IN THE SUPREME COURT OF FLORIDA

JIM SMITH, PROPERTY APPRAISER, PINELLAS COUNTY, FLORIDA, AND JAMES ZINGALE AS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE, STATE OF FLORIDA,

Petitioners,

vs.

Case No. SC05-488

Second District Court of Appeal Case No. 2D04-514

STEPHEN KROSSCHELL,

L.T. Case No. 01-9288-CI-21

Respondent.

PETITIONERS' JOINT INITIAL BRIEF

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PRELIMINARY STATEMENT

The Appellants below and the Petitioners in this Court are Jim Smith, Pinellas County Property Appraiser and Jim Zingale as the Executive Director of the State of Florida, Department of Revenue. Collectively, they will be referred to as "the Petitioners" in the Joint Initial Brief. Individually, they will be referred to as "the Property Appraiser" and "the Department," respectively.

The Appellee below and the Respondent in this Court is Stephen Krosschell. He will be referred to as "Krosschell" or "Respondent" in the Joint Initial Brief.

The court below was the Second District Court of Appeal. It will be referred to as "the Second District" in the Joint Initial Brief.

The trial court was the Sixth Judicial Circuit, in and for Pinellas County, Florida. It will be referred to as "the trial court" in the Joint Initial Brief.

References to the record on appeal will be prefixed with the letter R., which will be followed by the appropriate page number, e.g., R. 82-83.

References to the Appendix to the Initial Brief will be prefixed with the letters App, followed by the appropriate

appendix number and page number, e.g., App. 1, at 4.

STATEMENT OF THE CASE

On December 11, 2001, Krosschell, filed a complaint in circuit court against the Property Appraiser and the Department, challenging the year 2000 ad valorem tax assessment against his home located in Pinellas County. R. 1-3. The Complaint requested that the trial court "declare that the year 2000 assessed value for the Plaintiff's property is correct and that the year 2001 assessed value cannot be increased by more than 3%." R. 2. On December 28, 2001, the Property Appraiser filed its Answer to the Complaint, which was adopted by the Department. R. 4-5.

Krosschell filed a Motion for Summary Judgment on December 10, 2002. R. 6-7. The Petitioners filed a Cross Motion for Summary Judgment on January 9, 2003. R. 8. Following a hearing on both motions, the trial court entered a Final Judgment and Order granting Krosschell's Motion for Summary Judgment and Denying the Motion of the Petitioners on April 7, 2003. R. 82. On April 17, 2003 the Property Appraiser filed a Motion for Rehearing pursuant to Florida Rules of Civil Procedure 1.530. R. 84-88. The Motion for Rehearing was denied by Order dated

January 29, 2004. R. 96. As this motion tolled the rendition of the Final Judgment and Order, the Property Appraiser timely filed its Notice of Appeal of the Final Judgment and Order on February 3, 2004. R. 98-103.

On appeal, the Second District affirmed the trial court and certified conflict with Kornfield, infra. App. 1, at 4.

STATEMENT OF THE FACTS

Krosschell purchased the subject property on November 9, 1999 for $357,500. R. 25. He applied for and was granted a homestead exemption for the year 2000. R. 25. Therefore, by operation of section 193.155, Florida Statutes, the year 2000 assessment was to be set at just value. The 2000 ad valorem tax assessment became the base year for purposes of calculating assessments for subsequent tax years under Article VII, section 4, Florida Constitution, subject to the limitation upon annual increases commonly referred to as the Save-Our-Homes (SOH) cap.

On March 23, 2000, a field inspection of the property was conducted by the Property Appraiser's office to verify the information contained in the Property Appraiser's records. R. 25-26. When the database record for the property was updated following the field inspection, a clerical data entry error occurred which caused all 3,746 square feet of base living area

to be deleted from the Property Appraiser's records for this property. R. 26. This administrative error caused the property to be undervalued by $100,100, resulting in a valuation of $188,700, rather than the correct and just valuation of $288,800. R. 26.

The just value, sales, and building base size history for this parcel were as follows:

	Year	Just Value	Sales Price	Base Size
a.	1994	$215,600		3746 sq. ft.
b.	1995	$211,500	$232,800	3746 sq. ft.
c.	1996	$225,500		3746 sq. ft.
d.	1997	$223,700		3746 sq. ft.
e.	1998	$225,200		3746 sq. ft.
f.	1999	$223,100	$357,500	3746 sq. ft.
g.	2000	$188,700 (incorrect)		0 sq. ft.
		$288,800 (corrected)		3746 sq. ft.
h.	2001	$307,600		3746 sq. ft.

