FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD
ON REMAND

APPELLANT: Kevin Dahl
DOCKET NO.: 09-03144.001-C-3 through 09-03144.005-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; and 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
09-03144.001-C-3	06-29-427-001	126,162	0	$126,162
09-03144.002-C-3	06-29-427-002	175,467	0	$175,467
09-03144.003-C-3	06-29-427-003	293,653	0	$293,653
09-03144.004-C-3	06-29-427-004	402,414	0	$402,414
09-03144.005-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 (hereinafter "the PTAB") on December 21, 2012 wherein the PTAB reduced the assessments of the subject parcels. In those decisions the PTAB found that reductions in the assessments were warranted as Section 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 appellate 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, Section 10-155 (35 ILCS 200/10-155 et seq.), 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.

The appellant timely filed the appeal from decisions of the DeKalb County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessments for the 2009 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. (Compare to Spiel v. Property Tax

Appeal Board, 309 Ill.App.3d 530 (2nd Dist. 1999) lack of jurisdiction on open space assessment before PTAB because appellant never appealed to county board of review.)

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).

Application

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]

As part of the Appellant's Response to Intervenor's Motion To Dismiss Property Tax Appeal Board Appeal, the appellant submitted Exhibit B, consisting of five individual completed "Application for Open Space Purposes Assessment" forms for each of the subject parcels. The documents depict a signature and notarization date of January 7, 2009 and concern applications for open space assessment for tax year 2009 for each of the individual parcels on appeal. In answer to Question 4 on the forms, "Write the date the property began to be used for open space purposes," the answer on each document was "prior to January 1, 2006."

At hearing, counsel representing both the board of review and the intervenor (hereinafter "opposing counsel") contended, in part, that the appellant's open space applications were in essence void or defective because they were signed by appellant's attorney, Kevin Burke, rather than having been signed personally by the appellant, Mr. Dahl. (TR. 15-16, 71-75) In support of this position, counsel further argued that Mr. Burke did not have direct, actual, personal knowledge as to whether the property qualified for open space. (Id.)

Appellant's Exhibit B, the form, is identified as a "PTAX-334 Application for Open Space Purposes Assessment." The PTAB finds that the PTAX-334 form in "Step 2" calls for the document to be signed as follows, "under penalties of perjury, I state that to the best of my knowledge the information contained in this application is true, correct and complete." (See Appellant's Exhibit B) Moreover, the PTAB finds that the pre-printed signature line on the form is identified for the signature as "Property owner's or authorized representative's signature." (Id.) In further support of the authority for an individual other than the owner or taxpayer to sign the form and/or be notified of the determination on the open space application, the form in "Step 1" provides both for the (1) property owner's name and address and (2) name and address information to "Send notice to (if different than above)" where Mr. Burke provided his name and mailing address. (Id.) Therefore, in light of the "prescribed form" for open space application, the PTAB finds no merit in opposing counsel's argument that the appellant's

[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).

application for open space was defective or *void ab initio* on the grounds that the application was signed by someone other than the taxpayer or owner.

Based on the submission of appellant's Exhibit B, the PTAB finds that the appellant satisfactorily established that applications were timely made. Most important to this determination and despite opposing counsel's arguments in pleadings and closing argument (TR. 110-111), the opposing parties did not in any manner present evidence to dispute the authenticity of Exhibit B submitted by the appellant. Moreover, the board of review did not call any representative of the supervisor of assessments office to testify that no open space applications were filed for the subject properties for year 2009 such that the PTAB would not have subject matter jurisdiction for open space assessments.[2]

Evidence regarding the open space assessment claim

The PTAB finds the next issue is whether the subject parcels for tax year 2009 are entitled to or qualify for a preferential open space assessment as set forth in section 10-155 of the Code. Section 10-155 of the Code provides:

