FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Troy Dimmig
DOCKET NO.: 21-07021.001-F-1 through 21-07021.002-F-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Troy Dimmig, the appellant; and the LaSalle County Board of Review.

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 **LaSalle** 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
21-07021.001-F-1	26-37-304-000	0	8,040	0	0	$8,040
21-07021.002-F-1	26-37-305-000	0	5,655	0	0	$5,655

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the LaSalle County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2021 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 unimproved wooded parcels containing a combined 8.21 acres located on the Vermilion River in Vermilion Township, LaSalle County.

The appellant appeared before the Property Tax Appeal Board and as the basis of the appeal contends that the subject parcels have been improperly classified as residential land and that the property should have remained classified and assessed as farmland. In support of this argument the appellant submitted a memorandum arguing that all or part of the subject parcels meet the definition of "farm," meet the definition of "open space," qualify for a vegetative filter strip assessment, or qualify for a non-clear cut assessment under the Property Tax Code.

At hearing, the appellant testified that the parcels had been used continuously as a farm for 28 years and that his father farmed the parcels for at least 62 years prior to the appellant farming the acreage. He testified that the parcels were part of a larger 29-acre farm, on which oak, walnut,

and maple trees are harvested. The appellant stated that the parcels are in a flood plain, flooded 13 times in the last three years, and are located in the 100-year flood plain. The appellant testified that he had harvested approximately $5,000 worth of "deadfall" trees during the tax year in question, which was processed into boards and firewood, but did not sell any of the wood that year.[1] The appellant stated that he could not farm every year due to the length of time the trees take to mature, but that he removed product every year. The appellant testified that he only harvests whatever falls, and prefers not to harvest the live trees. The appellant testified he does not always sell the wood that is harvested, but that he did sell wood in 2019 and 2020. The appellant further testified that in addition to his harvesting of deadfall trees, he allows others to harvest trees, and allows hunting on the property.

Under questioning by the Administrative Law Judge, the appellant stated that the parcels are not under a forest management plan with the Illinois Department of Natural Resources and that he had never applied to have the parcels certified as vegetative filter strips.[2] The appellant also stated that he reports the profits as "other income" on his personal income tax return.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject parcels of $28,016. In its Notes on Appeal, the board of review offered to stipulate to a total assessment of $13,695 considering the subject's location in a flood plain.

Stephanie Kennedy, LaSalle County Supervisor of Assessments, appeared on behalf of the LaSalle County board of review. Ms. Kennedy argued that the subject did not meet the definitions of farm or open space under the Property Tax Code and did not qualify for a vegetative filter strip or non-clear cut assessment. Ms. Kennedy stated that there was no farming activity when the assessor and the board of review viewed the property. The board of review also submitted an email from Brian Grift, Director of the LaSalle County Land Use Department, which states the property "appears to be buildable for zoning," although it is entirely in the flood plain.

In written rebuttal, the appellant reiterated his arguments concerning the use of the property and submitted photographs of the wood that was harvested.

Conclusion of Law

The appellant appeals the assessments of the subject parcels under the category of a contention of law. The appellant seeks to have the entire parcels assessed as farmland. 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.

[1] Initially, the appellant testified that he received $1,000 of income during 2021, but under cross examination stated that the $1,000 of income was received in 2019 and no income was generated in 2021.

[2] At the hearing, the appellant stated that he was not arguing the property qualified as vegetative filter strips despite that argument being a part of his submission.

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. The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment based on classification is not warranted.

Farm Assessment

Section 1-60 of the Property Tax 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…. (35 ILCS 200/1-60). Emphasis added.

Here, the primary issue is whether the disputed parcels are used solely for agricultural purposes as required by Section 1-60 of the Property Tax Code. The Board finds that in order to receive a preferential farmland assessment, the property at issue must meet this statutory definition of a "farm" as defined above in the Property Tax Code. It is the present use of the land that determines whether the land receives an agricultural assessment or a non-agricultural valuation. See Kankakee County Board of Review v. Illinois Property Tax Appeal Board, 305 Ill. App. 3d 799 (3rd Dist. 1999) and Santa Fe Land Improvement Co. v. Property Tax Appeal Board, 113 Ill. App. 3d 872 (3rd Dist. 1983). To qualify for an agricultural assessment, the land must be farmed at least two years preceding the date of assessment. (35ILCS 200/10-110). Based on the statutory definition of a farm and controlling case law, the Property Tax Appeal Board finds the evidence and testimony shows the subject parcels do not qualify for a farmland classification and assessment.

