



**FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD**

APPELLANT: Harris Trust Savings Bank Trust HTX 7136
DOCKET NO.: 05-01549.001-R-3
PARCEL NO.: 19-14-354-020

The parties of record before the Property Tax Appeal Board are Harris Trust Savings Bank Trust HTX 7136, the appellant, by attorney Curt P. Rehberg, of Curt P. Rehberg and Associates, P.C. of Crystal Lake; the McHenry County Board of Review; and Cary Community Consolidated School District No. 26, intervenor, by attorney Robert E. Swain of Hodges Loizzi Eisenhammer Rodick & Kohn in Arlington Hts.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds no change in the assessment of the property as established by the **McHenry** County Board of Review is warranted.¹ The correct assessed valuation of the property is:

LAND:	\$ 356,964
IMPR.:	\$ 0
TOTAL:	\$ 356,964

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of approximately 10-acres of vacant land, the size of which is disputed. The appellant contends the subject parcel is in excess of 10-acres and the board of review contends the subject is 9.997-acres or in the alternative is exactly 10-acres. The subject parcel is located in Algonquin Township, McHenry County.

¹ The subject's 2005 assessment includes a 2004 omitted property assessment for the subject in the amount of \$133,632.

The appellant appeared before the Property Tax Appeal Board, through counsel, claiming the subject is entitled to the preferential developer's relief assessment pursuant to Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). In addition, the appellant argued that the subject's 2005 assessment is incorrect because it includes, in part, a 2004 omitted property assessment for the subject that was incorrectly pro-rated. The appellant further argued that pursuant to Section 10-30 of the Code, the subject's assessment could not be increased from its last assessment prior to the date of platting. Thus, it was argued that since the appellant purchased the subject parcel from a School District (an exempt entity), which purchased the subject parcel when it was assessed as farmland, the subject property should be classified and assessed as farmland, since that was the use and assessment prior to the exempt School District purchasing the property.

The first witness called to testify was James McPartlan, the beneficiary of the owner of the property. McPartlan testified that the subject was purchased on September 1, 2004 from Cary School District 26. The platting of the property was completed on October 7, 2005. McPartlan stated that prior to platting, the subject property was vacant agricultural land. After the purchase, the subject was subdivided into 25 residential lots with mass earth work, water and storm sewer work being performed. Two homes have been sold to residents and two model homes remain on the property. The adjacent properties surrounding the subject are residential.

During cross-examination, McPartlan stated he did not know that the deed to the property was dated May 14, 2004. McPartlan stated that the subject parcel is in excess of 10-acres. However, McPartlan agreed the real estate transfer declaration sheet depicts the subject is 10-acres. McPartlan stated that he was seeking the assessment of \$5,000 market value per acre (\$50,000 market value for 10-acres) for the use prior to the School District, which was agricultural. He stated the estimated market value was based on research depicting what agricultural land was selling for in 1974. When his company purchased the subject parcel it had a tot lot and baseball diamond on it. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject in 2005 totaling \$356,964 was disclosed.² To demonstrate the subject property is being equitably assessed the board of review submitted a letter from the Deputy Assessor of Algonquin Township, a quit claim deed for the subject property dated May 14, 2004, an Illinois Real Estate Transfer Declaration sheet, a legal description of the subject property, an omitted property notice, a notice of final decision, a transfer history chart, a map and property record cards. The Transfer Declaration sheet, recorded January 28, 2005, depicts the subject was purchased for \$852,000 and the date of deed was May 2004.

The board of review called Deputy Assessor for Algonquin Township, Josephine Petralia, as a witness. Petralia explained that the School District purchased the subject parcel and recorded a deed in 1989, at which time the School District applied for an exemption from property taxes. The School District then sold the subject parcel to the appellant, which was recorded as of 2004. The parcel split took place in 2005 after the appellant's deed was recorded. She stated the mapping department will not split parcels in the middle of the year. Prior to the subject parcel being split, it was assessed as agricultural. She stated that after the split the farm assessment was removed and the subject was assessed as vacant residential. In contradiction, she then stated that in 1988 the equalized assessed value for the subject parcel for 11.14-acres would have been \$53,750 (residential), which would have been the last assessment prior to the tax exempt assessment.

