FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Joseph Fraser
DOCKET NO.: 06-01988.001-F-2 through 06-01988.004-F-2 and 07-04224.001-F-2
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Joseph Fraser, the appellant, by attorney Thomas M. Battista, of Rock, Fusco & Associates, LLC of Chicago, and the DeKalb County Board of Review by Assistant State's Attorney John Farrell.

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 DeKalb County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NUMBER	PARCEL NUMBER	FARM LAND	LAND/LOT	RESIDENCE	OUT BLDGS	TOTAL
06-01988.001-F-2	19-36-204-008	0	83,075	0	0	$ 83,075
06-01988.002-F-2	19-36-204-010	0	89,167	0	0	$ 89,167
06-01988.003-F-2	19-36-204-003	0	59,802	0	0	$ 59,802
06-01988.004-F-2	19-36-204-004	0	23,206	60,132	0	$ 83,338
07-04224.001-F-2	19-36-204-023	0	191,292	0	0	$191,292

Subject only to the State multiplier as applicable.

ANALYSIS

For the 2006 assessment appeal, the subject property consists of four parcel identification numbers; for the 2007 assessment appeal, those four parcels plus an additional parcel were combined into one parcel identification number. The subject property consists of approximately 9.23-acres of land (402,058 square feet of land area). As of January 1, 2006, one parcel was improved with a residential dwelling. The residential dwelling was demolished in February 2006. The property is located in Sandwich, DeKalb County, Illinois.

The appellant appeared with counsel before the Property Tax Appeal Board claiming improper classification of much of the subject land and also seeking a reduction in the 2006 improvement assessment based upon demolition of the structure. In summary, the assessor had assessed the property entirely as non-farmland

with a dwelling for 2006 and as entirely non-farmland without an improvement assessment for 2007. In support of these contentions, appellant through counsel submitted a brief and a number of ground-level photographs of the subject property along with the testimony of the appellant as to the use of the property. In further support of the classification claim, appellant claimed at least a portion of the subject property had received a farmland classification prior to 2006 although the brief contends that the entire property was assessed as farmland prior to the purchase.

At the hearing, appellant was called to testify and stated that he purchased four adjacent parcels comprising the 2006 assessment appeal in November 2005 for about $960,000. At the time of purchase, there was a rundown dwelling on each of two parcels situated along Church Street/State Route 34 in Sandwich or along the northern portion of the four adjoining parcels. Appellant demolished one dwelling in December 2005 and there was no improvement assessment on this particular parcel for the 2006 assessment. The other dwelling was not demolished until February 2006 and there was a 2006 improvement assessment of $60,132 placed on this dwelling. Appellant subsequently purchased an additional adjacent parcel (adding to the southwestern corner of the previous four parcels) in the Fall of 2006. (TR. 11-17)[1] Eventually, those five individual parcels were combined into parcel number 19-36-204-023 which is the subject of the 2007 assessment appeal which was assessed entirely as non-farm land with no improvements in 2007.

Appellant Fraser further testified that as a life-long resident of Sandwich, he was familiar with the subject land of approximately 9-acres located directly within the city limits of Sandwich and recognized that there were not many parcels in-town of that size to be purchased at one time. The property was listed for sale as a "farm" through the use of a Realtor in about September 2005. Prior to purchase, Fraser investigated the taxation of the property with the Realtor and recalls the northern two parcels with dwellings were taxed for about $2,500 each and the adjoining southern parcels were taxed for $38 and $80, respectively. Therefore, Fraser believed the southern two parcels were assessed as farmland.

