IN THE SUPREME COURT OF FLORIDA

RONALD J. SCHULTZ, as Property Appraiser of Pinellas County, Florida, and RANDY MILLER, as Executive Director of the Department of Revenue of the State of Florida,	}	
Petitioners,	}	
vs.	}	CASE NO. 75,322
TM FLORIDA-OHIO RELATY LTD. PARTNERSHIP, an Ohio Limited Partnership, authorized and doing business in Florida,	}	
Respondent.	}	

INITIAL BRIEF OF AMICUS CURIAE

JAMES PAGE, NASSAU COUNTY PROPERTY APPRAISER
and as PRESIDENT OF THE PROPERTY APPRAISERS'
ASSOCIATION OF FLORIDA

and

RON ALDERMAN, HILLSBOROUGH COUNTY PROPERTY APPRAISER

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PRELIMINARY STATEMENT

This brief is submitted on behalf of the Property Appraisers' Association of Florida and the Honorable James Page, Nassau County Property Appraiser and the Honorable Ron Alderman, Hillsborough County Property Appraiser. Collectively they will be referred to herein as the "Association". The Petitioners, Ronald J. Schultz as Property Appraiser of Pinellas County, Florida and the Executive Director of the Department of Revenue of the State of Florida will be referred to herein as the "Petitioners". Where necessary to refer to either the Property Appraiser or the Department individually, such will be referred to as the "Property Appraiser" and the "Department". The Respondent, TM Florida-Ohio Realty Ltd. Partnership, will be referred to herein as the "Taxpayer". The references to the record on appeal will be denoted by the symbol (R-__). The Association adopts the appendix filed herein by the Petitioners and references to said appendix will be denoted by the symbol (A-__).

STATEMENT OF THE CASE

This cause is before this Court on a question certified by the District Court of Appeal, Second District, to be of great public importance. The question certified is as follows:

> WHAT IS THE PROPER METHOD OF ASSESSING FOR AD VALOREM PURPOSES INCOME-PRODUCING PROPERTY WHICH IS ENCUMBERED BY A LONG-TERM LEASE WHICH DOES NOT RETURN TO THE OWNER RENT

CONSISTENT WITH THE CURRENT RENTAL VALUE FOR SIMILAR PROPERTY? (A-1)

The case has its origin in an action filed in Circuit Court in Pinellas County contesting the 1986 assessment of certain property made by the Property Appraiser at that time in the amount of $3,981,400.00. (R-1-6). In the following trial, the Trial Court overturned the Property Appraiser's original assessed value and fixed a value on the subject property of $2,950,000.00 and entered final judgment accordingly. (R-70-71).

The District Court affirmed the decision of the Trial Judge and on motion for rehearing filed by the Petitioners denied said motion but granted in part the motion for certification. (A-3-15) and (A-1-2).

This Court has accepted jurisdiction of the matter.

STATEMENT OF THE FACTS

The involved property consists of a building occupied by a K-Mart department store and a waterbed store containing approximately 116,800 square feet located on approximately 11 acres of land. The property had been leased by the Taxpayer pursuant to a 22-year lease agreement with K-Mart Department Stores which commenced in 1970, the date the building was constructed. (R-35, 156-157). The lease contained four 5-year options to renew which had the effect of extending the duration of the lease until after the year 2000. (R-35, 195).

The expert for the Taxpayer, Mr. James Parham, testified that he appraised the leased-fee interest in the real property as opposed to the unencumbered fee interest. (R-109,

194). He valued only the lessor's interest based on the actual income received. (R-195, 197).

Mr. Richard Bova, Deputy Property Appraiser for Appraisals, testified on behalf of the Property Appraiser that the Property Appraiser's Office considered all the eight criteria contained in Section 193.011, F.S., and that the office was aware of the lease which encumbered the property and the income it generated. (R-144, 152-178, 124, 33). Mr. Bova concluded that the actual income from the property was "sub-market" and Mr. Parham, the Taxpayer's expert, agreed that the actual income was sub-market. (R-164, 170-171; R-233). Mr. Bova also testified that he believed that the law required assessment of the unencumbered fee as opposed to the encumbered fee. (R-153).

