SUPREME COURT OF FLORIDA

CASE NO. SC03-520
Lower Tribunal No. 3D02-2316

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

Appellants,

vs.

JOEL ROBBINS,

Appellee.

INITIAL BRIEF OF APPELLANTS, SUNSET HARBOUR NORTH CONDOMINIUM ASSOCIATION, *et al.*

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

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES CITED

Page

Page

Other Authorities Cited

Constitutions:

Statutes:

Publications:

CERTIFICATION OF FONT TYPE

The undersigned certifies that this brief was prepared using the Times New Roman 14 point font type.

STATEMENT OF THE FACTS AND OF THE CASE

Appellant, Sunset Harbour North Condominium Association, Inc., filed suit challenging a $20,000,000.00 valuation of its property for the year 1997, arguing that under §192.042(1), Fla. Stat. (1997)[1] the Miami-Dade County Tax Appraiser was required to place no value on improvements not "substantially complete" as of January 1 of that tax year. Appellee, the Miami-Dade County Property Appraiser, filed a general denial and an affirmative defense that the statute was unconstitutional.

[1] No change in text has occurred since 1997. *See* §192.042, Fla. Stat. (2001).

Summary judgment was entered by the trial court in the Tax Appraiser's favor, finding the statute unconstitutional. The Third District agreed and affirmed.[2]

Sunset Harbour requests review of the Third District's decision that incorporated and adopted a prior decision of the Third District *Fuchs v. Robbins*, 73 So. 2d 338, 341-348 (Fla. 3d DCA, 1999) finding §192.042(1) unconstitutional. You quashed *Fuchs v. Robbins* (at 818 So. 2d 460 (Fla. 2002)) on the basis that a Tax Appraiser does not have standing to challenge the statute.[3]

POINT ON APPEAL

IS THE *SUBSTANTIAL COMPLETION* REGULATION PRESCRIBED BY THE LEGISLATURE UNDER § 192.042(1) A LEGISLATIVE REGULATION THAT STRAYS BEYOND THE AUTHORITY OF ARTICLE VII, §4, OF FLORIDA'S CONSTITUTION

SUMMARY OF ARGUMENT

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

[3] Your decision in *Fuchs v. Robbins*, 818 So. 2d 460 (Fla. 2002) appears to approve the propriety of the Tax Appraiser's ability to file an affirmative defense on constitutional grounds. However, the article *Fuchs v. Robbins, Dictum on Property Appraiser Standing to Challenge Taxing Statutes Inconsistent With Longstanding Precedent Set in Atlantic Coast Line*, scholarly and well written, appearing in the May, 2003 Florida Bar Journal (Vol. XXVII), questions this point, which requires clarification.

Each and every word of Article VII, Section 4 of our Constitution requires attention to consider the propriety of legislative action. Plenary regulation and prescription in the area of taxation is the department of the legislature, for it is allowed to prescribe **regulations** for a **just valuation**.[4] This legislative process appears to create classes other than those identified by the Constitution, but this is permissible as the textual empowerment is that to prescribe *regulations by general law.* That is why the statute in issue does not escape the orbit permitted the legislature.

Valuation is not an exact or precise art; rather, it involves judgment. And this judgment can be exercised to achieve a *just* result or *just value*. So the legislature prescribed a reasonable and necessary timing *regulation* to secure a *just valuation* regarding improvements that are not substantially complete", necessary because uniformity of application is required. Some might find the regulation unfair - others may not. Notwithstanding the debate, the statute contains a view on the matter and the view and choice is that of the People. Its wisdom is not of appropriate concern to the judiciary.

ARGUMENT

[4] All emphasis is supplied unless otherwise indicated.

The Third District's conclusion rests on three premises: (1) the mandate of Article VII, Section 4 requiring the legislature to enact regulations *which shall secure* ***a just valuation*** *of all property for ad valorem taxation* prohibits regulations that do not prescribe valuation at other than fair market value, (2) a valuation that places no value on property is not a *just* valuation, and (3) the 1968 adoption of Article VII, section 4 proscribes legislative enactment of a *regulation* that may be viewed as creating a classification for ad valorem tax purposes other than those specified by sections (a), (b) and (c). All three premises are incorrect.

