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.

AMENDED REPLY BRIEF OF APPELLANT,
SUNSET HARBOUR NORTH CONDOMINIUM ASSOCIATION, *et al.*

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

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Mitchell A. Feldman, P.A.
Suite 111
1021 Ives Dairy Road
Miami, Florida 33139
-and-
Arnaldo Velez, P.A.

35 Almeria Avenue
Coral Gables, Florida 33134
Tel: 305-461-9499

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SUMMARY OF ARGUMENT

Our differences with the Property Appraiser and the Third District center on the interpretation of the text of our Constitution. The Property Appraiser and Third District insist that the term *fair market value* appears in the text of Article VII, Section 4 of the Constitution in the place and stead of *Just Valuation.* They also ignore the text of the Constitution that allows the legislature to *prescribe by general law regulations* to secure *Just Valuation,* text giving wide license to the adoption of timing regulations regarding the imprecise art of valuation. Timing regulations such as the statute in issue are consistent with the letter and spirit of this text.

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?

ARGUMENT

A prolix reply to the Property Appraiser's brief is not required; our initial brief anticipated each challenge for justification posed by the answer brief; nonetheless, as we are permitted riposte, we provide succinct reminders of constitutional precepts,

overlooked by the property appraiser, sufficient to expose the error of the Third District's decision.

At the core of the Property Appraiser's argument is a surrender to past comments regarding *Just Valuation*. According to the Property Appraiser, Just Valuation means Fair Market Value, no more, no less. This central premise is wrong.

A Constitution is not to be read as a technical manual, but rather as a fountainhead, the expression of the People, yielding energies to the Legislature to act. Absent an apparent ferocious design to exclude power to the Legislature, an unexpressed limitation derived merely from practices of the past should not be heeded.

Section 4 of our Constitution directs a mandate to the Legislature to *prescribe by general law regulations to secure* ***a just valuation*** *of all property for ad valorem tax purposes,* a directive that *requires interpretation so as to accomplish and not to defeat, its purpose as to lessen its efficiency.*[1]

A rule of reason and inquiry prevails: definition within this sphere of activity is that of the legislature; a sampling of legislation confirms this. For example, §192.001, Fla. Stat. (2003), a statute of long standing, contains definitions "**Personal**

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1 *Neisel v. Moran*, 80 Fla. 98, 114, 85 So. 346, 351 (1919).

Property",[2] and "**Real Property**"[3], each establishing what some may offer is a separate classification of property outside the scope of Art. VII, Section 4, but that could not be so; nor can a timing regulation such as the statute at hand. A permissible scope is rendered great on appreciation that the constitutionally permitted definition of the legislature is that of prescription of regulation to secure a *just valuation* of property. Placement of a limited meaning on "just valuation" depriving the legislature an ability to decide that an unfinished structure has no discernable tax value betrays an established principle of construction.[4] Neither does a finding of no taxable value for purposes of a "just valuation" mean, as signified, that the value of a subject real property equals zero dollars. This is simply a regulation directed to the Property

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[2] Section 192.001 (11), Fla. Stat. (2003).

[3] Section 192.001(12), Fla. Stat. (2003) - "Real property" means land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably.

Of special interest as noted by the Property Appraiser's brief, is the ability of the legislature to include within this definition "improvements to the land." By legislative option *improvements* could just as well be deleted from the definition. Would anyone then be able to state that the deletion creates an unpermissible class? Of course not - and that is what §192.042(1), Fla. Stat. (2003) operates to do – to delete improvements from the definition on a temporal basis arising in response to arguments regarding methodology in appraising an improvement that cannot be used for the purpose for which it was constructed.

[4] *Economy Cash & Carry Cleaners v. Florida Dry Cleaning and Laundry Board*, 138 Fla. 642, 645, 190 So. 31, 32 (1939).

Appraiser to eliminate the incomplete improvements from the tax rolls pending completion.

Just Valuation is broader in significance than fair market value: schooled authors of the resistant brief that argue "just valuation" is defined solely as "fair market value" know or should know *just valuation* is a picklock with a wide access. No mayhap from the offered convenient common thought has yet to tender any authority that contradicts this: until a repugnancy, plain and manifest appears in the Constitution, to action taken by the legislature within its sphere is shown, it is your duty to uphold the legislation.

Dispute will always exist regarding the value of an unfinished structure. Placing no taxable value on a structure not complete and not qualifying for the use for which it was intended in the face of admitted dispute arising from different schools and considerations on its assessment for taxation purposes is legitimate reminding us of the observation:

> *Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.*[5]

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[5] *McCullough v. Maryland*, 4 Wheat 316, 17 U.S. 316, 421 (1819).

