



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

APPELLANT: River Key Construction, Inc.
DOCKET NO.: 12-03241.001-R-1 through 12-03241.064-R-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are River Key Construction, Inc., the appellant, by attorney Robert A. Calgaro of Conde, Killoren, Bueschel & Calgaro, in Rockford, and the Winnebago County Board of Review.

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 **Winnebago** County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
12-03241.001-R-1	07-24-426-004	903	0	\$903
12-03241.002-R-1	07-24-426-005	903	0	\$903
12-03241.003-R-1	07-24-426-006	903	0	\$903
12-03241.004-R-1	07-24-426-007	903	0	\$903
12-03241.005-R-1	07-24-426-008	903	0	\$903
12-03241.006-R-1	07-24-426-009	903	0	\$903
12-03241.007-R-1	07-24-426-010	903	0	\$903
12-03241.008-R-1	07-24-426-011	903	0	\$903
12-03241.009-R-1	07-24-426-012	903	0	\$903
12-03241.010-R-1	07-24-426-013	903	0	\$903
12-03241.011-R-1	07-24-426-014	903	0	\$903
12-03241.012-R-1	07-24-426-015	903	0	\$903
12-03241.013-R-1	07-24-426-016	903	0	\$903
12-03241.014-R-1	07-24-427-005	903	0	\$903
12-03241.015-R-1	07-24-427-006	903	0	\$903
12-03241.016-R-1	07-24-427-007	903	0	\$903
12-03241.017-R-1	07-24-427-008	903	0	\$903
12-03241.018-R-1	07-24-427-009	903	0	\$903
12-03241.019-R-1	07-24-427-010	903	0	\$903
12-03241.020-R-1	07-24-427-011	903	0	\$903
12-03241.021-R-1	07-24-427-012	903	0	\$903
12-03241.022-R-1	07-24-427-013	903	0	\$903

12-03241.023-R-1	07-24-427-014	903	0	\$903
12-03241.024-R-1	07-24-427-015	903	0	\$903
12-03241.025-R-1	07-24-427-017	903	0	\$903
12-03241.026-R-1	07-24-427-018	903	0	\$903
12-03241.027-R-1	07-24-427-019	523	0	\$523
12-03241.028-R-1	07-24-427-020	523	0	\$523
12-03241.029-R-1	07-24-455-001	1,737	0	\$1,737
12-03241.030-R-1	07-24-455-003	1,737	0	\$1,737
12-03241.031-R-1	07-24-455-008	1,737	0	\$1,737
12-03241.032-R-1	07-24-455-010	1,287	0	\$1,287
12-03241.033-R-1	07-24-455-012	1,287	0	\$1,287
12-03241.034-R-1	07-24-455-013	1,287	0	\$1,287
12-03241.035-R-1	07-24-455-015	1,287	0	\$1,287
12-03241.036-R-1	07-24-455-017	1,287	0	\$1,287
12-03241.037-R-1	07-24-455-026	1,287	0	\$1,287
12-03241.038-R-1	07-24-455-028	1,287	0	\$1,287
12-03241.039-R-1	07-24-456-001	1,737	0	\$1,737
12-03241.040-R-1	07-24-456-003	1,737	0	\$1,737
12-03241.041-R-1	07-24-476-023	1,287	0	\$1,287
12-03241.042-R-1	07-24-476-025	1,287	0	\$1,287
12-03241.043-R-1	07-24-476-031	1,287	0	\$1,287
12-03241.044-R-1	07-24-476-032	1,287	0	\$1,287
12-03241.045-R-1	07-24-476-033	1,287	0	\$1,287
12-03241.046-R-1	07-24-476-034	1,287	0	\$1,287
12-03241.047-R-1	07-24-476-035	1,287	0	\$1,287
12-03241.048-R-1	07-24-476-040	1,287	0	\$1,287
12-03241.049-R-1	07-24-476-041	1,287	0	\$1,287
12-03241.050-R-1	07-24-476-046	523	0	\$523
12-03241.051-R-1	07-24-476-047	523	0	\$523
12-03241.052-R-1	07-24-476-048	523	0	\$523
12-03241.053-R-1	07-24-476-049	523	0	\$523
12-03241.054-R-1	07-24-476-052	523	0	\$523
12-03241.055-R-1	07-24-477-001	1,737	0	\$1,737
12-03241.056-R-1	07-24-477-006	1,737	0	\$1,737
12-03241.057-R-1	08-19-301-009	523	0	\$523
12-03241.058-R-1	08-19-301-010	523	0	\$523
12-03241.059-R-1	08-19-301-011	523	0	\$523
12-03241.060-R-1	08-19-301-012	523	0	\$523
12-03241.061-R-1	08-19-301-013	523	0	\$523
12-03241.062-R-1	08-19-301-015	523	0	\$523
12-03241.063-R-1	08-19-301-016	523	0	\$523
12-03241.064-R-1	08-19-301-017	523	0	\$523

