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OPINION COMMITTEE

The State of Texas  
House of Representatives

FILE # ML-46091-09  
I.D. # 46091



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June 11, 2009

**RQ-0808-GA**

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: Request for Opinion regarding a the denial of the inclusion of multiple lots as a part of a homestead exemption by an appraisal district pursuant to Chapter 11 Section 13 (j) of the Tax Code.

Dear General Abbott:

In 1979, a constituent of mine purchased a home in the Pleasant Springs subdivision, which is located in a rural part of Titus County. Soon after buying the home, the developer of the subdivision filed for bankruptcy. The development of the subdivision, including the roads and water lines, was never completed. A local realtor contacted my constituent regarding the purchase of an adjoining lot to the south of his home, and before completing the transaction the realtor also offered the four lots running west of the agreed upon original lot. In total, my constituent purchased five lots totaling 6.163 acres (this includes his home lot).

At the time, my constituent did not file an application to have the lots included in his homestead because he felt the appraisal valuations were a realistic fair market value. This year, the appraisal valuations were increased 433% on each lot. He protested the increase based on valuation and applied for a late homestead exemption for the 2007 tax year to include the lots in his homestead.

During the protest hearing, my constituent and his attorney presented evidence that two lots were sold in 2006 for \$2,500.00 each. The lots that were sold were similar to the lots my constituent owns. His lots were being appraised at over \$13,000.00 each. The review board accepted the value of \$2,500.00 per lot as being the fair market value. The discussion then turned to the homestead exemption application. The chief appraiser argued that the lots could not be included because they were in a platted subdivision, and that my constituent did not use the lots as a part of his homestead. My constituent explained that he uses the lots for gardening, planting fruit and pine trees, and mows some of the lots with a riding lawn mower and the rest with a farm tractor. Additionally, on the lot directly behind his home, my constituent has a work shop, a shed to store his recreational vehicle, and a small house in which his mother resides.

***I. If you own multiple contiguous lots of less than 20 acres in a rural platted subdivision, can you claim all of the lots on your homestead exemption?***

My constituent continued his argument by pointing out that directly south of his lots is a group of 12 lots that are included in the owner's homestead exemption. The chief appraiser stated that "this happened before his time." By this remark, you would assume he interprets the homestead law differently than his predecessor, thus creating an unbalanced administration of the law.

***II. Does the chief appraiser have the authority to limit the exemption to less than 20 acres by requiring the land be used in some manner?***

The definition, as set forth in Section 11.13(j) of the Texas Tax Code, provides that:

(j) For purposes of this section:

(1) "Residence homestead" means a structure (including a mobile home) or a separately secured and occupied portion of a structure (together with the land, not to exceed 20 acres, and improvements used in the residential occupancy of the structure, if the structure and the land and improvements have identical ownership) that:

(A) is owned by one or more individuals, either directly or through a beneficial interest in a qualifying trust;

(B) is designed or adapted for human residence;

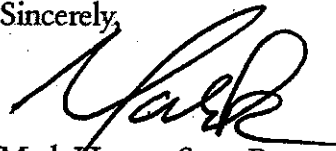
(C) is used as a residence; and

(D) is occupied as his principal residence by an owner or, for property owned through a beneficial interest in a qualifying trust, by a trustor of the trust who qualifies for the exemption.

In the above definition, there is no mention that multiple lots in a platted subdivision are excluded from being included in a homestead. As pursuant to Property Code, Chapter 41.002, the residence homestead definition specifies that the homestead can contain "one or more lots." My constituent has met the ownership provisions of the Property Code, and he has 100% ownership of the lots in question, thus meeting the identical ownership provision.

I respectfully ask for your interpretation of Chapter 11, Section 13(j) of the Tax Code in order to gain a more uniform administration of the homestead exemption. It is my belief that the Legislature did not intend for the chief appraisers to have the discretion to limit the homestead exemption to only one lot in a platted subdivision nor to define what usage qualifies the land for homestead exemption. Thank you for your consideration of this request. Please let me know if I can be of any assistance.

Sincerely,



Mark Homer, State Representative