

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Wyndham Deerpoint
DOCKET NO.: 05-01045.001-R-3 through 05-01045.005-R-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Wyndham Deerpoint, the appellant, by attorney Gary L. Taylor of Rathje & Woodward, LLC in Wheaton, Illinois, and the Kane County Board of Review.

The subject property consists of five individual parcels that range in size from 1.15-acres to 37.68-acres totaling approximately 70 acres. Four of the parcels were assessed and taxed as farmland in 2004. On September 30, 2005 the parcels were assigned new parcel numbers by the Plato Township Assessor and reassessed as "division" property, whereby the 2005 assessments increased from the 2004 assessment levels. On November 18, 2005, the parcels were subdivided and platted as "Unit One" of the Tall Oaks Subdivision. One of the parcels (PIN No. 05-13-476-015) contained a dilapidated farm house in very poor condition that was razed in 2005 and its improvement assessment was reduced to \$1 by the board of review to reflect its removal.

The appellant, through counsel, appeared before the Property Tax Appeal Board claiming that pursuant to Section 35 ILCS 200/10-30 of the Property Tax Code, the appropriate assessments for the parcels in 2005 would be equal to the assessment values placed on

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PIN No. 05-13-200-008 (farmland) became 05-13-200-020 (residential)
PIN No. 05-13-200-010 (farmland) became 05-13-200-022 (residential)
PIN No. 05-13-200-006 (farm w/ bldg) became 05-13-200-024 (residential)
PIN No. 05-13-476-012 (residential) was deleted and along with PIN No. 05-13-476-010 (farm w/ bldg.) became 05-13-476-015
PIN No. 05-13-476-013 (farmland) and 05-13-476-010 (farmland) became 05-13-476-017 (residential).

(Continued on Next Page)

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the Kane County Board of Review is warranted. The correct assessed valuation of the property is:

Table with 5 columns: Docket No., Parcel No., Land, Improv., Total. Rows include docket numbers 05-01045.001-R-3 through 05-01045.005-R-3 and their corresponding assessed values.

Subject only to the State multiplier as applicable.

the parcels in 2004. The appellant argued that pursuant to Section 10-30 of the Code, the platting and subdivision of the properties into separate lots and the development of the subdivided property shall not increase the assessed valuation of all or any part of the property if the conditions as set out in Section 10-30 of the Code are met.

Section 10-30 of the Property Tax Code states in pertinent part 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 party 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 10 acres²; and
 - (4) At the time of platting the property is vacant or used as a farm as defined in Section 1-60. . . .

(35 ILCS 200/10-30)

The appellant argued that the subject property met all four conditions of Section 10-30 of the Code and therefore the 2005 assessments for these parcels could not be increased from the 2004 assessment levels. In support of this argument the appellant cited Paciga v. Property Tax Appeal Board, et al., 322 Ill.App.3d 157 (2nd Dist., 2001). It was argued that Paciga stood for the proposition that the purpose and intent of the statute is to prevent developers from having to pay increased taxes on farmland or vacant land in the beginning of the development process. In addition, it was argued that Paciga held that no change in assessed valuation would occur under Section 10-30 until a habitable structure is constructed on one of the lots, or if one of the lots were used for any business, commercial or residential purpose. At which time, the lot at issue would be assessed separately from the remaining lots. Accordingly, under Paciga, there is no basis for increasing the subject's assessment from the determined assessment value placed on the parcels in 2004.

The appellant next cited Mill Creek Development, Inc. v. Property Tax Appeal Board, 345 Ill.App.3d 790 (3rd Dist., 2004) for the proposition that as long as the platting of the property and

² Effective January 1, 2008, the 10-acre size requirement of Section 10-30(a)(3) was changed to 5-acres. This change does not apply retroactively to this 2005 appeal.

reassessment occurred in the same year, the developer could obtain the protection provided in Section 10-30 of the Code. Mill Creek states in relevant part:

Consequently, we hold that, although the Assessor reclassified the land to residential in the same year that it was platted and subdivided, the tax valuation must remain at its prior assessment level until development has occurred pursuant to Section 10-30(c). Any other result renders Section 10-30 meaningless, defeating the legislative intent of the Statute. (345 Ill.App.3d 790 at 794.) (Citing Paciga.)

During cross-examination, the appellant acknowledged that the aggregate size of the parcels amounted to ±70 acres, and that each parcel was vacant in 2005, excepting the parcel containing the old farm house. The testimony further revealed that the dilapidated farm house was vacant and torn down sometime in 2005. Four of the parcels under appeal were farmed in 2004 and received a farmland assessment in 2004. The properties were not farmed in 2005, but remained vacant. Based on this evidence, the appellant requested a reduction in the subject assessments for each parcel under appeal.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment for each parcel was disclosed.

