

IN THE SUPREME COURT OF FLORIDA

**SUNSET HARBOUR NORTH
CONDOMINIUM ASSOCIATION,
et al., and STATE OF FLORIDA,
DEPARTMENT OF REVENUE,**

CASE NO. SC03-520

Lower Tribunal Nos. 3D02-2258 and
3D02-2316

Appellants

vs.

**JOEL ROBBINS, MIAMI-DADE COUNTY
PROPERTY APPRAISER**

Appellee

**AMICUS CURIAE BRIEF
OF PALM BEACH COUNTY SUPPORTING APPELLEE JOEL
ROBBINS**

PAUL F. KING (FBN339431)
Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue - Suite 601
West Palm Beach, Florida 33401
(561) 355-2225
(561) 355-4398 (Facsimile)

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

SUMMARY OF ARGUMENT 1

ARGUMENT 2

THE THIRD DISTRICT COURT DID NOT ERR IN
FINDING SECTION 192.042(1), FLORIDA STATUTES,
UNCONSTITUTIONAL

CONCLUSION 7

CERTIFICATE OF SERVICE 8

CERTIFICATE OF COMPLIANCE 8

TABLE OF AUTHORITIES

CASES

Fuchs v. Robbins,
738 So. 2d 338 (Fla 3d DCA 1999),
reversed on other grounds, 818 So.2d 460 (Fla. 2002) 3, 4

Interlachen Lakes Estates v. Snyder,
304 So.2d 433 (Fla. 1973) 3

ITT Community Dev. Corp. v. Seay,
347 So.2d 1024 (Fla. 1977) 3, 4

John Henry Jones, Inc. v. Lanier,
376 So.2d 450 (Fla. 5th DCA 1979) 5

Sunset Harbour North Condominium Association v. Robbins,
837 So.2d 1181 (Fla. 3d DCA 2003) 2, 3

Valencia Center, Inc. v. Bystrom,
543 So.2d 214 (Fla. 1989) 3, 4

OTHER AUTHORITIES

Article VII, Section 4, Florida Constitution (1968) 1, 3, 4, 6

Section 192.042(1), Florida Statutes 1, 2, 3, 4, 6, 7

SUMMARY OF ARGUMENT

Section 192.042(1), Florida Statutes, violates Article VII, Section 4 of the Florida Constitution (1968) by requiring that real property improvements be assessed for ad valorem taxes at zero value if such improvements are not “substantially completed” on January 1 of the current year. Such exemption does not comply with the constitutional mandate that real property be valued at just (fair market) value. Article VII, Section 4 contains no provisions allowing special treatment of incomplete improvements to real property. Without such provision, the Florida Legislature had no authority to provide this special treatment through Section 192.042(1).

Section 192.042(1)’s unconstitutional special treatment of real property improvements not “substantially completed” on January 1 may cause deliberate delays to avoid January 1 construction completion and consequent economic loss. It also causes economic inequality between classes of taxpayers, subsidizes new construction that uses government services while not paying anything for such services.

ARGUMENT

THE THIRD DISTRICT COURT DID NOT ERR IN FINDING SECTION 192.042(1), FLORIDA STATUTES, UNCONSTITUTIONAL.

Amicus Curiae Palm Beach County (the “County”) submits that the Third District Court correctly determined that Section 192.042(1), Florida Statutes, was unconstitutional. Section 192.042(1) clearly violated the Florida Constitution’s mandate that all real property be assessed at just valuation by requiring that incomplete improvement to real property must be assessed at zero value. This ruling in favor of Appellee Joel Robbins, Miami-Dade County Property Appraiser (“Robbins”), is supported by the County. The County urges this Court to affirm the Third District County’s decision for Robbins, and apply that decision throughout Florida. The elimination of the unfair “incomplete improvement” exemption in Section 192.042(1) will result in more equitable ad valorem assessment of improvements to real property. Further, elimination of Section 192.042(1) will also provide the County and other governmental entities with an increased ability to provide services with ad valorem taxes.

Section 192.042(1) is unconstitutional.

In the decision on review, Sunset Harbour North Condominium Association v. Robbins, 837 So.2d 1181 (Fla. 3d DCA 2003), the Third District Court held the

“substantial completion” statute, Section 192.042(1), unconstitutional as violative of the Florida Constitution’s requirement that all real property (with certain inapplicable exceptions) must be assessed at fair market value. Id. The Sunset Harbour opinion adopted the Third District Court’s prior opinion in Fuchs v. Robbins, 738 So. 2d 338 (Fla. 3d DCA 1999), reversed on other grounds, 818 So.2d 460 (Fla. 2002).

The Third District Court’s reasoning in its en banc opinion in Fuchs is compelling. The Fuchs en banc court pointed out that Article VII, Section 4 of the Florida Constitution (1968) states that general law may provide regulations for the just valuation of all property for ad valorem taxation, with certain specified property categories receiving special treatment. No provision, however, allows for special treatment of incomplete improvements to real property. Fuchs, 738 So.2d at 341. Without any constitutional authority for such special treatment, the Florida Legislature had no authority to provide for such treatment through Section 192.042(1). Id.

