

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA
CIVIL DIVISION

MARK ARON MILLER;
LESLEY ANNE HOPKINS.
Plaintiffs,

Case No.: 2024 13869 CIDL

Vs.
LARRY BARTLETT, as Property Appraiser;
WILL ROBERTS, as Tax Collector and
JIM ZINGALE as Executive Director
Of the Florida Department of Revenue,

Division: 01

Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT

COME NOW, Plaintiffs, MARK ARON MILLER and LESLEY ANNE HOPKINS, sue Defendants, LARRY BARTLETT as Property Appraiser of Volusia County ("Property Appraiser"), WILL ROBERTS as Tax Collector of Volusia County ("Tax Collector") and JIM ZINGALE ("Zingale"), as the Executive Director of the Florida Department of Revenue ("DOR"), and in support thereof states and alleges as follows:

General Allegations

1. This is an action for statutory relief. The Court has subject matter jurisdiction over this action pursuant to Section 194.171 Florida Statutes and Article V, sections 5 and 20 of the Constitution of the State of Florida.

2. This is an action to contest ad valorem tax assessments and the proper land use classification for the tax year 2024. The venue is proper in Volusia County as the Subject Property, as described below, and the Property Appraiser is in Volusia County, Florida.
3. The Defendant, Property Appraiser, is the duly elected Property Appraiser of Volusia County, Florida, and is obligated to discharge the duties of said office and is sued herein in his official capacity and is necessary party to the action pursuant to section 194.181(2) Florida Statutes.
4. The Defendant, Tax Collector, is the duly elected and acting Tax Collector for Volusia County, Florida, and is obligated to discharge the duties of said office and is sued herein his official capacity and is necessary party to the action pursuant to section 194.181(3), Florida Statutes.
5. The Defendant, Zingale, is sued in his official capacity as Executive Director of the Florida Department of Revenue and is necessary party to this action pursuant to section 194.181(5), Florida Statutes, because the tax assessment is also being contested on the grounds that it is contrary to the laws and Constitution of the State of Florida.
6. Plaintiffs have performed all conditions precedent which are required to be performed by Plaintiffs in establishing their rights to bring this action. Specifically, this action has been filed within the time period by section 194.171(2) Florida Statutes.
7. Prior to the filing of this lawsuit, without admitting that the ad valorem tax assessment against the Subjects Property is correct, the Plaintiffs have paid the taxes which have been assessed for the Subject Property in full, pursuant to section 194.171(3)(4), Florida Statutes. A copy of the receipt is attached hereto as Plaintiff's Exhibit "A".

COUNT 1: ACTION CONTESTING 2024 AD VALOREM TAX
ASSESSMENT AND JUST VALUATION OF REAL PROPERTY

The General Factual allegations contained in Paragraphs 1-7 are hereby incorporated as if specifically set forth in full and re-alleged herein.

8. Plaintiffs own the property identified as Parcel No. 810300000090, located in Volusia County, Florida (the "Subject Property").
9. On August 20, 2024, the Plaintiffs sent an affidavit of truth via email to the Property Appraiser's counsel, Michael D. Tempkins, and a certified mail copy, affirming under oath and penalty of perjury the intended purpose of the metal farm building. The affidavit included detailed plans outlining its construction and use.
10. Despite having full knowledge, (through a sworn affidavit), of the Plaintiffs intended purpose for constructing the metal farm building and lacking any evidence to support a claim that the structure was substantially completed as of January 1, 2024, the Property Appraiser breached his duty by certifying an improper assessment of \$75,262, in clear violation of Florida Statute 192.042.
11. Florida Statute 192.042 **Date of assessment.**—All property shall be assessed according to its just value as follows:
 - (1) Real property, on January 1 of each year. Improvements or portions not substantially completed on January 1 shall have no value placed thereon. "Substantially completed" shall mean that the improvement or some self-sufficient unit within it can be used for the purpose for which it was constructed.

