

# **MEMORANDUM**

**TO:** Howard Moyes, Deputy Director  
Property Tax Administration Program

**FROM:** Loren E. Levy, Office of General Counsel  
Property Appraisers' Association of Florida, Inc.

**DATE:** March 13, 2007

**RE:** Supplemental Response to Property Appraiser Survey

The following comments are submitted on behalf of the Property Appraisers' Association of Florida (PAAF). For the 2006-2007 year, PAAF's 29 member counties are: Baker, Bradford, Calhoun, Columbia, Clay, DeSoto, Dixie, Flagler, Franklin, Gadsden, Glades, Gulf, Hamilton, Hardee, Highlands, Holmes, Jackson, Lafayette, Liberty, Madison, Okeechobee, Osceola, Putnam, Suwannee, Taylor, Union, Wakulla, Walton, and Washington.

## **Introduction**

In Florida, property taxes are determined by a two-part process: (1) the valuation of property and application of any applicable exemption, which is referred to as the assessed value, and (2) the application of a millage, which is referred to as the tax rate, to that property. Thus, the formula for determining the amount of property taxes can be stated as:

$$\text{Assessed Value} \times \text{Tax Rate} = \text{Property Tax}$$

These two parts of the property tax process are administered by separate and independent branches of state and local government. Within each county, property appraisers are responsible for the valuation of all real property and tangible personal property (equipment) and the administration of exemptions applicable to that property. Property appraisers, however, do not determine taxes. Instead, counties, cities, school boards, special districts, and water management districts determine the tax rate to be applied each year. State government also indirectly determines a portion of the tax rate via the required local effort portion of the school board's millage.

As constitutional officers separate and apart from the county commissions and their employees, property appraisers function independent of the county.<sup>1</sup> In that manner, they are not the revenue-generating arm of county government. Property appraisers also do not make decisions on local government services or spending. Even their budgets are reviewed and approved at the state level by the Department of Revenue. Thus, property appraisers have the autonomy to focus their efforts on achieving fair and equitable assessments in accordance with the Florida statutes and constitutional requirement of just value, i.e., fair market value. This separation of powers and duties is an important aspect in the property tax system in Florida.

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<sup>1</sup>The only exception is in Dade County, where the property appraiser is an appointed county official.

## **(1) The Effectiveness of Florida's Property Tax System in Determining Just Value for All Property Statewide.**

Although PAAF's members cannot speak for every county in Florida, they believe that Florida's property tax system is extremely effective in resulting in assessments that do not exceed the constitutional mandate of just value for all property. PAAF's members and their staff work diligently to achieve fair, equitable and uniform values within their counties. Every year, property appraisers inspect properties, track new construction, develop and utilize aerial photography and GIS mapping, and gather information on sales of property, construction costs, and the income being generated by commercial properties. Property appraisers then rely upon this data and research in developing the preliminary assessments of all property within the county. The assessments also are evaluated statistically to ensure equity and uniformity between those assessments, whether it is the highest valued property within the county or the property with the lowest value.

Once property appraisers are satisfied that their preliminary assessments have derived a just value for all property within their county, they mail the Notice of Proposed Taxes (TRIM notice) to taxpayers in August. At this point in time, property appraisers begin the process of reviewing whether the mass appraisal process has resulted in just value for individual properties. When taxpayers receive their TRIM notices and have questions regarding the assessment of their properties, they can meet with the property appraiser and/or staff member most familiar with their assessment and review all data and information supporting the assessment. A tremendous amount of data regarding assessments of property within the county also is provided on the Internet and can be researched by the taxpayer. The property appraiser and/or staff member will always accept any additional information that property owners provide and review it with the owner. If a mistake has been made, it will be quickly corrected. Ultimately, the vast majority of taxpayers will leave the property appraiser's office satisfied that their property has been fairly assessed.

In recent years, the experience of PAAF's members has been that over 95 percent of taxpayers who inquire regarding their assessments believe that the *valuation* of their property is fair but that their property *taxes* are too high. When taxpayers are asked whether they would sell their property for an amount equal to the assessment, the answer almost always is no. Again, the property tax system is a two-part formula; assessed value and tax rate. The feedback from taxpayers is that the assessment process is working correctly. It is the tax rate aspect of the property tax formula that most taxpayers believe is failing to function properly.

Those taxpayers who believe that their property is over-assessed also have an administrative process to obtain a review of those assessments through the Value Adjustment Board (VAB). For a \$15 fee, taxpayers filing petitions with the VAB may obtain review of their assessments. Most often, that review is available within a few months of filing the petition.<sup>2</sup> The vast majority of VAB petitions are resolved on an amicable basis and without resorting to the formal hearing. Upon reviewing the data supporting the assessment with the property appraiser's office, many taxpayers withdraw their petitions. In some instances, the property appraiser's own objective review of the assessment, or

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<sup>2</sup>Taxpayers are entitled to receive notice of their VAB hearing date 25 days prior to the hearing. § 194.032(2), Fla. Stat. (2006). They also are entitled to reschedule their hearing upon written request 5 days prior to the hearing. *Id.*

review of the taxpayer's information, results in a lowered assessment that is satisfactory to the taxpayer.

