PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Oakridge Development Co., Algonquin Randall, LLC and Miller Family Partnership
DOCKET NO.: 06-01901.001-F-3
PARCEL NO.: 19-31-400-007-0060

The parties of record before the Property Tax Appeal Board are Oakridge Development Co., Algonquin Randall, LLC and Miller Family Partnership, the appellants, by attorneys Sandra Kerrick and William I. Caldwell of Caldwell, Berner & Caldwell, Woodstock, Illinois; the McHenry County Board of Review; and Community Unit School District 300, the intervenor, by attorney Scott E. Nemanich of Hinshaw & Culberson, LLP, Joliet, Illinois.

The subject property consists of a 75-acre vacant tract of land located in Algonquin Township, McHenry County, Illinois.

The appellants submitted evidence before the Property Tax Appeal Board arguing the subject property is entitled to a farmland classification and assessment as a matter of law as provided in the Property Tax Code (Code). The appellants allege the McHenry County Board of Review erred, as a matter of law, in the interpretation of applicable statutes or of their own authority to add qualifications, which are not provided by statute in the classification and assessment of farmland. The appellants argued portions of the Code mandate a January 1, cut-off date for determining assessments and a two-year pre-qualification period of farming before the assessment year in question. The appellants further argued the board of review misconstrued the statutes to require farming activities during the assessment year in question, which is after January 1, 2006, in order to qualify for a farmland assessment. In summary, the appellants argued the subject property is entitled a farmland assessment for the 2006 assessment year simply because it was farmed in 2004 and 2005 as provided by statute. (35 ILCS 200/10-110). The appellants argued the board of review cited no authority requiring three-years of farming activity in order to qualify for an agricultural assessment, because there is no such requirement provided by statute.

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

LAND:	$ 3,028,059
IMPR.:	$ 0
TOTAL:	$ 3,028,059

Subject only to the State multiplier as applicable.

PTAB/JUNE.09/BUL-7695

In more specific terms, the appellants argued that several sections of the Code apply to the subject's correct classification and assessment. The appellants argued the applicable provisions of the Code must be considered and construed together. The appellants argued Section 9-155 of the Code requires parcels to be assessed as of January 1 of the assessment year in question. Section 9-155 provides in part:

> Valuation in general assessment years. On or before June 1 in each general assessment year in all counties with less than 3,000,000 inhabitants, and as soon as he or she reasonably can in each general assessment year in counties with 3,000,000 or more inhabitants, . . . the assessor, in person, or by deputy, shall actually view and determine as near as practicable the value of each property listed for taxation **as of January 1** of that year, or as provided in Section 9-180, and **assess** the property **at 33 1/3%** of its fair cash value, **or in accordance with Sections 10-110 through 10-140** . . (emphasis added) (35 ILCS 200/9-155).

The appellants next cited Section 10-110 of the Property Tax Code, which provides in part:

> Farmland. The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the 2 preceding years, . . , 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)

The appellants argued the board of review has no authority to use any assessment date other than January 1; impose more stringent qualifications for farmland assessments; or apply a partial or proportional assessment for changing conditions later in the year. The appellants argued the board of review erred, as a matter of law, must not look at activities throughout 2006 and go back to the January 1 assessment date and assess the property for what actually occurred during that year. Appellants contend

property only qualifies for a farmland assessment in arrears after farming the land for two years. Appellants argued the board of review misconstrued Section 10-110 of the Property Tax Code (35 ILCS 200/10-110) to mean the land must qualify prospectively after January 1. The appellants argued only Section 9-180 of the Property Tax Code (35 ILCS 200-9-180) provides for the only exception for a change in use during the year. The appellants argued this section, like the farmland assessment section, imposes qualifications for assessing new buildings or in the case of destroyed property, providing a proportional assessment. The pre-qualification, before January 1, supports the appellants' interpretation of the controlling statutes. In order to make assessing manageable and equitable, the January 1 cut-off date was implemented for all other assessments. If the legislature intended farmland to be retroactively disqualified, it would have provided such exception in Section 9-180 of the Property Tax Code.