(2) Tangible personal property, on January 1, except construction work in progress shall have no value placed thereon until substantially completed as defined in s. 192.001(11)(d)

12. The Plaintiffs metal farm building was not substantially complete as of January 1, 2024, and could not be used for the purpose in which the Plaintiffs are constructing it for.

13. On October 4, 2024, the Property Appraiser certified the tax assessment of the Subject Property as follows:

Land Value: \$277,200

Just/Market Value: \$277,200

Miscellaneous Improvement: \$75,262

Agricultural Savings: \$245,464

Total Assessed Value: \$106,998

14. The DR-403 form, signed by the Property Appraiser on October 4, 2024, attested that all value figures submitted were accurate to the best of the Property Appraiser's knowledge.

15. On October 7, 2024, the Plaintiffs challenged the assessment of their metal farm building before a special magistrate of the Value Adjustment Board (VAB), Petition #2024-0067.

16. The challenge was based on the Property Appraiser's failure of duty to follow Florida Statute 192.042, which mandates that real property must be assessed as of January 1 of each tax year, and that improvements not "substantially completed" as of that date shall have no value placed on them.

17. The Property Appraiser breached this statutory duty by assessing a non-substantially completed metal farm building at \$75,262 in violation of Florida Statutes 192.042(1).

18. The Property Appraiser submitted documents to the Special Magistrate comparing the Plaintiffs' agricultural metal farm building to a finished, non-agricultural metal building with offices and a bathroom in an attempt to justify the \$75,262 tax assessment.
19. The Property Appraiser lacks firsthand knowledge of the actual condition of the Plaintiffs' building, rendering the comparison misleading and improper.
20. The Property Appraiser assessed the Plaintiffs metal farm building with a unit rate of Grade D.
21. On October 7, 2024, during the Special Magistrate hearing of Petition 2024-0067 to determine whether the Plaintiffs metal farm building was substantially completed under Florida Statute 192.042, the Property Appraiser, under oath, testified to the Special Magistrate, stating that the building was being assessed solely as a "shell" structure.
22. This testimony directly contradicted both the Property Appraiser's prior statements regarding the assessment of the Plaintiffs metal farm building and the documentary evidence submitted in support of the 2024 tax assessment of the Subject Property submitted in Petition 2024-0069.
23. The Property Appraiser assessed the Plaintiffs metal farm building at \$75,262 based on extraordinary assumptions and hypotheticals rather than its actual and factual condition.
24. The Property Appraiser testified in submitted documents to the Special Magistrate that no extraordinary assumptions, or limitations or hypotheticals were placed on the assessment of the Plaintiffs Subject Property outside those imposed by Florida Ad Valorem Tax Law.

25. The Property Appraiser testified in submitted documents to the Special Magistrate and Value Adjustment Board that the Subject Property had been physically inspected by a deputy appraiser.
26. Despite testifying under oath that the structure was merely a "shell," the Property Appraiser also assigned it a Grade D assessment and compared it to a fully completed building with bathrooms, a kitchen, and finished rooms.
27. This contradiction reflects a deliberate misrepresentation that unlawfully inflated the Plaintiffs tax assessment.
28. The Property Appraiser cannot simultaneously classify the structure as a "shell" while assigning it a Grade D assessment, which requires interior or superior improvements. This contradiction underscores the inconsistency and inaccuracy of the assessment.
29. On October 22, 2024, the Special Magistrate of Volusia County issued a ruling in favor of the Plaintiffs and against the Property Appraiser that the building should have no assessed value under Florida Statute 192.042(1).
30. On October 24, 2024, Kris Hoffmann, an Appraisal Director for Volusia County Property Appraiser, emailed the Plaintiffs stating that the Property Appraiser agreed to remove the assessment.
31. During the course of research, and after the deadline to provide evidence to the special magistrate, the Plaintiffs discovered that the Property Appraiser had also erroneously classified 17.6 acres of the Subject Property under Land Use Code 6901 – Ornamental Nursery.
32. The Plaintiffs never informed the Property Appraiser that they were using 17.6 acres for commercially selling ornamental nursery plants or using the property as a nursery.

