AMENDED
FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Lee and Judith Gori
DOCKET NO.: 07-00050.001-F-1
PARCEL NO.: 11-1-10-30-00-000-007.015

The parties of record before the Property Tax Appeal Board are Lee and Judith Gori, the appellants, by attorney Christopher Byron of Byron Gerber Petri & Kalb, LLC, Edwardsville; and the Madison 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 **Madison** County Board of Review is warranted. The correct assessed valuation of the property is:

F/Land:	$0
Land:	$27,890
Residence:	$0
Buildings:	$1,550
TOTAL:	$29,440

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 5.6 acre tract improved with a 360 square foot metal clad shed. The property is located in Edwardsville, Hamel Township, Madison County.

The appellants contend the subject property is entitled to a farmland classification and an agricultural assessment. The appellants' counsel, Christopher Byron, appeared before the Property Tax Appeal Board on behalf of the appellants. The appellants did not appear to provide testimony or to be cross-examined. In support of their argument the appellants' counsel submitted a legal brief and an affidavit signed by Lee Gori. In the affidavit Gori asserts that the property was purchased in February 2005 and was used for crop production and had no improvements. The affiant further averred in 2005 they began planting an orchard, which occupied .5 acres as of January 1, 2007. The affidavit also provides that in 2005 they began a vegetable garden that began producing vegetables in 2006. The

area encompassing the vegetable garden was approximately .2 acres. The affiant stated the remainder of the area consists of wooded and grassy areas. Gori stated that the grassy areas are dedicated to soil improvement and conservation for future expansion of the fruit and vegetable production. The statement also acknowledged the construction of the storage shed in 2006, which is purportedly used to store agricultural equipment and supplies. In 2007 Gori stated a swing-set and slide were placed on the subject property for the use of grandchildren.

The appellants also submitted a copy of the subject's data sheet, an aerial photograph of the subject, a schematic diagram of the subject, and various photographs.

Counsel also submitted a brief asserting the appellants' use of the subject property qualifies the property for a farmland assessment as cropland and other farmland.

There was no evidence as to the number of trees planted although a photograph submitted by the appellants depicts six or seven small trees planted next to some woodland. Counsel asserted the trees are apple or cherry trees. The record also contained a photograph of the subject depicting a large area of mowed open area. The record also has a photograph of the metal clad shed and the swing-set. There were no photographs depicting any area of the subject devoted to a garden. The record also contained photographs of a field in corn stalks but counsel stated that was not the subject property but a neighboring property.

Based on this evidence the appellants requested the subject's assessment be reduced to $1,565.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $29,440 was disclosed. The board of review chairman testified the subject property was purchased by the appellants on February 14, 2005 for a price of $124,000. At the time of purchase the subject was vacant unimproved rural ground and had been receiving a farmland assessment prior to 2007. In 2007 Hamel Township underwent a quadrennial reassessment and the township assessor's office reclassified the parcel after inspection to vacant residential unimproved. The board of review representative stated that there were no visible crops on the parcel at the time of the field inspection.

The chairman of the board of review testified the county was relying on Illinois Department of Revenue Publication 122, Farmland Implementation Guidelines, for the conclusion that the subject property, as of January 1, 2007, had not met the primary use requirements to qualify for a farmland assessment. The witness indicated that two years after the appellants had planted some trees for an orchard that could be a qualifying use as farmland. The board of review submitted a series of photographs dated January 18, 2007 and August 7, 2007, depicting the subject property. The photographs were taken by the field crews as part

of the inspection for the quadrennial reassessment. The photographs depict primarily an open grass area with no crops being visible, the swing-set and the metal clad shed.

The chairman of the board of review further testified the assessment reflects a market value of approximately $86,790, which is less than the purchase price.

After hearing the testimony and considering the evidence the Property Tax Appeal Board finds it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellants contend the subject should be classified and assessed as farmland. After reviewing the record and considering the evidence, the Board finds the evidence presented by the appellants was not credible in establishing the subject property was being used as a farm entitling it to a farmland classification and a farmland assessment.

Section 1-60 of the Property Tax Code defines farm in part as:

> Farm. 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. . . .

35 ILCS 200/1-60. Additionally, in order to qualify for a farmland assessment the property must be used as a farm for the two preceding years. 35 ILCS 200/10-110.

Initially, the Board finds that neither of the appellants was present at the hearing to be examined about the extent and nature of the use of the subject property. There was no opportunity to question the appellants to determine whether or not the subject property was being systematically managed as an orchard or to produce vegetable crops. The record contained a photograph purportedly showing six or seven small fruit trees occupying a very minor portion of the subject parcel. The photograph alone does not establish the subject is being used or managed as an orchard. At the hearing, appellants' counsel attempted to establish that the subject was being used as a farm through an affidavit. 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. The Board finds it can give no weight to the appellants' affidavit in establishing the purported use of the property; therefore, there is nothing in this record from the appellants to prove the subject property was used as a farm in 2007.

Furthermore, the record contains photographs submitted by appellants and the board of review depicting the subject in January and August 2007 during the quadrennial reassessment. The photographs submitted by both parties depict primarily idle/vacant land with a metal clad shed and a swing-set in place. Viewing these photographs, the Property Tax Appeal Board finds it is simply not credible to conclude the subject property was being used as farmland during 2007.

The record further disclosed the subject property was purchased in February 14, 2005 for a price of $124,000. The subject's total assessment of $29,440 reflects a market value of approximately $88,320, which is less than the purchase price. The Board finds this evidence demonstrates the subject's assessment is not excessive in relation to the property's fair cash value as reflected by the purchase price. Based on this record the Board finds the assessment of the subject property as established by the board of review is correct and no reduction 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

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 22, 2011

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.