STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA MANUFACTURED HOUSING, ASSOCIATION, INC.,	)	
Petitioner,	)	
vs.	)	CASE NO. 92-1009RP
DEPARTMENT OF REVENUE,	)	
Respondent.	)	

FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Mary Clark, held a formal hearing in the above-styled case on September 14, 1992, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Patrick J. Phelan, Jr., Esq.
Parker, Skelding, Labasky & Corry
Post Office Box 669
Tallahassee, FL 32302

For Respondent: James McAuley, Esquire
Mark Aliff, Esquire
Assistant Attorneys General
Tax Section-Capitol Building
Tallahassee, FL 32399-1550

STATEMENT OF THE ISSUE

As presented in the petition to determine the invalidity of a proposed rule filed on February 14, 1992, and as refined in the parties' joint stipulation filed at hearing on September 14, 1992, the issue presented for disposition is the validity of proposed amendments to rules 12D-6.001(3) and 12D-6.002(1)(d)1. and 2., F.A.C.

PRELIMINARY STATEMENT

After the filing of the petition the formal hearing was scheduled within the deadline prescribed in Section 120.54(4)(c), F.S.

The hearing was cancelled and the proceeding was placed in abeyance at the joint request of the parties. Later, the hearing was rescheduled and was continued once for good cause.

When the case did eventually proceed to formal hearing, the parties presented a thorough and concise stipulation of facts. In addition, official recognition was taken, without objection, of a series of statutes and existing

rules, and of Article VII, Section 1(b), Florida Constitution. The proposed rules at issue were received as Respondent's Exhibit #1.

After hearing, the parties submitted proposed final orders by the mutually agreed deadline October 20, 1992. In addition, Petitioner filed a supplemental motion for official recognition of Rule 12D-6.003, F.A.C. and of staff analyses of Senate Bill 1578 and CS/HB 691. After objection by Respondent and oral argument by the parties on November 6, 1992, the motion was granted as reflected in an order entered that same date. The parties were also given the opportunity to file supplemental briefs or memoranda, and such were timely filed by the established deadline, November 16, 1992.

Those and all matters properly of record have been considered in the preparation of this order. No appendix is required as all material facts have been stipulated.

FINDINGS OF FACT

The following facts are based in their entirety on the parties' joint stipulation presented at hearing on September 14, 1992:

1. This is a Section 120.54(4), F.S., rule challenge proceeding initiated by the Florida Manufactured Housing Association, Inc., Petitioner, to challenge the validity of proposed amendments to Rules 12D-6.001(3) and 12D-6.002(1)(d)1. and 2., F.A.C., as proposed by the State of Florida Department of Revenue, Respondent.

2. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this action.

3. The Petitioner is the Florida Manufactured Housing Association, Inc., "FMHA". The FMHA is a not-for-profit corporation organized to do business in the State of Florida. The FMHA is located at 115 North Calhoun Street, Tallahassee, Florida 32301.

4. The agency affected by this proceeding is the Respondent, Florida Department of Revenue, whose address is Post Office Box 3000, Tallahassee, Florida 32315-3000.

5. The proposed rules at issue in this proceeding are proposed Rule 12D-6.001(3) and proposed rule 12D-6.002(1)(d)1. and 2., F.A.C., as published in Volume 18, Number 4 of the Florida Administrative Weekly, January 24, 1992. The challenged provisions of these rules provide as follows:

> 12D-6.001(3) - "Permanently affixed." A mobile home shall be considered "permanently affixed" if it is tied down and connected to the normal and usual utilities, and if the owner of the mobile home is also the owner of the land to which it is affixed.
> 12D-6.002(1) This rule subsection shall apply if the owner of the mobile home is also the owner of the land on which the mobile home is permanently affixed and the mobile home has a current sticker affixed, regardless of the series.
> (d) This rule subsection shall apply to

mobile home parks operating a sales office in which a mobile home is being offered for sale where the dealer/developer/owner owns the mobile home and the land to which it is permanently affixed as follows:
1. The dealer/developer/owner must pay real property taxes even if the mobile home has been issued a dealer license plate.
2. A mobile home discussed in this subsection shall not be considered tangible personal property or mobile home inventory.

