

LEGAL NOTICE

PUBLICATION DATE: _____

Re: KRONKOSKY v. CHEROKEE VILLAGE SUB. IMPROVEMENT DISTRICT, *et. al.*

Sharp County Circuit Case No.: CV2018-225

If you are a person or entity that has owned a parcel within the Cherokee Village Suburban Improvement District sometime since November 14, 2018 you may be entitled to benefits reached under a Settlement Agreement preliminarily approved by the Court. You also have a right to object to the settlement agreement. Your rights are described below:

On November 14, 2018, a lawsuit was filed by Mark and Cynthia Kronkosky on behalf of themselves and all individuals similarly situated against the Cherokee Village Suburban Improvement District, the City of Cherokee Village, American Land Company and the Collector and County Clerk of Fulton and Sharp County alleging that 1) the District has improperly levied against the now-exhausted assessed benefit; 2) the District's 2018 Reassessment of Benefit violated Arkansas law; 3) the District's contributions to the City's Street and Fire Departments violates Arkansas law; and 4) the District's decision to waive American Land Company's obligation to pay taxes on lots acquired from the Commissioner of State Lands violated their contract.

Plaintiff alleges that these acts constitute an illegal tax and/or expenditure. Accordingly, Plaintiffs have asked the Court to enjoin the future collection of Assessed Benefits, refund previously collected assessed benefits, refund money paid to the City for street and fire maintenance and order American Land Company to pay assessed benefits it previously avoided.

The above-named Defendants vigorously dispute the above allegations. To avoid the uncertainty of trial, the parties have reached a settlement agreement.

WHAT KIND OF LAWSUIT IS THIS?

The pending lawsuit is an illegal exaction lawsuit, one that is established by the Arkansas Constitution. An illegal exaction lawsuit is a class action as a matter of law. The Plaintiff class (the "Class") is established by the Arkansas Constitution and automatically includes all persons or entities that owned a parcel within the Cherokee Village Suburban Improvement District since November 14, 2018. Class members may not opt out of the class and will be bound by any judgment or settlement. However, class members have a right to object to the settlement agreement reached between the class representative and named Defendants.

HOW WAS A SETTLEMENT AGREEMENT REACHED?

The Plaintiffs and Defendants engaged in lengthy discussions to arrive at terms agreeable by all parties. The settlement agreement was approved by the Representative of the Plaintiffs' Class. The Settlement Agreement was approved by the Commissioner of the Cherokee Village Suburban Improvement District on August 26, 2021. The City Council for the City of Cherokee Village approved the settlement agreement on August 28, 2021. Judge Bynum Gibson has granted

preliminary approval of the settlement agreement. Final approval will be considered after the Court has considered any objections raised by class members.

WHO IS ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT?

If you are a person or entity that owned a parcel within the Cherokee Village Suburban Improvement District since November 14, 2018, you might be entitled to exercise rights under the proposed settlement agreement.

As a class member you may not opt out of this lawsuit and, if final approval is granted, you will be bound by the terms of the settlement agreement.

WHAT ARE THE TERMS OF THE SETTLEMENT AGREEMENT?

It is agreed that the 2018 Reassessment of Benefit approved by the Cherokee Village Suburban Improvement District (“District”) is void and all Assessment of Benefits established under the 2018 Reassessment of Benefit will be removed from the property and tax records of Fulton and Sharp County.

To replace the 2018 Reassessment of Benefit, each parcel within the District shall be assessed a benefit equal to 36% of the county assessed land value for the year 2021 (“Agreed Assessed Benefit”). The Agreed Assessed Benefit will not include any additional value resulting from any improvements located on any parcel.

For any parcel *not* lying adjacent to a golf course or lake, the Agreed Assessed Benefit will be capped at \$3,400.00. Unimproved lots lying adjacent to a golf course or lake will also be capped at \$3,400.00. However, improved lots lying adjacent to a golf course or lake will be capped at \$7,400. The District shall be responsible for notifying the County collector of the Agreed Assessed Benefit for each parcel.

The District will be entitled to levy against the Agreed Assessed Benefit without any offset for previous payments of principal. However, all future payments of principal shall be fully accounted for by the District. The District shall be able to tell any property owner what their remaining principal is and all payments that have been applied to their property from such accounting.

The District agrees to be bound by the applicable provisions of the 1971 amendments to AR Code 14-92-201 *et seq* and cannot charge interest on the Agreed Assessed Benefit higher than six percent (6%) or the rate on any outstanding bonds, whichever is higher. Further, the District cannot make annual levies in excess of ten percent (10%).

Property owners shall have the right to pay off the Agreed Assessed Benefit at any time. Once paid off, that property will not be subject to another levy unless and until there are new District improvements justifying a reassessment of benefit. Any new reassessment resulting from improved amenities shall be subject to the law that exists at the time such reassessed benefits are equalized (not 1971 Act).

