



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

APPELLANT: Deer Lane Ventures, Ltd.
DOCKET NO.: 07-03473.001-F-1 through 07-03473.042-F-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Deer Lane Ventures, Ltd., the appellant(s), by attorney Robert A. Boron, of Robert A. Boron, Ltd. in Chicago; and the Kane 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 Kane County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NUMBER	PARCEL NUMBER	FARM LAND	LAND/LOT0	RESIDENCE	OUT0 BLDGS	TOTAL
07-03473.001-F-1	02-10-301-001	46	0	0	0	\$46
07-03473.002-F-1	02-10-301-002	57	0	0	0	\$57
07-03473.003-F-1	02-10-301-003	56	0	0	0	\$56
07-03473.004-F-1	02-10-301-004	14	0	0	0	\$14
07-03473.005-F-1	02-10-302-001	26	0	0	0	\$26
07-03473.006-F-1	02-10-302-002	16	0	0	0	\$17
07-03473.007-F-1	02-10-302-003	27	0	0	0	\$27
07-03473.008-F-1	02-10-302-004	13	0	0	0	\$13
07-03473.009-F-1	02-10-302-005	43	0	0	0	\$43
07-03473.010-F-1	02-10-310-001	12	0	0	0	\$12
07-03473.011-F-1	02-10-310-002	151	0	0	0	\$151
07-03473.012-F-1	02-10-310-003	4	0	0	0	\$4
07-03473.013-F-1	02-10-310-004	11	0	0	0	\$11
07-03473.014-F-1	02-10-310-005	13	0	0	0	\$13
07-03473.015-F-1	02-10-310-006	72	0	0	0	\$72
07-03473.016-F-1	02-10-310-007	37	0	0	0	\$37
07-03473.017-F-1	02-10-310-008	34	0	0	0	\$34
07-03473.018-F-1	02-10-310-009	35	0	0	0	\$35
07-03473.019-F-1	02-10-320-001	3	0	0	0	\$3
07-03473.020-F-1	02-10-320-002	14	0	0	0	\$14
07-03473.021-F-1	02-10-320-003	16	0	0	0	\$16
07-03473.022-F-1	02-10-320-004	27	0	0	0	\$27

07-03473.023-F-1	02-10-320-005	30	0	0	0	\$30
07-03473.024-F-1	02-10-320-006	35	0	0	0	\$35
07-03473.025-F-1	02-10-320-007	21	0	0	0	\$21
07-03473.026-F-1	02-10-320-008	24	0	0	0	\$24
07-03473.027-F-1	02-10-320-009	118	0	0	0	\$118
07-03473.028-F-1	02-10-351-001	17	0	0	0	\$17
07-03473.029-F-1	02-10-351-002	28	0	0	0	\$28
07-03473.030-F-1	02-10-351-003	6	0	0	0	\$6
07-03473.031-F-1	02-10-351-004	24	0	0	0	\$24
07-03473.032-F-1	02-10-351-005	12	0	0	0	\$12
07-03473.033-F-1	02-10-351-006	9	0	0	0	\$9
07-03473.034-F-1	02-10-351-007	707	0	0	0	\$707
07-03473.035-F-1	02-10-351-008	42	0	0	0	\$42
07-03473.036-F-1	02-10-351-009	37	0	0	0	\$37
07-03473.037-F-1	02-10-351-010	63	0	0	0	\$63
07-03473.038-F-1	02-10-351-011	111	0	0	0	\$111
07-03473.039-F-1	02-10-351-012	70	0	0	0	\$70
07-03473.040-F-1	02-10-351-013	86	0	0	0	\$86
07-03473.041-F-1	02-10-375-001	49	0	0	0	\$49
07-03473.042-F-1	02-10-375-002	38	0	0	0	\$38

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of an 80-acre parcel located in Rutland Township, Kane County. The subject parcel was purchased in 2004 and assessed as farmland through 2006 and reclassified in 2007. In July 2007 a plat was recorded dividing the subject 80-acres into 35 sub-parcels. In 2007 the subject parcel was reclassified and assessed by the township assessor as non-farmland property.

The appellant, through legal counsel, appeared before the Property Tax Appeal Board claiming the subject parcels should be classified and assessed in accordance with Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). In support of this claim, the appellant submitted a brief and various maps.

