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IN THE
SUPREME COURT OF FLORIDA

CASE NO. 80,952

SECTION 3 PROPERTY CORP.,

Petitioner,

v.

JOEL W. ROBBINS, as Property Appraiser
of Dade County, Florida,

Respondents.

ANSWER BRIEF OF JOEL W. ROBBINS, PROPERTY APPRAISER FOR DADE COUNTY, FLORIDA

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SUMMARY OF ARGUMENT

There is no constitutional right to a jury trial in cases which implicate the equitable jurisdiction of the courts. It is clear that tax challenge cases, including the case sub judice, have always and continue to implicate the courts' equitable jurisdiction, because the issues of the cases sound in equity, and because the historical antecedents to the current Florida Statutes which govern tax challenge cases made it clear that such cases were to be heard before the chancery courts sitting in equity. Numerous Florida cases set forth the elements of stating and proving a cause of action in equity to challenge a tax assessment--not one Florida case discusses what the elements of such a cause of action at law might be. Accordingly, because tax challenge cases are equitable actions, they do not fall within the scope of cases for which jury trials are guaranteed by the Florida Constitution.

No Florida court has ever granted a jury trial in a tax challenge case. Every recorded tax challenge case in Florida has been tried non-jury. The Florida Legislature has not provided for jury trials in tax challenge cases, even though it has done so by statute in other types of cases. This Court should not now depart from such a long history of non-jury tax challenge cases based merely upon strained inferences urged by Petitioner as taken from a few Petitioner-selected cases that do not even discuss the propriety of jury trials in tax challenge cases.

Tax challenge cases are in the nature of appeals for the review of the property appraiser's exercise of his or her administrative discretion. The fact finder is not allowed to make an independent determination of value. It is not within the province of a jury to pass judgment on whether an administrative officer has abused his or her administrative discretion, such determinations being exclusively within the province of the judiciary. There is therefore no proper role for a jury to play in a tax challenge case, and juries should therefore not be impaneled in such cases.

ARGUMENT

I

THE DISTRICT COURT OF APPEAL WAS CORRECT IN HOLDING THAT ACTIONS CONTESTING AD VALOREM TAXATION ARE ACTIONS SOUNDING IN EQUITY AND THUS NOT TRIABLE BY JURY

A. Actions In Equity Do Not Fall Within The Protection Of Article I, Section 22 Of The Florida Constitution.

It is well established that where a right or remedy is equitable in nature, there is no right to a jury trial. R.53; citing Hawkins v. Rellim Inv. Co., 92 Fla. 784, 110 So. 350 (Fla. 1926); Hathorne v. Panama Park Co., 44 Fla. 194, 32 So. 812 (Fla. 1902); Hughes v. Hannah, 39 Fla. 365, 22 So. 613 (Fla. 1897); Wiggins v. Williams, 36 Fla. 637, 18 So. 859 (Fla. 1896). See also In re: Estate of William A. Howard, 542 So. 2d 395, 399 (Fla. 1st DCA 1989) (statute which codifies an equitable principle creates no jury-demandable issue). Petitioner has not quarreled with or refuted this axiom in its Initial Brief on the Merits.

Accordingly, as stated by the district court below, actions in equity do not fall within the protection of Article I, Section 22 of the Florida Constitution guaranteeing the right to a jury trial. R.53; Wiggins, 18 So. at 863-64. It is, in fact, reversible error for a court to submit to a jury issues which are traditionally within the province of an

equity court to determine. Chabad House-Lubavitch of Palm Beach County, Inc. v. Banks, 602 So.2d 670, 672 (Fla. 4th DCA 1992); Cooley v. Cody, 377 So.2d 796, 797 (Fla. 1st DCA 1979). See Opinion, R.53, citing Lincoln Tower Corp. v. Dunhall's-Florida, Inc., 61 So.2d 474 (Fla. 1952); and Greenwood v. Oates, 251 So.2d 665 (Fla. 1971). Therefore, if the instant case is one sounding in equity, Petitioner can claim no right to a jury trial, and the ruling of the Third District Court must stand.

