



TAXATION AND BUDGET REFORM COMMISSION

600 South Calhoun Street, Room 245, Tallahassee, FL 32399-1300

Ph. (850) 921-8905 Suncom 291-8905 Fax (850) 921-0492

Website: www.floridatbrc.org

Staff Analysis and Economic Impact Statement

Measure: CS/CP 6/ 8/ 34

REFERENCE:

ACTION:

Sponsor: Commissioners Wilkinson, Scott
and Lacasa

1. FTC
2. TBRC

Favorable/CS
Pre-meeting

Subject: Real Property Assessments for
Working Waterfront Parcels

Date: March 11, 2008

I. Summary:

Committee Substitute for Constitutional Proposals 6, 8 and 34 provides that the following properties shall be assessed based on use for the purposes of ad valorem taxation:

- Land that is predominately used for commercial fishing purposes;
- Land used predominantly for commercial or industrial water-dependent activities;
- Land used for vessel launches that are accessible to the public and are navigable;
- Public marinas;
- Drystacks that are open to the public;
- Water-dependent marine manufacturing facilities;
- Commercial fishing facilities; and
- Marine repair facilities and their support facilities.

This measure creates an exception to the requirement in Article VII, Section 4 of the Florida Constitution that all properties be assessed at just valuation for ad valorem taxation.

II. Present Situation:

Just Valuation

Article VII, Section 4 of the Florida Constitution generally requires all real property to be assessed at just value for the purposes of ad valorem taxation.¹ Just value has been interpreted to mean fair market value.² Property appraisers determine the just value or market value of real property through the consideration of eight factors in s. 193.011, F.S.

That section states:

¹ Article VII, Section 4 of the Florida Constitution

² *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965).

In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

- (1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;
- (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, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;
- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;
- (6) The condition of said property;
- (7) The income from said property; and
- (8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.³

Exceptions to Just Valuation

Article VII, Section 4 of the Florida Constitution also creates exceptions from the requirement that real property be justly valued for the purposes of ad valorem taxation. One exception provides for the classification of agricultural lands by general law and for the assessment of those lands on the basis of character or use. Additionally, counties and cities are authorized to assess historical property based solely on the basis of its character or use.⁴

³ Section 193.011, F.S.

⁴ Implemented in s. 193.461, F.S.

For the assessment of agricultural lands, a property appraiser may consider only:

- (1) The quantity and size of the property;
- (2) The condition of the property;
- (3) The present market value of the property as agricultural land;
- (4) The income produced by the property;
- (5) The productivity of land in its present use;
- (6) The economic merchantability of the agricultural product; and
- (7) Such other agricultural factors as may from time to time become applicable, which are reflective of the standard present practices of agricultural use and production.

Economic Conditions Affecting Working Waterfront Properties

Changes in Florida's economy and land use may be affecting the economic viability of commercial-fishing and recreational working waterfronts. Increasingly, development interests are buying traditional working waterfronts and converting them to private and residential use. "Water-enhanced" and "water-related" activities are replacing traditional or "water-dependent" activities.⁵ This has the effect of both decreasing the availability of waterfront property necessary to sustain commercial-fishing and recreational boating activities, and increasing the value of nearby working waterfront property. This increase in property value results in higher property taxes, which may cause the working waterfronts to be decreasingly profitable thereby compounding the pressure to convert to the "highest and best" use of the property.⁶

Economic pressure to convert property from public access to private residential use is not a recent development. In 1983, Governor Bob Graham appointed a Blue Ribbon Marina Committee to "investigate problems encountered by water-dependent activities in the state with an emphasis on marinas and recreational boating."⁷ The committee concluded that, increasingly over time, waterfront is being developed for private as opposed to public access.

Counties and cities may allow tax deferrals for recreational and commercial working waterfronts by adopting ordinances or resolutions which specify:

- The percentage of taxes to be deferred;
- The type of working waterfront property eligible for the tax deferral; and
- The location of the property.⁸

⁵ "Watermarks: Technical Briefs on Coastal Waterfront Revitalization," Volume 1, Issue 3. Department of Community Affairs, July 1997.

⁶ Florida Senate Interim Project Report by Committee on Community Affairs, Florida Senate; November 2004; Report # 2005-122.

⁷ *Economic Impact of Blue-belt Incentives on the Marina Industry in Florida*, by Frederick Bell, Department of Economics, FSU, July 1990. p. ii.

