IN THE SUPREME COURT
STATE OF FLORIDA

LAWRENCE FUCHS, ETC., ET AL.,

Appellants,

v. CASE NOS. 96,182 & 96,183

JOEL W. ROBBINS, ETC.,

Appellee.
_____/

BRIEF OF AMICUS CURIAE, FLORIDA HOME BUILDERS ASSOCIATION

McFARLAIN, WILEY, CASSEDY & JONES, P.A.
215 S. Monroe Street, Suite 600
Tallahassee, FL 32301
(850) 222-2107
(850) 222-8475 (fax)
CHARLES A. STAMPELOS
FL Bar No. 240885

FLORIDA HOME BUILDERS ASSOCIATION
201 E. Park Avenue
Tallahassee, FL 32301
(850) 224-4316
(850) 224-1359 (fax)
KEITH C. HETRICK
FL Bar No. 564168

Attorneys for Florida Home Builders Association

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Florida Statutes

Florida Constitution

United States Constitution

Miscellaneous

STATEMENT OF INTEREST

As alleged in its Motion to Appear, Florida Home Builders Association (hereinafter FHBA), is a 13,000 plus member statewide construction industry association. One of the purposes of FHBA is to monitor judicial proceedings that may affect the construction industry in Florida and, when appropriate, to intervene or appear amicus curiae in those cases.

The outcome of this case regarding the constitutionality of the substantial completion law, section 192.042(1), Florida Statutes, is of great interest to and may have a substantial impact on the construction industry of Florida. A decision by this Court upholding the En Banc decision of the Third District Court of Appeal will mean that developing properties, which are under construction and are not substantially complete as of January 1 of each year, will be re-valued for ad valorem taxation purposes. It is expected that more revenue will be produced for the county. At the same time, it is expected that litigation regarding the value of structures under construction will dramatically increase and consume most, if not all, of the additional revenues.

SUMMARY OF THE ARGUMENT

The revisions to article VII, sections 2 and 4, of the Florida Constitution adopted in 1968, did not materially change the scope and intent of the 1885 Florida Constitution, as amended, for the purpose of securing just valuation of property. The 1968 revisions, like the 1885 Constitution, require that the Legislature secure a just valuation of all property.

In order to implement this constitutional directive, the Legislature established a statutory scheme for the timing and assessment of property for ad valorem taxation. In 1895, the Legislature defined real property and this definition has remained virtually unchanged. Also in 1895, the Legislature specified the duties of the assessor and directed the assessor to make out an assessment roll including all taxable persons in the county and their taxable personal property and real estate on the first day of January of such year.

Thirty-eight years ago, the Legislature enacted the predecessor to section 192.042(1) (section 193.11(4)), which provided the timing of the valuation and assessment of incomplete improvements to real property. The same January 1st date appears in this law.

The Legislature, not the courts, has the authority to establish the date upon which valuation and assessment of property shall take place, to wit: January 1st of each calendar year. Importantly, all, not some, improvements to property which are not substantially complete by January 1st are not taxed for that particular year.

The Legislature made this policy choice which was upheld by this Court in 1968 and has withstood the test of time. Section 192.042(1), like all statutes, is presumed to be constitutional. The Third District Court of Appeal substituted its policy for the policy established by the Legislature. This is contrary to well established constitutional law principles. This is especially so here where the Legislature, in proposing the revisions to the state

constitution, and people of this state in adopting those revisions in 1968, did not intend to repeal the substantial completion concept. Section 192.042(1) should be upheld.

ARGUMENT

THE 1968 REVISIONS TO ARTICLE VII, SECTIONS 2 AND 4, OF THE FLORIDA CONSTITUTION, DO NOT PROHIBIT THE LEGISLATURE FROM DEFINING THE TERM PROPERTY AND ESTABLISHING A SPECIFIC STATUTORY SCHEME FOR THE TIMING OF THE VALUATION AND ASSESSMENT OF REAL PROPERTY FOR AD VALOREM TAXATION PURPOSES.

Introduction

The Legislature, in proposing, and the people of the State of Florida, in adopting, the 1968 revisions to article VII, sections 2 and 4, of the Florida Constitution, did not intend to repeal or overturn the then existing substantial completion doctrine in section 192.042(1), Florida Statutes. The Third District Court of Appeal, En Banc, has decided differently and has substituted its notion of what the policy should be of this state for the policy established by the Legislature. Lawrence Fuchs, etc., et al. v. Joel W. Robbins,etc.(Fuchs II), 24 Fla. L. Weekly D1529 (Fla. 3d DCA June 30, 1999)(On Rehearing En Banc).

