



**FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD**

APPELLANT: Illinois Rural Electric Cooperative
DOCKET NO.: 06-02736.001-C-3
PARCEL NO.: 54-019-02A

The parties of record before the Property Tax Appeal Board are Illinois Rural Electric Cooperative, the appellant, by attorney Bruce C. Beal, of Claudon, Kost, Barnhart, Beal & Walters, Ltd., Canton, Illinois; and the Pike County Board of Review by attorney Christopher E. Sherer of Giffin, Winning, Cohen & Bodewes, P.C., Springfield, Illinois.

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

LAND: \$5,227
IMPR.: \$565,773
TOTAL: \$571,000

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 5.01 acre parcel improved with a 1.65 megawatt wind turbine. The property is located in Pittsfield Township, Pike County, Illinois.¹

The appellant appeared before the Property Tax Appeal Board by counsel contending the assessment of the subject property was excessive. The appellant argued the subject wind turbine should not be classified and assessed as real estate but should be considered personal property and exempt from real estate taxation under the provisions of section 24-5 of the Property Tax Code (35 ILCS 200/24-5). The appellant maintains that the subject wind turbine: (1) is not an integral part of the appellant's business, which is the distribution of electricity; (2) there was no intent

¹ For assessment years 2007 through 2011 wind energy devices are to be assessed in accordance with Sections 10-600 through 10-620 of the Property Tax Code (35 ILCS 200/10-600 through 10-620).

on the part of the appellant to make the wind turbine a permanent fixture on the parcel; and (3) the subject wind turbine is not a like kind property to other turbines in Pike County.

The board of review contends it submitted evidence of like kind property to that of the subject wind turbine that was classified and assessed as real estate prior to 1979, which warrants the subject's classification as real estate. As an alternative theory, the board of review contends that under the intention test the subject wind turbine should be classified and assessed as real estate.

The first witness called on behalf of the appellant was Jeremiah Riggins. Riggins is employed by Barnhart Crane and Rigging (Barnhart), which has a primary business of building, repairing and performing maintenance on wind turbines. The witness testified he had knowledge on how to build wind turbines and how to tear down wind turbines.

Riggins has been working with Barnhart for approximately two and one-half years as the lead quality "tec" (quality technician), which does all the inspections and ensures every part of the tower is put together right. Riggins did not know who constructed the subject wind turbine tower. The witness testified that he had looked at the subject wind turbine.

He testified that once a crane is present the subject tower could be dismantled in less than one week. Riggins explained that once the tower is taken down the sections are loaded on 18 wheeler tractor/trailers. The witness explained there would be four tube sections, the nacelle, the hub and three blades. The nacelle is the large part that sits on top of the tower that holds the generator. The witness explained that each blade would be removed one at a time and placed on a different truck. Riggins stated there would be no permanent damage to the real estate other than tracks. A bulldozer would be used to smooth back the roads. The witness explained the tower could be removed in the winter and a farmer could plant again in the spring.

Riggins further testified a tower could be constructed in approximately a week after the foundation is built. While employed by Barnhart, Riggins has either constructed or torn down 200 to 250 towers. He stated he has taken towers down, transported them to different sites and put them back up.

Under cross-examination Riggins explained that the tubes are attached to the foundation with foundation rods that extend through the foundation. Nuts are placed on the foundation rods which they have to torque down to hold the tube in place. He testified he does not build the foundation but they are about 30 feet in the ground and the foundation would stay behind when the tower is moved. He estimated the dimension of the foundation is about 20 feet and agreed that heavy equipment would be needed to remove the foundation.

Riggins further explained that in his employment he had erected and dismantled towers all across the country including New York, California, Minnesota, Oregon, Washington and Texas. He testified he looked at the subject property the morning of the hearing for 10 or 15 minutes. He was accompanied by Bruce Giffin and they took an overall look on the layout of the land and what it would take to tear the tower down.