6. The proposed rules were promulgated by the Department of Revenue to give effect to the statutory change to Section 193.075, F.S., as set forth in Committee Substitute to Senate Bill 1578 which provides as follows:

193.075 Mobile Homes --
(1) A mobile home shall be taxed as real property if the owner of the mobile home is also the owner of the land on which the mobile home is permanently affixed. A mobile home shall be considered permanently affixed if it is tied down and connected to the normal and usual utilities. A mobile home that is taxed as real property shall be issued an "RP" series sticker as provided in Section 320.0815.
(2) A mobile home that is not taxed as real property shall have a current license plate properly affixed as provided in Section 320.08(11). Any such mobile home without a current license plate properly affixed shall be presumed to be tangible personal property.

7. The Florida Manufactured Housing Association, Inc., is a trade association representing the interests of approximately 1300 mobile home parks, dealerships, manufacturers and related mobile home service firms who conduct business in the State of Florida. One of the primary purposes of the FMHA is to act on behalf of its members before the various governmental entities of the state, including the Respondent, Florida Department of Revenue. The subject matter of the proposed rules at issue in this proceeding is within the general scope of interest and activity of the FMHA. The relief requested in this action is of the type appropriate for FMHA to obtain on behalf of its members.

8. The proposed rules and economic impact statement were promulgated by the Department of Revenue in accordance with the requirements of Section 120.54, F.S.

9. The FMHA member manufacturers, dealers and park owners who are substantially affected by the proposed rules at issue herein are engaged in the business of selling mobile homes and offer mobile homes for sale to the public. A number of these homes are tied down in accordance with all applicable local, state and federal requirements and connected to the normal and usual utilities so that they can be displayed as fully functioning "model" homes prior to the time they are sold. The FMHA member manufacturers, dealers and park owners who display fully functional mobile homes for sale to the public maintain they have no intention of permanently affixing the homes to their real property. The

homes are maintained in this manner for the purposes of safety and display only, with the full intention that they be removed from the realty subsequent to the sale.

10. A substantial number of the members of the FMHA will be substantially affected by the proposed rules, because their business activities are subject to the rule provisions challenged herein and because it is FMHA's position that the proposed rules will directly impact the continued ability of FMHA member manufacturers, dealers and park owners to display fully functioning model homes held for sale to the public on their real property without being subject to ad valorem tax liability. FMHA members who own and operate mobile home parks, mobile home dealerships and mobile home manufacturing enterprises are subject to the rulemaking authority of the Respondent, Department of Revenue.

11. A substantial number of FMHA members are engaged in the process of manufacturing mobile homes. Mobile home manufacturers commonly display one or more completed mobile home units which are tied down and connected to the normal and usual utilities at model home centers located on their manufacturing premises. The homes are held for sale to mobile home dealers or to the general public. The homes are tied down and connected to utilities for purposes of safety and display. The attachment of the homes to the property is not intended by the manufacturer to be permanent. When the homes are sold, they are disconnected from the utilities, removed from the tie-downs, and transported off the manufacturer's property. The removal process does not cause damage to the home or the real property.

12. A substantial number of FMHA members operate retail sales lots, where new and used mobile homes are held for sale and displayed for sale to the public. These homes are owned by the retail dealers. Mobile home dealers typically display one or more mobile homes which are tied down and connected to the normal and usual utilities located on the dealer's sales lots. The homes are held for sale to mobile home park owners or the general public. The homes are tied down and connected to utilities for purposes of safety and display. The attachment of the homes to the property is not intended by the dealer to be permanent. When the homes are sold, they are disconnected from the utilities, removed from the tie-downs, and transported off the dealer's property. The removal process does not cause damage to the home or the real property.

13. A substantial number of FMHA members own and operate rental mobile home parks. In rental mobile home parks, a tenant places his own mobile home upon land owned by the park owner commonly referred to as a park "developer", and leases the land.

14. A substantial number of FMHA members who own mobile home parks also hold dealer licenses, and operate a mobile home sales business within the park. Mobile home park owners or developers typically display one or more model homes which are tied down and connected to the normal and usual utilities. The homes are held for sale to the public. When the units are sold to a purchaser, they are disconnected from the utilities, removed from the tie-downs, and transported from the model home area to a designated lot within the mobile home park. This process does not result in damage to the mobile home or the real property.

15. At the time of sale, the purchaser of the mobile home enters into a land lease with the mobile home park owner. At his option, the purchaser may choose to terminate the lease and remove the mobile home from the mobile home park.

16. In some instances, FMHA members, who own mobile home parks and operate a sales business within the park, lease both land and mobile homes to tenants as part of a lease option agreement, where the park owner retains ownership of the home and land until the home purchase option is exercised. If the tenant fails to exercise the option or defaults under the agreement, the park owner may sell the home to another purchaser. That purchaser may either remove the mobile home from the lot, or enter into a new land lease with the park owner.

