FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Roger L. & Marvin W. Mowen
DOCKET NO.: 18-00087.001-R-1
PARCEL NO.: 20-0-1201-007-00

The parties of record before the Property Tax Appeal Board are Roger L. & Marvin W. Mowen, the appellants, and the Adams 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 **Adams** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$1,870
IMPR.:	$ 0
TOTAL:	$1,870

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellants timely filed the appeal from a decision of the Adams County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2018 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property consists of a 2-acre unimproved residential lot which temporarily had a portable tool shed placed on the parcel. The property is located in Quincy, Melrose Township, Adams County.

The appellants contend assessment inequity as the basis of the appeal. In support of this argument, the appellants submitted an explanatory letter, photographs and information on three vacant comparable parcels located in close proximity to the subject.

In the letter, the appellants reported that for tax year 2017, the Melrose Township Assessor revalued the subject parcel from "unimproved residential building lot" to an "improved

residential lot." The appellants report that the subject's assessment was raised from $1,870 to $13,130, along with a substantial increase in the applicable property tax bill.[1] The basis for the changed classification for 2017 reportedly was that there was a building now located on the parcel. While the appellants acknowledge that a portable tool shed was temporarily placed on the parcel, they report that it has since been removed. The appellants further argued in this 2018 tax year appeal that the parcel should remain in "builder's code for residential lot" for assessment purposes. Also submitted with the appeal were aerial and ground level photographs of the subject and comparable parcels depicting each as vacant land.

In the Section V grid analysis of the Residential Appeal petition, the appellants described three vacant lots, situated to the east and west of the subject parcel, and each of which are on the same street as the subject parcel. The comparable parcels were described as ranging in size from 1.955 to 2.302 acres of land area. The comparable parcels each have a land assessment of $1,870.

Based on the foregoing evidence and argument, the appellants requested removal of the improvement assessment and a reduction in the subject's land assessment to be identical to that of the appellants' equity comparables.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $13,130. The subject property has an improvement assessment of $420 and a land assessment of $12,710 or $6,355 per acre of land area.

In support of its contention of the correct assessment, the board of review submitted a memorandum, three color photographs of the subject shed (both an interior and two exterior views), four black and white aerial photographs of the subject parcel and a chart with information on four comparable properties with both sales and equity data.[2]

The board of review agrees that the three appellant equity comparable parcels have remained assessed as vacant parcels under Section 10-30 of the Property Tax Code (35 ILCS 200/10-30) also referred to as the developer's relief or developer's exemption.

In the memorandum, the board of review reported that, until 2017, the subject parcel had been afforded a preferential land assessment in accordance with Section 10-30 of the Property Tax Code or the developer's exemption. Based upon two aerial photographs dated in 2016, it was the opinion of the assessing officials that there was a building situated on the parcel and, therefore, the preferential land assessment was removed in tax year 2017 resulting in both the building and land being assessed at market value. Submitted as evidence were copies of three black and white aerial photographs identified as the subject parcel; two of the aerial photographs were marked as February 2016 and one "Bing Geographic" aerial photograph was referenced as 2018. The board of review indicated the full value assessment continued for tax year 2018 as the structure was on the parcel on January 1, 2018 "as indicated by Bing Geographic." The Adams County Board of

[1] The Property Tax Appeal Board is without jurisdiction to determine the tax rate, the amount of a tax bill, or the exemption of real property from taxation. (86 Ill. Admin. Code, Sec. 1910.10(f)).
[2] As the appellants' basis of appeal is not a market value argument, the Property Tax Appeal Board will not analyze the market value evidence presented by the board of review in this matter.

Review wrote, in part, "we believe the structure to be real property and subject to *ad valorem* taxation."

The board of review also concedes that the structure may have since been removed, hypothesizing that removal may have occurred after issuance of the tax year 2017 property tax bill payable in 2018 which was mailed in May 2018. The board of review also noted that in the course of the July 2018 Adams County Board of Review appeal process, one of the appellants provided three color photographs of the interior and exterior of the subject structure (copies submitted). Thus, after having already assessed the building without inspection on the parcel and based upon the interior photographs supplied by one of the appellants, the board of review contends that "bunks" are shown on the left, a vented free-standing heater and an overhead light are also shown. As stated in their memorandum and apparently after viewing those ground level photographs, the board of review now reports that it "believes" the structure may be used as a hunting cabin. According to the board of review, the aerial photographs also show "a cleared area around the structure and to the structure."

