

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Donald F. Rogers, Jr.
DOCKET NO.: 06-00521.001-R-2 through 06-00521.005-R-2
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Donald F. Rogers, Jr., the appellant, and the Lake County Board of Review.

The subject property consists of five parcels, one of which has been improved with a metal pole building to house landscape vehicles, equipment and an office. The five parcels range in size from 15,773 to 16,225 square feet of land area.

The appellant's petition raised a legal argument contending that there are six adjacent parcels upon which a landscaping/nursery business has operated since 1934. The Lake County Board of Review reduced the assessment of one parcel (PIN 12-18-303-003) which is not the subject matter of this appeal because a substantial portion of that parcel is a pond providing drainage for the subject and surrounding parcels. Appellant seeks a reduction on the land assessment of the five parcels which are the subjects of this appeal.

In support of appellant's legal contention, a parcel map was provided depicting six adjacent lots along with color photographs from various compass directions depicting fenced land and a pole building. In further support of this appeal, appellant submitted a copy of a "Nurseryman Certificate" issued to Rogers Nursery & Garden Market by the State of Illinois, Department of Agriculture for 2007. In the brief, appellant asserted "[a]ll of the subject property is used either for growing or storing nursery stock or for other reasons in connection with the nursery business." Appellant contends the subject lots differ from any surrounding vacant lots which are in a condition to be developed for residential use whereas the subject needs "certain work" to be so used. In summary, the legal brief asserted:

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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:

Docket No.	Parcel No.	Land	Impr.	Total
06-00521.001-R-2	12-18-303-008	46,642	0	46,642
06-00521.002-R-2	12-18-303-001	45,865	10,311	56,176
06-00521.003-R-2	12-18-303-002	46,023	0	46,023
06-00521.004-R-2	12-18-303-006	46,469	0	46,469
06-00521.005-R-2	12-18-303-007	46,642	0	46,642

Subject only to the State multiplier as applicable.

The current use and condition of the subject property gives it a different and unique character from the other residential lots in the neighborhood. This unique character is the basis upon which the assignment of a lower valuation to the subject property does not harm uniformity among like vacant parcels in the neighborhood because the subject property is, in fact, truly different from the other vacant parcels.

Based upon the foregoing, appellant seeks a land assessment reduction for the subject parcels for an assessed value of between \$1.42 and \$1.46 per square foot of land area.

The board of review submitted its "Board of Review Notes on Appeal" wherein the final assessments of five parcels were disclosed. In response to the appellant's appeal and in support of the current assessment of the five subject parcels, the board of review submitted a legal brief prepared by the Assistant State's Attorney and a letter from the Clerk of the Board of Review with a grid analysis of six comparable properties with assessment information.

With citation to the Rules of the Property Tax Appeal Board, in its legal brief, the board of review contends that appellant has failed to provide substantive, documentary evidence or legal argument sufficient to challenge the correctness of the assessment of the subject property. 86 Ill. Admin. Code, Sec. 1910.63(b). The board of review asserts that appellant has provided no evidence to support the contention that the subject parcels should receive a reduced assessment as compared to other vacant lots in the neighborhood. In closing its brief, the board of review contends the subject parcels are uniformly assessed and appellant has not provided evidence or information warranting a reduction in the land assessment of the subject parcels.

In the letter from the Clerk of the Board of Review, the subject parcels are described as being zoned residential (R-3), but having a legal nonconforming use as part of a landscaping/nursery business. An aerial photograph of the subject parcels was submitted to support this assertion along with ground-level photographs. The aerial photograph depicts three of the parcels as primarily gravel areas, one parcel being part gravel along with the pole building, and one parcel having some shrubbery and/or trees. In conclusion, the board of review contends that a landscaping contractor's storage yard such as the subject is not eligible for treatment as a farm.

In further support of the subject's land assessment, the board of review presented data setting forth the land assessment methodology in the subject's neighborhood which was applied to both vacant and improved parcels. After rounding, the five subject parcels received land assessments ranging from \$2.87 to \$2.91 per square foot of land area. The board of review then presented a chart of six parcels in the subject's assessment neighborhood which ranged in size from 15,865 to 16,226 square

feet of land area. These six parcels had land assessment after rounding ranging from \$2.87 to \$2.90 per square foot of land area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board finds a reduction in the subject's land assessment is not warranted.

Although appellant did not specifically request classification as farmland, the Property Tax Appeal Board finds that the parcels in dispute are not entitled to a farmland classification. 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 would be whether the disputed lands 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). It is the use of the real property that determines whether it is to be assessed at an agricultural valuation. Sante Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill. App. 3d 872, 875 (3rd Dist. 1983). A parcel of property may be classified as partially farmland, provided the portion of property so classified is used for a farming purpose. Kankakee County Board of Review, supra. The evidence in this appeal is one pole barn, three parcels of gravel parking/storage areas, and one parcel with some shrubs and/or trees.

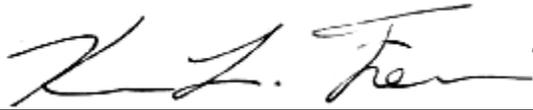
The Board finds there is no evidence of "farming" on any of the five parcels in this appeal. The aerial photograph does not depict rows of shrubs or trees being grown for harvesting or sale, but instead depicts a scattered arrangement of shrubs and/or trees. The ground level photos presented by both parties depict a buffer zone of trees shielding the landscaping business from view from the roadway. There is no record evidence in this matter of "farming" of the land. Appellant asserted "[a]ll of the subject property is used either for growing or storing nursery stock or for other reasons in connection with the nursery business." The photographic evidence however did not reveal the growing of nursery stock. The majority of the parcels consist of gravel areas. The Board finds that, while there may be some effort at planting one of the parcels (12-18-303-006), the appellant failed to establish that any intensive, deliberate or ongoing farming activity was being performed on even that parcel. Moreover, the Board finds there is no evidence of any intensive, deliberate or ongoing farming activity on the other four parcels in dispute. The Board finds any tree or shrub planting done on parcel 12-18-303-006 appears to be incidental to its primary use of a landscaping business with gravel parking and storage areas.

The Board further finds the appellant provided no substantive legal authority to demonstrate the subject's assessment should be reduced on any particular legal grounds. The issue of a potential farmland assessment for the parcels has been considered even though that argument was not specifically made.

On the other hand, the board of review demonstrated uniformity in the land assessment of the subject parcels by providing comparably sized parcels in the subject's assessment neighborhood which were assessed in a similar manner. As presented by the board of review the similar comparables to the subject were assessed from \$2.87 and \$2.90 per square foot of land area due to rounding while the subject was assessed at \$2.87 to \$2.91 per square foot of land area due to rounding. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). After an analysis of the assessment data, the Board finds the appellant has not met this burden. The Board finds the subject's per square foot land assessment is equitable and a reduction in the subject's assessment is not 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.

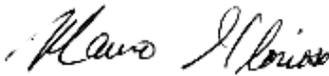
Chairman



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: April 24, 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.