

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

69,794 1788

FILED

DEC 29 1986

CLERK OF DISTRICT COURT
By _____
Deputy Clerk

OYSTER POINTE RESORT CONDOMINIUM
ASSOCIATION, INC., etc., et al.,

Plaintiffs, Petitioners,

v.

CASE NO. 85-1290

DAVID C. NOLTE, as Property Appraiser
for Indian River County, etc., et al.,

Defendants, Respondents.

_____ /

P E T I T I O N E R S'
B R I E F O N J U R I S D I C T I O N

APPEAL FROM THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT

Respectfully submitted by:

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TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	(1)
Argument	
POINT I	1
THE COURT HAS DISCRETIONARY JURISDICTION WHICH HAS BEEN INVOKED ON CERTIFIED QUESTIONS OF GREAT PUBLIC IMPORTANCE.	
POINT II	2
THE DECISION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF ANOTHER DISTRICT COURT OF APPEAL.	
POINT III	3
THE DISTRICT COURT OF APPEAL EXPRESSLY UPHELD THE VALIDITY OF §192.037, FLORIDA STATUTES (1985).	
POINT IV	3
THIS COURT HAS DISCRETIONARY JURISDICTION SINCE THE DECISION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AFFECTS THE PERFORMANCE AND DUTIES OF ALL PROPERTY APPRAISERS, A CLASS OF CONSTITUTIONAL OFFICERS.	
Certificate of Service	4
Appendix	
<u>Oyster Pointe Resort Condominium Association, Inc., etc., et al. v. David C. Nolte, etc., et al.; Case No. 85-1290, and Oyster Bay II Owners' Association, Inc., et al. v. David C. Nolte, etc., et al.; Case No. 85-1291, 4th DCA, Fla.; November 19, 1986</u>	(i)
<u>Spanish River Resort Corporation, et al. v. Rebecca Walker, etc., et al., Case No. 85-1645, 4th DCA, Fla.; November 19, 1986</u>	(iv)

TABLE OF AUTHORITIES

	<u>Page No.</u>
<u>Cases</u>	
<u>Day v. High Point Condominium Resorts, Ltd.</u> (pending before Florida Supreme Court, Case No. 69,519)	2
<u>High Point Condominium Resorts, Ltd. v. Day,</u> 11 F.L.W. 1812 (5th DCA, Fla., Aug. 14, 1986)	1, 2, 3
<u>Hausman v. VTSL, Inc.,</u> 482 So.2d 428 (5th DCA, Fla. 1985)	1
<u>Jollie v. State,</u> 405 So.2d 418 (Fla. 1981)	2
<u>Spanish River Resort Corporation v. Walker,</u> Case No. 85-1645, 4th DCA, Fla.)	1, 2
 <u>Statutes</u>	
§192.037(1) and (2), Fla. Stat. (1983)	2
§192.037, Fla. Stat. (1985)	3
 <u>Florida Rules of Appellate Procedure</u>	
Rule 9.030(a)(2)(A)(i)	3
Rule 9.030(a)(2)(A)(iii)	4
Rule 9.030(a)(2)(A)(iv)	2
Rule 9.030(a)(2)(A)(v)	2
Rule 9.120(d)	2

This cause involves ad valorem assessment of time-share interests in real property and improvements on it, resulting, in most cases, in a ten-fold difference between valuation of virtually identical properties. The issues have at least statewide implications and there are now pending in this Court appeals involving the same, or substantially similar, issues from the Fifth District Court of Appeal (Hausman v. VTSI, Inc., 482 So.2d 428 and High Point Condominium Resorts, Ltd. v. Day, 11 F.L.W. 1812 (Fla. 5th DCA, Aug. 14, 1986)), and the Fourth District Court of Appeal (Spanish River Resort Corporation v. Walker, Case No. 85-1645 in the lower court). The two District Courts of Appeal reach different results in virtually identical fact situations.

POINT I

THE COURT HAS DISCRETIONARY JURISDICTION WHICH HAS BEEN INVOKED ON CERTIFIED QUESTIONS OF GREAT PUBLIC IMPORTANCE.

The instant case involves affirmance of a trial court judgment adverse to Petitioners by the Fourth District Court of Appeal "...on the authority of Spanish River Resort Corporation v. Walker, Case No. 85-1645, which is being issued simultaneously." (Emphasis supplied) (Appendix, i).

