



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

APPELLANT: Roger Nimtzt
DOCKET NO.: 09-01003.001-F-1
PARCEL NO.: 05-23-326-037

The parties of record before the Property Tax Appeal Board are Roger Nimtzt, the appellant; and the Boone County Board of Review.

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

F/Land:	\$0
Land:	\$19,523
Residence:	\$0
Outbuildings:	\$0
TOTAL:	\$19,523

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of an 11.5-acre unimproved parcel located in Belvidere Township, Boone County.

The appellant appeared before the Property Tax Appeal Board claiming the subject parcel should be classified and assessed as farmland as the basis of the appeal. In support of this argument, the appellant submitted the subject's property record card, a letter, a copy of *Publication 122 - Instructions for Farmland Assessments*, issued by the Illinois Department of Revenue and a copy of assessment procedures published by the Lake County Chief County Assessment Office. In his letter, the appellant contends that since "A parcel or tract of land must be used solely for the purpose of agriculture in order to receive an agricultural assessment.", per Publication 122, and the subject parcel has no improvements, it should be assessed as farmland. The appellant testified that while no crops were grown on the parcel in 2008, it was plowed in the fall to cut down weeds. The appellant contends he employed a process known as "summer fallow", during which no crops are grown, to allow the soil to be

replenished. The Lake County document included summer fallow and idle cropland as categories to be assessed as farmland. The appellant also submitted an affidavit signed by Gerald Hulstadt on November 28, 2009. In this affidavit, Hulstadt asserted he had farmed the land along Fairgrounds Road (the subject parcel) for several years, but that in 2008 "I cultivated this field. This farm land was left fallow during the summer of 2008. It was planted again with corn in the year 2009." The appellant argued that the cultivation constitutes farming activity even if no crops were grown and the subject has been continuously used for agricultural purposes, including 2008, when he employed summer fallow. Based on this evidence, the appellant requested the subject parcel to be classified and assessed as farmland and for its assessment to be reduced to \$2,403.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$19,523 was disclosed. In support of the subject's assessment, the board of review submitted a letter, an aerial photograph and affidavits signed by John Elder, Kris Hall and Linda Treu. Elder was deputy assessor of Belvidere Township at the time the subject was assessed in 2009, a post which he held for 13 years. Hall is the present deputy assessor and Treu is the chief deputy assessor. Elder's affidavit stated that in the spring of 2008, he "observed no farming activity on parcel 05-23-326-037 (subject parcel). Elder's affidavit further stated he "observed in the summer of 2008 the subject parcel became overgrown with weeds between waist and shoulder height." He observed that "later in the summer of 2008 the parcel was disced to control the weed population on the subject parcel." Elder was present at the hearing and testified that to his knowledge, no other farmers in Belvidere Township allowed land to lay fallow during his 13 years as deputy assessor. Hall's affidavit made statements similar to Elder's regarding her observation of the subject parcel in 2008. Hall's affidavit noted the subject is "located across the street and directly north of the Belvidere Township Assessor's Office." Her affidavit further stated "I currently live on a working farm that produces corn, soybeans and hay. I am able to distinguish between cultivating for planting purposes or disking to knock down the weeds." Finally, Hall's affidavit stated "Summer Fallow's main goal is for moisture conservation. A crop is planted every other year to let the moisture gather in the ground. Fallow is also done mainly out west where it rains less." Hall was also present at the hearing. Both Elder and Hall's affidavits further stated no winter wheat was planted on the subject parcel.

In further support for its contention that the subject did not qualify for farmland assessment and classification in 2009, the board of review submitted an article entitled "*Summer Fallow in Kansas*", published by the Kansas State College of Agriculture and Applied Science. Summer fallow was defined as "the practice of keeping land free of all vegetation throughout one season for the purpose of storing a part of the rainfall of that period in the

soil for the use of crops the following year." The article further stated

"A good summer fallow is one in which the soil is free of all growing plants throughout the fallow period and has a rough open surface which will permit a ready and rapid penetration of moisture. Under such a condition no water will be lost through weeds and a minimum amount will be lost by runoff, hence the maximum amount will be stored in the soil." "Summer fallow frequently fails to be effective in storing moisture because tillage is delayed until after the moisture from spring rains is used by weeds or because weeds are permitted to grow during the summer. Weeds must be eradicated when they are small if moisture is to be conserved. Cultivation for fallow should start just as soon as weeds begin to grow."

Based on this evidence, the board of review requested the subject's classification and assessment as residential vacant land be confirmed.

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 the appellant's contention that the subject parcel qualifies for classification and assessment as farmland is unpersuasive.

