IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

No. 2009-CA-00292

3545 MITCHELL ROAD, LLC
d/b/a TUPELO TRACE APARTMENTS
and PINECREST/TUPELO, L.P.
d/b/a TUPELO SENIORS APARTMENTS — PLAINTIFFS/APPELLANTS

V.

BOARD OF SUPERVISORS
OF LEE COUNTY, MS
And MARK WEATHERS, LEE
COUNTY TAX ASSESSOR — DEFENDANTS/APPELLEES

APPEAL FROM THE CIRCUIT COURT OF LEE COUNTY, MISSISSIPPI

BRIEF OF APPELLEES

ORAL ARGUMENT NOT REQUESTED

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STATEMENT OF ISSUES

1. Whether the special rule for assessment of "affordable rental housing" property constitutes an exemption within the meaning of Miss. Code Ann. § 27-35-147 (3) so that a board of supervisors may change the assessed value of such property after the assessment roll has been approved.

2. Whether Miss. Code Ann. § 27-35-143 gave the board of supervisors authority to change the assessed value of the subject property after the assessment roll had been approved.

STATEMENT OF THE CASE

Course of Proceedings and Disposition in the Court Below

The Lee County Board of Supervisors gave notice to the owners of the subject properties of its intent to increase the assessed value of the real property after the assessment rolls had been approved by the Board. (R. Vol. 1 pp. 70-76.) Each property owner filed an objection to the proposed action. (R. Vol. 1 pp. 77-78.) The board voted to increase the assessments. (R. Vol. 1 pp. 79-80, 83-84.) The property owners then filed separate actions in the Circuit Court of Lee County pursuant to Miss. Code Ann. § 11-51-77 appealing the action of the board of supervisors in changing the assessed valuation. The circuit court held a consolidated trial on stipulated facts and entered an order affirming the action of the board of supervisors in both cases. (R. E. 2-4; R. Vol. 1 pp. 17-19.) The property owners now jointly appeal from that order.

Statement of Facts

The appellants, plaintiffs below, are owners of certain real property in Lee County that is being used as "affordable rental housing" as that term is defined in the taxation statutes. (R. Vol. 1 p. 46.) The subject properties had been assessed in 2006 using the special income capitalization approach prescribed for determining the true value of property used as affordable rental housing. In 2007, the owners failed to submit to the tax assessor statements of the actual net operating income attributable to the properties for the immediately preceding year, as required to qualify for the special valuation method for affordable rental housing property. (R. Vol. 1 p. 47.) The tax assessor failed to notice the omission, and erroneously assessed the properties using the special

valuation method as in the prior year despite the owners' failure to submit income statements. The board of supervisors approved and adopted the assessment rolls containing the erroneous assessment of the subject properties.

The tax assessor later discovered the error and reassessed the subject properties using the ordinary method of valuation, rather than the special income capitalization approach, which resulted in higher true values for both properties than the original assessments and a consequent increase in the owners' tax bills. The tax assessor proposed the changes in the assessments of the subject properties to the board of supervisors, which, after notice and hearing,[1] approved the increase in the assessments. (R. Vol. 1 pp. 47-49.)

[1] The board initially voted to revise the tax assessment of the properties without giving prior notice to the property owners. When that lack of notice was brought to the board's attention, the board rescinded the reassessment and gave the owners notice of the proposed reassessment. The property owners, represented by legal counsel, were given a hearing by the board, which again voted to increase the assessments of the properties.

SUMMARY OF THE ARGUMENT

Section 27-35-147(3) permits a board of supervisors to increase an assessment after an assessment roll has been adopted where the property in question was incorrectly given an exemption. The special valuation approach for affordable rental housing prescribed by Miss. Code Ann. § 27-35-50(4)(d) is in effect an exemption, because, like a homestead exemption, it grants the owner of such property immunity from a portion of the property tax that an owner of similar property that does not qualify for the preferential treatment is obligated to pay. The tax assessor incorrectly treated the properties as subject to an exemption when he assessed the properties under the special valuation approach for affordable rental housing despite the failure of the owners to submit the income statements necessary to qualify the property for the special valuation approach. Therefore, the incorrect assessment that resulted may be corrected by the board of supervisors under 27-35-147(3).

