

**PROPERTY TAX APPEAL BOARD'S DECISION**

APPELLANT: Cherokee Properties, Inc.  
DOCKET NO.: 04-00691.001-I-3 through 04-00691.004-I-3  
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Cherokee Properties, Inc., the appellant, by attorney David L. Antognoli of Goldenberg, Miller, Heller & Antognoli, P.C., Edwardsville, Illinois; the Madison County Board of Review; the Metro East Sanitary District, intervenor, by attorney George Filcoff, Jr. of the Callis Law Firm, Granite City, Illinois; and Southwestern Illinois College District No. 522, intervenor, by attorney Robert E. Becker of Becker, Paulson, Hoerner & Thompson, Belleville, Illinois.

Initially, the Property Tax Appeal Board finds Southwestern Illinois College District No. 522 did not appear at the scheduled hearing. Section 1910.69(b) of the rules of the Property Tax Appeal Board provides that:

When a hearing is ordered by the Property Tax Appeal Board, all parties shall appear for the hearing on the appeal on the date and at the time set by the Property Tax Appeal Board. Failure to appear on the date and at the time set by the Property Tax Appeal Board shall be sufficient cause to default that party. 86 Ill.Admin.Code 1910.69(b).

Pursuant to section 1910.69(b) of the rules of the Property Tax Appeal Board the Board finds Southwestern Illinois College District No. 522 to be in default and hereby dismisses the school district from the appeal.

The subject property consists of a 77.64 acre site improved with an older manufacturing plant containing a total of 1,386,443 square feet of building area in multiple interconnected building segments. The subject property also includes 16 overhead cranes as follows: 1 - 5 ton crane; 3 - 10 ton cranes; 2 - 15 ton

(Continued on Next Page)

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the Madison County Board of Review is warranted. The correct assessed valuation of the property is:

Docket No.	Parcel No.	Land	Impr.	Total
04-00691.001-I-3	21-1-19-25-00-000-001.003	\$16,060	\$162,330	\$178,390
04-00691.002-I-3	21-1-19-26-00-000-013	\$74,810	\$446,190	\$521,000
04-00691.003-I-3	21-1-19-23-00-000-003	\$14,180	\$31,490	\$45,670
04-00691.004-I-3	21-1-19-24-17-301-002.002	\$16,130	\$38,010	\$54,140

Subject only to the State multiplier as applicable.

PTAB/SMW/04-00691/9-07

cranes; 6 - 25 ton cranes; 1 - 40 ton crane; 2 - 50 ton cranes; and 1 - 75 ton crane. The property is located in Madison, Venice Township, Madison County.

At the beginning of the hearing the parties stipulated as to the size of the improvements and the land under appeal. The parties also agreed that the appraisals submitted by each party valued the land and buildings under appeal at approximately \$2,400,000. The parties disagree with respect to the inclusion of the overhead cranes located on the subject property as part of the assessable real estate. The parties also disagree with respect to the value associated with the overhead cranes.

The appellant contends the assessment of the subject property is excessive. More particularly, the appellant argued that the overhead cranes located on the subject have been incorrectly classified and assessed as real estate by the Madison County Board of Review. The appellant contends the overhead cranes should properly be classified as personal property and not assessed for ad valorem real estate taxation purposes. Alternatively the appellant contends the overhead cranes should not be included as part of the real estate assessment because the appellant does not own the cranes. Third, even if the cranes are considered as part of the property owned by the appellant, the overhead cranes are not worth anything.

The appellant initially contends that the overhead cranes were classified and assessed as personal property prior to January 1, 1979. Due to this classification and assessment prior to January 1, 1979, the appellant contends these cranes cannot be reclassified and assessed as real estate pursuant to section 24-5 of the Property Tax Code. In support of this aspect of its argument the appellant submitted various exhibits to demonstrate the overhead cranes were classified and assessed as personal property prior to January 1, 1979.

Appellant's Exhibit 8 is an appraisal of the subject property dated December 6, 1973, with an effective date of November 19, 1973, prepared on behalf of the Venice Township Assessor. The owner of the subject property at the time of the appraisal was Consolidated Aluminum Corporation. The first paragraph of page 19 of the appraisal under the heading "Description of Improvements" stated in part that:

It is a further premise of this appraisal that only the real estate, namely the land, buildings, and land and site improvements, are included. Machinery, equipment, personal property, piping, power wiring, cranes, craneways, and other similar items are not included. .

