Property Appraiser, property affected by drywall

Number: INFORMAL

Date: June 21, 2010

Mr. Will Shepherd
General Counsel, Hillsborough
County Property Appraiser
County Center, 16th Floor
601 East Kennedy Boulevard
Tampa, Florida 33602-4932

Dear Mr. Shepherd:

On behalf of the Hillsborough County Property Appraiser, you have asked for direction in interpreting the scope of the property appraiser's powers and duties under Chapter 2010-170, Laws of Florida. Attorney General McCollum has asked that I respond to your letter and the following informal comments are offered in an effort to assist you.

The Florida Legislature passed CS/CS/HB 965 during the 2010 Legislative session and it has been assigned Chapter 2010-170, Laws of Florida. The law creates section 193.1552, Florida Statutes, relating to real property assessment and requiring property appraisers to adjust the assessed value of certain properties affected by imported or domestic drywall[1] under certain circumstances. The act was approved by the Governor on June 1, 2010, and applies to the 2010 and subsequent assessment rolls.[2]

Subsection (2), about which you have specifically inquired, reads as follows:

"When a property appraiser determines that a single-family residential property is affected by imported or domestic drywall and needs remediation to bring that property up to current building standards, the property appraiser shall adjust the assessed value of that property by taking into consideration the presence of the imported or domestic drywall and the impact of such drywall on the assessed value. If the building cannot be used for its intended purpose without remediation or repair, the value of such building shall be assessed at the nominal just value of $0."

The statute limits its application to properties in which

• imported or domestic drywall was used in construction or in improvement of the property.

• the drywall has a significant negative impact on the just value of the property or the improvement.

• the purchaser was unaware of the imported or domestic drywall at the time of purchase.[3]

The provisions of the section do not apply to property owners who were aware of the presence

of imported or domestic drywall when they purchased the property.[4]

My review of the newly adopted statutory language and the House of Representatives Staff Analysis for CS/CS/HB 965 does not reveal any direction given to the property appraisers on the matter of implementation of section 193.1552, Florida Statutes.

A general grant of power or authority unaccompanied by definite direction as to how the power or authority is to be exercised implies a right to employ the means and methods necessary to comply with the statute.[5] Thus, when the law imposes a duty or power on an officer, it also confers by implication such powers as are necessary for the due and efficient exercise of the duties or powers expressly granted or such as may be fairly implied therefrom.[6]

Thus, in the absence of a statutory provision setting forth the method by which the property appraiser is to make those determinations required by Chapter 2010-170, Laws of Florida, the process to be used in making such determinations is within the property appraiser's official discretion so long as the methods employed accomplish the objectives or purposes of section 193.1552, Florida Statutes 2010.[7]

In conversations with the Department of Revenue on the subject of implementation of Chapter 2010-170, Laws of Florida, I was advised that the department is preparing a bulletin on this matter. The application of the new statutory language to condominiums and other types of property and the characterization of that property as "single-family residential" is currently being reviewed and the bulletin will address this matter. I would suggest that you continue to work with the Department of Revenue and the several professional organizations representing property appraisers in this state in an effort to develop procedures for implementing this bill.

I trust that these informal comments will be of some assistance to you in advising your client.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* s. 1, Ch. 2010-170, Laws of Fla., defining "imported or domestic drywall" as "drywall that contains elevated levels of elemental sulfur that results in corrosion of certain metals."

[2] *See* s. 2, Ch. 2010-170, Laws of Fla.

[3] Section 193.1552(3)(a) - (c), Fla. Stat. (2010).

[4] Section 193.1552(4), Fla. Stat. (2010).

[5] 67 C.J.S. *Officers* s. 193(a).

[6] *See State ex rel. Martin v. Michell*, 188 So. 2d 684 (Fla. 4th DCA 1966), *cert. discharged*, 192 So. 2d 281 (Fla. 1966); *In re Advisory Opinion to the Governor*, 60 So. 2d 285 (Fla. 1952); *Peter v. Hansen*, 157 So. 2d 103 (Fla. 2d DCA 1963); *cf. Molwin Investment Co. v. Turner*, 167 So. 33 (Fla. 1936); *Southern Utilities Co. v. City of Palatka*, 99 So. 236 (Fla. 1923); Ops. Att'y Gen. Fla. 10-01 (2010) and 04-27 (2004).

[7] In fact, this seems to be the understanding of the sponsor of the bill, Senator Ronda Storms, who is quoted in a recent Tampa Tribune article on the issue acknowledging that the wording of the statute may be confusing, but that "property appraisers are able to decide how to handle it." *See* http://www2.tbo.com/content/2010/jun/13/bz-drywall-bill-gives-power-to-appraisers/.