In August of 2000, Krosschell was sent the Notice of Proposed Property Taxes for the year 2000, otherwise known as the TRIM notice. R. 38. The TRIM notice showed that the assessed value of the property was $188,700, a substantial drop in value from the previous year's assessment of $223,100. R. 57. The Property Appraiser certified the 2000 tax roll, including this erroneous valuation, on October 13, 2000. R. 26. On November 10, 2000, after the clerical error resulting in the deletion of the entire square footage of living area from the property records was discovered, the Property Appraiser issued a

Certificate of Correction of Tax Roll and the Tax Collector of Pinellas County (hereinafter "the Tax Collector"), issued a corrected tax bill without consulting Krosschell. R. 26. This correction was made while the 2000 tax roll was open for collection. R. 27.

On December 20, 2000, after Krosschell complained about his corrected tax bill, the Property Appraiser sent him a letter explaining the discovery of the data entry error made on the base area of his home, and the Property Appraiser's legal duty to place the overlooked value on the tax roll. R. 62. The letter further notified Krosschell that correction of the clerical error would increase the assessed value by $100,100 in the year 2000. R. 62. Finally, the letter notified Krosschell of his options with regard to the increase, including the option to consent to the increase and waive the right to petition the Value Adjustment Board (hereinafter "VAB"), or to express the wish to petition the increased assessed value for the year 2000 to the 2001 VAB. R. 62-63. (These options are required by Florida Administrative Code Rule 12D-8.021(10)).

Krosschell elected to contest the year 2000 ad valorem tax assessment increase by submitting a petition to the VAB. R. 63. This option clearly stated that the year 2000 correction would

be placed on the 2001 tax roll. R. 27, 64. As Krosschell elected to petition to the 2001 VAB, the Property Appraiser directed the Tax Collector of Pinellas County to reinstate the original value for the year 2000, which omitted the square footage. R. 27.

The reinstatement of the $188,700 valuation was not an acknowledgment by the Property Appraiser that the erroneous valuation was proper. Rather, pursuant to Florida Administrative Code Rule 12D-8.021, the correction was delayed until Krosschell's petition to the 2001 VAB could be heard and decided. R. 27. It was not possible to bring the increase before the 2000 VAB, because it had adjourned on October 10, 2000. R. 26.

Subsequent to this Court's decision in Smith v. Welton, infra, the Legislature addressed the deficiencies of section 193.155(8)(a), Florida Statutes (1995), as pointed out by this Court and amended the statute in the 2001 regular session to state as follows:

> Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption. ~~Thereafter, determination of the assessed value of the property is subject to the following provisions:~~
>
> * * *

> (8) Erroneous assessments of homestead property assessed under this section may be corrected in the following manner:
>
> (a) If errors are made in arriving at any ~~annual~~ assessment under this section due to a material mistake of fact concerning an essential characteristic of the property, the just value and assessed value ~~assessment~~ must be recalculated for every such year, including the year in which the mistake occurred.

See Chapter 2001-137, section 5, p. 1128, 1130, Laws of Florida. This amendment became effective on July 1, 2001. See Chapter 2001-137, section 12, p. 1135, Laws of Florida.

On July 10, 2001, the Property Appraiser presented the corrected year 2000 value for the subject parcel to the 2001 VAB. R. 27. On August 6, 2001, the Property Appraiser mailed to Krosschell his year 2001 Notice of Proposed Property Taxes, which included the corrected just and assessed values of $288,800 for the year 2000, and a just (market) value of $307,600 and assessed value of $297,400 for the year 2001. R. 27, 37. On August 31, 2001, Krosschell filed an appeal for his year 2000 and 2001 values to the 2001 VAB. R. 27. The VAB determined that the Property Appraiser had acted correctly when he made his corrections to the assessment of the subject property. R. 27. Following the VAB's ruling, Krosschell timely filed his complaint with the trial court challenging the assessment. R. 1-3.

Krosschell has never disputed 1) that the correction resulted from a clerical error, or 2) the fact that the base area of the property is indeed 3,746 square feet. The only basis for Krosschell's challenge was that the corrected assessment for the year 2000 exceeded the SOH cap and that the base year just value for 2000 was correct.

