Rick Lussy

9/27/97

Dear Buck:

Enclosed is the depo we had. That Fuchs guy, has Curtis Richards as a Deputy. I hope they will find the file with the construction costs and equiptment costs for the Indiantown Cogeneration Plant in West Martin County.

I appreciate your help in this matter and when I subpoena you again I hope to have more information.

Sincerely,

Rick Lussy

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

CASE NO. 96-033-CA

RICHARD CHARLES LUSSY,

Plaintiff,

COPY

vs.

CITY OF STUART,

Defendant.
_______________________________________/

TELEPHONE DEPOSITION OF HAMILTON S. OVEN

DATE: September 12, 1997

TIME: 10:22 a.m.

PLACE: 900 East Ocean Boulevard, Suite 232
Stuart, Florida
- and -
Tallahassee, Florida

TAKEN BY: The Plaintiff

BEFORE: Cynthia Sciorra, Court Reporter and Notary Public of the State of Florida at Large

APPEARANCES:

FOR THE PLAINTIFF:

RICHARD C. LUSSY, PRO SE
16 SE 6th Avenue
Jensen Beach, Florida 34957-4907

I-N-D-E-X

* * * * *

E-X-H-I-B-I-T-S

THEREUPON,

HAMILTON S. OVEN, JR.,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LUSSY:

Q Mr. Oven, this is Rick Lussy, I'm the Plaintiff in the case. It's entitled Lussy versus the City of Stuart. Opposing counsel, Mr. Sang, is not present for reasons of conflict or other reasons so he's chosen not to be here.

It has to do with my candidacy for property appraiser in Martin County and a letter you mailed me dated July 17, 1996. Since it's not handy to you I can read it into the record if you like, and then you can make any comment as to whether it sounds appropriate.

A All right.

Q And it has to do with the ten percent salvage value and the initial cost of equipment. But, anyway, here's the letter, I'll read it in.

It's from the Department of Environmental Protection at Twin Towers Office Building at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, and it's Lawton Chiles, Governor, with Virginia B.

Wetherell, Secretary, dated July 17, 1996. It's to Mr. Richard C. Lussy, Republican Candidate for Property Appraiser, 16 Southeast Sixth Avenue, TO/OBP, Jensen Beach, Florida 34957. Re: Assessment of Pollution Control Equipment.

"Dear Mr. Lussy: The Department of Environmental Protection reviews material furnished by local property appraisers for properties that owners desire to be assessed as pollution control equipment pursuant to s, 193.621,F.S. Chapter 62-8, Florida Administrative Code provides guidance to property appraisers and tax payers in this matter. Such regulation directs that taxpayers wishing ad valorem relief to furnish a detailed list of the equipment included in each category, an explanation of that equipment's pollution control function and a statement from an engineer, registered in the State of Florida, that the primary purpose of the equipment is pollution control. With such information, the Department will advise the local property appraiser as to the eligibility of property to be assessed as pollution control equipment. It is up to the property appraiser and the tax payer to determine the salvage value of the equipment for appraisal purposes. Frequently, property appraisers have used ten percent of the initial cost of the equipment to determine its salvage value."

New paragraph. "If you have any questions concerning this matter, I can be reached on (904) 487-0472.

"Sincerely, Hamilton S. Oven, P.E." meaning Professional Engineer.

On the bottom it says, "Protect, Conserve and Manage Florida's Environment and Natural Resources, Printed on recycled paper."

So, this is the letter I'm just following up on and documenting the case under the preliminary discovery rules for the State of Florida. And my question is, does this letter sound as though it was the letter that would be authenticated by yourself?

A That is correct.

Q Okay. The key question that I'm inquiring about is the ten percent of the initial cost of equipment to determine its salvage value. The question in point is the Indiantown cogeneration plant that have over one hundred million dollars of equipment or air pollution control type of equipment that was installed to the facility. And as a backup to that I just wanted to enter, if this sounds familiar to you, it's a Marshall Valuation document that's from Section 97, Page 18, January 1996, and it gives the depreciation, fixtures and equipment, and down below there's a category for salvage value, and then is the electrical equipment manufacturing which shows ten percent, then there's electric power equipment which shows ten percent under, once again, a salvage value.

So, generally, I'm just double checking that the ten percent salvage value that you're talking about is also in coordination and in agreement with the Marshall Valuation exhibit?

A I don't -- I don't know what that Marshall Valuation exhibit is, you know. I think my letter speaks for itself. I just said that other tax appraisers, tax assessors across the State from time to time have used ten percent of the initial value of the equipment. Now, first some engineer has to specify which equipment he thinks is eligible, and then you would take the initial value of that equipment, whatever that would be established by appraisal valuation, and then you would apply the ten percent or whatever value they wanted to. Just because you've got a whole bunch of equipment in the plant and take ten percent of it, it may or may not be eligible.

So, you say the Marshall Valuation, you know, I don't know what's on that list. I don't know how that equipment was determined, or whether or not that is pollution control equipment or not.

Q Just to clarify that exhibit, the Marshall Valuation is an authoritative valuation cost guide which applies only to, say, real estate or personal property valuation on an appraisal basis which is separate and different from your profession, engineer valuation. So it's just another way of concurring with what you said, myself as an appraiser.

A All right.

Q I did not mean to infer anything and I just wanted your comment and, of course, you were very clear in stating it's not used by engineers; right?

A I don't know whether it's used by engineers or not.

Q You're not familiar with it?

A That's correct.

Q Does any time a new cogeneration plant -- are they ever one hundred percent exempt for equipment?

A I doubt it. Now, I do more than just

cogeneration plants. I mean, I do -- I assist tax appraisers on any type of industrial facility in the State of Florida. It could be a cement plant, it could be a phosphate plant, it could be an electrical power plant, it could be a coat hanger wire plant, it could be a paper mill. It just so happens in your case that was a cogeneration plant. I mean, I've had something similar with the Florida Power & Light Martin Power Plant.

Q So you're a specialist in industrial as it relates to the Department of Environmental Protection?

A I don't know whether I'm a specialist, but I've been assigned to this department for the last 20 years. So any industrial facility -- that's the last question referred to me -- for valuation, and I may well check with the people in our department. But since we are the agency that issues environmental regulatory permits, we actually issue permits which address these various pollution control devices, so it was given to us in helping out taxpayers in doing this because I believe legislators were trying to install more air pollution control equipment, and since we permit that equipment we should know what it is or isn't.

