

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Richard J. Wojtowicz  
DOCKET NO.: 05-02409.001-R-1  
PARCEL NO.: 05-19-21-400-011

The parties of record before the Property Tax Appeal Board are Richard J. Wojtowicz, the appellant, and the Washington County Board of Review.

The subject property consists of a 21.46 acre parcel improved with a Dutch Housing mobile home that was built in 2005 and contains 1,280 square feet of living area. The property is located in DuBois Township, Washington County.

The appellant appeared before the Property Tax Appeal Board contending the board of review erred in classifying and assessing the subject dwelling as real estate as the basis of the appeal. The appellant did not contest the subject's farmland or residential lot assessments. In support of the argument involving the subject dwelling, the appellant submitted a copy of the home's title issued by the Illinois Secretary of State, a copy of the sales contract with the mobile home dealer and photographs of the home, including photos of the underside of the dwelling that depict its method of attachment to the ground. Finally, the appellant submitted a copy of the Property Tax Appeal Board's decision under docket no. 98-127-R-1, which addressed a similar complaint regarding a mobile home in Fulton County. In that decision, the Property Tax Appeal Board found the subject dwelling was not resting in whole on a permanent foundation and should not be classified and assessed as real estate. Based on this evidence, the appellant contends the subject dwelling is a mobile home and should not be classified and assessed as real estate.

At the hearing, the appellant testified the subject dwelling is resting on non-mortared piers of concrete blocks with wood shims and is anchored to the ground with steel straps connected to earth anchors. A vinyl skirting surrounds the perimeter of the home, but the appellant testified it does not support the home's weight. The photos submitted by the appellant support this testimony, depicting the concrete block piers, wood shims and skirting. The subject dwelling's bill of sale between Fleetwood

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

<u>PARCEL NO.</u>	<u>FARMLAND</u>	<u>LAND</u>	<u>RESIDENCE</u>	<u>TOTAL</u>
05-19-21-400-011	\$152	\$1,285	\$0	\$1,437

Subject only to the State multiplier as applicable.

Homes of Mt. Vernon, Illinois and the appellant indicates the transaction included "delivery and set-up, new central air and piers and skirting." Finally, the appellant testified some mobile homes in Washington County are on the privilege tax and some are considered real estate and that there is not a consistent policy regarding the classification and assessment of mobile homes.

The board of review submitted its "Board of Review Notes on Appeal", wherein the subject property's total assessment of \$12,487 was disclosed. In support of the subject's assessment, the board of review submitted a letter, a copy of the subject's property record card and several attachments, including a copy of an article entitled "Today's Manufactured Homes", a copy of mobile home assessment schedules from the Illinois Real Property Appraisal Manual, published by the Illinois Department of Revenue and a copy of minutes from September, 1973 meetings of the Washington County Board of Review, which among other items, refer very briefly to a list of "trailers" that were classified as real estate by the Oakdale Township Assessor, along with a brief list of assessment figures for 1971, 1972, 1973 and 1974. Finally, the board of review submitted a list of sales of mobile homes mortgaged as real estate in the county. Based on this evidence, the board of review requested the subject's assessment be confirmed.

At the hearing, a member of the board of review testified that Washington County assessed mobile homes as real estate when land and dwelling are owned by the same person. He acknowledged there was no statutory basis for this policy. Under questioning by the Hearing Officer, the board of review member acknowledged there is no record of all 16 townships in Washington County having historically and consistently classified mobile homes or "trailers" as real estate, nor was there any record of a consistent county policy regarding this issue. The board of review member also testified homes that are deeded and mortgaged are considered real estate. This member also opined that anything which transfers the weight of a home to the ground is a permanent foundation.

After reviewing the record 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 Property Tax Appeal Board further finds a reduction in the subject's assessment is warranted. The Board finds the Washington County Board of Review erred in classifying and assessing the subject dwelling as real estate.

The board of review argues that the subject parcel should be taxed as real property, apparently based on the like kind provision contained in Section 24-5 of the Property Tax Code. The board of review's evidence disclosed that mobile homes or "trailers" were classified as real estate in Oakdale Township, a jurisdiction within Washington County, prior to 1979. However,

the board of review submitted no evidence, nor did it provide any testimony, that this was a consistent policy used throughout the county, neither that the other 15 townships in the county followed the practice in Oakdale Township. Section 24-5 of the Property Tax Code prohibits a change in property classification after January 1, 1979.

