



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

APPELLANT: Marilea & James Hunter  
DOCKET NO.: 10-01275.001-R-1  
PARCEL NO.: 15-04-300-022

The parties of record before the Property Tax Appeal Board are Marilea and James Hunter, the appellants, by attorney Jared J. Hunter of the Hunter Law Firm, Salem, Illinois; and the Marion County Board of Review represented at the hearing by Special Assistant State's Attorney Christopher E. Sherer of Giffin, Winning, Cohen & Bodewes, P.C., Springfield, Illinois.<sup>1</sup>

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

**LAND:** \$23,000  
**IMPR.:** \$17,160  
**TOTAL:** \$40,160

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject property consists of a .96 acre site located along the shore of Lake Centralia that is improved with a boat dock of metal and concrete construction. The dock has two boat lifts, a ceiling fan and is wired for electricity. The property has an address of 3271 Everglades Lane, Centralia, Marion County, Illinois.

The appellants appeared before the Property Tax Appeal Board contending the boat dock is personal property and should not be assessed and taxed as real estate. Submitted with the appeal was a narrative prepared by counsel asserting the boat dock was put in service during 2009 at 2242 Lakeshore Road, Centralia, Illinois, on property owned by Jared Hunter. Counsel asserted his parents purchased the dock knowing that if a different property at the lake was purchased the dock could be moved. He also asserted in the written narrative that there were attempts to sell the dock and the boat lifts for around \$30,000 in order to fund the purchase of a smaller dock for the new location on

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<sup>1</sup> Marilea and James Hunter are the parents of Jared J. Hunter.

Everglades Lane. Counsel explained in the written narrative that due to the fact they were not able to sell the dock it was moved to the present location on April 15, 2010.

Counsel asserted the dock was moved over a period of approximately two hours by a three or four-man crew, with most of the time floating the dock the distance of over a mile across the lake. He also explained the dock is held in place by "Mud Poles" embedded in the bed of the lake. He explained that the gangway connecting the dock to the shore is composed of two feet by two feet thin concrete squares that can be removed and stacked to free the walkway and allow it to be lifted in order to be moved.

Counsel asserted the dock is not attached to the shore and floats up and down on the poles with the changes in the water level on the lake. He explained the walkway is hinged to allow the dock to float and the end of the walkway is sitting on the shore and not attached in any manner. He also stated in the narrative that the power service for the boat lifts is provided by being plugged into an outlet on the shore. Counsel further avowed that they have relocated the dock several times in order to gain additional clearance depth for the boat lifts to function.

Counsel also contends that personal verses real property has traditionally legally been an issue mostly as to the attachment to real estate for mortgage purposes. He argued that floating docks cannot be valued or count as real estate under appraisal requirements and because of Fannie Mae and Freddie Mac rules.

In his written submission counsel cited Beeler v. Boylan, 106 Ill.App.3d 667 (4<sup>th</sup> Dist. 1982) as setting forth the intention test as one method to determine whether the property in question is real or personal in nature. In Beeler the court determined that grain dryers were not real property for taxation purposes. Counsel noted the court in Beeler stated that:

Under the intention test, three criteria are applied to evaluate whether property is personalty or realty, or more properly, whether an item has become a fixture. First, the property must be annexed to the realty or to something appurtenant thereto; second, the property must be applied to the use or purpose to which that part of the realty, with which it is connected, is appropriated; and finally, the party making the annexation must intend to make a permanent accession to the freehold.

Beeler, 106 Ill.App.3d at 670. Under the first element counsel argued the boat dock was not annexed or attached so as to become real property; under the second element counsel asserted the dock was not connected, and the third element was not met because there was no intention that the dock be a "permanent accession to the freehold."

Counsel also asserted that the boat lifts were similar to the grain dryers in Beeler that are only attached by bolts to the boat dock and should not be taxed even if the dock itself was taxed. He argued these boat lifts are a replaceable item that can be changed depending on the need and type of boat.

Counsel further argued that the dock was not located on the subject site until April 15, 2010, therefore, it is not taxable for the 2010 tax year.