As to the farming activity on the parcels just prior to Fraser's purchase, the appellant testified the property was mainly a tree farm containing predominantly evergreens; appellant further acknowledged that he did no planting in 2005 after the purchase of the four parcels (TR. 20). Appellant further testified that he desired to change the entire land into farmland so he would need to remove some of the timber to create tillable soil and

[1] References to the transcript of the proceedings will be made by a notation (TR.) followed by the applicable page number(s).

plant winter wheat or corn eventually (TR. 20-21). In September 2006, appellant testified that about 85% of the four parcels were planted in winter wheat (TR. 21-22). Appellant further testified that in 2007 99% of the total property, including the additionally purchased parcel, was winter wheat (TR. 22-23). In describing photographs #1 through #11 of the subject property, appellant testified that he first planted in September 2006 and the photographs depict the subject property planted in winter wheat from various directions in Spring of 2007 (TR. 25-28).

Fraser testified he began to become involved in real estate around 1990 and had advised the previous owner of the property at one time that if she was interest in selling to contact Fraser (TR. 30). Appellant testified that upon his view of the property in the years 2003 and 2004, the property was being farmed with trees (TR. 31).

On cross-examination, appellant acknowledged that the property's location within town made it attractive to the appellant for purchase. Appellant further acknowledged that in-town land would sell for about $100,000 per acre whereas farmland outside of town would sell for a lot less per acre; appellant noted that the property's in-town location justified the price he paid for the property (TR. 33-34). In the course of purchasing the property, appellant did not request records from the seller to support the contention that the property was being used as a tree farm (TR. 34-35). Upon cross-examination, appellant also acknowledged that none of the evergreen trees which dominated the property were harvested for re-sale because they were 40' to 50' tall and not able to be sold for the cost involved in transplanting them (TR. 36-37). Appellant was asked since farming the property if he filed a "form F" for tax purposes, but appellant testified he was not familiar with the form referred to in the question (TR. 37).

During further cross-examination, appellant testified he planted winter wheat in September 2006 and was issued a reassessment notice in November 2006 (TR. 37-38); appellant maintained that he was not billed for the planting work until later as shown in board of review Ex. 1, a receipt dated December 13, 2006 for $418 covering labor and twelve bags of seed (TR. 38-39).

Upon questioning by the Hearing Officer, appellant Fraser acknowledged that he had reviewed county assessment records and was aware that the parcels along the road which had the dwellings on them were not assessed as farmland nor did appellant expect them to be assessed as farmland as he acknowledged those parcels had not been farmed for two years prior to 2006 (TR. 46-47). Furthermore, Fraser testified he began removing the trees on the other two parcels commencing in late 2005 and early 2006 (TR. 47). As to the dwelling that was removed in February 2006, appellant testified in response to the Hearing Officer that the township assessor indicated to appellant that the dwelling would

be assessed for 2006 since it existed on January 1, 2006 (TR. 47-48).

On redirect examination, appellant Fraser testified that in performing due diligence prior to purchasing the four parcels, he learned that in a comprehensive development plan there was a desire to expand a street through to another thoroughfare which would require the expanded roadway to cut through the subject property. Based on this comprehensive plan, appellant believed the property long-term would be valuable. Appellant indicated that he could "just sit" on the property "and while I was sitting on it I just thought I could keep it in the farmland." (TR. 48-53)

In summary, for 2006 appellant claimed the southern two of the four parcels should be assessed solely as farmland; parcel 19-36-204-003 should have both a farmland and a homesite land assessment whereas parcel 19-36-204-004 which was improved with a dwelling through February 2006 should have both farmland and homesite assessments along with a reduced improvement assessment to reflect the existence of the residence for only two months. For 2007 appellant claimed the entire combined parcel qualified for a farmland assessment.

The board of review submitted two sets of "Board of Review Notes on Appeal" wherein the subject's 2006 assessment of $315,382[2] was disclosed and the subject's 2007 assessment of $191,292 was disclosed. The subject's total 2006 assessment reflects an estimated market value of $946,525 utilizing the three-year median level of assessments for DeKalb County of 33.32% as determined by the Illinois Department of Revenue. The combined parcel in 2007 reflected an estimated market value of $574,796 utilizing the three-year median level of assessments for DeKalb County of 33.28%.

