STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WILLIAM MARKHAM, as Broward County Property Appraiser,	)	
Petitioner,	)	
vs.	)	CASE NO. 95-1339RP
DEPARTMENT OF REVENUE,	)	
Respondent.	)	

FINAL ORDER

Pursuant to notice, the above matter was heard before the Division of Administrative Hearings by its assigned Hearing Officer, Donald R. Alexander, on April 18, 1995, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Gaylord A. Wood, Jr., Esquire
304 S. W. 12th Street
Fort Lauderdale, Florida 33315-1549

For Respondent: Joseph C. Mellichamp, III, Esquire
Department of Legal Affairs
The Capitol-Tax Section
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUES

The issues are (a) whether subsection (5) of proposed rule 12D-8.0062, Florida Administrative Code, is arbitrary and capricious and contravenes the law implemented, (b) whether subsection (6) of the rule is vague, and (c) whether subsection (5) of the rule conflicts with Article VII, Section 4(c) of the Florida Constitution.

PRELIMINARY STATEMENT

This case began on March 17, 1995, when petitioner, William Markham, as Broward County Property Appraiser, filed a petition challenging the validity of proposed rule 12D-8.0062, Florida Administrative Code. The rule has been proposed for adoption by respondent, Department of Revenue. As a statutory ground for invalidating the rule, petitioner contended the rule was "an invalid exercise of delegated legislative authority and is arbitrary and capricious." He alleged further that the "proposed Rule is at variance with the Constitution." After being reviewed for legal sufficiency, the petition was assigned to the undersigned Hearing Officer on March 23, 1995.

On April 11, 1995, the agency filed a notice of change, wherein it proposed certain revisions to the proposed rule. As a result of those changes, at

hearing petitioner was allowed to make an ore tenus motion to amend his petition to add the claim that subsection (6) of the rule was vague. On April 11, 1995, respondent filed a motion for summary final order. An affidavit in opposition to the motion was filed by petitioner. The motion was taken up at final hearing.

By notice of hearing dated March 23, 1995, the final hearing was scheduled on April 18, 1995, in Tallahassee, Florida. At final hearing, the parties agreed that there were no facts in dispute. Thereafter, both parties presented argument in support of their respective positions. Also, petitioner agreed that only subsections (5) and (6) of the rule are in issue.

The transcript of hearing was filed on April 28, 1995. Proposed findings of fact and conclusions of law were filed by respondent and petitioner on May 22 and June 2, 1995, respectively. A ruling on each proposed finding has been made in the Appendix attached to this Final Order.

FINDINGS OF FACT

Based upon all of the evidence, including the pleadings and attachments thereto, the following findings of fact are determined:

A. Background

1. This case involves a challenge by petitioner, William Markham, as Broward County Property Appraiser, to the validity of proposed rule 12D-8.0062, Florida Administrative Code. The rule is being proposed for adoption by respondent, Department of Revenue (DOR). That agency has the statutory responsibility of supervising the assessment and valuation of property and approving each assessment roll submitted by the county property appraisers.

2. By law, all property is to be valued as of January 1 for the tax year in question. Unless DOR grants an extension for good cause, the property appraiser is required to complete the assessment roll by the following July 1 and submit it to DOR for approval on or before that date.

3. The DOR executive director then approves or disapproves the rolls, in whole or in part. Roll approval is predicated upon substantial compliance with the requirements of the law relating to the form of the roll and just value, and upon full compliance with any administrative orders issued by DOR. The proposed rule codifies standards and establishes procedures relating to the assessed value of homestead property on the tax roll from year to year.

4. On November 3, 1992, the voters approved an amendment to Article VII, Section 4(c) of the Florida Constitution. The amendment was described as follows in the ballot summary:

> Homestead Valuation Limitation
> Providing for limiting increases in homestead property valuations for ad valorem tax purposes to a maximum of 3 percent annually and also providing for reassessment of market values upon changes in ownership.

As approved by the electorate, section 4(c) reads as follows:

(c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.

1. Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

(A) three percent (3 percent) of the assessment for the prior year.

