FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: American Way Storage, LLC
DOCKET NO.: 21-06320.001-C-1
PARCEL NO.: 07-1-08126-000

The parties of record before the Property Tax Appeal Board are American Way Storage, LLC, the appellant, by Jason Hortenstine, Attorney at Law,[1] in Mattoon; and the Coles 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 **Coles** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$4,779
IMPR.:	$0
TOTAL:	$4,779

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Coles County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2021 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 site containing approximately 27,878 square feet of land area. The subject site contains from time-to-time a varying number of self-storage units each containing 200 square feet of building area.[2] Each unit has a steel exterior and a wood base that is not affixed or attached to the ground. There are no utilities of any kind hooked up to the units. The subject site is located in Mattoon, Mattoon Township, Coles County.

The appellant appeared before the Property Tax Appeal Board through counsel, Billie Constant, asserting contention of law as the basis of the appeal. In support of this argument, the taxpayer

[1] Attorney Jason Hortenstine is also the owner of American Way Storage, LLC, the appellant in this case.
[2] The representative for the board of review testified that a total of 27 storage units were on the subject site on the January 1, 2021 assessment date at issue, but that number does vary. The property record cards submitted by the board of review describe each unit to be 200 square feet in size. This was not disputed by the appellant's counsel.

submitted a brief contending that the appellant owns and operates multiple self-storage facilities in the state of Illinois, with Mattoon, the site of the subject property, being the headquarters of the company. The taxpayer in his brief noted that the "portable" units are intended to remain at any one site temporarily. The taxpayer also asserted that the "intent is to test the site for storage demand and build a permanent site if demand warrants it, and then relocate the buildings to the next test site or to a new rental location." He added that the units on the subject site are moved from time to time to different sites for rental, and many of the portable units at the subject location are typically moved in any given year to different rental locations. As such, the taxpayer argues that these temporary "portable" units are personal property and not real property, and therefore, should not be assessed as real estate. The appellant further argued in his brief that the County has "… decided to now treat any business in the County differently than residential parcels, noting they intend to only tax businesses who have portable buildings of less than 240 square feet, and plan to tax it as if it were real estate, attaching the tax to whatever parcel the property happens to be located on January 1st of the year."

In his brief, the taxpayer cited *In re Casper*, 156 B.R. 794, 800 (Bankr. S.D. Ill. 1993), *Sword v. Law*, 122 Ill. 487, 496 (1887), and *Beeler v. Boylan*, 62 Ill.Dec. 385 (1982), three decisions issued by the Federal Bankruptcy Court for the Southern District of Illinois, the Illinois Supreme Court, and the Illinois Appellate Court, respectively. Relying on the aforementioned case law, the taxpayer argues that the Illinois courts apply three criteria to determine whether or not an article or structure is a fixture so as to be treated as real or personal property: 1) Actual annexation to the real property; 2) application of the property in question to the use or purpose for which the land is appropriated; and 3) the intention to make the property in question a permanent accession to the realty. Of these three criteria, the taxpayer argues that the "intention" is the most important factor and the first two "merely bear upon and give evidence of the affixer's intent." Applying this test to the case on appeal, the appellant contends that "the temporary portable non-affixed buildings of 240 square feet or less, which are intended to be moved and have in fact been moved from time to time, constitute personal property." Lastly, the taxpayer contends in his brief that prior to purchasing the portable buildings in question, the taxpayer contacted the Coles County Assessor's Office which confirmed to him that the County does not tax portable sheds as long as they are 240 square feet or less in size.

Attorney Constant argued at the hearing before the Property Tax Appeal Board that the storage buildings in question are "portable", and they are intended to be moved and are in fact moved from time to time. These units also have a relatively short physical life of no more than 20 years and are replaced much earlier than that. The appellant operates thirteen storage locations throughout the state of Illinois where these units may be moved depending on the storage needs at each location. For instance, if there is a flood or other natural disaster, individual units may be dropped off at a place of residence or business as requested. The units are leased on a month-to-month basis and there are no long-term contracts but rather strictly on an as-needed basis. Upon questioning by the Administrative Law Judge, counsel explained that within the last six months, approximately one dozen units were moved from the subject property to different locations within the state. A customer may arrange to move the storage unit(s) themselves or have the appellant load them on a flatbed trailer and move them to a desired location. Each unit is small enough to be moved and loaded by a skid steer as they each rest on top of a 2x4 wood pallet-type frame.

