IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CASE NO. 69,794

OYSTER POINTE RESORT CONDOMINIUM ASSOCIATION, INC., etc., et al.,
Petitioners,
v.
DAVID C. NOLTE, etc., et al.,
Respondents.

69,794

PETITIONERS'

INITIAL BRIEF ON THE MERITS

APPEAL FROM THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT
CASE NO. 85-1290

Respectfully submitted by:

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PREFACE

Petitioners were Plaintiffs in the trial court and Appellants below and this Brief will refer to the parties as they appeared in the trial court, Respondents being Defendants.

References in this Brief will follow the index prepared by the Clerk of the trial court (Circuit Court of the Nineteenth Judicial District in and for Indian River County, Florida), as follows:

R - indicates Record;

T - indicates Transcript;

Plaintiffs' (or Defendants') Exhibit _____ - indicates exhibits marked for identification or in evidence (the numbering being the same) in the trial court.

Unless otherwise indicated, emphasis on quoted material is supplied by Petitioners.

TABLE OF AUTHORITIES

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STATEMENT OF THE CASE AND OF THE FACTS

Plaintiffs--developers, owners individually and as a class, and condominium associations--filed suit against the Property Appraiser for Indian River County, Florida (together with the Tax Collector for the County and the Executive Director of the Department of Revenue of the State of Florida), challenging the ad valorem assessments for taxable year 1983 of time-share interests in real property submitted to the condominium form of ownership.

The property involved is known as Oyster Pointe Resort, a condominium; the property was developed by Plaintiff, Oyster Pointe Associates, by construction of multiple family dwelling structures and related amenities; the property is managed by Plaintiff, Oyster Pointe Resort Condominium Association, Inc.; and is used and occupied by the individual Plaintiff, Donald J. Pinson, Jr., and the members of his class, purchasers of time-share interests (T 14-16; Defendants' [Joint] Exhibits in evidence 1 and 5). Oyster Pointe was committed to the condominium form of ownership in 1982 (T 100). Condominium documents for the project provide for the creation of time-share interests in the condominium units. The time-share interest is a term of years followed by a tenancy in common of the real property among all owners of time-share interests (Defendants' [Joint] Exhibits 1 and 5). So that 2,652 (T 102) tenants in common will own the land and improvements in the year 2023 (T 119, 120).

Oyster Pointe, located in the town of Sebastian, Florida, consists of fifty-two multiple family dwelling units, all identical in a townhouse layout, each having two bedrooms and one bathroom (Plaintiffs' Exhibit 20, pp. 12-17). On January 1, 1983, six units were whole ownership condominium units, while the process of fractionalizing the forty-six remaining units into time-share partial interests had begun (T 284). Construction of the

improvements which comprise the Oyster Pointe project was completed within thirty days prior to the assessment date here pertinent (T 83).

The Complaint alleged that the Defendant Property Appraiser had taken a developer's list of sales prices for weekly periods in the time-share sales program of a condominium regime, averaged the same for each condominium unit to which the time-share interests attached, multiplied the average obtained by fifty-one (the maximum number of sales of interests in each condominium unit) to arrive at the value of the unit and then had applied a uniform discount of 26% to arrive at a taxable value. (R 450-456; R 571-577).

Plaintiffs asserted that the valuation method followed by Defendant (1) represented assessment of partial ownership interests in property; (2) involved a misconstruction and application of §192.037, Fla. Stat. (1982); (3) included items other than real estate; and, because of excessive valuation (4) resulted in a discriminatory tax burden to be borne by Plaintiffs.

Amendment to the Complaint was allowed (R 466-473; 587-594) asserting that, if the assessment procedure which Defendant Property Appraiser's interpretation of §192.037, Fla. Stat. (1982) is that intended by the Legislature, the statute is unconstitutional because:

(1) it denies the persons affected (owners of individual time-share interests) notice and an opportunity to be heard on the issue of the ad valorem tax burden they must bear;

(2) it singles out a particular interest (time-share) in real property for such treatment, denying such interest protection against assessment and foreclosure granted all other interests in real property;

(3) it is an unconstitutional delegation to a private party (the "managing entity" of a time-share development) of the duties of constitutional officers, the Property Appraiser and Tax Collector; and

(4) it permits a lien to be imposed on fractional interests in real property, and the consequent foreclosure and sale of such interests, even though the proportionate amount of tax due as to such interest may have been timely paid in full by the owner of the interest.

The Defendants, in effect, generally denied the allegations of the Complaint and amendment thereto (R 457-464; 475, 477-480 and R 578-585, 595-596, 598-601) and this case was consolidated with a companion case, now also pending before this Court (Oyster Bay II Owners' Assn. v. Nolte, Case No. 69,795) for non-jury trial.

For the tax year of 1983, Defendant Property Appraiser shifted his appraisal method for Oyster Pointe from a "cost" approach to value to a "market" approach (Plaintiffs' Exhibit 24, pp. 6 & 7). In making this change, the then Chief Deputy Appraiser took an average of a developer's list prices for time-share interests in each condominium unit (Plaintiffs' Exhibit 24, p. 9; T 99), multiplied the average by fifty-one (Plaintiffs' Exhibit 24, p. 10), took off 15% for "cost of sale" (as is done for every piece and type of property on the tax roll [Plaintiffs' Exhibit 24, pp. 12 and 13]) and an additional 11% for personalty included in the list price (T, 366 and 367).

The assessment resulted in a valuation increased by more than tenfold over the prior year and over identical, adjoining, condominium units, the ownership of which had not been fragmented (T 366-367). There had been no change in Plaintiffs' land or improvements from one year to the next, but Plaintiff had engaged in the sale of time-share interests in some condominium units. In fact, some dwelling units on Plaintiffs' properties were assessed by Defendant at value of $18,000 each, while identical improvements, immediately adjacent, "as like as peas in a pod," according to the Chief Deputy

Appraiser, were assessed at a value in excess of $180,000 (T 90, T 366 and 367) for the tax year of 1983. The only distinction between the two physically identical units was that time-share interests existed in the latter units, but not in the former. The Defendant Property Appraiser based his actions on his reading and interpretation of Chapter 197.037(2), Florida Statutes, 1982, effective on January 1, 1983 (T 341).

The Defendant Property Appraiser relied solely on what his staff perceived to be the "market" (Plaintiffs' Exhibit 24, pp. 8, 15, 27 and T 353) and, basically, there were only original sales of time-share interests by a developer to work from in establishing a market (T 345, 346). At the period of time here involved, only some 24 to 26 resales (T 346) had occurred, as compared to thousands of original developer sales (T 345, 363).

