

NOTICE

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2014 IL App (5th) 130490-U

NO. 5-13-0490

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

ROGER CAMPBELL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Marion County.
)	
v.)	No. 10-TX-1(2)
)	
PATTI J. HAHN, Marion County Treasurer)	
and Collector,)	Honorable
)	Michael D. McHaney,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* In this tax objection proceeding, the judgment of the circuit court is reversed where it relied on an appraisal of the real property which utilized an improper methodology.

¶ 2 This is an appeal from a judgment of the circuit court of Marion County, entered September 13, 2013, on the tax objection complaint of Roger Campbell (the taxpayer) against Patti J. Hahn, Marion County treasurer and collector. The county assessor's 2010 tax assessment had placed the fair market value of the taxpayer's property at \$333,600, more than triple the prior year's assessed market value of \$103,530.

¶ 3 The residence of the taxpayer is located on 2.43 acres of lakefront property on

Centralia Lake. The residence is a 2100 square foot, 1½ story, 2-bedroom home with 2½ bathrooms. The property includes amenities such as central air conditioning, a one-car attached garage, a patio, a deck, a fireplace, an in-ground swimming pool, a separate room containing a hot tub, and a pole barn with a concrete patio, lean-to, and gazebo. The residence also includes a boat dock. The real estate underlying the residence is owned by the City of Centralia (City), and the taxpayer leases that real estate from the City. The lease provides that the taxpayer is responsible for the payment of all real estate taxes.

¶ 4 A bench trial was held on the complaint on May 3, 2013, and the following evidence was adduced. The taxpayer testified that he purchased the residence in 2000, for a purchase price of \$155,000. The purchase included an assignment of the lease from the City of Centralia pertaining to the real estate underlying the residence. The taxpayer obtained a mortgage from a bank to finance his purchase of the property. The taxpayer believed that the lease had 15 years remaining on its term.

¶ 5 After purchasing the property in 2000, the taxpayer made several improvements. He replaced an old boat dock with a new boat dock within the first year. He added a small room to the house for a hot tub and built a lean-to onto the pole barn. He also added an in-ground swimming pool. Between 2009, when his property was assessed with a fair market value of \$103,530, and 2010, when his property was assessed with a fair market value of \$333,600, no improvements were made to the property.

¶ 6 The taxpayer believed that there were some restrictions on his use of the property because he held only a leasehold estate and not the fee simple estate. For example, he

had to get permission of the city council before he could build on the property or cut trees down, and he was restricted in his ability to sublease it. The City retained the right to enter upon his property and inspect it at any time. The City also held a lien on all improvements to the property. The taxpayer also believed that lakefront property that was owned in fee simple sold for a higher price than lakefront property that was held only as a leasehold. He believed this because he had "lived there and watched these places sell."

¶ 7 Jay O'Brist, a certified real estate appraiser, was hired by the taxpayer to appraise the property. The taxpayer had told O'Brist that he planned to contest the property taxes and asked O'Brist to appraise the property "as a leasehold." O'Brist valued the property at \$174,000. He compared three "comparable" properties that had recently sold to help determine the fair market value of the taxpayer's property. The first comparable property was located on Centralia Lake and was a leasehold estate. O'Brist gave this property an adjusted sale price of \$169,200. The second comparable property was on Racoon Lake and was a fee simple estate. O'Brist gave this property an adjusted sale price of \$177,120. The third comparable property was on a smaller lake than Centralia Lake and was a fee simple estate. O'Brist gave this property an adjusted sale price of \$174,140.

¶ 8 When comparing the plaintiff's leasehold estate with a fee simple estate, O'Brist "had to deduct for the value of the land." He testified that fee simple estates are valued much higher than leasehold estates. O'Brist also testified that he believed real estate values had gone down between January 1, 2009, and January 1, 2010.

¶ 9 On cross-examination, O'Brist was asked again about what he was hired to do:

"Q. Were you given any special instructions when you were hired?

A. Just to do the lease fee value.

Q. I'm sorry.

A. To do the lease fee value of the property?

Q. The lease fee?

A. Leasehold I mean.

Q. So you did not value the real estate?

A. No.

Q. So your appraisal is just the structures and improvements?

A. Yeah."

Later in cross-examination, O'Brist was asked, "you extracted the real estate component out of your appraisal; is that right," and responded, "yes."

