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FCIAAO 2010 SPRING CONFERENCE LEGAL UPDATE

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CASE LAW

Homestead Exemption -- Save-Our-Homes Amendment

Bruner v. Hartfield, 23 So.3d 192 (Fla. 1st DCA 2009); *Bruner, et ux v. Hartfield*, No. SC09-2291 (Fla. Dec. 16, 2009)(filed by not decided); and *Lanning v. Pilcher*, 16 So.3d 294 (Fla. 1st DCA 2009). In *Bruner* it was Florida residents and in *Lanning* it was non-state residents who challenged the constitutionality on several bases, of the Save-Our-Home Amendment and the portability provision, Amendment 1, which was passed by popular referendum in 2008. The appellate court ruled the constitutional provisions do not violate the federal constitution as applied to either Florida or non-Florida residents. The Court's prior decisions upholding the constitutionality of Save-Our-Homes Amendment which limit's the increase in taxes on homestead, have not been changed by the passage of the portability amendment. Article VII, section 4 does not violate a non-resident's rights under the Equal Protection Clause, the Privileges and Immunities Clause, or the Commerce Clause of the Federal Constitution. The tax benefits (the three percent tax cap on increases in the assessment of homestead property and the portability) are based on the way the property is used and not on the status of the landowner as a resident or non-resident. The court reasoned that if a Florida resident owned a vacation home in Florida, he will not be entitled to claim a tax benefit under article VII, section 4 and will be in the same position as a non-resident.

Deluccio v. Havill, 25 So.3d 31 (Fla. 1st DCA 2009). Challenge to the constitutionality of Save-Our-Homes Amendment and the portability of exemption was filed by non-residents. The trial court erroneously ruled it lacked subject matter jurisdiction. Appellate court reversed because not a challenge to a particular assessment; 60-day statute of non-claim is not applicable.

Karayiannakis v. Nikolits, 23 So.3d 844 (Fla. 4th DCA 2009), *rev. denied*, 2010 WL 1241553 (Fla. Mar. 30, 2010). Appellate court agreed the property owner was not entitled to Save-Our-Homes taxation cap on entire building and land surrounding it. Property owner owned two-story building with five units in it. She lives in one unit and rents out other four. Property appraiser concluded only 37% of land and improvements qualified for "special taxation treatment" under article VII, sections 4(d) and 6 of Florida

Constitution. Property owner argued term "contiguous real property" in section 196.031(1)(a), Florida Statutes (2007), indicates that all of her real property is entitled to valuation cap. Appellate court disagreed with this argument and held real property is divisible for tax exemption purposes and property appraiser correctly assessed property.

Judicial Review of Assessments

Shank v. Havill, 6 So.3d 631 (Fla. 5th DCA 2009), *rev. denied*, *Havill v. Shank*, SC09-59 (Fla. Dec. 7, 2009). Appellate court ruled that the filing of the receipt from the tax collector for payment of amount owners admit in good faith to be due and owing as required by section 194.171, Florida Statutes, is not a jurisdictional prerequisite. Property Appraiser in Lake County denied an agricultural classification on property held in revocable trust. Trustees paid \$849.49 to tax collector and filed complaint against Property Appraiser four days later. One day later, the tax collector returned the check with correspondence that stated the office cannot collect a partial payment. Trustees took no further action to correct the situation. The trial court dismissed for lack of jurisdiction under section 194.171(3), which requires the tax payer to file a receipt for their good faith payment along with the complaint challenging assessment. Appellate court reversed and stated that if tax collector refused to provide receipt for whatever reason, tax payer could not comply with statutory requirements. "We do not believe the Legislature intended such an absurd result."

Local or State Land Use Regulation(s)

Carabelle Properties Limited v. Pendleton, 10 So.3d 1118 (Fla. 1st DCA 2009), *rev. denied*, 18 So.3d 528 (Fla. 2009). Appellate court agreed with tax payer, golf course owner, that Property Appraiser failed to apply section 193.011(2), Florida Statutes (2006), when using sale prices of "comparable" parcels. Property Appraiser's comparable sales did not have land use restrictions imposed on them by a planned unit development order entered after development of regional impact process.

