

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 19-35066 CA (11)

FPT FLORIDA LAND, LLC,

Plaintiff,

vs.

PEDRO J. GARCIA, as MIAMI-DADE
COUNTY PROPERTY APPRAISER,
PETER CAM, as MIAMI-DADE
COUNTY TAX COLLECTOR, and
JIMZINGALE, as EXECUTIVE
DIRECTOR of the FLORIDA
DEPARTMENT OF REVENUE,

AMENDED COMPLAINT

Defendants.

_____/

Plaintiff, FPT FLORIDA LAND, LLC (“Taxpayer”), sues Defendants, **(i)** PEDRO J. GARCIA, as Property Appraiser of Miami-Dade County, Florida (“Appraiser”); **(ii)** PETER CAM, as Tax Collector of Miami-Dade County, Florida (“Tax Collector”); and **(iii)** JIM ZINGALE, as Executive Director of the Department of Revenue of the State of Florida (the “Department”) (collectively, “Defendants”); and says:

PARTIES, VENUE, AND JURISDICTION

1. This is an action for statutory relief. This Court has original and exclusive jurisdiction pursuant to *Fla. Stat.* §§ 194.036 and 194.171. Venue is proper in Miami-Dade County as the subject property as described below, and the Appraiser are located in Miami-Dade County, Florida.

2. Taxpayer is a Michigan limited liability company, which is registered and conducts business in the State of Florida.

3. Appraiser is the duly-elected Appraiser of Miami-Dade County, Florida, and is obligated to discharge the duties of said office. Appraiser is named as a party in accordance with *Fla. Stat. § 194.181(2)*.

4. Tax Collector is the duly-appointed Tax Collector of Miami-Dade County, Florida, and is obligated to discharge the duties of said office. Tax Collector is named as a party in accordance with *Fla. Stat. § 194.181(3)*.

5. Department is named as a defendant to this action as mandated by *Fla. Stat. § 194.181(5)* because the tax assessment and classification are contested on the grounds that they are contrary to the laws and Constitution of the State of Florida.

**THE “WORKING WATERFRONT”
AD VALOREM TAXATION CLASSIFICATION**

6. Article VII, section 4 of the Florida Constitution was amended, effective for the tax year 2010, to provide favorable tax treatment to working waterfront properties that possesses certain enumerated characteristics.

7. Article VII, section 4(j)(1) of the Florida Constitution states, in pertinent part:

The assessment of the following working waterfront properties shall be based upon the current use of the property:

- a. Land used predominantly for commercial fishing purposes.
- b. Land that is accessible to the public and used for vessel launches into waters that are navigable.
- c. Marinas and drystacks that are open to the public.

- d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

8. This amendment was implemented in response to development interests buying traditional working waterfronts and converting the property to private and residential use, which had the adverse effects of increasing the value of nearby working waterfront property and increasing the property taxes on nearby working waterfront property. This, in turn, caused working waterfronts to be less profitable, thereby compounding the pressure to convert the property to a higher-valued use.

9. Accordingly, the entitlement to this Constitutional classification expressly states that it is predicated on the property's "current use," rather than its "highest and best use." This Constitutional language was adopted to prevent working waterfront properties from being assessed or taxed like luxury, waterfront condominiums.

**THE USE OF THE SUBJECT, COMMERCIAL WATERFRONT
PROPERTY DURING THE LAST TWO DECADES**

10. The subject property is located at 3700 N.W. N. River Drive, Miami, Florida 33142-4931 and is assessed, for ad valorem taxation purposes, via folio number 30-3128-014-2420 (the "Property").

11. The 6.25 acre Property abuts the Miami River.

12. Taxpayer has been the owner of, and party responsible for, payment of taxes for the Property since July 26, 1999, pursuant to the Warranty Deed recorded in the Miami-Dade County Public Records at Official Book 18714, Page 3062.

13. Since Taxpayer's acquisition of the Property in 1999, Taxpayer has operated a metal scrap facility on the Property, which is a water-dependent marine manufacturing facility.

14. There is a dock on the Property.
15. In order to operate Taxpayer's business on the Property, Taxpayer procured a Marine Facilities Operating Permit, which remains current.
16. In connection with Taxpayer's application for the Marine Facilities Operating Permit, the United States Coast Guard inspected and approved Taxpayer's Property and its commercial operations thereon.
17. A portion of the materials necessary to operate the metal scrap facility are delivered to the Property by sea vessels coming from the Bahamas.
18. Taxpayer is currently in talks with potential new customers, which would result in increased barge traffic along the Miami River to the Property.

**THE SUBJECT PROPERTY HELD THE WORKING
WATERFRONT CLASSIFICATION FROM 2010-2018**

19. Ever since the Florida Constitution was amended to create the working waterfront classification, Appraiser has classified and assessed the Property as a working waterfront property and assessed the value of the Property based on that classification.
20. Specifically, Appraiser classified and assessed the Property as a working waterfront property during the 2010 tax year.
21. Specifically, Appraiser classified and assessed the Property as a working waterfront property during the 2011 tax year.
22. Specifically, Appraiser classified and assessed the Property as a working waterfront property during the 2012 tax year.
23. Specifically, Appraiser classified and assessed the Property as a working waterfront property during the 2013 tax year.

