

**Value Adjustment Board Meeting
Gadsden County, FL
County Commission Chambers
9 East Jefferson Street
Quincy, FL 32351
October 21, 2013
2:30 p.m.**

Present: **Sherrie Taylor – Chair, District 5
Gene Morgan – County Commissioner, District 3
Audrey Lewis, School Board Member, District 2
Scott Watson – Business Owner within the School District
Martha Peeler, Homestead Representative
Bradley Munroe – VAB Attorney
Marcella Blocker – Clerk’s Designee at VAB Clerk**

Call to Order

Chair Taylor called to the meeting to Order at 2:58 p.m.

Frank Brady, Esquire, and Lori Meader, Director of Property Management, appeared by telephone on behalf of Ybor III LTD.

Clay Vanlandingham, Gadsden County Property Appraiser, Robert Mayo, and Mike Moore, Property Appraiser’s Office and Anna Torres, Esquire, appeared on behalf of the Gadsden County Property Appraiser.

Clay Vanlandingham:

Mr. Vanlandingham stated that there was an amendment approved by the Legislation on April 29, 2013 and was retroactive to the January 1, 2013 tax year so accordingly, the Property Appraiser’s office removed the exemption for the 2013 tax year. He explained the assessment value of the property, which is the Ochlocknee Point Apartments just east of Midway, before you get to the river, the assessed value this year is \$2.9 Million and the petition did not deal with values but more with legislative or State of Florida Statute issues, he then turned the floor over to his Attorney, Ana Torres.

Chair Taylor:

“Ms. Torres, for the record, state your full name, please.”

Ms. Torres:

“Sure, Ana Torres, I am with the Levy Law Firm, Tallahassee.”

Chair Taylor:

“And you are being compensated to be here?”

Ms. Torres:

“Yes M’am.”

Chair Taylor:

“Thank you.”

Ms. Torres:

“I think what I want to first address is the change Mr. Vanlandingham alluded to earlier, is, the statute is 196.1978. I have copies for all Board members if I may. (She handed out copies of the Statute to everyone.) This affordable housing property exemption, if you will read the first sentence, I know it’s a little wordy, but essentially, it’s an exemption that is provided to property which is owned entirely by a non-profit entity that is a corporation “not-for-profit”. As Mr. Vanlandingham explained, this change came into effect, if you look at the footnote right there at the bottom, Note A, it says applying retroactively to the 2013 tax roll, and B. effective upon this act becoming a law and operating retroactively to the 2013 tax roll. Prior to this change, like Mr. Vanlandingham said, there was a different structure that allowed this particular Petitioner to get the exemption. However, this owner is now a limited partnership that is full profit. So, the statute has been amended, it’s affected for this year. The staff analysis on the change actually references and provides that this type of ownership structure where you have a limited partnership that is for profit or a sole general partner that may or may not be the 501(c)3 no profit entity no longer qualifies for this exemption. You now have to be a non-profit 501(c)3 entity. I had the opportunity to read the Petitioner’s Memorandum of Law that he submitted, I believe his argument essentially is that the statute is unconstitutional and therefore, they are entitled to obtain the exemption, notwithstanding the fact there has been no judiciary that has declared this statute unconstitutional. It is the law of the State of Florida, it is the law on the books and it is the law that Mr. Vanlandingham had to apply to this tax roll. Moreover, I also would posture that I do not believe that the Value Adjustment Board is the proper venue where we would bring a constitutionality challenge to a statute. There is various case law as far as Administrative agencies not having the authority to declare statutes unconstitutional, that applies both in Workers’ Compensation as well as any quasi-judicial body that may not have the authority to declare statutes unconstitutional. That is solely the authority of the judiciary Circuit Courts, District Courts and the Supreme Courts of Florida. I don’t know if Mr. Munroe would like to go into that case law at this time or I could say after the Petitioner has his argument.”

Chair Taylor:

“Thank you, I think we will maintain the Order aforementioned because that will give the Petitioner a chance to state his case and then we will move on for a response from Mr. Munroe. I think that is in order.”

Chair Taylor:

“Mr. Brady, were you able to hear pretty much?”

Frank Brady:

“Yes, I heard everything and I am ready to proceed.”

