



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

APPELLANT: Rubloff Shorewood, L.L.C.  
DOCKET NO.: 11-00380.001-C-3  
PARCEL NO.: 05-06-09-206-011-0000

The parties of record before the Property Tax Appeal Board are Rubloff Shorewood, L.L.C., the appellant, by attorney Daniel M. Mroz of Rubloff Shorewood, L.L.C., in Rockford; the Will County Board of Review, by Assistant State's Attorney Keith Aeshliman; and Joliet Twp. H.S.D. #204 and Troy C.C.S.D #30-C, the intervenors, by attorney Carl Buck of Rathbun, Cservenyak & Kozol, LLC, in Joliet.

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:** \$1,199,772  
**IMPR.:** \$ 0  
**TOTAL:** \$1,199,772

Subject only to the State multiplier as applicable.

**Statement of Jurisdiction**

The appellant timely filed the appeal from a decision of the Will County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2011 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

**Findings of Fact**

The subject property consists of a 9.28 acre parcel of land. Over one-half of the subject property is improved with a striped parking lot. The subject property is 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, 2011 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 (hereinafter Code). (35 ILCS 200/10-31). The appellant argued the subject's assessment should be determined based on the assessed value assigned to the property when last assessed prior to its last transfer or conveyance due to the fact that it meets the criteria provided under Section 10-31 of the Code (35 ILCS 200/10-31).

In the legal brief submitted to the Board and argued at hearing, counsel explained that in November 2007, Rubloff purchased the subject parcel from Black Road Investments, LLC, which was a platted lot that was receiving the "developer's" preferential assessment as provided by Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). Black Road Investments, LLC was the original developer that platted and subdivided the subject parcel. At the time of purchase, the property was improved with a parking lot and had an assessment of \$1,653 for the 2007 tax year. In tax year 2008, the appellant received notice that the subject's assessment increased to \$1,199,772 due to the fact the preferential assessment as provided under 10-30 of the Property Tax Code (35 ILCS 200/10-30(c)) terminated due to the initial sale. (Appellant Group Exhibit A). Counsel agreed it was proper to remove the preferential developer's exemption in tax year 2008 due to the subject parcel's 2007 sale (Tr. P.10).

Counsel next cited Section 10-30(d) of the Code (35 ILCS 200/10-30(d))<sup>1</sup>, which provides:

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. (35 ILCS 200/10-30(d)).

Counsel argued Public Act 96-480 became effective on August 14, 2009, which amended Section 10-30 of the Code (35 ILCS 200/10-30) and added Section 10-31 of the Code. (35 ILCS 200/10-31). Section 10-31(d) of the Code provides:

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

Counsel argued the appellant's primary contention is that when the subject parcel was assessed in 2011, Section 10-31 of the Code was in effect and applicable to the subject property. Section 10-31 of the 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

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<sup>1</sup> The Board hereby identifies this document as appellant's Exhibit B.

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.)

Appellant's counsel argued the subject parcel qualified for the preferential assessment because it was platted in accordance with the Plat Act; the platting occurred after January 1, 1978; at the time of platting the property was in excess of five acres; and at the time of platting the property was vacant or used as a farm as defined in Section 1-60. (35 ILCS 200/1-60). Counsel argued as of the January 1, 2011 assessment date, the subject parcel remained in the same condition when purchased in 2007.

Based on the new amendatory legislation passed in 2009, counsel argued the requirement in subsection (b) states: except as provided in subsection (c) of this Section, the assessed valuation of property so platted and subdivided, "if we stop right there, so platted and subdivided, that brings you back to the four conditions that were satisfied as of January 1, 2011, which is the proper date for determining the assessment of the subject property. It says 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." (Tr. P 10). Counsel argued the assessment of the subject parcel that was assigned prior to its last transfer or conveyance was the amount of \$1,653 as set forth in the 2008 notice of revised assessment. (See Appellant Group Exhibit A). Counsel argued any 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). Based on this interpretation of the statute, counsel argued the subject parcel is not disqualified from receiving the preferential land assessment due to the subject parcel's sale in 2007.

Counsel called no witness to describe the subject property or explain how the property was being used.

Appellant's counsel requested the Board take notice of its decision issued under Docket Number 09-00903.001-C-2, which was a similar argument to this instant appeal.

Based on these arguments, the appellant requested the subject's assessment be reduced to \$1,653, which reflects application of Section 10-31 of the Code. (35 ILCS 200/10-31).

