SUPREME COURT
STATE OF FLORIDA

Case No. **SC03-2273**

O R I G I N A

L

DEPARTMENT OF REVENUE,

Petitioner,

Lower Tribunal No.
1D02-1582

vs.

THE CITY OF GAINESVILLE,

Respondent.
_____/

BRIEF OF AMICUS CURIAE, PROPERTY APPRAISERS' ASSOCIATION OF FLORIDA, INC. IN SUPPORT OF PETITIONER

(Unopposed; Court Order Not Yet Issued)

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PRELIMINARY STATEMENT

Petitioner, Department of Revenue, will be referred to herein as the "department." Appellee, The City of Gainesville, will be referred to herein as the "city." Amicus Curiae, Property Appraisers' Association of Florida, Inc., will be referred to herein as the "PAAF."

This Court accepted jurisdiction on the request of the department, and the PAAF submits this brief in support of the position of the department.

STATEMENT OF THE IDENTITY OF THE AMICUS CURIE AND ITS INTEREST IN THE CASE

The Property Appraisers' Association of Florida, Inc. (PAAF), is an association comprised of elected county property appraisers throughout the State of Florida, and is the oldest association of county constitutional officers in Florida. The 2003-2004 membership consists of property appraisers from the following 39 counties: Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, DeSoto, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Highlands, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Nassau, Okeechobee, Osceola, Putnam, St. Johns, St. Lucie, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, and Washington.

The members of the PAAF are constitutional officers charged with the duty of administering the Florida Constitution and duly enacted laws of the State of Florida pertaining to appraising all real and tangible personal property, assessing same for ad valorem tax purposes, and administering exemptions. The case at bar construes Article VII, Section 3(a), Florida Constitution, and directly affects property appraisers' duties administering the constitutional provision.

The PAAF's amicus curiae brief addresses the issue of entitlement to an ad valorem tax exemption of municipally-owned property used by it for engaging in the business of operating a telecommunications services company for

hire to the general public both within and outside Alachua County, Florida. The PAAF urges this Court to reverse the majority decision in Dept. of Revenue v. City of Gainesville, 28 Fla. L. Weekly D2724 (Fla. 1st DCA 2003).

SUMMARY OF ARGUMENT

The PAAF respectfully urges this Court to reverse the First District's holding in City of Gainesville. The PAAF agrees with the analysis and reasoning of the dissent authored by Judge Ervin and support the department's position.

The PAAF submits that the majority decision is an incorrect analysis of Florida law on the subject and incorrectly construes article VII, Section 3 by merging it with article VIII, section 2, Florida Constitution. The majority decision is inconsistent with this Court's holding in Sebring Airport Auth. v. McIntyre, 783 So.2d 238 (Fla. 2001)(Sebring IV). It also is inconsistent with the Second District's decisions in Sebring Airport Auth. v. McIntyre, 718 So.2d 296 (Fla. 2d DCA 1998)(Sebring III), and City of Bartow v. Roden, 286 So.2d 228 (Fla. 2d DCA 1973).

The holding in Roden, authored by Judge Grimes, later Justice Grimes, was that municipally-owned property used by the city in the business of operating an industrial park was taxable. Both the property leased and that held for lease were equally taxable. There, the city had argued essentially the same contentions as the city has argued here. It contended that its activities were

specifically authorized by Florida Statutes, and that, accordingly, this was legislative recognition that such was a public purpose and, therefore, the property so used was exempt from taxation. Roden cites sections 332.03 and 332.08, Florida Statutes (1971), the latter of which expressly authorized the city to lease any property real or personal acquired for airport purposes and belonging to the municipality which, " in the judgment of its governing body, may not be required for aeronautic purposes . . . ." 286 So.2d at 229. Roden was decided after the 1968 Florida Constitution was adopted and article VII, section 3, Florida Constitution was in effect, and the holding was decided under its parameters. The effect of the City of Bartow's contention if adopted, was noted as follows:

> This would either have the effect of giving a preference to a lessee of airport property over his competitors or of permitting the municipality to charge more rent than the ordinary landlord because the lessee would not have to pay taxes.

