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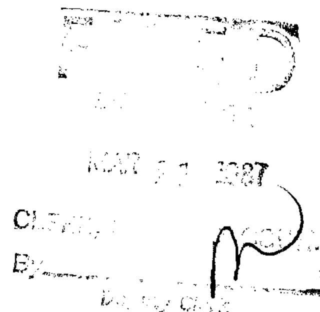
IN THE SUPREME COURT OF THE STATE OF FLORIDA



SPANISH RIVER RESORT
CORPORATION, etc., et al.,

Plaintiffs/Petitioners,

vs.

CASE NO. 69,797

REBECCA WALKER, et al.,

Defendants/Respondents.

/

On review from the Fourth District Court of Appeal,
State of Florida, Case No. 85-1645

ANSWER BRIEF OF DEFENDANT/RESPONDENT, DEPARTMENT OF REVENUE, STATE OF FLORIDA

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PRELIMINARY STATEMENT

In this Brief, the Defendant/Respondent, Randy Miller, Executive Director of the Department of Revenue, State of Florida, will be referred to as the "Department." The Co-Defendant/Respondent, Rebecca Walker, Property Appraiser of Palm Beach County, Florida, will be referred to as the "Property Appraiser." The Plaintiffs/Petitioners, Spanish River Resort Corporation, et al., will be referred to as the "Taxpayers. The trial court below , Fifteenth Judicial Circuit in and for Palm Beach County, Florida, will be referred to as the "trial court." The Fourth District Court of Appeal of Florida will be referred to as the "District Court."

The symbol "T" followed by a page number will refer to the transcript of the trial court testimony included in the Record on Appeal. The symbol "A" followed by a page number will be used to refer to Appendix separately attached to the Department's Answer Brief.

STATEMENT OF THE CASE AND FACTS

The Department will rely primarily on the Statement of the Case and Facts as set forth in the Answer Brief of the Respondent, Property Appraiser. However, the Department would add the following:

1. The Taxpayers' witness, Joseph Dahger, testified that the time-share units or periods at Spanish River Resort were sold by warranty deed conveying fee title to the individual time-share estates or units (T. 65). These warranty deeds were also accompanied by title insurance policies insuring title of the grantees to the individual fee time-share periods (T. 119-120). In addition, Mr. Dahger's testimony revealed that purchase money mortgage financing on sales of the individual time-share periods at Spanish River was frequently provided (T. 136-139).

2. The Property Appraiser appraised the time-share periods sold as fee time-share estates based on a market approach utilizing sales data of comparable time-share periods sold as fee time-share estates (T. 949, 965-969). The uncontroverted testimony by the Property Appraiser's staff also established that the actual valuation figure allocated to any of the individual time-share periods sold as fee time-share estates was always adjusted downward from the listed or actual sale price of any of the individual fee time-share estates (T. 970-975).

3. The Taxpayers' primary appraisal witness, Robert Callaway, arrived at his final opinion of value of the subject property based on a "discounted sell-out" approach. However, Mr. Callaway testified that he also had arrived at a valuation figure of the aggregate fee time-share estates at Spanish River Resort based on comparable sales of individual time-share estates (T. 904). Mr. Callaway's valuation of the aggregate fee time-share estates at Spanish River Resort was approximately $22,000,000 (T. 905), which exceeded the total valuation figure of approximately $19,000,000 determined by the Property Appraiser!

4. The suit filed in the trial court by the "managing entity," Spanish River Resort and Beach Club Association, timely placed into issue in this case the legality of the assessment of each and every fee time-share estate owned by the respective individual owners of fee time-share estates at Spanish River Resort for the year 1983. There was absolutely no contention presented by the Taxpayers in the trial court that the actions of the Property Appraiser or Tax Collector pursuant to s. 192.037, Fla. Stat., resulted in any notices of delinquent taxes being issued or tax certificates being sold or any other tax collection efforts adversely affecting the individual owners offee time-share estates at Spanish River Resort.

SUMMARY OF ARGUMENT

In the 1970's, a new concept of subdividing and marketing real property was introduced in Florida and other vacation states by the creation of "fee time-share estates" in real property. This novel concept of subdividing a condominium unit into as many as fifty separate "fee time-share estates" greatly enhanced the aggregate market value of the condominium units, to the delight of the real estate developers.

However, this new concept of a temporal subdivision of a single condominium unit into many individual "fee time-share estates" created unique problems with respect to state regulation over this newly created industry. In the year 1981, the Florida Legislature created Ch. 721, Fla. Stat. ("Real Estate Time-Share Plans"), in an attempt to provide needed consumer protection with respect to this unique and recent development in real estate sales. One of the basic concepts embodied in Ch. 721 featured the creation of a "managing entity" responsible for managing the time-share project, including the duty of collecting annual assessments for common expenses from the owners of time-share periods.

The potential geometrical increase from approximately 200 up to 10,000 individual taxpayers in a standard 200 unit condominium project committed to fee time-share real property also produced a potential administrative and fiscal crisis on the part of the officials responsible for the assessment and collection of ad valorem taxes in Florida and other affected states. In response

to the potential crisis in the ad valorem assessment and collection process, the Florida Legislature subsequently enacted Ch. 82-226, Laws of Fla. Sections 53-61 of Ch. 82-226 instituted comprehensive changes in the statutory provisions relating to ad valorem taxation of time-share real property.

Chapter 82-226 instituted, among other changes, the creation of s. 192.037, Fla. Stat., utilizing the "managing entity" concept already in existence in Ch. 721. The use of a "managing entity" (or other similar entity) designated by statute to be responsible for collection and payment of ad valorem taxes on fee time-share estates was also adopted by the States of Hawaii, Colorado and Vermont. In addition, Ch. 82-226 introduced "first-time" statutory references in the ad valorem tax provisions of Ch. 192 to "fee interest in a time-share unit or time-share period," and new references in Chapters 721 and 718, Fla. Stat. to "ad valorem taxation of time-share estates." (e.s.)

Notwithstanding the plain language of these terms utilized by the Legislature in Ch. 82-226, the Taxpayers and other time-share developers filed suits in various counties in 1983. These suits challenged the legality of the actions of the respective property appraisers whereby each of the fee time-share estates were separately appraised and then combined into one listing on the tax rolls in the name of the managing entity, as seemingly required by the Act.

Based on the express provisions of the 1982 Act, the Property Appraiser here subsequently appraised each of the individual fee time-share estates at the Spanish River Resort for

the tax year 1983. The Property Appraiser also combined the appraisals into one listing on the tax rolls, relying on the Act. The undisputed testimony at trial established that the valuations placed on the individual fee time-share estates by the Property Appraiser were based on the "market" or "comparable sales approach," utilizing adjusted sales data from list or actual sales prices of comparable fee time-share estates.

The Taxpayers presented trial testimony advocating a "discounted sell-out" approach, utilizing estimations of future income and expenses as the only appropriate method for valuing the subject fee time-share property at Spanish River Resort. However, this speculative "discounted sell-out" approach has never been approved by the courts of this state as being appropriate for valuing developed real property for ad valorem tax purposes, and was correctly rejected by the trial court and District Court.

The Taxpayers totally failed to carry their heavy burden of proving in the trial court that the Property Appraiser's valuations based on the market approach were totally arbitrary and not supported by any reasonable hypothesis of a legal assessment. The established case law of this state related to the appellate review of actions challenging tax assessments compels that the final judgment of the trial court and the decision of the District Court upholding the assessments of the Property Appraiser must be affirmed.

In the proceedings below, the Taxpayers also asserted claims that s. 192.037 (as implemented by the Property Appraiser) violated the Due Process and Equal Protection Clauses of the Federal and State Constitutions, as well as allegedly violative of the limitations of "delegation of authority" under the Florida Constitution. However, the Taxpayers have seemingly abandoned their direct constitutional assault against s. 192.037 before this Court before in that there is not one single reference in the Taxpayers' Initial Brief to the Due Process and Equal Protection Clauses of the United States or Florida Constitutions or to Art. II, s.3, Fla. Const., dealing with "delegation of legislative authority."

