

IN THE CIRCUIT COURT OF THE EIGHTH
JUDICIAL CIRCUIT IN AND FOR ALACHUA
COUNTY, FLORIDA

CASE NO. 2025-CA-001040

NW FIFTH AVENUE PROPERTY LLC,

Plaintiff,

vs.

AYESHA SOLOMON, as the Property
Appraiser of Alachua County, Florida; JOHN
POWER, as the Tax Collector of Alachua
County, Florida; and JIM ZINGALE, as the
Executive Director of the Florida Department of
Revenue,

Defendants.

COMPLAINT

COMES NOW Plaintiff, NW FIFTH AVENUE PROPERTY LLC, and sues the Defendants, AYESHA SOLOMON, as the Property Appraiser of Alachua County, Florida, JOHN POWER, as the Tax Collector of Alachua County, Florida, and JIM ZINGALE, as the Executive Director of the Florida Department of Revenue, and, as its cause of action, would state as follows:

1. The Plaintiff, NW FIFTH AVENUE PROPERTY LLC, (hereinafter "Plaintiff"), owns real property located in Alachua County, Florida, consisting of a student housing project located at 1210 NW 5th, Gainesville, Florida 32608, commonly known as Theory Gainesville, the denial of the "Live Local" property tax exemption under section 196.1978(3), Florida Statutes,

on which property and its subsequent effect on ad valorem taxes is the subject matter of this action. This exemption is also commonly known as the "Multifamily Middle Market" exemption.

2. The parcel is more fully described in the records of the Property Appraiser and Tax Collector under the following Parcel Identification Number ("the Subject Property"): 13913-004-000.

3. The Defendant, AYESHA SOLOMON is the Property Appraiser of Alachua County, Florida (hereinafter the "Property Appraiser"), and is sued herein in her official capacity, and not individually.

4. The Defendant, JOHN POWER, is the Tax Collector of Alachua County, Florida (hereinafter the "Tax Collector"), and is sued herein in his official capacity, and not individually.

5. The Defendant, JIM ZINGALE, is the Executive Director of the Florida Department of Revenue (hereinafter the "DOR"), and is sued herein in his official capacity, and not individually.

6. This Court has jurisdiction of this matter pursuant to Section 194.171(1) of the Florida Statutes.

7. Venue for this action lies in Alachua County, Florida pursuant to Section 194.171(1) of the Florida Statutes.

8. Plaintiff is now, and was on January 1, 2024, responsible for the property taxes on the Subject Property located in Alachua County, the legal description of which is contained in the Property Appraiser's records as listed in Paragraph 2, above.

9. The Alachua County Value Adjustment Board issued its Final Decision on the denial of the "Live Local" property tax exemption under section 196.1978, Florida Statutes, on

the Subject Property on February 7, 2025. The final decision was also mailed on February 7, 2025.

10. This is an action by Plaintiff contesting the legality and validity of the Property Appraiser's failure to grant the appropriate ad valorem tax exemption under Chapter 196.1978 of the Florida Statutes for tax year 2024.

11. At all times material to this cause of action, the Property Appraiser was responsible for properly determining the right to an ad valorem tax exemption, whether partial or in whole, on Plaintiff's property in accordance with Florida law.

12. The Tax Collector has the statutory duty to collect the taxes resulting from the assessment of the Subject Property. The Tax Collector is joined as a nominal party defendant for the purpose of providing timely notice of this action and to provide this Court with jurisdiction over the Tax Collector to direct a refund of taxes paid upon granting of the relief requested herein.

13. The DOR is joined as a party defendant pursuant to Section 194.181 of the Florida Statutes.

14. This is an action by Plaintiff contesting the legality and validity of the 2024 ad valorem taxation exemption denial on the aforesaid tax parcel.

15. As of January 1, 2024, a portion of the Subject Property was providing affordable housing as defined in section 196.1978(3), Florida Statutes, and is therefore considered property used for a charitable purpose and eligible to receive an ad valorem property tax exemption under 196.1978(3), Florida Statutes.

16. The Property Appraiser failed to properly or lawfully consider Section 196.1978, Florida Statutes, in making her determination as to the partial ad valorem property tax exemption on the Subject Property based on the affordable housing/charitable purpose.