During cross-examination, Petralia stated that from 1981 through 1988 the subject parcel was given a residential assessment. She further stated that the assessment of \$53,750, which the School District was exempt from, was for 11.14-acres. She stated that the subject parcel consisting of 10-acres was a part of the 11.14-acres. She further stated that in 1981 the subject was a part of two parcels adding up to 15-acres. The two parcels were combined in 1989 and then split. The School District was deeded 11-acres and in 2004 or 2005 the appellant received ownership of 10-acres from the School District. She stated that prior to 1989 the subject was assessed as farmland and sometime shortly thereafter, it received a residential assessment, and received

² The evidence depicts the 2005 assessment includes the 2004 pro-rated omitted property assessment for the subject of \$133,632. (2005 assessed value less the 2005 equalization factor of 1.0696 x .64).

an exemption from property taxes. The exemption remained in effect until the appellant purchased the property. She further stated that her office did not survey the property, but relied on the McHenry County Mapping Department to determine the subject property consisted of exactly 10-acres.

In rebuttal, appellant's counsel recalled James McPartlan as a witness. He stated that he was supplied with a survey in connection with the purchase of the subject property from the School District. The survey depicted a gross square footage for the subject parcel of 435,470 square feet. The survey was not introduced into the record.

Appellant's counsel then argued that Section 10-30 of the Property Tax Code applied to the subject parcel. Counsel argued that McHenry County has less than 3,000,000 inhabitants; the property was subdivided into separate lots which include streets, sidewalks, curbs, gutters, sewer, water and utility lines, and that the assessed valuation shall not increase on all or any part of the property. Counsel then stated that the property is platted and subdivided after January 1, 1978, in accordance with the Plat Act. Counsel further argued that at the time of platting, the property was vacant or used as a farm as defined in Section 1-60 of the Code. It was pointed out that the subject parcel was used as a farm in 1981 or before, and that in the alternative, it was clearly vacant at the time of platting. Counsel stated that when the four elements of Section 10-30 are met, there should be no increase in the assessed valuation of the subject property. Counsel relied upon Paciga v. Property Tax Appeal Board, 322 Ill.App.3d 157, 749 N.E.2d 1072 (2nd Dist. 2001) for the proposition that the legislative intent was to protect real estate developers from rising assessments which result from initial platting and subdividing farmland for real estate development. Counsel further argued that Paciga expressly states that there is an ambiguity to some extent in the statute and that the elements of 10-30(a) need only be satisfied and that when 10-30(a) elements are satisfied, then you do not apply Section 10-30(b). Once the elements of 10-30(a) are met, the assessment cannot increase.

Board of Review member, Robin Brunschon, testified that the appellant took possession of the subject parcel on the date of deed (May 14, 2004), even though it was not recorded until a later date. She stated that the appellant was sent various notifications and never replied. She further stated the

appellant never gave 30-days notice as required under the Plat Act.

During questioning, Brunshon agreed the population in McHenry County was 3,000,000 or less. She further stated that the subject property was not platted in accordance with the Plat Act because the Plat Act requires notice to be given within 30-days of the purchase. She agreed the platting occurred after 1978. She further stated the property is not in excess of 10-acres. Moreover, she stated the subject property is 130 square feet less than 10-acres.

During questioning, appellant's counsel stated that Section 10-30(a) of the Code only requires the subject property to be 10-acres based on legislative intent and that 10-acres or more satisfies the elements required in Section 10-30(a)(3).

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds that a reduction in the subject's land assessment is warranted for the 2004 assessment year. The appellant claimed the subject property was not properly assessed.

The preferential "developer's relief" assessment provided for by Section 10-30 of the Property Tax Code (35 ILCS 200/10-30) is applied to a property in excess of 10 acres³; previously vacant or used as a farm as defined in Section 1-60 of the Code; and has been platted and subdivided in accordance with the Plat Act after January 1, 1978.

