IN THE SUPREME COURT OF FLORIDA

DEPARTMENT OF REVENUE

Appellant,

v.

Appeal No. SC 03-2270
Lower Case No. 1D02-3762

JOSEPH C. HOWARD and JOYCE FORMAN, et al.,

Appellees.

APPELLANT DEPARTMENT OF REVENUE'S INITIAL BRIEF

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PRELIMINARY STATEMENT

The Appellant/Cross-Appellee below and the Appellant in this appeal is the Florida Department of Revenue. It will be referred to as "the Department" or "the Appellant" in the Initial Brief. The Appellees/Cross-Appellants below and the Appellees in this appeal are Joseph C. Howard, Joyce Forman, Joel Robbins in his official capacity as Property Appraiser of Dade County, and William Markham in his official capacity as Property Appraiser of Broward County. Collectively they will be referred to as "the Appellees" in the Initial Brief.

The court below was the First District Court of Appeal. It will be referred to as "the district court" in the Initial Brief. The trial court was the Second Judicial Circuit in and for Leon County, Florida. It will be referred to as "the trial court" in the Initial Brief.

References to the record on appeal will be prefixed with Vol., followed by the appropriate volume number, followed by the letter R, which in turn will be followed by the appropriate page number, e.g., Vol. 6, R-956-960.

RELIEF SOUGHT BY THE DEPARTMENT

In this appeal, the Department requests that this Court reverse the district court's decision which found Section 193.016, Florida Statutes, facially unconstitutional. Department of Revenue v. Howard and Forman, No. 1D02-3762 (Fla. 1st DCA November 26, 2003)(hereinafter referred to as "Howard and Forman").

The trial court, in its final order dated August 13, 2002, granted in part and denied in part [Appellees'] motion for judgment on the pleadings and entered a final judgment as to the facial constitutionality of Section 193.016, Florida Statutes. Vol. 6, R-956-960. The trial court found the statute constitutional in part and unconstitutional in part. However, on appeal the district court struck the entire statute as facially invalid.

The Department's position on appeal is that the entire statute in question is facially constitutional.

STATEMENT OF THE CASE AND FACTS

The appeal of the Department concerns the validity of Section 193.016, Florida Statutes, which states as follows:

> **193.016. Property appraiser's assessment; effect of determinations by value adjustment board**
>
> If the property appraiser's assessment of the same items of tangible personal property in the previous year was adjusted by the value adjustment board and the decision of the board to reduce the assessment was not successfully appealed by the property appraiser, the property appraiser shall consider the reduced values determined by the value adjustment board in assessing those items of tangible personal property. If the property appraiser adjusts upward the reduced values previously determined by the value adjustment board, the property appraiser shall assert additional basic and underlying facts not properly considered by the value adjustment board as the basis for the increased valuation notwithstanding the prior adjustment by the board.

The Legislature enacted this law as part of Chapter 00-262, Laws of Florida. The effective date of the statute was January 1,

2001.

Two of the Appellees[1] in this case - Howard and Forman - are residents of Florida. These Appellees alleged they own real property in Dade, Orange and Broward Counties. At the time of filing their second amended complaint, the Appellees did not allege they had any assessment proceedings, any proceedings before any value adjustment board ("VAB"), or any lawsuit pending against a property appraiser that implicated Section 193.016, Florida Statutes. Vol. 1, R-1-22; Vol. 2, R-268-289; and, Vol. 5, R-720-739. Appellees alleged only that they "anticipated" some future injury from Section 193.016, Florida Statutes. Vol. 5, R-723-725. Appellees' second amended complaint is devoid of any factual allegations establishing real, concrete present or future injury from the challenged law.

Appellees filed a motion for judgment on the pleadings based on their second amended complaint. Vol. 5, R-855-867. In its Final Order, the trial court found that Appellees Howard and Forman, while admittedly challenging no pending tax assessment, were in doubt as to their rights under the statute in question. Thus, the trial court held that the Appellees Howard and Forman had standing to challenge the constitutionality of Section 193.016, Florida Statutes. Vol. 6, R-957.