The term and concept of "time-share" are recognized and regulated by Florida Statutes (e.g. Chapter 721, Florida Statutes, 1982; §192.001, §192.037, Florida Statutes, 1982). The term itself evolved from computer users' common sharing of personalty, expensive computer "hardware" (T 374). Use of the concept for vacation sales and a sharing of ownership is not limited to real property, but the ownership of personalty may be, and is, similarly fragmented (T 33).

The testimony at trial was uncontroverted that the sale price of time-share interests by a developer comprehended many other things than real property and tangible personal property: The sale has been described as being one of prepaid, perpetual hotel or vacation advance reservations (T 32, 33, 45, 179, 282; Plaintiffs' Exhibit 21, pp. 21 and 22); that an important element of the sale is the ability to exchange vacations from one resort and geographical area to another (Plaintiffs' Exhibits 17 & 18; T 36-38); that lending institutions recognize a developer's sale price as including items of

intangible value, not realizable as security or loan collateral, and so require discount to the realizable property element of sale (Plaintiffs' Exhibit 21, p. 22; T 139). The real property component of the sale price of time-share interests is 28% to 30% (T 191) or, according to Plaintiffs' appraiser, 22% to 25% of the gross sale price (T 246, 279-281); the bulk of the sale price is made up of factors, in a purchaser's view, other than real property (T 234-235; Plaintiffs' Exhibit 21, pp. 21-22).

Conversely, and in terms of the net proceeds of the sale of a time-share interest realized or received by a developer, the usual and reasonable fees and costs of sale, typical and peculiar to the sale of time-share interests and the nature of the item being sold, consume an extraordinary portion of the gross sales price (T 45-49; Plaintiffs' Exhibit 13). The reason for the high proportion of sale price devoted to customary and necessary costs of sale is the need to draw and make a sales presentation to a minimum of 10 prospects before a single sale can be made (T 43, 129) of a discrete ownership interest in a condominium unit. Thus, it was necessary, at Oyster Bay, instead of 370 sales presentations to sell 37 condominium apartments, for the developer to attract to Sebastian, Florida, and make personal sales presentations to 11,000 people in order to effect sales of 1,100 interests (43). The costs of sale (exclusive of costs of personalty and atypical financing included in the sale price), from those knowledgeable and experienced in the business, ranged from 56% (T 128-131) through 60% (Plaintiffs' Exhibit 13; T 68-91, 98) to 77% of the sale price (T 178-188). Plaintiffs' expert witness' appraisal, in its approach under §193.011(8), Fla. Stat. (1982), totaled usual and reasonable costs of sales and marketing, including personalty--but excluding the cost of atypical financing--at 77.5% and at a little more than 74% of the gross sale price in arriving at the net proceeds received by the sellers from

sales of interests at Oyster Pointe and the companion resort property, Oyster Bay (Plaintiffs' Exhibit 20, pp. 37-44; Plaintiffs' Exhibit 21, pp. 41-46).

This testimony was buttressed by the testimony of a Certified Public Accountant who performed an independent audit of time-share sales for the year of 1983 (T 220). The independent accountant testified that, in accordance with Generally Accepted Accounting Principles (GAAP) established by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (T 217), time-share interests returned to or recovered by a seller upon a buyer's default in purchase money financing must be valued and accounted for at the lower of their cost or market value (T 222- 223). Market value was established by the independent audit as being lower than cost (T 223) and market value of such recovered interests ranged from 18.22% (T 226) to 21.08% (T 224 - 225) of the developer's original sales price of a time-share interest. The Plaintiffs' financial records (Plaintiffs' Exhibit 13; T 74-81) bear out the accountant's findings. Sale of time-share interests is not typically for cash, but is usually on terms (T 54-55, 58, 131-132); institutional financing for purchasers is generally unavailable (T 53-54, 57, 132) so that the seller is obliged to finance the purchase (T 54, 59), discounting the paper received from purchasers (T 59) in order to generate cash for construction mortgage releases, all at considerable, and unusual, cost to the seller (T 132-133).

The Defendant Property Appraiser did not differ from or quarrel with Plaintiffs' testimony as to the usual and reasonable costs incurred in the sale of time-share interests (T 376-377).

Construction was completed at the Oyster Pointe development in December of 1982--less than thirty days prior to the applicable assessment date (T 83). Actual acquisition and construction costs for the project,

immediately prior to Defendant Appraiser's assessment, were a fraction of Defendant's assessed values (Plaintiffs' Exhibit 15); these costs were not disputed and the uncontroverted testimony was that the replacement cost approach to value ordinarily establishes the high point in a range of values (T 237).

The testimony of Plaintiffs' expert appraisal witness was that, while the Oyster Pointe project was assessed for the year of 1983 at $9,996,440 (Plaintiffs' Exhibit 20, p. 19), its proper value for ad valorem purposes should have been $2,340,000 (Plaintiffs' Exhibit 20, second page of introductory letter of transmittal).

Following two days of trial, the trial court, by Amended Final Judgment (R 551-556), found, in pertinent part:

(1) All condominium units had been "declared to time-share use" (Paragraph 6);

(2) The assessment process followed by Defendant Property Appraiser was proper (Paragraphs 9 and 10).

The Fourth District Court of Appeal, on the authority of Spanish River Resort Corp. v. Walker, 497 So.2d 1299 (Fla 4th DCA 1986), affirmed the trial court and certified to this Court the following questions:

> 1. Under the facts of this case, was the property appraiser correct in assessing each individual time-share "week" or should that assessment have been restricted to the fair market value of the entire condominium apartment unit without reference to its subdivision into time-share interests?
>
> 2. Are we correct in upholding the constitutionality of Section 192.037?

SUMMARY OF ARGUMENT

For the ad valorem tax year of 1983, Defendant Property Appraiser interpreted §192.037(2), Fla. Stat. (1982) (effective January 1, 1983) to authorize assessment of an interest in property as the unit of value, rather than the property itself. He did this by grossing up sale prices of time-share interests in various condominium units to derive an assessed value many fold greater than the value of land, buildings and improvements to which a myriad of the ownership interests he valued attach.

The decision below affirmed the Defendant's reading of the statute. The Defendant's interpretation, in addition to being forced and unnatural, flies in the face of the plain language and intent of the balance of Chapter 192, Fla. Stat. (1982); bases a valuation and tax on ownership interests in the subject of the tax, rather than on the taxable res itself, through what is not explicit in the statute (and may well not even be implicit) but is, at best, ambiguous.

