Value adjustment board and substantial completion

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Subject:
Value adjustment board and substantial completion

Mr. Aaron B. Thalwitzer
Legal Counsel, Volusia County VAB
1990 West New Haven Avenue
Second Floor
Melbourne, Florida 32904

RE: REAL PROPERTY ASSESSMENTS, VALUE ADJUSTMENT BOARD – authority to hear taxpayer appeal from assessment valuation based on disputed status of improvement to real property as substantially completed. §§ 192.042(1), 193.1555(5)(a), 194.011(3)(d), and 194.035(1), Fla. Stat. (2017).

Dear Mr. Thalwitzer:

On behalf of the Volusia County Value Adjustment Board, you have requested an opinion regarding the following issues:

(1) Whether a value adjustment board ("VAB") has authority to hear taxpayer petitions appealing whether, under section 192.042(1), Florida Statutes (2017), improvements to property were "substantially completed" as of January 1, and if so, what is the source of the VAB's legal authority?

(2) If the answer to question 1 is yes, whether a petition to a VAB appealing whether, under section 192.042(1), improvements to property were "substantially completed" as of January I must be heard by an attorney special magistrate, or a valuation special magistrate?

In sum:

(1) Pursuant to section 194.011(3)(d), because the issue of whether improvements to property were "substantially completed" as of January 1 is part of the valuation appraisal process, a value adjustment board has authority to hear the petitions of taxpayers appealing whether, under section 192.042(1), improvements to real property were "substantially completed" as of January 1.

(2) Pursuant to sections 193.1555 and 194.035, a petition to a value adjustment board appealing whether, under section 192.042(1), improvements were "substantially completed" as of January 1 must be heard by an attorney special magistrate if, pursuant to the challenged assessment, the subject improvement increases the just value of the real property by at least 25 percent; improvements effecting an increase in an amount below that threshold percentage pursuant to the challenged assessment should be heard by a valuation special magistrate.

QUESTION ONE

Section 192.042(1), Florida Statutes, provides that all property "shall be assessed according to its just value as follows":

"Real property, on January 1 of each year. Improvements or portions not substantially completed on January 1 shall have no value placed thereon. 'Substantially completed' shall mean that the improvement or some self-sufficient unit within it can be used for the purpose for which it was constructed."

Under this statute, if a taxpayer's improvement (or self-sufficient unit within it) is not "substantially completed" on January 1 of the subject year, "the assessment valuation for that year is to consist solely of the value of [the taxpayer's] land as if it were vacant."[1] "Although the improvement is not taxed under such a circumstance, this is not an exemption from taxation; rather it is a part of the valuation appraisal process."[2]

Section 194.011(3)(d) establishes the procedure by which a taxpayer may challenge, before the value adjustment board, decisions of the property appraiser "as to valuation issues." Therefore, read *in pari materia*, sections 192.042(1) and 194.011(3)(d) supply the VAB's legal authority to hear the petitions of taxpayers appealing whether improvements to property were "substantially completed" as of January 1.

QUESTION TWO

You next ask whether such an appeal should be heard by an attorney special magistrate or a valuation special magistrate. Sections 193.1555(5)(a) and 194.035, Florida Statutes, answer this question.

Section 194.035(1) provides, in pertinent part, that a "special magistrate appointed to hear…determinations that a…qualifying improvement has occurred shall be a member of The Florida Bar with no less than 5 years' experience in the area of ad valorem taxation. A "special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than 5 years' experience in real property valuation." Section 193.1555(5)(a), in turn, defines
a "qualifying improvement" as "any substantially completed improvement that increases the just value of the property by at least 25 percent."

Therefore, if the assessment valuation based on a challenged determination of substantial completion reflects an increase in the just value of the property of at least 25 percent, the appeal should be heard by an attorney special magistrate. If the assessment valuation based on a challenged determination of substantial completion reflects an increase in the just value of the property of less than 25 percent, the appeal should be heard by a valuation special magistrate.

Based on the foregoing, it is my opinion that the Volusia County Value Adjustment Board has authority to hear taxpayers' petitions appealing whether, under section 192.042(1), an improvement to property was "substantially completed" as of January 1. Challenges to assessments reflecting an increase, based on a disputed improvement, in the just value of the

property of at least 25 percent shall be heard by an attorney special magistrate, and challenges to assessments reflecting an increase, based on a disputed improvement, in the just value of the property of less than 25 percent shall be heard by a valuation special magistrate.

Sincerely,

Pam Bondi
Attorney General

PB/ttlm

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[1] *Klein v. Robbins*, 947 So. 2d 623, 624 (Fla. 3d DCA 2007) (citing *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 932 (Fla. 2005), *as revised on denial of reh'g* (Nov. 3, 2005) ("This statute reflects the Legislature's intent to delay valuation of improvements to property until such time as these improvements are substantially completed.")).

[2] *Id.* (Emphasis supplied.)