286 So.2d at 230. The airport law, chapter 332, stated that "the exercise of any other powers herein granted to municipalities, are hereby declared to be public, governmental, and municipal functions exercised for a public purpose." Roden, 286 So.2d at 229. The Second District did not adhere to the legislative finding any more than this Court subsequently did in Sebring IV, and Sebring Airport Auth. v. McIntyre, 642 So.2d 1072 (Fla. 1994)(Sebring II).

In both Roden and the case at bar, the cities engaged in purely proprietary commercial activities, i.e., in Roden the business of operating an industrial park and, here, telecommunications services for hire. Here, the legislature stated that engaging in telecommunications services for hire to the public is not an exempt use, while in Roden the claimed exemption was based on the legislative finding that all powers granted to be for public, governmental or municipal functions. Had the legislature not included the language recognizing that the business of operating a telecommunications service system to the public for hire was not entitled to exemption, under Roden it would have been taxable anyway. Conversely, had the legislature attempted to define it as a proper public, governmental, or municipal purpose as it did in Sebring IV, it would have been taxable anyway and the language purporting to grant exemption invalid. In Roden and both Sebring cases the cities argued that chapter 332 was legislative recognition that the activities involved were for a "public, governmental, and municipal purpose."

The First District's decision also is inconsistent with the Second District's decision in Sebring III, authored by Judge Quince, now Justice Quince, which stated as follows:

> There is nothing in the constitution which purports to exempt property, whether owned by a municipality or a

> private entity, when the property is being used primarily for a proprietary purpose.

718 So.2d at 299. Judge Quince's statement recognizes that cities are quasi-private corporate entities.

The majority decision below in effect merges article VII, section 3 and article VIII, section 2. It's analysis appears to be that since a city is authorized to have "governmental, corporate, and proprietary powers," this means that any legislatively authorized activity would, therefore, constitute a lawful municipal purpose and, since article VII, section 3, exempts municipal property used for municipal or public purposes, any property used by the city in furtherance of such legislative authorization would be exempt. The PAAF submits that the different wording is significant and that the judicial "grafting" of article VIII section 2 language into article VII, section 3 is improper. The framers did not provide exemption for municipal property used for corporate or proprietary purposes. Sebring IV, Sebring III, and Roden recognized this. The effect of the majority decision below is to re-write article VII, section 3, and thus broaden it far beyond its language. The PAAF submits that this is erroneous. The dissent points out this faulty analysis and its effect. Going into the business sector and competing with private enterprise is not the proper function of municipal government, and article VII, section 3 does not support such a construction as Judge Grimes recognized in

Roden, and Judge Quince recognized in Sebring III. There, the limitation on exercise of municipal power was recognized that, when a municipality ceases to operate as a governmental body, and operates as a corporate business entity, it must be treated the same as any private corporate entity or person engaging in the same activity. Its municipal "cloak" is lost and article VII, section 3 no longer operates to provide exemption, because it is then a quasi-private body corporate.

STANDARD OF REVIEW

Since the district court held that the involved statutes were facially invalid, the standard of review is de novo. Carribean Conservation Corp. v. Florida Fish & Wildlife Conservation Comm'n, 838 So.2d 492 (Fla. 2002); City of Miami v. Magrath, 824 So.2d 143 (Fla. 2002).

ARGUMENT

I. SECTION 2, AND THAT PORTION OF SECTION 3 OF CHAPTER 97-197, LAWS OF FLORIDA (1997), ARE VALID LEGISLATIVE ENACTMENTS CLASSIFYING PROPERTY OWNED BY A MUNICIPALITY BUT NOT USED BY THE MUNICIPALITY EXCLUSIVELY FOR A MUNICIPAL OR PUBLIC PURPOSE.

A. Article VII, section 3, Florida Constitution, does not provide exemption for municipally-owned property used by it in its corporate capacity in a private commercial operation of engaging in the business of operating a telecommunications services company furnishing services to the public for hire.

The trial court declared facially unconstitutional the referenced statutes in whole or in part, and the district court, in a 2-1 decision, affirmed the trial court's decision stating:

> We affirm because we believe that the property in question is being used by the City for a municipal purpose and the legislature's attempt to condition the provision of these municipal services on the payment of an amount equal to any ad valorem tax liability is in direct conflict with Article VII, Section 3(a) of the Florida Constitution.