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from decisions of the Winnebago County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessments for the 2012 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 64 vacant lots with a total of 94.71-acres of land area located in Owen Township, Winnebago County. The appellant began to 'develop' the land in 1999 before any of the final Plats were recorded to create canals and raise the elevation of the land. Plat 1 of the subdivision consisting of 38.97-acres was recorded in 2001 where 8.94-acres consists of roadways and canal (waterways); Plat 2 of the subdivision consisting of 21.21-acres was recorded in 2004 where 2.83-acres consists of roadways and canals; and Plat 3 of the subdivision consisting of 15.14-acres was recorded in 2007 where 4.13-acres consists of roadways and canals.

The appellant appeared at hearing before the Property Tax Appeal Board by legal counsel. In the originally filed appeal, which was submitted pro se by the appellant, a "contention of law" was made that each of the subject 64 parcels should be assessed at \$97 per lot rather than the 2012 assessments which range from \$523 to \$1,737 per lot.

In support of this legal contention, the appellant argued in a two-page brief attached to the appeal petition that the subject parcels were receiving the preferential assessment afforded to developers under Section 10-30 of the Property Tax Code (35 ILCS 200/10-30) and that, although the subject property has a history of transfers between "related parties" the property should continue to receive preferential treatment now under Section 10-31 of the Property Tax Code which allows for such sales but also maintaining the preferential assessment treatment according to the appellant.

Furthermore, the appellant contends that the subject's vacant lot assessments are higher than competitive vacant residential lots that have placed the subject development at a competitive economic disadvantage. In this regard, in the brief the appellant argued that in excess of 1,750 parcels similarly classified like the subject property as 0039 within Winnebago County had 2010 assessments of \$100 or less each. Furthermore, at least 50 parcels classified as 0059 and at least 25 parcels classified as 0089 were similarly assessed for \$100 in 2010. Finally, the appellant contends that this erroneous assessment treatment has occurred since 2000.

In the initial appeal filing, the appellant also argued that the subject property was entitled to relief under Section 10-31 of the Property Tax Code (35 ILCS 200/10-31). Specifically, the appellant's brief asserted that while the subject property "has a history of transfers between 'related parties' which is now defined allowable under section 10-31"¹ the fact that the subject parcels have a higher assessment indicates the parcels are incorrectly assessed. The Board further recognizes that once legal counsel was retained in this matter, as part of the appellant's rebuttal submission, the argument concerning applicability of Section 10-31 of the Property Tax Code was waived as not applicable.²

The appellant's brief further contends that the subject parcels have "received unfair treatment" in the assessment process for a 12 year period "due to an error that occurred in the year 2000." In this regard, the brief asserted that in 1999 the subject property was classified as vacant farmland (0020) and had a total assessment of \$26,959, but in 2000 the township assessor changed the "use code" to residential land (0038) resulting in a total assessment of \$189,400. According to the appellant's brief, if this property had not been reclassified the subject would be assessed at "\$285 per acre, plus the applicable equalization multipliers."

For evidence, the appellant submitted three separate spreadsheets divided by the various plats within the River Key Subdivision and

¹ In Section 10-31(b), the exact language is: "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)." (35 ILCS 200/10-31(b)).

² Section 10-30(d) of the Code (35 ILCS 200/10-30(d)) states:

This Section applies **before the effective date of this amendatory Act** of the 96th General Assembly and then applies again beginning January 1, 2012. [Emphasis added.]