> §10-155. Open space land; valuation. In all counties, in addition to valuation as otherwise permitted by law, land which is used for open space purposes and has been so used for the 3 years immediately preceding the year in which the assessment is made, upon application under Section 10-160, shall be valued on the basis of its fair cash value, estimated at the price it would bring at a fair, voluntary sale for use by the buyer for open space purposes. Land is considered used for open space purposes if it is more than 10 acres in area and:

[2] As noted by the appellant in response to the intervenor's dismissal motion, the intervenor for purposes of this 2009 assessment appeal submitted with its dismissal motion Exhibit O, consisting of a single page application for open space assessment for tax year 2008 citing to all five parcels. As part of the intervenor's motion in this 2009 appeal, it was asserted that no timely application for an open space assessment was filed for tax year 2009. The appellant responded with Exhibit B. Then, in reply, the intervenor, despite the appellant's submission of Exhibit B, continued to assert "the Appellant did not even bother to submit its application for an open space assessment." (Intervenor's Reply In Support Of Motion To Dismiss, postmarked March 20, 2012, page 6) At hearing, Mr. Ginsburg continued to assert, "For the 2009 tax year, there is no evidence that any open space application was filed." (TR. 17, 110-111)

> (a) is actually and exclusively used for maintaining or enhancing natural or scenic resources,
>
> (b) protects air or streams or water supplies,
>
> (c) promotes conservation of soil, wetlands, beaches, or marshes, including ground cover or planted perennial grasses, trees and shrubs and other natural perennial growth, and including any body of water, whether man-made or natural,
>
> (d) conserves landscaped areas, such as public or private golf courses,
>
> (e) enhances the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces, or
>
> (f) preserves historic sites.
>
> Land is not considered used for open space purposes if it is used primarily for residential purposes.
>
> If the land is improved with a water-retention dam that is operated primarily for commercial purposes, the water-retention dam is not considered to be used for open space purposes despite the fact that any resulting man-made lake may be considered to be used for open space purposes under this Section. (35 ILCS 200/10-155).[3]

In the appellant's initial brief in support of this appeal, counsel for the appellant cited to six prior decisions of the PTAB for the proposition that the PTAB has granted open space status to a wide variety of property, not all of which were "neatly manicured, grass covered properties." See, for instance, U.S. Steel Group, Docket No. 00-24208.001-C-3, et al. (May 16, 2005). Specifically, the appellant asserted that the property owned by U.S. Steel Group had been used as a site for discarding cooled molten limestone (slag), a by-product of the steel making process. After steel production activities ceased, the subject land was allowed to remain fallow and vegetation began to grow. After hearing the testimony and considering the factual evidence presented in the U.S. Steel Group case about the disputed land, the PTAB determined that portions of the subject property "enhanced natural or scenic resources" and "the

[3] P.A. 95-70 §5, effective January 1, 2008, added the final paragraph.

value to the public of abutting or neighboring parks" was enhanced resulting in a determination that certain portions of the property were entitled to open space valuations. (Id.; see also Appellant's initial brief, postmarked on March 31, 2010, p. 4-5)

In the appellant's brief and with citation to the U.S. Steel Group decision by the PTAB, the appellant's counsel asserted the subject property contains more than ten acres, "enhances natural or scenic resources, promotes conservation of soil, and enhances the value to the public of the abutting park district soccer field." (Appellant's initial brief, postmarked on March 31, 2010, p. 4) For purposes of the hearing, the appellant called an engineer for testimony on the topic of how fields such as the subject property, serve and promote some of the same things that are set forth in Section 10-155 of the Code, such as conservation of soil, natural habitat, etc.