In addressing the merits of the Appellees' motion for

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[1] The other Appellees are duly-elected property appraisers.

judgment on the pleadings, the trial court found that Section 193.016, Florida Statutes, enacted into law as part of Chapter 00-262, Laws of Florida, is facially constitutional in part and facially unconstitutional in part. Vol. 6, R-957. The trial court rejected the Appellees' allegation that Section 193.016, Florida Statutes, violated the due process or equal protection rights of the Appellees under either the United States Constitution or the Florida Constitution. Vol. 6, R-958. The trial court found that there is no suspect classification and there is a rational basis for classifying tangible personal property and real property in a different manner. Vol. 6, R-958. The trial court was primarily concerned with the application of Article VII, Section 4 of the Florida Constitution to Section 193.016, Florida Statutes. Vol. 6, R-958.

First, the trial court found that the first sentence of Section 193.016, Florida Statutes, is not facially unconstitutional. Vol. 6, R-958; R-959. The trial court found that the requirement that the property appraiser "shall consider" the reduced values of the value adjustment board ("VAB") did not usurp the discretion and power of the property appraiser to value property at just value. Vol. 6, R-958. The trial court found that the property appraiser could consider and reject this additional factor in determining the just value of the property. The trial court found that the statute was clear

and unambiguous and was not violative of Article VII, Section 4 of the Florida Constitution. Vol. 6, R-958.

However, the trial court further ruled that the Legislature had no authority to usurp the power and discretion of the property appraisers. Vol. 6, R-958. Consequently, the trial court held that the second sentence of Section 193.016, Florida Statutes, which requires the property appraiser to "*assert additional basic and underlying facts not properly considered by the value adjustment board as the basis for the increased valuation*" to be facially unconstitutional. Vol. 6, R-958-959 (emphasis in the original)

The trial court found that the requirement that the property appraiser "assert additional basic and underlying facts not properly considered by the VAB" is mandatory. The trial court ruled that the second sentence of Section 193.016, Florida Statutes, did in fact usurp the discretion and power of the property appraiser by requiring the property appraiser to take affirmative action as to why he or she is rejecting the determination of the VAB. Vol. 6, R-959. Thus, the trial court ruled that the second sentence of Section 193.016 was unconstitutional as contrary to Article VII, Section 4, of the Florida Constitution. Vol. 6, R-959.

On September 11, 2002, the Department timely appealed the trial court's Final Order to the district court. Vol. 6, R-962-

970.[2] The Appellees cross-appealed the trial court's decision as to the first sentence of Section 193.016, Florida Statutes. Vol. 6, R-979-980; Vol. 6, R-984.

In its decision, dated November 26, 2003, the district court found all of Section 193.016, Florida Statutes, facially unconstitutional. Department of Revenue v. Howard and Forman, No. 1D02-3762 (Fla. 1st DCA November 26, 2003). The district court also affirmed the trial court's finding that the Appellees had standing to challenge the statute at issue in this case.[3] On December 22, 2003, the Department timely appealed the district court's decision to this Court.

STANDARD OF REVIEW

When the issue before the Court is the constitutionality of a state statute, the appropriate standard of review is *de novo*. See, City of Miami v. Magrath, 824 So. 2d 143, 146 (Fla. 2002); Carribean Conservation Corp., Inc. v. Florida Fish & Wildlife Conservation Commission, 838 So. 2d 492, 500 (Fla. 2002); and, Padavano, Florida Appellate Practice, Section 9.4 (2001-2002 ed.).

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[2]Due to an editing error in the Department's original notice of appeal, the Department filed its amended notice of appeal on September 17, 2002. Vol. 6, R-971-978.

[3]The district court addressed Appellees' standing in a footnote without any substantive discussion as to why or how the Appellees had established standing. Howard and Forman, at 2, fn. 2. See also Vol. 6, R-957.

SUMMARY OF ARGUMENT

This case relates to the Legislature's constitutional authority to prescribe the method of just valuation of property in this state. At issue in this case is whether the district court erred in finding Section 193.016, Florida Statutes, facially unconstitutional in its entirety.

Every law is presumed valid and the burden of proving a statute unconstitutional is upon the party challenging the act. The Legislature is presumed to know the meaning of the words used and to have addressed its intent by using them in the enactment.