Because of the results necessitated by Defendants' interpretation of §192.037, Fla. Stat. (1982), application of that statute denies the owners of the property interests which Defendants would define as the res of assessment and tax, notice of assessment afforded all other ad valorem owners and an opportunity to protest and be heard on assessment and taxation before becoming delinquent and subject to penalty. This denial of due process and equality under the tax laws, together with delegation of a constitutional officer's (Tax Collector's) duties and functions to a private entity in collecting and paying ad valorem taxes, renders §192.037, Fla. Stat. (1982) unconstitutional.

Finally, even were the Defendant's statutory interpretation of the unit to be valued correct, the challenged assessments are invalid for the Defendant's failure to consider or take into account the net proceeds of sale derived by

the developer seller after allowance of the customary and reasonable costs of effecting the sale. Although the Defendant Property Appraiser relied solely on list prices of a developer in applying a market approach to value, he failed entirely to allow the extraordinary sales costs mandated to be accounted for by §193.011(8), Fla. Stat. (1982) in the case of developer sales, which he conceded to have been actually and usually incurred.

ARGUMENT

POINT I

UNDER THE FACTS OF THIS CASE, WAS THE PROPERTY APPRAISER CORRECT IN ASSESSING EACH INDIVIDUAL TIME-SHARE "WEEK" OR SHOULD THAT ASSESSMENT HAVE BEEN RESTRICTED TO THE FAIR MARKET VALUE OF THE ENTIRE TIME-SHARE DEVELOPMENT OR OF THE ENTIRE CONDOMINIUM APARTMENT UNIT WITHOUT REFERENCE TO ITS SUBDIVISION INTO TIME-SHARE INTERESTS?

The District Court of Appeal, in the first sentence of its decision in Spanish River Resort Corp. v. Walker, 497 So.2d 1299 (Fla. 4th DCA, 1986) (decided simultaneously with, and deemed dispositive of, the instant case) poses the problem before it as: whether the Appraiser is " ... to assess each individual time-share unit ... or the value of the entire unit as if it were still an ordinary condominium apartment ... ." To phrase the query thus is to beg the real question: What is the proper subject or res of assessment and tax?

The court below decided the question it posed itself on what it perceived to be a fee interest. The question remains, however, whether the item appraised is a fee interest in property or the property itself: which is the proper unit of valuation?

Plaintiffs have never contended that "time-share" could not represent an interest in real property, whether being an estate in fee or otherwise. However, a discrete interest in a physical, spatial piece of real property, is not, of itself, a separate piece of real property. And therein lies Plaintiffs' point. The lower court's strained reading of legislative intent, by use of the word fee to describe an interest in real property in §192.037, Fla. Stat. (1982), is an attempt to value and tax the interest in the real property, rather than the real property itself. The legislature's use of the word "fee" does nothing to resolve the question of what the proper and intended object and unit of

valuation and tax is to be. It cannot be, and is not, argued that the interests in real property here at issue are other than terms for years which, at most, will ripen into tenancies in common at a fixed point in time.

The provisions of Florida's tax law giving rise to these proceedings were enacted in 1982 to become effective for 1983 and are found in Florida Statutes, Chapter 192 [§192.001, Fla. Stat. (1982) and §192.037, Fla. Stat. (1982)].

§192.001(14), Fla. Stat. (1982), defines "fee time-share real property," as "the land and buildings and other improvements to land that are subject to time-share interests which are sold as a fee interest in real property."

§192.037(2), Fla. Stat. (1982), then provides: "Fee time-share real property shall be listed on the assessment rolls as a single entry for each time-share development. The assessed value of each time-share development shall be the value of the combined individual time-share periods or time-share estates contained therein."

The Property Appraiser took the last quoted statute to authorize a change in the method of assessment of existing time-share resorts from a replacement cost approach of valuing land, buildings and improvements for the prior tax year (Plaintiffs' Exhibit 24, p. 6) to a valuation, for 1983, of each potential time-share interest in the land, buildings and improvements (regardless of the value of the latter), then multiplying each such interest by the maximum possible number of the same to arrive at the "single entry" on the assessment rolls. (T 340, 341; Plaintiffs' Exhibit 24, pp. 10 and 12). The result of this approach was a ten fold difference between assessed values of identical properties, depending on the structure of their ownership (T 90, 366).

The statutes involved are, concededly, not models of clarity. This was

acknowledged by the Fourth District Court of Appeal in Spanish River Resort Corp. v. Walker, 497 So.2d 1299 (Fla. 4th DCA 1986). However, basic principles of statutory construction to determine legislative intent and application of tax law demonstrate the error of the Property Appraiser and of the trial court in valuing the properties here involved.

Recognizing that "the power to tax ... is the power to destroy", C. D. Utility Corporation v. Maxwell, 189 So.2d 643 (Fla. 4th DCA 1966), Article IX, Section 3, of Florida's Constitution prohibits the levy of any tax except pursuant to law. Therefore, tax assessment laws are to be strictly construed against the taxing authorities and in favor of the taxpayer, ... " and any ambiguity or doubt must be resolved in favor of the person upon whom it is sought to impose the tax burden." C. D. Utility Corporation v. Maxwell, Id.; City of Miami v. Schonfeld, 132 So.2d 767 (Fla. 3rd DCA 1961). This hoary principle establishes the premise on which any reading of the tax laws must be based. If the law is "susceptible of two meanings, that meaning most favorable to the taxpayer should be adopted." Walgreen Drug Stores Co. v. Lee, 158 Fla. 260, 28 So.2d 535 @ 536 (1946). "Taxes cannot be imposed except in clear, unequivocal language. Taxation by implication does not exist." Florida S & L Services v. Dept. of Revenue, 443 So.2d 120 @ 122 (Fla. 1st DCA 1983), quoting, with approval, 1967-1968 Op. Att'y Gen. Fla. 068-62 (April 19, 1968).

"It is not within the power of taxing offices or this court to say who shall be taxed or to impose a tax on any person or class unless the Legislature in clear and specific terms authorizes the tax." Overstreet v. Ty-Tan, Inc., 48 So.2d 158 (Fla. 1950). Similarly, Lewis v. Mosley, 204 So.2d 197 (Fla. 1967).

A parallel principle of construction requires a reading of legislative enactments which makes their application constitutional in effect. Bystrom v.

Valencia Center, Inc., 432 So.2d 108 (Fla. 3d DCA 1983).

Approaching the statutes here involved, then, and on which the Defendant Property Appraiser purported to act, common sense and the application of the quoted principles require reversal.

§192.037(2), Fla. Stat. (1982), prescribes the res to be placed on the tax roll as being "fee time-share real property." That res is explicitly defined by §192.001(14), Fla. Stat. (1982) as "the land and buildings and other improvements that are subject to time-share interests ... ." "Real property" is almost identically defined by §192.001(12), Fla. Stat. (1982).

