IN THE SUPREME COURT OF FLORIDA

SUNSET HARBOUR NORTH CONDOMINIUM ASSOCIATION and STATE OF FLORIDA, DEPARTMENT REVENUE, Appellants,	)	Case No. SC03-520
v.	)	Lower Tribunal No. 3D02-2316
JOEL W. ROBBINS, Property Appraiser for Miami-Dade County, Appellee.	)	

AMENDED ANSWER BRIEF OF APPELLEE PROPERTY APPRAISER

On Appeal from the District Court of Appeal,
Third District, State of Florida

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(cont'd)

Page

TABLE OF CITATIONS

TABLE OF CITATIONS

Cases **Page**

TABLE OF CITATIONS

TABLE OF CITATIONS

TABLE OF CITATIONS

Cases **Page**

Other Authorities

TABLE OF CITATIONS

Other Authorities **Page**

STATEMENT OF THE FACTS

This case arises out of a dispute concerning the assessment of certain real property and involves the constitutionality of a tax statute. The subject property is the Sunset Harbour North Condominium, an eighteen-story condominium that was in the final stages of construction as of the tax date of January 1, 1997. R.I-179. The Property Appraiser determined that the property was substantially complete pursuant to section 192.042(1) of Florida Statutes. R-I-179. He then determined its fair market value using the criteria set forth in section 193.011, Florida Statutes, which basically codified the cost, income, and market approaches to value. *Id.* at 177-78. The fair market value of the subject property based upon such criteria was $22,935,100. *Id.* at 179. These facts are not disputed.

As representative of the developer and owners of individual units, the Appellant Sunset Harbour North Condominium Association filed suit challenging the assessment. In the lawsuit, Sunset Harbour did not contest the Property Appraiser's determination that the fair market value of the subject property was $22,935,100. R.I-179, 217. Instead, Sunset Harbour challenged only the Property Appraiser's determination that the property was substantially complete. Accordingly, Sunset Harbour contended that it's assessed value should be reduced from its fair market value of $22,935,100 to **zero** dollars pursuant to

section 192.042(1) of Florida Statutes (hereinafter "the Statute"). *Id*. In response to this argument, the Property Appraiser raised the affirmative defense that the Statute was unconstitutional and subsequently moved for summary judgement on that ground.

The Circuit Court determined that the Statute violated the requirement in the Florida Constitution that all property be valued at just value. RII-248. The Third District Court of Appeal agreed with the trial court that the Statute was unconstitutional in an opinion that adopted in full its unanimous, *en banc* opinion in *Fuchs v. Robbins*, 738 So.2d 338 (Fla. 3d DCA), *rev'd on other grounds*, 818 So.2d 460 (Fla. 2002). This appeal followed.

SUMMARY OF THE ARGUMENT

The statute at issue, section 192.042(1) of Florida Statutes, is constitutionally defective because it provides that "improvements not substantially completed" shall be assessed at less than fair market value --"no value" is the phrase used in the Statute -- even though such improvements are not included in the enumerated list of permissible exceptions to the requirement that all property be assessed at full fair market value.

Article VII, section 4 of the Constitution sets forth the overarching principle that "all property" be assessed at "just valuation," which this Court has held is synonymous with full fair market value. As initially adopted by the people, the Constitution allowed exceptions to this requirement for only four types of

property: agricultural lands, non-commercial recreation land, livestock, and inventory. Subsequently, the people amended the Constitution to also allow homestead properties, renewable energy devices, and historic properties to be assessed at less than full fair market value. No where does the Constitution except "improvements not substantially completed" from the rule that all property be assessed at full fair market value.

The actions of the people in adopting a Constitution with only four permissible exceptions to the rule of full fair market value, and then amending the Constitution to add three additional exceptions to the rule, would be rendered meaningless if the legislature was free to create additional statutory exceptions, not authorized by the Constitution. Indeed, in interpreting the precise Constitutional provision at issue, this Court has held, "the clear intent of the revisers of the Constitution was to prohibit the legislature from making those classifications which would result in some property being taxed at less than its just value except for the categories enumerated in subsections (a) and (b).". *Williams v. Jones*, 326 So.2d 425, 430 (Fla. 1975). The Statute at issue is constitutionally defective because "properties not substantially complete" are not is not a class of property enumerated in subsections (a) and (b) of Article VII and therefore the Legislature is prohibited from directing that such properties be assessed at "no value." *See, Interlachen Lakes Estates, Inv. v. Snyder*, 304

So.2d 433, 434 (Fla. 1974) ("[t]he people of this State, by enumerating in their new Constitution which classifications they want, have removed from the legislature the power to make others.").

Appellants, however, contend that it is constitutional to assess the eighteen-story condominium building at issue as having a value of zero dollars, when it is uncontested that it has an actual fair market value of almost $23,000,000, because the Statute at issue is merely a "timing" regulation. Article VII, however, cannot be reconciled with a "timing" or other such regulation whose sole effect is to reduce the assessment of select classes of properties to "no value." If a statute could bypass the full fair market value requirement of Article VII simply by being framed as a "timing" regulation, the constitutional requirement would quickly become meaningless because almost any legislative tax break could be written in the form of a "timing" regulation. Indeed, at least three of the statutes that this Court has declared in violation of Article VII, section 4 have timing components and could also be deemed "timing" regulations.

As this Court recently observed, "The people of Florida have spoken in the organic law and we honor that voice. It is not for this Court or the Legislature to grant ad valorem tax exemptions not provided for in the present constitution. That decision rests solely with the people of Florida as voiced in our constitution

and not through legislation." *Sebring v. McIntyre*, 783 So.2d 238, 253 (Fla. 2001).

Two Amici Curiae have raised the issue of the Property Appraiser's standing. The issue is waived, however, because both Appellants conceded in the circuit and district courts below that the property appraiser had standing. Even were it not waived, the issue cannot be interjected into this case for the first time by Amicus Curiae, which are authorized only to address the issues raised by the parties. As recently at 2002, moreover, this Court stated that property appraisers have the standing to challenge the constitutionality of tax statutes defensively, as was done in this case. In the last forty years, this Court has repeatedly ruled on the constitutionality of tax statutes when raised defensively by property appraisers. Great harm to the public, the tax provisions of the Constitution, and the authority of this Honorable Court would result if this Court retreats from this line of authority at this time.

TEXT OF THE CONSTITUTION AND STATUTE AT ISSUE

Article VII, section 4 of the Florida Constitution (1968) provides:

> By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:
>
> (a) Agricultural land or land used exclusively for non-commercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

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.[1]

Section 192.042(1) of Florida Statutes (hereinafter "the Statute") provides:

> **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.

