FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: KT Winneburg, LLC
DOCKET NO.: 10-04192.001-R-3 through 10-04192.089-R-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are KT Winneburg, LLC, the appellant, by Elliott L. Turpin of the Law Offices of Elliott L. Turpin in Carrollton; the Calhoun County Board of Review; and the County of Calhoun, intervenor, by Special Assistant State's Attorney Christopher E. Sherer of Giffin, Winning, Cohen & Bodewes, in Springfield.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds ***No Change and A Reduction***[1] in the assessment of the property as established by the **Calhoun** County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	FARM LAND	IMPRVMT	TOTAL
10-04192.001-R-3	07-16-01-100-003-401	3,370		0	$3,370
10-04192.002-R-3	07-16-01-100-003-402	3,495		0	$3,495
10-04192.003-R-3	07-16-01-100-003-403	4,120		0	$4,120
10-04192.004-R-3	07-16-01-100-003-404	3,940		0	$3,940
10-04192.005-R-3	07-16-01-100-003-405	5,240		0	$5,240
10-04192.006-R-3	07-16-01-100-003-406	2,570		0	$2,570
10-04192.007-R-3	07-16-01-100-003-407	3,170		0	$3,170
10-04192.008-R-3	07-16-01-100-003-408	2,570		0	$2,570
10-04192.009-R-3	07-16-01-100-003-410	2,520		0	$2,520
10-04192.010-R-3	07-16-01-100-003-411	2,570		0	$2,570
10-04192.011-R-3	07-16-01-100-003-412	2,550		0	$2,550
10-04192.012-R-3	07-16-01-100-003-413	3,095		0	$3,095
10-04192.013-R-3	07-16-01-100-003-414	3,195		0	$3,195
10-04192.014-R-3	07-16-01-100-003-415	3,645		0	$3,645
10-04192.015-R-3	07-16-01-100-003-416	2,520		0	$2,520
10-04192.016-R-3	07-16-01-100-003-417	2,695		0	$2,695
10-04192.017-R-3	07-16-01-100-003-418	2,595		0	$2,595
10-04192.018-R-3	07-16-01-100-003-419	2,550		0	$2,550
10-04192.019-R-3	07-16-01-100-003-420	3,520		0	$3,520
10-04192.020-R-3	07-16-01-100-003-421	2,995		0	$2,995
10-04192.021-R-3	07-16-01-100-003-422	3,045		0	$3,045

[1] All reductions are designated in "**bold**" typeface in the grid.

10-04192.022-R-3	07-16-01-100-003-423	3,995		0	$3,995
10-04192.023-R-3	07-16-01-100-003-424	2,520		0	$2,520
10-04192.024-R-3	07-16-01-100-003-425	2,570		0	$2,570
10-04192.025-R-3	07-16-01-100-003-426	2,570		0	$2,570
10-04192.026-R-3	07-16-01-100-003-427	2,550		0	$2,550
10-04192.027-R-3	07-16-01-100-003-428	2,495		0	$2,495
10-04192.028-R-3	07-16-01-100-003-429	3,565		0	$3,565
10-04192.029-R-3	07-16-01-100-003-430	1,650		0	$1,650
10-04192.030-R-3	07-16-01-100-003-431	2,895		0	$2,895
10-04192.031-R-3	07-16-01-100-003-432	2,930		0	$2,930
10-04192.032-R-3	**07-16-01-200-002-200**	**100**		**0**	**$100**
10-04192.033-R-3	07-16-01-200-002-201	1,820		0	$1,820
10-04192.034-R-3	07-16-01-200-002-202	1,650		0	$1,650
10-04192.035-R-3	07-16-01-200-002-204	1,525		0	$1,525
10-04192.036-R-3	07-16-01-200-002-205	1,570		0	$1,570
10-04192.037-R-3	07-16-01-200-002-209	1,620		0	$1,620
10-04192.038-R-3	07-16-01-200-002-210	1,470		0	$1,470
10-04192.039-R-3	07-16-01-200-002-211	1,400		0	$1,400
10-04192.040-R-3	07-16-01-200-002-212	1,425		0	$1,425
10-04192.041-R-3	07-16-01-200-002-213	1,275		0	$1,275
10-04192.042-R-3	07-16-01-200-002-214	1,400		0	$1,400
10-04192.043-R-3	07-16-01-200-002-215	1,320		0	$1,320
10-04192.044-R-3	07-16-01-200-002-216	1,470		0	$1,470
10-04192.045-R-3	07-16-01-200-002-217	1,595		0	$1,595
10-04192.046-R-3	07-16-01-200-002-218	1,375		0	$1,375
10-04192.047-R-3	07-16-01-200-002-219	2,175		0	$2,175
10-04192.048-R-3	07-16-01-200-002-220	3,545		0	$3,545
10-04192.049-R-3	07-16-01-200-002-301	10,705		0	$10,705
10-04192.050-R-3	07-16-01-200-002-33A	4,795		0	$4,795
10-04192.051-R-3	07-16-01-200-002-33B	4,420		0	$4,420
10-04192.052-R-3	07-16-01-200-002-34A	6,665		0	$6,665
10-04192.053-R-3	07-16-01-200-002-34B	7,265		0	$7,265
10-04192.054-R-3	07-16-01-200-002-35A	6,465		0	$6,465
10-04192.055-R-3	07-17-06-100-001-23A	3,520		0	$3,520
10-04192.056-R-3	07-17-06-100-001-23B	3,870		0	$3,870
10-04192.057-R-3	07-17-06-100-001-24A	4,090		0	$4,090
10-04192.058-R-3	07-17-06-100-001-24B	5,890		0	$5,890
10-04192.059-R-3	**07-17-06-100-001-300**	**100**		**0**	**$100**
10-04192.060-R-3	07-17-06-100-001-309	4,170		0	$4,170
10-04192.061-R-3	07-17-06-100-001-311	3,745		0	$3,745
10-04192.062-R-3	07-17-06-100-001-312	3,720		0	$3,720
10-04192.063-R-3	07-17-06-100-001-313	3,565		0	$3,565
10-04192.064-R-3	07-17-06-100-001-314	4,370		0	$4,370
10-04192.065-R-3	07-17-06-100-001-315	5,240		0	$5,240
10-04192.066-R-3	07-17-06-100-001-316	3,565		0	$3,565