The Board further finds the evidence in the record reveals the subject parcels have not been managed as a tree farm under Illinois law. The Board finds the sporadic harvesting of deadfall timber does not constitute an ongoing active tree farm. The Property Tax Appeal Board finds the Illinois Forestry Development Act (525 ILCS 15) provides some key elements to be considered when determining whether a taxpayer has a systematic plan to develop forest to grow and harvest timber on a methodical and regular basis. Sections 2(a) and 2(i) of the Illinois Forestry Development Act provide in part:

> "Acceptable forestry management practices" means preparation of a forestry management plan, site preparation, brush control, purchase of planting stock, planting, weed and pest control, fire control, fencing, fire management practices, timber stand improvement, timber harvest, and any other practices determined by the Department of Natural Resources to be essential to responsible timber management. (525 ILCS 15/2(a)).

> "Timber grower" means the owner, tenant, or operator of land in this State who has interest in, or is entitled to receive any part of the proceeds from, **the sale of timber** grown in this State and includes persons exercising authority to sell timber. (525 ILCS 15/2(i)). Emphasis added.

Furthermore, Section 5 of the Illinois Forestry Development Act provides in part:

> The proposed forestry management plan shall include a description of the land to be managed under the plan, a description of the types of timber to be grown, a projected harvest schedule, a description of the forestry management practices to be applied to the land, an estimation of the costs of such practices, plans for afforestation, plans for regeneration harvest and reforestation . . . . (525 ILCS 15/5).

The Board finds the above-referenced statute sets out key elements that are to be considered to determine whether a taxpayer has a systematic plan in place to develop a forest to grow and harvest timber on a methodical and regular basis to be used in the production of a forest crop. The Board finds the appellant presented no specific evidence that he complied with these enumerated requirements and testified that the parcels were not covered by a forest management plan with the Illinois Department of Natural Resources. The Board finds although the record contains evidence and testimony that wood was harvested from the parcels, the appellant's testimony lacked specificity as to whether he grew and harvested timber on a methodical and regular basis, instead removing fallen trees only. Further, the appellant gave inconsistent testimony regarding the amount of income he received, if any, from the wood that was harvested. Parcels used primarily for any purpose other than as a "farm" as defined in Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) are not entitled to an agricultural assessment. Senachwine Club v. Property Tax Appeal Board, 362 Ill.App.3d 566, 568 (3rd Dist. 2005).

Open Space Assessment

With respect to the appellant's contention that the subject parcels constitute open space, Section 10-147 of the Property Tax Code (35 ILCS 200/10-147) states:

> Former farm; open space. Beginning with the 1992 assessment year, the equalized assessed value of any tract of real property that has **not been used as a farm for 20 or more consecutive years** shall not be determined under Sections 10-110 through 10-140. If no other use is established, the tract shall be considered to be used for open space purposes and its valuation shall be determined under Sections 10-155 through 10-165. (35 ILCS 200/10-147).

Additionally, Section 10-155 of the Property Tax Code (35 ILCS 200/10-155) provides in part:

> 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:
>
> (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…. (35 ILCS 200/10-155). Emphasis added.

There is no dispute that the parcels at issue in this appeal are a combined 8.21 acres and therefore do not meet the threshold requirement that the land be more than 10 acres in order to be considered open space. Second, the appellant did not demonstrate that the parcels were not farmed for the preceding 20 years, on the contrary, appellant claimed that the parcels had been continuously farmed for at least 90 years. Third, the record is devoid of any evidence concerning the protection of waterways, promotion of conservation, conservation of landscaped areas, or enhancement of other open spaces. Fourth, the appellant did not submit any evidence that the land had been used for open space purposes for the three preceding years. Finally, the appellant did not submit any evidence regarding the filing of a verified application requesting an open space designation as required by Section 10-160 of the Code (35 ILCS 200/10-160). Based on the foregoing, the Board finds the subject parcels do not qualify for a special assessment as open space.