The appellant claimed the subject parcel had been used to grow crops in past years and submitted an affidavit to that effect by Gerald Hulstadt, the farmer who grew crops on the parcel "for several years." The farmer acknowledged he cultivated the parcel in 2008 and planted corn in 2009. However, the farmer's affidavit did not state when the cultivation occurred. The appellant contends the subject parcel was left to "summer fallow", a term mentioned in several publications contained in this record. The appellant first cited Publication 122, published by the Illinois Department of Revenue. This document refers to Section 10-125 of the Property Tax Code, which lists "land in cultivated summer fallow" as a type of cropland. Any definition for land to be properly termed "cultivated summer fallow" was not provided by the appellant. Testimony by Elder and Hall disclosed that no farming activity occurred on the subject parcel in the spring or summer of 2008, but that weeds which had grown to *waist or shoulder height* were disced in late summer of that year. The record further disclosed that the subject is located across the road and just north of the township assessor's office, suggesting that observation of the parcel's condition and use by assessment personnel was not difficult.

While the record is devoid of any statutory definition of the term "summer fallow", the board of review submitted an article entitled "*Summer Fallow in Kansas*", published by the Kansas State College of Agriculture and Applied Science. This publication stated

"A good summer fallow is one in which the soil is free of all growing plants throughout the fallow period and has a rough open surface which will permit a ready and rapid penetration of moisture. Under such a condition no water will be lost through weeds and a minimum amount will be lost by runoff, hence the maximum amount will be stored in the soil (emphasis added)."

Finally, the article states

"Summer fallow frequently fails to be effective in storing moisture because tillage is delayed until after the moisture from spring rains is used by weeds or because weeds are permitted to grow during the summer. Weeds must be eradicated when they are small if moisture is to be conserved. Cultivation for fallow should start just as soon as weeds begin to grow (emphasis added)."

The Property Tax Appeal Board finds the appellant did not dispute the testimony of Elder and Hall that the discing (or cultivation) of the subject parcel took place in the late summer, or that the weeds had attained waist or shoulder height. The Board finds the above excerpts from the article make clear that allowing weeds to establish a substantial presence negates the value of any effort to preserve field moisture. The Property Tax Appeal Board finds that by allowing weeds to attain significant height before finally discing them into the soil in the late summer, the appellant did not establish the subject parcel was land in cultivated summer fallow for the 2008 tax year. The Board further finds Elder testified that to his knowledge, no other farms in Belvidere Township employed the summer fallow technique during his 13-year tenure as deputy assessor. The court in Oakridge Development stated "in order to be assessed as farmland for a particular tax year, property must have been used as a farm during that year." Oakridge Development Company v. Property Tax Appeal Board, 405 Ill.App.3d 1011, 938 N.E. 2d 533 (2nd Dist. 2010).

Based on this analysis, the Board finds the subject parcel was not used for agricultural purposes for 2008 and is not entitled to farmland classification and assessment for 2009. The Board finds Section 10-110 of the Property Tax Code provides as follows:

Farmland. The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the preceding two years, except tracts subject to assessment under Section 10-45, shall be determined as described in Sections 10-115 through 10-140... (35 ILCS 200/10-110)

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).

Notwithstanding the use of the subject parcel to grow crops in prior years, no crops were grown in 2008, the proper use of the cultivated summer fallow technique to preserve soil moisture was not made and the appellant's claim of employing cultivated summer fallow¹ as a legitimate alternate use of cropland is not supported by the evidence in this record. Thus, the subject's 2009 classification and assessment as vacant residential land is correct and no reduction is warranted.

¹ The Board finds the Property Tax Code provides no definition of "cultivated summer fallow". However, the United States Department of Agriculture's Economic Research Service states that summer fallow refers to cropland in subhumid regions of the West that are cultivated for one or more seasons to control weeds and accumulate moisture before small grains are planted. This practice is optional in some areas, but it is a requirement for crop production in the drier cropland areas of the West. Other types of fallow, such as cropland planted to soil improvement crops but not harvested and cropland left idle all year, are not included in cultivated summer fallow but are included as idle cropland.

Summerfallow

Involves keeping normally cultivated land free of vegetation throughout one growing season by cultivating (plowing, discing, etc.) and/or applying chemicals to destroy weeds, insects and soil-borne diseases and allow a buildup of soil moisture reserves for the next crop year. Includes [chemfallow](#), tillage, and/or a combination of chemical and tillage weed control on the same land. Part of the crop rotation system in Western Canada. Rarely found in Eastern Canada.

Summerfallow land

Land on which no crops will be grown during the year but on which weeds will be controlled by cultivation or application of chemicals.

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

J. R.

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: February 24, 2012

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.