FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Arthur & Lisa McDonald
DOCKET NO.: 08-05946.001-R-1
PARCEL NO.: 15-14-02-306-009

The parties of record before the Property Tax Appeal Board are Arthur & Lisa McDonald, the appellants, and the Washington 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 **Washington** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$689
IMPR.:	$212
TOTAL:	$901

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a mobile home measuring twenty-eight by fifty-six feet containing approximately 1,568 square feet square feet of living area. The home was manufactured in 2005 and features air conditioning. The property is located on a 15,000 square foot parcel in Richview, Richview Township, Washington County.

The appellants filed an appeal with the Property Tax Appeal Board contesting the assessment on the mobile home. The appellants contend 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, citing to the Mobile Home Local Services Tax Act. (35 ILCS 515/1).

In support of this contention, the appellants submitted photographs depicting that the mobile home does not rest on a permanent foundation, but sits on cinder blocks with wood shims and tie downs. A photograph depicts a beam resting on stacked concrete blocks that are not mortared with wooden shims. These concrete blocks are placed under the steel frame of the home. Wooden shims were placed between the top of the concrete blocks

and the home's frame to level the dwelling. The dwelling is not attached to the blocks but simply rests on the blocks by its own weight. There is also a tie-down strap in the photograph that is under the home anchoring the dwelling in place. The photograph also depicts a mortared concrete block formation around the outside perimeter of the home. There is no indication whether the home is attached to the perimeter formation.

Also attached to the appeal was a copy of an invoice for the purchase of the Clayton Freedom III model mobile home from Clayton Homes of Maryville, Tennessee. The purchase price was approximately $51,900.

Based on this evidence the appellants contend 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 appellants request a reduction in the subject's improvement assessment to $212.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment of the subject of $18,390 consisting of a $689 land assessment and a $17,701 improvement assessment. In support of the subject's assessment and classification, the board of review submitted a letter and a grid analysis of three comparable properties with both assessment and sales data along with applicable property record cards and Illinois Real Estate Transfer Declaration (PTAX-203) forms.

In the letter, the board of review reported that it has been the practice in Washington County "to assess mobile homes as real estate going back prior to 1979. The intent of this home is to be a permanent residence and we feel it passes the intention test." The board of review also pointed out Public Act 096-1477 "takes effect January 1, 2011 making any mobile home outside of a mobile park assessed as real estate unless it has been assessed under the Mobile Home Services Tax Act." Based on the foregoing legislation effective January 1, 2011, the board of review contended its position in this 2008 assessment appeal was correct and the property should remain assessed as real estate.

In the grid analysis, the board of review presented "sales in the county where a mobile home has been included in the sale as part of the real estate." The three comparables were located in Lively Grove, Nashville and Okawville Townships respectively. Each parcel was less than an acre and contained a mobile home built between 1995 and 2002. The mobile homes ranged in size from 1,792 to 1,863 square feet of living area; one was said to have central air conditioning. Each had a garage ranging in size from 576 to 1,080 square feet of building area. The properties had improvement assessments ranging from $22,652 to $33,591 or from $12.26 to $18.03 per square foot of living area. The property record cards for the comparables reflect land and improvement assessments occurring on these properties no earlier than 1993 (see property record card for comparable #1). The properties sold between August 2007 and July 2008 for prices

ranging from $82,000 to $117,000 or from $44.37 to $62.80 per square foot of living area including land.

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 appellants 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]

The appellants argued that the mobile home on the subject property was improperly classified and assessed as real estate. The board of review argued that the subject parcel should be taxed as real property under the like kind provision contained in section 24-5 of the Property Tax Code (hereinafter the Code) as mobile homes in Washington County have been taxed as real estate "going back prior to 1979" and, therefore, should be classified and assessed as real property. (35 ILCS 200/24-5)

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,

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

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).

The Property Tax Appeal Board finds 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). 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(l) 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. 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 also depicted stacked, non-mortared concrete blocks under the home actually support the mobile home. Wood shims are placed between these non-mortared blocks and the under-side frame of the mobile home to support and level the dwelling. The mobile home was not attached to the concrete blocks but was held in place by its own weight and with straps that go through the frame of the home.

The Property Tax Appeal Board further finds the board of review's purported practice of classifying mobile homes as real estate prior to 1979 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 this pre-1979 policy; the property record cards provided in this appeal reveal assessments of improvements no earlier than 1993. 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 purported policy of classifying mobile homes 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 Washington County Board of Review's purported pre-1979 assessment practices do not "freeze the assessments" of the 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. However, the Board finds the garage and porch do constitute real property subject to assessment under the Property Tax Code and, therefore, the Property Tax Appeal Board finds that a reduction in the subject's assessment is warranted in accordance with the appellants' 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.

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: September 23, 2011

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.