Both the expert for the Property Appraiser and the expert for the Taxpayer developed an income approach using the actual income for the property and the conclusions of each are as follows:

Income Approach: (Actual Income/Property Appraiser)	$2,875,480,00	(R-168,34)
Income Approach: (Actual Income/Taxpayer)	$2,950,000.00	(R-197)

Both experts also developed an income approach using market rent and the conclusions are as follows:

Income Approach: (Market Rent/Taxpayer)	$ 4.5-4.8 million dollars	(R-255)
Income Approach: (Market Rent/Property Appraiser)	$5.6 million dollars	(R-178)

The Property Appraiser's final assessed just value was $3,981,400.00 and the Trial Court fixed the value at $2,950,000.00. The Taxpayer's expert admitted that if the law required assessments to reflect the value of the unencumbered fee interest then the Property Appraiser's assessment would not be excessive. (R-256).

SUMMARY OF ARGUMENT

Under Florida law, no statute exists which taxes only the lessor's interest, or which allows for separate assessment of the lessor's interest in real property. Under Florida law all property is valued and assessed for ad valorem tax purposes based on the value of the thing itself, that is, the property itself, without regard to whether or not such property is subject to a lease, an easement or a mortgage. Under Florida law all interests in a single parcel of real property are assessed to the owner, unless there is a statute which expressly authorizes separate assessment. Only two statutes exist under Florida law whereby the interest of a lessee is subjected to separate taxation and these are Section 193.481, F.S., and Section 196.001(2), F.S., and none exist authorizing separate assessment of the interest of one owning an easement or a mortgage.

Similarly, no Florida statute exists which assesses the equity of an owner of real property which is subject to a mortgage. Accordingly, if a parcel of property without a mortgage is actually worth $100,000.00, the value for ad valorem assessment purposes remains $100,000.00 even though there may be

a mortgage on such property in the amount of $50,000.00, $100,000.00 or $150,000.00. The equity in the property of the mortgagor may be $50,000.00 if the mortgage indebtedness is $50,000.00 in the $100,000.00 parcel example, or the value of the mortgagor's interest may be zero if either the outstanding indebtedness on the mortgage is $100,000.00 or if the property is overfinanced and the outstanding indebtedness is $150,000.00. Regardless of the value of the lessor's interest to the lessor and regardless of the value of the lessee's interest to the lessee, the value of the property must be determined assuming no lease or mortgage existed.

Any appraisal method or judicial premise which reduces the value of a parcel of property because the owner has entered into a lease which reduces the value of, or renders worthless the lessor's interest in the property, provides a special exemption for such property not provided in either the Constitution or statutes, and discriminates against owners of comparable property not subject to a lease and other comparable property which is subject to lease for which the owner reserves market rent. Bad management is not a basis for reducing the value of property.

The proper method for valuing a parcel of property encumbered by a long term lease which does not return to the owner-lessor the fair market rental of the property, is any method, or combination of methods which results in the property being assessed as if it were unencumbered with such lease, and

which generates just value when compared to comparable unencumbered property.

ARGUMENT

POINT

THAT THE PROPER METHOD FOR VALUING ANY PARCEL OF PROPERTY WHETHER SAME BE ENCUMBERED WITH A LONG-TERM OR SHORT-TERM LEASE, OR UNENCUMBERED WITH ANY LEASE, IS A METHOD WHICH RESULTS IN THE ENTIRE PROPERTY BEING ASSESSED AT ITS JUST VALUE.

The basic principle upon which all ad valorem taxation rests in Florida is that property must be uniformly assessed at 100 percent of its fair market value. Walter v. Schuler, 176 So.2d 81 (Fla. 1965). The concept of fair market value is articulated as that price which a willing buyer would pay to a seller under no compulsion to sell. (id.). This fundamental requirement that all property be assessed at its just valuation for ad valorem taxation is articulated in Article VII, Section 4, Florida Constitution. Pursuant to said organic provision only four classes or types of property are permitted to be classified and assessed on some basis other than the just valuation. See Interlachen Lakes Estates, Inc., v. Snyder, 304 So.2d 433 (Fla. 1974).

