



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

APPELLANT: Mark D. Smart
DOCKET NO.: 08-03241.001-R-1
PARCEL NO.: 14-24-23-417-005-00

The parties of record before the Property Tax Appeal Board are Mark D. Smart, the appellant, and the Christian 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 Christian County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$1,513
IMPR: \$4,693
TOTAL: \$6,206

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a mobile home measuring thirty by fifty-two feet containing approximately 1,560 square feet of living area. The home was manufactured in 2003 and features air conditioning. There is also a shed, a 768 square foot detached frame garage, a 320 square foot concrete slab and a 1,200 square foot asphalt driveway. The property is located in Rosamond, Rosamond Township, Christian County.

The appellant filed an appeal with the Property Tax Appeal Board contesting the assessment on the mobile home. The appellant did not contest the land assessment and sought an improvement assessment reduction to approximately \$6,206 to account for the assessments of the shed, garage and other permanent improvements to the property. The appellant attached a copy of the appellate court's opinion known as Christian County Board of Review v. Property Tax Appeal Board, 368 Ill.App.3d 792 (5th Dist. 2006) wherein the court held that a manufactured or mobile home should not be classified and assessed as real estate because the dwelling is not resting in whole on a permanent foundation as

required by section 1-130 of the Property Tax Code. (35 ILCS 200/1-130).

In support of this contention, the appellant provided color photographs depicting a gap between the mobile home and a concrete block foundation. These photographs depict a mortared concrete block formation around the outside perimeter of the home, but as shown the home is not attached to the perimeter formation; there is a gap between the top of the perimeter formation and the bottom of the home with human fingers in the gap in two of the photos. Additional photographs depict unmortared concrete blocks with wooden shims upon which the mobile home is resting. The appellant also submitted a copy of the Certificate of Title of a Vehicle issued by the Illinois Secretary of State indicating the appellant as an owner of a 2004 Fleetwood mobile home of 1,664 square feet along with photographs of the manufactured mobile home plate.

Based on this evidence, the appellant contends the home is not resting in whole on 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 \$24,546. In support of the subject's 2008 assessment and classification, the board of review submitted a copy of Public Act 096-1477 (effective January 1, 2011) with various portions highlighted in orange. The highlighted provisions of the Public Act refer variously to the fact that "any mobile home outside of a mobile park" that has been "classified, assessed, and taxed as real property on the effective date of this Act shall continue to be classified, assessed, and taxed as real property."

Based on the foregoing, the board of review requested confirmation of the subject's classification and assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant argued the subject property was incorrectly classified and assessed as real property. The Board finds the record supports this claim.

Initially, the board of review's citation to Public Act 096-1477 as support for its position shall be addressed. The Property Tax Appeal Board gives no weight to this argument of the board of review. By its own terms, Public Act 096-1477 "takes effect January 1, 2011." Nothing in the terms of Public Act 096-1477 sets forth any retroactive application and therefore, this new legislation is not applicable to the classification and/or assessment of the subject property as of January 1, 2008.¹

¹ Moreover, Public Act 096-1477 provides in pertinent part that mobile homes located outside of mobile home parks that are taxed under the Mobile Home

The appellant argued that the mobile home on the subject property was improperly classified and assessed as real estate. The board of review did not contest this assertion beyond citation to Public Act 096-1477.

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) as of January 1, 2008 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 as of January 1, 2008 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, as of January 1, 2008, Section 870.10 of the Manufactured Home Installation Code provides:

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. [Emphasis added.] (35 ILCS 200/1-130(b))

"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).

The Property Tax Appeal Board finds that as of January 1, 2008 both the Property Tax Code and the Mobile Home Local Services Tax Act require that a factory assembled structure, vehicle or similar portable structure used or so constructed as to permit its use as a dwelling place, and constructed as to permit its transport on wheels, temporarily or permanently attached to its frame, at which it is intended to be a permanent habitation, 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). As of January 1, 2008, the Property Tax Code and the Mobile Home Local Services Tax Act identify 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, 368 Ill.App.3d 792 (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 ½ 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 mobile home 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 in effect as of January 1, 2008. The Board finds the subject mobile home is not resting on, supported by and anchored to a perimeter foundation. The evidence disclosed the subject has a concrete block outside perimeter formation that does not support or anchor the home. Photographs disclosed that the home is not attached to this perimeter formation. The mobile home was not attached to the concrete blocks but was held in place by its own weight and resting on unmortared concrete blocks with wood shims.

The Property Tax Appeal Board further finds the board of review's apparent practice of classifying mobile homes as real estate does not "freeze" the assessments under section 24-5 of the Property Tax Code. Section 24-5 of the Property Tax Code, commonly known as the "Freeze Act" provides in part that "[n]o property lawfully assessed and taxed as real property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as personal property." (35 ILCS 200/24-5) Classification of property as real or personal is frozen by the Freeze Act only if it was lawfully made. Oregon Community Unit School District No. 220 v. Property Tax Appeal Board, 285 Ill.App.3d 170, 177-178 (2nd Dist 1996). The board of review provided no evidence of its pre-1979 policy. Moreover,

the Revenue Act of 1939, as amended, (Ill.Rev.Stat. ch. 120, ¶482) and the Mobile Home Local Services Tax Act, (Ill.Rev. Stat.1973, ch.120, ¶1201) with an effective date of August, 28, 1973, both provided that a mobile home could only be classified as real estate if it was resting in whole on a permanent foundation. Thus the board of review's classification of mobile homes as of January 1, 2008 as real estate, without reference to the type of foundation, appears to be unlawful. For the foregoing reasons the Property Tax Appeal Board finds the Christian County Board of Review's assessment practices prior to January 1, 2011 do not "freeze the assessments" of mobile homes.

In conclusion the Property Tax Appeal Board finds the mobile home located on the subject property should not be classified and assessed as real property. Therefore, the Property Tax Appeal Board finds that a reduction in the subject's assessment is warranted in accordance with the appellant's request.

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.

Donald R. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario Morris

Member

J. R.

Acting 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: December 23, 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.