17. Under proposed Rules 12D-6.002(1)(d)1. and 2., mobile homes owned by FMHA member manufacturers, dealers and park owners determined to be permanently affixed to real property, as defined by Section 193.075, F.S., and owned by the manufacturers, dealers and park owners will be declared real property, and taxed accordingly.

18. Under the proposed rules the assessment date is January 1 of any given year, and a mobile home permanently affixed to real property owned by FMHA member manufacturers, dealers, or mobile home park owners on January 1 will be taxed as real property.

19. The FMHA member manufacturers, dealers and park owners determined to own mobile homes permanently affixed to their realty will have their real property tax increased by the assessed valuation of the mobile homes, without regard to their intended use or disposition of the homes.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this proceeding pursuant to Section 120.54, F.S. and 120.57(1), F.S.

21. Subsection 120.54(4)(a), F.S. provides:

> Any substantially affected person may seek an administrative determination of the invalidity of any proposed rule on the ground that the proposed rule is an invalid exercise delegated legislative authority.

Based on the parties' stipulated facts regarding Petitioner and its members, Petitioner has standing to challenge the proposed rules at issue. Florida Home Builders Association v. Department of Labor and Employment Security, 412 So.2d 351 (Fla. 1982).

22. "Invalid exercise of delegated legislative authority" is defined in Section 120.52(8), F.S. as:

> . . . action which goes beyond the power, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one or more of the following apply:
> (a) The agency has materially failed to follow the applicable rulemaking procedures set forth in Section 120.54;
> (b) The agency has exceeded its grant of rulemaking authority, citation to which is

required by Section 120.54(7).
(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by Section 120.54(7);
(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency; or
(e) The rule is arbitrary or capricious.

23. The parties have stipulated that the proposed rules and economic impact statement were promulgated in accordance with the requirements of Section 120.54, F.S. (see paragraph 8 above). This disposes of Petitioner's initial challenge to the economic impact statement.

24. Petitioner's remaining challenges in this proceeding may be resolved by a simple review of the statute upon which the proposed rules are based.

25. Chapter 91-241, Laws of Florida, amended Section 193.075, F.S., effective January 1, 1992. It provides, in its entirety:

CHAPTER 91-241

Committee Substitute for Senate Bill No. 1578

An act relating to mobile homes; amending s.193.075, F.S.; revising provisions which specify conditions under which mobile homes are to be taxed as real or tangible personal property; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 193.075, Florida Statutes, is amended to read:

193.075 Mobile homes. -
* <<(1) A mobile home shall be taxed as real property if the owner of the mobile home is also the owner of the land on which the mobile home is permanently affixed. A mobile home shall be considered permanently affixed if it is tied down and connected to the normal and usual utilities. A mobile home that is taxed as real property shall be issued an "RP" series sticker as provided in s. 320.0815.
(2) A mobile home that is not taxed as real property shall have a current license plate properly affixed as provided in s. 320.08(11). Any such mobile home without a current license plate properly affixed shall be presumed to be tangible personal property.>> [[Any mobile home without a current license plate properly affixed, as provided in s. 320.08(11) or s. 320.0815, shall be presumed to be either real property or tangible personal property. It

shall be presumed to be real property only if the owner of the mobile home is also the owner of the land on which it is located and the mobile home is also permanently affixed to the realty. Otherwise it shall be presumed to be tangible personal property.]]

* Note: In the above quotation, language added to the statute is within the <<>>; deleted language is within the [[]].

Section 2. This act shall take effect January 1, 1992.

Became a law without the Governor's approval May 31, 1991.

Filed in Office Secretary of State May 30, 1991.

26. Applying the amended Section 193.075, F.S. as a template for the proposed rules challenged by Petitioner reveals that the rules themselves add nothing whatsoever to the requirements of the law. The challenged rules fit squarely within Section 193.075, F.S. (see language of proposed rules 12D-6.001(3) and 12D-6.002(1)(d)1., F.A.C. in paragraph 5, above).

27. Plainly and simply, both the law and rules provide that a mobile home is taxed as real property if the mobile home owner also owns the land upon which it is tied down and it is connected to the normal and usual utilities. No exception is found in Section 193.075, F.S., and the proposed rule, 12D-6.002(1)(d)1., F.A.C. reminds, "yes, this means mobile home parks and dealers as well, who own mobile homes and the land upon which they are tied down and connected to the normal and usual utilities."

