

GENE AND JO ADAIR, ET. AL.,
PLAINTIFFS

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IN THE DISTRICT COURT OF

v.

GRAYSON CENTRAL APPRAISAL
DISTRICT AND GRAYSON COUNTY
APPRAISAL REVIEW BOARD,
DEFENDANTS

GRAYSON COUNTY, TEXAS

397TH JUDICIAL DISTRICT

FILED FOR RECORD

BY CLERK

2018 SEP 18 9:49 AM

CLERK OF DISTRICT COURT
GRAYSON COUNTY

**PLAINTIFFS' ORIGINAL PETITION,
APPLICATION FOR TEMPORARY RESTRAINING ORDER
AND FOR INJUNCTIVE AND DECLARATORY RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Gene and Jo Ann Adair, Robert and Jo Anderson, Don Argenbright, Rick Arnold, Mickey and Jana Barker, Ronald and Lisa Barrentine, John Bloomer, Steven Brewster, Timothy Brice, Jim Brown, Larry Burch, Annie Burns, Becky Bush, Harold and Geneva Calvert, Noel Campbell, Marlene Cannon, Denise Cansler, Casey Living Trust, James Clark, Clarksons LLC, Wallace and Norma Coats, Kathryn Crews, Kevin and Megan Dahlstrom, Thomas and Debra Decicco, Diamond Pointe Tower Prttrs LP, Valynd a Ewton, V G Fagg, John and Pamela Farris, Bev Fleming / Jim Cooper, Frederick Gans, Ian and Gail Glen, Louis Gomez, Gary and Rebecca Goodman, Anthony Grindl, Craig and Betty Hahn, Randall Harris, William and Sherry Hartman, Robert and Barbara Illes, Don Ingram, Richard Irwin, Island View Yacht Club, Dave Jackson, Tom Jester, Lloyd Jones, Robert and Ann Jordan, Don Kelley, Lyell and Nancy Lassiter, Richard Leeper, Tom Lewis, Albert and Mary Longoria, Martha Madeley, Mike Matarelli,

Donna Matter Trust c/o Rick Maniscalco, Phillip and Cynthia McGuire, Monte McLaughlin, Ken Moran, Elizabeth Nabholtz, George Nabholtz, Sandy Nachman, Bill Neu, Sydney Oetker, Ellis and Patty Olmstead, Charles Oneil, Caroline Joyce Orr, James Owens, Jim and Martha Parks, Tod Percle, Charles Phelps, Randy Phillips, Jack and Betsy Poe, Ted Rains, Catherine Rambo, Ken Rambo, Thomas and Jean Reasonover, James Reed, RFW Investments, Inc., RFW Properties, LTD., Sandra Rickner, Kathleen Riley, JoAnn and Larry Rossler, Pat Routson, Linda Surratt, Bill Thomas, Bruce and Bernita Tompkins, Billie Turner, Oril and Nellie Upton, William and Kathleen Valentine, Ronald and Margaret Virnelson, Mike and Peggy Walker, Gerald and Meletha Walters, Fred White, J. Paul Wickett, William and Susan Woodall, Mrs. Jerome (Betty) Zipper, Howard Zuckerbrow, Plaintiffs, complaining of the Grayson Central Appraisal District (“GCAD”) and the Grayson County Appraisal Review Board (“ARB”), Defendants, and for cause of action would show the Court as follows:

1. Plaintiffs intend for discovery in this case to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

SUMMARY OF SUIT

2. Plaintiffs are among 180 similarly situated owners of private boat docks on Lake Texoma in Grayson County, Texas, who filed TEX. PROP. TAX CODE 25.25 (c) motions with GCAD and the ARB to correct a clerical error in the 2007 appraisal roll. Section 25.25(e) of the Texas Property Tax Code plainly states that “a party bringing a motion ... [under Subsection (c)] ... is entitled on

request to a hearing.” No other entity is entitled to request a hearing but the movant. Without a statutorily required request for hearing, GCAD, working with the ARB, has unilaterally set approximately 180 motions for hearings over a three day period, starting September 30, 2008. Sixty-eight hearings alone were set for the first day.

3. The action of GCAD and its pass-off to the ARB in unilaterally setting hearings under the circumstances here presented is outside of the ARB’s statutory authority, and is the proper subject for injunctive and declaratory relief.

