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 SUPPLEMENTAL BRIEF

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

Christina M. LeBlanc
Sr. Assistant County Att'y
Fla. Bar No. 0548669
Pinellas County
Attorney's Office
315 Court Street
Clearwater, FL 33756
Tel: (727) 464-3354
Fax: (727) 464-4147

Attorney for Jim Smith,
Property Appraiser,
Pinellas County, Florida

Eric J. Taylor
Fla. Bar No. 337609
Senior Assistant Attorney General

Mark T. Aliff
Fla. Bar No. 349658
Assistant Attorney General
Office of the Attorney General
Revenue Litigation Section
PL-01 – The Capitol
Tallahassee, FL 32399-1050
Ph. 850/414-3300
Fax 850/488-5865

Counsel for Petitioner
James A. Zingale,
Executive Director, Florida
Department of Revenue

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PRELIMINARY STATEMENT

The Appellants will use the designations and references in this Supplemental Brief that they used in their prior briefs.

STATEMENT OF THE CASE

This case was argued before this Court on December 1, 2005. At oral argument the Court raised the issue of the application of Section 197.122, Florida Statutes, to this case. As this statute was not part of the trial court's final order and was not briefed or argued before the Second District Court of Appeal, the Petitioners were not able to fully answer the Court's questions. Thus, this brief is before the Court on the Court's Order of December 7, 2005 directing the parties to file supplemental briefs addressing solely the application, relationship, and impact of Section 197.122, Florida Statutes (2000) with regards to the facts of this case.

STATEMENT OF THE FACTS

The facts are set forth fully in the statement of facts included in the Initial Brief, and incorporated herein by reference.

ISSUE

WHETHER THE PROPERTY APPRAISER WAS AUTHORIZED UNDER SECTION 197.122, FLORIDA STATUTES (2000) TO CORRECT A CLERICAL ERROR MADE IN TAX YEAR 2000, THE BASE YEAR, RESULTING IN AN INCORRECT BASE YEAR JUST VALUE.

SUMMARY OF ARGUMENT

Section 197.122, Florida Statutes allows for the correction of the clerical error in this case.

ARGUMENT

SECTION 197.122, FLORIDA STATUTES, ALLOWS THE CORRECTION OF THE DATA ENTRY ERROR AND DOES NOT CONFLICT WITH ANY PROVISION OF "SAVE OUR HOMES."

The question this Court asks is to what extent does Section 197.122 apply to the clerical data entry error in the initial assessment of Respondent's property. The Petitioners assert that Section 197.122 applies in this case, that the application of the law to the data entry error allows the Property Appraiser to correct the error, and that the correction does not run afoul of the "Save Our Homes" provision of Article VII, Section 4(c), Florida Constitution.

I. SECTION 197.122, FLORIDA STATUTES; ITS PURPOSE AND APPLICATION TO THIS CASE

A. THE PURPOSE OF SECTION 197.122, FLORIDA STATUTES, IS TO ALLOW FOR THE CORRECTION OF ADMINISTRATIVE ERRORS TO PREVENT UNEQUAL TAX TREATMENT

Section 197.122(1), Florida Statutes, states in pertinent part:

> . . . [B]ut any acts of omission or commission may be corrected at any time by the officer or party responsible for them in like manner as provided by law for performing acts in the first place, and when so corrected they shall be construed as valid ab initio

> and shall in no way affect any process by law for the enforcement of the collection of any tax. . .

Section 197.122, Florida Statutes, is the Legislature's exercise of power in ad valorem tax administration to provide the property appraisers of this State the authority to make a correction of clerical errors in the valuation of property and the corresponding assessment of taxes.

In addressing corrections which lead to increases in a property's assessment, this Court has distinguished increases resulting from mistakes of judgment and mistakes of omission. In the case of *Korash v. Mills*, 263 So. 2d 579 (Fla. 1972), this Court made a clear distinction between an increase in value due to mistakes of "judgment" and the correction of a record where a portion of the property mistakenly did not appear on the record for assessment.[1]/ In short, a motel was completed before January 1, 1967, however, due to an error, the paperwork documenting the value of the motel structure was separated from the land valuation and the assessment was based solely on the raw land value. The discovery of the error was found and, in 1968, a correction reflecting the true value was issued. There was no

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[1]/ Three years earlier, in 1969, this Court issued a short decision stating that only errors of purely administrative or ministerial nature were subject to correction under the law. *Allen v. Dickinson*, 223 So. 2d 310 (Fla. 1969).

question that the error was clerical.

