

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Lynne M. 2000 Oswald Trust
DOCKET NO.: 05-01653.001-R-1
PARCEL NO.: 03-34-402-003

The parties of record before the Property Tax Appeal Board are Lynne M. 2000 Oswald Trust, the appellant, represented by John Klick and Wayne Oswald, and the Boone County Board of Review.

The subject property consists of a 1.25 acre site improved with a one-story frame dwelling built in 2005. Features include central air conditioning, one fireplace, a full basement and a three car garage.

John Klick, son-in-law of appellant Lynne M. Oswald, and Wayne Oswald, Trustee, appeared before the Property Tax Appeal Board on behalf of the appellant trust claiming the subject property was not properly and/or uniformly assessed as the bases of the appeal. In addition, the appellant's representatives argued that the market value of the subject property was not accurately reflected in its assessed valuation. In support of these claims the appellant's representatives submitted a proration analysis, a Boone County prorated assessment worksheet, a property record card, statutory citations, case law and rebuttal argument.

The subject property was purchased from a builder/developer on February 4, 2005 for \$265,434. A copy of the warranty deed was submitted into the record by the appellant. It is undisputed that the subject land received a property tax "developer's relief" assessment from January 1, 2005 through February 3, pursuant to 35 ILCS 200/10-30 of the Property Tax Code. The improvement in question was approximately 70% complete on January 1, 2005 and 80% complete on January 25, 2005, when at that time a certificate of occupancy was issued. The subject improvement was prorated at 80% of fair market value from January 1, 2005 through January 24, 2005 (a certificate of occupancy was issued on January 25, 2005); and at 100% of fair market value from January 25, 2005 through the remainder of 2005. The subject land received the preferential "developer's relief" assessment through February 3, 2005; and was then prorated and assessed at 100% of fair market value from February 4, 2005 (date of sale) through

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the Boone County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	\$	1,572
IMPR.:	\$	76,601
TOTAL:	\$	78,173

Subject only to the State multiplier as applicable.

the remainder of 2005. The appellant's representatives argued that the subject's preferential "developer's relief" assessment for the land should remain in effect through the 2005 calendar year.

In support of this argument, John Klick referred to the Property Tax Code, 35 ILCS 200/9-65, which states in relevant part:

Reassessment after platting. Except as otherwise provided by Section 10-30 with respect to assessments made in counties with less than 3,000,000 inhabitants . . . lots shall be reassessed and placed upon the assessor's books, replacing the acreage property, **as of the first day of January immediately following the date of the recording** or filing of the subdivision. (Emphasis added)

It was argued that Section 10-30(c) of the Property Tax Code required the "developers relief" assessment for the land to remain in place until next determined on January 1, 2006. Section 10-30(c) of the Code states in relevant part as to this argument:

(iii) the assessed valuation of the remaining property, 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)).

It was the appellant's representatives' claim that the developer owned the land on January 1, 2005, and therefore the "developer's relief" assessment on the property should remain until next determined on January 1, 2006.

The appellant's representatives further argued that the Property Tax Code was not clear on this issue; therefore, Kennedy Brothers, Inc. v. Property Tax Appeal Board requires that revenue acts must be strictly construed against the State and in favor of the taxpayer. Kennedy Brothers, Inc. v. Property Tax Appeal Board, 158 Ill.App.3d 154 (2nd Dist. 1987).

In addition, it was argued that Mill Creek Development, Inc. v. Property Tax Appeal Board held that a property's assessed value is determined on January 1 of the assessment year, and any changes in status are applied from that date. Mill Creek Development, Inc. v. Property Tax Appeal Board, 345 Ill.App.3d 790 (3rd Dist. 2004).

At hearing the appellant further argued that the subject's assessment should reflect the purchase price of \$265,434 on February 4, 2005. No other documentary evidence was submitted to support this overvaluation claim. Based on the above arguments,

the appellant requested a reduction in the subject's land and improvement assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final equalized assessment of \$90,046 was disclosed wherein the land assessment was \$13,445 and the improvement assessment was \$76,601. The subject's assessment reflects a market value of approximately \$270,734 using the 2005 three-year median level of assessments for Boone County of 33.26%. In support of the subject's assessment, the board of review offered a legal brief, statutory citations, prorated assessment worksheets and property record cards.

