



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

APPELLANT: Kevin Dahl
DOCKET NO.: 08-03345.001-C-3 through 08-03345.005-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Kevin Dahl, the appellant, by attorney Kevin P. Burke of Smith Hemmesch Burke & Kaczynski, in Chicago; the DeKalb County Board of Review and the Sycamore Community Unit School Dist. #427, intervenor, both of whom were represented by attorney Scott L. Ginsburg of Robbins, Schwartz, Nicholas, Lifton & Taylor, in Chicago.

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 NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
08-03345.001-C-3	06-29-427-001	126,162	0	\$126,162
08-03345.002-C-3	06-29-427-002	175,467	0	\$175,467
08-03345.003-C-3	06-29-427-003	293,653	0	\$293,653
08-03345.004-C-3	06-29-427-004	402,414	0	\$402,414
08-03345.005-C-3	06-29-477-002	523,772	0	\$523,772

Subject only to the State multiplier as applicable.

BACKGROUND INFORMATION

The subject property consists of five vacant undeveloped parcels (see Appellant's Ex. A) which total 26.81 acres of land area. The property is located in a commercial subdivision known as Townsend Woods, in Sycamore, Sycamore Township, DeKalb County.

A consolidated hearing was held on Docket Nos. 08-03345.001-C-3 through 08-03345.005-C-3 and 09-03144.001-C-3 through 09-

03144.005-C-3 on September 18, 2012. Separate decisions were issued for the 2008 and 2009 tax years by the Property Tax Appeal Board on December 21, 2012 wherein the Property Tax Appeal Board (hereinafter "the PTAB") reduced the assessments of the subject parcels. In those decisions the PTAB found that reductions in the assessments were warranted as Section 200/10-30, known as the 'developer's relief' provision of the Property Tax Code (hereinafter "the Code") (35 ILCS 200-10-30), applied to the property.

The board of review and the intervenor timely filed petitions for administrative review challenging the decisions of the PTAB. In the consolidated appeal known as Sycamore Community Unit School Dist. No. 427 v. Illinois Property Tax Appeal Board, 2014 IL App (2d) 130055, 13 N.E.3d 321, 382 Ill.Dec. 908, the court vacated the decisions of the PTAB concerning the determination that the property qualified for developer's relief with accompanying reduced farmland valuation assessments. Furthermore, the court remanded the matters to the PTAB with direction to address the appellant's alternative argument regarding the applicability of the open space provisions of the Code (35 ILCS 200/10-155) which had not yet been addressed due to the developer's relief determination.

For purposes of these separate remand decisions, references will again be made as may be necessary to the pages of the transcript of the original proceedings identified as "TR" followed by page citation(s) and to the pleadings of record.

OPEN SPACE ISSUE

The appellant's remaining alternative argument on remand in this matter is based on a contention of law that the subject property should receive a preferential open space assessment as provided by Section 10-155 of the Code (35 ILCS 200/10-155). Where a contention of law is made the standard of proof is the preponderance of the evidence. (See 5 ILCS 100/10-15). The board of review and the intervenor oppose the applicability of the open space provisions of the Code to the subject property and request confirmation of the subject's assessments.

For open space, the PTAB finds that there are two specific requirements to obtain an open space assessment for a property. First, for open space assessment consideration, the person liable for the taxes must comply with the procedural requirement set forth in Section 10-160 of the Code (35 ILCS 200/10-160). Second, the applicant for an open space assessment must meet the

substantive or factual criteria related to the use of the property set forth in Section 10-155 of the Code (35 ILCS 200/10-155).

As to the first requirement, Section 10-160 of the Code mandates a specific application process to potentially qualify a property for an open space assessment (35 ILCS 200/10-160) as follows:

Open space; application process. The person liable for taxes on land used for open space purposes must file a verified application requesting the additional open space valuation with the chief county assessment officer by January 31 of each year for which that valuation is desired. If the application is not filed by January 31, the taxpayer waives the right to claim that additional valuation for that year. The application shall be in the form prescribed by the Department and contain information as may reasonably be required to determine whether the applicant meets the requirements of Section 10-155. If the application shows the applicant is entitled to the valuation, the chief county assessment officer shall approve it; otherwise, the application shall be rejected.

