



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

APPELLANT: James VanderLaan
DOCKET NO.: 09-00840.001-F-2 and 10-00690.001-F-2
PARCEL NO.: 19-09-15-300-019-0000

The parties of record before the Property Tax Appeal Board are James VanderLaan, the appellant, by attorney Timothy J. Rathbun, of Rathbun, Cservenyak & Kozol, LLC in Joliet; the Will County Board of Review; and Frankfort CCSD 157-C intervenor, by attorney Ares G. Dalianis of Franczek Radelet P.C. 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 Will County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
09-00840.001-F-2	19-09-15-300-000	240,000	0	\$240,000
10-00690.001-F-2	19-09-15-300-000	234,360	0	\$234,360

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of an 18 acre tract of land that is located in Frankfort Township, Will County, Illinois.

The appellant appeared before the Property Tax Appeal Board claiming the subject parcel is entitled to a farmland classification and assessment¹.

During opening statements, counsel argued the appellant has used the subject property for a variety of agricultural uses over the years. Counsel argued the appellant submitted income tax returns reflecting farm income. Counsel also referenced Senachwine Club v. Property Tax Appeal Board, 362 Ill.App.3d 566, (3rd Dist. 2005)

¹ The appellant also raised the issue of uniformity of assessments or unequal treatment in the assessment process. However, at the hearing, this aspect of the appeal was withdrawn without objection.

as an authority for the proposition that the subject parcel is entitled to a farmland classification and assessment.

Counsel called James VanderLaan as a witness. VanderLaan is the owner and taxpayer for the subject property. VanderLaan purchased the subject parcel in 1994. VanderLaan testified there was a house located on the northwest corner of the property but it was donated to the fire department and was burned in 1995. Prior to 2009, VanderLaan testified the parcel was being farmed. (Tr. p.21) He testified a "Mr. Kohl would farm it. It would be corn or beans. Every other year they would do something like that." VanderLaan testified David Kohl has farmed the property since he has owned it. In 2009, VanderLaan testified he could not remember what was farmed, but he thought he "farmed trees off the property." (Tr. p.22) VanderLaan testified black walnuts and oaks were located on the far south end of the property. In 2009, VanderLaan testified he moved some of the small trees to the north end of the property to save them.

Form 4835 of the appellant's 2009 federal income tax return was marked as Taxpayer's Exhibit 1. VanderLaan authenticated the document. In 2009, VanderLaan reported farm income in his federal income tax returns. Line 6 depicts other income, including federal and state gasoline or fuel tax credit or refund in the amount of \$4,250. Line 7, Gross farm rental income was of \$4,250. Line 32 lists the net farm rental income of \$4,250. Statement 7 attached to form 4835 lists "Timber sales" in the amount of \$4,250.

In 2010, VanderLaan testified he used the subject property to plant pumpkins and trees. (Tr. p. 23) VanderLaan testified pumpkins were planted "all over the place" and oak trees were planted on the "eastern part of the property along the fence line." He testified none of the trees were harvested in 2010. VanderLaan testified he sold the pumpkins to "all my friends" for \$400, which was reported on his federal income tax returns. VanderLaan testified in 2011 and 2012, he hired another farmer to plant pumpkins (2011) and beans (2012).

Based on this testimony, the appellant requested farmland assessment for the subject parcel.

Under cross-examination by the board of review, the appellant testified he was not approached by county assessment official requesting records for the sales of pumpkins. He testified Joe Kral (Frankfort Township Assessor) and Nancy Camera (Farm Specialist for Will County) visited the subject property the day after the local board of review hearing. He claimed they observed pumpkins. VanderLaan testified the pumpkins were planted on the northeast part of the subject property in May 2010. VanderLaan agreed pumpkins were not present in 2009.