Chair Taylor:

“OK, hold on just for s second.” (She moved the microphone closer to the speaker phone). “OK, we’re ready, Sir.”

Mr. Brady:

“OK, yes, the Petitioner, Ybor is not challenging the valuation of the property and the attorney for the Property Appraiser is correct, it is just a challenge as to the denial of the exemption for the property. As I look back as to what happened in the Legislature, if I may, it seems that the Legislature did not approve this legislation which deleted the exemption for limited partnership that have a 501(c)3 as its sole general partner. They didn’t approve that until April 29, 2013 and the Governor signed it on May 30, 2013 and the statute says, as Counsel indicated that it became effective July 1, 2013, but retroactive to January 1, 2013, which is the date on which the taxes for real estate is determined. As far as the structure of this entity, the statute in existence prior to the enactment did not matter whether the limited partnership was for profit or not for profit; what it had the exception for is any limited partnership where the sole general partner is a 501(c)3 organization and the property otherwise meets the criteria identified in Fla. Stat. § 420.004 and Internal Revenue Procedure, IRS Revenue Procedure 96.32 and the property did receive its exemption in prior years, particularly 2012. In the beginning of 2013, received a notice from the Property Appraiser as to whether the entity would like to renew its exemption, which they did, they sent in a one page document that was provided by the Property Appraiser’s office to renew the exemption on the same basis as it had received one in 2012. Now, the reason we are saying we think that this is unconstitutional and asking the Value Adjustment Board to make a determination that it is unconstitutional per say, but to overrule the Property Appraiser, based on that argument because the case law says that when a statute is applied retroactively, even when the legislature decides that it’s intentionally applying it retroactively, which is the case here, if the statute either impairs a vested right or creates new obligation, then it is unconstitutional and here, what happened is that property is bearing the new obligation that did not otherwise exist prior to the enactment of the two amendments to the Ad Valorem Tax Exemption 196.1978. This kind of thing applies whether it’s an existing cause of action that that someone might have that the legislature enacts to change what the elements are or change the amount of damages that one is entitled to receive as well as a tax that imposes new burden on the taxpayer that didn’t exist. We funded the case law on that point and trust the attorney for the Property Appraiser has reviewed that as she has indicated. Whether this entity is determined or not, I think what the Value Adjustment Board’s decision pertains is, who is going to be the Plaintiffs in Court on this, whether it is going to be the Property Appraiser or the Property Owner. But we are asking that the Value Adjustment Board overrule the Property Appraiser and grant the exemption at least for the percentage of the particular property that is occupied by people meeting the low and extreme low income requirements that are set forth in § 420.004 Fla. Stat.

and IRS Revenue Procedure 96.32 and the paperwork that we included with this Memorandum shows that it was a certification by the property owner as to the occupancy on January 1, 2013 meeting those criteria and it amounts to 84.375% with the exempt if the statute were not amended as it was in 2013, retroactive to that date. So, that is what we are asking the Value Adjustment Board to consider and I will turn the floor over to the next in order.”

Chair Taylor:

“Mr. Brady, you did indicate there was a Property Manager there. At this time she has no comments or are you ready to hear from the Attorney?”

Mr. Brady:

“I’ll let her answer.”

Lori Meader:

“Actually, I am the Property Management Record for the General Partner and Mr. Brady has said everything and we concur with what he has said.”

Chair Taylor:

“OK, alright. Thank you. Mr. Attorney, at this time, I think you mentioned, well, we need to discuss this particular process and one, one, we do have something that looks like a suit and unique to this Board, so if you could give us some directions.”

Mr. Munroe:

“I have read the brief and heard the arguments of the parties and I think it is a well-reasoned brief and while I may agree somewhat philosophically with the Petitioner’s position, as I explained to the Board when we first came to the first meeting here, we are a quasi-judicial body and what we are to do is to see if the Property Appraiser has followed the law in arriving at his appraisal. As I understand it, there is no challenge to the valuation, but only to the right to types as it is. I think this will have to go up on appeal and have the proper Court make the determination as to constitutionality or unconstitutionality and that is not our position to do so and if you are satisfied that the tax appraiser has followed the law and the law is retroactive to the first of the year and there is no challenge as to the valuation and it would be my recommendation to you that you would find the valuation proper.”

