



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

APPELLANT: John & Rebecca Telford
DOCKET NO.: 08-01569.001-R-1
PARCEL NO.: 15-19-05-104-022

The parties of record before the Property Tax Appeal Board are John & Rebecca Telford, the appellants, and the Macon 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 Macon County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$1,457
IMPR: \$0
TOTAL: \$1,457

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a double-wide mobile home measuring 24 feet by 56 feet containing approximately 1,344 square feet of living area. The home was manufactured in 1970 and features central air conditioning. The mobile home is located on a 7,500 square foot parcel in Blue Mound, Blue Mound Township, Macon County.

The appellants appeared before the Property Tax Appeal Board contesting the assessment on the mobile home asserting that the home is not on a permanent foundation and the original assessor erroneously reported the home had a permanent foundation. The appellants argued that the mobile home should not be classified and assessed as real estate because the dwelling is not resting in whole on a permanent foundation.

The appellants submitted a written statement explaining the legal issue concerning how the mobile home was anchored, supported by photographs and a copy of the Certificate of Title of a Vehicle issued by the Secretary of State's office. The copy of the Certificate of Title to a Vehicle identifies the subject mobile home by 'vehicle identification number' and as a 1970 Fleetwood

with a 'body style' of "mobile home." The title references that mobile home square footage as 1,560.

Appellants testified they purchased the mobile home already situated on the property in 1999. The subject property was advertised prior to an auction as a Fleetwood double-wide on a lot.¹ As shown in meeting minutes submitted at hearing and testified to by appellants as concerning the subject property, the appellants recognize that the subject mobile home, which was grandfathered in as a zoning ordinance exception, cannot be replaced by another mobile home.² The appellants also testified and presented photographic evidence that the foundation consists of unmortared concrete blocks. The appellants submitted with their appeal ten color photographs depicting the mobile home, the skirting, and the unmortared concrete blocks, wood shims and tie down straps under the dwelling. At hearing, the appellants submitted, without objection, an eleventh color photograph that depicts a wheel base and axle under the home. The appellants further contend that there are no footings that extend below the frost line. The appellants contend the home is secured to the ground by metal tie downs and the metal skirting was erected to keep the weather and animals out from under the mobile home.

Through some research, the appellants learned of the appellate court's decision in Christian County Board of Review v. Property Tax Appeal Board, 858 N.E.2d 909, 306 Ill.Dec. 851 (5th Dist. 2006), upholding the decision of the Property Tax Appeal Board that mobile homes were not real property under the Property Tax Code. Based on the foregoing evidence and case law, the appellants contend the home does not have a permanent foundation and should not be classified and assessed as real estate for *ad valorem* taxation purposes.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment of the subject of \$9,333. The board of review submitted four copies of property record cards for the subject parcel. The most recent card printed as of December 14, 2010 includes a second page schematic drawing identifying "dbl wide trailer" of 24 feet by 56 feet as the sole improvement on the parcel. The fourth property record card includes a schematic drawing also identifying a 24 foot by 56 foot "double trailer on foundation."

In further support of the assessment of the subject property, by letter dated December 14, 2010, the Macon County Board of Review

¹ At hearing, the appellants sought to submit a copy of the auction announcement concerning the subject property. The objection that the document was not timely submitted as part of the appellant's appeal was sustained. (86 Ill.Admin.Code Secs. 1910.30(g) & 1910.67(k)).

² The document was admitted over objection of the board of review. The objection concerned relevancy of zoning rules as opposed to assessment practices and/or policies. The board of review did not dispute the authenticity of the document or that it referenced the subject property even though the address of the property in the minutes was not identical to that of the subject property.

reported it "believes this property should continue to be assessed as real estate. The mobile home on this property has been assessed as real estate since 1978." The board of review provided no further evidence in support of its assessment of the subject property.

At the hearing, the board of review referenced that as of January 1, 2011, the law has changed regarding the treatment of mobile homes.³ The board of review representative further acknowledged that this statutory change was not applicable to the instant appeal.

Furthermore, since the subject has been assessed since 1978, when specifically asked if the board of review was invoking the Freeze Act, the board of review representative Daysa Miller, Supervisor of Assessments, stated the board of review was not invoking that provision of the Property Tax Code.⁴

³ Public Act 96-1477 provides in pertinent part that mobile homes located outside of mobile home parks and are taxed under the Mobile Home Local Services Tax Act shall continue to be so taxed until the home is sold or transferred or relocated, at which time it shall be classified, assessed and taxed as real property. (35 ILCS 200/1-130(b)).

⁴ In pertinent part the Illinois Constitution 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).

On cross examination, the board of review acknowledged that by definition, a permanent foundation must extend below the frost line. The board of review also acknowledged it had no evidence that the subject property has a foundation which extends below the frost line. Moreover, the board of review was not inferring that the property has a foundation that extends below the frost line.