The witness explained the subject has four tubes, with each section of tubing measuring from 56 feet to 72 feet. These tubes are bolted together to form the tower. The witness stated the nacelle, which houses the gearbox and everything on top, would weigh from 50,000 to 70,000 pounds. The witness also stated there is a hub where the blades are attached to the nacelle. Riggins did not know the size of the hub. Riggins did not know the size of the blades at the subject property; the witness testified the blades vary in size from 129 to 136 feet.

The witness explained there are different contractors that build the foundations and he just shows up to put the parts together or take them down. He clarified the bolts are in the foundation approximately 30 feet. He further clarified this was his first time in Illinois and he has not removed or constructed any towers in Illinois. The witness further clarified that a quality technician is present on every phase of putting up a wind turbine. Quality technicians inspect it, make sure the numbers are right, make sure everything is torqued right, make sure there is no damage and make sure everything is ready for the customer. The witness further clarified that he had not been involved in taking towers down, transporting them to different sites and putting them back up, but his company has.

Under redirect he explained that he did not need more than 15 minutes to inspect the subject because he knew before arriving at the site that he could remove the tower. He explained the towers are a simple design and almost every manufacturer of turbines is the same with similar ways of putting them up or taking them down. The witness identified Appellant's Exhibit #1 as a photograph depicting similar foundation bolts. The witness identified Appellant's Exhibit #2 as a photograph depicting the tower he saw the morning of the hearing. He also testified the way the nacelle is shaped it looks as though it is a Vestas model.

Under re-cross examination the witness indicated the subject tower is approximately 295 to 310 feet tall. He also indicated the nacelle is intended to remain in place as long as they function.

The next witness called on behalf of the appellant was Bruce Giffin, general manager with Illinois Rural Electric Cooperative. He began his current employment in 1997. Giffin testified he reports to the Board of Directors, which establishes the policies

and overall goals. Giffin manages the cooperative so as to work toward the achievement of the goals. Giffin has been in the electric distribution or generation business since 1991. Prior to 1997 Giffin was general manager of Fox Islands Electric Cooperative; prior to that he was Vice President at Palm Beach County Utilities Corporation; and prior to that he was a Vice President at the Connecticut Gas Company where he began in energy distribution in 1974. He explained that distribution gas companies and electric cooperatives buy a wholesale product and deliver it through an engineered system and sell it at retail. Giffin is also on the board of Prairie Power, Incorporated (PPI), a generation and transmission cooperative which is owned by Illinois Rural Electric Cooperative and nine other electric distribution cooperatives in the State of Illinois.

Giffin testified that Illinois Rural Electric is a distribution cooperative that buys power through Prairie Power on a wholesale basis and makes retail sales. He explained a generation cooperative owns or has contracts for power supply or owns generating facilities. A generation cooperative makes wholesale purchases on behalf of Illinois Rural Electric and produces electricity for and sells it to Illinois Rural Electric.

The witness testified the only production facility Illinois Rural Electric has is the subject wind turbine located in Pike County. Giffin testified Prairie Power owns the oil fired turbine at Pearl in Pike County and the natural gas fired turbines located at the Village of Alsey in Scott County. The witness testified that the Pearl oil powered generation facility is the one that Pike County is claiming is like kind property to the subject property. Giffin stated the Pearl facility is located in Pearl Township along the Illinois River. The witness identified Exhibit 1 attached to the appellant's petition for rebuttal evidence as four photographs of the oil driven turbine at Pearl. Giffin testified this turbine was housed in a building.

Giffin testified the name plate rating on the turbine at Pearl is 22 megawatts (a megawatt is a thousand kilowatts). The witness explained that the demand for the Illinois Rural Electric System is less than 20 megawatts for 74 percent of the hours of the year. Therefore, the oil fired turbine is larger than the demand for three quarters of the year. The witness testified the turbine is used as a peaking facility so its use will depend on the weather and prices on the Midwest Independent Transmission System Operator (MISO).

Giffin testified that in 2009 the cooperative's total requirements will be 161,000 megawatt hours. He anticipated the turbine in Pike County would provide 4,000 megawatt hours or slightly less than 2.5% of the total energy requirements. Giffin explained that a wind turbine simply provides energy into the system when the wind blows. He testified that if they didn't have the wind turbine, PPI is contractually obligated to meet all of their requirements.

