



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

APPELLANT: River Key Construction, Inc.
DOCKET NO.: 13-01665.001-R-1
PARCEL NO.: 07-24-426-003

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:

LAND: \$8,573
IMPR.: \$8,833
TOTAL: \$17,406

Subject only to the State multiplier as applicable.

ANALYSIS

The subject parcel is improved with a building. The property is located in Rockford, Owen Township, Winnebago County.

The appellant appealed based upon a contention of law. In support of this legal argument, the appellant reported that the subject parcel "has been used as a boat storage area for the River Key Owners Association since October of 2002." Based upon this assertion and related documentation, the appellant contends the land should have a \$1 common area assessment and the improvement (building) should likewise have a \$1 improvement assessment.

In further support of the legal contention, the appellant submitted a copy of an advertising brochure (one partial page)

from which the appellant argued this 2002 brochure had been designed and used for advertising purposes by the developer with the designation of the subject parcel as "Boat and Dock Storage Area (Owned by Lot Owners of River Key)." The appellant provided a document entitled "Tentative Plat" prepared as part of the plat approval process prior to initial platting of River Key Plat 1 with a notation "Boat Storage Area Owned by the Lot Owners of River Key."

Also submitted is a "vendor ledger" for River Key Owners Association purporting to depict the payment of real estate taxes for the subject parcel for tax years 2011 and 2012 (payable in 2012 and 2013) regarding the subject parcel. Six pages described as bank statement(s) in the name "River Keys Owners Association" reflecting payments for real estate taxes.

Additional documentation included a six-page copy of a document entitled "Declaration of Conditions and Restrictions For Plat of River Key Subdivision, Plat No. 1 Which Plat of Subdivision is Recorded in Book 43 of Plats on Page 70." In the memorandum, the appellant cites to Item 2(b) on page 3 stating:

The [River Key Owners] Association shall hold title to the Channel (Out Lot "A") and to Lot 45 and shall be responsible for the enforcement of covenants and restrictions as contained herein and the for management and maintenance, including construction of boat launch and additional improvements on Lot 45, being the lot designated for the private use of the lot owners. The Association shall be responsible for the maintenance of the subdivision sign located at the entrance to the subdivision and the boat storage facility.

The appellant also wrote "as to the assertions by the township assessor," the appellant acknowledges that the subject parcel "still remains in the developer's name and no transfer of title has occurred with a recorded instrument." Next, the appellant contends that "other" parcels within the subdivision did not require a transfer of title in order to receive the Association Owned classification. As an example, the appellant cites the boat ramp, highlighted as part of the Tentative Plat, the detention area, the canals and roadways within River Key are receiving "low assessed value" for which is a tax bill is not generated.

In the memorandum the appellant also stated, "there are also other parcels within Winnebago County that have received the Association Owned classification since the recoding of the Plat without any transfers of titles occurring (title still remains in the developer's name)." No specific parcel numbers or addresses of these purported comparable properties that have been treated differently were provided by the appellant.

In conclusion, the appellant asserted that the subject parcel has been used as a boat storage area for the Owners of River Key Subdivision since 2002 and should therefore be given the Association Owned Classification along with the applicable "common area" assessment.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$17,406. The subject's assessment reflects a market value of \$52,507, land included, when using the 2013 three year average median level of assessment for Winnebago County of 33.15% as determined by the Illinois Department of Revenue.

In response to the appeal the board of review submitted a memorandum from Trent Ferguson, Owen Township Assessor. In response to the request by the appellant for an "Association Owned" classification, the subject parcel would have to be owned by an association, which it is not. He further noted that the manner in which the property was advertised, how it was platted, who receives property tax bills, who pays property taxes, who is responsible for maintenance of the parcel "etc . . ." are asserted to be irrelevant inquiries to the classification issue.

As to the assertion that other county parcels which are not owned by an association, but are receiving the association owned classification "appears to be incorrect." The township assessor next acknowledged that the "boat ramp parcel" is receiving a \$1 assessment as it has a class code of 0039 (developer's preferential assessment).

Based on the foregoing arguments, the board of review requested confirmation of the subject's assessment.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Winnebago County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2013 tax year. The Property Tax Appeal Board

finds that it has jurisdiction over the parties and the subject matter of the appeal.

