

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

HARALD HERRMANN, an individual,

Plaintiff,

CASE NO. _____

v.

AMY MERCADO, AS ORANGE
COUNTY PROPERTY APPRAISER;
SCOTT RANDOLPH, AS ORANGE
COUNTY TAX COLLECTOR;
& JIM ZINGALE, AS EXECUTIVE
DIRECTOR, FLORIDA DEPARTMENT
OF REVENUE,

Defendants.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, HARALD HERRMANN ("Plaintiff"), by and through undersigned counsel, and pursuant to Chapter 86, *Florida Statutes*, sues AMY MERCADO, AS ORANGE COUNTY PROPERTY APPRAISER ("Mercado"), SCOTT RANDOLPH, AS ORANGE COUNTY TAX COLLECTOR ("Randolph"), and JIM ZINGALE, AS EXECUTIVE DIRECTOR, FLORIDA DEPARTMENT OF REVENUE ("Zingale") and alleges:

GENERAL ALLEGATIONS

1. This Court has subject matter jurisdiction because the Court is vested with jurisdiction under section 194.171, *Florida Statutes* (2021), the property in litigation is located in Orange County, Florida, and the amount in controversy is greater than \$30,000 exclusive of interest, attorney's fees, and costs.

2. This Court has personal jurisdiction over the Defendants, all of whom are constitutional officials in the State of Florida.

3. Venue is proper in Orange County, Florida because the property in litigation is located in Orange County, Florida.

4. The Plaintiff is an individual who owns the property located at 5139 Fairway Oaks Dr., Windermere, Florida 34789 (the "Property").

5. Mercado is an elected constitutional officer in the State of Florida who serves as the Orange County Property Appraiser (the "OCPA"), which is responsible for identifying, locating, and fairly valuing all property, both real and personal, within Orange County for tax purposes.

6. Randolph is an elected constitutional official in the State of Florida who serves as the Orange County Tax Collector (the "OCTC").

7. Zingale is a constitutional official who serves as the Executive Director of the Florida Department of Revenue ("DOR"), which among other things, oversees the local appraisal and assessment of taxes on real and intangible property, reviews the property tax rolls in each county, and collects taxes and fees.

8. Under section 193.011, *Fla. Statutes* (2021), there are eight factors that a property appraiser must take into consideration to arrive at a just valuation for tax purposes:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;
- (6) The condition of said property;
- (7) The income from said property; and
- (8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

§ 193.011, Fla. Stat. (2021).

9. A property appraiser's assessment is not owed a presumption of correctness if any criteria other than those factors specifically enumerated under section 193.011 were used or if professionally accepted appraisal practices were not followed by a property appraiser in valuing a property for purposes of taxes. *See Mastroianni v. Barnett Banks, Inc.*, 664 So.2d 284, 287 (Fla. 1st DCA 1995).

10. As evidenced by the 2017 Orange County Notice of Ad Valorem Taxes & Non-Ad Valorem Assessments issued by the OCTC, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A", the OCPA assessed the value of the Property at Five Million Nine Hundred Forty-Two Thousand Three Hundred Ninety-Nine and No/100 Dollars (\$5,942,399.00) (the "2017 Assessment").

11. Per the 2017 Assessment, it was determined by the OCTC that the Plaintiff owed Ninety-Seven Thousand Eight Hundred Fifty and 90/100 Dollars (\$97,850.90) in ad valorem taxes (the "2017 Taxes").

12. The Plaintiff paid the 2017 Taxes to the OCTC, which by operation, were paid to DOR.

13. As evidenced by the 2018 Orange County Notice of Ad Valorem Taxes & Non-Ad Valorem Assessments issued by the OCTC, a copy of which is attached hereto and incorporated herein by reference as Exhibit "B", the OCPA assessed the value of the Property at Six Million Seventy-Two Thousand Three Hundred Forty-Nine and No/100 Dollars (\$6,072,349.00) (the "2018 Assessment").

14. Per the 2018 Assessment, it was determined by the OCTC that the Plaintiff owed One Hundred One Thousand Six Hundred Fifty-Five and 85/100 Dollars (\$101,655.85) in ad valorem taxes (the "2018 Taxes").

