FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Teriann Gutierrez
DOCKET NO.: 12-02300.001-R-1
PARCEL NO.: 08-09-100-002

The parties of record before the Property Tax Appeal Board are Teriann Gutierrez, the appellant, by attorney Ryan Byers of Rammelkamp Bradney, P.C., in Jacksonville, and the Morgan County Board of Review.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds ***A Reduction*** in the assessment of the property as established by the **Morgan** County Board of Review is warranted. The correct assessed valuation of the property is:

F/Land:	$3,800
Homesite:	$2,090
Buildings:	$36,080
Outbuildings:	$0
TOTAL:	$41,970

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Morgan County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2012 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Preliminary Matter

The appellant's appeal petition challenged only the improvement assessment of the subject property. No dispute was raised concerning either the land (homesite/non-farmland) assessment or the farmland assessment. Prior to commencement of the hearing, the appellant and the board of review amicably resolved a portion of the improvement assessment dispute.

After their private discussions, the parties reported to the Property Tax Appeal Board that an agreement to assess the building on the subject parcel, referred to as "The Lodge," built in 2006 and containing approximately 1,296 square feet of building area with a finished attic, would have an assessment of $30,000 for 2012. Additionally, the parties agreed that the same $30,000 assessment for "The Lodge" building would apply for tax years 2013 and 2014 upon the filing of subsequent appeals by the appellant before the Property Tax Appeal Board. This agreement was

placed on the oral record with the Administrative Law Judge at the commencement of the hearing. Based upon the oral stipulation of the parties as to the assessment of "The Lodge" for tax year 2012, the improvement assessment herein reflects the parties' agreement.

After settlement of the assessment of "The Lodge" building, there still remains a dispute in this appeal concerning the improvement assessment placed upon the subject property. The remaining dispute was the sole focus of the hearing, the arguments of the parties and the written closing arguments. This decision will therefore focus solely on the remainder of the improvement assessment dispute, accompanied by necessary background information.

Findings of Fact

The subject 49.75-acre parcel includes both farmland and non-farmland acreage. Part of the non-farmland acreage is utilized as a campground, known as Buena Vista Farms. The campground includes traditional camping and recreational vehicle parking; the facility known as "The Lodge" is available for rental as a banquet/meeting center for private parties and weddings.

The campgrounds are also improved with five "park model trailers" or "recreational park trailers" (hereinafter "RPTs" or "units"), several of which are available for rent. Three units are dedicated for overnight accommodations; one unit is used as a lounge; and one unit is a bathhouse with five restrooms. Two units contain 240 square feet of building area; one unit contains 384 square feet of building area; one unit contains 396 square feet of building area; and one unit contains 456 square feet of building area.[1] Each of the units have at least one sink and toilet; units for overnight accommodations also have either a bathtub or a shower. The units also have a window air conditioning unit and electric baseboard heat. Each of the RPTs use a hose to hook up for water service, a hose to hook up for sewer service and an electrical plug to obtain electric service. The RPTs also have a set of stairs/porch/deck which is not attached to the unit along with skirting. The units have a permanently attached trailer bed or chassis with removable wheels and a removable hitch. The units were placed on the subject parcel in mid-2012. As the trailers are in place more than 30 consecutive days, the trailers are tied down in place by straps connected to concrete footings with an eyelet in the center. The subject property is located in Chapin, Township 15N, Range 11W, Morgan County.

The appellant Terriann Gutierrez appeared before the Property Tax Appeal Board with legal counsel. For purposes of this hearing and, after resolving the assessment of "The Lodge," the appellant contests the real property assessment placed upon the RPTs located on the subject property. The appellant contends these five units should not be classified and assessed as real property, because the RPTs are personal property which is not assessable under the Property Tax Code.

The appellant Gutierrez was called as a witness and testified that the subject property is operated as a commercial business consisting, in part, of a campground with RV sites and RPTs (which she referred to as cabins) that are rented out. The property also hosts events, mostly weddings, rehearsal dinners and occasionally a party or a meeting. As to the use of the RPTs, the appellant

[1] Data was derived from the schematic drawing identified as Attachment A to the "Board of Review Notes on Appeal."

testified that often the bride and groom and/or wedding parties stay for two nights, both after the rehearsal dinner and after the Saturday reception. She contended that there is a shortage of hotel rooms in the community and thus, the ability to stay in the RPTs is a convenience for the participants in weddings. She testified that "The Lodge" or event center was located separate from the campground, within walking distance, "but I would drive."

For the operation of the campground, the appellant is annually licensed and inspected by the Illinois Department of Public Health.[2] As of the date of hearing (February 2016), the campground was "coming into" its fourth year in operation and the appellant also tries to be well-read about standards in the campground industry. The appellant affirmatively testified that the subject property has taken no action to be registered or operated as a mobile home park; the witness also candidly acknowledged that she has very little knowledge about mobile home park registration and/or licensure.

Guiterrez testified that there are a total of five RPTs located in a portion of the subject parcel utilized as a campground; three of the RPTs are rented out for lodging purposes, one is a 'bathhouse' and one is a common area unit. The appellant purchased the units in 2012. The appellant described the physical structure of the RPTs as being located on a single-frame metal chassis with the unit transported on the road by a pick-up truck with a trailer hitch. Upon arrival, each RPT chassis had wheels attached for purposes of transportation. (See Appellant's Exhibit 2) The appellant (or someone at her direction) removed the wheels from the RPTs in order to strap the units in place for wind. The appellant testified that Illinois state law requires if the RPTs remain in the same location for more than 30 days, they have to be strapped down for wind and the subject units are so affixed to the ground.[3] Gutierrez further testified the strapping for each RPT consists of two nylon straps that are about 1.5 inches wide with a ratchet handle and a hook on one end; the hook attaches to an eyebolt located in a concrete pillar which is sunk into the ground. When asked if the units have foundations, the witness testified, "No, there is concrete round pieces in the ground and that is what they rest on and we mow over those. They are at ground level." The witness did not know how deep in the ground the pillars go.