Giffin testified the oil fired turbine at Pearl was put into service in 1974. Giffin testified that there are five gas fired turbines in Alsey, Illinois, owned by PPI, that are essentially the same size as the oil fired turbine at Pearl. He testified it took three or four months to assemble them. The witness testified he saw them moved.

Giffin testified the Pearl turbine constitutes capacity that can be turned on whenever you want to turn it on. The witness explained that as a participant in the MISO you must either own capacity facilities like Pearl, or you have to buy capacity from somebody who owns it. Giffin stated the facilities at Pearl constitute a capacity requirement by the MISO, which operates under the rules and requirements of the Federal Energy Regulatory Commission. The witness testified that the Pearl turbine is necessary because "we must have capacity."

Giffin testified the subject wind turbine is something that they do not have to have for their system. He testified the wind turbine does not provide capacity. He explained he would buy the electric from PPI. PPI would produce the electric and/or purchase it on their behalf from the MISO.

Giffin identified Appellant's Exhibit #2 as a photograph of the subject wind turbine. The wind turbine was constructed in 2005 and went into service in May 2005. Giffin personally observed the construction of the wind turbine, which took five days. He testified the construction period would have taken less time but it was windy one day and they could not put on the blades.

The witness explained that the turbine is efficient when it is windy and will produce electric when there are winds from 7 miles per hour up to 58 miles per hour. Giffin stated that on an average annual basis the turbine produces about 30 percent of its name plate capacity. The subject has a name plate rating of 1.65 megawatts and is not near the production capacity of the 22 megawatt Pearl facility.

The witness explained as the wind speed increases the blades only go at 14 rpm, relatively slowly. As the wind speed increases the torque builds up and more electric is produced. He agreed that there is a gearbox that regulates the speed of the generator producing more or less electricity.

The location of the wind turbine in Pike County was based on maps of the United States produced by the National Renewable Energy Laboratory, which showed simulations of areas in which there was likely to be utility grade wind. Giffin testified the subject wind turbine was constructed for three reasons: (1) if you can produce electricity from wind rather than from coal or natural gas, that is the right thing to do; (2) if the wind resource could be developed in Pike County it would contribute to the economic development of Pike County; and (3) since they were

getting such substantial help from the federal government, state government and the Illinois Clean Energy Foundation they were able to do it at a price which was right at the time.

Giffin explained that the construction had to be economic for them meaning production costs would have to be lower than the wholesale market price for energy on the MISO. The target for Illinois Rural Electric was that the cost of production from the tower had to be equivalent to the marginal price of coal, which drove the price in the Midwest market at the time. Giffin testified it is still favorable to have the tower.

He testified that if the economic conditions were not favorable he would recommend to the Board of Directors to sell the subject wind turbine.

Giffin testified it cost \$1,887,000 to build the wind turbine. Illinois Rural Electric borrowed \$1,000,000 from the Department of Agriculture. Illinois Rural Electric also received \$450,000 from the Federal Department of Agriculture, \$250,000 from the Illinois Department of Commerce and Economic Opportunity, and \$175,000 from the Illinois Clean Energy Foundation. The witness explained that they had to have that much grant money to make the project go; if they had gotten less than that Illinois Rural Electric could not have built the tower.

The witness testified if they sell the tower within the first five years they have to return to the federal government a prorated portion of their grant.

The witness testified that new towers the size of the subject on the market for the past year have been in the range of \$2,000,000. He further testified there is an active market and was told by General Electric there was a two year waiting period for General Electric turbines.

Giffin testified they had the intention of having the subject turbine in operation as long as it was economic.

Giffin testified the subject turbine tower is 234 feet tall. The witness identified Appellant's Exhibit #1 as a photograph of the subject he took in April or May 2005 where a worker is bolting the bottom section of the tower to the foundation. To remove the tower you would dismantle the sections and then unscrew the bottom section and lift it with a crane. The witness testified the tower is not housed in any kind of building and the turbine is not essential to the operation of the business because Prairie Power, Incorporated then Soyland is contractually obligated to meet all of the demand on their system.