Appellees Howard and Forman do not have standing to challenge the constitutionality of Section 193.016, Florida Statutes, based on the allegations of their second amended complaint. Appellees have not asserted an injury that has occurred to them from the operation of the statute that is different from any other taxpayer. Absent a *bona fide* dispute or a need for a declaration based on actual, present and ascertainable facts, the trial court lacked jurisdiction to render declaratory relief in this case. Both the trial court and the district court erred in finding that the Appellees had the requisite standing to challenge the constitutionality of Section 193.016, Florida Statutes.

Section 193.016, Florida Statutes, does not violate the uniform valuation requirements of Article VII, Section 4, of the

Florida Constitution. Nothing in the challenged statute directs the property appraiser to arrive at any assessment of the property other than "just value." Sections 193.016 and 193.011, Florida Statutes, must be read *in pari materia*. The Legislature can lawfully enact property valuation methodology for purposes of ad valorem taxation and can lawfully specify what factors property appraisers must consider *(but not necessarily follow)* in arriving at "just valuation" for all types of property.

ARGUMENT

I. APPELLEES HOWARD AND FORMAN LACK STANDING TO CHALLENGE SECTION 193.016, FLORIDA STATUTES.

There is an alternative to addressing the constitutional validity of Section 193.016, Florida Statutes, in this case. The alternative is for this Court to find that the Appellees did not have the requisite standing to challenge the law at this time and under these facts. The district court erred when it affirmed the trial court's determination that the Appellees had standing to challenge Section 193.016, Florida Statutes.[4] The Appellees have not asserted an injury that has occurred to them from the operation of the statute that is different from any other taxpayer.

It has long been the law of this state that a court is not to pass upon the constitutionality of a statute if the case

[4] See Howard and Forman, at 2, fn. 2; Vol. 6, R-957.

before the court can be decided on other grounds. See e.g. State v. Tsavaris, 394 So. 2d (Fla. 1981); State v. Dye, 346 So. 2d 538 (Fla. 1977). See also North American Company v. Green, 120 So. 2d 603 (Fla. 1959)[“Courts will not consider alleged unconstitutionality of a statute unless it is necessary to do so in order to dispose of the problem at hand”]. In this case, the Appellees lack the necessary standing to challenge the law, and thus, provide this Court with an alternative ground for disposition and avoiding a constitutional determination as to Section 193.016, Florida Statutes.

This Court has visited the law on standing on a number of occasions. In Santa Rosa County v. Administration Com'n, Div. of Administrative Hearings, 661 So. 2d 1190 (Fla. 1995), this Court had before it the right of a party to bring an action to court. The purpose of a declaratory judgment is to "afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations." Santa Rosa County, 661 So. 2d, at 1192, (citing Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991)). To have standing, there must exist some *bona fide*, actual, present practical need for a declaration; there must be a party suffering or going to suffer some actual injury from some activity; and these elements are necessary for a declaratory action to exist. Santa Rosa County, 661 So. 2d, at 1192-1193; Martinez v. Scanlan, 582 So. 2d, at 1170 (citations omitted). Stated in another way, in order to

bring a declaratory judgment action, there must be a *bona fide* dispute between the parties and an actual, present need for the declaration. Thus, absent a *bona fide* dispute or a need for a declaration based on present, ascertainable facts, the circuit court lacks jurisdiction to render declaratory relief. Santa Rosa County, 661 So. 2d, at 1193; Martinez, 582 So. 2d, at 1170 (citing Ervin v. Taylor, 66 So. 2d 816 (Fla. 1953)).

Based upon these legal holdings it has become well-established Florida law that a person may not challenge a statute on the grounds that it may result in an impermissible application to someone else. State v. Hunter, 586 So. 2d 319, 322 (Fla. 1991) [defendants cannot raise alleged due process violations suffered by third parties]; State v. Benitez, 395 So. 2d 514 (Fla. 1981); State v. Hagan, 387 So. 2d 943, 945 (Fla. 1980)["[a]ppellees may not challenge the constitutionality of a portion of the statute which does not affect them"]. As Justice Sundberg explained in Sandstrom v. Leader, 370 So. 2d 3 (Fla. 1979):

> Fundamental constitutional principles dictate that one may not challenge those portions of an enactment which do not adversely affect his personal or property rights. Broadrick v. Oklahoma, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973)(citations omitted). Such a personal stake in the outcome of the controversy is necessary in order 'to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions(.)'