In support of the subject's current land assessment, the board of review submitted data on four comparable parcels. Comparables #1, #2 and #3 had previously been receiving the developer's exemption in 2017, but after their respective sales in 2017, the parcels were revalued and an improvement was picked up in 2018.[3] Board of review comparable #4, which sold in May 2017, remains assessed as a vacant lot reflecting market value. The comparable parcels range in size from 1.50 to 2.51-acres of land area. These properties sold from February to August 2017 for prices ranging from $40,000 to $65,000 or from $22,500 to $28,667 per acre. The chart prepared by the board of review depicts that the parcels have land assessments ranging from $13,330 to $21,660 or from $7,500 to $9,553 per acre of land area.

Based on the foregoing evidence and arguments, the board of review requested confirmation of the subject's land and improvement assessments as established at market value.

In rebuttal, the appellants reiterated that the portable shed on the subject property has been removed. Marvin Mowen stated, "It was not built on [the] property and was not a permanent structure there. My brother just drug it over there to use to take his boy camping in it." According to the appellants, this is the purpose of the bunks and the propane heater; there is no electric or water service for the structure. The shed was used for camping purposes only and was built on runners for transport. The appellants argue the subject parcel should not be removed from coverage of Section 10-30 "for using our property for camping." There has been no excavation or digging of any kind on the parcel; to the extent that there is a cleared area on the parcel, the appellants report that was part of an old road "from years ago."

The rebuttal filing further references submission of a listing of the subject lot and nearby lots as residential vacant unimproved parcels. Although referenced in the rebuttal filing, the Board finds that no copies of listings were submitted. The only item submitted with the rebuttal brief was one color photograph of vacant land with what appears to be a free-standing gas grill for cooking; the appellants indicated this photo depicts "where [the] portable shed once sat."

[3] The chart does not depict nor describe the improvements that purportedly exist on comparables #1, #2 and/or #3.

Conclusion of Law

This appeal raises two substantive legal issues in seeking to reduce both the land assessment in accordance with the developer's exemption provision of the Property Tax Code and in seeking to have the improvement assessment removed based on the portable and non-permanent nature of the shed. First, the appellants contest the classification of the parcel as improved residential land due to the temporary placement of the shed on the parcel and the simultaneous removal, by the assessing officials, of the preferential land assessment (developer's exemption), applied to the subject land in accordance with Section 10-30. Second, the appellants contest the improvement assessment of $420 placed on the portable shed which was temporarily situated on the subject parcel.

In contrast, the board of review argued that the subject parcel was now improved with a structure and thus, the preferential land assessment expired. Furthermore, the shed was an assessable improvement and therefore, the subject parcel along with the shed were properly revalued at fair market value.

Ultimately at issue in this appeal is the application of Section 10-30 of the Property Tax Code (35 ILCS 200/10-30) or the developer's exemption, which gives a preferential property assessment for acreage that is in transition from vacant land to residential, commercial or industrial use. As set forth in Kennedy Bros., Inc. v. Property Tax Appeal Board, 158 Ill.App.3d 154 (2nd Dist. 1987), with regard to Section 10-30, the court found that the legislative history reflects an intention to protect real estate developers from rising assessments which result from initial platting and subdividing of farmland. (83d Ill.Gen.Assem., Senate Proceedings, May 24, 1983, at 293.) The court further noted that during the debates it was recognized that the statute would cause a penalty to some local governments because of the lower tax level but that the change would come one plat at a time and only after filing and appropriate action. 83d Ill.Gen.Assem., Senate Proceedings, May 24, 1983, at 293–94. Id. at 248. Additional case law further articulates the legislative purpose as one designed to "prevent developers from having to pay increased taxes on farmland or vacant land in the beginning of the development process." See Paciga v. Property Tax Appeal Board, 322 Ill.App.3d 157 (2nd Dist. 2001). As the court held in Paciga, the assessment would remain the same until a house was built or the property was used for a commercial purpose. The ruling in Paciga further found that the purpose of the developer's exemption was to encourage developers to develop land that had previously been used as farmland or had been vacant. Id. at 162.

With these principles and legislative purposes in mind, both the land assessment and improvement assessment at issue in this appeal shall be thoroughly examined by the Property Tax Appeal Board.