[1] After 1968, the Electors authorized three more exceptions to the requirement of fair market value: a cap on increases of homestead properties, renewable energy devices, and historic property. Art. VII, section 4(c), (d), & (e) (2003).

STANDARD OF REVIEW

Because this case involves the constitutionality of a statute, the standard of review is de novo. *City of Miami v. McGrath*, 824 So.2d 143, 146 (Fla. 2002).

ARGUMENT

I. THE LEGISLATURE CANNOT SINGLE OUT "IMPROVEMENTS NOT SUBSTANTIALLY COMPLETED" TO BE ASSESSED AT "NO VALUE."

B. Property Must Be Assessed at Just Valuation, Which is Synonymous With Fair Market Value.

Appellant Sunset Harbour boldly contends that the legislature can decide that "`no value' is `just valuation' for qualifying structures." Sunset Harbour Int. Brief at 13. Significantly, the Appellant Department of Revenue does not join in this novel argument. If accepted, this contention would blast away the constitutional foundation upon which decades of this Court's tax decisions have been constructed.

As this Court has explained, Article VII, section 4, "contains the *overarching provision* that `by general law regulations shall be prescribed which shall secure a just valuation of *all* property for ad valorem taxation.'" *Sebring Airport Authority v McIntyre*, 783 So.2d 238, 245 (Fla. 2001).[2] This Court has firmly established that "just value" is synonymous with "fair market value," which in turn has been consistently defined as the

[2] All emphasis in this brief has been added by Appellant unless otherwise indicated.

amount a willing buyer would pay to a willing seller. *Mazourek v. Wal-Mart Stores, Inc.*, 831 So.2d 85, 88 (Fla. 2002); *Schultz v. TM Florida-Ohio Realty Ltd. Partnership*, 577 So.2d 573, 574 (Fla. 1991); *Valencia Center, Inc. v. Bystrom*, 543 So.2d 214 (Fla. 1989); *ITT Community Dev. Corp. v. Seay*, 347 So.2d 1024, 1026 (Fla. 1977).

In the instant case, it is undisputed that the subject Condominium Building had a fair market value of **$22,195,100** on January 1, 1997 (the tax year in question). Given this undisputed fact, Appellants do not (and cannot) logically explain how a purported "just valuation" of zero dollars can be synonymous with a fair market value of over twenty-two million dollars. No willing seller would sell a $22,195,100 asset for nothing. A determination that the property was "not substantially completed," however, would, by operation of the Statute, cause the building to be valued at **zero dollars** for the 1997 tax year. This result clearly violates the Constitutional principle that all property be valued at fair market value. Far from securing the just valuation of the subject property as required by the Constitution, the Statute serves only to obliterate it.[3]

[3] Noting that the term "secure" means "guarantee", the Third District Court of Appeal in its *en banc*, unanimous opinion in *Fuchs* held that "the statute does not *secure* the assessments of the improvements at fair market value [ ], it totally *obliterates* the assessment (a zero assessment evaluation completely unrelated to fair market value.)." 738 So.2d at 345 (emphasis in original).

C. "Improvements Not Substantially Completed" Are Not One of the Exceptions to Fair Market Value Listed in Article VII, Section 4.

The requirement in Article VII, section 4 of the Constitution that "all" property must be assessed at just value, coupled with an enumerated list of exceptions, means that the Legislature cannot select additional types of property to be valued at less than fair market value. As this Court explained:

> [t]his section is different from the prior 'just valuation clause' contained in Article IX, Section 1 of the 1885 Florida Constitution, in that the two subsections were added by the 1968 constitutional revisers. Apparently the revisers felt that the four classes of property mentioned in these two subsections should be valued according to different standards than all other property. The rule expressio unius est exclusio alterius applies, however, so that by clear implication **no separate standards for valuation may be established for any other classes of property.**
>
> Under the 1885 Constitution, we had held that the legislature could tax different classes of property on different bases, as long as the classification was reasonable. *Lanier v. Overstreet*, 175 So.2d 521 (Fla. 1965). **The people of this State, however, by enumerating in their new Constitution which classifications they want, have removed from the legislature the power to make others.**

Interlachen Lakes Estates, Inv. v. Snyder, 304 So.2d 433, 434 (Fla. 1974). *See also Williams v. Jones*, 326 So.2d 425, 430 (Fla. 1975) ("the clear intent of the revisers of the Constitution was to prohibit the legislature from making those

classifications which would result in some property being taxed at less than its just value except for the categories enumerated in subsections (a) and (b).").

In *Interlachen*, the Court applied these principles to strike down a statute that required unsold lots in a platted subdivision to be valued as if they were unplatted raw land until a certain percentage of lots were sold. Noting "the fundamental unfairness of statutorily manipulating assessment standards and criteria to favor certain taxpayers over others," the Court held, "[t]he statute does no more than establish a classification of property to be valued on a different standard than all other property. Under the 1968 Constitution, Article VII, Section 4, this is no longer within the prerogative of the legislature to do." 304 So.2d at 433.

Similarly, in *Valencia Center*, the Court applied these principles to strike down a statute that required properties subject to long term leases to be assessed based upon the leases and not their fair market value. The Court stated, "[o]ur decision on the constitutionality of this statute is controlled by *Interlachen* …. There, we determined that the legislature cannot establish different classes of property for tax purposes other than those enumerated in article VII, section 4 of the Florida Constitution." 543 So.2d at 216.

Applying this precedent to the instant case, the Statute clearly identifies one type of real property ("improvements…not substantially completed") and specifically provides that such real property shall be valued at less than fair market value

("no value"). Because there is no express authorization in Article VII, section 4 of the Constitution allowing favored treatment of such real property, the Statute cannot pass constitutional muster. Like the statutes at issue in *Interlachen*, and *Valencia Center*, the Statute "does no more than establish a classification of property to be valued on a different standard than all other property. Under the 1968 Constitution, Article VII, Section 4, this is no longer within the prerogative of the legislature to do." *Interlachen*, 304 So.2d at 435.