The board of review argued that the subject property was not platted and subdivided in accordance with the Plat Act (765 ILCS 205) because the subject parcel was purchased May 14, 2004 (date of deed), however, the appellant failed to give notice within 30-days. The Property Tax Appeal Board finds that nothing in the Plat Act (765 ILCS 205) required the appellant to give notice within 30-days of the subject's purchase. The Plat Act requires that "[t]he plat must be submitted to the city council or the city or board of trustees of the village or town or to the officer designated by them, for their approval . . . "

³ Public Act 95-135 amended section 10-30(a)(3) effective January 1, 2008, to reduce the size of the property at the time of platting from 10 to 5 acres.

however, no time limit for giving such notice is expressly stated. (765 ILCS 205/2).

The appellant argued that all elements of Section 200/10-30(a) of the Code were met for the subject parcel. Section 200/10-30(a) of the Code provides in relevant part:

In counties with less than 3,000,000 inhabitants, the platting and subdivision of property into separate lots and the development of the subdivided property with streets, sidewalks, curbs, gutters, sewer, water and utility lines shall not increase the assessed valuation of all or any part of the property, if:

- (1) The property is platted and subdivided in accordance with the Plat Act;
- (2) The platting occurs after January 1, 1978;
- (3) At the time of platting the property is in excess of 10 acres; and
- (4) At the time of platting the property is vacant or used as a farm as defined in Section 1-60.

(35 ILCS 200/10-30(a)).

The Property Tax Appeal Board finds the subject does not exceed 10-acres as required by Section 10-30(a)(3) of the Code. The appellant testified that based on a survey provided to him at the time of purchase, the subject contained 435,470 square feet of land area, which is at least 130 square feet less than 10-acres, which is 435,600 square feet. The appellant testified that the subject parcel was in excess of 10-acres, however, the Real Estate Transfer Declaration sheet depicts the subject parcel is 10-acres. In addition the legal description depicts the subject as "Vacant 10 acres Fox Trails Drive." Appellant's counsel argued that the legislative intent of the statute mandates that even a 10-acre parcel meets the requirements of Section 10-30(a)(3) of the Code. The Board finds that Section 10-30(a)(3) of the Code is clear and unambiguous wherein it is expressly stated that "[a]t the time of platting the property is in **excess of 10-acres.**" (35 ILCS 200/1-030(a)(3)) (Emphasis added). The legislature changed the size requirement to an amount less than the "in excess of 10-aces" requirement, however this was not effective until January 1, 2008 (See footnote 2). Therefore, the Property Tax Appeal Board finds the subject parcel did not meet all of the elements required in Section 10-

30 of the Code to receive the preferential "developer's relief" assessment in 2005.

The Board will next address the issue of whether or not the property was properly assessed as omitted property for 2004. Section 9-155 of the Property Tax Code states in relevant part:

Valuation in general assessment years. On or before June 1 in each general assessment year in all counties with less than 3,000,000 inhabitants, . . . the assessor, in person or by deputy, shall actually view and determine as near as practicable the value of each property listed for taxation **as of January 1 of that year**, or as provided in Section 9-180, and assess the property at 33 1/3% of its fair cash value, or in accordance with Sections 10-110 through 10-140 and 10-170 through 10-200, or in accordance with a county ordinance . . . (Emphasis added).

(35 ILCS 200/9-155).

The court in Doran v. P.J. Cullerton stated in relevant part that "the date upon which real estate is assessed in the State of Illinois is January 1 of each year." Doran v. P.J. Cullerton, 51 Ill.2d 553, 558 (1972). Further, the court in Rosewell v. 2626 Lakeview Limited Partnership holds that "unless otherwise provided by law, a property's status for purposes of taxation is to be determined as of January 1 of each year." Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369, 373 (1st Dist. 1983). However, the court in Rosewell recognized two exceptions to change the status of property after the January 1 assessment date provided by Section 27a of the Revenue Act of 1939, now codified at Sections 9-175, 9-180 and 9-185 of the Property Tax Code, permitting partial exemption of taxation where a property becomes taxable or exempt after January 1 and providing for proportionate assessments in the case of new construction or uninhabitable property. Rosewell, 120 Ill.App.3d at 373.