Sandstrom, 370 So. 2d, at 4.

There is the general rule that a taxpayer has standing to bring an action against a public official "to restrain the unlawful exercise of the state's or county's taxing or spending authority only on a showing of special injury to such taxpayer that is distinct from that sustained by every other taxpayer in the taxing unit." Jones v. Department of Revenue, 523 So. 2d 1211, 1214 (Fla. 1st DCA 1988). The public policy rationale for this rule was well stated in Paul v. Blake, 376 So. 2d 256, 259 (Fla. 3d DCA 1979):

> This rule is based on the sound policy ground that without a special injury standing requirement, the courts would in all likelihood be faced with a great number of frivolous lawsuits filed by disgruntled taxpayers, who, along with much of the taxpaying public these days, are not entirely pleased with certain of the taxing and spending decisions of their elective representatives. It is felt that absent some showing of special injury as thus defined, the taxpayer's remedy should be at the polls and not in the courts. Moreover, it has long been recognized that in a representative democracy the public's representatives in government should ordinarily be relied on to institute the appropriate legal proceedings to prevent the unlawful exercise of the state or county's taxing and spending power.

However, that rule of law is not applicable in this case because the expenditure of public funds is not at issue. Since this Court's decision in Henry L. Doherty & Co. v. Joachim, 146 Fla. 50, 200 So. 238 (1941), this Court has consistently held that a "mere increase in taxes does not confer standing upon a taxpayer to challenge a governmental expenditure." In that case, this Court stated:

> Both parties seem to recognize the rule announced in

> Rickman v. Whitehurst, et al., 73 Fla. 152, 74 So. 205, that in the event an official threatens an unlawful act, the public by its representatives must institute the proceedings to prevent it, unless a private person can show a damage peculiar to his individual interests in which case equity will grant him succor.

Joachim, 200 So., at 239.

However, this Court has held that an exception to this rule exists where taxpayers "may challenge the constitutionality of a statute after showing that enforcement of the statute will injuriously affect the plaintiff's personal or property rights." Miller v. Publicker Industries, Inc., 457 So. 2d 1374, 1375 (Fla. 1984). In that case, Publicker, brokers and importers of Brazilian ethyl alcohol, brought an action challenging the constitutionality of a statute that limited a four cents per gallon gasohol tax exemption to only gasohol containing ethyl alcohol distilled from United States agricultural products. The Department of Revenue argued that since "Publicker lacked standing to challenge the constitutionality of the statute because it neither paid nor collected the tax in question," Publicker's business was only indirectly affected. Publicker, 457 So. 2d, at 1375. However, this Court disagreed and found that:

> Publicker demonstrated the devastating effect this statute has had on its business. It must continue to pay fixed expenses while unable to sell its alcohol in Florida at an economically viable price. The direct, adverse effect of chapter 84-353 on Publicker is obvious. The legislature may not protect a tax statute from constitutional review merely by ensuring

> that someone other than the party whose business is adversely affected must pay the tax. Miller failed to show that foreign alcohol producers will reduce their prices after losing the tax exemption. We therefore agree with the trial court's finding that Publicker had standing to challenge chapter 84-353.

Id., 457 So. 2d, at 1357. See also Department of Revenue v. Markham, 396 So. 2d 1120 (Fla. 1981); Division of Alcoholic Beverages and Tobacco v. McKesson Corporation, 524 So. 2d 1000, 1003 (Fla. 1988)[5][distributors and manufacturers of alcoholic beverages who are liable for taxes under Florida's alcoholic beverage tax scheme had standing to litigate whether the allegedly discriminatory scheme had an adverse competitive impact on their businesses].

However, the Publicker exception is not applicable here because the Appellees cannot show a concrete set of facts at present to warrant standing. In order to have standing, the Appellees would have to have their property assessed, have the VAB lower one year and have the property appraiser then use the provisions of Section 193.016, Florida Statutes, in the following year assessment of their real property. There is no such allegation in the second amended complaint of Appellees Howard and Forman.