10-04192.067-R-3	07-17-06-100-001-317	4,545		0	$4,545
10-04192.068-R-3	07-17-06-100-001-318	4,170		0	$4,170
10-04192.069-R-3	07-17-06-100-001-319	3,440		0	$3,440
10-04192.070-R-3	07-17-06-100-001-320	3,295		0	$3,295
10-04192.071-R-3	07-17-06-100-001-321	2,920		0	$2,920
10-04192.072-R-3	07-17-06-100-001-322	2,520		0	$2,520
10-04192.073-R-3	07-17-06-100-001-323	3,095		0	$3,095
10-04192.074-R-3	07-17-06-100-001-324	2,945		0	$2,945
10-04192.075-R-3	07-17-06-100-001-325	2,945		0	$2,945
10-04192.076-R-3	07-17-06-100-001-326	3,270		0	$3,270
10-04192.077-R-3	**07-17-06-100-001-BA**		*	0	**$***
10-04192.078-R-3	**07-17-06-100-001-BB**		*	0	**$***
10-04192.079-R-3	**07-17-06-100-001-E**		*	0	**$***
10-04192.080-R-3	**07-17-06-100-001-F**		*	0	**$***
10-04192.081-R-3	**07-17-06-100-001-H**		*	0	**$***
10-04192.082-R-3	**07-17-06-100-001-J**		*	0	**$***
10-04192.083-R-3	**07-17-06-100-001-K**		*	0	**$***
10-04192.084-R-3	**07-17-06-100-001-N**		*	0	**$***
10-04192.085-R-3	**07-17-06-100-001-O**		*	0	**$***
10-04192.086-R-3	**07-17-06-100-001-P**		*	0	**$***
10-04192.087-R-3	**07-17-06-100-001-Q**		*	0	**$***
10-04192.088-R-3	07-16-01-100-003-409	3,095		0	$3,095
10-04192.089-R-3	07-16-01-200-002-35B	7,165		0	$7,165

*TO BE CERTIFIED

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from decisions of the Calhoun County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessments for the 2010 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Preliminary Matters

The Calhoun County Board of Review was found to be in default in this proceeding by a letter issued on September 6, 2012 for failure to file any evidence in response to the appeal. The intervenor County of Calhoun timely intervened in this proceeding and filed evidence. Thereafter, this matter initially proceeded to hearing on February 24, 2014. The appellant appeared with counsel, the intervenor County of Calhoun appeared through its counsel and a representative of the Calhoun County Board of Review, Supervisor of Assessments Patricia Langland, was also present. Prior to the conclusion of the hearing, counsel for both the appellant and the intervenor indicated that a settlement had been reached. Thus, the hearing on that date was abruptly ended as set forth in a subsequent letter issued by the Administrative Law Judge dated February 25, 2014;

a date for the submission of a status report or, alternatively, a signed settlement was also established in that letter/order.

By a letter dated April 30, 2014, counsel for the intervenor, County of Calhoun, advised that his client had voted against agreeing to the stipulation which was set forth on the record at the hearing on February 24, 2014. Subsequent pleadings were filed by both the appellant and the intervenor alternatively seeking to enforce and opposing the enforcement of the settlement of the matter reached at the time of hearing as set forth in the transcript of the proceedings. By a letter/order dated May 6, 2015, the Property Tax Appeal Board denied the appellant's motion to enforce the settlement and scheduled the matter to reconvene the hearing commencing on September 8, 2015. Said letter/order dated May 6, 2015 by the Property Tax Appeal Board is hereby adopted and incorporated in full as if set forth in this decision.

As a consequence of the foregoing proceedings and the hearings held on both February 24, 2014 and September 8, 2015, there are two separate transcripts in this matter.[2] Each transcript commences with page 1 and continues consecutively to the end with nothing else to distinguish the two transcripts beyond the date the hearings were held. For purposes of this decision, references to the transcripts of the proceedings will be "TR I" for the hearing held on February 24, 2014 and "TR II" for the hearing held on September 8, 2015, with each respective reference followed by the applicable page number(s).

Analysis

The subject property consists of 89 individual subdivided vacant parcels. The property was at one point known collectively as the Winneberg Subdivisions of Calhoun County, Illinois. The property is located in Point Township, Calhoun County.

This decision of the Property Tax Appeal Board will initially discuss the appellant's contention of law regarding sections 10-30 and 10-31 of the Property Tax Code with the applicable evidence presented by both parties followed by a determination.

Next, if necessary, the decision will address the appellant's request for a farmland classification and/or timber classification based on the use of the property along with applicable evidence presented by both parties followed by a determination.

Contention of Law – Developer's Exemption

The appellant set forth a contention of law as the basis of the appeal arguing the subject parcels should each be assessed in accordance with either section 10-30 or, alternatively, section 10-31 of the Property Tax Code (hereinafter "Code") (35 ILCS 200/10-30 or 10-31) and receive the so called "Developer's Exemption." (See also Publication 134 – Developer's Exemption Property Tax Code, Section 10-30, Illinois Department of Revenue)

[2] The transcript of the proceedings conducted on September 8, 2015 are erroneously dated by the court reporter as September 7, 2015, the Labor Day and State of Illinois holiday.

In support of this contention of law, the appellant argued that the assessor and/or board of review incorrectly assessed or reassessed the subject parcels as "residential" property from their previous farmland assessment classification(s). As to the application of the Code, the appellant presented a four-page brief prepared by counsel with attachments that included copies of the two provisions of the Code that were cited and a copy of Paciga v. Property Tax Appeal Board, 322 Ill.App.3d 157 (2d Dist. 2001).

As noted previously in this decision, the board of review was found to be in default. The board of review did file its Certificate that on May 9, 2013 all taxing districts as shown on the last available tax bill were notified of the pending appeal.

The intervenor County of Calhoun contends that the appellant purchased the subject parcels at a mortgage foreclosure sale in 2008. "Some of the parcels were classified as residential before the mortgage foreclosure sale, and many were reclassified from farmland to residential upon the mortgage foreclosure sale." (Intervenor's Memorandum filed 10-29-13, p. 1) In summary, the intervenor contends that the subject property lost its eligibility for relief under section 10-30 due to the multiple sales of the property after platting and therefore neither cited provision of the Code is applicable.

The Board finds that while there may be some slight variations in the recitations of the parcels, lots and ownership changes, there is not any substantive distinction in the facts between the appellant and the intervenor in the acquisition and subsequent transfers of the parcels. (TR I, 12-13, 64-65) (See also KT Winneburg, LLC v. Calhoun County Board of Review, 403 Ill.App.3d 744 (4th Dist. 2010), *appeal denied* 239 Ill. 2d 555 (2011)). In pertinent part, the Property Tax Appeal Board finds that as stated in the appellant's memorandum:

> . . . ownership of the subdivision lots has changed hands multiple times. At various times, the lots in question have been owned in bulk by Golden Eagle Development Company, Anschloss Development Company, Nelco Development Company, and KT Winneburg, LLC. . . . These companies are all independent of each other.

The intervenor also did not disagree with the foregoing characterization. (Intervenor Memorandum, p. 10-11) Next, on pages 1 through 3 of the appellant's memorandum, the appellant outlined the various dates, lots and ownership changes that occurred. The parties agree that the original 420-acres of land were purchased in 1995 by a real estate developer. At the time of purchase, the land was assessed as farmland. Over the next ten years, some or all of the initial 420-acres were platted into nine different subdivisions by various parties. With some exceptions set forth by the intervenor, the land continued to be classified as farmland for assessment purposes. The original real estate developer platted Winneberg Subdivision in four phases: Phase 1 was platted on October 20, 1997; Phase 2 was platted on November 10, 1997, and amended on July 16, 1998; Phase 3 was platted on November 12, 2002; and Phase 4 was platted on November 7, 2005. Part of the original four phases of Winneberg Subdivision were subsequently re-subdivided into five subdivisions known as: The Villas of Winneberg; Brickyard Villas of Winneberg; Deer Trail; Eagle's Nest; and Fox Run.