Vegetative Filter Strip Assessment

With regard to the appellant's argument that the subject parcels qualify as vegetative filter strips, Section 10-152 of the Property Tax Code provides in part:

> (a) In counties with less than 3,000,000 inhabitants, any land (i) that is located between a farm field and an area to be protected, including but not limited to surface water, a stream, a river, or a sinkhole and (ii) that meets the requirements of subsection (b) of this Section shall be considered a "vegetative filter strip" and valued at 1/6th of its productivity index equalized assessed value as cropland. In counties with 3,000,000 or more inhabitants, the land shall be valued at the lesser of either (i) 16% of the fair cash value of the farmland estimated at the price it would bring at a fair, voluntary sale for use by the buyer as a farm as defined in Section 1-60 or (ii) 90% of the 1983 average equalized assessed value per acre certified by the Department of Revenue.

> (b) Vegetative filter strips shall meet the standards and specifications set forth in the Natural Resources Conservation Service Technical Guide and shall contain vegetation that (i) has a dense top growth; (ii) forms a uniform ground cover; (iii) has a heavy fibrous root system; and (iv) tolerates pesticides used in the farm field.
> (c) The county's soil and water conservation district shall assist the taxpayer in completing a uniform certified document as prescribed by the Department of Revenue in cooperation with the Association of Illinois Soil and Water Conservation Districts that certifies (i) that the property meets the requirements established under this Section for vegetative filter strips and (ii) the acreage or square footage of property that qualifies for assessment as a vegetative filter strip. The document shall be filed by the applicant with the Chief County Assessment Officer. The Chief County Assessment Officer shall promulgate rules concerning the filing of the document. The soil and water conservation district shall create a conservation plan for the creation of the filter strip. The plan shall be kept on file in the soil and water conservation district office. Nothing in this Section shall be construed to require any taxpayer to have vegetative filter strips. (35 ILCS 200/10-152).

The Board finds the appellant presented no evidence that the subject parcels meet the requirements of the above statute or that he complied with the statutory certification requirements. In fact, the appellant testified that he had not applied for the vegetative filter strip assessment. Based on the foregoing, the Board finds the subject parcels do not qualify for a special assessment as vegetative filter strips.

Non-clear cut Assessment

The appellant also argues that the subject parcels should qualify as non-clear cut land pursuant to Section 10-153 of the Property Tax Code. Section 10-153 of the Property Tax Code states:

> Non-clear cut assessment. Land that (i) is not located in a unit of local government with a population greater than 500,000, (ii) is located within 15 yards of waters listed by the Department of Natural Resources under Section 5 of the Rivers, Lakes, and Streams Act as navigable, and (iii) has not been clear cut of trees, as defined in Section 29a of the Rivers, Lakes, and Streams Act, shall be valued at 1/12th of its productivity index equalized assessed value as cropland. (35 ILCS 200/10-153).

The Board finds, with regard to the appellant's argument that the subject parcels should qualify for a special assessment as non-clear cut land, that Section 10-153 of the Property Tax Code applies to farmland, open space, and forestry management plans. The Board finds the appellant has failed to show that Section 10-153 of the Code is applicable to the subject. The appellant offered no evidence to indicate the subject parcels qualify as open space or are maintained under a forestry management plan. The Board finds the appellant has failed to show the subject parcels should receive a farm assessment. Therefore, the Board finds that any preferential assessment contained in Section 10-153 of the Code is not applicable based on the evidence and testimony in this record.

The appellant testified and submitted evidence regarding the subject parcels' inclusion in a flood plain. The board of review, in considering the parcels' location in the flood plain, offered to stipulate to a total assessment of $13,695. Based on the record evidence and testimony, the Board finds the proposed assessment reduction presented by the board of review is appropriate.

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. Pursuant to Section 1910.50(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(d)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.

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: March 26, 2024

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 or years of the same general assessment period, as provided in Sections 9-125 through 9-225, 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 such subsequent year or years 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 OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

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.

PARTIES OF RECORD

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