The witness identified the units as depicted in eight photographs (two per page) shown in the four-page document identified as Appellant's Exhibit 2. Gutierrez testified that the photographs were taken in April or May 2012 when the units were brought to the subject property. The top photograph on page one depicts the bathhouse from the exterior which was described as consisting of five individual bathrooms; Guiterrez further testified the bathhouse is used by recreational vehicle guests who "often don't like to use their own bathrooms" and prefer to shower in a facility. The bottom photograph on page one and both photographs on page two depict different angles of the exterior of a "small" RPT used as sleeping quarters. Page three of Exhibit 2 depicts the exterior of another RPT used as sleeping quarters. Page four of Exhibit 2 depicts other exterior views of the units, including in the last photograph depicting the three sleeping units as originally placed by the appellant. The appellant also testified one of the RPTs

[2] See 210 ILCS 95/1 et. seq.

[3] As part of the written briefs, the Administrative Law Judge requested that counsel for the appellant provide the citation to the statute mandating the units be tied down when in place for more than 30 days. No such citation was provided with the appellant's post-hearing brief.

is a common area unit with an exercise bike, the ability to watch television and/or relax for male guests and/or for female guests to have their hair and makeup done.

The units are not permanently attached to any utilities. For electric service, the RPT is plugged into a metal station/pillar with 110 watt service similar to an electric dryer outlet. This access to electricity and use of electricity is the same type utilized by recreational vehicles, fifth wheels and pull-behind campers at the subject's campground. For water for the RPTs, there is a hose bib that attaches like a garden hose to a faucet in the same manner that recreational vehicles and campers obtain water at the campgrounds. Sewer service for the RPTs involves a plastic, expandable tube that is hooked up to an outlet or port on the RPT with the other end of the tube going to a disposal hole in the ground with a screwed on cap; the ground disposal is hooked to septic tanks. This method of sewer disposal is the same for motored recreational vehicles and campers. For heating and cooling, the RPTs have window air conditioner units that are 110 watt capacity and baseboard electric heater units of similar wattage.

The witness identified Appellant's Exhibit 3 consisting of four pages as the "invoices" of the units. The appellant testified that one of the invoices reflected two identical units and the other three invoices reflected three different units.[4] The Board finds that examination of the documents reveals three separate serial numbers; reported dimensions of the units are: 11 feet 10 inches by 37 feet 10 inches; 11 feet 10 inches by 32 feet; and 11 feet 10 inches by 25 feet. The documents depict the seller was Fleetwood Homes, Inc. of Rocky Mountain, Virginia. When asked if she discussed with the seller the suitability of the RPTs for use as a permanent residence, the witness stated, "I don't think they recommend them as a residence." When asked if this was due to the winterization issues, the witness stated that the units depreciate pretty rapidly and they are just not made that sturdy. In terms of depreciation, the witness testified that her business expected to get less than 10 years' use from the RPTs. Gutierrez testified that other campgrounds in Illinois have RPTs, but she could not be specific by name which campgrounds those were. As she is aware, these other campgrounds would use the units for a like period of ten years.

The appellant testified that the five RPTs are not used year-round because the units are not suitable to be lived in during the winter as the water freezes and this would cause the toilets to crack. Instead, she testified that the units are winterized[5] and shut down from October 31 to April 15 along with the event business being shut down for that same time period. Gutierrez acknowledged that the RPTs have electric baseboard heat, but contended the units are not suitable for living in during the winter; she was unfamiliar with the insulation of the units, but noted that the walls were relatively thin.

The witness opined that it would be very easy to move/relocate the RPTs within or from the subject parcel with the use of a pick-up truck and a ball hitch once the wheels have been put back on. As of the date of the hearing, the water was not hooked up and the units were not plugged in.

[4] These four pages were identified as Exhibit E in the appellant's revised appeal petition postmarked on October 16, 2013. Both as Exhibit E and Appellant's Exhibit 3, pages 3 and 4 appear to be duplicates of the same document given the serial number depicted on each page.

[5] The witness testified that once the water hook-up is removed for the season, air is hooked up to the water inlet in order to blow out the pipes of remaining water and RV antifreeze is placed in the toilets and sinks to avoid freezing and cracking. The winterization process takes perhaps half an hour per unit.

The witness opined the units were ready to move except for the wheels. The units also have vehicle titles.[6]

She testified that the normal length of a stay in the RPTs at Buena Vista Farms was two nights with some guests staying merely one night. Since owning the RPTs, guests have not stayed more than four nights which length of stay occurs about once a year, except for one circumstance of a "crazy guy," who was homeless and had a car full of possessions. This man intended to stay for a month, but the arrangement did not work since there are no cooking facilities and there was no room for the man's possessions in the RPT. After no more than three weeks, this guest was asked to leave and did so voluntarily.

Based on this evidence and the argument that the subject RPTs by definition are not subject to real estate assessment and taxation, the appellant requested that the Property Tax Appeal Board reduce the subject's improvement assessment for the RPTs to $0.

On cross-examination by the board of review, the appellant was unable to provide any additional information about the R-value of the RPTs; she does not know how much insulation the units have, but she does assume that there is some insulation. Furthermore, she does not expect the insulation of the RPT to be similar to that of her residence.