Appellants attempt to distinguish these authorities by contending that "improvements… not substantially complete" do not constitute a "class" of property. This Court, however, has already characterized an early version of the substantially complete Statute as creating a "separate *classification* of such property." *Culbertson v. Seacoast Towers East, Inc.*, 212 So.2d 646, 647 (Fla. 1968) (emphasis added). Moreover, the plain and ordinary meaning of "class" belies Appellants' argument. *See Gainer v. Doran*, 466 So.2d 1055, 1059 (Fla. 1985) (a "class" is a "grouping of things because they agree with one another in certain particulars and differ from other things in those particulars"). *See also* American Heritage Dictionary (1982) (a "class" is a "set, collection, group, or configuration containing members having … at least one attribute in common.").

More importantly, arguments that turn on purported distinctions between different meanings of the term "classification" cannot save the Statute. The plain fact is that the *only* properties that can be constitutionally valued at less than fair market value are those properties specifically listed in Article VII, section 4, and "improvements … not substantially completed" are not so listed.

Similarly, this Court should reject the claim of one Amicus that "the substantial completion statute treats all property owners uniformly." Brief of Florida Home Builders Assoc. at 16. The substantially complete Statute only benefits the minority of taxpayers who own "improvements not substantially completed." The Statute burdens rather than benefits taxpayers who currently own and reside in their home; businesses that operate in completed buildings; and anyone else who owns land, whether improved or unimproved. These taxpayers are left shouldering the tax burden that is shifted from the favored group of taxpayers. In this regard, the substantially complete Statute functions no differently than a tax exemption that "necessarily involves a direct shift in tax

burden from the exempt property to other, non-exempt properties." *Sebring Airport Authority v. McIntyre*, 783 So.2d 238, 250 (Fla. 2001). A statute that shifts the tax burden from favored taxpayers to less favored taxpayers does not "treat all property owners uniformly."

Finally, Sunset Harbour and its amici, suggest cite to a law review article to suggest that the Drafters of the Constitution actually intended to maintain the legislature's right to classify property for assessment at less than fair market value. Sunset Harbour Initial Brief at 17. The article that Sunset Harbour cites in this regard actually contradicts its argument. *See* Dauer, Donovan and Kammerer, *Should Florida Adopt the Proposed Constitution? An Analysis*, 31 *Studies in Public Administration* 1 (U. of Fla. Public Ad. Clearing Serv. 1968). That article denounced the proposed 1968 Constitution because it contained "piecemeal classification in response to pressure from groups of property owners, while other properties are assessed at full cash value." Id. at 19. Having objected to *express* exceptions to fair market value, the authors cannot fairly be cited to embrace the additional *implied* exception that Appellants claim in this case.

In conclusion, while the windfall that Appellants seek may have been permissible under the 1885 Constitution, it no longer passes constitutional muster under the 1968 Constitution. Under the current Constitution, the

Legislature is no longer authorized to select such properties to be assessed at less then fair market value to the detriment of the remaining taxpayers who are thereby forced to shoulder the shifted tax burden.

D. The 1968 Constitution Superseded *Culbertson v. Seacoast.*

To a large degree, Appellants' arguments rely on the depression-era case, *L.Maxcy, Inc. v. Federal Land Bank of Columbia*, 150 So.2d 248 (Fla. 1933) and its progeny, *Lanier v. Overstreet*, 175 So.2d 521 (Fla. 1965) and *Culbertson v. Seacoast Towers East, Inc.*, 212 So.2d 646 (Fla. 1968). Together, these opinions form a trilogy of cases that reflect the power of the Legislature under the 1885 Constitution to classify property for assessment at less than fair market value provided such classifications were "reasonable." As described more fully below, this Court in *Interlachen* expressly noted that the holding and rationale of *Lanier v. Overstreet* was superseded by adoption of the 1968 Constitution. 304 So.2d at 434. In so doing, the Court necessarily also decided that *L.Maxcy* and *Seacoast* were similarly superseded.

L.Maxcy held that, under the 1885 Constitution, the legislature could decide that land containing non-bearing fruit trees should be assessed on the basis that the trees added no taxable value. The taxation of the "added valuation to land occasioned by the planting thereon of trees" could be postponed because the 1885 Constitution allowed the legislature to classify properties for assessment at "some other valuation other then mere `sales' valuation." 150 So. 250. "*The fact*

that the 'sales value' [of the land] *may be increased* . . . by the setting out thereon of the undeveloped trees *is no conclusive criterion by which to condemn a present valuation for tax purposes arrived at by considering some other valuation than mere 'sales' value*." *Id.* "[U]ntil the trees planted on the land . . . shall have come into a bearing state, it is obvious that they add nothing to the value of the land *except for purposes of sale*." *Id.* As is apparent, *L.Maxcy*, decided under the 1885 Constitution, dismisses the importance of "mere sales value," a concept that is the touchstone for assessing property under the 1968 Constitution.

Relying upon *L.Maxcy*, *Lanier* held that the legislature could classify agricultural lands for assessment at less than just value, even though the 1885 Constitution (unlike the 1968 Constitution) did not expressly authorize such a classification. Even without express authorization, such classifications were permissible under the 1885 Constitution if they were "reasonable." 175 So.2d at 523. This decision was superceded by the 1968 Constitution which specifically added new language authorizing agricultural properties to be assessed at less than fair market value. Art. VII, section 4(a), Fla. Const. (1968).

Again relying on *L.Maxcy*, and based on the 1885 Constitution, *Seacoast* upheld an earlier, different version of the Statute at issue in this case. The taxation of the value added by the buildings under construction in that case could be postponed because the 1885 Constitution required "simply that the separate classification of such property shall bear some reasonable relationship to the legislature's power to prescribe regulations to secure a just evaluation of

property." 212 So.2d at 647. The Court noted that, under the 1885 Constitution, "[f]actors analogous to those here involved have in numerous instances been made the basis for *special statutory treatment,*" and cited to section 192.31(2), Fla. Stat., by way of example. 212 So.2d at 647, n. 2. Significantly, this statute, cited as an example of a constitutional classification under the 1885 Constitution, is the *very same* statute that this Court subsequently declared unconstitutional under the 1968 Constitution in *Interlachen*, 304 So.2d 435 (note that section 192.31 (2), Fla. Stat., was renumbered as section 195.062 (1), Fla. Stat., by the time it was declared unconstitutional in *Interlachen*).

Both *Seacoast* and *Lanier* rely upon the core rationale of *L.Maxcy* -- that the legislature could classify property for assessment at less than fair market value so long as the classification was "reasonable." Thus the trilogy's holdings and rationales conflict with the line of cases interpreting the 1968 Constitution as eliminating the legislature's discretion to classify property for assessment at less than fair market value. *See, e.g., Interlachen*, 341 So.2d at 434; *Valencia Center*, 543 So.2d at 216; and *Williams v. Jones*, 326 So.2d at 430.