PARTIES

4. Plaintiffs are taxpayers residing in Grayson County, Texas and elsewhere.

5. Defendant, GCAD is a governmental entity with its main offices in Sherman, Texas and which conducts its governmental function of property appraisal in Grayson County, Texas. GCAD may be served with process by serving its Chief Appraiser, Teresa Parsons, or any officer or employee of the GCAD, at the offices of the Grayson County Appraisal District located at 205 N. Travis St., Sherman, Texas 75090. The ARB may be served with process by serving, Chairman, Dan Long, Chairman of the Appraisal Review Board, at its offices located at 205N. Travis, Sherman, Texas 75090.

FACTS

6. In 2007, GCAD invented a scheme to add all of the privately owned

boat docks on Lake Texoma to the appraisal rolls.¹ This was the brainchild of a GCAD appraiser by the name of Pam Lammers (Lammers 38).

7. In late April of 2008, Ms. Lammers was deposed. She admitted that a flawed “value calculation formula” was being used to appraise the boat docks on Lake Texoma (Lammers at 118):

Q. Okay. It was brought to your attention that the Marshall and Swift requires you to estimate on the square foot of deck, right?

A. Yes. And that was not done.

Q. Right. Your model is not correct according to Marshall and Swift. Would you agree with that?

A. I agree the decking was not correctly measured

Q. Okay. You told me earlier that you were limiting yourself to the structural components. And if you do that and if you apply Marshall and Swift, there is an error in your model, correct?

A. Okay.

Q. Is that a yes?

A. Yes.

Q. If your model is incorrect it results in a mistake in calculating the market value, doesn't it?

A. Yes.²

¹ The oral deposition of GCAD appraiser and employee Pam Lammers was taken in related litigation on April 17, 2008. See pages 36-37 and 94. Reference will be made to this deposition testimony by referring to the last name of the witness. Excerpts of this deposition are attached hereto as Plaintiffs' Exhibit "A".

² Lammers, p. 127. Shockingly, Ms. Lammers continued to perjurally testify in numerous ARB hearings that the flawed value calculation formula was the proper method of arriving at a fair market value for the boat docks after the errors were brought to her attention. (Lammers 117-120, 130). Testimony before the ARB is under oath. TEX. TAX CODE 41.67(a).

She then used this fatally flawed “value calculation formula” on each and every private boat dock. (Lammers 109-110). As a result of the miscalculation in square footages, the values placed on the boat docks for 2007 were inflated; some substantially, by as much as 500%. There is no dispute by GCAD that the formula was flawed, the incorrect square footage was used and in some cases, the values hugely inflated. Ms. Lammers is no longer employed by GCAD.

8. In response to this information, the Plaintiffs and others, totaling approximately 180 in number, filed motions with GCAD and the ARB, pursuant to TEX. PROP. TAX CODE 25.25, subsection c (1) to correct the 2007 values and a Chapter 41 Notice of protest for the year 2008. Attached hereto as Plaintiffs’ Exhibit “B”, are true and correct copies of some of the Plaintiffs’ motions. Upon information and belief, each Plaintiff has paid the taxes on the boat dock accounts which have been assessed. The motion part of the application clearly states:

This application consists of and a TPTC 25.25 (c)(1) motion to the ARB to change the value on the appraisal roll for 2007 due to a clerical error in the calculation of the value of the boat dock.

9. TEX. PROP. TAX CODE § 25.25 (c) (1) specifies a three step process: (1) a motion is filed,³ (2) settlement negotiations take place with the appraisal district for fifteen days and (3) if no settlement is reached, the party bringing the motion **may request** an ARB hearing. The ARB hearing and its subsequent “final order” then starts the administrative clock ticking. After the ARB hearing, the

³ A “motion” under Section 25.25 is to be distinguished procedurally from a “protest” under Chapter 41. See *Western Athletic Clubs, Inc. v. Harris County Appraisal Dist.*, 56 S.W.3d 269, 273 n.5 (Tex. App.—Amarillo 2001, no pet.).

party has 45 days from the receipt of the ARB's final order to file for judicial review in state court. If the party does not file with the district court within the 45 day time frame, the right to appeal is lost.

