THE DEVELOPER'S RELIEF ASSESSMENT FOR THE SETTING OF REAL ESTATE TAX ASSESSMENTS FOR THE YEARS 2010 AND 2011 (PUBLIC ACT 96-480)

Public Act 96-480 (Senate Bill 543) created a temporary "Developers' Relief Assessment" for platted and subdivided land in all counties except Cook County. As with the pre-existing developer's relief assessment under Section 10-30 of the Property Tax Code,[1] effective, August 14, 2009, the new enactment, in counties other than Cook, is a prohibition on increasing the assessed value of property that is in transition from vacant land to a residential, commercial, or industrial use. Public Act 96-480 extended what has been the traditional developers' preferential assessment to sales of lots, qualifying transfers to mortgage holders, and subdivisions or portions thereof that are replatted (referred to as the "Developers' Relief Assessment"). Public Act 96-480 introduced a new section into the property tax code: Section 10-31, which suspends and replaces Section 10-30, until January 1, 2012, when, unless 10-31 is extended, the previous law will again apply. This article is intended to assist the lawyer representing a client, developer which is holding vacant lots or bank which has received property through a foreclosure proceeding or transfer in lieu of foreclosure in seeking tax assessment relief by the application of Section 10-31 of the Property Tax Code.

In our experience, the township assessors have not been utilizing this Developer's Relief Assessment on their own initiative. The developer or builder must pursue it with the assessor and often, in order to receive the assessment relief, Assessment Complaints are required to be filed with the appropriate county Board of Review. There can be a substantial tax savings involved. This year on 2010 assessment complaints we have had several hundred improved lots, in a number of subdivisions, reduced to assessed values of $150 and $20 per lot.[2]

Although this last year, in our experience, at the Board of Review level, the bulk of the assessment complaints requesting relief on based on the statute were granted, many were denied relying on a legal interpretation that for any lot transfers prior to January 1, 2009, section 10-31 is not applicable, as being a retroactive application of the law. The argument presented is that the effective date of the law was August 14, 2009; however, the "date upon which real estate is assessed in the State of Illinois is January 1 of each year"[3] and "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 conclusion is then made that 10-31 cannot be applied to any lots that transferred prior to January 1, 2009.[4] In my opinion, the Developer's Relief Assessment for the setting of Real

1 35 ILCS 200/10-31 et seq. On August 14, the Governor signed the bill, which became P.A. 96-0480

2 This was the result of the previous assessed value being as farm

3 See, Doran V. P.J. Cullerton, 51 Ill.2d 553, 558 (1972)

4 In a memorandum to the Board of Review, in one of our appeals, the county state's attorney was quoted as follows:

> "Your office has inquired as to the application of statutory effective dates of new legislative enactments, specifically the effective date of 35 ILCS 200/10-31. A basic principle of statutory construction is that a law is not retroactive unless the legislature specifically puts a retroactivity provision in the law.
> In the context of 35 ILCS 200/10-31, the legislature specifically put in section (d) the effective date of August 14, 2009, with no retroactivity provision. Therefore, this enactment is effective starting in the tax year 2009. This act does not apply to any actions that took place before tax year 2009."

Estate Tax Assessments for the years 2010 and 2011, pursuant to section 10-31 is applicable to all property meeting the four conditions stated by the statute, regardless of whether it was acquired prior to or subsequent to January 1, 2009.

A Statute Which Language Clearly Expresses The Legislative Intent Must Be Construed To Give Effect To That Intent, Regardless Of The Consequences.

A court considering a statute which is unambiguous and clearly expresses the intention of the General Assembly has no right to say that the General Assembly did not mean what it said in plain language but must give effect to that intention, regardless of the consequences.[5] Section 10-31 (a) of the Act delineates the conditions when the Developers' Relief Assessment is to be utilized by the assessor in determining the property assessment.
Section 10-31(a) states:

> (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.