In a letter prepared by the Clerk of the board of review, the board contended that the subject property over a number of years had changed as shown in submitted aerial photographs from nursery use to non-nursery use and therefore was no longer entitled to a farmland assessment. The aerial photographs submitted depict the property in 1977, 1985, 1990, 1994, 2001, and 2006.

In support of the subject's assessment, Sheila A. Johnson, Sandwich Township Assessor since 1995, submitted a letter and testified at the hearing in this matter. In the letter, Johnson reported the four parcels were purchased by the appellant on December 22, 2005 for $950,625. Johnson further reported in her letter and testified at hearing that the subject property and all

[2] The 2006 assessment of the four parcels reflects an estimated market value of $946,525 based upon the 2006 three-year median level of assessments in DeKalb County of 33.32% as determined by the Illinois Department of Revenue.

Route 34 properties were reassessed; Johnson commenced her reassessment process with the Route 34 properties because she believe it had been many, many years since those properties had been reassessed (TR. 55-56). To reassess the properties, Johnson began by examining all of the sales on Route 34 from which she developed a formula which she used on every property along Route 34 (TR. 56-57).

As to the subject parcels, Johnson testified that she reassessed the land as commercial property because upon inspection of the property in the Spring or Summer of 2005, Johnson saw no evidence of farming, even though the parcels had previously been assessed as farmland; Johnson observed grass or weeds and scrubby trees which she assumed to have been just part of the overgrowth of the whole property; she saw no evidence of planted trees (TR. 57-58). At the time of her inspection, Johnson saw no signs indicating the property was a tree farm or any kind of business (TR. 58-59).

Johnson further reported in her letter that after the 2006 reassessment and application of the township multiplier, the four parcels had an estimated market value of $1,099,149. After the reassessment notices were issued, Johnson discussed with the appellant the options of reducing the assessment for one year only to reflect the recent purchase price which the assessor found to be an arm's-length transaction and/or combining the parcels in an effort to reduce the overall assessment; Fraser chose instead to appeal to the DeKalb County Board of Review on the grounds of incorrect classification of the property which the appellant believed qualified for a farmland assessment. (TR. 59-62)

On cross-examination, Johnson explained that while as a township assessor she is mandated to reassess all properties every four years, since there are so many parcels in Sandwich she tries to take a look at sections that she feels merit reassessment; the subject property was not reassessed in 2004, 2003, 2002 or 2001 and therefore other than any township multiplier, there would have been no reassessment on the subject property that Johnson was aware of. (TR. 64-66) Johnson also acknowledged that while she had been the assessor for over 10 years and the property was located along a main thoroughfare in Sandwich, Johnson had not evaluated the subject property for its farmland treatment since she became the assessor in 1995; Johnson further testified, however, that the county reassesses farmland, not the township assessor. Upon further questioning, Johnson testified she bases her determination of whether property qualifies as a farm purely upon observation of the property without talking with the owners or getting a statement from the owners. (TR. 66-68) After explaining her experience with orchards which have farmland assessments due to the reselling of produce, Johnson testified that for a property to be deemed a tree farm, she would have to receive proof of planting, that it was a tree farm in the past,

and that a tree farm existed for the purposes of reselling (TR. 71-72). From Johnson's 2005 inspection of the subject property, it was her observation that no farming had taken place on the parcels for a number of years. In light of this observation, on cross examination Johnson conceded that the subject parcels were not properly assessed in 2003 and/or 2004 due to "error, omission." (TR. 80)

During cross-examination, Johnson identified her assessment methodology as to assessment of dwellings which are demolished and/or removed in that she assesses the improvement present on the land as of January 1 of the given year. Therefore, when the appellant removed the dwelling in February of 2006, that dwelling was not removed from the assessment rolls until January 1, 2007; Johnson does not do any type of proportionate assessment for a demolished structure. (TR. 73-75)

Lastly, Johnson acknowledged that in light of information from the appellant, the subject property was classified and assessed as farmland in 2008 (TR. 76-77).