10. The Plaintiffs filed their motions and negotiations took place, but, on information and belief, none of the Plaintiffs requested an ARB hearing on their 25.25 (c) motion. Given this fact, nonetheless, GCAD has passed off to and the ARB has unilaterally set these some 180 motions including Plaintiffs for hearings starting on September 30, 2008, and continuing through October 2, 2008.⁴

THE LAW

11. Tax statutes are construed strictly against the taxing authority, and liberally in favor of the taxpayer.⁵

12. Except as provided in the Property Tax Code at Chapters 25, 41, and 42, the appraisal rolls may not be changed. TEX. PROP. TAX CODE § 25.25(a). Chapter 41 allows for changes to the appraisal roll before the appraisal records are certified (approved by the Board).⁶ Chapter 42 allows for appeals to and changes by judicial review.

13. The Legislature recognized that errors also may occur after the

⁴ Attached hereto as Plaintiffs' Exhibit "C" is a true and correct copy of the list of hearings set for these dates prepared by GCAD.

⁵ *Comerica Acceptance Corp. v. Dallas Central Appraisal Dist.*, 52 S.W.3d 495, 496 (Tex. App. – Dallas 2001)(en banc); *Dallas Central Appraisal Dist. v. Park Stemmons, Ltd.*, 948 S.W.2d 11, 13 (Tex. App. – Dallas 1997).

⁶ *Handy Hardware Wholesale, Inc. v. Harris Central Appraisal District*, 985 S.W.2d 618 (Tex. App. – Hou. [14th Dist.] 1999); *Matagorda County Appraisal Dist. v. Conquest Exploration Co.*, 788 S.W.2d 687, 691-92 (Tex. App. – Corpus Christi 1990, no writ).

appraisal records are approved. Thus, under Chapter 25, the appraisal rolls may be corrected to cure “clerical errors” that affect a property owner's liability for a tax imposed in that tax year. TEX. PROP. TAX CODE §25.25(c)(1). This correction mechanism (motion) can be brought anytime for the five preceding years. TEX. PROP. TAX CODE § 25.25 (c).

14. The Tax Code defines “clerical error” as an error “that is or results from a mistake or failure in writing, copying, transcribing, entering or retrieving computer data, computing, or calculating.” TEX. PROP. TAX CODE § 1.04(18). Clearly, the errors in calculation by Ms. Lammers qualify as a clerical error. *See, Handy Hardware*, 985 S.W.2d 618 (A correction in square footage is a “clerical error.”)

15. Regardless of any argument about whether the error qualifies as a “clerical error” as defined by the Property Tax Code, the ARB was without authority to set a hearing until requested by the Plaintiffs. Section 25.25(e) plainly states:

If the chief appraiser and the property owner do not agree to the correction before the 15th day after the date the motion is filed, ***a party bringing a motion*** under this Subsection (c) or (d) ***is entitled on request to a hearing*** on and determination of the motion by the appraisal review board.

TEX. PROP. TAX CODE § 25.25(e)(emphasis added). Thus, the Tax Code is quite clear, that it is only the movant – here the Plaintiffs – that can initiate a hearing for a 25.25(c) motion.⁷ In this case, the Tax Code does not allow the ARB to call its

⁷ *Richardson Independent School Dist. v. GE Capital Corp*, 58 S.W.3d 290 (Tex. App. – Dallas 2001)(“If the district's chief appraiser and property owner do not agree to the correction

own hearing. The Tax Code certainly does not allow the appraisal district (GCAD) to call a hearing. GCAD would be a *participant* in the ARB hearing, but it is *not a movant* in the Section 25.25 proceeding, and only movants are authorized to request that the hearing proceed.

16. Thus, the Tax Code contemplates a three step process, as explained previously:

1. A 25.25 (c) motion to correct the roll is filed with GCAD and the ARB;
2. Settlement discussions take place with GCAD; and
3. If GCAD will not settle, the person bringing the motion **on request** can have an ARB hearing TEX. PROP. TAX CODE § 25.25(e).

Clearly, the action of the ARB in setting hearings pursuant to Section 25.25(e), without a request from a party bringing the motion, is an action outside the ARB's statutory authority.

17. The Plaintiffs sue GCAD and the ARB for a declaration that its action in setting hearings on the various 25.25(c)(1) protests filed on the boat docks for 2007, is an act outside the ARB's statutory authority.

18. A private litigant does not need legislative permission to sue the State for a state official's violations of state law.⁸ This is because when state officials under section 25.25(c), the property owner may request a hearing before the district's appraisal review board to resolve the disagreement.”)