City of Gainesville, 28 Fla. L. Weekly at D2724. The majority below construed article VII, section 3(a) as providing exemption to property of a city used by it in its quasi-private corporate capacity engaging in a commercial business undertaking in competition with private businesses. This broadens and, in effect, rewrites article VII, section 3 to read:

> All property owned by a municipality and used exclusively by it for municipal or public purposes or used by it in its corporate proprietary capacity shall be exempt from taxation.

The underlined language simply was judicially grafted from article VIII, section 2 by the majority decision. The PAAF submits this is incorrect. The proper application of the law is as stated by Judge Ervin in the dissenting opinion.

There can be no doubt but that the purpose of both of the invalidated parts of chapter 97-197, were intended by the legislature to ensure that a municipality would not have an unfair competitive advantage in providing telecommunications services to the public for hire, compared to a private telecommunications company providing the same or similar services. The enactment simply recognizes that engaging in business in its corporate capacity is not a municipal function, and that if a city chooses to do so it loses its cloak as a public, governmental entity and is no longer entitled to tax exemption.

The involved statutes are entirely in keeping with the nature of municipalities recognized by the courts. Kaufman v. City of Tallahassee, 84 Fla. 634, 94 So. 697, 698 (1923), recognized that municipal government "is more nearly analogous to the conduct of a business than to the government of a sovereign state." "It is possessed of local franchises and rights which pertain to it as a legal personality or entity for its quasi-private (as distinguished from public) corporate advantage." Id. Also see Chardkoff Junk Co. v. City of Tampa, 102 Fla 501, 135 So. 457 (Fla. 1931).

With this understanding of the nature of municipalities as being in part purely business quasi private entities, it seems clear that the legislature has the authority to require that such entities be required to pay ad valorem taxes if engaging in business in competition with the private sector. This is simply a recognition of the legislature power to classify what essentially are quasi-private corporate entities so that the property of same is taxed and treated the same as that of a private corporation. This Court recognized this power in Williams v. Jones, 326 So.2d 425, 432 (Fla. 1975) stating:

> The Legislature clearly has the power to classify so that all property devoted to private use is treated on a parity and, therefore, there is an equitable distribution of tax burden. Basically, the appellants contend for a constitutional exemption from ad valorem real estate taxation where none exists and, if it did, such an exemption would undoubtedly be discriminatory and violative of the equal protection provisions of the Florida and United States Constitutions.

(Emphasis added).

The legislation recognized that the intrusion into the private commercial sector by a city give it an unfair competitive advantage because of taxes. The involved legislation provides for equality in tax treatment. It would be no different if a city decided that it wanted to engage in the business of truck and vehicle rentals to compete with Hertz, Avis, and U-Haul and other private operated companies, and no different from the City of Bartow's attempt to engage in the

business of owning and operating an industrial park which the Second District addressed in Roden. These certainly are not traditional municipal or public governmental activities as contemplated by the framers of the constitution. If telecommunication services, why not a chain of liquor stores, pool halls, movie theaters or restaurants? Even without the challenged statutes the PAAF submits that the property was taxable under Roden.

Recently, in Sebring IV, this Court invalidated language in section 196.012(6), Florida Statutes (2003), in which the legislature had attempted to, by definition, expand the concept of governmental-governmental services to include what would be purely commercial, profit-making activities. The majority found Sebring IV inapplicable because the property was leased by the city to the private company. The city contends that the governmental-governmental requirement only applies where the property is leased and, since cities are authorized to exercise municipal, corporate, and proprietary powers under article VIII, section 2, if the city itself engages in a purely corporate commercial undertaking its property is exempt. Presumably, the city would contend that the result would have been different in Sebring IV, had the city been operating the racetrack itself instead of leasing it out. This apparently would be in accord with the majority which held that there should be a very broad interpretation of the language in article VII, section 3(a), Florida Constitution, dealing with municipal exemption.

Following this rationale, any business which the legislature authorized by a statute for a municipality to engage in would then become an "authorized municipal function" and any property used in that function would then be exempt. The PAAF suggests that the district court misconstrued the import of this Court's decision in Sebring IV, and misapplied article VII, section 3. Article VIII, section 2 cannot be superimposed onto article VII, section 3 as the majority below did.