The unit of appraisal to be valued is, therefore, of necessity, the land and improvements to the land and not the ownership interests into which that unit or res may be fractionalized. This reading is reinforced by the fact that §192.037(2), Fla. Stat. (1982) continues to mandate that the taxable res defined by the statute shall be listed as "a single entry." And what is the entry on the roll?--"each time-share development."

"Development" is nowhere defined in the act, but common usage requires that it must intend the whole, the "land, buildings and improvements" that comprise the unit of appraisal by §192.001(14), Fla. Stat. (1982). Webster defines "development" as "a developed tract of land." Logic dictates that "development" cannot be intended to mean an individual condominium unit or apartment into which a building may be spatially subdivided and in which fifty-one potential time-share interests are created.

The first sentence of §192.037(2). Fla. Stat. (1982) prescribes the res, the unit of appraisal. The second sentence of §192.037(2), Fla. Stat. (1982), once the unit of appraisal has been defined and valued pursuant to the first sentence, prescribes that that valuation "shall be the value [singular!] of the combined individual time-share periods or time-share estates contained

therein."

The Property Appraiser would wrench common sense and the usage of the language and grammar by reading the last sentence of the paragraph first in order to make the first sentence of the statute mean that the partial interests in the whole shall be accumulated in order to derive the value of the whole rather than first evaluating the whole and allocating the total value thereof among the ownership interests in it, the res.

The forced reading of §192.037(2), Fla. Stat. (1982) advanced by the Property Appraiser and adopted by the court below flies in the face of the well established principle of ad valorem tax law that the value of the whole (the res, the "real property" subject to valuation and tax) cannot exceed the value of the interests into which it may be divided. Determination of what to appraise, rather than how to appraise, is for the legislature to make, not the appraiser [Overstreet v. Ty-Tan, Inc., 48 So.2d 158 (Fla. 1950); C.D. Utility Corporation v. Maxwell, 189 So.2d 643 (Fla. 4th DCA 1966)], and so does not fall within the Property Appraiser's discretion as a constitutional officer and is not entitled to any presumption of correctness when made by him.

Thus, reassessment was required when, using the replacement cost approach to value common property subject to common and cross easements, in a residential rowhouse development, the Appraiser may not have considered the right, by easement, of 200 homeowners in the common property so that the value he arrived at for the total development, the "entire" property, of both residential units and common property, by separating the parts for separate valuation, may have exceeded the value of the whole. Dept. of Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 (Fla. 1976).

Morganwoods Greentree, Id., involved an attempt to break up a unified

spatial whole of development into parts:

> In valuing the subject residential improvements and the common areas for ad valorem tax purposes, the total assessed value of the entire property should equal its just full value ... .
>
> It is inconclusive from this record whether a proper assessment has been made, that is, whether the assessed value of the individual units and the assessed value of the common areas equal the total just value of the lands and improvements comprising the total project [emphasis supplied]." 341 So.2d @ 758.

The sum of the parts cannot exceed the assessment value of "the land, buildings and other improvements" making up the taxable res or unit defined by §192.001(14), Fla. Stat. (1982). Nor can §192.037, Fla. Stat. (1982), be read to accomplish that result.

> Regardless of the method, the construction and implementing statutes must be interpreted so as to achieve an assessment at just full value; no construction or tax assessment may be allowed that would allow either the property owner an unjustified tax break or the government to collect more taxes that (sic) it is entitled.

Dept. of Revenue v. Morganwoods Greentree, Inc., Id.

In a case where the property owner sought an unjustified tax break by reducing a whole, a res, a single unit of appraisal (a regional shopping center development), into parts (parking lots as opposed to store buildings together with their parking facilities), the separation was rejected and the value of all land and buildings contained in the whole was required to be valued. Homer v. Dadeland Shopping Center, Inc., 229 So.2d 834 (Fla. 1969). Conversely, where the property owner attempts to arrive at a lower assessment by basing the value of the whole (leasehold estate together with remainder in fee; interests of both Lessee and Lessor) on the value of a part only (the Lessee's interest in the leasehold estate) by using the income approach to value, he will not be permitted to do so. The whole, all interests in land and buildings, is the res, the unit of appraisal. Bystrom v. Valencia Center, Inc., 432 So.2d 108 (Fla. 3d DCA 1983); Century Village v. Walker, 449 So.2d 378 (Fla. 4th DCA 1984). These cases involve an

attempt by the taxpayer to divide a temporal whole (leasehold and remainder) into parts in order to assert a lower value; the case at bar represents an effort by the Property Appraiser to achieve an assessment in excess of constitutional just value by valuing partial interests and then multiplying the parts to arrive at something in excess of the value of the unified whole.

Nor may §192.037, Fla. Stat. (1982) be read to permit the valuation of separate ownership interests in the same property to achieve a value in excess of the value of the thing owned, the res, land and buildings.

The condominium documents for all of the cases before this Court [Spanish River Resort Corporation v. Walker, 497 So.2d 1299 (Fla. 4th DCA 1986; Driftwood Management Co. v. Nolte, 497 So.2d 740 (Fla. 4th DCA 1986); and Oyster Pointe Resort Condominium Association, Inc. v. Nolte, 497 So.2d 1306 (Fla. 4th DCA 1986)], although prepared at different times by different people in different formats, overlay the time-share division of ownership interests in condominium units in the same way. There is created in each condominium unit into which a building is divided, a potential of fifty-one interests in the same physical space for a forty year term of years followed by a tenancy in common among all interests (Defendants' [Joint] Exhibit 1, pp. 115 and 117; Defendants' [Joint] Exhibit 5, pp. 4 and 5). There is a prohibition against partitioning the term of years from the remainder interest (Defendants' [Joint] Exhibit 5, pp. 4, 5 and 41).

The obverse of the coin of the preceding point--that the sum of the parts cannot legally exceed the value of the whole--is that separate ownership interests in the whole, the res or unit that is the object to be assessed and taxed, cannot be valued separately from the res to which they attach in order to derive the value of the taxable res. Put simply, if property 1 is owned by A, and its neighbor, property 2, identical in every respect to property 1,

is owned by A & B as tenants in common, the latter, by virtue of its multiple ownership, is not worth twice as much as the former. It is arguable that the value of a property whose ownership is fragmented, as in the case of a time-share tenancy in common, is worth less by reason of the fractionalization of interests, not more. If partition is prohibited, the need for accord in the use and disposition of the property owned among a myriad of owners diminishes the property's utility.