24. Specifically, Appraiser classified and assessed the Property as a working waterfront property during the 2014 tax year.

25. Specifically, Appraiser classified and assessed the Property as a working waterfront property during the 2015 tax year.

26. Specifically, Appraiser classified and assessed the Property as a working waterfront property during the 2016 tax year.

27. Specifically, Appraiser classified and assessed the Property as a working waterfront property during the 2017 tax year.

28. Specifically, Appraiser classified and assessed the Property as a working waterfront property during the 2018 tax year.

29. As a result of the application of the working waterfront classification in 2018, the Appraiser's assessed value of the Property for the 2018 tax year was \$5,863,774.00.

**THE SUBJECT PROPERTY WAS DEPRIVED OF THE
WORKING WATERFRONT CLASSIFICATION FOR 2019**

30. After classifying the Property as working waterfront pursuant to article VII, section 4(j), Florida Constitution, for the 2010-2018 tax years, the Appraiser reclassified and rescinded the working waterfront classification of the Property for the 2019 tax year.

31. The location of the Property did not change between 2018 and January 1, 2019.

32. The use of the Property did not change between 2018 and January 1, 2019.

33. The size of the Property did not change between 2018 and January 1, 2019.

34. The identity of the owner of the Property did not change between 2018 and January 1, 2019.

35. As a result of the Appraiser's subsequent arbitrary and unlawful revocation of the working waterfront classification in 2019, the Appraiser's assessed value of the Property for the 2019 tax year was \$15,403,810.00.

36. This is an almost \$10 million increase from the prior year.

37. Appraiser did not provide Taxpayer any notice before denying or disapproving the Property's working waterfront classification for the 2019 tax year.

38. The failure to issue a notice of disapproval or reclassification deprived the Taxpayer of procedural due process and abridged the Taxpayer's constitutional property rights, in the form of entitlement to working waterfront classification, without notice and without hearing.

39. Appraiser certified the 2019 assessment of the Property. Such assessment exceeds the Property's just value, and fails to classify the Property as working waterfront, in violation of Florida Statutes, including *Fla. Stat.* § 193.011, and in violation of article VII, section 4(j) of the Florida Constitution.

40. Appraiser's assessment of the Property is arbitrarily based on appraisal practices which are not professionally accepted appraisal practices nor acceptable mass appraisal standards within Miami-Dade County.

41. Property Appraiser's failure to properly consider the factors set forth in *Fla. Stat.* § 193.011 and all other Florida statutes related thereto renders the preliminary tax assessments of the Improvements inaccurate, illegal, arbitrary and violative of established requirements of law in determining just valuation of real property for *ad valorem* taxation purposes.

**TAXPAYER HAS BEEN SUBSTANTIALLY DAMAGED BY
APPRAISER'S ARBITRARY AND UNLAWFUL REVOCATION OF
THE WORKING WATERFRONT CLASSIFICATION FOR 2019**

42. Taxpayer has paid the taxes on the Property as required under *Fla. Stat. §* 194.171(3) and (4). Evidence of said payment is attached hereto and incorporated by reference as **Exhibit "A."**

43. Taxpayer will be irreparably damaged if Defendants are permitted to keep the collection of the full tax based on the Appraiser's inaccurate assessment of the Property.

44. Taxpayer has complied with all conditions precedent to the maintenance of this lawsuit, and has timely brought this action.

45. Defendants are liable for payment of all taxable costs pursuant to *Fla. Stat. §* 194.192(1).

**COUNT I
IMPROPER DEPRIVATION OF WORKING WATERFRONT
AD VALOREM TAX CLASSIFICATION AND
OVERASSESSMENT OF PROPERTY**

46. Taxpayer repeats paragraphs 1-45.

WHEREFORE, Taxpayer demands judgment against the Defendants as follows:

- A. reinstating the working waterfront classification on the Property for the 2019 tax year;
- B. establishing the working waterfront classified value of the Property and directing such adjustment between the parties as may be necessary in connection therewith or directing the Appraiser to reassess the Property for the 2019 tax year in compliance with Florida constitutional and statutory law;

- C. recalculating the taxes that should have been paid based on an assessment equal to the Property's working waterfront classified value, and ordering a refund to the Taxpayer of the excess amounts paid;
- D. awarding costs in favor of Taxpayer pursuant to *Fla. Stat.* § 194.192; and
- E. granting such other and further relief to the Taxpayer as this Court deems just and proper.

COUNT II
OVERASSESSMENT OF PROPERTY
(IN THE ALTERNATIVE)

47. Taxpayer repeats paragraphs 1-5, 10-18, 31-36, and 39-45.

WHEREFORE, Taxpayer demands judgment against the Defendants as follows:

- A. establishing the just value of the Property and directing such adjustment between the parties as may be necessary in connection therewith or directing the Appraiser to reassess the Property for the 2019 tax year in compliance with Florida constitutional and statutory law;
- B. recalculating the taxes that should have been paid based on an assessment equal to the Property's just value and ordering a refund to the Taxpayer of the excess amounts paid;
- C. awarding costs in favor of Taxpayer pursuant to *Fla. Stat.* § 194.192; and
- D. granting such other and further relief to the Taxpayer as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February 2020 a true and correct copy of the above and foregoing was given to a process server for service upon each of the defendants.

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