B. Tax Challenge Cases Brought Pursuant To Chapter 194 Of The Florida Statutes Are Actions Sounding In Equity.

The remedy sought in the case sub judice is in the nature of an injunction and a declaratory judgment seeking the reinstatement of the Property Appraiser's original assessment. R.53. As the court below found, the remedy sought is equitable in nature. R.53. Petitioner has not challenged this finding.

Additionally, it is clear that tax challenge cases have traditionally sounded and continue to sound in equity, and thus do not give rise to a right to jury trial. In Powell v. Kelly, 223 So.2d 305, 307 (Fla. 1969), this Court specifically stated that tax challenge cases implicate the equitable jurisdiction of the circuit courts. In Paul v. Blake, 376 So.2d 256, 259 (Fla. 3rd DCA 1979), the district court characterized a plaintiff's challenge of certain tax

exemptions as an action in equity. In Dade County Land Development Corp. v. Dade County, 157 So.2d 142 (Fla. 3rd DCA 1963), the equity doctrine of "clean hands" was held applicable to tax challenge cases. "The rule that one who seeks equity must do equity is particularly applicable in suits of this kind . . . . [H]e who seeks equity must do equity in cases challenging assessments." Dade County Land Development at 144, 145. In Charles Sales Corp. of West Palm Beach v. Maxwell, 224 So.2d 752, 755 (Fla. 4th DCA 1969), the Fourth District Court held that an aggrieved personal property taxpayer could pursue either "the traditional equitable remedy" or the legal remedy of certiorari then available under section 200.10, Florida Statutes (1967). There was no mention in any of these cases of any legal or other remedy which would give rise to a right to a jury trial being available to a taxpayer.

Furthermore, as pointed out by the Third District Court, it is beyond question that the statutory precursors to the current "tax challenge" statutes contained in Chapter 194 of the Florida Statutes were statutes authorizing equitable actions in the chancery courts. R.52. In Reid v. Lucom, 349 So.2d 661 (Fla. 4th DCA 1977), cert. den'd. 358 So.2d 132 (Fla.), cert. den'd. 439 U.S. 860, 99 S.Ct. 180, 58 L.Ed. 2d 169 (1978), the Fourth District Court recognized that an action brought pursuant to Chapter 194 is an action "formerly cognizable in equity". The First District Court, in a very

recent opinion, found that Chapter 8586, Acts of 1921, General Laws--the earliest predecessor to Section 194.171, Florida Statutes (1991)--conferred jurisdiction in tax cases upon "courts of equity". The Printing House, Inc. v. State of Florida, Dept. of Revenue, 18 FLW 245 (Fla. 1st DCA, Dec. 31, 1992). See also Day v. City of St. Augustine, 104 Fla. 261, 139 So. 880, 883 (Fla. 1932) (holding that statute conferred jurisdiction on courts of equity in all cases involving the legality of any tax, assessment, or toll, and that the statute was in consonance with the constitutional provision on the subject); Dade County v. McArthur Jersey Farm Dairy, Inc., 214 So.2d 362, 363 (Fla. 3rd DCA 1968); and Dade County Land Development, 157 So.2d at 143. Because it is clear that the statutory rights and remedies provided for in Chapter 194 and its predecessors are and were equitable in nature, it is equally clear that Petitioner has no right to a jury trial in the instant cause.

This Court has consistently found that the right to a jury trial does not apply to equity actions. Hawkins, 110 So. at 351; Hathorne, 32 So. at 813; Hughes v. Hannah, 22 So. at 615; Wiggins v. Williams, 18 So. at 863-64. This Court has also consistently recognized that tax challenge cases sound in equity. See, e.g., Powell, 223 So.2d at 307; Day, 139 So. at 883; City of Tampa v. Palmer, 105 So. 115, 120-21 (Fla. 1925) (holding that the only remedies available to challenge tax assessment were either to appear before local administrative

board of equalization or to sue in a court of equity); Graham v. City of West Tampa, 71 Fla. 605, 71 So. 926, 928 (Fla. 1916) ("Where the essential requirements of law are not observed in making valuations of property for assessment . . . appropriate relief may be had in equity."). Accordingly, if this Court were now to rule in favor of Petitioner, the Court would of necessity have to recede from either (a) the line of cases holding that equitable actions do not give rise to a right to jury trials, or (b) its line of cases finding that tax challenge cases sound in equity. Petitioner has presented neither sound nor compelling reasons for this Court to overturn either line of legal precedent.