(B) the percent change in the Consumer Price Index for all urban consumers, U. S. City Average, all items 1967 = 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

2. No assessment shall exceed just value.

3. After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter the homestead shall be assessed as provided herein.

4. New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead. That assessment shall only change as provided herein.

5. Changes, additions, reductions or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction or improvement, the property shall be assessed as provided herein.

6. In the event of a termination of homestead status, the property shall be assessed as provided by general law.

7. The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

5. The new amendment generally requires that all homestead property be assessed at just value on January 1 following the effective date of the amendment. Thereafter, the assessed value is to be increased by 3 percent or the change in the Consumer Price Index (CPI) percentage, whichever is lower, not to exceed just value. If there is a change in ownership, however, the amendment requires that the property be assessed at its just value on the following January 1. Subsequently, and until the next change in ownership, the limitation will apply. At the same time, when changes, additions, reductions or improvements to homestead property occur, the value of such changes will be assessed as provided by general law. After this adjustment is made, the assessment on the property as a whole is subject to the annual limitations.

6. In 1994, the legislature implemented the new amendment by enacting Section 193.155, Florida Statutes. The relevant portion of the new statute reads as follows:

> 193.155 Homestead Assessments. - Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption. Thereafter, determination of the assessed property is subject to the following provisions:
>
> (1) Beginning in 1995, or the year following the year the property receives homestead exemption, whichever is later, the property shall be reassessed annually on January 1. Any change resulting from such reassessment shall not exceed the lower of the following:
>
> (a) Three percent of the assessed value of the property for the prior year; or
>
> (b) The percentage change in the Consumer Price Index for All Urban Consumers, U. S. City Average, all items 1967 = 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.
>
> * * *
>
> As can be seen, the statute mirrors the constitutional amendment.

7. In response to this legislation, on March 3, 1995, DOR published in the Florida Administrative Weekly a notice of its intent to adopt new Rule 12D-8.0062, Florida Administrative Code. A public hearing on the proposed rule was held on March 31, 1995. Based on oral and written comments received at that hearing, on April 10, 1995, DOR gave notice of its intent to change the rule in certain respects. As modified by these changes, the proposed rule in its entirety reads as follows:

> 12D-8.0062 Assessments; Homestead; Limitations.
>
> (1) This rule shall govern the determination of the assessed value of property subject to the homestead assessment limitation under Article VII, Section 4(c), Florida Constitution and section 193.155, F. S., except as provided in rules 12D-8.0061, 12-8.0063, and 12D-8.0064, relating to changes, additions or improvements, changes of ownership, and corrections.
>
> (2) Just value is the standard for assessment of homestead property, subject to the provisions of Article VII, Section 4(c), Florida Constitution. Therefore, the property appraiser is required to determine the just value of each individual homestead property on January 1 of each year as provided in section 193.011, F. S.
>
> (3) Unless subsections (5) and (6) of this rule require a lower assessment, the assessed value shall be equal to the just value as determined under

subsection (2) of this rule.
(4) The assessed value of each individual homestead property shall change annually, but shall not exceed just value.
(5) Where the current just value of an individual property exceeds the prior year assessed value, the property appraiser is required to increase the prior year's assessed value by the lower of:
(a) Three percent; or
(b) The percentage change in the Consumer Price Index (CPI) for all urban consumers, U. S. City Average, all items 1967 = 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.
(6) If the percentage change in the Consumer Price Index (CPI) referenced in paragraph (5)(b) is negative, then the assessed value shall be the prior year's assessed value decreased by that percentage.
(7) The assessed value of an individual homestead property shall not exceed just value.

8. Sections 195.027(1) and 213.06(1), Florida Statutes, are cited as the specific authority for adopting the new rule. The former statute requires that DOR adopt "such rules and regulations (to ensure) that property will be assessed, taxes will be collected, and the administration will be uniform, just, and otherwise in compliance with the requirements of the general law and the constitution." Sections 193.011, 193.023, 193.155, 196.031 and 213.05, Florida Statutes, are given as the law implemented. It is clear, however, that section 193.155 is the principal law being implemented.

