



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

APPELLANT: Richard Cebuhar
DOCKET NO.: 08-01899.001-F-1
PARCEL NO.: 14-14-15-200-007

The parties of record before the Property Tax Appeal Board are Richard Cebuhar, the appellant, and the Fulton 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 **Fulton** County Board of Review is warranted. The correct assessed valuation of the property is:

F/Land:	\$1,490
Homesite:	\$0
Residence:	\$0
Outbuildings:	\$740
TOTAL:	\$2,230

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 148.43-acre tract of land located in Canton, Buckheart Township, Fulton County.

As currently assessed, the subject parcel has 61.44-acres of cropland; 4.67-acres of pasture; 44.04-acres classified as other farmland; and 37.3-acres classified as recreational water of which 30.52-acres was actual water and 6.78-acres of land immediately adjacent to the water as filter strips.

The appellant appeared before the Property Tax Appeal Board claiming that 37.3-acres of the subject tract, which is currently assessed as 'recreational water,' should be reclassified and assessed based on agricultural use. In support of this argument, the appellant contended that the water was used in herbicide applications to control brush and weeds along with serving as drainage for the remaining acreage which surrounds the water area. Moreover, the water has never been used for recreational purposes.

In his submission, appellant outlined that the subject property has been farmed for the past 37 years with the water previously treated as other farmland. For many years, the subject property supported a cow/calf operation of about 50 head which relied heavily on the water to support the livestock. Since that time, the farming operation has become one of grain, hay and CRP with the grain portion cash rented and the remainder of hay and CRP personally planted and managed by the appellant. For these uses, the water is used in herbicide applications to control brush and weeds.

Appellant also submitted an aerial photograph of the property denoting the acreage which would flood without the tiles, pipes and surface drains. Appellant contends that without the lakes, ponds and ditches, it would be impossible to farm the subject land. Surface water, field tiles and overflows all utilize the lakes to channel water from the fields and off the farm.

Based on this evidence and testimony, the appellant requested that the Property Tax Appeal Board find the disputed 37.3-acres of land should receive a farmland classification and assessment.

On cross-examination, the appellant testified that he has never made income on the water and that the water is strictly used for agricultural purposes. In the vegetative filter strips surrounding the water, some trees have grown up to further filter the water.

The board of review submitted "Board of Review Notes on Appeal" wherein the subject's total assessment of \$9,650 was disclosed. In support of the subject's assessment and classification, the board of review submitted a letter, a listing of township parcels with recreational assessments, and a grid of five sales along with a location map and aerial photographs of the sold parcels.

The letter explains Fulton County, at one time, was a prominent coal mining area, which left behind many areas of lakes that have become popular among hunters, fishermen, and outdoorsmen of all types. (See Exhibit D). The board of review explained the demand for this type of land remains high and the price being paid has been steady ranging from \$2,167 to \$4,077 per acre. (See Exhibit B). Some current real estate listings for similar type of land in Fulton County were also included with asking prices from \$2,800 to \$2,900 per acre. (See Exhibit E). In the 1980's county assessment officials recognized the trend and began assessing lakes and ponds as "Home-Site Recreational land." This designation has since been shortened (changed) to just "recreational."

Exhibit A consists of a list of all parcels in Buckheart Township that are being classified and assessed as farmland, but also have ponds or lakes that are assessed as recreational land at \$200 per acre. The board of review indicated that 111.13-acres of the subject parcel is classified and assessed as farmland at \$1,580

and the 37.3-acres with ponds are classified as recreational at \$200 per acre of water area.

In summary, the Fulton County Board of Review believed the information provided in the evidence shows that the subject property is being assessed in a fair, consistent and equitable manner and that the assessed value per acre is well below the market value for this type of land (water). Therefore, the board of review requested confirmation of the subject property's land classification and assessment.

In rebuttal at hearing, the appellant acknowledged that he also owns a nearby parcel on which his residence is situated and this residential parcel also has a small pond which admittedly has been assessed as recreational land. Appellant acknowledges that the pond on his residence can be seen from his home and may perhaps have some validity being characterized as recreational water. In contrast, however, the ponds on the subject parcel cannot be seen from his residence nor do these ponds have any recreational use.

After hearing the testimony and considering the record, 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's disputed 37.3-acres are entitled to a farmland classification and assessment.

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.

