

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT IN AND FOR ST.  
JOHNS COUNTY, FLORIDA

CASE NO.:  
DIVISION.:

SOUTH PONTE VEDRA, LLC, a Florida  
limited liability company; CARL  
MELVIN SMITH, JR.; and HARRIETT  
SHIELDS SMITH,

Plaintiffs,

vs.

SHARON OUTLAND, Property Appraiser  
of St. Johns County, Florida;  
DENNIS W. HOLLINGSWORTH, Tax  
Collector of St. Johns County,  
Florida; and LEON M. BIEGALSKI,  
Executive Director of the  
Florida Department of Revenue,

Defendants.

**COMPLAINT**

Plaintiffs, SOUTH PONTE VEDRA, LLC; CARL MELVIN SMITH, JR.; and  
HARRIETT SHIELDS SMITH (collectively, "Plaintiffs"), by and through their undersigned  
counsel, sue Defendants, SHARON OUTLAND in her capacity as Property Appraiser of St.  
Johns County, Florida; DENNIS W. HOLLINGSWORTH, in his capacity as Tax Collector of St.  
Johns County, Florida; and LEON M. BIEGALSKI, in his capacity as Executive Director of the  
Florida Department of Revenue and allege the following:

**Jurisdiction and Venue**

1. South Ponte Vedra, LLC ("SPV") is a Florida limited liability company licensed  
to do business in the state of Florida.

2. Carl Melvin Smith, Jr. ("CM Smith") is an individual residing in Duval County, Florida.

3. Harriett Shields Smith is an individual residing in Duval County, Florida.

4. Sharon Outland holds the office of Property Appraiser for St. Johns County, Florida and as such is a Constitutional Officer of the State of Florida ("Property Appraiser").

5. Dennis W. Hollingsworth holds the office of Tax Collector of St. Johns County, Florida and as such is a Constitutional Officer of the State of Florida ("Tax Collector").

6. Leon M. Biegalski is the Executive Director of the Florida Department of Revenue who oversees the budget for both the Property Appraiser and the Tax Collector ("DOR").

7. Plaintiffs are the owners of certain parcels of real property located in St. Johns County, Florida, which are described in more detail in Exhibit "A," attached hereto, and designated in the real property records of St. Johns County as Parcel Numbers 142310-0000 and 142310-0040 (collectively, the "Property").

8. Pursuant to section 47.011, Florida Statutes, venue is proper in St. Johns County as that is the location of the Property that is the subject of this litigation.

9. Plaintiffs' claims involve a controversy between the Property Appraiser, Tax Collector and SPV over the failure of the Property Appraiser to identify wetlands on the Property as reflected in the Property Record Cards for 2015 attached as Composite Exhibit "B."

10. The Property Appraiser's failure to identify wetlands on the Property results in an inflated value of the Property appearing in the Certification of Tax Roll dated October 20, 2016 (the "Tax Roll") as reflected on the Notice of Ad Valorem Taxes and Non-Ad Valorem Assessments, all attached as composite Exhibit "C."

11. The Court has jurisdiction pursuant to section 194.171, Florida Statutes for the adjustment to the valuation of the Property determined and certified by the Property Appraiser in 2016.

12. With respect to the jurisdiction over the 2016 assessment pursuant to section 194.171, this action has been timely filed within 60 days from the date of the Certificate to Roll, issued by the Property Appraiser of St. Johns County on October 20, 2016.

13. Plaintiffs have performed all conditions precedent to bringing this action or they have been waived.

14. The taxes assessed against the Property in 2016 are not yet due and owing.

#### **General Allegations**

15. On September 5, 2015, Plaintiffs submitted three forms titled Petition to the Value Adjustment Board Request for Hearing involving the Property plus one additional parcel.

16. Plaintiffs submitted an evidence package; the Property Appraiser designated the petitions 67, 68 and 69 and, after one continuance, set a hearing date for December 10, 2015 (the "Hearing").

#### *The Hearing*

17. Plaintiffs abandoned their claim to adjust the value of the additional parcel that is located on the east side of Highway A1A which the Property Appraiser had designated as Petition 69 at the Hearing. Copies of all three petitions are attached as Composite Exhibit "D."

18. During the Hearing, Plaintiffs explained that the only challenge they intended to make involved the Property Appraiser's failure to designate a portion of the Property as wetlands which resulted in a \$90,000.00 per acre valuation for both the wetlands and non-wetlands located on the Property.

19. Despite these representations by the Plaintiff, the Special Magistrate determined that the Plaintiff's challenge was to the market value assessment.