Appellees Howard and Forman simply allege in their second amended complaint that they "are residents, citizens and taxpayers of the State of Florida and ... own real and personal

[5] Reversed on other grounds, 496 U.S. 18 (1990).

property in Florida." Vol. 5, R-723-725. At best, Appellee Forman alleges that she "*previously* filed petitions with the Miami-Dade Value Adjustment Board."(emphasis added) Vol. 5, R-724-725. In paragraph 2 of its Final Order and Final Judgment, the trial court made a specific finding that "the plaintiffs have no pending tax assessment they are challenging." Vol. 6, R-957.

Thus, both the trial court and the district court erred in finding that the Appellees had the requisite standing to challenge Section 193.016, Florida Statutes. There is no actual case or controversy for a court to decide regarding this statute. The Department requests that this Court find the Appellees Howard and Forman lack standing to challenge the constitutionality of Section 193.016, Florida Statutes, and order that the plaintiffs' second amended complaint be dismissed on that ground. Publicker Industries, supra; Sandstrom v. Leader, supra.

II. THE DISTRICT COURT ERRED IN FINDING SECTION 193.016, FLORIDA STATUTES, FACIALLY UNCONSTITUTIONAL.

The trial court found that the first sentence of Section 193.016, Florida Statutes, is not facially unconstitutional, and that the second sentence of the statute is facially unconstitutional. In its November 26, 2003 decision, the district court's majority opinion found that Section 193.016, Florida Statutes, was facially unconstitutional in its entirety.

The district court's reasoning is flawed and is contrary to long-standing law.

I. THE FIRST SENTENCE OF SECTION 193.016, FLORIDA STATUTES, IS CONSTITUTIONAL.

In its decision, the trial court properly found that the first sentence of Section 193.016, Florida Statutes, was constitutional.

Analyzing the statute through the prism of Article VII, Section 4 of the Florida Constitution, the trial court held that the Legislature's directive that the property appraiser "shall consider" the reduced values of the value adjustment board does not usurp the discretion and power of the property appraiser to value property as "just value."[6] The trial court properly reasoned that the property appraiser can consider and reject this additional factor in determining the just value of property.

The majority opinion of the district court acknowledges that the first sentence of the statute "merely requires the property

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[6]**FLA. CONST., ART VII, 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:

(a) Agricultural land, land producing high water recharge to Florida's aquifers or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(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, may be classified for tax purposes, or may be exempted from taxation.

appraiser to *'consider'* the prior year tangible personal property assessment reduction made by the value adjustment board." Howard and Forman, at 4. The eight factors of Section 193.011, Florida Statutes, that the Legislature has required the property appraiser *"to consider in deriving just valuation"* are no different in application from the first sentence of Section 193.016, Florida Statutes. The majority opinion of the district court fails to read Sections 193.016 and 193.011, Florida Statutes, *in pari materia* and mistakenly concludes that the first sentence of Section 193.016, Florida Statutes, "prescribes a valuation methodology applicable to only a special class of tangible personal property." Howard and Forman, at 3.

The majority opinion in the district court ignores the actual and historical distinction between tangible personal property and real property. Land and buildings are materially different from tangible personal property in respect to useful life, rates of depreciation and obsolescence, and the fixed nature of real property.[7]

The first sentence of Section 193.016, Florida Statutes, is merely another factor for the property appraiser *to consider* (but not necessarily follow) in determining just value as

[7]Among other things, a desk or computer can be transported; in contrast, a parcel of land or a hotel cannot. The trial court's Final Order and Final Judgment, in rejecting Appellees' due process and equal protection claims, noted "[t]here is no suspect classification and there is a rational basis for classifying tangible personal property and real property in a different manner." Vol. 6, R-958.

required by Article VII, Section 4, of the Florida Constitution. The property appraiser is free to reject this consideration in much the same manner that the property appraiser is free to reject any of the eight factors of Section 193.011, Florida Statutes, in reaching the constitutional mandate of just value. Statutory factors that are given for a property appraiser to consider may constitutionally limit a property appraiser's discretion by tying them to the uniform constitutional standard of just valuation. See Cassady v. McKinney, 296 So. 2d 94, 96 (Fla. 2d DCA 1974). See also Walter v. Schuler, 176 So. 2d 81, 85 (Fla. 1965); Burns v. Butscher, 187 So. 2d 594, 595-596 (Fla. 1966); District School Board of Lee County v. Askew, 278 So. 2d 272, 277 (Fla. 1973).