These qualifications are identical to those previously existing in Section 10-30(a) of the Property Tax Code. The statute is clear, forthright and unambiguous. In determining assessed valuations, when the events enumerated in sections (1) through (4) are in existence then the Developers' Relief Assessment should apply. The fundamental rules of statute construction apply. The construction of a statute is necessary only when it is ambiguous,[6] and if the language of a statute is plain and unambiguous there is no occasion for construction to ascertain the meaning of the statute.[7] When the language of an act is certain and unambiguous, the only legitimate function of the courts is to enforce the law as it was enacted by the legislature.[8] Courts have no legislative powers, and their sole function is to determine and, within the constitutional limits of the legislative power, give effect to the intention of the lawmaking body.[9] So, when the language used in a statute is plain and certain, it must be given effect by the courts.[10]

---

5 People v. Laubscher, 183 Ill2d 330, 233 Ill. Dec. 639 701 N.E.2d 489 (1998); Bridgestone/Firestone, Inc. v. Aldridge, 179 Ill.2d 141, 227 Ill. Dec. 753, 688 N.E.2d 90 (1997).

6 In re Consolidated Objections to Tax Levies of School Dist. No. 205, 193 Ill.2d 490, 250 Ill. Dec. 745, 739 N.E.2d 508, 150 Ed. Law Rep. 75 (2000).

7 People v. Pullen, 192 Ill.2d 36,248 Ill.Dec. 237, 733 N.E.2d 1235 (2000).

8 Certain Taxpayers v. Sheahen, 45 Ill.2d 75, 256 N.E.2d 758 (1970).Courts have no legislative powers, and their sole function is to determine and, within the constitutional limits of the legislative power, give effect to the intention of the law making body.

9 People v. Sheehan, 168 Ill.2d 298, 213 Ill.Dec. 692, 659 N.E.2d 393 (5th Dist. 1974).

10 People v. Lavallier, 187 Ill.2d 464, 241 Ill.Dec. 529, 719 N.E.2d 464, 241 Ill.Dec. 529, 719 N.E.2d 658 (1999)

Once it has been determined pursuant to section 10-31(a) of the amended Act that the Developers' Relief Assessment applies then section 10-31(b) is referred to, to determine the calculation of the assessment.

Section 10-31 (b) of the Act 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).

Once again the language of the statute is clear, forthright and unambiguous. Section (b) states, *"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"* (emphasis supplied). Since it is the intention of the lawmaker embodied in a statute which makes the law that is determinative, the cardinal rule in the construction of Illinois statutes, to which all other canons and rules are subordinate,[11] is that a statute must be construed so as to ascertain and give effect to the intention of the General Assembly.[12] In other words, it is that intention of the General Assembly which controls,[13] and a statute should never be construed to defeat or override the intention of the General Assembly.[14] Recently, in the case of Maksym, *et al* v. The Board of Election Commissioners of the City of Chicago, *et. al.*,[15] the Illinois Supreme Court had the opportunity to again clearly state the rules of statutory construction, holding:

> "This presents a question of statutory interpretation, which is a question of law subject to *de novo* review (*In re Estate of Dierkes,* 191 Ill.2d 326, 330 (2000)) and the rules governing our inquiry are familiar. Our primary goal when interpreting the language of a statue is to ascertain and give effect to the intent of the legislature. *Devoney v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 199 Ill.2d 414, 424-25 (2002). The plain language of a statue is the best indication of the legislature's intent. *In re Christopher K*., 217 Ill.2d 348, 364 (2005). Where the statutory language is clear and unambiguous, we will enforce it as written and will not read into it exceptions, conditions, or limitations, that the legislature did not express. *In re Christopher K., 217 Ill2d at 364."*

11 In re Estate of Dierkes,191 Ill.2d 326, 246 Ill.Dec. 636, 730 N.E.2d 1101 (2000)
12 Phoenix Bond & Indem. Co. v. Pappas, 194 Ill.2d 99, 251 Ill.Dec. 654, 741 N.E.2d 248 (2000),.
13 People v. Pullen, 192 Ill.2d 36,248 Ill.Dec. 237, 733 N.E.2d 1235 (2000).
14 Lulay v. Lulay, 193 Ill.2d 455, 250 Ill. Dec. 758, 739 N.E.2d 521 (2000)
15 Docket No. 111773, Opinion filed January 27, 2011, p. 12.

