

IN THE SUPREME COURT OF FLORIDA

THE VALUE ADJUSTMENT BOARD
OF BAY COUNTY, FLORIDA,

Appellant,

v.

Case Number: SC10-419
L.T.Nos: 1D09-1449, 08-3198-CA

ZANE SPITZER, as Property Appraiser
of Bay County, Florida,

Appellee.

PETITIONERS' JURISDICTIONAL BRIEF

On Review from the First District Court of Appeal
State of Florida

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STATEMENT OF THE CASE AND FACTS

The case and appeal below involves the issue of whether the 2007 Bay County Value Adjustment Board may conduct evidentiary hearings for taxpayers or for the Property Appraiser who were dissatisfied with the recommendations of the special magistrates, pursuant to Section 194.035(1), Florida Statutes (2007).

The 2007 Bay County Value Adjustment Board (VAB) was composed of five members: three County Commissioners and two members of the Bay County School Board. §194.015, Fla. Stat. (2007).¹ Since Bay County has a population of over 75,000, Section 194.035(1), Florida Statutes (2007)², required that the VAB appoint “special magistrates for the purpose of taking testimony and making recommendations to the board [VAB].”

During tax year 2006, the real estate bubble burst in Bay County and by 2007 property values were in free-fall. As a consequence, in 2007, there were 1,590 petitions filed by taxpayers contesting their property assessments before the VAB. The rules adopted by the VAB authorized a review and hearing by the full

¹ In 2008, the Legislature amended Section 194.015, Florida Statutes (2008) to include two “citizens” members to the five member VAB, which is now constituted with two County Commissioners, one School Board member, a “citizen” who owns homestead property in the County appointed by the County Commission, and a “citizen” who owns a business occupying commercial space in the county, appointed by the School Board. Ch. 2008-197, §4, Laws of Fla.

² This statutory requirement was added in 2002 by Ch. 2002-18, § 4, and is unchanged in the present (2009) statutes.

Board when either taxpayers or the Property Appraiser were dissatisfied with the special magistrate's recommendation.³

The minutes of the 2007 Board reflect that special magistrates conducted hearings on a total of 757 petitions and recommended relief to 88 taxpayers. The remaining 669 recommendations suggested rulings in favor of the Property Appraiser. Of these, 28 taxpayers sought a hearing before the Board. Notably, of the 88 special magistrates' recommendations in favor of taxpayers, the Property Appraiser himself sought review and a hearing before the VAB of six such recommendations. These hearings were conducted before the full Board (all five members in attendance) on 24 April 2008.

After the VAB hearings, the Bay County Property Appraiser challenged the VAB's ability to grant taxpayers' relief. Procedurally, the Property Appraiser pursued the process set forth in Section 194.036(1)(c), Florida Statutes (2007). He first filed an "assertion" with the Department of Revenue that there was "a consistent and continuous violation of the intent of the law or administrative rule by the value adjustment board in its decisions." After the DOR entered an order authorizing a challenge, he filed suit against the VAB in circuit court. While there were numerous issues raised in the pleadings below, the Trial Judge resolved the case by concluding, in a case of first impression in Florida, that pursuant to Section

³ Record references are in the briefs filed in the 1st District.

194.035(1), the “actions of the VAB were not authorized by statute. . .” The VAB appealed.

The 1st District affirmed on December 31, 2009. Judge Barfield wrote the opinion to which Judge Rowe concurred “in result only”. Section 194.035(1), provides in part as follows:

In counties having a population of more than 75,000, the board shall appoint special magistrates for the purpose of taking testimony and making recommendations to the board, which recommendations the board *may* act upon without further hearing. (Emphasis added)

Judge Barfield examined this section of the statute and wrote: “[t]he clear meaning of this statute is that the legislature has relieved the VAB, in counties having more than 75,000 people, of the task of conducting evidentiary hearings and has assigned that task to special magistrates who have specialized real estate appraisal experience as specified further in the statute.” He concluded “the trial court correctly ruled that the VAB was not authorized to conduct further hearings.”

Judge Clark wrote a dissent. She focused on the use of the term “may,” as quoted above, concluding that the “legislature is granting the boards discretion whether to conduct further hearings. The statute gives the board a choice: it may act upon the recommendations either with further hearing or without further hearing.”

