2015 IL App (3d) 140065-U

Order filed July 10, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

BLAIR MINTON, LARRY PITHAN, MICELLI GROUP, LLC, an Illinois Limited Liability Company, and GFB HOLDINGS, LLC, an Illinois Limited Liability Company,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois.
Plaintiffs-Appellants,	)	
v.	)	Appeal No. 3-14-0065 Circuit No. 12-MR-1082
THE PROPERTY TAX APPEAL BOARD, and THE ROCK ISLAND COUNTY BOARD OF REVIEW,	)	
Defendants-Appellees.	)	Honorable James G. Conway, Jr., Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The preferential tax treatment set forth in 35 ILCS 200/10-31 (West 2012) does not apply where plaintiffs purchased the land prior to the statute's effective date. The developer's exemption pursuant to 35 ILCS 200/10-30 (West 2012) does not apply where the plaintiffs purchased platted property from a developer. Plaintiffs' appraisal was insufficient as a matter of law where the appraiser failed to utilize the sales comparison approach.

¶ 2 Country Estates at Fancy Creek, LLC (Fancy Creek), an Illinois limited liability company, purchased platted land from Andalusia Ventures, a developer. Fancy Creek could not secure financing to make infrastructure improvements. Subsequently, Fancy Creek sold four lots to plaintiffs in order to obtain money to make improvements. Rock Island County Board of Review (the Board) issued plaintiffs' tax assessments for their lots located within a subdivision, treating all lots as improved land. Plaintiffs protested, arguing that they did not improve the lots. The Board denied their protest and the Illinois Property Tax Appeal Board (PTAB) confirmed the Board's denial. The Rock Island County circuit court confirmed PTAB's ruling.

¶ 3 Plaintiffs appeal, arguing that the trial court erred in upholding PTAB's ruling that: (1) section 10-31 (35 ILCS 200/10-31(West 2012)) did not apply to plaintiffs' land; (2) plaintiffs did not qualify for the developer's exemption pursuant to section 10-30 (35 ILCS 200/10-30 (West 2012)); and (3) plaintiffs' appraisal was insufficient evidence as a matter of law. For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 Plaintiffs formed an Illinois limited liability company, Fancy Creek, to purchase and hold property in rural Andalusia, Illinois. Plaintiffs planned to construct infrastructure improvements and build a residential subdivision. Andalusia Ventures owned a tract of land in Andalusia, Illinois. In 2007, Andalusia subdivided and platted the tract into 22 lots. Andalusia recorded the plat in 2007. Rock Island County placed the subdivision on its tax rolls on January 1, 2008. On January 30, 2008, Andalusia sold the entire subdivision to Fancy Creek.

¶ 6 Fancy Creek was unable to secure financing to make infrastructure improvements; the property's value was insufficient to support the necessary financing. In order to obtain money to build infrastructure within the subdivision, Fancy Creek sold four parcels to plaintiffs on January

30, 2008. Plaintiffs recorded deeds for the sales between Andalusia and Fancy Creek and between Fancy Creek and plaintiffs on February 8, 2008. Plaintiffs' four lots are the subject of this appeal.

¶ 7 On January 1, 2009, the Board issued an assessment of the subdivision. As of January 1, 2009, Fancy Creek improved the subdivision with roads, curbs, gutters, utilities, and other infrastructure. Neither Fancy Creek nor plaintiffs made noninfrastructure improvements on the subject lots. However, the Board treated all the lots in the subdivision as improved land. Plaintiffs filed formal protests with the Board, arguing that the developer's exemption under section 10-30 and/or section 10-31 applied to their lots. Alternatively, plaintiffs argued that the tax assessments overvalued plaintiffs' lots. After conducting a hearing, the Board denied plaintiffs' protests. Plaintiffs appealed to PTAB, renewing the same arguments they previously presented to the Board. PTAB conducted a hearing. Plaintiffs argued that section 10-31 applied to their January 1, 2009, tax assessments. Plaintiffs also argued that the sales between Fancy Creek and plaintiffs did not constitute initial sales and did not terminate the preferential tax treatment set forth in section 10-30. Plaintiffs assert that they are developers and within the class the General Assembly intended to protect by enacting section 10-30.

¶ 8 The Board countered that tax assessments are fixed on January 1 of the tax year. The General Assembly did not enact section 10-31 until August 2009. The statute did not contain a retroactivity provision; thus, it did not apply to plaintiffs. The Board also argued that section 10-30 did not apply; Andalusia subdivided and platted the land prior to Fancy Creek purchasing the land and, subsequently, selling lots to plaintiffs. An initial sale terminates the preferential tax treatment pursuant to section 10-30.