The Third District Court in Fuchs relied on this Court’s decisions in Interlachen Lakes Estates v. Snyder, 304 So.2d 433 (Fla. 1973), ITT Community Dev. Corp. v. Seay, 347 So.2d 1024 (Fla. 1977) and Valencia Center, Inc. v. Bystrom, 543 So.2d 214 (Fla. 1989), which held unconstitutional other statutes that attempted to authorize improperly the assessment and taxation of real property at less than fair market value. Fuchs, 738 So.2d at 343. Based on the reasoning in this Court’s Interlachen, ITT

Community and Valencia Center decisions, the Third District Court held in Fuchs that Section 192.042(1), was unconstitutional as an unauthorized attempt to value certain real property improvements at less than fair market value, in violation of Article VII, Section 4, Florida Constitution (1968). This well-reasoned decision by the Third District Court should be affirmed by this Court and made applicable statewide.

Holding section 192.042(1) unconstitutional will result in more equitable ad valorem assessment of improvements to real property.

Holding Section 192.042(1) unconstitutional will result in more equitable current ad valorem assessment of improvements to real property. For this reason, the County urges this Court to affirm the Third District Court’s holding on review that Section 192.042(1) is unconstitutional. Application of that holding on a statewide basis will result in more equitable assessment of improvements to real property in growing areas of Florida.

Currently, under the unfair protection granted by Section 192.042(1), residences and commercial structures not found “substantially complete” on January 1 are considered to have no taxable value, even if completed only one day later, on January 2 of that same year. Such improved real property must be valued as vacant land for the current year, even though the improvements may be in full use for 364 days! This is inequitable, to say the least. This statutory provision may well lead to unjustified

construction delays merely so that the “substantially complete” standard will not be met on January 1 of the current year, resulting in assessment as vacant land for the current year. See John Henry Jones, Inc. v. Lanier, 376 So.2d 450 (Fla. 5th DCA 1979) (Improvements must be found not “substantially completed” even though the developer deliberately ceased work so that the six houses under construction would not be finished by January 1).

Besides causing unjustified economic slowdowns, improvement completion delays allow new home and business owners to avoid taxation on these improvements for the current year, and may delay payment for as much as 27 months under current ad valorem tax payment laws. For example, a commercial structure not completed until January 2, 2003 will not have its first ad valorem tax assessment on that structure become delinquent until April 1, 2005, 27 months later. The same commercial structure found “substantially complete” on January 1, 2003 would be assessed for 2003. The first ad valorem tax assessment on that structure will become delinquent on April 1, 2004. This results in an inequitable twelve month ad valorem tax difference for a one day difference in the improvement’s “substantial completion” date. This unequal treatment of similarly situated property owners should be rejected by this Court.

Section 192.042(1) also results in increased ad valorem taxes for owners of

existing residences and commercial structures, while unfairly subsidizing the owners of new improvements that require public services, but do not pay for them. These increased public service demands further strain local governments, such as the County, that rely on ad valorem taxes without providing the needed source of payment for such services.

Section 192.042(1), with its unjustified exemption from ad valorem taxes for new improvements not “substantially complete” on January 1, should be stricken as an unconstitutional violation of Article VII, Section 4 of the Florida Constitution. Further, that exemption has created economic inequality between classes of taxpayers that cannot be justified.

For the reasons stated above, Section 192.042(1) was properly held unconstitutional by the Third District Court.

CONCLUSION

Amicus Curiae Palm Beach County, for the reasons set forth above, urges this Court to affirm the decision of the Third District Court below, finding Section 192.042(1), Florida Statutes, unconstitutional.

Respectfully Submitted,

Paul F. King (FBN339431)
Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue - Suite 601
West Palm Beach, Florida 33401
(561) 355-2225
(561) 355-4398 (Facsimile)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copy of the above and foregoing was on _____, 2003 served via U.S. Mail upon Thomas W. Logue, Assistant County Attorney, Miami-Dade County, Suite 2810, 111 N.W. First Street, Miami, FL 33128; Mark T. Aliff, Assistant Attorney General, Office of the Attorney General, Tax Section, The Capitol, Tallahassee, Florida 32399-1050; Mitchell A. Feldman, Mitchell A. Feldman, P.A., Suite 111, 1021 Ives Dairy Road, Miami, FL 33179 and to Arnaldo Vélez, Arnaldo Vélez, P.A., 35 Almeria Avenue, Coral Gables, FL 33134

Paul F. King (FBN339431)
Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue - Suite 601
West Palm Beach, Florida 33401
(561) 355-2225
(561) 355-4398 (Facsimile)

CERTIFICATE OF COMPLIANCE

This brief complies with the font requirements of Florida Rules of Appellate Procedure. It was typed using Times New Roman 14-point font.

Paul F. King (FBN339431)