

No. _____

O'CONNOR & ASSOCIATES	}	IN THE DISTRICT COURT OF
	}	
	}	
	}	
VS.	}	HARRIS COUNTY, T E X A S
	}	
HARRIS COUNTY APPRAISAL	}	
DISTRICT, the APPRAISAL	}	
REVIEW BOARD OF THE HARRIS	}	
COUNTY APPRAISAL DISTRICT,	}	
JIM ROBINSON, CHIEF APPRAISER	}	
AND ROBERT CUNNINGHAM,	}	
CHAIRMAN	}	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION FOR MANDAMUS, DECLARATORY
JUDGMENT TEMPORARY RESTRAINING ORDER, INJUNCTION,
AND FOR DAMAGES**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now O'Connor & Associates, Plaintiff, complaining of the following Defendants, and would show:

Discovery Plan

Pursuant to Rule 190.1 discovery is intended to be conducted under Level 2.

I. Parties

Defendants are the HARRIS COUNTY APPRAISAL DISTRICT (the "District"), upon whom service may be had by serving Jim Robinson, Chief Appraiser, at 13013 Northwest Freeway, Houston, Texas 77040, the APPRAISAL REVIEW BOARD OF HARRIS COUNTY APPRAISAL DISTRICT (the "ARB") upon whom service may be had by serving Robert Cunningham, Chairman, at 13013 Northwest Freeway, Houston, Texas 77040, Jim Robinson, Chief Appraiser for the Harris County Appraisal District, who may be served at 13013 Northwest Freeway, Houston, Texas 77040, and Robert Cunningham, Chairman of the Appraisal Review Board for

the Harris County Appraisal District, who may be served at 13013 Northwest Freeway, Houston, Texas 77040.

Plaintiff is a Texas limited partnership which does business in Harris County, Texas. Plaintiff is an owner of property which is subject to appraisal by the Defendant, Harris County Appraisal District.

II. Venue and Jurisdiction

The actions and inactions complained of herein all occurred in Houston, Harris County, Texas such that venue is appropriate in Harris County, Texas. The Defendants, Harris County Appraisal District and the Appraisal Review Board are quasi-governmental entities that reside in and do business in Harris County, Texas. The individual Defendants, Jim Robinson and Robert Cunningham, as governmental officials so business in Harris County, Texas and are charged with fulfilling certain statutory duties in and for Harris County, Texas. The Texas Property Tax Code provides that jurisdiction over property tax matters is vested in the District Courts of Texas. Furthermore, the matters complained of herein, and the relief requested all come within the statutory jurisdiction of the District Court. Plaintiff is an owner of business personal property in Harris County, Texas, subject to appraisal by the Defendant, Harris County Appraisal District. This Court has jurisdiction over the parties to the suit and the subject matter of this suit. Pursuant to Chapter 41 and Chapter 42 of the Code this Court has jurisdiction and authority to order protest hearings and to determine and rule upon the authority of the Appraisal Review Board.

III. Facts Leading to Request for Relief

Plaintiff as an owner of business personal property in Harris County, Texas is a resident of Harris County, Texas, and is and has been at all times pertaining to pertinent dates in this Petition, the owner of business personal property located in Harris County, Texas. This suit in part is brought concerning the business personal property located identified by the Defendant, Harris County Appraisal District under account number 0568377 for the tax year 1995. Plaintiff has filed a timely protest of the appraised value of the property for the tax year 2005 pursuant to Section 41.41 of the Texas Property Tax Code.

Plaintiff is also a tax agent which represents numerous owners of real and personal property in Harris County, Texas pursuant to the provisions of Section 1.111 of the Code. In most circumstances Plaintiff contracts with the property owners for a fee which is contingent upon favorable results in a protest of the appraised value of property pursuant to the provisions of Chapter 41 of the Code. Plaintiff represents and provides services to the property owners in protests filed pursuant to the provisions of Chapter 41 of the Code. Plaintiff has a pecuniary interest in the outcome of protests which it files on behalf of property owners pursuant to Chapter 41 of the Code. Plaintiff also has an interest in the outcome of the protest that it filed for its business personal property account.

