

I.
DISCOVERY CONTROL PLAN

1.01 This case will be conducted under Discovery Plan 3, in accordance with Texas Rule of Civil Procedure 190.4.

II.
PARTIES

2.01 Plaintiffs Mitch and Catherine Vexler are individuals residing in Denton County, who may be contacted through the undersigned counsel of record.

2.02 Plaintiffs Jim and Gloria Solinski are individuals residing in Denton County, who may be contacted through the undersigned counsel of record.

2.03 Plaintiff Mavex Shops of Flower Mound, LP (“Mavex”) is a Texas limited partnership company, that may be contacted through the undersigned counsel of record.

2.03 Defendant Don Spencer (“Spencer”) is the Chief Appraiser of Denton Central Appraisal District (“DCAD”), and he may be served by delivering the Citation and a copy of this petition to DCAD at 3911 Morse Street, Denton, Texas 76028 or wherever Mr. Spencer (or his successor in office) may be found within or without the State of Texas.

2.04 Defendant Michelle French (“French”) is the Tax Assessor Collector for Denton County, and may be served by delivering the Citation and a copy of this petition to 1505 E McKinney Street, Denton, Texas 76209

2.05 Defendant Denton Central Appraisal District (“DCAD”) is a quasi-governmental entity that may be served by delivering the Citation and a copy of this petition to DCAD’s chief appraiser, Don Spencer, at 3911 Morse Street, Denton, Texas 76028 or wherever Mr. Spencer (or his successor in office) may be found within or without the State of Texas.

2.06 Defendant Hope McClure (“McClure”) is the former Chief Appraiser of DCAD and a resident of Denton County. She may be served at 2605 Loon Lake Road, Denton, Texas 76210, or wherever she may be found.

III. **JURISDICTION AND VENUE**

3.01 The actions and inactions complained of herein all occurred in Denton County, Texas. As such, venue is appropriate in Denton County, Texas. Furthermore, the matters complained of herein, and the relief requested, are all within the statutory jurisdiction of the District Court. The Court has jurisdiction over this matter pursuant to Section 65.021 of the Texas Civil Practice and Remedies Code. The Court has personal jurisdiction over the Defendants because they are either quasi-governmental entities of the State of Texas or residents of the State of Texas.

3.02 The Court has jurisdiction over the controversy because the damages sought by Plaintiffs are within the jurisdictional limits of the Court. Plaintiffs seek monetary relief of greater than \$1,000,000.00 and non-monetary relief.

IV. **FACTUAL BACKGROUND**

4.01 In April of 2023, DCAD sent out the 2023 Notice of Appraised Value to Denton County property owners regarding their Denton County properties. According to DCAD, those properties increased in market value by over \$30 billion dollars from 2022, representing more than a 20% increase in value. DCAD has been brazenly and recklessly increasing the value of Denton County properties for years, unchecked and without any accountability. Denton County property owners are facing the possible loss of their businesses, loss of their homes, and buyers are cancelling purchases as a result of this unprecedented and unconstitutional valuation upsurge.

4.02 Appraisal districts are required to certify their tax rolls to the Texas Comptroller's Office that the value for 95% of the respective district's tax base has been fully resolved by July 25. In 2021, DCAD, through its chief appraiser at the time, McClure, and her deputy, Spencer, falsified the tax rolls to the Comptroller's Office. As early as February of 2021, McClure and Spencer were aware that the data DCAD were using to generate initial notice values resulted in grossly inflated values, which led to a surge of Denton County property owners protesting property values with the Appraisal Review Board. Instead of sending amended or updated property values, McClure, with the assistance of Spencer, chose to falsify the tax roll certification by moving the status of anywhere between 8,000 and 10,000 unresolved properties to resolved. After certifying the tax rolls to the Comptroller's Office, McClure then redesignated those properties as unresolved. French helped to cover up this fraudulent certification, despite having numerous opportunities to reveal the truth to DCAD's board of directors and the property owners of Denton County.

4.03 On its face, DCAD's valuations are not uniform and equal as required by the Texas Constitution as such an increase far exceeds the present fair market cash value of those properties as a whole. This has been the case at DCAD for years, yet every chief appraiser has either outright ignored this problem at best, or willingly violated the constitutional rights of property owners in Denton County at worst. Property owners are entitled to appraisals that comply with constitutional and statutory requirements.

4.04 Article 8, Section 1(a) of the Texas Constitution requires all taxable property to be taxed in an equal and uniform manner. Section 23.01(a) of the Texas Property Tax Code ("Tax Code") requires all taxable property be appraised at its market value as of January 1 of the tax year. Section 23.01(b) of the Tax Code requires "each property shall be appraised based upon the individual characteristics that affect the property's market value, and all available evidence that is

specific to the value of the property shall be taken into account in determining the property's market value.” Plaintiffs contend that DCAD did not fulfill its mandatory obligation to base its appraisal upon the individual characteristics that affect the property's market value, and take into account all available evidence that is specific to the value of the property in determining the property's market value.

