

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

BRADY BENNETT AND MELISSA
K. BENNETT,

Plaintiffs

CASE NO. 04-CA-1032

Vs.

ED E. HAVILL, LAKE COUNTY
PROPERTY APPRAISER,

Defendant.

_____ /

FINAL JUDGMENT

THIS CAUSE came before the Court at the trial on January 30, 2006, and the Court having heard argument of counsel, the evidence presented at the trial, and being duly advised in the premises, makes the following:

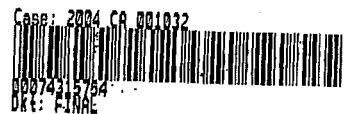
I. Findings of Fact

1. Although all real property is somewhat unique, the property at issue, is the first to come before this Court which is located in the "yellow bluff" geologic formation of Lake and Marion Counties. What makes the Plaintiff's property even more unique is that it is one of a group of Florida properties that is crossed by three (3) invisible county lines. The road access to the Plaintiff's property is from NE 310th Avenue in Marion County; most of the property is in Marion County; the Lake George frontage which is the subject of this law suit is situated in Lake County and the dock and boat house lie in Volusia County about fifty (50) feet below the yellow bluff formation. The Lake County tax parcel which is the subject of the suit is either the Plaintiff's front yard or back yard, depending on whether you ask the expert Mr. Stricklen or Mr. Beliveau. Plaintiffs purchased a remote 2.44 acre tract and cabin on the West side of Lake George in 1998 for the purchase price of \$120,000.

2. Approximately ninety-one percent (91%) of the subject property is located in Marion County (97,042 square feet), and approximately nine percent (9%) of the subject property is located in Lake County (9,218 square feet). The Plaintiffs' dock which is difficult to access because of the bluff is located in Volusia County and there was no

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assessment on the Volusia County tax rolls for the dock and shed for 2003.

3. The cabin is situated entirely in Marion County, and the small portion located in Lake County is vacant and is largely comprised of the 50 foot drop which is unsuitable for construction of a single family residence. The only road frontage for the property is in Marion County, solid waste collection is provided by Marion County, and Lake County provides no services to this property.

4. In 2003, Defendant, the Lake County Property Appraiser, raised Plaintiffs' assessment from \$29,568 to \$59,136.

5. It seems that the Defendant did not visit the site before making its assessment and Defendant was not aware of the extraordinary topographic condition of the property.

6. The Defendant apparently did not consider the effect of local and State land use regulations on the usability of the lakefront portion of the property as a single-family residential property, i.e. the Lake County section is not a buildable lot nor is it likely to ever be a buildable lot.

7. Defendant did not consider the purchase price of the subject property or the sale of a property immediately adjacent to the subject property to determine valuation of the subject property.

8. At trial, Defendant compared the subject tract to three other tracts with 370ft., 430 ft., and 650 ft. of depth. Defendant's Property Record Card reported the dimensions of the property as 150 feet deep and 128 feet for a total square footage of 19,200 square feet. The property is actually 9,218 square feet in size and is an average of 72 feet deep.

9. The Value Adjustment Board (VAB) found that Defendant incorrectly reported the square footage of the property as 19,200 square feet when in fact the property is approximately 9,128 square feet. The VAB decreased the assessment by only 25% from \$59,136 to \$44,352 instead of by 52% which is the difference between Defendant's erroneous calculation of 19,200 square feet and the actual size of the property located in Lake County which is 9,218 square feet ($19,200 \times .519895833 = 9,982$ --- $19,200 - 9,982 = 9,218$)

10. Defendant, Lake County Property Appraiser, approved and adopted the VAB's ruling and revised its property record card for the subject property to show an assessment of \$44,352, instead of \$59,136.

II. Legal Standard

A. A Property Owner Overcomes the Rebuttable Presumption of Correctness by Showing the Property Appraiser either (1) Failed to Properly Consider the Statutory Criteria or (2) Failed to Follow Generally Accepted Appraisal Practices.

Pursuant to §194.301, *Florida Statutes*, a property appraiser's assessment is presumed correct. This "presumption of correctness" is rebuttable and a property owner can defeat the presumption if he shows that either the property appraiser has failed to consider properly any of the criteria in §193.011 *FLORIDA STATUTES*, or if the property appraiser's assessment is arbitrarily based on appraisal practices which are different from appraisal practices generally applied by the property appraiser to comparable property within the same class and within the same county. In arriving at just valuation as required under s.4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors: (1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of the reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length; (2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable local or state land use regulation and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the governor when the moratorium prohibits or restricts the development of property as otherwise authorized by applicable law; (3) The location of said property; (4) The quantity or size of said property; (5) The cost of said property and the present replacement value of any improvements thereon; (6) The condition of said property; (7) the income from said property; and (8) The net proceeds of the sale of the property, as received by the seller, after deduction of all the usual and reasonable fees and costs of the sale, including the costs and expenses of financing and allowance for unconventional or atypical terms of financing arrangements.