33. The Plaintiffs demand that the Property Appraiser provide this Court with an aerial image of the 39.6 acre of the Subject Property, specifically identifying the 17.6 acres allegedly being used as a commercial nursery, along with proof and firsthand knowledge of supporting this absurd claim.
34. The Plaintiffs only use the land for agricultural purposes under Florida Statute 193.461, specifically as a goat farm and fish farm.
35. Under Florida law, the proper land use classification for the 17.6 acres of the Subject Property, which the Property Appraiser arbitrarily classified as a nursery without any proof, firsthand knowledge, or factual basis, can only fall under one of the following categories:

Land Use Code 9600 – Waste Land (\$500.00 an acre)

Land Use Code 9500 – Submerged Land (\$500.00 an acre)

Land Use Code 6700 – Agricultural Fish Farming (\$535.00 an acre)

Land Use Code 6800- Feed Lot (\$535.00 an acre).

36. The Property Appraiser arbitrarily assigned Land Use Code 6901 , Ornamental/Nursery, to 17.6 acres of the Plaintiffs Subject Property without any supporting evidence. This improper classification resulted in an assessment of \$1,135.00 per acre.
37. The Department of Revenue (DOR) defines Land Use Code 6901 as a nursery operation with "miscellaneous improvements".
38. The Plaintiffs do not have any miscellaneous improvements on the Subject Property as ruled upon by the special magistrate and the Property Appraiser agreeing with the findings, nor are the Plaintiffs commercially selling nursery plants.

39. The Property Appraiser has no proof in his claim that the Plaintiffs were using 17.6 acres of the Subject property to commercially sell ornamental nursery plants for the tax year 2024.
40. This further raises serious concerns of fraudulent intent, as the Property Appraiser has no proof to support his claim and instead relies on speculation and baseless assumptions to determine how the Plaintiffs are using 17.6 acres of their land. Rather than relying on verifiable facts, the Property Appraiser has knowingly fabricated an unsupported narrative, resulting in an improper and unlawful assessment.
41. Reclassifying the 17.6 acres under Land Use Code 6700 would reduce the assessed value to \$9,416, rather than the erroneous \$19,976 that the Property Appraiser classified as Land Use Code 6901.
42. Reclassifying the 17.6 acres under land code 9600 or 9500 would reduce the assessed value to \$8,800, rather than the erroneous \$19,976 that the Property Appraiser classified as Land Use Code 6901.
43. The Plaintiffs for the year 2024 have a certificate of registration to commercially sell fish by the Florida Department of Aquaculture that comes out twice a year to ensure compliance with the best management practices per the Florida Policy Act.
44. Without this Certification, the Plaintiffs would not legally be able to commercially sell fish on the Subject Property or in the State of Florida.
45. The Best Management Practices for Aquaculture, specifically for a fish farm, require the Plaintiffs to maintain compliance with proper buffers, fencing, vegetation, drainage, and runoff protocols across the entire Subject Property.