The Harris County Appraisal District (the "District") appraises property in Harris County for purposes of property taxation pursuant to the Texas Property Tax Code (the "Code"), and specifically Chapter 23 of the Code. The Appraisal Review Board (the "ARB") is established pursuant to the Code, and specifically

Section 6.41 of the Code. The ARB acts separate and independent of the District but may use the staff of the appraisal office for clerical assistance (Section 6.43 of the Code). The ARB is charged with specific responsibilities as set forth in Section 41.01 of the Code in particular determining protests by property owners.

IV. Plaintiff's Complaints

1. On the filing of a protest the ARB shall schedule a hearing on the protest (See Section 41.45(a)). A protest hearing may be postponed if the property owner requests additional time to prepare under specific circumstances (See Section 41.66(h)). No provision is made for the District or the ARB to otherwise postpone a hearing. Contrary to the Code, the ARB has not scheduled hearings for the 2005 tax year protests, the hearings have been scheduled and are controlled by the District. On information and belief this has been a practice for years. Contrary to the Code, the ARB and/or the District routinely postpone hearings for various reasons other than in response to requests by the property owners or their agents. The ARB and the District routinely and intentionally failed to abide by the statutory mandates making the District and the ARB independent bodies with independent duties and responsibilities. The unwarranted postponement of hearings substantially damages Plaintiff as Plaintiff is routinely required to incur unnecessary costs and expenses in order to comply with the requirements of the ARB and District in connection with postponement of hearings.

2. Property owners are entitled to protest a number of things before the ARB including the District's determination of the appraised value of their property pursuant to Chapter 23 (See

Section 41.41(1) of the Code) and unequal appraisal of the property owner's property (See Section 41.41(2) of the Code). The ARB must consider a protest based upon unequal appraisal (See Section 41.41(a)(2) and Section 41.43 of the Code). The District has the burden of establishing the value of the property by a preponderance of the evidence presented at the hearing, failing which the ARB is mandated to determine the protest in favor of the property owner (See Section 41.43(a) and (b) of the Code). Contrary to the Code some ARB panels and members refuse to consider property owner's protests based upon allegations of unequal appraisal unless other conditions which are not provided for in the Code are met. In particular hearings, Board members have asked the ARB panel to not consider the property owner's evidence on uniform and equal appraisal because no income and expenses information was presented. Contrary to the clear provisions of the Code, the ARB determines protests of unequal appraisal in favor of the District where the District either fails to establish the matters set forth in Section 41.43(b), or presents absolutely no evidence at all regarding the equality of the appraisal of the property. Some ARB panels ignore the property owner's evidence of unequal appraisal even under circumstances where the District presents no evidence whatsoever. Contrary to the Code the ARB determines protests in favor of the District where the District fails to produce evidence which establishes the value of the property or equity of appraisal by a preponderance of the evidence. As a result of these wrongful actions the Plaintiff has been substantially damaged and will continue to incur substantial damages if the ARB and District are allowed to continue to conduct protest hearings contrary to the

statutory requirements in this manner. As a result of the violations of the Code by the ARB and the District, protests have been determined in favor of the District wrongfully and the property owners and Plaintiff have been deprived of the recovery of substantial taxes which were wrongfully imposed and collected or are to be collected.

Furthermore, the Code specifically provides that a property owner may protest the determination of the appraised value of the property (Section 41.41(1)) and that a property owner may protest unequal appraisal of the owner's property (Section 41.41(2)). Section 41.45(a) provides that if more than one protest is filed relating to the same property, the appraisal review board shall schedule a single hearing on all of the timely filed protests related to the property. Section 41.47 provides that the appraisal review board shall determine the protest and make its decision by written order. Almost without exception Plaintiff protests the appraised value of the property owner's property and unequal appraisal of the property owner's property. Although the appraisal review board apparently schedules one hearing for both protests, the ARB does not issue a written order on each protest as required by statute. The ARB only issues one order and fails to determine both protests as required by the statute.