Ad valorem assessment, and, therefore, taxation, based on ownership instead of the value of the thing owned, is unconstitutional. Interlachen Lakes Estates, Inc. v. Snyder, 304 So.2d 433 (Fla. 1973).

All ownership interests in the object of ad valorem assessment and tax are comprehended in the value of the object. One of the earliest in a long line of cases supporting the proposition that it is the property, and not the ownership of the property, that is the subject of ad valorem assessment and tax, approaches the question from the other end of the taxing process. Wolfson v. Heins, 149 Fla. 499, 6 So.2d 858 (1942). There, two lots in a platted subdivision were divided by a parcel of land designated on the plat as "private street." The parcel dividing the two lots was separately assessed for ad valorem taxes and taxes were unpaid. A tax deed was issued to a third party and, by mesne conveyances, title to the parcel marked "private street" was acquired by the owner of one of the lots. The court found that the owner of the other lot had an easement in the street parcel but that that easement, as an interest in the property, was extinguished, together with all other interests, when a tax deed issued based upon an independent and proper assessment of the parcel between the two platted lots.

"Where, as in this state, the levy and assessment is on the realty itself, regardless of the existence of estates in it, an easement is destroyed by the

tax sale of the servient estate." Wolfson, Id. @ 860 and 861. To similar effect is Lee v. Carpenter, 132 So.2d 433 (Fla. 2d DCA 1961).

So, the owner of a leasehold (a term for years) cannot claim that it is his interest in the real property that is the proper unit of assessment--it is the property, res, which is assessed--comprehending all outstanding interests there may be in it, leasehold and remainder. McNayr v. Claughton, 198 So.2d 366 (Fla. 3d DCA 1967).

The general rule is " ... that in the levy of property tax the assessed value of the land must represent all the interests in the land ... . The general property tax ignores fragmenting of ownership and seeks payment from only one 'owner'." Dept. of Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 @ 758 (Fla. 1976). The process of creating a time-share development is precisely that of fragmenting ownership of a single physical, spatial res (T 32). This is contemplated by the enabling documents creating the regime (Defendants' [Joint] Exhibit 1, §3.19 - 3.21; 5.01-5.02; Defendants' [Joint] Exhibit 5, pp. 4 - 7 and 37.). Petitioners would submit that the second sentence of §192.037(2), Fla. Stat. (1982) is simply a restatement of the general rule that partial interests in the tax res are not valued separately from the res itself.

All this is not to say that the legislature cannot identify partial interests in real property for separate assessment and levy. Lee v. Carpenter, 132 So.2d 433 (Fla. 2d DCA 1961); Dickinson v. Davis, 224 So.2d 262 (Fla. 1969). Both of the cases cited involve mineral and subsurface rights; in each, the court found that the object of the assessment and tax, real property, was susceptible, in space, to horizontal, as well as vertical, division. The legislative intent, in the case of mineral and subsurface rights, to separate interests for assessment and tax is abundantly clear. See

§193.481(1), Fla. Stat. (1971). It is interesting to note in this instance of unambiguous separation of interests in real property, that there remains the basic prohibition against valuing the parts in such manner that their sum exceeds the value of the whole, the original res:

> §193.481(3): "Such subsurface rights shall be assessed on the basis of just valuation, as required by §4, Art. VII of the State Constitution, which valuation, when combined with the value of the remaining surface and undisposed of subsurface interests, shall not exceed the full just value of the fee title of the lands involved, including such subsurface rights."

In the case of subdivision of physical space by submission to condominium, the legislature has clearly and expressly provided that the subdivided spatial parts, and not the whole, are to be the tax res and the unit of appraisal, §718.120, Fla. Stat. (1982). In fact, in the last cited statute, care was taken to avoid the unconstitutional result the Defendant Property Appraiser seeks against these Petitioners, by providing that the lien for taxes attaches to and follows each discrete physical part or spatial subdivision so that one unit owner's default in the payment of ad valorem tax does not jeopardize or affect his neighbor's rights and property without notice or an opportunity to be heard.

It should be noted that, where a condominium is not subjected to time-share interests, assessment is prohibited against "the condominium property as a whole." §718.120(1) Fla. Stat. (1982). While in the case of a condominium which is time-shared, reference is made back to §192.037, Fla. Stat. (1982)--the implication clear that, in the latter case, it is the whole--not the parts--that is to be addressed for ad valorem purposes.

Comparing the terms of Chapters 718 and 193 to the provision the Defendant Property Appraiser seeks to rely on, §192.037(2), Fla. Stat. (1982), nowhere in all of Chapter 192 can be found the explicit statement that a time-share interest is to be treated and considered as a separate parcel of

real property for ad valorem tax purposes, as is the case in the legislative treatment of mineral rights and condominium units. Instead, §192.037(2), Fla. Stat. (1982) mandates that the entire time-share development is the unit to be appraised. And logically so, since, once fragmentation of ownership of discrete spatial units has begun, the value of each physical unit is impaired and diminished except in relation to the whole, the entire resort project or development in which each fractional interest may spend some time--a vacation.

Finally, a reading of §192.037(3), Fla. Stat. (1982) makes clear that it is the "land, building and improvements" of the "entire time-share development" and not the individual time-share interest that is to be valued. Subsection (3) of the statute requires the Property Appraiser each year to notify "the managing entity of the proportions to be used in allocating the valuation ... on time-share property among the various time-share periods." If the Property Appraiser is correct in attempting to value individual time-share periods instead of "the time-share property," what need is there to determine proportions of the whole to be allocated to each? This part of the statute becomes meaningless, superfluous.

The trial court erred in permitting the Property Appraiser's misapplication and misreading of §192.037, Fla. Stat. (1982), to stand and judgment should be entered finding just value to be in the amount of $1,545,000 (Plaintiffs' Exhibit 21, p. 2).

POINT II

IF THE LEGISLATURE CAN BE DEEMED TO HAVE AUTHORIZED AD VALOREM ASSESSMENT OF DISCRETE PARTIAL OWNERSHIP INTERESTS IN THE SAME PHYSICAL UNITS OF PROPERTY, RATHER THAN OF THE PROPERTY ITSELF, THEN SUCH AUTHORIZATION EXCEEDS JUST VALUE, DENIES DUE PROCESS OF, AND EQUAL PROTECTION UNDER, THE LAW TO THE OWNERS OF THE PROPERTY AND REPRESENTS ILLEGAL DELEGATION OF A CONSTITUTIONAL OFFICER'S POWERS.