Moreover, in this department the inquiry is limited to definition for **taxation purposes**. It does not, as the Property Appraiser argues, require or necessarily bring with it considerations under accounting principles and practices (GAPP), or measures resulting from federal legislative efforts directed by special interests for IRS purposes.

Interlachen Lakes Estates, Inv. v. Snyder, 304 So.2d 433, 434 (Fla., 1974) observes a limitation of classifications of property but it is haste to find in it an unexpressed limitation on *just valuation*; no ferocious design appears from Article VII that limits definition through regulation by a timing statute that a structure that is not substantially complete can have a just value other than zero or that it should not be placed on the tax rolls. If that were so, a legislative differentiation between real and personal property could not occur, nor could a chosen date of valuation be permitted.

Justice sometimes requires patience. That is what this timing regulation effects - a "forced patience" allowing literal and figurative dust to settle upon substantial completion of improvements for ad valorem tax purposes. Once settled, the matter of valuation is statutorily and permissibly defined and a uniform system of appraisal is available: when the improvement is substantially complete, the *just valuation* will indeed rise to the level of fair market value. Common sense reveals that fair market value of an incomplete structure is not subject to precise valuation and the legislative

draw to recognize this fluid must be acknowledged as permissible, indeed necessary, to effect a workable mechanism by which to assess real property tax value.

Extensions have been given within which to write this brief, but the last order dictated no further extensions are allowed. The Court has yet to pass on the Motion to Strike the Appendix to Appellee's Answer Brief and Portions of Appellee's Answer Brief. Since the Property Appraiser's brief rests on argument that should be stricken and we have addressed this through our motion, we again ask that you disregard it.

CONCLUSION

The decision of the Third District ought to be quashed.

MITCHELL A. FELDMAN
MITCHELL A. FELDMAN, P. A.
Suite 111
1021 Ives Dairy Road
Miami, Florida 33139

-and-

ARNALDO VELEZ, P.A.
Attorneys for Appellant
35 Almeria Avenue
Coral Gables, Florida 33134
Tel: (305)461-9499
Fax: (305)461-9498

BY:___________________________________
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Arnaldo Velez

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Reply Brief, was on December 3, 2003, served via U.S. Mail upon Thomas W. Logue, Jay W. Williams and James K. Kratch, Assistant County Attorneys, 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), upon Victoria L. Weber, Hopping Green & Sams, Attorneys for Amicus Curiae The St. Joe Company, 123 South Calhoun Street, Tallahassee, Florida 32314 and Robert M. Rhodes, Executive Vice President, The St. Joe Company, 245 Riverside Drive, Suite 500, Jacksonville, Florida 32202, Joseph Capers Mellichamp, III, Carlton Fields, P.A., Attorneys for Florida Home Builders Association, 215 S. Monroe, Suite 500, Tallahassee, Florida 32301, Benjamin K. Phipps, The Phipps Firm, P. O. Box 1351, Tallahassee, Florida 32302, Paul F. King, Assistant County Attorney, Palm Beach County, P. O. Box 1989, West Palm Beach, Florida 33402, Larry Levy, The Levy Firm, 1828 Riggins Road, Tallahasee, Florida 32308, Heather J. Encinosa, Nabors Giblin & Nickerson, P.A., 1500 Mahan Drive, Suite 200, Tallahasee, Florida 32308, Gaylord Wood, Wood & Stuart P.A., 206 Flagler Avenue, New Smyrna Beach, Florida 32169, Larry Levy, The Levy Law Firm, 1828 Riggins Road, Tallahassee, Florida 32308.

MITCHELL A. FELDMAN
MITCHELL A. FELDMAN, P. A.
Suite 111
1021 Ives Dairy Road
Miami, Florida 33139

-and-

ARNALDO VÉLEZ, P.A.
Attorneys for Appellant
35 Almeria Avenue
Coral Gables, FL 33134
Tel: 305-461-9499
Fax: 305-461-9498

BY:___________________________
ARNALDO VÉLEZ

CERTIFICATION OF COMPLIANCE WITH FONT TYPE

The undersigned certifies that this reply brief was prepared in compliance with Fla. R. App. 9.210(a)(2) using the Times New Roman 14 point font type.

MITCHELL A. FELDMAN
MITCHELL A. FELDMAN, P. A.
Suite 111
1021 Ives Dairy Road
Miami, Florida 33139

-and-

ARNALDO VÉLEZ, P.A.
Attorneys for Appellant
35 Almeria Avenue
Coral Gables, FL 33134
Tel: 305-461-9499
Fax: 305-461-9498

BY:____________________________
ARNALDO VÉLEZ

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Mr. Gaylord Wood
Wood & Stuart P.A.
206 Flagler Avenue
New Smyrna Beach, Florida 32169

Mr. Larry Levy
The Levy Law Firm
1828 Riggins Road
Tallahassee, Florida 32308