IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-520

SUNSET HARBOUR NORTH CONDOMINIUM ASSOCIATION, as Representative; et. al.,

Appellants,

v.

JOEL ROBBINS,

Appellees.
_____/

Lower Tribunals:
Third District Court of Appeal,
Consolidated Case: 3D02-2316

Miami-Dade 11th Judicial Circuit,
Case: 97-28404 CA 30

Appeal from a Final Order of the Third District Court of Appeal, Florida

AMICUS CURIAE BRIEF OF FLORIDA HOME BUILDERS ASSOCIATION, SUBMITTED BY LEAVE OF COURT

(Supporting Appellants, Sunset Harbour North Condominium Association, as Representative; et. al.)

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STATEMENT OF INTEREST

As stated in its Motion to Appear as Amicus, Florida Home Builders Association (hereinafter Amicus), is a 16,000 plus member statewide construction industry association. One of the purposes of Amicus is to monitor judicial proceedings that may affect the construction industry in Florida and, when appropriate, to intervene or appear as an amicus curiae in those cases.

The outcome of this case regarding the constitutionality of the substantial completion law, § 192.042(1), Fla. Stat., is of great interest to and may have a substantial impact on all property owners including the construction industry of Florida. A decision by this Court upholding the instant decision will mean that developing properties, which are under construction and are not substantially complete as of January 1 of each year, will be assessed for ad valorem taxation purposes as partial completed structures. 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

In justifying its decision to hold § 192.042(1) Fla. Stat., unconstitutional, the District Court in dicta stated that the effect of § 192.042(1), Fla. Stat., would [result] in the highly substantive, permanent loss of large sums in tax dollars. *Fuchs II,* 738 So.2d 338, 348. Whether or not the District Court agrees or disagrees with the Legislature's determination of tax policy is not the issue. The issue in this case is whether there was a change in the 1968 Constitution which prohibited the Legislature

from defining the term property and establishing a specific statutory scheme for the timing of the valuation and assessment of real property. As this Court has stated, both the 1885 and 1968 Constitutions required the Legislature to enact general law implementing the collection of ad valorem taxes. *Collier County v. Florida, et al.,* 733 So.2d 1012 (Fla. 1999).

Section 192.042(1), Fla. Stat., is part of the integrated and comprehensive Legislative implementation of Art. VII, § 4, Fla. Const. and is constitutional. The Legislature has properly specified the date on which property, both real and tangible, will be assessed, § 192.042(1), Fla. Stat. does not create an exemption of property. That date is January 1 of each year.[1] It has likewise properly determined that improvements or partial improvements to real property that are not substantially complete as of January 1 are not real property and shall not be assessed until the January 1 after the improvements have become substantially complete.

The revisions to Art. VII, §§ 2 and 4, Fla. Const. 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

[1] The Constitution has historically implied a yearly tax. The Legislature has provided that January 1 is the day all property shall be assessed. *See, e.g.,* Ch. 4322, §§ 3, 68, Laws of Fla. (1895). *See* Ch. 5596, Section 3, Laws of Fla. (1907), (which is the forerunner of present day § 192.053, Fla. Stat.), wherein the Legislature set a date that a lien on the property shall attach.

unchanged. § 15, Ch. 4322, 1895. 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.

Forty-three years ago, the Legislature enacted § 192.11(3), Fla. Stat. the predecessor to § 192.042(1), Fla. Stat. that provided the timing of the valuation and assessment of incomplete improvements to real property. The same January 1 date appears in this law. (See History note to § 193.11(4), Fla. Stat. 1965)

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 1 of each calendar year. Importantly, all, not some, improvements to property which are not substantially complete by January 1 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), Fla. Stat., like all statutes, is presumed to be constitutional. The District Court in the instant case 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), Fla. Stat. should be upheld.

ARGUMENT

SECTION 192.042(1), FLA. STAT. IS CONSTITUTIONAL.

INTRODUCTION

The case on appeal is *Sunset Harbour North Condominium Ass'n v. Robbins, (Sunset)* 837 So.2d 1181 (Fla. 3d DCA 2003). The court in *Sunset* incorporated and adopted its opinion on rehearing in *Fuchs and the Miami Beach Ocean Resort, Inc. v. Robbins, (Fuchs II)* 738 So.2d 338, 348-350 (Fla. 3d DCA 1998). Thus, *Fuchs II* is the focus of this appeal, even though *Fuchs II* was reversed on jurisdictional grounds in *Fuchs v. Robbins, (Fuchs III),* 818 So.2d 460 (Fla. 2002). The original opinion, prior to rehearing, in *Fuchs and the Miami Beach Ocean Resort, Inc. v. Robbins, (Fuchs I)* 738 So.2d 338-341 (Fla. 3d DCA 1998) will be referred to as *Fuchs I*.