⁸ *Federal Sign v. Texas Southern Univ.*, 951 S.W.2d 401, 404 (Tex. 1997); *Director of the Dept. of Agric. & Env't v. Printing Indus. Ass'n of Texas*, 600 S.W.2d 264, 265-66 (Tex. 1980)(holding legislative consent not required for suit for injunctive relief against state agency to halt unauthorized printing equipment and printing activities); *Texas Highway Comm'n v. Texas Ass'n of Steel Importers, Inc.*, 372 S.W.2d 525, 530 (Tex. 1963)(holding legislative consent not required for declaratory judgment suit against Highway Commission to determine the parties' rights); *Cobb v. Harrington*, 144 Tex. 360, 190 S.W.2d 709, 712 (Tex. 1945)(holding legislative

violate state law, they are not considered acts of the State. *Federal Sign*, 951 S.W.2d at 401. The same rule applies to State agencies, such as the ARB. “If a state agency acts without authority and contrary to express statutes, the aggrieved party may appeal directly to the courts.” *MAG-T, LP v. Travis Central Appraisal Dist.*, 161 S.W.3d 617, 625 (Tex. App. – Austin 2005).⁹ So when the ARB acts outside of its statutory authority, this Court has jurisdiction to so declare and enjoin the unlawful behavior.¹⁰

Defendant’s Actions Unlawfully Resets the Statutory Timeframe

19. GCAD’s and the ARB’s actions in unilaterally setting these hearings without request from the Plaintiffs is premature and unlawful. The movant in a Section 25.25 proceeding— here the movant, not the ARB or GCAD—is effectively allowed up to five years from the affected tax year to request and obtain an ARB hearing on its motion:

TPTC 25.25 (c): The appraisal review board may direct by written order changes in the appraisal roll for **any of the five preceding years**.

TPTC 25.25 (e): **a party bringing a motion** under Subsection (c) ... is

consent not required for declaratory judgment suit against State Comptroller to determine parties' rights under tax statute).

⁹ *Mag-T LP*, 161 S.W.3d at 625. As explained by the Austin Court of Appeals, in such a case, the purposes underlying the exhaustion rule are not applicable, judicial and administrative efficiency are not served, and agency policies and expertise are irrelevant if the agency's final action will be a nullity. *See also, Strayhorn v. Lexington Ins.*, 128 S.W.3d 772, at 780 (Tex. App. – Austin 2004); *Mitchison v. Houston Indep. Sch. Dist.*, 803 S.W.2d 769, 773 (Tex. App.-- Houston [14th Dist.] 1991, writ denied).

¹⁰ *MHCB (USA) Leasing and Finance Corp. v. Galveston Central Appraisal Dist.*, 249 S.W.3d 68 (Tex. App. – Hou. [1st Dist.] 2007)(When an ARB acts outside of its statutory authority, a district court has jurisdiction to consider an action for declaratory and injunctive relief.)

entitled **on request** to a hearing on and a determination of the motion by the appraisal review board.

20. Once the ARB hearing on the Section 25.25 motion is held, and the ARB makes a determination, the ARB issues a final order. The property owner then has forty five days to file suit in district court. TEX. PROP. TAX CODE § 42.21(a). The effect of the unauthorized action of the ARB in working in tandem with GCAD, but over the objection of the Plaintiffs, to force a hearing now on the Plaintiffs' Section 25.25(c) motions is to accelerate by as much as nearly five years the time that the Plaintiffs will be forced to proceed into court to obtain judicial review. The choice is not the ARB's to make. It is the Plaintiffs', and, for the reasons further explained below, the Plaintiffs are not choosing at this point to trigger the ARB hearings on their Section 25.25 (c) motion.

PREMATURITY, IRREPARABLE INJURY

21. The ARB's unilateral setting of the Section 25.25 hearings, over the objection of the Plaintiffs (the only parties statutorily authorized to request such a setting), is part and parcel of a concerted effort to grind down the Plaintiffs, as well as other boat dock owners, who are trying to obtain judicial review of the many issues raised by GCAD's push to force the boat docks onto the tax rolls at improperly inflated values. For any one taxpayers, proceeding alone, the amount of the judicial remedy for erroneous imposition of taxes as a result of GCAD's allegedly unlawful appraisals is dwarfed by the cost of obtaining that relief in court. This means that it is especially important in tax appraisal challenges which arise from a broadly-applied appraisal policy for property owners to marshal their

resources. It also is important for the efficient operation of the courts in performing their judicial review function in connection with questionable local appraisal policies that are applied across a wide array of property owners.