Giffin stated he was familiar with Exhibit 4 to the Petition for Rebuttal Evidence, which is the Notice of the 2004 Annual Meeting of the Illinois Rural Electric Cooperative. He testified that

Illinois Rural Electric agreed that the foundation, driveway and fencing are fixtures worth \$130,000.

Giffin testified that if the wind turbine was no longer part of the distribution system they would not notice any impact and they can distribute electricity without the wind turbine.

Giffin also stated that he was aware of other wind driven towers in Pike County that have not been considered real estate. He identified wind towers used to pump water. Giffin identified Exhibits 2 and 3 to the Petition for Rebuttal Evidence as photographs of wind mills used to pump water and copies of property information reports showing the assessments for a parcel owned by Velma Christison and Thomas B. Hughes Jr. Giffin contends these are similar to the subject and operate when the wind is blowing to power a shaft as the blades turn to have some usable form of power.

Giffin differentiated the Pearl facility from the subject wind turbine by noting Pearl provides capacity which is required by MISO under the regulations of the Federal Energy Regulatory Commission. Second, the turbine at Pearl can be turned on when needed but the wind turbine can't be turned on, it only produces electricity when there is wind. He did acknowledge they both produce electricity.

Under cross-examination Giffin testified that the turbine depicted in Exhibit 1 to the Petition for Rebuttal Evidence was at the Pearl facility in 1974 and essentially depicts the turbine as it would have appeared prior to 1979. The turbine has always had a name plate capacity of 22 megawatts. Giffin explained that the Pearl facility is a peaking facility meaning it can be dispatched on the hottest day of the year; it can be turned on when demand on the electric system is the highest. The witness stated the Pearl facility was a peaking facility prior to 1979.

In clarifying the size of the subject, Giffin stated from the base to the nacelle at the subject is 234 feet and the blades are 105 feet. Giffin agreed there is a fence around the wind tower and agreed that the fence around the wind tower is smaller and would be easier to move than the wind tower. The witness testified that to access the nacelle there is a ladder inside the tube with a safety on it and one can go up the ladder on the inside of the tube.

Giffin asserted that windmills which pump water for agricultural purposes are personal property. This was based on examination of tax records where they were never found to be listed on a real estate tax bill. The examination of the records was done under his direct supervision over the course of preparing material for this appeal. The subject wind turbine does not pump water on the subject property and is not used directly to pump water for livestock.

Giffin indicated there were no other activities going on at the subject property and the property was previously being used as farm property. He also agreed that if you brought the right people with the right equipment the turbine at the Pearl facility could be transferred to another location.

Giffin testified the wind turbine is being depreciated over 20 years, which they believe approximates the useful life of the equipment. Giffin testified that it took approximately five days to erect the tower but the foundation took several weeks to cure. He also thought the foundation was thirty-two feet deep and 15 feet across. He also indicated that as long as it is economically feasible the wind turbine will remain in place, which could be beyond the 20 year expected life of the property.

Giffin explained that there are relatively few pieces to the wind turbine in contrast to combustion turbines which have thousands of pieces, extensive plumbing, fuel supply and more extensive electrical connections. Additionally the combustion turbines are on a slab foundation while the wind turbine is up in the air.

The next witness called on behalf of the appellant was Donald G. Bergmann. Bergmann resides on a farm east of Perry, Pike County, Illinois. He purchased the farm from his father in 1969. His father owned the property beginning in 1933. He testified that he put a turbine to produce electricity on the windmill tower that he has on his farm. He explained that before the turbine there was a fan or mill head on the tower used to pump water for livestock and the home. The tower is 40 feet tall. The tower is bolted to the ground and has been in place since at least from 1930. He explained that when the wind was not blowing a gasoline engine worked the pump. He further explained that subsequently an electric motor replaced the gasoline engine to work the pump which was later replaced by a submersible pump in the well. To his knowledge the tower has not been assessed as real estate. He further explained that you could unbolt the legs of the tower and move it. He also stated that prior to 1979 he could operate the farm without the wind tower by using other wells, pack water or use a gas motor.