If a tax assessor incorrectly granted a homestead exemption to non-qualifying property, it is clear that the board of supervisors could change the assessment under section 27-35-147(3). The valuation approach imposed by section 27-35-50(4) is analogous to the homestead exemption, in that it also reduces the assessed valuation of property from what it would be if it did not qualify for the special tax treatment and also requires an affirmative action of filing by the property owner to qualify for the preferential tax treatment. Consequently, it should be treated the same as the homestead exemption for purposes of section 27-35-147(3).

The increase in the assessment was also authorized by section 27-35-143 of the Mississippi Code. Subsection (11) of that section gives a board of supervisors power to change an assessment when lands have been incorrectly classified. The classification

referred to in the statute is the tax assessor's categorization of property for purposes of applying exemptions and differing valuation methods. Thus, when the properties in question were erroneously treated as affordable rental housing for valuation purposes, the properties were incorrectly classified, and the board of supervisors was permitted to correct the erroneous assessment that resulted from the improper classification.

Subsection (2) of section 27-35-143 permits an assessment to be corrected if it resulted from a clerical error in making the equalization of assessments. The tax assessor's overlooking of the plaintiffs' failure to submit the required income statements was such a clerical error. Therefore, board of supervisors had the authority to correct the assessments pursuant to subsection (2).

ARGUMENT

I. THE BOARD OF SUPERVISORS HAD AUTHORITY TO CHANGE THE ASSESSMENT OF THE SUBJECT PROPERTIES PURSUANT TO SECTION 27-35-147(3) OF THE MISSISSIPPI CODE, BECAUSE THE SPECIAL RULE FOR THE ASSESSMENT OF "AFFORDABLE RENTAL HOUSING" PROPERTY CONSTITUTES AN EXEMPTION WITHIN THE MEANING OF THAT SECTION.

The circuit court held that the special valuation approach for affordable rental housing property is a type of exemption, and thus section 27-35-147(3) of the Mississippi Code authorized the board of supervisors to correct the assessment that resulted when the tax assessor improperly treated the properties as qualifying for that special valuation approach. That conclusion of law is subject to *de novo* review.

Section 27-35-50 of the Mississippi Code mandates that, for most types of real property, the tax assessor must determine the true value of the property by using one or a combination of three approaches: the income capitalization approach, the cost approach, and the market data approach.[2] Miss. Code Ann § 27-35-50(2). Typically, the true value is not determined by one single approach; rather, the appraiser's estimate should be "the product of a reconciliation of the indications yielded by the three approaches." *Rebelwood, Ltd. v. Hinds County*, 544 So.2d 1356, 1360 (Miss. 1989). However, section 27-35-50 makes an exception for property used as "affordable rental housing;" such property must be appraised using only a specified income capitalization approach developed by the Mississippi State Tax Commission. Miss. Code Ann § 27-35-50(4)(d). That approach was designed to yield a lower value than the standard

[2] The Mississippi Supreme Court explained each of these approaches to valuation in *Rebelwood, Ltd. v. Hinds County*, 544 So.2d 1356, 1360-62 (Miss. 1989).

the ordinary valuation methodology. The plaintiffs' sole basis for challenging the ultimate assessment of their properties and the tax bill resulting from that assessment is their contention that the board of supervisors lacked the power to change the assessment of the properties. The plaintiffs contend that the only permissible reasons for increasing the assessment of property after the original assessment rolls have been approved are those expressly provided by statute and that none of those grounds are applicable here.

Section 27-35-147(3) provides that a board of supervisors may increase an assessment after an assessment roll has been adopted "[w]hen lands or improvements thereon have been listed as exempt from taxation, but were subject to assessment and taxation on the preceding tax lien date." Contrary to the plaintiffs' argument, that ground for increasing an assessment applies to this situation.

Most property is subject to valuation based on the use of the valuation approaches set forth in Miss. Code Ann. § 27-35-50(2). Owners of affordable rental housing, on the other hand, are granted the privilege of having their property valued based on a more lenient valuation approach—a special income capitalization method that ignores the subsidy that the federal government gives to the property owner to make up for the below-market rents charged to the tenants as prescribed by federal law. Although the plaintiffs' brief suggests that this special approach is not necessarily more favorable to the taxpayer, that suggestion is plainly refuted by the difference in the valuations reached by the tax assessor in applying the two approaches in this case, as well as the fact, noted above, that the special approach precludes consideration of the federal subsidy received by the owner of such property, which would be taken into consideration under an ordinary income-capitalization valuation. This more favorable

approach.[3] However, in order to receive that favorable tax treatment for a given year, the owner of affordable rental housing must, on or before April 1, provide the county tax assessor a statement of the net operating income for the previous year. *Id.* Otherwise, the assessor lacks the information necessary to assess the property with the more favorable approach, and must resort to assessing the property under the standard approach.

