

ELAINE HENDERSON, ON BEHALF §
OF HERSELF AND ON BEHALF OF §
ALL OTHER PERSONS OR ENTITIES §
SIMILARLY SITUATED §

Plaintiffs, §

VS. §

JEFFERSON COUNTY APPRAISAL §
DISTRICT AND ANGELA BELLARD, §
IN HER CAPACITY AS CHIEF §
APPRAISER §

Defendants, §

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

172nd JUDICIAL DISTRICT

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO QUASH DEPOSITION
AND MOTION TO CONTINUE THE HEARING ON DEFENDANT'S PLEA TO THE
JURISDICTION, PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF AND
REQUEST FOR CLASS ACTION CERTIFICATION**

TO THE HONORABLE JUDGE OF SAID COURT:.

THE CONTROVERSY

1. On or about April 27, 2015, Plaintiff Henderson received a Notice of Appraised Value from Defendant JCAD, informing her that JCAD had raised the appraised value of her home by \$41, 830.00. *See* Exhibit "A." In response, she retained counsel to contest such appraised value. During the investigation of her tax appeal, an agent of JCAD represented to counsel for Mrs. Henderson that homes in Jefferson County, which had been previously classified one and a half story had been classified as two story homes for the 2015 year. On May 29, 2015, Mrs. Henderson *timely* filed her appeal of the appraisal board decision regarding the increase of value of her home. *See* Exhibit "B." Despite her timely appeal and protest, on July 14, 2015, the Appraisal Review Board panel denied her relief and determined the increase in value of Mrs. Henderson's home was warranted.

2. After the exhaustion of her administrative remedies under Section 41.001 *et seq.* of the Texas Tax Code, Plaintiff asserted her right to petition this Court under Section. 41.21 of the

Texas Tax Code and filed the above-referenced suit on July 22, 2015. Plaintiff's suit alleges that Angela Bellard, in her capacity as Chief Appraiser for JCAD, unilaterally and fraudulently changed her home which had previously been being classified as one and half story home to classify it as a two story homes for the 2015 tax year. Plaintiff contends that Defendant Bellard changed the statuses of an additional nearly 8,000 homes throughout Jefferson County, acting without authority and in direct violation of the Texas Tax code. As such, Plaintiffs also brought her suit on behalf of those taxpayers who were unaware of this change and unable to exhaust all of their administrative remedies.

3. Following the filing of the Plaintiff case, attorneys for Plaintiff reached out to multiple attorneys for JCAD in an attempt obtain more information regarding JCAD's appraisal methods as it relates to one and half story structures in Jefferson County and to possible reach reach an amicable resolution. Despite multiple requests a simple detailed statistical analysis as to *why* JCAD implemented such change was not provided. JCAD has continually relied on the argument that two years of data analysis support the rescheduling of one and half story homes; however, such self descibed analysis was actually based on *only* 298 self reported sales transactions. *See* Exhibit C. In reality, such "analysis" is simply raw data and any actual qualitative analysis is non-existent in the form of any type of correspondence, memo, or report. Plaintiff Counsel's own analysis of such limited and potentially unreliable data showed that the appraised value of one and a half story homes appeared to be raised on average about 5%, despite the sales of such homes reflecting only approximately a 1.4% increase at best. Plaintiff's counsel advised the attorney for JCAD of such finding on November 2, 2015. *See* Exhibit "D." Despite this revelation, JCAD would not agree to adjust any appraisals of home based on such analysis. *See* Exhibit "E."

4. On November 11, 2015, Defendants filed a plea to the jurisdiction and responded to plaintiff's motion for injunctive relief, class action certification, special exceptions, and original answer.

5. On November 16, 2015, realizing that the parties were at an impasse, counsel for Plaintiff requested dates to take the deposition of Chief Appraiser Bellard. *See* Exhibit "F." On November 18, 2015, counsel for Defendants advised that he would provide dates for a December deposition "by the end of the week." *See Id.* Such dates were not provided; however, on December 4, 2015 counsel for Plaintiff's did notice the hearing on the above-referenced Defendant's motion for January 8, 2015, despite a informal agreement between counsel that such motion would not be heard until after the deposition of Defendant Bellard.

6. On December 11, 2015, counsel for plaintiff, Bailey Wingate, again requested December dates for the deposition of Defendant Bellard. *See* Exhibit "F." Counsel for Defendant responded on December 13, 2015, by advising that he believed the deposition of Defendant Bellard should take place after the court rules on the Defendant's plea to the jurisdiction. *See Id.* Such withdrawal of defense counsels' willingness to provide Defendant Bellard's deposition forced Plaintiff counsel to notice the deposition of Mrs. Bellard for December 18, 2015, which the subject of Defendants' Motion to Quash.