Gutierrez did not know if RPTs like those of the subject are utilized in northern parts of the United States for camping purposes in winter. The witness was asked if it was possible, if the heat remained on, would the pipes not freeze? In response, the appellant opined that the hose would freeze where the water comes in to the unit. Upon further inquiry about insulating the incoming hose, the witness testified that she was aware that there are some recreational vehicles that are termed "four season RVs"; any RVs that are not of the "four-season" type are shut down before winter. The appellant further testified that "four season RVs" have heating coils in their water reserve tank and that is how they function through the winter. The RPTs do not have a reserve water tank. The appellant was asked whether a heating coil could be used around the water pipes to prevent freezing and she opined that all of the pipes would freeze.

When asked further about moving the RPTs, the witness acknowledged that there are unattached steps that lead into the respective units. The appellant further testified that when the RPTs were delivered to the parcel, the delivery was made to the front of the property by the road and then the appellant (or someone at her direction) moved the units within the parcel either by pick-up truck or a John Deere tractor to the back of the property. The witness opined that there may be a law about how the units are moved on roads and highways due to width and length that may require the use of semi-truck tractors, but she did not know.

The witness again acknowledged that the wheels are removed and skirting made of "cement board" is placed around and resting against the sides of the units. Gutierrez believed that the

[6] As part of the post-hearing briefing, the Administrative Law Judge requested submission of copies of the vehicle titles. Exhibit A to Appellant's Closing Argument consisted of five pages, four of which were entitled "Manufacturer's Statement or Certificate of Origin to a Manufactured Home" and one of which concerning the bathhouse was a Certificate of Origin for a Vehicle.

trailer hitch has been removed from the units. Therefore, in order to move the units, the hitch and wheels would have to be reattached.

The Administrative Law Judge asked the witness to review Exhibit 3 and she confirmed that there were no stated purchase prices on the documents entitled invoices. Gutierrez testified that there were four different prices for the units, two units being identical; when questioned further, the witness said the units possibly were $10,000 to $25,000 each, but she did not know the exact price. The witness also did not know the cost to install and/or stabilize the units, including the installation of the concrete piers.

On redirect examination, the witness testified that the skirting is not permanently affixed to the respective units unless there is a nail every few feet on the thin lip that is available. The skirting is made of cement board or hardboard which is about ¼ of an inch thick. The board is cut to fit by a saw from 4 foot by 8 foot sheets. Gutierrez testified the skirting is "more or less propped up there," noting that one of the sections continues to fall down.

The witness was asked to compare and contrast the sinks and toilets in the RPTs from those in a motorized RV. The appellant testified that she was not very familiar with the RVs and campers, but sometimes those toilets are equipped with a flap that covers the sewer hole, but there is no such flap in the toilets of the RPTs. Gutierrez testified that she sees no difference in the sinks.

On re-cross examination, the appellant testified that she does not believe that the RPTs have built in tanks for water and/or sewer, but she was not 100% sure about that. She also testified that guests who stay for a week utilizing either a pull-behind camper or a fifth-wheel do not remove the wheels of the campers; however, if they stay at the campground for a month, the witness believes there is a law that specifies what must be done.

Present at the hearing on behalf of the Morgan County Board of Review were one of its members, Bradley A. Zeller, and the Clerk of the Board of Review, Allen Vogt, who is also the Morgan County Supervisor of Assessments.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $50,710 along with a memorandum and Attachments A through E. Having failed to file a copy of the subject's property record card as required,[7] the Property Tax Appeal Board ordered submission of the property record card which was presented and added to the record, marked at hearing as Board of Review Exhibit 1, consisting of 14 pages. The subject's land assessment, based upon Board of Review Exhibit 1, consists of 34.85-acres of 'non-agricultural' land assessed at $2,090 and 14.9-acres assessed as farmland and other farmland with an assessment of $3,800.[8]

The subject property has an improvement assessment of $44,820 consisting of "the Lodge," the five RPTs, decks and porches. Upon further inquiry by the Administrative Law Judge seeking to

[7] See 86 Ill.Admin.Code §1910.40(a).

[8] In the memorandum submitted by the board of review, the contention was that the land assessment consisted of .76 of an acre assessed as residential and 48.99-acres assessed as cropland and other farmland. The Board finds that Board of Review Exhibit 1, page 11, entitled Morgan County Farmland Assessment contradicts the memorandum.

ascertain the assessment placed upon each of the RPTs at issue, Vogt testified to the history of the assessment of these RPTs. He stated that originally the five units were assessed based upon a total fair market value of $73,210. For purposes of assessing the RPTs as set forth in a memorandum filed in this matter, the board of review reported using the Illinois Real Property Appraisal Manual. The RPTs were valued as one-story frame residences, quality grade "E" (in light of the type of construction) and depreciated based on a CDU (condition, desirability, utility) factor of "fair" with a year built of 2011. In conjunction with this testimony and at the request of the Administrative Law Judge, Vogt presented an additional document marked at hearing as Board of Review Exhibit 2, consisting of 6 pages, with the individual DEVNET "Building Record – Residential – Rural" calculations for the five RPTs along with a value calculation for a wood deck. The documentation reflects estimated market values for the five individual units along with open frame porches (OFP) and/or decks ranging from $11,697 to $18,521. The five units reflect a total fair market value in Board of Review Exhibit 2 of $73,203 and the deck reflected on the sixth page of Exhibit 2 has a fair market value of $4,020.

Upon hearing the appellant's appeal before the Morgan County Board of Review, member of the board Zeller testified that it was determined that the RPTs were not "as quality built as a stick built or modular home." Therefore, the board of review reduced the fair market value of the five RPTs by approximately 50% to a fair market value of $36,300 or approximately $7,300 per unit resulting in an assessment of approximately $12,100 for the five RPTs.

Zeller further testified that besides Attachment D indicating a fair market value for one unit of $26,000, there was no other evidence of fair market value of the RPTs presented by the appellant. Attachment D consists of an internet printout dated February 4, 2013 of a 379 square foot RPT that was built in 2012. The document reflects the unit was offered for sale for $26,910. This RPT is described as having a kitchen and an 8 foot covered porch. The business selling this RPT was located in the state of Oregon.