Land Assessment

The parties agree that prior to the placement of the shed on the subject parcel, the land was entitled to a preferential land assessment pursuant to Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). The parties further agree on this record that the subject property met all four conditions of Section 10-30 of the Code and was properly afforded a preferential assessment in accordance with this provision until tax year 2017.

The question posed by this appeal, is whether the temporary placement of a portable shed on the subject parcel abrogates the preferential assessment treatment. It is the contention of the assessing officials in Adams County that the appellants' installation of a structure on the subject parcel, even temporarily, is an improvement which vacates the provisions of Section 10-30 going forward. The appellants counter that the structure was not built on the parcel, was not permanent and was a portable shed that was not used as a dwelling, but merely for camping purposes and should not abrogate the applicability of Section 10-30 to the parcel, besides that the structure has since been removed.

The Board finds the key to this appeal is found in Section 10-30(c) of the Property Tax Code (35 ILCS 200/10-30(c)) which provides in part:

> Upon completion of a habitable structure on any lot of subdivided property, **or** upon the use of any lot, either alone or in conjunction with any contiguous property, for any business, commercial, or residential purpose, or upon the initial sale of any platted lot, including a platted lot which is vacant: (i) the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot (ii) each lot shall be assessed without regard to any provision of this Section, and (iii) the assessed valuation of the remaining properties, when next determined, shall be reduced proportionately to reflect the exclusion of the property that no longer qualifies for valuation under this Section. (35 ILCS 200/10-30(c)). [Emphasis added.]

As to subsection (c) of Section 10-30, the Property Tax Appeal Board finds the subject portable shed was not a habitable structure as there was no water or electric service provided. Habitable is defined as "suitable to live in." *The American Heritage Dictionary*, Second College Edition, 1976. A habitable structure means fit for occupancy. (See Publication 134, *Developer's Exemption Property Tax Code, Section 10-30*, published by the Illinois Department of Revenue, p. 4 (March 2016)). There is also no indication in the record that an occupancy permit could have or would have been issued for the subject portable shed as described in this record. Publication 134 provides guidance concerning the term 'habitable' indicating that "assessors regularly decide when a structure is habitable as part of their work." The publication suggests that one reliable source is the issuance of a certificate of occupancy by a municipality or county. On this record, the Board finds the sole known use of the portable shed was for camping by one of the appellants and his son. The Board finds that camping as described in this record is not a business, commercial or residential purpose as set forth in subsection (c) of Section 10-30 (35 ILCS 200/10-30(c)). Therefore, the Board finds that the preferential developer's exemption was improperly removed from the subject parcel for tax year 2018 which is on appeal in this matter.

As depicted by the appellants by their assessment equity grid and as agreed by the parties on this record, when the subject parcel was afforded a preferential land assessment in accordance with Section 10-30 of the Property Tax Code, the parcel had a land assessment of $1,870 which is identical to that of the three comparable equity parcels presented by the appellants.

In light of the foregoing determination that the subject parcel was not improved with a habitable structure and/or being used for a business, commercial or residential purpose, the Board finds a

reduction in the subject's land assessment is warranted to properly reflect its preferential land assessment in accordance with Section 10-30 of the Property Tax Code for tax year 2018.

Improvement Assessment

As set forth previously, the purpose of the developer's exemption by the legislature was clear – to protect a developer from paying increased taxes until a return on investment can be made. On this record, the Property Tax Appeal Board finds that the Adams County Board of Review did not satisfactorily allege that any of the events provided for in subsection (c) of Section 10-30 occurred that would have allowed for the removal of the preferential assessment as outlined above in the discussion of the land assessment.

The building, which has been minimally identified in this record, is a portable shed, built on runners and lacking water or electrical service. As part of the appellants' original filing, the appellants reported the shed was "temporarily placed on the property." (Original brief).[4] In rebuttal, the appellants reported the shed "was not built on property and was not a permamant [*sic*] structure there." The assessing officials/board of review assessed the shed solely based upon aerial photography. There is no schematic drawing of the structure presented in this record with measurements as would be expected to be recorded on the applicable property record card of the subject parcel.[5] There is no indication from the assessing officials that they have ever personally viewed the structure. Moreover, the record makes clear that the interior and exterior photographs of the subject shed were originally supplied by the appellants in the course of their appeal before the board of review in July 2018 meaning the shed was assessed "sight unseen."