. .

The appellant's counsel noted that the function of the appraisal as stated on page 1 of the report "is to provide an estimate of market value to determine the basis of assessment for real estate tax purposes." Thus the appellant's attorney argued the cranes were not considered part of the real estate prior to January 1, 1979.

Appellant's counsel next made reference to Exhibits 3 through 5 contending these relate to the assessments of both personal and real property during the years 1977 through 1979. Exhibit 5 was Consolidated Aluminum Corporation's personal property tax return filed in 1978. The personal property tax return reflects machinery and equipment valued at \$1,812,394. Exhibit 3 disclosed that the Madison County Board of Review and the then owner/taxpayer of the subject property agreed to settle pending assessment appeals by agreeing that the 1978 personal property assessment on machinery and equipment be increased to \$2,346,410 and an assessment on the real estate of \$935,740. Exhibit 4 disclosed that the 1979 assessment on the real estate was increased to \$1,015,920 as the result of a multiplier being placed on the previous year's real estate assessment.

To demonstrate that cranes were considered as machinery and equipment by Consolidated Aluminum the appellant's attorney made referenced to Exhibit 6 which was Consolidated Aluminum Corporation's fixed asset depreciation policy dated December 31, 1981. On page 5 of the exhibit cranes were classified as machinery and equipment under the depreciation schedule.

The appellant's attorney also explained that the subject property was purchased from Consolidated Aluminum Corporation by Spectrulite Consortium Inc. in September 1986. To document the sale the appellant submitted Exhibit 2, the Real Estate Transfer declaration associated with the sale. The transfer declaration disclosed a total purchase price of \$11,750,000 with \$10,094,000 allocated to personal property resulting in a net consideration for the real estate of \$1,656,000. The attorney asserted that Spectrulite Consortium, Inc. continued to treat the cranes as machinery and equipment.

The appellant's attorney then explained that when Spectrulite Consortium, Inc. (Spectrulite) sold the subject property to Cherokee Properties, Inc. (Cherokee), the appellant herein, in 1989 the cranes were not included as an asset in the sale. The appellant submitted Exhibit 1, an affidavit completed by Chris A. Barnes, president of Cherokee Properties, Inc. The affiant asserted that Cherokee purchased the property from Spectrulite in September 1989 for the sum of \$3,000,000. He further stated that Cherokee did not purchase the cranes from Spectrulite. The cranes remained on the property because Spectrulite retained possession of the property pursuant to a lease agreement. The

affiant stated that the lease terminated in 2003, after Spectrulite filed bankruptcy and ceased operations. During the course of Spectrulite's bankruptcy case Magnesium Elektron, Inc. purchased seven cranes from the bankruptcy estate (crane numbers 1, 7, 8, 9, 10, 11 and 25). (Exhibit D attached to the affidavit was a copy of the Asset Purchase Agreement between Spectrulite and Magnesium Elektron, Inc. The exhibit contained no specific dollar amount allocated to the cranes.) These cranes remained on the property pursuant to a lease agreement between Cherokee and Magnesium Elektron, Inc. The affidavit also stated that during the course of Spectrulite's bankruptcy case Universal Press Acquisition Corporation (UPAC) purchased two cranes from the bankruptcy estate (crane numbers 5 and 24). On April 1, 2004, UPAC gave these cranes to Cherokee on the condition that Cherokee would not require UPAC to remove them from the property. (Exhibit E attached to the affidavit was a copy a letter dated April 1, 2004, from UPAC to Cherokee containing the terms of the transfer of the cranes to Cherokee.) Barnes further asserted that the Spectrulite bankruptcy estate abandoned the remaining cranes (crane numbers 2, 4, 12, 18, 19 and 23). He further stated that none of these cranes have been used since Spectrulite ceased operations with the exception of crane number 12, which is being used by Custom Steel Processing Company who leases a portion of the property.