The legislative purpose behind the creation of Section 193.016, Florida Statutes, is set forth in the Senate Staff Analysis and Economic Impact Statement to CS/SB 290[8] as follows:

> **Section 1**[9] creates s. 193.016, F.S., to require property appraisers, when assessing tangible personal property, to consider the reduced values determined by the value adjustment board in the previous year for tangible personal property, if the property appraiser did not successfully appeal the adjustment. If the property appraiser raises those values for the same tangible personal property, he or she must assert additional basic and underlying facts not properly considered by the board.

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[8] Enacted as Chapter 2000-262, Laws of Florida, and codified as Section 193.016, Florida Statutes.

[9] This is apparently a scrivener's error for Section 193.016, Florida Statutes, was created by Chapter 2000-262, Section 2, Laws of Florida.

(emphasis supplied)

It is the intent of the Legislature to require a property appraiser to consider the reduced values determined by the value adjustment board in the previous year for tangible personal property, if the property appraiser did not successfully appeal the adjustment and to provide additional underlying facts not properly considered by the value adjustment board when he or she raises those values for the same tangible personal property in a successive year. This is simply an additional factor the Legislature has charged the property appraiser to consider when ascertaining the value of tangible personal property on an annual basis.

As was recognized by the dissent of Judge Benton in the district court, the first sentence of Section 193.016, Florida Statutes, "is not a directive to arrive at any assessment that does not represent just valuation." Howard and Forman, at 7. It was therefore error for the district court majority opinion to strike the first sentence of Section 193.016, Florida Statutes, as facially unconstitutional and discard a valuation factor on equal footing with those enumerated in Section 193.011, Florida Statutes, that the property appraiser must simply ***consider*** (but not necessarily follow) in determining just value.

II. THE SECOND SENTENCE OF SECTION 193.016, FLORIDA STATUTES, IS CONSTITUTIONAL.

The district court majority held that the statute "prescribes a valuation methodology applicable to only a special class of tangible personal property." Howard and Forman, at 3. The district court agreed with the trial court when it found the second sentence of the statute in question compels property appraisers[10] throughout the state to explain[11] the increased valuation of the property. Both the trial court and the district court majority erred in finding this sentence of the statute provides "favored treatment for the class of property referenced therein." Howard and Forman, at 5, fn. 3.

There is nothing in the second sentence of Section 193.016, Florida Statutes, that would require the property appraiser to value the property at something other than just value. This

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[10] Article VIII, section 1(d), Florida Constitution, created a class of public officials known as property appraisers whose duty is to determine the fair market value of all properties located within county boundaries. Spooner v. Askew, 345 So. 2d 1055, 1058 (Fla. 1976). Furthermore, Florida law imposes a duty on property appraisers to exercise good faith and sound judgment in arriving at valuations of all real estate and tangible personal property so that equality and uniformity may result. Sanders v. Crapps, 45 So. 2d 484, 487 (Fla. 1954). Subject to the guidelines provided pursuant to statute or a Department of Revenue regulation, it is proper for the property appraiser to ascertain and assess the value by the exercise of his own independent judgment. See District School Board of Lee County v. Askew, 278 So. 2d 272, 276-277 (Fla. 1973).

[11] I.e., "...the property appraiser shall assert additional basic and underlying facts not properly considered by the value adjustment board as the basis for the increased valuation...." See Section 193.016, Florida Statutes.

second sentence is informational in nature; it merely requires the property appraiser to give a reason for "adjusting upward the reduced values previously determined by the value adjustment board." There is no usurpation of the property appraiser's discretion as was determined by the trial court[12] and this is not a prescribed "method of valuation methodology" as suggested by the majority opinion in the district court.[13]

As Judge Benton correctly noted in his dissent in the district court's opinion below:

> While the second sentence imposes more onerous requirements and presents a closer question, I would reject an interpretation of the second sentence, too, that would cabin exercise of the property appraiser's discretion in any way that would not leave the property appraiser free to arrive at just valuation in keeping with section 193.011, Florida Statutes.

