SUPREME COURT OF FLORIDA

Case No. **SC19-701**

BILL FURST, as Property Appraiser of Sarasota County, Florida; and **LEON M. BIEGALSKI**, as Executive Director of the Florida Department of Revenue,

Petitioners,

vs.

SUSAN K. DEFRANCES,

Respondent.
_____/

Lower Tribunal Cases:
DCA: 2D17-3973
LT: 58 2015-CA-6511

BRIEF OF AMICUS CURIAE THE PROPERTY APPRAISERS' ASSOCIATION OF FLORIDA, INC. IN SUPPORT OF PETITIONERS

Loren E. Levy
Fla. Bar No. 0814441
Stuart W. Smith
Fla. Bar No. 1011115
The Levy Law Firm
1828 Riggins Lane
Tallahassee, Florida 32308
Telephone: 850/219-0220
Email: *service.levylaw@comcast.net*
geri.smith@comcast.net

Counsel for Amicus Curiae, The Property Appraisers' Association of Florida, Inc.

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PRELIMINARY STATEMENT

Petitioner, Bill Furst, Sarasota County Property Appraiser, will be referred to herein as the "property appraiser." Petitioner, Jim Zingale, successor to Leon M. Biegalski, Executive Director of the Florida Department of Revenue, will be referred to herein as the "department." Respondent, Susan DeFrances, will be referred to herein as "DeFrances." Amicus Curiae, The Property Appraisers' Association of Florida, Inc., will be referred to herein as "PAAF." References to the record on appeal will be delineated as (R-volume #-page#). References to Appellant, Bill Furst's, Initial Brief will be delineated as (IB-page #).

IDENTITY AND INTEREST OF AMICUS CURIAE

The Property Appraisers' Association of Florida, Inc. (PAAF) is a statewide professional association consisting of 59 duly elected property appraisers in various counties throughout the State of Florida.[1] This brief will address whether a property appraiser may correct an error in the prior year's assessment resulting from a conversion of the existing computer-assisted mass appraisal (CAMA) system to a new CAMA system. PAAF's position is that the correction of an administrative, clerical, or mathematical error in the assessment of property for prior years is statutorily authorized under sections 193.092 and 197.122, Florida Statutes (2019).

SUMMARY OF THE ARGUMENT

Within the constitutional and statutory framework of the Florida property tax system, the question arises as to what types of changes, if any, may be made to the assessment of real and tangible personal property for a prior year or years once that assessment has been finalized. Generally speaking, the case law that has evolved prohibits any adjustment to a prior year's assessment based upon a

[1] PAAF's 2018-19 membership consists of property appraisers from the following 59 counties: Baker, Bay, Bradford, Brevard, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, Desoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lee, Leon, Levy, Liberty, Madison, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Santa Rosa, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, and Washington.

change in the property appraiser's judgment regarding a valuation or exemption. Changes resulting from administrative, clerical, or mathematical errors, on the other hand, are permitted to be made.

Importantly, changes to previous assessments can either increase or decrease that assessment and resulting taxes owed. The types of errors in prior tax years that may be corrected should be the same regardless of whether the error results in additional taxes owed or a refund of taxes previously paid.

In the instant case, an error in assessment resulting from the conversion of the property appraiser's CAMA system to a different software vendor's CAMA system is the exact type of data entry error that must be corrected. No prohibited change in appraisal judgment has occurred.

ARGUMENT

I. ALL REAL AND TANGIBLE PERSONAL PORPERTY IS REQUIRED TO BE ANNUALLY ASSESSED AT JUST VALUE, WHICH IS SYNONYMOUS WITH FAIR MARKET VALUE.