Section 9-185 of the Property Tax Code provides in relevant part:

Change in use or ownership. The purchaser of property on January 1 shall be considered as the

owner on that day. . . . Whenever a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, **that property shall be subject to taxation from the date of purchase or conveyance.** . . . It shall be the obligation of the transferee to notify the chief county assessment officer within 30 days of that action. Failure to give the notification, resulting in the assessing official continuing to list the property as exempt in subsequent years, shall cause the property to be considered omitted property for the purpose of this Code. In those cases the county collector is authorized to issue a tax bill to the person holding title to the property **in that part of the year during which it was not exempt from taxation** for that part of the year

(35 ILCS 200/9-185).

The Board finds that Section 9-185 of the Property Tax Code addresses the assessment of land transferred from a use exempt from taxation to a use not exempt from taxation. The evidence depicts a date of deed on May 14, 2004. Brunshon testified that the appellant failed to respond to requests regarding the subject's date of purchase. The evidence further depicts the subject's purchase was not recorded until January 28, 2005 (over 7 months later). The appellant presented no evidence to refute the lack of notice within 30-days of transfer as alleged by Brunshon, which is found in Section 9-185 of the Code. Therefore, the Board further finds the subject property is to be considered omitted property for the 2004 assessment year.

The evidence and testimony depicts the subject parcel (10-acres) was one part of two parcels (11.14-acres and 4.29-acres) that were combined in 1981. The agricultural assessment was removed at that time and the parcels were assessed as vacant residential land. In 1989 the parcels were combined and split into three parcels (11.0-acres, 2.38-acres and 2.05-aces), two of the three parcels became Fox Trails Subdivision. The third parcel (11.0-acres), purchased by the School District, was assessed as vacant residential land, however, it was exempt from taxation. As of January 1, 2004 the subject property was exempt from the residential vacant land assessment. Later in 2004, one-acre was

transferred from the School District to the Park District with the subject parcel (10-acres) being purchased by Provident Development Group, Ltd., from the School District, whereby the subject property (10-acres) lost its exempt status.

The appellant testified that the subject was purchased September 1, 2004. However, the evidence in this record does not support this testimony. The Real Estate Transfer Declaration sheet and Claim Deed support the board of review's argument that the subject property was purchased May 14, 2004. The record depicts that at the time of purchase by the appellant, the subject property was assessed as vacant residential land, even though it may have been exempt from taxation. Therefore, pursuant to Section 9-185, when a property is transferred from an exempt use to a non-exempt use, it is subject to taxation for that part of year it is not exempt.

The record disclosed that the McHenry County Board Review considered the subject property omitted property in 2004 because the transferee did not notify the chief county assessment officer within 30-days of the transfer of the property to a non-exempt status. The Property Tax Appeal Board finds that Section 9-185 of the Code provides that if the purchaser fails to give notice of the purchase, then that property may be assessed as omitted property. The record depicts the board of review applied a pro-rated assessment for the subject for 2004 equal to .64 of the 2005 assessment, less the 2005 equalization factor of 1.0696. The Property Tax Appeal Board finds the subject's 2004 assessment was pro-rated for that part of the year it was not exempt in accordance with Section 9-185 of the Code. The Board further finds the appellant offered no substantive evidence to refute the subject's estimated market value for 2004 or 2005. The record depicts the subject was purchased in 2004 for \$852,000. The Board finds the subject's 2005 assessment reflects a market value of approximately \$670,465 using the McHenry County three-year median level of assessments of 33.31% as determined by the Illinois Department of Revenue, which is less than its purchase price in 2004.

Based on the above analysis the Board finds the subject's omitted property assessment for 2004 is warranted. The Board further finds no reduction is warranted for the subject's 2005 assessment.

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.

Ronald R. Crit

Chairman

K. L. Fan

Member

Richard A. Huff

Member

Mark A. Lewis

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: December 23, 2009

Allen Castrovillari

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.