This Court reversed the opinion of the local chancellor that the property appraiser could not go back and correct the error. This Court began by noting that the decisions relied upon by the chancellor were cases where an actual assessment was increased due to a change in judgment by the property appraiser, stating:

> It will be seen however that in these prior cases the increase has been an attempted increase in *amount only* (after an assessment of the improvement for a total lesser *amount*) and not instances where the entire improvement was skipped and failed to be noted at all for taxation because of error or oversight as in the present case.

Korash, 263 So. 2d, at 580-81 (Emphasis in the original). In conclusion, this Court stated:

> Thus we have here an instance where the principal value of the property has indeed "escaped" taxation which is fairly within the contemplation of Fla. Stat. § 193.092, F.S.A. It would be an extremely inequitable and unjust result for a court of equity to grant to a knowing taxpayer an outright "windfall" of $25,000 which was the additional tax he admittedly escaped for the year in question.

Korash, 263 So. 2d, at 581-82.[2]

In the instant case, counsel for the Petitioners argued that the Respondent's position created inequities to other

[2]/ Although *Korash* was decided under the application of section 193.092, Florida Statutes, the reasoning of this Court in that case is equally applicable here.

taxpayers and a windfall to the Respondent. At oral argument, Justice Quince also asked a question concerning such inequities. This Court has previously noted that inequity could exist if a correction of clerical errors was not allowed. In *Korash* this Court stated:

> Justice may be "blind" but it is not stupid. Impartial fairness and equality is what the blindfold represents. We cannot condone a taxpayer's blithely asserting refined definitions of single assessments and separate billings when he so clearly knew that there was no tax bill whatever for the improvement of a $650,000 motel. The 1967 assessment and tax billed was precisely the same as in 1966 when the land was bare. Any taxpayer would realize that he has "escaped" a new substantial tax on a new building which he knew would be forthcoming.
>
> * * *
>
> Here, it is perfectly apparent to any buyer or seller that the exact tax in 1967 is that on the bare land in 1966 and that they must provide between them for the future correction of the tax which would be inevitably forthcoming, in the firm knowledge of "the certainty of death and taxes!" Here there has never been any change in the tax assessor's judgment. He made the same, proper assessment (the amount is not challenged) of the new motel in 1967 and it was simply left off the roll. Plaintiffs retained ownership of the motel until they sold it in 1970.
>
> A balanced scale of justice as the goal of our tax statutes is reflected by the corollary of § 193.092 taxing "escaped" property, and Fla. Stat. § 193.38 (1967), which provides in the event of double assessment that the tax assessor "shall collect only the tax justly due thereon." The clear objective is thus spelled out within the range of the applicable statutes to the end that a single but full, just tax be paid by each taxpayer. Petitioners are no

different.

Korash, 263 So. 2d, at 582-83 (footnote omitted). For as this Court stated:

> Our holding is consistent with the basic purpose of taxation: that all taxpayers share in proportion to their assessments, the support of their government and the protection and services afforded to their property and to themselves, and that none bears an added or unfair burden by reason of other taxpayers not paying their just share.

Korash, 263 So. 2d, at 582 (footnote omitted).

Subsequent to *Korash*, the District Courts of Appeal have followed this Court's reasoning and the distinction between mistakes in "judgments" and clerical errors. *See Robbins v. First National Bank of South Miami*, 651 So. 2d 184, 185 (Fla. 3rd DCA 1995)[computer error]; *McNeil Barcelona Associates, Ltd v. Daniel*, 486 So. 2d 628, 629 (Fla. 2nd DCA 1986); and, *Straughn v. Thompson*, 354 So. 2d 948 (Fla. 1st DCA 1978) [computer error].