In any event, it is a basic rule of constitutional law that actions of the Legislature carry a strong presumption of correctness, and the courts are required to indulge every presumption in favor of the constitutional validity of challenged enactments. The Taxpayers have totally failed to demonstrate that the challenged statutory scheme providing for separate appraisals of individual fee time-share estates and combining them into one entry for listing on the tax roll in the name of the "managing entity" is so invidiously discriminatory or palpably arbitrary as to be constitutionally impermissible.

ARGUMENT

POINT I

THIS COURT HAS APPARENTLY EXERCISED ITS DISCRETIONARY JURISDICTION TO REVIEW THIS CASE BASED ON THE DISTRICT COURT'S CERTIFICATION OF THE ISSUES AS MATTERS OF GREAT PUBLIC IMPORTANCE.

Stated in the Taxpayers' initial brief as:

The Court Should Exercise Jurisdiction.

The trial court and the District Court both upheld the legality of the Property Appraiser's valuations of the individual fee time-share estates and also expressly upheld the constitutionality of s. 192.037, Fla. Stat. However, the District Court also certified the following questions to this Court as matters of great public importance:

CERTIFIED 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? (A. 8)

This Court entered an order herein dated December 24, 1986, titled "Briefing Schedule." In the order of December 24, this Court directed that briefs on the merits shall be served by the Petitioners and Respondents. Implicit in the order directing briefs on the merits is the apparent conclusion that this Court has chosen to exercise its discretionary jurisdiction under Art.

V, s. 3(b)(4), Fla. Const., to review the two questions certified by the District Court to be of great public importance, since no jurisdictional briefs dealing with "conflict" jurisdiction were filed by any of the parties prior to entry of this Court's order.

In any event, the Department denies that the District Court decision below expressly and directly conflicts with the decision of the Fifth District Court of Appeal in Hausman v. VSTI, Inc., 482 So.2d 428 (Fla. 5th DCA 1985), rev. denied, 492 So.2d 1332 (Fla. 1986). As discussed in more detail under Point II, the holding of the District Court in the Hausman case is not applicable here because the Hausman opinion was expressly limited to the statutory provisions of Florida law as existing in 1982. In contrast, it is undisputed that the issues presented in this case involves the treatment of fee time-share estates for ad valorem tax purposes beginning with the statutory amendments having an effective date of January 1, 1983.

The Taxpayers also argued express and direct conflict with the decision of the Fifth District Court of Appeal in High Point Condominium Resorts, Ltd. v. Day, 494 So.2d 508 (Fla. 5th DCA 1986); appeal filed, Case No. 69,519 (Fla.). The Department would agree that there is conflict with the High Point Condominium Resorts decision only with respect to the second question certified by the District Court concerning the correctness of the holding below that the provisions of s. 192.037, Fla. Stat., are constitutional.

POINT II

THE PROPERTY APPRAISER WAS CORRECT IN APPRAISING EACH OF THE INDIVIDUAL FEE TIME-SHARE ESTATES UNDER THE FACTS OF THIS CASE.

Stated in the Initial Brief of Petitioners as:

> The subject of Taxation and Tax Appraisal is the Timeshare Development.

A. SECTION 192.037, FLA. STAT., AND THE RELATED STATUTORY PROVISIONS ENACTED IN 1982 EVIDENCE THE CLEAR INTENT OF THE LEGISLATURE TO TREAT FEE TIME-SHARE ESTATES AS SEPARATE PARCELS OF PROPERTY FOR AD VALOREM TAXATION BEGINNING WITH THE YEAR 1983.

The Taxpayers have attempted, without success, to convince the trial court and District Court below that the provisions of s. 192.037, Fla. Stat. (1983), and related statutes do not require the Property Appraiser to appraise individual time-share periods sold as fee time-share estates beginning with the year 1983 , despite the apparent statutory language to the contrary. This obviously self-serving contention is now presented to this Court as the Taxpayers' main argument.

In a Special Session of 1982, the Florida Legislature enacted Ch. 82-226, Laws of Fla., a comprehensive bill relating to taxation and local government finance. Chapter 82-226 will be referred to hereafter as the "Act." Sections 53 through 61 of the Act dealt specifically with the ad valorem taxation of time-share periods or units sold as _fee_ time-share real property (A. 9-17). Time-share periods or units sold as fee time-share real

property will be generally referred to hereafter as "fee time-share estates."

The Act not only created a new statutory section (s. 192.037, Fla. Stat., titled "Fee Timeshare Real Property"), but also amended ss. 192.001, 194.011, 195.073, 197.0167, 718.120, 718.503, 721.03 and 721.06, Fla. Stats. (1983). (A. 9-17). Section 81 of Ch. 82-226 expressly provided that the portions of the Act dealing with the ad valorem taxation of time-share periods sold as fee time-share real property <u>would take effect on January 1, 1983</u> (A. 16). Notwithstanding these substantial statutory amendments resulting from the 1982 Act, time-share developers subsequently filed several suits in various counties challenging the appraisals of fee time-share estates for the tax year 1983, including the instant case.

However, in every case where a challenge to a 1983 tax appraisal of fee-time estates under the 1982 Act has been asserted, the trial courts and appellate courts of Florida have unanimously rejected the contention of the time-share developers that s. 192.037 and related statutory provisions do not purport to require the property appraisers to appraise fee time-share estates as separate parcels of property for ad valorem tax purposes, and then combine them into a single listing on the tax roll. See, <u>Oyster Pointe Resort Condominium Assoc., Inc. v. Nolte</u>, 497 So.2d 1306 (Fla. 4th DCA 1986); appeal filed, No. 69,794 (Fla.); <u>Driftwood Management Co., Inc. v. Nolte</u>, 497 So.2d 740 (Fla. 4th DCA 1986), appeal filed, No. 69,796 (Fla.); <u>Spanish River Resort Corp. v. Walker</u>, 497 So.2d 1299 (Fla. 4th

DCA 1986); and High Point Condominium Resorts, Ltd. v. Day, 494 So.2d 508 (Fla. 5th DCA 1986), appeal filed, No. 69,519 (Fla.).

The Taxpayers have relied on the case of High Point Condominium Resorts, Ltd. v. Day, supra, decision as a basis for discretionary "conflict" jurisdiction in this case. The Fifth District Court of Appeal did hold s. 197.037 facially unconstitutional on Due Process and Equal Protection grounds in the High Point Condominium Resorts decision. However, the conclusion that s. 192.037 purports to require the property appraisers to appraise the individual fee time-share estates (and then to combine them into one listing on the tax rolls for the entire time-share development) was obviously taken for granted by the Fifth District Court in the High Point Condominium Resorts opinion, as plainly indicated in the numerous comparisons between [fee] "time-share owners and "other real property owners." Id., at pages 509-510.

Despite these above-referenced numerous statutory changes made by the Legislature in 1982 with respect to the ad valorem taxation of time-share periods sold as fee time-share estates, the Taxpayers and other time-share developers have attempted to persuade the courts of Florida to rule that there is still no statutory basis after 1982 for the separate appraisal of fee time-share estates for ad valorem tax purposes. The Department suggests that such an argument on the part of the Taxpayers merely evidences an understandable longing on their part to revert back to the pre-1983 statutory law of Florida, when time-share developers had no express statutory responsibility in

assisting in the process of collection of ad valorem taxes on fee time-share real property.[1]

The inherent weakness of the Taxpayers' argument that the Act was not adopted by the Legislature with the intent of providing an express statutory basis for the separate assessment of fee time-share estates for ad valorem taxation beginning with the tax year 1983 is evidenced by their substantial reliance in the initial brief on the case of Hausman v. VTSI, Inc., supra. The Hausman case, however, involved a challenge to a 1982 tax assessment on time-share property in Orange County.

In the Hausman case, the Fifth District Court held that, under the statutory law in effect in 1982, a time-share estate was a fractional or partial interest in real property and was not subject to separate assessment for ad valorem taxation. However, as discussed above, the critical portions of the Act dealing with the ad valorem taxation of fee time-share real property did not take effect until January 1, 1983.

The Fifth District Court of Appeal expressly acknowledged on page 430 of the Hausman opinion that:

> We note that even though this issue is one of first impression in Florida, it will have limited precedential value. Effective in 1983, the legislature provided for appraisal of time share developments as follows:

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[1] The current provisions of s. 192.037(5) require the "managing entity" to collect and remit the ad valorem taxes due on fee time-share real property, as the statutorily designated agent of the individual fee time-share period titleholders. The Taxpayers and other time-share developers disapprove of these statutory duties and attacked their validity on constitutional grounds below and in the other three cited decisions challenging 1983 assessments on fee time-share real property.