Indeed, *Interlachen* expressly noted that the holding and rationale of *Lanier* was superseded by the 1968 Constitution:

> Under the 1885 Constitution we had held that the legislature could tax different classes of property on different bases, as long as the classification was reasonable. [This is the exact standard set forth in *Seacoast* at 212 So.2d 647]. *Lanier v. Overstreet*, 175 So.2d 521 (Fla. 1965). **The people of this State, however, by enumerating in their *new* Constitution which classifications they want, have removed from the legislature the power to make others.**

304 So.2d 434. In directly overruling *Lanier*, the Court necessarily overruled *L.Maxcy* upon which it was based and *L.Maxcy*'s progeny including *Seacoast.* Any doubt in this regard is eliminated by the fact, mentioned above, that the

Court in *Interlachen* declared unconstitutional under the 1968 Constitution the very statute, section 192.31(2), that the Court in *Seacoast* cited as a permissible "special statutory treatment" under the 1885 Constitution. *See Seacoast*, 212 So.2d at 647 n. 2 (citing to 192.31(2), Fla. Stat.. which was renumbered as section 195.062(1), Fla. Stat., by the time it was declared unconstitutional in *Interlachen*).

As the Third District Court of Appeals stated in a unanimous, *en banc* opinion:

> It is important to know and understand that the supreme court in *Interlachen* specifically held that the legal logic of *Lanier v. Overstreet*, … was displaced by the new constitution. It is equally important to know and understand that *Lanier v. Overstreet* had relied on *L.Maxcy's* logic, thus *Interlachen* also clearly displaced *L.Maxcy*. And because the *Seacoast* decision . . . was bottomed on *L.Maxcy*, then *Seacoast was also clearly displaced by Interlachen*. The owner's reliance on *Seacoast* and its outdated logic is erroneous.

Fuchs v. Robbins, 738 So.2d 338, 347 (Fla. 3d DCA 1998*), rev'd on other grounds*, 818 So.2d 460 (Fla. 2002), *adopted in full*, *Sunset Harbour North Condominium Assoc. v. Robbins*, 837 So.2d 1181 (Fla. 3d DCA 2003). To resuscitate *L.Maxcy, Lanier* and *Seacoast* at this late date would vitiate the very purpose behind the adoption of the 1968 Constitution, which was to limit the ability of the legislature to shift the tax burden by granting special tax treatment

to favored taxpayers. Appellants argument to the contrary must be rejected by this Court.[4]

E. The Statute Is Not a "Timing" Regulation and Cannot Be Defended as Such Because It Results in an Assessment at Less Than Fair Market Value and Eliminates Annual Taxes That Are Never Recouped.

Appellants attempt to defend the Statute as a "timing" regulation. In support of this argument they rely upon the statements in *Seacoast* that upheld, under the 1885 Constitution, an early version of the substantially complete statute. Sunset Harbour Brief at 12-14. As explained in the preceding section of this brief, however, the holding and rationale of Seacoast was superceded by the adoption of the 1968 Constitution.

The Legislature now lacks authority to enact a "timing" or any other regulation whose effect is to reduce the assessments of select properties below fair market value. Each and every legislative device – "timing" or otherwise – that results in select types of property being assessed at less than fair market value is prohibited by the 1968 Constitution. Any other conclusion would directly contravene "the clear intent of the revisers of the Constitution [which] was to prohibit the legislature from making those classifications which would result in some property being taxed at less than its just value except for the categories enumerated in [Article VII, section 4]." *Williams v. Jones*, 326 So.2d at 430.

[4] By extension, Appellants' reliance on *Markham v. Yankee Clipper Hotel*, 427 So.2d 383 (Fla. 4th DCA 1983) and *Hausman v. Bayrock Inv. Co.*, 530 So.2d 938 (Fla. 5th DCA 1988) is also erroneous, because both of those cases explicitly followed *Seacoast* as controlling precedent.

In fact, at least three of the tax statutes that this Court has declared void as violating the 1968 Constitution had timing components and could be characterized as "timing" regulations. *See*, *Valencia Center*, 543 So.2d at 215-16 (declaring invalid a statute that required properties to be valued at less than fair market value while they were subject to sub-market long-term leases); *ITT Community*, 347 So.2d at 1028 (declaring invalid a statute that allowed a taxpayer to have its assessment based on a non-binding auction that occurred at a time remote from the taxing date); *Interlachen* 304 So.2d at 434 (declaring invalid a statute that required platted lots to be valued as raw land until such time as a certain percentage of the lots were sold). To accept Appellant's argument that "timing" mechanisms are some sort of permissible exception to the constitutional requirement that all property be assessed at fair market value would resuscitate these void statutes and open the door for more.[5]

Further, the dicta in *Seacoast* that the operation of the version of the Statute at issue in that case caused only a "temporary postponement" of taxes is clearly incorrect. If the subject property receives an assessment of "no value" for the 1997 tax year, it simply escapes taxation for that year. The annual taxes for that

[5] For example, if the Court accepts the Appellants arguments in this regard, the Legislature could enact laws providing "shopping centers not substantially leased out as of January 1 shall have no value placed thereon;" or "apartment complexes and office buildings whose space is not substantially rented out shall have no value placed thereon."

year are not postponed; they are lost forever and never recouped. As stated with irrefutable logic by the *en banc* Third District Court of Appeal: "The owner's argument derived from the *Seacoast* court's statement that the statute caused only a `temporary postponement' is not borne out by reality. The 1992 tax dollars, if based on a zero "valuation" rather than the $3,790,227 valuation, would be lost to the taxing authorities forever… The statutes governing taxation

did not, and do not, call for a back-assessment for the "zero" year even though the improvements are subsequently completed. Unlike postponed ball games, no rain check is issued for the "postponed" taxes." 738 So.2d at 345. (footnote omitted).

In fact, the challenged portion of the Statute here at issue – the fiat that certain favored properties "shall have no value" – is not a timing regulation at all: it is a ***valuation*** regulation. The actual language of 192.042(1) provides that "***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***." Thus, it is clear from the terms of the Statute itself that incomplete improvements ***are*** assessed on January 1 ***of each year*** -- they are simply assessed at "no value." (The terms "all property" and "real property" must of necessity include within their sphere "improvements or portions not substantially completed.") The legislature has *not* provided a different assessment date for such properties; the assessment date is ***January 1 of each year***. The difference is in the *valuation* placed on such properties -- "no value" versus fair market value.

