

**FLORIDA SUPREME COURT**

**CASE NO: SC10-419**

**THE VALUE ADJUSTMENT BOARD  
OF BAY COUNTY, FLORIDA,**

District Court Case No. 1D09-1449

Petitioner,

L.T. Case No. 08-3198-CA

vs.

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

Respondent.

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**RESPONDENT'S BRIEF ON JURISDICTION**

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## **PRELIMINARY STATEMENT**

Petitioner, The Value Adjustment Board of Bay County, Florida, will be referred to herein as the “VAB.” Respondent, Dan Sowell, successor to Zane Spitzer, Bay County Property Appraiser, will be referred to herein as the “property appraiser.” References to the petitioner’s jurisdictional brief will be delineated as (PB-page #).

## **STATEMENT OF THE CASE AND OF THE FACTS**

The case involves a suit filed by the property appraiser against the VAB as authorized pursuant to section 194.036(1)(c), Florida Statutes (2009). This statute permits a property appraiser to file suit against a VAB if the Department of Revenue, on written assertion by the property appraiser and after review of the VAB transcript and records, determines that the VAB has committed a consistent and continuous violation of the intent of the law in its conduct and actions at VAB hearings. The Department of Revenue so determined and issued its findings that the VAB had committed a consistent and continuous violation of the intent of the law.

The actions complained of were that, after all VAB petitioners had been heard by special magistrates who entered recommended orders that were approved by the VAB, the VAB submitted notice of the special magistrates' recommendations and its approval thereof to the various property owners, and also sent a letter advising that they could appeal such decisions to the VAB at the date fixed if they so desired.

Thereafter, the VAB conducted further hearings complete with testimony and evidence and granted relief to every petitioner who appeared before it. If a petitioner did not appear no reductions were granted. The property appraiser contended that (1) the VAB had no authority to conduct such evidentiary

hearings and appeals after the recommended special magistrates' decisions had been adopted, and (2) that the VAB's actions reducing assessments for all who appealed to it were wholly arbitrary. The trial court granted the property appraiser's motion for summary judgment finding that the VAB's action in holding such evidentiary hearings was unauthorized. The VAB appealed and the First District Court of Appeal upheld the trial court's decision stating in its decision:

Property owners who are dissatisfied with the appraised value of their properties may petition the VAB to adjust those assessments. Section 194.035(1), Florida Statutes (2007), provides in part:

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.

The 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. § 194.035(1), Fla. Stat. (2007). The appellant argues that this statute provides a loose and informal procedure which the VAB may supplement with additional evidentiary hearings, effectively negating the legislative directive. If the VAB may accept recommendations without further hearing, then ignore those recommendations, the statute has no meaning. Because the VAB was not authorized to conduct evidentiary hearings after the special magistrates had already done so and made recommendations (which

the VAB accepted), the trial court correctly ruled that the VAB was not authorized to conduct further hearings.

Value Adjustment Bd. of Bay Co. v. Spitzer, 27 So.3d 116, 117 (Fla. 1st DCA 2010). Motions for rehearing and clarification were denied, and the notice to invoke this Court's discretionary jurisdiction was subsequently filed.

### **SUMMARY OF ARGUMENT**

The VAB seeks to invoke this Court's discretionary jurisdiction on the basis that the case affects three classes of constitutional officers pursuant to Article V, Section 3(b)3, Florida Constitution. That provision provides in part that this Court "[m]ay review any decision of a district court of appeal . . . that expressly affects a class of constitutional or state officers . . . ." In its Summary of Argument, the VAB asserts that the First District's decision deprives property appraisers of a right to seek a hearing before the VAB regarding recommendations of special magistrates. (PB-5) This statement suggests that property appraisers have such a right. The property appraiser disagrees that any such right exists by statute for a property appraiser or a petitioner (property owner) to have a special magistrate's decision reviewed by a VAB. No statutory authority has ever been created whereby either a property owner or a property appraiser could appeal a special magistrate's decision to the VAB. Accordingly, property appraisers are deprived of nothing because no such right has ever existed.

Section 194.035(1), Florida Statutes (2009), originally was enacted to provide an option to the VAB to use special magistrates. The statute was amended in 2004, and the language was changed from permissive to mandatory in counties with populations of more than 75,000. See Ch. 2004-11, § 72, Laws of Fla. (2004). However, no appellate review of a special magistrate's decision is authorized therein, and at no time has there ever existed statutory authority for two evidentiary hearings at the administrative level as the petitioner suggests. Moreover, prior to 1973, no statutory mechanism existed for review of decisions of what now is the "Value Adjustment Board," but which in past years was referred to as the Board of Equalization, Board of Tax Adjustment, and the Property Appraisal Adjustment Board. At that time, section 193.122, Florida Statutes (1971), was amended in chapter 73-172, section 9, Laws of Florida (1973), to provide for all decisions of the board overturning a property appraiser's assessment to be reviewed by the Department of Revenue. That provision was found to be unworkable so, section 194.032(6), Florida Statutes (1977)--now section 194.036(1)--was created in chapter 76-234, section 3, Laws of Florida (1976), which for the first time provided the statutory authority for a property appraiser to challenge VAB actions.