The board of review contends and Vogt testified, in part, that the subject RPTs are equivalent to mobile homes for assessment purposes as the units are moved in on wheels, tied down to the ground, not located on a permanent foundation and have sewer systems, water and electric provided to them. The units are used in a manner similar to mobile homes and are further similar by lacking wheels and lacking a hitch; they are also skirted and they are strapped down the same as a mobile home would be. As part of the written submission, the board of review asserted that the RPTs are connected to a sewer collections system and a water system.

Also as part of the evidentiary submission, the board of review reported that the RPTs are rented on weekends "and sometimes for longer periods of time." A rate sheet for the RPTs located at Buena Vista Farms was submitted as Attachment B. Additional documentary evidence submitted by the board of review with the "Notes on Appeal" consisted of eight black and white photographs of the subject RPTs and two wooden decks in place at the subject property (Attachment C); and a copy of a newspaper promotion or advertisement[9] for Buena Vista Farms describing, in pertinent part, "homelike luxurious cabins" (Attachment E).

[9] The assessing officials in the memorandum reported Attachment E was from a website. The Property Tax Appeal Board finds the lower right hand corner of the document reflects "August 29 – September 4, 2013 – Illinois Times" which the Board takes judicial notice is a weekly free publication based in Springfield, Illinois.

In the memorandum, the board of review also asserted that the units are rented on a year-round basis and therefore there should be some sort of an assessment carried on the units based on the statutory change allowing for the assessment of mobile homes located outside of a mobile home park to be assessed as real property. (See 35 ILCS 200/1-130 effective January 1, 2011) The units were thus assessed similarly to other mobile homes or modular homes in the county.

At the hearing, the board of review acknowledged that for subsequent tax year(s), the assessment applied to the RPTs was reduced to approximately $12,100 and the board of review conceded this reduced assessment should likewise be applied for tax year 2012.

Upon inquiry by the Administrative Law Judge, Vogt testified that the RPTs were recorded by the assessing officials as installed as of July 2012 resulting in a prorated assessment for tax year 2012. He also testified that the five RPTs should therefore carry a prorated total assessment for tax year 2012 of $6,080.

Additionally, upon inquiry by the Administrative Law Judge, Vogt testified that Morgan County assesses all portable structures including, portable sheds that are purchased and put on "skids." The assessment is based on what is called a salvage value of $300 market value and $100 assessed, unless the shed is larger than 200 square feet. The sheds that exceed 200 square feet are assessed at a price per square foot. Vogt also testified that the logic for assessing such larger structures is both based upon the cost per square foot and because, if such a structure were to catch on fire, the fire department would be called to render services which is part of the services that are paid for with local property taxes. Vogt believes that there is fire protection for the subject parcel through a volunteer fire department that is paid by those served, but not through the real estate tax bill.

Post-Hearing Briefing/Closing Arguments

Due to the submission at hearing by appellant's counsel of Appellant's Exhibit 1, a Department of Housing and Urban Development document on a proposed rule, "Manufactured Home Procedural and Enforcement Regulations; Revision of Exemption for Recreational Vehicles" dated January 4, 2016 and issued by Edward L. Golding, Principal Deputy Assistant Secretary for Housing (hereinafter "HUD" or Appellant's Exhibit 1), the board of review representatives desired to have written post-hearing briefs rather than oral closing arguments in order to allow the Morgan County State's Attorney to review the exhibit and prepare appropriate legal arguments. Additionally, appellant's counsel was requested by the Administrative Law Judge to supplement the record with the statutory citation to the requirement to tie down the subject RPTs when in place for more than 30 days as asserted by the appellant and to submit copies of the vehicle titles for the RPTs which were referenced by the appellant.

The appellant's brief made four specific arguments. First, the appellant contends that the RPTs are not the same as mobile homes for taxation purposes as shown in the definition of a mobile home as set forth in the Mobile Home Local Services Tax and Safety Act (35 ILCS 515/1, et. seq.). Since by definition a mobile home must be "40 body feet or more in length," the appellant contends that the subject RPTs as described in Appellant's Exhibit 3 do not meet that definition as the documents depict the RPTs range from 25 feet to 37 feet 10 inches in length. (See also

Board of Review Attachment A reflecting the RPTs ranging from 20 feet to 38 feet in length). Moreover, this definition mandates that a mobile home must be "connected to utilities for year-round occupancy for use as a permanent habitation, and designed and situated so as to permit its occupancy as a dwelling place for one or more persons." The appellant's unrefuted testimony was that the subject RPTs are not connected to utilities on a year-round basis.

Second, the appellant argued that the RPTs meet the definition of a "recreation vehicle" under the Campground Licensing and Recreational Area Act (210 ILCS 95/1 et. seq.) and, while not binding on the Property Tax Appeal Board, such a definition was argued as being instructive for purposes of "determining the true legal status of the RPTs." The definition in that statutory provision includes the following:

> "Recreational Vehicle" means a vehicular-type unit, primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, motor home and **park model home**. (Emphasis added) (210 ILCS 95/2(j))

Based on the foregoing, the appellant contends that the only Illinois statutory definition that applies to the subject RPTs is "recreational vehicle" under the Campground Licensing and Recreational Area Act rather than the definition of a mobile home as argued by the board of review. As there is no authority in law to tax a recreational vehicle as real property, the appellant contends that the subject RPTs are not taxable real property for purposes of the Property Tax Code.