¶ 9 To prove the value of the subject lots, plaintiffs called appraiser David Mark Nelson and provided PTAB with Nelson's written 2009 appraisal report of the subject properties. Nelson testified that he prepared his report for plaintiffs' counsel's use during the appeal. He prepared a restricted use report as opposed to a regular property appraisal report. A restricted report cannot be brought to a bank to help secure financing. He drafted the report solely for the appeal. Nelson conceded that he did not utilize a sales comparison approach. He treated all of the lots in the subdivision as a bundle. Nelson failed to find a comparable bulk transaction in order to develop the sales comparison approach.

¶ 10 Instead, Nelson performed an income and a cost approach analyses by using a discounted cash flow analysis to establish a bulk value. He allocated the value among the individual lots within the subdivision. Nelson acknowledged that information about sales of individual lots is an integral part of the income approach. The lots at issue are at a disadvantage with respect to their location as opposed to competing properties. Plaintiffs' lots are farther from population, employment centers, and transportation routes. Further, the lots are considerably more rural than the competing subdivisions, which experience slightly more success. He also testified that the lots are big and bigger lots generally command a lower price per square foot. He also expressed that the development itself was not feasible. Nelson opined that it would take approximately three years to sell any one lot. The best use for the individual lots is a single family residential use. The infrastructure improvements in the subdivision do not add to the lots' value due to the oversupply of lots on the market. Based on this conclusion, Nelson compared the lots to "raw land" that lacked streets and other improvements. Nelson concluded that the lots in Fancy Creek subdivision were worth 39 cents per square foot or $17,500 per acre.

¶ 11 The Board called Larry Wilson, a supervisor of assessments for Rock Island County, who testified that he used a sales comparison approach in determining the value of the subject property. He compared sales of lots located within subdivisions improved with infrastructure. Wilson compiled 33 lot sales in Rock Island and determined the median sale price. The parcels ranged in size from .220 to 32.91 acres of land and the sales occurred between February 2006 and December 2008. Wilson assumed all sales were arm's length transactions; the information on the Illinois PTAX-203 form filed for each parcel indicated that the sales did not occur between related individuals or corporate affiliates. He concluded that the lots were worth $1.35 per square foot or $58,844 per acre. Wilson testified that the Illinois Constitution requires assessors such as himself to compare the value of "like property with like property."

¶ 12 Plaintiffs submitted, in rebuttal, a two-page letter from Nelson, stating that Wilson should not have included the sales from Fancy Creek to plaintiffs in its sales comparison analysis; those sales were not arm's length transactions. Further, he argues that the lots are bigger than the comparables. Finally, Wilson's sales comparison did not account for the inferior location of the lots and that the development itself was not feasible.

¶ 13 PTAB affirmed the Board's denial of plaintiffs' tax protest, holding that: section 10-31 (35 ILCS 200/10-31 (West 2012)) did not apply to plaintiffs' property; section 10-30 (35 ILCS 200/10-30 (West 2012)) barred plaintiffs from claiming the developer's exemption; and plaintiffs' submitted appraisal was insufficient evidence as a matter of law. PTAB found that section 10-31 did not apply; section 10-31 became effective on August 14, 2009, and the Board assessed plaintiffs' lots on January 1, 2009. Applying section 10-30, PTAB rejected plaintiffs' argument that the sales between Fancy Creek and plaintiffs did not constitute initial sales. PTAB found that undisputed evidence proved that plaintiffs were not the developers who platted and

subdivided the land. Instead, plaintiffs purchased their land from Fancy Creek. In addition, Fancy Creek purchased the land from the developer that platted the subdivision. In determining the value of the lots, PTAB found Nelson's appraisal not credible. However, it accepted plaintiffs' argument that the sales from Fancy Creek to plaintiffs should not be included in Wilson's consideration. After removing the subject lots from consideration, PTAB determined that the remaining lots sold for $3.50 per square foot. Applying the general rule that the larger the parcel, the lower the price per square foot, PTAB concluded that the Board's valuation of $1.35 per square foot established the lots' value on January 1, 2009. Plaintiffs were not entitled to the preferential tax treatment or a reduction on the grounds of valuation.

¶ 14 Plaintiffs appealed to the Rock Island circuit court. After holding a hearing, the court confirmed PTAB's ruling. Plaintiffs filed a motion to reconsider, which the trial court denied.