There is no dispute by the parties that the property was platted in accordance with the Plat Act; the platting occurred after January 1, 1978; the property was in excess of 5-acres when it was

subdivided; and the property was, as of the assessment date at issue, vacant. (See Intervenor Memorandum, p. 11)

The parties agree and the Board further finds that all of the lots in question were acquired by the appellant in 2008 as a result of a foreclosure sale. The intervenor contends that some of the parcels were already assessed as residential at the time of transfer (Intervenor Memorandum, p. 3-5) and the appellant contends that as of the time of transfer, all of the lots were reassessed from farmland to residential. On this record and as of the assessment date at issue, January 1, 2010, there is no dispute that the appellant KT Winneburg, LLC was the owner of the subject land consisting of 89 vacant parcels.

The appellant contends that each parcel should receive a preferential farmland assessment allowed to land developers in accordance with the Code. According to the appellant, prior transfers of the subject property did not trigger a change in the assessment of the parcels from farmland to residential and, therefore, neither should the appellant's acquisition of the parcels in a bulk transfer due to foreclosure in 2008. The focus of the appellant's memorandum of law was that the "bulk transfer" was not an 'initial sale' as referenced in Section 10-30 of the Code, that like the prior transfers, the farmland classification should not have been altered for the subject parcels.

Counsel for the appellant acknowledged that the subject property has been platted, subdivided and "sold a couple of times," but still remained undeveloped. Counsel for the appellant also contends that in the absence of a change in the use of the property, the exemption still applies and the property should be reassessed as farmland in accordance with the applicable soil types and productivity indices of the land. (Appellant's Brief, p. 3; TR I, p. 5-6)

According to the appellant, the assessing officials contend that upon the transfer of the property to the appellant, the developer's exemption was no longer applicable.[3]

The intervenor argued that because the subject property sold in 2008, Section 10-30(c) of the Code (35 ILCS 200/10-30(c)) directs that the preferential assessment no longer apply in determining its assessed value and further authorizes the subject parcel be assessed without regard to any provision of this section. The intervenor argued the appellant's position ignored the fact that an 'initial sale' occurred. Based on this evidence, the intervenor requested no change in the subject's assessment.

When a contention of law is raised the burden of proof is a preponderance of the evidence.[4] The Board finds the appellant did not qualify as to the "Developer's Exemption" under either section of the Code cited herein.

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[3] As the assessing officials were held in default in these proceedings, there is no written documentation of the board of review's rationale for the assessment in the record.

[4] Section 10-15 of the Illinois Administrative Procedure Act (5-ILCS 100/10-15) provides:

> Standard of proof. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

The rules of the Property Tax Appeal Board are silent with respect to the burden of proof associated with an argument founded on a contention of law. See 86 Ill.Admin.Code §1910.63.

As a consequence of the alternative arguments made by the appellant, within the context of the developer's exemption argument, there is an initial issue of whether Section 10-30 or 10-31 of the Code (35 ILCS 200/10-30 & 10-31) applies to the subject property. Each provision of the Code will be addressed separately.

1) Section 10-30

As to Section 10-30, the appellant contends the "bulk transfer" to the appellant via a foreclosure action was not an 'initial sale' and/or the appellant contends that, on grounds of equity, the assessment of the subject parcels should not be altered since prior transfers between developers of the subject parcels did not result in alterations to the classification of the subject property. The appellant argued that Section 10-30 applies to the subject property because the appellant was a land developer within the meaning of the Code and they held the property for purposes of eventual sale. (Appellant's Memorandum, p. 3-4)

As noted previously, the intervenor contends that the 2008 transfer to the appellant referenced in this record was an 'initial sale' and thus disqualified the property from the developer's exemption. As a consequence, the intervenor requested denial of the developer's exemption to the subject property.

The parties agree and the Board finds that the appellant was not the developer who platted and subdivided lots in order to establish the subject parcels. Instead, the parties agree and the Board finds that all of the platted parcels were sold/transferred in foreclosure to the appellant in April 2008. Section 10-30(a) of the Code provides in pertinent part:

> The platting and subdivision of property into separate lots and the development of the subdivided property with streets, sidewalks, curbs, gutters, sewer, water, and utility lines shall not increase the assessed valuation of all or any part of the property, if:
>
> (1) The property is platted and subdivided in accordance with the Plat Act;
> (2) The platting occurred after January 1, 1978;
> (3) At the time of platting the property is in excess of 10 acres; and
> (4) At the time of platting the property is vacant or used as a farm as defined in Section 1-60. [35 ILCS 200/10-30(a)]

Sections 10-30(b) and 10-30(c) of the Code (35 ILCS 200/10-30(b) & (c)) provides:

> (b) Except as provided in subsection (c) of this Section, the assessed valuation of property so platted and subdivided shall be determined each year based on the estimated price the property would bring at a fair voluntary sale for use by the buyer for the same purpose for which the property was used when last assessed prior to its platting.
>
> (c) Upon completion of a habitable structure on any lot of subdivided property, or upon the use of any lot, either alone or in conjunction with any contiguous property,

> for any business, commercial, or residential purpose, or **upon the initial sale of any platted lot, including a platted lot which is vacant**: (i) the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot, (ii) each lot shall be assessed without regard to any provision of this Section, and (iii) the assessed valuation of the remaining properties, when next determined, shall be reduced proportionately to reflect the exclusion of the property that no longer qualifies for valuation under this Section. . . [Emphasis added.]

The Property Tax Appeal Board finds the evidence establishes that the appellant, who was not the original developer, was the owner of the subject parcels as of the January 1, 2010 assessment date at issue. The evidence also discloses that the subject property sold to the appellant in April 2008 as a consequence of foreclosure. The plain and ordinary meaning of an "initial sale of any platted lot" would include the transfer of the subject property in bulk as reflected in the April 2008 Sheriff's Deed filed in this record by the intervenor (Intervenor's Exhibit F). Therefore, the Property Tax Appeal Board finds that the assessing officials were correct in assessing the subject property with reference to its status as of January 1, 2010 pursuant to Section 10-30(c) of the Code and properly considered the transaction that occurred in April 2008, in determining the subject property was no longer entitled to the developer's exemption as it had an 'initial sale.' The question is not before the Property Tax Appeal Board and thus, no determination is being made as to the correctness or the incorrect treatment of the subject parcels after the other various transfers that occurred prior to the transfer to the appellant in April 2008.

