



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

APPELLANT: Suzanne Burge
DOCKET NO.: 22-04110.001-C-1
PARCEL NO.: 06-36-451-010

The parties of record before the Property Tax Appeal Board are Suzanne Burge, the appellant, by attorney Adam Lawler, of Lawler Brown Law Offices in Marion; and the Jefferson County Board of Review.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds **A Reduction** in the assessment of the property as established by the **Jefferson** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$2,540
IMPR.: \$0
TOTAL: \$2,540

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Jefferson County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2022 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 parties appeared before the Property Tax Appeal Board on September 26, 2024 for a hearing at the Property Tax Appeal Board's office in Springfield pursuant to prior written notice dated August 8, 2024. Appearing at the hearing on behalf of the appellant was attorney, Zach Walston, of Lawler Brown Law Offices in Marion; and appearing on behalf of the Jefferson County Board of Review was Sean Featherstun, Jefferson County State's Attorney.

The subject property consists of a vacant commercial lot containing 1.62 acres of land area and is located in Mt. Vernon, Shiloh Township, Jefferson County.

The appellant indicated a contention of law as the basis of the appeal. In support of the contention of law argument, the appellant submitted a brief asserting the subject previously had a developer's preferential assessment. The appellant presented a Tax/Payment History for the

subject (Group Exhibit A), which depicts the subject had assessments ranging from \$2,350 to \$2,374 from 2012 to 2016, an assessment of \$2,374 in 2018, an assessment of \$2,374 in 2019, an assessment of \$2,374 in 2020, and an assessment of \$2,540 in 2021.

The appellant explained in the brief that the subject was purchased and developed by Nelson Gauto, who qualified the subject property for a developer's preferential assessment. The appellant presented a copy of a Warranty Deed dated June 19, 2002 (Exhibit B), conveying the subject property to Nelson Gauto. The appellant further explained that Nelson Gauto married the appellant in October 2006 and that Nelson Gauto thereafter died leaving his remaining property to the appellant who was not a U.S. citizen at the time. The appellant presented a copy of a Last Will and Testament dated August 25, 2010 (Exhibit C), which was filed with the Clerk of the Circuit Court on May 18, 2011, which describes the appellant as the decedent's legatee.

Because the appellant was not a U.S. citizen, it was asserted in the brief that the appellant created a Qualified Domestic Trust, to which the subject property was conveyed from Nelson Gauto's estate. The appellant presented a copy of an Executor's Deed dated July 25, 2012 (Exhibit D), conveying the subject property to the Trustee of the Suzanne M. Gauto Qualified Domestic Trust (the "QDOT"). This deed recited that the transfer was "in consideration of Ten Dollars (\$10.00), the receipt of which is hereby acknowledged" and further recited the transfer is exempt under Section 1004(e) of the Real Estate Transfer Act.

At hearing, Walston contended that the subject was conveyed to the QDOT to protect the property while the appellant applied for U.S. citizenship. Walston confirmed the subject property was not transferred during the period between Nelson Gauto's purchase in 2002 and his death. Walston further confirmed Nelson Gauto's estate was administered by a court and the estate had been closed. Walston asserted there was no monetary or other consideration for the conveyance of the subject property from the decedent's estate to the QDOT.

In the brief, the appellant further explained that the appellant thereafter married Monty Burge and obtained U.S. citizenship. The appellant stated the subject property was then conveyed to the appellant and Monty Burger, as joint tenants. The appellant presented a copy of a Trustee's Deed dated July 17, 2013 (Exhibit E), conveying the subject property from the Trustee of the Suzanne M. Gauto Qualified Domestic Trust to the appellant and Monty Burge, as joint tenants. This deed recited that the conveyance was "in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration in hand paid" and further recited the transfer is exempt under Section 1004(e) of the Real Estate Transfer Act.

At hearing, Walston stated the appellant obtained U.S. citizenship before the subject property was transferred from the QDOT to the appellant and Monty Burge as joint tenants. Walston confirmed there was no monetary or other consideration for this conveyance.

Based on these facts, the appellant argued that the 2012 and 2013 conveyances were not sales that trigger termination of the developer's preferential assessment under Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). The appellant contended the subject property remains vacant, is not used for any commercial, business, or residential purpose, and no sale has occurred. The appellant argued a transfer of property under a decedent's will is not a sale and the transfers to and from the appellant's trust were not sales. The appellant pointed out both

conveyances were exempt from transfer taxes and there was no change in the subject's assessment following these transfers.

Based on this evidence, the appellant requested a reduction in the subject's assessment to reflect the developer's preferential assessment for the prior tax year of \$2,540.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$37,753. The board of review did not submit any evidence to support the subject's assessment. At hearing, when asked by the Administrative Law Judge what the subject's assessment would be with a developer's preferential assessment, Featherstun did not know what that assessment amount would be but asserted it would be higher than the prior year's assessment without further explanation.