II

THE CASES CITED BY PETITIONER PROVIDE NO BASIS OR SUPPORT FOR PETITIONER'S CONTENTION THAT IT IS ENTITLED TO A JURY TRIAL IN A TAX CHALLENGE CASE

Petitioner's argument that this Court should overturn the ruling of the Third District Court is based on three premises: (I) that the case of Hollywood Inc. v. City of Hollywood, 321 So.2d 65 (Fla. 1965) negates the district court's finding that this action sounds in equity and thus is not triable by jury; (II) that Florida Courts have consistently granted jury trials in cases centering on property tax assessments; and (III) that the cases cited by the Third District Court are inapposite or contradictory to the district court's Opinion. A critical review of these three premises reveals them to be imprecise, incorrect, and irrelevant.

A. Hollywood, Inc. v. City Of Hollywood Is Not A Tax Challenge Case And Does Not Support Petitioner's Claim That It Is Entitled To A Jury Trial.

Petitioner states, on page 3 of its Initial Brief on the Merits, that this Court decided in Hollywood, Inc. that the defendant City of Hollywood "was entitled to a jury trial in a county tax assessor's suit for equitable relief and a declaratory decree as to the ownership of certain property." This statement is imprecise and misleading.

In August of 1964, the tax assessor for Broward County sued both Hollywood, Inc. and the City of Hollywood for a declaratory decree and equitable relief, alleging that both parties claimed ownership of certain ocean-front property and that the tax status of the land was unclear. Hollywood, Inc., 321 So.2d at 67. The tax assessor did not bring the suit to appeal a decision of an administrative board of tax review, as is the situation in the instant case.

Both defendants in Hollywood, Inc. did indeed claim ownership of the subject land. In an effort to legally establish its ownership, the City of Hollywood filed a cross-claim against Hollywood, Inc., seeking to quiet the City's title. Id., at 70. Conversely, Hollywood, Inc. counter-claimed against the City of Hollywood, seeking to quiet its own title and to receive damages. Id.

The City of Hollywood sought a jury trial on the issues of dedication and right to possession of the property, and

based its demand for jury trial on Florida Statute 65.061. Id. That statute provided that,

> Chancery courts [have jurisdiction of actions by any person or corporation claiming legal or equitable title to any land . . . and] shall determine the title of plaintiff and may enter a judgment quieting the title and awarding possession to the party entitled thereto, but if any defendant is in actual possession of any part of the land, a trial by jury may be demanded by any party whereupon the court shall order an issue in ejectment as to such lands to be made and tried by jury. Provision for trial by jury does not affect the action on any lands that are not claimed to be in the actual possession of the defendant. . . .

Id., at 70-71 (emphasis added).

This Court held that the question to be decided in Hollywood, Inc. was whether either party to the dispute was a defendant in possession of the land, as required by the statute in order to trigger its jury trial provisions. Id., at 72. The City of Hollywood argued that it met both tests for jury trial as set forth in the statute, in that (1) it was a defendant in the original suit brought by the tax assessor and a counter-defendant against whom affirmative relief and damages were sought by counter-plaintiff, and (2) that it had been irrefutably in possession of the subject property for half a century. Id., at 71.

In holding that the City of Hollywood was entitled to a jury trial, this Court held that the City indeed met both of the statutory tests for a jury trial, stating that, "It is difficult to comprehend how the [City] could do more to

possess the beach property . . . ", and that "we find that the [City] easily fits within the definition of the term `defendant'." Id., at 72. "There is no question that the [City], in defending against the counter-claim . . . , was a defendant in actual possession of the property." Id. (emphasis added).

