



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

APPELLANT: John Aegerter/Satcom, LLC
DOCKET NO.: 08-00270.001-C-1
PARCEL NO.: 21-14-19-400-004-0000

The parties of record before the Property Tax Appeal Board are John Aegerter/Satcom, LLC, the appellant; and the Will County Board of Review.

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

F/Land:	\$26
Homesite:	\$13,998
Improvements:	\$23,330
Outbuildings:	\$0
TOTAL:	\$37,354

Subject only to the State multiplier as applicable.

ANALYSIS

The parties of record before the Property Tax Appeal Board are John Aegerter/Satcom, LLC, the appellant; and the Will County Board of Review.

The subject property consists of two communication buildings, 200 linear feet of chain link fencing that is 44 years old and a guyed microwave radio transmission tower that is 240 feet high that was erected in 1964. Building 1 contains 240 square feet of building area and is of masonry exterior construction built in 1964. Building 2 is a 2004 pre-fabricated concrete structure containing 180 square feet of building area that was shipped to the site by truck. The building was then bolted in place on a concrete slab foundation. The subject property is located in Monee Township, Will County, Illinois.

The appellant appeared before the Property Tax Appeal Board claiming the fair market value of the subject buildings was not

accurately reflected in its assessed value. Furthermore, the appellant argued building 2 is personal property because it is merely bolted to a concrete slab, is not permanently affixed and could be easily removed. In support of these arguments, the appellant offered testimony, photographs, a letter addressing the appeal, a prior Property Tax Appeal Board decision (Docket Number 05-01099.001-C-1), and cost proposals to replace the two existing buildings.

With respect to building 1, the appellant submitted two replacement cost proposals. The first proposal was from CellXion of Milwaukee, Wisconsin that was dated February 14, 2009. The documents depict the cost new of a building similar to the subject was \$22,872 including shipping. The second proposal was from Fibrebond Corporation of Minder, Louisiana that was dated February 11, 2009. The documents depict the cost new of a building similar to the subject was \$23,455 including shipping.

With respect to building 2, the appellant submitted a replacement cost proposal. The proposal was from Fibrebond Corporation of Minder, Louisiana that was dated February 11, 2009. The documents depict the cost new of a building similar to the subject was \$21,035 including shipping.

The appellant testified the subject property was purchased in 2002 for \$20,000. The sale included the land, building 1 and the guyed microwave radio transmission tower. The appellant argued the assessor should view and assess the subject property according to its cost basis along with its age, condition and depreciation.

The appellant next referred to an unsigned memorandum dated May 28, 2003. The document is labeled Cell Towers In Will County and states:

As per the Supervisor of Assessments, cell towers that include an equipment/shed room are to be assessed at \$90,000 market value. Assessment should be placed on the building only.

The appellant argued this document supports his position that the guyed microwave radio transmission tower is personal property and should not be assessed as real estate. In addition, the appellant argued the "one size fits all" method applied to communication towers regardless of age, height, size and cost is inappropriate. To support this claim, the appellant cited the Property Tax Appeal Board decision under Docket Number 05-01099.001-C-1 regarding a communication building in Lake County, Illinois. In that appeal, the Ela Township assessor testified all communication buildings were valued at \$45,000 regardless of age, size, type or height. The Board found that assessment practice to be arbitrary and not supported by the evidence in that record. The appellant next argued that during the local board of review hearing that occurred on December 16, 2008, he questioned the assessment officials regarding the classification

and assessment of the guyed microwave radio transmission tower. The appellant testified the township assessor responded that the tower was personal property.

The appellant argued the transmission tower is personal property because it can be moved. Based on this evidence, the appellant requested the Property Tax Appeal Board to reduce the subject's improvement assessment to \$2,500 or a market value of \$7,500 to reflect the depreciated replacement cost new of the communication building. In addition, the appellant requested the Board find the subject's guyed microwave radio transmission tower and building 2 to be personal property that is not subject to real estate assessment and taxation.

During cross-examination, the appellant testified he does not own building 2. He testified building 2 is owned by Motorola that is used by the Illinois State Police. Motorola has a land and antenna lease with the appellant associated with building 2. During the hearing, the appellant acknowledged Motorola is responsible for any property taxes associated with building 2 and the structure is assessable. The appellant testified he depreciated the cost new of building 1 and did not depreciate building 2 to arrive at the requested assessment amount of \$2,500 or \$7,500 fair market value for both buildings. The method of calculating depreciation was not disclosed.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject property's final assessment of \$54,024 was disclosed. The subject has an improvement assessment of \$40,000, which reflects an estimated market value of \$120,337 using the 2008 three-year median level of assessments for Will County of 33.24%. The previous Monee Township Assessor, Nanci J. Barfoot, who initially valued and assessed the subject property was not present at the hearing for direct testimony or cross-examination. The newly elected Monee Township Assessor, Sandra Heard was present at the hearing, but provided no testimony.