The ad valorem tax is based upon the assessed value of real and tangible personal property. *See* §§ 192.001(1), 192.042, Fla. Stat. (2019). The assessed value of property means "an annual determination of the *just or fair market value* of an item or property," or the value of the property as limited pursuant to Article VII, Florida Constitution (assessment caps), or the classified use value or fractional value pursuant to Article VII. § 192.001(2), Fla. Stat. (2019) (emphasis added). Property

appraisers are required by the Florida Constitution "to assess all property at a 100% valuation level." *Dist. Sch. Bd. of Lee Cty. v. Askew*, 278 So.2d 272, 275 (Fla. 1973); *see Dep't of Revenue v. Markham*, 426 So.2d 555, 557 n.2 (Fla. 1982) (observing that fair market value and just value had been declared legally synonymous by the Court in 1934, and the principle had been followed ever since that time); *Burns v. Butscher*, 187 So.2d 594, 594 (Fla. 1966) (observing that valuations at 100 percent of fair market value actually had been required since 1869); *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965). Property appraisers must assess property at "just valuation, that is, one hundred percent of fair market value." *Dep't of Revenue v. Johnston*, 442 So.2d 950, 950 (Fla. 1983). "By the same token a systematic assessment at more than 100 would not accomplish 'just' valuation." *Walter*, 176 So.2d at 85.

It is a fundamental principle of ad valorem tax law that the terms "just value" and "fair market value" are legally synonymous. *E.g. Sunset Harbour Condo. Ass'n v. Robbins*, 914 So.2d 925, 930 (Fla. 2005) (The "phrase 'just valuation' has been construed by this Court to mean 'fair market value.'"); *Mazourek v. Wal-Mart Stores, Inc.*, 831 So.2d 85, 88 (Fla. 2002) ("The phrase 'just valuation' has been construed to mean 'fair market value.'"); *Schultz v. TM Fla.-Ohio Realty, Ltd.*, 577 So.2d 573 (Fla. 1991) (just valuation is synonymous with fair market value); *Valencia Center, Inc. v. Bystrom*, 543 So.2d 214, 216 (Fla. 1989) ("This Court has found that the just valuation at which property must be assessed under the

constitution and section 193.011 is synonymous with fair market value, i.e., the amount a purchaser, willing but not obliged to buy, would pay a seller who is willing but not obliged to sell."); *ITT Cmty. Dev. Corp. v. Seay*, 347 So.2d 1024, 1026 (Fla. 1977) ("This Court has stated that 'just valuation' is legally synonymous with fair market value."); *Deltona Corp. v. Bailey*, 336 So.2d 1163, 1167 (Fla. 1976) ("It is fundamental that property in Florida is legally required to be assessed at 100 percent of its actual fair market value and a court may not reduce a taxpayer's assessment below 100 percent on a mere showing that parcels of some other taxpayers are assessed at a lesser amount."); *Southern Bell Tel. & Tel. Co. v. Dade Cty.*, 275 So.2d 4, 8 (Fla. 1973) (just value is legally synonymous with fair market value); *Powell v. Kelly*, 223 So.2d 305, 307 (Fla. 1969) (same); *Schleman v. Connecticut Gen. Life Ins. Co.*, 9 So.2d 197 (Fla. 1942) (full cash value is same as just valuation).

Thus, this Court has consistently concluded that the just valuation required under the constitution and section 193.011 is legally synonymous with fair market value. Since 1934, the Court has restated this bedrock principle of ad valorem tax law on at least 15 separate occasions. In the instant case, the essential question to be decided is whether a CAMA software conversion error resulting in an assessment below just value can be corrected in the year in which the error occurs.

II. THE FLORIDA PROPERTY TAX SYSTEM INVOLVES AN ANNUAL ASSESSMENT PROCESS.

The Florida ad valorem tax system contemplates an annual determination of the valuation of property and entitlement to exemptions. *See* §§ 192.042, 196.011, Fla. Stat. (2019). It is well settled that a property appraiser's assessed value must stand or fall on its own validity, unconnected with the assessment against that property during any prior or subsequent year. *See Simpson v. Merrill*, 234 So.2d 350 (Fla. 1970); *Container Corp. of Am. v. Long*, 274 So.2d 571 (Fla. 1st DCA 1973); *Keith Invs., Inc. v. James*, 220 So.2d 695 (Fla. 4th DCA 1969). Accordingly, evidence of the prior years' assessments is irrelevant when contesting the value for a subsequent year. *Long*, 274 So.2d at 573; *Hecht v. Dade Cty.*, 234 So.2d 709 (Fla. 3d DCA 1970). Even when there may be a showing that no change in circumstances occurred since the last year's assessment, evidence of the prior year's assessment is irrelevant and inadmissible. *Simpson*, 234 So.2d at 352; *Homer v. Hialeah Race Course, Inc.*, 249 So.2d 491 (Fla. 3d DCA 1971); *Long*, 274 So.2d at 573. "The general maxim of 'each year stands on its own' is foundational to the understanding of tax law, and has been extended to the context of tax exemptions and not merely valuations." *Crapo v. Academy for Five Element Acupuncture, Inc.*, 2019 WL 2909345 (Fla. 1st DCA Jul. 8, 2019). The measuring point for this annual determination is January 1 of each year. *See* § 192.042, Fla.