(Citing P.A. 95-135, eff. 1-1-08; 96-480, **eff. 8-14-09**). In contrast, the new provision of the Property Tax 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 96th General Assembly and through December 31, 2011.

(Citing P.A. 96-480, **eff. 8-14-09**). Thus, in light of these provisions, the Property Tax Appeal Board finds that Section 10-31 was applicable only for the limited period of August 14, 2009 through December 31, 2011. As this appeal concerns an assessment challenge as of January 1, 2012, the Board finds that appellant's reliance upon Section 10-31 of the Property Tax Code would be misplaced.

depicting the "remaining" 64 lots identified by lot number, parcel number, square footage and acreage along with a calculation of the 1999 assessment of the lot at \$285 per acre, a calculation of the assessment of the lot at \$2,000 per acre based on the 2000 assessment and the "current" 2012 assessment of the parcel. This data reflects that the subject parcels range in size from .16 to .78 of an acre.

At the hearing, counsel for the appellant argued that the basic issue concerning the assessment of these parcels was assessment equity as shown by similar vacant parcels that are assessed at \$100 or less which were depicted in the rebuttal submission. As a second issue, counsel argued that if since 2000 along with application of the multipliers, the subject parcels would have been correctly assessed, the current assessment would be at least 30% less than the 2012 assessment.

The only witness called by the appellant for testimony was Tami Veitch, the Secretary of River Keys Construction, Inc. She was called to discuss the Excel spreadsheet of comparable vacant lots classified as 0039 like the subject which are located in Winnebago County which was presented in rebuttal. Based upon that data, Veitch concluded that the subject parcels have been assessed at more than \$100 each. She further testified that in 2010 vacant parcels in Winnebago County of residential and commercial use had been reduced to an assessment of less than \$100. She asserted that there were approximately 1,756 parcels that were treated in this manner within the county. As these parcels are in numerous different townships, the appellant is asserting that Winnebago County established a precedent of assessing vacant lots that qualify for the developers' preferential assessment at less than \$100 per lot.

Based on the foregoing evidence and argument, the appellant requested an assessment equivalent to that granted to other developers within the county and therefore, the appellant requested an assessment of \$97 for each of the subject 64 vacant parcels.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the assessments for each of the 64 individual subject parcels with assessments of \$523, \$903, \$1,287 or \$1,737. At hearing, the board of review was represented by board of review member Richard Crosby.

In support of its contention of the correct assessment, the board of review submitted a two-page memorandum prepared by the Owen Township Assessor's Office. As to the applicability of Section 10-31 of the Property Tax Code (35 ILCS 200/10-31), the township assessor asserted that this statutory provision sunsetted on December 31, 2011 and thus, is no longer in effect as of the assessment date at issue of January 1, 2012. Furthermore, the township assessor contends that even if Section 10-31 did apply "it would not change the assessed valuation of the subject parcels."

With regard to the subject parcels, the properties are assessed under class code 0039 and are receiving a preferential assessment. Next, the memorandum sets forth part of Section 10-30(b) of the Property Tax Code (35 ILCS 200/10-30(b)):

(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.

Based upon the foregoing provision, the township assessor contends the mandate is to assess vacant lots "as if they were not platted or otherwise improved" which means the assessment is to reflect the market value of the land as if it were vacant 21.41 acres with some frontage on the Rock River. As set forth in the memorandum, the subject property is currently assessed at \$64,074 or a market value of \$192,222 or \$8,978 an acre.

At hearing, the board of review called Trent Ferguson, the Owen Township Assessor, as its witness. Ferguson testified that the assessment for the subject property was determined by using Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). At the time of platting, the provision calls for the assessor to look at how the property was used when last assessed prior to platting. Ferguson testified that prior to platting the subject property was "vacant" but not farmed and thus, each year he is to look back to "use" prior to platting to determine the market value of the property if it were available for a voluntary sale. Thus, Ferguson contended that he followed the aforementioned provision along with guidance from Illinois Department of Revenue *Publication 134 Developer's Exemption*.