Based on these arguments and case law concerning both personal property and lack of uniformity in assessment treatment, the appellant requested that the improvement assessment be removed and only the undisputed assessment on the underlying land in the amount of $4,779 remain.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject parcel's total assessment of $47,736 was disclosed. The total assessment includes a land assessment in the amount of $4,779 and improvement assessment of $42,957.

In support of its contention of the correct classification and assessment, the board of review submitted a letter addressed to the Property Tax Appeal Board dated July 22, 2022. In the letter written by the Coles County Board of Review Clerk, Denise Shores, the board of review set forth the arguments in support of the subject's classification and assessment. The board of review first clarified that it is the policy in Coles County to assess storage sheds located at residential homes only if they contain 240 square feet or more building area. However, if the shed is located on commercial property and/or being used for commercial purposes, it will be assessed as real estate if it is 80 square feet in size or larger. Shores explained that when the appellant contacted the Coles County Assessor's Office about the assessment practices for storage sheds, he did not clarify that the units in question will be used for commercial purposes. If the appellant had mentioned the nature and intended use, he would have been told that any structure over 80 square feet in size would be placed on the tax roll as real property.

In further support of the subject's assessment, the board of review submitted property record cards for the subject's land and each of the 27 storage sheds,[3] along with property record cards for four comparable properties each located in Charleston. No grid analysis was presented. Based on the property record cards as to the four comparable properties in Charleston, each property contains at least one large metal frame building ranging in size from 3,800 to 8,400 square feet of building area. In addition to the larger building(s), the four comparables also include a varying number of smaller units of varying size.[4] One of the subject's property record cards has a notation dated June 21, 2021 stating that "[t]there are 27 10x20 storage modules on site. Each module is divided into various sizes of individual self-storage units. The new storage buildings are basically sheds on skids with metal siding and roofs." Finally, the board of review submission includes several color aerial and ground photographs taken of the subject property in March and July 2022 depicting more sheds that were added to the subject property with the addition of streetlights at the subject site.

Board of review member, Matt Frederick, appeared and testified before the Property Tax Appeal Board on behalf of Coles County. Frederick conceded that the units are on skids, however, as the photographs submitted into evidence depict, there are approximately 35 buildings on the subject site and are layered linearly as fixed storage would be so as to facilitate customers driving in and loading/unloading at the site. Frederick reiterated that commercial storage facilities greater than 80 square feet in size are assessed as real property in Coles County. Frederick asserted that the

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[3] The board of review submission includes one property record card for the subject site ("card 1of 3 page 1") along with individual property record cards for each of the 27 storage sheds (card 2 of 3, pages 1 through 15, and card 3 of 3, pages 1 through 11).

[4] The property record cards associated with the four comparable properties depict the larger steel building as a permanent structure affixed to the ground and there is no evidence in the record or testimony from the board of review to suggest that any of these larger structures were ever moved after being placed at their current locations.

appellant's business model is similar to those of other businesses in the County with fixed buildings and should be treated the same. He conceded that the storage units/buildings on the subject property are movable and have a "shorter shelf life" or "accelerated depreciation" when compared to the fixed storage units. However, Frederick argued that the fact that the subject units are used commercially and are arranged in rows to provide easy access for customers to load and unload demonstrates that they are intended to be more permanent because it is not feasible for the individual units to be easily moved given their configuration.

Upon questioning from the Administrative Law Judge, Frederick stated that there were 27 units on the subject site as of January 2021, but he was not able to state whether or not that number of units changed during the 2021 tax year. However, the following year, (in 2022), the number of units increased to 35 as depicted in the photos submitted into evidence. Upon further questioning, Frederick acknowledged that theoretically speaking, if the number of units decreased from one year to the next and the appellant appealed the improvement assessment, the board of review would adjust the improvement assessment downward as the assessment is based on the total number of buildings.

Based on the evidence submitted and arguments presented, the board of review requested that the storage units in question be classified as real property and that the improvement assessment be confirmed.

Conclusion of Law

The appellant sets forth a contention of law as the basis of the appeal. Specifically, the appellant contends that the storage units that are located on the subject site should be properly classified as personal property rather than real property and, therefore, should not be assessed as real estate and/or have not been equitably assessed in Coles County.