This case does not involve the improper exemption of real property as it is defined by § 192.001(12), Fla. Stat. The case involves "what is real property subject to ad valorem tax and when does it become subject to ad valorem tax?"

The original unanimous panel decision (*Fuchs I*) was correct. After stating the obvious, that all improvements to property covered by § 192.042(1), Fla. Stat. which are not substantially complete by January 1 are not taxed for that particular year, the three-judge panel found "that § 192.042, Fla. Stat. does not create an additional exemption in violation of Art. VII, § 4, Fla. Const. 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). *See Fuchs I.* The panel in *Fuchs I* 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 1 of each calendar year. *See* § 192.042 (1997), Fla. Stat." *Id.* These are appropriate conclusions given a reasonable application of well-worn principles of constitutional law.

While the Constitution gives the Legislature the authority to define property as that term is used in Art. VII, § 4, Fla. Const., for ad valorem tax purposes, the authority is not unlimited and must be exercised in a reasonable manner. The Legislature in the implementation of Art. VII, § 4, Fla. Const., has provided in a reasonable manner the definition of property as that term is used in Art. VII, § 4, Fla. Const.

The flexibility granted to the Legislature does not empower it to depart from the normal and ordinary meaning of the words chosen by the framers and adopters of the constitution. *Department of Revenue v. Florida Boaters Association, Inc.*, 409 So.2d 17, 19 (Fla. 1982). The Legislature has exercised this authority in a reasonable manner and has not departed from the normal and ordinary meaning of the words chosen by the framers and adopters of the 1968 Constitution. The definition of property contained in § 192.001(12), Fla. Stat., is for all practical purposes the same as the definition of real property first adopted in 1895. *See* § 192.02, Fla. Stat. (1965) and History note following the section.

The Property Appraiser and the District Court in the instant case would have this Court believe that the Legislature is without authority to define property as that term is used in Art. VII, § 4, Fla. Const. They are incorrect. The Legislature

possesses such authority under the present Constitution as it had under the 1885 Constitution.

Further, they would have this Court believe that the people in 1968, in the middle of a taxpayer revolt were voting to change the definition of real property and the timing of the taxation of that property. *See, State ex rel. Dade County v. Dickinson,* 230 So.2d 130 (Fla. 1969). In other words, the Property Appraiser would have this Court believe that the people were voting to tax for the first time their incomplete homes upon which they could not obtain homestead exemption until January 1, following the date upon which those homes were substantially complete. *See* § 196.031, Fla. Stat.

As the District Court correctly noted an ounce of history is often worth a pound of legal logic. *See,* 738 So.2d at 346, n.18. If one reviews the history and benefits that § 192.042(1), Fla. Stat., bestows on the people, it is reasonable to assume that the people, when voting for the 1968 Constitution, viewed the substantially complete statute as a timing statute, not an exemption statute, especially in view of this Court's characterization of it in *Culbertson,* as [o]nly a temporary postponement of valuation and assessment of incomplete improvements on real property. . . . *Culbertson,* 212 So.2d, at 647. Thus, the District Court discussion concerning the legal ability of the Legislature to single out properties or classification of properties for treatment that brings about their tax assessment at something other than fair market value is inapplicable to any discussion of the timing aspect of § 192.042(1), Fla. Stat.

Further, it is reasonable to assume that the people knew of the benefits this timing statute conferred on them when their homes were destroyed or severely damaged by hurricanes, such as Andrew in 1992, or by fires, such as the wild fires in Flagler County

in 1998, in mid year and then on the January 1 of the subsequent tax year when their homes were not substantially complete for the purpose for which it was constructed. Under the provisions of § 192.042(1), Fla. Stat., (or its predecessor § 193.11, Fla. Stat. (1961)), such damaged properties would not be subjected to assessment until they were substantially complete and the owners would not receive a tax bill for the partial structure which had been their home. Finally, it is reasonable to conclude that the people were not voting to give up this benefit. *Florida Boaters Association, Inc.*, 409 So.2d at 19.

The remedy for those who believe that § 192.042(1), Fla. Stat. 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).

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 1 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.

The Legislature, in proposing, and the people of the State of Florida, in adopting, the 1968 revisions to Art. VII, §§ 2 and 4, Fla. Const., did not intend to repeal or overturn the then existing substantial completion doctrine in § 192.042(1), Fla. Stat. The Third District Court of Appeal has decided differently and has

substituted its notion of what the policy should be of this state for the policy established by the Legislature.

I. Basic Principles of Constitutional Law

Section 192.042(1), Fla. Stat. is not contrary to any express or implied prohibition contained in the constitution.

This Court should not and must not annul, as contrary to the constitution, a statute passed by the legislature, 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. There is no repugnance between § 192.042(1), Fla. Stat. and Art. VII, § 4, Fla. Stat.