20. The Property Appraiser submitted the marketing materials of Plaintiff as evidence of its valuation.

21. During the hearing, the Property Appraiser, through the testimony of Dave Darty, Director of Real Property, represented that it determined in 2012 that the Property "had rights at the time" for 44 units based on the zoning of the Property.

22. Relying on Plaintiffs' marketing plans, Mr. Darty adjusted his testimony to state the Property was entitled to develop 40 units.

23. Mr. Darty stated that based on the reduction from 44 units to 40 units, he reduced the value of the Property by 5% in 2014.

24. Mr. Darty then stated as additional support, the Property Appraiser relied on a sale during October, 2013 of a 37 acre property (the "Comparable Property").

25. Mr. Darty testified the value of the property was \$27,400 per developable unit by dividing the number of platted units into the total value of the sale.

26. However, the Property has never been platted and currently, in the words of Mr. Darty, bare, raw, land with no entitlements. The Property is not supported by any infrastructure other than Highway A1A which splits the two parcels comprising the Property.

27. The Property Appraiser affirmed that its \$90,000 per acre value was based on a VAB ruling in 2011.

28. The VAB ruling in 2011 did not recognize the existence of the wetlands on the Property either.

29. In response to questions from the Special Magistrate, Mr. Darty explained that the

assessment is for \$21,900.00 per lot and that value is then allocated out to the two parcels resulting in the total valuation. Mr. Darty later changed that value to \$22,842.00 per unit.

30. Mr. Darty then testified that he had determined the highest and best use of the property in the immediate future to be a residential subdivision.

31. The Special Magistrate directed questions of Mr. Darty intended to illicit testimony concerning a Keller Williams sales package involving the Property along with the additional parcel.

32. Mr. Darty admitted:

- a. that he was aware that the Property contained 1.79 acres of wetlands;
- b. that the Property Record Card did not reflect that the Property contained any wetlands;
- c. that the Property Appraiser assessed the Property on a per gross acre basis
- d. that there had not been a sale of raw land in that area in the last ten years and thus there were no comparable sales; and
- e. that parcels with a plat or a PUD are twice as valuable as property that has neither.

33. The Special Magistrate stated during the hearing that the valuation would not be the price per acre. Instead, the value would be based on the number of developable units that could be placed on the Property.

34. Plaintiffs testified that if the Property Appraiser valued the non-wetland portion of the Property at \$81,000.00 per acre and the wetlands at \$250.00 an acre, Plaintiffs would not contest the result.

35. Through the testimony of a professional wetland scientist and a civil engineer, Plaintiffs established that the Property contained 1.79 acres of wetlands.

36. Plaintiffs testified that a survey map from the Property Appraiser's office prepared in 1979 contained the same value for the wetlands as testified to by its witnesses.

37. The Property Appraiser did not dispute the presence of 1.79 acres of wetlands on the Property.

38. Plaintiffs testified that the only method of determining a value for this Property would be to perform a residual value analysis.

*The Decision of the Value Adjustment Board*

39. On January 28, 2016 Reginald Carter, as Special Magistrate, provided Findings of Fact and Conclusions of Law in support of his decision to deny the Plaintiffs' Petitions. A copy of the Decision of the Value Adjustment Board for the two parcels comprising the Property is attached as Exhibit "E."

40. In his Findings of Fact, the Special Magistrate found:

- a. The three Petitions were heard as one hearing due to their interrelationship;
- b. The Property Appraiser "placed into evidence detailed information regarding the subject property and sales comparables to support the fairness of the assessments;
- c. That the Plaintiffs admitted that the Property and the other parcel were offered for sale for \$6,250,000.00;
- d. A number of findings regarding the parcels located to the east of A1A, a valuation challenge abandoned by the Plaintiffs prior to the beginning of the Hearing;
- e. A statement that the "record contains no evidence that the assessments are for raw land and do not include value for entitlements beyond zoning;
- f. That "[b]ased on the 36-lot plot plan [sic], the wetlands do not adversely impact the development of the site;"

41. Also in the Special Magistrate's Findings of Fact were the following conclusions of law:

- a. "The large disparity between what the taxpayer was admittedly willing to sell the property for, and the assessment, challenges the authenticity of the taxpayer's claim that the assessments, in sum, are excessive or unjust;"
- b. "[A]ny reasonable review of the evidence confirms that, as a developable unit, the three parcels are assessed below just value; and
- c. "The evidence submitted supports a finding that the property appraiser fulfilled the statutory requirements of Section 193.011, Florida Statutes . . ."