Third, the appellant argued that the standards published by HUD (Appellant's Exhibit 1) further establish the distinction between RPTs and mobile homes. Recognizing that these proposed 2016 rules are also not controlling in this 2012 tax year appeal in Illinois, the appellant contends the information is still instructive in historic treatment by governmental entities and current treatment by both the federal government and "the industry in which they are used." From this document, the appellant argued that while HUD is authorized to regulate safety standards for mobile homes, the agency has historically exempted recreational vehicles from those regulations because "recreational vehicles are not intended to be utilized as permanent residences." [Citing to 24 CFR 3282, adopted May 13, 1976]. The appellant contends that the original HUD recreational vehicle exemption was based upon size as 400 square feet or less, but in 2014 given various industry changes and the development of park model recreational vehicles that exceeded 400 square feet, HUD reportedly commenced revisions to the exemption language.

As a final and fourth argument, the appellant contends that the RPTs do not otherwise qualify as "permanent fixtures" and/or should not be considered "structures, buildings or improvements" on the subject parcel like a mobile home might be when located outside of a mobile home park under the Property Tax Code. The appellant argued that the phrase "permanent fixtures on land" is a catchall provision enabling taxation against items permanently on the land which are not considered traditional buildings, structures or improvements. In this regard, the appellant contends that the RPTs are not permanent fixtures, but rather are more similar to vehicles. As noted previously, the appellant was requested to produce with the brief copies of applicable vehicle titles for the RPTs; the paperwork in the appellant's possession are "certificates of

origin"[10] rather than common vehicle titles.[11] In light of the existence of the documents, the appellant reiterates the contention that the RPTs are more similar to vehicles than to permanent fixtures.

Counsel for the appellant did not provide any citation to the requirement to tie down the RPTs when they are stationary for more than 30 days. At page 7 of the brief, counsel made fleeting reference to the appellant's "common practice of her business . . . to keep the wheels and hitch off the RPTs," but there was nothing addressed regarding a statutory requirement to secure the RPTs.

The closing argument presented in this proceeding on behalf of the Morgan County Board of Review was prepared and submitted by Gray Herndon Noll, Morgan County State's Attorney. While the assessing officials deemed the RPTs to be similar to a mobile home, which is taxed as real property, the brief contends that even if the units are not considered to be a mobile home, the RPTs meet the definition of real property in the Property Tax Code (hereinafter "Code") (35 ILCS 200/1-1, et. seq.).

The board of review's brief addresses the change in taxation of mobile homes that had previously focused on the permanency of the foundation (35 ILCS 200/1-130 (1994)) to the location of the property (35 ILCS 200-1-130 (2011) and 35 ILCS 200/1-130 (2014)), along with consideration of previous treatment for assessment purposes (35 ILCS 200/1-130(b) (2011)). Citing to the definition of a mobile home found in the Mobile Home Local Services Tax Act (35 ILCS 515/1(a) (2011)), the board of review argued that the subject RPTs are similar to a mobile home "although they do not meet the definition exactly."

The board of review summarized that the subject RPTs are similar to mobile homes in that they are built to be towed on its own chassis from the place of construction to another site; they are connected to utilities; and, while the RPTs are not used year-round, the board of review asserted "they are designed for permanent habitation." Relying upon the Mobile Home Local Services Tax Act, which defines "permanent habitation" as available for habitation for a period of two or more months (35 ILCS 515/2.1 (1975)), the board of review contended that the subject RPTs meet this standard being available for use for over six months of the year with both air conditioning and heat. The board of review asserted that the record did not establish whether additional insulation would make the units suitable for year-round use.

Based upon a 2014 amendment to the Mobile Home Local Services Tax Act, the board of review contends that a mobile home should not be excluded from the definition of mobile home for failing to meet one of the size requirements. The 2014 amendment added a manufactured home as defined in the Uniform Commercial Code (U.C.C. §9-102(a)(53) (2010)) providing in pertinent part 8 feet wide or 40 feet long or 320 square feet or more in size. As such, the board of review contends the subject units fall within the definition of a mobile home as currently defined.

[10] Exhibit A attached to the brief consists of four "Manufacturer's Statement or Certificate of Origin to a Manufactured Home," two of which have the same 'manufacturer's ID no.' and invoice number along with one "Certificate of Origin for a Vehicle" issued in Martinsville, Virginia concerning the bathhouse unit.

[11] The appellant's brief asserted that Illinois law accepts certificates of ownership as documentation that an individual is the legal owner of a vehicle. (625 ILCS 5/3-100)

Alternatively, if not deemed to be mobile homes, the board of review contends the RPTs are still taxable as real property under the Code. Based on the definition of real property in the Code (Section 1-130), the assessing officials contend the subject units are a permanent fixture or improvement which is taxable as real property. Citing to the concrete pillars set in the ground for securing the RPTs, the board of review contends this indicates that there is an intention to make the units a permanent fixture to the realty. Additionally, the intention is to use the units for ten years by guests of the facility who are "otherwise enjoying the land." Wooden steps have also been built to access the RPTs as permanent fixtures to the realty.

If the units are not deemed to be permanent fixtures, the board of review contends the units are improvements to the real property. With concrete pillars and staircases, the board of review contends the appellant has indicated an intention to permanently improve the subject property. The units provide lodging in an area the appellant testified lacked a sufficient number of hotel rooms and the appellant receives rental income from the units. As such, the units are an integral component of the subject property, have increased the value of the property and enhanced its use.

As a final point of the brief by the board of review, it was asserted that the RPTs are not recreational vehicles and instead are designed for permanent habitation. As to Appellant's Exhibit 1, the HUD document, the board of review noted the date of the proposed rule in 2016 is not relevant to the subject appeal. Moreover, the record did not establish that the subject units have been certified "in accordance with NFPA 1192-15 or ANSI A119.5-09" requirements as called for in the proposed rule. Citing to Appellant's Exhibit 3, one of the invoices, the units were certified as "constructed in conformance with the Federal Mobile Home Construction and Safety Standard in effect on the date of manufacture." Based on this data, the board of review contends the units were certified as mobile homes and do not meet the definition of a recreational vehicle. As to the issue of having a title, the board of review argued that this is not dispositive of the property's status as real property since mobile homes also are titled under the Illinois Vehicle Code (625 ILCS 5/3-101 (2012)).