In support of the subject's assessment, the board of review submitted an aerial photograph of the subject property, a cost approach to value, an income approach to value and one purported comparable sale.

Using the telephone building cost schedule contained in Marshall Valuation Service, the board of review calculated the replacement cost new of building 1 to be \$150.64 per square foot of building area or \$35,153. Depreciation was calculated at 62%, resulting in a final depreciated value for building 1 of \$13,738. The board of review calculated the replacement cost new of building 2 to be \$150.64 per square foot of building area or \$27,115. Depreciation was calculated at 3%, resulting in a final depreciated value for building 2 of \$26,301. Thus, both buildings were estimated to have a depreciated estimated market value of \$40,039.

The board of review next calculated the replacement cost new of the guyed microwave radio transmission tower to be \$224.94 per foot or \$53,506 using the microwave tower cost schedule contained in Marshall Valuation Service. Depreciation was estimated at 20%, resulting in a final depreciated value for the tower of \$40,040, rounded. The board of review also calculated the replacement cost new for 200 linear feet of chain link fencing. The fencing was estimated to have a market value of \$8.44 per linear foot or \$1,687. Depreciation was estimated at 20%, resulting in a final depreciated value for the fencing of \$1,350, rounded.

Under the cost approach, the board of review argued the subject's improvements were estimated to have an aggregate depreciated market value of \$84,194, resulting in an improvement assessment of \$28,062, which is less than its 2008 improvement assessment of \$40,000.

The board of review next considered the income approach to value. The board of review considered leases in comparison to the subject and concluded a gross annual income of \$24,000. Vacancy was estimated to be 10% or \$2,400 resulting in an effective gross income of \$21,600. Management fee was estimated to be 5% or \$1,080 resulting in a net operating income of \$20,520. The board of review next selected a capitalization rate of 12% and then added an effective tax rate factor of .02256, which resulted in an overall loaded capitalization rate of 14.256%. Applying the 14.256% loaded capitalization rate to the subject's estimated net operating income of \$20,520, the board of review concluded the subject property has an indicated market value under the income approach of \$143,939 or \$140,000, rounded.

The board of review also introduced a 2006 sale of an unknown type of transmission tower involving four leases for \$285,000. The leases were reported to range from \$800 to \$1,200 per month. After adjusting this sale for differences to the subject, the board of review concluded the subject property had an indicated market value \$142,500 or \$140,000, rounded. No evidence of this sale was submitted. The Board of review representative testified the details of the transaction were not submitted due to proprietary confidential information. Based on this evidence, the board of review requested confirmation of the subject's assessment.

Under examination, the board of review representative testified Will County assessment officials had an assessment policy to value transmission towers as real property subject to ad valorem taxation. The board's representative testified this policy had been in place prior to 1979. He could not attest as to the assessment methodology used by the prior township assessor regarding the classification and valuation of transmission towers. The board's representative testified the prior township assessor may have been mistaken. The board of review representative further explained the transmission tower and building 1 were assessed at \$30,000 or an estimated market value

of \$90,000. Building 2 was assessed at a contributory value of \$10,000 or an estimated market value of \$30,000.

In rebuttal, the appellant argued the transmission tower is personal property because it is not permanently affixed to the land and can be moved to another location. The appellant explained the tower has an articulated base that rests on a concrete foundation with four guyed cables that hold the tower in place. The tower was placed on its site in 1964 and was modified in 1978. The tower has never be moved to another location or replaced. The appellant also presented a second document from the prior township assessor. The document states in part:

According to cell towers in Will County, "As per the Supervisor of Assessments, cell towers that include an equipment shed/room are to be assessed at \$90,000 market value. Assessment should be placed on the building only."

In response, according to assessment nomenclature the subject property has land, building, farmland, and farm building assessments that equate to a total assessment. The board's representative explained the \$30,000 or \$90,000 market value is placed on the building portion of the assessment rolls that includes the cellular tower or in this case a guyed microwave radio transmission tower.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

The appellant argued the subject property's assessment was not reflective of its fair market value. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Board finds the appellant has overcome this burden and a reduction in the subject's assessment is supported. The Board further finds the board of review properly classified and assessed building 2 and the guyed microwave radio transmission tower as real property subject to ad valorem 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 (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 were "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.