22. Here, GCAD has applied a new, and highly controversial, appraisal policy to hundreds of Grayson County taxpayers. These taxpayers have raised significant issues about whether the boat docks that are the target of this new policy are taxable at all and whether, even if they are taxable, whether GCAD has committed egregious, and admitted, clerical errors in the valuation of the boat docks. Yet, GCAD, in concert with the ARB, has embarked on a course of conduct designed to wear down the targeted taxpayers by making the cost of challenging GCAD's actions so hugely disproportionate to any potential remedy that might be obtained that the taxpayers will be forced into dropping their legal effort. If allowed to continue, the effect of GCAD and the ARB's effort will be to keep GCAD from ever being held judicially accountable.

23. These Plaintiffs, however, have determined a statutorily-authorized method which allows the dispute to move into the court system for fair adjudication without, at the same time, effectively financially wearing out the taxpayers. There is a case that already is ripe for judicial review on the merits of all the issues in dispute as a result of GCAD's new and questionable policy concerning the boat docks.¹¹ It can be cost effective from the taxpayers' perspective to use that case as the vehicle for obtaining judicial review of the issues

¹¹ Attached hereto as Plaintiff's Exhibit "E" is a true and correct copy of an Order, dated August 20, 2008, from the ARB, acting *en banc*, on a 25.25, sub. c, motion and the Notice of Appeal of Appraisal Review Board Order. This case is in the process of being to district court

surrounding GCAD's efforts. But, it can only be effective as a way to avoid GCAD's war of attrition on Grayson County property owners if the ARB observes the limits placed on its Section 25.25 authority by the Texas Legislature. This is why the Plaintiffs have come into this Court, seeking emergency relief to prevent the ARB from taking into its hands the authority to proceed with Section 25.25 hearings that the legislature has expressly placed in the hands of, in this case, the property owners – and only the property owners.

24. The courts have squarely held that parties in the shoes of the Plaintiffs in this case suffer irreparable harm if they are forced “to litigate in an improper forum *and to incur unnecessary attorney's fees.*” *Rapid Settlements, Ltd. v. Symetra Life Ins. Co.*, 234 S.W.3d 788, 802 (Tex. App. – Tyler 2007, no pet.) (emphasis added). This is precisely the irreparable harm that will ensue if the Court does not issue the requested injunctive relief and return the authority to start up the Section 25.25 proceedings to the parties—the Plaintiffs—given that authority by the legislature.

25. Moreover, there is a federal lawsuit pending wherein the Plaintiffs in this lawsuit are also Plaintiffs in the federal case.¹² The federal case may be dispositive about issues of whether GCAD can actually use Plaintiff's confidential Corps records as public appraisal records. This federal case and its outcome may affect whether GCAD had the right to put the Plaintiff's confidential Corps records

¹² See, the Plaintiff's Amended Complaint filed in the United States District Court for the Eastern District of Texas, in case number 4:08cv150 for violations of the Federal Privacy Act. A copy of excerpts that complaint is submitted herewith as Exhibit “D”.

into the GCAD appraisal record database in the first place and/or whether GCAD will have to return the records to the Corps removing the records from its appraisal record database, effectively stopping the Plaintiff's boat docks from being added to the GCAD appraisal roll.

26. Ms. Nancy Harris and her sister Ms. Lynda DeLosSantos are similarly situated private boat dock owners. She exhausted her administrative remedies on numerous issues in an ARB hearing dated August 20, 2008. Included was the section 25.25 (c) "clerical error" issue. A timely notice of appeal that Ms. Nancy Harris intends to file her appeal on TEX. PROP. TAX CODE § 25.25 (c) to district court has been filed with GCAD and the ARB. *See*, Exhibit "E" attached hereto. The *Harris* case will be filed shortly and is a test case. Certainly her case will work its way through the court system within the statutory time frame of five years as is allotted under section 25.25 (c).