¶ 15 Plaintiffs appeal, we affirm.

¶ 16 ANALYSIS

¶ 17 I. Section10-31

¶ 18 Plaintiffs argue that they are entitled to the preferential tax treatment pursuant to section 10-31 (35 ILCS 200/10-31 (West 2012)). Defendants argue that section 10-31 does not apply retroactively.

¶ 19 Whether section 10-31 applies to plaintiffs' property tax assessments is a question of law and we review *de novo*. *Kankakee County Board of Review v. Property Tax Appeal Board*, 226 Ill. 2d 36, 51 (2007).

¶ 20 Real property is assessed for taxation "in the name of the owner and at the value as of January 1" of that tax year. *People ex rel. Kassabaum v. Hopkins*, 106 Ill. 2d 473, 476 (1985); 35 ILCS 200/9-95 (West 2012). Here, plaintiffs' property assessment for tax year 2009 was

fixed on January 1, 2009. Section 10-31 was not yet effective; the statute became effective August 14, 2009. However, plaintiffs argue that section 10-31 applies retroactively for the 2009 tax year. We disagree.

¶ 21 The General Assembly temporarily amended section 10-30 by enacting section 10-31 (35 ILCS 200/10-30, 10-31 (West 2012)). Section 10-31, in relevant part, states:

> "(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 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." 35 ILCS 200/10-31(b)(c)(d) (West 2012).

¶ 22 The General Assembly clearly indicated that the statute applies only on or after the effective date, August 14, 2009, until December 31, 2011. Where the General Assembly clearly establishes a temporal reach of an amended statute, we will give effect to such intent, absent a constitutional prohibition. *Caveney v. Bower*, 207 Ill. 2d 82, 94 (2003); *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 38 (2001).

¶ 23 Moreover, our supreme court declined to apply preferential tax treatment where the language of the statute did not explicitly state that the statute applied retroactively. *Kassabaum*, 106 Ill. 2d at 477. There, the defendants filed an application with the Environmental Pollution Agency for certification as a pollution control facility in order to qualify for preferential tax treatment. *Id.* at 475. The defendants filed the certificate on October 23, 1981. *Id.* The court applied the rule that we are to strictly construe provisions granting tax exemptions to provisions granting preferential tax treatment. *Id.* at 477. The status of property for tax assessments is valued as of January 1; "property subject to taxation on assessment day in any year is liable for the taxes for that year even though it may subsequently, during that year, become exempt from taxation." *Id.* (citing *People ex rel. Pearsall v. Catholic Bishop of Chicago*, 311 Ill. 11, 17 (1924)). There, the statute providing for the preferential tax treatment did not explicitly state that the statute applied retroactively. *Id.* The defendants did not file the certificate until October; therefore, the defendants were not entitled to the preferential tax treatment until the assessment date (January 1) following the certification. *Id.*

¶ 24 Here, the statute does not explicitly allow for retroactive application. In fact, section 10-31 clearly states that it applies only between August 14, 2009, and December 31, 2011. Plaintiffs acquired ownership of the property from Fancy Creek on January 30, 2008. The Board fixed the assessment on January 1, 2009. Section 10-31 does not retroactively apply to provide preferential tax treatment for plaintiffs.

¶ 25 Plaintiffs improperly rely on *In re Application of Rosewell*, 120 Ill. App. 3d 369 (1983), where the court held that if property becomes taxable or exempt after January 1, the applicable exemption may apply for that tax year. This case is an aberration and stands alone. As mentioned above, our supreme court stated "property subject to taxation on assessment day in any year is liable for the taxes for that year even though it may subsequently, during that year, become exempt from taxation." *Kassabaum*, 106 Ill. 2d at 477 (citing *Pearsall*, 311 Ill. 11 (1924)); see also *Forest Preserve District of Du Page County v. Department of Revenue*, 266 Ill. App. 3d 264 (1994).

¶ 26 Furthermore, even if we applied section 10-31, plaintiffs would not be entitled to the preferential tax treatment. Section 10-31 states that an initial sale will not terminate the preferential tax assessment. Section 10-31 makes no mention of subsequent sales. Here, an initial sale occurred between Andalusia and Fancy Creek. This sale would not have terminated the preferential tax treatment. However, Fancy Creek subsequently sold the lots to plaintiffs. This second sale would have terminated the preferential tax treatment set forth in section 10-31.