Q If it's all right with you I'll attach in the record the letter that I read, Oven Exhibit A, and also will than attach the other page that I referenced.

A All right.

Q Typically, in my side of things trying to confirm costs submitted to the government for approval for the reason the local Martin County Building Department did not issue a permit for either the plant or equipment, I'm just trying to confirm costs of construction and cost of equipment. And you mentioned once before in a previous conversation, PSC, Public Service Commission, they take and determine the need and then they give it to, say, the Environmental Protection Department for environmental considerations, and the third step is it goes before an Administrative Law Judge that determines the total outlook based upon the need and environmental constraints, and then it's the Administrative Law Judge's opinion that is then offered to the Govenor's Cabinet Affairs. Is that generally the process?

A That's close. You've got your mistakes in there but --

Q You want to correct me?

A All right, I will, but first I'll say that process is covered under the Florida Electrical Power Plant Siting Act.

Q Pardon me, please, could you repeat that and go slower for the court reporter.

A Florida Electrical Power Plant Siting Act, Chapter 403 Florida Statutes, Section 2 -- or Part 2, sorry. Section 403.501 through 519.

Q Okay, continue, please. I didn't mean to interrupt your train of thought.

A When an applicant wishes to obtain certification through the Power Plant Siting Act, they would submit an application to this department for that, or at the same time they would also file for a determination of need with the Florida Public Service Commission.

Florida Public Service Commission is one of the reviewing agencies that submits a report to this department. The Public Service Commission determines whether or not there is a need for the capacity facility and whether or not that particular facility will be cost effective or produce the lowest cost electricity of any other option out there.

Their report comes into the department and we must have a permanent finding of need from them before we can proceed to a certification hearing. The certification hearing held by the Administrative Law Judge of these administrative hearings registers a recommend order that is submitted to the Power Plant Siting Board which is the Florida Cabinet. That's the Governor and other elected cabinet officials. They make the final decision on the project. We are the staff to the Board and are the chief coordinating agency for the project.

Q So in directing my question then to the source of the numbers for the construction cost of plant and equipment, the local county building department did not have those, and did you once before say that the --

A I once before said that Florida Public Service Commission may have some of that information.

Q Okay, and I called them and they had nothing, and so they said that maybe you might have something as far as the actual construction costs of plant equipment?

A I doubt that I do but, like I say, I can check the files and find out.

Q I would appreciate it if you could please check because I have no other avenue for checking actual construction costs or equipment costs because at present there's zero reference to machinery costs on the tax roll, so they're claiming that it's one hundred percent exempt for the over one hundred million dollars in equipment and machinery. And I'm just trying to follow-up on that number which reflects at least a ten million dollar plus salvage value basis missing in just value, so I just wanted to try to obtain additional preliminary numbers from the appropriate government entity.

A Okay.

Q So if you'd be so kind to follow-up on that I would be most appreciative.

Now, I understand that you will be out of the area at a convention or a seminar in the latter part of November; is that correct?

A Well, actually, I'll be out of the office from the 6th of November through -- I'll be back in the office on the 17th and on the 18th I go into hearing.

Q Because the jury trial in this matter will be October 20th through November 7th, on a preliminary basis subject to --

A Like I say, I will be in the State until, I believe it's November the 6th.

Q Thank you. And you have met your statutory deadline?

A Not yet.

Q So I didn't mean to be taking your time now --

A I'm in a hiatus right now.

Q Okay. So it's just a matter of trying to confirm the additional cost data for plant and equipment is my request for not just say the Indiantown cogeneration plant, West Martin County, but any other plant similar for comparison sake as a new plant without depreciation, or as a functional as built for an appraisal basis it's easier to deal with a new facility where there's no deductions?

A Mr. Lussy, if you talk to the Public Service Commission again, the docket that this project was under for them was Docket Number 890004-EU, and an order was issued, Order Number 22341.

Q And that order was issued to you or was --

A We got a copy of it, I think. I don't have it in front of me. I pulled a copy of the application off the shelf trying to see if there was anything in it on cost figures. I have not found them yet in the first volume, so as you're talking I'm doing a little research as best I can.

Q I appreciate your effort because I need some additional construction costs for both the plant and equipment, and rather than just rely exclusively upon the Martin County Property Appraiser's submission.

A Well, like I say, at this point if I come across that order in this document I'll let you know.

Q Thank you. Is there a contact person within the Governor's Cabinet Affairs that would be --

A Not cabinet affairs -- the Governor does have a Cabinet Affairs Office but the whole cabinet acts as the board. But if you want to talk to somebody, Chief of Cabinet Affairs, his name is Danny Fuchs, spelled F-U-C-H-S.

Q Danny, D-A-N-N-Y, F-U-C-H-S? Curtis Richardson Deputy Director

A Yes.

Q Does he have a phone number handy?

A He's Cabinet Affairs.

Q He's with Cabinet Affairs or he's --

A He's at the Governor's Office. Each of the cabinet officers has their own Cabinet Affairs Office, so your use of Cabinet Affairs is not really correct.

Q But he would be a chief --

A He is the Chief of the Cabinet Affairs Office for the Governor.

Q For Governor Lawton Chiles.

Gov. 850-488-4441 Cabinet Aff

A Correct.

Q Does he have a phone number that you have handy?

A I don't -- well, I've got a state phone book, I can try looking it up.

Q Well, it's F-U-C-H-S, and I can get that, and you've been most helpful, but I would appreciate your follow-up and given the time available, just to find some construction costs for plant and equipment.

A I don't have that because it's not normally given to me because we don't focus on that. The only place we might have some information would be on air pollution equipment if it were part of a air control determination. I'm not sure how much information we have on that, it may be more generic.

Q Isn't the reason for submission to your department an exemption? Otherwise, one hundred percent of the value would be authorized to be claimed on --

A Well, we don't look at the cost, we look at the function.

Q Okay.

A Our purpose is to determine whether or not a piece of equipment or a system is eligible as pollution control equipment. We don't care what the cost is, that's irrelevant to our function.

Q So you just need an inventory of the equipment?

A Right, list of equipment and the function that that equipment is supposed to fulfill.

Q As part of the Subpoena Duces Tecum I've requested any information that was given you by the Martin County Property Appraiser's Office. Would you be kind enough to forward that to me at that address?

A Sure.

Q Well, I believe we've covered both the preliminary discovery and what was of record. I have no further questions.

Would you like to read or waive your right to read this deposition, Mr. Oven?