27. GCAD, by its rigorous and punitive defense of the boat docks accounts that have been appealed to district court through the ARB, TEX. PROP. TAX CODE Chapter 42 process, has made these appeals cost a huge amount of money plus an inordinate amount of time. It is estimated that one appeal alone could cost as much as \$25,000. This is for GCAD's defense in some cases of less than \$1,000 in taxes. It is unlawful and unfair for GCAD and the ARB to force Plaintiffs into this hugely costly (possibly hundreds of thousands of dollars) administrative process of hearing and appeal when they do not have the statutory right to do so; without request.

29. GCAD's request or hand-off to the ARB in an effort to schedule these hearings without request from the Plaintiffs is a punitive effort to force as many as 180 movants, some Plaintiffs here, into the hugely costly decision described above when, at this time, it is completely unnecessary and unlawful. The statute gives the Plaintiffs five years to make this decision; i.e. request the hearing. The Plaintiffs do not want to start this process now.

29. Arguably, GCAD in its pass off to the ARB for the scheduling of 180 hearings in three days knew a large number of movants will not be able to financially afford to participate. For those that do, they know a huge percentage of the original number can not afford district court appeal. This is the game they are attempting to play in this case. They schedule hearings with no request from the Plaintiffs and with no statutory right to do so, knowing that the property owners cannot afford to fight and therefore will either no show the hearings or give up.

30. If GCAD and the ARB are not enjoined from holding such unlawfully set hearings, numerous of the 180 movants including the Plaintiffs will not be able to afford to go forward with the ARB hearing/judicial appeal process. GCAD will then claim that the movants including Plaintiffs have forever lost their right to request hearings and have the mistakes corrected. GCAD knows this and has unlawfully forced these hearings upon the Plaintiffs.

31. On or about August 11, 2008 GCAD along with the ARB sent the same approximately one hundred-eighty (180) notices of TPTC 25.25 (c) hearings as are the subject of this petition. After discussions of the statutes and issues set

forth herein with the attorneys of GCAD and the ARB, the hearings were cancelled. Now, only thirty days later, GCAD and the ARB have once again set them for September 30th through October 2, 2008.

32. The Plaintiffs have no adequate remedy at law.¹³ The Defendants are insulated from money damages by sovereign immunity. The Plaintiffs are thus put in a position of attending the illegally set hearings, and then appealing at tremendous costs. If they ultimately prevail, they then get to start the process over, incurring double costs and expenses. Plaintiffs request that the Court enter a temporary restraining order restraining Defendants from conducting hearings on Plaintiffs' 25.25 motions, and after hearing, convert the same to a temporary injunction. Finally, following trial hereof, Plaintiffs request that the Court grant permanent injunctive and declaratory relief that the Defendants do not have the authority and jurisdiction to set hearings on any motion filed pursuant to subsection c of TEX. PROP. TAX CODE § 25.25, absent a request from the taxpayer movant.

33. The ARB's statutory violation in this situation cannot be remedied *after* completion of the hearings that the Plaintiffs seek to enjoin. There is no "remedy" to exhaust because the setting of the hearing itself is the violation. Plaintiffs have requested the ARB to set aside its statutorily unauthorized setting of the hearing, and the ARB has refused. There is nothing left for the Plaintiffs to do,

¹³ Plaintiffs have communicated with Defendants regarding the relief requested herein. Attached hereto as Plaintiff's Exhibit "F" is a true and correct copy of correspondence by Plaintiff's counsel.

administratively. As the Supreme Court of Texas has previously explained, “the mere pendency of a hearing” can impair a participant’s financial standing and “thwart” the proper functioning of the process, thereby making it appropriate for the courts to stop the administrative process from going forward. *See Westheimer ISD v. Brockette*, 567 S.W.2d 780, 789 (Tex. 1978).

CONCLUSION

34. The Plaintiffs filed the 25.25 (c) (1) motions knowing and understanding the three step process in the tax code. They filed their motions (1); were in hopes that GCAD would see the error in their ways, settle and correct the mistakes (2); unfortunately GCAD does not want to do this. Now, the Plaintiffs want to wait to request a hearing (3), as is their statutory right, to see what is the outcome of the federal lawsuit and other actions that may affect this overall boat dock tax including additional non-exhaustive type litigation; not to mention saving tens of thousands of dollars and time. GCAD along with the complicity of the ARB do not want this; they want to unlawfully use the process of TPTC Chapter 41 to punitively force these hearings into the administrative process, start the time running, and cause these Plaintiffs to spend huge sums of money, again, when it is not necessary, was not their choice to start with and is not within the statutory right of the Defendants to do so; to set the hearings.