¶ 10 Accordingly, O'Brist testified that when he calculated the adjusted sales prices of the comparable properties, he deducted \$30,000 from the sales price if the property was held in fee simple as opposed to a leasehold. O'Brist testified that the fair market value of property held as a leasehold is less than the fair market value of the same property held in fee simple.

¶ 11 Russell Sanderson, a certified real estate appraiser, testified on behalf of the defendant. He testified that he would not make any adjustment to account for property being held as a leasehold as opposed to fee simple. He testified that when people purchase lakefront property they do not care whether they are getting the fee or just the use of the land; there is no discernible difference in the price people are willing to pay.

While he denied that there is a "sales advantage" with fee simple properties over leasehold estates, he admitted that there is a "marketing advantage." He admitted that this marketing advantage may translate to a higher sales price but stated he had no evidence to support that. All of Sanderson's comparable properties were owned in fee simple. He gave them adjusted sales prices of \$210,000, \$297,000, and \$274,800. Sanderson placed on the plaintiff's property a fair market value of \$270,000.

¶ 12 Patty Brough, the supervisor of assessments for Marion County, testified that she has held that position since December 1, 2000. She is an elected official and supervises over 34,000 properties. She testified that prior to 2010, the lakefront homes that were on leased property were assessed under a unique parcel number and the underlying land belonging to the City was assessed separately under a different number.¹ In 2010, the two parcels were combined under one number and one assessment. When the county assesses the property for tax purposes, it values the land and the structures, just like any other property; it does not value the leasehold interest. This is the way the county was directed by the Illinois Department of Revenue to do things. The plaintiff's lease provides that he is to pay all property taxes.

¶ 13 Brough explained that this change in the way properties are assessed partially explains why the assessed value of the plaintiff's property nearly tripled from 2009 to

¹It is not disputed that the property belonging to the City is not exempt from taxation because it is outside the city limits and is not used for public purposes, being leased to the taxpayer for private purposes. See 35 ILCS 200/15-60 (West 2014).

2010. Brough further explained that the assessment increased because the plaintiff's property had not been reassessed in many years. With the reassessment of the plaintiff's property, the several improvements he had made were included and also property values in general had increased.

¶ 14 Brough testified that the county had offered to lower the assessed value of the plaintiff's property from \$333,600, the county's assessment, to the value given by appraiser Sanderson, \$270,000, but the plaintiff had refused the offer.

¶ 15 Brough testified that she understood appraiser O'Brist to say that when he appraised the plaintiff's property he appraised only the structures and not the underlying real estate.

¶ 16 On May 21, 2013, the circuit court entered an order finding that both appraisers were credible witnesses, but the court was persuaded by the testimony of O'Brist that a leasehold estate is less valuable than a fee simple estate. The court also found that the comparable properties considered by O'Brist were more similar to the taxpayer's property than the comparable properties relied on by appraiser Sanderson. Accordingly, the court adopted O'Brist's opinion as to the fair market value of the taxpayer's property, \$174,140. The defendant's motion to reconsider was denied and final judgment was entered September 13, 2013.

¶ 17 We reverse. Because we believe the issues presented in this case involve the propriety of the methodology used by the appraisers to value the taxpayer's property, a question of law, and not merely a question of fact as to which appraiser's value is supported by the manifest weight of the evidence, our review is *de novo*. See *Kankakee*

County Board of Review v. Property Tax Appeal Board, 226 Ill. 2d 36, 51 (2007) (whether appraisals utilized the proper methodology for valuation is a question of law to be reviewed *de novo*).

¶ 18 We begin with the undisputed fact that the City's property underlying the leasehold of the taxpayer was not exempt from taxation. It lies outside the incorporated limits of the City, is not held or used for public purposes, and is leased by the City to the taxpayer for use other than public purposes. See 35 ILCS 200/15-60 (West 2012). Accordingly, the subject property does not fall under section 9-195 of the Property Tax Code, which provides that where property which is exempt from taxation is leased to another whose property is not exempt from taxation, the leasehold estate and appurtenances shall be listed as the property of the lessee and the lessee shall be liable for those taxes and no tax lien shall attach to the exempt real estate. 35 ILCS 200/9-195 (West 2012). In the instant case, the fee simple estate, owned by the City, is subject to taxation.