Even if the Statute at issue were a timing regulation, however, the Legislature simply cannot establish categories of property that are subject to special "timing" regulations that operate solely to reduce their assessments below just value. For these reasons, the Court must reject Appellants' "timing" argument.

F. The Statute Cannot Be Defended as a Legislative Definition Excluding "Improvements Not Substantially Complete" from the Constitutional Term "Property."

Amicus Florida Home Builders makes a complex argument that concludes that the Electorate in 1968 excluded by inference "properties not substantially completed" from the term "property" as used in the constitutional phrase "the just valuation of all property." *See*, Amicus Florida Home Builders Brief at 18-19. This argument relies upon a series of dubious inferences to reach to a blatantly illogical conclusion.

The conclusion reached by Florida Home Builders cuts against the very grain of the text of Article VII, section 4. It is illogical to conclude that the Drafters, when they *expressly* set forth the only four permissible exceptions to fair market value, were also, by *inference*, adopting a fifth exception. This conclusion undermines the very purpose of having express exceptions. *Interlachen*, 304 So.2d at 434. Nothing in the Constitutional debates, ballot language, or contemporary documents supports such a counter-intuitive conclusion. *See* section I.C. of this brief, *supra*.

Florida Home Builders' illogical conclusion in this regard grows even more doubtful when one examines the assumptions that Florida Home Builders used to reach it. Florida Home Builders' argument is premised on the assumption that the substantially complete Statute amended by inference the legislative definition of "real property" in order to exclude incomplete improvements. This premise conflicts with the plain language of the statutes involved and with common sense.

The statutory definition of real property does not occur in the substantially complete Statute; instead, it occurs in section 192.001(12) of Florida Statutes. If the Legislature intended to change the definition of real property for tax purposes, common sense dictates that it would have done so by amending section 192.001(12), which was expressly created for purposes of defining that term, not by jumping over this section to amend the substantially complete Statute. Section 192.001(12) defines "real property" for tax purposes as meaning "land, buildings fixtures and all other improvements to land." Far from excluding improvements from the definition of real property, this definition explicitly includes "buildings .. and *all other improvements*" within the

meaning of "real property." In doing so, it makes no distinction between improvements that are complete or incomplete, thereby clearly including both categories.

Moreover, the substantially complete Statute also fails to contain any statement that removes incomplete improvements from the ambit of the term "real property". The substantially complete Statute sets forth three types of property: (1) real property, (2) tangible personal property, and (3) intangible personal property. It expressly includes "improvements … not substantially completed" in the category of "real property," stating that "[a]ll property shall be assessed according to its just value as follows: (1) Real property, on January 1st of each year. Improvements or portions not substantially completed on January 1st shall have no value placed thereon." Far from *excluding* "not substantially completed" improvements from the definition of real property, the Statute's language expressly *includes* such improvements within its use of the term. Florida Home Builders' contrary assumption conflicts with the actual language of the Statute on this point.

Finally, even if the existing statutes supported Florida Home Builders' argument, which they do not, excluding incomplete improvements from the term "property" would exceed the Legislature's limited power to define constitutional terms. To say that a building under construction that is annexed or attached to

land is not real property is a radical departure from the ordinary meaning of the term "real property."[6] To depart from this well-established meaning only to grant favored tax treatment that is otherwise unconstitutional falls well outside the legislature's ability to define constitutional terms. *See, e.g. Sebring Airport Authority v. McIntyre*, 783 so.2d 238, (Fla. 2001) (The legislature cannot provide a tax exemption for certain property by legislatively redefining the constitutional term "public purpose" to include an activity that does not qualify as a public purpose under the Constitution); *Department of Revenue v. Florida Boaters Assoc.*, 409 So.2d 17, 19 (Fla. 1981) ("The flexibility granted to the Legislature [with respect to defining "boats' and other species of property excluded from ad valorem taxation] does not empower the Legislature to depart from the normal and ordinary meaning of the words chosen by the framers and adopters of the constitution."). For these reasons, the Statute cannot be upheld under Florida Home Builders' "definition" argument.

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[6] The normal and ordinary usage of the term "real property" includes all improvements to land, including buildings under construction. The improvement becomes part of the land not only after it is substantially completed but as soon as it is attached or annexed to the land. *See, generally, Miller v. Duke*, 155 So.2d 627, 628 (Fla. 1st DCA 1963) (materials supplied by subcontractor to build a house that general contractor only partially completed "were incorporated into the improvements to the land"); *Esto Real Estate Corp. v. Louisiana Tax Comm.*, 129 So. 117 (La. 1930) (partially completed three story brick apartment house was included within definition of real property); *Regency Dev. Co., Inc. v. Jefferson County Board of Equalization and Adjustment*, 437 So.2d 560 (Ala. 1983) (partially completed building was included in term "real property.").

G. Appraisers and Courts Routinely Determine the Fair Market Value of Improvements That Are Not Substantially Complete.

Appellants finally contend that the valuation of incomplete buildings is too difficult, expensive, and subjective for Property Appraisers to undertake on a regular basis. There is no factual basis for this argument in the record. Moreover, a constitutional mandate cannot be set aside merely because it may be difficult to perform. Most importantly, however, Appellants grossly exaggerate the problems presented in this regard.

Appraisers and courts routinely determine the fair market value of incomplete buildings for purposes of eminent domain and insurance lost.[7] Tax appraisers in other states routinely value incomplete buildings for ad valorem tax purposes.[8] Appellants fail to provide any explanation why property appraisers in Florida cannot perform a function that tax appraisers in other states do as a normal and ordinary part of their responsibilities.

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[7] *See, e.g., United States v. Savannah Shipyards*, Inc., 139 F. 2d 953 (5th Cir. 1944) (taking of partially-completed shipyard); *Laurel, Inc. v. Comm. of Transportation*, 428 A. 2d 789 (Conn. 1980) (taking of partially-completed residential complex); *State v. Willett Holding Co.*, 298 A. 2d 69 (N.J. 1972) (taking of partially completed nursing home); *Rouse v. Williams Realty Building Co.*, 544 S.E. 2d 609 (Ct. App. N.C. 2001) (value for insurance purposes of partially built luxury home destroyed by fire). *See, also,* Appraisal Institute, *The Appraisal of Real Estate* at 580, 585 (11th ed. 1996). (discussing the appraisal of "a project that remains partially completed" and to the valuation of "improvements which may or may not be complete.").