VanderLaan testified trees were harvested in 2009, which were present when he purchased the property in 1994. For clarification, the appellant testified under direct examination

that the subject parcel was farmed with beans and corn from 1994 to until 2009. In response, the appellant testified "Let me count back years now. Last year was beans (2012), pumpkins (2011), pumpkins (2010) and then yeah - - yeah". VanderLaan could not remember if in 2008 or what year Kohl last farmed the subject property. VanderLaan testified "I never had a contract with him. I always got paid \$500 every year I had it." With respect to tax year 2008, VanderLaan testified "I would say he (Kohl) did" (farm the subject property). For tax year 2007, VanderLaan could not remember if he saw Kohl farm the property. For tax year 2009, VanderLaan testified Kohl raised either beans or corn.

With respect to the federal income tax return regarding the sale of timber, VanderLaan produced a copy of a contract/invoice/receipt pertaining to the sale of walnut trees located on the subject parcel for \$3,500. The document was dated October 2, 2006. The admissibility of the document was debated at the hearing. Ultimately, the Board's Administrative Law Judge ordered the document to be made part of the record. (86 Ill.Admin.Code §1910.67(h)(D)).(Tr. p.61) The document was marked as Appellant Exhibit 2.

The Board's Administrative Law Judge (ALJ) questioned VanderLaan for clarification of his previous testimony. VanderLaan previously testified beans and corn were planted and harvested on the subject property until 2009 (1994 through 2008); trees were harvested in 2009; and pumpkins were plated and harvested in 2010. With respect to Exhibit 2 in relation to the 2009 tax year, VanderLaan testified "Well that's what I cut down, whatever year that is". The Board's ALJ questioned for clarification if it would be fair to say you (VanderLaan) did not harvest any timber in the years 2007, 2008, 2009 or 2010. VanderLaan responded by stating "If that what it says. I can't see - - if that's what you said, yes. I know I planted trees from - - on the property, relocated them - -." VanderLaan finally agreed he did not harvest trees in 2007, 2008, 2009 or 2010. (Tr. p. 32).

VanderLaan was next questioned if he submitted a management plan in accordance with the Forestry Management Development Act (525 15/1 et seq.) with a description of the land to be managed, description of the types of lumber to be grown and the harvest schedule. Appellant's counsel objected to the question, arguing "To whom did he submit that?" The Board hereby overrules the objection. The appellant testified that he does have an inventory of the trees on the property. Notwithstanding the trees on the property, VanderLaan argued it does not mean you cannot still plant corn and beans on the property at the same time. The appellant testified he did not apply pest control or perform brush control.

Under cross-examination by Frankfort CCSD 157-C, VanderLaan testified he did not prepare or file a Forestry Management Practice Plan with any state, local or federal agency. VanderLaan did not prepare or submit drawings regarding the

preparation of the site for forestry planting. VanderLaan did purchase and plant approximately 300 oak trees during 2009 or 2010. He tended to the trees himself, but did not hire a weed or a pest control service. VanderLaan did not employ or know of a Fire Management Practices Plan. Photographs of the subject were reviewed that were submitted by the appellant. The photographs depict a few small trees, weeds and snow on the ground and have a stamp date of February 5, 2010. VanderLaan could not remember when the photographs were taken.

VanderLaan testified he did not file any report to any local or federal government agency indicating that he was growing corn on the subject property. The appellant has shown a copy of the U.S. Department of Agricultural Farm Services Agency Abbreviated 156 Farm Record, which was submitted by the appellant. The report was prepared on February 16, 2010 and lists the appellant, James VanderLaan as the farm operator. The document shows that 12.5 acres of the subject parcel would be planted in corn in 2010 for farm number 8898 and tract number 9573, which is the subject property. In response to questions regarding this document, VanderLaan testified "To be honest with you, last year they said they were going to plant corn. They plant soybeans. I can't - - don't know what that is. I don't know. I can't answer that. (Tr. p.46) That's what it says. I didn't sign it. I don't know. I don't know where this came from." (Tr. p.47) VanderLaan agreed he filed no documents, such as photographs, records, affidavits with respect to how the property was farmed in 2007 or 2008.