The board of review submitted a brief contending that the subject's preferential assessment under Section 10-30 terminated with the 2012 and/or 2013 conveyances of the subject property. The board of review argued that Section 10-30 does not require an arm's length sale. The board of review further argued that a sale means any conveyance for consideration. The board of review acknowledged the subject had a developer's preferential assessment until 2021, but denied the subject qualified for this preferential assessment following the 2012 and/or 2013 conveyances. The board of review contended an incorrect prior assessment of the subject did not entitle the appellant to a continuation of that incorrect assessment.

At hearing, the board of review stipulated to the material facts in the record presented by the appellant and to the copies of the Last Will and Testament and the deeds presented by the appellant. The board of review acknowledged the appellant's stated purpose of transferring the subject property to the QDOT. However, Featherstun argued this stated intent assumes a legal or financial benefit was obtained from the transfer. Featherstun argued a transfer tax exemption indicated in a deed is not dispositive of whether a sale occurred and the plain language of both deeds states that consideration was given for the subject property. Featherstun agreed that no monetary consideration was paid, but contended other consideration had been given in the form of a legal or financial benefit arising under tax laws.

With its brief, the board of review presented a copy of the decision in Foxfield Realty, Inc. v Kubala, 287 Ill. App. 3d 519 (2d Dist. 1997), which Featherstun explained was cited only for its definition of a sale. The Foxfield court, citing Black's Law Dictionary, defined a sale as a "contract whereby property is transferred from one person to another for a consideration of value, implying the passing of general and absolute title, as distinguished from a special interest falling short of complete ownership." Id. at 524. In that case, the court held a realtor was not entitled to a commission under exclusive listing agreement when a partial interest in the property was conveyed by a Quit Claim Deed from one spouse to the other in connection with a dissolution of marriage. Id. at 525.

The board of review also submitted a copy of a final administrative decision of the Property Tax Appeal Board in Docket No. 12-01456.001-R-1, in which the Board determined transfers between the developer and another entity were sales that terminated the developer's preferential assessment. At hearing, Featherstun acknowledged that appeal involved transfers between business entities.

When asked by the Administrative Law Judge to clarify the board of review's position on whether the board of review considers all conveyances of property to be sales, Featherstun asserted any conveyance for which there is a deed that recites consideration is a sale. Featherstun acknowledged the board of review had not presented any legal authority to support this conclusion. Featherstun stated the board of review relies on the consideration language in a deed and does not investigate the facts and circumstances of each transaction.

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

In written rebuttal, the appellant argued that a recitation of consideration is required to make a deed legally effective, even in transfers to a trust. The appellant argued a change in the form of ownership does not always indicate a sale has occurred, citing to Cooley Inv. Co. v. Jones, 780 P.2d 29 (Colo. Ct. App. 1989), a case cited in the Foxfield case that involved the contribution of property to a partnership and the applicability of a realtor's commission.

The appellant also cited to Weaver v. Ellis, 127 Ill. App. 3d 725 (Dist. 1984), for the proposition that the parties' intent controls in the construction of a deed. In that case, the court stated "[t]he primary purpose of the construction of a deed is to ascertain the intention of the parties, such to be determined and gathered from the instrument as a whole, giving effect to every word and rejecting none as meaningless or repugnant, if it can be done without violating any positive rule of law...The words need not be construed literally or strictly, since greater regard is accorded to the real intention as manifested in the entire deed than to any particular work or arrangement in its expression. In order to understand the language in the sense intended by the parties, the court will consider the facts they had in mind, including their situation, the state of the property, and the objects to be attained." Id. at 729 (citations omitted). The appellant argued the parties did not intend to have the 2012 and the 2013 conveyances construed as sales.

Conclusion of Law

The appellant's argument is based on a contention of law regarding the interpretation and application of section 10-30 of the Property Tax Code (35 ILCS 200/10-30). The standard of proof on a contention of law is a preponderance of the evidence. (See 5 ILCS 100/10-15). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The appellant seeks a reduction in the subject's assessment pursuant to Section 10-30 of the Property Tax Code. Paragraphs (a) and (b) of Section 10-30 prescribe a developer's preferential assessment as follows:

- (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 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 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.

Section 10-30(c) provides for termination of the developer's preferential assessment as follows:

(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, 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. (emphasis added).

It is undisputed that the subject met the requirements of Section 10-30(a) and had a developer's preferential assessment under Section 10-30(b) prior to 2022. The Board finds that Section 10-30(b) provides that an **"initial sale"** of the property triggers termination of the preferential assessment, rather than any conveyance or transfer of the property (emphasis added). The parties disagree on what constitutes a sale, with the appellant contending that transfers from a decedent's estate to a legatee and from a trust to a beneficiary are not sales and the board of review contending all conveyances by deed that recite consideration are sales.