Upon questioning by the Hearing Officer, Johnson testified that as best as she could tell the 2001 aerial photograph of the subject property was representative of what Johnson observed in early 2005 (TR. 81). As to the 2008 farmland determination, Johnson testified the appellant provided information of planting and cropping of wheat through receipts of harvest and photographs (TR. 82-83).

The Clerk, Margaret M. Whitwell, who is also the Supervisor of Assessments and has held that position for nearly 18 years, testified as the board of review's second witness. Whitwell testified that the Sandwich Township Assessor turned in the assessment books for 2006 from which change notices were issued around October or November 2006 by Whitwell's office to the property owners, such as the appellant, to notify of changes in assessments (TR. 89-90). Within 30 days of receiving the notice, appellant came to the office and discussed with Whitwell the change in the assessment of the subject property and what could be done to change the classification; Whitwell explained that based on the township assessor's observation, the property was not being farmed and that under law, if the property were farmed for two years, it would be classified as farmland (TR. 91-92). In her letter, Whitwell also wrote that the appellant was to receive a one-year credit toward the two-year statutory requirement for farming activity since appellant had planted winter wheat in December 2006 (see board of review Ex. 1).

During cross-examination, Whitwell was asked to explain the quadrennial system of assessment: pursuant to statute, Whitwell testified that at least once every four years property should be reviewed and reassessed where necessary (TR. 94). Whitwell

testified that 2003 was the start of a quadrennial cycle such that 2005 was in the "middle" of DeKalb County's quadrennial with 2007 being the start of another quadrennial reassessment cycle. Typically a property would be reassessed in year 1 of the quadrennial. (TR. 95-96)

Upon questioning by the Hearing Officer, Whitwell testified that there is no statutory limitation upon a township assessor from making corrections and/or viewing properties at any time (TR. 98).

Upon further cross-examination, Whitwell expounded that the township assessor has the authority to submit changes (TR. 99). She further testified that records of her office regarding assessments and the current classifications of properties are public records (TR. 102-03).

Based on the foregoing and in light of the Property Tax Code provisions, the board of review was of the opinion that the subject property's primary use was not for farming (35 ILCS 200/1-60) and that it was assessed accordingly in 2006. Moreover, the one dwelling on one parcel was properly assessed as of January 1, 2006, prior to its subsequent demolition. Similarly, as to the 2007 assessment, the property did not qualify for a farmland assessment in accordance with the Property Tax Code since farming activity had not yet occurred for two years (35 ILCS 200/10-110). Thus, the board of review requested confirmation of the subject's 2006 and 2007 assessments.

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 the subject property is not entitled to a farmland classification and assessment. Moreover, the assessment of the dwelling which was demolished in February 2006 also does not merit a reduction in the 2006 improvement assessment.

As to the farmland classification issue, 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... [Emphasis added.]

Furthermore, 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).

Appellant in this matter has contested the 2006 assessment of the subject property so that the question becomes the use of the subject land in 2004 and 2005. The testimony presented by appellant indicated that he understood the property to be a tree farm prior to purchase, however, upon obtaining ownership of the property, the trees were so tall as to not be suitable for resale. The appellant presented no documentation to support that farming had occurred on the subject property in either 2004 or 2005, but rather relied upon his characterization of the property as a "tree farm" and the representation that the southern two parcels had received a farmland assessment prior to appellant's purchase of the property in late 2005. The aerial photographs submitted by the board of review depict a "grove" of trees on the western portion of the property in 2001, but no clearly defined lines of trees or even entirely tree covered ground; much of the land appears to be only grassland. In summary and most importantly, testimony failed to reveal that the subject property has been used as a farm since 2004 in accordance with the Property Tax Code (35 ILCS 200/10-110) in order to be eligible for a 2006 farmland assessment.