Thus, it is clear that this Court in Hollywood, Inc. was analyzing the City's right to a jury trial pursuant to the provisions of Florida Statute 65.061, and more particularly as it related to Hollywood, Inc's. counter-claim against the City. This Court did not adopt a blanket holding, as Petitioner's Initial Brief misleadingly suggests, that a defendant is entitled to a jury trial in any tax assessor's suit for equitable relief and declaratory decree.

Hollywood, Inc. simply does not establish any precedent for allowing a jury trial in a tax challenge case such as the instant action. First, Hollywood, Inc. did not involve any question as to the propriety of a tax assessor's assessment, as does the case sub judice. This Court granted a jury trial only as to dedication and actual possession of the property, issues unrelated to the actual tax assessment. Id., at 71. Second, there were necessarily legal as well as equitable concerns in Hollywood, Inc. because the counter-claim filed therein sought damages as well as affirmative relief. Id. No damages are or could be sought in the instant case. Third, the statute at issue in Hollywood, Inc. provided that, if a defendant was in actual possession of the land, an issue in

ejectment should be made and tried by a jury. Id. This provision is in keeping with Florida law which holds that, "Ejectment is essentially a legal remedy", and that, "An action of ejectment is deemed to be a proceeding at law." 20 Fla.Jur.2d, Ejectment and Related Remedies, ss. 1, 43 (emphasis added). There is clearly no issue of ejectment in the action now before this Court.

Fourth, and most importantly, the issue before this Court in Hollywood, Inc. was decided on the basis of a statutory provision explicitly providing for jury trials under certain specified circumstances. There is no such corresponding statutory provision in the case sub judice. Nothing in Chapter 194 of the Florida Statutes, pursuant to which the instant case was brought, creates or provides for any right to a jury trial.

In the past, when the Florida Legislature has provided for a jury trial in a cause of action, it has done so explicitly, as it did under the statute at issue in Hollywood, Inc.[1/] If the legislature had intended to make such a drastic change in the nature of a tax assessment challenge as to provide for a right to a jury trial where none existed previously, it could have done so with clear and unambiguous

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1/ The eminent domain statute, for example, explicitly provides that "the court shall impanel a jury. . . . The jury shall determine solely the amount of compensation to be paid . . . . " Sections 73.071(1) and (3), Fla. Stat. (emphasis added).

language in Chapter 194. It did not do so. Courts have consistently refrained from reading into statutory language a newly created right to a jury trial in tax assessment cases where no such right is explicitly granted. Ewert v. City of Winthrop, 278 N.W.2d 545, 551 (Minn. 1979) (denying right to a jury trial in a tax case); Dexter Horton Bldg. Co. v. King County, 116 P.2d 507, 512 (Wash. 1941) (denying right to jury trial in a tax case, stating "there is no warrant for reading into the statute by implication a requirement that the taxpayer may or must submit his cause to a jury.") This Court should similarly refrain from inferring that the legislature intended such a major departure from past practice as to allow a jury trial in a tax challenge case.

B. No Florida Court Has Ever Granted A Jury Trial In A Case Centering On An Ad Valorem Tax Assessment Challenge.

Petitioner heads the second section of its Initial Brief with the statement that "Florida courts have consistently granted jury trials in cases centering on property tax assessments." Petitioner then cites four cases as precedent to support its heading statement. To be of value as precedent, the questions adjudicated in a case cited as precedent must be in point with those presented in the instant case. Twyman v. Roell, 166 So. 215, 217 (Fla. 1936). A prior decision is not authority on any question not raised and considered. City of Miami v. Stegemann, 158 So.2d 583, 584 (Fla. 3rd DCA 1963). Pursuant to these well-established

principles of law, the cases cited by Petitioner have no precedential value to this Court.

Petitioner first cites Ozier v. Seminole County Property Appraiser, 585 So.2d 357 (Fla. 5th DCA 1991) to support its assertion that it is entitled to a jury trial. In Ozier, the issue of whether a party to a tax challenge case had a right to a jury trial was never raised or considered by the court. The issue before the appeals court was whether summary judgment had been appropriately entered by the trial court. The Fifth District Court held that there was not a proper basis for summary judgment because of the existence of an issue of fact as to whether certain properties cited by the taxpayer were comparable with the taxpayer's property. The court then said that the issue of whether the properties were comparable for tax assessment purposes was "to be decided by the jury." Ozier, 585 So.2d at 358. This reference to "the jury" was most probably an inexact use of language, where the court should have said "by the trier of fact after receipt of evidence" rather than "by the jury". In any event, the language used by the Ozier court is not stare decisis, because the issue of whether a jury trial was proper was not discussed by that court and was never raised as an issue on appeal.