Article VII, Section 3(a), Florida Constitution (1968), contains the only permissible exemptions of property in Florida, with the exception of homestead tax exemptions and certain economic tax exemptions found elsewhere. Thus, it is clear that no exemption could legally exist under the Constitution because the owner of certain property had, through bad management or

ignorance, entered into a long-term lease which did not return to the owner the fair rental value of the property or which did not contain a clause in the lease requiring the lessee to pay whatever ad valorem taxes became due on the property.

This Court addressed this precise issue in the case of Valencia Center v. Bystrom, 543 So.2d 214 (Fla. 1989), and held unconstitutional a statute which required the assessment of property in accordance with the highest and best use permitted under certain long-term leases. In that decision this Court recognized that the effect of the statute was to assess only the value of the lessor's interest in the lease and that that this interest could readily be diminished through bad management, by stating:

> As to whether the assessment should be decreased because of the below-market lease to Publix, this issue too has already been addressed by this Court. In Department of Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756, 758 (Fla. 1977), we stated:
>
> > We reaffirm the general rule that in the levy of property tax the assessed value of the land must represent all the interests in the land. This means that despite the mortgage, lease, or sublease of the property, the landowner will still be taxed as though he possessed the property in fee simple. The general property tax ignores fragmenting of ownership and seeks payment from only one "owner."
>
> (Citations omitted.) Here, the overall interest consists of two parts: the interest remaining in the hands of the owner-lessor, Valencia, and the interest held by the lessee, Publix. The amount a willing buyer would pay for the "fee simple" equals the value of both the lessor's and lessee's interests. The owner in this case, Valencia,

> has simply transferred a large part of the property's value to the lessee. Failing to consider the transferred interest would result in an assessment below fair market value. (e.s.).

There can be no doubt that the District Court reached its conclusion in the case at bar by assessing only the value of the lessor's interest under the sub-market long-term lease. It stated at page 1207:

> The property is subject to a long-term lease for a K-Mart store which yields rental income which is "submarket," ie., less than that obtainable from a lease negotiated on the current market. . . . Since at the time of the assessment the lease had a remaining term, with extensions, of twenty-six years, its submarket rent could not be renegotiated and raised for twenty-six years. The level of the rental income resulted in a reduction of the property's fair market value because, since that level was submarket and could not be renegotiated for twenty-six years after the date of the assessment, a willing purchaser of the property on that date would have reduced his offering price on account of the lease. The longer property is locked into a lease calling for submarket rent, the longer the owner of the property must wait to receive from a willing buyer a price for the property not reduced by the submarket rent. (e.s.).

Here the Court is recognizing that any informed investor interested in the property would only be willing to pay the owner a price representative of the reduced value of his lessor's interest, because that is all the lessor has to sell. That is, the lessor has a right to receive an income stream that is less than that capable of being generated by the property, because the lessor has given the lessee rights to the rest of the income stream.

The standard adopted by the District Court of using only the actual rent received by the lessor in arriving at a value on the entire parcel is inherently discriminatory as can be demonstrated from the following example.

Assume two brothers, brother "X" and brother "Y", each inherit $500,000.00 from their father and each invest in identical office buildings sitting side by side at a cost of $500,000.00 each. Assume that brother "Y" lacks the business acumen of brother "X" and decides that he needs his $500,000.00 back and is able to obtain an improvident loan from a savings and loan institution of $450,000.00 for which he executes a mortgage in favor of the institution. Assuming that the value of the two buildings was $500,000.00 each before brother "Y" entered into the mortgage and assuming no other changes in the condition or character of the property, then the value must still be the same after the mortgage is entered into by improvident brother "Y". This is so because no Florida statute taxes the mortgagor's equity. If the law were any different then brother "X's" building would be taxed on a value of $500,000.00 while brother "Y's" building, because it was subject to a mortgage, would only be taxed at $50,000.00, the value of the mortgagor's equity.