Under redirect examination, VanderLaan testified Mr. Kohl farmed the property with corn or soybeans in 2007 and 2008. There was no written lease with Kohl.² Kohl stopped farming in 2008 and in 2009 VanderLaan planted trees. He did not sell any trees in 2009. In 2010 VanderLaan planted pumpkins. He sold the pumpkins for \$4 each, but did not place a sign in front of the property. He sold pumpkins by word of mouth. VanderLaan did not apply pest control because he wanted to grow "organic pumpkins". Although he submitted the U.S. Department of Agricultural Farm Services Agency Abbreviated 156 Farm Record to the Property Tax Appeal Board, at the hearing, VanderLaan testified "No, I never seen that". (Tr. p.60)

Under further questioning by the board of review, VanderLaan testified he planted trees in 2009, but did not harvest any tree, even though he claimed \$4,250 for income on his 2009 federal income tax returns for "timber sales".

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final land assessments of \$240,000 for 2009 and \$234,360 for 2010 were disclosed.

In support of the subject's classification and assessment, the board of review called Nancy Camera as a witness. Camera is the

² Kohl was not present at the hearing to provide testimony with respect to the use of the subject property.

Will County Farm Specialist. She has worked in the Supervisor of Assessment Office for 19 years. Camera testified in 2006 Bulletin 810 changed the procedure farm properties were classified and assessed. She testified all properties in Will County were reviewed. Camera reviewed aerial photographs of the subject property. She personally inspected the subject property in 2010 with Joe Kral, the Frankfort Township Assessor. Camera testified during the inspection she viewed weeds on the subject property. She testified Mr. Kral, Mr. VanderLaan and herself searched for pumpkins. She testified they "waded" through the weeds, which were "over her head" in order to find a few pumpkins scattered throughout the front half-acre of the subject property. In her opinion, she did not believe the subject represented other farm properties she has inspected. Camera did not have a description of the land to be managed; she did not see a harvest schedule; she did not observe any brush control; and did not see any harvesting of timber.

Camera was next referred to board of review Exhibit 1, an aerial photograph of the subject property from 2009. In reviewing the aerial photograph, Camera opined no farming activities have taken place on the parcel. She explained "If you look at the subject photograph, first of all, to the west you see another field, and it is obviously a row crop of some kind out of harvest, corn or soybeans. This is a typical row crop aerial photograph. When I see photos like the subject property that are outside the norm, then the question comes up, what is it? Could be hay or non-row crop such as that, could it be a garden harvest, pumpkins, could it be something else? So that's the first differentiation I make. When there is a tree farm that has been planted it's very obvious with you can see the dots. Dot, dot, dot, dot, dot. Trees are shown in rows of sufficient quantity to be seen on an aerial. I see none of that here. I see no change in how the grass or the greenery or the - - how the actual dirt looks from where it might be cropped as to where it might be cut as opposed to where it was let go because it's too wet. There's nothing to indicate any work being done on that property." (Tr. P.82) Camera testified corn and beans are row crops that can be seen from aerial photographs.

Under cross-examination, Camera testified the aerial photograph was taken in the spring of 2009. She did not know from what altitude. In the spring of 2009, Camera agreed pumpkins could not be seen from an aerial photography³. Camera testified 300 tree saplings should be able to be seen (from an aerial photograph). She testified she saw "a few" "hip high" saplings during the inspection of the property in 2010. Camera testified she did see aerial photographs of the subject parcel in years 2007 and 2008, but the images were not part of the evidence.⁴

³ The appellant testified pumpkins were grown in 2010.

⁴ Subsequent to the hearing, the Board ordered and received aerial photographs of the subject parcel for tax years 2007 and 2008 pursuant to section 1910.67 of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.67(h)(D))

Camera testified that if a property was farmed in 2008 with row crops, the spring of 2009 aerial photograph should show some evidence of the rows still being there, until overgrowing in late spring to mid-summer. Camera agreed she never physically viewed the property until 2010 with Mr. VanderLaan. Camera next testified she saw evidence of non-use on the subject property. She agreed she saw objects growing from the ground, including pumpkins and saplings.