Howard and Forman, at 7-8 (footnotes omitted).

The legislative purpose behind the creation of Section 193.016, Florida Statutes, is set forth in the Senate Staff Analysis and Economic Impact Statement to CS/SB 290 as follows:

> **Section 1**[14] creates s. 193.016, F.S., to require property appraisers, when assessing tangible personal property, to consider the reduced values determined by the value adjustment board in the previous year for tangible personal property, if the property appraiser did not successfully appeal the adjustment. If the property appraiser raises those values for the same tangible personal property, he or she must assert additional basic and underlying facts not properly

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[12]Vol. 6, R-958-959.

[13]Howard and Forman, at 3-5.

[14]See footnote 9, supra.

considered by the board.

(emphasis supplied)

It is the intent of the Legislature to require a property appraiser to provide additional underlying facts not properly considered by the value adjustment board when he or she raises those values for the same tangible personal property in a successive year.

The district court's reliance on Interlachen Lakes Estate v. Snyder, 304 So. 2d 433 (Fla. 1973), and Valencia Center, Inc. v. Bystrom, 543 So. 2d 214 (Fla. 1989), is misplaced. This case is not a "classification" case. Both Interlachen and Valencia Center concerned statutes used in the valuation process that led to improper classification of properties that were ultimately found in violation of the just value mandate contained in Article VII, Section 4, of the Florida Constitution.

In Interlachen Lakes, the statute at issue provided for a favored taxing standard for unsold lots in platted subdivisions. This Court found that the effect of the statute gave a subdivision developer a tax break by treating his unsold lots as unplatted for tax valuation purposes until he sold sixty per cent of his lots, while all of the purchasers of his lots were not so favored. The statute also discriminated between subdividers who sold sixty per cent of their lots and those who did not. Interlachen Lakes, 304 So. 2d, at 435.

In Valencia Center, the statute at issue created a similar

favored classification for property that was subject to a pre-1965 lease. In an attempt to end a long-running dispute, in 1986 the Legislature, enacted Section 193.023(6), Florida Statutes (Supp. 1986), which stated:

> (6) In making his assessment of improved property which is subject to a lease entered into prior to 1965 in an arm's length, legally binding transaction, not designed to avoid ad valorem taxation, and which has been determined by the courts of this state to restrict the use of the property, the property appraiser shall assess the property on the basis of the highest and best use permitted by the lease and not on the basis of a use not permitted by the lease or of income which could be derived from a use not permitted by the lease. This subsection shall apply to all assessments which are the subject of pending litigation.

Subsequently, the property appraiser assessed the property at its highest and best use (i.e., as a thirteen-story building). The taxpayer disagreed and brought suit. The taxpayer's position before this Court was that the property's potential use for thirteen-story buildings should not have been a consideration in its valuation because it did represent present or immediate future use of the property pursuant to Section 193.011(2), Florida Statutes. 543 So. 2d, at 217. In disagreeing with the taxpayer's position and finding the statute unconstitutional, this Court held:

> This Court has addressed this particular issue long ago in City of Tampa v. Colgan, 121 Fla. 218, 230, 163 So. 577, 582 (1935), in which we ruled:
>
> > Prospective value alone cannot be made the substantive basis of an assessment, but can be considered to the extent that it enters into, or is reflected in, present value.

> In arriving at fair market value, a willing buyer most certainly would consider that Valencia's property is zoned for thirteen-story buildings. The appraiser properly considered this potential future use.
>
> 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.

Valencia Center, 543 So. 2d, at 217.

Florida law imposes a duty on property appraisers to exercise good faith and sound judgment in arriving at valuations of all real estate and tangible personal property. Subject to the guidelines provided pursuant to statute or Department of Revenue regulation, it is proper for the property appraiser to ascertain and assess the value by the exercise of his or her own independent judgment. Even though the property appraiser may rely on his or her sound discretion in arriving at just value as

required by Article VII, Section 4, of the Florida Constitution, the property appraiser is not an unregulated monarch without constraint in the exercise of his or her official duties.