28. Petitioner has presented thorough argument as to the invalidity of the proposed rules and the statute, including a constitutional challenge. Petitioner's real quarrel is with Section 193.075, F.S., which Petitioner claims violates this Article VII, Section 1, Florida Constitution, prohibition:

. . .

(b) Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.

. . .

Petitioner cites Department of Environmental Regulation v. Leon County, 344 So.2d 297 (Fla. 1st DCA 1977) for the proposition that "[a]n administrative hearing officer may rule on the constitutionality of a proposed rule or statute [sic], subject to judicial review, if the issue is raised during the proceedings." (Petitioner's Proposed Final Order, p. 8, filed 10/20/92). Later, Petitioner concedes that the authority is limited to proposed rules, as indeed it is. (Petitioner's Supplemental Memorandum of Law, filed 11/6/92.)

29. The arguments of the parties, for and against the validity of Section 193.075, F.S. are preserved for another forum. Whether Section 193.075, F.S.

withstands constitutional scrutiny under Department of Revenue v. Florida Boater's Assn, 409 So.2d 17 (Fla. 1981), is immaterial in this proceeding.

30. In Jax Liquors, Inc. v. State of Florida, Department of Business Regulation, Division of Alcoholic Beverages and Tobacco, 2 FALR 81-A (DOAH Final Order entered 12/13/79), aff. Jax Liquors v. Division of Alcoholic Beverages and Tobacco, 388 So.2d 1306 (Fla. 1st DCA 1980), the hearing officer declined to invalidate rules that were based on a beverage law with a regulatory scheme similar to another beverage law that had been declared unconstitutional, stating ". . . the executive branch of government, of which the DOAH is an extension, is not empowered to make constitutional determinations on the validity of a statute and the Hearing Officer must proceed as if the subject provision is constitutional."

31. The rules in question do not exceed the agency's broad rulemaking authority found in Section 213.06, F.S.:

> 213.06 Rules of department; circumstances requiring emergency rules.-
> * (1) The Department of Revenue is granted authority to adopt such rules as are necessary to carry out the intent and purposes of this chapter and all other revenue laws administered by the department, <<and it may amend such rules to conform to legislation>> or department policy changes made in absence of any legislation.
>
> . . .
>
> (emphasis added)

* Note: In the above quotation, language added to the statute is within the <<>>; deleted language is within the [[]].

The proposed rules do not enlarge, modify or contravene the specific provisions of Section 193.075, F.S. nor other provisions of the law cited as implemented in the notice of proposed rules (Respondent's exhibit #1).

32. The proposed rules are clear, free of ambiguity and remove from the agency rather than vest in it, any discretion, unbridled or otherwise.

33. If the rules at issue are arbitrary or capricious, so also is the statute upon which they are based. Invalidating these rules would provide no relief to Petitioner from the strictures of which it complains.

34. Proposed rules 12D-6.001(3) and 12D-6.002(1)(d)1, and 2. F.A.C. are not an "invalid exercise of delegated legislative authority" as defined in Section 120.52(8), F.S., and it is, therefore,

ORDERED

The petition by Florida Manufactured Housing Association, Inc., is DENIED.

DONE and ORDERED this 30th day of November, 1992, at Tallahassee, Florida.

MARY CLARK
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
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(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of November, 1992.

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A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULE OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DIVISION OF ADMINISTRATIVE HEARINGS AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

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DISTRICT COURT OPINION

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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

FLORIDA MANUFACTURED HOUSING ASSOCIATION, INC.,

Appellant,

v.

DEPARTMENT OF REVENUE,

Appellee.
_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 92-4390
DOAH CASE NO. 92-1009RP

Opinion filed September 14, 1994.

An appeal from an order of the Division of Administrative Hearings.

Jack M. Skelding, Jr, Patrick J. Phelan, Jr., and Jennifer Parker Lavia, of Parker, Skelding, Labasky & Corry, Tallahassee, for Appellant.

Robert A. Butterworth, Attorney General, and James McAuley, and Mark T. Aliff, Assistant Attorneys General, Tallahassee, for Appellee

PER CURIAM.

Florida Manufactured Housing Association, Inc. (FMHA) appeals a final administrative order of the Division of Administrative Hearings which denied the petition of FMHA to declare proposed Florida Administrative Code Rules 12D-6.001 and 12D-6.002 /1 to be invalid. FMHA argues that section 193.075, Florida Statutes (1991), violates the prohibition against ad valorem taxation of mobile homes set forth in article VII, section 1(b) of the Florida Constitution. FMHA also argues that the Department of Revenue (DOR) has exceeded its rulemaking authority and that the rules are arbitrary and capricious. We affirm.

