

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Andy & Pamela Danco
DOCKET NO.: 05-00293.001-R-1
PARCEL NO.: 07-32-22-403-084

The parties of record before the Property Tax Appeal Board are Andy and Pamela Danco, the appellants, by attorney Robert McQuellon III of Peoria; and the Bond County Board of Review by State's Attorney Christopher Bauer.

Based on an agreement of the parties the following appeals were consolidated for hearing purposes due to the similarity of arguments, witnesses and evidence: Docket Nos. 05-00290.001-R-1, 05-00291.001-R-1, 05-00292.001-R-1, 05-00293.001-R-1, 05-00294.001-R-1, and 05-00295.001-R-1. In each appeal the appellant was contesting the classification of the mobile home as real estate. Where appropriate the Board will incorporate the testimony provided by John Sharp, the witness called on behalf of each appellant, and the Bond County Supervisor of Assessments in each decision.

The subject property consists of a 28,000 square foot parcel improved with a double wide mobile home that contains 1,056 square feet of living area. Also located on the subject parcel is a 720 square foot detached garage, a 360 square foot carpart and a mobile home pad. The property is located in Pocahontas, Burgess Township, Bond County.

The appellant, Andy Danco, appeared before the Property Tax Appeal Board with his attorney contesting the assessment on the mobile home. The appellant contends the mobile home should not be classified and assessed as real estate because the dwelling is not resting in whole on a permanent foundation as required by section 1-130 of the Property Tax Code. (35 ILCS 200/1-130).

In support of this argument the appellants called John Sharp as a witness. Mr. Sharp is the President of Property Tax Pro. Mr. Sharp is a licensed real estate agent but has no appraisal or

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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 Bond County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	\$	3,148
IMPR.:	\$	4,172
TOTAL:	\$	7,320

Subject only to the State multiplier as applicable.

assessment designations. He testified that he has sold conventional homes and modular homes. He and his wife are owners of a real estate firm. For the past 15 years he has done work in the property tax field. Mr. Sharp explained that he has property tax clients and conducts a review of their property. He would then turn the information or documentation over to an attorney to determine if the appeal has merit. The attorney would then file an appeal where appropriate. Mr. Sharp also testified that his pay is contingent on the outcome of the appeal. If there is no assessment relief granted he is not paid. Mr. Sharp was present to give testimony as a fact witness.

Mr. Sharp testified the subject dwelling is a double wide mobile home. Mr. Sharp testified he visited the subject property and photographed the dwelling. The record contains three photographs of the home. Two photographs depict the exterior of the home and the third photograph depicts the area under the home. The photograph of the crawl space beneath the home depicts stack concrete blocks that support the mobile home. He testified the dwelling was supported by the stacked concrete blocks with wooden shims that level the dwelling. He also testified that perimeter concrete block skirting does not support the dwelling. The blocks were not affixed to the dwelling and the home was resting in place.

Under cross-examination Sharp testified he could not recall the date he visited the subject property although it was during the summer. He did have an independent recollection of visiting the property. He indicated that a perimeter mortared concrete block skirting went around the base of the home but he did not know how deep it went into the ground. He further testified that the stacked concrete blocks are on concrete but he did not know how deep the footing went into the ground. Mr. Sharp testified he looked under the home but did not crawl under the dwelling. He testified that the mobile home was supported by unmortared stacked concrete blocks resting on concrete under the frame of the home. He again asserted that the home was not resting on the perimeter concrete block skirting.

The next witness called was the appellant, Andy Danco. Mr. Danco testified he had been under a portion of the home. He testified he observed the metal I-beams of the home. He testified the home rests upon concrete blocks and not the perimeter foundation.

Under cross-examination the appellant did not know whether the beams under the home touch the perimeter. The witness also identified his signature on the Illinois Real Estate Transfer Declaration associated with the purchase of his home. The appellant purchased the property in June 2004 for a price of \$60,000. On the transfer declaration the appellant did not include any part of the consideration for the purchase of

personal property. Furthermore, the appellant answered "no" to the question whether the value of a mobile home was included in the consideration. He did not know how the home was anchored in place.