The final issue in the classification of this property can best be summarized as "detrimental reliance" in that appellant seeks to argue whether properly or improperly granted a farmland assessment as of the time of the purchase of the property, appellant should continue to enjoy the benefits of the reduced farmland assessment for the subject property, particularly since the appellant has after purchase cleared the property and planted crops in 2006 and 2007. The Property Tax Appeal Board gives this argument little merit.

The Property Tax Appeal Board finds that Section 9-75 of the Property Tax Code grants power to assessment officials to revise and correct individual assessments as appears to be just. Section 9-75 of the Code provides:

> The chief county assessment officer of any county with less than 3,000,000 inhabitants, or the township or multi-township assessor of any township in that county, may in any year revise and correct an assessment as appears to be just. Notice of the revision shall be given in the manner provided in Sections 12-10 and 12-30 to the taxpayer whose assessment has been changed.

(35 ILCS 200/9-75).

In summary, the Property Tax Appeal Board finds based on the evidence in this record that since no clear evidence of farming activity was presented as having taken place on the subject property in 2004 and 2005, no portion of the subject is entitled to be classified and assessed as farmland for the 2006 assessment year. Similarly, until the property meets the two-year farming requirement of Section 10-110 of the Property Tax Code, the subject property is similarly not entitled to a farmland classification for 2007. Therefore, the Property Tax Appeal Board finds the current classification of the subject property is correct and no change in the land assessment is warranted for either 2006 or 2007.

As to the appellant's claim for a reduced 2006 assessment on the improvement due to its demolition in February 2006, Section 9-160 of the Property Tax Code is relevant and provides in pertinent part for valuation in years other than the general assessment year:

> The assessment shall also include or <u>exclude, on a proportionate basis in accordance with the provisions of Section 9-180</u>, all new or added buildings, structures or other improvements, the value of which was not included in the valuation of the property for that year, <u>and all improvements which were destroyed or removed</u>. In case of the destruction or injury by fire, flood, cyclone, storm or otherwise, or removal of any structures of any kind, or of the destruction of or any injury to orchard timber, ornamental trees or groves, the value of which has been included in any former valuation of the property, the assessor shall determine as near as practicable how much the value of the property has been diminished, and make return thereof.

(35 ILCS 200/9-160). Further detail is then provided in Section 9-180 of the Property Tax Code as follows:

> <u>When, during the previous calendar year</u>, any buildings, structures or other improvements on the property were destroyed and rendered uninhabitable or otherwise unfit for occupancy or for customary use by accidental means (excluding destruction resulting from the willful misconduct of the owner of such property), the owner of the property on January 1 shall be entitled, on a proportionate basis, to a diminution of assessed valuation for such period during which the improvements were uninhabitable or unfit for occupancy or for customary use. <u>The owner of property entitled to a diminution of assessed valuation shall, on a form prescribed by the assessor, within 90 days after the destruction of any improvements</u> or, in counties with

> less than 3,000,000 inhabitants within 90 days after the township or multi-township assessor has mailed the application form as required by Section 9-190, file with the assessor for the decrease of assessed valuation. Upon failure so to do within the 90 day period, no diminution of assessed valuation shall be attributable to the property.
>
> Computations under this Section shall be on the basis of a year of 365 days.

(35 ILCS 200/9-180). In this matter, the evidence establishes that the appellant intentionally removed the structure in February 2006. While the appellant apparently verbally informed the township assessor of the demolition of the structure (TR. 47-48), the record is not all clear as to when he informed the township assessor (i.e., within 90 days of the demolition) and/or whether he filed the form prescribed by the assessor with which to seek a reduction in the assessment in accordance with Section 9-180. Therefore, the Property Tax Appeal Board finds that a reduction in the improvement assessment is not warranted on this record.

In conclusion, the Property Tax Appeal Board finds the board of review's assessment of the subject property for 2006 and 2007 is correct and no reductions are 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: September 28, 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.