FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Sean Feco
DOCKET NO.: 09-00158.001-R-1
PARCEL NO.: 14-2-15-13-02-208-016

The parties of record before the Property Tax Appeal Board are Sean Feco, the appellant, by attorney Frank L. Flanigan of Flanigan Law Office, Ltd., in Edwardsville, and the Madison County Board of Review.

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

LAND:	$18,760
IMPR.:	$0
TOTAL:	$18,760

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property, also known as 327 Shea Court, is located in Edwardsville, Edwardsville Township, Madison County.

The appellant's appeal cites a contention of law as the basis of this 2009 assessment appeal. In the brief, counsel for the appellant contends that the subject parcel is entitled to the developer's exemption of Section 10-30 of the Property Tax Code (hereinafter "Code.")

Specifically, counsel set forth the issue as: whether land platted before January 1, 2009, but after January 1, 1978 that is in excess of 5 acres, but less than 10 acres, should receive the preferential developer's exemption provided for in the Code either under Section 10-30 or 10-31?

As to the subject parcel, the appellant reported that the lot was platted in accordance with the Plat Act on December 9, 2003. No documentation was submitted to support this contention. At the time of platting there were reportedly 6.34-acres platted as stated in the brief[1] and the land was vacant.

[1] A plat map was also attached indicating the subdivision contains 7.22-acres.

The appellant argued that the subject property meets the requirements of Section 10-30 of the Code as of January 1, 2009 and therefore the 2009 assessment of the parcel was erroneous. Counsel further argued that the board of review's interpretation of the acreage requirement to qualify for Section 10-30 relief was in error. In the alternative, counsel also cited to Section 10-31 of the Code in the brief as a basis to reduce the subject's assessment (35 ILCS 200/10-31) in accordance with the preferential developer's exemption.

The board of review filed its "Board of Review – Notes on Appeal" reflecting the final equalized assessment of the subject parcel as $18,760. In support of the subject's equalized assessment, the board of review submitted an Addendum outlining the argument as to why Section 10-30 of the Code was not applicable to the subject parcel along with a copy of Publication 134.

The board of review contends that the subject lot (as of the assessment date of January 1, 2009) was owned by the original developer. The board of review contends that the Final Plat was recorded on July 20, 2005 consisting of 7.22-acres of land area.[2] In support of this contention a copy of the recorded plat was attached.

Based on this argument and the provisions of Section 10-30 of the Code, the board of review requested confirmation of the subject's equalized 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 is a single issue in this appeal: whether the preferential treatment or assessment available under Section 10-30 and/or 10-31 of the Code (35 ILCS 200/10-30 & 10-31) applies to the subject parcel. The Board finds that the subject parcel is not entitled to the provisions of either Section 10-30 or Section 10-31 of the Code.

The best record evidence establishes that the subject property was part of a 7.22 acre property with a plat recorded on July 20, 2005.

As of July 20, 2005 when the subject parcel was platted, Section 10-30 of the Code stated in pertinent part:

[2] The plat consists of 22 lots (5.10-acres), roadway consisting of 1.01-acres, common area of passive green space and water detention consisting of 1.11-acres.

> (a) 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) [Emphasis added.] Section 10-30(a)(3) of the Code was amended effective January 1, 2008 reducing the 10-acre size requirement to a 5-acre size requirement. (P.A. 95-135, §5, eff. Jan. 1, 2008)

The parties do not dispute that the subject parcel was platted and subdivided in accordance with the Plat Act satisfying the requirement of Section 10-30(a)(1) of the Code. The parties agree that the subject was platted after January 1, 1978 and no dispute was raised that at the time of platting the property was vacant thus satisfying the requirements of Sections 10-30(a)(2) and (a)(4). It is solely Section 10-30(a)(3) that is in dispute between the parties.

The record evidence reveals that the parcel was platted on July 20, 2005. As of July 20, 2005, the requirements of Section 10-30 of the Code included that the property be **in excess of 10 acres when platted** (Section 10-30(a)(3)). The subject property was 7.22-acres at the time of platting. As such, the provisions of Section 10-30 of the Code have not all been met and the Property Tax Appeal Board finds that subject parcel does not qualify for the developer's exemption under Section 10-30 of the Code since it was not in excess of 10 acres when platted.

This interpretation of the Code is further supported by the Illinois Department of Revenue's Publication 134, Developer's Exemption Property Tax Code, Section 10-30 (October 2007). On page 2, Publication 134 notes that of the four criteria to qualify for the developer's exemption, "before January 1, 2008, the subdivision had to be more than 10 acres when platted."

As to the appellant's alternative argument that Section 10-31 of the Code now applies to the subject parcel, the Board finds this contention is also in error. Counsel's argument that the change in law now applies to the subject since the acreage requirement was reduced to 5-acres is wrong. The subject property does not

qualify under Section 10-31 of the Code since the acreage requirement was not met as of the time the subject was platted and, more importantly, the Property Tax Appeal Board finds that by its own terms in subsection (d), Section 10-31 of the Code does not apply to any parcel until assessments issued as of January 1, 2010. The Property Tax Appeal Board finds the provision is inapplicable due to the assessment date at issue of January 1, 2009 and the lack of any statement of retroactive effect in the statute as to Section 10-31.

Section 10-30(d) of the Code (35 ILCS 200/10-30(d)) provides:

> This Section applies **before the effective date of this amendatory Act** of the 96th General Assembly and then applies again beginning January 1, 2012. [Emphasis added.]

(Citing P.A. 95-135, eff. 1-1-08; 96-480, **eff. 8-14-09**). In contrast, the new provision of the Property Tax Code known as Section 10-31(d) states as follows:

> This Section applies **on and after the effective date** of this amendatory Act of the 96th General Assembly and through December 31, 2011.

(Citing P.A. 96-480, **eff. 8-14-09**).

The appellant argued that Section 10-31 governs the instant 2009 appeal as the subject parcel exceeded 5-acres in size as of January 1, 2009. This interpretation of the provision is in error based on the above statutory provisions and related case law.

The Property Tax Appeal Board finds that properties are assessed as of January 1 each year and as such, Section 10-31 of the Code cannot be applicable to a January 1, 2009 assessment appeal since the provision did not become effective until August 14, 2009. Sections 9-95, 9-155 and 9-175 of the 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 manner provided in Section 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 **amount owned on January 1 the year for which it is assessed**, including all property purchased that day. . . . [Emphasis added.] [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** . . . . [Emphasis added.] [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** . . . . [Emphasis added.] [35 ILCS 200/9-175]

Thus, 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.

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) applied 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 & 9-185). Neither of these exceptions is applicable here.

In light of the foregoing, the Property Tax Appeal Board finds that the lack of explicit language to address retroactive assessments mandates that Section 10-31 of the Property Tax Code applies only to those assessments established beginning January 1, 2010. This interpretation is further supported by the Appellate Court's holding in Kennedy Brothers, Inc. v. Property Tax Appeal Board, 158 Ill.App.3d 154, 510 N.E.2d 1275 (2nd Dist. 1987).

In conclusion and as discussed above, the subject property is not entitled to the developer's exemption as set forth in either Section 10-30 or Section 10-31 of the Property Tax Code and, therefore, no change in the subject's equalized assessment is warranted on this record.

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: September 21, 2012

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.