The original unanimous panel decision was correct. After stating the obvious, that all improvements to property covered by section 192.042(1), Florida Statutes which are not substantially complete by January 1st are not taxed for that particular year, the three-judge panel found "that section 192.042 does not create an additional exemption in violation of Article VII, section 4. Rather, it merely relates to the timing of the valuation and assessment of incomplete improvements to real property" consistent

with this Court's pronouncement in Culbertson v. Seacoast Towers East, Inc., 212 So. 2d 646, 647 (Fla. 1968). Lawrence Fuchs, etc, et al. v. Joel W. Robbins, etc.(Fuchs I), 23 Fla. L. Weekly D2529, 2530 (Fla. 3d DCA Nov. 18, 1998), withdrawn, 24 Fla. L. Weekly D1529 (Fla. 3d DCA June 30, 1999). The panel also correctly noted "that it is the Legislature, acting through statutes that it passes, that has the recognized authority to determine the date upon which valuation and assessment of property shall take place, to wit: January 1st of each calendar year. *See* Fla. Stat. § 192.042 (1997)." Id. These are appropriate conclusions given a reasonable application of well-worn principles of constitutional law.

The remedy for those who believe that section 192.042(1) is not reasonable, or is otherwise unfair, lies with the people of this state through their legislative branch of our state government. See D. R. L., Inc. v. Murphy, 508 So. 2d 413, 416 (Fla. 5th DCA 1987), rev. den., 518 So. 2d 1277 (Fla. 1987). This was the precise remedy suggested by this Court in Collier County v. State, 733 So. 2d 1012, 1019 (Fla. 1999). Referring directly to section 192.042(1), this Court noted:

> If there is a windfall created by the current statutory scheme, as the County claims, the County's redress lies with the Legislature....To achieve the relief sought, the counties must persuade the Legislature to provide the cure, not the courts....

Id.

It is not reasonable to assume that during the fall of 1968, a property owner and voter, building a home or other improvement

which was not substantially complete and not expected to be by January 1st of the following year, voted to have the real property and any improvements thereon subject to ad valorem taxation regardless of the state of completion.

This Brief is in two parts. The first deals with a discussion of basic principles of constitutional law and the second part applies these principles to this case in the context of the history of section 192.042(1).

I.

Basic Principles of Constitutional Law

"The right to propose amendments to or revisions of the Florida Constitution is conferred upon the legislature by the constitution," article XI, section 1, Florida Constitution. 10 Fla. Jur. 2d Constitutional Law § 5 (1997). "The courts should not and must not annul, as contrary to the constitution, a statute passed by the legislature, unless it can be said of the statute that it positively and certainly is opposed to the constitution. Thus, the courts are without authority to declare a statute unconstitutional unless it appears beyond all reasonable doubt that under any rational view taken it is in positive conflict with the constitution. The repugnance between a statute and the constitution must be clear, plain, inevitable, or substantial." Id. at § 99. Statutes are also presumptively valid and constitutional. Id. at § 87.

"Our state constitution is a limitation upon power, and, unless legislation duly passed be clearly contrary to some express or implied prohibition contained therein, the courts have no

authority to pronounce it invalid." Taylor v. Dorsey, 155 Fla. 305, 19 So. 2d 876, 881 (1944) (citation omitted).

"The touchstone for determining the intent of a constitutional provision has always been the intent of the people at the time the document was adopted." In Re Advisory Opinion of the Governor, Request of November 19, 1976 (Constitution Revision Commission), 343 So. 2d 17, 22 (Fla. 1977) (citations omitted). "The fundamental object to be sought in construing a constitutional provision is to ascertain the intent of the framers and the provision must be construed or interpreted in such manner as to fulfil the intent of the people, never to defeat it. Such a provision must never be construed in such a manner as to make it possible for the will of the people to be frustrated or denied." Gray v. Bryant, 125 So. 2d 846, 852 (Fla. 1960).

As noted in Smathers v. Smith, 338 So. 2d 825, 826 (Fla. 1976), quoting Gray v. Golden, 89 So. 2d 785, 790 (Fla. 1956),

> Another thing we should keep in mind is that we are dealing with a constitutional democracy in which sovereignty resides in the people. It is their Constitution that we are construing. They have a right to change, abrogate or modify it in any manner they see fit so long as they keep within the confines of the Federal Constitution.

Id. at 826-27 (emphasis added).

The courts are charged with reviewing the constitutional validity of statutes and to interpret them, but not to make the laws, as this is the constitutional prerogative of the Legislature. 10 Fla. Jur. 2d Constitutional Law § 160 (1997). However, "[w]hile the courts are authorized to determine the legality of a statute in

appropriate proceedings, considerations of policy, including the necessity and wisdom of a statute, are determined by the legislature in enacting the statute. The reasonableness or wisdom of an act, or the policy or motives prompting it, are not subject to judicial control unless there is a contravention of some portion of the organic law, since such matters are solely for legislative consideration." Id. at § 162.