Every property owner that paid levies under the 2018 Reassessment for the years 2019, 2020, and 2021 will be allowed 90 days to file a claim for reimbursement equal to the combined aggregate amount paid minus 10% of the Agreed Assessed Benefit. For example, if a parcel paid \$150 a year under the 2018 Reassessment for the years 2019, 2020, and 2021 but would only have paid \$90 under the new Agreed Assessed Benefit (after applying a 10% levy), then that claimant is entitled to a refund of \$180 (\$450 - \$270

= \$180). The claims must be filed within 90 days but would be paid out over the next seven years, beginning July 1, 2022. Claims will be paid exclusively from the proceeds of delinquent lots sold by the District. To allow for covering the administrative costs associated with the sale of these lots, the proceeds from the sale of delinquent lots will be allocated as follows: 1) 20% to administration costs and/or realtor fees; and 2) 80% to the claim fund. If the sale of delinquent lots pays off all the claims before the seven-year period, the District will be released from this obligation and all further proceeds from the sale of delinquent lot sales shall be deemed abandoned and shall go to the District. If the claims are not paid off during the seven-year period, the amount of unpaid claims are waived by the agreement of the parties. Claims will be paid on an annual basis from the proceeds received that year from the sale of delinquent lots and will be mailed by the 15th day of January of the following year. The claims will be paid out to each claimant on a pro rata basis.

Both the District and the City of Cherokee Village (“City”) agree to post a claim form that is mutually agreed upon by the parties on both of their respective websites. The District will also publish the Claim Form in a paper of general circulation within Sharp and Fulton County, Arkansas. Property owners will have 90 days to file a claim or forever be barred from filing. Claimants can submit their claims to Plaintiffs’ counsel by mail or electronic mail. Plaintiffs’ counsel will provide received claims to the District who can make any objection. At the end of the 90 days, the parties will submit to the Court a summary of the claims received which identifies the claimant by name, parcel number, amount of claim and whether the claim is disputed. For disputed claims, the Court can set a time and place to hear and rule on the disputed claim.

Contract between City and District for subsidizing the street’s road and fire departments.

Beginning September 1, 2021 and continuing through December 31, 2021 (City’s Modification Period), the District and City agree to modify the contract entered between them on December 15, 2015. During the City’s Modification Period, the District will pay the City by the fifteenth day of each month an amount equal to seventeen percent (17%) of all funds received by the District from the Fulton and Sharp County Collectors or Treasurers as District assessments as well as any assessments collected by the State of Arkansas. This provision shall govern the September 2021 payment which is based on August 2021 collections. This amount includes all moneys received through December 31, 2021, although payments on funds received in December 2021 will occur on or before January 15, 2022.

The District shall freeze the remaining amount owed to the City under the contract (17%) until final approval of this settlement agreement by the Court. Should the Court give final approval, the District shall unfreeze said funds and use said funds to pay attorney fees for Plaintiffs’ counsel. Should the Court reject the parties’ proposed settlement agreement, the District shall unfreeze said funds and remit those funds to the City.

If approved by the Court, beginning January 1, 2022, the District and City agree to terminate the December 15, 2015 contract with no further obligations being owed and with each side releasing the other from any obligation contained in said Agreement. The parties agree that the District will continue to allow the City to use any fire stations owned by the

District or the District and the City may enter into a lease agreement concerning any such fire stations for a nominal sum.

Contract between District and American Land Company (“ALC”) for the marketing of delinquent lots

Beginning September 1, 2021 through June 30, 2022 (“ALC Modification Period”), the parties agree to modify the November 4, 2002 Contract as amended on January 6, 2004 between the District and American Land Company (ALC). During the ALC Modification Period, ALC is prevented from selling a parcel to a person or entity that directly or indirectly shares an interest, regardless of the degree of interest with ALC, its owners, employees, managers, or their family members. To confirm that sales are being made only to disinterested third parties through an arm’s length transaction, each sale of a delinquent lot during the ALC Modification Period will be approved by the District’s commissioners.

Beginning July 1, 2022, the District and ALC agree to terminate the November 4, 2002 contract and any subsequent amendments (written or verbal) with no further obligation being owed and with each side releasing the other from any obligations contained in said Agreement.

District Governance

The District agrees to transition from its current three-person board to a five-person board made up of commissioners elected by the property owners. To accomplish this, the Board shall set an election for the additional two new positions by or before May 31, 2022. To ensure that elected commissioners comprise a majority of the Board (3 positions), Joe Waggoner agrees to resign before the election, but is not prohibited from running for one of the two newly created positions. The election to fill the vacancy created by Joe Waggoner’s resignation shall be held at the same time and in the same manner as the election for the two newly created positions. Going forward, all five commissioners shall hold four (4) year terms staggered as follows: the three elected commissioners shall be elected for a full four-year term (stand for re-election in 2026). The current commissioners shall stand for election in 2024 for a term of four years (2028).