When the intention of the General Assembly has been ascertained, the court must give effect to that intention if it is not in conflict with constitutional provisions. As a general rule, the word "shall" used in a statute denotes that a duty, right, or benefit is mandatory.[16] Section 10-31 provides that qualifying property, subject to Section (c) "*shall* be determined based on the assessed value assigned to the property when last assessed *prior* to its last transfer or conveyance." (Emphasis supplied). The plain meaning of the words is clear and not open to interpretation of alternate meanings.

In Arriving At The Legislative Intent In The Construction Of A Statute, The Statute Should Be Construed As A Whole Or In Its Entirety And All Its Parts Considered Together.

All the parts, provisions, or sections of a statute must be read, considered, or construed together, in the light of the general purpose and object of the statute, so as to make it harmonious and consistent in all its parts and to give effect, if possible, to all the parts. The statute should be so read and construed, if possible, that no word, clause, or sentence is rendered superfluous or meaningless. When the precursor section 10-30(b) was effective, a conveyance of a lot by the developer terminated the Developers Assessment.

Section 10-30(c) stated inter alia:

> (c) ….upon the use of any lot….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….

This language was removed by the legislature in its enactment of section 10-31(c) which now states inter alia:

> (c) ….upon the use of any lot….: (i) the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot….

The language "*or upon the initial sale of any platted lot, including a platted lot which is vacant:"* has been removed. The legislature by changing the basis of the assessment in 10-31(b) to the "assessed value assigned to the property when last assessed prior to its last transfer or conveyance" in conjunction with elimination of the above provision in the enactment of 10-31(c) clearly intended to override the previous statute and preserve and limit the assessed value to the amount of the "assessed value assigned to the property" <u>prior</u> to a transfer or conveyance of the property. This value will commonly be based on a farm value assessment.[17]

---

16 The word "shall" in a statute will not be given a permissive meaning when it is used with reference to any right or benefit to anyone, and the right and benefit depends upon giving a mandatory meaning to the word. – Newkirk v. Bigard, 109 Ill.2d 28, 92 Ill. Dec. 510 485 N.E.2d 321 (1985)

17 In a memorandum to the Board of Review, by one county Supervisor of Assessments, the Supervisor wrote:

> "Section 10-31 of the Illinois Property Tax Code was signed into law as part of Public Act 96-480. It requires that subdivided land meeting the conditions of the law be assessed at the use that was in place prior to the subdivision taking place.

A Statute Ordinarily Is Not Construed As Retroactive Unless Its Language Is So Clear As To Admit Of No Other Construction.

A retroactive law, in the legal sense, is one which takes away or impairs vested rights acquired under existing laws or creates a new obligation, imposes a new duty, or attaches a new disability in respect of transactions or considerations already past.[18] Section 10-31(d) states "This Act takes effect upon becoming law." That date was August 14, 2009. Under section 9-155 of the Property Tax Code the "date upon which real estate is assessed in the State of Illinois is January 1 of each year"[19] and "unless otherwise provided by law, a property's status for purposes of taxation is to be determined as of January 1 of each year."[20] Since the effective date of the amendatory Act by the legislature creating the Developers' Relief Assessment is prior to the 2010 assessment determination date of January 1, 2010 it is logical to conclude that the Developers' Relief Assessment applies to 2010 and 2011 years assessments. The required method of assessment calculation is straightforward and unambiguous. Section 10-31(b) states, the assessor "*shall"* determine the assessment "*based on the assessed value assigned to the property when last assessed prior to its last transfer or conveyance"*. There is no requirement or limitation in the statute that the "last transfer of conveyance" referenced had to occur after August 14, 2009.