Further, as noted by Appellant Fuchs in this case, see Initial Brief of Appellant Lawrence Fuchs at 14 n. 15, and concurred in by FHBA, article VII, section 4, is not self-executing. Thus, "all existing statutes which are consistent with the amended Constitution will remain in effect until repealed by the Legislature. Implied repeals of statutes by later constitutional provisions is not favored and the courts require that in order to produce a repeal by implication the repugnancy between the statute and the Constitution must be obvious or necessary. Pursuant to this rule, if by any fair course of reasoning a statute can be harmonized or reconciled with the new constitutional provision, then it is the duty of the courts to do so." In Re Advisory Opinion to the Governor, 132 So. 2d 163, 169 (Fla. 1961) (citations omitted).

"General principles governing the construction of statutes are applicable to the construction of Constitutions with some modifications. A Constitution is the framework of the government. It contains the general principles under which the government must function. Technical rules of construction therefore are not to be applied so as to defeat the principles of government or the object

of its establishment. The fundamental purpose in construing a constitutional provision is to ascertain and give effect to the intent of the framers and the people who adopted it. The object sought to be accomplished, therefore, must be kept constantly in view." City of Jacksonville v. Continental Can Co., Inc., 113 Fla. 168, 151 So. 488, 489 (1933); see also Sullivan v. City of Tampa, 101 Fla. 298, 134 So. 211, 216 (1931)("The court, therefore, should constantly keep in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied.").

If there is no express inhibition in a constitutional provision, "[a]ny restriction must be implied on the theory that certain obligations being designated, others, by the same token, are proscribed. This reasoning would bring into play the oft quoted maxim, 'Expressio unius est exclusio alterius,' which should be sparingly used in construing the constitution, or, as was written in State v. Bryan, 50 Fla. 293, 39 So. 929, 956 [1905], 'should be applied with great caution to the provisions of an organic law relating to the legislative department * * * .'" Taylor v. Dorsey, 19 So. 2d at 881.

"The Legislature is presumed to be cognizant of the judicial construction of a statute when contemplating making changes in the statute. . . ." Nicoll v. Baker, 668 So. 2d 989, 991 (Fla. 1996) (quoting State ex rel. Quigley v. Quigley, 463 So. 2d 224, 226 (Fla. 1985)). See also 49 Fla. Jur. 2d Statutes § 166 (1984) ("It follows that where a provision has received a definite judicial construction, the subsequent reenactment of that provision by the

legislature may be held to amount to legislative approval of the judicial construction.")

Finally, and returning to a familiar principle of law, "[i]n construing provisions of the Florida Constitution, [this Court is] obliged to ascertain and effectuate the intent of the framers and the people" and is "guided by circumstances leading to the adoption of a provision." Gallant v. Stephens, 358 So. 2d 536, 539 (Fla. 1978)(citations omitted).

II.

Factors Leading to the Adoption of the Revision to the Florida Constitution in 1968.

Any discussion of intent of the Legislature in enacting section 192.042(1), Florida Statutes, and its predecessor statutes, what the Legislature meant in proposing the constitutional revisions in 1968, and what the people intended in 1968 when they voted on the revisions, must begin with a brief history of section 192.042(1), Florida Statutes and the political and economic climate existing in 1968.[1]

In 1961, the Legislature amended section 193.11, Florida Statutes, and added subsection (4) as follows:

> '193.11 *Assessment of real and personal property; assessors to visits precincts*. - (4) All taxable lands upon which active

[1] Please see State ex rel. Dade County v. Dickinson, 230 So. 2d 130, 133-135 (Fla. 1969) for a discussion of the political circumstances at the time the 1968 revisions were submitted to the people. See also Sullivan, 134 So. at 313-14, where this Court accepted as a matter of common knowledge circumstances existing during the boom years between 1924 and 1926 when it interpreted a constitutional amendment in light of extant statutes.

> construction of improvements is in progress and upon which such improvements are not substantially completed on the first day of January of any year shall be assessed for such year, as unimproved lands.' Provided, however, the provisions hereof shall not apply in cases of alteration or improvement of existing structures.

Ch. 61-240, § 1, at 422-23, Laws of Fla. Compare with Ch. 4322, § 15, at 16, Laws of Fla. (1895) (regarding the date for making the assessment roll for taxable persons and their personal property and real estate as of January 1st).

