



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

APPELLANT: Esmer Capital Mgt., LLC
DOCKET NO.: 07-02900.001-F-2
PARCEL NO.: 02-29-201-001

The parties of record before the Property Tax Appeal Board are Esmer Capital Mgt., LLC, the appellant, by attorney Kelly Kramer in Yorkville, and the Kendall 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 Kendall County Board of Review is warranted. The correct assessed valuation of the property is:

F/Land:	\$248
Homesite:	\$0
Residence:	\$0
Outbuildings:	\$0
TOTAL:	\$248

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 6.8-acre tract of land. Prior to hearing in this matter both parties stipulated that 1.8-acres should be properly classified as farmland for agricultural use. The Property Tax Appeal Board recognizes and accepts the stipulation and therefore, 5-acres remains in dispute as the subject of this appeal.

The appellant appeared with counsel before the Property Tax Appeal Board claiming that the subject 5-acre tract should be classified and assessed based on agricultural use. Appellant, Verne Henne, sole proprietor of Esmer Capital Management, LLC., testified that the subject property was purchased in December 1, 1997. Henne stated that prior to the purchase the property was used for agricultural purposes wherein beans and corn were planted. At the same time he purchased the property, Henne entered into a 15-year lease agreement with Job's Landscaping, Inc. (Appellant's Exhibit A). The lease terms required Job

Lomeli, owner of the landscaping business, to pay Henne a fee based on the removal of trees, shrubs and sod from the property. Lomeli was to pay Henne \$30 for each tree; \$10 per shrub and \$0.50 for each yard of sod. In 2006, Henne received a payment of \$2,100 per the terms of the lease for removal of 10 trees, 100 shrubs and approximately 1,600 yards of sod. Job Landscaping first planted sod in 1998 after preparation of the property. Henne testified that in 2006 he received a notice of revised assessment for the subject property. Prior to 2006 the subject was classified as farmland. In 2006 Henne received a revised assessment from the Kendall County Board of Review for \$592,409 for the subject parcel. The board of review later reduced the assessment to \$170,301 following an appeal. Henne testified that the Yorkville/Bristol Sanitary District caused a disturbance on approximately 300 feet of the subject when they put in a sewer line. In addition, Harlem Irving further disturbed the property in late 2006 or early 2007 in widening Route 34 and during installation of a storm water sewer pipe. Henne testified that the subject property was actively farmed in 2005, 2006 and 2007.

During cross-examination, Henne testified that he drives by the property every other day since he lives next door. He has seen Lomeli take trees and sod off of the property in 2005 and 2006. Henne stated that he received two payments from Lomeli, one in 2006 and another in 2008. Henne testified that he and Lomeli had a gentleman's agreement that he [Henne] would get paid when Lomeli got to a substantial amount. Henne testified that he could not farm the front portion of the property in 2006 and 2007 because of the construction.¹ Henne testified that he does not use the subject parcel for any recreational activities.

The next witness called by the appellant's counsel was Job Lomeli. He is the owner of Job Landscaping, Inc. He does softscape and hardscape landscaping consisting of plants, sod, flowers, mulch and rocks or brick. Lomeli testified that in 1997 he entered into a lease agreement with Henne regarding the subject property. He agreed to pay Henne for removal of trees, shrubs and sod from the property as previously testified to by Henne. In preparation for the sod, his crew plowed the subject parcel and then slit seeded Kentucky Blue Grass. He then continually fertilized as needed. It took 2-3 years before he could remove any sod. He also planted trees and shrubs on the subject parcel. He removed approximately 1000 yards of sod in 2005, approximately 500 yards in 2006 and approximately 800 yards in 2007. Lomeli testified that he removes small sections of sod as needed for his landscaping business. Lomeli further testified that he farmed the subject parcel in 2005, 2006 and 2007. Based on this evidence, the appellant requested the subject property's classification be returned to agricultural and assessed accordingly.

¹ The parties agreed that the front portion measuring approximately 14,000 square feet was not farmed in 2007 because of the ongoing construction.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment was disclosed. The board of review was of the opinion that the subject's primary use was for commercial purposes and that it was assessed appropriately. In support of the subject's assessment, the board of review submitted a grid analysis of four comparable properties.

The township assessor, Raymond Waclaw, testified that the subject's assessment classification and value changed in 2006. Waclaw testified that he was instructed by the Chief County Assessment Officer at the time that all parcels under 10-acres were to be reviewed and the values applied that were the highest and best use. Waclaw testified that if the properties were actually being farmed or attached to another farm, he [Waclaw] had to separate the issue and apply Bulletin 810. If a parcel was not being farmed then he determined the highest and best use and assessed it accordingly. For the subject he determined the highest and best use was for commercial use because there was commercial property across the road on the south side and commercial property to the west. Waclaw testified that he inspected the subject and did not see any harvesting. Waclaw stated that he goes by the property at least three days a week because his daughter lives across the road from the subject. Waclaw testified that he later reduced the assessment from a full commercial to a full commercial developer's value since Henne was the original owner. Waclaw stated that the subject's value was also reduced because of the trees on the property. The trees make up the area previously stipulated to as agricultural (1.8-acres).

During cross-examination, Waclaw could not testify as to the comparables submitted into evidence by the board of review as he did not prepare the evidence. Waclaw admitted he was not very familiar with sod farming operations.² The four vacant land comparables submitted by the board of review ranged in size from 42,200 square feet to 5.48-acres. The properties sold from February to June 2006 for prices ranging from \$800,000 to \$2,200,000. Comparables one and two represented one sale of two parcels.³ Based on this evidence, the board of review requested confirmation of the subject's classification and assessment.

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 6.8-acres of the subject property are entitled to a farmland classification and assessment.

² The board of review was ordered to compute a farmland assessment for the subject property and submit same to the Property Tax Appeal Board. A copy the proposed farmland assessment is included and made a part of this record.

³ No witnesses were offered to testify in support of the grid analysis.

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..."

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.

Credible testimony revealed that the subject property has been used as a farm since at least 2005 and continued up to and including 2007. The record disclosed that the appellant had a farming cash rent lease in place for the subject parcel covering the tax assessment year in question. Thus, the testimony presented by the appellant indicated that the subject has been used for agricultural purposes for two years preceding the assessment date and including the assessment year in question. The Board gave no weight to the board of review's grid analysis as it does not address the classification issue raised by the appellant. The Board further finds a portion of the property, approximately 300 feet along the roadway retained its agricultural characteristics as farmland during construction of a sewer line and road widening project in 2006 and 2007. The appellant's sod farming operation on this portion of the subject was disrupted through no fault of the appellant or actions taken by the appellant. Pursuant to a request by the hearing officer, the board of review has determined that because of the construction damage, the appellant's farmland assessment, if any, should be reduced by \$69.⁴

The Property Tax Appeal Board ordered the Kendall County Board of Review to compute a farmland assessment for the subject parcel reclassifying certain portions of the subject property as farmland in accordance with relevant provisions of the Property Tax Code. The revised assessment calculations were received on May 19, 2010.

After reviewing the board of review's revised assessment, the Property Tax Appeal Board finds that it is proper, less the \$69 for construction damage.

⁴ See letter dated May 14, 2010 from Andrew Nicoletti, AS, CIAO/M

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.

Ronald 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: July 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.