



**FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD**

APPELLANT: Dennis & Catherine Carlton
DOCKET NO.: 06-01632.001-F-1
PARCEL NO.: 07-22-200-020

The parties of record before the Property Tax Appeal Board are Dennis & Catherine Carlton, the appellants, by attorney James P. Hecht of Woodstock, and the McHenry County Board of Review.

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

F/Land:	\$ 0
Homesite:	\$39,604
Residence:	\$42,652
Outbuildings:	\$ 0
TOTAL:	\$82,256

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of 9.09 acres located in Woodstock, Hartland Township, McHenry County. In 2004 a pole building of 2,800 square feet was constructed on the property. In 2006 the property was improved with a two-story single-family frame dwelling containing 2,749 square feet of living area with a full basement, central air conditioning, and a two-car attached garage.

One of the appellants, Catherine Carlton, appeared before the Property Tax Appeal Board with her counsel claiming that an unspecified portion of the subject tract should be classified and assessed based on agricultural use. In the Farm Appeal form, appellants had also requested a change in the farm buildings assessment, but at hearing counsel withdrew that aspect of the appeal.

Appellant Catherine Carlton testified that the taxpayers purchased the subject property in March of 2002 and moved in to the property in September 2006. She further testified that

beginning in 2003, the appellants began to buy pine trees with the intention to eventually sell them as mature Christmas trees. With regard to the purchase of trees, appellant testified regarding two invoices (Exhibits E & F) depicting purchases made in 2004 and 2005 for 35 and 12 pine trees of differing varieties, respectively. Appellant testified these trees were planted as depicted in appellants' Exhibit D as denoted by red dots, primarily on the perimeters of the property. Exhibit D has more than 47 red dots denoting the locations of trees.

Appellant further testified that the trees planted within the mature forest have not done very well, but the trees in the northwest and northeast corners of the property, on the edges of the paddock, have done better. In further support of these contentions and without objection by the board of review, appellants further presented Group Exhibit K, consisting of twelve color photographs taken in August 2007, depicting small pine trees with red ribbons which have been planted on the perimeter of existing wooded areas of the subject property; some of the pine trees appear to be a matter of inches high and some appear to be about a yard high. Counsel asserted the trees depicted in the photographs had been planted in 2003, 2004 and 2005, but did not ask his client to testify to that assertion. These photographs as Group Exhibit K were in addition to the photographs comprising appellants' Exhibit I where photograph #5 depicts six immature pine trees with red ribbons attached.

In addition, appellants included a chart of four suggested comparable properties (Exhibit G) depicting the parcel number, address, size, "use" of the property and proximity to the subject. The four comparables range in size from 7.82 to 16.24-acres and were located in close proximity to the subject as further depicted on a parcel map (Exhibit H). These four comparables purportedly consist of a residential dwelling and crops, horses, or a barn and horses. Appellants provided no further information whether these properties had farmland or non-farmland assessments other than an index notation that the properties had an "0011 classification."

In conclusion and through counsel, appellants contended based on the foregoing evidence that the subject property, or at least a portion thereof, warrants a farmland assessment due to the growing of and intention to harvest Christmas trees.

On cross-examination, appellant Catherine Carlton testified that the appellants now in April 2009 have ten horses on the property and also obtained a stallion in June of 2008 for the purposes of breeding and raising of horses on the property. However, as of January 1, 2006, the appellants had two horses on the property.¹

¹ The Property Tax Code defines "Farm" in Section 1-60 (35 ILCS 200/1-60) in part as "any property used solely for" certain purposes, including the raising and feeding of ponies or horses. The amount of land so used must be specified and the property must be used as a farm for the 2 preceding years as set forth in Section 10-110 (35 ILCS 200/10-110).

Also as of January 1, 2006 the appellants did not have an approved Forestry Management Plan for the property, although they had one as of the time of the hearing in April 2009.

Upon questioning on cross-examination, appellant Catherine Carlton further testified that both scotch pine and white pine trees have been planted on the property, among other evergreens. Appellant further acknowledged that appellants should have done more research as the pine trees which were planted among the wooded area have grown to be rather tall and scraggly such that they cannot be sold as Christmas trees.

Upon questioning by the Hearing Officer, appellant Catherine Carlton acknowledged that as of the date of hearing in April 2009 the appellants had not harvested or sold any pine trees for Christmas tree purposes.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment, which consisted of homesite and residence assessments, disclosed a total assessed value of \$82,256; there was no land assessed as farmland and no farm building assessment. The board of review representative at the hearing argued that the planting of the trees as displayed on appellants' Exhibit D appears to be for purposes of a privacy hedge for the parcel and as a windbreak since the plantings were along the property line; moreover, the planting/sale of Christmas trees is not the primary use of the property and in fact consumes less than half of the property. Furthermore, the representative argued that the planting of more than half of the trees within dense forest areas means the trees will never be appropriate for re-sale as mature Christmas trees.

