FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Steven & JoAnn Pingsterhaus
DOCKET NO.: 12-00058.001-F-1
PARCEL NO.: 17-12-400-005

The parties of record before the Property Tax Appeal Board are Steven & JoAnn Pingsterhaus, the appellants, and the Marion 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 **Marion** County Board of Review is warranted. The correct assessed valuation of the property is:

F/Land:	$122
Homesite:	$0
Buildings:	$1,670
Outbuildings:	$0
TOTAL:	$1,792

Subject only to the State multiplier as applicable.

ANALYSIS

The subject 40-acre parcel is improved with a fourteen foot by twenty foot wooden structure/portable building. The building was constructed on site in 2002 and rests on "skids" or railroad ties. Features of the building include an open porch of five feet by twenty feet. There is no water or electric service to the building, however, some power is supplied by a small solar system for a shop light. The subject property is located in Iuka, Romine Township, Marion County, Illinois.

The appellants appeared before the Property Tax Appeal Board contesting the assessment placed on the "portable building" and contending this structure should not be classified and assessed as real estate because it is not resting in whole on a permanent foundation. (Citing to Section 1-130 of the definitions in the

Property Tax Code). In support of this argument, the appellants provided a brief with their contentions, a copy of a letter from the Marion County Board of Review dated December 3, 2012 and seven color photographs depicting the building, the railroad ties and the exterior gas line to a portable gas tank.

In the brief, the appellants reported in pertinent part that the building serves as storage for tools needed to complete the appellants' forestry obligation and also temporary shelter from the environment. "The scoring and cutting of selected trees takes place in the winter months and we reside over an hour away from the subject property, and temporary shelter from the elements is vital in the completion of this Forestry management [of the 40-acres of timber that is enrolled in the Forestry Stewardship Program]." At the hearing, the appellants testified that the solar system on the building is used to power one shop light. They also stated that the building was not used as a dwelling.

The appellants further contend that a previous assessor advised the appellants that the subject building was not taxable. At hearing, the appellants further testified that in about 2003 two assessing officials appeared at the subject property, reviewed the structure and having verbally confirmed with the appellants the lack of electricity, water and foundation for the building, declared the structure was not taxable because it is on skids. Additionally, as part of the brief, the appellants report they intend to sell the portable building and build a home on the same site after they retire and thus, the building is temporary and portable.

The appellants further argued that the subject building lacks any footing, foundation or slab under it and thus, the building is not connected/secured to the ground in any way. As such, the appellant contest (1) "being taxed on a portable building due to a size that doesn't exist in the Illinois tax code" and (2) being taxed for a portable building that does not meet the definition of "real property" (86 Ill.Admin.Code §1910.5 citing to 35 ILCS 200/1-130 from P.A. 91-502, §5, eff. August 13, 1999)[1] as follows:

> Property; real property; real estate; land; tract; lot. The land itself, with all things contained

[1] The Property Tax Appeal Board recognizes that this provision of the Property Tax Code was significantly modified by P.A. 96-1477, §805, effective January 1, 2011, however, those modifications are not relevant to the arguments of this appeal.

> therein, and also all buildings, structures and improvements, and other permanent fixtures thereon, including all oil, gas, coal and other minerals in the land and the right to remove oil, gas and other minerals, excluding coal, from the land, 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**. Not included therein are low-income housing tax credits authorized by Section 42 of the Internal Revenue Code, 26 U.S.C. 42. [Emphasis added.]

At hearing, the appellants further argued that in the absence of a new law, decree or other written document, they did not understand how the Marion County assessing officials could simply decree that buildings that meet or exceed a certain size could now be assessed.

Based on this evidence and the argument that the subject structure by definition is not subject to real estate assessment and taxation, the appellants requested that the Property Tax Appeal Board reduce the subject's improvement assessment to $0 and make no change to the farmland assessment.

On cross-examination, the board of review inquired as to the method by which the structure was brought to the site to which Mr. Pingsterhaus testified that the building was constructed on site on skids. He also stated that as built with the floor structure, the building can be moved by use of a mule. He further testified the building is a storage unit and that, if occasionally he has to stay out there, he stays out there. He noted this was seldom, but he does sometimes stay at the building. When asked what method would be used to move the structure, Mrs. Pingsterhaus stated, "Apparently we would use a mule." Mr. Pingsterhaus further testified that he does not believe the building, such as the porch, would have to be removed or disassembled in order to utilize the mule.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject property's final assessment of $1,792 was disclosed. The subject has an improvement assessment of $1,670 and a farmland assessment of $122.

In response to the appellants' legal argument, Patty Brough, Clerk for the Marion County Board of Review and Marion County Supervisor of Assessments, presented a two-page letter with numerous attachments. In the letter, Brough argued that due to the subject structure's large size "it is not easily taken to or removed from the land." She further wrote, "It is the policy of the Assessor that any structure measuring or exceeding 10 feet x 16 feet, are presumed to be fixtures and therefore assessable." In further support of the uniform treatment and proper application of assessment practices under the Freeze Act, Brough included property record cards for 10 properties "throughout the county as evidence that sheds were assessed as real property." She also submitted ten property record cards depicting the assessment of sheds on other parcels in the county. These property record cards depict the assessment of sheds that range in size from 60 to 432 square feet of building area. Furthermore, it appears that five of the parcels have sheds of less than 160 square feet (i.e., 10 feet by 16 feet) which have been assessed in Marion County.

At hearing, Brough further expounded that the county has always assessed sheds, but in 2010 township assessors within in the county questioned how small of a shed is too small for purposes of assessment? At that point along with some reviews and reassessments, it came to light that there was some inconsistency among the townships as to whether sheds were or were not treated as assessable and thus, the ten foot by sixteen foot size policy came into effect. Moreover, the new township assessor, who filled a vacancy that had existed for several years, then applied this policy to the subject building and assessed the structure.