¶ 19 The Property Tax Code recognizes that leasehold estates and fee simple estates are two different things for tax purposes, and it distinguishes between assessments of fee simple estates and taxable leasehold estates, at least where the underlying real estate is exempt from taxation and the leasehold is not. 35 ILCS 200/9-195 (West 2012). Leasehold estates are taxable only when the underlying fee simple estate is exempt from taxation. See *Metropolitan Water Reclamation District of Greater Chicago v. Department of Revenue*, 313 Ill. App. 3d 469, 480 (2000). Leasehold estates are valued for taxation at 33 1/3% of their fair cash value, just as the underlying real estate is valued for taxation at 33 1/3% of its cash value. 35 ILCS 200/9-145 (West 2006).

¶ 20 Finally, we note that the property taxes in the case at bar were indeed assessed against the owner of the fee, the City of Centralia and, pursuant to the lease which obligated the taxpayer to pay all taxes that come due, the bill was mailed to the City of Centralia c/o Roger Campbell, at the taxpayer's address.

¶ 21 Because the land in question is not exempt from taxation, it is only proper that any valuation of the property for tax purposes be based on the value of the land in question, that is the fee simple estate. See *Metropolitan Water Reclamation District of Greater Chicago v. Department of Revenue*, 313 Ill. App. 3d 469, 480 (2000). These are the taxes for which the landowner, the City, is liable, although the taxpayer/lessee has agreed in the lease to be responsible for paying them. Because the taxpayer's appraiser, O'Brist, by his own testimony valued only the leasehold, the circuit court erred as a matter of law in accepting and relying on that appraisal. The real property taxes are properly based on the value of the City's fee simple estate, not the value of the taxpayer's leasehold estate.

¶ 22 We turn now to a second issue which we must address. Shortly after purchasing the property in 2000, the taxpayer replaced an old boat dock with a new boat dock. The taxpayer's appraiser testified that he considered this dock to be personal property and not taxable as real property under the Property Tax Code. The county's appraiser testified that he considered the boat dock to be taxable real property. In its order, the court held that the boat dock was personal property because it was not permanently affixed or attached to the land, and the existence of the boat dock was not indispensable to the use of the real estate. The county appeals, arguing that the "Freeze Act" applies to this case and requires that the boat dock be classified as real property.

¶ 23 The Freeze Act "freezes" the classification of real and personal property made by assessing officials prior to January 1, 1979. See *Oregon Community Unit School District v. Property Tax Appeal Board*, 285 Ill. App. 3d 170, 176 (1996). It provides that no property lawfully assessed and taxed as real property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as personal property, and similarly, no property lawfully assessed and taxed as personal property, or property of like kind, shall be classified as real property. 35 ILCS 200/24-5 (West 2006). In other words, if property, such as a boat dock, was taxed as real property prior to January 1, 1979, that same property, or any property of like kind acquired or put in use after January 1, 1979, will continue to be taxed as real property. If it was taxed as personal property, it cannot be taxed as real property. The classification of property as either real or personal prior to January 1, 1979, controls the status of property after January 1, 1979. *Oregon Community Unit School District*, 285 Ill. App. 3d at 176. Patty Brough, the supervisor of assessments, testified that prior to January 1, 1979, boat docks were classified and taxed as real property in Marion County.

¶ 24 We note that the taxpayer has the burden of showing that the property must be classified as personal property under the Freeze Act. *Oregon Community Unit School District*, 285 Ill. App. 3d at 176. The following evidence was adduced at trial with respect to this question. The taxpayer testified that the boat dock that had been on the property when he purchased it was driven into the lakebed with pipe and was permanently attached to the ground. The taxpayer replaced it with what he called a floating boat dock. The floating boat dock floats on the water up to the lake bank and

"anchors with two arms and a couple of wires." It has "two legs off each corner that fold down that are pin driven in the ground and there's two guy wires." The pins driven in the ground are steel nails that are driven about three feet deep with a sledgehammer. To move the boat dock, one simply had to take the pins out, unhook the guy wires, and float the dock away. The boat dock has electricity running to it, and at one time it had water running to it. These utilities would have needed to be disconnected in order to move the dock.

