FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Charles Scharfenberg
DOCKET NO.: 08-01460.001-C-2
PARCEL NO.: 18-09-400-003

The parties of record before the Property Tax Appeal Board are Charles Scharfenberg, the appellant, by attorney James E. Skinner of Rehn & Skinner, LLC, Galesburg; and the Knox County Board of Review.

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

LAND:	$ 5,150
IMPR.:	$172,130
TOTAL:	$177,280

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 4.65 acre parcel improved with eight greenhouse structures and a garage/office. The greenhouses are assembled with hoop style metal supports covered by plastic, which are used for growing flowers and farm products. The structures have over head watering systems, fans and liquid propane heaters. The green houses are attached to ground with earth anchors, which are large screw-in metal rods. The appellant claimed the green houses were constructed in the late 1980's while the board of review's property record cards indicates the greenhouses were constructed from 1991 to 2005. The subject parcel is also improved with a combined 4,665 square feet of asphalt and concrete. The subject property is located in Knox County, Illinois.[1]

[1] The subject matter of this appeal was set for oral hearing based upon the merits on November 30, 2011, at the request of the appellant. The hearing notification letter was dated October 4, 2011. The notice advised the appellant of the requirement to procure a court reporter to transcribe the proceeding pursuant to section 16-190 of the Property Tax Code (35 ILCS 200/16-190) and section 1910.98(a) of the rules of the Property Tax Appeal

The appellant submitted evidence before the Property Tax Appeal Board contending the assessment of the subject property was in error. More specifically, the appellant argued that the greenhouse structures situated on the subject parcel do not have permanent foundations and should not be classified and assessed as real estate, but should be considered personal property and exempt from real estate taxation. In support of this claim, the appellant submitted two photographs depicting a typical greenhouse situated on the subject parcel. Additionally, the appellant cited section 1-130 of the Property Tax Code. (35 ILCS 200/1-30). As of the subject's January 1, 2008 assessment date, section 1-130 of the Property Tax Code provides in part:

> The land itself, with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon. . . and all rights and privileges belonging or pertaining thereto, except 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 on a permanent foundation. (35 ILCS 200/1-130), (Amended by P.A. 91-502, § 5, eff. Aug. 13, 1999.).

The appellant argued the greenhouses do not have permanent foundations, therefore cannot be assessed and taxed as real property.

The appellant also submitted correspondences from the Supervisor of Assessment(s) for the Illinois counties of Mercer, Hancock, McDonough and Henderson to further support the position that the greenhouses should not be assessed as real property. In summary, these assessment officials do not classify or assess greenhouses as real property. Mercer County: polyethylene greenhouses are not assessed as real property because they are not on any permanent foundation and are readily removable. Hancock County: hoop buildings are not assessed as real property. However, any concrete walls or floors will be taxed. McDonough County: we do not assess polyethylene greenhouses. Henderson County: I do not assess greenhouses that do not have a permanent foundation.

In the brief, the appellant argued the greenhouses can be easily moved by merely removing the outer shell and un-skewering the earth anchors from the ground. To support the proposition that the greenhouse building are not real property, the appellant cited the appellate court's holding regarding the definition of a permanent foundation in Christian County Board of Review v. Property Tax Appeal Board, 368 Ill.App. 3d 792 (5th Dist. 2006).

Board (86 Ill.Adm.Code §1910.98(a)). The appellant did not procure a court reporter to transcribe the hearing. Instead of dismissing the appeal pursuant to section 1910.69(d) of the rules of the Property Tax Appeal Board (86 Ill.Adm.Code §1910.69(d)), the parties to this appeal stipulated to have the Property Tax Appeal Board render a decision based on the evidence contained in the record. In order to clarify the evidence, both parties were allowed to file briefs to further outline their positions. This decision follows.

The appellant argued the foundation language in the Code is not determinative; it is illustrative of the legislature's intent as to what should be taxed. In order to be determined a fixture the structure needs to be attached to the reality in a way which precludes its easy removal. Whether something is a fixture rather than a piece of personal property depends upon the nature of its attachment to the real estate, its adaption to and necessity for the purposes for which the premises are devoted, and whether or not it was intended that the item should be considered to be part of the reality. (Nokomis Querry Company v. Dietl, 333 Ill.App.3d 480 (5th Dist. 2002)).

The appellant argued the greenhouse structures are akin to mobile homes which are in a mobile home park and are not taxed as realty. The appellant also argued the greenhouses are similar to moveable lawn sheds, which are not fixtures and should not be taxed as real estate.

With respect to the evidence submitted by the board of review, the appellant argued evidence as to other greenhouse structures does not provide significant evidence as the construction of the other greenhouses. The appellant alleges the type of green house is important as to their classification as real property. It is akin to storage buildings, some are affixed to the real estate by foundation or slab and some are moveable. The appellant reiterated the greenhouse structures are easily removable and should not be classified as real estate. The appellant argued the other greenhouses are of more permanent construction and are truly a building permanently affixed to the real estate. Based on this evidence, the appellant requested the subject's improvement assessment be reduced to $0.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $177,280 was disclosed.