3. Pursuant to Section 41.461 Plaintiff requested in advance of scheduled hearings that the District produce a copy of the information that the District planned to introduce at the hearing to establish the matters at issue. Pursuant to Section 41.461(a)(2) the District was required to inform the property owners (through the Plaintiff) that the information requested could

be inspected and copied. Pursuant to Section 41.67(d) of the Code, if the information previously requested pursuant to Section 41.461 is not made available to the protesting party at least fourteen (14) days prior to the hearing, the information may not be used as evidence at the hearing. In response to the Plaintiff's request for information the District only provided limited information. Since the basis of most protests is consistent and the District controls most of the information regarding appraised values, the District is certainly in a position to provide the protesting party with all of the necessary information. Contrary to the provisions of the Code the District produced information (not previously made available after request) as evidence at the hearings. Contrary to the provision of the Code, the ARB allowed the evidence to be presented, did not exclude the evidence, and determined the protests in favor of the District. Furthermore, in circumstances where the District failed to produce evidence or failed to produce evidence which would establish the value of the property by a preponderance of the evidence the ARB prompted the District to find and present additional evidence which had not been previously produced in order to establish the value of the property. Clearly, the protests should have been determined in favor of the property owners.

V. Immediate Relief Requested

1. Protest hearings pursuant to the Code continue to be held by the ARB and District. If the Plaintiff is not granted immediate relief by way of mandamus, temporary restraining order and/or injunction it will be irreparably harmed as Plaintiff and its property owner clients will lose the right to a proper

determination of their protests of the appraised value of their property. At the very least, Plaintiff and the property owners will be harmed and damaged irreparably as the burden of proof to establish the proper appraised value of property shifts from the District to the property owner at the judicial appeal level pursuant to the provisions of Chapter 42 of the Code. Furthermore, judicial appeal of appraised value of property is not economically feasible under most circumstances. Upon information and belief this is precisely why the District and ARB continue to hold and conduct hearings in direct contravention of the Code. An order of the Court or mandamus order maintaining the status quo by requiring the Defendants to abide by the statutory provisions is the only remedy which will afford the Plaintiff the relief which is mandated by the Code. Alternatively, the Court should enter an order providing that protest hearings cease immediately until proper procedures can be put into place to provide Plaintiff, tax agents and property owners the requisite protest hearing as provided by the Code. Section 41.45(f) provides that the District Court may order a hearing to be held.

2. Plaintiff has no adequate remedy at law and cannot be adequately compensated by damages. Once the administrative protest process has been completed neither Plaintiff nor its property owner clients have any remedy comparable to the proper administrative protest process.

VI. Request for Temporary Restraining Order

Plaintiff requests that the Court enter a Temporary Restraining Order which orders the ARB and the District to immediately cease conducting protest hearings until procedures are established to

insure that the Plaintiff's rights and the property owner's rights are adequately protected by the implementation of guidelines requiring the ARB and the District to comply with the clear mandates of the Code. Specifically, Plaintiff seeks a mandamus order and/or temporary restraining order which:

A. Prohibits the District from scheduling protest hearings and which requires the ARB to schedule hearings;

B. Prohibits the ARB and/or the District from postponing scheduled hearings under circumstances not permitted by the Code;

C. Requires the ARB to consider Plaintiff's presentation of protests of unequal appraisal;

D. Requires the ARB to require the District to meet the burden of proof as established in Section 41.43 of the Code or to determine the protest in favor of the property owner;

E. Requires the ARB to exclude all evidence offered at a hearing by the District that the Plaintiff or the property owner establishes was not produced at least fourteen (14) days prior to the hearing as required by Sections 41.461 and 41.67(d) of the Code;

F. Prohibits the District from offering as evidence any information that was not produced at least fourteen (14) days prior to the hearing as required by Sections 41.461 and 41.67(d) of the Code;

G. Requiring the Appraisal Review Board to issue written orders determining all protests including multiple protests on the same property;

H. Requires the Appraisal Review Board to conduct hearings in accordance with the provisions of the Code;

I. Determines that the Appraisal Review Board has exceeded its authority by permitting improper evidence at hearings and by not determining each protest by written order as required by the provisions of the Code.

VII.

Plaintiff will show that a temporary restraining order will cause Defendants no harm and that the issuance of a temporary restraining order is the sole remedy to maintain the status quo as the Plaintiff has no adequate remedy at law and the Plaintiff will be irreparably injured and damaged in the event that the Court does not enter a temporary restraining order.

VIII.