A I'll waive.
Q All right, I have no further questions.
A I do find in the calculation a table for on-site control alternatives and they indicate a total direct cost which includes purchase of equipment and installation for the on-site control system of a value $19,908,000.
Q One more time please, the number?
A Nineteen million nine hundred eight thousand dollars. That's the total direct cost. Their indirect installation cost was another $3,982,000.
Q Three million -- the number once again, please?
A Three million nine hundred eighty-two thousand.
Q With three zeros?
A Correct. That's considering during construction expense and contingency.
Q This is for what?
A This is the direct construction costs.
Q That's more then the indirect soft costs. I'm looking for primarily the hard costs.
A If you like, I'll send you this sheet.
Q Thank you, that's most appreciated.

Anything to do dealing with the cost approach direct.

A Like I say, this was a comparison. I don't know if it was truly what would apply. Like I say, this was for comparison purposes in assessing whether or not a particular piece of equipment is cost effective. Whether it's a true cost of that equipment or not, I don't know, that's what they said it might be.

Q It's part of the application to Indiantown cogeneration plant?

A Correct.

Q So it would, therefore, apply to this case then, generally speaking?

A Yes. It's starting to give you a relative idea how much the equipment might cost.

Q And if there are any other costs, figures or calculations, that would be appropriate for you to include those and send them to me.

A Right.

Q At the same address that was read into the record.

A Yes.

Q So do you have any question on my address, then?

A No. I presume it's going to be on the subpoena when I get it.

Q Yes, and I'll give it to you once again so we keep it altogether. It's Rick Lussy, L-U-S-S-Y, it's 16 Southeast Sixth Avenue, TO/OBP, that's Jensen Beach, Florida 34957-4907. So there's no need to wait and take care of it and move on to other things.

A Okay.

Q Appreciate your time and your effort, Mr. Oven.

A All right, Mr. Lussy.

Q Thank you once again.

(A Composite was marked Plaintiff's Exhibit A, for identification.)

Stipulated and agreed by and between counsel for the respective parties and the witness, HAMILTON S. OVEN, that the reading and subscribing of the deposition by the witness be waived.

(Deposition concluded at 10:45 a.m.)

* * * * *

CERTIFICATE OF OATH

STATE OF FLORIDA)
)
COUNTY OF ST. LUCIE)

I, the undersigned, certify that Hamilton S. Oven produced Florida driver's license #015033742001-0, exp. date 11/1/98, and was duly sworn.

WITNESS my hand and official seal this 15th day of September, 1997.

NOTARY PUBLIC STATE OF FLORIDA
CYNTHIA SCIORRA
My Commission CC424952
Expires Dec. 16, 1998
Bonded by NFNU
800-224-6368

Cynthia Sciorra

Cynthia Sciorra

* * * * *

CERTIFICATION

STATE OF FLORIDA)
)
COUNTY OF ST. LUCIE)

I, Cynthia Sciorra, Court Reporter, certify that I was authorized to and did stenographically report the foregoing deposition and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 15th day of September, 1997.

Cynthia Sciorra

Cynthia Sciorra

NOTARY PUBLIC STATE OF FLORIDA
CYNTHIA SCIORRA
My Commission CC424952
Expires Dec. 16, 1998
Bonded by NFNU
800-224-6368

Department of
Environmental Protection

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

n Chiles
ernor

Virginia B. Wetherell
Secretary

8-7/20/96
ELD

July 17, 1996

Mr. Richard C. Lussy
Republican Candidate for Property Appraiser
16 SE Sixth Avenue, TO/OBP
Jensen Beach, Florida 34957

Re: Assessment of Pollution Control Equipment

Dear Mr. Lussy:

The Department of Environmental Protection reviews material furnished by local property appraisers for properties that owners desire to be assessed as pollution control equipment pursuant to s. 193.621, F.S. Chapter 62-8, Florida Administrative Code provides guidance to property appraisers and tax payers in this matter. Such regulation directs that tax payers wishing ad valorem relief to furnish a detailed list of the equipment included in each category, an explanation of that equipment's pollution control function and a statement from an engineer, registered in the State of Florida, that the primary purpose of the equipment is pollution control. With such information, the Department will advise the local property appraiser as to the eligibility of property to be assessed as pollution control equipment. It is up to the property appraiser and the tax payer to determine the salvage value of the equipment for appraisal purposes. Frequently, property appraisers have used 10% of the initial cost of the equipment to determine its salvage value.

If you have any questions concerning this matter, I can be reached on(904) 487-0472.

Sincerely,

Hamilton S. Oven

Hamilton S. Oven, P.E.

PLAINTIFF'S EXHIBIT
Oven "A"
(es) 9/10/97

"Bok"

of the actual costs, hence, I cannot disclose any further information concerning the Indiantown Cogeneration Plant.

Ashley Tract 5-38-41-000-000-00021-80000

Enclosed is a copy of the property record card for the Ashley Tract for your information. The property consists of land only and was valued on the 1996 tax roll at $8.50 per square foot of land area, resulting in a market value indication of $403,580. The land portion of property along most of the commercial waterfront in Stuart from the FEC railroad tracks to the Martin Memorial Hospital was valued at $17.00 per square foot of land area. The Ashley tract was factored downward by 50% to reflect its proximity to the railroad tracks and new Roosevelt Bridge.

Also enclosed for your information are sales which were considered in estimating the underlying land value of the waterfront property in the vicinity of the Ashley tract. The sale of the Ashley tract itself was given little if any weight because it was sold under the power of condemnation. Our analysis of these sales indicated that $17.00 per square foot of land was appropriate for commercial properties along the waterfront in Stuart between the FEC railroad tracks and the Martin Memorial Hospital.

If I can be of any further help in this matter, please contact me at the main office address noted on the letterhead.

Sincerely,

Michael Fribourg

Michael Fribourg
Assistant Property Appraiser

April 3, 1997

Richard C. Lussy, SRPA, SRA, Esquire
16 SE 6th Avenue, TO/OBP
Jensen Beach, FL. 34957-4907
Phone (561) 334-2849

Michael Fribourg
4731 SW Bimini Circle, North
Palm City, FL. 34990
Phone (561) 286-1165

Re: Attached Appraisal of Indiantown Cogeneration Memo 7/16/96.

Dear Mr. Fribourg:

As noted above, I called the phone number listed in the white pages of the local telephone book, and left a message. I am following up to confirm the following:

*Listed total of five account numbers is $316,722,450.