The board of review submitted its "Board of Review Notes on Appeal" wherein the total assessment of the subject property of \$16,885 was disclosed.

The board of review called as its witness Don Albert. He explained that the parcel number on the transfer declaration differed with the parcel number under appeal because the appellant purchased lots one through six and subsequently sold two lots off.

The Bond County Supervisor of Assessments Don Albert, was cross-examined about the assessment of the subject property and the assessments of mobile homes in Bond County. The board of review submitted the subject's property record card that depicted the mobile home and the garage. The mobile home was valued at \$27,072, the detached garage was valued at \$6,006, the carport was valued at \$500 and the pad was valued at \$5,300. The witness has not been under the home, did not know how the home was anchored to the ground and did not know whether the perimeter formation supported the home. The witness had testified it was the policy that a double-wide placed on land owned by the owner of the mobile home is real estate. The witness indicated the underlying factor in classifying a mobile home as real estate was who owned the underlying land.

Also submitted with the board of review's evidence was the real estate transfer declaration associated with the sale of the subject, a copy of a warranty deed, and a Manufactured Home Affidavit of Affixation. However, the affidavit appeared to be signed by Betty L. Danco, was for an address different from the subject property and was for a newer mobile home as compared to the one described on the subject's property record card.

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 Board further finds a reduction in the subject's assessment is warranted.

The appellants contend that the mobile home on the subject property was improperly classified and assessed as real estate. The appellants argued the mobile home should not be classified and taxed as real estate but be subject to the Mobile Home Local Services Tax Act.

Section 1-130 of the Property Tax Code defines real property in part as:

The land itself, with all things contained therein, and also buildings, structures and improvements, and other permanent fixtures thereon, ... and all rights and privileges belonging or pertaining thereto, except where otherwise specified by this Code. Included therein is any vehicle or similar portable structure used or so constructed as to permit its use as a dwelling place, if the structure is resting in whole on a permanent foundation. . . . (35 ILCS 200/1-130).

Additionally, section 1 of the Mobile Home Local Services Tax Act defines a mobile home as:

[a] factory assembled structure designed for permanent habitation and so constructed as to permit its transport on wheels, temporarily or permanently attached to its frame, from the place of its construction to the location, or subsequent locations, and placement on a temporary foundation, at which it is intended to be a permanent habitation, and situated so as to permit the occupancy thereof as a dwelling place for one or more persons, provided that any such structure resting in whole on a permanent foundation, with wheels, tongue and hitch removed at the time of registration provided for in Section 4 of this Act, shall not be construed as a 'mobile home', but shall be assessed and taxed as real property as defined by Section 1-130 of the Property Tax Code. (35 ILCS 515/1).

Both the Property Tax Code and the Mobile Home Local Services Tax Act require a mobile home to be resting in whole on a permanent foundation before it can be classified and assessed as real estate. Absent a permanent foundation a mobile home is subject to the privilege tax provided by the Mobile Home Local Services Tax Act. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d 711, 719(2nd Dist. 1996); Berry v. Costello, 62 Ill.2d 342, 347 (1976). The Property Tax Code and the Mobile Home Local Services Tax Act provide that the determining factor in classifying a mobile home as real estate as being the physical nature of the structure's foundation. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d at 724.

Neither the Property Tax Code nor the Mobile Home Local Services Tax Act defines "permanent foundation." The Property Tax Appeal Board may, however, look to other statutes that relate to the same subject to determine what constitutes a permanent foundation for assessment purposes. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d at 720; Christian County Board

of Review v. Property Tax Appeal Board, 858 N.E.2d 909, 306 Ill.Dec. 851 (5th Dist. 2006).

