

To: Property Appraisers
From: James McAdams
Date: March 18, 2008
Bulletin: PTO 08-02

FLORIDA DEPARTMENT OF REVENUE PROPERTY TAX INFORMATIONAL BULLETIN

[NOTE: This bulletin replaces PTA-06-18, dated November 29, 2006.]

This bulletin is in response to the question of whether it would be appropriate to consider real property sales that were closed after the January 1st date of assessment when deriving just valuations of all real property as of January 1st or when reviewing those just valuations under Chapter 194, Florida Statutes. This bulletin contains information to assist Property Appraisers and reviewers in answering this question. For purposes of this bulletin, the term “reviewers” means those involved in reviewing just valuations under Chapter 194.

Context of the Question and Provisions of Law

The context of the question is framed by dates on the annual assessment timeline as described below. Florida law recognizes that the date of appraisal is a controlling factor when appraising property for ad valorem tax purposes. Florida law provides a date of appraisal and a definition of just value to be used in mutual conjunction.

Section 192.042, Florida Statutes, requires that all real property be assessed according to its just value as of January 1st of each year. Subsection 192.042(1), Florida Statutes, further specifies that improvements or portions not substantially completed on January 1st shall have no value placed thereon.

In this bulletin, the term “pre-date sales” denotes sale transactions closed on or before the January 1st date of appraisal and the term “post-date sales” denotes sale transactions closed after the January 1st date of appraisal. Florida statutory and administrative law does not specifically address whether post-date sales may be considered.

In the case of Walter v. Schuler, 176 So. 2d 81 (Fla. 1965), the Florida Supreme Court held that just value and fair market value are legally synonymous, and that fair market value is defined as: “*The amount a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell.*” This value definition, like others, describes a hypothetical, arm’s-length sale transaction. Implicit in the just valuation of each parcel as of January 1st is the closing of a hypothetical sale transaction for each parcel on the January 1st date of appraisal.

The law also provides for Property Appraisers to report their just valuations of all real property to the Department on or about July 1st of each year. Due to the operational aspects of assessment roll production, Property Appraisers often do not complete their just valuations (effective January 1st) of all real property until June of each year. Generally, the Property Appraisers' annual just valuations are not subject to review under Chapter 194 until mid to late August each year after the truth in millage (TRIM) notices are mailed to taxpayers of record.

Chronological Perspective of Buyers and Sellers

The chronological perspective of buyers and sellers, closing a hypothetical, arm's-length sale transaction, is on the January 1st date of appraisal looking forward without specific knowledge of future events. To assist them in decision-making, only pre-date sales would be available to these buyers and sellers. When taking the chronological perspective of buyers and sellers as of January 1st, appraisers and appraisal reviewers likewise would only have pre-date sales to consider. Post-date sales would not be available to them. The key difference is that only pre-date sales could influence the decision-making of market participants as of the January 1st date of appraisal.

However, based on the chronological context described above, some post-date sales may be available to Property Appraisers before they complete their just valuations and to reviewers of those just valuations under Chapter 194. The question is whether it would be appropriate to consider these post-date sales in the annual derivation and review of just valuations.

Information from an External Professional Standard

This section contains information from an external professional standard. Every two years, the Appraisal Foundation publishes the Uniform Standards of Professional Appraisal Practice (USPAP). While there is no requirement under Florida law for just valuations to be derived or reviewed in accordance with any external standard, the USPAP may offer useful information on specific issues and is referenced here only for that purpose. These standards include Statement on Appraisal Standards No. 3, which addresses retrospective appraisals. The following are key excerpts from Statement 3:

“Retrospective appraisals (effective date of the appraisal prior to the date of the report) may be required for property tax matters, estate or inheritance tax matters, condemnation proceedings, suits to recover damages, and similar situations.”

“Current appraisals occur when the effective date of the appraisal is contemporaneous with the date of the report. Since most appraisals require current value opinions, the importance of specifying both the date of the report and the effective date of the analysis is sometimes lost.”

“A retrospective appraisal is complicated by the fact that the appraiser already knows what occurred in the market after the effective date of the appraisal. Data subsequent to the effective date may be considered in developing a retrospective value as a confirmation of trends that would reasonably be considered by a buyer or seller as of that date. The appraiser should

determine a logical cut-off because at some point distant from the effective date, the subsequent data will not reflect the relevant market. This is a difficult determination to make. Studying the market conditions as of the date of the appraisal assists the appraiser in judging where he or she should make this cut-off. In the absence of evidence in the market that data subsequent to the effective date were consistent with and confirmed market expectations as of the effective date, the effective date should be used as the cut-off date for data considered by the appraiser.”

The following are the conclusions in Statement 3, presented in their entirety.

- *“A retrospective appraisal is complicated by the fact that the appraiser already knows what occurred in the market after the effective date of the appraisal.”*
- *“Data subsequent to the effective date may be considered in developing a retrospective value as a confirmation of trends.”*
- *“The appraiser should determine a logical cut-off.”*
- *“Use of direct excerpts from then-current appraisal reports prepared at the time of the retrospective effective date helps the appraiser and the reader understand market conditions as of the retrospective effective date.”*
- *“In the absence of evidence in the market that data subsequent to the effective date were consistent with and confirmed market expectations as of the effective date, the effective date should be used as the cut-off date.”*

In effect, this standard limits the consideration of post-date sales to situations where post-date sales are used in conjunction with pre-date sales to confirm market trends as of the effective date of appraisal.