*Not listed, but named in the narrative of your memorandum references an additional $9,468,800 for the 236.72 acre tract of land; and an additional 11,896,500 for the total improvement value, as seperate.

*Not listed, but named in the narrative as well is the number for in excess of $100 million for reported pollution control equipment, as exempt from property taxes.

I would like you to confirm that these later two categories were not included in the listed $316,722,450, which they appear to me, not to be included.

What is your opinion on this?

I will appreciate your cooperation in this matter; as I have included copies of the five pages, provided me in this past 1996, Martin County Property Appraiser Campaign.

Sincerely,

Richard C. Lussy, SRPA, SRA, Esquire
State Cert.Gen.REA #RZ0001564

attachments-5 pages noted

7/ . '96

Rmc 904-488-0714

To: Steve Kelber FAX 904-488-7114

From: Rick Lusly

Page Attached.

FAX 220-4905

Memo

To: Laurel Kelly

From: Michael Fribourg MF

Date: July 16, 1996

Re: Indiantown Cogeneration Facility

I spoke with Jenifer Cognata at Indiantown Cogeneration and she indicated that they definitely wish to keep their return confidential. I am attaching a copy of Florida Department of Revenue General Rule 12D-1.005, Access to Financial Records, which addresses confidentiality of taxpayer returns and cites Specific Authority under Florida Statute 195.027.

The facility is being assessed on five parcels; four real property parcels and one tangible personal property parcel. The bulk of the plant is classified and assessed as tangible personal property. Indiantown Cogeneration submitted an amended return after we closed the roll for certification. The amended return will likely result in some small modifications to our value conclusions. Since we are in the process of rolling over the database from appraisal to assessed and there is no opportunity to modify the values at this time, I have not fully reviewed the amended return.

The identifying parcel numbers and their corresponding assessed values follow:

Acct No.	Parcel Control (GEO) Number		Assessed Val	Roll Type
103043	100000103043		$294,718,554	TPP
58745	263938001000000119000O		$ 100	Real
58750	273938000000000412000O		$ 638,400	Real
58813	343938001000000104000O		$ 21,365,300	Real
58815	343938001000000300000O		$ 100	Real
		Total	$316,722,450	

Not included in these totals is an amount in excess of $100,000,000 which reflects the reported value of the pollution control equipment which is exempt from taxation under Florida Statute 193.621. The Florida Department of Environmental Protection is still reviewing the listed equipment items to certify that the primary purpose of each of the items is for pollution control.

Accounts 58745 and 58815 are narrow strips of service land with nominal value contributions. Accounts 58750 and 58813 contain 15.96 acres and 236.72 acres, respectively. Although purchased separately, they are valued as if it is one large tract. All of the real property improvements are located on the 236.72 acre tract. The land value of the 236.72 acre tract is estimated to be $9,468,800. The total improvement value of the tract is estimated to be $11,896,500.

Attached with this memo is a sketch of each of the buildings located on the property.

SKETCH/AREA TABLE ADDENDUM

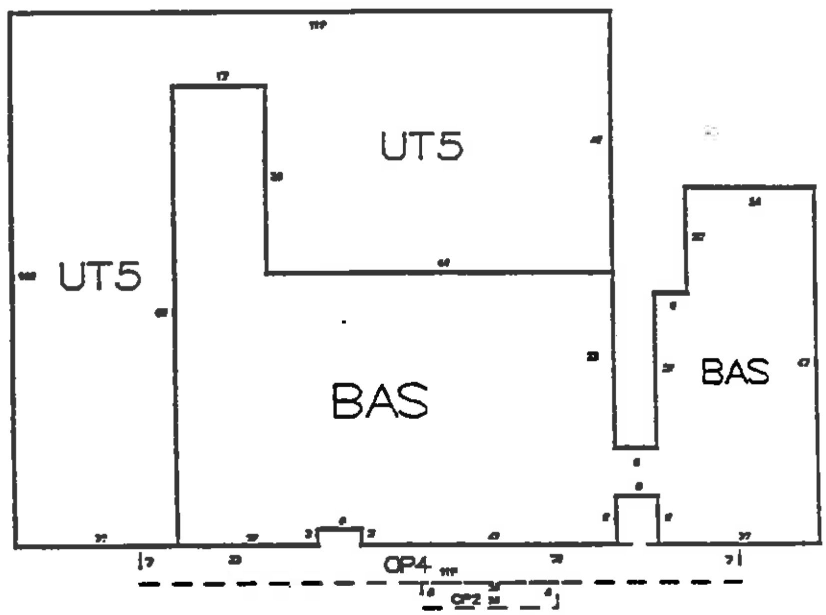
File No: 34393800100000C

Borrower/Client: INDIANTOWN COGENERATION, LP

Property Address: 19140 S.W. WARFIELD BLVD.

City	County	State	Zip Code
INDIANTOWN	MARTIN	FLORIDA	34956

Lender: OFFICE COMPLEX



4 Bath. 14' Ht.
9 Fix No tile

SCALE: 1 inch = 30 feet

AREA CALCULATIONS SUMMARY

Area	Name of Area	Size	Totals
GLA1	BAS	6374.00	
	OFS	6664.00	13038.00
POR	OP4	801.00	
	OP2	125.00	926.00
TOTAL LIVABLE (rounded)			13038

LIVING AREA CALCULATIONS

Breakdown			Subtotals
111.00	x	14.00	1554.00
30.00	x	86.00	2580.00
64.00	x	35.00	2240.00
17.00	x	86.00	1462.00
24.00	x	67.00	1608.00
64.00	x	48.00	3072.00
6.00	x	47.00	282.00
8.00	x	9.00	72.00
9.00	x	3.00	27.00
47.00	x	3.00	141.00
			13038

issions, school boards, commissions, rities, and agencies of a public or si-public nature) special taxing districts, i-county districts and municipalities, ll beginning in 1972, on or before April furnish to the several property appraisers this state a list of real property owned. ıch list shall include a description ıfficient to identify the same and an timate of the value of the same. After 172, such list may include only the operty which has been acquired or sposed of by the governmental entity ıce the filing of the previous return or list, d shall be due on or before April 1 of ch year.

(3) An assessment may not be ntested until a return, if required, is filed the taxpayer.

pecific Authority 195.027 FS. Law plemented 193.052, 193.501, 193.621 . History-New 10-12-76, Formerly 12D-04.

12D-1.005 Access to Financial ecords.