The Fifth District Court of Appeal has found the statute, §192.037, Fla. Stat. (1982), on which Defendant's actions and the decision below were based, to be invalid as unconstitutional. High Point Condominium Resorts, Ltd. v. Day, 494 So.2d 508 (Fla. 5th DCA 1986). The decision of the Fourth District Court of Appeal below, Oyster Pointe Resort Condominium Assoc., v. Nolte, 497 So.2d 1306 (Fla. 4th DCA 1986), based on Spanish River Resort Corp. v. Walker, 497 So.2d 1299 (Fla. 4th DCA 1986), is in acknowledged, and direct, conflict with that of the Fifth District Court of Appeal.

Florida's Constitution mandates that legislation affecting ad valorem taxes must assure assessment of property at just value--no more, no less. Art. VII, §4, Fla. Const. (1980). In these cases, the Appraiser's method of valuing Plaintiffs' properties resulted in assessments ten-fold greater than the value of identical, adjoining land, building and improvements (T 90, 366-367). This was accomplished by multiplying partial ownership interests in Plaintiffs' property to arrive at the value of the property itself. The only distinction between two physically identical properties adjacent to each other, one assessed at more than ten times the value of the other, is in the form of ownership--the one at the lower value is a condominium unit owned by one or two persons (as joint tenants), while the other potentially may be owned by fifty-one or more persons.

Testimony was that the replacement cost approach ordinarily established

the high end of ad valorem value (T 237). This is because the marketplace recognizes the "principle of substitution"--that is, if a seller's price exceeds what it would cost a buyer to go out and duplicate the land, building and improvements being offered for sale, there will be no sale and the price does not establish or relate to the market (T 237). "Just value," as used in the Constitution, is a term of art synonymous with market value. Bystrom v. Valencia Center, Inc., 432 So.2d 108 (Fla. 3d DCA 1983). Assessment of separate interests in a single property cannot constitutionally be deemed "just value" if the sum of the partial interests exceeds the value of the whole property or res subject to assessment. Dept. of Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 (Fla. 1976).

Moreover, the provisions of §192.037, Fla. Stat. (1982), for dealing with the entire ad valorem tax assessment and collection procedure, if interpreted as the Defendant Property Appraiser would have it, deny to the owners of the res being assessed (and subject to the lien for payment of the tax) any opportunity to participate in the process. The denial of the process afforded other taxpayers is inescapable and irrefutable. That's what the statute does. This denial was the basis of the opinion of the 5th District Court of Appeal in striking the statute down. High Point Condominium Resorts, Ltd. v. Day, 494 So.2d 508(Fla. 5th DCA 1986).

Because a "time-share development" is carried on the tax roll as a "single entry" (§192.037(2), Fla. Stat. (1982)), the notices required by §194.011, Fla. Stat. (1982) to "each taxpayer whose property is subject to ... ad valorem taxes" and by §200.069, Fla. Stat. (1982) will never be delivered to or received by the intended party, the owner of the time-share interest. From the very inception of the process, the ultimate taxpayer is denied notice and an opportunity to participate and be heard. The provisions

of §192.037(4), Fla. Stat. (1982), preserving rights to contest assessment pursuant to Chapter 194 are meaningless to the owners without notice to them. The entire administrative review machinery of Chapter 194, Fla. Stat. (1982) is denied to the real party in interest, the owner of the interest which may be foreclosed. This denial is of the essential due process which Florida's Constitution secures to Petitioners. Art. I, §9, Fla. Const. (1980). High Point Condominium Resorts, Ltd. v. Day, Id.; Quay Development, Inc. v. Elegante Building Corp., 392 So.2d 901 (Fla. 1981).

Worse, the interest of the owner is subject to foreclosure, even if notice to him were provided and even if his payment of the proportion of the total tax allocated to him (again, without notice to him of that proportion) were timely made, because of the default in payment by others, beyond his control or knowledge! §192.037(7), Fla. Stat. (1982) provides that only payment in full of the total tax levied on the whole, an "entire development" (§192.037(2), Fla. Stat. (1982)), may be accepted by the Collector, regardless of the payment or collection rate among the parts of the whole, the ultimate payors, owners of time-share interests. The statute is silent as to who (if anyone) makes up the payment of any deficiency in collection by the managing entity before the lien for non-payment is foreclosed. Surely this liability cannot be thrust upon an "agent" involuntarily.

No other ad valorem taxpayer is distinguished for this kind of treatment; no one else has an agent (without any legal or beneficial interest in the property) legislatively appointed for him to receive notice of a valuation which may be contested; no one else is denied notice and no one else's interest in property is subjected to a potential foreclosure and loss for the default of others in responding to their deemed agent.

> ... We do not believe the legislature can appoint the managing entity or anyone else to be an agent of the time-share title

holders ... . The creation of an agency relationship requires a consensual agreement between the parties.

High Point Condominium Resorts, Ltd. v. Day, 494 So.2d 508 @ 511 (Fla. 5th DCA 1986).

Extending to the owners of partial ownership interests the protection of Chapter 197 (§192.037(9), Fla. Stat. (1982)) upon application for a tax deed for the "entire time-share development" carried on the tax rolls does nothing to cure the infirmities of the procedures afforded by §192.037, Fla. Stat. (1982) if the Defendant Property Appraiser's approach to the statute is sustained. For the holder of a fractional interest as small as 1/2652 (T 102) in a property conceded to be worth at least $2,000,000 (Plaintiffs' Exhibit 20, second page of letter of transmittal dated February 25, 1985) to be afforded the opportunity to pay a delinquent tax on the entire development in order to protect his fractional interest is totally illusory. Moreover, protection from issuance of a tax deed does not protect from liability for interest on another's obligation at the highest rate permitted by law (§197.116, Fla. Stat. (1982)) on the sale of tax certificates without notice.

Florida's Constitution, in authorizing the assessments to be made by Defendant Property Appraiser, ties those assessments to the value of the property to be taxed--by definition, ad valorem. Art. VII, §4, Fla. Const. (1980). If the tax is not tied to the value of the underlying taxable res, it is an excise tax and cannot constitutionally be permitted as an ad valorem tax. Jerome H. Sheip Co. v. Amos, 100 Fla. 863, 130 S. 699 (1930); North American Co. v. Green, 120 So.2d 603 (Fla. 1959); City of Deland v. Florida Public Service Co., 119 Fla. 804, 161 S. 735 (1935). An assessment based on ownership, rather than the value of the res taxed cannot pass muster as an ad valorem tax. Interlachen Lakes Estates, Inc. v. Snyder, 304 So.2d 433 (Fla. 1973).

It is only Defendant Property Appraiser's reading of §192.037, Fla. Stat. (1982), in attempting to value and tax the ownership interests in property, instead of the property itself--land, buildings and improvements, that forces the denial of due process and want of equal protection of the tax law to the owners of time-share interests. If the Defendants had not separated the assessment res from the lien res, most of the constitutional problems with the statute disappear.