15. The Plaintiff paid the 2018 Taxes to the OCTC, which by operation, were paid to DOR.

16. As evidenced by the 2019 Orange County Notice of Ad Valorem Taxes & Non-Ad Valorem Assessments issued by the OCTC, a copy of which is attached hereto and incorporated herein by reference as Exhibit "C", the OCPA assessed the Property at Six Million Two Hundred Five Thousand Five Hundred Twelve and No/100 Dollars (\$6,205,512.00) (the "2019 Assessment").

17. Per the 2019 Assessment, it was determined by the OCTC that the Plaintiff owed One Hundred Two Thousand Six Hundred Thirteen Dollars and 50/100 Dollars (\$102,613.50) (the "2019 Taxes").

18. The Plaintiff paid the 2019 Taxes to the OCTC, which by operation, were paid to DOR.

19. As evidenced by the 2020 Orange County Notice of Ad Valorem Taxes & Non-Ad Valorem Assessments issued by the OCTC, a copy of which is attached hereto and incorporated herein by reference as Exhibit "D", the OCPA assessed the Property at Three Million Seven Hundred Twenty-Three Thousand Nine Hundred Ninety-Four and No/100 Dollars (\$3,723,994.00) (the "2020 Assessment"), which was nearly fifty percent (50%) less than the 2017 Assessment, the 2018 Assessment, and the 2019 Assessment.

20. Per the 2020 Assessment, it was determined by the OCTC that the Plaintiff owed the amount of Sixty Thousand Seven Hundred Three and 30/100 Dollars (\$60,703.30).

21. The Plaintiff paid the 2020 Taxes to the OCTC, which by operation, were paid to DOR.

22. There is no valid explanation or basis for the sudden and massive decrease in valuation of the Property from the Assessments from 2017 through 2019 to the Assessment in 2020.

23. In addition, the criteria provided under the 193.011 could not have been used to justify the precipitous decrease in value of the Property from the 2019 Assessment to the 2020 Assessment.

24. As a result, and based upon the facts set forth herein, there is a bona fide, actual, present practical need for a declaration of the parties' rights that deals with a present, ascertained state of facts or present controversy.

25. In short, the Plaintiff is in doubt concerning the OCPA's valuation and assessment of the Property in 2017, 2018, and 2019 and if the corresponding amounts of ad valorem taxes paid by the Plaintiff to the OCTC, by operation, to DOR in 2017, 2018, and 2019 were accurate.

26. Because the Plaintiff has [t]he right to bring action in circuit court to contest a tax assessment..." §192.0105(2)(i), Fla. Stat. (2021), the Plaintiff is entitled to a judicial determination as to the following issues:

- a. If the OCPA followed and properly applied the are eight factors provided under section 193.011 or other professionally accepted appraisal practices to value the Property in 2017, 2018, and 2019;
- b. If the Property was overvalued by the OCPA in 2017, 2018, and 2019;
- c. If the corresponding ad valorem taxes ascribed to the Property by the OCTC and correspondingly paid to the OCTC and the DOR for 2017, 2018, and 2019 were accurate;
- d. If the Plaintiff is entitled to a refund from DOR if the valuation of and the corresponding ad valorem taxes ascribed to the Property in 2017, 2018, and 2019 were not accurate. *See* § 197.182, Fla. Stat. (2021).

27. All adverse parties are present before the court.

28. The relief sought is not merely seeking advisory opinion.

29. The Plaintiff has retained and is obligated to repay the undersigned attorneys for their legal representation and litigation costs incurred in this case.

WHEREFORE, Plaintiff, Harald Herrmann requests a judicial determination and declaration as to the correctness of the assessment and valuation of the Property in 2017, 2018, and 2019 by the Orange County Property Appraiser, the correctness of the ad valorem taxes levied on the Property by the Orange County Tax Collector and collected by the Florida Department of Revenue, and if the Plaintiff is entitled to a refund for the ad valorem taxes paid for the Property in

2017, 2018, and 2019. The Plaintiff also requests an award of his costs and for other relief this Court deems just and proper.

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