We reject the argument that section 193.075, Florida Statutes, (1991), is unconstitutional. Article VII, section 1(b) of the Florida Constitution provides that "mobile homes, as defined by law, . . . shall not be subject to ad valorem taxes." (Emphasis added). Section 193.075, as amended in 1991, takes mobile homes which are permanently affixed to land owned by the mobile home owner out of the definition of mobile homes for purposes of article VII, section 1(b). Cf. Nordbeck v. Wilkinson, 529 So.2d 360 (Fla. 2d DCA 1988)

We also reject the argument that the proposed rules constitute an invalid exercise of delegated legislative authority because DOR has exceeded its rulemaking authority and the rules are arbitrary and capricious. As noted in the final order, the challenged rules add nothing whatsoever to the requirements of the law, but instead fit squarely within section 193.075, Florida Statutes (1991)

AFFIRMED.

BARFIELD, J. and JORGENSON, Associate Judged CONCUR. BENTON, J. CONCURS WITH A WRITTEN OPINION.

BENTON, J., concurring.

I write separately to point out that Florida Administrative Code Rule 12D-6.002(1)(d)1 and 2 have been amended on account of statutory amendments that took effect after the administrative rule challenge proceedings under review here had come to a close. The challenged provisions originally took effect on February 17, 1993, in the wake of the final order under review. The final order denied a challenge to Florida Administrative Code Rule 12D- 6.002(1)(d)1 and 2, as proposed, a challenge predicated in part on the contention that dealers and manufacturers should be able to treat mobile homes as inventory in certain circumstances, despite their being "permanently affixed" to realty.

After Hearing Officer Clark entered her scholarly order denying the petition to invalidate proposed rules, the Legislature enacted an amendment to section 193.075, Florida Statutes (1993), effective April 29, 1993. Ch. 93-132, 6, at 763-64, Laws of Florida:

> A mobile home shall be taxed as real property if the owner off the mobile home is also the owner of the land on which the mobile home is permanently affixed. A mobile home shall be considered permanently affixed if it is tied down and connected to the normal and usual utilities. However, a mobile home that is permanently affixed shall not be taxed as real property if it is being held for display by a licensed mobile home dealer or a licensed mobile home manufacturer and is not rented occupied or located on property used for mobile home occupancy. A mobile home that is taxed as real property shall be issued an "RP" series sticker as provided in s. 320.0815.

s. 193.075(1), Fla. Stat. (1993)(language added by the amendment underlined). This year saw legislative refinement of the 1993 amendment:

> However, this provision does not apply to a mobile home that is permanently affixed shall not be taxed as real property if it is being held for display by a licensed mobile home dealer or a licensed mobile home manufacturer and that is not rented or occupied, located on property used for mobile home occupancy.

Ch. 94-353, 30, at__ , Laws of Florida, 1994 Fla. Sess. Law Serv. No. 7, p. 1805. (Additions indicated by underline; deletions by strikeout.) In response to the legislative decision to allow dealers and manufacturers to treat mobile homes as inventory in certain circumstances, despite their being "permanently affixed" to realty, the Department of Revenue amended Florida Administrative Code Rule 12D-6.002(1)(d)1 and 2, on January 11, 1994, to read:

> (d) This rule subsection shall apply to permanently affixed mobile homes which are held for display by a licensed mobile home dealer or a licensed mobile home manufacturer. The mobile home is considered tangible personal property and inventory not subject to the property tax if the following conditions are met:
> 1. It is being held strictly for resale as tangible personal property and is not rented or occupied; and
> 2. The mobile home is not used as a sales office by the mobile home dealer or mobile home manufacturer; and
> 3. The mobile home is not located on a parcel which is in a mobile home park, mobile home subdivision, or any other residential lot or residential parcel[.]

This change moots any question as to the validity of the prior, superseded rule provisions, on or after January 11 1994. The final order was clearly correct when entered on November 30, 1992. It is perhaps worth noting, however, that from April 29, 1993, to January 10, 1994, Florida Administrative Code Rule 12D-6.002(1)(d)1 and 2 lacked statutory authorization under amended section 193.075(1), Florida Statutes (1993), and would, therefore, have been an inappropriate basis for assessing real property on January 1, 1994.

ENDNOTE

1/ Proposed Rule 12D-6.001(3) and proposed Rule 12D- 6.002(1)(d)1. and 2., Florida Administrative Code, as published in Volume 18, Number 4 of the Florida Administrative Weekly, January 24, 1992.