This interpretation of Section 10-30 of the Code is further supported by the guidance in Publication 134, Developer's Exemption Property Tax Code, Section 10-30, published by the Illinois Department of Revenue. On page 3 of Publication 134, the Department of Revenue advises in pertinent part that "if the developer sells all or a portion of the land to another developer, does the property continue to receive the preferential assessment? -- No." (Page 3) The publication asserts that 'when any sale occurs' the preferential assessment is removed.

> If the entire development is sold to another developer, then that entire development no longer qualifies for the preferential assessment. This applies even if no habitable structures have been built or the area has not been used for any business, commercial, or residential purpose. (Publication 134 at p. 3; see also TR I, 63)

On the assessment date at issue the subject property was not entitled to the preferential assessment allowed by the procedures contained within Section 10-30(b) of the Code as such preferential status was no longer applicable under Section 10-30(c) of the Code after the "initial sale of any platted lot, including a platted lot which is vacant." (35 ILCS 200/10-30(c)). Based on these facts alone and not considering the potential actual use of the property for farming purposes which will be addressed further in this decision, the Property Tax Appeal Board finds the assessing officials did not err in assessing the subject property in accordance with procedures other than maintaining its farmland assessment as of January 1, 2010 due to the 'developer's exemption.' In conclusion, based on the foregoing evidence and analysis, the Property Tax Appeal Board finds the assessing officials and board of review correctly denied the subject parcel's preferential assessment provided by Section 10-30 of the Code (35 ILCS 200/10-30) for the assessment year at issue since the property had been the subject of an 'initial sale' in April 2008.

2) Section 10-31

In the alternative, on the developer's exemption contention, the appellant argued that Section 10-31 has "clarified" that a transfer in foreclosure does not trigger a change in assessment classification for properties receiving the 'developer's exemption.' According to the appellant, Section 10-31 is applicable to the subject property given the provision's effective date of August 14, 2009 on the basis that the instant appeal "deals with the 2010 taxes payable in 2011." Appellant reasoned, therefore, since Section 10-31 was in effect during the entire 2010 tax year, the provision applies. (Appellant's Memorandum, p. 4)

The Property Tax Appeal Board finds no merit in the appellant's argument as to the applicability of Section 10-31 of the Code where the appellant purchased or obtained via transfer the subject property prior to the statute's effective date. The Property Tax Appeal Board finds that the 'status' of the subject property whether entitled to or not entitled to developer's relief was determined as of (a) the date the property was platted and (b) as of the 'initial sale' which, in this case, was in April 2008 prior to the effective date of Section 10-31.

As an alternative consideration, the provisions of Section 10-31 are further examined with regard to subsection (b) of the section:

> (b) Except as provided in subsection (c) of this Section, the assessed valuation of property so platted and subdivided shall be determined based on the assessed value assigned to the property **when last assessed prior to its last transfer or conveyance**. An initial sale of any platted lot, including a lot that is vacant, or a transfer to a holder of a mortgage, as defined in Section 15-1207 of the Code of Civil Procedure, pursuant to a mortgage foreclosure proceeding or pursuant to a transfer in lieu of foreclosure, does not disqualify that lot from the provisions of this subsection (b). (Emphasis added.) (35 ILCS 200/10-31(b))

The Board finds that the subject property had previously been disqualified from the provisions of subsection (b) of Section 10-31 when the property was transferred in April 2008, prior to the effective date of the statutory provision which is effective for assessments as of January 1, 2010.

Moreover, as to the respective developer's exemption provisions, Section 10-30(d) of the Code (35 ILCS 200/10-30(d)) states:

> This Section applies **before the effective date of this amendatory Act** of the 96th General Assembly and then applies again beginning January 1, 2012. [Emphasis added.]

(Citing P.A. 95-135, eff. 1-1-08; 96-480, **eff. 8-14-09**). In contrast, the newer provision of the Code known as Section 10-31(d) states as follows:

> This Section applies **on and after the effective date** of this amendatory Act of the 96th General Assembly and through December 31, 2011.

(Citing P.A. 96-480, **eff. 8-14-09**).

The Property Tax Appeal Board finds the Illinois General Assembly temporarily amended Section 10-30 by enacting Section 10-31 of the Code. The Board finds that Section 10-31 clearly states that it applies only between August 14, 2009 and December 31, 2011. The appellant acquired ownership of the subject property in April 2008, prior to the effective date of the relevant provision. Moreover, Section 10-31 does not explicitly allow for retroactive application and thus, the Board finds that there is no support for the appellant's contention for retroactive application of preferential tax treatment for the subject parcels.

The Property Tax Appeal Board agrees with the interpretation of the intervenor and finds that Section 10-31 of the Code is not applicable to this 2010 assessment appeal. Sections 9-95, 9-155 and 9-175 of the Code provide that real estate is to be assessed in the name of the owner and at that value as of January 1. (See People ex rel Kassabaum v. Hopkins, 106 Ill. 2d 473, 476-477, 478 N.E.2d 1332, 1333 (1985). Section 9-95 of the Code provides in part:

> All property subject to taxation under this Code, including property becoming taxable for the first time, shall be listed by the proper legal description in the name of the owner, and assessed at the times and manner provided in Section 9-215 through 9-225, and also in any year that the Department orders a reassessment (to the extent the reassessment is so ordered), with reference to **amount owned on January 1 the year for which it is assessed**, including all property purchased that day. . . . [Emphasis added.] [35 ILCS 200/9-95]

Section 9-155 of the Code states in part that:

> On or before June 1 in each general assessment year in all counties with less than 3,000,000 inhabitants . . . the assessor . . . shall actually view and determine as near as practicable the value of each property listed for taxation **as of January 1, of that year** . . . . [Emphasis added.] [35 ILCS 200/9-155]

Section 9-175 of the Code provides in part that:

> The **owner of property on January 1, in any year shall be liable for the taxes of that year** . . . . [Emphasis added.] [35 ILCS 200/9-175]

Thus, the status of property for taxation and liability to taxation is fixed on January 1. People ex rel Kassabaum v. Hopkins, 106 Ill. 2d at 477.

In Rosewell v. Lakeview Limited Partnership, 120 Ill.App.3d 369, 373, 458 N.E.2d 121, 124 (1st Dist. 1983), the court also held that, unless otherwise provided by law, a property's status for purposes of taxation is to be determined as of January 1 of each year. The court noted that section 27a of the Revenue Act of 1939 (Ill.Rev.Stat.1981, ch. 120, par. 508a; now codified at 35 ILCS 200/9-175, 9-180 & 9-185) applied to status, and provides that the owner of real property on January 1 shall be liable for the taxes of that year. Lakeview Limited Partnership, 120 Ill.App.3d at 373. The court further stated that there are only two circumstances that allow change applications from the January 1 date. One circumstance deals with the situation where a property

becomes taxable or exempt after January 1 and the second circumstance provides for proportionate assessments in the case of new construction or uninhabitable property. Id. at 373. (See 35 ILCS 200/9-180 & 9-185). Neither of these exceptions is applicable here.