> 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. (e.s.)

Consequently, the Hausman opinion is expressly limited to the 1982 statutory language (later amended in substantial form). Thus, it is not applicable to the disposition of the issue before this Court, i.e., the ad valorem taxability of fee time-share estates as separate parcels of real property beginning with the tax year 1983.

The Taxpayers' argument under Point II presents a laborious analysis of various cases purporting to support their position. The Department submits that it is legally unnecessary and would result in a waste of judicial time to address each of the cases cited in the Taxpayers' brief. It is significant that only two of the cases relied upon by the Taxpayers deal with time-share real property, i.e., Hausman v. VTSI, supra, and High Point Condominium Resorts, Ltd. v. Day, supra.

However, as discussed above, the Hausman case is a pre-Act ad valorem tax case and is not controlling on the disposition of the case now before this Court. In addition, the High Point Condominium Resorts decision, as discussed above clearly assumes that s. 192.037 purports to require the Property Appraiser to treat the individual fee time-share estates as separate parcels of property for ad valorem tax taxation. Thus, any reliance by

the Taxpayers on the High Point Condominium Resort opinion with respect to the valuation issues is clearly misplaced.

The apparent conclusion that the Act evidences the Legislature's intention to statutorily recognize time-share periods sold as fee estates in real property as separate parcels of property as ad valorem taxation beginning in 1983 is evidenced by the fact that there are at least thirteen (13) separate references to the terms "fee" time-share estates, "fee" time-share periods, "fee" interests in real property , "fee" interest in time-share units or "fee" time-share real property in ss. 53 through 61 of the Act (A. 9-17). This repeated reference to the terms "fee" and "estates" in connection with ad valorem taxation of time-share periods sold as fee interests in real property would seemingly compel a reasonable conclusion that it was the intent of the Legislature to classify fee time-share estates as separate parcels of property for ad valorem taxation.

It is an elementary tenet of real property law that the term "fee" or "fee simple" represent the highest and most complete estate in the land known to law. See, State ex rel. Erwin v. Jacksonville Expressway Authority, 139 So.2d 135 (Fla. 1962); and 22 Fla. Jur.2d, Estates, Powers & Restraints, s. 8. In 22 Fla. Jur.2d, Estates, Powers & Restraints, supra, the treatise sets forth the following discussion of the term "fee" simple at pages 256-257:

> "Fee simple" defines the largest estate in the land known to the law and necessarily implies that absolute dominion over the land. Only one estate in fee simple can exist in a particular tract of land; it is an estate of inheritance unlimited in duration, descendible

> to all the heirs of the owner, and except for the fact that it may be created so as to be defeasible and subject to executory limitations or granted or devised subject to a condition subsequent, it is clear of any qualification or condition with respect to its duration and enjoyment. It is also defined as an estate of perpetuity, conferring an unlimited power of alienation. . . .
>
> *   *   *   *   *
>
> Inasmuch as an estate in fee simple implies absolute sovereignty over the land, the power of alienation is necessarily incidental thereto, and an unlimited condition in restraint of alienation attached to such an estate is void. . . . (e.s.)

Thus, the Taxpayers' vain attempt to continue to portray fee time-share estates in real property as "partial interests" in real estate for ad valorem taxation under the Florida statutory law commencing January 1, 1983, is totally repugnant to the critical statutory terminology as historically utilized in real property law and should be rejected.

One of the established rules of statutory construction is that the Legislature is presumed to know the meaning of words having accepted usage and the Legislature is presumed to have expressed its intent by use of such words found in statutory language. See, Thayer v. State, 335 So.2d 815 (Fla. 1976); and 49 Fla. Jur.2d, Statutes, s. 123. In view of the repeated use of the terms "fee" and time-share "estates" in the statutory language added by the Act, it should be presumed by the courts that the Legislature intended to classify fee time-share estates in real property as separate parcels of property for ad valorem taxation.

The Department poses the following pertinent questions with respect to the Taxpayers' argument that the statutory language added by the Act does not authorize a separate assessment of fee time-share estates. If the Legislature had not intended by promulgation of the Act to express its intent that each time-share period or unit sold as a fee time-share estate should be separately appraised for ad valorem taxation, then:

1. Why did the Legislature provide in subsection 192.037(4), Fla. Stat., that each person having a fee interest in a time-share unit or time-share period would have all the rights and privileges afforded [other] property owners to contest tax assessments? (e.s.)

2. Why did the Legislature guarantee in subsection 192.037(9), Fla. Stat. (1983), that upon application for a tax deed pursuant to s. 197.241 each time-share period titleholder shall receive [all] the protections afforded [other property owners] by Ch. 197? (e.s.).

3. Why did the Legislature require in subsection 718.503(1)(h), Fla. Stat., that a "contract for the sale of a fee interest in a time-share estate" shall contain in bold print: **"FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A TIME-SHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED THE TAXPAYER UNDER THE FLORIDA LAW. YOU HAVE THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR TIME-SHARE ESTATE PURSUANT TO THE PROVISIONS OF CH. 194 OF THE FLORIDA STATUTES?"** (e.s.)

4. Why did the Legislature state in subsection 721.03(5), Fla. stat., that "treatment of time-share estates for ad valorem tax purposes . . . shall be as prescribed in chapters 192 through 200?" (e.s.)

The Department submits that it is extremely significant that the term "time-share development" as promoted by the Taxpayers in this case is not even contained in the above cited statutory language. The Taxpayers are, in essence, asking this Court to amend, by judicial fiat, the critical language in ss. 192.037(4) and (9), 718.503(1)(h) and 721.03(5) to insert the term "development" in lieu of the Legislative terms "unit," "period" and "estates." Such requested statutory amendments are, however, beyond the power and authority of the courts. See, 49 Fla. Jur.2d, Statutes, s. 120.

The Taxpayers' argument under Point II would clearly render meaningless the above numerated provisions added by the Act. Consequently, this contention also violates another established rule of statutory construction that "it should never be presumed that the Legislature intended to enact meaningless and useless legislation and it must be assumed that the provisions enacted by the Legislature are intended to have some useful purpose." See, Smith v. Piezo Technology & Professional Administrators, 427 So.2d 182 (Fla. 1983); Dickinson v. Davis, 224 So.2d 262 (Fla. 1969); and City of Indian Harbour Beach v. City of Melbourne, 265 So.2d 422 (Fla. 4th DCA 1972).

In the remarkably similar case of Oyster Pointe Resort Condominium, Inc. v. Nolte, supra, the trial court recently found as follows:

* * * * * *

> 7. The Property Appraiser, for the tax year 1983, appraised each individual time share estate based on comparable sales of individual time share periods. The Property Appraiser therefore valued each time share unit based on the market value approach. (e.s.)
>
> * * * * * *
>
> 10. The Court further finds that the sale of individual time share periods is the sale of real estate and is assessable as real estate for ad valorem taxes. The evidence showed that the conveyances of time share periods were accompanied by warranty deed, recorded in the real property records of Indian River County which was accompanied by the issuance of title insurance issued for the full purchase price of each unit. (e.s.)
>
> 11. The Court specifically finds that the Property Appraiser properly appraised each of the time share periods for ad valorem taxes, and that the tax on the full combined individual time share periods is due from the Plaintiffs to the Tax Collector of Indian River County, Florida. (e.s.) (A. 20-21)

As in Oyster Pointe Resort case, the undisputed testimony of the Taxpayers' principal factual trial witness, Joseph Dahger, established that the time-share units or periods at Spanish River Resort were sold by warranty deed conveying fee title to the individual time share units or periods (T. 65). These warranty deeds were also accompanied by title insurance policies insuring title of the grantees to the individual fee time-share periods (T. 119-120). In addition, the Taxpayers' testimony revealed

that purchase money mortgage financing on sale of the individual fee time-share periods at Spanish River was frequently provided (T. 136-139), comparable to purchase money mortgage financing of any other parcel of real property.

