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CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

CAPITAL CITY COUNTRY CLUB, INC.. a corporation not for profit,

Petitioner,

vs.

KATIE TUCKER. Executive Director of the Florida Department of Revenue, DICK BRAND, as Property Appraiser of Leon County, Florida, and JOHN CHAFIN, as Tax Collector of Leon County, Florida,

Respondents.

and

INTERNATIONAL SPEEDWAY CORP., a **Florida** corporation,

Amicus Curiae.

CASE NO. 78,201

From the First District Court of **Appeal**

AMICUS CURIAE ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

Amicus Curiae, JIM SMITH, Property Appraiser of Pinellas County, hereby adopts the Statements of the Case and Facts presented by the Appellees, KATIE TUCKER, Executive Director of the Florida Department of Revenue, and DICK BRAND, Property Appraiser of Leon County, Florida.

SUMMARY OF ARGUMEMT

JIM SMITH, Property Appraiser of Pinellas County, as Amicus Curiae herein, addresses and responds to two points raised by the Petitioner herein, i.e.,

> **A.** Is a municipality's ownership interest in land exempt from **ad** valorem taxation if that **land was** leased to **a** private interest for non-governmental **purposes** prior to **April** 15, 1976 and continues to be leased in such manner?

If the above question is answered affirmatively, then the Petitioner wins **as** against the Respondent, DICK BRAND, Property Appraiser **of** Leon County and no ad valorem taxes may be **assessed** against the municipality. On the other hand if this question is answered negatively, then a second question must be addressed **as follows:**

> **B. If** the Capital City Country Club, Inc. golf course is subject to **ad** valorem taxation, what specific property or legal interests in said property should be appraised in order to arrive at a legal assessment?

ARGUMENT

A.

IS A MUNICIPALITY'S OWNERSHIP INTEREST IN LAND EXEMPT FROM AD VALOREM TAXATION IF THAT LAND WAS LEASED TO A PRIVATE INTEREST FOR NON-GOVERNMENTAL PURPOSES PRIOR TO APRIL 15, 1976 AND CONTINUES TO BE LEASED IN SUCH MANNER?

Florida Statute § 196.199(4) is inapplicable to the present situation. Rather, the Court should focus on Florida Statute § 196.199(1)(c), which is essentially a restatement, insofar as it deals with municipalities, of the constitutional provision contained in the Florida Constitution Article VII, Section 3. This section provides in part that:

> "All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation".

The history of Constitutional meanderings of municipal tax exemptions is set forth in Volusia County v. Daytona Beach Racing, Etc., 341 So.2d 498, 501 (Fla. 1977).

In a footnote to Petitioner's Brief (Page 15, Footnote 4), Petitioner opines that this particular constitutional provision is not a prohibition of the Legislature creating other statutory exemptions, Indeed, the Legislature has not created other statutory exemptions which would impinge upon this constitutional provision.

Petitioner's reliance on the concepts embodied in Park-n-Shop, Inc. v. Sparkman, 99 So.2d 571 (Fla. 1958), is misplaced. The property which was the subject matter of the Sparkman case was County property, traditionally held immune from

ad valorem taxation, as distinguished from municipal property which may be exempted from taxation.

If <u>municipal</u> property is leased today to a private entity for purely private (non-governmental) purposes, the property is **taxed** for **ad** valorem purposes and is not tax-exempt. This is true today, yesterday, **and** in 1956 when the leasehold interest at issue was put in place.

ARGUMENT B.

IF THE CAPITAL CITY COUNTRY CLUB, INC. GOLF COURSE IS SUBJECT TO AD VALOREM TAXATION, WHAT SPECIFIC PROPERTY OR LEGAL INTERESTS IN SAID PROPERTY SHOULD BE APPRAISED IN ORDER TO ARRIVE AT A LEGAL ASSESSMENT?

Property Appraisers throughout the state of Florida **are** charged under Florida law with appraising all real property located in their jurisdiction at 100% of just value. Just value has been equated with fair market value by this Court. In <u>Valencia Center, Inc. v. Bystrom</u>, **543 So.2d** 214 (Fla. 1989), this Court concluded that a Property Appraiser in making a fair market appraisal, must look beyond a long-term unfavorable or submarket rent lease and appraise the property **as** though the landlord "possessed the property in fee simple." <u>Valencia Center, Inc.</u>, <u>supra</u>, citing <u>Department of Revenue v. Morgan Woods Green Tree, Inc.</u>, 341 So.2d 756. 758 (Fla. 1977). Obviously, a **landlord,** whether he rents his property out or not, owns that property in fee simple. It is presumed that what the Morgan Woods Court meant thereby was for the Property Appraiser to appraise the property **as** though the leasehold interest did not **exist.**