Under cross-examination Bergmann expected it might cost \$5,000 or \$6,000 to replace the tower on his property. He further stated that he had not reviewed any records at the Supervisor of Assessments' office to determine what was exactly assessed as real estate.

Under re-direct the witness stated he asked Cindy (Shaw) if the tower had been assessed as real estate and she indicated that it hadn't.

The next witness called by the appellant was William Christison. Christison lives on a farm two and a half miles east of Detroit, Pike County, Illinois. The witness stated that he has a windmill on his farm but it does not operate anymore. The windmill has

been in place since he moved to the farm in 1950. The windmill was used as a source of power to pump water for cattle and hogs. If the wind was not blowing he would use a gasoline motor to power the pump. He stated that he could operate the farm without the windmill providing water for the farm. To his knowledge the windmill was not taxed as real property. Christison had not talked to the assessor's office to find out whether the windmill had been taxed as real estate.

Christison stated his wife's name is Velma Marie Christison and he resides at 25466 475th Street, Pittsfield. Christison identified the second photograph of Exhibit 2 to the Petition for Rebuttal Evidence as the windmill on his farm. He also examined Exhibit 3 to the Petition for Rebuttal Evidence, the Parcel Information Report for parcel number 52-011-02 and stated he did not see anything other than a farmland assessment.

Under cross-examination Christison testified the tower is still on the property and that if it is being assessed and taxed as real estate he does not know it.

Christison also identified the fourth photograph of Exhibit 2 to the Petition for Rebuttal Evidence as a photograph of the same windmill on his farm. The witness did not know whether the parcel identified in Exhibit 3 to the Petition for Rebuttal Evidence was the same parcel where the windmill on his farm is located. The witness agreed that the assessment year for Exhibit 3 to the Petition for Rebuttal Evidence was 2007. He did not know whether farm buildings are assessed based on their contributory value to the farm operation.

Giffin was recalled as a witness and testified the parcel identified in Exhibit 3 to the Petition for Rebuttal was the same parcel that had the photographs of the windmill.

Based on this evidence, the appellant on the Commercial Appeal petition requested the subject's total assessment be reduced to \$48,543, reflecting a market value of approximately of \$146,570, rounded, when using the 2006 three year median level of assessments for Pike County of 33.12%.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling \$571,000 was disclosed. The improvements had an assessment of \$565,773 and the land had an assessment of \$5,227. The subject's assessment reflects a market value of approximately \$1,724,000, rounded, when using the 2006 three year median level of assessments for Pike County of 33.12%.

The board of review submitted a copy of the property record card for the subject property marked as Exhibit D. Page two of Exhibit D indicated the fence located on the subject had a market value of \$5,630 and an assessment of \$1,875; the road and base (concrete) had a fair market value of \$130,000 and an assessment

of \$40,300; and the tower/turbine was considered real estate valued at \$1,700,000 (\$1,000,000 x 1.7 megawatts) and assessed at \$518,500 or 30.5% of the value.

The board of review called as its witness Cindy Shaw, Pike County Supervisor of Assessments. Shaw has been the supervisor of assessments for six years. She testified that prior to 1979 turbines generating electric power in Pike County were considered real estate. She testified she went back into the township books in Pearl Township and the turbine at the power plant was assessed as real estate. She testified that it was put on in 1974.

Shaw testified that the turbine from the Pearl Township facility was depicted on board of review Exhibit B, the Assessor's List of Taxable Lands in the Township for Assessment Years 1971, 1972, 1973 and 1974. She was of the opinion the generator at Pearl is substantially similar to the subject wind turbine generator because they both produce electricity.

Shaw also testified that she did not recall speaking to Bergmann about the issue of whether his 40 foot tower was assessed and taxed as real estate. She testified she has spoken to him in the past because he is a township supervisor and she was surprised to hear him testify that she had spoken to him about that particular issue.

Shaw further identified Respondent's Exhibit 1 as an aerial view of property owned by Christison. On her review of the aerial map she could not identify the windmill located on parcel number 52-011-02. She further indicated the windmill may be located on parcel number 52-010-03 owned by Christison. She also reviewed Respondent's Exhibit 2, a printout of parcel 52-010-03, noting it has a \$300 assessment for a farm building that she indicated could be attributed to the windmill, but she was not 100% sure.