46. Operating a commercial fish farm in Volusia County requires the Subject Property to have a setback landscaping buffer of 50 feet consisting of Canopy trees, mid story trees and understory trees and shrubs continuously around the perimeter of the Subject Property line.
47. Florida House Bill 7063, passed during the 2023 Florida Legislative Session, amended Section 125.01, Florida Statutes (F.S.), providing that as of July 1, 2023, special assessments are prohibited on lands classified as agricultural.
48. A special assessment (Volusia County Stormwater), in the amount of \$31.03 was levied against the Subject Property that is agricultural land in violation of 125.01(1) (r) 1.
49. The Florida Constitution explicitly states: “No tax shall be levied except in pursuance of law.” – Article VII, Section 1(a), Florida State Constitution.
50. The Property Appraiser’s incorrect classification and unlawful assessment violate this constitutional provision by levying taxes more than what is legally permitted.
51. The Property Appraiser’s actions have resulted in an overassessment of the Subject Property, creating an undue financial burden in direct violation of the Florida Constitution and the Property Appraiser’s duty.
52. The Plaintiffs suspect that the Property Appraiser may have engaged in unauthorized aerial surveillance in the form of aerial trespassing of the Subject Property and intend to determine the validity of this claim through the discovery process.
53. Upon information and belief, the Property Appraiser may have conducted unauthorized aerial surveillance of the Subject Property without the Plaintiffs consent resulting in aerial trespassing.

54. Plaintiffs have reason to suspect that the Property Appraiser's assessment and classification of the Subject Property may have been based, in part or in whole, on improperly obtained aerial imagery or surveillance rather than lawful means of assessment.
55. If discovery establishes that the Property Appraiser conducted unauthorized aerial surveillance, Plaintiffs will seek appropriate relief, including but not limited to injunctive relief, suppression of any unlawfully obtained information, and any other remedies this Court deems just and proper.
56. The Property Appraiser owed a legal duty to Plaintiffs to assess the Subject Property accurately and in compliance with Florida law when he swore his oath of office.
57. The Property Appraiser breached his duty by:
- (A.) Assigning a Grade D assessment to the Plaintiffs metal farm building, despite claiming under oath that it was merely a "shell", and despite having any evidence that the building was substantially completed in which it was being built for.
 - (B.) Relying on unsubstantiated extraordinary assumptions about the metal farm building's condition, without factual support.
 - (C.) Incorrectly classifying 17.6 acres of the Subject Property under Land Use Code 6901 – Ornamental Nursery, despite no proof of such use.
 - (D.) Despite having full knowledge of the Plaintiffs' affidavit, which clearly states the intended purpose of the metal farm building and lacking any evidence to rebut this claim or prove the building's completion, the Property Appraiser improperly assigned it a value in direct violation of Florida Statute 192.042, which explicitly prohibits such assessments.

58. The Property Appraiser's negligence resulted in an inflated and improper tax assessment, causing financial harm to Plaintiffs.

59. If discovery establishes that the Property Appraiser's actions were willful, intentional, or fraudulent, Plaintiffs reserve the right to seek additional relief, including punitive damages or any other relief outlined in Florida Statute 768.28.

60. Plaintiffs will be irreparably damaged if the Property Appraiser's assessment remains.

WHEREFORE, Plaintiffs demand that this Court take jurisdiction over this cause and the parties hereto; and demand judgement against the Defendants as follows:

- a. Declare that the 2024 tax assessment of the Subject Property was improper and unlawful;
- b. Determine the appropriate classification of the 17.6 acres that the Property Appraiser has classified erroneously as an Ornamental Nursery;
- c. Correct the land use classification of the 17.6 acres in accordance with Florida Statute 193.461 and the DOR Land Use Codes as well as complies with the Florida State Constitution;
- d. Ensure that no special assessments are levied against the Subject Property in violation of Florida Statute 125.01(1)(r)(1);
- e. Recalculate the tax liability based on the correct classification;
- f. Order the Tax Collector to issue a refund for any overpaid taxes pursuant to Florida Statute 197.182;
- g. Award Plaintiffs its costs incurred in bringing this action pursuant to section 194.192, Florida Statutes;
- h. Grant such further relief as this Court deems just and equitable.

RESPECTFULLY SUBMITTED,

By: /s/ Mark Aron Miller
Mark Aron Miller
Plaintiff, Pro Se
Farmermarkum@gmail.com
816-898-8265

By: /s/Lesley Anne Hopkins
Lesley Anne Hopkins
Plaintiff, Pro Se
lesley@aqualilyfarms.com
619-381-3951