Mr. Krosschell's position would require this Court to endorse and preserve his tax "windfall." Respondent wants to take advantage of the clerical error to lock in an artificially low base year assessment, which will result in a situation where each subsequent year's assessment will also be artificially low. Because of the SOH cap, the Property Appraiser will never be able to raise the taxable valuation of Plaintiff's home to the level where it would have been if no clerical error had been made. Thus, Mr. Krosschell will pass a portion of his lawful tax burden to the other taxpayers in Pinellas County.

SUMMARY OF ARGUMENT

Both the Third District Court of Appeal and the Second District have rendered opinions on section 193.155(8)(a), Florida Statutes (2001). The Third District found that the 2001 amendment to this statute, is retroactive and allows for just value and/or assessed values, that are based upon material

mistakes of fact, to be recalculated for each year affected, even if the mistake occurred in the base year. However, the Second District found that the 2001 amendment to section 193.155(8)(a), did not apply.

Under section 193.155(8)(a), Florida Statutes, as amended in 2001, a property appraiser is statutorily required to correct erroneous assessments back to, and including, the year in which the material mistake of fact occurred. This language is clear, unambiguous and manifests the Legislature's intent to be retroactive as the legislative response to this Court's decision in Smith v. Welton, 729 So. 2d 371 (Fla. 1999).

This Court has the jurisdiction to decide which interpretation of section 193.155(8)(a), Florida Statutes (2001), is correct. This Court should provide guidance to the Property Appraisers of the State of Florida so that they will know how to apply this law when errors do occur. Petitioners request that this Court approve the Third District's decision in Kornfield, infra, and disapprove the Second District's decision below.

ARGUMENT

I. THIS COURT HAS THE JURISDICTION TO RESOLVE THE EXPRESS AND DIRECT CONFLICT BETWEEN THE SECOND AND THIRD DISTRICT COURTS OF APPEAL ON THE SAME QUESTION OF LAW

In its decision below, the Second District certified conflict with a decision of the Third District Court of Appeal in Robbins v. Kornfield, 834 So. 2d 955 (Fla. 3rd DCA 2003), appeal voluntarily dismissed, 868 So. 2d 523 (Fla. 2004). See App. 1, at 4. This Court has the requisite jurisdiction to resolve this express and direct conflict. See Article V, section 3(b)(4), Florida Constitution; Florida Rules of Appellate Procedure 9.030(a)(2)(A)(vi).

The Second District, like the Third District in Kornfield, had before it the application and interpretation of section 193.155(8)(a), Florida Statutes (2001). This statute was amended in 2001 by the Florida Legislature and the amendment was the Legislature's response to this Court's decision in Smith v. Welton, 729 So. 2d 371 (Fla. 1999).

In Welton, this Court had before it the question of whether a property appraiser could "retroactively" correct an error to the base year's assessment. This Court held that section 193.155(8)(a), Florida Statutes (1995), did not provide the authority for the property appraiser to make changes to the base year just value assessment, pursuant to its interpretation of the plain language of the statute. Smith v. Welton, 729 So. 2d, at 373. Specifically, this Court held that:

> The statute by its plain language refers to errors in the "annual assessment" (i.e., the value that is ascribed to a homestead each year after the "just value" has been determined in the base year), not errors in the base year "just value" assessment. Nowhere in section 193.155(8)(a) is the base year "just value" assessment even mentioned." Id.

In response to this interpretation and holding by the Court, the Legislature amended then section 193.155(8)(a), Florida Statutes (1995), in 2001 to state as follows:

> Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption. ~~Thereafter, determination of the assessed value of the property is subject to the following provisions:~~
>
> * * *
>
> (8) Erroneous assessments of homestead property assessed under this section may be corrected in the following manner:
>
> (a) If errors are made in arriving at any ~~annual~~ assessment under this section due to a material mistake of fact concerning an essential characteristic of the property, the just value and assessed value ~~assessment~~ must be recalculated for every such year, including the year in which the mistake occurred.

See Chapter 2001-137, section 5, p. 1128, 1130, Laws of Florida. This amendment became effective on July 1, 2001. See Chapter 2001-137, section 12, p. 1135, Laws of Florida.