On November 2, 1961, the Attorney General was asked "the meaning of the phrase 'upon which active construction of improvements is in progress and upon which such improvements are not substantially completed,' as used in § 193.11(4),F.S." Op. Att'y. Gen. Fla. 61-177. Cf. Op.'s Att'y Gen. Fla. 93-46[2] & 72-36 discussing variations on what may be considered "substantially completed," including a brief discussion in Op. Att'y Gen. Fla. 93-46 of the impact of Hurricane Andrew. While addressing several scenarios, the Attorney General opined in part that the question posed was "not subject to a positive and fixed definition, because what may be a substantial completion of a building for one purpose might not be a substantial completion for another purpose." However, and material here, the Attorney General referred to L.

[2] Section 192.042(1) is not limited to new property. "Where an improvement to property has been determined to be substantially complete as of January 1st and is then completely destroyed later in that same year, this office has determined that the taxpayer is not entitled to any relief for taxes assessed as of January 1st of that year. However, on the following January 1st, if the property had not been replaced, there would be no improvement to tax." Id.

Maxcy, Inc. v. Federal Land Bank, 111 Fla. 116, 150 So. 248 (1933) in which this Court upheld section 193.20 which provided that "'nonbearing fruit trees shall not be considered as adding value to' the land upon which planted." Id. It was further stated: "It doubtless was the view of the legislature when it adopted Ch. 61-240, the same being §193.11(4), F.S., that improvements [do not] add to real value to land until they are substantially completed." Id.

Section 193.11(4), Florida Statutes (1961) should be read in conjunction with the 1961 definition of real property, to wit:

> 192.02 **Real Property defined**.–For the purpose of taxation 'real property' shall be construed to include lands and all buildings, fixtures and other improvements thereon. When used in connection with taxation the terms 'land' and 'real estate' shall be construed as having the same meaning as real property above defined.

§192.02, Fla. Stat. (1961). The definition of real property has remained virtually unchanged since 1895. Compare Ch. 4322, §2, at 3, Laws of Fla. (1895) with §192.001(12), Fla. Stat. (1997).

In 1963, section 193.11, Florida Statutes, is mentioned in the Laws of Florida without any changes to subsection (4). Ch. 63-245, § 1, at 556-57, Laws of Fla; Ch. 63-250, § 3, at 601, Laws of Fla.

On May 21, 1965, this Court, in Lanier v. Overstreet, 175 So. 2d 521 (Fla. 1965), upheld the constitutionality of section 193.11(3), Florida Statutes, under section 1, article IX of the 1885 Florida Constitution, as amended, and the Fourteenth Amendment to the United States Constitution. This subsection was "a valid legislative classification designed to secure a 'just valuation' of agricultural lands." Id. at 525. There is passing mention of

section 193.11(4): "The character of a particular parcel–whether as improved or unimproved land, see Sec. 193.11(4), Fla. Stat., F.S.A., or as homestead property, see Section 192.141, Fla. Stat., F.S.A.–is determined as of January 1st and continues throughout the tax year regardless of any change in its character during that year." Id. at 523-24.[3]

While getting ahead of the chronology a bit, in 1969, and after the voters approved the revisions to the Florida Constitution, the Legislature reorganized and renumbered certain sections of the Florida Statutes relating to ad valorem taxation and, in part, renumbered section 193.11 to section 193.071. Ch. 69-55, § 2, at 240-41, Laws of Fla. "The purpose of this revisor's bill [was] to rearrange and reorganize the several sections presently appearing in chapters 192, 193, 194, 195, 196 and 200 in accordance with the chapter and part designation set out in section 1 of this bill. There have been no substantive changes by way of

---

[3] In 1970, chapter 192 was amended by adding section 192.042 (1)-(4). Ch. 70-243, § 4, at 713-14, Laws of Fla. Subsection (1) stated: "192.042 Date of Assessment - All property shall be assessed according to its just value as follows: (1) *Real Property*. On January 1, of each year. Improvements or portions not substantially completed on January 1, shall have no value placed thereon. 'Substantially completed' shall mean that the improvement or some self-sufficient unit within it can be used for the purpose for which it was constructed." Id. at 714. The Committee Comment recites: "This section sets the effective date of taxation for all forms of property and includes elements of sections 193.034, 193.511, and relates to the lien date on real property established in 192.021." Id. at 714 (emphasis added). A definition of "substantially completed" is provided and the prior assessment "as unimproved lands" was changed and "no value placed thereon" inserted. See Manufacturers National Corp. v. A.H. Brake, 287 So. 2d 129, 131-32 (Fla. 3d DCA 1973), cert. denied, 294 So. 2d 91 (Fla. 1974) (discussing the changes). Other changes not material here were made in 1980 and 1981. Ch.80-272, § 57, Laws of Fla.; Ch. 81-308, § 9, Laws of Fla.

omissions, additions or rewordings to any section....Therefore, the substantive impact of every section is completely unchanged." Ch. 69-55, § 4, at 257, Laws of Fla. Thus, the Legislature retained the substantial completion concept, unaltered by the 1968 revisions to article VII.

