FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: John Kantor
DOCKET NO.: 13-31171.001-F-1 through 13-31171.006-F-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are John Kantor, the appellant(s); and the Cook County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds ***no change*** in the assessment of the property as established by the **Cook** County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NUMBER	PARCEL NUMBER	FARM LAND	LAND/LOT	RESIDENCE	OUT BLDGS	TOTAL
13-31171.001-F-1	03-08-303-056-0000	0	7,203	78,983	0	$ 86,186
13-31171.002-F-1	03-08-303-057-0000	0	8,233	0	0	$ 8,233
13-31171.003-F-1	03-08-303-058-0000	0	3,202	0	0	$ 3,202
13-31171.004-F-1	03-08-303-059-0000	0	6,854	24,789	0	$ 31,643
13-31171.005-F-1	03-08-321-012-0000	0	3,713	0	0	$ 3,713

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Cook County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2013 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property consists of two improvements. Improvement #1 is situated on Permanent Index Number ("PIN") 03-08-303-056. It is a masonry constructed dwelling and it contains 6,290 square feet of living area. Improvement #1 is class 2-09 property under the Cook County Real Property Assessment Classification Ordinance. It is 18 years old. Features of the home include a full basement, central air conditioning, two fireplaces and a three and one-halfcar garage. Improvement #2 is situated on PIN 03-08-303-059. Improvement #2 is a class 2-04 property under the Cook County Real Property Assessment Classification Ordinance. It is masonry constructed and contains 1,993 square feet of living area. The dwelling is 58 years old. Features of the home include a full basement, central air conditioning, and a two-car garage.

The remaining PINs consist of land parcels. The breakdown is as follows:

> PIN 03-08-303-057 is a class 2-41 property that contains 54,887 square feet of land and has a land assessment of $8,233, or $0.15 per square foot of land;
>
> PIN 03-08-303-058 is a class 2-41 property that contains 14,235 square feet of land and has a land assessment of $3,202 or $0.23 per square foot of land; and
>
> PIN 03-08-321-012 is a class 1-00 property that contains 74,269 square feet of land and has a land assessment of $3,713, or $0.05 per square foot of land.

Prior to the hearing, the appellant withdrew his appeal for parcel 03-08-314-026. The subject is classified as a class 2 and class 1 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends that the subject parcels should be assessed as class 2-39 farm property. The appellant asserts that the parcels comprise over five acres of farm land. In support of this argument the appellant submitted a Cook County Assessor's Farm Land Questionnaire/Affidavit that indicates the subject was used as a tree farm and orchard. The appellant also submitted a United States 2012 Census of Agriculture form that includes instructions and a definition of "farmland". In addition, the appellant submitted a list of the number and varieties of his apple trees, other fruit trees, and additional fruits and vegetables. The appellant also submitted a hand drawn map that depicts the location of the fruit trees. Lastly, the appellant submitted a website print out from Schaefer Greenhouses Inc. that lists an insecticide spraying schedule.

The appellant also contends that the subject PINs are located completely or partially in a flood zone. In support of this

contention, the appellant submitted a FEMA flood zone map and an aerial map wherein the appellant highlighted his property. In addition, the appellant submitted a Sidwell Map wherein the appellant highlighted the subject property and identified the flood zone portions of the property. In further support of his contention, the appellant submitted a letter and "Flood Insurance Rate Map" from Terra Consulting Group, Ltd. that states PIN 03-08-321-012, 03-08-303-057, and 03-08-303-058 are located in the same designated flood zone.

In addition, the appellant contends the subject parcels are not equitably assessed. In support of this contention, the appellant submitted four land comparable properties. The comparable properties consist of farmland located in Wheeling, Wheeling Township. The comparables have land assessments of $0.005 per square foot of land. The appellant also submitted one improvement comparable. The comparable is a farm building with an 18,514 square foot improvement and an improvement assessment of $0.89 per square feet of improvement area.

At hearing, the appellant John Kantor, testified that he has owned the subject property for approximately 20 years. The appellant testified that approximately four of the subject's five acres is a farm and that the property is intensively farmed. He stated that the intensively farmed portion of the subject property is larger than the residential portion of the property. The appellant stated that, in 2007, he cleared most of the property and planted an apple orchard and other trees and shrubs. He stated that the trees take four to five years to grow before they produce crops. The appellant stated that, since 2007, he has used the property as a farm. He described the subject property as containing 410 fruit trees and hundreds of other trees that require spraying every seven to ten days from March through September. The appellant stated that in 2015, the trees produced ten tons of apples which he sold for $20.00 per peck (approximately 15 pounds).