The appellant's attorney argued that if you consider these documents together, especially the 1973 appraisal of the subject property prepared on behalf of the township assessor, the conclusion is that the cranes located on the subject were classified and taxed as personal property prior to 1978. The appellant's attorney argued that based on this classification the cranes should not be considered real estate for assessment purposes.

Alternatively, the appellant's attorney argued that the cranes were installed in the facility more than 40 years ago when the property was being operated as an armament facility during World War II. He argued that Spectrulite did not pass title to the cranes to Cherokee when it sold the property and that Spectrulite retained title to the cranes. He further noted that during bankruptcy Spectrulite sold seven of these cranes to Magnesium Elektron, Inc. and two cranes to UPAC. UPAC then left two of the cranes at the facility per agreement with Cherokee in return for Cherokee not requiring UPAC to remove the cranes. Additionally, six cranes owned by Spectrulite have been abandoned. Based on these factors the appellant's attorney argued these cranes have no value.

The appellant also submitted an appraisal of the subject property prepared by Robert Lowrance, an Illinois Certified General Real Estate Appraiser. Lowrance identified Appellant's Exhibit No. 9

as the appraisal he prepared wherein he estimated the subject property had a market value of \$2,400,000 as of January 1, 2004. He testified the cranes were not valued within his appraisal based on conversations with Mr. Barnes that the appellant did not own the cranes. He concluded that the cranes had no value or weren't owned so they were not included in his report.

Bill Barnes was present at the hearing and was questioned about the activities of Cherokee Properties, Inc. He testified that Cherokee owns the real estate and leases parts to various tenants. Cherokee is not a manufacturer that uses the property for manufacturing purposes. He identified one tenant as being involved with heavy industrial manufacturing that uses the cranes. He also agreed that the other cranes located at the site would potentially be available to tenants.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling \$1,130,690 was disclosed. The subject's assessment reflects a market value of \$3,395,465 using the 2004 three year median level of assessments for Madison County of 33.30%.

Kerry Miller, Chairman of the Madison County Board of Review, testified that he became a member of the board of review in 1985 and was informed that Madison County always "picked up" overhead cranes as real estate at other industrial properties throughout the County. He testified that overhead cranes were picked up and classified as real estate prior to January 1, 1979. He further testified that it is the policy of the board of review and Madison County assessment officials to value overhead cranes as part of the real estate. He agreed, however, the board of review submitted no documents in the instant appeal as support for this proposition. Mr. Miller asserted that it is difficult to obtain documentation because so much time had passed. He did reference a 1988 Pre-Coat Metals case wherein the assessment included the value of overhead cranes but the balance of the machinery and equipment was not included in the real estate assessment. However, a copy of that decision or reference to any docket number was not provided. He also testified that that property was in a different township and he could not testify what individual township assessors did prior to 1979.

The next witness called on behalf of the board of review was appraiser Barry Loman. Loman is a State Certified General Real Estate Appraiser and is employed as a valuation specialist for the Office of the Madison County Supervisor of Assessments. Loman identified Board of Review Exhibit No. 1 as the appraisal he prepared for the subject property. He testified that he estimated the value of the improvements and the land to be \$2,400,000 and the contributory value of the cranes to be

\$777,590 resulting in a total value for the property of \$3,178,000, rounded.

Loman testified the contributory value of the cranes was calculated in the cost approach to value. Pages 21 and 22 of his appraisal contained his valuation calculations for the cranes. The board of review's appraiser testified he included the cranes because he assumed they were owned by the appellant. In estimating the cost new for the cranes he inspected the cranes to gather information. He then used both the Illinois Real Property Appraisal Manual and the Marshall Valuation Service to arrive at replacement cost new of \$3,509,850 and \$3,110,358, respectively. He estimated the effective age of the cranes based on his observation to arrive at an average age of 9 years old. The Marshall and Swift life expectancy guidelines for the cranes ranged from 9.5 to 14.5 years so he estimated a life expectancy of 12 years. Using these estimates the appraiser calculated depreciation to be 75%. Using the estimate of replacement cost new from the Marshall Valuation Service and deducting 75% for depreciation resulted in a depreciated value for the cranes of \$777,590.