The Legislature is not prohibited from enacting more than one statute to accomplish this goal. Sections 193.011 and 193.016, Florida Statutes, should be read *in pari materia*. Under the eight criteria of Section 193.011, Florida Statutes, this Court has held that a property appraiser must consider, but not necessarily use, each of the eight factors listed in Section 193.011 for deriving just value. See Valencia Center, 543 So. 2d, at 216, (citing Oyster Pointe Resort Condominium Assoc., Inc., v. Nolte, 524 So. 2d 415 (Fla. 1988)). See also Florida East Coast Railway Co. v. Department of Revenue, 620 So. 2d 1051, 1061 (Fla. 1st DCA 1993). Section 193.016, Florida Statutes, is but another factor that a property appraiser must consider, but not necessarily use, in arriving at just value. Taking the Appellees' argument to its logical end, the Legislature would not be able to enact any statutes that provide factors for property appraisers to consider in arriving at just valuation, including Section 193.011, Florida Statutes. This would leave the property appraisers with arbitrary, standard-less discretion in deriving the just value of property.

Because every presumption is indulged in favor of the validity of the Legislature's action, the district court erred by finding Section 193.016, Florida Statutes, facially

unconstitutional because it has not been shown that the Legislature has clearly usurped its power in all aspects. Eastern Air Lines v. Department of Revenue, 455 So. 2d 311, 314 (Fla. 1984), (citing Walters v. City of St. Louis, 347 U. S. 231, 74 S.Ct. 505 (1954)).

The Legislature is presumed to know the law as it exists when a statute is enacted. Williams v. Jones, 326 So. 2d 425, 435 (Fla. 1975). Nicoll v. Baker, 668 So. 2d 989, 991 (Fla. 1996). Public purpose determinations are reserved for Legislature. Legislative determinations of public purpose and facts are presumed correct and entitled to deference, unless clearly erroneous. University of Miami v. Echarte, 618 So. 2d 189 (Fla. 1993), cert. denied, 510 U.S. 915, 114 S.Ct. 304 (1993).

The second sentence of Section 193.016, Florida Statutes, conforms with the existing language of Section 193.011, Florida Statutes, and is not facially unconstitutional.

CONCLUSION

Both the trial court and the district court erred in finding Appellees Howard and Forman had standing to challenge the constitutionality of Section 193.016, Florida Statutes.

The district court erred in finding Section 193.016, Florida Statutes, facially unconstitutional in its entirety. Statutes are presumed to be constitutional and the courts must construe them in harmony with the Constitution and if there is any reasonable way for the statute to be construed not in conflict with the Constitution, it must be so construed. Based on the foregoing arguments and authorities, the Department requests that this Court reverse the district court's decision and find Section 193.016, Florida Statutes, facially constitutional.

Dated at Tallahassee, Florida, this 3rd day of February, 2004.

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: Evan J. Langbein,

Esquire, Langbein & Langbein, P.A., Aventura Corporate Center, Suite 506, 20801 Biscayne Boulevard, Miami, Florida 33180; Gaylord A. Wood, Jr., Esquire, Wood & Stuart, 304 SW 12th Street, Fort Lauderdale, Florida 333l5-l549; Steven A. Schultz, Esquire, Zack Kosnitzky, 100 SE 2nd Street, Suite 2800, Miami, Florida 33131; Tom Logue, Assistant Dade County Attorney, 2810 Stephen P. Clark Center, 111 NW First Street, Miami, Florida 33128-1993; and Edward A. Dion, County Attorney for Broward County, Andrew J. Meyers, Tamara M. Scrudders, Beth-Ann Herschaft, Governmental Center, Suite 423, 115 South Andrews Avenue, Fort Lauderdale, Florida 32301, this ___ day of February, 2004.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the Department's Initial Brief complies with the font requirements of Fla. R. App. P. 9.210(a)(2), in that this Brief uses Courier New 12-point font.

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