A statute is not retroactive merely because it relates to antecedent events.[21] Referring to an antecedent event in a calculation for assessments that only apply in 2010 and 2011, subsequent to the effective date of the Act, is not a retroactive application of the statute. If a transfer was required to have occurred in 2010 to qualify for a 2010 Developers' Relief Assessment, the relief of the Amendatory Act would be illusory since the assessment valuations are determined as of January 1 of 2010. It is instructive to note that prior to the enactment of section 10-31, the effective section was 10-30, which by the express terms of the amendment in Section 10-31(d) will become effective again on January 1, 2012. Section 10-30 (b) stated, "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," which is also an antecedent event. The legislature explicitly changed the basis of determination of assessed value from 10-30(b), "the estimated price the property would bring at a fair voluntary

---

If that use was residential vacant land, it must be assessed as residential vacant land without regard to subdivision or subdivision improvements. If a property was classified as farmland as of the time of subdivision, it "must be assessed at the farm land valuation" in the application of Section 10-31 until one of the trigger events takes place. (See *Mill Creek Development, Inc. v. Property Tad Appeal Bd. Of State of Illinois*, 3 Dist.2003, 2003 WL 22462636, superseded 281 Ill.Dec.270, 345 Ill.App3d 790, 803 N.E.2d 891, modified on denial of rehearing.)"

18 U.S. Steel Credit Union v. Knight, 32 Ill.2d 138, 204 N.E.2d 4 (1965); MCAleer Buick-Pontiac Co. v. General Motors, Corp., 95 Ill.App. 3d 111, 50 Ill.Dec. 500, 419 N.E.2d 608 (4th Dist. 1981); Barrett v. Guaranty Bank & Trust Col., 123 Ill.App.2d 326, 260 N.E.2d 94 (1st Dist. 1970).

19 Doran v. P.J. Cullerton, 51 Ill.2d 553, 558 (1972).

20 Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App3d 369, 373 (1st Dist. 1983).

21 U.S. Steel Credit Union v. Knight, 32 Ill.2d 138, 204 N.E.2d 4 (1965); Sipple v. University of Ill., 4 Ill.2d 593, 123 N.E.2d 722 (1955).

sale for use by the buyer for the same purposes for which the property was used when last assessed prior to its platting" to 10-31(b) "the assessed value assigned to the property when last assessed prior to its last transfer or conveyance" without any limitation as to the date of transfer. It is presumed that in adopting an amendment to a statute the General Assembly intended to make some change in the existing law[22] and under this presumption courts ordinarily will not construe a statute as it existed before an amendment in such a manner that the amendment serves no purpose.[23]

Revenue Laws Are Construed Strictly Against The State And In Favor Of The Taxpayer In Cases Of Doubt.

Although revenue or tax laws are to be given a reasonable construction, they are strictly construed,[24] and in cases of doubt they are construed strictly against the State and in favor of the taxpayer.[25] Legislative intention should properly be determined with regard to the general conditions prevailing at the time of enactment.[26] A court can take judicial notice of the state of the economy and the general circumstances at the time the legislation was passed. It is common knowledge that the Illinois development real estate market is depressed and in the worst condition it has been in more 50 years. Senate Bill 0543 which became P.A. 96-0480, the statute amending the existing law and giving effect to Developers' Relief Assessment, was passed by the House on April 2, 2009, by a vote of 115 yeas, 0 nays and 1 present, it was passed Senate on May 19, 2009 by a vote of 57 yeas, and 0 nays, and was signed by the Governor on August 14, 2009. The legislation was passed without debate, without objection in the House or Senate at the votes, and not a single legislator voted against the bill. It is clear from the action taken by the legislature to amend the existing statute and by specifically stating that it replaced the existing law and would be effective until January 1, 2012, that the legislature's purpose was to provide tax assessment relief for developers, builders and banks holding and acquiring distressed vacant lots in this economy.

22 In re K.D., 186 Ill.2d 542, 239 Ill.Dec. 572, 714 N.E.2d 491 (1999).

23 Lindley v. Murphy, 387 Ill. 506, 56 N.E.2d 832 (1944)

24 Texaco-Cities Service Pipeline Co. v. McGaw, 182 Ill.2d 262, 230 Ill.Dec. 991, 695 N.E.2d 481 (1998), reh'g denied, (June 1, 1998).

25 In re Consolidated Objections to Tax Levies of School Dist. No 205, 193 Ill.2d 490, 250 Ill.Dec. 745, 739 N.E.2d 508, 150 E.Law Rep. 795 (2000).

26 Society of Divine Word v. Cook County, 107 Ill App. 2d 363, 247 N.E.2d 21 (1st Dist. 1969)