The appellants next cited Section 9-175 of the Code, which provides in part:

> Owner on assessment date. The owner of property on January 1 in any year shall be liable for the taxes of that year. . . (35 ILCS 200/9-175).

Appellants argued that if this Section is read together with the farmland assessments statute(s) as interpreted by the board of review, it would mean that if a farmer sold the property mid-year, but was responsible for taxes because of ownership as of January 1, whatever activities the new owner undertakes would create a tax liability for the original farmer.

Appellants next cited Illinois Department of Revenue Publication 122, Page 6, dated September 2006, instructions to local assessors:

> Use of a tract during the assessment year. Since real property is valued according to its condition on January 1 of the assessment year, a time when most farmland is idle, an assessor will often not know if a tract will no longer be used for farming. Therefore, circumstances occurring after January 1 may be taken into consideration to determine a parcel's tax status as farm or nonfarm. <u>For example</u>, if a typically cropped tract previously assessed as <u>farmland has not been planted</u> or used in any other qualified farm use <u>during the assessment year and building construction has begun on the tract, the tract should not be assessed as farmland</u>.
>
> Two-year eligibility requirement. The statutory requirement that land be in a farm use for the preceding two years applies to nonfarm converted-to-farm tracts for which there was no previous farming and

> not to tracts converted for the purpose of adding to existing farmland. For example, the two-year requirement would not apply when the dwelling on a farmed parcel is demolished and the land is farmed. The two-year requirement also does not apply to tracts assessed under the Forestry Development Act or land assessed as a vegetative filter strip.

The appellants argued statutes should be construed to sustain public policy. The appellants contend the appellate court considered the meaning of a companion statute for vacant land located in DeKalb County. The Court considered the legislative debate on the statute where a legislative member stated:

> It's not uncommon for a real estate developer to purchase farmland for [a] development site and then see the assessment double or triple . . . developers . . . are unable to sustain this . . . development because of the increased cost and taxes . . . The legislative purpose [was] designed to prevent developers from having to pay increased taxes on farmland or vacant land in the beginning of the development process . . . (Paciga v. Property Tax Appeal Board, 322 Ill.App. 3d 157, 162, 255 Ill.Dec. 590 (2nd Dist. 2001)).

The appellants requested the Property Tax Appeal Board to construe the controlling statutes consistent with public policy of awaiting development to support the higher taxes before the land has an increased assessment. Furthermore, the appellants requested the Board to construe the farmland statutes in the same manner as did the Appellate Court in Paciga in considering the companion statute for vacant land. The appellants argued the court recognized vacant land and farmland both have the same cash flow problem which the legislation is designed to remedy. The appellants assert the Illinois Supreme Court [no citation] has held:

> [S]tatutes are to be strictly construed. Their language is not to be extended or enlarged by implication. In cases of doubt they are construed most strongly against the government and in favor of the taxpayer.

The appellants argued the subject property has no development to support the tax. The subject's circumstances during 2006 demonstrate the problem foreseen by the legislature when it determined to delay increasing assessments until some economic activity could be generated. Failure to do so confiscates the property in violation of the Fifth Amendment to the Constitution of the United States and Article I, Section 15 (just compensation for eminent domain) and Article IX Section 4 (uniform application of tax laws) of the Constitution of Illinois of 1970.

The appellants also submitted two affidavits. The first sworn affidavit was signed by Timothy J. Schwartz. It provided in part: the affiant is familiar with the 74 acres of farmland which

he has been attempting to purchase from the Miller family for the past eight years. The affiant is President of Oakridge Properties, Ltd, which buys land to develop using a number of related companies. The affiant observed crops growing for eight years prior to 2006; in early 2006 the Miller family and their tenant readied the land for cultivation by using herbicide to prevent weeds from growing with crops. When it was time to plant, the Miller family concluded that Oakridge would close a sale, so they abandoned their plans to plant crops. On December 4, 2006, Oakridge closed the purchase for 38-acres of the subject parcel. The Miller family still owns the remaining 36-acres.