The decision of the Second District in Sebring III, which was affirmed by this Court, recognized that the statutory amendment involved in Sebring III constituted an "impermissible attempt by the legislature to create a tax exemption that is not authorized by the Florida Constitution." 718 So.2d at 297. As the court, speaking thru Judge Quince, now Justice Quince, stated:

> The use of the property appears to be the determinative factor in favor of exemption. There is nothing in the constitution which purports to exempt property, whether owned by a municipality or a private entity, when the property is being used primarily for a proprietary purpose.

Sebring III, 718 So.2d at 299 (emphasis added). The PAAF suggests that this recognizes the underlying premise that exemption does not extend to private commercial use by a city in its corporate capacity.

The PAAF does not suggest that every regulatory or proprietary charge made by a governmental entity would render the property taxable. There is

a clear dichotomy between ownership and use of property by a municipality, or any public body for that matter, which might include charging a regulatory fee pursuant to the police power, or proprietary fees emanating from ownership so that the use of such property properly is preserved for the general populous of the citizens for minimal charge, and using public property by engaging in a commercial business in competition with a private business. Indeed, parking fees as a means of regulating traffic flow on the streets fit in this category as this Court's recognized on numerous occasions in the past. City of Panama City v. State, 60 So.2d 658 (Fla. 1952), recognized that parking meters and the fees from same were regulatory charges emanating from the police power not proprietorship. These are not commercial business undertakings, but are merely a means of regulating property uses for the public. Also see Chase v. City of Sanford, 54 So.2d 370, 373 (Fla. 1951); State ex rel. State v. City of Daytona Beach, 42 So.2d 764 (Fla. 1949); Harkow v. McCarthy, 171 So. 314, 315-316 (Fla. 1936).

It is common for municipalities and counties who own property on waterways to provide boat ramps and docks for the use of the public at large, and to charge reasonable regulatory use fees to offset the cost of maintaining such facilities. However, this is a far cry from engaging in a commercial, profit-making endeavor or operating a business. In fact, the state has docks and loading facilities on waterways throughout Florida and charges small amounts ($3 - $4) for use of

such facilities. Similarly, the federal government charges small fees for entry into and use of federal parks and reserves. (For instance, the St. Marks Wildlife Refuge, which also had a boat ramp.) Obviously, neither the state nor federal government is engaged in the business of a commercial undertaking when it does this. These are the same type charges routinely charged for the use of athletic fields by participating groups to help defray the cost of use of the property and to ensure that public use is shared, and certainly are not private, commercial undertakings in competition with private commerce. These are readily distinguishable from the situation at bar where it is undisputed that the city is engaging in a commercial undertaking, competing with private business in its quasi-private corporate capacity. The statutes involved in the case at bar recognize that a municipality wishes to compete with private commerce in a purely private, commercial, profit-making venture as a corporate entity.

The majority in the district court's decision make several references to Page v. City of Fernandina Beach, 714 So.2d 1070 (Fla. 1st DCA), review denied, 728 So.2d 201 (Fla. 1998), and cite that case as an example where the property appraiser was exempting a municipally-operated marina. The dissent correctly points out that there is nothing in Page which sets forth the factual predicate as to what use the City of Fernandina Beach was making of the marina property prior to or later upon default of the lease agreement. The propriety of the property

appraiser's action as to the docks and marina after repossession on default of the lessee was not an issue in the case. See Ocean Highway & Port Auth. v. Page, 609 So.2d 84 (Fla. 1st DCA 1992); Page v. Fernandina Harbor Joint Venture, 608 So.2d 520 (Fla. 1st DCA 1992), review denied, 620 So.2d 761 (Fla. 1993). There is nothing in any of these cases to show what charges, if any, the city was making for loading boats or overnight boat parking. The lessees constructed the marina and operated it as a business. When the city took it back, its financial operation is not addressed in any case.

The majority's decision attempts to equate telecommunications services to the furnishing of electrical services is without merit as the dissent points out. The furnishing of electrical services arose throughout Florida as a carefully crafted and statutorily regulated system to provide electrical services to the population of the state. This included not only the urban areas such as municipalities, but also the rural areas. The statutory regulatory mechanism preserved unto each a separate and distinct area of operation. For instance, Florida Power & Light Company (FPL), furnishes electric utility service in 37 counties in metropolitan areas, but rural electrical co-ops furnish electricity in rural areas which are not served by FPL and some cities have their own electric operation. The purpose of the regulatory mechanism recognized in Florida Statutes is to see that all citizens have available to them electrical services.