35. Plaintiffs request that the Court enter a declaratory judgment that the actions of the ARB in setting hearings starting on September 30, 2008, without a request for a hearing by a movant is outside of the statutory authority of the ARB

and temporarily and permanently enjoin the ARB from so conducting any hearings without the express request of Plaintiffs. Plaintiffs further request that the Court enter a temporary restraining order immediately restraining the ARB from so conducting any hearings. These acts will cause Plaintiffs irreparable harm unless enjoined by the Court.

37. All conditions precedent to the bringing of this action have been performed or have occurred.

REQUEST FOR DISCLOSURE

38. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, the Defendant is requested to disclose within the later of fifty days of service of this request, the material described in Rule 194 of the Texas Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that a temporary restraining order issue without notice to Defendant, its agents, employees and representatives restraining as set forth above pending further hearing on this matter and further order of this Court; Defendant be cited to appear and show cause and that upon such hearing a temporary injunction be issued enjoining Defendant, its agents, employees and representative, from the acts above described, pending further hearing on this matter; a permanent injunction be ordered on final trial of this cause enjoining Defendant from the acts described above; and for such other and further relief to which Plaintiff may justly be entitled.

Respectfully submitted,

By: _____

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AFFIDAVIT OF THOMAS SCOTT SMITH

THE STATE OF TEXAS
COUNTY OF GRAYSON

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BEFORE ME, the undersigned authority, on this day personally appeared Thomas Scott Smith, who, being first duly sworn states as follows:

"My name is Thomas Scott Smith. I am over 21 years of age, of sound mind, capable of making this affidavit, and fully competent to testify as to the matters stated herein. I have personal knowledge of each of the facts stated in the above and foregoing Motion, and each is true and correct.

In connection with a cause styled *Randy C. Phillips v. Grayson Central Appraisal District*, cause number 07-1878-336 in the 336th Judicial District Court of Grayson County, Texas, I personally attended the oral deposition of Pam Lammers and received a copy from the Court Reporter. Pam Lammers was an employee of the Grayson Central Appraisal District ("GCAD") at the time of her deposition. I was advised by the Chief Appraiser of the GCAD that Ms. Lammers is no longer so employed. Attached hereto are pages 1, 5-8, 36-38, 94, 109-110, 117-120, 127 and 130, the reporter's certification, all of which are true and correct copies. Excerpts of the deposition are being submitted in lieu of the entire deposition in the interest of conserving space in the Court's file.

Attached hereto as Plaintiff's Exhibit "B" is a copy of a motion filed with the Defendants pursuant to TEX. PROP. TAX CODE § 25.25, subpart c. Similar motions requesting similar relief have been filed on behalf of each Plaintiff. In the interest of maintaining a workable court's file, I have not attached them to this petition.

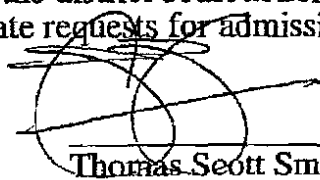
Also, attached hereto as Plaintiff's Exhibit "D" are excerpts from Plaintiff's Original Complaint, in cause styled *Anderson, et al. v. United States Army Corps*

of Engineers, et al., under number 4:08cv150 in the United States District Court for the Eastern District of Texas. I filed the original and obtained a file marked copy from the Clerk of the Court. The attached documents are true and correct copies therefrom.

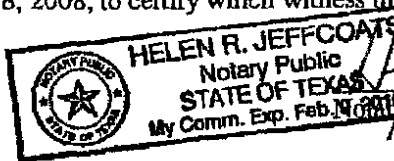
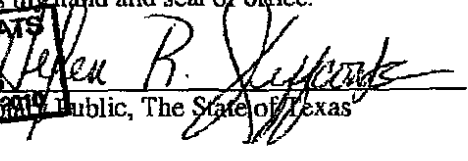
Attached hereto as Plaintiff's Exhibit "E" is a true and correct copy of an Order, dated August 20, 2008, from the ARB, acting *en banc*, on a 25.25, sub. c, motion and the Notice of Appeal of Appraisal Review Board ("ARB") Order in case number 2007-3202. This case is in the process of being appealed to district court.