The second sworn affidavit was signed by Martin F. Miller. It provided in part: the affiant was a 1/9 fee simple owner of the 75-acre subject parcel until December 4, 2006, when the front 40 acres was sold to Algonquin Randall, LLC. Miller remains the managing partner in the Miller Farm Partnership that operates Miller Farm holdings in Algonquin, Illinois, including the rear 35 acres of the subject property. A corn crop was harvested from the subject in October 2005 by a local tenant farmer. That on January 1, 2006, the subject property was still used and considered by the owners as a farm property that would be farmed in 2006. In April 2006, Daren Smith, the tenant farmer, sprayed the subject parcel for weeds in anticipation of planting a 2006 crop. The contract purchaser advised construction activity on the subject parcel would commence in the summer of 2006 and would interfere with the growth of a crop on the subject parcel. As the managing partner for the owners, the tenant farmer was informed not to plant a 2006 crop on the subject parcel.

Additionally, the appellants argued only one house and farm buildings may be constructed on the 75-acre site under current zoning; the subject does not have municipal sewer or water service; the subject does not have roads; the subject has no permit to access public roads; the subject may require its own frontage road, cross easements and a traffic signal; the subject property is not municipally annexed; the subject is not a Planned Unit Development; the subject is not platted or subdivided; the subject has no pending petitions for zoning changes or annexation; and the subject has no income production or cash flow. Based on the evidence submitted, the appellants requested the Board to (1) rule the subject property qualifies for a farmland assessment as a result of active farming for the two years preceding January 1, 2006; (2) that the assessment of the un-zoned, unimproved subject land is confiscatory and void; and (3) as a result of the law, the appellants request the 2006 assessment of $3,028,059 be reduced to $10,855 to reflect the subject's 2005 farmland assessment.

The board of review presented its "Board of Review Notes on Appeal" wherein the subject property’s final assessment of $3,028,059 was disclosed. The subject's assessment reflects an estimated market value of $9,090,054 using McHenry County's 2006 three-year median level of assessments of 33.31%. In support of the subject's classification and assessment, the board of review

merely submitted the evidence submitted by all parties at the local board of review hearing. Among that evidence, a Real Estate Transfer Declaration that indicates approximately 40 acres or 1,742,400 square feet of land area of the subject's 74.85 acre tract was purchased in December 2006 for $11,400,000 or $6.54 per square foot of land area. In addition, the board of review submitted a memorandum adopting the legal brief filed by the intervenor, Community Unit School District 300.

Community Unit School District 300, the intervenor, submitted a legal brief in support of the final assessment of the subject parcel as established by the McHenry County Board of Review. The intervenor argued there is no dispute that prior to 2006, the subject parcel had been farmed. There is also no dispute that in 2006, there was no farming on the subject parcel. (See affidavits submitted by the appellants). It was the board of review's and intervenor's legal position in accordance with the Property Tax Code, that after two years of farming, a property qualifies for farmland classification the following year, presuming the land is indeed farmed that following year.

With respect to the January 1, 2006, assessment date at issue in this appeal as raised by the appellants, the intervenor argued the appellate court held in People ex rel. Rosewell v. Lakeview Limited Partnership, 75 Ill.Dec. 953, 458 N.E.2d 121 (1st Dist. 1983) that a property's status for purposes of taxation is to be determined as of January 1 of each year. As a practical matter, the intervenor argued the township assessor does not complete his or her books as to the classification and valuation of a property on January 1 of each year; rather, the books are prepared throughout the spring and summer and then delivered to the Supervisor of Assessments office and/or board of review in accordance with applicable statutes. Regardless at what point in the year the assessor places the assessment in the assessment books, the assessment is to based on the use of the land as of January 1 of that year.