Stat. (2019) (all property assessed at just value on January 1); § 196.011, Fla. Stat. (2019) (annual application for exemption required by owners of property entitled to exemption as a result of ownership and use as of January 1).

Every year, property appraisers prepare real property and tangible personal property assessment rolls pursuant to section 193.114, Florida Statutes (2019). The assessment rolls, among other items of information, reflect the just, assessed, and taxable value of the property, land and improvement characteristics, the name and address of the owner, and any applicable exemptions. *Id.* Because property appraisers are charged with determining the just value of thousands of properties in each county, they utilize a technique known as mass appraisal, which is defined as the process of valuing a group of properties as of a given date, using common data, standardized methods, and statistical testing. Mass appraisal emphasizes statistical model development and calibration with the goal of assessing similar groups of properties in a similar manner. *See The Fla. Real Property Appraisal Guidelines* at §§ 4.0-8.0 (Nov. 2002).

To perform their annual assessment duties, all 67 Florida property appraisers utilize Computer-Assisted Mass Appraisal (CAMA) systems to store, retrieve, analyze, and report mass appraisal data. *Id.* at § 4.3. There are different software companies developing CAMA systems and licensing the use of their software to property appraisers. All 67 property appraisers are not required to use

the same software vendor, but the respective CAMA systems must be capable of storing and maintaining the data necessary to produce the reports and files required by the Department of Revenue (department). *Id.*; *see generally* § 193.114, Fla. Stat. (2019); Fla. Admin. Code R. 12D-8.007-8.013 (2019).

Integral to the proper functioning of the property appraisers' CAMA systems is the data inputs for those systems. All data should be as complete, accurate, and consistent as possible, and assuring data completeness and accuracy is an ongoing task in the mass appraisal process. *The Fla. Real Property Appraisal Guidelines* at § 6.1. Some of these data inputs primarily involve questions of appraisal judgment. For example, is the quality of construction for a house excellent, above average, or good and is the condition of the house – for its age – good, average, or poor. Other data inputs are more factual in nature. For example, the size of land, the year built of an improvement, and the square footage of and/or number of stories of an improvement.

The assessment rolls are prepared and submitted to the department by July 1 of each year. § 193.1142(1)(a), Fla. Stat. (2019). The department is responsible for reviewing and ultimately approving or disapproving the assessment rolls. § 193.1142, Fla. Stat. (2019). The content of the department's review of assessment rolls is set forth in section 195.096, Florida Statutes (2019). Under section 195.096, the department conducts an "in-depth" review of the assessment

rolls no less frequently than every two years. § 195.096(2), Fla. Stat. (2019). As part of the in-depth review, the department conducts assessment ratio studies within the various classes of property, i.e., vacant, residential, commercial. § 195.096(3)(a), Fla. Stat. (2019). In conducting the ratio studies, the department is required to "primarily rely upon an assessment-to-sales-ratio study," which is where the property appraiser's assessment of a property is compared with its recorded selling price. § 195.096(2)(c), Fla. Stat. (2019). For those counties not subject to the in-depth review, the department projects value-weighted mean levels of assessment for each county. § 195.096(3)(b), Fla. Stat. (2019).