Both parties were entitled to file reply briefs; only the appellant filed a reply brief.

In reply, as to the board of review argument that the units qualify as mobile homes based on size, the appellant argued reliance was placed upon a statutory amendment to the definition established in 2014, which is after tax year 2012 that is at issue in this appeal. As to the use of the units, the appellant contends that speculation as to additional insulation to allow for year-round use is not relevant and citation to the Mobile Home Local Services Tax Act of permanent habitation for "a period of two or more months" has been misapplied based upon two opinions of the Illinois Attorney General, Exhibit A attached to the reply brief. Moreover, both the design and actual use of the RPTs is for short-term use, not permanent habitation.

The appellant also in reply disputed the assertion by the board of review that the units were either fixtures or improvements to the real property. With citation to Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d 711 (2nd Dist. 1996), the appellant contends the common law tests for determining the existence of a permanent fixture or improvement are not to be applied, but rather the statutory scheme should be applied for classifying property. To further support the appellant's argument and counter the assertions of

the board of review concerning annexation of mobile homes to real property, the appellant cited three cases from Missouri, Georgia and Washington addressing whether mobile homes had become a fixture.

Similarly, the appellant disputes the contention by the board of review that the RPTs are improvements to the land. Citing to Lee County, supra, the appellant contends the RPTs are not improvements. The appellant conceded that the use of the RPTs has enhanced the use of the subject parcel, but the units are not permanent and can be removed relatively easily. Then, without in any manner explaining the relationship, at page 10 of the reply brief, the appellant contends that the land is owned by Ms. Gutierrez as trustee of her trust, but the RPTs are titled "to a separate entity, Buena Vista Farms, Inc." as set forth on the Certificates of Origin. The appellant did not report if this is therefore a leasehold arrangement or on what legal basis the RPTs are located upon her parcel if she does not own them or have a legal interest in the ownership of the RPTs.

In the reply brief, the appellant also disputes the contention by the board of review that the RPTs are not recreational vehicles as defined in the statute regarding campground licensing. As to the HUD proposed rule (Appellant's Exhibit 1), the appellant contends that over time the recreational vehicle industry has developed larger units with more amenities which still remain distinguishable from mobile or manufactured homes.

Conclusion of Law

The appellant contends the five RPTs located on the subject parcel are not assessable real property, but should be treated as removable personal property which is exempt from assessment and not subject to real property taxation. The sole issue for determination before the Property Tax Appeal Board is whether the RPTs located on the subject parcel are personal property and should not be classified and assessed as real estate. In this regard, the appellant's appeal was based on a contention of law. Section 10-15 of the Illinois Administrative Procedure Act (5-ILCS 100/10-15) provides:

> Standard of proof. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

The rules of the Property Tax Appeal Board are silent with respect to the burden of proof associated with an argument founded on a contention of law. See 86 Ill.Admin.Code §1910.63.

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. The 1970 Illinois Constitution contains a uniformity clause which provides:

> Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law. (Ill.Const. 1970, art. IX, §4(a)).

The court in DuPage Bank and Trust Company v. Property Tax Appeal Board, 151 Ill.App.3d 624 (2nd Dist. 1987) explained that the 1870 Illinois Constitution contained a similar provision (Ill.Const. 1870, art. IX, §1). The court further stated:

> Our supreme court has determined that the clause requires only that taxation be uniform as to the class upon which it operates. (*Citation omitted*.) DuPage Bank and Trust Company, 151 Ill.App.3d at 628.

Illinois' system of taxing real property is founded on the Property Tax Code or the "Code." (35 ILCS 200/1-1 et seq.) Section 1-130 of the Code defines real property as amended by Public Act 96-1477, with an effective date of January 1, 2011, in pertinent part as follows:

> §1-130. Property, real property; real estate; land; tract; lot:
>
> (a) The land itself, with all things contained 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. Not included therein are low-income housing tax credits authorized by Section 42 of the Internal Revenue Code, 26 U.S.C. 42.
>
> (b) Notwithstanding any other provision of law, mobile homes and manufactured homes that (i) are located outside of mobile home parks and (ii) are taxed under the Mobile Home Local Services Tax Act on the effective date of this amendatory Act of the 96th General Assembly shall continue to be taxed under the Mobile Home Local Services Tax Act and shall not be classified, assessed, and taxed as real property until the home is sold or transferred or until the home is relocated to a different parcel of land outside of a mobile home park. If a mobile home described in this subsection (b) is sold, transferred, or relocated to a different parcel of land outside of a mobile home park, then the home shall be classified, assessed, and taxed as real property. . . .

(Emphasis added.) 35 ILCS 200/1-130(b).[12]

The appellant is the owner/taxpayer of the subject parcel of land. The subject land is operated as a recreational campground with spaces available for rental to campers, pull-behinds and similar modes of camping units. The campground also includes a building referred to as "The Lodge" which is available for rental for meetings, receptions and weddings. There is no dispute on the record regarding either the land assessments or the assessment of "The Lodge" as the parties have stipulated prior to hearing as to the assessment of "The Lodge."