B. SECTION 197.122, FLORIDA STATUTES, PERMITS THE CORRECTION OF THE ADMINISTRATIVE ERROR IN THIS CASE

The Property Appraiser's error in this case is administrative/clerical. That type of error is clearly within the line of cases distinguishing mistakes in judgment from clerical errors. Therefore, this Court may apply the *Korash* reasoning to this case and reverse the courts below which

disallowed the correction.

The undisputed facts in this case reveal that there was no error in judgment as to the value of the property by the Property Appraiser; the value of Mr. Kroschell's property was not increased because of some mistake as to the value of the entire appraised property. Instead, the data entry error omitting 3,746 square feet of base living area was an administrative ministerial error; no judgment was involved.

In this case, the original erroneous assessment excluded the value of the omitted base living area square footage. Further, the clerical error omitting the base area square footage from the base year assessment is within the contemplation of section 197.122, Florida Statutes (2000), particularly its authorization to property appraisers to correct acts of omission or commission.

As this Court noted in *Korash*, it must not be "blind" to the facts of this case and the permanent windfall the Respondent would receive if correction of the administrative error is not permitted. Therefore, application of Section 197.122 to the facts of this case results in a correction of the clerical error and reflects the true just value of the Respondent's property.

This Court should reverse the Second District Court, and remand the case with the order that the Property Appraiser

correct the clerical error in the base year.

C. SECTION 197.122, FLORIDA STATUTES (2000), NOT SECTION 193.155, FLORIDA STATUTES (2000), APPLIES TO THE CORRECTION OF THE DATA ENTRY ERROR WHICH RESULTED IN AN INCORRECT BASE YEAR VALUE ON RESPONDENT'S PROPERTY

Because of the timing of the clerical error in this case, there is a question as to which statute, Section 197.122, Florida Statutes (2000), or Section 193.155, Florida Statutes (2000)[3], controls the correction of the clerical error that occurred in March 2000.

This Court has stated that ". . . it is well-settled that where two statutory provisions are in conflict, the specific statute controls the general statute." *Palm Beach Canvassing Board v. Harris*, 772 So. 2d 1220, 1234, *reversed sub nom.*, *Bush v. Gore*, 531 U.S. 98, *on remand*, 772 So. 2d 1273 (Fla. 2000). Conversely, if the two statutes do not conflict, then the specific statute does not control and "related statutory provisions must be read as a cohesive whole." *Harris*, 722 So. 2d, at 1235. This is because a statutory provision is not to be "construed in such a way that it renders meaningless or absurd

[3]/ Petitioners have addressed, in the initial and reply briefs, their arguments related to the application of section 193.155(8), Fla. Stat. (as amended in July 2001) to the instant case. The following argument is presented in the alternative to those set forth in the prior briefs, in the event that it is

any other statutory provision." *Harris*, 722 So. 2d, at 1234. Therefore, we must see if, in 2000, Section 193.155 and 197.122 were in conflict, and if not, how they could be construed in harmony with each other.

The Legislature has made clear in Section 197.122(1), Florida Statutes (2000), that "any acts of omission or commission may be corrected at any time by the officer or party responsible for them . . ." This statute was in effect prior to 1994, before the passage of Save Our Homes (hereinafter "SOH"). Section 197.122 is the general correction statute governing the taxation process. Such corrections are further limited within such section only to certain instances of material mistakes of fact when a Property Appraiser would reduce an assessment. *See* § 197.122(3), Fla. Stat. (2000).

Although the Legislature enacted Section 193.155 to implement the SOH amendment (Article VII, Section 4(c), Florida Constitution) there is no indication that the enactment of Section 193.155(8) in 1994, was intended to render Section 197.122 meaningless or superfluous. A more appropriate interpretation is that these two statutory provisions, which are both part of the Taxation and Finance title of the Florida

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determined that section 193.155(8), Fla. Stat. (as amended in July 2001) does not apply retroactively.

Statutes, should be read in pari materia such that they harmonize with one another and the SOH amendment. *See Florida Dep't of State, Div. of Elections v. Martin*, 30 Fla. Law Weekly S780, S781 (Fla. November 10, 2005). *See also Jones v. ETS of New Orleans*, 793 So. 2d 912, 914-915 (Fla. 2001)("A basic tenet of statutory construction is that a 'statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all parts.'")