9. As clarified at hearing, petitioner does not challenge subsections (1) through (4) and (7) of the proposed rule. Rather, he alleges that subsection (5) of the rule is arbitrary and capricious and conflicts with the law implemented. He also contends that subsection (6) is vague. Finally, he contends that subsection (5) conflicts with Article VII, Section 4(c) of the Florida Constitution.

B. Statutory Grounds Concerning Subsection (5)

10. To avoid being found arbitrary and capricious, the proposed rule must be supported by facts and logic and adopted with thought and reason. Aside from argument of petitioner's counsel, there is no evidence to support the notion that the rule lacks a factual and logical underpinning or is not rational. Indeed, because subsection (5) of the rule simply tracks the provisions found in the law implemented, that is, Sections 193.155(1)(a) and (b), Florida Statutes, it cannot be arbitrary and capricious. At the same time, by parroting the statutory language, subsection (5) comports with the law implemented. Accordingly, subsection (5) of the rule is deemed to be a valid exercise of delegated legislative authority.

C. Is Subsection (6) of the Rule Vague?

11. Subsection (6) of the rule reads as follows:

> (6) If the percentage change in the Consumer Price Index (CPI) referenced in paragraph (5)(b) is negative, then the assessed value shall be the prior year's assessed value decreased by that percentage.

12. Through argument of counsel, petitioner contends that the foregoing provision is "badly worded" and that "a reasonable man can(not) read . . . that rule, and know what it means."

13. The language in the rule is plain and unambiguous. It indicates that if the percentage change in the CPI is negative, then the prior year's assessed value would be decreased. Indeed, the clarity of this language becomes even more evident when reading subsections (5) and (6) together. Subsection (5) requires an increase to the prior year's assessed value in a year where the CPI is greater than zero. Conversely, subsection (6) spells out the requirements when the CPI is negative. This is exactly the result required by the statute and Constitution in the event of a negative percentage change in the CPI. Accordingly, the contention that the rule is impermissibly vague is deemed to be without merit.

D. Does Subsection (5) Conflict with the Constitution?

14. Finally, petitioner contends that subsection (5) conflicts with Article VII, Section 4(c) of the Florida Constitution. More specifically, he argues that the rule conflicts with the "intent" of the framers of the ballot initiative, and that a third limitation relating to market value or movement, and not contained in the amendment itself, or even in the ballot summary, should be incorporated into the language of the rule in order to make it compatible with the constitution. He agrees, however, that subsection (5), as now written, does not conflict with the actual language found in the amendment.

15. To be constitutionally infirm in the context of petitioner's challenge, subsection (5) would have to contain provisions which depart from the language in the amendment. Because the subsection essentially tracks the language in Section 193.155, Florida Statutes, which in turn tracks the language of the amendment, it is found that the rule does not conflict with the constitution.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to Sections 120.54(4) and 120.57(1), Florida Statutes.

17. As the party challenging the proposed rule, petitioner has the burden of proving by a preponderance of the evidence that the challenged rule is an invalid exercise of delegated legislative authority. Agrico Chemical Company v. Department of Environmental Regulation, 365 So.2d 759, 763 (Fla. 1st DCA 1978). This burden has been characterized as being "a stringent one indeed." Agrico, 365 So.2d at 763.

18. Subsection 120.52(8), Florida Statutes, defines an invalid exercise of delegated legislative authority as follows:

> Invalid exercise of delegated legislative authority means action which goes beyond the powers, functions, and duties delegated by the legislature.

The same statute goes on to provide that a proposed rule is invalid if:

> (a) The agency has materially failed to follow the applicable rulemaking procedures set forth in s. 120.54;
> (b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(7);
> (c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(7);
> (d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridles discretion in the agency, or
> (e) The rule is arbitrary or capricious.

19. In his initial petition, as amended and clarified at hearing, petitioner contends that subsection (5) of the rule is arbitrary and capricious and conflicts with the law implemented. He also contends that subsection (6) is vague. Finally, he alleges that subsection (5) conflicts with Article VII, Section 4(c) of the Florida Constitution. In his one-page proposed order, however, petitioner argues only that the rule is "contrary to the language of the Constitution" and thus "it represents an invalid exercise of delegated legislative authority." Notwithstanding this confusion and lack of clarity, the undersigned will address both the statutory and constitutional grounds initially raised.

