NEWS LETTER

COMMUNITY LAW NEWSLETTER

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PAVESE LAW FIRM
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Have Property Assessments Followed Our Declining Economy Accordingly?

It's that time of year again; Florida homeowners will soon be receiving their TRIM notices setting forth their yearly property taxes. And as we have all noticed, since the recent downturn in our nation's economy (especially in the southwest Florida market), home prices have decreased significantly. However, a proper reduction in a homeowners "assessed value" for purposes of property taxes may not always follow accordingly. In many instances, the Property Appraiser's office may not properly re-assess your home's value. This may be for a number of reasons, be it lack of resources with all home values fluctuating so rapidly, uncertainty as to what "true value" actually is, or simple neglect on the part of the property appraisers office.

Bankruptcy, foreclosures, and short sales are some of the reasons all of our homes have decreased in value. Home values, as appraised, are a reflection of similar "comparable" sales. Therefore, if someone in your neighborhood sells their home in a short sale to avoid foreclosure at a significantly reduced price, the assessed value of your home should be adjusted accordingly for property tax purposes. If there is any silver lining to this seemingly never ending downward spiral, it *should* be significantly reduced property taxes; but... this may not always be the case.

Many concerned homeowners may think that even if their assessment does not accurately reflect the true value of their home, challenging the property appraiser's assessment would be simply unaffordable, envisioning a long drawn out expensive process whose result would not justify the fight and hassle. One advantage of living in a condominium association, cooperative or mobile homeowner's association as defined in s. 723.075, Florida Statutes, is that the association can challenge these assessments, on behalf of many of the owners collectively. When considering the cost and hassle to the residents under this scenario, the process becomes relatively inexpensive, cost effective, and hassle-free for the residents individually and may be more in their interest than before.

Section 194.011(3)(e), Florida Statutes, provides that "A condominium association, cooperative association, or any homeowners' association as defined in s. 723.075, with approval of its board of administration or directors, may file with the value adjustment board a single joint petition on behalf of any association members who own parcels of property which the property appraiser determines are substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition. The condominium association, cooperative association, or homeowners' association as defined in s. 723.075 shall provide the unit owners with notice of its intent to petition the value adjustment board and shall provide at least 20 days for a unit owner to

elect, in writing, that his or her unit not be included in the petition."

The statute also provides, however, that a petition as to valuation issues must be submitted on or before the 25th day following the mailing of the TRIM notice by the property appraiser. Associations should be prepared to send notice of intent to petition the value adjustment board as soon as TRIM notices are delivered, as the Association must give each unit owner 20 days to elect whether his or her unit should not be included in the petition. This essentially leaves the Association with only 5 additional days to file the petition on behalf of the owners.

Of course, an appraisal will be needed to challenge the property appraiser's assessment. However, this can also be cost effective, as with identical units, multiple appraisals should not be necessary. Most residents sharing similarly situated units, as in a condominium, can share in the cost of the appraisal.

If you or any of your residents should have any questions surrounding the filing of a petition objecting to the property tax assessments received, please feel free to contact our office and we'd be glad to help assist in the process.

Property Appraiser No Longer "Entitled" To Presumption of Correctness

Until recently, the property appraiser's determination of value for ad valorem tax assessment purposes was clothed with a "presumption of correctness" unless a taxpayer could prove, by a preponderance of the evidence, that the property appraiser failed to properly consider those factors required in deriving just valuation or that the assessments were arbitrarily based on appraisal practices different than those professionally accepted. Once the taxpayer proved this, the taxpayer's burden of proving the assessment was excessive was lowered from the more difficult "clear and convincing standard" down to the "preponderance of the evidence" standard. Historically, proving the property appraiser failed to consider the enumerated factors or that the assessment was arbitrarily based on incorrect appraisal practices was a very difficult task and there were seldom successful challenges.

In the last year however, the Florida Statute pertaining to challenging the property appraiser's assessment has been amended to significantly favor property owners. Now, the burden of proof is still on the challenging party, however, the taxpayer need not challenge the presumption of correctness but only prove by a preponderance of the evidence that the assessed value (1) does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; (2) does not represent the classified use value or fractional value of the property if the property is required to be assessed based on its character or use; or (3) is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county.

In presenting its case, the property appraiser, itself, has the burden of proving it is entitled to the presumption rather than automatically receiving it, as in the past. If the property appraiser shows by a preponderance of the evidence that the assessment was arrived at by properly considering those factors required in deriving just valuation, applying other applicable statutory requirements, and following professionally accepted appraisal practices, it is entitled to the presumption. But even if the property appraiser meets this burden and establishes the presumption, the challenging taxpayer is still entitled to a determination that the methodology used to reach the appraisal was appropriate in accordance with Florida Statutes and accepted appraisal practice.

If the taxpayer successfully proves any of the enumerated elements above, the presumption is overcome and the value adjustment board must determine the assessment if there is sufficient evidence in record. If not, the assessment is sent back to property appraiser's office with directions for reaching an appropriate assessment.

With regard to exemptions or classifications, the legislature has made it clear that there is no presumption of correctness and the taxpayer must simply show by a preponderance of the evidence that the assessment is incorrect.

The implications of these amendments are huge giving an advantage for homeowners who were once saddled with a very strenuous task in challenging the property appraiser's assessment. The taxpayer's standard for challenging these assessments has been lowered from proving that the assessment is not supported by "any reasonable hypothesis of a legal assessment," to a "clear and convincing" standard, to a "preponderance" standard. In addition, in order for the property appraiser to obtain this "presumption of correctness," which essentially protected it from any challenge, the burden of proving entitlement to it lies on the property appraiser's office.

In the event the association feels that of the residents have been incorrectly assessed as to value, please feel free to call our office to discuss a possible challenge. With the burden on the challenging taxpayers being significantly lowered, I would expect many parties will be moving forward claiming their property tax assessments have been presented as being too high. Coupled with the fact that qualifying associations may challenge on behalf of a number of similarly situated unit owners makes the challenge that much more feasible, efficient, cost effective, and hassle free. Please feel free to contact me if you should have any questions.

This newsletter is provided as a courtesy and is intended for the general information of the matters discussed herein above and should not be relied upon as legal advice. Christopher J. Shields (Christophershields@paveselaw.com) is a Florida Bar Certified Real Estate Lawyer and Partner in the Pavese Law Firm. Christina Harris Schwinn (christinaschwinn@paveselaw.com) is a Partner in the Pavese Law Firm. Stacy L. Bennings (stacybennings@paveselaw.com) and Matthew D. Koblegard (matthewkoblegard@paveselaw.com) are Associates with the Pavese Law Firm. Each attorney practices in the area of Real Estate Development and Community Association Law. Ms. Schwinn also specializes in Employment Law. Should you wish to contact any one of them, please feel free to contact them via the e-mail addresses listed above.