Witness Thomas G. McArdle, a forest ecologist and manager of the environmental resources department of Christopher Burke Engineering in Rosemont, has been employed with the firm for 20 years. As a forest ecologist, his work includes forest surveys, biological assessments, natural-area-community-type mapping, wetland assessments, urban forest management plans, wetland permitting and other permitting requirements. McArdle's professional designations include being a Certified Arborist by the International Society of Horticulture. He is also a certified professional in erosion and sediment control for Lake County; a certified wetland specialist with both Lake and McHenry Counties; a designated erosion control inspector with Lake County; and a wetland review specialist with Kane County. (TR. 34-35)

McArdle testified that in the past his work has involved looking at property with regard to the Illinois Open Space Statute, including doing community-type mapping for natural areas, looking at open space and making an assessment of what type of forest or plant community is in a given location based on the types of area plants, moisture needs, sun and other phlegmatic and topographic requirements of the plants. (TR. 35-36)

On the topic of successional patterns, the witness testified that there are two different types of succession: primary and secondary. Primary succession is when plants or vegetation grow in an area that did not have plants in the past, examples include exposed rock, landslides and cooled lava. Secondary succession has three different types: (1) degraded, where an

area has minor disturbances to it and they are temporal or sporadic; (2) cultivated areas which is a type of disturbance; and (3) ruderal which is revegetation of an area that at one time held plants and was so significantly disturbed so as to destroy all the area vegetation such as old rail yards, old and abandoned industrial sites, roadsides and spoil piles. (TR. 36-37) As described by the witness, successional pattern is a process of many, many, many years in the absence of disturbance resulting in a climax community.

The benefits of secondary succession in the early stages involve plants moving onto exposed ground and establishing root, which holds the soil in place and prevents erosion. This can also provide some limited wildlife habitat for common wildlife species and he also testified that there are water quality benefits. Rainfall on newly established vegetation is taken up by the roots and slows the movement of water off the site thereby reducing erosion and reducing sedimentation of adjacent streams or wetlands.

McArdle previously viewed the U.S. Steel Group property on the lakefront at the south side of Chicago after it had been abandoned and become overgrown and covered in vegetation. He was also involved in viewing another site near the Chicago lakefront and Lake Shore Drive where a site had been an industrial property and then was converted to a golf course. (TR. 38-39)

As to the subject property, McArdle testified that he visited the property and reviewed eleven historical aerial photographs dating from May 1999 to July 2012. Based on this review of the photographs, McArdle opined that from May 1999 to September 2000, portions of the subject property were cultivated as cropland and another portion of the property was scraped in the early spring of 2002 and remained scraped in 2004. (TR. 39-40) He further testified that in April 2005, the entire area was scraped and graded. He determined the subject property was disturbed in 2006, although it also had two storm water management ponds. McArdle further testified that in summer 2007, 2008 and 2009, the site became vegetated and was undergoing the early stages of secondary succession with pioneer plants moving in to unvegetated and exposed ground. (TR. 40) McArdle very specifically testified that when disturbances ceased on the site, there were the beginnings of revegetation of the property. (TR. 40-41)

The witness acknowledged that some winter wheat was planted on the subject property in 2006. McArdle opined that the planting of winter wheat serves or promotes conservation in that it holds the soil in place, reduces erosion and reduces downstream sedimentation. (TR. 42)

On cross-examination, the witness was not aware of any relationship between his employer, Christopher Burke Engineering, and appellant's Attorney Kevin Burke. As to his prior experience testifying before PTAB, McArdle stated that the U.S. Steel Group case involved Attorney Brannigan, who may have been with the same law firm as Mr. Burke. (TR. 43) Testifying in this matter is the third occasion that McArdle has testified for this law firm on open space issues. (TR. 43-44)

The witness reiterated that the north portion of the subject property was farmed prior to 2005. When asked about the installation of roadways on the subject property, McArdle testified that the 2005 aerial photography does not clearly show interior roadways. (TR. 45-46) The witness has personally visited the subject property once on August 6, 2012 for about 1.5 to 2 hours. (TR. 46, 50) He prepared a "discussion" of his impressions of the aerial photography review and the existing site conditions on August 27, 2012. (TR. 47)