4.05 Section 23.01(b) of the Tax Code requires that the “same or similar appraisal methods and techniques shall be used in appraising the same or similar kinds of property.” DCAD’s 2022 and 2023 appraisal records are replete with disparate valuations of similarly situated and comparable properties, which valuations could not have been derived by using similar appraisal methods and techniques. DCAD uses a computer mass appraisal system called PACS Appraisal. PACS Appraisal is the primary software used by DCAD to conduct property appraisals for Denton County. The PAC Appraisal has produced thousands of erroneous valuations, either through limitations in the software or manipulation by DCAD. As a matter of law, property tax on valuations that are greater than market value cannot be equal and uniform.

4.06 Plaintiffs anticipate other Denton County property owners will join this lawsuit given the egregious conduct by DCAD. Denton County property owners fall into three categories (1) those who accepted DCAD’s fraudulent appraisals; (2) those who protested DCAD’s appraisals to the ARB like the Solinskis; and (3) those who have appealed the ARB’s appraisal to a district court, like the Vexlers and Mavex.

V.
SUIT FOR DECLARATORY RELIEF

5.01 Each of the foregoing paragraphs are incorporated and reasserted herein by reference.

5.02 Pursuant to § 23.01(b) of the Texas Tax Code, if an “appraisal district determines the appraised value of a property using mass appraisal standards, the mass appraisal standards must comply with the Uniform Standards of Professional Appraisal Practice.” *See* Tex. Tax Code § 23.01(b). Thus, the standards used by DCAD related to the use of the PACS Appraisal software to perform a mass appraisal for the years 2022 and 2023 must comply with the Uniform Standards of Professional Appraisal Practice (“USPAP”).

5.03 These requests for declaratory relief are brought under:

(a) Tex. Civ. Prac. & Rem. Code Ann. § 37.003 (Power of Courts to Render Judgment; Form and Effect) empowers a court to declare rights, status, and other legal relations either affirmative or negative in form and effect.

(b) Tex. Civ. Prac. & Rem. Code Ann. § 37.004 (Subject Matter of Relief) empowers a court to determine Plaintiffs’ rights, status, or other legal relations affected by a **statute**.

5.04 Plaintiffs ask the Court to determine that DCAD has violated Section 23.01(b) of the Texas Tax Code by failing to comply with USPAP provisions when conducting the mass appraisal for 2023 by failing to act with statutory authority when making these appraisals, and, in fact, acting outside the scope of his statutory authority. Plaintiffs seek the following judgements:

Judgment No. 1: DCAD has failed to comply with the USPAP Records Keeping Rule when conducting the 2023 mass appraisal.

Judgment No. 2: DCAD has failed to comply with the USPAP Ethics Rule by willfully or knowingly violating the Records Keeping Rule.

Judgment No. 3: DCAD has failed to comply with USPAP Standards Rule 5-1(b) by committing substantial errors of omission and commission that significantly affected the mass appraisal conducted by DCAD in 2023.

Judgment No. 4: DCAD has failed to comply with USPAP Standards Rule 5-1(c) by rendering the 2023 mass appraisal in a careless or negligent manner.

Judgment No. 5: DCAD has failed to comply with USPAP Standards Rule 5-2(e)(iii) by failing to consider location when conducting the mass appraisal in 2023.

Judgment No. 6: DCAD has failed to comply with USPAP Standards Rule 5-4(b) by failing to develop mathematical models that, with reasonable certainty, represent the relationship between property value and supply and demand factors, as represented by quantitative and qualitative approaches to value for the 2023 mass appraisal.

Judgment No. 7: DCAD has failed to comply with USPAP Standards Rule 5-4(c) by failing to employ recognized techniques for calibrating the mass appraisal models used in 2023.

Judgment No. 8: DCAD has failed to comply with USPAP Standards Rule 5-7(a) by failing to reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability and relevance of the approaches, methods, and techniques used in the 2023 DCAD mass appraisal.

Judgment No. 9: DCAD has failed to comply with USPAP Standards Rule 5-7(b) by failing to use or implement appraisal testing procedures and techniques to ensure that standards of accuracy are maintained for the 2023 DCAD mass appraisal.

Judgment No. 10: DCAD has failed to comply with USPAP Standards Rule 6 by reporting the results of the 2023 DCAD mass appraisal in a manner that is misleading.

Judgment No. 11: DCAD, Don Spencer, Hope McClure, and Michelle French worked in concert to falsify the Denton County tax roll in July 2021.

6.05 The flawed methods used by DCAD to determine the 2023 appraised values of Denton County properties are not uniform and equal as required by Article 8, Section 1(a) of the Texas Constitution. Those methods do not comply with Texas statutory mandates set forth in the Tax Code. Property according to the appraisal roll for 2023 exceed the appraised value required by law, and, pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, Plaintiffs seek a twelfth declaration that DCAD's valuation of their properties violated the Texas constitutional mandate for equal and uniform taxation and statutory requirements in determining 2023 market values.

VI.