Once the department approves the assessment rolls, the property appraiser prepares and mails to all property owners the Notice of Proposed Property Taxes and Non-ad Valorem Assessments. § 200.069, Fla. Stat. (2019). Typically, the notices are mailed in August. The notice advises property owners of the assessment their property for that year, the millage rates proposed by the taxing authorities, and the dates of the budget hearings for those authorities. *See* §§ 200.069(2), (4), (6), Fla. Stat. (2019). The notice also advises property owners that they may file a petition with the Value Adjustment Board (VAB) to contest the value if it is perceived to be inaccurate or not reflective of "fair market value." § 200.069(7), Fla. Stat. (2019).

The annual assessment process culminates with the property appraiser's certification and extension of the assessment rolls, and the tax collector's mailing of a tax bill in November. *See* § 193.122, Fla. Stat. (2019) (certification and extension of tax rolls); § 197.322, Fla. Stat. (2019) (mailing of tax bills required within 20 working days after receipt of certified assessment rolls). All ad valorem taxes are due and payable on November 1 of each year or as soon thereafter as the certified tax roll is received by the tax collector. § 197.333, Fla. Stat. (2019). Although payments of taxes are due in November, the lien for taxes exists as of "January 1 of the year the taxes were levied until discharged by payment or until barred under chapter 95." § 197.122(1), Fla. Stat. (2019).

The tax roll certification date is the point in time when the property appraiser's annual assessment responsibilities are concluded. Every tax system must have a beginning and an end. In Florida, January 1 is the beginning date and the tax roll certification date is the end. As stated in *Okeelanta Sugar Refinery, Inc. v. Maxwell*, 183 So.2d 567, 568 (Fla. 4th DCA 1966), *quoting State ex rel. Gillespie v. Thursby*, 139 So. 372, 376 (Fla. 1932):

> '* * * There must be a time for the cessation of the relation of the levying and assessing officers to the tax of each year, and there can be no better time than when the possession of the tax rolls pass to other parties. With the levy made, assessments completed, certificate of the board of county commissioners affixed to the tax rolls, the warrant to the tax collector issued, and the tax rolls delivered to the proper officials under the law, who are

> without authority to surrender them, it would not be possible for the assessment of the lands * * * to be changed * * *.'

The requirement that all real and tangible personal property must be annually assessed at just or fair market value is somewhat modified by the assessment cap provisions that now impact all real property. Since 1994, all property receiving the homestead tax exemption is likewise entitled to the Save Our Homes cap on annual assessment increases. § 193.155, Fla. Stat. (2019); Art. VII, § 4(d), Fla. Const. The Save Our Homes cap applies to all millage levies and prohibits the annual assessment of homestead property from exceeding three percent or the percentage change in the Consumer Price Index, whichever is less. § 193.155(1), Fla. Stat. (2019). Over time, the Save Our Homes cap may result in the "assessed value" of the homestead property being less than the "just value." The difference between the assessed and just values is referred to as the "assessment differential." Since 2008, persons owning homestead property may transfer or "port" their assessment differential to a new homestead property; provided that they establish a new homestead within two years of abandoning their prior homestead. § 193.155(8), Fla. Stat. (2019); Art. VII, § 4(d)(8), Fla. Const. The Save Our Homes cap is removed when the owner abandons the homestead property, or a change of ownership occurs. *See* § 193.155(3), Fla. Stat. (2019).

For nonhomestead real property, there is a ten percent cap on annual assessment increases. *See* §§ 193.1554, 193.1555, Fla. Stat. (2019); Art. VII, §§ 4(g), (h), Fla. Const. The ten percent assessment cap applies to all millage levies except school district levies. *Id.* There are two categories of nonhomestead real property: (1) nonhomestead residential property, which means residential real property that contains nine or fewer dwelling units and vacant land zoned and platted for residential use, and (2) and nonresidential real property, which basically means all other types of real property besides those receiving homestead exemption, some type of classified use status (such as agricultural lands), and nonhomestead residential property. *Id.* The ten percent assessment cap is removed after an ownership change and certain types of changes or improvements to the property. *See* §§ 193.1554(5), (6), 193.1555(5), (6), Fla. Stat. (2019). Over time, the ten percent assessment cap also may result in the "assessed value" being less than "just value." Unlike the Save Our Homes cap, however, the owner of property that has accrued an assessment differential due to application of the ten percent cap is not allowed to transfer or port that differential to another property.

