

**MINUTES OF BOARD OF REVIEW**  
**June 23, 2014**

**1. Call to Order, Roll Call**

The meeting of the Village Board of Review of the Village of Slinger was called to order by Clerk Tennies at 300 Slinger Road, Slinger, WI, at 12:00 p.m. on Monday, June 23, 2014 with the following members present: Clerk Tennies, Sharon Grudzinski and Candi Martin. Also present were Attorney Christopher Jaekels, Village Assessor Michael Grota of Grota Appraisals and Treasurer Wilber.

**2. Election of Chairperson**

Motion Martin/Tennies to elect Sharon Grudzinski as Chairperson of the Board. A roll call vote was taken and the motion passed unanimously.

**3. Overview of General Board of Review Procedures**

Attorney Christopher Jaekels introduced himself and stated he would be representing the Board of Review for this hearing. He provided some background information on his experience with municipal law and Board of Review proceedings.

Attorney Jaekels noted for the record that one member of the Board has received the required training for this hearing, and Treasurer Wilber stated that the training affidavit was filed with the Department of Revenue to confirm that Tammy Tennies has obtained the required training.

Attorney Jaekels provided a brief discussion of the Board of Review process and stated that this hearing is a quasi-judicial proceeding to give property owners a forum for objecting to assessments placed on their properties. He stated the objector will have the opportunity to present evidence in support of his opinion of the value of the property. He stated that after the objector has made his presentation, the Board members and Village Assessor will be able to ask any questions they may have. Attorney Jaekels stated that the Assessor will then present his argument and explain how he arrived at the assessments in question, after which the Board members and objector may ask him questions.

Attorney Jaekels discussed the State statutes that govern this process and stated that under State law there is a presumption of correctness, which means that the Board is required to presume that the Assessor's valuation is correct. He stated this places the burden of proof on the property owner to provide evidence showing that the Assessor is incorrect. Attorney Jaekels reviewed the evidence used to support or refute an assessment and stated this includes recent sales of the subject property, recent sales of comparable properties and other factors that may directly affect the market value of the property.

Attorney Jaekels stated it appeared from the objection forms submitted that the property owner is claiming zero value for the parcels. He informed the Board that they are not obligated to accept only the Assessor's or the objector's valuation, but can establish a different valuation based on the evidence provided. He stated that if any appraisals are submitted as evidence, the person who conducted the appraisal must also appear to answer any questions about it.

Treasurer Wilber asked Attorney Jaekels to discuss the guidelines that the Board should follow if they receive a request to reschedule this hearing. She explained that she had been contacted earlier by the property owner's attorney, who had asked if another date and time could be set for this meeting.

Attorney Andrew Weininger with Eminent Domain Services appeared before the Board and stated that since this meeting was scheduled, property owner Don Thoma, a member of Polk Properties LLC, had a funeral set for today that he needs to attend. Attorney Weininger also stated that Erik Olsen, another attorney with his firm, has been representing Mr. Thoma and is much more familiar with this matter but Attorney Olsen is out of town this week. Attorney Weininger stated that if the hearing could be rescheduled, it would allow Mr. Thoma to attend the funeral and would also permit Attorney Olsen to assist in the proceedings.

Attorney Jaekels informed the Board that they are authorized to adjourn to a different date and time if they wished, but they are under no obligation to do so. He stated that the meeting had been properly scheduled and the necessary notice was given to the property owner. He explained that it is the property owner's responsibility to ensure that they have adequate representation for the meeting as scheduled, and this can be arranged even on short notice.

Board members informed Mr. Thoma that they would like to accommodate his request if possible. They asked him if it would help to adjourn until a later time in the day and Mr. Thoma stated he should actually be at the funeral already and he would need to be there for the rest of the day. Board members discussed their schedules and agreed that it would be very difficult to find another date and time when everyone would be available again.

Motion Martin/Tennies to proceed with the hearing as originally scheduled. A roll call vote was taken and the motion passed unanimously.

**4. Receive Objection Forms Not Previously Filed (only if waived)**

Attorney Jaekels noted for the record that the Village already fulfilled the requirement to hold Board of Review hearings for at least two hours on June 5, 2014. Treasurer Wilber stated that since that date, no requests for a waiver of the 48-hour notice for filing an objection had been received.