ULTRA VIRES ACTS OF HOPE MCCLURE, DON SPENCER, AND MICHELLE FRENCH

6.01 Each of the foregoing paragraphs are incorporated and reasserted herein by reference.

6.02 Appraisal districts are required to certify their tax rolls to the Texas Comptroller's Office that the value for 95% of the respective district's tax base has been fully resolved by July 25. In 2021, DCAD, through its chief appraiser at the time, McClure, and her deputy, Spencer, falsified the tax rolls to the Comptroller's Office. As early as February of 2021, McClure and Spencer were aware that the data DCAD were using to generate initial notice values resulted in grossly inflated values, which led to a surge of Denton County property owners protesting property values with the Appraisal Review Board. Instead of sending amended or updated property values, McClure, with the assistance of Spencer, chose to falsify the tax roll certification by moving the status of anywhere between 8,000 and 10,000 unresolved properties to resolved. After falsifying

the tax rolls to the Comptroller's Office, McClure then redesignated those properties as unresolved. In falsifying the tax roll certification, McClure and Spencer acted without legal authority. Further, McClure acted without legal authority by changing the status of properties back to unresolved after having certified the tax roll. In the alternative, McLure and Spencer failed to perform a ministerial act, as the law requires them to certify that the value for 95% of the Denton County's tax base has been fully resolved by July 25.

6.03 French helped to cover up this fraudulent certification, despite having numerous opportunities to reveal the truth to DCAD's board of director and the property owners of Denton County. French acted without legal authority by failing her oath to faithfully execute the duties of her office and breaching her fiduciary duties to the public.

6.04 Plaintiffs seeks a declaratory judgment that McLure, Spencer, and French committed ultra vires acts in connection with the certification of the 2021 Denton County tax roll.

VII.

MONEY HAD AND RECEIVED

7.01 Each of the foregoing paragraphs are incorporated and reasserted herein by reference.

7.02 As a result of DCAD's egregiously inflated property values, DCAD holds money, in the form of additional and unsubstantiated property taxes that, in equity and good conscience, belongs to Denton County property owners like Plaintiffs. Plaintiffs seek liquidated damages in an amount that is within the jurisdictional limits of the Court. Further, Plaintiffs' injuries resulted from DCAD's gross negligence, malice, or actual fraud, which entitles them to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

VIII.
SECTION 23.01 OF THE TEXAS TAX CODE IS UNCONSTITUTIONAL

8.01 Section 23.01 of the Texas Tax Code states that if an “appraisal district determines the appraised value of a property using mass appraisal standards, the mass appraisal standards must comply with the Uniform Standards of Professional Appraisal Practice.” As previously stated, DCAD uses a mass appraisal standard to value commercial properties, and thus is bound by USPAP for any given appraisal year. USPAP standards are developed by the Appraisal Standards Board of the Appraisal Foundation. Thus, the Texas legislature has chosen to delegate its legislative prerogative and power to define the standards that DCAD, or another appraisal district, must follow when conducting a mass appraisal. This delegation of legislative authority is known as adoption by reference.

8.02 DCAD, a political subdivision, must comply with the Administrative Procedure Act or Title 1 of the Texas Administrative Code § 91.40, which requires a state agency adopting by reference (ABR) a document into law to “note the revision date of the ABR information” and to “amend the rule to adopt a newer version of the ABR information.” *See* Tex. Admin. Code § 91.40. There is no evidence that any of these mandatory procedures have been followed, as USPAP is updated yearly by the Appraisal Standards Board. The Appraisal Standards Board of the Appraisal Foundation, a private, non-governmental entity, is writing the law that holds appraisal districts, like DCAD, accountable every year, without any oversight. Plaintiffs seek to assert a facial challenge to this unfettered legislative delegation to the Appraisal Standards Board, a private entity, as unconstitutional.

8.03 The Texas Uniform Declaratory Judgment Act empowers a court to determine Plaintiffs’ rights, status, or other legal relations affected by a statute, like Texas Tax Code § 23.01.

See Tex. Civ. Prac. & Rem. Code § 37.004. The Declaratory Judgment Act is one vehicle by which Plaintiffs may challenge the constitutionality of Texas Tax Code § 23.01. Accordingly, Plaintiffs asks the Court to determine that Texas Tax Code § 23.01 is an unconstitutional delegation of legislative authority to a private entity in violation of: (1) Article III, Sec. 36 of the Texas Constitution; (2) Article II, Sec. 1 of the Texas Constitution; and (3) the Administrative Procedure Act (Texas Government Code § 2001.021).

IX.
ATTORNEYS' FEES

9.01 Pursuant to Sections 37.005 and 37.009 of the Texas Civil Practices and Remedies Code, Plaintiffs request that they recover their attorneys' fees and costs associated with this matter.

PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiffs respectfully pray that Defendants Don Spencer, Hope McClure, Michelle French, and Denton Central Appraisal District be cited to appear and answer and that, upon final trial, the Court enter relief as requested herein, and grant Plaintiffs judgment against Defendants for all relief requested herein, grant the declaratory judgments requested herein, as well as for all costs incurred, reasonable attorneys' fees through trial of this matter, attorneys' fees on appeal, and all such other and further relief to which Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,

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