Under cross-examination Shaw stated she was not positive the windmill was on parcel 52-010-03. She also stated she did not recall talking to Bergmann about the windmill. Shaw also testified since both the turbines at Pearl and the subject property generate electricity she considered them like property.

Shaw also testified she assessed the subject property at 30% of the fair market value.

Shaw was questioned with respect to board of review Exhibit B. She stated that line 10 was for a land assessment and line 11 is for both land and improvement assessment at the Pearl facility. She noted that in 1974 the assessor noted a "new turbine add \$182,000." She stated that the 1974 improvement assessment of \$787,200 reflects the turbine assessment. She agreed that it was based on this ledger that she determined the subject property should be assessed as real estate.

Giffin was called as a witness and using Respondent's Exhibit 1 could not locate the windmill that was allegedly located on parcel 52-011-02, Exhibit 3 to the Petition for Rebuttal.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellant contends the subject wind turbine has been incorrectly classified and assessed as real property. The appellant argued the subject wind turbine should be considered personal property, which is exempt from assessment and not taxed as real estate. The board of review contends the subject wind turbine is like kind to an oil fired turbine located at another facility in Pike County that was classified and assessed as real property prior to 1979 and, therefore, should be classified and assessed as real property.

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 (2nd Dist. 1996); People ex rel. Bosworth v. Lowen, 155 Ill.App.3d 855, 863-864 (3rd 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 (3rd 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 (2nd 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 (2nd Dist. 1996).

The court in County of Whiteside v. Property Tax Appeal Board, 276 Ill.App.3d 182 (3rd 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 by the Property Tax Appeal Board in that appeal 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 (3rd 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 Illinois Supreme Court further 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 valuating one kind of property within a taxing district at a certain proportion of its true value while valuating the same kind of property in the same district at a substantially lesser or greater proportion of its true value. [Citation omitted.]

The court 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 (3rd Dist. 1996); Moniot v. Property Tax Appeal Board, 11 Ill.App.3d 309 (3rd 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 (3rd 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.

When a county's pre-1979 method of classifying property as real or personal can be ascertained, that practice must be applied to property acquired in the same county after January 1, 1979. Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d at 182.

With these assessment and classification principles as a guide, the Property Tax Appeal Board finds the subject property was correctly classified and assessed as real property.

The Property Tax Appeal Board finds the parties are in agreement that the land, concrete foundation and fencing surrounding the wind tower are to be classified and assessed as real property. The parties disagree with respect to the classification and assessment of the tower, which measures 234 feet, supporting the wind turbine and the generating equipment located within the nacelle at the top of the tower as real property. The Board finds there was no testimony or evidence that segregated the cost of the tower and the generating equipment within the nacelle. Giffin testified it cost \$1,887,000 to build the wind turbine, which included the tower. The property record card disclosed that the tower and turbine were valued at \$1,700,000 by the Pike County assessing officials. The primary issue before this Board is whether the tower and generating equipment within the nacelle are to be classified and assessed as real property.

As previously stated, Section 1-130 of 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).

After considering the testimony and after viewing the photographs of the subject tower and foundation bolts affixing the 234 foot tower to the 32 foot deep by 15 foot wide concrete base, the Board finds the wind tower itself is a structure or improvement that is to be considered real property for assessment purposes. The tower serves as a structure or support base for the generating equipment located at the top of the tower housed within the nacelle. The tower also provides access to the nacelle and the generating equipment by a ladder within the tower itself. Based on this record the Board finds the tower is real property.

The Board further finds that the appellant did not meet its burden of proof with respect to establishing that the subject tower should be exempt under section 24-5 of the Code and, thus, proving that such property or like-kind property was lawfully assessed and taxed as personal property prior to January 1, 1979. First, the Board finds the windmills cited by the taxpayer were not particularly similar in construction, size and use as the subject tower to establish that they are like kind. Second, the taxpayer did not present any credible testimony or documentary evidence that the windmills were classified and assessed as personal property prior to January 1, 1979.