20. Taking the statutory grounds first, there is no evidence of record to sustain any of petitioner's contentions. Indeed, the challenged portions of the rule are consistent with the agency's mandate to adopt such rules pertaining to property assessment as are necessary to ensure "compliance with the requirements of the general law and the constitution," Subsection 195.027(1), F. S., they have a factual and logical underpinning, they are plain and unambiguous, and they do not conflict with the law implemented. Therefore, petitioner's claims to the contrary are rejected.

21. Petitioner further contends that subsection (5) of the rule is "contrary to the language of the Constitution." As clarified through argument of counsel, petitioner suggests that in addition to the two limitations specifically included in section 4(c) of the constitution, namely, the 3 percent and CPI restrictions, the framers of the ballot initiative intended that a third limitation, not found in the amendment itself, or the ballot summary, should also apply. This limitation, grounded on "market movement," would mean that in a year in which market value did not increase, the assessed value of a homestead property would not increase. Because the rule does not include this limitation, petitioner reasons that the rule is in conflict with the amendment.

22. Petitioner's request that the undersigned apply this theory of intent to an unambiguous constitutional provision must be rejected for three reasons. First, the law is settled that when constitutional language is precise, as it is here, its exact letter must be enforced and extrinsic guides are not allowed to

defeat the plain language. See, e. g., State ex rel. West v. Gray, 74 So.2d 114, 116 (Fla. 1954). Second, such intent is unreliable. As stated by the supreme court in Williams v. Smith, 360 So.2d 417, 420 (Fla. 1978):

> In analyzing a Constitutional amendment adopted by initiative rather than by legis-lative or Constitutional revision commission vote, the intent of the framers should be accorded less significance than the intent of the voters as evidenced by materials they had available as a predicate for their collective decision. An absence of debate and recorded discussion marks the development of an initiative proposal. To accord the same weight to evidences of the intent of an amendment's framer as is given to debates and dialogue surrounding a proposal adopted from diverse sources would allow one person's private documents to shape Constitutional policy as persuasively as the public's perception of the proposal. This we cannot permit.

Third, the ballot summary is not consonant with the intent that petitioner advocates in this proceeding. Indeed, there is no mention whatsoever of "market movement" or "market value" in the summary. Further, there was no evidence submitted or proffered by petitioner of any legislative history concerning this third limitation. In fact, petitioner agreed that none existed.

23. For all of these reasons, the undersigned declines to ignore the plain and unambiguous provisions of the amendment as written and to apply the "intent" of the framers of the ballot initiative. Because the rule as written clearly comports with the language in section 4(c), it is not unconstitutionally infirm.

24. In view of the above, respondent's motion for summary final order is granted and, as a matter of law, the rule is determined to be valid.

Based on the foregoing findings of fact and conclusions of law, it is

ORDERED that subsections (5) and (6) of proposed rule 12D-8.0062 are determined to be a valid exercise of delegated legislative authority, and subsection (5) is determined to be consistent with Article VII, Section 4(c) of the Florida Constitution.

DONE AND ORDERED this 21st day of June, 1995, in Tallahassee, Florida.

DONALD R. ALEXANDER
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of June, 1995.

APPENDIX TO FINAL ORDER, CASE NO. 95-1339RP

Petitioner:

1. Partially accepted in findings of fact 1 and 7.
2. Rejected as being contrary to the evidence.
3. Rejected. See findings of fact 14 and 15.

Respondent:

1-6. Rejected as being unnecessary.
7-8. Partially accepted in finding of fact 1.
9. Partially accepted in finding of fact 2.
10. Partially accepted in finding of fact 3.
11. Partially accepted in finding of fact 4.

NOTE: Where a proposed finding has been partially accepted, the remainder has been rejected as being unnecessary for a resolution of the issues, irrelevant, cumulative, subordinate, not supported by the evidence, or a conclusion of law.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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 Rules 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.