



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

APPELLANT: Kerry Wienke
DOCKET NO.: 07-02127.001-F-1
PARCEL NO.: 21-24-201-013-0040

The parties of record before the Property Tax Appeal Board are Kerry Wienke, the appellant; and the Vermilion County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the Vermilion County Board of Review is warranted. The correct assessed valuation of the property is:

F/Land:	\$1,064
Homesite:	\$5,326
Residence:	\$22,081
Outbuildings:	\$0
TOTAL:	\$28,471

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 5.02-acre parcel located in Oakwood, Oakwood Township, Vermilion County. The subject is improved with a one year-old, one-story pole building with a slab foundation that contains 3,486 square feet of building area, including 984 square feet of living area and a shed area of 2,502 square feet.

The appellant appeared before the Property Tax Appeal Board claiming a portion of the subject parcel should be classified and assessed as farmland as the basis of the appeal. In support of this argument, the appellant claimed the subject was 100% tilled farmland when purchased in 2004. In 2006, the subject's pole building was erected, "along with establishment of a 2-acre grass area for the building site.", but 3.02 acres of the parcel remain in rotating corn and soybean production and are currently enrolled in the USDA Farm Program. The appellant also submitted level and aerial photographs of the subject parcel and a soil

map. The appellant's evidence indicated he also farms a 20 acre tract in another township, which "is part of a family farm operation of approximately 1,500 acres." During the hearing, the appellant testified the 3.02-acre portion of the subject was farmed in 2005, 2006 and 2007. When asked by the Hearing Officer how he determined the requested farmland and building assessments, the appellant responded he apportioned the requests based on the tax bill. The appellant did not contest the assessment of the pole building. Based on this evidence, the appellant requested the 3.02-acre portion of the subject that he uses for crop production be classified and assessed as farmland with an assessment of \$744 and the subject's homesite assessment be reduced to \$5,326.

The board of review submitted its Board of Review Notes on Appeal wherein the subject's total assessment of \$35,449 was disclosed. In support of the subject's classification and assessment, the board of review submitted a letter prepared by the clerk of the board who is also the Vermilion County Supervisor of Assessments. This letter cited Section 1-60 of the Property Tax Code where it states

For purposes of this code, "farm" does not include property which is primarily used for residential purposes, even though some farm products may be grown or farm animals bred or fed on the property incidental to its primary use. (35 ILCS 200/1-60)

The board of review contends that since the appellant's residence is situated on the subject parcel, the subject "is precluded by law from being considered 'farm'." The board of review also submitted the covenants and restrictions of the subject's subdivision, citing several provisions which appear to preclude business uses, that no buildings can be used for business purposes and that any garage or shed must harmonize with the main dwelling. Finally, the board of review cited other sections of the covenants that prohibit livestock, or "noxious or offensive activity". The board of review contends the appellant agreed to abide by these covenants upon his purchase of the subject. The board of review also submitted property record cards for the other lots in the subject's subdivision that indicate they are all classified as residential properties. Based on this evidence, the board of review requested the subject's classification and assessment as entirely residential land be confirmed.

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 the un-refuted evidence and testimony in this record clearly indicate that 3.02 acres of the subject parcel was used for corn and soybean production in 2005 and 2006, continuing in 2007 and that this portion of the subject was not used for any other purpose.

Section 1-60 of the Property Tax Code 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). (35 ILCS 200/1-60)

The Board further finds Section 10-110 of the Code states in part:

Farmland. The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the preceding two years, except tracts subject to assessment under Section 10-45, shall be determined as described in Sections 10-115 through 10-140... (35 ILCS 200/10-110)

The board of review contends the primary use of the subject is residential and further, that restrictive subdivision covenants prohibit non-residential uses. However, the Property Tax Appeal Board finds the actual use of land is the determining factor in its correct classification and assessment. Property that is used solely for the growing and harvesting of crops or the feeding, breeding and management of livestock is properly classified as farmland, even if the farmland is part of a parcel that has other uses. Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill.App.3d at 872, (3rd Dist.1983).

The Board also finds the subdivision covenants which are the basis of the board of review's denial of farmland classification and assessment of 3.02 acres of the subject parcel do not supersede statutory interpretation by the courts of the state laws of Illinois. Therefore, the Board finds 3.02 acres of the subject is to be classified and assessed as farmland and ordered the board of review to compute a revised assessment incorporating this order. The board of review complied with the order on November 18, 2009 and provided the Property Tax Appeal Board with the revised 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

K. L. Ferr

Frank A. Huff

Member

Member

Mark Morris

Shawn P. Lerbis

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 23, 2010

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.