As to the alleged portability of the subject structure, Brough included an Affidavit referencing conversations she had with employees of Marten Portable Buildings, Bear Building Supplies, M & M Sales and Woolsey Brothers Farm Supply, each of whom reportedly said "the only sure way to move a shed that size is by a machine called a mule."

Based on the aforesaid policy, the board of review requested confirmation of the subject's improvement assessment.

At hearing, Brough acknowledged that until the instant hearing and testimony from the appellants, her office was unaware that the subject structure had been in existence since 2002. She did further assert that her office has no intention of pursuing assessing the structure for prior years.

At hearing in rebuttal, the appellants cited the letter dated December 3, 2012 from the Marion County Board of Review, which was included in the appellants' initial filing with the Property Tax Appeal Board, stating in pertinent part:

> It is the policy of the Assessor that any structure measuring or exceeding 10' x 16', are presumed to be fixtures and therefore assessable.

In written rebuttal, the appellants argue that "Marion County cannot tax a portable building based on its made up size guidelines." As to the comparables presented by the board of review, the appellants note there was no substantive evidence that these purportedly comparable buildings were portable versus having some sort of footing or foundation which annexes them to the ground "making them a permanent fixture." As to the ten comparables which are currently being assessed, the appellants wrote, "If these buildings also do not rest in whole or part on a permanent foundation, per the Illinois Tax Code, this simply proves that we are not the only ones being taken advantage of." contended "the State of Illinois does not tax personal property and it is unjust of Monroe County to arbitrarily assess personal property."

After hearing the testimony and reviewing 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 based on the statutory definition of real property the subject building is real property which is subject to *ad valorem* taxation.

The appellants argued that the building on the subject property was improperly classified and assessed as real estate in 2012. The appellants argued the structure, which is not permanently affixed to the land, should be considered exempt from assessment and not taxed as real estate. The appellants further contended that the building is portable, thereby inferring that it could be removed at any time. The Board finds that these facts do not alter the fact that the subject building is real property and is being assessed based on a uniform policy to assess such buildings that are at least 10 feet by 16 feet in size. The subject building substantially exceeds the county's size guideline and therefore has been assessed.

The board of review contends the subject building has been treated under the policy in Marion County to tax portable

buildings "measuring or exceeding 10 feet x 16 feet." Therefore, the board of review contends the appellants' building should be classified and assessed as real property.

The Property Tax Appeal Board finds the sole issue before this Board is whether the subject building is to be classified and assessed as real property.

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 defines real property in part as:

> The land itself, with all things contained therein, and also buildings, structures and improvements, and other permanent fixtures thereon, . . . (35 ILCS 200/1-130). [Emphasis added.][2]

In light of the foregoing definition, the Property Tax Appeal Board finds the subject building, a "structure," was correctly classified and assessed as real property.

In Ayrshire Coal Company v. Property Tax Appeal Board, 19 Ill.App.3d 41 (3rd Dist. 1974), the court addressed the issue of distinguishing between real and personal property. In determining the property classification of heavy machinery and equipment and whether they were annexed to real estate, the court held:

> . . . [p]ersons dealing with land and improvements thereon may consider a building thereon as personalty for their purposes, but such treatment as between individuals, does not change essential characteristics of building as realty. Id. at 44-45.

The court emphasized that an examination of the item, not the contractual language or booking practices, should establish the classification of an item. The court in Ayrshire further wrote, "[a] structure has been defined in the broad sense as any construction or piece of work composed of parts joined together in some definite manner." Id. at 45. In addition, the court noted:

> A building has been defined as a fabric, Structure, or edifice, such as a house, church, shop, or the like,

[2] The Property Tax Appeal Board recognizes that this provision was modified as of January 1, 2011 in a manner that does not impact the arguments in this proceeding.

> designed for the habitation of men or animals or For the shelter of property. [Capitalization as shown; citation omitted.] Id. at 45.

In the case of In re Hutchens, 34 Ill.App.3d 1039 (4th Dist. 1976), the court noted that the trial court held that:

> . . . the manner of the placement of the cabin on blocks and a provision of the lease for plumbing connections between the cabin and a septic tank and a well sufficiently attached the cabin to the land to 'become a part of it.' Id. at 1040-1041.

On appeal, the Fourth District Appellate Court held that as far as property taxes are concerned, the finding of the trial court that the cabin was part of the real estate was not contrary to the manifest weight of the evidence.

After considering the evidence and record including the photographs of the subject building, the Board finds the improvement is a "building" or a "structure" as defined in Section 1-130 of the Property Tax Code (35 ILCS 200/1-130). Thus, based on this record, the Board finds the building is real property and may be assessed as such regardless of its foundation.[3]

The Property Tax Appeal Board is certainly cognizant of the appellants' aggravation and confusion given that the subject structure had not been assessed for the first ten years of its existence and that the appellants found the county's response(s) perplexing with regard to questions of foundation. In summary, however, the record before the Board does not support any inference of a lack of uniformity in the treatment of structures that are at least 10' x 16' in size, like the subject. Thus, the Property Tax Appeal Board finds the subject building is properly classified as assessable real property. As the appellants made no other challenge to the assessment of the structure, no change in the improvement assessment is warranted.

[3] The instant case is distinguishable from those cases where the structure is identified as a vehicle or similar portable structure such that it can be classified based on its physical foundation pursuant to the Property Tax Code. See Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d 711 (2nd Dist. 1996).

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 21, 2014

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.