

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

SHELL POINT MARINA, LLC,  
a Florida limited liability company,

Plaintiff,

18-CA-9531

Case No.: \_\_\_\_\_

v.

Division: \_\_\_\_\_

BOB HENRIQUEZ, AS PROPERTY  
APPRAISER OF HILLSBOROUGH  
COUNTY, FLORIDA; DOUG BELDON,  
AS TAX COLLECTOR OF  
HILLSBOROUGH COUNTY, FLORIDA;  
and LEON M. BIEGALSKI, AS THE  
EXECUTIVE DIRECTOR OF THE  
DEPARTMENT OF REVENUE FOR THE  
STATE OF FLORIDA,

Defendants.

\_\_\_\_\_ /

**COMPLAINT**

Plaintiff, SHELL POINT MARINA, LLC, sues Defendants, BOB HENRIQUEZ, as property appraiser of Hillsborough County, Florida; DOUG BELDON, as tax collector of Hillsborough County, Florida; and LEON M. BIEGALSKI, as the executive director of the Department of Revenue for the State of Florida, and alleges:

1. This is an action filed pursuant to section 197.182(1)(m), *Florida Statutes*, challenging the denial of a tax refund application filed by Plaintiff requesting a refund for Taxpayer's overpayment of ad valorem taxes for the tax years 2010-2013, regarding certain real property identified by the Property Appraiser as Parcel No. 031923.0000 (the "Property").

2. Pursuant to section 194.171(1), *Florida Statutes*, this Court has original jurisdiction of all matters related to property taxation. The venue is proper for this action.

3. Defendant, BOB HENRIQUEZ, is the duly elected Property Appraiser of Hillsborough County, Florida (Property Appraiser”). The Property Appraiser is named as a party in accordance with Section 194.181(2), *Florida Statutes*.

4. Defendant, DOUG BELDON, is the duly elected Tax Collector for Hillsborough County, Florida (“Tax Collector”). The Tax Collector is named as a party in accordance with Section 194.181(3), *Florida Statutes*.

5. Defendant, LEON M. BIEGALSKI, is the Executive Director of the Department of Revenue for the State of Florida (“Department of Revenue”). The Department of Revenue is named as a party in accordance with Section 194.181(5), *Florida Statutes*.

6. Plaintiff, SHELL POINT MARINA, LLC (“Taxpayer”) is a Florida limited liability company authorized to conduct business in Hillsborough County, Florida. At all material times, the Property owned by Taxpayer has been an operating marina, also known as a working waterfront property.

7. On January 1, 2010, and for all times thereafter, Taxpayer was the record owner of the Property.

8. The Property Appraiser erroneously assessed the Property at a value of \$2,546,239, for tax year 2010; \$2,435,979 for tax year 2011; \$2,459,504 for tax year 2012; and \$2,465,726 for tax year 2013. These assessed values were erroneous because the Property Appraiser, through oversight, mistakenly failed to classify and assess the Property as a marina, a working waterfront property. This error was admittedly not an error of judgment.

9. Taxpayer has paid the ad valorem taxes for tax years 2010-2013, which are the subject of this action, at the erroneously assessed values for those years. Attached as composite Exhibit “A” is a copy of the proof of payment and receipt of the ad valorem taxes paid by Taxpayer for the tax years 2010-2013 at the erroneously assessed valuations.

10. Article 7, section 4 of the *Florida Constitution* was amended effective for the tax year 2010 providing for favorable tax treatment to working waterfront properties, such as the Property. Art. 7, section 4(j)(1), *Florida Constitution*. Commencing with the year 2010, the Tax Appraiser was required by the Florida Constitution to assess Plaintiff's Property as a working waterfront property (e.g., marina) and assess the value of the Property based on that classification as opposed to any other classification.

11. In September 2014, Plaintiff brought to the attention of the Property Appraiser the Property Appraiser's error in failing to classify Plaintiff's Property in accordance with the Florida Constitution, and initiated communication with the Property Appraiser to set a meeting with the Property Appraiser to discuss the error.

12. In Taxpayer's meeting with the Property Appraiser, the Property Appraiser admitted its error in the classification and assessment of the Property, and represented to Taxpayer that the Property Appraiser would correct the error for 2014 and for the previous tax years 2010-2013, and initiate the processing of a refund to Taxpayer of its overpayment of ad valorem taxes for those prior years.

13. Taxpayer relied on these representations and was misled and lulled into inaction believing that the assessment for years 2010-2013 would be correctly adjusted and a refund would be processed and delivered to Plaintiff.

14. Taxpayer's accounting department is located in Minnesota. The operating officer of Taxpayer is Jason Barth, who, at all material times, has lived in Hillsborough County, Florida. Jason Barth does not regularly communicate with the accounting department regarding receipts of refunds for Taxpayer. During much of the time between 2014 and 2018, Jason Barth was fighting a serious illness which incapacitated him from his regular duties. In the spring of 2018, Jason Barth became interested in making capital improvements to the marina and approached

Taxpayer's accounting department to inquire about the money from the promised tax refund in order to make these capital expenditures for the marina. At that time, Mr. Barth first became aware that the refund for the prior years 2010-2013, which the Property Appraiser represented would be provided to Taxpayer, was not, in fact, provided and that the Defendants had failed to make the correction of the error in the assessed values for the prior years and provide the promised refund for the overpayments.

15. Upon learning of this, with the assistance of the Property Appraiser, Taxpayer filed an application for the tax refund for the years 2010-2013. A true and accurate copy of the application filed by Taxpayer is attached hereto as Exhibit "B" and is incorporated herein by reference.

16. In the application, the Property Appraiser admitted its error regarding the classification and assessments of the Property and the submission to the Department of Revenue of a correction and refund.

17. The amount of the refund that should have been processed and delivered to Taxpayer and for which Taxpayer's is entitled is \$76,105.38, together with interest.

18. The Department of Revenue, however, rejected the application for tax refund stating, as its sole basis, that the application was untimely. On August 7, 2018, the Tax Collector notified Taxpayer of this denial.

19. Taxpayer had been misled and lulled into inaction, and relied to its detriment on the representations made by the Property Appraiser in 2014 that the classification and assessed value would be corrected and that a refund would be provided for the overpayments for the years 2010-2013.

20. The Department of Revenue's decision has the effect of failing to correct an overpayment of taxes by Taxpayer for the Property, an error admitted by the Property Appraiser, all to Taxpayer's detriment.

21. All conditions precedent to bringing this action have been performed, have occurred or have been waived.

WHEREFORE, Taxpayer respectfully requests this Court to enter final judgment:

- (a) Overturning the decision of the Department of Revenue in the denial of Plaintiff's application for tax refund and directing the Department of Revenue to approve the Taxpayer's application for tax refund;
- (b) Determining that Plaintiff is entitled to a refund in the amount of \$76,105.38, together with interest, for Taxpayer's overpayment of ad valorem taxes for the Property;
- (c) Directing the Tax Collector to pay the Taxpayer the amount of the refund set forth above; and
- (d) Granting such other and further relief as the Court deems proper.

Dated: September 28, 2018.

  
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