Some cities furnish electrical services and some do not. The City of Tallahassee early on obtained legislative authority to generate and furnish electric power and furnish electric service to the people within the municipality and outside the county to designated areas. Since Tallahassee was the only feasible place which could furnish electricity to some areas, the legislature recognized this and enacted various special acts which permitted the City of Tallahassee to furnish electricity in certain outlying areas and down a corridor in Wakulla County. See Gwin v. City of Tallahassee, 132 So.2d 273 (Fla. 1961). Also see Saunders v. City of Jacksonville, 157 Fla. 253, 25 So.2d 648 (1946).

The PAAF submits that the underlying lynchpin of the differences between article VII, section 3 and article VIII, section 2 is that municipalities were never contemplated or intended to be entities which could compete with private business in purely, commercial, profit-making endeavors and at the same time receive tax exemption. It follows that, if a municipality chooses to get "outside" its purely municipal public character and become a pure corporate entity competing in commercial money making ventures, that it loses its character as a municipality and thus its property used in such venture becomes taxable to the same extent as if being used by a private commercial entity. Article VII, section 3(a) does not extend to such corporate proprietary use.

Thirty years ago, the Second District in Roden, recognized this as a fundamental lynchpin when it held that the municipal operation of an industrial park was not entitled to exemption.

In Roden, there was no accompanying legislative language declaring that any industrial park created thereon and any property leased or held out for lease in any such park would be taxable even though owned by the municipality, but as the holding in the case demonstrates, that does not make any difference. Article VII, section 3 simply did not reach it at all.

The majority decision seemed to place emphasis on the fact that a Staff Analysis pointed out that any claim to municipal exemption would be lost by the language included in the statute. The PAAF suggests that the majority's analysis is erroneous because, even had such not been taxed in the statute, the involved property would have been subject to tax in accordance with Roden. This same chapter, 332, relied on in Roden was relied on by the city in both the subsequent Sebring cases.

In Sebring III, the district court stated:

> Even property that is owned by a municipality but used by it for other than a governmental purpose loses its tax exemption. When the government operates in other than its governmental capacity, i.e., in a proprietary capacity, it too must carry its share of the tax burden. This issue was addressed by the supreme court in *Markham v. Maccabee Invs., Inc.*, 343 So.2d 16 (Fla. 1977). There,

> the court reversed a ruling by the Fourth District which allowed a tax exemption to a theater that was located on property owned by a city but leased to a for-profit entity.

718 So.2d at 300 (emphasis added).

Suppose that, instead of including language in the 1997 laws being reviewed here providing that the municipal property so used would be taxable, the legislature had included language providing that all such property so used by the municipality would constitute a municipal purpose and the property would be exempt and the question before the court was the constitutionality of the validity of the language purporting to give the exemption. This would be strikingly similar to the situation in Sebring IV, in which this Court struck a legislative attempt to broaden the exemption.

B. The district court's majority decision improperly construed article VII, section 3 by rewriting same to include language found in article VIII, section 2, which such language was not included by the framers, thereby permitting the legislature by statutory authorization or labeling to broaden article VII, section 3.

The dissent in the court below points out the differences in the language used in article VII, section 3 and article VIII, section 2, Florida Constitution. The constitutional exemption provided to municipalities in article VII, section 3 does not exempt property used by municipalities for corporate proprietary purposes in a corporate commercial undertaking. Had the framers

intended this to be the result, they could easily have included this additional language in the provision. They did not. The authority to engage in corporate and proprietary activities recognized in article VIII, section 2 certainly does not by implication suggest that this was intended to broaden the language in article VII, section 3. The city attempts to rewrite article VII, section 3, to include the language in article VIII, section 2.