On June 26, 1968, this Court, in Culbertson, 212 So. 2d 646, upheld the constitutionality of section 193.11(4), Florida Statutes and stated in part:

> The statute [section 193.11(4), Florida Statutes] constitutes only a temporary postponement of valuation and assessment of incomplete improvements on real property provided the prescribed conditions are met on the annual assessment date.

Id. at 647. (citations omitted).

The date of this Court's decision in Culbertson is critical, for the Legislature met in Special Session on June 24- July 3, 1968, and adopted three Joint Resolutions, which together constituted a proposed revision[4] of the Florida Constitution of 1885, as amended. The articles proposed in House Joint Resolution 1-2X constituted the entire revised constitution except for articles V, VI, and VIII.[5]

---

[4] "When the Constitution uses the word 'amendment' it has reference to an article or articles, while the word 'revision' relates to the whole instrument." Rivera-Cruz v. Gray, 104 So. 2d 501, 505 (Fla. 1958) (Terrell, C.J., concurring specially). See also Adams v. Gunter, 238 So. 2d 824, 829 (Fla. 1970).

[5] The Legislature also adopted Senate Joint Resolution 4-2X which proposed a new article VI, relating to suffrage and elections and Senate Joint Resolution 5-2X which proposed a new article VIII, relating to local government. The revisions were ratified by the voters On November 5, 1968. Each Joint Resolution stood on its own, so that in the event of the acceptance of, for example, any two Joint Resolutions and the rejection of the

A side-by-side comparison of former article IX, section 1, Florida Constitution (1885), as amended, with the 1968 changes appearing in article VII, sections 2 and 4, Florida Constitution (1968), is instructive.

---

third, the existing article embraced by the third carried ahead so that a complete Constitution still would result. See Volume 3, Florida Statutes, (1969), Constitution of the State of Florida as revised in 1968 and subsequently amended, at page 1.

1968 Proposed Revisions to article VII, sections 2 and 4.	**1885 Constitution, as amended, article IX, sections 1 and 14A.**
Section 2. TAXES-RATE.-- All ad valorem taxation shall be at a uniform rate within each taxing unit, except the taxes on intangible personal property may be at different rates but....	Section 1. UNIFORM AND EQUAL RATE OF TAXATION; SPECIAL RATES.-- The Legislature shall provide for a uniform and equal rate of taxation, except that it may provide for special rate or rates on intangible property....
Section 4.TAXATION-ASSESSMENTS.-- By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:	Section 1. UNIFORM AND EQUAL RATE OF TAXATION; SPECIAL RATES.- - The Legislature shall provide for a uniform and equal rate of taxation,. . . and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, education, literary, scientific, religious or charitable purposes.
(a) Agricultural land or land used exclusively for non-commercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.	NO COMPARABLE SUBSECTION
(b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value.	Section 14A. EXEMPTION; STOCK IN TRADE.--Goods, wares, commodities and merchandise, commonly known as stock in trade or inventory and livestock, may be exempted in part from ad valorem taxation as personal or tangible property as the legislature may prescribe by general law of uniform operation throughout the state.

The first sentence of article VII, section 4, calling for "just valuation" is very similar to former section 1 of article IX. Subsection 4(a) dealing with agricultural lands or lands used exclusively for non-commercial recreational purposes had no comparable subsection in former article IX. Subsection 4(b) dealing with stock in trade and livestock had a comparable provision in former section 14A (adopted in 1966) of article IX which provided for a partial exemption for stock in trade and livestock. See Art. IX, §14A, Fla. Const. (1966).

These changes were discussed in an analysis of the proposed revisions performed by the Legislature Reference Bureau to wit:

****

> TAXES-RATES
>
> Section 2. Continues the state taxation of intangible property, at rates of not more than 2 mills, as the sole exception to the uniform rate of ad valorem taxation; omits the reference to 'payable at the time such mortgage....is presented for recordation.'

****

> TAXATION-ASSESSMENTS
>
> Section 4. 'By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation,' is transferred from Sec. 1, Art. IX. Also, transfers from Sec. 14-A the partial exemption of 'stock in trade,' and amends it to 'a specified percentage of its value.' Adds the classification of land held for agricultural and recreational purposes, to be assessed on basis of use.

****

"Draft of Proposed 1968 Constitution submitted by the Legislature to the voters for ratification at the General Election of November 5, 1968," Legislative Reference Bureau, at 13, July 20, 1968. See

Dickinson, 230 So. 2d at 135, referring to another portion of the Bureau's analysis.