The Department respectfully suggests the Taxpayers' position in attempting to persuade this Court that the individual fee time-share periods conveyed to the public by warranty deeds are not separate parcels of real property for ad valorem taxation purposes constitutes blatent incongruity. <u>This claim is in direct contrast to the Taxpayers' representations in their warranty deeds, title insurance policies and purchase money mortgages that the grantees are receiving separate fee estates in real property</u>. Such inconsistent posturing should not be condoned by the appellate courts of this state!

B. THE TAXPAYERS TOTALLY FAILED TO PROVE THAT THE APPRAISALS BY THE PROPERTY APPRAISER OF THE TIME-SHARE PERIODS SOLD AS FEE TIME-SHARE ESTATES WERE NOT SUPPORTED BY ANY ANY REASONABLE HYPOTHESIS OF A LEGAL ASSESSMENT.

It is undisputed that the Property Appraiser appraised the time-share periods sold as fee time-share estates at Spanish River Resort based primarily on the "comparable sales" of similar time-share periods sold as fee time-share estates (T. 949, 965-969). The uncontroverted testimony by the Property Appraiser's staff also established that the actual valuations allocated to any of the individual time-share periods sold as fee time-share estates were always below the listed or actual sale prices of any of the individual fee time-share estates (T. 970-975).

It is evident that the Taxpayers and their expert witnesses who testified at trial soundly disagreed with the "comparable sales" or "market data" approach used by the Property Appraiser in appraising the individual fee time-share estates. The Taxpayers' M.A.I., Robert Callaway, made an appraisal based on a "discounted sell-out" approach and testified at trial that his "discounted sell-out" approach was <u>the method</u> that should be used to appraise the subject property for tax purposes. However, disagreement by a taxpayer with the Property Appraiser's assessment methodology, no matter how sincere, has been repeatedly held by the Florida appellated courts to be legally insufficient to overturn a tax assessment.

This Court has consistently held over the years that, as a constitutional officer, the actions of a property appraiser are

clothed with the presumption of correctness, and that a taxpayer has the burden of overcoming this presumption of correctness by sufficient allegations and proofs excluding every reasonable hypothesis of a legal assessment. See, Blake v. Xerox, 447 So.2d 1348, 1351 (Fla. 1984); Straughn v. Tuck, 354 So.2d 368, 361 (Fla. 1977); District School Bd. of Lee Co. v. Askew, 278 So.2d 272, 277 (Fla. 1973); and Powell v. Kelly, 223 So.2d 305, 308 (Fla. 1969).

The proposition that appraisal of property necessarily involves a great deal of discretion and judgment on the part of each appraiser is a basic maxim of ad valorem tax law. The inherent ingredient of subjective judgment [often resulting in substantial differences in opinions of value of the same property by reputable appraisers] has been recognized by the appellate courts of this state as one of the underlying bases for the legal presumption of correctness of the property appraiser's estimates. See, District School Bd. of Lee Co. v. Askew, supra, Powell v. Kelly, supra, and Schleman v. Connecticut General Life Ins. Co., 9 So.2d 197 (Fla. 1942).

This Court observed at page 307 of its landmark opinion in Powell v. Kelly, supra, as follows:

> The fixing of a valuation on property by a tax assessor for the purpose of taxation is an administrative act involving the exercise of administrative discretion, and the Court will not in general control that discretion unless it is illegally or fraudulently exercised or exerted in such manner or under such circumstances as will amount in law to a fraud. (e.s.)

In the often-quoted opinion in the Connecticut General Life Ins. Co. case, supra, this Court stated on page 200 of the opinion that:

> We are fully aware of the difficulty of fixing with certainty the full cash value of property and the great variance in values set by persons of like experience and judgment, all making estimates conscientiously. Because of this inexactitude considerable leeway should be granted the official whose duty it is to make assessments and because of his position his valuations should not be easily disturbed . . . . (e.s.)

This Court also observed on page 309 of its opinion in Powell v. Kelly, supra, that:

> The appraisal of real estate is an art, not a science. There are various methods of approach in determining the market value of real estate, each approach involving the use of various guidelines. Although the use of such guidelines may be mandatory in appraisal work, their application to various situations calls upon the exercise of judgment. . . . (e.s.)

The most recent and detailed analysis by this Court of the presumptions and burdens of proof applicable to a suit challenging an ad valorem tax assessment is contained in the Court's 1984 opinion in Blake v. Xerox Corp., supra. In the Xerox Corp. case, the trial court's judgment upholding the property appraiser's assessment based on the "market" or "comparable sales" approach was reversed by the Third District Court of Appeal due to a conclusion by the district court that the income approach to value recommended by Xerox's appraisers was the "better method" for determining the market value of the tangible personal property in question.

However, the decision of the Third District Court was quashed by this Court and remanded with instructions that the judgment of the trial court be affirmed. In so holding, this Court stated on pages 1350-1351 of the Xerox opinion as follows:

> The district court found that the income capitalization method put forward by Xerox was a better method of determining market value than the list-price-less-depreciation method used by the property appraiser. On the basis of this perceived superiority of one method over the other, the district court held that the income capitalization method should have been used. But see Xerox Corp. v. Blake, 415 So.2d at 1311 (Pearson, J., concurring) (income capitalization was the only possible legally correct method). We find that the district court applied an erroneous standard of review and we therefore quash the district court's decision.
>
> [1] The property appraiser's determination of assessment value was an exercise of administrative discretion within the officer's field of expertise. Therefore, if the appraiser proceeded lawfully, then that determination was clothed with a presumption of correctness when the taxpayer challenged it. The burden was on the taxpayer to show that the appraiser departed from the requirements of the law or that the appraisal made was not supported by any reasonable hypothesis of legality. Powell v. Kelly, 223 So.2d 305 (Fla. 1969).
>
> * * * * *
>
> . . . Although the trial court appears to have grounded its judgment on the finding that Xerox had failed to prove that its method was superior, this finding was unnecessary to the judgment. Regardless of which method was theoretically superior, the trial court was bound to uphold the appraiser's determination if it was lawfully arrived at and within the range of reasonable appraisals, that is, if it was supported by any reasonable hypothesis of legality.
>
> [4,5] Like the trial court, the district court addressed the merits of the question of

> which method was theoretically superior, and simply disagreed with the trial court's determination. Although the trial court's determination was based in part on a finding that the property appraiser's method was the better one, the judgment should have been affirmed simply on the ground that the property appraiser's determination, having been lawfully arrived at and being supported by a reasonable hypothesis of correctness, was properly upheld. Homer v. Dadeland Shopping Center, Inc., 229 So.2d 834 (Fla. 1969). The size or scope of the sales market for Xerox copying machines should not have been regarded by the district court as determinative. The trial court found that there was a sufficient sales market to render the appraiser's method reasonable.
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> * * * * *
>
> The district court may have been correct in concluding that the income capitalization method was the better method for determining market value, but that was not the legal question presented. (e.s.)

The holding of the Xerox v. Blake case has been followed by the district courts of Florida in the recent cases of Bystrom v. Bal Harbour 101 Condominium Association, Inc., 12 F.L.W. 612 (Fla. 3rd DCA 1987); Vero Beach Shores, Inc. v. Nolte, 467 So.2d 1041 (Fla. 4th DCA 1985); and Daniel v. Canterbury Towers, Inc., 462 So.2d 497 (Fla. 2nd DCA 1984). The Bal Harbour decision represents the latest known opinion of the appellate courts of this state dealing with the presumptions and burdens of proof applicable to an action challenging the validity of an ad valorem tax assessment.

In the Bal Harbour case, the property appraiser's assessments of the individual condominium units were overturned by the trial court. However, the Third District Court of Appeal

reversed the trial court and reinstated the property appraiser's valuations for all of the units in the Bal Harbour 101 Condominium. The taxpayer claimed that the property appraiser had merely increased last year's assessments on all of the condominium units by a flat percentage increase. The property appraiser presented evidence that the assessments were based on prior sales of similar units in the same building.