Since it is the Constitution, the organon of government, that is under consideration, every word and phrase must be considered to achieve the harmonious

framework intended by the People.[5] Article VII, Section 4, *an overarching provision*,[6] materially provides:

> **SECTION 4. Taxation; assessments.**--By **general law regulations** shall be prescribed **which shall secure a just valuation** of all property for ad valorem taxation, provided:
>
> (a) Agricultural land, land producing high water recharge to Florida's aquifers or land used exclusively for non-commercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

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[5] *See State ex. rel. Ellars v. Board of Com'rs of Orange County*, 147 Fla. 278, 3 So. 2d 360 (1941)(*Every word of a State Constitution should be given its intended meaning and effect, and essential provisions of a Constitution are to be regarded as mandatory*); *State ex. rel Gibbs v. Couch*, 139 Fla. 353, 376, 190 So. 723, 732 (1939); *see* also *Sebring Airport Authority v. McIntye, supra*, 783 So. 2d at 243, fn. 4 (Fla. 2001)(referencing Chief Justice Stone's words on the death of Mr. Justice Brandeis:

> He never lost sight of the fact that the Constitution is primarily a great charter of government, and often repeated Marshall's words: "it is a constitution we are expounding"...Hence, its provisions were to be read not with the narrow literalism of a municipal code or a penal statute, but so that its high purposes should illumine every sentence and phrase of the document and be given effect as part of a harmonious framework of government.

cf. Carribean Conserv. v. Fla. Fish & Wildlife, 838 So.2d 492, 500 (Fla. 2003) (with questions concerning regulatory statutes an examination of the explicit language is in order).

[6] *Sebring Airport Authority v. McIntyre*, 783 So. 2d 238, 245.

> (b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.
>
> (c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.

We start from a simple premise. Section 4 is not self executing - in the area of taxation *general law* through **prescription** is the dictate, and the power for *prescription* is peculiarly left to the legislature[7] since:

> ...the legislature's **power and discretion in regard to taxation are broad, plenary, unlimited and supreme**. All questions as to mode, form, character, or extent of taxation, exemption or nonexemption, apportionment, means of assessment and collection, and all other incidents of the taxing power, **are for the legislature to decide.**[8]

And it is the legislature that supplies instruction to the Tax Appraiser through regulation regarding just valuation. The Tax Appraiser is only identified by the Constitution - no duties or instruction are prescribed by it.

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[7] *See State ex. rel Atty Gen. v. City of Avon Park*, 108 Fla. 641, 149 So. 409, 416 (1933). More so than in other areas the freedom for classification is extensive. *Markham v. Yankee Clipper Hotel, Inc.*, 427 So. 2d 383, 385 (Fla. 4th DCA, 1983) *rev. den.*, 434 So. 2d 888 (Fla. 1983).

[8] *Miller v. Higgs*, 468 So. 2d 371, 375 (Fla. 1st DCA, 1985), *rev. den.*, 479 So. 2d 117 (Fla. 1985), (overruled on other grounds, *Capital City County Club v. Tucker*, 613 So. 2d 448 (Fla. 1993).

Moreover, we observe and emphasize the allotment of the People to the legislature is one to prescribe *regulations* through *general law* that secure a *just valuation.* Indeed, the premise of *just valuation* has appeared in every Constitution since 1868. *Just valuation,* derived from *just value* is legal art adopted in the 19th century[9]; it is considered the process of *assessing or fixing the value of a thing*, that has *reasonable or adequate grounds* or is *equitable*.[10] As recognized in *Minnesota Rate Cases (Simpson v. Shepard),* 230 U S. 352, 33 S. Ct. 729, 754 (1916):

> The ascertainment of . . . value is not controlled by artificial rules. It is not a matter of formulas, but there must be reasonable judgment, having its basis in a proper consideration of all relevant facts

yielding a conclusion that the valuation of property cannot be determined by adherence to any rigid mathematical rule.

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[9] *E.g. Graham v. Florida Land & Mortg. Co*, 33 Fla. 356, 373, 14 So. 796, 802(1894); *Yulee v. Canova* 11 Fla. 9, 21 (1864); and *see e.g.* Conn. Rev. Stat. § 840 (1854); Indiana Constitution of 1851, art. X, § 1; Maine Constitution of 1876, art. IX, § 8; Mass. Gen. Laws ch. 50, § 1 (1785); Vt. Stat. tit. 365, § 21 (1875).