Under questioning from the Administrative Law Judge, appellant's counsel did not know if the subject parking lot was used for overflow parking from the Home Depot or if people are parking illegally. Counsel contends the parking is a necessity that appears in any sort of preliminary type of commercial development. He agreed the statute listed its effective date of August 14, 2009. Counsel disagreed that the new legislation did not have language pertaining to retroactivity, but argued there was no language in the statute that did not allow for a preferential land assessment due to a prior sale. Counsel argued

there is no language contained in the amendatory statute that did not allow for the preferential land assessment due to a prior sale or that somehow a prior sale disqualifies the subject from a preferential land assessment. Counsel further argued the intent of the law should be considered 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 \$1,199,772 was disclosed. In support of the subject's assessment, the board of review submitted a plat map of the subject's subdivision, a recorded deed and an Illinois Real Estate Transfer Declaration pertaining to the sale of the subject property. The subject parcel sold with another parcel of land in November 2009 for \$7,009,397. The board of review was of the opinion the current owner (Rubloff Shorewood, LLC) was not the original developer and is therefore not eligible for developer's relief pursuant to Section 10-31 of the Property Tax Code.

At the hearing, Assistant State's Attorney Keith Aeshliman deferred to the intervenors, Joliet Twp. H.S.D. #204 and Troy C.C.S.D #30-C, in response to the appeal on behalf of the Will County Board of Review. The Assistant State's Attorney noted the intervenors submitted a memorandum of law and their position is identical to that of the board of review. The board of review adopted the evidence submitted by the intervenors. 86 Ill.Admin.Code §1910.99.

Carl Buck, counsel for Joliet Twp. H.S.D. #204 and Troy C.C.S.D #30-C, adopted the evidence and arguments submitted by the Will County Board of Review and moved to admit the exhibits that were attached to its memorandum of law into evidence. 86 Ill.Admin.Code §1910.99. The adopted board of review evidence was marked as General Board of Review Exhibit A. Intervenors exhibits include a Plat Map (Exhibit A), General Warranty Deed (Exhibit B), Legal Description (Exhibit C), 2009 Aerial Photograph of the subject's development (Exhibit D), Memorandum of Lease (Exhibit E), Will County Real Estate Multi-Year Inquiry Sheet (Exhibit F), a Special Warranty Deed (Exhibit G), Will County Real Estate Multi-Year Inquiry Sheet (Exhibit H), Will County Real Estate Multi-Year Inquiry Sheet (Exhibit I), a Common Area Maintenance Memorandum and Agreement (Exhibit J), and another Will County Real Estate Multi-Year Inquiry Sheet (Exhibit K).

The intervenors called John Trowbridge as a witness. Trowbridge has been a consultant for the Will County Supervisor of Assessments and Will County Board of Review for ten years. Trowbridge was of the opinion the subject parcel did not qualify for relief under the "developers relief" provisions of the Code because the parcel was purchased in 2007 terminating the preferential land assessment and allowing the assessment to be increased in 2008 to reflect its fair market value as allowed by Section 10-30 of the Code. Trowbridge explained the subject property is part of a commercial endeavor in which a majority of

the actual physical area is covered by a parking lot that is used by adjoining property owners. Referring to the aerial photograph of the subject's development, Trowbridge testified over one-half of the subject parcel is improved with a parking lot, which is not a use that is exempt under the "Developers Relief Act". Trowbridge further testified the parking lot is also used in conjunction with the other out lots in the commercial development.

Under cross-examination, the witness agreed the parking lot situated on the subject parcel is an extension from the adjacent parcel that is improved with the Home Depot store and fronts a vacant piece of ground. He was not aware of any business being conducted on the subject parcel. He did not know if Rubloff Shorewood, LLC, was not using the subject parcel for any purposes related to Home Depot. He was not aware that there was no snowplowing, as recent as last year. The intervenors objected to the question because the appellant submitted no evidence to allow them to make that argument. The Board hereby sustains the objection. The Property Tax Appeal Board finds the appellant submitted no independent evidence or testimony that would suggest the parking lot had or had not been snow plowed from 2007 to the date of hearing.