In written rebuttal, the appellants argued the board of review did not provide a reason why they believe the property should continue to be assessed as real estate. Appellants submitted six color photographs of the subject again depicting the sheet metal skirting at the base of the mobile home, the tie downs to the ground and the unmortared concrete blocks with wood shims under the mobile home.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds a reduction in the subject's assessment is warranted.

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

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. . . and all rights and privileges belonging or pertaining thereto, except where otherwise specified by this Code. Included therein is any vehicle or similar portable structure used or so constructed as to permit its use as a dwelling place, **if the structure is resting in whole on a permanent foundation.** . . . [Emphasis added].
(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.

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

[a] factory assembled structure designed for permanent habitation and so constructed as to permit its transport on wheels, temporarily or permanently

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

Finally, Section 870.10 of the Manufactured Home Installation Code provides:

"Manufactured home" is synonymous with "mobile home" and means a structure that is factory-assembled, completely integrated structure designed for permanent habitation, with a permanent chassis and so constructed as to permit its transport, on wheels temporarily or permanently attached to its frame, from the place of its construction to the location, or subsequent locations, at which it is placed on a support system for use as permanent habitation, and designed and situated so as to permit its occupancy as a dwelling place for one or more persons; provided, that any such structure **resting wholly on a permanent foundation**, as defined in this Part, shall not be construed as a mobile home or manufactured home. The term "manufactured home" includes manufactured homes constructed after June 30, 1976 in accordance with the federal National Manufactured Housing Construction and Safety Standards Act of 1974 and does not include an immobilized mobile home as defined in Section 2.10 of the Mobile Home Park Act. [Emphasis added.] [430 ILCS 117/10] (77 Ill.Admin.Code 870.10).

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

Neither the Property Tax Code nor the Mobile Home Local Services Tax Act defines "permanent foundation." The Board may, however, look to other statutes that relate to the same subject to

determine what constitutes a permanent foundation for assessment purposes. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d at 720; Christian County Board of Review v. Property Tax Appeal Board, 858 N.E.2d 909, 306 Ill.Dec. 851 (5th Dist. 2006).

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

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

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

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

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

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

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

"Permanent Foundation" is a continuous perimeter foundation such as mortared concrete blocks, mortared brick, or concrete that **extends into the ground below**

the established frost depth and to which the home is secured with foundation bolts at least one-half inch in diameter, spaced at intervals of no more than 6 feet and within one foot of the corners, and embedded at least 7 inches into concrete foundations or 15 inches into block foundations. (77 Ill. Admin. Code 870.10). [Emphasis added].

The Manufactured Home Community Code (77 Ill. Admin. Code 860.150) addresses the issue of immobilization of a mobile home, which appears to be analogous to having a permanent foundation. A manufactured home is considered immobilized when the following conditions are met:

- a) The home shall be provided with individual utilities as defined in Section 2.8 of this Act.
- b) The wheels, tongue, and hitch shall be removed and the home shall be supported by a continuous perimeter foundation of material such as concrete, mortared concrete block, or mortared brick which **extends below the established frost depth**. The home shall be secured to the continuous perimeter foundation with $\frac{1}{2}$ inch foundation bolts spaced every 6 feet and within one foot of the corners. The bolts shall be imbedded at least 7 inches into concrete foundations or 15 inches into block foundations. (77 Ill. Admin. Code 860.150). [Emphasis added].

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

The Board finds under the facts of this appeal the subject dwelling is not resting in whole on a permanent foundation so as to be classified and assessed as real estate under the provisions of the Property Tax Code. The Board finds the subject dwelling is not anchored to a perimeter foundation that extends below the frost depth. Evidence disclosed that the home has stacked, non-mortared concrete blocks under the home that actually support the center of the mobile home. Wood shims are placed between these non-mortared blocks to support and level the dwelling. The mobile home was not attached to the concrete blocks, but is held in place by its own weight and has tie down straps to the ground. Furthermore, the board of review provided no contradictory evidence to refute the appellants' assertions regarding the nature of the foundation and/or photographic evidence regarding the subject dwelling.

In conclusion the Property Tax Appeal Board finds the mobile home located on the subject property should not be classified and assessed as real property despite its having been so assessed since 1978.⁵ Therefore, the Property Tax Appeal Board finds that a reduction in the subject's assessment is warranted in accordance with these findings.

⁵ The rule in Illinois is that taxes voluntarily, though erroneously, paid cannot be recovered unless recovery is authorized by statute. Jansen Real Estate Corp. v. P.J. Cullerton, 49 Ill. App. 3d 231, 236 (1st Dist. 1977); Aldens, Inc. v. Rosewell, 71 Ill. App. 3d 754, 757; Inland Real Estate Corp. v. Oak Park Trust and Savings Bank, 127 Ill. App. 3d 535, 549 (1st Dist. 1984); Bass v. South Cook County Mosquito Abatement Dist., 236 Ill. App. 3d 466, 467 (1st Dist. 1992). Since there is no statute providing for a recovery of taxes that may have been wrongly but voluntarily paid without protest, there is no method by which appellants can obtain a refund for any years prior to the year in which an assessment complaint has been filed.

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 19, 2011

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.