



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

APPELLANT: Alexander K. Phillips  
DOCKET NO.: 06-02675.001-F-1 through 06-02675.002-F-1  
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Alexander K. Phillips, the appellant, by attorney David D. Albee in Galena, and the Jo Daviess County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction<sup>1</sup> 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:

DOCKET NUMBER	PARCEL NUMBER	FARM LAND	LAND/LOT	RESIDENCE	OUT BLDGS	TOTAL
06-02675.001-F-1	09-000-296-00	742	0	0	0	\$742
06-02675.002-F-1	09-000-295-30	0	11,108	0	0	\$11,108

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject property consists of two parcels totaling approximately 94.15 acres located in Hanover Township, Jo Daviess County. Parcel number 09-000-296-00 (hereinafter referred to as "parcel 00") consists of 80.82 acres of which 25 acres are assessed as farmland (cropland) and the remainder of which were assessed as non-agricultural timber. Parcel number 09-000-295-30 (hereinafter referred to as "parcel 30") consists of 13.33 acres of timber where the entire parcel was assessed as non-agricultural land.

The appellant appeared through counsel before the Property Tax Appeal Board for hearing claiming that the entirety of the subject tracts on appeal should be classified as "farm" under the Property Tax Code, citing to Section 1-60 (35 ILCS 200/1-60), and should receive the applicable farmland assessment. In support of this classification argument, counsel for the appellant submitted a two-page legal brief, a color aerial map of the subject parcels which also depicted an additional two contiguous parcels owned by

<sup>1</sup> The only reduction issued herein is for parcel number 09-000-296-00.

the appellant, an affidavit and a copy of an Illinois Cash Farm Lease. In the brief, counsel noted that despite the common ownership by the appellant of four contiguous parcels of varying sizes, only acreage within the two parcels which are the subject matter of this appeal were reclassified as non-agricultural land for 2006.

In further support of the farm use of the parcels, appellant relied upon the affidavit of Warren Offenheiser, a neighbor and farmer, who purportedly leases all four contiguous parcels according to the brief. The affidavit references all four parcel numbers owned by the appellant and avers, in pertinent part, that the parcels "have been and are used for agricultural purposes" and "I have raised crops and livestock on the above-referenced parcels for many years." Offenheiser did not appear at the hearing to provide any testimony or be cross-examined. When questioned about the lack of the affiant, counsel for the appellant noted the affidavit was "un-contradicted" and the hearing could be postponed to a later date at which time the affiant could appear if the Property Tax Appeal Board so desired.<sup>2</sup> Also attached to the appeal was a copy of an Illinois Cash Farm Lease dated August 2003 between the appellant and Offenheiser wherein approximately 300 acres were leased "to the farmer (Warren Offenheiser) as agricultural and pasture to be determined at lessee's discretion" through August 2053. The lease further reported this consists of 37.5 acres of cropland at a cash rent of \$50.00 per acre plus 262.5 acres of pasture land at \$3.50 per acre.

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.

Counsel further argued the subject property was not reassessed on or before June 1, 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, 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). In conclusion, counsel argued the

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<sup>2</sup> Continuances of hearing shall be granted for good cause shown in writing wherein good cause is the inability to attend the hearing at the date and time set by the Board for a cause beyond the control of the party, such as the unavoidable absence of a party, his attorney or a material witness. (86 Ill.Admin.Code §1910.67(i)). There was no assertion by counsel of good cause for the non-appearance of Offenheiser as a material witness.

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).

Based on the foregoing evidence, the appellant requested the subject parcels be afforded a farmland classification 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 its "Board of Review Notes on Appeal" wherein the subject's assessments were disclosed for parcel 00 consisting of \$661 for farmland and \$43,133 for other land and for parcel 30 consisting of \$11,108 for other land. The board of review was of the opinion that parcel 00 contained 25 acres of cropland that has been properly assessed as farmland and the balance of the acreage is timber which is assessed as non-agricultural land. As to parcel 30, the board of review was of the opinion that the entire parcel was timber and assessed as non-agricultural land as it has been assessed since 1989.