Aside from questions of vagueness (i.e. does "managing entity", as used in §192.037(1), Fla. Stat. (1982) intend the not-for-profit condominium association which administers the condominium under the terms of the enabling documents or the independent, for profit, commercial and professional management entity to whom property management may be contracted?), §192.037(1), Fla. Stat. (1982) purports to appoint an "agent" for the owner of a time-share interest "for the purposes of ad valorem taxation and special assessments ... ." The practical effect of the statute, however, in stating the managing agent's functions, §192.037(3) and (5), Fla. Stat. (1982), is to appoint the managing entity the agent of the Property Appraiser and Tax Collector, rather than of the ultimate taxpayer, to perform the functions of their offices for them.

The managing agent is to allocate ad valorem taxes (and, presumably, to give notice of proposed assessments to) among the (potentially) thousands of owners of time-share interests §192.037(3), Fla. Stat. (1982); and to collect taxes from the owners of time-share interests, distinguishing and labeling between ad valorem taxes and special assessments §192.037(5), Fla. Stat. (1982). At the same time, the "agent" is prohibited from payment of the tax until it has totally completed the Collector's job §192.037(7), Fla. Stat. (1982) presumably thru judicial lien foreclosure, if need be §192.037(8), Fla. Stat.

(1982).

Of course, the cost of performing these functions must be paid and must necessarily be passed on to the ultimate payers of the tax, the owners of the interests in the property. Time-share owners, then, are the only ad valorem tax payers given an opportunity to pay for the services of constitutional officers twice--once to their managing entity under the provisions of §192.037, Fla. Stat. (1982) and a second time as that part of the ad valorem tax levy which comprehends the budgets for the two constitutional offices. Even if this burden were levied only once against the owners of time-share interests, they are the only ad valorem taxpayers denied the opportunity to share and spread the costs of tax collection with all other taxpayers, but are required to pay that cost alone, and directly, to their private, non-governmental, managing entity.

The burden with which the managing entity (and, in turn, the owners of interests in the property to whom the burden is inevitably passed) is saddled is substantial, not only in terms of cost, but also of responsibility. Presumably, the TRIM notice required by law (§200.069, Fla. Stat. (1982)) will be mailed to the "managing entity" pursuant to §192.037, Fla. Stat. (1982). Designated by statute, and as the agent of the real parties in interest, nothing can be done until notice is given and instructions received from thousands of "principals." The time and money involved in the process, of necessity, must be considerable. How is the involuntary agent to deal with conflicting instructions from principals having the same interest? No provision is made for the agent's resignation or shirking of responsibility. Who is responsible for directing whether, and how, the agent is to seek administrative or judicial relief? And, after remedies are exhausted--or allowed to pass by default--what must the collection procedure comprehend, in

time and money, before the agent is able to pay the tax in full as required by §192.037(7), Fla. Stat. (1982)?

The duties of the constitutional office of the Property Appraiser cannot constitutionally be delegated to private interests. Cassady v. Consolidated Naval Stores, 119 So.2d 35 (Fla.1960); District School Board of Lee County v. Askew, 278 So.2d 272 (Fla. 1973). Moreover, the validity of the entire tax process, from assessment through compulsory payment by means of foreclosure, depends on the scrupulous observance of statutory procedure by the "managing entity." Smith v. Green, 159 Fla. 319, 31 So.2d 925 (1947). This unlawful delegation of assessment and collection functions creates a monster impossible to administer or enforce.

If the Defendants' reading and application of §192.037, Fla. Stat. (1982), is a correct interpretation of the Legislature's intent, then that intent violates: (1) Florida's constitutional limitation on ad valorem valuation to just value; (2) the State and Federal Constitutions' due administrative and judicial process requirements; and (3) the need for equal rights and remedies of all similar properties under the tax laws. The statute, in any case, represents an attempt at delegation of authority by Constitutional officers that cannot be permitted.

POINT III

WHEN THE PROPERTY APPRAISER RELIES SOLELY ON THE MARKET APPROACH TO VALUE, HE MUST NET FROM THE SALE PRICE ALL OF THE USUAL AND REASONABLE COSTS OF THE SALE TO THE SELLER, TOGETHER WITH THE COST OF ATYPICAL FINANCING, AND MUST ALSO, CORRESPONDINGLY, SUBTRACT ALL ELEMENTS OF THE PURCHASE PRICE OTHER THAN ITS REAL PROPERTY ELEMENT.

The testimony was uncontroverted that the costs of effecting a sale of a time-share interest are staggering in relation to the gross sale price (T 74-82; Plaintiffs' Exhibit 13; T 128-137; T 171-178; Plaintiffs' Exhibit 20, pp 37-44; T 242-245). The enormity of the sales' cost burden is comprehensible in terms of what must be sold. In order to sell out a project comprising 37 one-bedroom condominium units, more than 11,000 prospective purchasers had to be attracted to Sebastian, Florida, over a period of no more than three years (T 41-43). This is the experience of the entire industry (T 129) engaged in the sale of a product which has been singled out for special regulation by the legislature in the elaborate disclosure prescriptions of Chapter 721, Florida Statutes (1982).

The real estate elements of the purchase of a time-share interest, as perceived from the buyer's perspective, on the other hand, do not make up more than 25% of the purchase price (T 246). In addition to substantial items of personalty, the price comprehends intangible values, such as the right to participate in an extensive exchange network of resorts (Plaintiffs' Exhibit 17; T 36-38), a reservation and front desk system, together with other services and amenities ordinarily found in a hotel (T 45, 179, 193). Clearly, a part of the price must include the discounted present value of an innkeeper's profit for the life expectancy of the physical facilities, since the developer-seller removes resort lodging time from his future market with

every sale he makes.

Notwithstanding these undisputed facts, the Defendant Property Appraiser deducted only the value of personalty from the sale price and subtracted only the costs of sale arbitrarily allowed every type of real property located in the county on the assessment rolls (T 356, 376). In fact, the Appraiser's office conceded the costs of sale of a time-share interest to be of the magnitude testified to by Plaintiffs' experts (T 377).