Petitioner next cites Firstamerica Dev. Corp. v. County of Volusia, 298 So.2d 191 (Fla. 1st DCA 1974). In Firstamerica, the appellant appealed the trial judge's determination that appellant's land was not entitled to an agricultural classification for the tax year in question. The

opinion of the First District Court noted that a jury trial had been "specifically waived by stipulation of the parties". This case provides no more precedential support for Petitioner's claim than does Ozier. First, as in Ozier, the issue of whether a jury trial would have been proper was never discussed by the court and never raised as an issue on appeal. Second, it is obvious that the "waiver" of a non-existent right is a nullity that can have no effect on the proceedings of a case.

Petitioner also cites Dickinson v. Allen, 215 So.2d 747 (Fla. 2nd DCA 1968). The issue before the Second District Court in Dickinson, as in Ozier, was whether the summary judgment entered by the trial court was properly entered. The Dickinson court held that there were sufficient issues of fact to preclude summary judgment and to make final judgment a "full-trial question". Dickinson, 215 So.2d at 749. As in Ozier and Firstamerica, the issue of a right to a jury trial was never raised on appeal or considered by the court.

The language from page 749 of the Dickinson opinion, stating that, if there is an issue of material fact, the case "should be submitted to a jury which is the constitutional trier of the facts," is merely a paraphrasing of numerous Florida cases which state that, where there is a genuine issue of fact, a case is not proper for summary judgment, but

instead must go to the trier of facts (which is often a jury, but not always).[2/] As support for the cited language, the Dickinson court cited its own decision in Booth v. Mary Carter Paint Co., 182 So.2d 292 (Fla. 2nd DCA 1966) and "cases collated therein." The cause of action at issue in Booth, however, was for the wrongful death of a motorist, not a tax challenge, and none of the cases "collated therein" were tax challenge cases.[3/]

The final case cited by Petitioner in the second section of its Initial Brief is City of South Miami v. State ex rel Gibbs, 143 Fla. 524, 197 So. 109 (Fla. 1940), a case which has absolutely no application to the question before this Court. City of South Miami is not a case discussing assessments or challenges to assessment valuations or classifications. Instead, it was a case brought by the State of Florida for a writ of quo warranto to compel the City of South Miami to show good reason why it was exercising authority, including but not limited to its tax authority, over lands lying far from the

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2/ It is abundantly clear that, despite the language used by the Dickinson court, a jury is not always the constitutional trier of facts. For example, juries are not the constitutional trier of facts in probate matters or other equitable proceedings. See In re: Estate of Howard, 542 So.2d 395, 397 (Fla. 1st DCA 1989); Allen v. Estate of Dutton, 394 So.2d 132, 135-36 (Fla. 5th DCA 1980); and cases cited in Section I of this brief, supra.

3/ The Dickinson case itself was not a case dealing with the correctness of an assessment valuation or classification, but was rather a declaratory judgment action to determine the property appraiser's statutory authority to change his assessment after certification of the tax roll.

city center. This case is of absolutely no relevance to the instant case, because the remedy of quo warranto is of legal rather than equitable cognizance. 43 Fla.Jur.2d, Quo Warranto, s.5; citing Swoope v. New Smyrna, 98 Fla. 1082, 125 So. 371 (Fla. 1929). See also Orange County v. Orlando, 327 So.2d 7 (Fla. 1976) (equitable relief improper in action by county against city where county had adequate remedy at law available in quo warranto). Because the State brought its action pursuant to the legal action of quo warranto, it of course had a right to a jury trial.

