

IN THE DISTRICT COURT OF APPEAL OF THE EIGHTH JUDICIAL CIRCUIT
ALACHUA COUNTY, FLORIDA

ED CRAPO, as Alachua
County Property Appraiser

Appellant/Cross-Appellee,

CASE NO.: 1D17-1895
L.T. NO.: 2015-CA-001554

v.

ACADEMY FOR FIVE ELEMENT
ACUPUNCTURE, INC. a Florida
Non-Profit Corporation

Appellee/Cross-Appellant.

ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

SUPPLEMENTAL BRIEF OF APPELLANT

JOHN C. DENT, JR.
FBN: 0099242
JENNIFER A. MCCLAIN
FBN: 0446830
DENT & MCCLAIN, CHARTERED
3415 Magic Oak Lane
Sarasota, Florida 34232
(941) 952-1070
Attorneys for Appellant, Ed Crapo,
as Alachua County Property Appraiser

RECEIVED, 02/15/2019 04:40:26 PM, Clerk, First District Court of Appeal

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
ARGUMENT	2
CERTIFICATE OF SERVICE	6
CERTIFICATE OF COMPLIANCE.....	7

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Container Corp. of America v. Long</i> , 274 So. 2d 571 (Fla. 1 st DCA, 1973)	2
<i>Davis v. Macedonia Housing Auth.</i> , 641 So. 2d 131 (Fla. 1 st DCA, 1994)	3
<i>Fla. Dept. of Revenue v. Howard</i> , 916 So. 2d 640 (Fla. 2005).....	2, 4
<i>Tilton v. Gardner</i> , 52 So. 3d 771 (Fla 5 th DCA, 2010)	2, 4
 <u>FLORIDA STATUTES</u>	
Section 193 Florida Statutes	4
Section 193.016 Florida Statutes	2, 4
Section 193.461 (3) (e) Florida Statutes	2, 4
Section 194.011 Florida Statutes	2
Section 194.036 Florida Statutes	3
Section 194.036 (1) (3) Florida Statutes	3
Section 196.011 Florida Statutes	1
Section 196.011 (9) (e) Florida Statutes	3, 4
Section 196.193 Florida Statutes	2, 3
Section 196.195 Florida Statutes	2
Section 196.196 Florida Statutes	2

FLORIDA LAWS

Chapter 88-65 §(1) Laws of Fla..... 1, 3

Chapter 90-343 §§3, 4, Laws of Fla. 3

ARGUMENT

I. THE DOCTRINE OF ADMINISTRATIVE FINALITY DOES NOT APPLY TO EITHER PRIOR LEGAL AND FACTUAL DETERMINATIONS OF A VALUE ADJUSTMENT BOARD

Appellant Ed Crapo, appreciates the three amicus briefs filed herein and generally agrees with the argument and conclusion of each. The three briefs generally recognize the uniqueness of the appeal process for ad valorem tax purposes.

Part of the appeal process includes the administrative value adjustment board process. This process as described by the Florida Bar has evolved over the years, but is established as a less complex and expensive process in which many taxpayers participate without experts or counsel.

Appellant does not believe that even when the case involves only a legal conclusion, as raised by the Florida Bar brief, that a legal conclusion of a VAB was intended to be conclusive against the property appraiser or taxpayer.

The issue has become more complicated by the amendments to Section 196.011 Florida Statutes. See Ch. 88-65 §(1) Laws of Fla. The old law provided for annual applications for exemptions. Each year every taxpayer claiming an exemption was required to file an application together with all their documentation to establish their entitlement to the exemption.

The property appraisers would review the application and grant or deny them. §§196.193; 196.195; 196.196 Fla. Stat.; *Davis v. Macedonia Housing Auth.*, 641 So. 2d 131 (Fla. 1st DCA, 1994).

