



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

APPELLANT: Kamin Builders, Inc.
DOCKET NO.: 06-00380.001-R-2
PARCEL NO.: 07-01-09-204-087-0000

The parties of record before the Property Tax Appeal Board are Kamin Builders, Inc. (Downers Grove National Bank, Trust 87-5), the appellant, by attorney Lynn M. Hickey, of Hutchison, Anders & Hickey in Tinley Park, and the Will County Board of Review.

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 Will County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$ 4,457
IMPR.: \$110,000
TOTAL: \$114,457

Subject only to the State multiplier as applicable.

ANALYSIS

The subject parcel known as Lot 708 (13,500 square feet of land) located in Naperville, Wheatland Township, Will County, was improved in 2006 with a two-story masonry and frame constructed dwelling containing 3,924 square feet of living area and featuring a three-car garage.

The appellant's appeal, as presented through legal counsel, argued a contention of law with a brief and attached documents and also alleged overvaluation based on a recent sale. In support of the overvaluation argument, appellant reported the subject vacant property was purchased in January 2006 for \$235,000 from a developer known as MAP Developments, Inc. The property, however, was not advertised for sale and the seller's mortgage was not assumed.

In appellant's legal brief it was further reported the subject property was purchased on January 5, 2006 (Exhibit A). Thereafter a Warranty Deed In Trust was recorded on January 18,

2006 and an Illinois Real Estate Transfer Declaration was prepared (multiple pages of Exhibit B). Appellant further asserts in the brief that at the time of purchase, the property was under 'developer relief' [*sic*] pursuant to the Property Tax Code (hereinafter also the Code) (35 ILCS 200/10-30). Appellant reported the 2005 assessment of the subject property for land only was \$4,457.

After purchase in January 2006, appellant reports construction of a single-family dwelling commenced. As of the filing of this appeal in February 2007, no occupancy permit had been applied for or obtained by the appellant. Being fully advised in the position taken by the Wheatland Township Assessor regarding the reassessment of the subject property, counsel for the appellant further asserts in the brief that: "The home was not substantially complete as of the date of the field inspection and would not have passed the inspection necessary to obtain an occupancy permit on that date."

Based on the foregoing evidence and argument, appellant's counsel argued that the subject's preferential "developer's relief" assessment for the land should remain in effect through the 2006 calendar year and there should be no assessment on the improvement since no occupancy permit had been requested or obtained.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$156,188 was disclosed. In support of the subject's assessment, the board of review submitted a letter from the Wheatland Township Assessor, a copy of an Illinois Real Estate Transfer Declaration (PTAX-203) recorded on January 18, 2006, a copy of the property record card with a schematic of the dwelling, and a color photograph of the subject dwelling with a Realtor's sign out front.

In the letter, the Wheatland Township Assessor argued that the appellant applied for a building permit with the City of Naperville on December 22, 2005 in which appellant asserted he was the owner of the subject parcel of vacant land.¹ The assessor further argued that by so filing, the appellant "certified with the City of Naperville that the information provided in the permit was true to his knowledge." Therefore, based on this information the assessor contends that the appellant acknowledged ownership of this property in his certified statement to the City of Naperville. Based on the foregoing argument and evidence, the assessor requested confirmation of the land assessment of the subject property and removal of the developer's relief on the 2006 land assessment

¹ The letter states a copy of the City of Naperville permit application was enclosed for consideration, but no copy of the building permit application was provided with the board of review's evidence to the Property Tax Appeal Board.

since the property was no longer owned by the developer as of January 1, 2006.

As to the improvement assessment, the assessor further wrote that a field agent from the assessor's office visited the subject property on July 19, 2006 and verified that the dwelling was 100% complete on this date.² The assessor further reported that there was "even a Remax Realtor sign in the front yard." Therefore, the assessor contends the 2006 building assessment was based on a 100% completion date of July 19, 2006 in accordance with Section 9-180 of the Property Tax Code (35 ILCS 200/9-180) which states in pertinent 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. . . .

Based on the foregoing evidence, the board of review requested confirmation of the subject's improvement assessment.