In support of the subject assessments, the board of review argued that the subject properties were reclassified as subdivided or subdivision land and were each assessed at \$20,000 per acre during the 2005 assessment year. It was argued that this provided an equitable situation for other taxpayers in the immediate area to assess land at an appropriate value as it transitioned from farmland to developed property, and therefore the subdivision rate should apply. It was further argued that at least some of the individual parcels contained within the appeal were not 10-acres or more in size and therefore the protections afforded by Section 10-30 of the Code did not apply to those parcels. The evidence revealed that three of parcels were less than 10-acres in size³. Based on this evidence, the board of review requested confirmation of the subject assessments under appeal.

During cross-examination, the board of review agreed that four of the subject parcels were vacant at the time of platting in 2005. It was further agreed that all of the properties in combination, comprised more than 10-acres at the time of platting.

³ PIN No. 05-13-200-020 was 2.55 acres.
PIN No. 05-13-200-024 was 5.27 acres.
PIN No. 05-13-476-015 was 1.15 acres.

Subsequent to the hearing herein, the Property Tax Appeal Board requested and received from the board of review the 2003, 2004 and 2005 assessments for each parcel under appeal.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject assessments for four of the parcels is warranted.

The appellant contends by operation of law and pursuant to Section 10-30 of the Code (35 ILCS 200/10-30), that the subject parcels, which received a farmland assessment in 2004, could not have their assessments increased in 2005. It was not refuted that the subject parcels were platted in accordance with the Plat Act. Both parties agreed the parcels under appeal were platted and subdivided after 1978. In addition, it was agreed that at the time of platting, the aggregate size of the parcels exceeded 10-acres. Further, the board of review agreed that four of the parcels were vacant in 2005 (Pin No. 05-13-476-015 consisted of an improvement and homesite only); and received a farmland assessment in 2004.

The Property Tax Appeal Board finds that all four conditions of Section 10-30 of the Property Tax Code were met regarding four of the subject properties: 1) The properties were platted and subdivided in accordance with the Plat Act; 2) The platting occurred after January 1, 1978; 3) At the time of platting the property was in excess of 10 acres; and 4) At the time of platting the property was vacant or used as a farm.

In Grundy County National Bank v. Property Tax Appeal Board, 297 Ill.App.3d 774 (citing Ill.rev.Stat.1991, ch. 109, par.2), the court found that the Plat Act requires:

The statement of the registered Land Surveyor and of acknowledgement, together with the plat, must be recorded . . . in the recorder's office of the county in which the land is situated

Appellant's exhibit "C" was introduced into evidence containing a statement and acknowledgement recorded on a plat map for the subject property occurring on October 18, 2005. The board of review did not refute that the surveyor's statement, acknowledgement and plat map was properly recorded. The Property Tax Appeal Board finds the provision of Section 10-30 of the Code requires the land at time of platting be in excess of 10-acres. There is no reference in this Section of the Property Tax Code requiring that each parcel be in excess of 10-acres.

For these reasons the Property Tax Appeal Board finds the size requirement of Section 10-30(a)(3) was met. The Property Tax Appeal Board finds the evidence is undisputed that four of the properties were vacant at the time of platting. Therefore, four of the subject properties under appeal, having met all of the

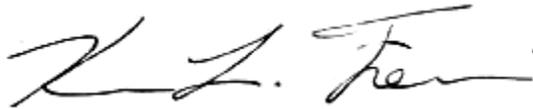
requirements of Section 10-30 of the Property Tax Code shall receive the protections of Section 10-30 and shall not have their assessments increased from the 2004 farmland assessment amounts. The Property Tax Appeal Board further finds that PIN No. 05-13-476-015 contained an improvement in 2004 and partially in 2005 and, therefore, the protections afforded by Section 10-30 of the Property Tax Code do not apply to this parcel because it was not farmland nor was it vacant at time of platting.

Subsequent to the hearing a telephone conference was held at the request of the Property Tax Appeal Board for clarification of the additional evidence submitted by the board of review explaining the division and creation of the parcels under appeal⁴.

Based on the above analysis, the Property Tax Appeal board finds that four of the subject parcels under appeal should have their 2005 assessments reduced to the 2004 amounts pursuant to Section 10-30 of the Property Tax Code.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

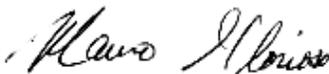
Chairman



Member



Member



Member



Member

DISSENTING: _____

⁴ The 2005 parcels under appeal were subdivided out of larger parcels that existed in 2004, and therefore, the 2005 parcels represent only a percentage of the 2004 parcels as they existed in 2004.

PIN No. 05-13-200-020 represents approx. 16% of PIN No. 05-13-200-008
PIN No. 05-13-200-022 represents approx. 31.44% of PIN No. 05-13-200-010
PIN No. 05-13-200-024 represents approx. 74% of PIN No. 05-13-200-006
PIN No. 05-13-476-015 represents 100% of PIN No. 05-13-476-010
PIN No. 05-13-476-017 represents approx. 94.2% of PIN No. 05-13-476-013

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: May 27, 2009



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.