With respect to the memorandum of law submitted by the intervenors, in summary, Buck argued the subject parcel is not entitled to any preferential assessment under Sections 10-30 or 10-31 of the Code. Counsel noted the taxpayer did not file an assessment appeal for tax year 2010, nevertheless, the taxpayer is arguing the subject re-qualifies for a preferential land assessment as provided by Section 10-31 of the Code for the 2011 tax year. Counsel argued there are no provisions in Sections 10-30 or 10-31 of the Code that allows for requalification of the preferential assessment once terminated. Counsel argued Section 10-31 of the Code is not applicable because the property is improved with a parking lot; the parking lot was being used in conjunction with commercial purposes that service the outlying lots within the commercial development.<sup>2</sup> Furthermore, the existence of a parking lot is not one of the allowed improvements listed in Section 10-30 or 10-31 of the Code, which both provide in part:

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 . . . (35 ILCS 200/10-30(a) and 10-31(a)).

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<sup>2</sup> As of January 1, 2011, the subject development was improved with a Home Depot store, a McDonald's fast food restaurant and two other commercial buildings, but their names and uses were not identified during the course of the hearing. See Intervenors' Exhibit D.

He further noted the Common Area Maintenance Memorandum, which contained the Common Area Maintenance Agreement (CAMA) (identified as Exhibit B in the memorandum), recital (b) states:

By virtue of that certain document entitled "Restriction Agreement and Grant of Easements" which encumbers the Shopping Center and is recorded concurrently herewith ("RAGE"), the Owners have imposed certain restrictions on their parcels and have granted reciprocal easements each in favor of the other with respect to the Shopping Center.

Intervenors' counsel argued the "RAGE" is a cross access agreement for the property owners for the purposes of allowing travel across the subject parcel between, for instance, the McDonalds and Home Depot and so forth. Counsel claimed it is impossible to argue the subject parking is not being used for commercial purposes to grant access to the other parcels within the shopping development.

In rebuttal, appellant's counsel argued the taxpayer is not using the subject parcel in conjunction with any adjacent property and there is no structure on the parcel. Counsel agreed a parking lot is not listed in Section 10-31 of the Code (35 ILCS 200/10-31), but there is nothing that suggests the statute was intended to be exhaustive. In support of this proposition, the appellant counsel cited Outcom, Inc., d/b/a Porlier Advertising v. Illinois Department of Transportation, 233 Ill.2d 324 (2009). Counsel also argued Common Area Maintenance Agreements (CAMA) and Restriction Agreement and Grant of Easements (RAGE) agreements are common in commercial developments.

#### **Conclusion of Law**

The appellant argued that the appellant is a "developer" and contends the Illinois General Assembly enacted new amendatory legislation, Section 10-31 of the Code (35 ILCS 200/10-31), which replaced Section 10-30 of the Code which "re-qualifies" the subject parcel for a preferential land assessment. The appellant did not otherwise challenge the subject's estimated market value as reflected by its assessment. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case conducted under this Act by an agency shall be the preponderance of the evidence. (5 ILCS 100/10-15). The Board finds the appellant did not meet this burden of proof and no reduction in the subject's is assessment warranted.

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. However, the parties disagreed that the subject property was vacant as of the January 1, 2011 assessment date. The board of review and intervenors contend the existence of the parking lot is an improvement and it is used in conjunction with

a business, commercial or residential purpose of the contiguous parcels.

The appellant's counsel agreed the subject parcel, which previously received a preferential land assessment as provided by Section 10-30 of the Code, no longer applied due to the sale of the subject parcel in November 2007. However, the appellant contends the subject parcel should re-qualify for the preferential land assessment because the new amendatory statute enacted under Section 10-31 of the Property Tax Code (35 ILCS 200/10-31). The Board finds there is no support for the appellant's interpretation of the statutes.

Section 10-30(d) of the Code 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.** (Source: P.A. 95-135, eff. 1-1-08; 96-480, **eff. 8-14-09**). [Emphasis added.]

In contrast, the new provision of the 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 96<sup>th</sup> General Assembly and through December 31, 2011.** (Source: P.A. 96-480, **eff. 8-14-09**). [Emphasis added.]