Every year, there are easily thousands of inquiries by taxpayers statewide regarding their assessments, either in person at the property appraisers' offices, over the telephone, or via the Internet. Only a very small percentage of these inquiries result in the filing of a VAB petition. The number of lawsuits contesting assessments that taxpayers file each year is almost statistically insignificant, especially when compared against all taxpayer inquiries. Within the property tax system, the assessment part of the process is working extremely effectively and in a non-adversarial manner. Property is being uniformly and equitably assessed at just value.

**(a) Uniform Application of the "8 Criteria".**

The eight criteria of section 193.011, Florida Statutes (2006), reflect the standard appraisal methodologies – cost approach, sales comparison approach, and income approach – that property appraisers and independent fee appraisers use in reaching an opinion of the fair market value of a particular piece of property. See *Bystrom v. Whitman*, 488 So.2d 520 (Fla. 1986). Currently, the statutory criteria and case law interpreting those criteria allow both parties to reasonably evaluate the legality of the assessment and the likelihood that the Value Adjustment Board or the Court will overturn the assessment.

Stability in the law and statutes governing assessments contributes significantly to the effectiveness of the property tax system in Florida. Property appraisers have the well-established eight criteria that must be considered in reaching assessments and there is a statutory presumption of correctness statute that specifies the appropriate burden of proof and evidentiary analysis to be used in all administrative and legal challenges to assessments. See § 194.301, Fla. Stat. (2006). In addition, an established body of case law allows property appraisers and taxpayers to evaluate assessments and reasonably determine the propriety and fairness of the assessments.

PAAF's members simply do not have the necessary information to evaluate whether the eight criteria of section 193.011 are being uniformly applied in all 67 counties. Certainly, the appraisal process involves the exercise of judgment. As the Florida Supreme Court recently observed, "Determination of 'just value' inherently and necessarily requires the exercise of appraisal judgment and broad discretion by Florida property appraisers." *Dept. of Revenue v. Howard*, 916 So.2d 640, 643 (Fla. 2005). "Appraisal is an art, not a science." *Powell v. Kelly*, 223 So.2d 305, 309 (Fla. 1969). Property appraisers are required to consider, but not necessarily use, each criteria. *Mazourek v. Wal-Mart Stores, Inc.*, 831 So.2d 85 (Fla. 2002). Although property appraisers are required to consider all of the criteria, they may accord such weight to the criteria as necessary and may discard entirely any criteria that are not probative of fair market value. *Turner v. Tokai Fin. Servs., Inc.*, 767 So.2d 494 (Fla. 2d DCA 2000). Regardless of whether the criteria are being uniformly weighed and applied, however, the end result must be the same – fair market value.

For these reasons, the assessment of property in one county is legally irrelevant to a taxpayer's challenge to the validity of his or her assessment in another county. See *Dept. of Revenue v. Ford*, 438 So.2d 798 (Fla. 1983) (collecting cases). The Department of Revenue is responsible for the supervision of all assessment rolls in the counties for uniformity in assessments. See § 195.027(1), Fla. Stat. (2006). The Department is not responsible, however, for reviewing the uniformity of how each property appraiser evaluates the eight criteria of section 193.011. In fact, such a responsibility

would be outside the Department's scope of authority and unconstitutionally interfere with the discretion that must be accorded property appraisers. See *District School Bd. of Lee County v. Askew*, 278 So.2d 272 (Fla. 1973).

### **(b) Just Value vs. Current Use Value**

Property appraisers already are required to consider the present use of the property in their assessments as part of the eight statutory criteria. See § 193.011(2), Fla. Stat. (2006) (property appraisers must consider the “highest and best use to which property can be expected to be put in the immediate future and the *present* use of the property . . .”) (emphasis added). The value of property, however, should not change depending upon ownership of property or the business decisions and abilities of the owners. For example, if you have two identical buildings housing an auto repair shop, the value for property tax purposes should not be different simply because one mechanic is a better business person or has a better reputation. Likewise, two identical hotels should not be valued differently simply because one generates more income (perhaps due to a franchise) than the other facility. Florida always has required that value for property tax purposes be based on the property and not the owner or the owner's business acumen. Disparate valuation depending upon the owner of property is unconstitutional. See *Interlachen Lakes Estates v. Snyder*, 304 So.2d 433 (Fla. 1973).

Assessments based solely upon the present use of the property will increase disparity in assessments of similar property and will be more difficult to explain to taxpayers. Taxpayers become frustrated with perceived disparities and lack of uniformity in assessments and lose confidence in the system. There also is a concern that taxpayers will attempt to manipulate the present use of the property to result in a lower assessment while they hold the property for future speculation. An owner may put a lemonade stand on his or her vacant downtown commercial lot and claim that it should be assessed lower than the nearby vacant lot because of the limited income being produced.