(1) The appraiser of each county, ly authorized representatives of the epartment, and duly authorized presentatives of the Auditor General shall ve the right to inspect and copy financial cords relating to non-homestead property hich are reasonably necessary to termine the property assessment of the operty in question.

(a) Access to a taxpayer's records all be provided only where it is termined that such records are cessary to determine both the assification and value of the taxable non-mestead property.

(b) This section shall apply to all real d personal property physically located thin the State, and within the county in question on January 1 of the year for which inspection is sought.

(c) The types of records which this section covers shall include, but not be limited to the following in the case of real property:

1. Profit and loss statements,

2. Income tax returns of the person, firm or corporation operating the property,

3. Leases of tenants in possession of property, both before and after the January 1 valuation date,

4. Casualty insurance policies insuring the premises against damage from fire and other hazards,

5. Any financial statements of any person, firm or corporation having an interest in the property in which the property or an interest in it is listed as an asset,

6. Mortgage note and other instruments made in connection with mortgages placed on the property, such as loan applications,

7. Ledgers showing construction expenses of any improvements made to the property, and contracts for the construction or reconstruction of improvements made to the property, and contracts for the construction or reconstruction of improvements or additions to the property,

8. Closing statement between buyer and seller pertaining to the most recent purchase of the property in question,

9. Appraisals made on the property in connection with obtaining mortgage financing or the sale thereof.

(d) The types of records which this section covers shall include, but not be limited to the following in the case of personal property:

1. Profit and loss statements,

2. Invoices from purchase of the property in question,

3. Inventories,

4. Federal Income Tax returns for the entity owning the property, including

depreciation schedules,

5. General journal and ledgers showing date of acquisition and installed price for commercial personal property,

6. Financial statements for the business in connection with which the property is used, including balance sheets,

7. Insurance policies insuring the property in question against casualty loss,

8. Leases for leased property,

9. Records by which to determine the value of inventory, such as opening inventories, acquisitions, sales, cost of goods sold.

(2) The following procedures shall govern access to the records of a taxpayer:

(a) The appraiser or his duly authorized representative, the duly authorized representative the Department, or the duly authorized representative of the Auditor General shall make request, in writing, of the taxpayer and shall specify in general the records requested.

(b) The request shall state the purpose of the request, and the time and place at which the records shall be produced by the taxpayer. If the records are located without the county, the taxpayer shall have ten (10) days following the request in which to make them available for inspection and copying.

(c) All records produced under this section shall be returned to the taxpayer as expeditiously as possible under the circumstances, after examination by the requesting agency.

(d) In the event the taxpayer shall refuse, after written demand, to make production of the books and records requested, the requesting agency shall have the right to proceed with an original action in the Circuit Court for an application to the court for a subpoena duces tecum and production of the records in question.

(3) All records produced by the taxpayer under this rule shall be deemed to be confidential in the hands of the appraiser, the Department and the Auditor General, and shall not be divulged to any person, firm or corporation.

Specific Authority 195.027(1) FS. Law Implemented 195.027(3) FS. History-New 10-12-76, Formerly 12D-1.05.

12D-1.006 Exchange of Information Among Appraisers, Tax Collectors, Department and Auditor General.

(1) In accordance with Section 195.084, F.S., and upon written request to the Executive Director reasonably specifying the data requested, the Auditor General, Tax Collector, or Appraisers may obtain data collected or generated by the Department which has to do with values of property in the counties or which pertain to levels of just valuation as required by the Constitution or Statutes.

(2) Before any records of the Department, which are of a confidential nature, or which are of a confidential nature and are furnished to the Department by the United States or other states under reciprocal agreements are furnished to the Appraiser, Tax Collector, or the Auditor General, the Executive Director shall satisfy himself that suitable precautions have been taken by the Appraiser, Tax Collector, or the Auditor General to safeguard the confidential information from those not entitled to access thereto, and that within the requesting office the confidential information will be released only to those employees within the office with a need to know the information in the performance of their official duties.

(3) Upon written request reasonably specifying the items requested and array desired, the appraiser or collector shall furnish to the Executive Director of the Auditor General all records in whatever

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL
CIRCUIT, IN AND FOR MARTIN COUNTY, FL.

RICHARD CHARLES LUSSY, Plaintiff,	)	Case No. 96-033-CA
VERSUS	)	
CITY OF STUART, Defendant.	)	SUBPOENA FOR ORAL DEPOSITION SUBPOENA DUCES TECUM

SEP 12 1997

SITING COORDINATION

STATE OF FLORIDA TO: Hamilton S. Oven, P.E.
Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL. 32399-2400
Phone (904) 487-0472

Telephone Deposition: on 10% salvage value on over $100 million of air pollution control equiptment, Indiantown Cogeneration Plant on the tax rolls at $210 million, a new plant.
Attached: your 7/17/97 letter to me, my marshall valuation Sec.97 Page 18 + 7 pages exhibits

YOU ARE HEREBY COMMANDED to appear before a person authorized by law to take your deposition **at a convenient time pre-arranged with Mr. Lussy 9/15-19/97,**

for the taking of the deposition in the above styled cause.

You are subpoenaed to appear by Attorney Richard C. Lussy, and unless excused from this subpoena by Attorney Richard C. Lussy, you shall respond to this subpoena as directed.

Dated on 9/8, 1997

BY: **Richard C. Lussy, SRPA, SRA, Esquire**
16 SE 6th Avenue, TO/OBP
Jensen Beach, FL. 34957-4907
Phone (561) 334-2849

Marsha Stiller, Clerk of Martin County

By: LEVI JOHNSON

As Deputy Clerk

Certified State General REA/Licensed/Designated
RZ0001564/SL531638/902668

Plaintiff For Himself

CIRCUIT COURT MARTIN COUNTY, FLORIDA

NOTICE TO PERSONS WITH DISABILITIES
If you are a person ... needs any accommodation in order to ... you are entitled, at no cost to you ... assistance. Please contact Elsie ... Stuart, FL 34994 561-28... receipt of this document ... call 1-800-955-8771.

If you are a person with a disability who needs any accomodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact : Clerk of the Circuit Court, Attention: Elsie Hutton - 100 East Ocean Boulevard, Post Office Box 9016, Stuart, FL 34995-9016 (561-288-5577).

If you are hearing impaired, call 1-800-955-8771; if you are voice impaired, call 1-800-955-8770.

