

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Alan Zabransky
DOCKET NO.: 06-02828.001-F-1
PARCEL NO.: 09-000-292-00

The parties of record before the Property Tax Appeal Board are Alan Zabransky, the appellant, and the Jo Daviess County Board of Review.

The subject property consists of 73.5-acres of unimproved land located in Hanover Township, Jo Daviess County.

The appellant appeared before the Property Tax Appeal Board making a legal argument that the entire subject parcel should be classified and assessed as farmland. For 2006, 7.41-acres were afforded a farmland assessment as pasture and the remaining 66.09-acres were assessed as timber land at a market value.¹ In support of this legal contention that 66.09-acres were improperly classified, the appellant relied solely upon House Joint Resolution 0095 (HJR0095) dated February 7, 2006 which provided in pertinent part:

RESOLVED, . . . that the Wooded Land Assessment Task Force is created concerning the assessment of wooded land and property under forestry management programs; and be it further

. . .

RESOLVED, That the task force must submit a report to the Governor and the General Assembly by December 31, 2006 concerning its findings and recommendations; and be it further

RESOLVED, That if, during the 2005 taxable year, any parcel of wooded land was valued based upon its productivity index equalized assessed value as

¹ In testimony, appellant specifically stated that he did not dispute the market value determination itself, only the classification and failure to apply House Joint Resolution 0095.

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds an increase 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:

LAND:	\$	61,250
FARMLAND:	\$	0
IMPR.:	\$	0
TOTAL:	\$	61,250

Subject only to the State multiplier as applicable.

cropland, then we urge the Department of Revenue to accept any similar valuation of that wooded land for the 2006 and 2007 taxable years; and be it further

RESOLVED, That, for the purpose of this Resolution, **"wooded land" means any parcel of unimproved real property that: (i) does not qualify as cropland, permanent pasture, other farmland, or wasteland under Section 10-125 of the Property Tax Code; and (ii) is not managed under a forestry management plan and considered to be other farmland under Section 10-150 of the Property Tax Code;** [Emphasis added to reflect portions quoted in the appellant's brief].

At the hearing, appellant testified that he was notified of a change in assessment classification for the disputed acreage for 2006 whereby 66.09-acres were no longer deemed to be farmland, and instead were classified as residential property. Appellant argued that the legislative intent was not followed in reclassifying and reassessing the subject property in 2006. Appellant contends the subject property had been valued based upon its productivity index equalized assessed value as cropland in 2005. In accordance with the terms of the resolution, appellant further argued based on an aerial photograph, the disputed property does not qualify as cropland, permanent pasture, other farmland or wasteland under Section 10-125 of the Code and, lastly, appellant asserted the property was not currently managed under a forestry management plan, thus the property should not have been reclassified in order to comply with the legislative resolution.

As additional support for the legal claim, appellant submitted a copy of a letter from the Director of the Illinois Department of Revenue (IDOR) generically addressed to Supervisor of Assessments dated May 24, 2006 and enclosing a copy of the above-referenced resolution. The Director of IDOR further wrote that as a consequence of the legislative intention, the Department would "redirect its efforts from checking compliance plans for classification of freestanding woodlands to working with the Wooded Land Assessment Task Force to create a permanent solution to the question of fair and equitable assessments of woodlands."

While appellant acknowledged that the House Joint Resolution was not a statute requiring compliance, he argued that the resolution did reflect the intent of the legislature to allow for the proper resolution of the woodland problem. Appellant further specifically testified that the disputed land is "not farmland" and it is indeed "woodland that is being used as non-farm property." Appellant further acknowledged that in 2005 and 2006, there was no forestry management plan in place for the subject parcel, although a plan has since been implemented.

In response to the board of review's documentary evidence, appellant addressed a remark by the board of review that

reclassification was an ongoing process which actually began in the year 2000. Appellant claimed that in 2000 his "taxes" were cut in half, so from this he concluded the subject property was reclassified for 2000.

In conclusion, the appellant requested a change in classification to farmland for the entire parcel and thus a reduction in the assessment of the entire parcel to \$352.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment for farmland of \$115 and for non-farmland of \$55,075 was disclosed.

In support of an increase in assessment for the subject parcel, the board of review presented evidence that an error had been discovered on the GIS map depicting the boundaries of the subject property. The corrected boundaries reflect that the entire parcel is timberland such that the assessment should be changed to reflect all 73.5-acres as timberland with no pasture (Exhibit A).

As to the classification of the property, the board of review was of the opinion that the subject's use did not fall within the definition of a "farm" as found within the Property Tax Code (35 ILCS 200/1-60) which states in pertinent part:

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 board of review contended that the property did not meet this definition and thus it is not entitled to a preferential farmland assessment. The board of review further noted that appellant acknowledged the property was not "farmed" and there was no forestry management plan in place for the year in question.

As Exhibit C, the board of review presented directions it had received which were issued by IDOR to Chief County Assessment Officers dated May 30, 2003. The directions were geared toward achieving implementation of Bulletin 810 for 2006 and uniformly updating farmland classifications with accurate land use data, productivity index data, slope and erosion adjustments, flood debasement data, and current soil map data. The board of review

representative further testified that the guidelines for Bulletin 810 were already being issued in 2000; she further testified that implementation of the guidelines were repeatedly delayed because various counties did not have access to GIS mapping, soil surveys, and other computerized equipment necessary to bring the farm/non-farm properties up-to-date. Based upon the guidelines from IDOR, if a property did not qualify as farmland, the property was to be reassessed at appropriate market value rates.

