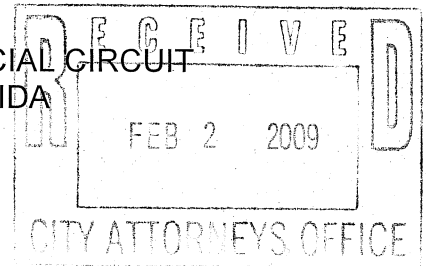


IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA



CITY OF VERO BEACH,
a Florida municipal corporation,

Plaintiff,

vs.

DAVID C. NOLTE, as Property Appraiser of
Indian River County, Florida; CHARLES SEMBLER,
as the Tax Collector of Indian River County, Florida,

Defendants.

CASE NO.: (Consolidated)
2003-0837-CA19
2004-0768-CA19
2005-0824-CA17
2006-0997-CA17

FINAL JUDGMENT

THIS CAUSE came before the Court for a non-jury trial. The Court, having heard the testimony, considered the evidence admitted during the proceedings, and heard argument of counsel, makes the following findings of fact and conclusions of law:

STATEMENT OF THE CASE

The Plaintiff, City of Vero Beach ("City"), has filed a two-count complaint challenging the imposition of ad valorem taxation on aircraft hangers built and operated by the City. The City is seeking a declaratory judgment against Defendant, David C. Nolte, as Property Appraiser of Indian River County, Florida ("Property Appraiser"), that his classification and taxation of the City's municipal property, as proprietary and taxable leasehold interests subject to locally imposed ad valorem taxes, is void and contrary to law. The City is also seeking injunctive relief against Defendant, Charles Sembler, as Tax Collector of Indian River County, Florida ("Tax Collector"), to stop the collection of any such locally imposed ad valorem taxes. The City filed subsequent lawsuits challenging the assessments for the tax years of 2004, 2005, 2006, and 2007. The lawsuits were consolidated by agreement

of the parties.

The main issue to be decided by the Court in this case is whether the hangars, built and operated by the City at its municipal airport, within the aviation area, which are leased on a relatively short term basis (one year or less) to anyone owning aircraft suitable for temporary storage are subject to local ad valorem taxes.

FACTS

The City is the owner and operator of the Vero Beach Municipal Airport ("Airport"). This is a general aviation airport providing aviation/aeronautical services for the public. It is a municipally owned "public airport," subject to regulation by the Federal Aviation Administration ("FAA") and the Florida Department of Transportation ("FDOT"). These regulations include control over the acquisition, construction, and operation of all improvements to the real property within the aviation area of the airport layout plan as approved by the FAA and FDOT. The Airport is a "Part 139 (of the FAA regulations) Certified Airport."

In 2002, the City built, at the Airport, structures containing 28 "T-hanger" spaces and five "executive hanger" spaces ("the hanger facility"). Prior to the City's construction of the hanger facility, hanger space was and still is provided by privately owned fixed based operators ("FBOs") at the Airport. In 2002, the Property Appraiser notified the City that he intended to classify the hanger facility not as municipal property, but as government leaseholds, subject to local ad valorem taxation. In 2003, he reclassified the property, as he had indicated and began imposing property taxes on this municipal property.

The Tax Collector accepted the real property tax roll from the Property Appraiser, including classification of the municipal property as government leaseholds and generated a tax bill and attempted to impose a lien on the City.

The hanger facility is located within the aviation area of the Airport layout plan

approved by the FAA for the Airport. The City did not apply for an exemption for this property or any other property owned and operated by the City.

The City operates the hanger facility, directly, without the agency of an FBO. The aircraft hanger spaces are leased on a multi-month basis to individuals, business entities, associations, or anyone else owning aircraft suitable for, and qualified for, temporary storage in the hangers. The lease agreements with the hanger tenants include pass through provisions for any ad valorem taxes legally imposed so that the tenants are "solely responsible for same. There is no residency requirement on the part of the tenant. Access to the hanger facility is granted only to tenants or authorized personnel. To access the hanger facility, one must use a key pad code for entry through the gate. The code is given only to tenants and authorized airport/emergency personnel. The fence surrounding the hanger facility is six feet or more in height topped by three strands of barbed wire. Upon taking possession, the tenant has the exclusive right to the hanger unit. Airport personnel may enter the hanger facility with the consent of the tenant or for maintenance/inspection purposes as provided in the lease with the tenant. The City does not use, lease to itself or otherwise hold possession of any of the hanger units. The City does not own, lease, have rights to or otherwise have an interest in any aircraft. The City does not have any rights to or interests in any of the aircraft stored by the tenants at the hanger facility nor does the City in any way limit, dictate or control, the tenants' use of their aircraft.

The funding for the construction of the hanger facility was provided through general revenues from the City (20%) and with grants from the FDOT (80%), as reflected in the "Public Transportation Joint Participation Agreements" and "Supplemental Joint Participation Agreements." The source of these funds is the 6.5 cents per gallon fuel tax imposed by the state on the sale of all aviation fuel. These tax revenues are deposited into the State Transportation Trust Fund to be spent for aviation related projects at the State's

public airports (both general aviation and commercial). The City applied for grants from the State to build the hanger facility because there were no facilities providing safe and secure enclosed storage for individual general aviation aircraft at the airport. The demand for this form of storage justified the cost of building the hanger facility, using grant funds. The Airport's FBOs were unwilling to build such structures because they were not economically feasible as a privately financed venture.

LEGAL CONCLUSIONS

The City's claim for a constitutional exemption in this case is presumed to be correct. The Property Appraiser has the burden of overcoming that presumption. *Florida Department of Revenue v. City of Gainesville*, 918 So.2d 250, 258 (Fla. 2005).