Department of
Environmental Protection

8 c 7/20/96
8 G A

n Chiles
/ernor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Wetherell
Secretary

July 17, 1996

Mr. Richard C. Lussy
Republican Candidate for Property Appraiser
16 SE Sixth Avenue, TO/OBP
Jensen Beach, Florida 34957

Re: Assessment of Pollution Control Equipment

Dear Mr. Lussy:

The Department of Environmental Protection reviews material furnished by local property appraisers for properties that owners desire to be assessed as pollution control equipment pursuant to s. 193.621, F.S. Chapter 62-8, Florida Administrative Code provides guidance to property appraisers and tax payers in this matter. Such regulation directs that tax payers wishing ad valorem relief to furnish a detailed list of the equipment included in each category, an explanation of that equipment's pollution control function and a statement from an engineer, registered in the State of Florida, that the primary purpose of the equipment is pollution control. With such information, the Department will advise the local property appraiser as to the eligibility of property to be assessed as pollution control equipment. It is up to the property appraiser and the tax payer to determine the salvage value of the equipment for appraisal purposes. Frequently, property appraisers have used 10% of the initial cost of the equipment to determine its salvage value.

If you have any questions concerning this matter, I can be reached on(904) 487-0472.

Sincerely,

Hamilton S. Oven

Hamilton S. Oven, P.E.

"Buck"

DEPRECIATION – FIXTURES AND EQUIPMENT

These tables are furnished primarily for the experienced equipment appraiser who has knowledge of the normal lives of fixtures and equipment, as a check against his other methods of determination of the total depreciation of equipment.

The tables are based on actual cases of sales and mortality to which mathematical curves have been matched. They are averages and as such must be used with care using effective age and modifying for above- or below-normal wear and tear.

NORMAL DEPRECIATION – PERCENTAGE

EFFECTIVE AGE IN YEARS	TYPICAL LIFE EXPECTANCY IN YEARS 30	25	20	15	12	10	8	5
1	2	2	3	5	6	8	10	15
2	3	5	7	10	13	16	21	31
3	5	7	10	15	20	24	33	48
4	7	10	14	21	27	33	46	66
5	9	13	18	27	34	42	57	77
6	11	16	22	32	42	51	67	82
7	14	19	26	38	50	61	74	
8	16	22	30	45	57	70	78	
9	18	25	35	51	64	76	80	
10	21	29	40	57	71	79		
11	24	32	45	63	76	80		
12	26	36	50	69	78			
13	29	40	55	74	80			
14	32	44	60	77				
15	35	48	65	79				
16	39	52	69	80				
17	42	56	73					
18	46	61	76					
19	49	66	78					
20	53	70	79					
22	60	74						
24	66	77						
26	72	79						
28	77							
30	79							
32	80							

REMAINING LIFE – YEARS

EFFECTIVE AGE IN YEARS	TYPICAL LIFE EXPECTANCY IN YEARS 30	25	20	15	12	10	8	5
1	29	24	19	14	11	9	7	4
2	28	23	18	13	10	8	6	3
3	27	22	17	12	9	7	5	2
4	26	21	16	11	8	6	4	1
5	25	20	15	10	7	5	3	1
6	24	19	14	9	6	4	2	1
7	23	18	13	8	5	3	1	
8	22	17	12	7	4	2	1	
9	21	16	11	6	3	1	1	
10	20	15	10	5	2	1		
11	19	14	9	4	2	1		
12	18	13	8	3	1			
13	17	12	7	3	1			
14	16	11	6	2				
15	15	10	5	1				
16	14	9	4	1				
17	13	8	4					
18	12	7	3					
19	11	6	2					
20	10	5	2					
22	8	4						
24	6	3						
26	5	2						
28	4							
30	3							
32	2							

SALVAGE VALUE

The following table lists average salvage value of all equipment and fixtures by industry. Thus, all the equipment in a bakery, taken as a whole, might be expected to have a 10% remaining salvage value when fully depreciated. If the installation is unmarketable, however, then the value could go to zero.

Airplane mfg.	10%
Apartment	10%
Bakery	10%
Bank	10%
Bottling	10%
Brewery, distillery	8%
Candy, conf.	10%
Cannery - fish	8%
Cannery - fruit	8%
Cement mfg.	8%
Chemicals	6%
Church	10%
Clay products	7%
Construction equip.	14%
Creamery - dairy	11%
Dwelling	12%
Elec. equip. mfg.	10%
Elec. power equip.	10%
Flour, cereal, feed	8%
Garage	10%
Glass mfg.	8%
Hospital	12%
Hotel	10%
Laundry - dry cleaning	10%
Library	10%
Logging equip.	10%
Metalworking	12%
Mining, milling	8%
Motion picture	12%
Office equipment	12%
Oil refining	7%
Packing - meat	7%
Paint mfg.	7%
Paper mfg.	7%
Printing	10%
Refrigerating	8%
Restaurant	14%
Rubber	9%
School	10%
Sewage disposal (city)	7%
Shipbuilding	9%
Steam power	10%
Store	10%
Textile	8%
Theater	12%
Warehousing	10%
Waterworks, (city)	6%
Woodworking	10%

Martin County Property Appraiser
Laurel Kelly, CFA

MAIN OFFICE
100 E. Ocean Blvd., Suite 300
P. O. Box 396
Stuart, Florida 34995
561-288-5608 FAX: 561-288-5993

HOBE SOUND ANNEX
8771 S.E. Bridge Road
Market Place At Hobe Sound
Hobe Sound, Florida 33455
561-546-1309 FAX: 561-546-3287

May 15, 1997

Mr. Richard C. Lussy
16 SE 6th Avenue, TO/OBP
Jensen Beach, FL 34957-4907

Dear Mr. Lussy:

Re: Subpoena Duces Tecum; 96-033-CA

As to your request for written or recorded statements used to establish the appraised value of property in the City of Stuart, there are no recorded statements regarding the Indiantown Cogeneration facility or the Ashley tract. I am assuming by recorded statement that you mean tape recordings, and none of these exist.

The Indiantown Cogeneration Plant

The Indiantown Cogeneration facility is not within the boundaries of the city of Stuart.

Each of the Cost Approach, Comparable Sales Approach and Income Approach valuation methods were considered in valuing the Indiantown Cogeneration Plant.

No comparable sales of similar cogeneration facilities were found, hence, the Comparable Sales Approach was not considered applicable.

The Indiantown Cogeneration plant is a unique property which was brand new and did not have an income history, hence, the income approach was not considered applicable.