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 parties presented no objection to a decision in this matter being rendered on the evidence submitted in the record. Therefore, the decision of the Property Tax Appeal Board contained herein shall be based upon the evidence contained in and made a part of this record.

There are two issues involved in this appeal: (1) whether the preferential treatment or assessment available under Section 10-30 of the Property Tax Code (35 ILCS 200/10-30) applies to the subject parcel and (2) the treatment of an improvement on the subject parcel after January 1 of the assessment year pursuant to either Section 10-30 or Section 9-180 of the Property Tax Code (35 ILCS 200/1 et. seq.). The Board finds that a reduction in the land assessment of the subject property is warranted based on the Property Tax Code and the evidence contained in the record; the Board further finds that a reduction in the improvement assessment of the subject property is not warranted based on the Property Tax Code and the evidence contained in the record.

² The letter states a copy of the field agent worksheet is enclosed, but no copy of such field agent worksheet was provided with the board of review's evidence.

Section 10-30(a) of the Property Tax Code provides in pertinent part:

. . . 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)).

Section 10-30(b) and 10-30(c) of the Property Tax Code (35 ILCS 200/10-30(b) & (c)) provide as follows:

(b) 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 purpose for which the property was used when last assessed prior to its platting.

(c) 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(b) & (c)) [Emphasis added].

Land Assessment

In light of the facts and the foregoing statutory provisions, the Property Tax Appeal Board finds the board of review incorrectly denied the subject parcel's preferential assessment provided by Section 10-30 of the Property Tax Code (35 ILCS 200/10-30) for

the assessment year at issue. There was no evidence the platting and subdividing was not in accordance with the requirements of Section 10-30(a) of the Property Tax Code. (35 ILCS 200/10-30(a)). The evidence disclosed the appellant purchased the subject parcel through a Warranty Deed In Trust for \$235,000 from the developer on January 5, 2006.

The board of review did not adequately challenge the subject's effective sale date, despite having attempted to impugn the purchase date through a purported building permit application filed by the appellant on December 22, 2005. As to this ownership issue, Sections 9-95, 9-155 and 9-175 of the Property Tax Code provide that real estate is to be assessed in the name of the owner and at that value as of January 1. (See People ex rel Kassabaum v. Hopkins, 106 Ill. 2d 473, 476-477, 478 N.E.2d 1332, 1333 (1985)).

Section 9-95 of the Code provides in part:

All property subject to taxation under this Code, including property becoming taxable for the first time, shall be listed by the proper legal description in the name of the owner, and assessed at the times and in the manner provided in Sections 9-215 through 9-225, and also in any year that the Department orders a reassessment (to the extent the reassessment is so ordered), with reference to the amount owned on January 1 in the year for which it is assessed, including all property purchased that day. . . .

(35 ILCS 200/9-95).

Section 9-155 of the Code states in part that:

On or before June 1 in each general assessment year in all counties with less than 3,000,000 inhabitants . . . the assessor . . . shall actually view and determine as near as practicable the value of each property listed for taxation as of January 1 of that year

(35 ILCS 200/9-155).

Section 9-175 of the Code provides in part that:

The owner of property on January 1 in any year shall be liable for the taxes of that year

(35 ILCS 200/9-175). The status of property for taxation and liability to taxation is fixed on January 1. People ex rel Kassabaum v. Hopkins, 106 Ill. 2d at 477.

While 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,³ the Property Tax Appeal 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) set forth above in that 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.

In Rosewell v. Lakeview Limited Partnership, 120 Ill. App. 3d 369, 373, 458 N.E.2d 121, 124 (1st Dist. 1983), the court also held 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. The court noted that Section 27a of the Revenue Act of 1939 (Ill.Rev.Stat.1981, ch. 120, par. 508a; now codified at 35 ILCS 200/9-175, 9-180 & 9-185) applies to status, and provides that the owner of real property on January 1 shall be liable for the taxes of that year. Lakeview Limited Partnership, 120 Ill. App. 3d at 373. The court further stated that there are only two circumstances that allow change applications from the January 1 date. One circumstance deals with the situation where a property becomes taxable or exempt after January 1 and the second circumstance provides for proportionate assessments in the case of new construction or uninhabitable property. Id. at 373. (See 35 ILCS 200/9-180 and 9-185).