**5. Hear Objections to Property Assessments and Take Action as Necessary**

**A. Tax Keys**

#V5 0815 001 2250 Farmlane Drive	#V5 0815 002 2210 Farmlane Drive
#V5 0815 003 2615 Backwoods Circle	#V5 0815 004 2645 Backwoods Circle
#V5 0815 005 2665 Backwoods Circle	#V5 0815 006 2675 Backwoods Circle
#V5 0815 007 2680 Backwoods Circle	#V5 0815 008 2690 Backwoods Circle
#V5 0815 010 2600 Backwoods Circle	#V5 0815 025 1870 Farmlane Drive
#V5 0815 026 1860 Farmlane Drive	#V5 0815 027 1865 Farmlane Drive
#V5 0815 028 1875 Farmlane Drive	#V5 0815 029 1895 Farmlane Drive
#V5 0815 030 2500 Overview Court	#V5 0815 031 2490 Overview Court
#V5 0815 032 2470 Overview Court	#V5 0815 033 2475 Overview Court
#V5 0815 034 2485 Overview Court	#V5 0815 035 2495 Overview Court
#V5 0815 036 2505 Overview Court	#V5 0815 037 2025 Farmlane Drive
#V5 0815 038 2500 Sunrise Court	#V5 0815 039 2490 Sunrise Court
#V5 0815 040 2480 Sunrise Court	#V5 0815 041 2470 Sunrise Court
#V5 0815 042 2475 Sunrise Court	#V5 0815 043 2485 Sunrise Court
#V5 0815 044 2505 Sunrise Court	#V5 0815 046 2125 Farmlane Drive
#V5 0815 047 2165 Farmlane Drive	#V5 0815 048 2205 Farmlane Drive
#V5 0815 049 2245 Farmlane Drive	#V5 0815 050 2495 Sunrise Court
#V5 0815 057 001 through #V5 0815 057 028 1872 – 2140 Farmlane Drive	

**Polk Properties, LLC**

**Donald J. Thoma (#V5 0815 007, #V5 0815 008, #V5 0815 034 and #V5 0815 043)**

Attorney Jaekels stated that in view of the many parcels under objection, the property owner and Assessor may wish to discuss the parcels in groups. He asked if there were any suggestions for grouping the properties for more effective review.

Assessor Grota stated it was his opinion that the parcels could be separated into three main groups. He stated that parcels #V5 0815 001 through #V5 0815 008, #V5 0815 010, and #V5 0815 038 through #V5 0815 044 and #V5 0815 046 through #V5 0815 050 could be considered one group since the lots are all fully developed. He stated the next group would be parcels #V5 0815 025 through #V5 0815 037 since they are semi-developed, and the third group would be the condominium sites, parcels #V5 0815 057 001 through #V5 0815 057 028.

Don Thoma, member of Polk Properties LLC, stated it was his opinion that the first group and the condominium group should be broken down further since not all of the lots in those groups can be considered fully developed. Attorney Weininger suggested that all parcels should be discussed together since the objection for each is based on the same arguments. He stated that various categories of parcels could be separated out as the discussion went along. It was agreed that the objections should be heard as a group, and details for particular parcels could be discussed as needed.

Treasurer Wilber introduced the hearing for the tax key parcels as listed above located in the Pleasant Farm Estates subdivision. She informed the Board that objection forms for each parcel had been submitted prior to this meeting as required. She stated it should be noted that the objection forms all stated there was no address for the parcels, but each parcel has a street address assigned to it.

Treasurer Wilber swore in all witnesses to this hearing, which were property owner and Polk Properties LLC member Donald Thoma, Attorney Andrew Weininger with Eminent Domain Services and Assessor Grotta.

Attorney Weininger stated he would have Mr. Thoma present most of the case as he is the most familiar with it, and he asked Mr. Thoma to provide some background information. Mr. Thomas stated that he has been a surveyor for 23 years and operates as Accurate Surveying. He stated he has worked on hundreds of developments with other parties and he has worked on approximately 10 developments on his own. Mr. Thoma stated the property in question was purchased during 2004 – 2005 and was approved for rezoning between 2005 and 2007.

Mr. Thoma stated that lots in the development have been for sale ever since 2007. He stated that one lot sold around 2008, but he has been unable to sell anything since then, primarily because of the bad economy.

Mr. Thoma stated it was his personal knowledge that the real estate market is still very depressed. He stated that he knew of a development in Kewaskum that included 7 4-family building pads that stayed on the market for several months and finally sold for only \$37,000 for the entire development. He stated there was also the Glen Ivy development in West Bend that has 7 buildings built in it and 13 duplex pads still available. He stated that the remaining development is listed at \$120,000 but the owner has indicated they would be willing to accept \$60,000 for it and it still hasn't sold.