Florida's Constitution allows agricultural property to be assessed solely based upon its current use while ignoring its highest and best use. While the agricultural classification was intended to protect the “real” farmer, every year there are many developers that take advantage of the lower assessment based on the current use of the property as a bona fide commercial agricultural practice while holding the property for future speculation. Any change in the statutory criteria to limit assessments to the present use of the property will probably result in similar tax avoidance measures.<sup>3</sup>

The mass appraisal process also will be adversely affected by a change to assessment based solely upon present use. Currently, every shopping center, office building, and house is assessed using market income and expense data, comparable sales, and construction cost data. This data is analyzed and converted into units of comparison so that all property can be assessed uniformly and equitably. Under a present use standard, two identical buildings could be assessed differently. There should be no different valuation for two identical condominium units depending upon whether one of owners decides to rent his or her unit. Over a period of years, the mass appraisal process would

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<sup>3</sup>Any statutory change requiring assessment of a particular type of property, i.e., commercial income-producing properties, based solely upon current use or ownership also requires constitutional authorization. See *Valencia Center, Inc. v. Bystrom*, 543 So.2d 214 (Fla. 1989); *Interlachen Lakes Estates v. Snyder*, 304 So.2d 433 (Fla. 1973).

evolve into more of a fee appraisal process. Disparity in assessments would increase, as well as the need for staff and resources in the property appraisers' offices.

Ultimately, defending assessments at the Value Adjustment Board or in Court also will become more difficult. Similar property should have similar values. Currently, property appraisers are required to assess the fee simple unencumbered of all property. *See Schultz v. TM Florida-Ohio Realty Ltd.*, 577 So.2d 573 (Fla. 1991). A change to assessment based solely upon present use could endanger this bedrock principle of Florida property valuation. The resulting valuation would more reflect the owner and business decisions of the owner as opposed to the property. In some instances, the valuations may increase. For example, many commercial property owners do not provide income and expense data to property appraisers during "good years" because it would result in higher values. The equipment of a successful business would be more valuable than identical equipment owned by a less successful business. Property taxation should be based on the value of the property and not of the business.

### **(c) Impacts of Proposed Legislation.**

There are numerous concepts and proposals currently filed to address the increasing property tax burden of Florida's taxpayers. In evaluating the merits and impact of these proposals, PAAF's members believe that it is important to distinguish those proposals affecting the assessed value of property from the proposals affecting the tax rate to be applied to that value. Florida's property tax system consists of two separate and distinct parts: (1) the assessment process (assessed value) and (2) the millage process (tax rate).

PAAF's members believe that the assessment process is working effectively and equitably. Assessments are constitutionally required to reflect the fair market value of property. For the reasons discussed above, the vast majority of taxpayers are satisfied that their assessments do not exceed fair market value. Instead, they are concerned about the amount of property taxes that they must pay and increases in those taxes from one year to the next. Thus, those legislative proposals addressing the millage process are most appropriately directed to resolving the increasing property tax burden of Florida's taxpayers.

Many of the current proposals impose restraints on government spending and tax rates, requiring use of the "rolled back" millage rate each year absent an extraordinary or unanimous vote of the county or city commissioners. PAAF's members believe that it is far simpler to administer a soft cap on millage rates than to cap the assessments of all property or to grant additional property tax exemptions to certain classes of individuals or property. Restrictions on millage rates provide property tax relief to all taxpayers in an equitable and fair manner. Assessment caps and additional exemptions, in contrast, provide preferential tax treatment to certain taxpayers at the expense of other taxpayers. One person's exemption is another person's tax.

In addition, restraints on government spending can be accomplished through amendment to the statutes as opposed to a permanent amendment to the constitution. If immediate property tax relief is the goal, the most reasonable and efficient method is through legislative proposals that impact the millage process. In fact, similar mechanisms were used in the early 1980's. PAAF's members also believe that the property tax burden could be reduced through the current proposals to replace the "required local effort" portion of the school board millage with an increase in sales taxes.

## **(2) Property Appraiser Opinions on Changes that Should Be Made to Florida's Property Tax System to Improve Equity and Uniformity.**

The issues of equity and uniformity in Florida's property tax system involve the assessment process as opposed to the millage process. Once a millage rate is determined, it is applied to all taxable property. In general, concerns about equity and uniformity typically involve the impact of exemptions upon the valuation of property and not the valuation itself. Unquestionably, property tax exemptions are policy decisions to favor certain taxpayers or property uses at the expense of other taxpayers.

Recently, the most often cited example of disparity in Florida's property tax system is the property tax burden of taxpayers receiving the benefit of homestead exemption and the Save Our Homes cap on assessment increases versus the tax burden of other property owners. The Save Our Homes cap was a policy decision made by Florida's voters in 1992, and PAAF's members have no position on whether that decision should be revisited. Nevertheless, caps on the assessments of other taxpayers or the extension of additional exemptions do not resolve this disparity. Such additional preferential tax treatment only creates a new class of property owners that will believe that they have been unfairly treated and inequitably assessed.

PAAF's members appreciate the opportunity to participate in this discussion of the Florida property tax system. If we can provide any additional information, please do not hesitate to contact us.

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cc: All Members of the PAAF