Assume the same situation except that both brothers have now decided to lease their office buildings. The provident brother, brother "X", knows that fair market rental after expenses for the building is $50,000.00 per year for a 10-year period but brother "Y", being rather ignorant and a poor manager, rents his building for a net rental after expenses of $25,000.00

per year for a 10-year period. Brother "X" then will be receiving an income stream totaling $500,000.00 over the term of the lease while brother "Y" would be receiving only an income stream of $250,000.00 over the ten year term although total income stream capability of the property is $500,000.00. Applying the income approach to the two parcels of property using the actual rental received by each of the two brothers results in brother "X" having to pay twice as much taxes as brother "Y". Following is the formula using the income approach to value and using the actual rent and assuming a market capitalization rate of 10 percent.

$$\text{Value} = \frac{\text{Net Operating Income}}{\text{Capitalization Rate}}$$

Brother "X":

$$\text{Value} = \frac{\$50{,}000 \text{ (Net Income)}}{.10 \text{ (cap. rate)}} = \$500{,}000.00 \text{ Value}$$

Brother "Y":

$$\text{Value} = \frac{\$25{,}000 \text{ (Net Income)}}{.10 \text{ (cap. rate)}} = \$250{,}000.00 \text{ Value}$$

However, the "rub" comes when brother "Y" decides he wishes to sell the property encumbered with his bad management lease. The lessee knows that he has a good deal because he's paying $25,000.00 per year for something worth $50,000.00 per year. In fact, he could sublease his rights to a sublessee for $50,000.00 per year (market rent) and realize a $25,000.00 per year profit which rightfully should have been going to the owner-lessor had the owner-lessor been more astute. The lessee's interest would be the rights to receive $25,000.00 per year for the remaining term of the lease. So, assuming that the lease had 9 years still to run, and the owner wished to sell the property,

a purchaser, to obtain the property could anticipate having to pay the owner for his rights to receive $25,000.00 per year income for the remaining 9 years of the lease, and the lessee for his rights to receive $25,000.00 per year for the remaining term of the lease. This would recognize the total income stream of the property.

The effect of the District Court's holding is that only the lessor's rights in the income stream are assessed. But if economic or market rent had been used the value of both the lessor's rights and the lessee's rights in the income stream would be assessed to the owner.

The following example explains the operation of the formula valuing property based on the income approach to value and clearly demonstrates that the property is not valued at its just value if submarket actual rent is used because all interests in the property are not assessed.

Brothers Abe and Bill each build a 30,000 square foot office building in 1976. Both were built by the same builder on opposite sides of the block. The make-up of the buildings is exactly the same and the location is equally attractive for both.

Assume that the market dictates a $5.00 square foot rental rate after expenses and that a prudent investor would expect and that the market dictates a 10 percent capitalization rate. Abe signs a 3-year renewable lease and Bill signs a 20-year lease.

$$\text{VALUE} = \frac{\text{Net Operating Income}}{\text{Capitalization Rate}}$$

ABE - $\frac{\$5.00 \text{ per sq. ft. x } 30{,}000 \text{ sq. ft.}}{.10 \text{ (cap. rate)}} = \frac{\$150{,}000 \text{ Income}}{.10}$

$1,500,000 indicated value based upon market rent and market price.

BILL - $\frac{\$5.00 \text{ per sq. ft. x } 30{,}000 \text{ sq. ft.}}{.10 \text{ (cap. rate)}} = \frac{\$150{,}000 \text{ Income}}{.10}$

$1,500,000 indicated value based upon market rent and market price.

In 1982 Abe's rental has increased to $9.00 per square foot after expenses. Since Bill is locked into a 20-year lease his income after expenses is still $5.00 per square foot. Assume an investor would expect and the market would dictate an 11.50 percent capitalization rate of return.