Rental of Homestead

Haddock v. Carmody, 1 So.3d 1133 (Fla. 1st DCA 2009). Appellate court held that homeowners rented their entire dwelling to others, and thus, abandoned their homestead for ad valorem tax purposes. In 2003, 2004, and 2005, owners put their condominium into Amelia Island Plantation rental program. The unit rented for 113 nights in 2003, 104 nights in 2004, and 66 nights in 2005, and the owners received a homestead exemption on the property. When unit was rented, homeowners stored their personal belongings in two locked owner's closets. Property Appraiser sent notice in October, 2005, that homestead exemption was revoked for 2003, 2004, and 2005, based upon abandonment under section 196.061, Florida Statutes. Owners argued they did not rent entire dwelling. Appellate court stated such an emphasis on word "entire" would permit owner to rent but prevent access to *de minimus* space in home.

[Florida Bar Journal], January, 2010. Rothenberg, J. and Cannizzaro, K. "The Loss of

Homestead Through Rental.” Discusses the *Haddock v. Carmody* case and urges: 1. legislature should revise the statute to clarify the “permitted contours of rental activity;” 2. *Haddock* illustrates section 196.061, Florida Statutes, is ambiguous because it fails to provide definitions for “rental” and “entire dwelling;” 3. practitioners should structure contracts so that the homeowner creates a “license” rather than a lease or rental; and 4. so long as portion excluded is not *de minimus*, rental statute should not apply.

Tax Deed Sales

Village of Doral Place Association, Inc. v. RU4 Real, Inc., 22 So.3d 627 (Fla. 3d DCA 2009); *RU4 Real, Inc. v. Village of Doral Place Association, Inc.*, SC10-90 (Fla. Jan. 14, 2010)(filed but not decided). Tax deed for portion of condominium’s common area -- swimming pool -- set aside by appellate court. In 1998, the developer turned over Tract F of a 331-unit condominium to the Association. The Association hired the Continental Group to manage the property for the Association. The Continental Group failed to pay property taxes on Tract F and failed to inform the Association the taxes were not paid. A local bank purchased the tax certificate and conveyed it to RU4 Real for \$57,000. RU4 Real fenced off the pool and barred access. The trial court granted declaratory relief for the Association. The appellate affirmed and held that section 718.107, Florida Statutes (2003), controls and a tax deed sale would violate this statute. According to the appellate court, a separate sale of a condominium’s common elements is prohibited. The 60-day statute of non-claim in section 194.171, Florida Statutes, is not applicable because this was not a challenge to a tax assessment.

Value Adjustment Board Hearings

Value Adjustment Board of Bay County v. Spitzer, 35 Fla. L. Weekly D82 (Fla. 1st DCA Dec. 31, 2009), *Value Adjustment Board of Bay County v. Spitzer*, SC10-410 (Fla. Mar. 5, 2010)(filed but not decided). Bay County Value Adjustment Board appointed special magistrates who held hearings, made findings of fact and conclusions of law, and submitted same to VAB. The VAB met and approved the recommendations but advised all petitioners the VAB would hold hearings at later date and would permit petitioners to present evidence and testify. Property Appraiser filed suit in circuit court arguing VAB had no statutory authority to conduct further hearings on petitions. Appellate court agreed: section 194.035(1), Florida Statutes (2007), assigns task of holding evidentiary hearings to special magistrates. If VAB accepts special magistrates recommendations then ignores those recommendations, statute has no meaning. VAB is not authorized to conduct evidentiary hearings after special magistrate had already done so and made recommendations which VAB approved. *Dissent* notes that nothing in statute binds VAB to magistrates’ recommendations, and concludes VAB can consider further evidence or conduct further hearings.