¶ 25 Appraiser O'Brist testified that he considered the boat dock to be personal property because it could be moved and was not permanently attached to the real property. A floating boat dock is almost like a boat tied to the shore, he testified.

¶ 26 Appraiser Sanderson testified that he considered the boat dock to be real property. A three-foot post pounded into the ground with cables affixed is similar to a fence post being put in the ground and is real property. Any kind of electric or water hookup will make property real and not personal. These are manners of permanent affixation to the land.

¶ 27 Supervisor of assessments Patty Brough testified that the boat dock was affixed to the land by poles anchored in the ground as well as electrical wiring and a water supply. The boat dock includes a patio area which manifested an intent to use the dock there indefinitely. Brough believed that the taxpayer's boat dock was more permanently affixed to the land than boat docks were prior to January 1, 1979, especially given the electric and water connections.

¶ 28 The question becomes then, whether the present boat dock, which was put in use

after January 1, 1979, is "of like kind" to the boat docks used prior to January 1, 1979. Our courts have pointed to four factors to consider in making this determination: (1) whether they perform the same function; (2) whether they produce the same product; (3) whether they are similar in portability and manner of attachment; and (4) whether the new equipment replaced existing equipment. *County of Whiteside v. Property Tax Appeal Board*, 276 Ill. App. 3d 182, 186 (1995).

¶ 29 The circuit court held that the key factor in the case at bar was whether the taxpayer's boat dock was similar in portability and manner of attachment to boat docks that existed prior to January 1, 1979, and found that it was not: "a comparison of [the taxpayer's] boat dock to the permanently attached, wooden docks prior to 1979, discloses that the two are not similarly portable nor are they attached in a similar manner." The circuit court determined that the taxpayer's boat dock should be classified as personal property and not taxed as real property. We conclude that the circuit court's finding is contrary to the manifest weight of the evidence.

¶ 30 The evidence demonstrates that the current boat dock is similar in portability and manner of attachment to the land to boat docks used prior to January 1, 1979, and is "of like kind." The old boat docks were attached to the land by being attached to poles driven into the ground. The current boat dock is attached to the land by being attached to poles driven into the ground. The old and current docks may be attached to the poles differently, but they are attached to the land in a similar manner—by being attached to poles driven into the ground. Furthermore, the current boat dock has electricity running to it, making it even harder to remove than the old boat docks.

¶ 31 We have viewed the photographs of the current boat dock admitted into evidence at the trial. It has two covered boat slips and a large covered patio area. It is attached to the land by two large metal girder arms that are nailed or pinned into the ground, and two metal cables that are also nailed or pinned into the ground. It appears to be as permanently attached to the ground as the old wooden boat docks in use prior to January 1, 1979. The circuit court's finding to the contrary is against the manifest weight of the evidence.

¶ 32 Accordingly, we reverse the circuit court's order of May 21, 2013, which expressly adopted O'Brist's appraisal because that appraisal was improperly based on the value of the leasehold rather than the value of the fee simple estate. Arguing that the only other evidence of value before the court was the testimony of appraiser Sanderson, the appellant, Marion County treasurer and collector, asks that we remand this cause to the circuit court with directions that it enter an order finding that the fair market value of the property for tax purposes is \$270,000, in accordance with appraiser Sanderson's appraisal. Although there was testimony from the Marion County supervisor of assessments, Patty Brough, as to how she assessed the value of the property, we note that she also testified that the county was satisfied with Sanderson's appraisal and had offered to settle the case with the taxpayer based on Sanderson's appraisal. Accordingly, we will grant the appellant's prayer for relief. This cause is remanded to the circuit court of Marion County with directions that it enter an order establishing the subject property's fair market value as of January 1, 2010, at \$270,000, and enter final judgment thereon. We note that appraiser Sanderson included the boat dock as real property in his appraisal

of the property.

¶ 33 For the foregoing reasons, the circuit court's order of May 21, 2013, and its final judgment of September 13, 2013, are hereby reversed and this cause is remanded with directions to the circuit court of Marion County.

¶ 34 Reversed and remanded with directions.