The appellant asserted that the subject property is a farm pursuant to 35 ILCS 200/1-60 which states, ""Farm' does not include property which is primarily used for residential purposes even though some farm products may be grown or farm animal bred or fed on the property incidental to its primary use." The appellant stated that the primary use of a parcel containing only intensive farm and residential uses is residential unless the intensively farmed portion of the parcel is larger than the residential portion of the parcel. The appellant stated that his apple orchard is an intensive farm use as the per acre income and expenditures are significantly higher than in conventional farm use.

The appellant also asserted that two of the subject PINs are not buildable as they are located in a floodway. He stated that he consulted with a civil engineer and referred to the previously submitted engineering report which stated that PIN 03-08-303-057

and 03-08-303-058 are in the same flood zone as PIN 03-08-321-012.

The appellant stated that he submitted assessment information for the only other farm in Wheeling Township. He stated that the other farm has a land assessment of $0.005 per square foot of land and that the subject farm land should be assessed at this amount. The appellant conceded that a portion of the subject class 2-09 improvement parcel is residential and he suggested that the Board prorate the subject's land to account for a portion of the subject property having a residential use.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject property of $132,977. In support of its contention of the correct assessment, the board of review submitted information on four equity comparables. The board of review also submitted property record cards for all of the subject parcels.

At hearing, the board of review's representative rested on the board's previously submitted equity comparables. He stated that the board was not taking a position regarding the appellant's floodway argument; however, he asked that the appellant be held to his burden of proof.

The board's representative argued that the subject property does not meet the definition of "farm" pursuant to 35 ILCS 20/160 as the subject property is primarily residential and the farming is incidental to the subject's primary residential use. He stated that whether a property is used as a farm is a question of fact pursuant to McClean County Board of Review v. Property Tax Appeal Board 286 Ill.App3d 1076. He argued that the appellant did not submit evidence to indicate the percentage of each parcel that is used for farming and that every map submitted by the appellant is highlighted and marked by the appellant. The board's representative also stated that the appellant did not submit aerial or other photos to support the contention that the subject is intensively farmed.

Upon questioning from the board of review's representative, the appellant stated that he has a tenant who occupies the house located on parcel 03-08-303-059. The appellant stated that in exchange for occupying the house, the tenant works at least once a week, excluding the winter months, spraying the trees and maintaining the property's irrigation system including PIN 03-08-303-056. The appellant stated that the tenant has a separate full time job. There are no full time employees working at the property. The appellant stated that he wakes at 4:00 a.m. to tend to the property before heading to his full time job as an attorney. He also stated that his family helps with harvesting.

Upon further questioning, the appellant stated that he submits a Schedule F income and expense form with his personal income tax returns. The Schedule F form lists the income the appellant receives from the harvest. For tax year 2013, the appellant

stated, the harvest resulted in an income of $3,000 to $4,000. The appellant also stated, upon questioning, that he does not have separate insurance for the orchard. He has a business endorsement on his homeowner's policy which covers the farm. In addition, the appellant stated that he previously inquired with the Village of Arlington Heights as to whether he was required to have farmland zoning. The appellant stated that based on that inquiry, he was of the opinion that he was not required to file for a zoning change and therefore, he never filed for a zoning change.

The appellant stated that he previously filed for Certificates of Error and he has requested field checks of the subject property. He stated that his applications for Certificates of Error for 2010, 2011, and 2012 were denied. He suggested that the field checks were completed before the subject trees were mature enough to produce fruit.

Lastly, upon questioning, the appellant stated that in addition to the house occupied by his tenant, PIN 03-08-303-059 contains grass, a tennis court/ sport court, nursery stock, and other plants.

Conclusion of Law

As to preliminary matters, the appellant withdrew his appeal with regard to PIN 03-08-314-026. In addition, the appellant's rebuttal evidence was not considered as it was untimely.

The appellant contends the subject should be classified and assessed as farmland. After reviewing the record and considering the testimony and evidence, the Board finds the evidence presented by the appellant was not credible in establishing the subject property is used as a farm entitling it to a farmland classification and a farmland assessment.

Section 1-60 of the Property Tax Code defines farm in part as:

Farm. When used in connection with valuing land and buildings for an agricultural use, any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to, hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming. 35 ILCS 200/1-60.