In further response to the appellant's appeal, the board of review presented several exhibits and further outlined 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 July 9, 2008. Exhibit B is a copy of Section 26-5 of the Property Tax Code (35 ILCS 200/26-5), Savings Provisions, for the proposition that assessments completed beyond the time limit in the Code shall be legal and valid. Exhibit C was page 5 of Publication 122, Instructions for Farmland Assessments (September 2006) noting the definition of "idle land."

Exhibit E consisted of a color aerial photograph depicting the two parcels on appeal along with five neighboring parcels along with applicable property record cards. For the five identified neighboring parcels of timber, the board of review asserted these were assessed as non-agricultural land like the two parcels on appeal.

As to the appellant's purported lease agreement, the board of review noted that the agreement was not signed by the landowner suggesting that there may be some question as to the validity or the enforceability of the provisions of the lease. In addition, the board of review noted that the Offenheiser affidavit references farming the subject land "for many years," but yet the appellant has only owned the property since 2003.

Lastly, the board of review noted that implementation of Bulletin 810 (issued by the Illinois Department of Revenue) in 2006, mandated that rural property be assessed according to actual use. As 2006 was the quadrennial reassessment year for Hanover

Township, changes were implemented at that time in accordance with the directive.

At hearing, the board of review representative testified that the 'majority' of parcel 00 was not being farmed and thus, only the 25 acres used as cropland was afforded a farmland assessment.

Based on the foregoing, the board of review requested confirmation of the subject's classification as non-agricultural land and confirmation of the 2006 assessments of these two parcels.

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 parcel 00 is entitled to a farmland classification and assessment, but that the record does not support a farmland classification for parcel 30.

A number of legal issues were raised by appellant's counsel in this proceeding. First, the Property Tax Appeal Board finds that nothing within the provisions of Section 10-125 of the Property Tax Code (35 ILCS 200/10-125) mandates that the types of farmland determinations be set forth on the property record cards themselves.

Additionally the Property Tax Appeal Board finds the appellant's legal arguments concerning publication and notification of real estate assessments for the 2006 quadrennial assessment year are without merit. The appellant claimed the subject property was not reassessed on or before June 1, 2006, which is in violation of Section 9-160 of the Property Tax Code. (35 ILCS 200/9-160). Counsel also argued the statutory provisions 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. 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). The Property Tax Appeal Board finds that counsel has 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 (5<sup>th</sup> 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 2006 assessments in Jo Daviess County. Furthermore, in Golf Trust of America v. Soat, 355 Ill. App. 3d 333 (2<sup>nd</sup> 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).

Turning to the classification issue in this appeal, of the four contiguous parcels owned by the appellant, only the classification of a portion of parcel 00 and the classification of parcel 30 are in dispute in this proceeding.

As to the board of review's argument regarding the treatment of parcel 30 since 1989, the Property Tax Appeal Board finds that the subject's prior classification and assessment has no bearing on its classification and assessment as of January 1, 2006, the assessment year for the instant appeal.

The Board further finds in order for a property to receive a farmland assessment the property must first meet the statutory definition of a "farm" as defined in Section 1-60 of the Property Tax Code. 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 a portion of parcel 00 and/or all of parcel 30 are used solely for agricultural purposes as required by Section 1-60 of 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 (3<sup>rd</sup> Dist. 1999) and Santa Fe Land Improvement Co. v. Property Tax Appeal Board, 113 Ill. App. 3d 872 (3<sup>rd</sup> 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).