III. ONCE THE TAX ROLL HAS BEEN CERTIFIED FOR COLLECTION, CHANGES IN APPRAISAL JUDGMENT ARE PRECLUDED BUT ADMINISTRATIVE, CLERICAL, AND MATHEMATICAL ERRORS MAY BE CORRECTED.

Within the constitutional and statutory framework of the Florida property tax system, the question arises as to what types of changes, if any, may be made to the assessment of real and tangible personal property for a prior year or years once that assessment has been finalized, i.e., certified for collection under section 193.122, Florida Statutes (2019). Generally speaking, the case law that has evolved prohibits any adjustment to a prior year's assessment based upon a change in the property appraiser's judgment regarding a valuation or exemption. Changes resulting from administrative, clerical, or mathematical errors, on the other hand, are permitted to be made. *Compare Krosschell*, 937 So.2d at 660-61 (correction of mathematical, administrative, or clerical error was authorized under section 197.122); *Korash v. Mills*, 263 So.2d 579 (Fla. 1972) (clerical error resulting from separation of property record card for the motel improvement from the card for the land valuation can be corrected to reinstate improvement value); *Nikolits v. Haney*, 221 So.3d 725 (Fla. 4th DCA 2017) (change to prior year's assessment based upon judicial decision establishing the assessment for that year and revision of subsequent year's assessments constituted a pure mathematical correction); *Robbins v. First Nat'l. Bank of S. Miami*, 651 So.2d 184 (Fla. 3d DCA 1995) (key punch operator's

error in entering $260,000 as assessment instead of $775,000 could be corrected); *McNeil Barcelona Assocs., Ltd. v. Daniel*, 486 So.2d 628 (Fla. 2d DCA 1986) (multiplication of square footage by improper factor to obtain assessment value was correctable); *Straughn v. Thompson*, 354 So.2d 948 (Fla. 1st DCA 1978) (computer error that omitted a zero in property owner's tax bill was correctable); *with Underhill v. Edwards*, 400 So.2d 129 (Fla. 5th DCA 1981) (new property appraiser may not revisit predecessor's judgment decision to allow exemption); *Markham v. Friedland*, 245 So.2d 645 (Fla. 4th DCA 1971) (new property appraiser may not revisit predecessor's judgment decision that building was not substantially complete and, therefore, not subject to taxation).

Importantly, changes to previous assessments can either increase or decrease that assessment and resulting taxes owed. *See e.g.* § 193.092, Fla. Stat. (2019) (assessments of property for back taxes); § 193.155(9), Fla. Stat. (2019) (erroneous assessments of homestead property); § 193.1554(9), Fla. Stat. (2019) (erroneous assessments of nonhomestead residential property); § 193.1555(9), Fla. Stat. (2019) (erroneous assessments of nonresidential real property); § 197.122(1), Fla. Stat. (2019) (act or omission or commission may be corrected at any time); § 197.182, Fla. Stat. (2019) (refunds of taxes paid). The types of errors in prior tax years that may be corrected should be the same regardless of whether the error results in additional taxes owed or a refund of taxes previously paid.

The department has promulgated a rule that provides guidance as to the types of errors that are subject to correction in prior years as opposed to those that are disallowed. Fla. Admin. Code R. 12D-8.021 (2019). The rule provides in pertinent part that:

> (a) The following errors shall be subject to correction:
> 1. The failure to allow an exemption for which an application has been filed and timely granted pursuant to the Florida Statutes.
> 2. Exemptions granted in error.
> 3. Typographical errors or printing errors in the legal description, name and address of the owner of record.
> 4. Error in extending the amount of taxes due.
> 5. Taxes omitted from the tax roll in error.
> 6. Mathematical errors.
> 7. Errors in classification of property.
> 8. Clerical errors.
> 9. Changes in value due to clerical or administrative type errors.
> 10. Erroneous or incomplete personal property assessments.
> 11. Taxes paid in error.
> 12. Any error of omission or commission which results in an overpayment of taxes, including clerical error.
> 13. Tax certificates that have been corrected when the correction requires that the tax certificate be reduced in value due to some error of the property appraiser, tax collector, their deputies or other county officials.
> 14. Void tax certificates.
> 15. Void tax deeds.
> 16. Void or redeemed tax deed applications.
> 17. Incorrect computation or measurement of acreage or square feet resulting in payment where no tax is due or underpayment.
> 18. Assessed nonexistent property.
> 19. Double assessment or payment.
> 20. Government owned exempt or immune property.