When such an application has been filed with and approved by the chief county assessment officer, he or she shall determine the valuation of the land as otherwise permitted by law and as required under Section 10-155, and shall list those valuations separately. The county clerk, in preparing assessment books, lists and blanks under Section 9-100, shall include therein columns for indicating the approval of an application and for setting out the two separate valuations.

(Source: P.A. 88-455, Art. 10, § 10-160, eff. Jan. 1, 1994.)¹ [Emphasis added.]

In the appellant's brief at pages 3 through 5 filed in support of the contention of law argument, the appellant outlined an argument in support of an open space valuation for the subject parcels. Most importantly in terms of the procedural posture of

¹ Subsequent amendment(s) to the provision post-date the assessment date at issue in this matter. (See, Amended by P.A. 97-296, § 5, eff. Aug. 11, 2011).

the appellant's application, at paragraph 17 of the appellant's brief, the appellant stated:

The property owner concedes that it did not file an application for open space valuation with the chief county assessment officer by January 31 of 2008. The reason the application was not filed is that in January of 2008, all of the records from both the Sycamore Township Assessor and the DeKalb Supervisor of Assessor [sic] indicated that the property was being assessed at the 2005 assessed values. It was not until sometime after September 22, 2008 that the Sycamore Township Assessor proposed to cancel the 2005 assessed values and increase the assessments. [Emphasis added.]

(Appellant's Brief, p. 5; see also Appellant's Response to Intervenor's Motion To Dismiss Property Tax Appeal Board Appeal, postmarked on November 22, 2011, page 10)

The PTAB further finds the testimony provided by appellant Dahl confirms that the appellant (the person liable for the taxes) did not file a verified application requesting the open space valuation with the chief county assessment officer by January 31, 2008, for any of the parcels under appeal, as required by Section 10-160 of the Property Tax Code until such time as an assessment appeal was filed with the DeKalb County Board of Review for tax year 2008. (TR. 62) When asked at hearing why Dahl did not file a request for open space in January of 2008, the witness said I "didn't have any notice that I'd need to." (TR. 62)

As an additional argument to excuse the failure to timely file and in reply to the intervenor's dismissal motion, the appellant reported that "[s]hortly after the taxing officials increased the 2008 assessment, the Appellants [sic] filed the verified application on the prescribed form provided by the Illinois Department of Revenue." (Appellant's Response to Intervenor's Motion To Dismiss Property Tax Appeal Board Appeal, postmarked on November 22, 2011, page 11) A copy of the appellant's "Application for Open Space Purposes Assessment" for tax year 2008 was marked as Exhibit O of the intervenor's dismissal motion. The Application depicts that the document was signed by counsel for the appellant and also notarized on December 22, 2008. The document also depicts a "received" file stamp date of November 25, 2008 of the DeKalb County Chief County Assessment

Office which inexplicably is a date prior to the signing and notarizing of the document.

Further confirming the appellant's late filing of an application, the board of review reported that "Mr. Dahl's current attorney, Mr. Kevin Burke, requested an open space assessment on the property if the farmland value was not granted." (Board of Review Notes on Appeal, attached letter dated July 29, 2010 of Margaret Whitwell, Clerk of the DeKalb County Board of Review) She noted that the board of review did not grant an open space assessment in part because "[an application] was not filed in a timely manner." (Id. letter at page 2)

In an effort to excuse this obvious late filing, the appellant's initial brief cited the case of Weber v. White Eagle Golf Club, 241 Ill. App. 3d 557 (3rd Dist. 1993) for the proposition that "failure to file a timely application for open space valuation has been excused by the courts in similar situations." (Appellant's initial brief, p. 5, paragraph 18) The PTAB finds the case of Weber is factually distinguishable from the instant appeal.