Chair Taylor:

“OK. Did everyone understand the interpretation from the attorney? Alright, then, I think at this particular time we hear from each of the members around the dais to get some weigh-ins and input and then we will come to a conclusion. I think that’s in order. We’ll start with you Ms. Peeler.”

Ms. Peeler:

“OK, well based on the evidence that was provided by the Property Appraiser, it appears that the law was followed, the statute was followed and it is specific as to the fact that it was retroactive, there is no discussion or question about the valuation, so I feel they have proven that they acted properly.”

Chair Taylor:

“Yes sir, state your full name again, I have to apologize. I’m not the best at names.”

Scott Watson:

“That’s OK, Scott Watson. I concur with Ms. Peeler’s statement that certainly it appears to me based on the evidence presented by Mr. Vanlandingham and Ms. Torres that they followed their obligation in abiding by the law and that is their obligation and I have no objection to their finding.”

Chair Taylor:

“Thank you, and now we hear from Commissioner Morgan.”

Gene Morgan:

“Thank you Commissioner Taylor. I do have a question for the Property Appraiser or someone here. Were there other properties that fell into this same situation here in the County? This is the only one?”

Mr. Vanlandingham:

“This is the only one in Gadsden County.”

Mr. Morgan:

“OK, thank you. I am in full agreement with the previous two Board members that it certainly looks as though the Appraiser’s Office has done their job the proper way and what they are supposed to do based on Statutes. I certainly agree with that. Thank you.”

Chair Taylor:

“Board Member Lewis.”

Audrey Lewis:

“Yes, Audrey Lewis. I too concur with the Property Appraiser’s adjustment and findings so I concur with the Board as well.”

Chair Taylor:

“Mr. Brady, here’s where we are at. Are you still there Sir?”

Mr. Brady:

“Yes I am.”

Chair Taylor:

“After hearing your argument, it certainly to me, sounds like something that needs to be taken to a higher appeal because this Board’s only responsibility is to know that whether or not the assessment was in order and according to the law, it is. You are saying that there is an apparent vestment rights. You also mention that there is a burden on the taxpayer. Those are all legal terms and I don’t think that is under our auspice to determine whether or not there is a burden and there is an impairment. Again, that is something for the Courts to handle and settle. We are only here to talk about the assessment and based on, and you concluded yourself that there is no question about the assessment amount, however, about the statute in applying it at this juncture. Again, as the attorney said, it’s a great argument and probably this is not the venue for it. So I would recommend that you seek other venues to hear this. However, at this time, it seems that the majority of the Board is willing to vote and to agree with the assessment that has been presented to us by the Property Appraiser. So at this time I call for a vote, unless you have a statement, Sir, or if you have one, Clay.”

Mr. Brady:

“Yes, just one point of clarification, then, what I have heard is that the Value Adjustment Board properly said it’s to follow the law, but I think that the law includes not only the statute, but it would have to interpret the statute and I will abide by whatever decision the Value Adjustment Board comes to and we will presume whatever we deem is necessary after that. Thank you very much.”

Chair Taylor:

“I want to thank you, Sir, for your patience and your due diligence, especially with the Board having to start thirty minutes late. We do apologize to you and again, the statute is clear and so are our responsibilities. I call for a motion.”

Commissioner Morgan:

“Madam Chair, I will move approval to support the current assessment by the Property Appraiser’s Office.”

Chair Taylor:

“There is a motion.”

Mr. Watson:

“I second the motion.”

Chair Taylor:

“There is a motion and a second. All in favor of this motion please let it be known by saying ‘aye’.”

Everyone said aye.

Gadsden County Value Adjustment Board
October 21, 2013

Chair Taylor

“Opposed same sign. Motion carries. I want to thank everybody for coming. This meeting is adjourned.”

Mr. Brady:

“Thank you. One quick thing, will we get a written verification of that?”

Mr. Munroe:

“Yes.”

ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE BOARD, CHAIR TAYLOR DECLARED THE MEETING ADJOURNED AT 3:19 P.M.

SHERRIE TAYLOR, Chair
Gadsden County Value Adjustment Board

ATTEST:

Marcella Blocker, VAB Clerk