In this appeal, the appellant submitted anecdotal evidence prepared by the previous township assessor indicating that "cell towers that include an equipment/shed room are to be assessed at \$90,000 market value. Assessment should be placed on the building only." The appellant interpreted this document to mean the subject's transmission tower in Will County should be classified as personal property. The Board gives this argument little merit. Foremost, the prior township assessor was not present at the hearing to provide testimony or be cross-examined regarding this document. Therefore, the Board finds this document and any reference to the prior township assessor regarding the classification and assessment of transmission towers to be hearsay. The general rule is that hearsay is inadmissible in an administrative hearing. Spaulding v. Howlett, 59 Ill.App.3d 249, 251, 375 N.E.2d 437, 16 Ill.Dec. 564 (1st Dist. 1978). Hearsay evidence is an out-of-court statement offered to prove the truth of the matter asserted and is inadmissible in administrative proceedings unless it falls within one of the recognized exceptions to the rule. Morelli v. Ward, 315 Ill.App.3d 492, 734 N.E.2d 87, 248 Ill.Dec. 379 (3rd Dist. 2000).

Notwithstanding the hearsay nature of the evidence provided by the appellant, the Board further finds the board of review offered a credible response to the personal property argument. The board's representative testified according to assessment nomenclature, the subject property has land, building, farmland, and farm building assessments that equate to a total assessment. He explained the \$30,000 or \$90,000 market value placed on the building portion of the assessment rolls includes the cellular tower or in this case a guyed microwave radio transmission tower.

The Board further finds the board of review provided credible testimony that prior to January 1, 1979, Will County assessment officials had a policy to value transmission towers as real property subject to ad valorem taxation. The board's representative testified this policy had been in place prior to 1979. The appellant did not submit any credible evidence to refute the testimony offered by the board of review or that suggests transmission towers were classified as personal property prior to 1979.

The appellant also contends building 2 should be classified as personal property because it is merely bolted to a concrete slab, is not permanently affixed and could be easily removed. The Board gives this argument little merit. For ad valorem taxation purposes, section 1-130 of the Property Tax Code provides in part:

The land itself, with all things contained therein, and also buildings, structures and improvements, and other permanent fixtures thereon, including all oil, gas, coal and other minerals in the land and the right to remove oil, gas, and other minerals, excluding coal, from the land, and all rights and privileges belonging or pertaining thereto, except otherwise specified by this Code. (35 ILCS 200/1-130).

The Board finds building 2 located on the subject parcel is structure that is assessable as real property according to the plain language contained in Section 1-130 of the Property Tax Code. (35 ILCS 200/1-130).

After reviewing the market value evidence submitted by both parties, the Property Tax Appeal Board finds the preponderance of the evidence shows the subject parcel is overvalued.

Building 1.

The Board finds the best evidence of value is the actual replacement cost proposal submitted by the appellant for \$23,455 including shipping. However, this building was built in 1964 and is subject to depreciation in the amount of 62%. (See board of review evidence). Thus, the Board finds building 1 has a fair market value of \$8,913 based on this record.

Building 2.

The Board finds the best evidence of value is the actual replacement cost proposal submitted by the appellant for \$21,035 including shipping. This building was constructed in 2004 and is subject to minimal depreciation in the amount of 3%. (See board of review evidence). Thus, the Board finds building 2 has a fair market value of \$20,404 based on this record.

Guyed Tower.

The Board finds the board of review submitted the best and only evidence as to the fair market value of the guyed microwave radio transmission tower that is 240 feet high. The board of review calculated the replacement cost new of the transmission tower to be \$224.94 per foot or \$53,506 using the microwave tower cost schedule contained in Marshall Valuation Service. Depreciation was estimated at 20%, resulting in a final depreciated value for tower of \$40,040, rounded.

Fencing.

The board of review also calculated the replacement cost new for 200 linear feet of chain link fencing. The fencing was estimated to have a market value of \$8.44 per linear foot or \$1,687. However, the Board finds the board of review underestimated the amount of depreciation for the fencing of only 20%. Given the age and condition of the fencing, the Board finds a depreciation rate of 62% to be more appropriate, similar to building 1. Thus, the Board finds the fencing has a depreciated value of \$641.

Based on this analysis, the Board finds the subject's improvements have an aggregate market value of \$69,998. The subject has an improvement assessment of \$40,000, which reflects a market value of \$120,337, which is higher than the best evidence of value contained in this record. Therefore, a reduction in the subject's improvement assessment is warranted.

In conclusion, the Board finds the appellant has shown by a preponderance of the evidence that the subject's property was overvalued and a reduction in the subject property's improvement assessment is warranted.

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

Shawn R. Lerbis

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: August 20, 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.