Section 24-5 states in pertinent part:

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. (35 ILCS 200/24-5).

Section 24-5 was enacted in 1979 to prevent the reclassification of personal property to real property after the General Assembly abolished the *ad valorem* personal property tax. Oregon Community Unit School District No. 220 v. Property Tax Appeal Board, 285 Ill.App.3d 170, 176, 220 Ill.Dec. 858, 674 N.E.2d 129 (1996). This section mandates that property lawfully assessed as real property or personal property prior to January 1, 1979, including property of like kind, shall be classified the same way after January 1, 1979 (emphasis added).

The Court in Christian County Board of Review v. Property Tax Appeal Board, 858 N.E.2d 909, 306 Ill.Dec. 851 (5<sup>th</sup> Dist. 2006), based on similar evidence, determined the Property Tax Appeal Board's findings that the County did not have a *lawful method* of assessing mobile home property prior to 1979, and therefore, the status of the mobile home property or property of like kind in Christian County did not freeze under section 24-5, was correct.

In the instant appeal, based on the exhibits and testimony herein, the County has failed to demonstrate that mobile home property, including property of like kind, was uniformly assessed prior to January 1, 1979, and therefore, cannot maintain that mobile homes were lawfully assessed prior to that date. The board of review claimed that Oakdale Township classified mobile homes or "trailers" as real estate prior to January 1, 1979, but provided no evidence or testimony that a consistent policy throughout the county existed, or that the other townships in Washington County adopted a practice of classifying mobile homes as real estate. Because the County failed to demonstrate that mobile home property or property of like kind had been lawfully assessed as real property prior to January 1, 1979, section 24-5 does not provide a means for the subject mobile home to be taxed as real property. Since Washington County did not have a uniform system in place to classify and assess mobile homes prior to January 1, 1979, and hence, a lawful method, section 24-5 does

not apply to determine if the subject should be taxed as real or personal property.

The Board next looks to other statutes to determine if the subject should be assessed as real property or personal property. The appellant argues the mobile home should not be taxed as real estate but should be subject to the Mobile Home Local Services Tax Act as personal property.

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 for in the Mobile Home Local Services Tax Act. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d 711, 719(2<sup>nd</sup> 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 is 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 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 (5<sup>th</sup> Dist. 2006).

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 foundation, 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.Adm.Code 870) also contains a definition of "permanent foundation" which mirrors language contained in the 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 of material such as mortared concrete block, 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.Adm.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 resting on, supported by and anchored to this type of continuous perimeter foundation.

The Board finds under the facts of this appeal the subject mobile home is not resting on, supported by, or anchored to a permanent foundation so as to be classified and assessed as real estate under the provisions of the Property Tax Code. The evidence disclosed the subject mobile home was not attached to a permanent foundation because the mobile home rests on non-mortared concrete block piers situated on concrete footings and is anchored to the ground with metal tie down straps attached to earth anchors to prevent the dwelling from shifting during inclement weather. The Board also finds the vinyl skirting around its perimeter does not support the dwelling. Wood shims are placed between the non-mortared blocks and the underframe of the mobile home to support and level the dwelling. The mobile home is not attached to the concrete blocks but is held in place by its own weight and with the aforementioned straps and anchors.

The Board finds no statutory language that supports the board of review's contention that mobile homes should be classified and assessed as real estate if a taxpayer owns the home and the underlying land. The Board also finds no statutory language that supports the board of review's contention that mobile homes should be classified and assessed as real estate because they are mortgaged. The Board further finds no statutory language that supports the board of review's contention that a permanent foundation is anything which transfers the weight of a home to the ground. The numerous statutory references cited above and consistently relied upon by the Property Tax Appeal Board in its decisions define a permanent foundation in clear and unambiguous language.

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 Board finds a reduction in the subject's 2006 assessment is warranted in accordance with its findings.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.



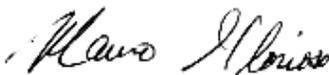
Chairman



Member



Member



Member



Member

DISSENTING: \_\_\_\_\_

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: March 20, 2009



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.