City of Orlando v. Hausman, 534 So.2d 1183 (Fla. 5th DCA 1988). rev. denied, 544 So.2d 199 (Fla. 1989) presents a factually similar situation, i.e., a municipality losing its tax exemption by leasing real property to tenants who made private (non-governmental or public) use of property. Petitioner asserts this case to be distinguishable on the basis that the leasehold interests, were not included in the property. However, no mention is made in the case of sub-market rent considerations. When market rent is capitalized it should yield a good indicator of fair market value, and hence consideration of leasehold interests would be unnecessary.

Indeed, this amicus definitely relies on the recent case of Schultz v. Florida-Ohio Realty Limited Partnership, 577 So.2d 573 (Fla. 1991), which this Court decided on March 28 of this year.1/ Schultz reaffirms that the Property Appraiser is charged with appraising the entire property, not separated interests in that property. Petitioner's attempt to distinguish the Valencia and Schultz cases falls short in that the instant case as well as the Valencia and Schultz cases all involve a single real property ad valorem taxpayer, but similarly involve an attempt by the taxpayer to disassociate itself from a large portion of the taxable value of the real property involved. Quite the contrary to petitioner's assertion, the aforementioned cases are appropriate and believed by the undersigned to be controlling.

1/ It should be noted that this amicus is the successor to the Property Appraiser who was the prevailing party in this case.

The only new wrinkle which the instant case presents is the anomalous situation where a private interest is leasing real property from a governmental entity. Otherwise, there would be nothing to distinguish this case from either Valencia or Schultz, the governmental aspect triggering the intangible personal property treatment accorded to the lessee by Florida Statute § 196.199(2)(b). In reviewing that section it is somewhat interesting to note that had the lease in question not provided for a payment of $1.00 each year then in that event ownership of the entire property interest would have been deemed held by the petitioner and would have been taxed to the petitioner as real property.

Petitioner argues for equitable treatment. One need only observe the inequity of tax exemption based upon a Depression-era golf course conveyance to the City of Tallahassee followed by a 99 year lease back to original grantor's successor golf club operator--for $1.00 per year--thereby creating a tax exempt situation on land originally totally taxable, leaving only the requirement for intangible personal property tax to the lessee on the leasehold, if Petitioner's argument is accepted.

SUMMARY

Pursuant to the Constitution of the State of Florida a municipality which owns real property that is not used exclusively by it for municipal or public purposes is not exempt from taxation and, insofar as the operation of Capital City Golf Club is not a municipal or public purpose the real property is taxable to the owner for ad valorem purposes.

The Property Appraiser of Leon County was charged by law to appraise the subject property at just or full market value without regard to the bifurcation or fragmenting of various ownership interests in that property. Accordingly, respondent Dick Brand, Property Appraiser of Leon County, appraised the property in question as the law of Florida charged him to do and the assessment derived therefrom should therefor be sustained.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has **been** furnished by U.S. Mail to JEAN R. **WILSON,** Assistant Attorney **General.** Department of Legal Affairs, Tax Section, Capitol Building, Tallahassee, FL 32399; BENJAMIN K. **PHIPPS,** ESQUIRE, **P. O. Box** 1351, Tallahassee, FL 32302; **PETER** GUARISCO, **ESQUIRE,** 2003 Apalachee Parkway, Suite 101, Tallahassee, FL 32301; S. **L. WILLIAMS,** ESQUIRE, **150 Sa.** Palmetto Avenue, Box **A**, Daytona Beach, FL 32114: **and** to WILLIAM C. **OWEN**, ESQUIRE, Post Office Drawer **190,** Tallahassee, FL **32302** this 30th **day** of September, **1991.**

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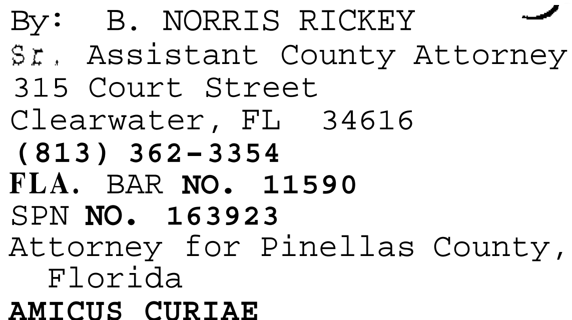

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