17. The Subject Property has and continues to serve an important function of the affordable housing system in Florida and that portion of the property is entitled to exemption from ad valorem taxation.

18. The “Live Local” or “Multifamily Middle Market” exemption was provided for by the Florida Legislature via revisions to section 196.1978, Florida Statutes, and makes housing properties that meet certain criteria eligible for an ad valorem property tax exemption beginning in tax year 2024.

19. Plaintiff and the Subject Property met all the criteria identified in section 196.1978(3), Florida Statutes, and therefore should have received a partial ad valorem property tax exemption on the Subject Property for tax year 2024. Those criteria include:

- a. The Subject Property is “newly constructed,” as it has been substantially completed within 5 years before the date of Plaintiff’s first submission of a request for a certification notice from Florida Housing Finance Corporation (“FHFC”);
- b. The Subject Property provides more than 70 units of affordable housing based on income and rent rate limitations as provided for by section 196.1978, Florida Statutes;
- c. Plaintiff applied for a certification notice from FHFC for the 2024 tax year for the Subject Property, which application process for the certification notice included a completion and transmittal of a rental market study meeting the requirements of the statute;

- d. Plaintiff received the Certification Notice dated February 18, 2024, from FHFC for the Subject Property; and
- e. Plaintiff submitted an exemption application package to the Alachua County Property Appraiser in a timely fashion (i.e., ahead of the March 1, 2024 exemption application deadline), which exemption application package included the Ad Valorem Tax Exemption Application and Return for Multifamily Project and Affordable Housing Property application form, also known as DR-504AFH.

20. Plaintiff met all the requirements for a partial ad valorem property tax exemption under section 196.1978(3), Florida Statutes, of January 1, 2024, the date on which all valuations and exemptions are to be determined in Florida, and filed its exemption application ahead of March 1, 2024, and is therefore entitled to a partial ad valorem property tax exemption under Florida Statutes.

21. Plaintiff should have appropriately received a partial exemption on the Subject Property for 2024.

22. As a result of the foregoing failure to apply the appropriate partial exemption to the Subject Property, the ad valorem taxes resulting from the Subject Property substantially exceed the taxes which would have been levied on the Subject Property had it been properly identified as receiving the ad valorem tax exemption identified above.

23. In an exemption denial challenge, Plaintiff is obligated to only pay a good faith amount of taxes due on the subject property. Plaintiff has shown in good faith that the partial exemption should be granted as to the affordable housing units, and therefore lower ad valorem taxes on that space are owed. Notwithstanding the good faith requirement, Plaintiff has paid the entire tax bill on the Subject Property for 2024, less the 4% discount for early payment in

November, but payment of these taxes is not an admission that the tax was due and does not prejudice the right to bring this action. Verification of payment of the payment of taxes to the Tax Collector on the Subject Property is attached hereto as Exhibit "A" and incorporated herein by this reference.

24. This action has been timely filed, and all conditions precedent to the filing of this action have been satisfied.

WHEREFORE, the Plaintiff, NW FIFTH AVENUE PROPERTY LLC, respectfully prays for the Court to render a judgment decreeing (a) that the application for partial exemption under Section 196.1978, Florida Statutes, was inappropriately denied by the Property Appraiser; (b) that the Court establish and declare that the subject property be granted a partial ad valorem exemption for 2024 or, in the alternative, that the Court remand this determination to the Property Appraiser with instructions to comply with the provisions of the Florida Statutes and the Florida Constitution in determining the exempt status; (c) that the 2024 assessment and the resulting taxes be set aside to the extent the same exceeds the taxable value of the subject property; and (d) that the judgment further decree that Plaintiff, NW FIFTH AVENUE PROPERTY LLC, is entitled to a refund of taxes paid to the extent that the amount previously paid exceeds the amount of taxes which would be owed on a corrected assessment with the partial exemption in place, and such tax refund shall be promptly paid by the Tax Collector within thirty (30) days of entry of a Final Judgment by this Court, along with any statutory interest. Further, Plaintiff, NW FIFTH AVENUE PROPERTY LLC, would request that it be granted such other and further relief as the Court may deem just and proper, as well as the costs of this action.

LOWNDES, DROSDICK, DOSTER, KANTOR &
REED, P.A.

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