As stated above, this amendment was the Legislature's response to Smith v. Welton. This is evident from the fact that the very language that this Court found missing from the

original 1995 statute applied in Welton was added to the 2001 amended version.

Both the Third District and the Second District have rendered opinions on the same version of a law - section 193.155(8)(a), Florida Statutes (2001). In Kornfield the Third District found that in 2001 the Legislature amended section 193.155(8)(a), to allow for adjustments to be made to correct errors in the calculation of a property's just value. Kornfield, 834 So. 2d at 957. However in Krosschell the Second District found that the 2001 amendment to section 193.155(8)(a), did not apply. See App. 3-4.

Both District Courts have reached opposite results in the application of the same law. Clearly this Court has the jurisdiction to decide which interpretation of section 193.155(8)(a), Florida Statutes (2001), is correct. While errors are not the rule of the day with the Property Appraisers, errors such as these do occur. This Court must decide the correct interpretation so the other Property Appraisers will know how to apply this law when errors do occur.

Under the plain language of section 193.155(8)(a), Florida Statutes, as amended in 2001, a property appraiser is statutorily required to correct erroneous assessments back to,

and including, the just and assessed values rendered in the year in which the material mistake of fact occurred, regardless of whether that was the base year. As such, the Third District's decision in Kornfield is clearly in conflict with the Second District's decision below. Compare, Kornfield, 834 So. 2d, at 956-957, with, Smith v. Krosschell, No. 2D04-514, at 3-4 (Fla. 2nd DCA January 12, 2005)(App. 3-4).

Petitioners request that this Court accept jurisdiction of this case, resolve the conflict between the Districts, approve the Third District's decision in Kornfield, and disapprove the Second District's decision in Krosschell.

II. THE LEGISLATURE ONLY PASSES MEANINGFUL LAWS; THE PLAIN LANGUAGE OF SECTION 193.155(8)(a), FLORIDA STATUTES (2001) MUST BE FOLLOWED

The question before this Court, as applied to section 193.155(8)(a), Florida Statutes (2001), is one of statutory construction. On March 10 ,2005, this Court issued its opinion in Daniels v. Florida Department of Health, __ So. __, 30 Fla. Law Weekly S143, (Fla. March 10, 2005). In that decision, this Court provided a complete restatement of the law on the position a court is in when addressing statutory construction. This Court stated:

> In construing a statute we are to give effect to the Legislature's intent. *See State v. J.M.*, 824 So. 2d

> 105, 109 (Fla. 2002). In attempting to discern legislative intent, we first look to the actual language used in the statute. *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000); *accord BellSouth Telecomms., Inc. v. Meeks*, 863 So. 2d 287, 289 (Fla. 2003). When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. *See Lee County Elec. Coop., Inc. v. Jacobs*, 820 So. 2d 297, 303 (Fla. 2002). In such instance, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent. *See State v. Burris*, 875 So. 2d 408, 410 (Fla. 2004). When the statutory language is clear, courts have no occasion to resort to rules of construction--they must read the statute as written, for to do otherwise would constitute an abrogation of legislative power. *Nicoll v. Baker*, 668 So. 2d 989, 990-91 (Fla. 1996). Because statutes providing for attorney's fees are in abrogation of the common law, such statutes are to be strictly construed.[1]/ *See Sarkis v. Allstate Ins. Co.*, 863 So. 2d 210, 223 (Fla. 2003).

Daniels v. Florida Department of Health, 30 Fla. Law Weekly, at S143. See also Patchen v. Florida Department of Agriculture and Consumer Services, No. SC02-1291, at 6-7 (Fla. April 14, 2005), (this Court found that the compensation statute of the citrus cancer eradication program was a remedial statute and by its plain meaning was to provide compensation to homeowners who had trees destroyed on or after January 1, 1995). Applying this Court's standard to section 193.155(8)(a), Florida Statutes

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[1]/ The same standard to be applied in construing

(2001), this Court should reverse the decision of the Second District below and adopt the decision of the Third District as the proper application section 193.155(8)(a).

The legislature is presumed not to pass meaningless legislation. State v. Goode, 830 So. 2d 817, 824 (Fla. 2002); Smith v. Piezo Technology and Professional Administrators, 427 So. 2d 182 (Fla. 1983). The courts are not to presume that a given statute employs "useless language." Piper Aircraft Corporation v. Schwendmann, 564 So. 2d 546, 547 (Fla. 3rd DCA 1990).