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 Board first turns to the appellant's contention of inequity in assessment process and the Coles County policy regarding the assessment of storage units in general, including the ones that are the subject matter of this appeal. The evidence in the record discloses that it is the policy of the Coles County Board of Review to assess storage sheds as real estate and be placed on the tax roll only if they are 80 square feet in size or larger and/or being used for commercial purposes. However, if a storage unit is located on residential property, it will not be assessed as real estate unless it is 240 square feet in size or larger. The board of review acknowledged that any one of the appellant's storage sheds that contain 200 square feet of building area would not be taxed if it was located on residential property. The Board finds this disparate treatment of like-kind property based solely on their location on residential or commercial property inequitable and in violation of the constitutional principle of uniformity. The Board finds there is an obvious inequity in assessment treatment in this case. *See Kankakee County Board of Review v. The*

Property Tax Appeal Board, 131 Ill. 2d 1, 544 N.E.2d 762 (1989). The appellant raised the lack of uniformity argument in his brief asserting that Coles County has "… decided to now treat any business in the County differently than residents, noting they intend to only tax businesses who have portable buildings of less than 240 square feet, and plan to tax it as if it were real estate, attaching the tax to whatever parcel the property happens to be located on January 1st of the year." This assertion was confirmed by the Coles County board of review in their memorandum as follows: "It is Coles County's rule of thumb that a storage shed at a residential home is 240 sq ft before it is put into the tax roll, if however it is commercial and being used as commercial the shed is put on tax roll after 80 sq ft." (*sic*).

It is well-established in Illinois that it is unlawful for an assessor to exempt one kind of property while classifying the same kind of property in the same district as nonexempt. Id. Uniformity requires not only uniformity in the level of taxation, but also in the basis for achieving the levels. Kankakee County Board of Review v. The Property Tax Appeal Board, 131 Ill. 2d 1, 544 N.E.2d 762 (1989). Any attempts to correct disparities in assessments must be applied in a uniform manner. Thus, the Property Tax Appeal Board finds the Coles County Board of Review and township assessor violated the uniformity clause of the Illinois constitution and their assessment practices are against the holding in Walsh v. Property Tax Appeal Board, 181 Ill.2d 228, 229, Ill.Dec. 487, (1998). In Kankakee, our Supreme Court explained as follows:

> The principle of uniformity of taxation requires equality in the burden of taxation. (*People ex rel. Hawthorne v. Bartlow* (1983), 111 Ill. App. 3d 513, 520.) This court has held that an equal tax burden cannot exist without uniformity in both the basis of assessment and in the rate of taxation. (*Apex Motor Fuel Co. v. Barrett* (1960), 20 Ill. 2d 395, 401.) The uniformity requirement prohibits taxing officials from valuating one kind of property within a taxing district at a certain proportion of its true value while valuating the same kind of property in the same district at a substantially lesser or greater proportion of its true value. *Apex Motor Fuel Co. v. Barrett* (1960), 20 Ill. 2d 395, 401; *People ex rel. Hawthorne v. Bartlow* (1983), 111 Ill. App. 3d 513, 520.

Here, Coles County expressly acknowledged that given sheds of equal size and characteristics, it is only the **location** on either residential or commercial sites that is the sole determining factor as to whether or not it will be subject to taxation. It may be implied that the commercially used shed of equal size has a greater market value due to its capacity to earn income, but in application of the County policy, the opposite appears to be the case. For example, according to the Coles County policy, if a shed is less than 80 square feet in size and located on commercial property, it would not be subject to taxation. Conversely, if a shed is greater than 240 square feet and located on residential property, it would be placed on the tax roll. In either case, the income capacity and the market value is inconsequential, but rather only the location determines whether or not sheds of same size and utility will be subject to taxation. This policy by the Coles County Assessor creates a substantial disparity between similar properties and/or classes of taxpayers. See Id. at 20.

Lastly, the board of review asserted that the County has "many other commercial properties that contain this type of buildings and they are being taxed." As to this argument, the Board finds that

the four comparable properties that the board of review submitted do not overcome the unequal treatment that is admitted herein between like-sized sheds situated either on commercial or residential parcels.

Based on the evidence in this record, the assessment placed on the subject storage sheds does not conform to the principles of uniformity. Therefore, the Board finds that the improvement assessment on the subject property should be removed and a reduction in the subject's assessment commensurate with the appellant's request is warranted.

With respect to the issue of personal vs. real property, the Property Tax Appeal Board need not further address this aspect of the appeal as the reduction has been granted on the ground of lack of uniformity.

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: April 18, 2023

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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