The Board finds the 2012 conveyance was a testamentary transfer to a legatee. The Board takes judicial notice of the Probate Act of 1975 (755 ILCS 5/1-1, *et seq.*) which clearly distinguishes between sales of a decedent's property and distributions of a decedent's property to the decedent's legatees or heirs.

As to the transfer of the subject property from the decedent's estate to the QDOT, rather than to the appellant, individually, the Board takes judicial notice of 26 U.S.C § 2056A and related federal regulations, which permit the creation of and the transfer of property to a QDOT when a non-citizen surviving spouse is entitled to receive property from a decedent's estate, and from which it can be inferred that the appellant was the trust beneficiary of the QDOT. It is undisputed that the appellant was not a U.S. citizen at the time of the decedent's death, the appellant was entitled to receive the decedent's property upon his death, and the subject property was transferred to the QDOT to preserve the subject property for the appellant as the non-citizen surviving spouse. The Board finds there is no evidence in this record to indicate the QDOT was

not properly established or that the subject property was not properly conveyed to the QDOT in accordance with 26 U.S.C § 2056A and related federal regulations.

As to the transfer of the subject property from the QDOT to the appellant and her spouse, rather than to the appellant, individually, it can be inferred from the 2013 conveyance that the appellant had a power to withdraw the subject property from the QDOT and that the appellant had a power to direct distribution of the subject property to herself and to her spouse. The Board finds there is no evidence in the record to indicate this conveyance was not authorized or properly made under the terms of the QDOT. Following this distribution from the QDOT, the appellant continued to have an interest in the subject property as a joint owner.

The board of review presented no legal authority to support its contention that a testamentary transfer to a legatee or that the transfer of a property to a Qualified Domestic Trust under 26 U.S.C § 2056A and related federal regulations is a sale as a matter of law.

Based on the definition of a sale presented by the board of review (“contract whereby property is transferred from one person to another for a consideration of value, implying the passing of general and absolute title, as distinguished from a special interest falling short of complete ownership”) the Board finds the appellant demonstrated these elements of a sale have not been met for the 2012 and 2013 conveyances of the subject property.

It is undisputed there was no monetary consideration for either conveyance. Although the board of review argued the consideration for both of these transfers was a legal or financial benefit arising under tax laws, the board of review presented no legal authority to support this contention. Moreover, the board of review did not specify who received a legal or financial benefit for each conveyance. If the grantee received the subject property, then it follows from the board of review’s argument that the grantor should receive the legal or financial benefit arising under tax laws as consideration.

Based on 26 U.S.C § 2056A and related federal regulations, it appears both the decedent’s estate and the appellant could receive a legal and/or financial benefit from the transfer of the subject property to the QDOT rather than to the appellant, individually. With regard to the 2013 conveyance, it is unclear that the QDOT received any legal and/or financial benefit for this transfer, whereas the appellant, as grantee, received an interest in the subject property and the legal or financial benefits arising under on 26 U.S.C § 2056A and related federal regulations relating to the QDOT’s ownership of the subject property while the appellant was not a U.S. citizen.

The Board further finds the board of review’s sole reliance on the consideration language contained in the deeds for these conveyances, to the exclusion of other language contained in these deeds, such as the transfer tax exemption or the identity of the grantor and the grantee, to be illogical.

Moreover, following the 2013 conveyance, the Board finds the appellant retained an interest in the subject property as a grantee, while also having had an interest in the subject property as a trust beneficiary of the QDOT.

Based on this record, the Board finds the required elements of a sale are not met for either the 2012 or the 2013 conveyance of the subject property and the Board finds that neither of these transfers was a sale. Consequently, the Board finds these conveyances did not trigger a termination of the subject's developer's preferential assessment under Section 10-30 of the Property Tax Code and a reduction in the subject's assessment commensurate with the appellant's request is warranted. Although Featherstun asserted at hearing that the subject's preferential assessment would be higher than the appellant's requested assessment for the 2023 tax year, the Board gave little weight to this contention as it was not supported by any explanation, calculation, or other evidence in the 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. Pursuant to Section 1910.50(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(d)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.



Chairman



Member



Member



Member



Member

DISSENTING: _____

CERTIFICATION

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: _____

November 19, 2024



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 or years of the same general assessment period, as provided in Sections 9-125 through 9-225, 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 such subsequent year or years 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 OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

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.

PARTIES OF RECORD

AGENCY

State of Illinois
Property Tax Appeal Board
William G. Stratton Building, Room 402
401 South Spring Street
Springfield, IL 62706-4001

APPELLANT

Suzanne Burge, by attorney:
Adam Lawler
Lawler Brown Law Offices
1600 West Main
PO Box 1148
Marion, IL 62959

COUNTY

Jefferson County Board of Review
Jefferson County Courthouse
100 S 10th Street
Mt. Vernon, IL 62864