Further, it seems incredible that, based on the four cases discussed above, Petitioner is able to make the assertion that "Florida Courts have consistently granted jury trials in cases centering on property tax assessments." To the contrary, Respondent has been unable to find even one Florida tax challenge case that was tried by jury. To the best of Respondent's knowledge, each and every tax challenge case recorded in the opinions of Florida has been tried non-jury. See, e.g., Bystrom v. Hotelerama Associates, 511 So.2d 987 (Fla. 1987); Blake v. Xerox, 447 So.2d 1348 (Fla. 1984); Greenwood v. Oates, 251 So.2d 665 (Fla. 1971); Wade v. Murhee, 75 Fla. 494, 78 So. 536, 537 (Fla. 1918); Robbins v. Summit Apartments, Ltd., 589 So.2d 460, 461 (Fla. 3rd DCA 1991); Florida Rock Industries v. Bystrom, 485 So.2d 442, 443 (Fla. 3rd DCA 1986), rev. den'd. 492 So.2d 1332 (Fla. 1986); and Bystrom v. Union Land Investments, Inc., 477 So.2d 585, 586 (Fla. 3rd DCA 1985) (where, as in the instant case, the

property appraiser filed an action in circuit court seeking to reinstate his original non-agricultural assessment of property after it had been overturned by the Property Appraisal Adjustment Board).

Neither the Ozier, Firstamerica, nor Dickinson cases were concerned with jury trials or the constitutional provision guaranteeing jury trials. None of these cases discussed whether the subject matters therein were based on equitable or legal principles. The City of South Miami case has no relevance to the instant case whatsoever. Given the non-precedential value of these cases, such a major departure from established law as to allow a jury trial in equitable proceedings such as tax challenge cases should not be based on mere inferences to be drawn from obiter dictum in cases where the propriety of jury trials was not an issue before the court.

C. The Cases Cited By The Third District Court Support The Court's Opinion.

The third section of Petitioner's Initial Brief discusses two cases, cited by the district court in its Opinion below, that Petitioner now asserts do not support the court's Opinion. Petitioner ends its third section by making the blanket statement that, "The remaining cases cited in the Opinion do not address the issues presented in this case." As with its earlier assertions, these assertions are unfounded and do not stand up to rational analysis.

Petitioner first claims that the case of Lincoln Tower Corp. v. Dunhall's-Florida, Inc., 61 So.2d 474 (Fla. 1952), cited by the district court on page three of its Opinion, R.53, supports Petitioner's claim of entitlement to a jury trial, rather than the Third District Court's contrary holding.[4/] A proper reading of the Lincoln Tower case establishes that the case does support and is consistent with the district court's Opinion. Lincoln Tower was a statutory proceeding brought pursuant to an earlier version of the declaratory judgment act. This Court construed the statute at issue to prohibit "the submission of issues of fact to a jury which are traditionally within the province of an equity court to determine", but left "wide latitude . . . to the Court as to the submission to the . . . jury of those issues properly triable at common law." Lincoln Tower, at 476 (emphasis added). Thus, it is clear that this Court recognized the difference between issues of fact in equitable (chancery court) actions, and issues of fact in common law (law court) actions. Accordingly, when this Court stated that, "[I]t is immaterial whether the cause is entitled at common law or in equity, or that it partakes of the nature of both, so long as

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4/ Petitioner also states that Lincoln Tower Corp. was the principal case on which Respondent relied in his petition for writ of certiorari. See Petitioner's Initial Brief, p.6. In fact, Respondent did not even cite Lincoln Tower Corp. in his petition for writ of certiorari. R.1-21.

the right to jury trial of pertinent issues is preserved," Id. (emphasis added), it is clear that the "pertinent issues" referred to are those issues properly triable in the law courts, not those issues triable in the equity courts. To argue otherwise, as Petitioner does, is to ignore and render a nullity this Court's construction of the statute at issue as prohibiting "the submission of issues of fact to a jury which are traditionally within the province of an equity court." Id.