As noted above, the plaintiffs, the owners of properties being used as "affordable rental housing," failed to submit the requisite statements of net operating income,[4] but the tax assessor nevertheless erroneously classified the properties as affordable rental housing and valued the properties using the special income capitalization approach. (Stipulation of Facts ¶ 12, R. Vol. 1 p. 47.) After the board of supervisors had approved the assessment rolls, the tax assessor discovered the oversight, and the board changed the assessments of the properties to reflect the tax assessor's application of the ordinary valuation approach. (*Id.* ¶¶ 12, 13, 15, 17, R. 47-49.)

The plaintiffs do not dispute that they were required to submit an income statement in order to be entitled to the benefit of the special income capitalization approach of section 27-35-50(4)(d) or that they failed to submit the required income statement. The record does not reflect that the plaintiffs, either before the board of supervisors or in the circuit court, challenged the *substantive* correctness of the true values for the properties determined by the tax assessor when he subsequently applied

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[3] For example, under the special approach mandated by section 27-35-50(4)(d), the federal subsidy received by the property owner, although it is income attributable to the property and normally would be considered in a valuation of the property, *Rebelwood, Ltd.*, 544 So. 2d at 1363, may not be considered by the tax assessor in as part of the income from the property.

[4] The assertion in the plaintiffs' brief that the reason the plaintiffs did not submit the requisite income statement is because "the valuation proposed by the Assessor for 2007 was acceptable to Plaintiffs" is not supported by the record; in any event, the reason is irrelevant.

tax treatment constitutes an exemption from the taxes that the property owner would have to pay if the property were not being used as affordable rental housing.

In construing a statute, a word or phrase is to be given its common and ordinary meaning. *Tower Loan v. Mississippi Tax Commission*, 662 So. 2d 1077, 1083 (Miss. 1995). "Exemption" is defined as the state of being free from an obligation or duty required of others. American Heritage Dictionary 474 (2d College Ed. 1985); Black's Law Dictionary 593 (7th ed. 1999). In *Clement v. Stone*, 15 So. 2d 517, 522 (Miss. 1943), the court defined a property tax exemption as a grant of immunity from tax upon property which persons generally are obligated to pay. An exemption may be complete, as in the case of property owned by charitable organizations, or partial, as in the case of property that is the owner's homestead.

In short, an exemption excludes all or a portion of the true value of property from the assessment of the tax. Property owners generally have to pay property taxes based on a true value calculated by a method that yields a higher value than the special income capitalization method applicable to affordable rental housing. Since owners of affordable rental housing are spared that obligation, they are the recipients of an exemption; in other words, their property is exempt from being taxed based on the standard method of valuation and from the higher tax that they would otherwise have to pay.

A more favorable tax treatment need not involve a total exclusion from taxation in order to be an "exemption." The favorable tax treatment given to homestead property is clearly an "exemption," even though it results in only a reduction in the tax due rather than a complete exclusion from taxation. *See* Miss. Code Ann. § 27-33-3. Also, the federal and state income taxation laws grant a taxpayer an "exemption" from taxation

for a portion of personal income depending on the number of dependents the taxpayer has.

Also, a preferential tax treatment need not be explicitly denominated by a statute as an "exemption" in order to be considered as one. For example, in *Tupelo Garment Co. v. State Tax Commission*, 173 So. 656, 660 (Miss. 1937), the court held that the provision of a deduction from gross income for ordinary and necessary business expenses so as to lower the amount of taxable income was an exemption and thus was subject to the rule that tax exemptions are strictly construed against the persons claiming them. Another example of the broad scope of the term "exemption" is *Riese-St. Gerard Housing Corp. v. City of Patterson*, 592 A.2d 270 (N. J. Super. App. Div. 1991), which involved a statutory provision that permitted non-profit housing projects to pay 15 per cent of gross rents rather than the normal property tax based on the value of the property. The court described this statutory scheme, which is analogous to the special valuation approach of section 27-35-50(4)(d), as an exemption. Similarly, in *1198 Butler Street Associates v. Board of Assessment Appeals*, 946 A.2d 1131 (Pa. 2008), the concurring justice stated that the statute in question, which precluded the tax assessor from including tax credits in the income stream used to determine value based on the income capitalization approach (which is similar to section 27-35-50(4)(d)'s preclusion of consideration of the federal subsidy), amounted to a partial tax exemption. *Id.* at 1143 (Pellegrini, J. concurring).