The intervenor next referenced Exhibit A, which is a 2006 agricultural affidavit signed on June 24, 2006, by Myrtle H. Miller, of Miller Farm Partnership. The document indicates the subject parcel was farmed with corn and soybeans in 2004 and 2005, but the subject parcel would not be farmed in 2006.

With respect to the appellants claim that the subject parcel is entitled to a preferential farmland assessment for 2006 since it was farmed in 2004 and 2005, the intervenor cited 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, . . . shall be determined as described in Sections 10-115 through 10-140.

The intervenor argued that common sense dictates that land not only must be farmed the prior two years from the assessment date, but the property must also be farmed the assessment year in question in order to receive a farmland assessment. In support of this proposition, the intervenor cited Bond County Board of Review v. Property Tax Appeal, 343 Ill.App.3d 289, 796 N.E.2d 628 (5th Dist. 2003) wherein the Court held: The present use of the land determines whether it is entitled to a farmland classification for assessment purposes. (277 Ill.Dec at 545) The court in Bond County cited a pronouncement from Santa Fe Land Improvement v. Illinois Property Tax Appeal Board, 69 Ill.Dec. 708, 448 N.E.2d 3 (3rd Dist. 1983). In this case, the appellate court had to determine whether a property that had been farmed in the assessment year in question should receive a farmland assessment despite the fact improvements were placed on the property, the property had been zoned industrial, and was being marketed as an industrial site. The court determined that it was the use of the real property which determined whether it was to be assessed at an agricultural valuation. The court concluded that the lands involved that had been farmed during 1978 (**the assessment year in question**) are entitled to a preferential agricultural assessment, but those lands that were not farmed in 1978 would be valued on a non-agricultural basis.

The intervenor next pointed out the township assessor prepared six comparable sales in support of the subject's assessed valuation that were submitted by the board of review. The suggested comparables range in size from 32 to 70.96 acres or from 1,393,920 to 3,079,256 square feet of land area. They sold from February 2002 to October 2003 for prices ranging from $5,750,000 to $9,306,619 or from $2.53 to $4.80 per square foot of land area. The comparables were adjusted for differences when compared to the subject for time (date of sale), location, shape, topography, and size. The adjustments resulted in adjusted sale prices ranging from $2.48 to $2.91 per square foot of land area. The subject's assessment reflects an estimated market value of $9,090,054 or $2.79 per square foot of land area. Based on this evidence, the intervenor requested confirmation of the subject property's classification and assessment.

In rebuttal, appellants' counsel agreed the facts are undisputed that the subject's 75-acre unimproved parcel was farmed for decades, including the 2004 and 2005 assessment years, for which it received a preferential farmland classification and assessments. Appellants' counsel agreed the subject was not farmed during 2006; but the land lay idle and the land was zoned for only an agricultural use, making any other use unlawful. However, the appellants reiterated the subject parcel is entitled to a farmland classification and assessment in 2006 since it was conducting requisite farming activity the two years preceding the assessment date of January 1, 2006. (See 35 ILCS 200/10-110) The appellants argued this case is one of first impression and that no court has determined the question of law posed here.

The appellants again cited Section 9-155 of the Property Tax Code that requires parcels to be assessed as of January 1 of the assessment year in question, which provides in part:

> Valuation in general assessment years. On or before June 1 in each general assessment year in all counties with less than 3,000,000 inhabitants, . . . the assessor, in person or by deputy, shall actually view and determines as near as practicable the value of each property listed for taxation **as of January 1** of that year, or as provided in Section 9-180, and **assess** the property **at 33 1/3%** of its fair cash value, **or in accordance with Sections 10-110 through 10-140**. . . (35 ILCS 200/9-155).