The standard for determining the intent of a constitutional provision has always been the intent of the people at the time the document was adopted. *Department of Revenue v. Florida Boaters Association, Inc.*, 409 So.2d 17 (Fla. 1982). Art. VII, § 4, Fla. Const. must be construed or interpreted in such manner as to fulfill 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); *Smathers v. Smith,* 338 So.2d 825, 826 (Fla. 1976), quoting *Gray v. Golden*, 89 So.2d 785, 790 (Fla. 1956).

While 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.

Since Art. VII, § 4, Fla. Const. is not self-executing, all existing statutes which are consistent with the amended Constitution such as § 192.042(1), Fla. Stat. 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. 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). Such harmony exist between Art. VII, § 4, Fla. Const. and § 192.042(1), Fla. Stat.

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

Any discussion of intent of the Legislature in enacting § 192.042(1), Fla. Stat., and its predecessor statutes, must begin with the history of § 192.042(1), Fla. Stat. and the political and economic climate existing in 1968. *Florida Boaters Association, Inc.*, 409 So.2d at 19.

In 1961, the Legislature amended § 193.11, Fla. Stat., and added subsection (4) involving improvements not substantially complete on January 1. 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 1), which was § 192.04, Fla. Stat. (1961). *See also,* § 193.11(1), Fla. Stat. (1961).

On November 2, 1961, the Attorney General addressed 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 by the Legislature has used it in § 193.11(4), Fla. Stat. Op. Att'y. Gen. Fla. 61-177. It was further stated: "It doubtless was the view of the legislature when it adopted Ch. 61-240, the same being § 193.11(4), Fla. Stat., that improvements [do not] add to real value to land until they are substantially completed." *Citing, L. Maxcy, Inc. v. Federal Land Bank of Columbia,* 111 Fla. 116, 150 So. 248 (Fla. 1933). Cf. Op.'s Att'y Gen. Fla. 72-36 & 93-46 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, stating that § 192.042(1) is not limited to new property. "Where an improvement to property has been determined to be substantially complete as of January 1 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 1 of that year. However, on the following January 1, if the property had not been replaced, there would be no improvement to tax." *Id.*

Section 193.11(4), Fla. Stat. (1961) should be read in conjunction with the 1961 definition of real property, contained in § 192.02, Fla. Stat. (1961). § 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, § 193.11, Fla. Stat., 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. In 1970, Ch. 192 was amended by adding § 192.042 (l)-(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 §§ 193.034, 193.511, Fla. Stat., 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 Corporation v. A.H. Blake,* 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.

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 § 193.11 to § 193.071. Ch. 69-55, § 2 at 240-41, Laws of Fla. "The purpose of this reviser's bill [was] to rearrange and reorganize the several

sections presently appearing in Ch. 192, 193, 194, 195, 196 and 200 in accordance with the chapter and part designation set out in § 1 of this bill. There have been no substantive changes by way of 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 Art. VII.

On June 26, 1968, this Court, in *Culbertson,* 212 So.2d 646, upheld the constitutionality of § 193.11(4), Fla. Stat. 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 of the Florida Constitution of 1885, as amended. The articles proposed in House Joint Resolution 1-2X constituted the entire revised constitution except for Art. V, VI, and VIII.

A side-by-side comparison of former Art. IX, § 1, Fla. Const. (1885), as amended, with the 1968 changes appearing in Art. VII, §§ 2 and 4, Fla. Const. (1968), is instructive. (Appendix 1 at p. 109-110; Appendix 2 at p. 13).

The first sentence of Art. VII, § 4, calling for “just valuation” is very similar to former § 1 of Art. IX. 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) (Appendix 3). This analysis is also referred to in *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 Art. VII, *id.* at 19, and material here, Art. VII, § 4 (a)&(b), stating that "The first sentence in this section is taken over from Art. IX, § 1 of the present constitution."

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.)

Art. VII, § 4, Fla. Const., is not a substantial reworking of the ad valorem mandate. 738 So.2d at 340. The district court in *Fuchs II* 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 746, n. 20. However, given a side-by-side comparison and the apparent purpose for adding subsections 4(a)&(b), the changes were indeed insignificant and had and have no bearing on the constitutionality of § 192.042(1), Fla. Stat.

The panel's analysis in *Fuchs II,* of this Court's decision in *Interlachen Lakes*

Estates, Inc. v. Snyder, 304 So.2d 433 (Fla. 1973) is also flawed. In fact, *Interlachen* did not overrule *Culbertson.* The result was correct in *Interlachen* because "the statute at issue in *Interlachen* [§ 195.062 (I)] did not permit a 'just valuation' of **all** property." 378 So.2d at 340. . . [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. 304 So.2d at 434. Here, **all** property not substantially complete by January 1 is not taxed for that particular year." *Id.* at D2529-30.