Plaintiff requests that the Court establish a bond in the amount of \$1,000 for the issuance of the temporary restraining order and that the Court find that a bond in such amount will adequately protect the Defendants since the Defendants will not be harmed by the issuance of a temporary restraining order.

IX. Injunction

After proper notice and hearing Plaintiff requests that the Court enter an injunction under the same terms and conditions as plead herein with regard to the temporary restraining order. Plaintiff will establish at hearing its entitlement to the injunction and that it has no adequate remedy at law and will be irreparably damaged should an injunction not be put into place for at least the pendency of this suit.

X. Mandamus

The remedy of mandamus is available to compel a public official to perform a ministerial act. The actions and inactions complained of by the Plaintiff are ministerial acts all provided for by clear and unequivocal statutory provisions. The cited law clearly spells out the duty to be performed by the Appraisal Review Board, its Chairman, and the duty to be performed by the Harris County Appraisal District and the Chief Appraiser. The Chief Appraiser of the Harris County Appraisal District is Jim Robinson. Mandamus should issue against the Defendant Harris County Appraisal District, by and through Jim Robinson as more fully set forth below. The Chairman of the Appraisal Review Board is Robert Cunningham. Mandamus should issue against the Defendant Appraisal Review Board, by and through Robert Cunningham as more fully set forth below.

Plaintiff has no adequate remedy at law and if mandamus does not issue for all matters sought above with regard to the temporary restraining order the Plaintiff and its clients and property owners in Harris County will be forever deprived of due process and their statutory protest rights.

Specifically, Plaintiff seeks a mandamus order which:

A. Prohibits the District from scheduling protest hearings and which requires the ARB to schedule hearings;

B. Prohibits the ARB and/or the District from postponing scheduled hearings under circumstances not permitted by the Code;

C. Requires the ARB to consider Plaintiff's presentation of protests of unequal appraisal;

D. Requires the ARB to require the District to meet the burden of proof as established in Section 41.43 of the Code or to determine the protest in favor of the property owner;

E. Requires the ARB to exclude all evidence offered at a hearing by the District that the Plaintiff or the property owner establishes was not produced at least fourteen (14) days prior to the hearing as required by Sections 41.461 and 41.67(d) of the Code;

F. Prohibits the District from offering as evidence any information that was not produced at least fourteen (14) days prior to the hearing as required by Sections 41.461 and 41.67(d) of the Code;

G. Requiring the Appraisal Review Board to issue written orders determining all protests including multiple protests on the same property;

H. Requires the Appraisal Review Board to conduct hearings in accordance with the provisions of the Code;

I. Determines that the Appraisal Review Board has exceeded its authority by permitting improper evidence at hearings and by not determining each protest by written order as required by the provisions of the Code.

XI. Motion to Compel Proper Hearing

Plaintiff incorporates the facts and allegations contained in paragraphs I through VIII above. Pursuant to the provisions of Section 41.45 Plaintiff and its property owner clients are entitled to protest hearings, having timely filed notices of protests. Plaintiff and its property owner clients have been denied proper hearings according to the statute because of the failure of the ARB

and the District to abide by clear mandates of the statute. Pursuant to Section 41.45(f) Plaintiff alleges that it, and its clients, have been denied hearings to which the Plaintiff and property owners are entitled. Suit is brought herein against the ARB and the District to compel the ARB to conduct proper and appropriate hearings on all matters protested by Plaintiff. Pursuant to the provisions of Section 41.45(f) Plaintiff seeks recovery of, and should be awarded, costs and reasonable attorneys fees.

XII. Declaratory Judgment

Plaintiff incorporates the facts and allegations contained in paragraphs I through XI above. Plaintiff sues pursuant to the Declaratory Judgments Act and requests that the Court enter a declaratory judgment establishing the matters set forth herein above. Plaintiff will show the Court that a dispute exists between the Plaintiff and each Defendant concerning the hearing process and the interpretation and application of certain provisions of the Code. There is a dispute between the parties, the subject of which can properly be determined by the Court, and properly resolved by the Court by the entry of a Declaratory Judgment establishing and setting out each parties' rights and obligations. The provisions of the Code are clear and Plaintiff is entitled to a declaratory judgment requiring the Defendants to abide by the clear provisions of the Code. Pursuant to the Declaratory Judgment Act Plaintiff seeks recovery of, and should be awarded, costs and reasonable attorneys fees for this proceeding and for all necessary appeals.