The Board finds the evidence established that the original developer, MAF Developments, Inc., was the owner of the subject parcel as of the January 1 assessment date at issue. The best evidence in the record disclosed that the subject property sold on January 5, 2006 (see appellant's Exhibit A). In other words, in this case the subject parcel was owned by a developer on January 1, 2006 and received the preferential "developer's relief" assessment at that time.

³ The Board recognizes that there may be some ambiguity as to when the provisions of subsection 10-30(b) no longer applies 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.

The evidence further reveals that prior to this 2006 reassessment of the land, the parcel had a 2005 vacant land assessment of \$4,457. Moreover, 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. Therefore, the Property Tax Appeal Board finds that the preferential "developer's relief" assessment for the land portion of the subject property should be applied for the 2006 assessment year. On the assessment date at issue, the subject land should have been assessed in accordance with the preferential treatment allowed by the procedures contained within Section 10-30(b) of the Property Tax Code. Thus, the Property Tax Appeal Board finds that the board of review should have assessed the subject parcel with reference to its status as of January 1 and should not have considered the transaction that occurred on January 5, 2006, or the purported "ownership" as described in an application for a building permit filed with the City of Naperville in determining the subject's land assessment. Based on these facts, the Property Tax Appeal Board finds the board of review erred in assessing the subject parcel at 33 1/3 percent of its market value as of January 1, 2006.

Based on the Property Tax Appeal Board's finding that the subject parcel was entitled to the preferential assessment provided by Section 10-30(b) of the Code because of its status and legal ownership as of January 1, 2006, it need not address the board of review's argument that a building permit application made by the appellant in December 2005 altered the provisions of the Property Tax Code and/or in some manner constituted a transfer of the subject parcel prior to January 1, 2006. Moreover, based on the Board's finding that the subject parcel was entitled to a preferential land assessment, the Board need not further address the appellant's overvaluation argument contending that the subject property should be assessed based on its vacant land purchase price of \$235,000.

Improvement Assessment

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. Subsection 10-30(c)(iii) applies when one of the lots contains a habitable structure. Paciga v. Property Tax Appeal Board, 322 Ill. App. 3d 157, 749 N.E.2d 1072 (2nd Dist. 2001).

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.

Specifically, 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. The owner of the improved property shall notify the assessor, within 30 days of the issuance of an occupancy permit **or within 30 days of completion of the improvements**, on a form prescribed by that official, and request that the property be reassessed. . . . Computations under this Section shall be on the basis of a year of 365 days.

(35 ILCS 200/9-180) [Emphasis added]. Thus, the Property Tax Appeal Board finds that Section 9-180 of the Property Tax Code addresses the pro-ration of improvements based on a 365 day year.

The appellant argued that, although construction of a single-family dwelling was commenced on the parcel after purchase of the property on January 5, 2006, as of the filing of this appeal in February 2007 no occupancy permit "has been applied for or obtained for the property as of this date." As is clear by the terms of the Property Tax Code, the issuance of an occupancy permit is not the only determining factor for pro-rata valuations of new or added improvements on a parcel as set forth in Section 9-180 (35 ILCS 200/9-180). The board of review through the township assessor asserted, and the assertion was not refuted by the appellant, that the dwelling was "100% complete" as of a field inspection performed on July 19, 2006. Based on the foregoing evidence and statutory language, the Board finds the improvement was subject to a pro-rated assessment at 100% of fair market value from July 19, 2006 through the remainder of the 2006 assessment year. The township assessor reported that the

improvement assessment was issued in accordance with Section 9-180 of the Property Tax Code (35 ILCS 200/9-180) once the field agent reported the completion date of July 19, 2006. The appellant did not challenge the calculation of the pro-rated improvement assessment beyond asserting that the property was entitled to a zero improvement assessment due to the lack of an occupancy permit having been requested or issued.

In summary, the Property Tax Appeal 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. However, the appellant has failed to demonstrate that the pro-rated improvement assessment was incorrect and thus the improvement assessment as established by the board of review is correct and no reduction in the improvement assessment is warranted.

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. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario Morris

Member

Shawn R. Lerbis

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: November 25, 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.