The Bal Harbour opinion contains a detailed review of the recent appellate court decisions of Florida dealing with the legal requirements for overturning a tax assessment as follows:

> Since the Appraiser substantially complied with section 193.011, his valuation is entitled to the same presumption of correctness on appeal of the trial court's judgment as it was below. Markham v. June Rose, 495 So.2d 865 (Fla. 4th DCA 1986); see also Nolte, 467 So.2d at 1041. Therefore, the mere fact that the taxpayers disagree with either the weight to be accorded each factor or the method to be utilized in arriving at the valuation of the property is not a sufficient reason to overturn the Appraiser's valuation. See Blake v. Xerox Corp., 447 So.2d 1348 (Fla. 1984) method of valuation is within discretion of appraiser so long as the determination is lawfully arrived at and within the reasonable range of appraisals); Bath Club, Inc. v. Dade County, 394 So.2d 110 (Fla. 1981) (weight accorded to each factor in assessing value is within the discretion of appraiser); Straughn v. Tuck, 354 So.2d 368 (Fla. 1977) (same); Daniel v. Canterbury Towers, Inc., 462 So.2d 497 (Fla. 2d DCA 1984) (weight accorded each factor and method used to reach valuation within appraiser's discretion); Blake v. Oceancoast Corp., 417 So.2d 1002 (Fla. 3d DCA), review denied, 424 So.2d 762 (Fla. 1982) (weight accorded each factor within appraiser's discretion); Bystrom v. Equitable Life Assurance Soc'y of the United States, 416 So.2d 1133 (Fla. 3d DCA 1982) (method used in valuation within discretion of appraiser), review denied, 429 So.2d 5 (Fla. 1983).

> The taxpayers had the burden of presenting proof which excluded "every reasonable hypothesis of a legal assessment." Calder Race Course, Inc. v. Overstreet, 363 So.2d 631 (Fla. 3d DCA 1978). The taxpayers failed to demonstrate that the valuation reached by the Appraiser was outside of the range of reasonable hypothesis. In fact, the appellees' own expert testified that if he reduced the amounts attributable to personal property in his own valuation, then the valuation reached by the Appraiser could fall within the expert's own valuation range. The expert further testified that the assessment of personal property is a judgment call. This type of judgment is within the Appraiser's discretion in valuing property for ad valorem tax purposes and should not be overturned absent proof that the Appraiser's valuation was arbitrary and unsupported by any reasonable hypothesis. See Xerox, 447 So.2d at 1350 (if assessment is within the range of reasonable appraisals it will be upheld); Powell v. Kelly, 223 So.2d 305 (Fla. 1969) (appraisal of real estate is an art not a science); Bystrom v. Bloom, 472 So.2d 819 (Fla. 3d DCA 1985) (though a lower valuation under the circumstances might be more reasonable, the appraiser's valuation will not be disturbed absent a showing that it was arbitrary and had no reasonable basis), review denied, 482 So.2d 347 (Fla. 1986). Therefore, the trial court erred in overturning the Appraiser's valuation. . . .

Id. at page 613.

The Taxpayers' argument before this Court is based in substantial part on their conclusion that the methodology utilized by the Property Appraiser in appraising the individual fee time-share estates is inappropriate under the circumstances of this case. However, the strong presumption of correctness accorded to assessments of the property appraisers has resulted in rulings by the appellate courts of Florida that proof by taxpayers that the property appraisers' methodology was erroneous does not, of itself, entitle the taxpayers to any relief in an ad

valorem tax challenge. See, Bystrom v. Whitman, 488 So.2d 520 (Fla. 1986); Bystrom v. Bal Harbour 101 Condominium Association, Inc., supra, and City National Bank of Miami v. Blake, 257 So.2d 264 (Fla. 3rd DCA 1972). In the City National Bank case, Id , the district court stated on page 266 of the opinion as follows:

> . . . Based upon a virtual presumption of validity accorded to governmental decisions, the taxpayer in a court proceeding challenging the discretion of a tax assessor assumes a large burden. See: Markham v. Friedland, Fla. App. 1971, 245 So.2d 645. A tax assessment is presumed correct, and in order to successfully challenge it, the taxpayer must present proof which excludes every reasonable hypothesis of a legal assessment. That is, an assessor may reach a correct result for the wrong reason. (e.s.)

In Bystrom v. Whitman, supra, this Court recently observed that:

> We begin our analysis by noting the general proposition that the core issue in any action challenging a tax assessment is the amount of the assessment, not the methodology utilized in arriving at the valuation. Homer v. Connecticut General Life Insurance Co., 213 So.2d 490 (Fla. 3d DCA 1968). An appraiser may reach a correct result for the wrong reason. City of National Bank v. Blake, 257 So.2d 264 (Fla. 3d DCA 1972). (e.s.)

Id., at 521.

The citations from the above cases clearly establish that testimony by expert witnesses on behalf of the taxpayers as to their disagreement with the methodology used by the property appraiser is not sufficient to overcome the presumption of correctness accorded to the assessment. A taxpayer must affirmatively and clearly demonstrate that the property appraiser's valuation is beyond the range of reasonable appraisals in order

for the Property Appraiser's presumption of correctness to be overcomed.

The only significant claim made by the Taxpayers in this proceeding relating to any alleged failure of the Property Appraiser to comply with the statutory criteria set forth in s. 193.011, Fla. Stat., relates to subsection 193.011(8), Fla. Stat., and in particular that portion thereof dealing with "deduction of all the usual and reasonable fees and costs of the sale. . . ." However, the conclusion that the weight to be given to any of the enumerated criteria set forth in s. 193.011 is within the sound discretion of the Property Appraiser, and that mere disagreement by a taxpayer over the weight to be given a particular criteria is not sufficient to upset the Property Appraiser's assessment has been repeatedly approved by the appellate courts of this state. See, Bath Club, Inc. v. Dade County, 394 So.2d 110 (Fla. 1981); Vero Beach Shores, Inc. v. Nolte, supra, and Atlantic International Investment Corp. v. Turner, 383 So.2d 919 (Fla. 5th DCA 1980).

As previously discussed, the fact that the subject assessments of the Property Appraiser were made utilizing the "market data" or "comparable sales" approach is undisputed. Thus, any claim by the Taxpayers that the subject appraisals of the Property Appraiser are invalid because she did not consider the statutory criteria set forth in s. 193.011, Fla. Stat., should fail in view of the district court's ruling on pages 1042-1043 of the Vero Beach Shores case as follows:

> . . . While all of the statutory factors must be considered in making an appraisal under the statutory scheme, they may be variously weighted by the appraiser or discarded entirely where they are not, under the circumstances, probative of present value.
>
> Thus, in Bystrom v. Valencia Center, Inc., 432 So.2d 108 (Fla. 3d DCA 1983), rev. denied, 444 So.2d 418 (Fla. 1984), the Dade County Property Appraisal Adjustment Board lowered the property appraiser's valuation. The property appraiser brought suit, and the trial court reinstated the appraiser's determination. The court said that the guidelines in section 193.011, Florida Statutes (1983), are of particular use when there are no comparable sales. When there are comparable sales, the appraiser necessarily considers all, and uses some, of the factors. (e.s.)

The only other appraisal before the trial court other than the official assessments of the Property Appraiser was the appraisal made by the Taxpayers' M.A.I., Robert Callaway, utilizing a discounted sell-out approach. This "discounted sell-out" approach, featuring estimations of income and costs in future years, has been consistently rejected as being too speculative for valuing property for ad valorem taxation in the State of Florida. See, Muckenfuss v. Miller, 421 So.2d 170 (Fla. 5th DCA 1982), rev. denied, 430 So.2d 451 (Fla. 1983); St. Joe Paper Co. v. Adkinson, 400 So.2d 983 (Fla. 1st DCA 1981); and Town of Bay Harbour Island v. Lancelot Associates, 243 So.2d 437 (Fla. 3rd DCA 1971).

The Taxpayers' reliance on the case of Boynton v. Canal Authority, 265 So.2d 722 (Fla. 1st DCA 1972) is totally misplaced. The Boynton case did not even deal with ad valorem taxation, but with the taking of real property for purposes of

eminent domain. Furthermore, the real property involved in the Boynton case was a single parcel of undeveloped land. The real estate now before this Court consists of improved real property committed to condominium ownership and subdivided into fee time-share estates, many of which fee time-share estates had been sold to various members of the public on the assessment date.