Given a question posed by the Administrative Law Judge, Crosby agreed that it is the duty and obligation of the Winnebago County Board of Review to equalize assessments across townships and it was Crosby's position that the board of review had done so under these particular facts as brought before the board of review. Based on the foregoing argument and evidence, the board of review requested confirmation of the subject's assessments.

On cross-examination, Ferguson was asked if he considered what vacant platted lots in townships throughout the county were being assessed at in his assessment process of the subject parcels, to which he answered that he did not as he does not equalize assessments outside of Owen Township and thus, it would not be appropriate for him to do so. He noted that as a township assessor it is his duty to equalize property within the boundaries of his jurisdiction. Furthermore, upon questioning Ferguson agreed that there were parcels that were assessed at less than \$100, but he also asserted that there were many, many vacant parcels that had assessments greater than \$100.

In rebuttal, the appellant submitted a two-page memorandum along with a multi-page Excel spreadsheet "summarizing all the lots that were receiving an assessed value of less than [\$]100 within Winnebago County during 2011 (last General Assessment year)." Based on the appellant's submissions, this spreadsheet presumably contains a listing of some 1,750 parcels with assessments which are lower than the subject property and which have been classified under code 0039 like the subject.³

Pursuant to the rules of the Property Tax Appeal Board, rebuttal evidence is restricted to that evidence to explain, repel, counteract or disprove facts given in evidence by an adverse party. (86 Ill.Admin.Code §1910.66(a)). Moreover, rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties. "A party to the appeal shall be precluded from submitting its own case in chief in the guise of rebuttal evidence." (86 Ill.Admin.Code §1910.66(c)). In light of these rules, the Property Tax Appeal Board has not considered the multi-page Excel spreadsheet submitted by appellant in conjunction with its rebuttal argument.

Also as noted above, as part of this rebuttal memorandum, counsel for the appellant acknowledged that Section 10-31 of the Property Tax Code "sunsetting"; however, counsel contends that Section 10-30 is still applicable to the subject parcels.

The memorandum states: "What the petitioner is questioning is the practice throughout all townships within Winnebago County to assess parcels classified as 0039 (subject property), 0059 and 0089 at values less than [\$]100 in the year 2009; excluding the parcels within River Key Subdivision." In this lack of assessment uniformity claim, the appellant River Key Construction, Inc., which still holds title to 64 of the development's 150 platted lots, with a total assessment of these vacant lots of \$62,555 reflecting a market value of \$187,665. According to the appellant if these parcels had received the "same treatment as the other 1,766 lots within Winnebago County," the total assessment would be \$6,400 or a market value of approximately \$19,200.

The memorandum next contends that the subject land was farmed in 1999 with an assessment under class code 0020 (vacant farmland) and then in 2000 "improvements" were being made to the 96.17-acre site including excavation of a 6.58-acre canal, raising of the property elevation above flood elevation, grading of roadways and stone placement within roadways, along with water, sanitary sewer and storm sewer installation. For the year 2000 the property was reclassified and reassessed for \$189,400. No documentation or

³ What this Excel spreadsheet fails to depict is whether these purportedly comparable parcels that have now been subdivided by a developer were used and assessed as farmland prior to being subdivided; farmland carries a preferential assessment based on its productivity as compared to other merely "vacant" land that would be assessed at 33.33% of fair cash value. (35 ILCS 200/10-110 compared to 35 ILCS 220/9-145).

other substantive evidence was submitted to support the contention that the subject parcels were being farmed prior to 1999.⁴

Conclusion of Law

As an initial matter, the Property Tax Appeal Board takes judicial notice that 2011 was a general reassessment year for properties in Winnebago County. (86 Ill.Admin.Code §1910.90(i); 35 ILCS 200/9-215) Therefore, the appellant's brief repeatedly referring to the treatment of similar vacant parcels in 2010 and their respective assessments of \$100 or less is arguably irrelevant to the issue of the 2012 assessment of the subject parcels.

Furthermore, the jurisdiction of the Property Tax Appeal Board is limited to determining the correct assessment of property which is the subject of an appeal. (35 ILCS 200/16-180) Section 16-160 of the Property Tax Code provides in part that:

[F]or all property in any county other than a county with 3,000,000 or more inhabitants, any taxpayer dissatisfied with the decision of a board of review . . . as such decision pertains to the assessment of his or her property for taxation purposes, . . . on an assessment made by any local assessment officer, may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the decision of the board of review . . . appeal the decision to the Property Tax Appeal Board for review. . .