In support of the subject's assessment, the board of review submitted a letter addressing the appeal along with seven exhibits. (Exhibits 1 through 7)

Exhibit 1 is a sketch of the greenhouses situated on the subject parcel. The board of review claims each of the greenhouses are assessed on a per square foot basis upon their construction type. The board of review noted concrete and asphalt paving, along with a garage, are also part of the subject's assessed value.

Exhibit 2 is a copy of page 23 from the 2006 Components and Cost Schedules of the Illinois Real Property Appraisal Manual showing the cost range for greenhouses. The board of review argued none of the greenhouses are being assessed anywhere near the price shown in the manual.

Exhibits 3 through 7 are comprised of property record cards for other properties in Knox County that either still or did have greenhouses/nurseries on them of similar construction type as the

subject. The board of review argued the property record cards show greenhouse structures have been assessed as real estate since the 1950's.

Exhibit 3 depicts 1,256 square feet of shed/greenhouses erected in 1952. The greenhouses contain 1,126 square feet and are of glass or fiberglass construction. Exhibit 4 depicts a 425 square foot greenhouse of unknown construction that was erected in 1952. Exhibit 5 depicts a greenhouse of unknown size or construction that was erected in 1988. Exhibit 6 depicts a frame and fiberglass greenhouse containing 1,320 square feet building area that was erected in 1988. Exhibit 7 depicts an 896 square foot nursery display building that was reportedly constructed in 1950.

In their brief, the board of review addressed the issue of "like properties" that were assessed as real estate prior to January 1, 1979. The board of review argued although other greenhouses may not be identical to the subject, they are "like properties". The board of review contends the greenhouses are permanent year round fixtures. The board of review agreed the greenhouses are anchored to the ground with hoop framing bolted to the anchors. There are also 2 x 6 boards attached the entire interior of the structures. Some sides and roofs of the greenhouses are plastic membrane, but some fronts, sides and backs are made of fiberglass. The board of review argued the greenhouses do not have gravel floors, but concrete or asphalt sidewalks that run through the middle and outside from greenhouse to greenhouse. In summary, the board of review contends that like kind property to that of the subject has been classified and assessed as real estate prior to 1979.

After reviewing the record 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 greenhouses have been incorrectly classified and assessed as real property. The appellant argued the greenhouses should be considered personal property, which is exempt from assessment and not taxed as real estate. The board of review contends the subject greenhouses are like kind to other greenhouses located in Knox County that were classified and assessed as real property prior to 1979. Therefore, the greenhouses should be classified and assessed as real property.

The Property Tax Appeal Board finds 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. . . 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 on a permanent foundation. (35 ILCS 200/1-130).

As an initial matter, the Board finds the appellant's contention that the subject greenhouses should not be assessed as real property because they were not placed on a permanent foundation to be unpersuasive and without merit. The appellant relied on section 1-130 of the Code (35 ILCS 200/1-130) in support of this claim. The Board finds this part of section 1-130 of the Code does not support this proposition. The Board finds the "permanent foundation" language pertains to "any vehicle or similar portable structure used or so constructed as to permit its use as a dwelling". The board finds the structures that are the subject matter of this appeal are not vehicles or similar portable structures **used or so constructed as to permit its use as a dwelling** (emphasis added). The structures are use as greenhouses to grow flowers and farm products.

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 importance 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). As a result, 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 Property Tax Appeal Board finds the taxpayer has the burden of proving that property is exempt under section 24-5 of the Code and 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 court further noted the Illinois Supreme Court 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.

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 in place, the Property Tax Appeal Board finds the subject property was correctly classified and assessed as real property. The primary issue before this Board is whether the greenhouses 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).

The Property Tax Appeal Board finds that the evidence (property record cards) provided by the Knox County Board of Review was

that like kind greenhouses located Knox County had been classified and assessed as real estate since at least 1952. (See board of review Exhibits 3 and 4). The appellant provided no credible evidence to refute this contention. Instead, the appellant to some extent challenged the like kind nature of the other greenhouses submitted by the board of review. The Board finds the two other greenhouses detailed on this record that were lawfully assessed as real property prior to 1979 sufficiently establishes "like-kind" to support the conclusion the subject greenhouses 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 Board finds the structures situated on the subject parcel perform the same basic tasks used for growing flowers and farm products inside of greenhouses.

In summary, the Board finds greenhouses in Knox County that are used for growing flowers and farm products are lawfully and uniformly assessed as real property. As a result, the Property Tax Appeal Board to the finds the greenhouses situated in the subject parcel are like kind properties that should have the same classification for real property assessment purposes as required by 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.

As a final point, the Board further finds the appellant did not challenge the estimated market value of the subject property as reflected in the assessment. Based on this record the Board finds the subject's total assessment is not illegal or excessive as of January 1, 2008.

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: May 18, 2012

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.