Florida Court Cases Involving Post-Date Information

Florida court cases provide information on the issue, as summarized below. Users of this bulletin are advised to exercise due care in the application of court cases. It is essential for users to review the actual cases and to obtain necessary legal advice in the application of these cases.

Ad Valorem Tax Cases

The case of Security Management v. Markham, 516 So. 2d 959 (Fla. 4th DCA 1987), provides the following:

“Although an appraiser may consider information which comes to light after January 1 of the taxable year, insofar as it is relevant to the valuation as of January 1, the focus for the actual assessment remains with the January 1 date, and, the present use and highest and best use in the immediate future.”

In the case of Haines v. Holley, 234 So. 2d 152 (Fla. 2nd DCA 1970), the date of a sale of the subject property was at issue. The court disallowed the use of this sale, which occurred in June after the January 1st appraisal date. In its opinion, the court stated:

“The tax officials have appealed to this Court, contending that the lower Court erred in entering summary judgment for the reason that the Tax Assessor was required by law to assess the property on January 1, 1968, and the sale did not occur until June 7, 1968. We agree and reverse.”

In this case, the court mentions the sale date relative to the appraisal date as reasoning for excluding this post-date sale. This sale occurred about five months after the statutory date of appraisal.

While the date of a sale was not at issue, the case of Bystrom v. Equitable, 416 So. 2d 1133 (Fla. 3rd DCA 1982), provides in a footnote the following regarding dates of sales:

“Similarly, when comparable sales are considered in reaching a just valuation, a sale after January 1 of the taxable year may be relevant. Here, the Taxpayers’ appraiser readily conceded that he used the comparable sale of the Sheraton Four Ambassadors in March of 1978. The rationale behind the use of such evidence is that a sale of this size is negotiated over a long valuation as of January 2. Of course, the further the sale is away from January 1, the less probative it may become.”

“In Southern Bell Telephone and Telegraph Company v. County of Dade, 275 So. 2d 4 (Fla. 1973), the taxpayer introduced into evidence sales ratio studies based upon comparable sales occurring through June 30 of the taxable year. Because the opinion does not reflect an objection to the admission of that testimony, that case is merely persuasive support for the use of comparable sales after January 1.”

In the Bystrom case, the court stated that a post-date sale may be relevant and allowed the consideration of a sale that occurred about three months after the January 1st date of appraisal. The court goes on to indicate that a post-date sale may become less probative as the post-date sale period increases.

In the Southern Bell case, the court allowed into evidence three statistical studies that were based on sale transactions. Two of these studies employed sales that occurred over a period beginning six months before the appraisal date and ending six months after the appraisal date. The other of the three studies employed sales that occurred only during the six-month period preceding the appraisal date. In none of these three studies were post-date sales used except in conjunction with pre-date sales.

Eminent Domain Cases

In the case of Home Owners of Winter Haven, Inc. v. Polk County, 320 So. 2d 480, (Fla. 2nd DCA 1975), the court stated:

“The landowner further contends that the trial court erred in excluding testimony proffered by the landowner of three comparative sales which occurred after March 20, 1970, the date the declaration of taking was filed in this case.”

“After reading the proffered testimony as to the later sales, which the landowner attempted to introduce into evidence, we hold that the judgment of the trial court excluding testimony of such subsequent sales was within the trial court’s discretion. The record shows that one of said sales was consummated by deed dated May 10, 1971, and involved another parcel of land that is in this taking. The other sales took place on January 7, 1972 and July 17, 1973.”

In this case, the appellate court affirmed the exclusion from evidence of these three post-date sales, which occurred about 14 months, 22 months, and 40 months after the date of appraisal, respectively.

In the case of State of Florida v. George B. Espey, et. al., 413 So. 2d 71 (Fla. 3rd DCA 1982), the court simply stated:

“The trial court properly allowed the jury to consider, as evidence of the value of the property, a comparable sale to the condemning authority subsequent to the date the declaration of taking was filed.”

This published court decision contains no further information on the specific circumstances of this case, such as the date of appraisal and the date of the sale. The lower court decision, which could contain more information, is not published.

Limits on the Consideration of Post-Date Sales

In some cases, the courts have allowed the consideration of post-date sales. In other cases, the courts have excluded post-date sales from consideration. Generally, to be considered under law, post-date sales must be probative of just value as of the appraisal date. The legal and external information above does not suggest that post-date sales may be used in place of pre-date sales. This information indicates that post-date sales should only be considered in conjunction with pre-date sales when otherwise appropriate.

The court cases and external information do not provide a definitive cut-off sale date for situations where post-date sales could be considered. However, the available information suggests a limited post-date sale period in such situations. In both court cases where post-date sales were excluded, the court specifically discussed both the date of appraisal and the dates of the excluded sales. Due to the wide variation in appraisal circumstances for the different property types, it is unlikely that a single cut-off sale date could be appropriate for all situations.

The information in this bulletin indicates that Property Appraisers and reviewers should not consider post-date sales except when the following four conditions are met.

1. When post-date sales are probative of just value for the subject property as of January 1st;
2. When post-date sales are not used as a substitute for pre-date sales;
3. When post-date sales are considered only in conjunction with pre-date sales; and
4. When the consideration of post-date sales is otherwise consistent with law.

Regardless of the data set considered, the law requires a just valuation as of January 1st of each year. It is essential for users of this bulletin to review all applicable legal provisions and to obtain the necessary legal advice when evaluating the consideration of post-date sales.

If you have questions regarding this bulletin, please contact Al Mobley at 850-487-0945.