In an October, 1968, Florida Bar Journal article entitled, "A People's Constitution Will be Offered to the Voters," 42 Fla. Bar J. 1038 (1968), the author opined in part:

> **Taxes Held in Check and Rights Protected**
>
> The new Article VII dealing with finance and taxation continues the prohibition against a state income tax and an inheritance tax. The exemption of household goods is increased from $500 to $1,000 to the head of a family. The $5,000 homestead exemption is continued and the legislature may increase this for disabled persons and persons over 65 to $10,000. The state intangible tax limitation of 2 mills is continued. Ad valorem taxes shall not exceed 10 mills for all county purposes, 10 mills for all municipal purposes and 10 mills for all school purposes.
>
> The basic rights of the individual are safeguarded. Religious and racial discrimination are now expressly forbidden. The new document conforms with rights outlined in the United States Constitution.

Id. at 1040. This article was referred to by this Court in Dickinson, 230 So. 2d 134-35.[6]

Then too, Dauer, Donovan and Kammerer offered commentary regarding the then proposed Constitutional revisions in "Should Florida Adopt the Proposed 1968 Constitution? An Analysis," Studies in Public Administration No. 31, U. of Fla. Public Administration Clearing Service (1968). This analysis is also referred to in

---

[6] This Court mentioned that "in the 1966 general elections the subject of tax relief was widely touted as the primary task facing the new post-election legislature, and many a candidate embraced the cause." Id. at 132. Also noted was the "seething resentment by taxpayers and mounting resistance to property taxation excesses not only in Florida, but throughout the nation as well....This situation has been further exacerbated by the full impact of full valuation." Id.(citation omitted).

Dickinson, 230 So. 2d at 134. The authors recount the attempts at revision in 1965 until the 1968 special session and were not enamored with the 1968 proposals. Id. at 1. After noting that there were "glaring omissions," and "a few restrictions which would so restrict local government as to make its adequacy questionable in this state in the next few years," they said that "the proposed constitutional draft adds very little really new provisions or powers." Id. at 4. They also discussed each proposed revision including revisions to article VII, id. at 14-33, and material here, article VII, section 4 (a)& (b), to wit:

> The first sentence in this section is taken over from Article IX, Section I of the present constitution. Over the years the legislature has set up several criteria to be used in determining just value. The decision of the Florida Supreme Court in Shuler vs. Walter [Walter v. Schuler, 176 So. 2d 81 (Fla. 1965)] in 1965 upholding the lower court's decision requiring assessment of all properties at full value and defining just value, cash value and full value as synonymous went far toward meeting the problem. However, over a decade ago the legislature decided that agricultural land should be taxed on the basis of its value in such use, regardless of its other potential. This requirement that such lands be assessed on the basis of their actual or nominal use, rather than market value, seemed to be contrary to the uniformity clause of the constitution, but this legislation was upheld by the Florida Supreme Court. In the proposed constitution this legislation is given firmer constitutional basis and the privilege of classification is extended to non-commercial recreational lands as well. Not only has political controversy ensued over attempts by owners of land in the midst of sizeable cities that were being held for speculation or at least later urban investment purposes to obtain lower so-called green belt agricultural assessments of their property; but this loophole is now being widened. There is potential abuse of this provision in giving low effective rates of taxation to lands held in use for so-called agriculture and for

> 'noncommercial recreational purposes' but destined to rise in value with urban population growth and expansion. Noncommercial recreational purposes are hard to define. Writing the provision into the constitution will certainly not make it easier to correct such abuses.
>
> More recently the present constitution was amended to permit the legislature to order the assessment of merchant's inventory or stock in trade at a fraction of full value. This provision is incorporated in Section 4 (b). This piecemeal classification in response to pressure from groups of property owners, while other properties are assessed at full cash value, certainly raises questions of equity. Freezing these specific categories in the constitution while maintaining a facade of uniformity for other properties is even more open to question.

Id. at 19-20.

The "just valuation" provision of the Florida Constitution was not revised in any manner that could reasonably have been intended by the drafters or interpreted by the public to be an invalidation of the substantial completion statute. In light of this Court's decision in Culbertson, there was no need for the Legislature to carve out a new exemption as the Legislature did in 1968 for agricultural land or land used exclusively for non-commercial recreational purposes. (The concept of partially exempting stock in trade and livestock had previously been adopted in 1966.)

FHBA disagrees with the En Banc's pronouncement that "article VII, section 4, is a substantial reworking of the ad valorem mandate." Fuchs II, 24 Fla. L. Weekly at D1531. The Court disagreed with Judge Glickstein's analysis in Markham v. Yankee Clipper Hotel, Inc., 427 So. 2d 383, 384 n.3 (Fla. 4th DCA 1983), rev. denied, 434 So. 2d 888 (Fla. 1983), that the "constitutional change in 1968 is insignificant." Id. at D1533 n. 20. Given a side by side

comparison and the apparent purpose for adding subsections 4(a) and (b), the changes were indeed insignificant and had and have no bearing on the constitutionality of section 192.042(1).