The Property Tax Appeal Board finds the evidence establishes that the appellant, who was not the original developer, was the owner of the subject parcel as of the January 1, 2011 assessment date. The evidence also disclosed that the subject parcel was part of a sale that occurred in November 2007. The 2007 November sale was a transfer from the original developer to the appellant. The appellant's counsel agreed it was proper for Will County Assessments Officials to remove the preferential land assessment provided by Section 10-30 of the Code in 2008 due to the subject's 2007 sale. However, appellant's counsel argued the subject re-qualified for the preferential land assessment for the 2011 tax year due to the amendatory language contained in Section 10-31 of the Code. The Board gave this argument no weight. The Property Tax Appeal Board finds that once the subject parcel's preferential land assessment was terminated in 2008 due to its initial sale, it cannot "re-qualify" for the preferential land assessment as provided by Section 10-31 of the Code. The Board finds the provisions outlined in Section 10-31 of the Code do not allow for the subject property to "re-qualify" for a preferential land assessment. The Board finds the subject parcel was not a replatted lot as provided in Section 10-31(a)(4) of the Property Tax Code which provides:

At the time of platting or replatting the property is vacant or used as a farm as defined in Section 1-60. (35 ILCS 200/10-31(a)(4).

The Boards finds that as of the January 1, 2011 assessment date the subject parcel was not replatted nor was the property vacant or used for a farm as defined in Section 1-60 of the Property Tax Code. In fact, the Board finds, based on the testimony of Trowbridge and the aerial photograph, the subject parcel was improved with a parking lot as of the January 1, 2011 assessment date and thus, not vacant. The Board further finds the subject parcel's parking lot is not one of the specified land improvements provided by Section 10-31(a) of the Code, which provides:

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,. . . (35 ILCS 200/10-31(a). [Emphasis added.]

The Board further finds, based on the testimony of Trowbridge, the subject's parking lot was used in conjunction with other commercial business purposes within the development. The Board finds the aerial photograph shows there were cars in the subject's parking lot and there are three access points that are part of the subject's commercial development. Two of the access points, from Black Road and Brookforest Avenue, must be used to traverse the subject parcel's parking lot to access the Home Depot Store. In addition, the Common Area Maintenance Agreement (CAMA) and the Restriction Agreement and Grant of Easements (RAGE) further demonstrate the subject parcel is used for business and commercial purposes with contiguous property. Section 10-31(b) of the Property Tax Code provides:

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,. . . (35 ILCS 200/10-31(b). [Emphasis added.]

The Board further finds the subject parcel does not qualify for a preferential land assessment because it did not sell from one developer to another between the effective of Public Act 96-480, which dates are specified by Section 10-31(d) of the Code, which provides that:

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).

Section 10-31 of the Code had an effective date of August 14, 2009 through December 31, 2011. The subject parcel was not part of 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 from August 14, 2009 through December 31, 2011, but sold in 2007, prior to the effective date of Section 10-31 of the Code being enacted.

Based on this analysis, the Board finds neither Section 10-30 nor 10-31 of the Code is applicable as of the January 1, 2011 assessment date to provide the preferential developer assessment.

The Property Tax Appeal Board further 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 through December 31, 2011. 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 (2<sup>nd</sup> Dist. 1987).

Appellant further argues the legislative intent would be best affected by not finding that an "initial sale" had occurred under circumstances where the "taxpayers" intended to develop the parcels and were holding the land for sale. As noted previously, the November 2007 transfer referenced in this record was an "initial sale" and thus disqualified the property from the developer's exemption from that point forward, unless the property was replatted. Based on this analysis, the Board finds the board of review properly denied the preferential land assessment as provided under Section 10-31 of the Code.

A complete reading of Section 10-31 seems to provide for additional temporary benefits of the preferential assessment after a sale and/or due to transfers arising out of financial hardships caused by foreclosures or transfers in lieu of foreclosure to help real estate developers avoid rising assessments which result from initial platting and subdivision of vacant land for further development. These circumstances do not apply to the subject property. As noted above, however, given the assessment date of January 1, 2011, Section 10-31 is inapplicable to this appeal and does not override the fact that the subject's "initial sale" occurred in 2007 so as to terminate the preferential assessment allowed by Section 10-30 of the Code.

In conclusion, based on the foregoing evidence and analysis, the Property Tax Appeal Board finds the board of review correctly

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denied the request for a preferential land assessment as provided by either Section 10-30 or 10-31 of the Code (35 ILCS 200/10-30 & 10-31) for the assessment year at issue.

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.

*Donald R. Cuit*

Chairman

*K. L. Fan*

Member

*Richard A. Huff*

Member

*Marko M. Lioy*

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: October 24, 2014

*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.