Attached hereto as Plaintiff's Exhibit "F" is a true and correct copy of a letter sent to Christopher Jackson, an attorney who represents the Grayson Central Appraisal District and David B. Tabor, an attorney who represents the Grayson Central Appraisal District.

I have entered an appearance as the attorney of record for numerous taxpayers in connection with the Tex. Prop. Tax Code § 25.25, subpart c, motions which are set for September 30, 2008, October 1-2, 2008. I anticipate spending three full days just attending the hearings on behalf of these clients. Thereafter, if an appeal is processed through the district court and court of appeals, the attorneys' fees incurred will be in the tens of thousands of dollars. I have represented boat dock owners in prior litigation with the ARB and GCAD. In that prior litigation, counsel for both entities vigorously defended the position of their clients, and legal fees were substantial to prosecute the district court actions. For example, GCAD submitted one taxpayer 144 separate requests for admissions."


Thomas Scott Smith

SWORN TO AND SUBSCRIBED, BEFORE ME, the undersigned authority by Thomas Scott Smith on this September 18, 2008, to certify which witness my hand and seal of office.

 
HELEN R. JEFFCOATS
Notary Public
STATE OF TEXAS
My Comm. Exp. Feb. 14, 2011
Helen R. Jeffcoats
Notary Public, The State of Texas

APPENDIX OF EXHIBITS

- A. Excerpts of Deposition Testimony of Pam Lammers, GCAD appraiser.
- B. Sample Motion filed with the Defendants pursuant to TEX. PROP. TAX CODE § 25.25, subpart c.
- C. GCAD's List of Hearings Set
- D. Excerpts from Federal Complaint
- E. Order Determining Protest and Notice of Appeal in *Harris*.
- F. Letter to counsel

AFFIDAVIT OF FRED WHITE

THE STATE OF TEXAS
COUNTY OF GRAYSON

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BEFORE ME, the undersigned authority, on this day personally appeared Fred White, who, being first duly sworn states as follows:

“My name is Fred White. I am over 21 years of age, of sound mind, capable of making this affidavit, and fully competent to testify as to the matters stated herein. I have personal knowledge of each of the facts stated in this affidavit, and each is true and correct.

I am the owner of a boat dock on Lake Texoma. Attached hereto as part of Plaintiff’s Exhibit “B” is a motion which I (along with some 180 other dock owners) filed with the Grayson Central Appraisal District and the Grayson Appraisal Review Board pursuant to section 25.25c of the Texas Property Tax Code.

I as well as the other owners requested that GCAD correct the roll because of errors in GCAD’s calculation of the square footages of the docks. As a result of the miscalculation in square footages, the values placed on the boat docks for 2007 were inflated; some substantially, by as much as 500%. I have had several discussions with present appraisers with the Grayson Central Appraisal District, and there is no dispute by GCAD that the formula was flawed, the incorrect square footage was used and in some cases, the values hugely inflated. So far GCAD has refused to correct the mistakes.

I knew when I filed my 25.25 motion that if I could not negotiate a settlement with GCAD, it was my right to request an ARB hearing. It was not GCAD’s or the ARB’s right to set a hearing without my request. I did not request a hearing on my motion and no one did on my behalf.

On or about August 11, 2008 GCAD along with the ARB sent approximately one hundred-eighty (180) notices of TPTC 25.25 (c) hearings to the dock owners; me included. GCAD and the ARB cancelled the hearings, now only thirty days later to set them once more for September 30th through October 2, 2008.

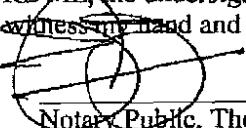
If the boat dock owners such as myself are forced to be put through these

unlawful hearings, we will have to spend a substantial amount of time calculating, measuring and preparing packages for presentation to the Appraisal Review Board. Following the hearing, an appeal will be required for each case to the District Court, which will inevitably find that the ARB was without jurisdiction. The whole process will then have to start anew. The legal fees that I and the other owners will incur because of these unlawfully set hearings are substantial and can not be recovered; the money will be lost forever.”



Fred White

SWORN TO AND SUBSCRIBED, BEFORE ME, the undersigned authority by Fred White on this the 19 day of September, 2008, to certify which ~~witness my hand and seal of office.~~



Notary Public, The State of Texas