ABE - $\frac{\$9.00 \text{ x } 30{,}000}{.115} = \frac{\$270{,}000 \text{ Income}}{.115} = \$2{,}347{,}526$ Value

BILL - $\frac{\$5.00 \text{ x } 30{,}000}{.115 \text{ Rate}} = \frac{\$150{,}000 \text{ Income}}{.115 \text{ Rate}} = \$1{,}304{,}348$ Value

In 1985 Abe's rental is renegotiated to $12.00 per square foot after expenses. An investor would expect a 12.5 percent rate of return.

ABE - $\frac{\$12.00 \text{ x } 30{,}000}{.125 \text{ (cap. rate)}} = \frac{\$360{,}000 \text{ Income}}{.125 \text{ (cap. rate)}} = \$2{,}880{,}000$ Value

In 1985 Bill's tenant, Sam, subleases his lease to Charles for $12.00 per square foot which is what the market dictates. A good deal for Sam and a good deal for Bill too because his value would be based on the 20-year lease <u>if</u> actual rent instead of market rent is used in determining the value.

BILL - $\frac{\$5.00 \text{ x } 30{,}000}{.125 \text{ (cap. rate)}} = \frac{\$150{,}000}{.125 \text{ (cap rate)}} = \$1{,}200{,}000$ Value

The total income stream flowing to the property would be the combined income received by the lessor, Bill, and that received by the lessee, Sam, from the sub-lessee, Charles, and the total value of both interests in the property would be the combined value of each.

Florida has always adhered to the rule that unless there is a specific statute authorizing it, all interests in a parcel of real property must be assessed together as a single unit. In the case of Dickinson v. Davis, 224 So.2d 262 (Fla. 1969), the Florida Supreme Court considered the constitutionality of a statute which provided for separate assessment of the subsurface rights in real property. It upheld the statute, (Section 193.221, F.S., 1967, now Section 193.481, F.S.). The statute expressly provided that when there was a separation by conveyance or otherwise of the subsurface interest in real property from the fee or surface of said real property, then the subsurface interest should be taken and treated as a separate interest in real property and be subjected to separate taxation.

Shortly thereafter the Supreme Court cited the Davis case in the case of Homer v. Dadeland Shopping Center, Inc., 229 So.2d 834 (Fla. 1970) and stated:

> It is elementary that the tax assessment valuation must include all interests in the property except when the Legislature authorizes the assessment of separate interests. See Dickinson v. Davis, 224 So.2d 262 (Fla. 1969). (e.s.).

In the Homer case, the Supreme Court reversed a decision of the Third District Court because the Third District Court had

authorized an assessment of less than all the interests in the real property. It stated the holding of the Third District Court at page 836:

> The opinion of the District Court of Appeal in the case sub judice is based upon the theory that the encumbrances are "covenants restricting the use of land for purposes lower than its highest and best use". It was held that only the fee simple owner's interest in the real property was to be included in the tax assessment valuation and that the value of the rights held by third parties should be excluded from that valuation. (e.s.).

It cited and quoted from the case of Wolfson v. Heins, 149 Fla. 499, 6 So.2d 858 (Fla. 1942), which involved the sale of a tax deed for nonpayment of taxes. The Plaintiff in that suit had contended that the tax assessment did not include an easement which he held in a private street adjacent to his property and that therefore the tax sale did not divest him of his easement. The Homer decision quoted from Wolfson at page 836 as follows:

> "Although there is a division of authority on the question of whether the purchaser at a tax sale of land subject to an easement takes the land free from such easement, the difference in the cases seems based solely upon the nature of the tax levy and assessment. Where, as in this State, the levy and assessment in on realty itself regardless of the existence of estates in it, an easement is destroyed by the tax sale of the servient estate." (e.s.).

In Homer, the taxpayers had contended successfully before the Third District that the interests of the tenants in the parking area and other vacant land to be used for future expansion was a separate interest (easement) in real estate and

that the value of such should not be included in the value of the fee simple owner's interest in the property. The Court concluded by holding that the tax assessor was justified in placing the same value on the land used for the parking area as the land upon which the improvements were erected.