In response to the appellant's contentions regarding House Joint Resolution 0095, the board of review pointed out language within the resolution: ". . . we urge the Department of Revenue to accept any similar valuation of that wooded land for the 2006 and 2007 taxable years . . ." The board representative further testified that by the time the resolution was issued and received, Jo Daviess County had already finished up-dating the records of about half of the farm/non-farm properties in the county to verify farm and non-farm use. In light of this fact, a decision was made within the county to finish up-dating the records of Jo Daviess County to ensure that all properties were equitable and updated in anticipation of implementing Bulletin 810 in 2006. The board further asserted that with the implementation of Bulletin 810 in 2006 and new aerial photos flown in the spring of 2006, any remaining non-farm property was revalued to market value.

In Exhibit E, the board of review presented five sales of primarily vacant rural property in Hanover Township to establish the correctness of the non-farmland assessment of the subject property based on market data. The comparables ranged in size from 27.58 to 99.28-acres. One of the properties sold twice in the same year. The sales occurred from January 2003 to October 2005 for prices ranging from \$84,000 to \$341,550 or from \$2,424 to \$3,661 per acre of land.

In Exhibit F, the board of review presented eight comparable properties in Hanover Township with aerial photographs and property record cards which, like the subject, were assessed with timber acreage at \$2,500 per acre/market value.

In response to the appellant's contention regarding "taxes" for 2000 having been reduced from the previous year for the subject property, the board of review representative noted that farmland values had been decreasing for about ten years, so the tax bill may have been reduced but there had been no change in the classification of the parcel between 1999 and 2000. The representative further testified that Jo Daviess County had been verifying land use and revaluing non-farm property since 2000 based upon the statutory definition of a farm and in anticipation of the implementation of Bulletin 810.

In conclusion, the board of review requested an increase in the assessment of the subject property of 73.5-acres to reflect a land assessment of \$61,250 with no farmland portion.

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 Property Tax Appeal Board further finds a change in the classification of the property to farmland for 2006 is not warranted and instead, a change to all non-farmland is warranted based on the evidence. Moreover, the Property Tax Appeal Board further finds that based on the removal of a farmland classification for 7.41-acres, an increase the subject property's assessment is warranted.

As to the classification issue, the Property Tax Appeal Board finds that the subject property is not entitled to a farmland classification and assessment. Namely, the evidence reflects 7.41-acres were improperly afforded a pasture designation, however, the corrected mapping of the parcel reveals all 73.50-acres to be non-farm timber land that should be assessed in accordance with its market value. 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...

Testimony revealed that the subject property has not been used as a farm. It is the use of real property that determines whether the property is to be assessed at an agricultural assessed valuation. Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill. App. 3d 872, 448 N.E.2d 3 (3rd Dist. 1983). Moreover, 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). The testimony presented by the appellant indicated that the subject has not been used in accordance with the definitions of "farm" as set forth in Section 1-60 of the Property Tax Code (35 ILCS 200/1-60). For these reasons, the Board finds the subject property does not qualify for a farm classification and farmland assessment under the Property Tax Code.

The Board further finds that the appellant did not dispute that there was no agricultural use of the subject property, but claims the parcels should not have been reassessed due to a change in classification because of House Joint Resolution 0095 (HJR0095) reflecting legislative intent to delay reclassification of timberland. The appellant's argument is equivalent to treating HJR0095 as if it were law or codified statutory language. Such

an interpretation is technically prohibited by the Illinois Constitution.

Article 3 of the constitution divides the powers of government into three distinctive departments, - legislative, executive and judicial. It ordains that no person, being one of these departments, shall exercise any power properly belonging to either of the others except as expressly directed or permitted in the constitution. The veto power conferred upon the Governor under section 16 of article 5 of the constitution is one of the express exceptions provided for in article 3. In the exercise of his constitutional power to approve or disapprove legislative enactments he is limited to the express authority granted.

People ex rel. Petersen v. Hughes, 372 Ill. 602, 606-07 (1940); see also Fergus v. Russel, 270 Ill. 304 (1915). As stated in the case of Greenfield v. Russel, 292 Ill. 392 (1920), "It must also be conceded that a state Legislature has power to obtain information upon any subject upon which it has power to legislate, with a view to its enlightenment and guidance. This is essential to the performance of its legislative functions, and it has long been exercised without question." Thus, the resolution at issue mandated a report back to the legislature so that appropriate solutions could be considered, but it by no means overrode Section 1-60 of the Property Tax Code regarding the determination of the use of a parcel of land for farm or non-farm activities.

Here, there was no legislative enactment sent to the Governor for signature or veto. As such, the appellant is requesting the Property Tax Appeal Board sanction the legislature through HJR0095 to unilaterally create law that must be obeyed. In light of the constitutional division of duties, the Property Tax Appeal Board finds the statutes control, namely, the Property Tax Code (35 ILCS 200/1-1, et seq.) and not HJR0095.

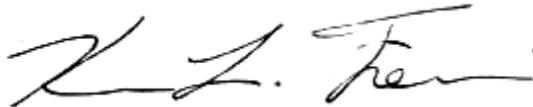
Moreover, given the facts of this appeal, the Property Tax Appeal Board agrees with the board of review's interpretation of Section 1-60 of the Property Tax Code (35 ILCS 200/1-60). Where there is clear, unambiguous statutory language, the Property Tax Appeal Boards finds the requirements of the Property Tax Code have statutory authority and precedence over House Joint Resolution 0095 (HJR0095) dated February 7, 2006.

In conclusion, the Property Tax Appeal Board finds the entire parcel is subject to a non-farmland assessment and therefore, an increase in the subject's assessment is warranted to reflect 73.5-acres at a non-farm land assessment.

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.



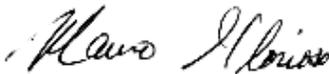
Chairman



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: 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.