¶ 27 II. Section10-30

¶ 28 Alternatively, plaintiffs argue that they are entitled to the preferential tax treatment, known as the "developer's exemption," set forth in section 35 ILCS 200/10-30 (West 2012). Specifically, plaintiffs argue that the sale from Fancy Creek to them did not constitute an "initial

sale"; Fancy Creek sold plaintiffs the lots for the sole purpose to obtain financing for further development. The Board and PTAB argue that the term initial sale is unambiguous and the sale from Andalusia to Fancy Creek and Fancy Creek to plaintiffs constituted two sales.

¶ 29 We review *de novo* whether the transactions between Andalusia Ventures and Fancy Creek or the transaction between Fancy Creek and plaintiffs constitute an initial sale pursuant to section 10-30. *Petersen v. Wallach*, 198 Ill. 2d 439, 444 (2002) ("The interpretation of a statute is a question of law, subject to *de novo* review.").

¶ 30 Section 10-30, in relevant part, states:

> "[T]he 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 ***.
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> ***
>
> (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 purposes for which the property was used when last assessed prior to its platting.
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> (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 ***." (Emphasis added.) 35 ILCS 200/10-30(a)(b)(c) (West 2012).

¶ 31 When interpreting a statute, our responsibility is to determine and give effect to the General Assembly's intent. *Petersen*, 198 Ill. 2d at 444; *Stinson v. Chicago Board of Election Commissioners*, 407 Ill. App. 3d 874, 864 (2011); *Carroll v. Paddock*, 199 Ill. 2d 16, 22 (2002). We look to the statutory language to determine such intent. *Peterson*, 198 Ill. 2d at 444. Where the language of a statute is unambiguous, we will enforce the law as written and not look beyond the language of the statute. *Petersen*, 198 Ill. 2d at 445; *Stinson*, 407 Ill. App. 3d at 864; *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 421-22 (2002). We will not read into the statute exceptions, limitations, or conditions. *Stinson*, 407 Ill. App. 3d at 864.

¶ 32 Plaintiffs rely on the Condominium Property Act (765 ILCS 605/22, *et seq.* (West 2012)) to support their argument that a sale between developers does not constitute an initial sale. Specifically, plaintiffs argue that the General Assembly defined "initial sale" in the Condominium Property Act and we should apply that definition to section 10-30. The Condominium Property Act states:

> "A sale is not an initial sale *for the purposes of this Section* if there is not a bona fide transfer of the ownership and possession of the condominium unit for the purpose of occupancy of such unit as the result of the sale or if the sale was entered into for the purpose

of avoiding the requirements of this Section." (Emphasis added.)

765 ILCS 605/22 (West 2012).

The General Assembly made it clear that this definition of "initial sale" applies only to section 22; here, the Board issued tax assessment pursuant to section 10-30.

¶ 33 The General Assembly did not include language limiting the definition of an initial sale in section 10-30. Again, "the initial sale of any platted lot, including a platted lot which is vacant" terminates the developer's exemption. 35 ILCS 200/10-30 (West 2012)). The General Assembly knows how to include an exclusion from what constitutes an "initial sale" as evidenced by the language in the Condominium Property Act. Had the General Assembly wanted to include the limitation on an "initial sale" in section 10-30 it would have done so.

¶ 34 An initial sale occurred when Andalusia sold the platted land to Fancy Creek. Andalusia recorded the plat in 2007. The land qualified for the preferential tax treatment pursuant to section 10-30 for the 2008 tax year; the property's tax status is fixed for that year on January 1. *Kassabaum*, 106 Ill. 2d at 476. Andalusia owned the platted land as of January 1, 2008. Plaintiffs failed to address the sale between Andalusia and Fancy Creek in their appellants' brief or their reply brief. Instead, they request we conclude that the sale from Fancy Creek to plaintiffs did not constitute an initial sale. Defendants argue two sales occurred; the initial sale was between Andalusia and Fancy Creek. In some respects, plaintiffs are accurate in stating that the transaction between Fancy Creek and plaintiffs did not constitute an initial sale; this was the second sale of the platted land. Ultimately, the sale between Fancy Creek and plaintiffs is irrelevant. Based on the plain language of the statute, when Andalusia sold the platted land to Fancy Creek on January 30, 2008, an initial sale occurred. The property was no longer entitled to the developer's exemption as of January 1, 2009.

