



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

APPELLANT: KLHR LLC  
DOCKET NO.: 09-00903.001-C-2  
PARCEL NO.: 05-06-01-304-038-0000

The parties of record before the Property Tax Appeal Board are KLHR, LLC, the appellant, by attorney Anthony M. Farace of Amari & Locallo, Chicago; and the Will 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 Will County Board of Review is warranted. The correct assessed valuation of the property is:

**LAND:** \$258,746  
**IMPR:** \$ 0  
**TOTAL:** \$258,746

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject property consists of 2.97 acres or 129,373 square feet of land area located in Troy Township, Will County.

The appellant appeared before the Property Tax Appeal Board through legal counsel claiming the subject property was incorrectly assessed as of the January 1, 2009 assessment date based on a contention of law. The appellant contends that the subject parcel was improperly denied the "developer's" exemption in accordance with Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31). Based on the facts in this record, the parties did not dispute that the property was platted in accordance with the Plat Act; the platting occurred after January 1, 1978; and at the time of platting the property was in excess of 5-acres when it was subdivided; and the property was vacant as of the January 1, 2009 assessment date.

In the legal brief submitted to the Board and argued at hearing, counsel explained that during the 2008 assessment year the subject parcel received a "developer's" preferential assessment of \$4,489 as provided under Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). In 2009, the subject parcel lost the

preferential "developer's" exemption. Counsel argued the sole contention of this appeal is that the subject parcel should not have lost the preferential "developers" exemption from 2008 to 2009 as provided by Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31). Section 10-31 of the Property Tax Code provides:

(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 5 acres; and
- (4) At the time of platting or replatting the property is vacant or used as a farm as defined in Section 1-60.

(b) Except as provided in subsection (c) of this Section, the assessed valuation of property so platted and subdivided shall be determined based on the assessed value assigned to the property when last assessed prior to its last transfer or conveyance. An initial sale of any platted lot, including a lot that is vacant, or a transfer to a holder of a mortgage, as defined in Section 15-1207 of the Code of Civil Procedure, pursuant to a mortgage foreclosure proceeding or pursuant to a transfer in lieu of foreclosure, does not disqualify that lot from the provisions of this subsection (b).

(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: (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 property, when next determined, shall be reduced proportionately to reflect the exclusion of the property that no longer qualifies for valuation under this Section. Holding or offering a platted lot for initial sale shall not constitute a use of the lot for business, commercial or residential purposes unless a habitable structure is situated on the lot or unless

the lot is otherwise used for a business, commercial or residential purpose. The replatting of a subdivision or portion of a subdivision does not disqualify the replatted lots from the provisions of subsection (b).

(d) This Section applies on and after the effective date of this amendatory Act of the 96th General Assembly and through December 31, 2011.  
(Source: P.A. 96-480, eff. 8-14-09.)

Counsel argued the owner of the subject property received notice dated August 19, 2009, from the county assessor that the subject property was losing its preferential assessment due to its initial sale in September 2008 for \$970,626. Counsel did not know the specifics or condition of the transaction. Counsel argued that the notice of revised assessment occurred after the effective enactment date of August 14, 2009. Therefore, the subject parcel is entitled the preferential assessment as provided in Section 10-31 of the Property Tax Code. Specifically, counsel cited Section 10-31(b) of the Property Tax Code (35 ILCS 200/10-31(b)), which provides in pertinent part:

An initial sale of any platted lot, including a lot that is vacant, or a transfer to a holder of a mortgage, as defined in Section 15-1207 of the Code of Civil Procedure, pursuant to a mortgage foreclosure proceeding or pursuant to a transfer in lieu of foreclosure, **does not disqualify that lot from the provisions of this subsection (b).** [Emphasis Added]

The appellant argued that Section 10-30 of the Property Tax Code (35 ILCS 200/10-30) does not control in determining the subject's 2009 assessment. Counsel acknowledged the subject parcel does not qualify for a preferential developer's assessment for the 2010 assessment year under Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31).

Based on these arguments, the appellant requested the subject's assessment be reduced to \$4,489, which reflects application of Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31).

Under questioning from the Board's Administrative Law Judge, the parties stipulated that the subject's assessment date in this appeal was January 1, 2009. (Tr. P. 8). Appellant's counsel was questioned whether the Property Tax Code allowed for prorated or proportional assessments from the date legislation was enacted through the end of the assessment year, more specifically, whether Section 10-31 of the Property Tax Code provides for proration. Counsel agreed that neither Sections 10-30 nor 10-31 of the Property Tax Code (35 ILCS 200/10-30 and 10-31) provide for prorated application. (Tr. p. 12). Counsel reiterated the subject parcel sold in 2008 and was in process of being developed throughout 2009, but was not occupied until 2010. In summary, appellant's counsel argued the subject parcel should not lose its

preferential "developer's" exemption for 2009 because it had not lost the exemption as of August 14, 2009, since the notice of the 2009 revised assessment was dated August 19, 2009. Counsel argued the subject lost the exemption due to its initial transfer, which is prohibitive under Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31). Counsel agreed the new legislation does not have language pertaining to retroactivity nor a proactive date, but does list a clear termination date. Counsel also agreed that the Property Tax Appeal Board's determination is whether Sections 10-30 or 10-31 of the Property Tax Code (35 ILCS 200/10-30 and 10-31) controls in determining the subject's correct assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$256,746 was disclosed. The subject's assessment reflects an estimated market value of \$780,060 using Will County's 2009 three-year median level of assessments of 33.17%. In support of the subject's assessment, the board of review submitted a short summary brief addressing the appeal prepared by the township assessor, the subject's property record card and a Real Estate Transfer Declaration regarding the subject's sale. The Real Estate Transfer Declaration depicts the subject property sold for \$970,616 in September 2008. Mr. John Trowbridge, Deputy Supervisor of Assessments was designated to represent the board of review. Scott Koca, Deputy Assessor for Troy Township, was also present and provided limited testimony in connection to this appeal.