[8] *See, e.g., Webb/Henne Montgomery Luxury Apartments v. Hamilton County Board of Revision*, 654 N.E. 2d 1263 (Ohio 1995) (partially completed apartment complex); *Sizemore v. Cleveland County Assessor*, 690 P. 2d 1054 (Ok. 1984) (assessing partially completed office building); *Kok v. Cascade Charter Township*, 660 N.W. 2d 389 (Ct. App. Mich. 2003) (house under construction); *Regency Dev. Co., Inc. v. Jefferson County Board of Equalization and Adjustment*, 437 So.2d 560 (Ala. 1983) (partially-complete seven-story condominium).

Indeed, even in Florida, the Courts have upheld the method used by property appraisers to value property that is under construction and therefore not complete. *Colding v. Klausmeyer*, 387 So.2d 430 (Fla. 2d DCA 1980) (valuation of shell of incomplete building); *Aeronautical Communications Equipment, Inc.*, 219 So.2d 101 (Fla. 3d DCA 1969) (valuation of personal property under construction).

Moreover, Appellants' argument that incomplete buildings are too difficult to value collapses if one considers two obvious questions. If the subject eighteen-story building were destroyed in a fire, would the Appellants forego their insurance claim and agree that it had no value because attempting to assign a value was too difficult? If the subject twenty-two million dollar condominium complex was being taken by government in an eminent domain proceeding, would the Appellants assert the position that it was simply too difficult to value and therefore had no value? Both questions can only be answered in the

negative. Thus, this Court must reject the Appellants' contention that buildings under construction are somehow too difficult to value.

II. THE PROPERTY APPRAISER PROPERLY RAISED THE CONSTITUTIONALITY OF THE STATUTE DEFENSIVELY.

II. THE

A. Since Appellants Conceded the Property Appraiser's Standing, the Issue is Waived and Cannot Be Injected into this Appeal By Amici.

The Appellants conceded in both the trial and appellate Courts below that the Property Appraiser had standing to defensively challenge the Statute at issue and they have not raised the issue of standing as a grounds for reversal before this Court.[9] Because the Appellants have conceded the Property Appraiser's standing, the issue has been waived and cannot be raised for the first time in the Supreme Court. *Krivanek v. Take Back Tampa Political Committee*, 625 So.2d 840, 842 (Fla. 1993). This rule applies with particular force in the instant case because (1) the attempt to interject standing into this case is being done by two non-party Amici Curiae that are barred from raising issues not raised by the parties; and because (2) Amici are raising the issue of standing based upon the

[9] The trial judge stated in her order, [a]ll parties agree that there is no standing issue in the instant case." RII-248. The Third District Court of Appeal stated, "[t]he parties here do **not** dispute the property appraiser's right to raise the constitutionality of the statute when defending against the taxpayer's challenge to the appraiser's assessment." *Sunset Harbour North Condominium Association v. Robbins*, 837 So.2d 1181 (Fla. 3d DCA 2003).

false contention that the Property Appraiser failed to apply the Statute in this case, when the undisputed record indicates that the Property Appraiser *did* apply the Statute. R-I-179.

This Court has consistently held that standing is waived if not raised in the lower courts. For example, in *Krivanek*, 625 So.2d at 842, this Court held that a party "has waived the right to raise the issue of standing because this issue has been raised for the first time in her petition to this Court. The issue of standing should have been raised as an affirmative defense before the trial court, and [the party's] failure to do so constitutes a waiver of that defense, precluding her from raising that issue now."

Similarly, this Court held that a Property Appraiser waived his right to dispute a taxpayer's standing to challenge the constitutionality of a tax statute in *Markham v. Neptune Hollywood Beach Club*, 527 So.2d 814, 814 n.2 (Fla. 1988). Noting that the standing argument "was not made before the trial court nor was the issue raised on direct appeal," the Court held that the Property Appraiser had "therefore waived the right to raise the issue of standing before this Court." *Id.* *See also Cowart v. City of West Palm Beach*, 255 So.2d 673, 674-75 (Fla. 1971) (where a defendant waited to raise the issue of standing until the matter was up on appeal, "the right to question the plaintiff's standing to sue was waived.").

Applying this law to the instant case, the issue of the standing of the Property Appraiser is not properly before this Court because the Appellants conceded the issue in the lower courts. Amicus FP & L attempts to evade this law by creatively interpreting these cases to hold that failure to raise standing in the lower courts constitutes waiver only if the standing problem could have been corrected if the issue had been raised in the pleadings at the trial level. Nothing in the cases supports FP&L's creative interpretation in this regard. But even under this strained reading of the case law, standing was waived in this case because any standing issue could have been resolved in the trial court if standing had been raised.

If standing had been timely raised as an affirmative defense, the Property Appraiser could have easily eliminated the standing issue by the simple expedient of joining the case in his individual capacity as a property owner and taxpayer. *See, e.g., Dept. of Educ. v. Lewis*, 416 So.2d 455, 458-59 (Fla. 1982) (officials who did not have standing to bring suit challenging statute in their official capacity had standing to do so "as ordinary citizens and taxpayers."); *Jones v. Dept. of Revenue*, 523 So.2d 1211, 1214 (Fla. Fla. 1st DCA 1988) (property appraiser has standing to challenge constitutionality of tax statute "in his individual capacity as a citizen and taxpayer."). The Property Appraiser could also have easily resolved this issue by having another taxpayer join the

lawsuit to challenge the unconstitutional law at issue. Thus, even under FP&L's strained reading of the case law, it is clear that the issue of standing was waived in this case because the issue could have been eliminated if raised below. *Miami-Dade County v Omnipoint Holdings, Inc.*, SC 02-815 (Fla. Sept. 25, 2003) (citations and quotations omitted) (reversing an appellate court that ruled on an issue not raised by the parties because "[o]ordinarily an appellate court does not give consideration to issues not raised below."

Moreover, the facts of this case present a perfect occasion for this Court to remind amici that they are not authorized to interject new issues into a case. Every Florida court that has considered the issue and every major treatise on Florida Appellate law agree that amici curiae cannot raise issues not raised by the parties. *See, e.g., Michels v. Orange County Fire/Rescue*, 819 So.2d 158 (Fla. 1st DCA 2002) ("The issues raised by amici were not properly before this court"); *Turner v. Tokai*, 767 So.2d 494 n. 1 (Fla. 2d DCA 2000) (amicus cannot raise issues not raised by the parties.); *Acton, II v. Ft. Lauderdale Hospital*, 418 So.2d 1099, 1101 (Fla. 1st DCA 1982) ("amici lack standing to raise issues not raised by the parties, [therefore] this issue was not properly before the court."); *Keating v. State*, 157 So.2d 567, 569 (Fla. 1st DCA 1963) ("amici is not at liberty to inject new issues into a proceeding."); P. Padovano, *Florida Appellate Practice* (1988) Vol. 2 at 206 ("nor is it proper for an amicus to inject an issue that has not been raised by one of the parties."); D. Monaco, *Florida Appellate*

Practice Forms and Commentary (1998), Comment to rule 9.370 ("Amici do not have standing to raise any issues … which are not raised by the parties. That is to say, amici may not inject new issues into the proceeding.").