Attorney Fees and Enhancement Award

Plaintiffs’ counsel and named Plaintiffs will receive attorney fees and an enhancement award totaling \$275,000. This amount shall be paid by December 31, 2021 or within seven days of this Court’s granting final approval of this settlement agreement, whichever is later.

The District shall be responsible for paying two hundred thousand dollars (\$200,000.00) of the above amount. ALC shall be responsible for paying seventy-five thousand dollars (\$75,000.00) of the above amount by December 31, 2021 or seven days after final Court approval of this Settlement Agreement whichever event occurs last.

Further, Plaintiffs’ counsel shall receive 20% of any amounts paid out to claimants from the claim fund established herein. At the end of each year, the District shall calculate the collective amount being paid to claimants from the previous year and issue a check to RMP, LLP in an amount equal to 20% of the amount to be paid out to claimants. The check

shall be mailed to RMP by the 15th day of the following January. The District shall then deduct from each claimant's check an amount equal to 20% of the annual amount owed to the claimant.

Release

In exchange for and in consideration of the above cited terms, the Plaintiffs and the entire class of property owners and taxpayers they represent do hereby irrevocably and unconditionally release, acquit, remise, and forever discharge Defendants from any and all rights, promises, obligations, liens, claims, demands, liabilities, actions and causes of actions of whatever kind and character, in law or equity, in contract, tort or other, both known and unknown, disclosed and undisclosed, actual and consequential, specific and general, however denominated, including but not limited to those arising out of or in any way connected with the claims brought herein, for any past or present claim, relief or cause of action, no matter how denominated, income from any source, declaratory or injunctive relief, compensatory, liquidated or punitive damages, wages, money, remuneration, or thing of value whatsoever, by the Plaintiffs against the Defendants, including, without limitation, and allegations, causes of action, claims and/or matters caused by, arising out of, related to or in any way connected with the rights afforded a property owner and taxpayer of whatever character or nature of Plaintiffs with Defendants, and/or arising under, relating to or covered by any federal, state or local ordinance, law, statute, act, custom, usage, rule or regulation and including, without limitation, any claim or cause of action which was, or could have been stated herein.

It is the express intent of the Plaintiffs to enter into this full and final settlement and compromise of any and all claims against Defendants, whatsoever, arising out of events occurring up to and including the date of execution of this Agreement.

It is understood, agreed and stipulated between the parties hereto that the consideration described herein is in complete and full accord, satisfaction and discharge of any and all doubtful or disputed claims, whatsoever.

The Plaintiffs stipulate and agree not to initiate, join in, continue and/or institute any legal proceedings or process based on the within described claims or causes of action before any administrative, judicial, or any other forum against the Defendants, whatsoever, except to the extent necessary to enforce the settlement agreement.

WHAT SHOULD I DO IF I WANT TO PARTICIPATE IN THE SETTLEMENT?

Upon final approval from the Court, you should fill out the claim form and send it to Tim Hutchinson at P.O. Box 1788, Fayetteville, AR 72702 or by email at thutchinson@rmp.law. You will have 90 days to submit your claim after final approval. If mailed, your claim form must be post-marked by the deadline date.

If you do not want a reimbursement of any moneys paid by you, you do not need to do anything, and you will not be rewarded any claim proceeds. If you choose not to file a claim, you will not be able to bring another lawsuit on your own.

WHO MAY OBJECT TO THE SETTLEMENT?

You may object to the Settlement if you are a member of the class.

WHAT DO I NEED TO DO IF I WANT TO OBJECT TO THE SETTLEMENT?

If you want to object to the settlement, you, or a lawyer on your behalf, should file a Notice of Objection within thirty (30) days of the date of this publication. You should file your Notice of Objection with the Circuit Clerk of Sharp County describing the factual and legal basis of your objection. Any Notice of Objection filed should contain a reference to the Case No.: 68CV-18-225. If you are an entity such as a corporation or LLC, you must be represented by an attorney when filing an objection. You may view the entire case file at the Sharp County Circuit Clerk's office.

WHEN WILL THE SETTLEMENT BE COMPLETE?

The Court will hold a final approval hearing on October 20, 2021 at 9:00 a.m at the Sharp County Courthouse. Without further notice, the Court may adjourn and reconvene the final approval hearing and set it for a different time.

The settlement will be complete when, and if, the Court has entered an order finally approving the settlement and any appeals of the final order are resolved. If the Court does not enter an Order finally approving the settlement, or if the appellate court reverses the Court's approval, then, depending on the circumstances then existing, the settlement may be delayed, modified, or rendered null and void. If the settlement is rendered null and void, the litigation will continue as if this settlement had never been reached.

ADDITIONAL INFORMATION

You are automatically represented by Counsel for the Plaintiffs class, RMP, LLP. You are not responsible for their attorney fees. If you hire another lawyer to represent you in filing an objection, you will be responsible for that lawyer's attorney fees. If you believe that you are affected by this lawsuit or have any questions regarding this lawsuit, you may call Tim Hutchinson at 479-443-2705.