

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

JIMMY ALVAREZ, as Property Appraiser for Bradford County, Florida; TEILA N. PEARSON as Tax Collector for Bradford County, Florida; and JAMES A. ZINGALE, as Executive Director of the Florida Department of Revenue,

Petitioners,

v.

WHISPERING OAKS HOUSING PARTNERS, II, LTD.,

Respondent.

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NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.

CASE NO. 1D07-2238

Opinion filed August 21, 2007.

Petition for Writ of Prohibition -- Original Jurisdiction.

Larry E. Levy of the Levy Firm, Tallahassee; and Bill McCollum, Attorney General, and Mark T. Aliff, Assistant Attorney General, Tallahassee, for Petitioners.

James M. Spoonhour of Lowndes, Drosdick, Doster, Kantor & Reed, P.A., Orlando, for Respondent.

PER CURIAM.

Whispering Oaks Housing Partners, respondent herein, challenged the assessment of its real property by filing a petition with the value adjustment board (VAB) on September 5, 2006. On October 9, 2006, the VAB conducted a hearing and

orally announced denial of the petition. Four days later, petitioner Alvarez, the property appraiser for Bradford County, certified the tax roll. The VAB issued its written order regarding Whispering Oaks' petition on October 27, 2006, and respondent filed its complaint in circuit court on December 21, 2006. Alvarez moved to dismiss the complaint as untimely under the provisions of section 194.171(2), Florida Statutes. The motion was denied and relief is sought from this court by petition for writ of prohibition. We have jurisdiction. Higgs v. Armada Key West Ltd., 903 So. 2d 303 (Fla. 3d DCA 2005); Suber v. Pultz, 889 So. 2d 947 (Fla. 5th DCA 2004); Crapo v. City of Gainesville, 855 So. 2d 203 (Fla. 1st DCA 2003); Page v. McMullan, 849 So. 2d 15 (Fla. 1st DCA 2003).

We have considered the arguments of petitioner and respondent and can find no material distinction between the facts of this case and those in Wal-Mart Stores, Inc. v. Day, 742 So. 2d 408 (Fla. 5th DCA 1999), rev. denied, 770 So. 2d 163 (Fla. 2000). We also agree with the reasoning and result in Wal-Mart v. Day and therefore grant the petition and remand to the circuit court with directions to dismiss the complaint of Whispering Oaks as untimely.

PETITION GRANTED.

KAHN and BENTON, JJ., CONCUR; BROWNING, C.J., DISSENTS WITH OPINION

BROWNING, C.J., dissents.

I dissent. It is illogical and contrary to the requirement that a litigant exhaust his or her administrative remedies before seeking a court remedy to construe the statute so that the time for filing a complaint in circuit court begins to run before the administrative challenge has concluded by issuance of a written order by the VAB. I would deny the petition for writ of prohibition and certify conflict with Wal-Mart Stores, Inc. v. Day, 742 So. 2d 408 (Fla. 5th DCA 1999).