The effect of merging article VII, section 3 and article VIII, section 2, as the majority did below is to amend article VII, section 3 to embrace language not inserted by the framers. This violates the fundamental rule of construction of constitutional provisions, which require the courts consideration of the object sought to be accomplished and the evils sought to be remedied, and the provision should be so interpreted as to accomplish rater than defeat such object. State ex rel. West v. Gray, 74 So.2d 114 (Fla. 1954); Owens v. Fosdick, 153 Fla. 17, 13 So.2d 700 (1943). The 1968 constitution removed the wide latitude the legislature previously had under the 1885 constitution as this court recognized in Williams and Interlachen Lakes Estates, Inc. v. Snyder, 304 So.2d 433 (Fla. 1973)(compare article IX, section 1 and article XVI, section 16, Florida Constitution (1885) to article VII, section 4, Florida Constitution (1968)). The legislative prerogative to establish exemption by determining for itself what it considers as "municipal" or "public purpose" no longer exists. Sebring IV; Mallard v. Tele-Trip Co., 398

So.2d 969 (Fla. 1st DCA 1981); St. Johns Associates v. Mallard, 366 So.2d 34 (Fla. 1st DCA 1978), writ discharged, 373 So.2d 912 (Fla. 1979). Yet the effect of the majority decision is to reestablish this legislative prerogative. As held by the majority, the legislature authorization amounts to recognizing the words "municipal," or "public" as including the words "corporate" and "proprietary" as used in article VIII, section 2. This simply is rewriting the constitutional language used by the framers and ignoring the framers careful selection of words which clearly have different meanings. The municipal exemption provided in article VII, section 3 is self executing; and neither requires nor permits legislative implementation and certainly does not permit enlargement.

The rule of construction is that words should be given their natural and popular meaning in which words are usually understood by the people who adopted them. Wilson v. Crews, 168 Fla. 169, 34 So.2d 114 (1948); Advisory Opinion to the Governor, 156 Fla. 48, 22 So.2d 398 (1945). The framers certainly knew the difference between "public" and "corporate" and "municipal" and "proprietary." The different provisions should also be interpreted with reference to each other, and every part should be given effect. No construction should be adopted which renders any part superlative or which nullifies or modifies some other specific clause. State ex rel. West v. Butler, 70 Fla. 102, 69 So. 771 (1915); State ex rel. McKay v. Keller, 140 Fla. 346, 191 So. 542 (1939). The majority

decision merges these two and construes "municipal" as including "corporate" and "proprietary" while the framers recognized the difference by their use in the two provisions. "Municipal, "corporate," and "proprietary" are not synonymous.

In Greater Orlando Aviation Auth. v. Crotty, 775 So.2d 978 (Fla. 5th DCA 2000), involved the operation by the city of the Hyatt Regency hotel pursuant to a management agreement with the Hyatt management company. The PAAF suggests that the court's holding in Crotty analogizing the operation of the Hyatt hotel to a pizzeria is a clear indication that that court too recognized that the city had lost its municipal cloak and was no different from any other private profit-making entity and, accordingly, should be treated the same.

CONCLUSION

Based upon the aforementioned arguments and authorities, the PAAF respectfully urges this Court to reverse the decision in City of Gainesville, and hold that municipally-owned property used by it for private commercial, profit-making purposes is not entitled to ad valorem tax exemption.

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 **NICHOLAS BYKOWSKY, ESQUIRE,** Assistant Attorney General, Office of the Attorney General, Tax Section - The Capitol, Tallahassee, Florida 32399-1050; **ROBERT W. PASS, ESQUIRE**, and **E. KELLY BITTICK, JR, ESQUIRE**, Carlton, Fields, P.A., Post Office Drawer 190, Tallahassee, Florida 32302; **SHERRI L. JOHNSON, ESQUIRE**, and **JOHN DENT, ESQUIRE**, Dent & Associates, P.A., Post Office Box 3259, Sarasota, Florida 34230-3259; **KENNETH R. HART, ESQUIRE**, and **JASON GONZALEZ, ESQUIRE**, Ausley & McMullen, 227 S. Calhoun Street, Tallahassee, Florida 32301; **RAYMOND O. MANASCO, JR., ESQUIRE**, Gainesville Regional Utilities, Post Office Box 147117, Sta. A138, Gainesville, Florida 32614-7117 on this the **17th** day of February 2004.

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Larry E. Levy

CERTIFICATE OF COMPLIANCE

The undersigned counsel for amicus curiae, Property Appraisers' Association of Florida, Inc., certifies that the font size and style used in the foregoing brief is 14 Times New Roman and complies with the font requirement of Florida Rule of Appellate Procedure 9.210(a).

Larry E. Levy