The Taxpayers are, in essence, asking this Court to reverse the trial court and overturn the Property Appraiser's assessments based upon a speculative valuation approach that has never been approved by the appellate courts of this state as being appropriate for valuing developed real property for ad valorem tax purposes. Such a legal predicate obviously falls far short of the Taxpayers presenting clear proof that the Property Appraiser's assessments were so arbitrary as to amount to a fraud at law, thereby excluding every reasonable hypothesis of a legal assessment!

In concluding this portion of the answer brief, the Department would direct the Court's attention to the fact that the Taxpayers' M.A.I. admitted that he had also arrived at a total valuation figure based on comparable sales or other individual time-share estates (T. 904). Mr. Callaway's total valuation of the aggregate fee time-share estates at Spanish River was approximately $22,000,000 (T.905), actually exceeding the total valuation figure of approximately $19,000,000 determined by the Property Appraiser!

POINT III

THE DECISION OF THE DISTRICT COURT EXPRESSLY UPHOLDING THE CONSTITUTIONALITY OF SECTION 192.037, FLORIDA STATUTES, IS CORRECT AND SHOULD BE AFFIRMED BY THIS COURT.

Stated in the inital brief of Taxpayer as:

> Even if the Statutes and Constitution Authorize Tax Appraisal of Timeshare Estates The Assessments Are Unlawful.

The Department respectfully submits that it is not necessary for this Court to expend any substantial judicial time and effort in an attempt to do a detailed analysis of the Due Process and Equal Protection claims raised by the Taxpayers in the trial court and District Court below for the following reasons:

1. The Taxpayers have not maintained their Due Process or Equal Protection claims in their initial brief filed in this Court.

2. The Record on Appeal is totally devoid of any evidence (or even any allegations) presented on behalf of the Taxpayers that the individual owners of fee time-share estates at Spanish River Resort have suffered any damage or injury due to the challenged statutory schemes set forth in s. 192.037, Fla. Stat., and related statutes.

The District Court expressly rejected the Due Process and Equal Protection claims raised by the Taxpayers in the proceedings below by ruling on page 1306 of the Spanish River Resort v. Walker opinion that:

> . . . Therefore, we are of the opinion that section 192.037 does not deprive the time-share fee owners of due process and equal protection and is constitutional.

The Taxpayers have apparently abandoned their direct constitutional attack against s. 192.037 before this Court in that:

(1) The three issues as framed by the Taxpayers in their initial brief do not even contain the term "unconstitutional."

(2) The Department's review of the Taxpayers' initial brief failed to locate one single citation to the Due Process or Equal Protection Clauses of the United States or Florida Constitutions! See, Department of Health v. Petty-Eifert, 443 So.2d 266, 268 (Fla. 1st DCA 1983); and Polyglycoat Corp. v. Hirsch Distributors, Inc., 442 So.2d 958, 960 (Fla. 4th DCA 1983).

In the Polyglycoat Corp, case, the Fourth District Court of Appeal ruled as follows:

> [7] This Court will not depart from its dispassionate role and become an advocate by second guessing counsel and advancing for him theories and defenses which counsel either intentionally or unintentionally has chosen not to mention. It is the duty of counsel to prepare appellate briefs so as to acquaint the Court with the material facts, the points of law involved, and the legal arguments supporting the positions of the respective parties. See Re: Estate of Barrett, 137 So.2d 587 (Fla. 1st DCA 1962) and Clonts v. Spurway, 104 Fla. 340, 139 So. 896 (1932). When points, positions, facts and supporting authorities are omitted from the brief, a court is entitled to believe that such are waived, abandoned, or deemed by counsel to be unworthy. . . . (e.s.)

Id., at page 960.

The second reason this Court should summarily affirm the holding of the District Court that s. 192.037 does not deprive

the individual owners of fee time-share estates of due process and equal protection and is constitutional is that the Taxpayers failed to allege or present any evidence whatsoever in the trial court that the individual owners of fee time-share estates at Spanish River Resorts suffered (or assuredly will suffer) any actual damage or injury due to the challenged statutory scheme.

One of the leading Florida cases discussing the issue of a requisite showing of some present (or imminently probable) injury on the part of a plaintiff attacking the constitutionality of a statute is Henderson v. Antonacci, 62 So.2d 5 (Fla. 1952). On page 8 of the Henderson opinion, this Court ruled as follows:

> It is a well established principle that the courts will not declare an act of the legislature unconstitutional unless its constitutionality is challenged directly by one who demonstrates that he is, or assuredly will be, adversely affected by it. . . . (e.s.)

Furthermore, in the landmark case of Gaulden v. Kirk, 47 So.2d 567 (Fla. 1950), this Court upheld the constitutionality of the Florida Revenue Act of 1949 by ruling in its opinion that:

> . . . [O]ne will not be heard to question the constitutionality of a legislative enactment except insofar as he may be able to show that it adversely affects him. (citations omitted).

Id., at page 572.

The possibility of injury to the Taxpayers at sometime in the future is insufficient as a matter of law to constitute the necessary present, adverse interest that must be demonstrated in order for a complaining party, to be entitled to a declaratory decree passing on the validity of the action of any state, county

or municipal agency or public official. See, City of Pensacola v. Johnson, 28 So.2d 905 (Fla. 1947); and Okaloosa Island L. Association, Inc. v. Okaloosa Island Authority, 308 So.2d 120 (Fla. 1st DCA 1975).

It is undisputed in this proceeding that the suit filed in the trial court by the "managing entity" and other plaintiffs below placed into issue the validity of the assessment of each and every fee time-share estate on behalf of each and every fee time-share estate titleholder at Spanish River Resort. Futhermore, it is also undisputed that there was no evidence (nor even any allegation by the Taxpayers) of any delinquent taxes or sale of tax certificates adversely affecting the property rights of the individual owners of fee time-share estates at Spanish River Resort.

It can be seen from above that the list of potential deprivation of property rights alluded to in the Taxpayers' initial briefs are merely speculative possibilities having absolutely no basis in the facts of record! Hypothetical damages posed solely in argument of counsel and totally unsupported by the record obviously do not constitute a basis for the courts to declare a statute unconstitutional. Consequently, the constitutional Due Process and Equal Protection claims relating to the individual owners of fee time-shares at Spanish River Resort should be summarily denied.

Even if the Taxpayers had properly asserted the Due Process and Equal Protection claims in their initial brief filed with this Court, these constiutional claims are legally insufficient

to warrant a decision by this Court reversing the District Court's holding that the provisions of s. 192.037 are constitutional. This conclusion is compelled because the Taxpayers have failed to carry their heavy burden of overcoming the strong presumptions favoring the constitutional validity of actions of the Legislature. These presumptions applicable to judicial review of actions challenging the constitutionality of taxing statutes include, but are not limited to, the following:

1. It is a fundamental rule of constitutional law frequently cited by this Court that acts of the Legislature are presumed to be valid, and that the courts should indulge every presumption in favor of the constitutional validity of a challenged statute. Eastern Airlines, Inc. v. Dept. of Revenue, 455 So.2d 311 (Fla. 1984); Just Valuation & Taxation League, Inc .v. Simpson, 209 So.2d 229 (Fla. 1968); and Gaulden v. Kirk, supra.

2. The burden on a person attacking a statute is an unusually heavy one in that this Court has held that the challenging party has the burden of proving its constitutional validity ". . . beyond a reasonable doubt." (e.s.). Knight & Wall Co. v. Bryant, 178 So.2d 5, 8 (Fla. 1965); cert. denied, 383 U.S. 958 (1966).

3. In taxation, even more than other fields, the Legislature possesses the greatest freedom in classification; and the burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it. Eastern Airlines supra, at page 314; Just Valuation & Taxation League,

Inc. v. Simpson, supra, at page 232; and Madden v. Kentucky, 309 U.S. 83, 60 S.Ct. 406, 84 L.Ed. 590 (1940).

4. If any state of facts can be conceived of which would sustain the reasonableness of an act of the Legislature, then the courts should indulge the presumption that such state of facts exists and justifies the enactment. State v. Bales, 343 So.2d 9, 11 (Fla. 1977).

The case of Day v. High Point Condominium Resorts, Ltd., appeal filed No. 69,796 (Fla.), is now awaiting oral argument before this Court. The Department respectfully submits that the judicial analysis of the district court in the High Point Condominium case relating to the constitutionality of s. 192.037 is fatally flawed and the Department urges this Court to reverse the holding of the Fifth District Court's that s. 192.037 is facially unconstitutional.