In support of the subject's current classification as non-farmland, the board of review presented a letter and testimony from Marjorie Emricson, Hartland Township Assessor. She noted initially that the original appeal before the McHenry County Board of Review concerned the ownership and keeping of two horses on the property. Emricson further testified that when she spoke with appellant Dennis Carlton, he indicated the appellants were planning to have one or two horses for pleasure riding by the appellants. From this information, the township assessor concluded that the subject's primary use was for residential purposes and that it was assessed accordingly, removing the farmland assessment.² Subsequently, appellants reported to the assessor the purchase of a third horse which the appellants intended to raise and sell. Thereafter, this appeal before the Property Tax Appeal Board followed asserting the planting of Christmas trees for re-sale purposes which appellants claimed would justify a classification of farmland for the property.

² Appellants argued the sole basis for farm classification of the subject property before the Property Tax Appeal Board concerned the growing of evergreens for subsequent sale as Christmas trees.

At hearing and through the testimony of the township assessor, the board of review offered color photocopies of eleven ground level photographs of the subject property which were taken in April 2008 along with an aerial photograph of the subject parcel depicting the location of each of the eleven photos (Group Exhibit #1). Appellants' counsel did not object to the introduction of the photographs at the hearing with the exception of photos #5, #6 and #8 since the farm outbuildings and/or ownership of horses was not at issue in this appeal. Without objection and with a recognition that improvement assessments of the dwelling and any other buildings were not at issue in this matter, board of review Group Exhibit #1 was admitted in evidence. From Group Exhibit #1, photos #1, #2 and #9 depict scattered plantings of pine trees with red ribbons attached similar to the photographs submitted by appellants as Group Exhibit K; based upon the aerial photograph depicting the location of the photographs, the three photographs can best be described as being located along the gravel driveway within the subject parcel.

In the letter from the township assessor, she also noted that appellants' Exhibit D, the parcel map with red dots, purports to be a Christmas tree inventory as of December 2006. Since the instant appeal concerns valuation of the property as of January 1, 2006, the assessor contends based on the foregoing evidence that appellants have not established the necessary prerequisite for a farmland assessment due to a lack of evidence of farming of the property for two years preceding January 1, 2006.

In her letter, the assessor also addressed the facts surrounding each of the four comparables referenced by appellants: comparable #1, based on a letter from the farmer, has 12 acres of corn which has been so farmed for the previous 25 years; comparable #2, combined with several other parcels consists of 33.12-acres, has over 20-acres farmed in hay; as to comparable #3 the assessor learned in late 2007 that the hay crop was not cut and the property went to weeds; and comparable #4 along with another parcel has 10.09-acres for the breeding, training and boarding of horses.

In conclusion, the board of review requested confirmation of the subject's classification as non-farmland and confirmation of the 2006 assessment. In closing argument, counsel for appellants argued that placement of the trees was a good-faith enterprise by the appellants, but as it turned out the appellants were "lousy tree placement people." However, counsel argued the appellants' intentions were clear to turn the trees into Christmas trees for re-sale which would take some time for the necessary growth to occur.

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 finds that the subject property is not entitled to a farmland classification and assessment. The only issue before the

Property Tax Appeal Board is the classification of the property as a tree farm.

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 subject parcel is 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). The testimony presented by appellant Catherine Carlton indicated that she and her husband have had the intention of growing and selling Christmas trees. Evidence on this record indicated that 35 pine trees were planted in 2004 among existing wooded areas of the property and that the trees have not done very well in the shaded forest areas. Evidence further revealed another 12 trees were planted in 2005. She further indicated trees in the more open paddock areas have done better. The additional photographs submitted by the appellants depict a random array of pine trees along a driveway and/or along the perimeter of the subject parcel. While pine trees have been planted on the property, none have been harvested as Christmas trees.

Thus, in summary, the Board finds that testimony revealed that the property has been planted in at least 2004 and 2005 with at least 47 pine trees of various varieties. However, the Board further finds that besides testifying that the planting of at least 47 trees occurred in 2004 and 2005, appellants made no showing whatsoever to establish what cultivation of those trees

was occurring to aid in their growth. Based on this record, the Board finds that, while there has been some effort at planting trees on the subject property within two years prior to the assessment date at issue, the appellants failed to establish that any intensive, deliberate or ongoing farming activity was being performed in these areas in relation to the growth of pine trees intended for re-sale as Christmas trees.

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). The Board finds the evidence submitted by the appellants fails to establish that the subject parcel or any portion thereof is being used solely for the growing and harvesting of Christmas trees. Thus, the Board finds that the appellants' evidence and testimony have failed to adequately establish the subject parcel or any portion thereof as being appropriate for a farmland classification under the Property Tax Code.

In conclusion, the Property Tax Appeal Board finds that the subject property is not entitled to a farmland classification and no change in the classification of the subject's assessment 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.

Donald R. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario Morris

Member

Shawn R. Lerbis

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: October 28, 2009

Allen Castrovillari

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.