As described, the Property Tax Appeal Board finds the actions of the Adams County assessing officials thwarted the purposes to be achieved by the legislature with the enactment of the developer's exemption. As part of their brief, the Adams County Board of Review summarily stated, "we believe the structure to be real property and subject to *ad valorem* taxation." In summary, the Board finds on this record that the assessing officials made a decision to assess the portable shed prior to having seen the interior and/or having personally viewed the structure other than the grainy aerial photographs which have been supplied in response to this appeal. As argued in their submission, the Adams County Board of Review surmised, without any substantive evidentiary support, that "we believe this structure may be used for a hunting cabin."

The board of review made no specific analysis of subsection (c) of Section 10-30 to articulate the basis of assessing the subject land and shed at market value for tax years 2017 and/or 2018. As outlined herein, the Board finds that the record is void of any evidence that a habitable structure was completed on the lot; there was no evidence that the lot, either alone or in conjunction with any contiguous property, was being used for any business, commercial or residential purpose; or that there was a sale of the platted lot during the 2018 tax year. Without the happening of one of

[4] In pertinent part, the appellants wrote, "For the tax year 2017 the Melrose township assessor changed my Unimproved Residential Building Lot to an Improved Residential Lot, because there was a Building on it. I took a picture of it and showed them it was just a portable tool shed that was temporarily placed on the property and was no longer on the property, therefore should remain in builder's code for Residential Lot."

[5] The board of review failed to submit a copy of the subject's property record card as required by the procedural rules. (86 Ill.Admin.Code §1910.40(a)).

these events provided for in Section 10-30(c) the lot in question was to be assessed as provided for in Section 10-30(b) of the Code for the 2018 tax year as outlined previously.

The board of review failed to provide any assessment equity comparables of sheds on runners that are assessed within the jurisdiction nor was there any articulation of the policy or practice with regard to the assessment of similar structures. The Property Tax Appeal Board has been frequently tested to address similar assessment determinations in prior appeals concerning the real property assessment treatment and/or practices within various jurisdictions throughout Illinois of items such as the instant portable shed. (Compare, *John Pawlik*, Docket No. 08-04096.001-R-1 (September 2011) (DuPage County reported that two metal carports and a shed were not assessed as they were not considered to be permanent, p. 3); *Richard & Brenda Humphrey, Jr.*, Docket No. 16-02051.001-F-1 (June 2019) (pursuant to Lee County policy, a portable building that is more than 10 feet by 10 feet is to be assessed as real property, p. 5); and *Steven & JoAnn Pingsterhaus*, Docket No. 12-00058.001-F-1 (May 2014) (pursuant to Marion County policy, "any structure measuring or exceeding 10 feet x 16 feet are presumed to be fixtures and therefore assessable," p. 4). Although, the Board finds the instant facts are distinguishable from what have previously been found to be assessable sheds or cabins, in this matter given that the underlying land had previously been and should have remained preferentially assessed the shed should not be assessed.

On this record, the Property Tax Appeal Board finds no evidence of an intent by the appellants as developers to permanently improve the subject parcel with the shed; moreover, there was no permanent accession to the freehold. (Kelly v. Austin, 46 Ill. 156 (1867)). All indications in the record are that the appellants were and continue to offer the subject parcel for sale as a vacant lot. In the case of In re Hutchens, 34 Ill.App.3d 1039, 341 N.E.2d 169 (4th Dist. 1976), a cabin was purchased by a lessee and transported to a leased site where it was set up on pillars of concrete blocks and shimmed up with shingles, along with the provision of the lease for plumbing connections between the cabin, septic tank and a well. The trial court determined the cabin was sufficiently attached to the land to 'have become part of it.' The Appellate Court of Illinois, Fourth District, found that the trial court's finding that the cabin was part of the real estate was not contrary to the manifest weight of the evidence even though the cabin could be removed without substantial damage to the land and even though the lessee had the right to do that. Unlike In re Hutchens, the subject shed was not in any way affixed to the site with any plumbing, well, septic or electricity so as to infer an intent to make an improvement to the land at issue. Under the narrow and limited facts in this proceeding, the Board finds no basis upon which the subject portable shed may be assessed as an improvement to the subject parcel which was improperly removed from the developer's relief exemption of the Property Tax Code.

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. Pursuant to Section 1910.50(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(d)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.

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: August 18, 2020

Mauro M. Glorioso

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 or years of the same general assessment period, as provided in Sections 9-125 through 9-225, 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 such subsequent year or years 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 OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

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.

PARTIES OF RECORD

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