There is no question that Miss. Code Ann. § 27-35-50(4) provides immunity to the owners of affordable rental housing from an amount of tax that owners of identical property used for another purpose would be required to pay. There is no real dispute that absent the preferential valuation method prescribed by section 27-35-50(4) for

affordable rental housing property, the tax on such property would uniformly be substantially higher. Indeed, that is precisely the plaintiffs' complaint—their property was reassessed without using the preferential valuation method, resulting in a higher assessed valuation and a higher tax bill. Accordingly, the special valuation method meets the definition of an exemption.

The special valuation method for affordable rental housing is analogous to the homestead exemption. A taxpayer desiring initially to claim the homestead exemption must apply to the county tax assessor on the prescribed form on or before April 1, and where there has been a "change in the property description, ownership, use or occupancy" that does not disqualify the property from the exemption the owner is required to submit a new application by the April 1 deadline in order to continue to receive the exemption. Miss. Code Ann. § 27-33-31. Thus, for example, if property that received a homestead exemption the previous year has changed owners, and if the new owner fails to apply for the exemption in a timely manner, then the property no longer qualifies for the exemption. Similarly, an owner of affordable rental housing, in order to claim the beneficial valuation approach, must "apply" for the special treatment by submitting an income statement by April 1. Just as the homestead exemption is granted to encourage home ownership, the special valuation approach mandated by section 27-35-50(4) is designed to encourage the development of affordable rental housing by giving a tax benefit to such property that is not available to owners of other types of property, by excluding a portion of the normally determined true value from taxation, just as the homestead exemption does. Both the homestead exemption and the special valuation approach of section 27-35-50(4) reduce the value of the respective property that is subject to taxation. Whether the effect of reducing the assessed valuation of

property is achieved by specifying a simple monetary amount of exclusion (as with the homestead exemption), by applying a percentage (as with the exemption for newly acquired railroad property granted by Miss. Code Ann. § 27-31-37), or by applying a special appraisal approach (as in section 27-35-50(4)), the effect is the same. Each of those three approaches excludes a portion of the true value of property from the assessment of property tax. Since the effect is the same, the treatment under section 27-35-147 should be the same as well. It defies reason to say that a statutory scheme that reduces the taxable value of homestead property by $7500 is an exemption, but a scheme that reduces the taxable value of affordable rental housing property by over $905,000 (as with the Tupelo Trace property) is not an exemption simply because it is not explicitly labeled as such and employs a different formula to reach the result of reducing the taxable value.

If, in the case of homestead property, the tax assessor should fail to learn of a change in ownership of homestead property and should continue to list the property as exempt despite the failure of the new owner to apply for the exemption, it is clear that the assessor and board of supervisors would be entitled under section 27-35-147(3) to increase the tax assessment upon learning that the property was not eligible for the exemption. There is no logical or practical reason for treating the preferential valuation granted to affordable rental housing differently from the homestead exemption. Therefore, a mistake in applying the section 27-35-50(4)(d) special valuation to property that does not qualify is also subject to correction under section 27-35-147(3). Accordingly, the tax assessor and the board of supervisors acted properly when they increased the assessment of the subject properties upon discovering that the properties

had been treated as affordable rental housing despite the property owners' failure to submit income statements as required to qualify for that special treatment.

Since the special valuation rule of section 27-35-50(4) is an exemption, then the tax assessor's mistake in utilizing the special valuation approach with respect to the plaintiffs' property, when the plaintiffs had not met the prerequisites for the preferential treatment, was subject to correction under section 27-35-147(3), and the tax assessor and the board of supervisors were authorized by section 27-35-147(3) to increase the assessment of the subject properties upon discovering that the properties did not qualify for the special valuation approach. Therefore, the court should affirm the judgment of the circuit court upholding the decision of the board of supervisors to correct the assessment of the properties in question pursuant to section 27-35-147(3).

II. THE BOARD OF SUPERVISORS HAD AUTHORITY TO CHANGE THE ASSESSMENT OF THE SUBJECT PROPERTIES PURSUANT TO SECTION 27-35-143 OF THE MISSISSIPPI CODE.