[10] Oxford English Dictionary, 2d Edition, Clarendon Press, Oxford, 1989 Edition. *See also Lake Hancock & C. R. Co. v. Stinson*, 77 Fla. 333, 334, 81 So. 512 (1919) (*just denotes something which is morally right and fair).*

Certain decisions have observed that *just value* is synonymous with *fair market value*[11] and some may argue this judicial legislation[12] curtails the need to further consider the significance and dimension of *just valuation*, but this ignores the People's deliberate and consistent choice of the term *just valuation*. *Just valuation* is elastic, legal art, the deliberate choice of the authors of earlier Constitutions, who reading by candlelight and recalling the experience of the burden of taxation, knew the textual difference between *value* and *market value*. Their number knew, acknowledged and profited from the historical lesson that:

> So difficult a matter, however, is it to separate the idea of *value* that it will be found text-writers and the courts have frequently used those terms as interchangeable, and both as being the equivalents of '*actual value,*' '*saleable value*'...
>
> While it is thus seen that the terms *value*, *market value* and *rental value* have been used somewhat indiscriminately, **yet we think that there is a distinction between them,** at least **in cases where the matters or things contracted for have not been bought and sold in the market,** so as to have established a *market value*; but even in such cases this is

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[11] *See Mazourek v. Wal-Mart Stores, Inc.*, 831 So. 2d 85, 88 (Fla. 2003) *Valencia Center v. Bystrom*, 543 So. 2d 214 (Fla. 1989) and *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965). Decortication of these cases to yield the source of their authority exposes the broad sweep allotted the legislature to include in the fold such concepts as "highest and best use" and the factors set out in §193.011, Fla. Stat. (1997).

[12] Oliver Wendell Holmes observed *judges do and must legislate, but they can do only interstitially, they are confined from molar to molecular motions. Southern Pacific Co. v. Jensen*, 244 U.S. 205, 218, 221 (1919).

> not the final or conclusive test of value. ...But where the article of or thing in question is unusual in its character as that there is little or no demand for, its *value* must be ascertained in some other way and from such elements as are attainable... in such cases it is evident that **to refer to the market as the sole standard of *value* may work serious injury to the party complainant.**[13]

Nothing has changed the significance of this precept. **Despite opportunity**, the People have not substituted "fair market value" as the polestar in the Constitution;[14] the terminology is identical to that first appearing in the 1868 Constitution. To suggest *fair market value* as the limiter of *just valuation* is simply wrong[15] and but a subscription to an artificial rule that deprives the legislature of its bestowed authority to provide measures and techniques for *just valuation.* This authority includes the

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[13] *Jonas v. Noel*, 14 Pickle 317, 98 Tenn. 440, 443- 444 (1896).

[14] We have a form of government that can be described as a three-horse team - the legislative, the executive and the judicial. It is the People that have always been in the driver's seat; it is they that want the furrow plowed. Long ago the People gave a form of government that left to the legislature to pass on matters of taxation. Until it is shown that the extension of the wisdom of the People exercised through legislative enactment exceeds beyond reasonable doubt that office, then it is your duty to figure out a way to consider the legislation proper and it is your equal duty to affirm - to do otherwise is to subscribe for another regulatory scheme that you might have enacted but that is not your province.

[15] For example, §199.032, Fla. Stat. (1997) prescribes an annual tax of one mill on the dollar of the "just valuation of all intangible personal property" and a nonrecurring tax of 2 mills on the dollar of the "just valuation of all notes, bonds and other obligations for payment." That the term "just valuation" in the context of this legislation could not be equivalent to "fair market value" evidences the concept of *just valuation* to be of different substance and greater magnitude.

creation of reasonable and necessary timing regulations by which taxation of improvements to real property can be applied even-handedly without inquiry into the value of each and every incomplete improvement to real property in the State.