42. In the Conclusions of Law, the Special Magistrate held:

- a. "Based on the cumulative evidence submitted at the hearing the property appraiser's assessment is entitled to a presumption of correctness"
- b. "The petitioner did not show by a preponderance of the evidence that the assessment was based on appraisal practices different from those applied to other comparable properties in deriving an assessment or that the property appraiser failed to consider the criteria of Section 193.011, Florida Statutes.

43. On February 23, 2016, the Value Adjustment Board rendered its Final Decision, adopting the recommendation of the Special Magistrate. Copies of the two documents titled Decision of the Value Adjustment Board for the two relevant Petitions are attached as Composite Exhibit "H."

44. The Property Appraiser did not confer with the Plaintiffs regarding the correctness of the appraisal prior to the hearing.

45. The Property Appraiser did not grant the Plaintiffs' request for an informal

hearing prior to the Hearing.

46. The Special Magistrate failed to state on the record that the Plaintiffs had withdrawn Petition #69 and were not challenging the valuation of the portions of the parcels located east of Highway A1A as required by Chapter 12D-9.021(4), Florida Administrative Code ("FAC").

47. Despite the withdrawal of petition #69, the Special Magistrate produced a recommended decision and reasoning for that decision involving that petition in contradiction to Chapter 12D-9.021(5), FAC.

48. The Special Magistrate failed to provide a short overview of the rules of procedure or to provide an opening statement or provide a brochure as required by Chapter 12D-9.021(4), (5) and (6), FAC.

49. The Special Magistrate did not identify whether the evidence presented by either the Property Appraiser was admissible or not in contravention to Chapter 12D-9.025(1) and (2)(d), FAC.

50. The Special Magistrate allowed as evidence sales brochures as an indication of the value of the property.

#### **COUNT I – Contest of Tax Assessment**

51. Plaintiffs adopt and reallege paragraphs 1 – 50 as if set out here in their entirety.

52. This is an action to contest the tax assessment for the Property as it appears on the Certification of the Tax Roll dated October 20, 2016.

53. The Property Appraiser has not valued the Property as just value due to the following factors:

a. The Property Appraiser has not segregated the wetland acreage from the non-



wetland acreage resulting in an overvaluation of the Property at the non-wetland value;

- b. The Property Appraiser relied upon the outcome of a 2011 VAB decision to determine the value of the acreage;
- c. The Property Appraiser determined that despite the fact that the Property had not been platted that the Property would be developed as a residential community with 40 plots;
- d. The Property Appraiser, while admitting that no comparable properties existed for comparison to the Property, used several properties to justify its overall pricing of the acreage that were entitled either through approved plats or PUDs;
- e. The Property Appraiser heavily relied upon marketing material which identified a desired sales price for the Property as justification for its assessment

54. As the Property Appraiser has either impermissibly considered factors that are not the immediate use of the Property or failed to consider the proper classification of portions of the Property, the Property Appraiser has not assessed the Property at its just value.

55. Due to the errors in classification concerning the wetland issue, the Property Appraiser has not properly applied the eight factors identified in section 193.011, Florida Statutes and has not arrived at a just valuation for the Property.

WHEREFORE, Plaintiffs request the Court grant the following relief:

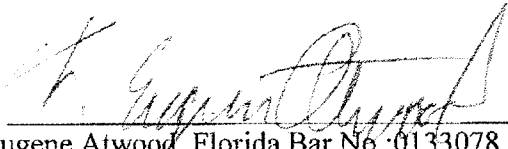
- a. Declare that the Property Appraiser did not follow the requirements of section 193.011 and that the value established by the Property Appraiser exceeds the just value of the Property;
- b. Establish the just value of the Property for ad valorem tax purposes;

- c. Order the Tax Collector to refund to the Plaintiffs the difference, if any, between the amount of taxes paid by the Plaintiffs and the tax due based on the just value established by the Court;
- d. Order that all costs associated with this action be taxed against the Property Appraiser; and
- e. Grant such further relief as the Court deems just and proper.

**ELECTRONIC SERVICE DESIGNATION**

Plaintiffs, SOUTH PONTE VEDRA, LLC; CARL MELVIN SMITH, JR.; and HARRIETT SHIELDS SMITH, hereby designate their primary and secondary email service addresses pursuant to rule 2.516, Florida Rules of Judicial Administration, as follows: Primary: gatwood@rwzalaw.com, Secondary: court papers@rwzalaw.com.

REGAN WHELAN ZEBOUNI & ATWOOD, P.A.

By:   
F. Eugene Atwood, Florida Bar No.: 0133078  
9905 Old St. Augustine Road, Suite 400  
Jacksonville, Florida 32257  
Ph: (904) 356-1300  
Fax: (904) 356-8050  
*Attorney for Plaintiffs*