At the hearing counsel reiterated the points made in his written submissions. Counsel called as a witness Marilea Hunter who testified that her son, Jared Hunter (counsel), purchased property at the lake and she and her husband purchased the dock and put it in place for him. Subsequently, the appellants purchased the subject lot on the lake and built a house. Jared Hunter then decided to purchase the house next to his parents. The persons who purchased Jared's old property did not need the large dock so the dock was floated across the lake to the appellants' property. The dock is attached to the land/shore by a metal "rampway" that rests on the land. The only attachment is the poles in the lake that the boat dock slides upon with the level of the water.

Mrs. Hunter explained that the boat dock is held in place by the "mud poles" and there is no rope or cable attached to the land to hold the dock in place. She also explained there was an extension cord line that provides electricity to the dock.

Mrs. Hunter testified that they tried to sell the dock by word of mouth. She could not recall any details concerning the price paid for the dock or the price they were trying to sell the dock for.

Under cross-examination Mrs. Hunter testified that the dock stays in place during the winter. She did not know the weight of the concrete squares on the dock. She further testified the dock does have a ceiling fan.

James Hunter was called as the next witness on behalf of the appellants. He testified that there were other persons at the lake he tried to sell the dock to although he could not recall the names. Mr. Hunter did not provide any testimony with respect to the asking price of the dock.

Mr. Hunter testified that one of the board lifts had to be taken off the dock for repair. He also testified that another boat lift was broken and need to be taken off the dock for repair. He also testified that it takes approximately five minutes to remove one of the "mud poles" out of the bed of the lake and the pontoon boat he owns could be used to move the dock.

Neither of the appellants could provide definitive testimony as to when the dock was put in place at its current location

although Mr. Hunter testified the dock was located at 2242 Lakeshore Road on January 1, 2010.

Based on this record the appellants requested the improvement assessment be reduced to \$0 resulting in a revised total assessment of \$23,000.

The board of review submitted its "Board of Review Notes on Appeal" (Board of Review Exhibit A) wherein its final assessment of the subject totaling \$40,160 was disclosed. The subject dock had an assessment of \$17,160 which reflects a market value of \$51,041 when using the 2010 three year average median level of assessments for Marion County of 33.62%. The board of review submitted photographs depicting the boat dock (Board of Review Exhibit B) and property record cards regarding Marion County's pre-1979 treatment of boat docks for tax purposes (Board of Review Exhibit C).

The board of review also submitted a brief in which it argued the boat dock was properly classified and assessed as real estate pursuant to section 24-5 of the Property Tax Code (35 ILCS 200/24-5) also known as the "Freeze Act". Section 24-5 of the Property Tax Code provides:

Tax on personal property. Ad valorem personal property taxes shall not be levied on any personal property having tax situs in this State. However, this Section shall not prohibit the collection after January 1, 1979 of any taxes levied under this Code prior to January 1, 1979, on personal property subject to assessment and taxation under this Code prior to January 1, 1979. 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 board of review contends that the pre-1979 procedures of Marion County control when determining whether the subject boat dock should be assessed as real property or personal property. It argued that if similarly situated property was treated as real estate prior to 1979, then it must continue to be treated as real estate. In the brief the board of review argued that its investigation disclosed that Marion County's pre-1979 assessment practice was to classify boat docks, including those at Lake Centralia, as real estate. It further contends the subject boat dock is of "like kind" to those docks and should be classified and assessed as real estate.

In the alternative the board of review argued that if the Freeze Act does not apply the intention test demands that the subject boat dock be considered real estate.

At the hearing Patty Brough, Marion County Chief County Assessment Officer (CCAO), was called as a witness. Ms. Brough has been the CCAO for 12 years. She testified that as of January 1, 2010, the appellants had purchased the subject land but had not yet constructed their home. The only improvement assessed was the boat dock that was floated from the other property. She testified that based on conversations with Jared Hunter that he was trying to sell his property and trying to pro-rate the taxes to the new owner. She asserted that she had asked him about the boat dock and he informed her to place it on the other property. She did not know when the dock was actually floated to the subject property. She testified Marion County assessment records reflect the dock was at the subject property as of January 1, 2010 and that no one disputed whether the dock was physically located at the subject site on January 1, 2010.