Equally wrong is the notion that the license allotted the Legislature to *prescribe* a regulation directing the Tax Appraiser to place no value on an improvement is unjust and constitutionally unavailable. This is but an invasion into the province of wisdom of legislation, a task truly beyond the purview of judicial review, severely curtailed in this area of taxation. Concern as to whether additions may be considered as adding value to property was by this Court said to involve *nothing more than a question of legislative policy concerning what is to be considered a just valuation*.[16] Thus, in *Maxcy*, a statute instructing the deletion of immature fruit bearing trees from consideration of value for tax purposes was upheld as but *a postponement of value, plainly a matter lying within the domain of the legislative policy.*[17]

Truly, license to prescribe regulations pertaining to taxation, to include text, timing and procedure by mandate are reserved to the legislature to enact through

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[16] *Maxcy v. Federal Land Bank of Columbia*, 111 Fla. 116, 120; 150 So. 248, 250(1933).

[17] *Maxcy, supra*, 111 Fla. at 121; 150 So. at 251.

general law regulations to secure a just valuation - no other branch of government is allowed to prescribe in this area.

In prescribing ***regulations*** to assess a *just valuation* for all property the legislature adopted §192.042, Fla. Stat. (1997) that states:

> - 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 improvements or some self sufficient unit within it can be used for the purpose for which it was constructed.

The concept has existed at least since the days of *Maxcy*. As applied to improvements on real property, the statute has existed since 1961. In 1961, the Florida Legislature amended Section 193.11, Fla. Stat., (1959), by adding subsection (4). *See*, Ch. 61-240, § 1, Laws of Fla., stating:

> (4) All taxable lands upon which active construction of improvements is in progress and upon which such improvements are not substantially completed on the 1st day of January of any year shall be assessed for such year, as unimproved lands. Provided, however, the provisions hereof shall not apply in cases of alteration or improvement of existing structures. Its precursor §193.11(4), Fla. Stat. (1967).

Since the contours of *just valuation* are surrendered to the legislature (without restriction that is positive or concrete), an inquiry arises how to value justly an unfinished improvement that cannot be used for its intended purpose .[18]

To tax one begins with a starting point - a date. Then for the assessment a methodology and direction are required, an inexact philosophy:

> ...Absent a miracle of time, place and circumstance - willing buyer, willing seller, high noon, January 1, 1984 for example - true market value for purposes of ad valorem taxation is always an estimate, always an expression of judgment, always a result built on a foundation of suppositions about knowledgeable and willing buyers and sellers, endowed with money and desire, whose desires are said to converge in a dollar description of the asset. **All of this is simply a sophisticated effort at "let's pretend" or "modeling" in modern jargon, and all of it involves judgment. Not natural law, not science - judgment.**[19]

A chosen date by the legislature is January 1[20] - the regulation on how to go about doing it is contained in §192.402 and §193.011, with §192.402 acknowledged

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[18] How does one do this? Legislation has been submitted and considered without success. Surrender to the legislature on its conclusion that the structures have no taxable value is unquestionably necessary.

[19] *Union Pacific RR. Co. v. State Tax Comm'n of Utah*, 716 F. Supp. 543, 554 (D. Utah., 1988); accord *Powell v. Kelly*, 223 So. 2d 305, 309 (Fla. 1969).

[20] Historically, a yearly tax is implied and January 1 has been legislatively chosen. *See, e.g.*, Ch. 4322, §§3, 68, Laws of Fla. (1895). *See*, Ch. 5596, §3, Laws of Fla. (1907), (the forerunner of present day §192.053, Fla. Stat.), wherein the legislature set a date on which property liens attach.

as a "*specific statutory scheme for the timing of the valuation and assessment*".[21] Indeed, on two occasions the Supreme Court has observed that the statute constitutes only a temporary postponement of valuation and assessment of incomplete improvements.[22] The latest articulation, *Collier County*, [23] reiterates this.

Equal application of the statute is required - it applies to all property as of January 1.[24] It regulates the Property Appraiser, directing improvements not substantially complete to have no value thus shoring any debate as to what to do with such property. Some may say that, in fairness and notwithstanding the inexact judgment of appraisal, a formula is required whereby unfinished structures must pay something. Others say it is not fair to treat the inert unfinished status as one enjoying

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[21] We suggest this observation, stated in *Collier County v. State*, 733 So. 2d 1012 at 1019 (Fla. 1999), was not light nor the product of an incidental reference. It was deliberate and freighted with the respect allotted and required for the legislature.