The rationale inherent in the district court's opinion in the High Point Condominium case erroneously assumes that there is an absolute legal requirement that every owner of a fee interest in real property in this state be separately identified on the tax roll and must receive an annual tax bill in order for the annual ad valorem tax on their real property to be constitutionally valid. Such an assumption, however, is directly contrary to the long standing ad valorem tax law of Florida concerning the rule that all persons are presumed to have knowledge of the annual taxes due and owing on property in this state.

The provisions of s. 197.0151(1), Fla. Stat. (1983), read in pertinent part as follows:

> . . . All owners of property shall be held to know that taxes are due and payable annually and are charged with the duty of ascertaining the amount of current and delinquent taxes and paying them before April 1 of the year following the year in which taxes are assessed. No sale or conveyance of real or personal property for nonpayment of taxes shall be held invalid except upon proof that:
>
> (a) The property was not subject to taxation;
>
> (b) The taxes had been paid before the sale of personal property; or
>
> (c) The real property had been redeemed before the execution and delivery of a deed based upon a certificate issued for nonpayment of taxes. (e.s.)

The above-cited provisions of s. 197.0151(1), Fla. Stat., place all owners of property in this state on statutory notice that ad valorem taxes are annually due and payable, and they are charged by statute with the duty of ascertaining the amount of such taxes. There is absolutely no suggestion or implication in the language of s. 197.0151(1) that the failure of an owner of property to be named on the tax roll or the failure to receive an annual tax bill would invalidate the tax assessment.

In the case of Thompson v. City of Key West, 82 So.2d 749 (Fla. 1955), this Court relied upon a statutory predecessor of current s. 197.0151(1) to uphold the validity of a tax assessment of the City of Key West, even though the description of the property on the tax rolls was so defective that the land could

not be located by reference to the defective description. On page 754 of the opinion on rehearing in the City of Key West case, the learned Justice Terrell observed in his "homespun" manner that:

> . . . Since 1925 or earlier the legislature has more and more indulged the presumption that every property owner is on notice that his taxes are due annually. This is not an unreasonable presumption. It is a common cliche that 'death and taxes are certain.' To indulge otherwise would be as ridiculous as it would be to assume that one who lives in the country and owns a milk cow was not on notice that she has to be fed and milked twice a day. (e.s.)

There are various legal capacities of ownership of real property in this state, whereby several parties may have multiple ownership interests in a single parcel of real property. Property ownership as tenants by the entirety, joint tenants with the right of survivorship and tenants in common is recognized in Florida. However, the Department is not aware of any Florida case law, statutory law or any other legal authorities holding [or even suggesting] that a tax assessment would be constitutionally invalid solely because one [or more] of a number of tenants in common or joint tenants with right of survivorship were not named on the tax roll or did not receive an annual tax bill from the Tax Collector!

The ad valorem tax law of Florida has, for many years, been based on the logical and sensible assumption that the various parties who have an ownership interest in a particular parcel of land will protect their respective property interests, even

though they may not receive a separate tax bill or even may not be identified as taxpayers on the assessment rolls. Just as lessors and lessees have the prudence and common sense to negotiate their respective rights and obligations concerning payment of ad valorem taxes when they negotiate their lease agreement, so should the prospective owner of a fee time-share estate make provision for the payment of ad valorem taxes at the time of purchase. In the case of the sale of fee time-share estates, an agreement between the seller and purchaser concerning payment of taxes is even mandated by statute in Florida! See, s. 721.06(1)(h), Fla. Stat.

In reviewing the statutory concept embodied in s. 192.037 (and other related statutes), it is also important to recognize that the "managing entity" concept was not originated by the 1982 Act dealing with ad valorem taxation of fee time-share property. The "managing entity" concept was created pursuant to the enactment in 1981 of Ch. 721, Fla. Stat., known as the "Florida Real Estate Timesharing Act," administered by the Division of Florida Lands Sales & Condominiums of the Department of Business Regulations.

Under s. 721.13, a time-share developer is required to set up a "managing entity" prior to the first sale of a time-share period. Among other duties of the "managing entity" set forth in s. 721.13 are the management and maintenance of all accommodations and facilities constituting the time-share plan, collection of all assessments for common expenses and an annual mailing to all purchasers of an itemized budget.

Under s. 721.13, the "managing entity" was therefore required prior to 1983 to send annual information to each time-share purchaser and the "managing entity" was already required prior to the enactment of s. 192.037 to collect from each owner of a time-share period all assessments for common expenses. It is evident that the Legislature's use of the "managing entity" concept as a designated agent to remit and collect ad valorem taxes on fee time-share estates under s. 192.037 was integrally connected with the existing "managing entity" statutory scheme embodied in s. 721. Consequently, the enactment of the challenged provisions of s. 192.037 in 1982 by the Legislature did not introduce a radically new concept, but merely imposed additional statutory responsibilities on the part of the "managing entity" similar to those already existing under Ch. 721.

The Department would also advise the Court that the use of a agent designated to be statutorily responsible for remitting ad valorem taxes on fee time-share estates to taxing authorities is not a judicial concept that is completely unique to the State of Florida. The State of Hawaii utilizes a similar "managing entity" concept in the statutory chapter on Timesharing Plans by providing that "The plan manager, if any, shall be primarily liable for the payment of real property taxes due on the time-share units under his authority." Ch. 514, E-3(a), Hawaii Revised Statutes (1984 Supp.), (e.s.).

A similar provision is also found in the statutes of the State of Vermont dealing with Timeshare Projects, wherein it is provided that:

> With respect to property taxes, both real and personal, on time-share projects, each property owner of a time-share estate shall be liable for the payment thereof to the town. <u>However, the owners' association, corporation or what ever entity is authorized by the project instruments to manage the common property, shall be the agent of the time-share estate owers for the payment of property taxes from the individual owners to the town</u>. . . . (e.s.)

Title 3332, s. 3619(b), <u>Timeshare Projects</u>, Vt. Stats. Anno. (1982 Supp.).

The use of a statutory agent is also employed by the State of Colorado in their Condominium Ownership Act wherein it is provided in s. 38-33.111(3), as follows:

> <u>With respect to each time share unit, each owner of a time share estate therein shall be individually liable to the unit owners' association or corporation for all assessments, property taxes both real and personal,</u> and charges levied pursuant to the project instruments against or with respect to that unit, and <u>such association or corporation shall be liable for the payment thereof,</u> except to the extent that such instruments provide to the contrary. (e.s.)

Title 38, Ch. 33, s. 111(3), Colorado Rest. Stats. (1982 Supp.).

The conclusion that the "managing entity" as agent of the taxpayer statutory scheme employed by the State of Florida [and the States of Hawaii, Vermont and Colorado] does provide adequate constitutional due process to the individual owners of fee time-

share estates is actually demonstrated in this case. The "managing entity", acting in behalf of all the fee time-share estate owners at Spanish River Resort, timely challenged the valuation of all the time-share unit weeks resulting in this proceeding now before the Court. Thus, any alleged deprivation of due process or equal protection exists solely in the minds of the disgruntled time-share developers.

The conclusion that a state tax scheme which arguably discriminates against a particular class of taxpayers is not necessarily proscribed by the Equal Protection Clause of the United States Constitution is illustrated by the case of Allied Stores of Ohio v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480 (1959). In the Allied Stores case, the U.S. Supreme Court upheld an Ohio tax scheme which assessed taxes for ad valorem purposes on merchandise held in warehouses for storage only by residents, while exempting the same merchandise of nonresidents. In upholding this tax scheme, the Supreme Court concluded in the opinion that:

> The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule on equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. (e.s.).

Id., at 358 U.S. 526.

Another example of the U.S. Supreme Court's tendency to uphold state tax schemes attacked on federal Equal Protection grounds is found in Lehnhausen v. Lakeshore Auto Parts Co., 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973). In Lehnhausen, the Supreme Court upheld an Illinois tax scheme which had the effect of authorizing the ad valorem taxation of tangible personal property of corporations, while exempting tangible personal property of individuals from taxation. In upholding this act, the Supreme Court ruled in pertinent part in the Lehnhausen opinion that:

> The Equal Protection Clause does not mean that a State may not draw lines to treat one class of individual or entities differently from others. The test is whether the difference in treatment is an invidious discrimination. . . . (e.s.)