Under redirect examination, Camera testified that based on her experience and her inspection, for 2007 and 2008 there was no indication of row crops being grown on the subject property. She testified she did not observe a Forestry Management Plan in place during inspection in 2010; there was no attempt to "knock out" obnoxious weeds; no attempt to control brush; and it was difficult to access the saplings. Camera agreed it would be reasonable that the saplings could have been overtaken by the weeds.

Under cross-examination by the Frankfort CCSD 157-C, Camera was shown four photographs taken at the subject property dated October 10, 2010. The top left photograph was described as wild grasses and weeds. The lower left and top right photographs show weeds. She agreed the photographs are representative of the entirety of the property she walked across. The lower right photograph shows two pumpkins, which she described as buried under weeds, which is not optimal growing conditions for pumpkins. Looking to the 2009 aerial photograph she described an access road and she did not know what the "oval" shape was used for.

The board of review next called Joe Kral, the Frankfort Township Assessor, as a witness. Kral testified that during the inspection in 2010 he saw a few pumpkins, but they were not planted in an orderly fashion. He testified it was extremely hard to maneuver due to ruts and weeds over his head. Kral testified the eastern portion of the tract was inspected, which is where the saplings were pointed out. He did believe the property had been farmed in 2010.

Under cross-examination, Kral stated he could see no difference between tree saplings or weeds, admitting he is not an expert. He did not know if there was such thing as wild pumpkins.

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 the appeal. The Board further finds no reduction in the subject's assessment is warranted.

The appellant claims the subject parcel is entitled to a farmland assessment and classification for both assessment years 2009 and 2010. The Board finds the most credible evidence and testimony presented by the parties does not show the subject property qualifies for a farmland classification and assessment under

Illinois law. Section 1-60 of the Property Tax Code 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.
(35 ILCS 200/1-60)

Additionally, in order 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). A review of the controlling common law shows the definition of a "farm" requires the property classification be based on the use of the property. See Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill.App.3d at 872, (3rd Dist.1983). Kankakee County Board of Review v. Illinois Property Tax Appeal Board, 305 Ill.App.3d 799 (3rd Dist. 1999); and McLean County Board of Review v. Property Tax Appeal Board, 286 Ill.App.3d 1076, 1078 (4th Dist. 1997). Based on the statutory definition of a farm and controlling case law, the Property Tax Appeal Board finds the evidence and testimony shows the subject parcel does not qualify for a farmland classification and assessment.

Initially, the Board finds the subject parcel does not qualify for a farmland assessment for neither the 2009 or 2010 tax years due to the fact the subject parcel was not used for any type of accepted agricultural use during the 2009 assessment year. The appellant, initially testified, that during 2009, he harvested timber. At another point on the hearing he testified the subject was used to grow corn or soybeans in 2009, but could not remember which. However, under questioning, VanderLaan acknowledged timber was not harvested for assessment years 2007, 2008, 2009 or 2010. VanderLaan acknowledged that the last time timber was harvested was in 2006, for which he produced contract/invoice/receipt pertaining to the sale of walnut trees located on the subject parcel for \$3,500. The document was dated October 2, 2006. This evidence further undermines the testimony of VanderLaan that he planted trees in 2009, but did not harvest any trees, although he claimed \$4,250 for income on his 2009 federal income tax returns for "timber sales".

The Board further finds the evidence in the record reveals the subject parcel has not been managed as a tree farm under Illinois law. The Board finds the sporadic planting of saplings and the irregular poor maintenance of some of the trees contained on the subject parcel, as depicted in the photographic evidence, does not constitute an ongoing active tree farm. The Property Tax

Appeal Board finds the Illinois Forestry Development Act (525 15/1 et seq.) provides some key elements to be considered when determining whether a taxpayer has a systematic plan to develop forest to grow and harvest timber on a methodical and regular basis. Sections 525/2(a) and (i) of the Illinois Forestry Development Act provide in part:

"Acceptable forestry management practices" means preparation of a forestry management plan, site preparation, brush control, purchase of planting stock, planting, weed and pest control, fire control, fencing, fire management practices, timber stand improvement, timber harvest, and any other practices determined by the Department of Conservation to be essential to responsible timber management. (525 ILCS 15/2(a)).