[22] *See Collier County, supra* at 1019 and *Culbertson v. Seacost Towers East, Inc.*, 212 So. 2d 646, 647 (Fla. 1968).

[23] *See* fn. 21 and 22 *supra*.

[24] While *Markham v. Yankee Clipper Hotel, Inc.*, 427 So. 2d 383 (1983), *rev. den.*, 434 So. 2d 888 (Fla. 1983) and *Culberston v. Seacoast Towers East*, 212 So. 2d 646 (1968) refer to the statute as creating a "classification", aught appears to indicate the term as one of art in the context of such cases. It is therefore unwise to proceed with the untested hypothesis that prior decisions have forever branded the statute as one creating a separate classification proscribed by Art. VII, §4 and that it may not be considered as reasonable regulation.

all perquisites afforded by government on January 1 and that a *just valuation* is to prescribe a timing regulation to postpone taxation until "fair market value" is better able to be gauged. Through exercise of the Constitutional mandate to *prescribe*, the debate ends.[25] A legislative finding[26] exists that it is only *just* to place **no taxable** value on the uncompleted and unfit improvements for a particular year, a result concomitant with the reign of Article VII, Section 4, to regulate and secure a ***just*** *valuation.* Succinctly, "no value" is a "*just valuation*" for qualifying structures, rationally defined for revenue raising purposes by the legislature.[27] This is the manner

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[25] Terminating the debate through adoption of the bright line rule of §192.042(1) affords uniformity, predictability and certainty. *See* Brief of *Amicus Curiae* The St. Joe Company.

[26] Legislative findings and observations when rational must be upheld. *City of Tampa v. State ex. rel. Evans*, 155 Fla. 177, 19 So. 2d 697 (1944). Inquiry on the issue is limited to whether any state of facts, either known or assumed, afford support for the challenged statute. *See e.g.*, *State v. Bales*, 343 So. 2d 9, 11 (Fla. 1977); *State ex. Rel. Adams v. Lee*, 122 Fla. 639, 166 So. 249, 254 (1955), *affirmed on rehearing*, 122 Fla. 670, 166 So. 2d 262 (1936), *cert. denied*, 299 U.S. 542, 57 S. Ct. 15 (1936).

Additionally, the public policy determination inherent in the statute is of peculiar province to the legislature. *State v. Hodges*, 506 So. 2d 437 (Fla. 1st DCA, 1987) *rev. den.*, 515 So. 2d 229 (Fla. 1987).

[27] We emphasize the statute does not state the improvements are worthless for *market value* purposes. Rather, the focus is on the *just value* for revenue purposes on improvements that cannot be used for the purposes for which they were intended.

of appraisal judgment dictated by the Legislature.[28] Contours for adoption of §192.402 differ not from those adopted in regulation operable in specific circumstances.[29] It is but another method of carrying out the *just valuation* mandate.[30]

Validity of a textually similar statute was upheld by the Supreme Court in *Culbertson v. Seacoast Towers East.*[31] Additionally, the declination of review of the

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[28] *See* fn.20, *supra* and supportive text.

[29] *Compare* §193.015, Fla. Stat. (1997) pertaining to property for which dredge and fill permits have been issued; §193.075, Fla. Stat. (1997) involving mobile homes, and *see Oyster Pointe Resort Condominium Association, Inc., v. Nolte,* 524 So. 2d 415 (Fla. 1988) (involving statute prescribing method to assess time share developments) and *Miller v. Higgs, supra* at fn. 8 (involving statute reclassifying leasehold interests in government owned land as intangible personal property instead of real property).

[30] *Hausman v. Bayrock, Inv. Co.*, 530 So. 2d 938, 940 (Fla. 5th DCA, 1988).

[31] In *Culbertson* a hotel instituted a suit in chancery contesting its tax assessment as illegal on the ground that the improvements included in the valuation were not substantially complete on January 1, 1967, in reliance on the *substantial completion* regulation.