Later cases recognized that the statute requiring separate assessment of the subsurface rights extended not only to subsurface rights held by fee but also those held by lease. In Straughn v. Sun Oil Company, 345 So.2d 1062 (Fla. 1977), this Court reversed a decision of the First District Court, rendered in Fisher v. Sun Oil Company, 330 So.2d 76 (Fla. 1 DCA 1976), which had held that oil, gas and mineral leasehold interests were neither an interest nor an estate in real or personal property, nor were they subject to ad valorem taxation. In the Fisher case the character of the division of the interest in the property created by the statute was explained beginning at page 78 as follows:

> Land is not only divisible horizontally, but is also divisible vertically. Dickinson v. Davis, Fla., 224 So.2d 262 (1969). The fee may be split unto a surface estate and a mineral estate by conveyance or by a reservation of the mineral fee in the conveyance of a surface fee (or vice versa) so that the result is a fee in the surface estate and a separate fee in the mineral estate. (e.s.).

The language used in the statute dealing with separate taxation of subsurface rights clearly states that the Legislature is directing that the subsurface rights shall be treated as an interest in real property subject to taxation separate and apart

from the fee or ownership of the fee or other interest in the fee. No statute exists in Florida law which assessed only the owner-lessor's interest in a parcel of property encumbered by a lease.

The early cases of City of Tampa v. Colgan, 121 Fla. 218, 163 So. 577 (Fla. 1935), and the case of Bancroft Investment Corporation v. City of Jacksonville, 27 So.2d 167 (Fla. 1946), recognized and adhered to the basic principle in Florida law that it is the property itself which is assessed at its full case value, without regard to whether or not there exists encumbrances by way of lease, mortgage, easements, or separate estates therein.

In Bancroft the Supreme Court recognized that under Florida law all interests in property are assessed to the owner unless there is a statute expressly authorizing separate estates or interests therein, at page 169 stating:

> Whether the Legislature may change its statutes so as to extend the provisions of the tax exemption laws only to such real and personal property of the United States as may be actually "owned, held, used and occupied" exclusively for governmental purposes, or may so amend same as to authorize the taxation of separate interests in property, is a question not before us. But so long as our statutes remain in force and effect in their present form we think it perfectly plain that no authority exists for the taxation of the equitable interest of Bancroft Investment Company in and to the real estate, the legal title of which rests in the United States; there being no lawful authority under the laws of Florida for splitting property interests in land for the purpose of determining the incidents of taxation. (e.s.).

The case of Donovan v. City of Haverhill, 1923, 247 Mass. 69 (141 N.E. 564, 30 A.L.R. 358) was cited as authority for its decision by this Court in Colgan and in the Third District decision of McNayr v. Claughton, 198 So.2d 366 (Fla. 3 DCA 1967), as support for the principle that the property must be assessed as though unencumbered and that the assessment of same in such state must disregard any encumbrances or other interest in the land stating beginning at page 565:

> Manifestly the entire estate to be taxed may be made up of various tenancies, vested and contingent, as well as leasehold interest, the value of which in many cases would be impracticable to determine. It is plain a deduction of the surrender value of a long term lease from the market value of the estate, ascertained by a sale of the land free of the lease, in many instances would seriously impair the taxable valuation of the estate considered as a whole; and that, the entire estate would escape taxation to the extent of the tax upon the value of the leasehold interest to the estate for the purpose of extinguishment. We do not think a determination of the fair cash valuation of real estate requires the assessors to make such a deduction. . . . In the case at bar, the use and enjoyment of the estate are not affected by the fact that the owner of the estate receives less income therefrom than he might receive if he had made other provisions and covenants as to rent and payment of taxes.

The holdings all dictate quite clearly that unless there is a statute expressly so providing, all interests or estates in real property must be assessed to the owner. Using only sub-market rent to determine the value of a parcel of property encumbered with a sub-market long-term lease does not assess all the interests in the property to the owner. The previous example clearly demonstrates this.