The appellant acquired the subject property in April 2008. The Board finds that the provision effective as of January 1, 2009 known as Section 10-30 would be the applicable statutory provision for the subject property after the acquisition by the appellant and likewise to this 2010 assessment appeal. The Property Tax Appeal Board further finds that the lack of explicit language to address retroactive assessments mandates that Section 10-31 of the Code applies only to those assessments established beginning January 1, 2010. This interpretation is further supported by the Appellate Court's holding in Kennedy Brothers, Inc. v. Property Tax Appeal Board, 158 Ill.App.3d 154, 510 N.E.2d 1275 (2nd Dist. 1987).

The Property Tax Appeal Board finds that Section 10-31 is inapplicable to the subject appeal and does not override the fact that an 'initial sale' occurred in April 2008 regarding the subject property. The appellant's argument regarding the applicability of Section 10-31 to the subject's 2010 assessment is also in some ways parallel to the arguments made in Kennedy Brothers, Inc. v. Property Tax Appeal Board, 158 Ill.App.3d 154 (2nd Dist. 1987). In that case, the issue was whether a September 26, 1983 amendment to section 20g-4 of the Revenue Act of 1939 (similar to the developer's relief provision which is now contained in the Code at Section 10-30) applied to the 1983 assessment of the petitioner's property. The court held the amended provision first applied to assessments as of January 1, 1984.

In conclusion, the subject property is not entitled to the developer's exemption as set forth in either Section 10-30 or Section 10-31 of the Code on the facts in this record and, therefore, no change in the subject's equalized assessment is warranted based upon the developer's exemption provision(s) of the Code.

Contention of Law – Classification: Farm Use

The appellant's appeal seeks to have to the subject parcel assessed as either farmland or timber and specifically objects to the classification of the parcels as "residential" in that the parcels are vacant land.

The intervenor responded that any farming activity was not the 'primary use' of parcels which is instead 'residential.' Moreover, in the absence of either an oral or a written agreement to engage in farming on the subject parcels, the intervenor argued that the farming activity was analogous to utilizing a contractor for weed control, but in this case, the control was done with soybeans. (See closing argument at hearing)

In response, counsel for the appellant reiterated that the subject parcels do not have a 'residential use' as vacant parcels and in closing at hearing, counsel argued that the values applied to the subject property were "unbelievably high." The Board finds, however, that the appellant placed no evidence in the record to establish an alternative market value for the subject parcels beyond arguing farm use.

At the hearing held on February 24, 2014, the appellant's counsel presented evidence of the farming use of the subject property for the years 2008, 2009 and the tax year on appeal 2010.

The appellant called Kenneth Howard as its sole witness. Howard is the manager of KT Winneburg, LLC that owns the subject parcels. The witness and his brother Tom formed KT Winneburg, LLC which was established to buy the note in the Fall of 2007 from the bank that was secured by the subject parcels. The appellant proceeded to foreclosure via Sheriff's Sale in April or May of 2008. Since obtaining the subject property, the appellant has not constructed any habitable structures and has not installed any streets, sidewalks or gutters, although there are streets in portions of the property for access. None of the parcels have been sold by the appellant. (TR I, 8, 13-18, 67-68)

The witness testified that prior to the platting, the subject parcels were timber and farm ground. Howard testified that besides now managing the property for the appellant since 2008, he has been familiar with the property since 1977 in that a high school friend lived in the immediate area; Howard and the friend rode ATVs in the late 1970's in that area. At that time, Howard knew the area to be farm ground and timberland where various people, friends of the owner, would hunt. (TR I, 9-10, 68)

As to the "farm ground," Howard testified that as of about 2001 the land or some portion of it was controlled by Dan Nelson who retained Bobby Weishaar to farm the property. Weishaar continues to farm the property and portions of the property are still in timber which are still hunted also. Since 2008 when the appellant became the owner, the farmer Weishaar has had soybeans and corn planted; corn was planted for two years. Most years the farmer plants soybeans for visibility purposes in order to see the terrain. (TR I, 10-11, 15, 18)

Counsel for the appellant presented Petitioner's Exhibit 1, a Google aerial photograph of the subject property with white lines that reflect area roadways or access points. The witness testified that all four subdivisions as shown in the aerial photograph have both farm areas and a good amount of timber on them. (TR I, 19-24, 69; Petitioner's Ex. 1) Appellant also submitted at hearing a county soil map identified as Petitioner's Exhibit 2 and an Illinois Soil Productivity Index from the Department of Revenue identified as Petitioner's Exhibit 3. (TR I, 25-27) Lastly, the appellant at hearing presented Petitioner's Exhibit 4, the 2010 Certified Farmland Values. (TR I, 27-28)

On cross examination, Howard acknowledged that the farmer, Weishaar was not present at the hearing. The witness stated that Weishaar farms the land in the Winneberg Estates lots with farming "going on on just about every" lot; there is an oral agreement, not a signed lease according to Howard. Weishaar farms the ground and keeps the land cleared between the farmed area and the road to avoid a Johnson grass problem that has occurred in the past. There is no payment to the appellant by the farmer and Weishaar also does some brush hogging for the appellant. Howard acknowledged that the land was fairly rugged, but the parts that level out are then farmed with the remainder being timber. (TR I, 29-30, 50-52)

Howard testified that farmer Weishaar has a practice of taking relatively small pieces of ground from different landowners and farms the parcels by bringing the necessary equipment in to perform the work; on occasion the equipment will be left until the tasks in the immediate area are completed. (TR I, 54-55)

When questioned about the timber, Howard testified that there are parts that are timber and in some parts, like Fox Run, are completely timber "so it varies." The witness did not understand a question about whether an application had been made with the Department of Conservation (now known as the Department of Natural Resources) for a woodland acreage assessment or to have the property placed in stewardship. Howard testified that the timber is not being removed or sold, but the land is being used for hunting by various local citizens without charge or permission, although the appellant has also not installed no trespassing signs nor has Howard confronted the hunters. (TR I, 29-31, 38-40)

As to the Fox Run area, Howard testified that it is all timber that is not being cut down. He also testified that this property is not adjacent to land that is being farmed; "it drops down into a hill, and there are like four or five hollows down in there that really make this portion unfarmable." He stated that this area will remain timber until it is developed. (TR I, 32-33)

As to the Deer Trail lots, the witness acknowledged that not all of the lots are used for soybean and corn production. Howard testified that some of the lots are pretty steep, but perhaps half to two-thirds of the area would be farmed. He further testified that corn was farmed on the parcels in 2008 and 2009 with soybeans having been farmed there since 2010. The witness acknowledged that parcel numbers 07-17-06-100-001-300 through 320 in Deer Trail as shown on Appellant's Ex. 6 were all timber parcels. (TR I, 40-41, 46-47)

For the Eagles Nest lots depicted on page 1 of Appellant's Ex. 6, Howard testified that all of these parcels are timber, except 07-16-01-200-002-213 which was farmed in 2008 and/or 2009. (TR I, 47-50)

The body of water depicted in the aerial photograph (Petitioner's Exhibit 1) is the Mississippi River. While the subject land does not flood, Howard acknowledged that waterfowl come into the area including on the subject parcels. He further testified that area hunting is primarily bow hunting of deer as the adjacent subdivision owners object to gun-based hunting in the area; there has been some duck hunting, "but the [area] residents don't like that" and it is unauthorized and "not good duck hunting." The witness objected to an inference that corn is planted to attract ducks for hunting; Howard testified that the farmer harvests the corn and for duck hunting, the land would have to be adjacent to water which the subject property is not. (TR I, 52-54)

At hearing, the appellant produced a plat map of the subject property that was marked as Appellant's Exhibit 5. The appellant also produced a "key" to identify the applicable parcel numbers and corresponding "lot numbers" with subdivision names which three-page document was marked as Appellant's Exhibit 6. The exhibit displays "Estate Lots" and the subdivisions of Eagles Nest, Deer Trail and Fox Run. (TR I, 44)

Based on the foregoing evidence and argument, the appellant requested a farmland and/or timber assessment for the subject parcels.