XIII. Conditions Precedent

All conditions precedent to the Plaintiff's right of recovery have occurred or have been waived by the Defendants.

XIV.

In the event that the Court determines that Plaintiff can be adequately compensated by an award of damages, the Plaintiff sues the Defendants for those damages and consequential damages, the extent of which has not yet been determined. Plaintiff sues Defendants jointly and severally for those damages. Pursuant to the Code, Plaintiff sues the Defendants for attorneys fees for this proceeding and all necessary appeals.

XV. Jury Demand

Plaintiff requests trial by jury on all issues triable to a jury and Plaintiff submits its jury fee with the filing fee in this matter.

XVI. Verification

This petition is verified by the affidavit of Patrick O'Connor attached hereto and incorporated herein. The additional facts and matters set forth in the affidavit of Patrick O'Connor are all incorporated herein as though set forth fully herein.

XVII. REQUEST FOR DISCLOSURE AND DISCOVERY

Pursuant to the provisions of Texas Rule of Civil Procedure 194 (and specifically the response provisions of Rule 194.3) each Defendant is requested to disclose, within 50 days after service of this petition and request, the information or material described in Rule 194.2.

Furthermore, pursuant to the provisions of the Texas Rules of Civil Procedure this Petition also contains a Request for Production (Exhibits "A"). This Request for Production is being

served as to each Defendant. Each Defendant is advised that in accordance with the Texas Rules of Civil Procedure (196.2(a)) you must serve written responses to this discovery within fifty (50) days from the service of this petition and discovery.

WHEREFORE, Plaintiffs request that the Defendants be cited to appear and answer, and that on final trial, the Court render judgment:

1. Granting the mandamus order, temporary restraining order and injunction as requested herein;

2. Entering an order requiring Defendants to conduct protest hearings in accordance with the Code;

3. Entering a declaratory judgment as plead herein;

4. Granting Plaintiff the relief, at law and in equity, to which Plaintiff may show itself entitled, including damages and consequential damages, if applicable; and

5. Awarding Plaintiffs all costs incurred, reasonable attorney's fees through trial of this matter, attorneys fees on appeal and all other relief to which Plaintiff may be entitled.

RESPECTFULLY SUBMITTED,
McKENNEY & ASSOCIATES, P.C.

by: _____

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hlm/05lit/oco-hcad.pop

EXHIBIT "A" - Items, Documents and Things Requested

1) Items, documents and things which set forth the property account identified by the District, the owner's name and address, the agent's name, address and telephone number, if represented by an agent, and the hearing date and time, for each protest filed with Harris County Appraisal District for the 2005 tax protest year.

- 2) Items, documents and things comprising rules, regulations, guidelines, instructions, or other matters which set forth any rules, procedures or guidelines for the ARB to schedule hearings, postpone hearings or conduct hearings pursuant to Chapter 41 of the Texas Property Tax Code.
- 3) Items, documents and things comprising copies of all requests for information pursuant to Section 41.461 submitted to the District by any property owner or agent for the 2005 protest season.
- 4) Items, documents and things comprising copies of all correspondence by the District to any property owner or agent pursuant to Section 41.461 informing the property owner or agent that the property owner or agent may inspect and may obtain copies of the data, schedules, formulas, and all other information the chief appraiser planned or plans to introduce at a protest hearing.
- 5) Items, documents and things comprising rules, regulations, guidelines, instructions, or other matters which set forth any rules, procedures or guidelines for the ARB in determining or making a determination concerning whether or not evidence or information previously requested under Section 41.461 that was not made available to the protesting party at least fourteen days prior to the hearing should be used or admitted at a protest hearing.
- 6) Items, documents and things comprising rules, regulations, guidelines, instructions, or other matters which set forth any rules, procedures or guidelines for the ARB concerning the conducting of protest hearings.
- 7) Items, documents and things comprising rules, regulations, guidelines, instructions, or other matters which set forth any rules, procedures or guidelines for the ARB concerning determination of protest hearings.
- 8) Items, documents and things comprising rules, regulations, guidelines, instructions, or other matters which set forth any rules, procedures or guidelines for the ARB concerning the issuance of board orders determining protests.