Jennifer Davis, a partner of Deer Lane Ventures, LLC, was called as a witness. Davis testified that the subject 80-acres was acquired in the fall of 2004. Davis further testified that the subject was farmed in corn in 2005 and with winter wheat in the fall of 2006. In the spring of 2006 some preliminary development work was done and in the fall of 2006 the clearing of wooded areas occurred with a wheat crop also being planted in the fall of 2006. Davis reiterated that in the fall of 2005 a farm tractor was purchased and crops were planted. In 2006, Davis testified that preliminary site development was performed to

convert the subject into a subdivision. The work involved the initial layout of the roadways and the construction of a fence around all of the wetland areas to protect against silt runoff. The clearing of corn crops continued while the development was being performed. The 2006 winter wheat crop was harvested in the spring of 2007. In 2007 they continued with some of the crops. Davis testified that the entire subject was farmed in 2007. In 2008, additional farming occurred. Davis testified that from 2005 to 2007 there was either development preparation ongoing or farming being done on the subject parcel. Davis testified that they continued to farm the subject parcel even though they were developing the subject parcel because the state of the economy was uncertain and the process of development was long and slow.

During cross-examination, Davis testified that on May 9, 2006 the subject parcel was rezoned from farming to planned unit development. It was brought to Davis' attention that she made a statement in a letter dated January 15, 2008 which stated in relevant part: "Due to the stage in development that we are at, the county is not willing to issue any building occupancy or access permits. As a result, no further use of the lots can be had for either it's [sic] prior use (farm) or it's [sic] future use (residential)." Davis explained that at the time of the letter on January 15, 2008, no physical farming was occurring. Davis testified that approximately 1-acre of the subject parcel is unusable wetland. Davis testified that additional planting occurred in the fall of 2007 on approximately 40% of the parcels with a harvest in 2008. In addition, Davis testified that roadways were being put in for the 1-acre to 2.5-acre lots. Davis testified that some changes were made to the drain tiles. Davis further testified that the plat was recorded July 12, 2007. In 2005 the subject had a farmland classification which was not changed until sometime in 2007.

In the brief in support of the appellant's claim, the appellant argued that in accordance with Section 10-30 of the Code, the subject was 1) platted in accordance with the Plat Act; 2) the platting occurred after January 1, 1978; 3) at the time of platting the subject was in excess of 10-acres; and 4) at the time of platting the subject was vacant or used as a farm as defined in Section 1-60 of the Code (35 ILCS 200/10-30). The appellant argued that the Rutland Township Assessor incorrectly reclassified the subject parcel as residential in 2007, which increased the subject's assessment, in contravention of Section 10-30 of the Code. It is the appellant's position that Section 10-30 mandates that the platting, subdividing and development of the farm land or vacant land freezes the classification of the subject and any increase in assessment until such time as actual construction of the residence on each respective parcel is completed, or until commercial or business use begins. Appellant argued that when the subject parcel's plat was recorded in July 2007 the subject's prior year's assessment was based upon a farm classification. Relying on Mill Creek Development, Inc. v. Property Tax Appeal Board, 345 Ill.App.3d 790 (3rd Dist. 2004), the appellant asserts the operative date is the date upon which

the land is platted and subdivided. If on that date the four criteria in Section 10-30 are met, then the developer will be eligible for statutory relief. Based on this evidence and argument, the appellant requested the subject parcels be afforded relief pursuant to Section 10-30 of the Code.

The board of review submitted its "Board of Review Notes on Appeal" wherein each of the 42 individual parcels' assessments of non-farmland property of \$9,946 was disclosed. Janet Sires, the Rutland Township Assessor, was called as a witness. Sires testified that she retook office in January 1, 2006. Sires determined that the subject had not been farmed in 2005 or 2006 based on a visual inspection and discussions with adjacent farmers and property owners. Sires testified that a small amount of corn was planted in the front of the property, but it was never harvested. Sires testified that in 2006 the appellants started moving dirt and pulling up tiles which caused flooding in the front and did not allow for farming. Her observations in 2006 occurred towards the end of the year. Based on her observation in 2006, her office reclassified the subject from farmland to residential vacant land on January 1, 2007. Sires testified that she turned her records over to the county in November 2007.

During cross-examination, Sires testified that she observed corn in the front of the subject in 2005 that was never harvested and observed no farming in 2006, 2007 or 2008. Sires testified that her office determined at the end of 2006 that the subject was not being farmed, so at the beginning of 2007 she reclassified it. Her office would have put it on as of January 1, 2007. Once her office changes the assessments, they certify that information to the county, which occurred in November 2007. Notice of the change in assessment is sent out by the county. She was aware the subject property had been re-platted July 12, 2007.