The witness testified that he was retained to analyze the subject property on July 25, 2012. As part of those initial discussions, McArdle provided a proposal for Attorney Burke to do a historic aerial review of the property and also look at the existing site conditions. McArdle also looked at a chronology of some planting "what the farmer had done over the site in the mid 2000s." At the time of his inspection in August 2012, the majority of the subject property was being farmed "with the exception of the road rights of way and the storm water management facilities, the site was being cultivated . . . ." McArdle did not know if the subject property was farmed in 2009; the witness agreed that topsoil was removed from the subject property in the grading operations; in 2005, the site was scraped and topsoil removed although he does not know how much was removed. (TR. 47-51)

Next, the appellant Kevin Dahl was called as a witness. His testimony, relevant to tax year 2009 for an open space assessment, was that for the period of 2005 to 2008, the subject property was vacant, there were no buildings on it. The property was not secured or fenced off. Dahl may have put up no trespassing signs "a couple of times" but the signs would be

stolen and occasionally personal property, such as a couch or a floor fan, was dumped on the property. Dahl testified that a junior high school is located across the street from the property and to the east are houses and apartments. The property was also used as a short-cut and children would ride bikes on the property; children with motorized dirt bikes were also "run off" the property. He stated, "It was a recreational area." (TR. 62-63, 64)

There was no farming of the property in 2005. Part of the reason that farming was stopped was for purposes of developing the property. Dahl worked with FEMA to get part of the land out of the floodplain. He also installed the sewer lines and water lines. (TR. 67-68)

In learning that the property for tax year 2006 was re-classified to commercial, in November 2006, Dahl had the subject property planted in winter wheat by farmer George Diedrich. (TR. 64, 77, 92-93; Intervenor's Exhibits E & F; see also page 3 of Board of Review Exhibit D) He chose to plant winter wheat to "address the farming deal of it" and because he thought the property might look better and be more marketable if it had "some semi nice looking crop on it." However, there was no harvest due to an early period of cold weather. (TR. 64)

Dahl further testified that for the period of 2006 to 2008, the sewer and water lines had been put in. For this period, Dahl also testified that "off and on" you would still see children using the property as a shortcut. (TR. 64) The property was not farmed in 2007 or in 2008. (TR. 78; see also TR. 94)

The witness initially seemed unsure of himself, but testified that in 2009 he began farming the property again. His reason for farming the property was twofold: cutting down the weeds got fairly expensive and the "guy that I got to farm it would farm it for free and do trimming around the edges if he could farm it free and get whatever he got off of it, so that fit my program." Part of Dahl's rationale for farming the property was to reduce the taxes. (TR. 65)

The subject property was farmed in 2010 and 2011 with farming continuing as of the most recent season. (TR. 78) According to Dahl, the property has again been assessed with the preferential farmland assessment as of either 2010 or 2011. (TR. 65-66)

Based on the foregoing evidence and argument, the appellant requested an open space assessment for the subject parcels.

The board of review submitted its "Board of Review Notes on Appeal" wherein the final 2009 assessments for each of the five parcels were disclosed as $126,162, $175,467, $293,653, $402,414 and $523,772, respectively, for a total assessment of $1,521,468 for the vacant land.

As part of the response to the instant appeal, the board of review submitted a letter dated June 3, 2011 from Robin L. Brunschon, Clerk of the DeKalb County Board of Review. In pertinent part, Brunschon wrote, "We believe that these parcels do not qualify for open space per the statue [*sic*]. We have attached a copy of the statue [*sic*]. These parcels were and still are on the open market as vacant commercial land."