The cited case Spanish River, supra (copy of which is found in the Appendix, p. iv) certified to this Court, as questions of great public importance, the following:

"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?" (Appendix, xvii)

Since the factual and legal issues are identical in the two cases "simultaneously issued," and the result in one was deemed to control the outcome of the other, a brief on jurisdiction under this heading would seem superfluous (last sentence, Rule 9.120(d), Florida Rules of Appellate Procedure), other than to point out to the Court that discretionary jurisdiction has been invoked and that the cases are identical in fact and questions of law. This Court has jurisdiction, should it elect to accept it. Rule 9.030(a)(2)(A)(v), Florida Rules of Appellate Procedure.

POINT II

THE DECISION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF ANOTHER DISTRICT COURT OF APPEAL.

The opinion simultaneously issued by the Court below (Spanish River, *supra*, Appendix iv) upon which the instant case there turned, expressly found §192.037(1) and (2), Florida Statutes (1983) constitutional, "...secure in the knowledge that any infirmities, both in his [the trial judge's] reasoning and in ours, will be scrutinized by the Supreme Court...." at 10 (Appendix, xiii). This holding conflicts with that of the Fifth District Court of Appeal, High Point Condominium Resorts, Ltd. v. Day, 11 F.L.W. 1812 (Fla 5th DCA, Aug. 14, 1986), which found the same statute to deprive owners of time-share interest in real property of due process and equal protection of the law and, so, unconstitutional and void. The conflict is acknowledged in the opinion of the Fourth District Court of Appeal (Appendix, xvi).

The opposing result reached by the Fifth District Court of Appeal is now before this Court (Day v. High Point Condominium Resorts, Ltd, Case No. 69,519). Jurisdiction lies with this Court. Jollie v. State, 405 So.2d 418 (Fla. 1981); Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure.

POINT III

THE DISTRICT COURT OF APPEAL EXPRESSLY UPHELD THE VALIDITY OF §192.037, FLORIDA STATUTES (1985).

The opinion below, in the instant case and in the companion case, Spanish River, supra, on which the instant case rests, expressly and explicitly held §192.037, Florida Statutes (1985) to be valid; this express ruling is in addition to certification of that ruling to this Court, and to being in express conflict on the same issue with a decision of the Fifth District Court of Appeal, High Point Condominium Resorts, Ltd., supra. Accordingly, discretionary jurisdiction lies with this Court under the terms of Rule 9.030(a)(2)(A)(i), Florida Rules of Appellate Procedure.

POINT IV

THIS COURT HAS DISCRETIONARY JURISDICTION SINCE THE DECISION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AFFECTS THE PERFORMANCE AND DUTIES OF ALL PROPERTY APPRAISERS, A CLASS OF CONSTITUTIONAL OFFICERS.

Without touching on the merits of the decision below more than necessary to make clear the point under this heading, in expressly upholding the validity, and construing the ambiguous language, of §192.037(2), Fla. Stat. (1985), the Court below authorized Property Appraisers to assess the value of interests in property, rather than the property itself, for ad valorem tax purposes. This decision affects the duties of the Property Appraiser in every county of the State where property is located in which time-share interests have been vested. Respondent's methodology of grossing up the "value" of all interests in a piece of real property to arrive at the value of the property itself, independently of its value (whether market, replacement or income-producing) unfragmented into a myriad of interests, has been licensed by the lower court in interpreting a statute. This revolutionary approach to valuation is sanctioned for all Property Appraisers and therefore

confers jurisdiction upon this Court to review the matter. Rule 9.030(a)(2)(A)(iii), Florida Rules of Appellate Procedure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief on Jurisdiction has been served, by Express Mail, this 26th day of December, 1986, to Robert Jackson, Esq., 2165 15th Avenue, Vero Beach, Florida 32960, Attorney For Defendant, Respondent, David C. Nolte; Miles B. Mank, II, P.A., P. O. Box 908, Vero Beach, Florida 32961-0908, Attorney for Defendant, Respondent, Gene E. Morris; and J. Terrell Williams, Esq., Assistant Attorney General, The Capitol, Room LL04, Tallahassee, Florida 32301, Attorney for Defendant, Respondent, Randy Miller, Department of Revenue.


Michael O'Haire