ARGUMENT

7. Defense counsel previously agreed verbally and in writing to present Defendant Bellard for deposition during the month of December. In Defendants Motion to Quash, it is alleged that counsel "recently" requested deposition dates and that "Defendants' attorneys communicated to Plaintiff's attorneys that they object to producing Ms. Bellard for a deposition prior to the hearing on Defendants' Plea to the Jurisdiction." *See* Defendants' Motion to Quash, paragraph 2. Defendants also represented, to this court that it is "highly likely" this case will be dismissed. *See id.*

All statements are a half-truths. In reality, attorney for Plaintiff requested deposition dates for Defendant Bellard on November 16, 2015 and was advised he would have them by the “end of the week.” *See* Exhibit “F.” Furthermore, the attorneys for Defendant did not “object” to producing Ms. Bellard prior to the hearing on Defendant’s plea to jurisdiction at that time. In fact, the hearing had not been set. Furthermore, the Defendants attorneys advised counsel for Plaintiff that Defendant Bellard had been asked to provide available dates for December. *See id.* Plaintiff’s attorneys only learned of such “objection” on December 13, 2015. *See* Exhibit “E.” The third half-truth is their failure to advise the Court that any pleas to the Jurisdiction would not dismiss the case in its entirety, as Plaintiff’s Henderson case would move forward though the regular discovery process regardless of the outcome of such motions. Why counsel for Defendants have failed to include this in their motion is unknown; however, such misrepresentation should be expected given the informal discovery process has revealed unreliable presumptions and inconsistencies which appear to exist in the appraisal process and are unfortunately affecting thousands of Jefferson County Taxpayers. Simply put, despite a request for a reasoned analysis to justify the changes made in the appraisal process for one and half story homes, all JCAD provided to attorneys for Plaintiff was unreliable raw data, which inconsistent with their change in methodology. It is unknown why a simple memo, correspondence, email, does not describe the “why” in detail does not exist. It is also unknown why Jefferson County Taxpayers were not advised of this change. Perhaps if they had been so advised, many would have filed appeals to their notices of appraised values. Defendant Bellard, as Chief Appraiser for the appraisal district would be the key witness that could enlighten Plaintiff Henderson and other Jefferson County Taxpayers with answers to these questions which have seemed to elude Plaintiff’s attorneys, despite their efforts to learn the truth of these matters.

8. Plaintiff simply seeks and is entitled to a transparent explanation of these matters from the Chief Appraiser, Ms. Bellard, via deposition; however, the attorneys for Defendants,

despite prior agreements to the contrary, are not willing to provide her deposition until after the court rules on Defendants Plea to the Jurisdiction. In that regard the Plaintiff respectfully request this Court to 1) deny Defendant's Motion to Quash and require counsel for Defendants to present Defendant Bellard for Deposition prior to any ruling to the aforesaid motions and 2) set the hearing on such motions at some time after the date of Defendant Bellard's deposition.

WHEREFORE, PREMISES CONSIDERED, ELAINE HENDERSON, ON BEHALF OF HERSELF AND ON BEHALF OF ALL OTHER PERSONS OR ENTITIES SIMILARLY SITUATED, pray that this Court deny the Defendants Motion to Quash and enter an order compelling the Defendants to present Defendant Bellard for Deposition prior to any ruling on DEFENDANT'S PLEA TO THE JURISDICTION, PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF AND REQUEST FOR CLASS ACTION CERTIFICATION and to enter an order continuing the hearing on DEFENDANT'S PLEA TO THE JURISDICTION, PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF AND REQUEST FOR CLASS ACTION CERTIFICATION to take place at some time after Defendant Bellard's deposition.

Respectfully submitted,

By: /s/ Brent W. Coon
BRENT W. COON
State Bar No. 19856400
ERIC W. NEWELL
State Bar No. 24046521
215 Orleans
Beaumont, Texas 77701
(409) 835-2666
(409) 838-1871 – Telecopier
brent@bcoonlaw.com

BAILEY WINGATE
State Bar No. 24091212
1335 Broadway St.
Beaumont, Texas 77701
PO Box 0705
Beaumont, Texas 77704
(409) 832-3381
(409) 832-3384 – Telecopier
bailey@wingatelaw.com

CHRISTOPHER J. SACHITANO
State Bar No. 24014886
PO Box 105
Beaumont, Texas 77704
(409) 838-9999
(409) 242-6059 – Telecopier
sach@sachlaw.com