Under cross-examination Loman agreed that the validity of the cost approach depends in part on the functional utility of the item being valued. He was not able to find much information about the cranes. At the time of his inspection he did not observe any of the cranes being used and did not know the last time they were used. He also explained that in estimating depreciation instead of using actual age he used effective age based on his observations. Loman agreed that he had no evidence that the cranes are used or useful.

Loman also testified that if the cranes were not owned by the appellant they would not be included in the appraisal report.

Loman testified that in preparing the appraisal he talked to individuals in the commercial department to find out how data was entered on the Computer Assisted Mass Appraisal system with respect to cranes. He determined that cranes are currently assessed as part of the real estate. He did no research to determine how overhead cranes were classified prior to 1979.

Loman also included with his report copies of the property record cards associated with the subject property. Card 002/005 for parcel number 22-1-19-26-00-000-013 had an entry for overhead cranes at a value of \$898,200.

After hearing the testimony and considering the evidence the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

The appellant initially contends the assessment of the subject property is excessive due to the fact that the overhead cranes have been improperly classified and assessed as real estate. The appellant contends that since the cranes were classified as personal property prior to January 1, 1979, they should have retained that classification pursuant to the section 24-5 of the Property Tax Code. (35 ILCS 200/24-5).

The Board finds that both the appellant's appraiser, Robert Lowrance, and the board of review's appraiser, Barry Loman, were in agreement that the subject land, site improvements and buildings had a market value of \$2,400,000 as of January 1, 2004. The parties differ on whether the overhead cranes should be included as part of the real estate for assessment purposes. Therefore, the Board finds that the primary issue in this appeal is whether or not the 16 overhead cranes located on the subject property should be classified and assessed as real estate or determined to be personal property exempt from real estate taxation.

Illinois' system of taxing real property is founded on the Property Tax Code. (35 ILCS 200/1-1 et seq.) Section 1-130 of the Property Tax Code (hereinafter the Code) defines "real property" in pertinent part as:

The land itself, with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon. . . . (35 ILCS 200/1-130).

As a general proposition, except in counties with more than 200,000 inhabitants that classify property for taxation purposes, each tract or lot of property is to be valued at 33 1/3% of its fair cash value. 35 ILCS 200/9-145.

Of further relevance to this appeal is the following passage from the Illinois Constitution, which states:

On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. . . . Ill.Const. 1970, art.IX, §5(c).

As mandated by the above excerpt from the Constitution of 1970 the General Assembly enacted the Illinois Replacement Tax Act (Ill.Rev.Stat.1979, ch.120, ¶499.1, now codified at 35 ILCS 200/24-5) to replace the revenues lost by the abolition of the personal property tax. Also known as the "Freeze Act", the

statute was amended in 1983 to add a prohibition against the reclassification of property of like kind acquired or placed in use after January 1, 1979. Oregon Comm. School Dist. v. Property Tax Appeal Board, 285 Ill.App.3d 170, 176 (2<sup>nd</sup> Dist. 1996); People ex rel. Bosworth v. Lowen, 155 Ill.App.3d 855, 863-864 (3<sup>rd</sup> Dist. 1983). Section 24-5 of the Code now provides in part that:

Ad valorem personal property taxes shall not be levied on any personal property having tax situs in this State. . . No property lawfully assessed and taxed as personal property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as real property subject to assessment and taxation. No property lawfully assessed and taxed as real property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as personal property.

The legislature's intent in passing this provision of the Replacement Tax Act was to "freeze" classifications of property to their pre-January 1, 1979, classifications. Property that was lawfully classified as real property or personal property before January 1, 1979, cannot be reclassified as personal property or real property after that date. Central Illinois Light Co. v. Johnson, 84 Ill.2d 275 (1981); People ex rel. Bosworth v. Lowen, 155 Ill.App.3d 855 (3<sup>rd</sup> Dist. 1983). Thus, the classification of property as either real or personal prior to January 1, 1979, controls the status of property after January 1, 1979. Central Illinois Light Co. v. Johnson, 84 Ill.2d 275 (1981).

