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REPLY ARGUMENT

1. The abandoned drawings

Section 193.011(2), F.S., requires, in pertinent part, that the Property Appraiser assess property predicated upon:

"The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property. . ."

The Appellee Dade County Taxing Authorities have taken the position, inter alia, that the Florida Constitution requires the assessment of the subject property predicated upon a remote future use rather than the existing use. They hedge their bet on this position now, however, by contending that Valencia Center's abandoned office building drawings demonstrate that the subject property is immediately expected to be put to an office building use. The Appellees have failed to inform this Honorable Court that the drawings (which appear in the appendix to the appellee's brief, pages A.8 through A.29) never came to fruition as it was determined in litigation between Publix and Valencia Center, Inc., that the construction of the building is impermissible. Please see Plaintiff's exhibit 3, the order which precludes the office building development. Indeed the drawings were not presented to governmental agencies for consideration and approval as no feasibility study had been undertaken (R. Vol.IV, p. 125-126).

The Appellees have attempted here to parlay these abandoned and unusable drawings into an appearance of the Property Appraiser's compliance with Section 193.011(2), F.S., notwithstanding that neither the Circuit Court in its Final Judgments (R.124-126; R.243-245; R.318-320; 378-380) nor the Third District Court of Appeal so determined or even discussed. In fact, the Appellee Property Appraiser had been compelled to admit in his testimony that he had based his assessment solely on "whatever the zoning allows for" (R.Vol III, p.64).

At no time has it been expected that this shopping center property will be put to an office building use in the immediate future. The proof of the pudding is that the litigation here involved is for the tax years 1981, 1982, 1984, and 1985, yet today the property remains a Publix supermarket. Obviously there was, and is, no immediate expectation of an office building use on the subject property.

2. The legislative will

This Honorable Court's recent decision in Markham v. Neptune Hollywood Beach Club, 13 FLW 423 (Fla., 1988), is of assistance in reaching a conclusion in this case. Therein this Court dealt with the situation in which there had been a prior judicial interpretation of Section 194.171(2), F.S., based upon what had then appeared to the Court to be the legislative intent. Subsequent to that interpre-

tation, however, the Florida Legislature enacted a new statutory provision (Section 194.171(6), through Chapter 83-204, Section 7, Laws of Florida) which enactment made it clear that the legislature's will was to the contrary of the Court's prior conclusion. This Honorable Court determined that the subsequent legislative will must prevail.

However, at 13 FLW 424, Footnote 5, the following language appears:

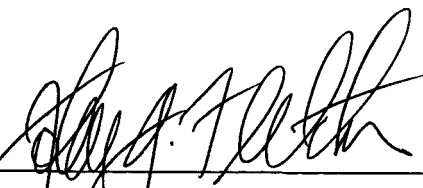
"The respondents do not challenge the constitutionality of Section 194.171(6)."

This Court inserted the footnote as there had been in the earlier decision a due process question which could have been revived as to Section 194.171(6). As this Court so properly noted, its constitutionality had not been challenged thus the statute had to be applied as written.

This concept from Markham v. Neptune Hollywood Beach Club is controlling here. Although Section 193.023(6) was challenged by the Appellees as being unconstitutional, Section 193.011(2) was not so challenged. The Third District Court of Appeal and the Circuit Court thus erred in refusing to apply Section 193.011(2) as written and as specifically mandated by the Florida Legislature (as discussed in this Appellant's initial brief, pages 18-21).

For the foregoing reasons it is again requested that the decision of the District Court be reversed. Ultimately the Circuit Court should be instructed to strike the assessment

valuations and substitute Valencia's assessment valuation figures.

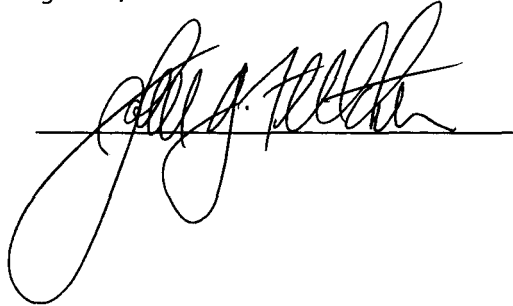


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been mailed to Daniel A. Weiss and Craig H. Collier, Assistant County Attorney, Suite 2810, 111 N.W. First Street, Miami, Florida 33128 and to Lealand L. McCharen, Assistant Attorney General, Tax Section, The Capitol, Tallahassee, Florida 32301 this 2ND day of August, 1988.

A handwritten signature in cursive script, appearing to read "Daniel A. Weiss", is written over a horizontal line.