Ms. Brough testified she has seen the boat dock and took the photographs of the dock (Board of Review Exhibit B). She described the dock as being of a wood and metal frame with concrete squares. Photographs of the dock depict the concrete squares as resting on the framing to form the decking. The dock is wired for electricity. She also described the dock as having poles embedded in the real estate and the dock slides/floats on the poles depending on the level of the lake. There is also a gang plank that is attached to the real estate parcel. She also had a photograph of water hydrant next to the boat dock. Brough was of the opinion the dock was attached to the real estate by the poles and the gang plank. She was also of the opinion the owners were going to use the dock indefinitely. Ms. Brough asserted the function of the boat dock was to dock boats and to be used for the appellants' enjoyment on the lake. She also contends the boat dock was not portable.

Brough also testified she reviewed the assessment practices and records of Marion County prior to 1979 with respect to the way boat docks were treated. She identified boat docks that were assessed as real estate prior to 1979, which were contained in the property record cards made part of Board of Review Exhibit C. She further testified she was not able to identify any boat docks that were not assessed as real estate prior to 1979. Based on the records she asserted that Marion County uniformly applied the rule of classifying boat docks as real estate prior to 1979, without exception.

She testified that the subject boat dock performed the same function as those boat docks assessed prior to 1979 in Marion County. She also was of the opinion the subject boat dock was attached to the real estate as were the pre-1979 boat docks in Marion County. She was of the opinion the subject boat dock was part of the real estate.

During cross-examination Brough testified she had a conversation with counsel in which he asked that the boat dock be assessed to the other property due to the fact he was selling his property and did not want to pro-rate the value to the new owners. Counsel asserted he had no recollection of the conversation and pro-rating the dock taxes.

She also testified that the property record cards contained in the record as Exhibit C pre-dated January 1, 1979. Brough further testified assessments are pro-rated in Marion County by picking up the date an improvement is complete and assessing it the remainder of the year. She further explained that in valuing the subject boat dock she used "Pro Val", a computer assisted mass appraisal system. Brough explained that this system had schedules from Marshall & Swift and she further got with several property owners to get cost schedules and pricing from them to see how the computer system was valuing the docks.

Brough further testified it was the practice of Marion County assessment officials to assess all boat docks on Lake Centralia as real estate. She also testified that she had reviewed personal property records in Marion County and did not see any boat docks identified as personal property.

Mr. Hunter was called as a witness on behalf of the board of review and testified he did not notify the Marion County CCAO or any assessment official about the existence of the boat dock on his property. Mr. Hunter further asserted that the "mud poles" are placed in the lake and the gravity of the boat dock pushes the poles into the bed of the lake. He thought the poles were approximately three feet into the bed of the lake. He explained the dock is free floating on the poles.

Based on this evidence, the board of review requested confirmation of the assessment.

The appellants submitted a rebuttal brief challenging the applicability of the Freeze Act.

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 the evidence in this record does not support a reduction in the subject's assessment.

The primary issue before the Property Tax Appeal Board is whether the boat dock owned by the appellants located on Lake Centralia is personal property and should not be classified and assessed as real estate. 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) in effect as of January 1, 2010, defined "Property; real property; real estate; land ; tract; lot" 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).<sup>2</sup>

Also of relevance to this appeal is the following passage from the Article IX, section 5(c) of the Illinois Constitution of 1970, which provides as follows:

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).