The Cost Approach was primarily relied upon to value the subject property. Financial information concerning the costs to construct the Indiantown Cogeneration Plant were supplied by the owner. I analyzed the costs presented by the owner and I compared those with the costs of other similar electric power generating facilities and I compared those costs with the cost estimates provided by Marshall Valuation Service. The Marshall Valuation Service page which was utilized was Section 14, Page 33 updated in June, 1995.

As noted in other correspondence to you, financial and cost information submitted by an owner is, according to Florida Statutes, to be held by the Property Appraiser as confidential information and may not be disclosed. My analysis and final value conclusion included consideration of the actual costs obtained from the owner and any disclosure of my analysis would result in discovery of the actual costs, hence, I cannot disclose any further information concerning the Indiantown Cogeneration Plant.

Ashley Tract **5-38-41-000-000-00021-80000**

Enclosed is a copy of the property record card for the Ashley Tract for your information. The property consists of land only and was valued on the 1996 tax roll at $8.50 per square foot of land area, resulting in a market value indication of $403,580. The land portion of property along most of the commercial waterfront in Stuart from the FEC railroad tracks to the Martin Memorial Hospital was valued at $17.00 per square foot of land area. The Ashley tract was factored downward by 50% to reflect its proximity to the railroad tracks and new Roosevelt Bridge.

Also enclosed for your information are sales which were considered in estimating the underlying land value of the waterfront property in the vicinity of the Ashley tract. The sale of the Ashley tract itself was given little if any weight because it was sold under the power of condemnation. Our analysis of these sales indicated that $17.00 per square foot of land was appropriate for commercial properties along the waterfront in Stuart between the FEC railroad tracks and the Martin Memorial Hospital.

If I can be of any further help in this matter, please contact me at the main office address noted on the letterhead.

Sincerely,

Michael Fribourg

Michael Fribourg
Assistant Property Appraiser

April 3, 1997

Richard C. Lussy, SRPA, SRA, Esquire
16 SE 6th Avenue, TO/OBP
Jensen Beach, FL. 34957-4907
Phone (561) 334-2849

Michael Fribourg
4731 SW Bimini Circle, North
Palm City, FL. 34990
Phone (561) 286-1165

Re: Attached Appraisal of Indiantown Cogeneration Memo 7/16/96.

Dear Mr. Fribourg:

As noted above, I called the phone number listed in the white pages of the local telephone book, and left a message. I am following up to confirm the following:

*Listed total of five account numbers is $316,722,450.

*Not listed, but named in the narrative of your memorandum references an additional $9,468,800 for the 236.72 acre tract of land; and an additional 11,896,500 for the total improvement value, as seperate.

*Not listed, but named in the narrative as well is the number for in excess of $100 million for reported pollution control equipment, as exempt from property taxes.

I would like you to confirm that these later two categories were not included in the listed $316,722,450, which they appear to me, not to be included.

What is your opinion on this?

I will appreciate your cooperation in this matter; as I have included copies of the five pages, provided me in this past 1996, Martin County Property Appraiser Campaign.

Sincerely,

Richard C. Lussy, SRPA, SRA, Esquire
State Cert.Gen.REA #RZ0001564

attachments-5 pages noted

7/ . '96

To: Steve Keller   Phone 904-488-0714
FAX 904-488-714
From: Rick Lusy
Page Attached.
FAX 220-4905

7/ . '96
3:15 P.M.

Memo

To: Laurel Kelly
From: Michael Fribourg
Date: July 16, 1996
Re: Indiantown Cogeneration Facility

I spoke with Jenifer Cognata at Indiantown Cogeneration and she indicated that they definitely wish to keep their return confidential. I am attaching a copy of Florida Department of Revenue General Rule 12D-1.005, Access to Financial Records, which addresses confidentiality of taxpayer returns and cites Specific Authority under Florida Statute 195.027.

The facility is being assessed on five parcels; four real property parcels and one tangible personal property parcel. The bulk of the plant is classified and assessed as tangible personal property. Indiantown Cogeneration submitted an amended return after we closed the roll for certification. The amended return will likely result in some small modifications to our value conclusions. Since we are in the process of rolling over the database from appraisal to assessed and there is no opportunity to modify the values at this time, I have not fully reviewed the amended return.

The identifying parcel numbers and their corresponding assessed values follow:

Acct No.	Parcel Control (GEO) Number		Assessed Val	Roll Type
103043	100000103043		$294,718,554	TPP
58745	263938001000000119000		$ 100	Real
58750	273938000000000412000		$ 638,400	Real
58813	343938001000000104000		$ 21,365,300	Real
58815	343938001000000300000		$ 100	Real
		Total	$316,722,450	

Not included in these totals is an amount in excess of $100,000,000 which reflects the reported value of the pollution control equipment which is exempt from taxation under Florida Statute 193.621. The Florida Department of Environmental Protection is still reviewing the listed equipment items to certify that the primary purpose of each of the items is for pollution control.

Accounts 58745 and 58815 are narrow strips of service land with nominal value contributions. Accounts 58750 and 58813 contain 15.96 acres and 236.72 acres, respectively. Although purchased separately, they are valued as if it is one large tract. All of the real property improvements are located on the 236.72 acre tract. The land value of the 236.72 acre tract is estimated to be $9,468,800. The total improvement value of the tract is estimated to be $11,896,500.

Attached with this memo is a sketch of each of the buildings located on the property.

SKETCH/AREA TABLE ADDENDUM

File No: 343938001000000

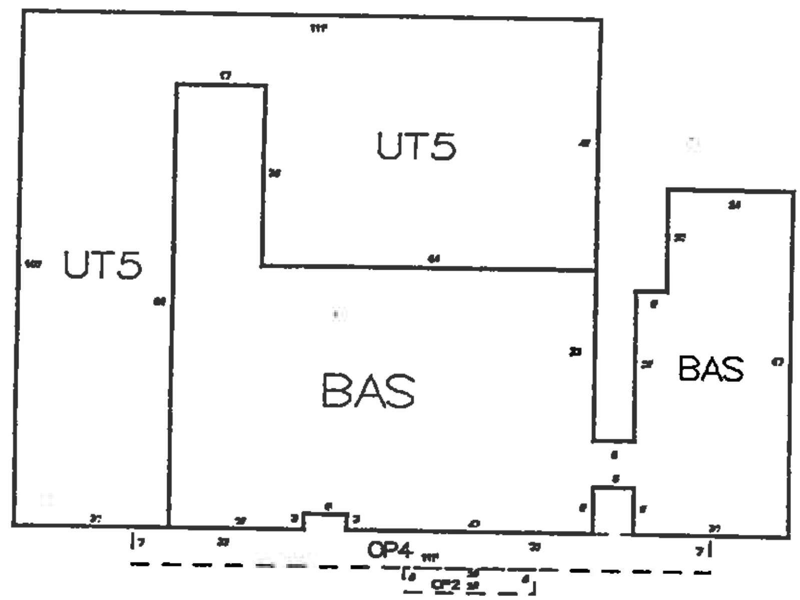
ower/Client: INDIANTOWN COGENERATION, LP

roperty Address: 19140 S.W. WARFIELD BLVD.