Absent statutory authorization, a property appraiser has no authority to challenge any VAB decision or actions, and the sole statutory authority is in

section 194.036(1). The property appraiser does not agree with the VAB's statement that a property appraiser has some right to appeal special magistrates' decisions to the VAB. A property appraiser's only remedy is as provided in section 194.036(1), Florida Statutes, and the property appraiser in this case used the procedure provided for in section 194.036(1)(c) to initiate this action. A property appraiser has no due process rights as the VAB suggests, as a public official he/she has only those powers and authority conferred by law. Moreover, any authority to equalize tax rolls or make adjustments to the tax roll, such as reductions to all who appear as was done by the VAB in this case, clearly was held illegal by this Court's ruling in Spooner v. Askew, 345 So.2d 1055 (Fla. 1977).

### **ARGUMENT**

**Whether petitioner has shown that the decision of the First District Court affects the duties of a class of constitutional officers so as to activate this Court's discretionary jurisdiction?**

To invoke the discretionary jurisdiction of this Court, the VAB must show that the First District Court's decision expressly affects a class of constitutional officers, to wit, property appraisers. The VAB asserts that the decision deprives property appraisers of the opportunity to get a hearing before a VAB to contest a special magistrate's recommendation. The property appraiser disagrees with this statement for the reason that the decision addressed only the issue focused on by the facts of what the VAB had done in this case which was to

meet in a second evidentiary hearing after having previously approved all of the special magistrates' recommendations. This amounted to two evidentiary hearings at the VAB administrative level, and chapter 194, Florida Statutes (2009), has always only allowed one.

The First District Court held that the statute, section 194.035(1), divested the VAB of the authority to hold additional evidentiary hearings after full evidentiary hearings had already been held before special magistrates. Property appraisers have never had any statutory authority to file appeals to the VAB from an adverse special magistrate decision, and a property appraiser's sole avenue of relief was as provided for in section 194.036(1), whether the decision was made by the VAB or a special magistrate. The First District Court's decision merely recognized that the statute meant what it said, which was that in counties with populations over 75,000, hearings before special magistrates replaced the hearing before the VAB. In other words, each petitioner receives only one evidentiary hearing, not two. Property appraisers never had a statutory right to an administrative appeal and, hence, no right could be affected. Use of special magistrates, formerly special masters, was first authorized by chapter 69-140, section 4, Laws of Florida (1969), that created 193.2701(4), Florida Statutes (1969)--now section 194.032--which provided:

(4) The board is hereby authorized to appoint special masters for the purpose of taking testimony and making

recommendations to the board, provided such special masters are not elected or appointed officials, or employees of the county.

No administrative appellate review was authorized originally, or when use of special magistrates was made mandatory by the 2004 amendment to section 194.035(1).

Thus, any suggestion that the decision eliminates an administrative remedy of all 67 county property appraisers to seek review of recommendations of special magistrates is totally specious. Property appraisers have never had an administrative appellate review remedy of such decisions for the simple reason that the legislature has never created one. Hence, no reduction in a property appraiser's power results from the First District Court's decision as the VAB asserts.

The VAB also contends that the decision affects county commissioners and school board members because the make-up of the VAB in 2007 consisted of three county commissioners and two school board members. Section 194.015, Florida Statutes (2009), was amended in 2008 to change to the makeup of the VAB to consist of two county commissioners, one school board member, and two citizen members, one appointed by the county commission who must own homestead property within the county, and one appointed by the school board who must own a business occupying commercial space within the school district. See Ch. 2008-197, § 4, Laws of Fla. (2008). The First District Court's

decision merely recognizes the legislative intent that use of special magistrates is mandatory, but it created no new review authority for the VAB or property appraisers, and arbitrary reductions similar to those in Spooner have never been authorized.

### **CONCLUSION**

Respondent, Dan Sowell, successor to Zane Spitzer, Bay County Property Appraiser, by and through their undersigned counsel, respectfully submits that the petitioner has not demonstrated a basis for the exercise of discretionary jurisdiction and, accordingly, this Court should deny the petitioner's request to exercise its discretionary jurisdiction.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail to **BENJAMIN K. PHIPPS, ESQUIRE**, Phipps & Howell, Post Office Box 1351, Tallahassee, Florida 32302-1351, and **TERRELL K. ARLINE, ESQUIRE** and **DONALD J. BANKS, ESQUIRE**, Office of Bay County Attorney, 840 W. 11th Street, Panama City, Florida 32401 on this the **6th** day of April 2010.

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Larry E. Levy

**CERTIFICATE OF COMPLIANCE**

The undersigned counsel for the respondents certifies that the font size and style used in the foregoing jurisdictional brief is 14 Times New Roman and complies with the font requirement of Florida Rule of Appellate Procedure 9.210(a).

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Larry E. Levy