When the hearing in this matter was reconvened on September 8, 2015, the intervenor brought four witnesses to the hearing who had not previously been present at the time of the original hearing. Intervenor's counsel characterized the witnesses as 'rebuttal' and intervenor sought a

ruling as to whether the witnesses would be permitted to testify. Counsel for the appellant did not object to the presentation of the intervenor's witnesses recognizing the hearing was an adversarial proceeding. As such, the intervenor proceeded to present its witnesses. (TR II, 8)

The intervenor called Patricia Langland as its first witness. At the time of hearing, Langland had been the Supervisor of Assessments for Calhoun County for the previous two years, filling in for a position which had been vacated. Previously, Langland had worked for 17 years in Kankakee County, including having been the Chairman of the Kankakee County Board of Review. (TR II, 10)

In her current position in Calhoun County, Langland is responsible for supervision of approximately 6,000 parcels. While she was not previously present in Calhoun County, Langland investigated the use of the subject parcels as of 2010 and for the two years prior of 2008 and 2009 through retrospective aerial Google Earth Maps which were marked as Intervenor's Exhibit 1. The exhibit consists of 13 pages with handwritten notations in the upper right hand corner of the landscape documents, individually, with years 2003 through and including 2015. (TR II, 10-11) Langland testified that the subject parcels were vacant pending sale in the development. (TR II, 20)

The witness testified with regard to the aerial photograph in Intervenor's Exhibit 1, the 2011 aerial photograph, and marked the exhibit in yellow highlighter to reflect a southern property that was not part of the subject parcels and a northern boundary of the subject property known as Plank Road. Langland testified that the aerial photographs depict a massive tree canopy for the subdivision; the witness also noted that there are a lot of cliffed areas "and such" that cannot be farmed. She also contended that there are ground-level photographs to depict the "dense undergrowth and overgrowth of trees, etc., that makes it so that it's very difficult for that to be a farming community." The witness testified as to the history of the area having been a clay factory where a lot of pits were dug. Over time the areas grassed over and trees grew in such that the area is left with cliffs and steep terrain. (TR II, 11-14)

Further efforts to investigate the use of the subject property by Langland involved speaking with Mr. Friedel, Mr. Weishaar and Ms. Deb Jordan. She noted that, based upon her investigation and the fact that the parcels had been broken into smaller units, none of the parcels "met the 5-acre requirement" for it to be considered a farm.[5] When asked about the uses of the subject property, the witness testified that there was a lot of area that is overgrown and made up of trees, etc., that hasn't been cleared. She further declared that a number of the parcels in the respective subdivisions identified in Appellant's Exhibit 6 are "common ground" which are open land areas that belong to the development, not the individual homeowners, and are assessed at $100 each, a reduced level, as that is all that is allowed.[6] From her investigation, there was no indication to Langland that

[5] As set forth in guidelines issued by the Illinois Department of Revenue, a property should have more than five acres of farmland to be afforded the farmland classification. (See Publication 122, Instructions for Farmland Assessments) There are, however, no acreage requirements for farmland in the Property Tax Code. (See 35 ILCS 200/1-60 & 10-110 through10-145)

[6] Upon further questioning by the Administrative Law Judge, it was ascertained that none of the Calhoun County Board of Review Final Decisions of the parcels on appeal were assessed at $100 per lot, even the parcels characterized as "common ground." In her testimony, Langland acknowledged that perhaps she adjusted the assessments of the "common ground" parcels to $100 in her current position as Supervisor of Assessments. (TR II, 21-22)

these "common ground" parcels were being farmed in the relevant years of 2008, 2009 and/or 2010. (TR II, 15-19)

Upon her investigation, Langland found that there were parcels upon which crops had been planted and grown in the years 2008, 2009 and/or 2010. These parcels were mainly in the northern area "across from the clubhouse" in the Winneberg Subdivision. Looking to Appellant's Exhibit 6, Langland identified the first 11 parcel numbers on page one under the heading of "Estate Lots" as being parcels upon which farming activity occurred in the relevant years. Next, looking at Intervenor's Exhibit 1, the 2011 aerial photograph, Langland utilized a blue ink pen and marked the location of the Winneberg lots on the northern part of the subject parcels; she also wrote the word "Winneburg" [sic] on the aerial photograph. (TR II, 19-21, 23-24)

Given her investigation, Langland testified that there was no farming activity in the subdivisions of Eagles Nest, Deer Trail and/or Fox Run. She further testified that the terrain of Eagles Nest is too uneven to be farmed. In addition, the Eagles Nest, Deer Trail and Fox Run areas are not close enough in proximity to the Winneberg lots to be ancillary to the farming operations. Utilizing Intervenor's Exhibit 1, the 2011 aerial photograph, witness Langland marked in blue ink the subdivisions of Fox Run, Deer Trail and Eagles Nest, respectively. In the course of describing this area, Langland also marked "clubhouse" on the same aerial photograph and described the clubhouse as having a swimming pool. (TR II, 20-25)