FLORIDA ATTORNEY GENERAL OPINIONS

2009 AGO 23 (May 14, 2009). Seminole County Property Appraiser directed two questions to Attorney General for his opinion. The first question is whether a golf

course located within platted residential subdivision can be taxed or assessed as a "common element" pursuant to section 193.0235, Florida Statutes, if golf course has been designated on the plat, approved site plan, or otherwise as a "common element for the exclusive benefit of lot owners." The Attorney General is of the opinion that a golf course, regardless of ownership, is within the scope of section 193.0235 if it is designated on a plate or approved site plan as a common element or common area and is subdivision property which is not included in the inventoried lots of the developer and is not intended to be or is not privately owned. The second question is whether the property must actually and exclusively be used by lot owners of the subdivision or simply be designated on the plat, approved site plan, or otherwise as a "common element for the exclusive benefit of lot owners." The Attorney General opined that a property appraiser must be able to determine the golf course is used exclusively by the lot owners, which would include their guests and relatives.

2009 AGO 34 (July 6, 2009). The question from Hillsborough County was whether the taxation of "limited" common elements may be prorated among all condominium owners pursuant to section 718.120, Florida Statutes, however, the real issue is whether the limited common elements which in this case consist of garages, are to be taxed on a prorated basis among all condominium units under section 718.120, Florida Statutes. Common elements are defined as the portions of the condominium property which are not included in the condominium units. Section 193.023(5), Florida Statutes, provides that in the assessment of common elements which are owned by the condo association or jointly by the owners of parcels, the assessment shall apply to the parcel and its fractional or proportionate share. In the Attorney General's opinion, it is consistent with section 193.023(5) to assess the individual units their proportional share of the **benefit** from the limited common elements, i.e., a unit which has exclusive use of a parking space would be assessed the value of the parking space. The statute does not address "limited" common elements, but the A.G. is of the opinion there is no reason to treat "limited" common elements differently than common elements.

2009 AGO 44 (Sept. 29, 2009). The question from the Broward County Property Appraiser was how will the transfer of certain property from Palm Beach County to Broward County affect the assessment, administration, collection, and distribution of ad valorem taxes on the property. In the Attorney General's opinion, the January 1st assessment by Palm Beach County will control the subsequent administration, collection, and distribution of ad valorem taxes, unless the Legislature directs otherwise. Any proration should be determined by the two counties' board of commissioners.

2009 AGO 50 (Nov. 24, 2009). The question was whether the Value Adjustment Board for Miami-Dade can consider and act upon petitions filed by taxpayers who challenge the just value of their currently owned property as too low. The Attorney General is of the opinion the VAB can consider and act on petitions to adjust the market value of currently-owned property even if the petition seeks an increase in valuation. According

to the Attorney General, he is not aware of any statutory or constitutional provision which would limit the review of the VAB to only those petitions which seek a reduction in the assessment. However, he notes that this opinion is limited to those situations where the challenge to the assessment is brought by the taxpayer who is the current owner of the property.

2010 AGO 11 (Apr. 13, 2010). The question asked by the Palm Beach County Property Appraiser is whether the office is required to revise the tax rolls to reflect revisions made by the Value Adjustment Board in connection with petitions filed by taxpayers after the statutory filing deadline in section 194.011(3)(d), Florida Statutes, and after these assessments have been "certified" to the tax collector. The Attorney General is of the opinion the Property Appraiser has to revise the tax roll to reflect the revisions made in connection with late-file petitions heard for good cause. The opinion identifies "good cause" as:

1. Personal, family, or business crisis or emergency at a critical time or for an extended period of time that would cause a reasonable person's attention to be diverted from filing;
2. Physical or mental illness, infirmity, or disability that would reasonably affect the petitioner's ability to timely file;
3. Miscommunication with or misinformation from the board, its clerk, the property appraiser, or staff regarding the necessity or the procedure for filing which would cause a reasonable person's attention to be diverted from timely filing; or
4. Any other cause beyond the petitioner's control which would prevent a reasonably prudent petitioner from timely filing.

The Attorney General notes the statutes recognize the process of property assessment and certification is an on-going process which involves cooperation between public officials. He goes on to note the VAB may wish to take into consideration the statutory deadlines established for the property appraiser and tax collector in certifying tax rolls when considering whether acceptance of late filed petitions may be harmful to the timely accomplishment of the taxing process. However, because section 194.011, Florida Statutes, is not a statute of non-claim and Rule 12D-9.015(11), Florida Administrative Code, recognizes extraordinary circumstances for accepting a late filed petition, the Property Appraiser is required to revise the tax rolls to reflect revisions made by the VAB.