A summary judgment raised to the surface the validity of the substantial completion concept. Validity of the Statute was upheld by the Supreme Court notwithstanding the protestations that §193.11(4) grants an exemption from ad valorem taxation in violation of Article IX, §1, of the Florida Constitution finding that:

> *The statute constitutes only a temporary postponement of valuation and assessment of incomplete improvements on real property provided the prescribed conditions are met on the annual assessment date.*

Fourth District's interpretation of the present statute in *Markham v. Yankee Clipper Hotel, Inc.*, *supra*, in which you expressly noted the statute as Constitutional[32] bolsters the belief that the statute is immune from attack, an authority constant for the enactment of *regulation* for a *just valuation*.

Neither the revision of the Constitution in 1968 and Article VII, §4, nor *Interlachen Estates v. Snyder*, 304 So. 2d 433 (Fla. 1973) limit the legislature's ability to prescribe regulations. *Interlachen* is itself of limited application to the point under consideration as it bears no accountancy or response to the established ability of the legislature to prescribe timing regulations.[33] While timing of the assessment and the attendant methodology regulated by §192.042 may, to some, seem to create a separate classification with substantive rights, an equally available view justifies its character as a necessary timing regulation reasonably *prescribed* to achieve a *just valuation* for a

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This rationale persists. Accounting for a new Constitution, the teaching of *Culbertson* taken *mutatis mutandis* hedges any assault on §192.042, Fla. Stat. (1997). *See* historical analysis in *Amicus Curiae* Brief of Florida Home Builders Association.

[32] *Yankee Clipper* may be criticized for its reference and reliance on *Lennhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 93 S. Ct. 1001 (1973). The criticism is unwarranted as the reference is to the rationale within the case recognizing the wide constitutional latitude afforded the legislature in the enactment of tax laws.

[33] *Interlachen*'s analysis commenced with use of the rule *expressio unius est exclusio alterius*, a rule that *should be applied with great caution in construing the Constitution. Taylor v. Dorsey*, 155 Fla. 305, 19 So. 2d 876 (1945); *State v. Bryan*, 50 Fla. 293, 39 So. 929 (1906).

given tax period. This view cures the statute of constitutional infirmities on the obligation to give statutes a construction upholding them when a reasonable basis[34] or theory[35] exist for doing so.[36]

When reviewing statutes, it is presumed that the legislature has considered and discussed the constitutionality of all enactments passed by it[37] and every reasonable presumption must be indulged favoring their constitutionality.[38] A presumption exists that the legislature knows existing law when a statute is enacted and is also presumed

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[34] *Seaboard Air Line R. Co. v. Watson*, 103 Fla. 477, 137 So. 719, (1931) *app. dismissed* 287 U.S. 86, 53 S. Ct. (32); *Dunedin v. Bense*, 90 So. 2d 300 (Fla. 1956); *Miami v. Kayfetz*, 92 So. 2d 798 (Fla. 1957); *Pinellas County v. Laumer*, 94 So. 2nd 837, (Fla. 1957); *Brevard County v. Harland*, 102 So. 2d 137, (Fla. 1958); *Chatlos v. Overstreet*, 124 So. 2d 1 (Fla. 1960); *Rich v. Ryals*, 212 So. 2d 641 (Fla. 1968); *Sarasota County v. Barg*, 302 So. 2d 737 (Fla. 1974); *Coen v. Lee*, 116 Fla. 215l, 156 So. 747 (1934).

[35] *Adams v. Miami Beach Hotel Assoc.*, 77 So. 2d 465, (Fla. 1955); *Pinellas County v. Laumer*, 94 So. 2d 837 (Fla. 1957); *Rabbin v. Conner*, 174 So. 2d 721 (Fla. 1965).

[36] Invalidation of the statute requires a showing beyond a reasonable doubt that it is in conflict with the Constitution. *Metropolitan Dade County v. Bridges*, 402 So. 2d 411 (Fla. 1981); *A.B.A. Industries, Inc. v. City of Pinellas Park*, 366 So. 2d 761 (Fla. 1979). The responsible and justifiable definition as a necessary timing regulation places the statute on a footing immune from such showing.

[37] *McConville v. Ft. Pierce Bank & Trust Co.*, 101 Fla. 727, 135 So. 392 (1931).