The board of review argued that Section 10-30(c) of the Property Tax Code removes the preferential "developer's relief" assessment for the land upon completion of a habitable structure, which in this case was January 25, 2005. Thus, it was argued, that the subject land is then prorated for the remainder of the assessment year at full market value. The Caledonia Township Assessor was not available for direct testimony or subject to cross-examination regarding the methodology used in calculation of the subject's pro-rata assessment. The undisputed evidence depicts the subject land received the preferential "developer's relief" assessment until the date of sale (February 4, 2005), at which time the preferential "developer's relief" assessment for the land was removed and the land assessment was prorated and assessed at 100% of full market value for the remainder of 2005.

Section 10-30(b) of the Property Tax Code states in relevant part:

Except as provided in subsection (c) of this Section, the assessed valuation of property so platted and subdivided shall be determined each year based on the estimated price the property would bring at a fair voluntary sale for use by the buyer for the same purposes for which the property was used when last assessed prior to its platting. (35 ILCS 200/10-30(b)).

Section 10-30(c) of the Property Tax Code states in relevant 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 (35 ILCS 200/10-30(c)).

The Clerk of the Boone County Board of Review, Patricia Elder, testified that Boone County has used this prorated method throughout the county since 1994 and applied this method to all properties sold by a developer to a private individual containing an improvement. In support of the county's prorated method the board of review referred to Section 9-180 of the Property Tax Code. Section 9-180 of the Property Tax Code states in relevant part:

Pro-rata valuations; improvements or removal of improvements. The owner of property on January 1 also shall be liable, on a proportionate basis, for the increased taxes occasioned by the construction of new or added buildings, structures or other improvements on the property from the date when the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended customary use to December 31 of that year. . . .
(35 ILCS 200/9-180).

In response to the appellant's overvaluation argument at hearing, Ms. Elder testified that the subject's assessment was the result of field inspections and calculations using cost manuals, which are used throughout the county. Based on the above arguments and evidence, the board of review requested confirmation of its assessment.

In rebuttal, the appellant argued that the pro-rata methodology used by Boone County was not uniform with the assessment practices of other counties within the State of Illinois. In addition, the appellant argued that Section 200/10-30 of the Property Tax Code specifically states that reassessments occur "when next determined."

After reviewing the record 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. The appellant initially 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 acres¹; 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. Section 10-30(c) of the Property Tax Code reveals that no change in valuation will occur until a habitable structure is constructed on one of the lots or it is sold, even if vacant, or it is used for a business, commercial or residential purpose. At that time, the provisions of subsection

¹ 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.

10-30(b) will no longer apply in determining the assessed valuation of the lot. Subsection 10-30(c)(iii) applies when one of the lots contains a habitable structure, otherwise subsections 10-30(a) and 10-30(b) apply to the entire property and the assessed valuation will not increase. Paciga v. Property Tax Appeal Board, 322 Ill.App.3d 157, 749 N.E.2d 1072 (2nd Dist. 2001).

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). 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 9-180 of the Property Tax Code provides in relevant part:

Pro-rata valuations; improvements or removal of improvements. The owner of property on January 1 also shall be liable, on a proportionate basis, for the increased taxes occasioned by the construction of new or added buildings, structures or other improvements on the property from the date when the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended customary use to December 31 of that year. . . . (35 ILCS 200/9-180).

The Board finds that section 9-180 of the Property Tax Code addresses the pro-ration of improvements based on a 365 day year but does not address the pro-ration of the land that was receiving a preferential land assessment afforded by section 10-30(b) of the Code as of January 1 of the assessment year in question. In fact, section 10-30(b) states that the "assessed valuation of property so platted and subdivided shall be determined **each year** (emphasis added). . . ." The language of subsection (b) does not suggest that land receiving the preferential assessment is to be pro-rated during the course of the calendar year.