For purposes of this 2009 assessment appeal, the board of review also submitted a copy of a two-page letter to the PTAB dated July 29, 2010 from Margaret Whitwell, the previous Clerk of the DeKalb County Board of Review, concerning the 2008 assessment appeal. In that letter, Whitwell, in pertinent part, asserted:

> Mr. Dahl's current attorney, Mr. Kevin Burke, requested an open space assessment on the property if the farmland value was not granted. The Board felt that this acreage, which was basically covered with weeds, did not qualify for the open space classification as it was not filed in a timely manner. The property was not used for maintaining or enhancing natural or scenic resources, was not protecting air or streams or water supplies, was not promoting conservation of the soil, was not conserving landscaped areas, was not enhancing the value to the public parks and homes in the area, and was not preserving an historic site. The property in question, not farmed in 2005, was planted in winter wheat in November of 2006. Therefore, the requirement that the property be used as open space for three years prior to application was not satisfied. [citation to farming receipt exhibits omitted]

One of the attachments to the board of review's submission was a "receipt" to the appellant dated November 28, 2006 concerning "fall tillage & application to seed winter wheat" consisting of a billing for labor with a tractor, an operator of a tractor and spreader buggy and labor for an operator and pickup truck for a total of $712.50. The receipt/invoice was issued by John M. Diedrich of Sycamore.

Based on the foregoing evidence and argument, the board of review requested confirmation of the subject's assessment and denial of the appellant's request for an open space valuation for the subject parcels.

The intervenor submitted its motion to dismiss, brief and documentary evidence in response to the appellant's appeal. In sum, the intervenor contends that the subject commercially zoned property was not entitled to classification as open space. (Intervenor's pleadings postmarked on December 12, 2011)[4] After arguing that the appellant had waived the right to claim open space for failure to timely make application (see Footnote 2 above), the intervenor made two additional arguments why the open space claim should fail.

First, the intervenor and board of review at hearing argued that based on the terms of Section 10-160 of the Code (35 ILCS 200/10-160), the open space application must "contain information as may reasonably be required to determine whether the applicant meets the requirements of Section 10-155." (TR. 17-18) Since the appellant failed to provide information within the four corners of the application to determine whether the subject property qualifies for open space assessment, the opposing parties contend the open space request must fail in this matter. (Id.) The PTAB finds no merit in this assertion since Section 10-160 of the Code also calls for the application to be made on "the form prescribed by the Department [of Revenue]." (35 ILCS 200/10-160) The PTAB finds that the PTAX-334 form as depicted in Appellant's Exhibit B has been fully completed with all necessary items completed in both Steps 1 and 2 as required on the "prescribed" form established by the Department of Revenue.

Second, the opposing parties both also contend that the appellant's open space claim fails because in late November 2006 the appellant farmed the subject property (citing the November 2006 receipt submitted in this matter by the board of review; see also Intervenor's Exhibit E). In further support of the allegation that there was farming activity occurring on the subject property in late 2006, the intervenor submitted a copy of the appellant's Verified Complaint filed in circuit court (Case No. 06 MR 221; Intervenor's Exhibit G) along with an attachment to the complaint, Attachment C-1. In Count IV of the circuit court complaint, the appellant alleged at paragraph 39

[4] By letter dated March 5, 2012, the PTAB denied the intervenor's dismissal motion.

that the appellant was "still farming" the property. In addition in Attachment C-1, appellant's attorney for the circuit court action, Michael P. Coghlan, wrote in a letter dated November 29, 2006 addressed to the DeKalb County Supervisor of Assessments, Margaret Whitwell, in part, "I was informed that farming activity is continuing on the above parcels." The opposing parties also cited an opinion of the Illinois Attorney General to support the proposition that land suitable to be assessed as open space should not be assessed as either farmland or land suitable for developmental purposes. (1982 Ill.Atty.Gen.Op. 004 (February 18, 1982); TR. 20)

Further support on the "non-open space" nature of the subject property was presented through the testimony at hearing from Kevin Schnetzler, Sycamore Township Assessor. As part of the valuation of property for assessment purposes, Schnetzler was required to view and classify property within the township. He found that prior to 2005 the subject property was farmed, but as of 2005 there was no farming activity on the subject property. Schnetzler was able to verify with the farmer of the subject property that it was farmed in November 2006. The subject property was not farmed in either 2007 or 2008, but was again farmed in 2009 with evidence of a visible crop in July 2009. The witness further testified the property was farmed in 2010, 2011 and 2012. (TR. 86-89, 92-96; Intervenor's Exhibit F)