Id., at 410 U.S. 359.

Furthermore, both this Court and the U.S. Supreme Court have held that in taxation, even more than other fields, the Legislature proposes the greatest freedom in classification; and the burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it. Eastern Airlines, supra, at page 314; Just Valuation & Taxation League, Inc. v. Simpson, supra, at page 232; and Madden v. Kentucky, supra.

There is a conceivable basis, not invidiously discriminatory in nature, for the Legislature designating a statutory agent responsible for remitting ad valorem taxes on fee time-share

estates to the Tax Collector and for combining the numerous fee time-share estates into one listing on the tax roll. Time-share real property is a creation of very recent origin having first appeared in its currently recognized form in Florida in the 1970's. The sheer ingenuity of the persons responsible for conceiving the idea of subdividing a single condominium unit into as many as 50 separate marketable fee time-share estates is admirable!

The temporal subdivision of a condominium unit into many fee time-share estates has dramatically increased the number of potential purchasers of fee interests in a single condominium unit committed to fee time-share use. This subdivision of a condominium unit into many fee time-share estates has also resulted in a significant increase in the total aggregate purchase price received for a single condominium unit subdivided into fee time-share estates. However, this ingenuous and concept of real estate marketing has also created some serious problems for local government officials responsible for the assessment and collection of ad valorem taxes on condominium units subdivided into fee time-share estates.

The magnitude of the potential problems inherent in the Florida statutory process for assessment and collection of ad valorem taxes on fee time-share estates, assuming no statutory designated agent such as a "managing entity," is illustrated by consideration of the notice requirements of the "Trim Bill" as codified in Ch. 200, Fla. Stat. Section 200.069, Fla. Stat., requires the Property Appraiser to annually mail to each taxpayer

a Notice of Proposed Property Taxes containing, among other information, the proposed millage rate of each taxing authority and the date, time, and place of a public hearing to be held to consider the proposed millage rate and the tenative budget.

If the Property Appraiser was dealing with a standard 200 whole-unit condominium project, then he would only have to send approximately 200 Trim Notices under s. 200.069. However, if the provisions of s. 192.037 are stricken, the Property Appraiser could be required to mail up to 10,000 Trim Notices with respect to a comparable condominium development committed to a fee time-share plan and having sold substantially all the available fee time-share estates. The same potential geometrical increase from approximately 200 to up to 10,000 would also be applicable to the annual notice of taxes that is required to be mailed by the Tax Collector to each taxpayer under the provisions of s. 197.072.

These ad valorem tax assessments and collection problems dealing with fee time-share estates have been recognized and discussed by experts in the time-share development field. In the treatise on "The Law and Business of Timeshare Resorts," Tax Aspects, s. 7.03(5)(a), the following comments are made at pages 7-14 and 7-15:

> Due to the number of interest owners associated with a time-share resort, there is some dispute as to the method for administering property taxes. Should the tax assessor send one lump-sum bill to the owners' association reflecting all of the interests, a partial bill addressed to each condominium unit on behalf of all 52 interest owners in that unit, or an individual bill to each interest owner? Needless to say, the assessor's office will not cherish the idea of sending out 52 bills where they previously

sent out one. Nor will they cherish administering 52 separate assessments for each condominium unit and attempting to collect on delinquent taxes from 52 interest holders with out-of-state addresses. A sold-out time-share development with 200 units which previously required 200 separate tax bills will now require over ten thousand bills. It just may not be worth the assessor's time to collect ten thousand bills of $50 to $75 when each conventional residential bill hovers around $1,000. (e.s.) (A. 24-25)

As indicated in the above-cited portion of the treatise on "The Law and Business of Timeshare Resorts," the notice and collection problems related to ad valorem taxation of fee time-share estates are magnified by the fact that time-share promotions are directed, in large part, to out-of-state residents. Some of these fee time-share estate owners are even residents of other countries. A statutory requirement that separate tax bills must be sent to numerous persons residing in various parts of the nation and world as a condition precedent to collecting ad valorem taxes on fee time-share estates poses an obvious serious threat to the efficacy of the ad valorem tax process in Florida.

Furthermore, as noted in the above-cited treatise, the dubious cost effectiveness of trying to collect small tax bills in the range of $50 to $75 from numerous nonresident fee time-share estate owners is apparent. These potential substantial tax assessment and collection problems were obviously considered by the Legislature during the course of its deliberations on the passage of s. 192.037, Fla. Stat.

The relevance of tax collection costs in comparison with the amount of potential revenue to be generated in classifying

property for ad valorem taxation was noted by this Court in its decision in Colding v. Herzog, 467 So.2d 980 (Fla. 1985). On page 983 of the Herzog opinion, this Court stated in pertinent part as follows:

> . . . This principle does not, however, prohibit the legislature from classifying property or from excluding certain property from taxation when the expense of an assessment and collection would exceed the revenue generated from the tax. Were the legislature not permitted such authority, Florida taxpayers would be forced to subsidize tax collection costs. Such a result would be illogical and was never intended by the authors of the constitution. . . . (e.s.)

This Court has acknowledged its approval of the rule of statutory construction that, if any state of facts can be conceived of which would sustain the reasonableness and validity of an act of the Legislature, the courts should indulge the presumption that such state of facts exists and justifies the enactment. See, State v. Bales, supra; and Ex parte Lewis, 101 Fla. 624, 135 So. 147, 150 (Fla. 1931).

Consequently, the presumed existence of the facts supporting the apparent futility of requiring the Property Appraisers and Tax Collectors in the 67 counties in Florida to send trim notices and tax bills in relatively small amounts to numerous owners of fee time-share estates residing in other states and countries clearly supplies a reasonable basis for the statutory scheme set forth in s. 192.037. In addition, the potential threat to the financial viability of the process for assessment and collection of ad valorem taxes in Florida if each of the numerous fee time-share estates has to be separately listed and billed constitutes compelling state interest in the enactment of this necessary statutory scheme embodied in s. 192.037, Fla. Stat.

CONCLUSION

The appraisals of the subject fee time-share estates at Spanish River Resort for the year 1983 were made in direct response to the mandate of the 1982 Act, which instituted comprehensive statutory changes with respect to the ad valorem taxation of fee time-share real property. The valuations of the subject fee time-share estates were made by the Property Appraiser based on the market approach and there was substantial, competent evidence before the trial court of the sufficiency of the market data. Consequently, the valuation issue is controlled by the holding of this Court in Blake v. Xerox, supra.

Furthermore, there is clearly a conceivable, rational basis to support the constitutionality of the statutory scheme set forth in s. 192.037 and related statutes for separately appraising individual fee time-share estates and combining them into a single entry for listing purposes on the tax roll. The designation of an "on-site" statutory agent (managing entity) responsible for remitting to the Tax Collector the aggregate ad valorem taxes due from numerous fee time-share estate owners, many of which reside in other states and countries, represents a reasonable attempt by the Legislature to deal with the unique tax assessment and collection challenges arising from the recent creation of fee time-share estates in real property.

The two questions certified by the District Court should both be answered in the affirmative, and the final judgment of the trial court upholding the assessments of the subject fee

time-share estates at Spanish River Resort for the tax year 1983 should be affirmed.

Respectfully submitted,

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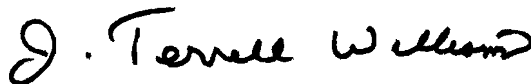
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Answer Brief of Defendant/Respondent, Department of Revenue, has been furnished by mail to GAYLORD A. WOOD, JR., Esq., 304 S.W. 12th St., Ft. Lauderdale, FL 33315; ROBERT C. ROSS, Esq., P.O. Box 3466, West Palm Beach, FL 33402; JAMES M. SPOONHOUR, Esq., 215 North Eola Dr., Orlando, FL 32802, LARRY KLIEN, Esq., Suite 503, Flagler Center, 501 South Flagler Dr., West Palm Beach, FL 33401 and ROBERT GOLDMAN, Esq., P.O. Box 1876, Tallahassee, FL 32302-1876, this 11th day of March, 1987.



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