There is sufficient evidence Defendant's assessment was arbitrarily based on appraisal practices which are different from appraisal practices generally applied by Defendant to comparable property within the same class within the same county.

There is evidence in this case that Defendant failed to consider several criteria in §193.011 *Florida Statutes*. If the presumption of correctness is lost, the taxpayer shall

have the burden of proving by a preponderance of the evidence that the appraiser's assessment is in excess of just value.

If the property appraiser's assessment is determined to be erroneous, the court can establish the assessment if there exists competent, substantial evidence in the record, which cumulatively meets the requirements of § 193.011 *FLORIDA STATUTES*.

III. Analysis and Conclusions of Law

A. Defendant Erred in Calculating Quantity of the Parcel

The Property Appraiser had incorrectly calculated Plaintiffs' property as 19,200 square feet rather than 9,218 square feet, thus resulting in an assessment that clearly exceeded the just value of the property. Based on the uncontroverted evidence Plaintiff presented at trial, the property situated in Lake County is approximately 9,218 square feet in size and not 19,200 square feet as originally contended by the Defendant. Defendant produced no survey or reliable direct testimony which conflicted with Plaintiffs' evidence.

Accordingly, the Property Appraiser's error on the issue of the property's quantity shows Defendant did not properly consider the property's quantity as required under §193.011 (4) and thus, the presumption of correctness is removed. This alone is sufficient to remove the presumption of correctness, however the Court also finds Defendant did not properly consider other criteria under §193.011.

B. Defendant Erred in Calculating the Property's Size and Dimensions

Defendant's Property Record Card reported the dimensions of the property as 150 feet deep; however, the depth ranges from 122 feet to 22 feet for an average of 72 feet. This is another error that shows Defendant did not properly consider the size and dimensions of the Property as required under §193.011 (4).

C. Defendant Failed to Consider Government Regulations Preventing Use of Site as Separate Residential Lakefront Tract.

Defendant did not consider the effect of local and state land use regulations on the usability of the property as a single family residential property, and classified the property in Lake County as a single-family residential lakefront parcel although it would be exceedingly difficult if not impossible to develop the Lake County property for such

purposes. This is additional evidence that shows Defendant did not properly consider the effect of governmental regulations on the highest and best use of the site under §193.011 (2).

D. Defendant Failed to Consider the Property's Sale Price and Proceeds.

Defendant did not consider the purchase price of the subject property. The purchase price of the subject property was \$120,000. The square footage of the entire parcel is 106,260 square feet. A cabin, dock, shed and stairs to the dock were included in the purchase price. If no adjustments are made for these improvements, the "unit value" per square foot for the parent tract is \$1.13. At a square foot unit price of \$1.13, the total assessed value of the Lake County property would be \$10,416.34; The Defendant did not consider the purchase price of the Property in violation of §193.011 (8).

E. Defendant failed to Consider the Condition of the Property.

The condition of the property is a steep bluff with limited use. There is a 50 foot drop from the level area of the subject property to the waters edge, and most all of the Lake County property is within this cliff as shown on the Salt Springs USGS topographical map. There is a large sand bar in this area of Lake George with an indicated depth of 1 foot making it extremely difficult to access Plaintiff's dock by boat. It is nearly a half of a mile out in the lake before a depth of six feet is reached; that is why all the docks in this area are literally hundreds of feet long in order to get the boat house over water with a suitable depth so boats may freely move in and out. Defendant did not take into consideration the condition of the Property in making its assessment in violation of §193.011 (6), and erroneously compared the Property to other parcels that had sufficient size and topography to support a single family residence and that had in fact been improved for such purposes.

The evidence shows that a representative of the Defendant only stepped foot on the property after the assessment was made and the Owner, Plaintiff Mr. Bennett, complained about the erroneous assessment. Accordingly, because Defendant failed to properly follow the statutory criteria as required, Defendant loses its presumption of correctness and Plaintiff is entitled to prevail.

F. The Just Value of the Property

Since the presumption of correctness is lost, the question before this Court turns to whether Plaintiffs have proven that Defendant's assessment exceeds just value by a preponderance of evidence. In this case, Plaintiffs have proven by a preponderance of the evidence that Defendant's assessment exceeds just value and that the just value is \$6,636.96.