"Timber Grower" means the owner, tenant, or operator of land in this State who has interest in, or is entitled to receive any part of the proceeds from, **the sale of timber grown** in this State and includes persons exercising authority to sell timber. (515 ILCS 15/2(i)).

Furthermore, Sections 525/5 of the Illinois Forestry Development Act provides in part:

The proposed forestry management plan shall include a description of the land to be managed under the plan, a description of the types of timber to be grown, a projected harvest schedule, a description of the forestry management practices to be applied to the land, an estimation of the costs of such practices, plans for afforestation, plans for regeneration harvest and reforestation (525 ILCS 525/5).

The Board finds the above referenced citations set out key elements that are to be considered to determine whether a taxpayer has a systematic plan in place to develop a forest to grow and harvest timber on a methodical and regular basis to be used in the production of a forest crop. The Board finds the appellant presented no evidence that he complied with these enumerated requirements. The Board finds although the subject property contains some trees in various stages of maturity and some saplings, the appellant readily admitted no trees have been harvested from the subject parcel for lumber production. Parcels used primarily for any purpose other than as a "farm" as defined in Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) are not entitled to an agricultural assessment. Senachwine Club v. Property Tax Appeal Board, 362 Ill.App.3d 566, 568 (3rd Dist. 2005).

The Board further finds the testimony of Camera and Kral was credible, unlike the testimony provided by VanderLaan, and placed more weight on the testimony by these witnesses. These witnesses, based on their inspections in 2010, explained that

weeds were so tall that many of the trees and saplings were overgrown. Furthermore, these witnesses testified that saplings were planted in a haphazard fashion, managed poorly and were unorganized. Thus, the Board finds the appellant's argument that the subject property is a tree farm is neither credible nor persuasive.

The Property Tax Appeal Board further finds this record is void of any credible evidence or testimony that would demonstrate the subject property was farmed with corn or soybeans, typical row crops, for tax years 2007, 2008 or 2009. In reviewing the aerial photographs, as Ordered, the Board finds there is no indication row crops were planted nor harvested for the aforementioned assessment years. In contrast, aerial photographs show the property located directly west of the subject property was clearly row cropped, unlike the subject property. The Board further finds it problematic that the appellant submitted a copy of the U.S. Department of Agricultural Farm Services Agency Abbreviated 156 Farm Record. This report was prepared on February 16, 2010 and lists the appellant, James VanderLaan as the farm operator. The documents purports that 12.5 acres of the subject parcel would be planted in corn in 2010 for farm number 8898 and tract number 9573, which is the subject. Although the appellant submitted this document, he testified "I didn't sign it. I don't know. I don't know where this came from." (Tr. P. 47). Based on this analysis, the Board finds the subject parcel does not meet the requirements to qualify for a farmland classification and assessment as provided in Section 10-110 of the Property Tax Code, which 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, except tracts subject to assessment under Section 10-145, shall be determined as described in Sections 10-115 through 10-140. (35 ILCS 200/10-110).

This section of the Property Tax Code requires that land must be used for agricultural purposes for at least two years preceding the date of assessment, which did not occur under the facts of this case.

The Board finds based on the testimony elicited at the hearing, VanderLaan did not provide credible or persuasive testimony that the subject property was being used as a farm as defined by the Property Tax Code for tax year 2009 and 2010. Under both direct and cross-examination, VanderLaan was evasive in answering questions. Furthermore, VanderLaan's answers under questioning were either incomplete or inconsistent throughout the hearing. Based on this record, it appears from the evidence and testimony, VanderLaan attempted to comply with Illinois farmland assessment laws retrospectively by manipulating records and with the sporadic planting of pumpkins and tree saplings in a haphazard manner, only after the subject parcel's classification and assessment was changed to non-farmland.

Based on this record, the Property Tax Appeal Board finds the subject property does not qualify for a farmland classification and assessment for tax years 2009 or 2010. The Board further finds the subject's assessment as established by the board of review is appropriate.

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 Morris

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: December 20, 2013

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.