A change of language contained in an amendment to a statute often evinces a clarification of legislative intent or a change in the original intent of the statute. Aetna Casulty and Surety Co. v. Buck, 594 So. 2d 280, 283 (Fla. 1992). See also Guadalupe v. Peterson, 779 So. 2d 494, 497 (Fla. 2nd DCA 2000); Equity Corporation Holdings, Inc., v. Department of Banking and Finance, Division of Finance, 772 So. 2d 588, 589 (Fla. 1st DCA 2000). This is especially true where the Legislature has enacted an amendment shortly after a judicial decision the Legislature believed was contrary to its initial intent. Palma Del Mar Condominium Association No. 5 of St Petersburg, Inc., v.

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exemption statutes, substantively and procedurally.

Commercial Laundries of West Florida, Inc., 586 So. 2d 315, 317 (Fla. 1991).

The legislature is presumed to know the law as it exists when a statute is enacted and is also presumed to be acquainted with the judicial construction placed on the former laws on the subject. Florida Department of Children and Familes v. F.L., 880 So. 2d 602, 609 (Fla. 2004); City of Hollywood v. Lombardi, 770 So. 2d 1196, 1202 (Fla. 2000). Finally, the Legislature is presumed to know the meaning of the words used and to have addressed its intent by using them in the enactment. King v. Elliot, 648 So. 2d 666, 668 (Fla. 1994), (quoting S.R.G. Corporation v. Department of Revenue, 365 So. 2d 687 (Fla. 1978)). See also American Telephone & Telegraph v. Florida Department of Revenue, 764 So. 2d 665, 667 (Fla. 1st DCA 2000)(the First District looked to the plain meaning of the language used in the statutory definition of section 212.02(2) and (4), and held that the Legislature chose not to limit the sales tax to services that must be purchased with tangible personal property); Barnett Bank of South Florida v. State Department of Revenue, 571 So. 2d 527, 528-529 (Fla. 3rd DCA 1990)(the Third District looked to the plain meaning of the language used in the 1977 amendment to section 201.08(1), and

concluded that the Legislature specifically added the word "mortgages" into the class of documents subject to the documentary stamp tax).

It is clear from the language used in Chapter 2001-137, section 5, p. 1128, 1130, Laws of Florida, that the Legislature intended that a property appraiser would be able to correct an erroneous assessment back to and including the year in which the material mistake of fact occurred, regardless of whether that was the base year. This Court should approve the decision of the Third District in Kornfield, disapprove the decision of the Second District below and find that the 2001 amendment section 193.155(8)(a) was intended to operate retroactively.

III. THE SECOND DISTRICT'S DECISION IGNORES THE PLAIN LANGUAGE OF SECTION 193.155(8)(a), FLORIDA STATUTES (2001)

In its decision below, the Second District incorrectly affirmed the trial court's Final Judgment and Order Granting Krosschell's Motion for Summary Judgment and Denying the Motion of the Property Appraiser on April 7, 2003. R. 82. In its decision below, the Second District relied on this Court's decision in Smith v. Welton, supra. It is the Petitioners' position that section 193.155(8)(a), Florida Statutes (1995), construed by this Court in Smith v. Welton, has been abrogated

by the Legislature's passage of Chapter 2001-137, Laws of Florida. In other words, this Court's Welton decision was directly addressed by the Legislature and the result of that case negated by the amending of section 193.155(8)(a), Florida Statutes in 2001.

After a recitation of the facts before the trial court, the Second District incorrectly concluded that:

> [T]he trial court correctly relied on ***Smith v. Welton,*** 729 So.2d 371 (Fla.1999), in finding that the Property Appraiser had no statutory authority to make a retroactive change in the assessment of Krosschell's property. In ***Smith,*** 729 So.2d 373, the court held: "By its plain wording, section 193.155(8)(a) thus bestows no authority on a property appraiser to make a retroactive change in the base year assessment. Accordingly, we hold that [the property appraisers] lack authority under section 193 .155(8)(a) to retroactively change the base year 'just value' assessment...."
>
> As the Property Appraiser notes, section 193.155, Florida Statutes (2000), was amended effective July 1, 2001, to allow property appraisers to change the base year assessment and thus correct an error like the one which occurred here. Krosschell asserts, and we agree, that this statute is not retroactive. "It is a well-established rule of construction that in the absence of clear legislative intent to the contrary, a law is presumed to act prospectively." . . . Furthermore, "[t]ax statutes ... operate only prospectively unless legislative intent to the contrary clearly appears." . . . There is no indication of legislative intent, clear or otherwise, that the statute in question applies retroactively. Therefore, the circuit court correctly determined that the 2000 version of the statute applied here and that the Property Appraiser could not change the original assessed value of

$188,700.