The court in Board of Education of Gibson City-Melvin-Sibley Community Unit School Dist. No. 5 v. Illinois Property Tax Appeal Board, 354 Ill.App.3d 812 (4<sup>th</sup> Dist. 2005) explained that:

In 1979, to (1) effectuate the intent of this section of the Illinois Constitution [Ill.Const. 1970, art.IX, §5(c)] and (2) prevent the reclassification of personal property as real property, the General Assembly enacted section 18.1 of the Code (the Freeze Act) (Ill.Rev.Stat.1979, ch. 120, par. 499.1 (now 35 ILCS 200/24-5 (West 2000))), which barred reclassification of personal property that existed before 1979. In 1982, the legislature amended the Freeze Act to prohibit taxation of "like kind" property acquired after January 1, 1979.

Board of Education of Gibson City-Melvin-Sibley Community Unit School Dist. No. 5., 354 Ill.App.3d at 813. 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

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<sup>2</sup> Section 1-130 of the Code was amended by Public Act 96-1477, §805, effective January 1, 2011.

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 (3<sup>rd</sup> 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 showing that property must be classified as personal property under the Freeze Act. Oregon Comm. School Dist. v. Property Tax Appeal Board, 285 Ill.App.3d 170, 176 (2<sup>nd</sup> Dist. 1996). However, if the taxpayer meets this burden, the property must be classified as personal property without resorting to any other method of classification. Id.

The court in County of Whiteside v. Property Tax Appeal Board, 276 Ill.App.3d 182 (3<sup>rd</sup> 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 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 (3<sup>rd</sup> 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 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 noted the 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 (3<sup>rd</sup> Dist. 1996); Moniot v. Property Tax Appeal Board, 11 Ill.App.3d 309 (3<sup>rd</sup> 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. The court further found that the like kind criteria used by the Property Tax Appeal Board in County of Whiteside v. Property Tax Appeal Board, 276 Ill.App.3d 182 (3<sup>rd</sup> Dist. 1995) was not the exclusive method for determining whether the Freeze Act applies to post 1978 property. Oregon, 285 Ill.App.3d at 182-183.

In this appeal the Board finds the Marion County Board of Review, through the uncontradicted testimony of Chief County Assessment Officer Patty Brough, established that the pre-1979 practice in Marion County had been to classify and assess boat docks as real property. Brough provided testimony and numerous property record cards set forth in Board of Review Exhibit C demonstrating that boat docks were assessed as real estate prior to January 1, 1979. She further testified that her research had caused her to examine personal property tax returns and she found no examples that boat docks had been classified as personal property prior to January 1, 1979. Based on this record and the workings of the Freeze Act, the Property Tax Appeal Board finds the boat dock on the subject property was properly classified and assessed as real estate.

The next issue to be addressed is whether the assessment of the boat dock is reflective of its market value. Market value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellants did not meet this burden of proof.

The assessment of the boat dock of \$17,160 reflects a market value of \$51,041 when using the 2010 three year average median level of assessments for Marion County of 33.62%. In this appeal appellants' counsel submitted a brief in which he asserted the appellants had attempted to sell the dock for \$30,000. However, during the course of the hearing neither appellant provided any definitive testimony with respect to the marketing or listing of the dock for sale. Neither appellant specifically testified

establishing the listing price or offering price of the boat dock. Brough did provide testimony with respect to how the value of the boat dock was determined. The Board finds the appellants presented no credible evidence or testimony challenging the correctness of the assessment of the boat dock.

The final issue is whether or not the boat dock should have a pro-rated assessment for tax year 2010 as allowed by sections 9-160 and 9-180 of the Property Tax Code. (35 ILCS 200/9-160 & 9-180). Again, appellants counsel asserted in his brief that the dock was moved to its current location on April 15, 2010. However, at the hearing neither appellant could provide clear unequivocal testimony with respect to when the dock was moved to the site. Neither testified that the dock was moved to the site on April 15, 2010 as asserted in the appellants' brief. Based on this record the Board finds the appellants did not present sufficient evidence to challenge the correctness of the assessment of the dock on the basis that the improvement was not in place during calendar year 2010. The Board also finds the appellants did not provide any testimony establishing a specific date that the dock was placed on the subject site which would allow the Property Tax Appeal Board a basis to calculate a pro-rated assessment.

Based on this record the Board finds a change in the subject's assessment is not justified.

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.*

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 20, 2013

*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.