In Weber, the subject golf course prior to 1990 had been identified for tax purposes with parcel identification number (PIN) 01-04-100-004 (hereinafter "004") and had been approved for an open space assessment in accordance with the predecessor open space provision of the Revenue Act of 1939. Id. at 558. There was no factual dispute in Weber, the application for open space valuation was filed for PIN 004 for tax year 1990 on January 5, 1990. Moreover, the County Supervisor of Assessments approved the open space assessment application. Id. at 559. However, a subsequently issued tax bill in the Spring of 1991 did not reflect the open space assessment. The court in Weber further found that as of the time the open space application was filed in 1990, the property was still known as PIN 004; administratively by the time the taxes were extended, a new PIN had been assigned to the subject golf course which was now designated as 010. Id. at 560. In the absence of an open space application for PIN 010, the valuation was increased on the property. Under these factual circumstances where the only thing that had changed was the PIN, the court in Weber determined that the taxpayer complied with the law to the greatest extent possible to obtain its open space valuation for 1990. Id.

The PTAB finds that the appellant in this matter did not suffer under an administrative change in PIN designations by the assessing officials for any of the subject parcels and, admittedly, the appellant did not file a timely application for open space for any of the subject parcels prior to the deadline of January 31, 2008. The PTAB finds the decision in Weber does not excuse the appellant's failure to file a timely application for open space valuations of the subject parcels by the deadline of January 31, 2008.

Given the unusual fact pattern in the assessment history of the subject parcels which shifted from farmland assessments to full value assessments and back again,² the appellant also argued that a determination by PTAB that a request for open space treatment was not timely would be a denial of the appellant's "due process rights." (Appellant's Response to Intervenor's Motion To Dismiss Property Tax Appeal Board Appeal, postmarked on November 22, 2011, page 11) The appellant asserted that as of January 31, 2008 the tax records depicted a total assessment for the subject parcels of \$3,918 whereas the appellant contends that an open space valuation for these parcels would have been higher than the reported total assessments as of January 2008. As the appellant contends that only in October 2008, when the DeKalb County taxing officials increased the 2008 assessed value from \$3,918 to \$1,420,696, did the appellant now have a reason to request an open space valuation; as a consequence, the appellant made the request "to the DeKalb County Board of Review as part of their 2008 Board of Review complaint." (Id. at 12; Intervenor's Exhibit O to dismissal motion) The PTAB finds the appellant's argument concerning the reason or rationale for making a late filing again does not overcome the clear statutory language in Section 10-160 which states, "If the application is not filed by January 31, the taxpayer waives the right to claim that additional valuation for that year." (35 ILCS 200/10-160) In this regard, the PTAB finds there is no exception or excuse for a late-filed application.

In support of the decision of the PTAB finding that the late application forecloses further consideration of the open space assessment claim, the Illinois Appellate Court has previously held that the filing of a verified application with the county assessor for open-space valuation of land for property tax purposes is a prerequisite for a landowner to challenge the county's failure to assess the property as open space. Illini Country Club v. Property Tax Appeal Board, 263 Ill.App.3d 410,

² See Intervenor's Motion to Dismiss, p. 5, charting the shifts in the total assessments of the parcels.

200 Ill. Dec. 764, 635 N.E.2d 1347 (4th Dist. 1994) (overruled on other grounds by, Peacock v. Illinois Property Tax Appeal Board, 339 Ill.App.3d 1060, 275 Ill. Dec. 136, 792 N.E.2d 367 (4th Dist. 2003)). In light of both the statutory language and case law, the Property Tax Appeal Board finds that the procedural requirements of Section 10-160 of the Code are mandatory. The appellant acknowledged more than once in the pleadings filed in this matter that the appellant did not timely submit an application for an open space assessment. There is no exception set forth in Section 10-160 allowing consideration of an untimely filed application. Therefore, the PTAB hereby finds that in the absence of the prerequisite procedural compliance with Section 10-160, there is no basis to consider substantive issues regarding an open space assessment under the criteria of Section 10-155 for this 2008 tax year appeal.

Based on the record in this 2008 assessment appeal, the PTAB finds due to the fact that no open space application had been timely filed by the appellant or the person liable for the taxes for the subject parcels, the appellant has waived his right to claim the preferential open space assessment for those parcels. Therefore, no reduction in the subject's assessment is warranted on this record on grounds of an open space valuation request.

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. Fan

Mark Albino

Member

Member

JR

Jerry White

Member

Acting Member

Robert Steffen

Acting 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: November 20, 2015

A. Proctor

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.