The Property Tax Appeal Board finds that Section 10-30(c) sets forth the factors that cause the "developer's relief" assessment assigned to the land to end, which include the completion of a habitable structure on any lot of subdivided property, or upon the use of any lot for business, commercial or residential purpose, or upon the initial sale of any platted lot.² However, the Board finds this change in the land's status for assessment purposes will be the first day of January immediately following the occurrence of one of the aforementioned events described in section 10-30(c). This is again based on Section 9-155 of the Property Tax Code (35 ILCS 200/9-155), the subject's status as determined on January 1 of each assessment year for the land portion of the assessment shall be used in the determination of the subject's valuation for the entire assessment year in question. Further, the Board finds that pro-rata valuations as provided in Section 9-180 of the Property Tax Code applies to improvements or removal of improvements only.

In this case, the subject was owned by a developer on January 1, 2005 and received the preferential "developer's relief" assessment at that time. The evidence depicts the subject's land was owned by a developer and had a market value of \$4,725, after application of the equalization factor, as of January 1, 2005. The Board finds that the preferential "developer's relief" assessment for the subject's land portion should be applied for the 2005 assessment year. The Board further finds that the undisputed evidence depicts that 80% of the dwelling was complete on January 25, 2005. The improvement, subject to equalization, was assessed at 80% of fair market value from January 1, 2005

² The Board recognizes that there may be some ambiguity as to when the provisions of subsection 10-30(b) no longer apply in assessing the lot. Unlike section 9-180 of the Code, which provides that the assessments on the improvements are to be pro-rated "from the **date** (emphasis added) when the occupancy permit was issued or from the **date** (emphasis added) the new or added improvement was inhabitable and fit for occupancy or for intended customary use to December 31 of that year"; and section 9-185 of the Code, which provides for the change in exempt status "from the **date** (emphasis added) of purchase or conveyance"; meanwhile, section 10-30(c) does not clearly aver that the preferential land assessment terminates on the date when one of the stated events occurs. Section 10-30(c) merely provides that once one of the specified events occurs by use of the word "upon", the provisions of subsection (b) no longer apply in determining the preferential lot assessment.

through January 24, 2005, and then received a prorated assessment at 100% of fair market value from January 25, 2005 through the remainder of the 2005 assessment year.

The appellant also argued the subject property was not uniformly assessed because other counties did not apply the same proration methods as used by Boone County. The Board finds the unrefuted testimony at hearing was that the Boone County Board of Review applied the above stated prorated assessments throughout Boone County. The Board finds the other county's assessment practices were not established or relevant to this appeal. See Cherry Bowl, Inc. v. Property Tax Appeal Board, 100 Ill.App.3d 326, 331 (2nd Dist. 1981). To the extent it could be presented, the Board further finds that this claim by the appellant's representatives was unsupported with substantive evidence and/or credible testimony regarding the assessment procedures of counties other than Boone.

The appellant further argued overvaluation claiming the assessment should reflect the subject's purchase price of \$265,434 on February 4, 2005. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellant has not met this burden of proof and a reduction in the subject's assessment is not warranted on this basis.

The Board finds the appellant failed to submit substantive or documentary evidence which would support the subject's purchase price. Nothing in the record or testimony indicates or affirms whether the purchase price of \$265,434 was an arm's-length transaction reflecting the subject's full market value. No evidence was presented on the relationship of the parties to the sale; financial details of the sale; length of time the subject was advertised for sale or whether the sale was generally open to the public. Therefore, the Board finds the appellant has not shown by a preponderance of the evidence on this basis that the subject was overvalued as reflected by its assessment.

In conclusion, the Board finds the appellant has demonstrated the subject's land assessment was improperly calculated. Therefore, the Board finds the subject property's land assessment as established by the board of review is incorrect and a reduction is warranted commensurate with the above analysis.

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.



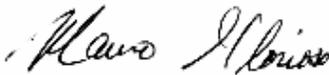
Chairman



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: January 23, 2009



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.