The trial court held in the alternative that the action of the board of supervisors in increasing the assessment for the subject properties was authorized under section 27-35-143 of the Mississippi Code, which provides for a board of supervisors to change the assessment of real property after approval of the assessment rolls in certain specified circumstances. Specifically, the trial court held that the increase in the assessment was permissible under subsection (11), which authorizes a change "[w]hen lands have been assessed and incorrectly classified." (R. E. 4; R. Vol. 1 p. 19.) This conclusion of law is subject to *de novo* review.

The plaintiffs do not argue in their brief that a board of supervisors cannot act under section 27-35-143(11) to increase the assessment of property, and thus have

tacitly conceded that the provision authorizes increases in assessments in the proper circumstances and have waived any argument to the contrary. *Sumrall v. State*, 758 So. 2d 1091, 1093-94 ¶6 (Miss. 2000).[5] Such an argument would be without merit in any event. The statute provides that a board of supervisors may make a "change" in the assessment roll, which includes, in its ordinary and common meaning, an increase. Furthermore, at least two opinions of the attorney general state that supervisors can increase an assessment pursuant to section 27-35-143. OAG 98-0421, 1998 WL 458446 *2; OAG 95-0164, 1995 WL 526095 *2.[6]

The plaintiffs' sole argument with respect to this the trial court's ruling is that the trial court erred in concluding that the subject properties had been "incorrectly classified" within the meaning of subsection (11). The plaintiffs' position is that the only way property can be incorrectly classified within the meaning of the statute is if it is incorrectly characterized with respect to the classes of property specified in Article 4, section 112 of the Mississippi Constitution.[7] However, the plaintiffs cite no authority for that argument, and their position is refuted by logic and case law.

In *City of Jackson v. Mississippi Fire Insurance Co.*, 95 So. 845 (Miss. 1923), the supreme court recognized the power of the legislature to "exempt from taxation property of a *particular class* embraced within a *general class* that is subjected to taxation," *Id.* at 847 (emphasis added). Thus, the legislature may, and has, adopted particular sub-classifications within the general classes of property set forth in section

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[5] Thus, the plaintiffs cannot properly assert this argument belatedly in a rebuttal brief.

[6] Although official opinions of the attorney general are not binding, the supreme court has said that "they are certainly useful in providing guidance to this Court." *In re Assessment of Ad Valorem Taxes*, 854 So. 2d 1066, 1071 ¶11 (Miss. 2003).

[7] Under section 112, there are only two classes of non-public real property: Class I, "Single family, owner-occupied, residential," and Class II, "All other real property."

particular sub-classifications within the general classes of property set forth in section 112 for purposes of according different tax treatment such as complete exemptions, partial exemptions, and special methods of determining value. The special valuation methods for agricultural property and affordable rental housing in Miss. Code Ann. § 27-35-50(4)(b) and (d), and the exemption for property of charitable organizations in section 27-31-1(d)[8] are such particular classifications within the general Class II property as defined in section 112 of the Constitution. Furthermore, the tax assessor must necessarily "classify" the property in his county according to the various types in order properly to assess it. Given its common and ordinary meaning, "classified," in subsection (11), refers to this act of the tax assessor in assigning property to a particular category for assessment purposes. Obviously, the assessor must do more than merely determine if real property is Class I or Class II in order to conduct the assessment. Thus, "classified" cannot logically or practically be given the very narrow interpretation advocated by the plaintiffs.

In *Riley v. Jefferson Davis County*, 669 So. 2d 748 (Miss.1996), the plaintiff challenged what the supreme court termed "a tax *classification* by the County Tax Assessor" that a parcel of property was residential. *Id.* at 749 n. 1 (emphasis added). The plaintiff contended that the tract should have been treated as agricultural property under section 27-35-50(4)(b) and thus assessed under the special valuation method prescribed by that statute. The plaintiff did not live on the property in question, so, under either "classification," the parcel was Class II property. *Id.* at 749. Thus, the "classification" referred to by the court was not a classification as either Class I or Class

[8] In *Mississippi Fire Insurance Co.*, the supreme court referred to the granting of an exemption as a classification. 95 So. at 847-48.