The Property Tax Appeal Board finds that as additional accommodations and/or amenities at the campground, the appellant either installed or allowed to be installed on her land five RPTs. The

[12] P.A. 98-749 amended subsections (b) and (c) of section 1-130 of the Property Tax Code effective July 16, 2014, which is not germane to the present appeal.

record reveals that three of the RPTs are made available for overnight rental and lodging; one RPT is a 'common area' whose availability was not specifically described other than as an area for men to relax and women to have their hair done [presumably prior to a wedding]; and one RPT is a bathhouse with five bathrooms for the personal hygiene use of persons who rent camping spaces on the premises and/or otherwise use/rent the facilities on the subject parcel.

The Property Tax Appeal Board finds that the record is clear that for tax year 2012 the RPTs at issue in this appeal are not mobile homes as defined in the applicable Mobile Home Local Services Tax Act (35 ILCS 515/1 et. seq.) and/or the Illinois Manufactured Housing and Mobile Home Safety Act (430 ILCS 115/2(1)) which defines a permanent foundation. The tax imposed under the Mobile Home Local Services Tax Act is a tax on the privilege of owning an inhabited mobile home. Berry v. Costello, 62 Ill.2d 342, 346, 341 N.E.2d 709 (1976). The establishment of a privilege tax for mobile homes was necessary because absent a privilege tax, unless a mobile home were placed on a permanent foundation, it would escape real estate taxation. Berry, 62 Ill.2d at 347 cited in Lee County Board of Review v. Property Tax Appeal Board, 278 Ill. App. 3d 711, 719 (1996). There is no evidence in this record that the subject RPTs were issued privilege tax bills under the Mobile Home Local Services Tax Act. Moreover, to the extent, that the Act provides guidance in defining a mobile home, subsection (a) of the Act effective for tax year 2012 provided as follows:

> . . . "mobile home" means 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. Mobile homes owned by a corporation or partnership and on which personal property taxes are paid as required under the Revenue Act of 1939 shall not be subject to this tax. Mobile homes located on a dealer's lot for resale purposes or as an office shall not be subject to this tax.

P.A. 78-375, § 1, eff. Aug. 28, 1973. Amended by P.A. 79-1184, § 1, eff. Dec. 19, 1975; P.A. 88-670, Art. 3, § 3-17, eff. Dec. 2, 1994. As noted by counsel for the board of review in closing arguments, as of January 1, 2011, the previous statutory distinctions for assessment of mobile homes based on their foundation(s) has been modified to now being focused upon the location of the mobile homes whether within or outside of mobile home parks and to maintain or "grandfather" treatment of mobile homes until sold or relocated. The Board finds these previous and current statutory provisions regarding mobile homes fail to specifically address the circumstances of the RPTs, even though the subject parcel is not a mobile home park, and therefore, the Board shall seek other guidance in the treatment of the RPTs for assessment purposes.

The court in Ayrshire Coal Company v. Property Tax Appeal Board, 19 Ill.App.3d 41, 45 (3rd Dist. 1974), provided the following guidance:

> 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. Ahy [*sic*] form or arrangement of building or construction materials { "pageset": "S2e involving the necessity or precaution of providing proper support, bracing, tying, anchoring, or other protection against the pressure of the elements. Ballantine Law Dictionary. The term ordinarily carries with it the idea of size, weight, and strength * * * and has come to mean anything composed of parts capable of resisting heavy weights or strains, and artifically [*sic*] joined together for some special use. 83 C.J.S. Structure.

The court in Ayrshire also emphasized that an examination of the item, not the contractual language or booking practices, should establish the classification of an item. 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, designed for the habitation of men or animals or For the shelter of property. [Capitalization as shown; citation omitted.] Id. at 45.

The record is further clear and the Board finds that the subject RPTs are not located in a mobile home park. Instead, the subject RPTs are located in a recreational campground. Moreover, the record reflects that these five subject RPTs are not merely brought in to the subject campground by an individual owner for a brief stay at the subject campground such as a motorized recreational vehicle or a fifth wheel camper, but the Board finds that the appellant has installed these units and had these units secured to the ground, added stairs/porches/decks and makes the units available for rental/use from mid-April to the end of October annually as part of the subject parcel's campground facilities. (See Rushmore Shadows, LLC v. Pennington County Board of Equalization, 838 N.W.2d 814 (2013) – South Dakota Supreme Court finds RPTs were constructively affixed to the real estate and constituted an 'improvement' to be subject to ad valorem taxation as real property). Furthermore, the appellant in briefing acknowledged that the installation of these units has enhanced the subject campground facilities.

The appellant in part relied upon the Campground Licensing and Recreational Area Act which includes a definition of "recreational vehicle" as, among other items, a "park model home" such as the subject RPTs. Having analyzed this statute, the Property Tax Appeal Board finds the cited statutory definition is not helpful nor dispositive of the treatment of the subject RPTs for assessment purposes. The stated purpose of the Campground Licensing and Recreational Area Act is:

> . . . there exists, and may in the future exist, within the State of Illinois recreational areas and campgrounds which are sub-standard in important features of safety, cleanliness, or sanitation. Such conditions adversely affect the public health, safety and general welfare of persons. Therefore, the purpose of this Act is to protect, promote, and preserve the public health, safety and general welfare

> by providing for the establishment and enforcement of minimum standards for safety, cleanliness and general sanitation for all recreational areas and campgrounds now in existence or hereafter constructed or developed and to provide for inspection of all such facilities and the licensing of campgrounds.

210 ILCS 95/3. As clearly stated, the Board also finds that the cited definition is concerned with issues of public health and safety in the existence of park model trailers at campgrounds, such as the subject. There is nothing in the statutory provision indicative of an intention to find the RPTs to be personal property and/or to include or to exclude the RPTs from the assessment rolls of the jurisdiction in which they are located.