The appellants argued the statute provides for a farmland assessment in arrears only after conducting the qualifying farm activity for the two preceding years. The appellants argued the intervenor fails to consider the January 1 cut-off date as mandated by statute, but instead a later date with retroactive disqualification. A property's status for purposes of taxation is to be determined as of January 1 of each year. Appellants argued Section 10-110 through 10-140 of the Property Tax Code (35 ILCS 200/10-110 et. al.) provide for farmland assessments. Thus, as of January 1, a property must be assessed at 33 1/3% of fair cash value or under the farmland assessment provisions if the property meets the criteria. Appellants argued Section 9-155 of the Property Tax Code (35 ILCS 20/9-155) directly ties farmland assessments to the "as of January 1" assessment date. The appellants argued county assessment officials are assessing a "future use" with respect to the subject's January 1, 2006 assessment date.

Appellants argued the intervenor is correct in that the "present use" of a property is what assessors must account for. For example, the fact that farm property has been subdivided for residential development while still being farmed will not justify withdrawal of the farm assessment. Bond County Board of Review v. Property Tax Appeal, 343 Ill.App.3d 289, 796 N.E.2d 628 (5th Dist. 2003). Appellants implied this case is distinguishable because the issue involved in Bond County is not the same issue posed in this instant appeal. To do otherwise would tax a "future use" not yet materialized. Appellants noted the Appellate Court in People ex rel. Rosewell v. Lakeview Limited Partnership, 120 Ill.App.3d 369, 458 N.E.2d 121 (1st Dist. 1983) held that it could only find two instances in the Property Tax Code where assessors could consider later activities after January 1: (1) when a building under construction was granted an occupancy permit; and (2) when an improvement was destroyed during the year. A proportional assessment could be granted for the portion of the year when the property (improvement) could be properly occupied.

After reviewing the record and considering the evidence, 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 parcel does not qualify for a farmland classification and assessment. Section 1-60 of the Property Tax Code defines "farm" in part as:

> When used in connection with valuing land and buildings for an **agricultural use**, any property **used solely for the growing and harvesting of crops** (emphasis added); 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)

In addition, Section 10-110 of the Property Tax Code 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, . . . shall be determined as described in Sections 10-115 through 10-140. (35 ILCS 200/10-110).

The Property Tax Appeal Board finds the record in this appeal is un-refuted that the subject property was used as a farm for the years 2004 and 2005, but was not farmed during the 2006 assessment year. As a result, the Property Tax Appeal Board finds the subject parcel does not fall under the statutory definition of farmland as provided by Section 1-60 of the Property Tax Code (35 ILCS 200/1-60). Thus, the Property Tax Appeal Board finds the subject parcel is not entitled to a farmland assessment and classification based on the applicable statutes. The Board finds the controlling statutes clearly provide that in order for a particular property to receive a farmland assessment, it must be used for an agricultural purpose for the assessment year in question and the two years that precede that assessment date, which clearly did not occur in this appeal.

Illinois case law and publications issued by the Illinois Department of Revenue provide that the actual use of land is the determining factor on whether a particular parcel receives a farmland classification and assessment. For example, property that is used solely for the growing and harvesting of crops is properly classified as farmland for tax purposes, even if that farmland is part of a parcel that has other uses. Kankakee County Board of Review v. Illinois Property Tax Appeal Board, 305 Ill.App.3d 799 (3rd Dist. 1999). The present use of land determined whether it is entitled to a farmland classification

for assessment purposes. Santa Fe Land Improvement Co., 113 Ill.App.3d at 875, 448 N.E. 2d at 6. Based on the actual use of the property during the 2006 assessment year, the Property Tax Appeal Board finds the subject parcel is not entitled to a preferential farmland classification and assessment.