II property, but rather as either agricultural or non-agricultural for purposes of the valuation approach under section 27-35-50. The tax assessor and the board of supervisors denied the agricultural classification solely because the property was in an area zoned "residential" rather than on the basis of how the property was actually being used. The circuit court affirmed the board's decision, focusing on the use, assessment, and zoning of other lots in the subdivision. The supreme court characterized that approach as "a new *reclassification* test" that was contrary to the dictate of section 27-35-50(4)(a) that property shall be appraised according to its use, regardless of its location. *Id.* at 750-51 (emphasis added.) In short, the supreme court characterized the tax assessor's decision on whether or not to assess the property as agricultural as a "classification" and described a potential change in status from Class II residential to Class II agricultural as a "reclassification." Thus, had it been clear that the property qualified as agricultural, the supreme court would have considered the property as "incorrectly classified."[9]

Similarly, in the case at bar, the properties were "incorrectly classified" when the tax assessor erroneously treated them as affordable rental housing despite the plaintiffs' failure to submit the income statements necessary to qualify for such treatment. Therefore, the board of supervisors had the authority under section 27-35-143(11) to change the assessments of the subject properties based on the fact that the tax assessor incorrectly classified the properties as affordable rental housing for valuation purposes.

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[9] Because the tax assessor had not considered the current use and it was not clear from the record whether the property met the criteria for classification as agricultural, the supreme court reversed and remanded for a reconsideration of the proper tax treatment of the property according to its actual current use. *Id.* at 751, 752.

The action of the board of supervisors was also authorized by section 27-35-143(2), which permits a change in an assessment "[w]hen a clerical error has been made . . . in making the equalization of assessments." When a board of supervisors equalizes the assessments pursuant to Miss. Code Ann. § 27-35-83, the board necessarily relies to a great degree on the prior determinations made by the tax assessor. *See, e. g.*, Miss. Code Ann. § 27-35-85 (requiring tax assessor to attend all sessions of the board of supervisors during the equalization process and "render all assistance which his knowledge or information may enable him to give.") Therefore, the valuation and assessment work of the tax assessor is an integral part of the total equalization process. If a mistake on the part of the tax assessor or his staff results in an incorrect assessment that remains after the board's equalization examination has concluded, then that mistake is an "error . . . in making the equalization." If such an error is "clerical," then section 27-35-143(2) permits the board to change the incorrect assessment after the final approval of the assessment rolls.

A "clerical error" is a mistake related to the making, keeping, or reading of documents as opposed to an error in judgment. An analogous Tennessee statute gives guidance as to the meaning of "clerical error." Section 67-5-509 of the Tennessee Code provides, in subsection (c)(1), for the correction of an assessment where there has been "an error or omission in the listing, description, classification, or assessed value of property," but limits the scope of such corrections, in subsection (f), to "obvious clerical mistakes, involving no judgment of or discretion by the assessor, apparent from the face of the official tax and assessment records."

In this case, the properties were incorrectly assessed because of the failure of the tax assessor's staff to note the absence in the tax assessor's files of the income

income statements was something apparent from the face of the records. It was, therefore, a "clerical error" within the common and ordinary understanding of the term. Since the mistake with respect to the assessment of the properties was clerical rather than judgmental, the board of supervisors had the power to correct the assessment pursuant to section 27-35-143(2).

In sum, the circuit court was correct in holding that the mistake in assessment was subject to correction under section 27-35-143. Consequently, this court should affirm the judgment of the circuit court.

CONCLUSION

Because the action of the Lee County Board of Supervisors in increasing the assessment of the subject properties was authorized by Miss. Code Ann. § 27-35-143 and/or by Miss. Code Ann. § 27-35-147, the circuit court was correct in upholding the board's action. Accordingly, this court should affirm the judgment below.

BOARD OF SUPERVISORS OF
LEE COUNTY, MISSISSIPPI and
MARK WEATHERS, LEE COUNTY
TAX ASSESSOR, Appellees

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CERTIFICATE OF SERVICE

I certify that I have this day served a true and correct copy of the above and foregoing *Brief of Appellees* by placing said copy in the United States Mail, postage prepaid, addressed to the following:

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This the 26th day of August, 2009.

GARY L. CARNATHAN

CERTIFICATE OF FILING

I hereby certify that I have mailed via first-class, United States mail, postage prepaid, the original and three copies of the Brief of Appellees and an electronic diskette containing same on August 26, 2009, addressed to Ms. Kathy Gillis, Clerk, Supreme Court of Mississippi, 450 High Street, Jackson, Mississippi 39201.

TRACY MILLS