As enacted in 1994, Section 193.155(8), read, in pertinent part:

> 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 assessment must be recalculated for every such year.

Section 197.122 insures the initial setting of just value as required in Article VII, Section 4. Under the holding of *Smith v. Welton*, 729 So. 2d 371, 373 (Fla. 1999), the Court found that Section 193.155(8), Florida Statutes (2000), was inapplicable on its face to the base year assessment set forth in Article VII, Section 4, Florida Constitution. As such, the implementing statute, Section 193.155(8), Florida Statutes (2000), for the "capped" or assessed value component of the SOH

amendment, applied after just value was set, and did not conflict with Section 197.122. Both statutes could be applied to the same set of facts without doing injustice to one another.

Further, the application of Section 197.122 to the clerical error in the instant case does not conflict with this Court's holding in *Smith v. Welton*. First, on its face section 197.122, Florida Statutes, can apply to the base year because of corrections errors of omission or commission may be made at any time. Second, as the Court recognized at argument in the case at bar, *Smith v. Welton* dealt with a mistake in value of the property due to an error in judgment - not a clerical data entry error. Therefore, in *Smith v. Welton*, Section 197.122 was not an option, not because Section 193.155 made it inapplicable to capped properties, but because the error was not one of omission or commission, but a mistake in judgment.

In the instant case, the data entry error is clearly within the parameters of Section 197.122(1), because it was an omission of the 3746 square feet of base area of the home from the property value roll.[4]/ The intent of the voters in enacting the SOH amendment was not to remove the initial requirement to set the assessment at just value, but to limit increases in assessed

[4]/ *See Straughn v. Thompson*, 354 So. 2d 948 (Fla. 1st DCA

value once just value was set in the base year. Application of Section 197.122(1) to correct the clerical error in the base year assessment ensures the threshold component of Article VII, Section 4 - just value, is satisfied.

In sum, Section 197.122, Florida Statutes (2000) and Section 193.155, Florida Statutes (2000), did not address the same issues in the year 2000, the time of the error here.[5]/ Each statute could be applied to the facts of this case, Section 197.122 to correct a clerical error in "just" value and Section 193.155(8)(a) to correct an error in the "annual" assessment.

II. A CORRECTION OF A CLERICAL ERROR IN THE BASE YEAR ASSESSMENT UNDER SECTION 197.122, FLORIDA STATUTES, DOES NOT VIOLATE ARTICLE VII, SECTION 4(c) OF THE FLORIDA CONSTITUTION, "SAVE OUR HOMES" PROVISION.

The SOH amendment to Article VII, Section 4(c) does not affect the validity or operation of Section 197.122. "Article VII, section 4 of the Florida Constitution requires a 'just valuation of all property for ad valorem taxation,' . . ." *Dep't of Revenue v. The City of Gainesville*, 30 Fla. Law Weekly S829, S830 (Fla. December 8, 2005).

1978) [computer error omitting a "0" from the assessed value].

[5]/ Petitioners acknowledge that it appears clear that after July 1, 2001 (the effective date of the statutory amendment), clerical errors in "just" value in homestead property that occurred after July 1, 2001 would be controlled by Section 193.155(8), Florida Statutes (2002).

> Under Article VII, Section 4's mandate for just valuation, the just valuation of all property, except for the different classes of property actually listed in section 4, must be measured under uniform objective standards. See *Valencia Ctr., Inc. v. Bystrom, 543 So. 2d 214, 216 (Fla. 1989)*; *Interlachen Lakes Estates, Inc. v. Snyder, 304 So. 2d 433, 434-35 (Fla. 1973)*.

Florida Dep't of Revenue v. Howard, 30 Fla. L. Weekly S498, S498 (Fla. June 30, 2005).[6]/

In analyzing the validity of a statute, this Court has long held

> we are obligated to accord legislative acts a presumption of constitutionality and to construe challenged legislation to effect a constitutional outcome whenever possible. See *Eastern Air Lines, Inc. v. Dep't of Revenue, 455 So. 2d 311, 314 (Fla. 1984)*; *Chatlos v. Overstreet, 124 So. 2d 1, 2 (Fla. 1960)*.