35 ILCS 200/16-160. Based on the foregoing, the appellant's inference of a claim for excessive property taxes paid due to incorrect assessments since 2000 is not a potential remedy in this proceeding; the Property Tax Appeal Board has no jurisdiction with regard to any "multi-year" rebate as implied by the appellant. The rule in Illinois is that taxes voluntarily, though erroneously, paid cannot be recovered unless recovery is authorized by statute. Jansen Real Estate Corp. v. P.J. Cullerton, 49 Ill. App. 3d 231, 236 (1st Dist. 1977); Aldens, Inc. v. Rosewell, 71 Ill. App. 3d 754, 757; Inland Real Estate Corp. v. Oak Park Trust and Savings Bank, 127 Ill. App. 3d 535, 549 (1st Dist. 1984); Bass v. South Cook County Mosquito Abatement Dist., 236 Ill. App. 3d 466, 467 (1st Dist. 1992). Since there is no statute providing for a recovery of taxes that may have been wrongly but voluntarily paid without protest, there is no method

⁴ Accepting the appellant's contention without proof that the subject land was farmed "prior to 1999," the next stated event was "development" of the canals and raising of the elevation. In accordance with the Property Tax Code, in order to maintain a preferential farmland assessment, the land must have been used as a farm "for the 2 preceding years" and thus, by the time Plat 1 was recorded in 2001 "farming activity" had presumably not taken place on the land for the prior two years when "development" was occurring. (35 ILCS 200/10-110)

by which appellant can obtain a refund for any years prior to the year in which an assessment complaint has been filed.

As to the instant appeal, Section 16-180 of the Property Tax Code provides in pertinent part:

Each appeal shall be limited to the grounds listed in the appeal petition filed with the Property Tax Appeal Board. (35 ILCS 200/16-180).

Additionally, Section 1910.50(a) of the rules of the Property Tax Appeal Board states in pertinent part:

Each appeal shall be limited to the grounds listed in the appeal petition filed with the Board. (86 Ill. Adm. Code §1910.50(a)).

The appellant's original appeal petition filed with the Property Tax Appeal Board was clearly marked as "contention of law" as the basis of the appeal wherein the appellant contended that the subject parcels are entitled to a reduced assessment based upon Section 10-30 and/or 10-31 of the Property Tax Code (35 ILCS 200/10-30 & 10-31). These were the arguments addressed by the board of review in response to the appeal. Nevertheless, in rebuttal, the appellant attempted to present the 2010 assessments of numerous parcels presumably for purposes of a lack of assessment uniformity claim.

First, the burden of proof falls on the appellant in an appeal before the Property Tax Appeal Board. Second, based on the record evidence, the subject parcels are being assessed under Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). Third, to the extent that the argument has been made, Section 10-31 of the Property Tax Code is not applicable to the subject property for tax year 2012 as the statutory provision "sunsetting" as of December 31, 2011. (35 ILCS 200/10-31). Finally, based upon the Board's procedural rules prohibiting the submission of the appellant's case-in-chief in the guise of rebuttal, the Property Tax Appeal Board has given no weight to the purported equity comparables presented in rebuttal for a determination of the purported legal argument in this appeal.

The appellant's original appeal petition and evidence disclosed the basis of the appeal was contention of law asserting that the subject property is entitled to a preferential developer's assessment under Section 10-30 and/or 10-31 of the Property Tax Code. The board of review contends that the subject property has been assessed "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" in accordance with Section 10-30 of the Property Tax Code. The appellant submitted no evidence to dispute the contention that the property had been assessed in conformance with Section 10-30 of the Property Tax Code.

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For the foregoing reasons, the Property Tax Appeal Board finds that the subject's assessments as established by the board of review have not been established to be incorrect and thus no reductions in the assessments of the subject parcels are warranted on this 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.

Donald R. Cuit

Chairman

K. L. Ferr

Member

Member

Marko M. Louie

Member

[Signature]

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.