The VAB filed motions for clarification and rehearing, rehearing en banc and certification. On February 5, 2010, the 1st District denied the motions without

an opinion. On March 5, 2010, the VAB sought this Court's discretionary jurisdiction as the decision expressly affects three classes of constitutional officers: boards of county commissioners, school boards, and property appraisers.

SUMMARY OF ARGUMENT

This Court has jurisdiction pursuant to Article V, Section 3(b)(3), of the Florida Constitution, because the decision of the 1st District expressly affects three classes of constitutional officers: county commissioners, school board members, and property appraisers. The decision affects the class of all property appraisers because it deprives them of a right to seek a hearing before the VAB regarding recommendations of special magistrates. The decision affects school board members and county commissioners appointed to the VAB because it deprives them of the power to conduct further hearings to review the recommendations, regardless of any errors which might have been made by any special magistrate.

ARGUMENT

A. Standard of Review. In order to invoke this Court's discretionary jurisdiction to review the decision, Petitioners must show that it directly and, in some way, expressly affects the duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state officers. *Spradley v. State*,

293 So. 2d 697 (Fla. 1974). In *School Board of Pinellas County v. District Court of Appeal, Second, et al.*, 467 So. 2d 985 (Fla. 1985), this Court held that the term “express” contained in Article V, section 3(b)(3), “means within the written district court opinion.” 467 So.2d 985, 986. See also *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

B. The Decision on Review Expressly Affects Three Classes of Constitutional Officers. In this case, the decision of the 1st DCA expressly affects property appraisers, who are constitutional officers. Art. VIII, Section 1(d), Fla. Const. The decision deprives them, as well as taxpayers, of the opportunity to seek a hearing before a VAB to contest a special magistrate’s recommendation. To this extent the decision affects the “powers” afforded property appraisers.

This Court has accepted discretionary jurisdiction in cases directly and expressly affecting property appraisers as a class of constitutional officers. In *Mazourek et al. v. Wal-Mart Stores, Inc.*, 831 So. 2d 85 (Fla. 2002), the property appraiser’s method for the determination of value of certain personal property was at issue. Here, the impact on the class of property appraisers is more serious. The decision of the 1st DCA eliminates an administrative remedy of all 67 property appraisers in Florida to seek review of the recommendations of the special magistrates by the VAB. This is a direct reduction of their powers.

The decision also affects county commissioners and school board members, who are also constitutional officers. Art. VIII, Section 1 (d) and Art. IX, Section 4 (a), Fla. Const. In 2007, the Bay County Value Adjustment Board (VAB) was composed of five members: three County Commissioners and two members of the Bay County School Board. §194.015, Fla. Stat. (2007). The decision took away any real authority of these officers of local government taxing authorities to hear from their taxpayers, and relegated the VAB to a board with only “rubber stamp” authority. Thus, the decision directly affects the “duties” and “powers” of VAB members who are constitutional officers.

CONCLUSION.

As this Court has recognized, the "obvious purpose" of the jurisdictional provision at issue was to "permit this Court to review a decision which directly affects one state officer and in so doing similarly affects every other state officer in the same category." *Fla. State Bd. of Health v. Lewis*, 149 So. 2d 41, 43 (Fla. 1963). The decision on appeal interprets the statutory provision governing the quasi-judicial authority of all value adjustment boards in Florida. In doing so, the Court limited the due process remedies available to all property appraisers in Florida to seek administrative review before the VAB of special magistrate's recommendations. It also eliminated the power of county commissioners and

school board members of the VAB to have any meaningful involvement in the local review process of property tax assessments for individual taxpayers. For these reasons, this Court should accept discretionary jurisdiction.

Respectfully submitted this 12th day of March 2010.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioners' jurisdictional brief was served by U.S. Mail to Larry E. Levy, The Levy Law Firm, 1828 Riggins Lane, Tallahassee, Florida 32308, this 12th day of March 2010.

Benjamin K. Phipps

CERTIFICATE OF COMPLIANCE

I further certify that this brief is presented in 14-point Times New Roman and complies with the font requirements of Rule 9.210.

Benjamin K. Phipps