Conclusion of Law

The appellant asserts the subject parcel is utilized as common area and the land should be assessed at a rate of \$1.00 per year along with the improvement (building) which should also be assessed at the rate of \$1.00 per year as detailed in the Property Tax Code. The applicable provision, Section 10-35(a) (35 ILCS 200/10-35(a)) states:

Residential property which is part of a development, but which is individually owned and ownership of which includes the right, by easement, covenant, deed, or other interest in property, to the use of any common area for recreational or similar residential purpose shall be assessed at a value which includes the proportional share of the value of that common area or areas.

Property is used as a "common area or areas" under this Section if it is a lot, parcel, or area, the beneficial use and enjoyment of which is reserved in whole as an appurtenance to the separately owned lots, parcels, or areas within the planned development.

The common area or areas which are used for recreational or similar residential purposes and which are assessed to a separate owner and are located on separately identified parcels, shall be listed for assessment purposes at \$1 per year.

In support of the contention that the subject parcel is common area, the appellant presented a memorandum and documentation. There were no affidavits and no ground-level photographs to support the proposition that the subject parcel is used for boat and dock storage as asserted. There was no photographic evidence to support this assertion.

In further support of this argument, the appellant submitted "Declaration of Conditions and Restrictions For Plat of River Key Subdivision, Plat No. 1 Which Plat of Subdivision is Recorded in Book 43 of Plats on Page 70." In Item 2(b) on page 3 it states in pertinent part:

The [River Key Owners] Association shall hold title to the Channel (Out Lot "A") and to Lot 45 and shall be responsible for the enforcement of covenants and restrictions as contained herein and the for management and maintenance, including construction of boat launch and additional improvements on Lot 45, being the lot designated for the private use of the lot owners. The Association shall be responsible for the maintenance of the subdivision sign located at the entrance to the subdivision and the boat storage facility.

After reviewing the evidence and arguments, the Property Tax Appeal Board finds the assessment established by the board of review is proper using applicable State statutes. Therefore, the Board finds the subject parcel, and its building, are not entitled to preferential assessment as common area or areas as provided by Section 10-35 of the Property Tax Code (ILCS 200/10-35(a)). This Section states in pertinent part:

Property is used as a "common area or areas" under this Section if it is a lot, parcel, or area, the beneficial use and enjoyment of which is **reserved in whole as an appurtenance to the separately owned lots, parcels, or areas within the planned development** [emphasis added].

The Board finds that according to the statute, for a parcel to receive a preferential assessment the beneficial use and enjoyment of the parcel must be "reserved in whole" to the separately owned parcels. The appellant acknowledged that the ownership is not recorded as being the owners of River Key Subdivision; instead, the subject parcel is owned by River Key Construction, Inc. and only purportedly used exclusively for the area land owners; however, there was no documentation of the users of the parcel and thus it is unknown if the property is exclusively reserved for the lot owners of the subdivision.

On page 4 within subsection (e), in the Declaration states: Reasonable regulations regarding the usage of the channel, Lot 45, the storage of boats and trailers and piers and docks may be made and amended from time to time by the [Board of Directors]." In light of this provision, the Property Tax Appeal Board finds there is no specific limitation that only River Key Subdivision Homeowners may utilize the boat and dock storage facility. The evidence does not clearly indicate that the subject parcel's use was restricted as an appurtenance to the separately owned lots

within the River Key development. Therefore, the Property Tax Appeal Board finds the appellant failed to clearly demonstrate the beneficial use and enjoyment of the subject parcel was "reserved in whole" to the separately owned lots within the development through some summary statements that were not affidavits or other substantive evidence regarding the use of the parcel. There is simply no evidence that the property in question in this appeal is reserved in whole for the appurtenant property owners of River Key Subdivision.

Section 10-35 states that a common area is a "lot, parcel or area, the beneficial use and enjoyment of which is reserved in whole as an appurtenance to the separately owned lots, parcels, or areas within the planned development." (35 ILCS/200-10-35(a)).

Based on this analysis of the record, the Property Tax Appeal Board finds the subject property is not entitled to a common area assessment of \$1 as provided by section 10-35 of the Property Tax Code. (35 ILCS 200/10-35(a)) As a result, the Board finds no change in the subject's assessment as established by the board of review is warranted on this record.

As the appellant made no other challenge to the assessment of the land or structure, no change in the land or improvement assessment is warranted.

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

K. L. Fan

Klaus Albrecht

Member

Member

JR

Jerry White

Member

Acting Member

Robert Steffen

Acting 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: November 20, 2015

A. Proctor

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.