As part of the briefing, the parties also raised an issue concerning the intention test, which is one method to determine whether the property in question is real or personal in nature. (See, Beeler v. Boylan, 106 Ill.App.3d 667 (4th Dist. 1982)) The case in Beeler primarily involved the issue of whether two grain dryers that were mounted on floating concrete slabs could be classified as real property under the statutory predecessor to the Code. In Beeler, the court determined that grain dryers were not real property for taxation purposes. The court in Beeler stated:

> 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 the parties have taken contrary positions as to whether the RPTs have been annexed or attached so as to become real property. The arguments were focused on the tie down of the RPTs to the pillars in the ground noting, for the appellant, the ease with which the units can be moved and removed in contrast to the board of review's contention that such tie down is similar to the securing of mobile homes. Under the second element, the parties mostly agree that the units have been used or purposed to enhance the recreational experiences of guests at the campground and "The Lodge." As to the third element, the appellant contends that the units were temporary given their useful life of only ten years and, again, the ease with which the units can be moved and/or removed from the parcel without damage to the underlying land.

The Illinois Supreme Court has previously addressed the distinction between a "fixture" and an "improvement" to real estate:

> Relevant criteria for determining what constitutes an “improvement to real property” include: whether the addition was meant to be permanent or temporary, { "pageset": "S71 whether it became an integral component of the overall system, whether the value of the property was increased, and whether the use of the property was enhanced.

St. Louis v. Rockwell Graphic Systems, Inc., 153 Ill. 2d 1, 4-5 (1992). On this record, the Property Tax Appeal Board finds that the appellant/operator of the campground established these RPTs as structures at the campground to provide a new service and/or level of accommodation including overnight lodging and restroom facilities at the campground. The Board finds the three RPTs used for lodging are akin to individual cabins available for use by guests of the facility and the restroom facilities are another added feature of the subject campgrounds that are made available for the use of those persons staying at the campground. Each of the attributes addressed in St. Louis v. Rockwell Graphic Systems, Inc., supra, is answered in the affirmative by the facts adduced in this case.

There is one case in Illinois with a few factual similarities to the instant matter involving a tax objection by the owner of a cabin. In the Matter of Hutchens, 34 Ill.App.3d 1039 (4th Dist. 1976), a cabin that was transported to leased land, set upon pillars made of concrete blocks and shimmed up with shingles, was taxed separately from the land. Unlike in the cases involving the assessment of mobile homes, in Hutchens there was no statutory scheme for classifying the cabin. In Hutchens, the trial court found 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 court found that while the cabin was part of the real estate, it should not have been assessed and taxed as a separate entity, but determined that the value of the cabin should have been included in the assessment of the tract of land that was listed in the name of the landlord. 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.

In light of the foregoing, the Property Tax Appeal Board finds that if the underlying land and the RPTs were in fact owned by different individuals would not preclude the RPTs from being classified, assessed and taxed as real estate to the land owner, although this record is less than clear on the issue of ownership which was briefly raised in the appellant's reply brief.

Given all of the foregoing, the Board finds that common law principles applicable to permanent fixtures should be applied in assessing the subject RPTs. This application is further supported by the consistent assessment policy of the Morgan County Supervisor of Assessments which was clearly placed on the record at hearing and which was not refuted in any manner. As testified to by Vogt, Morgan County assesses all portable structures including, portable sheds that are purchased and put on "skids." He stated that the practice is to assess smaller sheds at a salvage value of $300 market value or $100 in assessed value. He further set forth that the Morgan County policy was to assess all sheds that are larger than 200 square feet based upon a price per square foot of building area since buildings of such size may necessitate rendering of fire department services if there is a problem with fire. The appellant provided no evidence to refute the credible testimony provided by the Morgan County Supervisor of Assessments regarding the assessment policy for portable buildings.

To the extent that the appellant relies upon HUD guidance found in Appellant's Exhibit 1, the Board finds that the instant determination that the subject RPTs are assessable as real estate does not conflict with the HUD guidance. There is nothing in Section 1-130 of the Code that

mandates use of a structure as a primary residence or one being used for permanent occupancy in order to be an assessable "building" or "structure."

After considering the evidence and record including the photographs of the subject RPTs both as they arrived to the subject parcel (Appellant's Exhibit 2) and after they have been installed on the subject parcel (Board of Review Attachment C), the Property Tax Appeal Board finds the RPTs are "buildings" or "structures" as defined in Section 1-130 of the Code (35 ILCS 200/1-130). The Property Tax Appeal Board finds that the appellant is in error in her contention that the subject RPTs are personal property not subject to taxation under the Code. In summary, the Board finds the RPTs are real property and may be assessed as such regardless of foundation,[13] wheels, hitch and/or lack of permanent utility hookups.

The record further indicates the RPTs were installed at the premises in 2012 and the assessing officials have placed a partial year assessment on the units to account for the period of July 2012 through and including December 2012. The Board further finds that the appellant did not provide any substantive market value data to dispute the assessment placed upon the RPTs,[14] but rather relied solely upon a contention that the RPTs were not assessable real property and should instead be treated as non-assessable personal property under the Code.

Based on this record, the Board finds a reduction in the subject's improvement assessment is justified based on (1) the parties' stipulation to assess "The Lodge" for $30,000 and (2) the partial year assessment of the five RPTs for $6,080 as agreed to by the board of review.[15]

[13] 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 Code. See Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d 711 (2nd Dist. 1996).

[14] The appellant vaguely testified the units have values of from $10,000 to $25,000, but provided no documentation to support the assertion. The assessing officials have agreed to place a partial year assessment of $6,080 on all five units which would reflect a total market value of approximately $36,480 (assessment x 3 x 2 for partial year) or substantially less than the appellant's rough estimate of the market value of the five units combined.

[15] The board of review did not place any evidence on the record of the precise improvement assessment(s) placed upon the porches and/or wooden decks located on the subject parcel and thus, those amenities have not been accounted for within this decision due to the lack of evidence.

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: July 22, 2016

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.