Krosschell, at 3-4, (citations and footnote omitted); App. 3-4.

The decision of the Second District is simply in error because that court did not correctly interpret the clear and unambiguous language in the 2001 amendment to section 193.155(8)(a). In the trial court, it was undisputed that in 2000, the base year for Krosschell under the Homestead exemption, the Property Appraiser's initially certified assessment of $188,700 was based upon a material mistake of fact resulting from a clerical data entry error. Following an inspection of the property, the home base area was incorrectly entered as zero (0) square feet instead of the actual square footage of 3,746 square feet. This error concerned an essential characteristic of the property which led to an omission of the value of the entire base area, resulting in a loss of $100,100 from the 2000 tax roll.

In affirming the trial court's judgment, the Second District improperly applied the law as clearly stated by the Legislature. First, the Second District erred in not applying the very terms of the amended section 193.155(8)(a), Florida Statutes (2001), to the facts surrounding Krosschell's property. On the date Krosschell challenged the correction of the under

valued property, section 193.155(8)(a), Florida Statutes (2001), stated as follows:

> Erroneous assessments of homestead property assessed under this section may be corrected in the following manner:
>
> (a) If errors are made in arriving at any assessment under this section due to a material mistake of fact concerning an essential characteristic of the property, the just value and assessed value must be recalculated for every such year, including the year in which the mistake occurred.

Clearly the erroneous deletion of the house's living space from the Property Appraiser's records for this parcel, based upon a data entry mistake, is a "material mistake of fact."

By failing to apply the clear and unambiguous language of the amended statute to the facts before it, the Second District stripped from the Property Appraisers of the State the very powers the Legislature had just granted to them. Included in those powers was the right and duty of the Appraiser to retroactively correct such errors.

The Second District compounded its first error by applying the decision of Smith v. Welton, supra, to reach its decision, ignoring the 2001 amendment to section 193.155(8)(a). In Welton, this Court determined that section 193.155(8)(a), Florida Statutes (1995), did not provide authority to make changes to the base year just value assessment, based upon its

interpretation of the plain language of the statue as it then existed. Specifically, this Court found that:

> The statute by its plain language refers to errors in the "annual assessment" (i.e., the value that is ascribed to a homestead each year after the "just value" has been determined in the base year), not errors in the base year "just value" assessment. Nowhere in section 193.155(8)(a) is the base year "just value" assessment even mentioned.

Smith v. Welton, 729 So. 2d, at 373.

What the District Court below ignored or overlooked was the Legislature's reaction to the Welton decision. In response to the interpretation by the Court, the Legislature amended section 193.155(8)(a) in 2001. See Chapter 2001-137, section 5, p. 1128, 1130, Laws of Florida.[2]/ The evidence that the Legislature's 2001 amendment was a response to this Court's Smith v. Welton, decision is the fact that the very language this Court found missing from the section 193.155(8)(a), Florida Statutes (1995), was added to the amended 2001 version of section 193.155(8)(a).

Under the plain language of section 193.155(8)(a), Florida Statutes (2001), the Property Appraiser was statutorily required to correct the erroneous 2000 tax year's assessment on the 2001

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[2]/ See also, Petitioners' discussion of this amendment in the Joint Initial Brief under Point I, supra, at pages 8-11.

tax roll. As such, the Second District's affirmance of the trial court's Final Judgment first violates the clear language and Legislative intent of the 2001 amendment of section 193.155(8)(a), Florida Statutes, which was passed in order to change the result of Smith v. Welton. Second, the affirmance applies the rationale of Smith v. Welton, a case that has been abrogated by the Legislature's 2001 amendment to section 193.155(8)(a).

The Second District was also in error in its decision that the Property Appraiser could not, in 2001, retroactively correct an error in the tax year 2000 assessment. This ruling is contrary to the unambiguous language of section 193.155(8)(a), Florida Statutes (2001).