The Property Appraiser has alleged in his First Affirmative Defense that the City cannot claim an exemption from ad valorem taxation because the City has failed to establish that a lessee of the subject property is performing a governmental, municipal, or public function as defined in section 196.012(6), Florida Statutes.

In this case, the Property Appraiser is attempting to relate the statute to the lessees of the hanger facility and argues that the lessees are required to perform a governmental, municipal, or public function for the City to qualify for an exemption from ad valorem taxation. However, it is the City that is performing a governmental, municipal, or public function in providing the hanger facility for aircraft as part of its operation of the airport. The operation of a public airport by a municipality is traditionally a public purpose.

In 2001, the Property Appraiser began to tax all property leased to the FBOs at the Vero Beach Municipal Airport. The FBOs alleged that they were entitled to an exemption from ad valorem taxation as an FBO providing aviation services to the general public on property leased from the City pursuant to section 196.012(6) and 196.199(2)(a), Florida

Statutes. After protracted litigation, that matter was resolved by this Court in a decision that the property was not taxable which was appealed and later affirmed by the Fourth District Court of Appeal in *Nolte v. Sun Aviation, et al.*, 975 So. 2d 627 (Fla. 4th DCA 2008).

Clearly, section 196.012(6), Florida Statutes, provides that property leased to an FBO is performing a “governmental, municipal or public purpose, making it exempt from ad valorem taxes when providing goods and services to the general aviation public in the promotion of air commerce. Therefore, when the municipality performs these same exempt functions directly, rather than through a lessee, it remains a governmental, municipal or public function.

The Property appraiser has alleged in his Second Affirmative Defense that the City is not entitled to relief under Article VII, Section 3, of the Florida Constitution because the subject property is owned by the City, a municipality, but the property is not being used exclusively by the City for a municipal or public purpose.

Article VII, §3(a) of the Florida Constitution provides, “All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation.” That section confers on property owned by municipalities an exemption from ad valorem taxation under certain circumstances. To qualify for the exemption, the property must be both owned by a municipality and used exclusively by the municipality for municipal or public purposes. *See Gainesville*, 918 So.2d 250, at 258.

Section 332.03, Florida Statutes, provides that the acquisition and operation of airports granted to municipalities are determined to be used for public, governmental, and municipal purposes as a matter of public necessity. The exempt status of such property may be lost or legally abandoned when it is leased or otherwise used for a predominantly

private purpose, and only incidentally for a public purpose. *Hillsborough County Aviation Authority v. Walden*, 210 So. 2d 193 (Fla. 1968). The Court finds that the construction and leasing of the hanger facility within the aviation area of the Airport is incidental to the airports normal operation and service of providing shelter for aircraft using the facility and is therefore a public purpose. The Property Appraiser's argument would be valid if the City was leasing the hanger facility for nonaeronautical activities.

The Property Appraiser's Third Affirmative Defense states that the City is not entitled to relief under section 197.122(1), Florida Statutes. This statute enures to the benefit of the Property Appraiser and the other named entities. It provides that an act of omission or commission of the Property Appraiser, Tax Collector, Board of County Commissioners, Clerk of Court, or County Comptroller, or their deputies or assistants, or newspaper in which the advertisement of sale may be published, can be corrected so that property taxes are not defeated and the collection of any tax can be enforced. Relief is not available to the City under this section of the Florida Statutes.

The Property Appraiser's Fourth Affirmative Defense states that the City waived any claim of exemption from ad valorem taxes as a result of the failure to file an application for exemption as required by section 196.011, Florida Statutes. Article VII, § 3(a) of the Florida Constitution clearly establishes that it is a self-executing provision and therefore does not require statutory implementation. The language of chapter 196 is irrelevant because although a statute may grant additional exemptions, it may not repeal the exemptions granted municipalities by the constitution. *City of Sarasota v. Mikos*, 374 So. 2d 458 (Fla. 1979).

The Tax Collector's First Affirmative Defense states that the Tax Collector does not classify property and cannot, as a matter of law, become involved in determining what

property is or is not on the tax roll. The Court finds this affirmative defense legally insufficient as to the injunctive relief sought by the City.

The Tax Collector's Second Affirmative Defense states that section 197.122(1), Florida Statutes does not entitle the City to challenge an error of omission or commission by the Tax Collector in connection with classification of the property and to the issuance of the tax bill. The Court agrees with the Tax Collector for the same reasons stated in the Property Appraiser's Third Affirmative Defense set forth above.

The Court finds that the hanger facility directly supports the operation of the Airport and therefore is exempt from ad valorem taxation. It is therefore:

ORDERED AND ADJUDGED:

1. That Plaintiff's Motion for Summary Judgment is denied.
2. That the Defendant, David Nolte, as the Property Appraiser of Indian River County, Florida, shall reclassify the City of Vero Beach's municipal property (described as "32-39-26-00011-0140-00001/0 Vero Beach Municipal Airport Parcel #14 Less Parcel 14-13" on the Indian River Tax Collector's Notice of Ad Valorem Taxes and Non-Ad Valorem Assessments) as exempt from ad valorem taxation.
3. That the Defendant, Charles Sembler, as the Tax Collector of Indian River County, Florida, is enjoined from collecting ad valorem taxes on the subject property.
4. The Court reserves jurisdiction to award attorneys' fees and costs.

DONE AND ORDERED in chambers at Vero Beach, Indian River County, Florida

this _____ day of _____

SIGNED AND DATED

JAN 30 2009

ROBERT A. HAWKEY
CIRCUIT JUDGE

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Benjamin K. Phipps, Esquire
Charles P. Vitunac, Esquire
Eric C. Barkett, Esquire
Robert C. Nall, Esquire