The Legislature, in adopting the revisions that appear in Art. VII, §§ 4 (a) & (b), Fla. Const., (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 § 192.042(1), Fla. Stat. (formerly §§ 193.071(4) and 193.11(4)), has not carved out a special exemption of property so as to violate the just valuation clause. Thus, an express constitutional exemption in 1968 was not necessary. The substantial completion statute treats **all** property owners uniformly. Consequently, § 192.042(1), Fla. Stat. meets the just valuation requirements as recognized by this Court in *Culbertson* and its progeny.

There is no tension between this Court's decision in *Culbertson* and any of the

cases relied upon by the District Court specifically, *Interlachen; ITT Community Development Corp. v. Seay*, 347 So.2d 1024 (Fla. 1977), and *Valencia Center, Inc. v. Bystrom*, 543 So.2d 214 (Fla. 1989).

In *Valencia Center*, this Court declared a statute unconstitutional which required the property appraiser, in situations where the property was subject to a lease entered into prior to 1965, to assess the property only as to the highest and best use permitted by the lease. This classification had the effect of taxing two identical lots, one with a lease entered into prior to 1965 and the other without a lease or with a lease entered into after 1965, at different rates based on the extrinsic characteristic of use.

Far from violating Art. VII, § 4, Fla. Const., the enactment of § 192.042(1), Fla. Stat., actually effectuates the constitutional directive that the Legislature prescribe, by general law, regulations which shall secure a just valuation of all property for ad valorem taxation. The Florida Legislature enacted just such a regulation when it required that an improvement to real property be substantially complete so that it can be used for the purpose for which it was constructed before being assessed.

In contrast to the statute at issue in those decisions, § 192.042(1), Fla. Stat. does not create an exemption 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.

Until the instant decision both this Court and other District Courts have rejected the contention that § 192.042 Fla. Stat., created an impermissible classification or

implicated just value. *See, Sherwood Park, Ltd. 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); *Metropolitan Dade County v. Colsky,* 241 So.2d 440 (Fla. 3d DCA 1970); *Forte Towers East, Inc. v. Blake,* 275 So.2d 39 (Fla. 3d DCA 1973); *Manufacturers National Corporation v. A.H. Blake,* 287 So.2d 129, 131-32 (Fla. 3d DCA 1973), *Markham v. Kauffman,* 284 So.2d 416 (Fla. 4th DCA 1973); and *Yankee Clipper, infra.*

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 those decisions. *Collier County,* 733 So.2d at 1019.

In summary, the Legislature, in submitting the proposed revisions to the Florida Constitution in 1968, including but not limited to Art. VII, and the people in adopting them, must have had notice and knowledge of several factors. Both had knowledge that the substantial completion statute, § 192.042(1), Fla. Stat., formerly §§ 193.071(4) and 193.11(4), Fla. Stat., 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 1 has been the date 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, not more taxes.

This Court, while the Legislature was in Special Session considering the proposed revisions to the Florida Constitution and specifically Art. VII, decided *Culbertson*, concluding that § 193.11(4), Fla. Stat. 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.*

Thus, the Legislature and the public have been aware of the substantial completion statute for over 42 years and have understood this provision to be constitutional for over 35 years and have understood its application. *See*, e.g. Op. Att'y Gen. Fla. 93-46 and cases cited therein.

Finally, § 192.042(1), Fla. Stat., is presumed to be constitutional and is constitutional. In 1968, the Legislature, the framers of the revisions to Art. VII, §§ 2 and 4, Fla. Const., did not intend to repeal § 192.042(1), nor did the Legislature, at any time since 1968, seek to overrule *Culbertson*, notwithstanding the opportunity to do so. The instant 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 district court substituted its policy choice for that of the Legislature.

CONCLUSION

Based upon the foregoing, Amicus requests this Court to uphold the constitutionality of § 192.042(1), Fla. Stat. and reverse and vacate the decision on

appeal in this case with direction to the district court to enter an order upholding the constitutionality of Section 192.042, Fla. Stat.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to **Thomas W. Logue,** Assistant County Attorney, Suite 2810, 111 N.W. First Street, Miami, Florida 33128; **Mark T. Aliff,** Assistant Attorney General, Office of the Attorney General, Tax Section, The Capitol, Tallahassee, Florida 32399-1050; **Mitchel A. Feldman,** Mitchel A. Feldman, P.A., Suite 111, 1021 Ives Dairy Road, Miami, Florida 33179; and **Arnaldo Velez,** Arnaldo Velez, P.A., 35 Almeria Avenue, Coral Gables, Florida 33134, this 6th day of May, 2003.

_____

JOSEPH C. MELLICHAMP, III

CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.210(a)(2), this Brief has been prepared using 14-point, Times New Roman-style type.

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JOSEPH C. MELLICHAMP, III