City	County	State	Zip Code
INDIANTOWN	MARTIN	FLORIDA	34956

Lender: OFFICE COMPLEX

IMPROVEMENTS SKETCH



4 Bath. 14' Ht.
9 Fix No tile

SCALE: 1 inch = 30 feet

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Area	Name of Area	Size	Totals
GLA1	BAS	6374.00	
	OF5	6664.00	13038.00
POR	OP4	801.00	
	OP2	125.00	926.00
TOTAL LIVABLE (rounded)			13038

LIVING AREA CALCULATIONS

Breakdown			Subtotals
111.00	x	14.00	1554.00
30.00	x	86.00	2580.00
64.00	x	35.00	2240.00
17.00	x	86.00	1462.00
24.00	x	67.00	1608.00
64.00	x	48.00	3072.00
6.00	x	47.00	282.00
8.00	x	9.00	72.00
9.00	x	3.00	27.00
47.00	x	3.00	141.00
			13038

issions, school boards, commissions, orities, and agencies of a public or si-public nature) special taxing districts, i-county districts and municipalities, all beginning in 1972, on or before April furnish to the several property appraisers this state a list of real property owned. uch list shall include a description ufficient to identify the same and an stimate of the value of the same. After 972, such list may include only the operty which has been acquired or sposed of by the governmental entity nce the filing of the previous return or list, d shall be due on or before April 1 of ach year.

(3) An assessment may not be ntested until a return, if required, is filed the taxpayer.

pecific Authority 195.027 FS. Law plemented 193.052, 193.501, 193.621 S. History-New 10-12-76, Formerly 12D-04.

12D-1.005 Access to Financial ecords.

(1) The appraiser of each county, ily authorized representatives of the epartment, and duly authorized presentatives of the Auditor General shall ave the right to inspect and copy financial cords relating to non-homestead property hich are reasonably necessary to etermine the property assessment of the operty in question.

(a) Access to a taxpayer's records hall be provided only where it is etermined that such records are ecessary to determine both the assification and value of the taxable non-omestead property.

(b) This section shall apply to all real d personal property physically located ithin the State, and within the county in question on January 1 of the year for which inspection is sought.

(c) The types of records which this section covers shall include, but not be limited to the following in the case of real property:

1. Profit and loss statements,

2. Income tax returns of the person, firm or corporation operating the property,

3. Leases of tenants in possession of property, both before and after the January 1 valuation date,

4. Casualty insurance policies insuring the premises against damage from fire and other hazards,

5. Any financial statements of any person, firm or corporation having an interest in the property in which the property or an interest in it is listed as an asset,

6. Mortgage note and other instruments made in connection with mortgages placed on the property, such as loan applications,

7. Ledgers showing construction expenses of any improvements made to the property, and contracts for the construction or reconstruction of improvements made to the property, and contracts for the construction or reconstruction of improvements or additions to the property,

8. Closing statement between buyer and seller pertaining to the most recent purchase of the property in question,

9. Appraisals made on the property in connection with obtaining mortgage financing or the sale thereof.

(d) The types of records which this section covers shall include, but not be limited to the following in the case of personal property:

1. Profit and loss statements,

2. Invoices from purchase of the property in question,

3. Inventories,

4. Federal Income Tax returns for the entity owning the property, including

depreciation schedules,

5. General journal and ledgers showing date of acquisition and installed price for commercial personal property,

6. Financial statements for the business in connection with which the property is used, including balance sheets,

7. Insurance policies insuring the property in question against casualty loss,

8. Leases for leased property,

9. Records by which to determine the value of inventory, such as opening inventories, acquisitions, sales, cost of goods sold.

(2) The following procedures shall govern access to the records of a taxpayer:

(a) The appraiser or his duly authorized representative, the duly authorized representative the Department, or the duly authorized representative of the Auditor General shall make request, in writing, of the taxpayer and shall specify in general the records requested.

(b) The request shall state the purpose of the request, and the time and place at which the records shall be produced by the taxpayer. If the records are located without the county, the taxpayer shall have ten (10) days following the request in which to make them available for inspection and copying.

(c) All records produced under this section shall be returned to the taxpayer as expeditiously as possible under the circumstances, after examination by the requesting agency.

(d) In the event the taxpayer shall refuse, after written demand, to make production of the books and records requested, the requesting agency shall have the right to proceed with an original action in the Circuit Court for an application to the court for a subpoena duces tecum and production of the records in question.

(3) All records produced by the taxpayer under this rule shall be deemed to be confidential in the hands of the appraiser, the Department and the Auditor General, and shall not be divulged to any person, firm or corporation.

Specific Authority 195.027(1) FS. Law Implemented 195.027(3) FS. History-New 10-12-76, Formerly 12D-1.05.

12D-1.006 Exchange of Information Among Appraisers, Tax Collectors, Department and Auditor General.

(1) In accordance with Section 195.084, F.S., and upon written request to the Executive Director reasonably specifying the data requested, the Auditor General, Tax Collector, or Appraisers may obtain data collected or generated by the Department which has to do with values of property in the counties or which pertain to levels of just valuation as required by the Constitution or Statutes.

(2) Before any records of the Department, which are of a confidential nature, or which are of a confidential nature and are furnished to the Department by the United States or other states under reciprocal agreements are furnished to the Appraiser, Tax Collector, or the Auditor General, the Executive Director shall satisfy himself that suitable precautions have been taken by the Appraiser, Tax Collector, or the Auditor General to safeguard the confidential information from those not entitled to access thereto, and that within the requesting office the confidential information will be released only to those employees within the office with a need to know the information in the performance of their official duties.

(3) Upon written request reasonably specifying the items requested and array desired, the appraiser or collector shall furnish to the Executive Director of the Auditor General all records in whatever