Florida Dep't. of Revenue v. Howard, 30 Fla. L. Weekly, at S498. It is beyond question that every law is presumed valid. *North Florida Women's Health and Counseling Serv. Inc. v. State*, 866 So. 2d 612, 625-626 (Fla. 2003); *Chicago Title Ins. Co. v. Butler*, 770 So. 2d 1210, 1214 (Fla. 2000).

A cardinal rule of statutory construction is that a statute

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[6]/ This requirement of uniformity has led this Court to hold "that while the Legislature could establish just valuation criteria to be applied in determining the just value of property for tax purposes, it could not arbitrarily classify some property for favored tax treatment. *See Bystrom, 543 So. 2d at 216*; *Snyder, 304 So. 2d at 434-35*." *Howard*, 30 Fla. L. Weekly, at S498.

must be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts; statutory interpretations that render statutory provisions superfluous or meaningless are, and should be, disfavored. *Hawkins v. Ford Motor Company*, 748 So. 2d 993, 997 (Fla. 1999).[7]/ Furthermore, it is well settled that courts will not adjudicate constitutional questions where there are other grounds on which a cause may be disposed of. *Sullivan v. Sapp*, 866 So. 2d 28, 34 (Fla. 2004). It is equally well settled that courts should endeavor to implement the legislative intent of a statute and avoid any constitutional issues raised. *State v. Mozo*, 655 So. 2d 1115 (Fla. 1995).

The correction of the type of error that occurred in this case, a clerical error, does not run afoul of "Save Our Homes" as it does not undercut the intent and purpose of Article VII, Section 4(c), Florida Constitution. Further, it was not the intent of the SOH amendment to change prior ad valorem tax procedures, except to limit increases in the valuation of homestead property on an annual basis once its just value was

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[7]/ The Legislature is presumed not to pass meaningless legislation. *State v. Goode*, 830 So. 2d 817, 824 (Fla. 2002). The courts are not to presume that a given statute employs "useless language." *Johnson v. Feder*, 485 So. 2d 409, 411 (Fla. 1986).

established.

Section 197.122, Florida Statutes, is affected by Article VII, Section 4(c), Florida Constitution, only if the purpose of the SOH amendment and Section 197.122 conflict. Article VII, Section 4(c) states in pertinent part:

> (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.
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> *** * ***
>
> (3) After any change of ownership, as provided by general law, homestead property **shall be assessed at just value** as of January 1 of the following year. Thereafter, the homestead shall be assessed as provided herein. (Emphasis added)

This Court has held that the purpose of SOH is to:

> . . . [limit] the annual change in property tax assessments on homestead exempt property to three percent of the previous assessment or the change in the Consumer Price Index, whichever is less.

Zingale v. Powell, 885 So. 2d 277, 279 (Fla. 2004).[8]/ Quoting from the First District's decision in *Smith v. Welton*, 710 So. 2d 135, 137 (Fla. 1st DCA 1998) this Court noted:

> The purpose of the amendment is to encourage the preservation of homestead property in the face of ever increasing opportunities for real estate development,

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[8]/ *See also Smith v. Welton*, 729 So. 2d 371, 372 (Fla. 1999).

> and rising property values and assessments. The amendment supports the public policy of this state favoring preservation of homesteads. Similar policy considerations are the basis for the constitutional provisions relating to homestead tax exemption (Article VII, Section 6, Florida Constitution), exemption from forced sale (Article X, Section 4(a), Florida Constitution), and the inheritance and alienation of homestead (Article X, Section 4(c), Florida Constitution).

Zingale, 885 So. 2d, at 281. *See also Smith v. Welton*, 729 So. 2d, at 372-73.

Of importance to Save Our Homes, and this case, is the setting of the "just" valuation for the homestead property in the year the property owner qualified for homestead exemption. *Zingale*, 885 So. 2d, at 884.[9]/ Article VII, Section 4, begins with the words:

> By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation . . .

Thus, the first requirement of the Article VII, Section 4 is for the Legislature to create a mandatory state-wide, uniform procedure for the "just" valuation of real property for ad valorem tax purposes. *See also Howard*, 30 Fla. Law Weekly, at

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[9]/ In *Horne v. Markham, 288 So. 2d 196, 199 (Fla. 1973)*, this Court "held that article *VII, section 6* does not create an absolute right to a homestead exemption but instead requires that taxpayers establish the right thereto by following the procedures required by law." *See also Zingale*, 885 So. 2d, at 282.

S498. Without the "just" valuation of property, the entire constitutional and statutory scheme makes no sense and fails. This Court's decision in *Howard* sets forth the need for and reasoning behind "just" valuation. *Howard*, 30 Fla. Law Weekly, at S498-S499.

The assumption running throughout all of this Court's decisions on "just" valuation is the assumption that a meaningful "just" valuation on the property has been made in the first place. If an assessment is based upon incorrect or erroneous information, the assessment is not "just."

As an amendment to Article VII, Section 4(c), SOH changed the prior application of Article VII, Section 4 and the legislation enacted to implement Article VII, Section 4. But the SOH amendment did not repeal in any manner the mandate to first have "just" valuation of property. All SOH did was to limit the annual increase in the valuation of the property once just value was established.[10]/ Therefore, there is no conflict between the requirements to first set "just" value with the later SOH assessment limitation on exempted homestead property.

Section 197.122's grant of authority to property appraisers

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[10]/ Article VII, Section 4(c) had the effect of limiting a rise in the annual assessment either to 3% of the prior years assessment or a percentage change in the Consumer Price Index

to correct any acts of omission or commission, at any time, furthers Article VII, Section 4's mandate of "just" value of **all** property. Section 197.122 insures a "just" valuation can be made after certain administrative, ministerial errors occur.

Proper application of the Save Our Homes assessment limitation is predicated upon the "just" valuation of the homestead property from which its limitation can be applied. The Save Our Homes provision is not offended or violated by application of the preexisting correction statute of Section 197.122, Florida Statutes (2000) to correct clerical errors so the properties benefiting from the Save Our Homes cap are valued at "just" value prior to calculation in later years of a limited assessed value.

(CPI). *Smith v. Welton*, 729 So. 2d, at 372.

CONCLUSION

Therefore, for the above reasons, Section 197.122, Florida Statutes, authorizes correction by the Property Appraiser of the erroneous base year value to just value. The error here was an administrative data entry error. No question of judgment was present in the increased valuation of the Respondent's property, rather the value attributable to the omitted base area square footage was added to the tax bill. Therefore, the correction of the error was legally proper.

Article VII, Section 4(c), Florida Constitution, has a different intent and purpose from that of Section 197.122. The enactment of Article VII, Section 4(c) does not effect the use of Section 197.122 in the correction of administrative errors in the calculation of base year "just" valuation. Further, as section 193.155(8)(a), Florida Statutes in 2000, did not apply to the base year just valuation, 197.122 would control this error.

Based on the foregoing, this Court should find that the Property Appraiser was proper in correcting such an administrative error and reverse the lower courts on their disallowance of the correction of the base year just value.

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

_____
Mark T. Aliff
Fla. Bar No. 349658
Assistant Attorney General

Eric J. Taylor
Fla. Bar No. 337609
Senior Assistant Attorney General

Office of the Attorney General
Revenue Litigation Section
PL-01 Capitol Bldg.
Tallahassee, FL 32399-1050
Ph. 850/414-3300
FAX 850/488-5865

Counsel for Petitioner
James A. Zingale,
Executive Director, Florida
Department of Revenue

_____
Christina M. LeBlanc
Senior Assistant County Attorney
FBN: 0548669
315 Court Street, Sixth Floor
Clearwater, FL 33756
(727) 464-3354 telephone
(727) 464-4147 facsimile
Counsel for Petitioner
Jim Smith, Property Appraiser
of Pinellas County

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 January, 2006, to: **Stephen Krosschell**, 2907 Cedar Trace, Tarpon Springs, FL 34688.

_____
Mark T. Aliff
Assistant Attorney General

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.

_____
Mark T. Aliff
Assistant Attorney General