The board of review contends that since the subject parcel sold in September 2008 for \$970,626 by the original developer to another developer, its preferential "developer's" assessment is no longer applicable under Section 10-30 of the Property Tax Code. (35 ILCS 200/10-30). Therefore, the subject parcel was valued and assessed at 33 1/3% of its estimated fair cash value as of its January 1, 2009 assessment date. The board of review noted the subject's assessment reflects an estimated market value less than its 2008 sale price. Section 10-30(c) provides in 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 [Emphasis Added]: (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 [Emphasis Added], 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)).

The board of review also argued the subject property does not qualify for a preferential developer's assessment under Section 10-31(b) of the Property Tax Code, but provided no further explanation.

The board of review also argued that the revised publication (notice) date of August 19, 2009, is not key to whether the subject property is to be assessed under Section 10-31 of the Property Tax Code (35 ILCS 200/10-31). The board of review agreed the legislation was enacted on August 14, 2009, but the subject's assessment date was January 1, 2009.

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

After hearing oral arguments 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 Board further finds no reduction in the subject's assessment is wanted based on the contention of law raised.

The appellant contends the subject property is entitled to a preferential "developer's" assessment as provided by Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31). Specifically, appellant argued the enabling legislation of Section 10-31 was effective on August 14, 2009 whereas the notification date revising the subject's 2009 assessment was August 19, 2009, five days subsequent to the enactment of Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31). The appellant alleges the date of notice was the date the subject lost the preferential "developer's" assessment, which was formerly granted in the 2008 assessment year under Section 10-30 of the Property Tax Code. (35 ILCS 200/10-30). Appellant contends that since the notice of revised assessment occurred after the effective date of August 14, 2009, the subject parcel is entitled the preferential developer's assessment provided by Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31). The board of review contends that the subject parcel sold in 2008 and no longer qualified for the preferential "developer's" assessment as of January 1, 2009 pursuant to Section 10-30 of the Property Tax Code. (35 ILCS 200-10-30). The Board finds the appellant's reliance on the notification date in order to receive the preferential "developer's" assessment to be misplaced.

The Property Tax Appeal Board finds that Section 10-31 of the Property Tax Code is not applicable to this 2009 assessment appeal. 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 as of January 1 of that assessment year. (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** [Emphasis Added], 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** . . . . [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).

The Board finds that these provisions clearly enumerate the date for assessment purposes is as of January 1 of the assessment year in question and shall be subject to the applicable statutory provisions of the Property Tax Code. 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 (1<sup>st</sup> 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 also 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 are applicable to this appeal.

The Property Tax Appeal Board finds Section 10-31 of the Property Tax Code does not contain any language providing for retroactivity in the application of this provision. This finding is in direct compliance with the appellate court's holding in

Kennedy Brothers, Inc. v. Property Tax Appeal Board, 158 Ill.App.3d 154, 510 N.E.2d 1275 (2<sup>nd</sup> Dist. 1987).

Finally, the Section 10-31(d) states as follows:

This Section applies **on and after the effective date** [Emphasis Added] of this amendatory Act of the 96<sup>th</sup> General Assembly and through December 31, 2011. (35 ILCS 200/10-31(d)).

The Board finds section 10-31 of the Property Tax Code was not applicable for the 2009 assessment year and applies beginning for assessment year 2010. The Board finds the September 2008 transfer of the subject property referenced in this record was an 'initial sale' and disqualified the property from the developer's exemption for 2009 pursuant to section 10-31(c) of the Property Tax Code. Section 10-30(a) of the Property Tax Code provides in pertinent part:

(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 [Emphasis Added], (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(c)).

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

This Section applies **before the effective date of this amendatory Act** of the 96<sup>th</sup> General Assembly and then applies again beginning January 1, 2012.

The Property Tax Appeal Board finds the evidence shows that the appellant purchased the subject property from the original developer and was the owner of the subject parcel as of the January 1, 2009 assessment date at issue. The evidence also shows subject property was sold to the appellant in September 2008. The Board finds section 10-30(c) of the Property Tax Code regarding the "initial sale of any platted lot" would include the transfer of the subject property as detailed in the September 2008 Real Estate Transfer Declaration filed by the board of review. Based on this analysis of the record, the Property Tax Appeal Board finds that the board of review correctly applied Section 10-30(c) of the Property Tax Code in determining that the subject parcel no longer qualified for the preferential "developer's" exemption as of January 1, 2009. Based on these

facts the Property Tax Appeal Board finds the board of review did not error in assessing the subject property in accordance with its estimated market value as of January 1, 2009.

In conclusion, the Property Tax Appeal Board finds the board of review correctly assessed the subject property as of the January 1, 2009 assessment date.

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

*Mark Morris*

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

*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.