Attorney Jaekels asked Mr. Thoma if he had any documentation to show the list and sale prices for those developments or any information that could be used for comparison and Mr. Thoma stated he did not.

Mr. Thoma stated that the restrictive covenants attached to the subject properties are causing a problem for the sale of these lots. He stated the development is currently in litigation with the Village and that is also an obstacle to achieving any sales. Mr. Thoma stated the restrictive covenants are lengthy and poorly written and they act as a deterrent to potential buyers.

Attorney Weininger asked Mr. Thoma to discuss the three phases of the Pleasant Farm Estates development. Mr. Thoma stated all of the improvements are located in Phase I, Phase II is to the north of Phase I and Phase III includes a few lots that surround the former barn structure that has been razed since the development was started. Mr. Thoma stated that sidewalk and street trees are still needed in Phase I and the street still needs a final layer. He stated that there have actually been two lots sold since the development was started, but the second one was sold recently to an LLC that he is a partner for and he stated that was the only way he could sell the lot.

Mr. Thoma stated that the development agreement requires that 50% of Phase I has to be sold before any lots in Phase II can be sold, and this is why he feels the value of the Phase II lots are zero at this time. He stated the lots in Phase III have curb, gutter and road but the barn foundation would have to be removed with the Village's approval. Mr. Thoma presented Exhibit A from the Amended Subdivision Development Agreement for Pleasant Farm Estates and discussed more details about the phasing of the specific lots.

Attorney Jaekels asked Mr. Thoma for his opinion of the value for each of the parcels in this subdivision. Mr. Thoma stated it was his opinion that the lots should all be valued at the assessment level they had for 2013, which was as agricultural parcels with a much lower assessed value. Attorney Jaekels asked if Mr. Thoma was carrying a mortgage on the property and Mr. Thoma stated he has a mortgage of \$1.8 million on the property but that does not reflect all of the investment that has gone into the development.

Board members asked Mr. Thoma about the rezoning of the property and Mr. Thoma confirmed that he had requested the rezoning to make the parcels residential zoning, but he was paying taxes at an agricultural use value even after the rezoning. Treasurer Wilber informed the Board that the Village has obtained an injunction prohibiting the agricultural use of the property. Attorney Weininger and Mr. Thoma both stated that for 2013 he has only been maintaining the ground cover on the parcels and there has been no farming.

Board members asked about how the parcels are being marketed because some appear to be listed with private parties while others are advertised with Shorewest. Mr. Thoma stated that Shorewest is no longer handling any of the parcels. He stated that he personally owns lots #7, 8, 34 and 43 and he has been listing them for sale on his own.

Board members asked Mr. Thoma to provide more information on the restrictive covenants and Mr. Thoma stated he agreed to them when they were first created. Board members asked how the covenants were different from any other development agreement entered into with the Village and Mr. Thoma stated they included wording that would make the property owner liable for any costs or legal fees that may result if the Village takes the property owner to court for violation of any of the agreement. He stated that this discourages potential buyers from taking on that kind of risk. Mr. Thoma stated that he had drafted the restrictive covenants when the agreement was first being written, but the Village made him get an attorney to write up the restrictive covenants and he wasn't happy with them, but he agreed to them.

Assessor Grota asked Mr. Thoma if he could provide more information on the Kewaskum property and if he knew who the buyer and seller were for that transaction. Mr. Thoma stated the property was sold by Harris Bank, and he had bought it himself. Assessor Grota asked about the West Bend property. Mr. Thoma stated he knew someone who had offered the owner \$40,000 for the entire development, but that offer was rejected and the owner asked for \$60,000. He further stated he did not believe the Glen Ivy parcels had sold yet.

Assessor Grota asked Mr. Thoma about the second parcel in the Pleasant Farm Estates development that was sold recently to Cobblestone Custom Homes. Mr. Thoma stated that the parcel was sold for \$60,000 but he is a part owner of Cobblestone Custom Homes and that was the only way he could sell the parcel. He stated that the house being built on that parcel is a spec home that they have built to try to market other parcels.

Attorney Weininger asked if it would be possible to release Mr. Thoma so he could attend the funeral. Attorney Jaekels informed the Board that they would be authorized to grant this request if they wished. He stated that Attorney Weininger could contact Mr. Thoma by phone and Mr. Thoma could continue to testify via phone if necessary. The Board agreed to release Mr. Thoma at 1:10pm.