To further illustrate the subject parcels, on Friday, September 4, 2015, Langland went to the subject area and took photographs that she identified in the hearing as Intervenor's Exhibits 2A through 2Z, except for 2Y which was withdrawn. Langland's purpose in taking the photographs was to depict that the terrain was unfriendly to the growth of a lot of farm crops. She testified to each photograph which is summarized herein as: Ex. 2A depicts Deer Trail, a gravel/rock road with trees/bushes on one side and a grass covered sloped area on the other; Ex. 2C depicts common ground with a pond; Ex. 2E depicts land in Eagles Nest some of which is flat followed by a steep drop off where treetops are then seen; Ex. 2F depicts a "vast amount of undergrowth and areas where there is absolutely nothing taking place and it's heavily wooded"; Ex. 2G depicts an area of grasses that cannot be mowed to get at it; Ex. 2H is similar and this area is not able to be farmed to get rid of the grasses; Ex. 2I in the Deer Trail area depicts tree overgrowth where it is not possible to walk into the parcel "because that's just massive"; Ex. 2J was taken from the clubhouse and depicts a flat area that is deceptive as it is followed by a sharp drop off; Ex. 2K depicts a winding gravel road with bush/tree growth on one side and grasses on the other side (this area is close to where they are farming); Ex. 2L is close to the Winneberg subdivision and depicts "vast undergrowth and overgrowth" such that the property cannot be walked through and there is a lot number sign in the photo that cannot be deciphered; Ex. 2M depicts a roadway just beyond Deer Trail headed toward Eagles Nest showing dense tree/bush growth on both sides of the road and hanging toward the road; Ex. 2N depicts a road going into The Villas of Winneberg with the Mississippi River in the background and rooftops between the roadway and the river; Ex. 2O is a grassy area in Eagles Nest and also depicts a sharp drop off with dense trees in the distance; Ex. 2P depicts the entrance roadway to Winneberg Subdivision; Ex. 2Q depicts overgrowth and trees on both sides of a gravel road on the way to Eagles Nest; Ex. 2R is located in the upper part of The Villas and the Brickyard area, depicting a gravel road in the foreground with a short distance of flat ground, the Mississippi River in the distance and only residential rooftops visible in between those two areas; Ex. 2S depicts an area across from Deer Trail showing the underbrush to the west

of Deer Trail; Ex. 2T depicts one of the cliffs indicating the land is not suitable for farming which are similar areas in both The Villas[7] and in Eagles Nest; Ex. 2U reflects a road with tree growth on both sides and was said to be "almost to the top of Eagles Nest"; Ex. 2V depicts a fishing pond in a common area; Ex. 2W was taken from the clubhouse and depicts an area road and the drop off beyond the trees in the photograph; Ex. 2X depicts grasses in Eagles Nest with a gully at the back with trees; and Ex. 2Z depicts a grassy area that could not be mowed in Eagles Nest. (TR II, 27-38)

On cross examination, Langland agreed that there are no residential dwellings on any of the parcels which the appellants have on appeal before the Property Tax Appeal Board. Moreover, the witness agreed that the parcels on appeal are either being used for farming or are timber/wasteland. The witness further concluded from her investigation that there has not been a change in the use of the subject parcels. (TR II, 38-39, 45) The farming activity on the subject parcels was in the far northern area surrounded by timber or hillsides with no residential use. (TR II, 42-43)

Upon questioning, Langland acknowledged that the clubhouse was not a property that was owned by the appellant and, while Langland used the clubhouse as a reference point in taking her photographs, the photographs taken from the clubhouse are not land owned by the appellant. The photographic evidence was prepared to show the terrain of rolling ground which sometimes dropped off drastically which is consistent throughout the appellant's property. (TR II, 43-45)

The intervenor next called Debra Jordan as a witness. Jordan is a resident within the Winneberg Subdivision since January 2004. On Intervenor's Exhibit 1, on the 2015 aerial photograph, the witness placed a red "X" where her home is located. (TR II, 46-47)

Jordan has seen farming activity in her neighborhood in 2008, 2009 and 2010, specifically on a lot next to her property along with her property that she purchased in 1999. Usually soybeans were planted by Mr. Weishaar even before Jordan bought her parcel. "He planted it without any agreement from us, but it helped keep the noxious weeds down, so we didn't make any objection to him going ahead and taking care of it." This kept the Johnson grass down which the witness really appreciated. Jordan acknowledged that Weishaar does not get much yield from the land, but "he just does it to help us out basically." Next, the witness used a red pen and marked various areas on Intervenor's Exhibit 1, the 2015 aerial photograph, where planting has taken placed near her property. Jordan further testified that when construction of her home began in August 2003, the soybeans on her parcel were cut down. She further testified that there was an area near her property that was planted and was owned by Dick Sanders, but Mr. Weishaar plants that area, also, to keep the weeds down. (TR II, 47-50)

On cross-examination, Jordan testified that she purchased her vacant parcel from Ed Morrissey, Sr. Her parcel is not part of the subject appeal. She reiterated that there is farming in the form of planting and harvesting by Weishaar on property near her parcel and there was no formal agreement between herself and Weishaar. She further testified that keeping the Johnson grass and noxious weeds down and from spreading to nearby properties was helpful and a service to her; she further stated that Weishaar has a lot of trouble with the lot immediately next to her property because it is so steep, "it's quite dangerous for him to work." (TR II, 50-52)

[7] Upon inquiry, Langland acknowledged that The Villas are not owned by the appellant.

The intervenor next called Robert Weishaar as a witness. He testified that he plants crops in the Winneberg Subdivision area "just to keep their Johnson grass down." Weishaar further stated that Johnson grass is a thick, terrible noxious weed "that should never be there" and that was "all we was doing it for." (TR II, 52-53)

Weishaar testified that Ed Morrissey started the Winneberg Subdivision and it was Morrissey that asked Weishaar to care for the area; there was no written agreement. He does sell the crops in exchange for taking care of the Johnson grass. (TR II, 53-54)

Examining Intervenor's Exhibit 1, the 2015 aerial photograph, marked in red ink by Debra Jordan, Weishaar recognized an area he plants in crops that is owned by Dick Sanders. As he examined the aerial photograph, the witness further volunteered that he does not know what the appellant, Winneburg, owns. The witness was also asked to mark the aerial photograph with a red ink pen with "any other spots in this area" where he has been planting crops; the witness complied and testified "right here." (TR II, 54-55)

On cross-examination, Weishaar testified that he primarily planted soybeans in the subject area. He once planted corn, "but they didn't want that." When asked if the land was more suitable for soybeans, Weishaar stated, "It's poor for anything." The witness acknowledged that if corn was planted, potential buyers could not sufficiently see the lot that was for sale. Therefore, there was a preference for the planting of soybeans since it is a much shorter crop. Weishaar testified that none of this planting and harvesting activity was reported to the FSA office. (TR II, 56-57)

As to Weishaar's marking in red ink on Intervenor's Exhibit 1, the 2015 aerial photograph, the witness acknowledged that he drew a long, narrow, horizontal strip toward the left-hand corner of the landscape page. Weishaar testified that this area was owned by Morrissey. (TR II, 57-58)

The intervenor next called Neal Friedel as a witness. Friedel testified that he farms the Winneberg property with his father-in-law, Robert Weishaar. (TR II, 58-59) Looking to Intervenor's Exhibit 1 and the previously marked red circled areas, Friedel acknowledged that the marked areas reflect what he and his father-in-law farm by planting and harvesting crops in order to keep the Johnson grass from growing. "Instead of like shredding it and him paying me to shred it, we get a crop to - -." The harvested soybeans are then sold. There is no verbal or written agreement with the appellant/owner of Winneberg. (TR II, 58-60)

On cross-examination, when asked how long he had been farming this area, Friedel said he could not say "for sure" although he was sure it was prior to 2008 and he was still farming it as of the date of the hearing. Friedel agreed that he at least has been farming the relevant parcels in 2008, 2009 and 2010 on a yearly basis. The witness agreed that most of the crop was soybeans as the landowners preferred better visibility of the lots. The resulting crops were sold and the money retained as he and his father-in-law had paid all of the expenses of the input. Friedel also agreed that none of this farming was reported to the FSA office. (TR II, 60-63)