In addition, Section 1-60 of the Property Tax Code states:

> For purposes of this code, "farm" does not include property which is primarily used for residential

> purposes, even though some farm products may be grown or farm animals bred or fed on the property incidental to its primary use. (35 ILCS 200/1-60)

The Board finds that the appellant and his tenant both occupy residential houses on the subject property and that the subject property is located in a residential neighborhood that is not zoned for farming. The appellant testified that he spends a few hours per day tending to the orchard. The appellant and the tenant both have other full time, non-farming jobs and there are no other employees of the farm. In addition, the Board finds that the appellant did not submit evidence such as aerial or other photos or a survey that show the exact location of the farming activity. Moreover, the appellant testified that in 2013, the income from his orchard business ranged from $3,000 to $4,000, in total. Based on these factors, the Board finds the uncontradicted evidence and testimony in this record indicates the subject is primarily used for residential purposes and that any farming activity is merely incidental to its primary use as residential. Therefore, the Board finds the subject is not entitled to a farmland assessment.

As to the appellant's equity of improvement assessment argument, when unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The Board finds the best comparables in the record with regard to Improvement #1's improvement assessment are the board of review's comparables #2, #3, and #4. These comparables have improvement assessments that range from $12.65 to $13.84. Improvement #1's improvement assessment of $12.55 per square foot of living area falls below the range established by the best comparables in this record. Based on this record the Board finds the appellant did not demonstrate with clear and convincing evidence that Improvement #1's improvement is inequitably assessed and a reduction in Improvement #1's improvement assessment is not justified.

The Board finds that neither party submitted sufficient evidence to show that the subject's Improvement #2 is not equitably assessed. The board of review did not submit any comparables to demonstrate Improvement #2 is equitably assessed. The appellant submitted one comparable of a farm building. The Board finds that the parties submitted insufficient evidence or no evidence to support their assertions as to Improvement #2. As such, the Board finds that the appellant has not met the burden of a proving by

clear and convincing evidence that subject Improvement #2's improvement is not equitably assessed. Based on this record the Board finds a reduction in Improvement #2's improvement assessment is not justified.

The appellant also argued that subject land parcels 03-08-303-057 and 03-08-303-058 should be assessed the same as 03-08-3210-12 as they are located in the same flood zone. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds that the appellant has not met the burden of proving, by a preponderance of the evidence, that the subject is overvalued.

The Board finds that the appellant submitted a FEMA map that shows the three land parcels are located in Zone X. The appellant also submitted a letter from a civil engineer at the Terra Consulting Group that states PINs 03-08-30-057 and -058 should be assessed at the same rate as 03-08-321-012 as they are located in the same Designated Flood Zone. The Board finds that the appellant's assertion that the three land parcels are located in the same flood zone is insufficient to meet his burden of proving by a preponderance of the evidence that these parcels are overvalued. The Board finds the appellant did not submit any evidence of the correct market value of these parcels, such as an appraisal of the parcels, a recent sale, or comparable sales as required by 86 Ill.Admin.Code §1910.65(c). As such, the Board finds that the appellant has not met the burden of proving, by a preponderance of the evidence, that these parcels are overvalued.

Additionally, the Board finds that the appellant's argument that subject land parcels 03-08-303-057 and 03-08-303-058 should be assessed the same as 03-08-321-012 as they are located in the same flood zone is without merit from an equity standpoint. The appellant asserts that two parcels of land should have lower assessments because one parcel of land with the same zoning has a lower assessment. The Board finds that the evidence does not contain a range of comparables within which to compare these two land parcels. As such, the Board finds that the appellant has not met the burden of a proving by clear and convincing evidence that PINs 03-08-303-057 and 03-08-303-058 are not equitably assessed. Based on this record the Board finds a reduction in the land assessment of these two PINs is not justified. In addition, the Board notes that Illinois courts have held that a Permanent Index Number under appeal cannot be used as a comparable property. Pace Realty Group, Inc. v. Property Tax Appeal Bd., Nos. 2-98-0946 & 2-98-0830, 2nd District, 15 July 1999

In the alternative, the appellant argued that the subject's land is not equitably assessed when compared to four suggested comparables. As stated above, when unequal treatment in the assessment process is the basis of the appeal, the inequity of

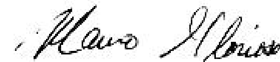
the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The board finds the appellant submitted four comparables located in the Village of Wheeling, Wheeling Township. The board of review did not submit additional land comparables. The appellant's comparable properties are class 2-24 or 2-39 farm properties. The Board accords no weight to these comparables as they are farm properties, while the subject is not farm property. In addition, these comparables are located in a different village than the subject property. Accordingly, the Board finds that the appellant has not met the burden of a proving by clear and convincing evidence that the subject is not equitably assessed. Based on this record the Board finds a reduction on this basis is not justified.

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

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: March 18, 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.