It is axiomatic under Florida tax law that the Property Appraiser must consider all of the eight factors to a determination of value set forth in §193.011, Fla. Stat. (1982). Cassady v. McKinney, 296 So.2d 94 (Fla 2d DCA 1974); Palm Corporation v. Homer, 261 So.2d 822 (Fla. 1972). Presumably, this means more than glancing down the list of eight or having a random thought in the morning shower. When the appraiser relies solely on the market approach to value, as here (T 353) and as distinguished from the cost and income approaches, §193.011(8), Fla. Stat. (1982) must be applied and not merely "considered." Bystrom v. Equitable Life Assur. Soc., etc., 416 So.2d 1133 (Fla. 3d DCA 1982). This (the market) is the only approach to value that requires application of §193.011(8). Bystrom v. Equitable, Id. Subsection 8 of the statute must be applied when using the market approach--or never! In the circumstances, this factor cannot be discarded as not being "probative of present value." Spanish River Resort Corp. v. Walker, 497 So.2d 1299 (Fla. 4th DCA 1986). In the absence of sales, the subsection of the statute has no relevance to the cost or income methods of value. Here, the actual costs of sale were uncontroverted and conceded (T 377).

The statutory requirements that the net proceeds of sale as received by the seller, after deduction of all costs of sale, be accounted together with

allowance for atypical and unconventional terms of financing arrangements, are plain. That no allowance for the statutory requirements was here made is equally plain.

> [The Property Appraiser] must proceed with an assessment of the property consistent with the mandated criteria of §193.011, Florida Statutes ... . The discretion vested in the property appraiser is not unbridled. The legislature has progressively more firmly pinned down the definition of 'just value' and the discretion of the property appraiser must be exercised within the legislative parameters.

Lee County Electric Co-Operative, Inc. v. Lowe, 344 So.2d 308 @ 310 (Fla. 2d DCA 1977).

Failure to take a pertinent criterion into consideration in arriving at a valuation is sufficient, not only to overcome the presumption of correctness of that valuation (which presumption Appellant concedes under this heading), but also to require revaluation. Muckenfuss v. Miller, 421 So.2d 170 (Fla. 5th DCA 1982); Palm Corporation v. Homer, 261 So.2d 822 (Fla, 1972); Lanier v. Walt Disney World Co., 316 So.2d 59 (Fla. 4th DCA 1975); Straughn v. Tuck, 354 So.2d 368 (Fla. 1977).

Certainly, the fact that the legislature deemed time-share interests a unique enough product in the market to be singled out for exhaustive treatment, as to the regulation of sales and marketing methods and requirements, Chapter 721, Fla. Stat. (1982), is suggestive that the 8th criterion provided by §193.011, Fla. Stat. (1982) has special application to the costs peculiar to the product sold and is worthy of at least studied consideration.

The basic yardstick of value, the value of "land, buildings and improvements" [§192.001(14), Fla. Stat. (1982)], is in no way enhanced by a developer's mass marketing costs. Each spatial, physical, unit of a structure is designed to be sold fifty-one times. If a conventional condominium apartment, whole ownership, not time-share, were required to be sold fifty-one times, rather than once by a single owner, the standard real estate

commission alone would yield a cost of sale to the seller in excess of 300% of the price of the unit (sale price x 6% x 51).

Having relied exclusively on a market approach to value but having then failed to take into account the factors mandated by §193.011(8), Fla. Stat. (1982) the presumption of correctness falls and the Defendant Property Appraiser's valuation of Plaintiffs' properties must also fall. There should be substituted the uncontroverted valuation of Plaintiff's expert witness, which winnows out from the developers' sales prices non-real estate elements of the product sold and the costs of the sale which do nothing to increase the underlying value of the real property and its improvements.

POINT IV

THE COURT ERRED AS TO THIS PLAINTIFF BY FINDING AND DETERMINING THAT FIFTY-TWO MULTIPLE FAMILY DWELLING UNITS WOULD BE ASSESSED FOR 1983 AD VALOREM TAX PURPOSES PURSUANT TO THE PROVISIONS OF §192.037, FLA. STAT. (1982), WHEN, ON JANUARY 1, 1983, SIX UNITS WERE COMPLETED AND WERE WHOLE OWNERSHIP CONDOMINIUM UNITS IN WHICH NO TIME-SHARE INTERESTS HAD BEEN CREATED.

The evidence is uncontroverted (T. 284) that only forty-six of a total of fifty-two units had time-share interests in a fifty-two unit project. Six units in which no time-share interests were existant on January 1, 1983 could not be assessed by Defendant Property Appraiser pursuant to the provisions of §192.037, Fla. Stat. (1982).

CONCLUSION

Because the Defendant Property Appraiser has forced an interpretation of §192.037, Fla. Stat. (1982), to achieve an assessment of ownership interests or of a form of ownership rather than of the value of the thing owned, real property--land, buildings and improvements--the intent of the Legislature and the constitutional mandate of ad valorem assessment at "just value" have been frustrated.

Even if the Defendant Property Appraiser's interpretation of statutes and method of appraisal were correct, such interpretation and method render §192.037, Fla. Stat. (1982) unconstitutional as applied to the owners of time-share interests or estates.

Moreover, having based an assessment solely on a market approach to value, the Defendant Property Appraiser has wholly failed to consider the sales and marketing costs of achieving a "market" as required by §193.011(8), Fla. Stat. (1982), but instead has included in the assessed value of real property many elements of the sale which make up a "market" other than real property.

In any case, and even should the questions certified be answered favorably to Defendants, the cause should be remanded for revaluation on the basis that time-share interests are extant in less than all of the spatial condominium units in the "development."

Therefore, this Court should reverse the judgment entered below and remand the cause for entry of judgment in favor of Petitioners at a just value as reflected by the uncontroverted appraisal of just value represented by

Plaintiffs' Exhibits 20 and 21 in evidence.

Respectfully submitted,

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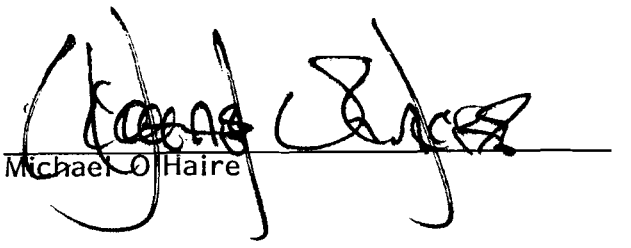
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief of Petitioners has been served, by mail, this 1st day of May, 1987, to Robert Jackson, Esq., 2165 15th Avenue, Vero Beach, Florida 32960, Attorney For Respondent, David C. Nolte; Miles B. Mank, II, P.A., P. O. Box 908, Vero Beach, Florida 32961-0908, Attorney for Respondent, Gene E. Morris; and J. Terrell Williams, Esq., Assistant Attorney General, The Capitol, Room LL04, Tallahassee, Florida 32301, Attorney for Respondent, Randy Miller, Department of Revenue.



Michael O'Haire