Petitioner next attempts to assail the Third District Court's citation of Camp Phosphate Co. v. Allen, 77 Fla. 341, 81 So. 503 (Fla. 1919). The district court cited Camp Phosphate as an example of the fact that tax challenge cases implicate the equitable jurisdiction of the courts, because, in Camp Phosphate, the taxpayer plaintiff sought an injunction against the tax collector. R.52. Petitioner attacks this citation by stating that Cosen Investment Co., Inc. v. Overstreet, 154 Fla. 416, 17 So.2d 788 (Fla. 1944), overturned the rule of law, established in Camp Phosphate, that a tax assessment could be legal even if the assessment was for less than full cash value, so long as all property was assessed at the same percentage of full value. Cosen, 17 So.2d at 788. Although Cosen certainly did overturn this rule from Camp Phosphate, in did nothing to contradict the fact that Camp Phosphate was a tax challenge case that implicated the equitable jurisdiction of the court. Petitioner's argument as to Camp Phosphate is both curious and irrelevant.

Petitioner finally argues that the "remaining cases cited in the Opinion do not address the issues presented in this case." Petitioner's Initial Brief, p.7. In truth, it is Petitioner's Initial Brief that does not address the issue before this Court. As set forth by the district court in its Opinion and established further in this brief, supra, it is a legal fact in Florida that there is no right to a jury trial in equitable actions, and that tax challenge cases are equitable actions. Therefore, and not surprisingly, the Third District Court concluded that there is no right to a jury trial in a tax challenge case. This was and is the only logical conclusion that could be reached given the first two facts. Petitioner, however, does not seriously refute or present cases contradictory to either the two facts or the conclusion stemming therefrom. Instead, Petitioner ignores both the facts and the conclusion and merely states that, "The Opinion cites no decision which reverses a trial court order denying a motion to strike jury trial demand." Petitioner's Initial Brief, p.7. It is more relevant to say that Petitioner cites no decision which would refute the conclusion that there is no right to a jury trial in a tax challenge case.

III

A TAX CHALLENGE CASE IS A REVIEW OF ADMINISTRATIVE ACTION AND IS THUS APPELLATE IN NATURE, AND AS SUCH THE ISSUES TO BE DECIDED ARE NOT WITHIN THE PROVINCE OF A JURY

The fixing of a valuation of property by a property appraiser for the purpose of taxation is an administrative act involving the exercise of administrative discretion. Powell v. Kelly, 223 So.2d 305, 307 (Fla. 1969). An appeal of the property appraiser's assessment pursuant to Chapter 194 is thus a review of administrative action, which is a purely judicial function.

The property appraiser's classification of property as agricultural is presumed to be correct at the trial level, even if the Property Appraisal Adjustment Board (PAAB) has ruled that the property was entitled to an agricultural classification, as is the situation in the instant appeal. "The property appraiser's assessment . . . based on a non-agricultural classification was entitled to a presumption of correctness despite the subsequent decision of the PAAB overturning the assessment . . . ." Bystrom v. Union Land Investments, Inc., 477 So.2d 585, 588 (Fla. 3rd DCA 1985). In order to overcome this presumption of correctness, the taxpayer must present proof that excludes every hypothesis of a legal assessment, even where, as here, the PAAB has reduced the assessment and it is the property appraiser who is bringing the suit. Bystrom v. Whitman, 488 So.2d 520, 521 (Fla. 1986).

This standard of proof, that every hypothesis of a legal assessment must be excluded, is an even higher standard of review than the traditional "substantial competent evidence" standard. Because of the great administrative discretion accorded the property appraiser, a property appraiser's decision as to agricultural classification "does not stand or fall, depending on whether it is supported by substantial competent evidence." Markham v. Rose, 495 So.2d 865, 866 (Fla. 4th DCA 1986), citing Straughn v. Tuck, 354 So.2d 368, 371 (Fla. 1977) (taxpayers had not met burden of excluding every reasonable hypothesis which would support the tax assessor, where there was evidence upon which the tax assessor could have found that the taxpayers' land was not being used for an agricultural purpose).