Furthermore, the Board finds that Warren Offenheiser, the purported lessee of the parcels and affiant, was not present at the hearing to be examined about the extent and nature of the use of the subject parcels. There was no opportunity to question Offenheiser to determine what crops were raised, when they were planted and harvested and/or what livestock used the parcels at issue. In addition, the record contained no ground-level photographic evidence of agricultural use of the property. Appellant's counsel sought to establish that the subject was being used as a farm only through an "un-contradicted" affidavit of Offenheiser. However, in Balmoral Racing Club, Inc. v. Illinois Racing Bd., 151 Ill.2d 367, 400-01, (1992), which involved administrative review, the Supreme Court of Illinois stated that "affidavits offered to establish the truth of a matter at issue in the agency or on review should not be considered unless subject to some sort of adversarial examination." The court went on to state that it would be a "miscarriage of justice" and "a violation of basic due process protections to allow the parties to append to the trial record" an "unexamined affidavit to establish the proof of a matter asserted." Balmoral Racing Club, Inc., 151 Ill.2d at 401. Thus, contrary to the arguments made by appellant's counsel, but in accordance with directives of the Illinois Supreme Court, the Property Tax Appeal Board finds that it can give no weight to the Offenheiser affidavit in establishing the purported use of the property. In summary, there was no testimony or evidence in this matter to reveal the use of the disputed acreage in 2006 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 (2<sup>nd</sup> Dist. 1986), *appeal denied* 115 Ill. 2d 540, 511 N.E.2d 427, *cert. denied* 484 U.S. 1004, 98 L.Ed.2d 646.

However, Section 10-125 of the Property Tax Code (35 ILCS 200/10-125), as noted in Publication 122, also identifies cropland, permanent pasture, other farmland and wasteland as the four types of farmland and further prescribes the method for assessing the components. Section 10-125 further states that U.S. Census Bureau definitions are to be used to define cropland, permanent pasture, other farmland and wasteland. According to Publication 122 the following definition complies with this requirement:

Other farmland includes woodland pasture, woodland, including woodlots, **timber tracts**, cutover, and deforested land; and farm building lots other than homesites. (*Publication 122, Instructions for Farmland Assessments*, Illinois Department of Revenue, September 2006, p.1.) [Emphasis added.]

It was undisputed on this record that 25 acres of parcel 00 were assessed as farmland as they were being used as cropland and the dispute concerning parcel 00 concerned the remaining timber acreage. In Senachwine Club v. Putnam County Board of Review, 362 Ill. App. 3d 566 (3<sup>rd</sup> 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 (3<sup>rd</sup> Dist. 1999). The board of review's assertion that the "primary" portion of parcel 00 was not being farmed is not supported by the Property Tax Code and applicable case law that has developed as cited above. Given the treatment of the 25 acres within parcel 00, the Property Tax Appeal Board finds the remaining acreage within parcel 00 meets the definition of other farmland, a timber tract. The Board further finds this acreage should not be classified and assessed as "non-agricultural" land, but should be classified and assessed as "other farmland."

As to parcel 30, the primary issue is whether the parcel is used solely for agricultural purposes as required by Section 1-60 of the Property Tax Code. There was simply no proper evidence on this record as to the use of this 13.33 acre parcel. The "use" of the property was never presented by the appellant so as to establish the assertion that the land at issue qualified under the definition of "farm" as provided in the Property Tax Code. Furthermore, there was no evidence to reveal the use of the acreage in 2006 or in the two years prior thereto. DuPage Bank and Trust Co. v. Property Tax Appeal Board, 151 Ill. App. 3d 624, 502 N.E.2d 1250 (2<sup>nd</sup> Dist. 1986), *appeal denied* 115 Ill. 2d 540, 511 N.E.2d 427, *cert. denied* 484 U.S. 1004, 98 L.Ed.2d 646. In conclusion, in the absence of testimony to establish use, the

appellant has failed to establish that parcel 30 has been improperly classified.

In conclusion, with respect to the classification of parcel 00, the Property Tax Appeal Board finds that the acreage in dispute is to be classified and assessed as other farmland. Furthermore, the Board finds that the appellant has failed to supply sufficient evidence to change the classification of parcel 30.

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.



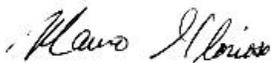
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Chairman



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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 22, 2012



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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.