Assessor Grota provided information on the assessment process for the Village of Slinger and the numerous directives, statutes and procedures that assessors must follow. He also informed the Board that he has been a licensed assessor since 1984 and has worked with the Village since 1990.

Assessor Grota provided an aerial map of the subdivision and information on 5 comparable properties. He stated that all parcels were sold within the past 2 years. He stated one of these parcels is the second lot sold in the subdivision and the other 4 are in a neighboring subdivision. Assessor Grota explained that it is more appropriate to consider similar parcels in the same municipality if possible, since it is difficult to know how many other factors affect the value of parcels in other communities. He stated that this practice is supported by case law. Assessor Grota reviewed the comparables and stated that they all supported his assessment of the subject properties.

Attorney Weininger asked Assessor Grota why the property assessments had been changed from the much lower agricultural assessment used in the previous year. Assessor Grota stated that the Department of Revenue's position is typically that a property's use trumps its zoning, even if the use is prohibited by the zoning designation. He stated that since the developer was farming the property in 2012, the property had to be assessed for agricultural use for 2013. Assessor Grota stated that after the court issued the injunction at the end of 2012 ordering the developer to cease and desist from any agricultural use, any agricultural activity that may have taken place in 2013 was in contempt of the court order and would not be considered for assessment purposes. Assessor Grota stated this change was discussed with Pat Janeske, the Southeastern Wisconsin Regional Supervisor for the Department of Revenue and the change to residential assessment was confirmed during that discussion.

Attorney Weininger stated that the court order was a non-final judgment and should not be considered in the assessment. He stated that the property's use has not changed because the activity taking place on it has always been just to maintain ground cover. He stated this was not actually farming, but was just maintaining the property in an effort to make it presentable for prospective buyers. He stated that maintaining the ground cover should still be counted as an agricultural use for assessment purposes. Attorney Weininger stated that in view of the fact that the court order is not the final word on this matter, the assessment should stay as it has been until the litigation is concluded.

Board members asked Assessor Grota if it was his opinion that maintaining the ground cover on this property qualified as agricultural use. Assessor Grota stated it was his opinion that this activity fulfills the criteria for agricultural use, but the court order changes the priorities to be considered for assessment.

In closing, Attorney Weininger stated that lots in this subdivision just aren't selling, much like other communities that are experiencing difficulties in this poor economic climate. He stated that the lawsuit and restrictive covenants have been baggage for this development and are preventing the developer from marketing the property. He stated that the lots in Phases II and III can't be built until 50% of Phase I is sold and this should also lower the value of those parcels. Attorney Weininger stated that it is the property owner's opinion that the property's assessment should continue at the 2013 agricultural values until the lawsuit is settled.

Assessor Grota stated it was his opinion that the comparable sales provided support his assessment of the property. He discussed the need to consider only arm's length sales when choosing comparable sales and stated it was also important to select property sales within the same municipality if available. He stated that agricultural assessment would apply if the property were actually used for agriculture, but since a court order has prohibited agricultural use, the residential zoning and purpose for the property must be considered.

Testimony for both parties concluded at 1:50pm and Board members discussed the evidence provided. Chairperson Grudzinski stated that she has delivered mail to the area surrounding the subdivision for the past several years and she has personally observed tractors and balers working the property. She stated it was her opinion that the use of the property has not changed and the agricultural assessment should be maintained.

Motion Grudzinski to determine that the taxpayer has presented sufficient evidence to rebut the presumption of correctness granted by law to the Assessor and to return the parcels to agricultural use assessment at their 2013 levels. As no second was offered for this motion, the motion failed.

Motion Martin/Tennies to determine that the taxpayer has not presented sufficient evidence to rebut the presumption of correctness granted by law to the Assessor and to affirm the Assessor's 2014 valuations of the parcels as presented. A roll call vote was taken on the motion with the following results: Yea's: Tennies, Martin; Nay's: Grudzinski. The motion was passed.

Attorney Jaekels stated that the property owner has appeal rights which will be explained in the Notice of Board of Review Determination. Assessor Grota stated that in view of the large number of parcels involved, the notices will be mailed from his office within 24 hours using certified mail and with a return receipt.

**6. Adjournment**

Motion Grudzinski/Tennies to adjourn the Board of Review sine die at 2:00pm. A roll call vote was taken and the motion passed unanimously.

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Sharon Grudzinski, Chairperson