The only evidence presented at trial by a licensed appraiser as to value was that the just value of the property located in Lake County was \$6,636.96. Defendant attempts to justify its high assessment of Plaintiffs' property on the grounds that the sliver of land located in Lake County is more valuable per square foot than the portion lying in Marion County. It argues that Plaintiffs' Lake County parcel (although it is only approximately 9% of the total size), brings more value to the total equation than the Marion County parcel (although it is approximately 91% of the total size). Defendant argues its high assessment is valid because if the Lake County piece were owned separately, it would warrant a higher value than the Marion County property owned by Plaintiffs since it was more valuable lakefront.

Defendant ignores the fact that the property is actually owned by the same owner, not a different owner. It seems settled that an appraisal that ignores the actual present condition and use of the land cannot pass just valuation muster. Defendant erroneously assessed the Lake County portion of Plaintiffs' property as if it were held in separate ownership from the Marion County portion of Plaintiff's Property. In doing so, Defendant created an artificial market for the Lake County tract that does not exist and is contrary to reality; There is no genuine market for a piece of property of this size with no access and cannot be built on due to land use regulations. Accordingly, Defendant's assessment is in error resulting in an assessment which exceeds just value.

The proper assessment of the Lake County property based on all the statutory factors is \$6,637. Defendant also erred in omitting from its comparable sale analysis a 2.04 unimproved parcel which sold for \$64,000 in 2000. This parcel is directly South of the parcel at issue in this case, abutting the South boundary line of the subject parcel. The "unit value" for the property directly to the South is \$.72 a square foot indicating the unit value for the subject property since it is in a similar location, was a similar size and had similar conditions as the subject property. Accordingly, based on this sale and the evidence presented by the Plaintiffs at trial, the just and proper total assessed value of the subject property in Lake County should be \$6,636.96 (9,218 x \$.72).

Defendant seems to be essentially arguing that because Marion County is not assessing the portion lying in Marion County as much as Defendant thinks is appropriate; Defendant can make up the difference in its assessment of the property lying in Lake County. This Court believes that the proper method of assessment is for a county property appraiser to look at the whole property and then apportion the assessment in proportion to land lying within in its jurisdiction. In fact, the U.S. Supreme Court has consistently upheld this practice when property interests are located in more than one state. *W.U. Tel. Co. v. Attorney General of Massachusetts*, 125 U.S. 530, 8 Sup. Ct. 961; *Massachusetts v. W.U. Te. Co.*, 141 U.S. 40, 11 Sup. Ct. 889; *Maine V. Grand Trunk Ry. Co.*, 142 U.S. 217, 12 Sup. Ct. 121, 163; *Railroad Co. v. Backus*, 154 U.S. 421, 14 Sup. Ct. 1114; *Railroad Co. v. Backus*, 154 U.S. 439, 14 Sup. Ct. 1122.

In those cases, the U.S. Supreme Court recognizes that in order to arrive at market value of an entity that operates in more than one jurisdiction it is appropriate for the taxing authority to look outside of its jurisdiction for purposes of establishing a unit value, and that by apportioning the unit value according to the quantity located within the taxing authority's jurisdiction, just value within that jurisdiction can be ascertained.

Defendant argues that if the total amount of the Marion County assessment when added to the Lake County assessment does not exceed the just value of the whole site, then Plaintiff has not been injured. The fact that Marion County did not view the "whole property" in order to apportion the assessment for that property located within Marion County is not justification for permitting Defendant, Lake County Property Appraiser, free reign to "make up the difference." Just value as defined by the Florida Constitution and case law does not permit a property appraiser to "make up the difference." Furthermore, there is absolutely no statutory authority authorizing a property appraiser to "make up the difference.

To find otherwise would be contrary to the express provisions on the statute and would grant free license to individual jurisdictions, in those instances where a taxpayer's property is located in more than one county, to attribute a disproportionate amount of value to those features located within their jurisdictions that they consider more valuable than features found in adjoining counties.

IV. Prevailing Party and Jurisdiction Reservation

Plaintiffs are the prevailing parties entitled to recovery of all costs incurred and a refund of all payments rendered over and above the proper assessment. Jurisdiction is reserved by the Court to award costs and any other relief deemed proper to render justice.

SO ORDERED in Chambers, Lake County, Florida this 28th day of March, 2006.


MARK J. HILL
Circuit Judge

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Derek A. Schroth, Esq., 600 Jennings Avenue, Eustis, Florida 32726, B. Jordan Stuart, Esq. and Gaylord A. Wood, Jr., Esq., Stuart & Wood, P.A., 206 Flagler Avenue, New Smyrna Beach, FL 32169 and to Leslie Campione, Esq., 342 E. Fifth Avenue, Mount Dora, FL 32757, by regular mail this 28th day of March, 2006.


Judicial Assistant/Deputy Clerk