As a final matter, the intervenor and board of review argued that even if the appellant establishes entitlement to open space assessment for tax year 2009, the appellant cannot establish that the subject property continued to be used for open space purposes for years 2010, 2011 and 2012 which then implicates Section 10-165 of the Code (35 ILCS 200/10-165). (TR. 18-20) Section 10-165 of the Code is essentially a "rollback" provision and requires payment of taxes based on the valuation otherwise permitted by law plus 5% interest if the property does not remain as open space for three years after the year of an open space assessment. (35 ILCS 200/10-165) In conclusion, based on the foregoing evidence and argument, the intervenor requested confirmation of the subject's assessment and denial of the appellant's request for an open space valuation for the subject parcels.

CONCLUSION OF LAW

The appellant contends the subject property, containing 26.81-acres, should be assessed as open space pursuant to Section 10-155 of the Code (35 ILCS 200/10-155). The board of review and

the intervenor both contend the property does not qualify as open space.

Having determined that the appellant through his authorized representative timely applied for an open space assessment for tax year 2009 by completing the PTAX-334 Application for Open Space Purposes Assessment (Appellant's Exhibit B), the issue before the PTAB is whether or not the subject land is entitled to receive an open space valuation and assessment or should be valued based on the land's fair cash value as otherwise provided in the Code. (See 35 ILCS 200/1-50 and 35 ILCS 200/9-145). The PTAB finds the appellant did not meet this burden of proof and reductions in the subject's assessments are not warranted.

Besides the timely filing of an application for an open space assessment, the land at issue applying for an open space assessment must be "used for open space purposes and . . . been so used for the 3 years immediately preceding the year in which the assessment is made." (35 ILCS 200/10-155) In this appeal, the appellant is seeking an open space assessment for tax year 2009 which means that the property had to be used for open space purposes for years 2006, 2007 and 2008.

While the PTAB recognizes that Section 10-155 and its six criteria is open to broad interpretation, the PTAB finds that the appellant clearly engaged in farming activities on the subject property in November 2006 when the appellant hired farmer Diedrich to plant winter wheat on the property. Moreover, the PTAB further finds that appellant Dahl specifically planted winter wheat in order to obtain a farmland assessment; he testified he planted it "to address the farming deal of it." The appellant did not testify to any clear desire to plant "ground cover," "perennial grasses" or other plants set forth in Section 10-155 to either obtain or maintain an open space assessment. To the contrary, the PTAB finds that tilling the soil, seeding and planting winter wheat with the intention of harvesting a crop (even though the crop failed to be harvested due to an early cold period), disturbs the soil and defeats the appellant's claim for an open space assessment on the subject property. Given the requirement that the property be used for open space for the three years preceding 2009, the PTAB finds that the planting of winter wheat and the resulting disturbance of the soil, runs counter and afoul of the precepts of the open space statute and is not supported by the testimony of forest ecologist McArdle. The expert was clear that the successional pattern (growth of new plant material on bare

ground) is a process of many, many, many years in the absence of disturbance which then results in a 'climax community.'

Moreover, in light of expert's clear opinion that this successional pattern takes numerous years of the soil or ground being undisturbed, the PTAB finds McArdle's testimony that planting winter wheat "serves or promotes conservation" by holding soil in place was not credible and runs counter to the remainder of his testimony.

Therefore, based on a review of the evidence and testimony contained in the record, the PTAB finds that the appellant has failed to support his legal contention for an open space assessment for tax year 2009. The PTAB finds that due to the 2006 farming activity of planting winter wheat, the subject property fails to meet the qualifications for an open space assessment.

In conclusion, 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 appellate court vacated the decisions of the PTAB concerning the determination that the subject property qualified for developer's relief with accompanying reductions to farmland valuation assessments. With the instant determination by the PTAB that the subject property does not qualify for an open space assessment, the PTAB finds that no change in the assessment of subject parcels 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

Acting Member

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

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.