The problem of Amici interjecting new issues into an appeal is highlighted in this case because Amici base their standing argument on the false claim that the Property Appraiser in this case refused to apply the Statute. This claim is belied by the undisputed record fact that the Property Appraiser did apply the Statute. R.I-179. As stated in his undisputed affidavit, "the Property Appraiser determined that the subject property was substantially complete." R-I-179. Only when the Taxpayer filed a lawsuit disagreeing with the Property Appraiser's determination under the Statute, and therefore the parties had an actual case and controversy, did the Property Appraiser raise the unconstitutionality of the Statute as an affirmative defense. Thus, the factual predicate upon which Amici based their challenge to the Property Appraiser's standing simply does not obtain in this case.

For all of the above reasons, this Court should hold that the issue of standing was waived and that Amici cannot interject it into this appeal at this late date.

B. In *Fuchs*, this Court Stated that Property Appraisers Have Standing to Raise the Constitutionality of Tax Statutes Defensively.

As recently as the 2002 term, this Court reaffirmed the principle that property appraisers have standing to defensively challenge the constitutionality of a statute in a lawsuit filed by a taxpayer challenging an assessment. In *Fuchs*, 818 So.2d at 464, this Court stated that "**[t]he appraiser may also raise such a constitutional defense in an action initiated by the taxpayer challenging a property assessment**."

In so ruling, the Court cited to *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982). In *Lewis*, after noting that officers generally do not have standing to file suits challenging the constitutionality of statutes, the Court stated that "[i]f, on the other hand, the operation of a statute is brought into issue in litigation brought by another against a state agency or officer, **the agency or officer may defensively raise the question of the law's constitutionality**." 416 So.2d at 458. This Court's statement in *Lewis* directly supports this Court's statement in *Fuchs*. In fact, prior to *Fuchs*, *Lewis* had

already been judicially interpreted to authorize a property appraiser to raise the unconstitutionality of a tax statute defensively.[10]

In support of its statement in *Lewis* that an "agency or officer may defensively raise the question of the law's constitutionality," this Court cited three cases, all of which directly support *Lewis* and *Fuchs* on this point. *See*, *City of Pensacola v. King*, 47 So.2d 317 (Fla. 1950) (when Railroad Commission was sued pursuant to a statute, Commission could challenge the constitutionality of statute defensively); *State ex rel. Harrell v. Cone,* 177 So. 854 (Fla. 1937) (when comptroller was sued to comply with a statute, the comptroller could challenge the constitutionality of the statute defensively); and *State ex rel. Florida Portland Cement Co. v. Hale*, 176 So. 577 (Fla. 1937) (when State Road Department was sued to comply with a statute, the Department could challenge the constitutionality of the statute defensively).

Amicus FP&L attempts to distinguish the cases cited in *Lewis* by contending that the government officials in those cases had defensive standing because their responsibilities derived directly from the Constitution whereas the

[10] In *Markham v. Yankee Clipper Hotel, Inc*., 427 So.2d 383, 384 (Fla. 4th DCA 1983), *rev. denied*, 434 So.2d 888 (Fla. 1983), the Court cited *Lewis* in support of its holding that that a property appraiser had standing to raise the constitutionality of a tax statute defensively. Significantly, the Court in *Yankee Clipper* also cited to *Culbertson v. Seacoast Towers East, Inc*., 212 So.2d 646 (Fla. 1968), noting that "[t]here, as here, the then known tax assessor, as defendant, attacked the constitutionality of a [tax] statute." 427 So.2d 384, n.3.

responsibilities of property appraisers derive solely from statutes. FP&L's argument in this regard does not withstand scrutiny. For instance, in *Hale*, the

Court recognized that the State Road Department had standing to defensively raise the constitutionality of a statute even though the Department's responsibilities were purely statutory. Thus, *Hale* directly contradicts FP&L's argument.

Further, even if FP&L's reading of the cases were to be adopted by this Court, the Property Appraiser would still have standing because his responsibility to assess property at full value does not flow merely from statutory law, but from the Constitution itself. "County tax assessors," this Court has explained, "are *constitutionally created* officers who are mandated *by the Constitution* and by this Court to assess all property at 100% valuation level." *District School Board of Lee County v. Askew*, 278 So.2d 272, 275, 276 (Fla. 1973) ('we recognize the county tax assessor as a constitutional officer, elected to determine the value of property within his county. As such, *he is under a constitutional duty to assess property at full value.*").

Even Amici FP&L recognizes that a government officer is entitled to raise "defensive challenges" when "grounded upon a public official's defense of independent constitutional powers." FP&L Brief at 3. Because a property appraiser's duties flow directly from the Constitution, he or she necessarily must be free to challenge defensively a statute that impinges upon those independent and constitutionally derived powers.

This conclusion is bolstered by our Constitutional history. Tax assessors under the 1868 Constitution were part of the State executive, appointed by the Governor with the consent of the Senate and removed by the Governor. Article V, section 19, Fla. Const. (1868). Beginning with the 1885 Constitution and ever since, the people of Florida detached local property appraisers from the State executive and established their status as locally-elected constitutional officers. Article VIII, section 6, Fla. Const. (1885). If this detachment means anything, it must signify that property appraisers have some level of independence from the executive and legislature. To maintain this level of independence, this Court should continue to recognize that property appraisers have the limited authority to raise the issue of the constitutionality of tax statutes defensively.

For these reasons, this Court was correct in relying upon *Lewis* to state in *Fuchs* that "**[t]he appraiser may also raise such a constitutional defense in an action initiated by the taxpayer challenging a property assessment**." Amici have presented no compelling or even persuasive reason why this Court should recede from *Fuchs* in this regard.

C. In a Line of Cases Spanning Forty Years, this Court Has Ruled on the Constitutionality of Statutes When Raised Defensively by Property Appraisers.

