IN THE SUPREME COURT OF FLORIDA

CASE NO. 60,759

WILLIAM MARKHAM, as
BROWARD COUNTY PROPERTY APPRAISER

Petitioner,

-vs-

E. C. FOGG, III, ALAN S. FOGG,
and ELIZABETH FOGG LANE,

Respondents.

BRIEF ON JURISDICTION IN SUPPORT OF THE
SUPREME COURT EXERCISING DISCRETIONARY
JURISDICTION PURSUANT TO RULE 9.030(a)(2)(A)(iii & iv)
FLA.RAPP.P., TO REVIEW A DECISION OF THE
DISTRICT COURT OF APPEAL, FOURTH DISTRICT

BRIEF OF PETTIONER

GAYLORD A. WOOD, JR.
Attorney for Petitioner
304 S.W. 12th. Street
Fort Lauderdale, FL 33315

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STATEMENT OF THE FACTS AND CASE

This is a petition for discretionary review brought by WILLIAM MARKHAM, as Broward County Property Appraiser, who was a Defendant in the Circuit Court and Appellee in the District Court of Appeal, in a civil action brought by Respondents FOGG seeking to obtain the agricultural classification for the years 1974 and 1975 for 270 acres of land located in Broward County. The Circuit Court, per Hon. Lamar Warren, after trial found in favor of the taxing authorities; the District Court of Appeal reversed.

Since the purpose of this Brief is simply to show that jurisdiction exists in this Court, Petitioner will not go beyond the Final Judgment of the Circuit Court and the Opinion of the District Court of Appeal, and invites the Court's attention to the facts as stated therein.

THE DECISION OF THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT, OVERTURNING THE CIRCUIT COURT'S DENIAL OF THE AGRICULTURAL CLASSIFICATION TO RESPONDENTS, CONFLICTS WITH DECISIONS OF THE DISTRICT COURT OF APPEAL, FIRST AND THIRD DISTRICTS, AND OF THIS COURT.

A. The Fourth District Court of Appeal's decision conflicts with *Lauderdale v. Blake*, 351 So.2d 742 (Fla.3d DCA 1977). In that case, property was being physically used for agriculture as of January 1, 1974. However, during 1973, the owners sought and obtained a rezoning to a non-agricultural use, R-3-5 (multiple family district). Despite a physical use of the property for agriculture, the District Court of Appeal upheld the language in Sec. 193.461(4)(a)(3), F.S., and upheld the denial of the agricultural classification.

The Fourth District Court of Appeal in the instant case found that the property had been rezoned to a non-agricultural use at the request of the owner. It then concluded that if land were zoned "Planned Unit Development" but that agricultural activities were suffered to exist by the governing body granting the zoning, the clear language of the statute would not be given effect.

The effect of the instant decision is to add words not placed there by the Legislature. This action brings the instant decision into conflict with *Chaffee v. Miami Transfer Company, Inc.*, 288 So.2d 209 (Fla. 1974), wherein this Court held that a Court in construing a statute cannot invoke a limitation or add words to the statute not placed there by the Legislature.

B. The District Court's opinion conflicts with cases holding that a "sale" of land occurs when a binding contract is entered into.

The District Court of Appeal held that the only time the "three times rule" comes into play is when a deed has changed hands from vendor to purchaser, holding "...although various contracts were signed on the property, no closing ever occurred and legal title never actually passed from the present owners to the various prospective purchasers who intended to develop the property." This holding conflicts with *Jasper v. Orange Lake Homes, Inc.*, 151 So.2d 331 (Fla. 2d.DCA 1963) and *First Mortgage Corp. v. deGive*, 177 So.2d 741 (Fla. 2d. DCA 1965), holding that after a binding contract for sale is entered into, the vendor is no longer the sole and unconditional owner of the property. He is the holder of legal title for the benefit of his vendee; the legal title in fee is retained by the vendor as security for the payment of the purchase price, or, as it is otherwise expressed, he has a lien on the vendee's equitable interest as security for the payment of purchase money. See 33 Fla.Jur., Vendor and Purchaser, Sec. 102.

