



## TAXATION AND BUDGET REFORM COMMISSION

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### Staff Analysis and Economic Impact Statement

Measure: SR 13

REFERENCE:

ACTION:

Sponsor: Finance and Tax Committee

1. FTC

Pre-Meeting

Subject: Just Valuation of Property

2.

3.

Date: February 7, 2008

#### I. Summary:

Statutory Recommendation 13 amends s. 193.011, F.S., to revise the factors that a property appraiser must consider in deriving just valuation of real and tangible property. The revised factors require a property appraiser to consider the legally permissible use of property, zoning changes, concurrency requirements, permits necessary to achieve the highest and best use of property, and physical deterioration and functional obsolescence of property. The recommendation provides that it will apply to assessments beginning in 2009.

#### II. Present Situation:

Section 193.011, F.S., was first adopted in 1963 and was originally known as the "just value law." It was adopted to assist tax assessors, now known as property appraisers, to apply the normal criteria used by professional appraisers to make market value evaluations. The 1963 Legislature recognized that the constitutional requirement of "just valuation" mandated all property to be assessed at its full market value. The list of seven original criteria was simply an enumeration of the factors required in a professional appraisal.

To determine the just value or fair market value of a property, property appraisers must consider the eight factors set forth in s. 193.011, F.S., which states:

Factors to consider in deriving just valuation. ☐ 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.<sup>1</sup>

The second factor, or criteria, originally stated in 1963:

(2) The highest and best use which the property can be expected to be put in the immediate future; and the present use of the property.

The qualifying language which has been added by numerous legislative enactments since have been designed to require property appraisers to recognize the various regulatory and judicial restraints on the use of property.

Highest and best use is an appraisal concept which is inherent in establishing the fair market value of real estate. The formal definition adopted by the Appraisal Institute<sup>2</sup> is:

Highest and best use is the reasonably probable and legal use of vacant land or an improved property that is physically possible, legally

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<sup>1</sup> Section 193.011, Florida Statutes.

<sup>2</sup> Appraisal Institute, *The Appraisal of Real Estate*, 12<sup>th</sup> Edition, <http://www.appraisalinstitute.org/> (last visited January 31, 2008).

permissible, appropriately supported, financially feasible, and that results in the highest value.

The application of this definition, however, will vary somewhat, depending on the purpose of the appraisal. The Florida statute, and similar limitations in most other states, would not permit a presumption of a zoning change, but would require an appraisal based on the existing zone. Highest and best use seldom applies in the appraisal of tangible personal property since there is seldom an economically feasible alternative use for tangible personal property. Section 192.001, F.S., provides the definitions for real property and tangible personal property as follows:

“Real property” means land, buildings, fixtures, and all other improvements to land. The terms “land,” “real estate,” “realty,” and “real property” may be used interchangeably.<sup>3</sup>

“Tangible personal property” means all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself. “Construction work in progress” consists of those items of tangible personal property commonly known as fixtures, machinery, and equipment when in the process of being installed in new or expanded improvements to real property and whose value is materially enhanced upon connection or use with a preexisting, taxable, operational system or facility. Construction work in progress shall be deemed substantially completed when connected with the preexisting, taxable, operational system or facility. Inventory and household goods are expressly excluded from this definition.<sup>4</sup>

The application of the concept of highest and best use is inherent in determining any given property’s “just value.” That is why the substitution of the concept of appraising property at its present use, rather than a different highest and best use, may be constitutionally problematic when it results in a reduced assessment. The case of *Bystrom v. Valencia Center*<sup>5</sup> involved the acknowledged “underutilization” of a block in downtown Coral Gables which was zoned for mid-rise office buildings. The property was used as a neighborhood strip center, anchored by a Publix grocery store. The facts in the case acknowledged that the property was not at its highest and best use. The Dade County Property Appraiser (Bystrom) had assessed the land as if it were under a mid-rise office building, and assigned a nominal value to the improvements constituting the strip center. The facts also acknowledged any lower valuation would be less than just value because the property would not be assessed at its highest and best use. A long-term lease to Publix prevented the property from being used at its highest and best use. Attempts by

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<sup>3</sup> Section 192.001, F.S.

<sup>4</sup> Section 192.001, F.S.

<sup>5</sup> *Bystrom v. Valencia Center*, 432 So. 2d 108 (Fla. 3d DCA).

the legislature to allow for an assessment at less than just value when the property was encumbered by a sub-market lease or otherwise were stricken down in the subsequent *Valencia Center* cases.

### **III. Effect of Proposed Changes:**

Statutory Proposal 13 amends s. 193.011, F.S., to revise the factors that a property appraiser must consider in deriving just valuation of real and tangible property. Under the revised factors:

1. A property appraiser must consider zoning changes, concurrency requirements and permits necessary to achieve the highest and best use of the property, and “immediately permissible” use in determining the highest and best use of property.
2. A property appraiser must consider property condition, such as physical deterioration and functional obsolescence, in determining the cost and replacement value of improvements.

The revised factors apply to assessments beginning in 2009.

### **IV. Constitutional Issues:**

#### **A. Constitutional or Statutory Issues:**

This issue is appropriately classified as a statutory issue.

#### **B. Other Constitutional Issues:**

There are no other constitutional issues.

### **V. Economic Impact and Fiscal Note:**

#### **A. Tax/Fee Issues:**

This measure will potentially result in lower assessments and thus lower taxes on some properties. Millage rates may be increased on all properties to compensate for revenue losses as a result of this measure.

#### **B. Private Sector Impact:**

The impact on the private sector is indeterminate.

#### **C. Government Sector Impact:**

The impact of expanding the criteria for determining just value will potentially affect the appraised value of property. However, the actual fiscal impact is

indeterminate at this time. Property appraisers may be required to revise the current procedures used to assess property.

**VI. Technical Deficiencies:**

There are no technical deficiencies.

**VII. Related Issues:**

There are no related issues.