FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Benchmark Partners, LLC
DOCKET NO.: 09-03954.001-R-2
PARCEL NO.: 14-22-405-011

The parties of record before the Property Tax Appeal Board are Benchmark Partners, LLC, the appellant, and the Lake 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 **Lake** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$134,931
IMPR.:	$0
TOTAL:	$134,931

Subject only to the State multiplier as applicable.

ANALYSIS

The subject parcel consists of approximately 36,803 square feet of land area or .8449 of an acre of vacant land in Meadowood Estates. The subject parcel was purchased in May 2007 for $513,375 and is located in Kildeer, Ela Township, Lake County.

The appellant's appeal cites a contention of law as the basis of the appeal. In the letter-brief, the appellant contends that SB 543 was introduced in February 2009 to amend the developer's exemption provision of the Property Tax Code (35 ILCS 200/10-30). Furthermore, on August 14, 2009 the Governor signed Public Act 96-0480 making the amendment effective "immediately" through the end of 2011.

The appellant wrote "the sole purpose was to provide some financial relief to entities which bought property from developers and were being assessed extremely high taxes on properties that they were rapidly loosing [*sic*] value and will not be able to build on for the foreseeable future." The appellant contends that this change in the Property Tax Code passes to the first buyer the same privileges that were enjoyed by developers in Section 10-30 of the Code.

The appellant further reported that lots still held by developers were being assessed between $6,000 and $8,000 whereas lots like the subject were being assessed at $125,000 to $150,000. In support of these contentions, the appellant included a grid analysis depicting three vacant parcels located in Meadowood Estates with lot sizes ranging from 33,167 to 39,043 square feet of land area and land assessments ranging from $6,473 to $7,621. The subject lot has a land assessment of $134,931.

Based on the foregoing legal contention, the appellant requested that the subject's land assessment be reduced to $6,000.

The board of review submitted its "Board of Review - Notes on Appeal" wherein the subject parcel's land-only assessment of $134,931 was disclosed. In support of the subject's assessment and in explaining the denial of a developer's exemption, the board of review through Assistant State's Attorney Tara H. Ori submitted a three-page brief and a grid analysis of comparable parcels along with property record cards for the subject and comparables.

In the brief on behalf of the board of review it is argued that Public Act 96-0480, now known as Section 10-31 of the Property Tax Code (35 ILCS 200/10-31), is not applicable to the subject parcel and, furthermore, that the 2009 assessment of the parcel is correct. The board of review argues that the August 14, 2009 effective date of Section 10-31 does not apply to the subject since a property's status for purposes of taxation is determined as of January 1 each year. Citing Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369, 373 (1st Dist. 1983). Based on this principle and others, the board of review contends that Section 10-31 is prospective in its application and the "practical" effective date is January 1, 2010. Citing Doran v. P.J. Cullerton, 51 Ill.2d 553, 558 (1939). Since this appeal concerns the assessment of the subject property as of January 1, 2009, the board of review contends the provision cited by the appellant is not applicable to this appeal.

Moreover, in support of the subject's assessment, the board of review presented a grid analysis of four comparable vacant lots in Meadowood Estates which were located from .03 to .16 of a mile from the subject. These parcels range in size from 32,997 to 36,974 square feet of land area and have land assessments ranging from $121.025 to $141,754 or $3.67 or $3.83 per square foot of land area. The subject's land assessment is $3.67 per square foot of land area.

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

After considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant contends entitlement for this January 1, 2009 assessment of a change in law enacted by

Public Act 96-0480, now known as Section 10-31 of the Property Tax Code.

The developer's exemption or Section 10-30 of the Property Tax Code (35 ILCS 200/10-30) states in pertinent part in subsection (d):

> 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 states as follows at subsection (d):

> 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 board of review argued 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.

The Property Tax Appeal Board agrees with the interpretation of the board of review and finds that Section 10-31 of the Code or Public Act 96-0480 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 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.

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).

The evidence also disclosed that the subject parcel was purchased in May 2007 for $513,375. (See appellant's grid analysis). In light of this sale, the Board further finds that Section 10-30 or the developer's exemption is also not applicable to the subject parcel.

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 occurred 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)]

Sections 10-30(b) and 10-30(c) of the Code (35 ILCS 200/10-30(b) & (c)) provide:

> (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) <u>the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot</u>, (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. . . [Emphasis added.] [35 ILCS 200/10-30(b) & (c)]

The Property Tax Appeal Board finds that the board of review was correct in assessing the subject property with reference to its status as of January 1, 2009 pursuant to Section 10-30(c) of the Code and in determining the subject parcel was not entitled to the developer's exemption as it had already undergone an 'initial sale.'[1]

Based on the foregoing analysis, the Property Tax Appeal Board finds that the subject parcel is not entitled to the exemption provisions of either Section 10-31 or Section 10-30 of the Property Tax Code.

[1] Moreover, this fact of a sale in 2007 eliminates the possibility of the application of Section 10-31 of the Property Tax Code as of January 1, 2009. The subject parcel lost its developer's exemption as of January 1, 2008 due to the prior sale in May 2007. The subject parcel cannot again be entitled to the exemption of Section 10-31 absent new platting of more than 10 acres, etc.

Finally, an analysis of the record indicates the assessed valuation of the subject property is not excessive when compared to assessments of other, similar properties not entitled to the developer's exemption in the area. The board of review submitted four comparable parcels for comparison to the subject property. The comparables were assessed at $3.67 or $3.83 per square foot of land area whereas the subject parcel was assessed at $3.67 per square foot of land area. The subject's total assessment of $134,931 reflects a market value of approximately $404,793 which is substantially less than its May 2007 purchase price of $513,375. On the basis of the assessment equity information submitted by the parties, the Board finds that the evidence has demonstrated that the subject property is not assessed in excess of what equity would dictate. Therefore, the Property Tax Appeal Board finds that no reduction of the subject's assessed valuation 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.