The Fourth District has now opened the door to creative sales arrangements such as agreements for deed wherein the legal title never departs the seller until the last dollar of purchase price is paid. Under such arrangements, the Fourth District would hold that no "sale" occurred for purposes of invoking Sec. 193.461(4)(c), F.S.

C. The District Court of Appeals' decision conflicts with cases holding that the function of the appellate court is not to reweigh the evidence.

Despite a clear finding by Judge Warren that the primary use of the property was not bona-fide commercial agriculture, the District

Court of Appeal proceeded to set aside that finding of fact, which was based on conflicting evidence. This action conflicts with a myriad of cases, such as *Shaw v. Shaw*, 334 So.2d 13 (Fla. 1976), *Delgado v. Strong*, 360 So.2d 73 (Fla. 1978), and cases collected under Key Number 1008.1(3), Appeal & Error, Fla.Digest. The holding likewise conflicts with this Court's holding in *Greenwood v. Oates*, 251 So.2d (Fla. 1971) at 667 that the question of entitlement to the agricultural classification based on a "bona fide forestry operation" is to be ascertained objectively based on the expressed intention of the operator and the actual use of the land in question, constituting questions of fact and conclusions to be drawn by the Chancellor, and when the District Court of Appeal substitutes its judgment for that of a Chancellor whose judgment is supported by substantial, competent evidence, that decision will be quashed.

D. The District Court of Appeals' decision conflicts with holdings of this Court and the First District Court of Appeal to the effect that the primary use of property can be a non-physical use, such as phosphate reserve or as part of an installment land-sales scheme.

In *Walden v. The Bordon Company*, 235 So.2d 300 (Fla. 1970) it was held that a Property Appraiser was eminently correct in denying agricultural classification to a landowner whose primary use of the property was for a phosphate reserve with an incidental use for agriculture (cattle grazing) and in *Firstamerica Development Corp. v. County of Volusia*, 298 So.2d 191 (Fla. 1st. DCA 1974), wherein an installment land sales scheme was held to be the "primary" use of the property. The statute under which these two cases were decided required only physical use of the land for agriculture as a basis for the agricultural classification--they arose before the 1972

Legislature modified the statute substantially. The opinion of the trial Court found as a matter of fact that the agricultural operation was simply incidental to the primary use of the land for non-agricultural purposes; the District Court of Appeals' decision creates a conflict with the *Walden* and *Firstamerica* cases.

E. The instant decision affects a class of Constitutional officers, Property Appraisers, whose decisions as to granting and denying the agricultural classification will be greatly affected were this Court not to review the decision of the District Court of Appeal, Fourth District.

CONCLUSION

The decision of the District Court of Appeal, Fourth District conflicts with holdings of this Court and other District Courts of Appeal and affects a class of Constitutional officers; this Court accordingly has jurisdiction and should accept this important case for review.

Respectfully submitted,

GAYLORD A. WOOD, JR.

I HEREBY CERTIFY that a copy of the foregoing Brief on Jurisdiction of Petitioner, WILLIAM MARKHAM, as Broward County Property Appraiser, and Appendix thereto, has been served by mail this 18th day of June, A.D. 1981, on GREENBERG, TRAURIG, ASKEW, HOFFMAN, LIPOFF, QUENTEL & WOLFF, P.A., Attorneys for Respondents FOGG, 1401 Brickell Avenue, PH-1, Miami, Florida 33131; HARRY A. STEWART, General Counsel of Broward County, 201 S.E. 6th. Street, Fort Lauderdale, Florida 33301, Attorneys for Respondent BROWARD COUNTY, and HON. JIM SMITH, Attorney General, Attorney for Respondent STATE OF FLORIDA, DEPARTMENT OF REVENUE, Room LL-01, The Capitol, Tallahassee, Florida 32304.

GAYLORD A. WOOD, JR.
Attorney for Petitioner, WILLIAM MARKHAM, as Broward County Property Appraiser, 304 S.W. 12th. Street, Fort Lauderdale, Florida 33315
Telephone: (305) 463-4040