The taxpayer has the burden of proving that property is exempt under section 24-5 of the Code and, thus, proving that such property was lawfully assessed and taxed as personal property prior to January 1, 1979. Trahraeg Holding Corp. v. Property Tax Appeal Board, 204 Ill.App.3d 41, 43 (2<sup>nd</sup> Dist. 1990). However, if the taxpayer meets this burden, the property must be classified as personal property without resorting to any other method of classification. Trahraeg Holding Corp. 204 Ill.App.3d at 43; Oregon Comm. School Dist. v. Property Tax Appeal Board, 285 Ill.App.3d 170, 176 (2<sup>nd</sup> Dist. 1996).

The court in County of Whiteside v. Property Tax Appeal Board, 276 Ill.App.3d 182 (3<sup>rd</sup> Dist. 1995) considered the criteria used by the Property Tax Appeal Board in determining whether certain items of machinery and equipment put into service after 1979 was "of like kind" to pre-1979 personal property. The court stated "any common sense construction of the term like kind would require substantial similarities between pre-1979 and post-1979 equipment." County of Whiteside 276 Ill.App.3d at 186. The

court concluded the factors relied upon by the Property Tax Appeal Board were sufficient to establish a like kind relationship. The factors relied upon included: (1) performance of the same function; (2) production of the same product; (3) similar portability and manner of attachment; and (4) that the new equipment replaced the existing equipment. Id.

The court in Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d 170 (3<sup>rd</sup> Dist. 1996), further discussed the workings of the Freeze Act. The court noted the Freeze Act also provides that the classification is frozen only if it was lawfully made. The court further stated that it is unlawful for an assessor to exempt one kind of property while classifying the same kind of property in the same district as nonexempt. The court further recognized that Article IX, section 4(a) of the Illinois Constitution states that, "taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law." The court further noted the supreme court has explained that:

The principle of uniformity of taxation requires equality in the burden of taxation. [Citation.] This court has held that an equal tax burden cannot exist without uniformity in both the basis of assessment and in the rate of taxation. [Citation.] The uniformity requirement prohibits taxing officials from valuing one kind of property within a taxing district at a certain proportion of its true value while valuing the same kind of property in the same district at a substantially lesser or greater proportion of its true value. [Citation omitted.]

The court in Oregon concluded that an assessment of taxes on property is not lawful if it creates a "substantial disparity between similar properties or classes of taxpayers." Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d 170, 178 (3<sup>rd</sup> Dist. 1996); Moniot v. Property Tax Appeal Board, 11 Ill.App.3d 309 (3<sup>rd</sup> Dist. 1973).

The court in Oregon found that the Freeze Act contains no language indicating that the like kind comparison of machinery and equipment is limited to property located at one plant or at the same location. Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d at 180-181. The court also found that the legislative history of the Freeze Act indicates that the purpose of the like-kind provision was to continue the assessment practices of assessors in their respective counties. Id. The court further found that the like kind criteria used by the Property Tax Appeal Board in County of Whiteside v. Property Tax Appeal Board, 276 Ill.App.3d 182 (3<sup>rd</sup> Dist. 1995) was not the

exclusive method for determining whether the Freeze Act applies to post 1978 property. Oregon, 285 Ill.App.3d at 182-183.

Where the taxpayer cannot establish that property is exempt under the provisions of section 24-5 of the Code, case law dictates how the machinery and equipment is to be analyzed in determining whether the contested items are to be classified and assessed as real estate. Annexations made by the owner are presumed to be made with the design of their permanent enjoyment with the realty and as an accessory to it. Ayrshire Coal Co. v. Property Tax Appeal Board, 19 Ill.App.3d 41, 45 (3<sup>rd</sup> Dist. 1974). In matters relating to taxation, rules more nearly conforming to those used in determining what constitutes fixtures as between grantor and grantee, vendor and vendee, mortgagor and mortgagee should apply rather than the rule used in what constitutes removable fixtures as between landlord and tenant. Commonwealth Edison Co. v. Property Tax Appeal Board, 219 Ill.App.3d 550, 556 (2<sup>nd</sup> Dist. 1991), Cherry Bowl, Inc. v. Property Tax Appeal Board, 100 Ill.App.3d 326, 330 (2<sup>nd</sup> Dist 1981), Ayrshire Coal Co. v. Property Tax Appeal Board, 19 Ill.App.3d 41, 46 (3<sup>rd</sup> Dist. 1974). The major difference between these doctrines is that annexations by a tenant are presumed to be for his benefit and not to enrich the freehold, while annexations made by an owner are presumed made with the intent to permanently improve the premises. Commonwealth Edison Co. v. Property Tax Appeal Board, 219 Ill.App.3d 550, 557 (2<sup>nd</sup> Dist. 1991), Cherry Bowl, Inc. v. Property Tax Appeal Board, 100 Ill.App.3d 326, 330 (2<sup>nd</sup> Dist 1981).