A quick review of Florida case law reveals a line of cases spanning several decades in which this Court has ruled on the constitutionality of a tax statute when that issue was raised defensively by a property appraiser, including:

- *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001) ("*Sebring* IV") (property appraiser raised constitutionality of tax statute defensively, and court declared section 196.012(6) of Florida Statutes unconstitutional.);

- *Valencia Center, Inc. v. Bystrom*, 214 So.2d 543 (Fla. 1989) ("Valencia Center IV") (property appraiser raised constitutionality of tax statute defensively, and court declared section 193.023(6) of Florida Statutes unconstitutional.);

- *ITT Community Dev. Corp. v. Seay*, 347 So.2d 1024, 1029 (1977) (property appraiser raised constitutionality of tax statute defensively, and court declared section 194.042 of Florida Statutes unconstitutional.);

- *Interlachen Lakes Estates, Inc. v. Snyder*, 304 So.2d 433 (1974) (property appraiser raised constitutionality of tax statute defensively, and court declared section 195.062(1) of Florida Statutes unconstitutional.);

- *Culbertson v. Seacoast Towers East, Inc.*, 212 So.2d 646 (Fla. 1968) (property appraiser raised unconstitutionality of tax statute defensively,

and court upheld the statute at issue on the merits.);

- *Palethorpe v. Thompson*, 371 So.2d 526 (Fla. 1965)(property appraiser raised constitutionality of tax statute defensively, and Court declared sections 200.45 and 320.081 of Florida Statutes unconstitutional as applied.)

- *Lanier v. Overstreet*, 175 So.2d 521 (Fla. 1965) (property appraiser raised issue of constitutionality of tax statute defensively and court upheld constitutionality of section 193.11(3) of Florida Statutes.).

The long history of this Court recognizing the standing of property appraisers to defensively challenge the constitutionality of statutes is entitled to great weight in the Court's deliberations on this issue.

First, this history demonstrates that the Property Appraiser herein had standing to raise his constitutional defense because, as restated in *Fuchs*, it is the accepted practice of this Court to rule on the constitutionality of a tax statute when that issue is raised defensively by a property appraiser. Second, this history belies Amici's excited claim that such standing will give rise to rampant "nullification" that will cause the business of the State to come to a "standstill." In the over forty years that this Court has recognized property appraisers' standing in this regard, no such nullification or standstill has occurred.

Amici, however, would no doubt overly-simplistically frame the issue presented as whether this Court should confer upon property appraisers the power to adjudicate the constitutionality of statutes by simply refusing to execute them,

subject only to further review if a taxpayer brings suit. Besides being factually inaccurate in this case,[11] framing the issue in this manner presents a straw argument. No property appraiser in the State of Florida seeks the power to "adjudicate the constitutionality of statutes." Instead, in limited instances, appraisers have sought such adjudication *from the courts*.

Conversely, however, there is potential harm to the public and to the authority of the courts that would occur if the Property Appraiser's standing to raise issues defensively was now removed. The problem in this regard is shown by *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001) ("*Sebring* IV") and *Valencia Center, Inc. v. Bystrom*, 214 So.2d 543 (Fla. 1989) ("*Valencia Center* IV").

In both of these cases, a prior court decision squarely held that it would violate the Florida Constitution to grant special tax treatment to a particular piece of property.[12] Notwithstanding such decisions (indeed, in apparent defiance of such decisions), the Legislature in both cases enacted statutes extending to those properties favored taxtreatment that would shift their tax burden

[11] It is undisputed in this case that the Property Appraiser applied the Statute. R.I-179.

[12] In *Sebring IV*, the Florida Supreme Court had previously held that granting an ad valorem tax exemption to the Sebring Racetrack would violate the Florida Constitution (because the Racetrack, although owned by a government entity, was leased to a for profit corporation for a for-profit use). *Sebring Airport Authority v. McIntyre*, 642 So.2d 1072 (Fla. 1994) ("*Sebring* II"). In *Valencia Center IV*, a district court had previously held that it would violate the Florida Constitution to value a certain shopping center based on the income from a long-term lease rather than the full fair market value of the property. *Valencia Center, Inc. v. Bystrom*, 432 So.2d 108, 110 (Fla. 3d DCA 1988) ("*Valencia Center* I"), *rev. denied*, 444 So.2d 418 (Fla. 1984).

onto other taxpayers in a manner that the Courts had stated was constitutionally proscribed. *Sebring IV*, 783 So.2d at 242-43; *Valencia Center, Inc. v. Bystrom*, 526 So.2d, 707 (Fla. 3d DCA 1988), *aff'd*, 543 So.2d 214 (Fla. 1989).

The very real dilemma presented to the property appraisers in these cases was whether to obey the statutory law as set forth by the Legislature or the Constitutional law as set forth by the courts. In both *Sebring* and *Valencia Center*, this Court upheld the property appraisers' actions and declared the statutes at issue unconstitutional when the property appraiser raised the issue defensively. *Sebring IV*; *Valencia Center IV*. Amici would have the Court repudiate these cases.

But these cases are too significant to discard so cavalierly. If, prior to the decision of these cases, the Court had adopted the contention of Amici that property appraisers had no standing to challenge unconstitutional laws -- even defensively -- the property appraisers would have been bound to disobey or ignore binding judicial precedent and grant to special interests the favorable tax treatments that the courts had previously and specifically found unconstitutional. Neither public policy nor the law supports such a result.

Defensively challenging such statutes no more partook of "nullification" than this Court's invalidation of such statutes partook of "judicial supremacy." Instead, both the challenges and the invalidations merely reflect that the

Constitution was and is supreme over all branches of government: the executive, the judicial, and the legislative. As this Court recently stated:

> [A]s long as the people of Florida maintain the constitution in the form we are required to apply today, neither we nor the Legislature may expand the permissible [tax] exemptions…. The people of Florida have spoken in the organic law and we honor that voice. It is not for this Court or the Legislature to grant ad valorem taxation exemptions not provided for in the present constitutional provisions. That decision rests solely with the people of Florida as voiced in our constitution and not through legislation.

Sebring Airport Authority v. McIntyre, 783 So.2d 238, 253 (Fla. 2001).

CONCLUSION

For these reasons, the Property Appraiser respectfully asks this Court to find the substantially complete Statute unconstitutional and to affirm the decision of the Third District Court of Appeal.

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Undersigned counsel certifies that the type size and style used in this brief is 14 point Times New Roman.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this _____ day of September, 2003, to the attorneys on the attached list.

_____
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