In rebuttal, appellant argued that Board of Review clerk, Mark Armstrong, conceded in a memorandum dated February 14, 2008 that if the subject property were farmed, the statutory provisions of Section 10-30 applies in all respects. It was further argued that the Rutland Township Assessor, Janet Sires admitted that she only observed 2 of the 80 acres as being flooded, and that part of that had always been a pond. Sires reclassified the subject parcels, but admitted it was done with the knowledge that platting occurred in July 2007. Further, it was argued that Sires testified to the amount of corn harvested, but never mentioned the winter wheat being planted or harvested. Counsel for the appellant argued that if the property was not farmed then it should be considered vacant, whereby Section 10-30 of the Code would still apply.

During legal argument, the board of review argued that the re-platting did not occur until after the subject was reclassified which occurred in January 2007, even though the assessors books were not turned over to the county until November 2007 and notice published in December 2007. Therefore, at time of platting, it

was argued that the subject parcels were properly classified as vacant residential land. It was further argued that the subject was incorrectly assessed in 2006 as farmland and that Section 10-30 considers actual use and not the mistaken classification. It was the board of review's position that the subject was not farmed in 2006.

Upon questioning, the board of review agreed that the subject met all four criteria of Section 10-30 of the Code, however, the subject was vacant and not used as a farm. In addition, the board of review agreed that if the property was farmed in 2005 and 2006 it would deserve a farmland classification in 2007. It was the board of review's position that re-classification occurs based on the actions of the assessor (January 2007) and not when the books are turned over to the county (November 2007). The appellant argued that re-classification takes place when notice is actually given (December 2007).

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the subject parcel qualifies for a farmland classification and assessment. Section 1-60 of the Property Tax Code 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.

(35 ILCS 200/1-60)

In addition, Section 10-110 of the Property Tax Code provides in pertinent part:

The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the 2 preceding years, . . . shall be determined as described in Sections 10-115 through 10-140.

(35 ILCS 200/10-110).

The Property Tax Appeal Board finds credible evidence and testimony in this record that the subject property was used as a farm for the years 2005, 2006 and 2007. A partner of Deer Lane Ventures testified that a farm tractor was purchased in 2005 and corn was planted in that same year. The witness further

testified that winter wheat was planted in the fall of 2006 and harvested in the spring of 2007. The Board finds credible testimony that the clearing of corn crops continued and the planting of winter wheat occurred while the development was being performed. The Board finds it questionable that the Rutland Township assessor, based on personal observations, did not see winter wheat being planted or harvested on the subject parcels during the years in question. The assessor's determination was based in part on hearsay evidence which was not supported in this hearing. As a result, the Property Tax Appeal Board finds the subject parcels fall under the statutory definition of farmland as provided by Section 1-60 of the Property Tax Code (35 ILCS 200/1-60). Thus, the Property Tax Appeal Board finds the subject parcels are entitled to a farmland assessment and classification based on the applicable statutes. The Board finds the controlling statutes clearly provide that in order for a particular property to receive a farmland assessment, it must be used for an agricultural purpose for the assessment year in question and the two years that precede that assessment date, which the Board finds occurred in this appeal.

Illinois case law and publications issued by the Illinois Department of Revenue provide that the actual use of land is the determining factor on whether a particular parcel receives a farmland classification and assessment. For example, property that is used solely for the growing and harvesting of crops is properly classified as farmland for tax purposes, even if that farmland is part of a parcel that has other uses. Kankakee County Board of Review v. Illinois Property Tax Appeal Board, 305 Ill.App.3d 799 (3rd Dist. 1999). The present use of land determined whether it is entitled to a farmland classification for assessment purposes. Santa Fe Land Improvement v. Illinois Property Tax Appeal Board, 69 Ill.Dec. 708, 448 N.E.2d 3 (3rd Dist. 1983). Based on the actual use of the property during the 2007 assessment year, the Property Tax Appeal Board finds the subject parcel is entitled to a farmland classification and assessment.¹

Having determined that the appellant established improper classification of the subject parcels, the Property Tax Appeal Board need not further address the application of Section 10-30 of the Code. Therefore, the Property Tax Appeal Board finds the subject property's assessment as established by the board of review is incorrect and a reduction in assessment and a change in classification for each parcel are warranted.

¹ At hearing, the board of review was requested to provide an estimated farmland assessment for the subject parcels if they had been classified as such. The farmland assessments were provided and entered into this record. Each farmland assessment herein was rounded to the nearest dollar.

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: August 20, 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.