The court in Ayrshire Coal Co. v. Property Tax Appeal Board, 19 Ill.App.3d 41 (3<sup>rd</sup> Dist. 1974) set forth the "integrated industrial plant" doctrine as a test to determine the proper classification of property for ad valorem taxation purposes. This doctrine takes the position that any and all machinery essential to the proper functioning of a plant, mill, or similar manufacturing is a fixture or is at least so presumed to be, irrespective of the manner in which it is annexed to the realty and even though it is not attached thereto at all. Id. at 45-46.

The court in In re Application of Beeler, 106 Ill.App.3d 667 (4<sup>th</sup> Dist. 1982) recognized two different approaches to determine whether property is realty for real estate taxation purposes: the intention test and the integrated industrial plant doctrine. The court stated under the integrated industrial plant doctrine all machinery of a factory or plant necessary for its operation as a complete going concern, is considered to be part of the freehold. Id. at 671. The court stated "under the intention test three criteria are applied to evaluate whether the property is personalty or realty, or more properly, whether an item has become a fixture." Id. at 670. The criteria set forth in Beeler are:

- 1) The property must be annexed to the realty or to something appurtenant thereto.
- 2) The property must be applied to the use or purpose to which that part of the realty, with which it is connected is appropriated.
- 3) The party making the annexation must intend to make a permanent accession to the freehold.

Beeler, 106 Ill.App.3d at 670.

The court in Beeler stated the integrated industrial plant doctrine is just an extension of the second and third elements of the intention test. The court explained that under the industrial plant doctrine physical annexation is subordinated to the interrelationship between the disputed piece of property and the use of the real estate. The higher the degree of relationship between the contested property and the uses of the realty, the more assuredly it can be said that the property is part of the realty. In re Application of Beeler, 106 Ill.App.3d at 672.

With these assessment and classification principles as a guide, the Property Tax Appeal Board will analyze the evidence presented by the parties to determine whether the 16 overhead cranes should be classified and assessed as real estate.

The Board must first determine whether the Freeze Act precludes the machinery and equipment located on the subject property from being classified and assessed as real estate. As stated earlier, the taxpayer has the burden of proving that property is exempt under section 24-5 of the Code and, thus, proving that such property was lawfully assessed and taxed as personal property prior to January 1, 1979. Once this burden is met, however, the property must be classified as personal property. Trahraeg Holding Corp. v. Property Tax Appeal Board, 204 Ill.App.3d 41, 43 (2<sup>nd</sup> Dist. 1990). The Board finds the taxpayer has met this burden.

The Board finds the appellant presented numerous exhibits which viewed together demonstrate that the overhead cranes at the subject property were classified and assessed as personal property prior to January 1, 1979. Appellant's Exhibit 8 is an appraisal of the subject property dated December 6, 1973, with an effective date of November 19, 1973, prepared on behalf of the Venice Township Assessor. The owner of the subject property at the time of the appraisal was Consolidated Aluminum Corporation. The first paragraph of page 19 of the appraisal under the heading "Description of Improvements" stated in part that:

It is a further premise of this appraisal that only the real estate, namely the land, buildings, and land and site improvements, are included. Machinery, equipment, personal property, piping, power wiring, cranes, craneways, and other similar items are not included. .

The appellant's counsel noted that the function of the appraisal as stated on page 1 of the report "is to provide an estimate of market value to determine the basis of assessment for real estate tax purposes." Based on the disclaimers and definitions in the appraisal Kerry Miller agreed that the cranes were not included in the appraisal assignment. (Transcript page 19.)