If the appraiser made a determination to deny the application, the tax payer had the remedies available to challenge the appraiser in Section 194.011 Florida Statutes, including a conference with the appraiser, the VAB and/or circuit. §194.011 Fla. Stat. The doctrine “Ad valorem taxes assessed against property in this state for any given tax year must stand or fall on its own validity, unconnected with the assessment made against that land during any prior to subsequent year” was applied in *Container Corp. of America v. Long*, 274 So. 2d 571 (Fla. 1st DCA, 1973). In this case it applied against a tax payer.

The legislature has attempted some abrogation of this principal. §§193.016; 193.461 (3) (e) Fla. Stat. However, the courts considering the measures have found against complete prohibition of reconsideration of a prior VAB decision. See *Fla. Dept. of Revenue v. Howard*, 916 So. 2d 640 (Fla. 2005); *Tilton v. Gardner*, 52 So. 3d 771 (Fla 5th DCA, 2010).

The legislature gave counties the option to dispense with annual applications. If adopted by a county, as did Alachua County, there would be no filing of the application each year for the exemption claimed, and no review by a property appraiser.

Now, with the adoption of the automatic renewal of all exemptions, initially in 1988, Ch 88-65 §(1) Laws of Fla. and later amended to now provide for the recording of a lien for the taxes plus a penalty and interest. Ch. 90-343 §§3, 4, Laws of Fla. As part of the 1988 amendment, the legislature added what is now sub-section 196.011 (9) (e) Florida Statutes, which provided for revocation of an existing exemption in the current tax year when an application is not filed because of the waiver of subsection 9(a) §196.011 (9) (e) Fla. Stat.

This is the process that occurred in this case. The statute provides for notice of the current year denial, which notice provides for the applicant to file within 28 days a new current application which is then reviewed under Section 196.193 Florida Statutes. §196.193 Fla. Stat.

Crapo sent the notice in June of 2014 and the Appellee failed to file a new application which was raised in his complaint and was an issue of the final judgment. Crapo, however, has not pursued that part of the final judgment. This process then comes under the de novo provisions of Section 194.036 Florida Statutes. §194.036 (1) (3) Fla. Stat. See Davis, id.

The special magistrate recommended, based upon the evidence of Appellee, that the Appellee's exemption be denied for failure of Appellee to demonstrate it was an educational institution. The VAB did not concur and granted the exemptions.

As opposed to the presumption of Sections 193.016 and 193.461 (3) (e) Florida Statutes, the legislature has not created a general presumption or estoppel for other exemptions or issues and even if it did it could not be conclusive. See *Fla. Dept. of Revenue v. Howard*, 916 So. 2d 640 (Fla. 2005); *Tilton v. Gardner*, 52 So. 3d 771 (Fla 5th DCA, 2010).

By subsection 196.011 (9) (e) Florida Statutes, a property appraiser can require a new submittal after the initial annual application is granted. This is reviewed under Section 193 Florida Statutes and the review is de novo under the applicable statutes for an initial application.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to: Paul A. Donnelly, Esquire and Jung Yoon, Esquire, Donnelly & Gross, P.A., 2421 NW 41st Street, Suite A-1, Gainesville, Florida 32606, at paul@donnellygross.com, jung@donnellygross.com and elecdocs@donnellygross.com on this 15th day of February, 2019.

DENT & MCCLAIN, CHARTERED
3415 Magic Oak Lane
Sarasota, Florida 34232
Phone: (941) 952-1070
Fax: (941) 952-1094
Attorneys for Appellant, Edward A. Crapo
Alachua County Property Appraiser

/s/ John C. Dent, Jr.

JOHN C. DENT, JR.

Florida Bar No. 0099242

jdent@dentmcclain.com

JENNIFER A. MCCLAIN

Florida Bar No. 0446830

jmcclain@dentmcclain.com

CERTIFICATE OF COMPLIANCE

Counsel for Appellant, Ed Crapo, certifies that Appellant's Supplemental Brief is typed in 14 point (proportionately spaced) Times New Roman font.

/s/ John C. Dent, Jr.
JOHN C. DENT, JR.
Florida Bar No. 0099242