The Board finds the taxpayer's evidence with respect to whether or not the farm windmills are currently classified and assessed as real property was not persuasive in establishing that the subject tower should be exempt from classification and assessment as real property. First, the testimony of the witnesses with respect to the assessment of the windmills was somewhat equivocal. Second, as stated above, the Board finds the windmills and the subject tower are not similar in construction, size and use. Third, and more importantly, the photographs of the windmills and the testimony provided by the appellant's witnesses, Bergmann and Christison, clearly disclosed these farm windmills are in poor condition, dilapidated and non-functioning farm structures. There was no testimony that these water windmills were contributing to the productivity of the farm parcels cited in the appeal. With respect to the assessments of farm improvements the Board finds section 10-140 of the Code provides that:

Other improvements. Improvements other than the dwelling, appurtenant structures and site, including, but not limited to, roadside stands and buildings used for storing and protecting farm machinery and equipment, for housing livestock or poultry, or for storing feed, grain or any substance **that contributes to or is a product of the farm**, shall have an equalized assessed value of 33 1/3% of their value, **based upon the current use of those buildings and their contribution to the productivity of the farm.** (Emphasis added.)

35 ILCS 200/10-140. Based on this record, the Board finds that it was appropriate that the windmills cited by the appellant as comparable to the subject tower should not be assessed as improvements to the respective farm parcels. The Board finds these water windmills did not contribute to the productivity of the farm parcels and were properly not assessed. The Board finds the subject tower's assessment is a different class of commercial property from the farm improvements and its assessment is not contingent upon contributing to the productivity of the parcel to which it is affixed.

The Board must next determine whether the wind turbine electric generating equipment within the nacelle is real property. The Board finds that the evidence and testimony provided by the Pike County Board of Review was that an oil fired turbine located in Pearl Township, Pike County, had been classified and assessed as real estate beginning in 1974. The appellant provided no testimony or evidence to refute this contention. Instead, the appellant challenged the like kind nature of the oil fired turbine as compared to the wind turbine generating equipment located at the subject property. The Board finds the two turbines are sufficiently like-kind to support the conclusion the

subject wind turbine should be classified and assessed as real property pursuant to the dictates of section 24-5 of the Property Tax Code. (35 ILCS 200/24-5).

The Property Tax Appeal Board recognizes that there is a difference in size of the two turbines with the one located at Pearl having a name plate capacity of 22 megawatts as compared to the subject wind turbine with a 1.65 megawatt name plate capacity. The Board also recognizes that the two turbines are powered by different sources, one being powered by fuel oil and the other being powered by the wind. The Board further finds the turbine at Pearl can be started and turned off as needed to meet demand while the production of electricity at the subject wind turbine is limited by the existing wind. However, the Board finds the wind turbine at the subject property performs the same basic task as the oil fired turbine at Pearl in producing electricity that is distributed to Illinois Rural Electric Cooperative customers. The Board further finds the wind turbine at the subject property and the oil fired turbine at Pearl produce the same product, electricity, although in different megawatt capacities.

In summary, the Board finds both turbines in Pike County are used to produce electricity for distribution to customers of Illinois Rural Electric Cooperative. This leads the Property Tax Appeal Board to the conclusion these turbines are like kind properties that should have the same classification for real property assessment purposes as required by the uniformity clause of the Illinois Constitution of 1970 and section 24-5 of the Property Tax Code which provides in part that:

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 Board further finds the appellant did not challenge the estimate of market value of the subject property as reflected in the assessment. The Board finds the appellant presented testimony that the cost to build the wind turbine in 2005 was \$1,887,000, which excludes the value of the land. The subject's total assessment of \$571,000 reflects a market value of approximately \$1,724,000, rounded, when using the 2006 three year median level of assessments for Pike County of 33.12%. Based on this record the Board finds the classification and assessment of the subject property by the Pike County Board of Review is correct.

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.

Ronald R. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario Morris

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: February 23, 2010

Allen Castrovillari

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.