If an investor wished to purchase a commercial piece of property so as to receive the income stream dictated by the market, he must consider the total income stream capability of said property and the existence or non-existence of any sub-market rent.

If the income stream flowing to the owner-lessor is market and is generating the expected return the investor's purchase of the property which would include the rights to the income stream from the owner would be all the income stream reasonably anticipated to be associated with the property. This is so because the rent being paid is the market rent for other and similar properties located in the county.

But if the property was subject to a sub-market lease, obviously then, if the investor wished to purchase the property and obtain the rights to receive all the income reasonably to be expected from the property then he must purchase both the rights of the owner, and the rights of the lessee. If a lessee were paying $25,000.00 per year rent for that which is worth $50,000.00 per year, then the lessee could sublease his interest for the difference of $25,000.00 and this, together with the $25,000.00 being paid by the lessee to the lessor, would constitute the total income earned which could reasonably be expected by the investor from the property. Thus, to properly assess this property using the income approach to value under Florida law, it would be necessary to combine the value of the interest held by the lessor and the value of the interest held by the lessee. To use hypothecated market rent instead of actual

rent is a method which values all the interests in the property whether held by the owner-lessor or the tenant-lessee, and that is what Florida law requires. In no other way can all the interests in the property be assessed to the owner.

Approaching the appraisal problem from the standpoint of the investor as in the example mentioned above demonstrates clearly that the market value of an income producing property must be based on a total income stream capability of the income producing property. Otherwise a purchaser would be purchasing only that which was held by the owner-lessor and no prudent investor would ever do this unless he could buy the lessor's interest at a sufficient discount so as to allow him to receive the desired return on his investment. Thus, if the lessor is receiving only half the rent which the property should be bringing, a prudent investor would not be willing to pay more than one-half of the value of the property.

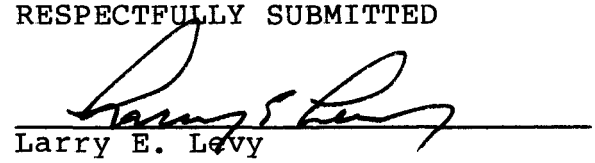
CONCLUSION

The District Court's decision fixing the value based on the actual income received by the lessor, which was admitted to be sub-market rent, is in conflict with Florida law and all the Florida cases which hold that an assessment of property for ad valorem tax purposes must include all the interests in such property. The District Court's decision is incorrect because the method employed inherently operates to discriminate among comparable properties because it permits property encumbered with a sub-market lease to be valued lower than unencumbered property

and property encumbered with a lease where the owner is receiving the fair market rental.

The District Court's decision should be reversed.

RESPECTFULLY SUBMITTED



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to KENT G. WHITTEMORE, ESQUIRE, Whittemore and Ramsberger, One Beach Drive, SE, Suite 205, St. Petersburg, Florida 33701; GAYLORD A. WOOD, JR., ESQUIRE, 304 Southwest 12th Street, Ft. Lauderdale, Florida 33315-1521; WILLA FEARRINGTON, ESQUIRE, Fearrington & Hyman, 105 South Narcissus Avenue, Suite 710, West Palm Beach, Florida 33401-5529; SUSAN H. CHURUTI, ESQUIRE, 315 Court Street, Clearwater, Florida 34616; ROBERT A. GINSBERG, ESQUIRE, DANIEL E. WEISS, ESQUIRE and CRAIG H. COLLER, ESQUIRE, Metro-Dade Center, Suite 2810, 111 Northwest First Street, Miami, Florida 33128; JOHN G. FLETCHER, ESQUIRE, 7600 Red Road, Suite 304, South Miami, Florida 33143; ROBERT E. V. KELLY, JR., ESQUIRE, Rydberg, Goldstein & Bolves, 220 East Madison Street, Suite 724, Tampa, Florida 33602; and JOSEPH C. MELLICHAMP, III, ESQUIRE, Senior Assistant Attorney General, Dept. of Legal Affairs, The Capitol, Tallahassee, Florida 32399-1050 on this the 30 day of March, 1990.

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