At the request of the Administrative Law Judge, Friedel marked Intervenor's Exhibit 1, the 2015 aerial photograph, with a red ink pen denoting additional areas that are more distant and to the east from the Jordan property (the red "X") which he and his father-in-law farm. The witness marked

four distinct areas that were farmed, although he did not know who owned the marked parcels. (TR II, 63-64)

The intervenor's final witness was Mark Martin, who testified that he has driven through the KT Winneburg subdivision a few times. Martin testified that he began his employment with "the school district" in 2011. Next, the witness acknowledged that he had performed calculations of "the financial impact to the school district" if a farmland assessment were to be granted for the subject parcels for 2010. As the question was posed "what would the financial impact to the school district be?," a relevancy objection was made by appellant's counsel. No response was provided by the intervenor's counsel. The Administrative Law Judge conducting the hearing sustained the relevancy objection which is hereby affirmed by the Property Tax Appeal Board. No further questions were placed to Martin.

Both parties then presented oral closing arguments.

The question now presented before the Property Tax Appeal Board is whether the subject parcels are entitled to a farmland assessment for the 2010 tax year.

Section 1-60 of the Code (35 ILCS 200/1-60) 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. (Emphasis added.)

Moreover, Section 10-110 of the 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 10-145, shall be determined as described in Sections 10-115 through 10-140... (35 ILCS 200/10-110)

The Property Tax Appeal Board finds credible evidence that portions of the subject property were used for agricultural purposes in 2008, 2009 and in 2010. The farmers Weishaar and Friedel acknowledged growing and harvesting soybeans and/or corn; the neighbor Jordan testified to the farming activity; and the Supervisor of Assessments testified that she was aware of farming activity on 11 parcels listed on Appellant's Exhibit 6 under the category of Estate Lots. (TR II, 21)

In order to qualify for an agriculture assessment, the parcel must be farmed at least two years preceding the date of assessment (35 ILCS 200/10-110). The evidence, without objection, shows

that at least the 11 parcels identified by the Supervisor of Assessments have been consistently used for agriculture purposes for the two years preceding the assessment date.

While the evidence set forth on Intervenor's Exhibit 1, the 2015 aerial photograph, additional areas of farming activity were depicted by Friedel, the Property Tax Appeal Board finds that Appellant's Exhibit 5 is not an accurate parcel map nor do the numbers reflected in the exhibit match the "lot numbers" set forth in Appellant's Exhibit 6. Therefore, if the additional land that Friedel farms to the east of the Jordan property is owned by the appellant, there is no record evidence establishing the parcel numbers for the farmed areas.

Based on the evidence presented by both parties, the subject 11 parcels identified by Langland are entitled to a farmland classification and assessment as cropland as soybeans and/or corn have been grown on the parcels for at least the two years preceding the assessment year on appeal.

The appellant also argued that the parcels were "timber." The appellant's manager testified that there was no harvesting of the timber, but indicated that there is unauthorized hunting that occurs on the property. In this regard, the Board finds Section 10-150 of the Code provides in pertinent part:

> In counties with less than 3,000,000 inhabitants, any land being managed under a forestry management plan accepted by the Department of Natural Resources under the Illinois Forestry Development Act shall be considered as "other farmland" and shall be valued at 1/6 of its productivity index equalized assessed value as cropland. (35 ILCS 200/10-150).

The Board finds there was no evidence of the pursuit by the appellant of a forestry management plan for the subject timber lands and, in fact, when Howard was asked about such an application, he was confused and was not familiar with the concept. As such, the Board finds that there is no evidence in the record entitling the subject "timber" parcels to any reduced assessment as "other farmland" as there is no evidence the parcels have been enrolled and/or accepted into a forestry management plan.

Also, based on the evidence presented by Langland the two parcels located in Eagles Nest and Deer Trail identified as "common ground" (PINs 07-16-01-200-002-200 and 07-17-06-100-001-300) are each entitled to assessment of $100 in accordance with the assessing practices in Calhoun County.[8] The Board finds that these are the only two parcels specifically identified in the record evidence (Appellant's Exhibit 6) as "common ground" although other parts of the record also refer to "common ground," the Board finds that none of those references are tied to specifically identified parcel numbers for purposes of this decision and/or the granting of an assessment reduction in accordance with the assessing practices in Calhoun County.

In conclusion, the Property Tax Appeal Board finds the board of review's assessment of several of the subject parcels is incorrect and reductions are warranted. The Board hereby **orders** the Calhoun County Board of Review to compute a farmland assessment for the 11 parcels identified

[8] The Code at Section 10-35 (35 ILCS 200/10-35) provides that "common area or areas" are to be listed for assessment purposes at $1 per year.

by the Supervisor of Assessments in the Estate Lots category as cropland in accordance with this decision. The Calhoun County Board of Review is to submit the revised assessment to the Property Tax Appeal Board **within 30 days from the date of this decision**.

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: May 20, 2016

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.

FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: KT Winneburg, LLC
DOCKET NO.: 10-04192.001-R-3 through 10-04192.089-R-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are KT Winneburg, LLC, the appellant, by attorney Elliott L. Turpin of the Law Offices of Elliott L. Turpin in Carrollton; the Calhoun County Board of Review; and the County of Calhoun, intervenor, by attorney Christopher E. Sherer of Giffin, Winning, Cohen & Bodewes, in Springfield.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds ***A Reduction*** in the assessment of the property as established by the **Calhoun** County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	FARM LAND	IMPRVMT	TOTAL
10-04192.077-R-3	07-17-06-100-001-BA		49	0	$49
10-04192.078-R-3	07-17-06-100-001-BB		45	0	$45
10-04192.079-R-3	07-17-06-100-001-E		46	0	$46
10-04192.080-R-3	07-17-06-100-001-F		46	0	$46
10-04192.081-R-3	07-17-06-100-001-H		51	0	$51
10-04192.082-R-3	07-17-06-100-001-J		115	0	$115
10-04192.083-R-3	07-17-06-100-001-K		84	0	$84
10-04192.084-R-3	07-17-06-100-001-N		47	0	$47
10-04192.085-R-3	07-17-06-100-001-O		39	0	$39
10-04192.086-R-3	07-17-06-100-001-P		36	0	$36
10-04192.087-R-3	07-17-06-100-001-Q		38	0	$38

Subject only to the State multiplier as applicable.

ANALYSIS

On May 20, 2016, the Property Tax Appeal Board rendered a decision reclassifying portions of the subject property from residential to farm in accordance with relevant provisions of the Property Tax Code. The Calhoun County Board of Review was ordered to compute a farmland assessment and certify said assessment to the Property Tax Appeal Board. The revised assessment was received on June 6, 2016.

After reviewing the board of review's revised assessment, the Property Tax Appeal Board finds that it is proper.

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: July 22, 2016

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.

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