The En Banc panel's analysis of this Court's decision in Interlachen Lakes Estates, Inc. v. Snyder, 304 So. 2d 433 (Fla. 1973) is flawed. In fact, Interlachen did not overrule Culbertson. The result was correct in Interlachen because "the statute at issue in *Interlachen* [section 195.062(1)][7] did not permit a 'just valuation' of *all* property." Fuchs I, 23 Fla. L. Weekly D2529. "...[S]ection 195.062(1) taxed similar property differently, depending on who owned it; to wit, if the lot had been sold the land was taxed, if it had not been sold the land was not taxed. Here, *all* property not substantially complete by January 1st is not taxed for that particular year." Id. at D2529-30.

The Legislature, in adopting the revisions which appear in article VII, sections 4(a) and (b), (livestock and stock in trade were previously partially exempted by an amendment in 1966), intended to carve out privileged classes whose property would be valued more favorably than property owners in general. See Dauer, Donovan and Kammerer, supra at 19-20. These exemptions were necessary because they do precisely what this Court has held the "just valuation" clause prohibits.

Therefore, Interlachen was correctly decided, but its holding is not applicable or controlling here. The Legislature, in adopting

---

[7] Section 195.062(1) provided: ' . . . [The tax assessor's manual of instructions] shall provide that platted lands unsold as lots shall be valued for tax assessment purposes on the same basis as any unplatted acreage of similar character until 60 per cent of such lands included in one plat shall have been sold as individual lots.' Interlachen, 304 So. 2d at 434.

section 192.042(1) (formerly sections 193.071(4) and 193.11(4)), has not carved out a special classification of property so as to violate the just valuation clause. Thus, an express constitutional exemption in 1968[8] was not necessary. The substantial completion statute treats all property owners uniformly. Consequently, section 192.042(1) meets the just valuation requirements as recognized by this Court in Culbertson and its progeny.

In contrast to the statute at issue in Interlachen, section 192.042(1) does not create a classification which requires different taxes to be imposed on identical property. Rather, it requires that all improvements be substantially complete for the purpose for which they are built before being assessed and given a value. Thus, the Legislature established just valuation criteria to be applied to all property equally and this is just what the Florida Constitution authorizes the Legislature to do.

Recently, and consistent with Culbertson, this Court in Collier County, 733 So. 2d 1012 reiterated:

> The constitution requires the Legislature to enact the general law regarding the collection of ad valorem taxes, and the Legislature has established a *specific* statutory scheme for the timing of the valuation and assessment. Section 192.042(1) makes clear that partial year assessments[9] are

[8] Further, there is no need to resort to the maxim of "expressio unius..." in order to define the intent of the framers of the Constitutional revisions and the people in 1968. This maxim of statutory construction should be used sparingly in construing the Constitution and not here. See Taylor, 19 So. 2d at 881.

[9] As an aside, the Florida Tax & Budget Reform Commission met during its 1990-1992 session. It appears that on October 22, 1991, the Joint Committee on Governmental Services/Procedures and Structure considered Proposal No. GS/PS 278 regarding Partial Year Assessments. See Fla. State Archives, Dept. of State, Series

> not authorized for improvements to real property substantially completed after January 1, which 'shall have no value placed thereon.' There is no ambiguity in the statute. It appears that any benefit to taxpayers was specifically contemplated by the legislative scheme.

Id. at 1019 (italics in original). In 1961, as amended, the Legislature did what the 1885 Constitution and 1968 revisions required: it established a specific statutory scheme for the timing of the valuation and assessment and there is no ambiguity in the statute. This Court in Collier County, as it had previously done in Culbertson, reaffirmed this policy choice and should take comfort with this decision.