The retroactive application of section 193.155(8)(a), Florida Statutes (2001), has been both interpreted and approved by the Third District Court of Appeal in Robbins v. Kornfield, supra. In Kornfield, the Property Appraiser discovered in 1999 that he had omitted 1,610 square feet of a residence from the building's measurement and that the error allowed the missing square footage to escape taxation for nine years. Kornfield, 834 So. 2d, at 956. When this error was discovered, the Property Appraiser placed a back assessment on the property for

1998-2000. Id. The trial court set aside the back assessment on the basis that the Florida Constitution and this Court's decision in Smith v. Welton prohibited the reassessment of the property's just value.

On appeal, the Third District discussed the 2001 amendment of section 193.155(8)(a), Florida Statutes, and recognized that the Legislature's amendment of section 193.155(8)(a), in 2001 was a clear indication of its intent to "allow for adjustments to be made to correct errors in the calculation of a property's just value." Kornfield, 834 So. 2d, at 957. Recognizing such intent, the Third District correctly found that "Welton is superceded by the 2001 amendment to Section 193.155." Id. In reversing the trial court, the Third District held that "the Property Appraiser has the authority to place a back assessment on the portion of the taxpayers' property which has escaped taxation." Id.

In this case, the Property Appraiser attempted to back assess Krosschell's property, as was done in Kornfield, for the value which escaped taxation due to the clerical error of entering zero (0) sq. ft. instead of the actual 3,746 sq. ft of living area in the home's base area. As in the Kornfield case, the error which the Property Appraiser sought to correct

occurred prior to the amendment of section 193.155(8)(a) in 2001. Also similar to Kornfield, and subsequent to the 2001 amendment, the trial court improperly applied Smith v. Welton, and disregarded the plain language of section 193.155(8)(a), Florida Statutes (2001).

The Second District affirmance of the trial court's Final Judgment in this case contradicts the decision rendered by the Third District. The Second District refuses to permit the correction of any assessment in the base year due to a material mistakes of fact concerning an essential characteristic of the property. When a mistake effecting the base year is made, the just value assessment in the base year on homestead property will be incorrect and all subsequent years will be assessed based upon the incorrect value as limited by the SOH cap. The Second District and the trial court's decisions clearly accepted Krosschell's argument that this Court's decision in Smith v. Welton, was still controlling law, and thus created a direct and express conflict with the Third District's interpretation of section 193.155(8)(a), Florida Statutes, as amended in 2001.

The practical result of the Second District's affirmance of the trial court's Judgment is clear. The Second District's decision allows Krosschell to reap an inappropriate windfall for

the duration of his ownership of this home. More particularly it allows Krosschell to pay taxes on a base year assessment that never reflected the true just value because it was derived from a material mistake of fact. This windfall will continue because each subsequent year's assessment will be limited by the Save Our Homes cap. Finally, the Second District's decision prohibits the Property Appraiser from following the mandate set forth by the Legislature in section 193.155(8)(a) in subsequent tax years where there in no question that the statute, as amended in 2001, is in effect.

Krosschell has never disputed that this was a clerical error, or that his property includes 3,746 square feet of base area that was erroneously "lost." He additionally has never disputed that such a clerical error relating to the size of the improvement is not a mistake concerning an essential characteristic of the property. Rather he simply seeks to unfairly benefit from an error the Legislature has expressed should be corrected.

It is bad public and tax policy to allow Mr. Krosschell, and any other similarly situated homestead property owner, to be excused from their public obligation to pay taxes upon the value of their property, as calculated by the clear language of

section 193.155(8)(a), Florida Statutes (2001), as interpreted by the Third District in Kornfield, and therefore shift the costs of taxation to other citizens of Pinellas County.

CONCLUSION

Petitioners request that this Court accept jurisdiction of this case, resolve the conflict between the Districts, approve the Third District's decision in Kornfield, and disapprove the Second District's decision in Krosschell.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Initial Brief has been furnished by U.S. Mail this _____ day of April 2005, to: **Stephen Krosschell**, 2907 Cedar Trace, Tarpon Springs, FL 34688.

_____
Mark T. Aliff
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CERTIFICATE OF COMPLIANCE

I hereby certify that Petitioners' Joint Initial Brief complies with the font requirements of Florida Rules of Appellate Procedure 9.210(a)(2), in that this Brief uses Courier New 12-point font.

_____
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