The Illinois Manufactured Housing and Mobile Home Safety Act contains a definition of "permanent foundation". Section 2(1) of the Illinois Manufactured Housing and Mobile Home Safety Act defines a "permanent foundation" as:

a closed perimeter formation consisting of materials such as concrete, mortared concrete block, or mortared brick extending into the ground below the frost line which shall include, but not necessarily be limited to cellars, basements, or crawl spaces, but does exclude the use of piers. (430 ILCS 115/2(1)).

The Manufactured Home Quality Assurance Act provides a definition of permanent stating in part:

[T]hat any such [factory assembled] structure resting on a permanent foundation, which is a continuous perimeter foundation of material such as mortared concrete block, mortared brick, or concrete which extends into the ground below the established frost depth and to which the home is secured with foundation bolts at least one-half inch in diameter, spaced at intervals of no more than 6 feet and within one foot of the corners, and embedded at least 7 inches into concrete foundations or 15 inches into block foundations, shall not be construed as a mobile home or manufactured home. . . . (430 ILCS 117/10).

The Mobile Home Park Act also speaks in terms of an "immobilized mobile home" which means:

[A] mobile home served by individual utilities, resting on a permanent perimeter foundation which extends below the established frost depth with the wheels, tongue and hitch removed and the home secured in compliance with the Mobile Home Tiedown Act. 210 ILCS 115/2.10.

The Manufactured Home Installation Code (77 Ill.Admin.Code 870) also contains a definition of "permanent foundation" which mirrors language contained in Manufactured Home Quality Assurance Act as quoted above. Section 870.10 of the Illinois Manufactured Home Tiedown Code states in part that:

"Permanent Foundation" is a continuous perimeter foundation such as mortared concrete blocks, mortared brick, or concrete that extends into the ground below the established frost depth and to which the home is secured with foundation bolts at least one-half inch in

diameter, spaced at intervals of no more than 6 feet and within one foot of the corners, and embedded at least 7 inches into concrete foundations or 15 inches into block foundations. (77 Ill.Admin.Code 870.10).

The Board finds that each of these statutory provisions requires that a permanent foundation must be a continuous perimeter foundation composed of concrete, mortared concrete block, or mortared brick that extends below the frost line. The home must be actually attached, supported and anchored by this type of continuous perimeter foundation to be considered a permanent foundation.

The Board finds under the facts of this appeal the mobile home is not resting in whole on a permanent foundation so as to be classified and assessed as real estate under the provisions of the Property Tax Code. The Board finds the subject mobile home is not resting on, supported by and anchored to a perimeter foundation that extends below the frost depth. The evidence disclosed the subject has a mortared concrete block under the base perimeter of the home that does not support or anchor the home. Stacked, non-mortared concrete blocks placed upon concrete under the home actually support the mobile home. The mobile home was not attached to the concrete blocks but was held in place by its own weight.

The supervisor of assessments did not provide any testimony that disputed the description of the foundation of the home provided by Mr. Sharp and Mr. Danco. The testimony further revealed that the supervisor of assessments did not conduct an inspection similar to that done by Mr. Sharp. Therefore, even though Mr. Sharp's fee is contingent on the outcome of the appeal his testimony was consistent with that provided by Mr. Danco, thus the Board finds their testimony more credible and persuasive with respect to the description of the foundation associated with the home.

The supervisor of assessments further indicated that it was the policy in assessing mobile homes to classify double wide mobile homes as real estate where the owner also owns the underlying land. The Board finds this practice is not in accordance with the definitions of real estate set forth in either the Property Tax Code or the Mobile Home Local Services Tax Act which both focus on the nature of the foundation.

The Board recognizes that the appellant's testimony in this hearing was at odds with his assertions on the real estate transfer declaration with respect to whether the dwelling was a mobile home. Nevertheless, the testimony in this hearing clearly established the dwelling is a mobile home that is not resting in

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whole on a permanent foundation so as to be classified and assessed as real estate.

In conclusion the Property Tax Appeal Board finds the mobile home located on the subject property should not be classified and assessed as real property. Therefore, the Property Tax Appeal Board finds that a reduction in the subject's assessment is warranted in accordance with these findings.

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

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.