With respect to the assessment date at issue in this instant appeal, the appellants argued that if the classification of the subject parcel is to be determined as of January 1, activities that occur after that date cannot be legally considered in determining the subject's correct classification and assessment. In fact, the appellants argued that since the subject parcel was classified and assessed as farmland the prior two assessment years pursuant to Section 1-60 and 10-110 of the Property Tax Code (35 ILS 200/1-60 and 10-110), the subject property is entitled to a farmland classification and assessment. In support on this contention, the appellants further relied on Section 9-155 of the Property Tax Code, which provides in part:

> On or before June 1 in each general assessment year in all counties with less than 3,000,000 inhabitants, and as soon as he or she reasonably can in each general assessment year in counties with 3,000,000 or more inhabitants, . . . the assessor, in person or by deputy, shall actually view and determine as near as practicable the value of each property listed for taxation as of January 1 of that year, or as provided by Section 9-180, and assess the property at 33 1/3% of its fair cash value, or in accordance with Sections 10-110 through 10-140 . . . (35 ILCS 200/9-155).

In further support of this proposition, the appellants cited Section 9-175 of the Code, which provides in part:

> The owner of property on January 1 in any year shall be liable for the taxes of that year. . . (35 ILCS 200/9-175).

After reviewing this record and considering the legal arguments, the Property Tax Appeal Board finds the record contains little factual support or probative case law that would support the appellants' position. Section 9-155 of the Property Tax Code that requires parcels to be assessed as of January 1 of the assessment year in question provides:

> On or before **June 1** in each general assessment year in all counties with less than 3,000,000 inhabitants, . . . the assessor, in person or by deputy, shall actually view and **determine as near as practicable the value of each property listed for taxation as of January 1 of that year**, or as provided by Section 9-180, and assess the property at 33 1/3% of its fair cash value, or in accordance with Sections 10-110 through 10-140. . . (35 ILCS 200/9-155).

The Board finds the legislature clearly contemplated subsequent events in the assessment process by inserting the language "On or before **June 1** . . . the assessor, in person or by deputy, shall actually view and **determine as near as practicable the value of each property listed for taxation as of January 1 of that year. . .** and assess the property at 33 1/3% of its fair cash value, or in accordance with Sections 10-110 through 10-140**.**" The Property Tax Appeal Board finds assessment officials are statutorily bound to determine a given property's fair cash value as near as practicable **as of** the date of January 1 of a given assessment year. The Board finds January 1 is the effective valuation date, not the statutorily defined date to determine proper classification or assessment for any particular property. Here, the record shows the assessment officials valued the subject property at 33 and 1/3% of its estimated fair market value as of the January 1, 2006, effective assessment date in accordance with the statute. In doing so, McHenry County Assessment Officials correctly construed the controlling statutes in denying the subject a farmland assessment for 2006 because it was not used for any agricultural purpose as defined by Section 1-60 of the Property Tax Code.

The Property Tax Appeal Board recognizes the Appellate Court's holding in People ex rel. Rosewell v. Lakeview Limited Partnership, 120 Ill.App.3d 369, 458 N.E.2d 121 (1st Dist. 1983) wherein the court noted unless otherwise provided by law, the property's status for purposes of taxation is to be determined as of January 1 of each year. However, the court specifically found the legislature provided to change application of the January 1 date in only two circumstances: (1) permit partial exemption of taxation where a property becomes taxable or exempt after January 1; and (2) providing for proportionate assessments in the case of new construction or uninhabitable property. (Codified in the Property Tax Code under 35 ILCS 200/9-160 and 9-180) The Board finds neither of these circumstances applies to subject's situation in this instant appeal and the appellants' reliance on Section 9-160 and 9-180 of the Property Tax Code in their legal brief is misplaced. The Board finds these provisions are mainly for improved property whereas this appeal pertains to the correct classification regarding the subject's vacant land in determining its correct assessment for real estate taxation purposes. Additionally, the Court in Rosewell, citing the trial court, noted that assessing officials are not barred, as a matter of law, from considering events which occurred after the lien date in assessing the subject properties. Subsequent events assessing officials may consider in any individual case will depend on the nature of the event and the weight to be given the event will depend upon its reliability.

The Property Tax Appeal Board further finds the Illinois Department of Revenue Publication 122, as cited by the appellants, supports the board of review's classification of the subject parcel as non-farm land. Publication 122 provides

instructions for local assessors in the classification and assessment of farmland.