⁸ Professional Staff Analysis & Economic Impact Statement by Finance & Tax Committee, Florida Senate; June 11, 2007, SJR 4-B, Property Tax Reform

For coastal counties, the future land use element of comprehensive planning must include, without limitation, regulatory incentives and criteria that encourage the preservation of recreational and commercial working waterfronts.⁹

Statutory Definition of Working Waterfront

Section 342.07 F.S., defines “recreational and commercial working waterfront” as a parcel or parcels of real property that provide access for water-dependent commercial activities or provide access for the public to the navigable waters of the state.

Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water. Seaports are excluded from the definition.¹⁰

III. Effect of Proposed Changes:

Article VII, Section 4 of the Florida Constitution generally requires all properties to be assessed at just value for the purposes of ad valorem taxation. Committee Substitute for Constitutional Proposals 6, 8 and 34 creates an exception to the just value requirement by providing for certain working waterfront properties to be assessed on the basis of character or use for all levies except school district levies.

The assessment based on the current use of property applies to the following:

- Land that is predominately used for commercial fishing purposes;
- Land used predominantly for commercial or industrial water-dependent activities;
- Land used for vessel launches that are accessible to the public and are navigable;
- Public marinas;
- Drystacks that are open to the public;
- Water-dependent marine manufacturing facilities;
- Commercial fishing facilities; and
- Marine repair facilities and their support facilities.

This measure will take effect upon approval by the electors and apply to property assessments starting in 2010.

IV. Constitutional Issues:

A. Constitutional or Legislative Issues:

⁹ Section 163.3177, F.S.

¹⁰ Section 342.07, of F.S.

None.

B. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This measure may reduce property taxes on working waterfront properties. Local governments may increase millage rates on all properties to offset revenue shortfalls.

B. Private Sector Impact:

This measure may reduce the property taxes on working waterfront properties and thereby reduce pressure on these properties to convert to highest and best use. Local governments may increase millage rates on all properties to offset revenue shortfalls.

C. Government Sector Impact:

This measure may lead to reduced revenue for local governments. Assessment does not apply to school district levies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A side-by-side presentation of CP0006, CP0008 and CP0034 follows:

CP0006	CP0008 & CP0034
<p>Assessment Benefit: Parcels to be assessed as provided by general law.</p>	<p>Assessment Benefit: Parcels to be assessed based on current use, rather than highest & best use.</p>
<p style="text-align: center;">Lands Benefited</p> <ul style="list-style-type: none"> • Land used <i>exclusively</i> for commercial fishing purposes; • Land <i>open to the public</i> and used predominantly for commercial water-dependent activities; and • Land for public access to waters that are navigable. 	<p style="text-align: center;">Lands Benefited</p> <ul style="list-style-type: none"> • Land used <i>predominantly</i> for commercial fishing purposes; • Land used predominantly for commercial <i>or industrial</i> water-dependent activities; • Land for public access to waters that are navigable; • Public marinas and drystackes; and • Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine repair facilities and their support facilities • Other water-dependent facilities approved by a three-fifths vote of the Legislature.
<p style="text-align: center;">Impact to School Districts</p> <p>Assessment applies to school district levies and would reduce the amount collected for schools.</p>	<p style="text-align: center;">Impact to School Districts</p> <p>Assessment does not apply to school district levies.</p>
<p style="text-align: center;">Legislative Authority/Flexibility</p> <p>Legislature can define:</p> <ul style="list-style-type: none"> • Commercial fishing purposes; • Open to the public and used predominantly for commercial water-dependant activities; and • Public access to navigable waters. <p>Does not limit the power of the Legislature to determine how to assess working waterfront property.</p> <p>Permits the Legislature to restrict application of the benefit through conditions and limitations set by general law.</p>	<p style="text-align: center;">Legislative Authority/Flexibility</p> <p>Legislature can define:</p> <ul style="list-style-type: none"> • Commercial fishing purposes; • Commercial or industrial water-dependent activities; and • Public access to navigable waters. <p>Legislature is not expressly authorized to define:</p> <ul style="list-style-type: none"> • Public marinas and drystackes; and • Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine repair facilities and their support facilities. <p>The Legislature may only provide for the assessment of working waterfront based on use.</p> <p>The Legislature has no express authority to make the benefit subject to conditions and limitations.</p>