



TAXATION AND BUDGET REFORM COMMISSION

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Staff Analysis and Economic Impact Statement

Measure: CP 43

REFERENCE:

ACTION:

Sponsor: Barney Barnett

1. FTC
2. GPSC

Pre-meeting

Subject: Burden of Proof

Date: February 7, 2008

I. Summary:

Constitutional Proposal 43 provides that a property appraiser has the burden of proving the assessed value of real property when a taxpayer challenges an assessment.

II. Present Situation:

A burden of proof is an obligation to prove a fact. Property appraisers are charged with placing a just value on all real property for ad valorem taxation. The date of value (lien date) is January 1 of each year. Property appraisers create an opinion of what a property is valued on January 1 by examining comparable sales from the year before or analyzing income, expense, and capitalization rates for commercial and industrial properties.

Property appraisers review the cost of building materials and labor costs each year to analyze the cost approach. They send to income properties a request for income and expenses of commercial properties each year. As professional appraisers, they belong to appraisal societies, read professional publications, and continually examine the market on a yearly basis. In May, the property appraiser provides a tentative value for local governments to begin their budget process. By July, the tax roll is sent to the Department of Revenue for approval. In August and September, the counties send out the Truth In Millage (TRIM) notice. Each notice has a mailing date.

To contest an assessment, a petition to the Value Adjustment Board (VAB) must be made by the twenty-fifth day from the mailing date of the TRIM notice. A taxpayer can go directly to court without filing a petition or after a petition is heard regardless of an outcome. However, if a taxpayer wishes to file in court, the filing must be made within 60 days of a tax roll being certified or 60 days from a notice from the VAB.

At the last count, 76,000 petitions were filed with VABs with approximately 25,000 of these petitions filed in Miami-Dade County and 25,000 filed in Broward County.¹ The

¹ Kent Wetherell, *The New Burdens of Proof in Ad Valorem Tax Valuation Cases*, Florida State University Law Review Winter, 1998.

number of petitions has followed increases in the tax roll. Florida has had two periods of double digit tax roll increases: one recently and one in the early 1980's. Save Our Homes has acted to greatly reduce the number of petitions from homeowners. However, commercial, industrial, vacant land, and new home buyers' petitions have increased in the past three years.

Although property owners see individual assessments, mass appraisals or the mass appraisal process works off of historical values. The cost of producing a single appraisal for each property would be prohibitive. The general appraisal process is called mass appraisal. A mass appraisal system can be looked at as a committee approach to value numerous properties at one time. Many different people do different tasks that all result in one value for each property.

There are two basic systems in a modern appraisal system in Florida. First, residences, condominiums, co-ops, and time-share properties are valued on an absolute modeling system. These programs examine the different types of data from each property and the current sale information to place a value on each property. Data is collected for each property, such as: number of bedrooms, square footage, fireplace, water view, garage, etc. Other than collecting data and analyzing sales information, these computer programs establish a value for each property. This type of system works well in Florida because there are a significant number of sales and the buildings are relatively homogeneous.

Commercial and industrial properties are modeled much differently. There are a smaller number of sales and a greater variety of types of buildings. There is a greater involvement with appraisers effecting unique rents, expenses, and capitalization rates during the modeling process. It would not be unusual for an appraiser to change a property type from AAA to AA, or a capitalization rate, during the process which would change the assessment. On average, in a mid-size property appraiser's office, one could find 12 appraisers in the commercial area, 2 in condo, 2 in mobile homes, 9 in personal property, and 27 in the residential sections.

Appraisals are opinions of value that reflect just value. Because opinions among professions can vary, the process of challenging appraisals has been of great concern in Florida. When a taxpayer files a petition, there is an opportunity to discuss the assessment with the property appraiser's office. A hearing is set and the taxpayer must deliver all evidence to the property appraiser 15 days prior to the hearing. The property appraiser's office delivers its evidence 5 days before the hearing. In most counties, the property appraiser goes first and presents all the appraisal data for the hearing magistrate. The magistrate must be a qualified appraiser.

After the property appraiser presents all the data to the magistrate, the taxpayer then presents his/her case. First, the taxpayer provides evidence that the property appraiser did not properly consider the eight criteria in s. 193.011 F.S. The location, quantity, quality, income, highest and best use, case value, condition, cost, and market are examples of the eight criteria. By the time of the hearing, the property appraiser has re-established all elements of the eight criteria and presented this in the documentation at the

beginning of the hearing. The burden is on the taxpayer to prove that the property appraiser did not properly consider these criteria. “Properly considered” is not an appraisal term that is well defined and varies from one county to another in Florida. If this burden is not met, the taxpayer must prove that the assessment does not meet the legal standard of just value by clear and convincing evidence.

“Clear and convincing evidence” means evidence indicating that the thing to be proved is highly probable or reasonably certain.²

III. Effect of Proposed Changes:

The key requirement of a Florida challenge to an assessment is to prove that a property appraiser failed to properly consider the eight criteria in s. 193.011, F.S. This measure removes this burden of proof requirement. The constitutional requirement in Article VII, Section 4 for assessments to be at just value is not affected. The property appraiser must present evidence to support the assessment, and the tax payer would have to present evidence that the assessment does not meet the standard of just value.

By requiring a property appraiser to prove that the assessed value meets just value, the burden on the tax payer would be lessened in that the taxpayer would not have to prove that the property appraiser did not properly consider the eight factors in s. 193.011, F.S. The time for hearings could be lessened as the number of issues at a hearing would be reduced. The number of court cases may be lessened as more value cases would be addressed at the VAB level. Many assessment challenges are currently dismissed for failure to overcome the presumption of correctness.

Currently, the costs of litigation control the number of cases filed in circuit court in VAB disputes. Costs average between \$18,000 and \$25,000 per property, depending on the area at the circuit court level. Generally, it would take a reduction of \$1,000,000 to support these costs. Court challenges are from the larger property owners. This measure would have the greatest benefit for properties assessed for under \$1,000,000. Property appraisers would need to establish by appraisal evidence that the value meets the standard for assessments by law rather than indicating that a challenger did not prove that the property appraiser did not properly consider the eight criteria in s. 193.011, F.S.

IV. Constitutional Issues:

A. Constitutional or Legislative Matters:

The effect of this matter is within the power of the Legislature to accomplish by law.

B. Other Constitutional Issues:

None.

² Black’s Law Dictionary, 8th ed. 2004.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

This measure may lead to reduced ad valorem revenues.

B. Private Sector Impact:

The cost to contest a value may be reduced to the taxpayer.

C. Government Sector Impact:

If approved by the voters, this may result in a shift from legal personnel to appraisal personnel, which may increase the property appraiser's budget to prove that the assessed value is just value.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.