The appellant also submitted Exhibits 3 through 5 contending these relate to the assessments of both personal and real property during the years 1977 through 1979. Exhibit 5 was Consolidated Aluminum Corporation's personal property tax return filed in 1978. The personal property tax return reflects machinery and equipment valued at \$1,812,394. Exhibit 3 disclosed that the Madison County Board of Review and the then owner/taxpayer of the subject property agreed to settle pending assessment appeals by agreeing that the 1978 personal property assessment on machinery and equipment be increased to \$2,346,410 and an assessment on the real estate of \$935,740. Exhibit 4 disclosed that the 1979 assessment on the real estate was increased to \$1,015,920 as the result of a multiplier being placed on the previous year's real estate assessment. What the Board finds significant about these returns is that personal property reflected 71.5% of the assessed value of the property in 1978. This demonstrates that a substantial proportion of the subject property was considered personal property for assessment purposes prior to January 1, 1979. Furthermore, there was no reclassification of the property from 1978 to 1979, only an increase in the real estate assessment due to the application of an equalization factor.

To further demonstrate that cranes were considered as machinery and equipment by Consolidated Aluminum the appellant made reference to Exhibit 6, Consolidated Aluminum Corporation's fixed asset depreciation policy dated December 31, 1981. On page 5 of the exhibit cranes were classified as machinery and equipment under the depreciation schedule.

Of further significance the Board finds the evidence disclosed that at the time Cherokee purchased the subject property in 1989 the seller, Spectrulite, retained ownership of the overhead cranes. In fact, the evidence disclosed Spectrulite while in bankruptcy during 2003 sold nine of the cranes to Magnesium Elektron, Inc. and UPAC. This evidence demonstrates the cranes were not considered as part of the real estate.

To counter this aspect of the appellant's argument Kerry Miller, Chairman of the Madison County Board of Review, testified that he became a member of the board of review in 1985 and was informed that Madison County always "picked up" overhead cranes as real estate at other industrial properties throughout the County. He testified that overhead cranes were picked up and classified as real estate prior to January 1, 1979. He further testified that it is the policy of the board of review and Madison County assessment officials to value overhead cranes as part of the real estate. He agreed, however, that the board of review submitted no documents in the instant appeal as support for this proposition. Mr. Miller asserted that it is difficult to obtain documentation because so much time has passed. He also stated that there are 24 townships in Madison County and he can't testify what individual township assessors did prior to 1979. (Transcript page 19.)

Based on this record the Board finds the appellant has met its burden of proof on the classification issue and demonstrated that the overhead cranes located at the subject property were classified as personal property prior to January 1, 1979. The Board finds the testimony of Mr. Miller was not sufficient to counter the documentary evidence submitted by the appellant on this issue. Mr. Miller did not become a member of the board of review until 1985 and submitted no county records to refute the documentation presented by the appellant on this issue. The Board is cognizant that as time passes it becomes more difficult for both taxpayers and assessing officials to discover and submit documentary evidence that conclusively establishes the classification of property prior to 1979 for assessment purposes. Nevertheless, where one party is able to produce documentary evidence that is probative on the issue of classification it is incumbent on the opposing party to provide documentation or persuasive credible testimony on county assessment classification practices prior to 1979 to refute the argument. Based on this record the Board finds the board of review was not able to refute the appellant's argument.

Based on this analysis, the Property Tax Appeal Board finds that the assessment of the subject property as determined by the Madison County Board of Review is incorrect. The Board finds the overhead cranes at the subject property were classified as personal property prior to January 1, 1979. The Board further finds that section 24-5 of the Property Tax Code precludes the assessment of the cranes located at the subject property as real estate. Since the Property Tax Appeal Board finds that section 24-5 of the Property Tax Code controls the determination of the correct classification and assessment of the cranes located at the subject property, it is not necessary to further analyze the

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classification and assessment of the overhead cranes using the common law tests.

In conclusion the Property Tax Appeal Board finds the subject property had a market value of \$2,400,000 as of January 1, 2004. Since market value has been established the 2004 three year median level of assessments of 33.30% shall apply.

This is a final administrative decision of the Property Tax Appeal Board are 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: September 28, 2007



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

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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.