[38] *State v. Green*, 36 Fla. 154, 18 So. 334 (1895); *Kaas v. Lewin*, 104 So. 2d 572 (Fla. 1958).

to be acquainted with the judicial construction placed on former laws on the subject.[39] Furthermore, the legislature is presumed to know the meaning of the words used and to have addressed its intent by using them in the enactment.[40] It is beyond peradventure to believe that with the *seething resentment* to taxation observed by this Court in *State v. Dickinson*, 230 So. 2d 130, 132 (Fla. 1970) the will of the People would be to carry over into present legislation a statute that is a nullity which, if so declared, results in greater taxation.

And again, a party challenging a statute must prove beyond all reasonable doubt that the challenged act is in conflict with some designated provision of the Constitution.[41] The duty attendant is to give a statute a construction that will uphold it if there is any reasonable basis for doing so; the duty being to construe legislation in a form saving it from constitutional infirmities, since every reasonable doubt should

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[39] *Williams v. Jones*, 326 So. 2d 425, 435 (Fla. 1975); *Nicoll v. Baker*, 668 So. 2d 989, 991 (Fla. 1996).

[40] *S.R.G. Corporation v. Department of Revenue*, 365 So. 2d 687 (Fla. 1978); *Zukerman v. Alter*, 615 So. 2d 661, 663 (Fla. 1993); *Zukerman v. Hofrichter & Ouiat, P.A.*, 646 So. 2d 187, 188 (Fla. 1994).

[41] *Metropolitan Dade County v. Bridges and A.B.A. Industries, Inc. v. City of Pinellas Park*, *supra* at fn. 36.

be resolved in favor of constitutionality.[42] If there is any reasonable theory to uphold a statute, it is your responsibility to so do.[43]

While some may press loss of revenue as an apt argument to justify striking the statute, this does not answer to reality. First, under §§200.011 and 200.065, Fla. Stat. (1997) local county bodies quantify the dollar needs specifying a budget. A millage rate is applied to the aggregate taxable value of all properties in the ad valorem tax base to produce revenue.[44] Property that is not substantially complete as of January 1 is not included in this tax base. However, the budget remains the same with tribute required on a *pari passu* basis on the tax roll resulting from the authorized and directed legislative regulation. **Revenue is not lost**. While it is true that the revenue requirement is then distributed over taxpayers whose property was appraised as complete and that the statute may provide a temporary respite shielding some property, these are but

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[42] *Haddock v. State*, 141 Fla. 132, 192 So. 802 (1939) overruled on the grounds in *Strazula v. Hendrick*, 77 So. 2d 1 (Fla. 1965); *Robinson v. Florida Dry Cleaning & Laundry Board*, 141 Fla. 899, 194 So. 269 (1940); *Waybright v. Duval County*, 142 Fla. 875, 196 So. 430 (1940); *Scarborough v. Webb's Cut Rate Drug Co.*, 150 Fla. 754, 8 So. 2d 913 (1942); *Ball v. Branch*, 154 Fla. 57, 16 So. 2d 524 (1944).

[43] *Adams v. Miami Beach Hotel Assoc*. *supra* at fn. 35; *Pinellas County v. Laumer*, 94 So. 2d 837 (Fla. 1957); *Rabbin v. Conner*, *supra* at fn. 35.

[44] *See* §200.069, Fla. Stat. (1997).

disagreements as to how best to regulate taxation, with no play in light of Justice Pariente's observation:

> *There is no ambiguity in the statute. It appears that any benefit to taxpayers was specifically contemplated by the legislative scheme.*
>
> *If there is a windfall created by the current statutory scheme, as the county claims, the County's redress lies with the Legislature.*[45]

CONCLUSION

Keeping the authorities in mind, we ask that you quash the decision of the Third District and that you remand the action for further proceedings.

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[45] *Collier County*, *supra* at 1019.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was on May 2, 2003, served via U.S. Mail upon Thomas W. Logue, Assistant County Attorney, Suite 2810, 111 N.W. First Street, Miami, FL 33128 (Fax: 305-375-5634), Mark T. Aliff, Assistant Attorney General, Office of the Attorney General, Tax Section, The Capitol, Tallahassee, Florida 32399-1050 (Fax: 850-488-5865) and upon Mitchell A. Feldman, Mitchell A. Feldman, P.A., Suite 111, 1021 Ives Dairy Road, Miami, FL 33179 (Fax: 305-652-1855).

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