¶ 35 Plaintiffs rely on *Bond County Board of Review v. Property Tax Appeal Board*, 343 Ill. App. 3d 289 (2003), to support their position that they are entitled to the developer's exemption. Plaintiffs argue that the *Bond* court held the developer's exemption applied, even though the land was sold twice. We find that plaintiffs' reliance is misplaced. There, the taxpayer disputed the classification of the land. *Bond County*, 343 Ill. App. 3d at 291. The court held that despite the fact that the land was subdivided prior to the two sales, the land should be assessed as agricultural as opposed to rural residential. *Id.* at 294. The taxpayer continued to use the land for agricultural purposes and no one improved the land. *Id.* Here, plaintiffs do not dispute the classification of the land but, rather, insist that they are entitled to the developer's exemption. Therefore, *Bond County* is not relevant to this appeal.

¶ 36 III. Plaintiffs' Appraisal Insufficient Evidence

¶ 37 Plaintiffs argue that the trial court erred in confirming PTAB's rejection of plaintiffs' appraisal as insufficient as a matter of law. Plaintiffs submitted an appraisal prepared by David Mark Nelson, which included the cost approach and income approach, but excluded the comparable sales approach to valuation.

¶ 38 The parties disagree about the applicable standard of review. Plaintiffs argue that we should review *de novo* whether Nelson utilized a proper valuation method. The defendants argue that we should determine whether PTAB's finding that the property was not overvalued was against the manifest weight of the evidence. We find that the central issue is whether PTAB correctly decided to confirm the property assessments for the 2009 tax year. Our determination turns on a question of law—whether PTAB considered an appraisal that employed a proper valuation method in assessing plaintiffs' lots. *Cook County Board of Review v. Property Tax Appeal Board & Omni Chicago*, 384 Ill. App. 3d 472, 479 (2008) (citing *Kankakee County*

Board of Review v. Property Tax Appeal Board, 226 Ill. 2d 36, 50 (2007)). We review *de novo* this legal question. *Cook County Board of Review*, 384 Ill. App. 3d at 479 (citing *Kankakee County Board of Review v. Property Tax Appeal Board*, 131 Ill. 2d 1, 14 (1989)).

¶ 39 In the absence of a contemporaneous sale between parties negotiating at arm's length, appraisers utilize valuation methods to estimate the property's fair market value. *Cook County Board of Review v. Property Tax Appeal Board*, 384 Ill. App. 3d at 480. The comparable sales approach is the preferred valuation method and appraisers should use such approach when market data is available. *Id.* Market data consists of sale prices of comparable properties to the subject property. *Id.* The exclusion of the sales comparison approach is the exception, not the typical practice. *Cook County Board of Review*, 384 Ill. App. 3d at 481. An appraiser must justify his appraisal that excludes the sales comparison approach. *Id.* The appraiser must allege more than unsupported conclusions that he could not utilize the sales approach due to the lack of sales of similar properties. *Id.*

¶ 40 Here, Nelson failed to utilize the sales comparison method even though data of sales for similar properties was available. Instead, Nelson bundled the lots together and attempted to find a comparable bulk transaction, which he failed to do. The Board's appraiser utilized the sales comparison approach. The Board submitted a spreadsheet detailing information regarding 33 sales of similar individual lots in the area between 2006 and 2008. PTAB accepted plaintiffs' contention that the sales from Fancy Creek to plaintiffs were not arm's length transactions. It did not consider those sales in determining the lots' value. It considered the values of the remaining lots listed in the spreadsheet. The remaining lots were smaller in size compared to plaintiffs' lots; PTAB applied the general rule that larger lots sell for a lower price per square foot. After

doing so, it determined that the Board's proposed market value of the lots at $1.35 per square foot was an appropriate valuation as of January 1, 2009.

¶ 41 Plaintiffs accurately note that there are limited situations where market value by sales comparison cannot be established. *Id.* Those instances include property that has a special use, such as a church, college, cemetery, clubhouse or terminal of a railroad. *Id.* However, plaintiffs fail to explain how the lots in the subdivision are of "special use" or similar to the uses listed above. Further, we do not agree that plaintiffs' lots are of special use. The lots are for residential purposes and are in no way similar to a church, cemetery, railroad terminal, or a college.

¶ 42 Nelson failed to utilize the proper valuation method. PTAB was not required to consider Nelson's appraisal. PTAB's determination that the assessment's accurately reflected the value of the land was not against the manifest weight of the evidence. The trial court did not err in confirming PTAB's administrative decision.

¶ 43 CONCLUSION

¶ 44 For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 45 Affirmed.