In summary, the Legislature, in submitting the proposed revisions to the Florida Constitution in 1968, including but not limited to article VII, and the people in adopting them, must have had notice and knowledge of several factors. Both had knowledge that the substantial completion statute, section 192.042(1), Florida Statutes, formerly sections 193.071(4) and 193.11(4), had been in effect and applied to property owners for approximately seven years prior to the consideration of and adoption of the proposed constitutional revisions. The statute had been interpreted by the Attorney General in 1961. January 1st has been the magic date

---

1470, Carton 7, Oct. 22, 1991, Committee Action Form and Findings. This proposal was presented to the Commission to amend article VII, section 2, as follows: "All ad valorem taxation of real and tangible personal property shall be at a uniform rate within each taxing unit, except that real property may be assessed on the basis of a partial year from the actual date of substantial completion thereof regardless of whether tangible personal property is so assessed...." Id. at Findings (additions underlined). The proposal included a recommendation that the Legislature implement the changes. Id. These proposals were not adopted by the Commission during its November 6, 1991, meeting. See February 28, 1992, minutes of the Commission meeting at 4-5.

for assessments since 1895 and the definition of real property has remained substantially the same over the years. In fact, the people wanted tax relief. This Court, while the Legislature was in Special Session considering the proposed revisions to the Florida Constitution and specifically article VII, decided Culbertson, concluding that section 193.11(4) did not carve out a privileged class of property owners whose property would be valued more favorably than property owners in general. And, importantly, there is no contention made here or below that this statute was invalid at the time of its adoption in 1961 before its constitutionality was upheld by this Court in Culbertson. See also, Hausman v. Bayrock Inv., Co., 530 So. 2d 938 (Fla. 5th DCA 1988); Markham v. Yankee Clipper Hotel, Inc., 427 So. 2d 383 (Fla. 4th DCA 1983), rev. denied, 434 So. 2d 888 (Fla. 1983); Sherwood Park, Ltd., Inc. v. Meeks, 234 So. 2d 702 (Fla. 4th DCA 1970), aff'd sub nom., Markham v. Sherwood Park, Ltd., 244 So. 2d 129 (Fla. 1971).

Thus, the Legislature and the public have been aware of the substantial completion statute for over 38 years and have understood this provision to be constitutional for over 21 years and have understood its application. See, e.g., Op. Att'y Gen. Fla. 93-46 and cases cited therein.

Finally, section 192.042(1), Florida Statutes, is presumed to be constitutional and is constitutional. In 1968, the Legislature, the framers of the revisions to article VII, sections 2 and 4, did not intend to repeal section 192.042(1), nor did the Legislature, at any time since 1968, seek to overrule Culbertson, notwithstanding the opportunity to do so. The En Banc decision should be reversed because it overlooked the history of the

substantial completion statute and thus the long-standing intent of the Legislature and the people of this state. In so doing, the Court substituted its policy choice for that of the Legislature.

CONCLUSION

Based upon the foregoing, FHBA requests this Court to uphold the constitutionality of section 192.042(1), Florida Statutes.

Respectfully submitted this ___ day of October, 1999.

CERTIFICATE OF TYPE SIZE AND STYLE

Pursuant to Florida Rule of Appellate Procedure 9.210(a)(2), this Brief has been prepared using 12 point courier-style type.

CHARLES A. STAMPELOS
FL Bar No. 240885
McFARLAIN, WILEY, CASSEDY & JONES, P.A.
215 S. Monroe Street, Suite 600
Tallahassee, FL 32301
(850) 222-2107
(850) 222-8475 (fax)

KEITH HETRICK
FL Bar No. 564168
FLORIDA HOME BUILDERS ASSOCIATION
201 E. Park Avenue
Tallahassee, FL 32301
(850) 224-4316
(850) 224-1359 (fax)

Attorneys for Florida Home Builders Association

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Jay Williams, Assistant County Attorney, Stephen P. Clark Center, Suite 2810, 111 N.W. First Street, Miami, Florida 33128-1993, counsel for Appellee Joel W. Robbins; Arnaldo Velez, Bloom & Minsker, 255 University Drive, Coral Gables, Florida 33134, counsel for Appellant The Miami Beach Ocean Resort, Inc.; Victoria L. Weber and Donna E. Blanton, Steel, Hector & Davis, LLP, 215 S. Monroe Street, Suite 601, Tallahassee, Florida 32301-2398, counsel for Amicus Curiae Florida Power & Light Company; Thomas R. Julin and Edward M. Mullins, Steel, Hector & Davis, LLP, 200 S. Biscayne Blvd., 40th Floor, Miami, Florida 33131-2398, counsel for Amicus Curiae Florida Power & Light Company; Dan R. Stengle, David L. Powell, and Kent T. Wetherell, II, Hopping, Green, Sams & Smith, P.A., P. O. Box 6526, Tallahassee, Florida 32314, counsel for Amicus Curiae The St. Joe Company; Robert M. Rhodes, The St. Joe Company, 1650 Prudential Drive, Suite 400, Jacksonville, Florida 32307, counsel for Amicus Curiae The St. Joe Company; and Joseph C. Mellichamp, III, Senior Assistant Attorney General, Tax Section, Capitol Building, Tallahassee, Florida 32399-1050, counsel for Appellant Lawrence Fuchs, by U.S. Mail this ____ day of October , 1999.

CHARLES A. STAMPELOS