Property Appraiser, assessment of marina

Number: INFORMAL

Date: January 30, 2007

The Honorable Jeffrey H. "Jeff" Atwater
Senator, 25th District
824 U.S. Highway One
Suite 210
North Palm Beach, Florida 33408

Dear Senator Atwater:

This is in response to your request for assistance in determining whether the Palm Beach County Property Appraiser is properly interpreting the provisions of section 193.011, Florida Statutes, in assessing the value of marina property. While this office will not comment on the property appraiser's actions, absent a request from him, the following general comments are provided in an effort to be of assistance.

Section 4, Article VII of the Florida Constitution requires a just valuation of all property for ad valorem taxation. The property appraiser's determination of just value, however, is an exercise of administrative discretion within the field of his or her expertise.[1] There is a presumption of validity which attaches to the property appraiser's assessment of property for ad valorem taxation purposes.[2] Property appraisers are required under section 193.011, Florida Statutes, to take the following factors into consideration in determining just valuation: (1) the present cash value of the property; (2) the highest and best use to which the property can be expected to be put in the immediate future and the present use of the property; (3) the location of the property; (4) the quantity or size of the property; (5) the cost of the property and the replacement value of improvements on the property; (6) the condition of the property; (7) the income from the property; and (8) the net proceeds from the sale of the property.[3]

The weight given to all of the factors set forth in section 193.011, Florida Statutes, is left to the discretion of the property appraiser and will not be disturbed if all of them are duly considered.[4] If each of the statutory factors is not considered, the presumption of validity of the assessment is lost.[5] However, as recently stated by the Supreme Court of Florida, "[f]rom its title, it is clear that section 193.011 requires only that the property appraiser consider the listed factors--not that he necessarily apply them."[6] In addition, the Court noted that the language of the statute itself specifically requires only the consideration of the enumerated factors, not their application.[7]

You note the passage of Chapter 2005-157, Laws of Florida, to promote the preservation of recreational and commercial waterfronts and suggest that the property appraiser should consider this in his determination of highest and best use. Within the legislation, there is a provision for the board of county commissioners of any county or the governing authority of any municipality to adopt an ordinance to allow for ad valorem tax deferrals for recreational and commercial working waterfront properties if the owners are engaging in the operation, rehabilitation, or renovation of the properties in accordance with the guidelines established in the act.[8] Thus, it

would appear that the Legislature has provided a means to alleviate the tax burden on recreational and commercial waterfronts which do not affect the manner in which the property appraiser derives just valuation pursuant to section 193.011, Florida Statutes.

I trust that these informal comments will be helpful to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *Blake v. Xerox Corp.*, 447 So. 2d 1348 (Fla. 1984).

[2] *Bystrom v. Whitman*, 488 So. 2d 520, 521 (Fla. 1986).

[3] *Havill v. Scripps Howard Cable Co.*, 742 So. 2d 210 (Fla. 1998).

[4] *Lanier v. Walt Disney World Co.*, 316 So. 2d 59 (Fla. 4th DCA 1975); *Straughn v. Tuck*, 354 So.2d 368 (Fla.1977).

[5] *Straughn v. Tuck at* 371.

[6] *Turner v. Tokai Financial Services*, 767 So. 2d 494 (Fla. 2000).

[7] *Turner at* 497.

[8] *See* s. 13, Ch. 2005-157, Laws of Florida.