> Since real property is valued according to its condition on January 1 of the assessment year, a time when most farmland is idle, an assessor will often not know if a tract will no longer be used for farming. **Therefore, circumstances occurring after January 1 may be taken into consideration to determine a parcel's tax status as farm or nonfarm. For example, if a typically cropped tract previously assessed as farmland has not been planted or used in any other qualified farm use during the assessment year** and building construction has begun on the tract, **the tract should not be assessed as farmland**. (emphisis added)

In reviewing the guidelines issued by the Illinois Department of Revenue as well as the controlling case law and statutes, the Property Tax Appeal Board finds the board of review properly followed the statutes and legal instructions in a common and logical sense in classifying and assessing the subject parcel as non-farmland because a crop was not planted or harvested during the 2006 assessment year. Parcels used primarily for any other 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 appellants also argued only one house and farm buildings may be constructed on the 75-acre site under current zoning; the subject does not have municipal sewer or water service; the subject does not have roads; the subject has no permit to access public roads; the subject may require its own frontage road, cross easements and a traffic signal; the subject property is not municipally annexed; the subject is not a Planned Unit Development; the subject is not platted or subdivided; the subject has no pending petitions for zoning changes or annexation; and the subject has no income production or cash flow. The Board finds none of these factors demonstrate the subject's classification and underlying assessment are incorrect. In fact, the preponderance of the market value evidence supports the subject's assessed valuation and may suggests the subject parcel may be under-assessed in relation to its fair cash value. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000).

The Board finds there is credible documentation contained in this record showing one-half or approximately 40-acres of the subject parcel was sold/purchased by the parties in December 2006 for $11,400,000 or $6.64 per square foot of land area. The Illinois Supreme Court has defined fair cash value as what the property would bring at a voluntary sale where the seller is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so.

Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428 (1970). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Roswell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369 (1st Dist. 1983); People ex rel. Munson v. Morningside Heights, Inc., 45 Ill.2d 338 (1970); People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945). The Board finds the subject's assessment for all 74.85 acres reflect an estimated market value of $9,090,054 or $2.79 per square foot of land area using McHenry County's 2006 three-year median level of assessments of 33.31%, which is considerably less than its sale price of $11,400,000 for only 40 of the 74.85 acres. The Property Tax Appeal Board further finds the board of review submitted five comparable sales to further support its assessment of the subject property. The suggested comparables range in size from 32 to 70.96 acres or from 1,393,920 to 3,079,256 square feet of land area. They sold from February 2002 to October 2003 for prices ranging from $5,750,000 to $9,306,619 or from $2.53 to $4.80 per square foot of land area. Again, the subject's assessment reflects an estimated market value of $9,090,054 or $2.79 per square foot of land area, which falls within the range established by the raw sales data contained in this record. Thus, the Board finds no reduction in the subject's assessed valuation is warranted.

As a final point, the Board gave no weight to the uniformity aspect of the appellants' appeal using the Paciga case as outlined in the appellants' legal brief with the context of legislative intent regarding Section 10-30 of the Property Tax Code. The Property Tax Appeal Board finds there is no evidence the appellants availed themselves of the process or that the subject property qualifies for the preferential land assessment as enumerated in Section 10-30 of the Property Tax Code. (35 ILCS 200/10-30). Thus, the Board finds the appellants' reliance on Paciga to be misplaced and not applicable in this appeal. More importantly, the Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the evidence in this record, the Board finds the appellants submitted no substantive evidence to overcome this burden of proof and no reduction is warranted.

In conclusion, the Property Tax Appeal Board finds the subject parcel does not fall under the statutory definition of a farm as provided by Section 1-60 of the Property Tax Code. (35 ILCS 200/1-60). Thus, the subject property is not entitled to a preferential farmland classification and assessment. Therefore, the Board finds the subject's land assessment as established by the board of review is correct and no reduction is 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: June 19, 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.