Section 10-115 of the Property Tax Code provides that the Illinois Department of Revenue shall issue guidelines and recommendations for the valuation of farmland to achieve equitable assessment within and between counties. (35 ILCS 200/10-115) Section 10-125 of the Property Tax Code (35 ILCS 200/10-125) indentifies four types of farmland: (a) Cropland; (b) Permanent pasture; (c) Other farmland; and (d) Wasteland. Publication 122, Instructions for Farmland Assessments, issued by the Illinois Department of Revenue provides further guidance in this instant appeal. Page 2 of Publication 122 has a category labeled Wasteland, which provides in pertinent part:

Wasteland is assessed according to its contributory value to the farm parcel. In many instances, wasteland contributes to productivity of other types of farmland. **Some land may be more productive because wasteland provides a path for water to run off or a place for water to collect.** [Empahsis added.] (Publication 122, p. 2, 2006)

Page 3 of Publication 122 has a category labeled pond and borrow pits, which provides in pertinent part:

Assess ponds and borrow pits used for agricultural purposes as contributory wasteland. (Publication 122, p. 3, 2006).

The Property Tax Appeal Board finds the subject's disputed 37.3-acres are used in conjunction with the farming operation for drainage purposes and clearly meets the definition of farmland as contained in the Property Tax Code. Furthermore, the subject's pond areas are contiguous and are surrounded by cropland, pasture ground and other farmland, which further supports an agricultural assessment as provided by the Property Tax Code and Publication 122.

The board of review did not dispute the appellant's agricultural use for 111.13-acres of the subject property, but claimed the subject's 37.3-acres with ponds or 'recreational water' should be assessed as recreational land. The board of review contends ponds and lakes like the subject are uniformly classified and under-assessed. The Property Tax Appeal Board gave little merit to this aspect of the response submitted by the board of review.

Notwithstanding the fact that the board of review failed to present any credible evidence showing that the use of the subject's 37.3-acres with ponds is used for recreational purposes, the Property Tax Appeal Board finds property that is used for agricultural purposes should be assessed as farmland even if the farmland is part of the parcel that has other incidental uses, such as recreation. In Santa Fe Land Improvement Co. v. Property Tax Appeal Board, 113 Ill.App.3d 872 (3rd Dist. 1983), the court held "it is the use of real property which determines whether it is to be assessed at an agricultural valuation" and that "the present use of land determines whether it receives an agricultural or nonagricultural valuation." The Board finds the "present use" controls the classification of farmland under the Property Tax Code and has been codified several times under Illinois case law. See Oakridge Development Co. v. Property Tax Appeal Board, 405 Ill.App.3d 1011 (2nd Dist. 2010); Senachwine Club v. Putnam County Board of Review, 362 Ill.App.3d 556, 568 (2005); Bond County Board of Review v. Property Tax Appeal Board, 343 Ill.App.3d 289, 292 (5th Dist. 2003); Kankakee County Board of Review v. Illinois Property Tax Appeal Board, 305 Ill.App.3d 799 (3rd Dist. 1999); Du Page Bank & Trust Co. v. Property Tax Appeal Board, 151 Ill.App.3d 624, 627 (2nd Dist. 1986).

Additionally, the Board finds that Illinois courts have granted the Property Tax Appeal Board substantial deference in its interpretation of Section 1-60 of the Property Tax Code. In McLean County Board of Review v. the Property Tax Appeal Board, 286 Ill.App.3d 1076, 1081 (4th Dist. 1997), the court held that the definition of "farm" in Section 1-60 of the Code is very broad. Furthermore, in McLean County Board of Review, the appellate court did not overturn the lower court's finding that **the recreational use of** the property is incidental and insignificant, and the property can be farmed and managed simultaneously as a conservation area, without losing its [farmland] assessment.

In summary, the Board finds the subject's pond areas are entitled to a farmland classification and assessment for three reasons. First, the subject is used in conjunction with a farming operation. Second, the pond areas contribute to the productivity of other types of contiguous farmland because they provide paths for water to run off or places for water to collect. Third, since the subject ponds are contiguous to the previously classified farmland and have not been shown to be used for any other use incidental and insignificant to their primary use as farmland, the subject's ponds are entitled to a farmland classification and assessment as provided by Publication 122 issued by the Illinois Department of Revenue.

The Property Tax Appeal Board gave little merit to the response submitted by the Fulton County Board of Review. Although the evidence disclosed the board of review uniformly assessed rural ponds based on market transactions as recreational land, the Property Tax Appeal Board finds the board of review failed to address the farmland classification of the subject's ponds based on their use in conjunction with the overall farming operation conducted on the subject parcel.

In conclusion, the Property Tax Appeal Board finds the board of review's assessment of the subject property is incorrect and a reduction is warranted. Subsequent to the hearing at the request of the Property Tax Appeal Board, the Fulton County Board of Review submitted a farmland assessment for the subject property.

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.

Donald R. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario M. Louie

Member

Shawn R. Lerski

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: June 24, 2011

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.