board finds Jo Daviess County assessment officials did not err in changing the subject's 2005 classification and assessment to reflect the fact that no farming activity occurred on the disputed portions of the parcels that year.

The Board further finds in order for a property to receive a preferential farmland assessment the property must first meet the statutory definition of a "farm" as defined in Section 1-60 of the Property Tax Code. Based on the evidence in this record, the Board finds that the area in dispute of the subject property is not entitled to a farmland classification and a reduction in the

subject's 2005 assessment is not warranted. Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) defines "farm" in part as:

> **When used in connection with valuing land and buildings for an agricultural use**, **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 solely for agricultural purposes as required by Section 1-60 of the Property Tax Code. 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. It is the present use of the land that determines whether the land receives an agricultural assessment or a non-agricultural valuation. See Kankakee County Board of Review v. Illinois Property Tax Appeal Board, 305 Ill. App. 3d 799 (3rd Dist. 1999) and Santa Fe Land Improvement Co. v. Property Tax Appeal Board, 113 Ill. App. 3d 872 (3rd Dist. 1983). To qualify for an agricultural assessment, the land must be farmed at least two years preceding the date of assessment. (35 ILCS 200/10-110).

There was no testimony or evidence beyond a description of timber or wasteland in this matter to reveal the use of the disputed acreage in 2005 or, moreover, in the two years prior thereto or the nature of the total farm operation. DuPage Bank and Trust Co. v. Property Tax Appeal Board, 151 Ill. App. 3d 624, 502 N.E.2d 1250 (2nd Dist. 1986), *appeal denied* 115 Ill. 2d 540, 511 N.E.2d 427, *cert. denied* 484 U.S. 1004, 98 L.Ed.2d 646. Aerial photographs and property record cards of the subject and suggested comparable properties alone are not sufficient evidence for appellant to establish by a preponderance of the evidence that the subject property has been improperly classified. The appellant attempted to show through aerial photographs that the subject's land classification as determined by the township assessor and/or board of review was incorrect, or, more specifically, the subject property looks from aerial photographs like the comparable properties and should be similarly classified. In this regard, the Board finds the appellant's evidence in this matter is distinctly different from the evidence presented in Richard Nichols, et al., Docket No. 98-132-F-1, et al., reprinted at pages F-14-21 in the Board's 1999 Synopsis of Representative Cases. In Nichols, specific evidence was

presented about the nature of the land use of the subject and the comparable properties.

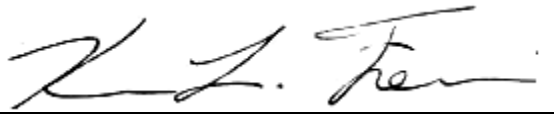
Parcels used primarily for any purpose other than as a "farm" as defined in Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) are not entitled to an agricultural assessment. In Senachwine Club v. Putnam County Board of Review, 362 Ill. App. 3d 566 (3rd Dist. 2005), the court stated that a parcel 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). In this matter, no evidence was offered to support the conclusion that the subject property was "farmed" and/or allowed to lie fallow as a farming practice. DuPage Bank & Trust Co. v. Property Tax Appeal Board, 151 Ill. App. 3d 624 (2nd Dist. 1986). In other words, the "use" of the property was never presented by the appellant through appropriate testimony so as to establish the assertion that the land at issue qualified under the definition of "farm" as provided in the Property Tax Code. Thus, the Board finds that in the absence of testimony to establish use, the appellant has failed to establish that the disputed land was not properly classified.

As to the assessment equity arguments in this matter, appellant contends unequal treatment in the subject's assessment as a basis of the appeal. Having determined, however, that the alleged improper classification of the subject property has not been adequately established by the appellant, the Property Tax Appeal Board need not further address the uniformity of assessments argument in this matter. Appellant's entire argument questioned first the classification and secondly the uniformity of farmland assessments. Having failed in the first argument, there is nothing more as to uniformity of assessments to be considered.

In conclusion, as to the classification issue, 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. Therefore, the Property Tax Appeal Board finds the subject property's assessment as established by the board of review is correct and no reduction in assessment or change in classification is warranted.

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



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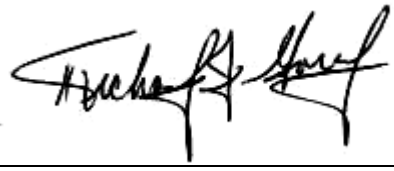

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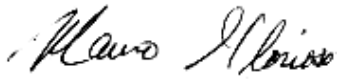

Member

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: June 19, 2009

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.