Courts have no jurisdiction to assess or levy taxes. West Virginia Hotel Corp. v. W.C. Foster Co., 101 Fla. 1147, 132 So. 842, 849 (Fla. 1931). This Court has held that a trial court should merely determine "whether the appraiser, following the law, could conceivably and reasonably have arrived at the appraisal value being challenged." Blake v. Xerox Corp., 447 So.2d 1348, 1350 (Fla. 1984). Stated another way, the court should determine whether the assessment was supported by any reasonable hypothesis of legality. Straughn, at 371. If an assessment is supported by any reasonable hypothesis of legality, it cannot be overturned by a mere showing that a different valuation might be more reasonable. Bystrom v. Bloom, 472 So.2d 819, 820 (Fla. 3d DCA 1985).

These iterations of the standards for review of the appraiser's discretion are analogous to the "reasonableness" test for appellate review of a trial judge's discretionary power. See, e.g., Canarkis v. Canarkis, 382 So.2d 1197, 1203 (Fla. 1980) (judicial discretion is abused only when the judicial action is arbitrary or unreasonable, to the extent that no reasonable person would take the view adopted by the trial court).

The respondent is aware of no case of any type whatsoever where a jury has been called upon to determine if an administrative or judicial officer has abused his discretion or exercised his discretion in an unreasonable manner. Such a determination is purely a judicial function. Yet Petitioner seeks to have a jury make just such a determination in tax challenge cases.

The court in a tax challenge case (and, by extension, a jury if so impaneled) is simply not authorized to make a determination of the value of property, as a jury would, for instance, in an eminent domain proceeding. It is reversible error for a trial court to make "a factual determination of what it believes the property is worth. That simply is not the standard by which an assessment is to be evaluated." Walker v. Smathers, 507 So.2d 1207, 1208 (Fla. 4th DCA 1987), citing Bystrom v. Whitman, 488 So.2d 520 (Fla. 1986). If a judge is not so empowered to make a factual determination as to value, it would be inconsistent and illogical to grant

juries the power to make such factual determinations. By ruling in favor of Petitioner and allowing juries to hear and decide tax challenge cases, this Court would be granting juries exactly that power.

IV

THE MERE ACT OF CERTIFYING THE QUESTION BEFORE THIS COURT DOES NOT IN AND OF ITSELF RAISE A DOUBT SUBSTANTIAL ENOUGH TO COMPEL A FINDING THAT PETITIONER IS ENTITLED TO A JURY TRIAL

Petitioner cites Hollywood, Inc. v. City of Hollywood, 321 So.2d 65 (Fla. 1975) for the proposition that questions as to the right to a jury trial should be resolved, if at all possible, in favor of the party seeking the jury trial. For the reasons set forth in this brief, supra, Respondent does not feel that it is at all possible to resolve this issue in Petitioner's favor. Petitioner argues that, because the Third District Court certified the question before this Court, it must have had a question as to Petitioner's right to a jury trial, and therefore that question must be resolved in Petitioner's favor. Even if one could give credence to such circular reasoning, a review of the district court's Opinion discloses no uncertainty as to the correctness of their Opinion.

The district court of appeals states clearly and unequivocally that "Tax challenge cases implicate the equitable jurisdiction of the courts," R.52, that "where a right or remedy is equitable in nature there is no right to a jury trial", R.53, and that "The remedy sought in this tax

challenge case . . . is equitable in nature; therefore, the right to a jury trial does not apply." R.53. There is no equivocation or uncertainty in these findings. The mere act of certifying the question before this Court should not therefore suffice to create a doubt that there is no entitlement to a jury trial in a tax challenge case.

CONCLUSION

For the reasons stated and upon the authorities cited, this Court should uphold the decision of the Third District Court of Appeal and find that there is no right to a jury trial under Article I, Section 22 of the Florida Constitution (1968) in a tax challenge case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was this 25th day of February, 1993, mailed to: William A. Fragetta, Esq., BAILEY HUNT JONES & BUSTO, P.A., Courvoisier Centre, Suite 300, 501 Brickell Key Drive, Miami, Florida 33131-2608; Eric J. Taylor, Lee R. Rohe, Lisa M. Raleigh, and Lealand L. McCharen, Assistant Attorneys General, Office of the Attorney General, The Capitol - Tax Section, Tallahassee, Florida 32399-1050.

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