21. Government obtained property after January 1, for which proration is entitled under subsections 196.295(1) and (2), Florida Statutes, and partial refund due.
22. Erroneous listing of ownership of property, including common elements.
23. Destruction or damage of residential property caused by tornado, for which application for abatement of ad valorem taxes levied for the 1998 tax year is timely filed as provided in Chapter 98-185, Laws of Florida.
24. Material mistake of fact as described in Section 197.122, Florida Statutes, which is discovered within one (1) year of the approval of the tax rolls under Section 193.1142, Florida Statutes. The one (1) year period shall expire herein, regardless of the day of the week on which the end of the period falls. A refund resulting from a correction due to a material mistake of fact corrected within the one-year period may be sent to the Department for approval.
Alternatively, the property appraiser has the option to issue a refund order directly to the tax collector. The option chosen must be exercised by plainly so indicating in the space provided on Form DR-409.
25. Errors in assessment of homestead property corrected pursuant to Section 193.155(8), Florida Statutes.
26. Granting a religious exemption where the applicant has applied for, and is entitled to, the exemption but did not timely file the application and, due to a misidentification of property ownership on the tax roll, the property appraiser and tax collector had not notified the applicant of the tax obligation. This subparagraph shall apply to tax years 1992 and later.
(b) The correction of errors shall not be limited to the preceding examples, but shall apply to any errors of omission or commission that may be subsequently found.

* * * *

(d) The following is a list of circumstances which involve changes in the judgment of the property appraiser and which, therefore, shall not be subject to correction or

> revision, except for corrections made within the one-year period described in subparagraph (2)(a)24. of this rule section. The term "judgment" as used in this rule section, shall mean the opinion of value, arrived at by the property appraiser based on the presumed consideration of the factors in Section 193.011, Florida Statutes, or the conclusion arrived at with regard to exemptions and determination that property either factually qualifies or factually does not qualify for the exemption. It includes exercise of sound discretion, for which another agency or court may not legally substitute its judgment, within the bounds of that discretion, and not void, and other than a ministerial act. The following is not an all inclusive list.
> 1. Change in mobile home classification not in compliance with attorney general opinion 74-150.
> 2. Extra depreciation requested.
> 3. Incorrect determination of zoning, land use or environmental regulations or restrictions.
> 4. Incorrect determination of type of construction or materials.
> 5. Any error of judgment in land or improvement valuation.
> 6. Any other change or error in judgment, including ordinary negligence which would require the exercise of appraisal judgment to determine the effect of the change on the value of the property or improvement.
> 7. Granting or removing an exemption, or the amount of an exemption.
> 8. Reconsideration of determining that improvements are substantially complete.
> 9. Reconsideration of assessing an encumbrance or restriction, such as an easement.

In this case, the district court held that rule 12D-8.021 only "sets forth the procedure for the correction of errors by property appraisers, it does not address the circumstances under which back taxes may be assessed." *DeFrances v. Furst*, 267 So.3d 525, 528 (Fla. 2d DCA 2019). Although later sections of the rule describe

the procedure by which a certificate of correction is prepared, the above quoted sections plainly contrast those types of clerical, administrative, and mathematical errors that may be corrected for prior years from those types of judgment changes that may not be corrected. The district court's constrained reading of the administrative rule was incorrect.

The district court, moreover, failed to discuss section 197.122, which requires an error of omission or commission by the property appraiser to be corrected at any time. The statute provides in pertinent part that:

> An act of omission or commission on the part of a property appraiser, tax collector, board of county commissioners, clerk of the circuit court, or county comptroller, or their deputies or assistants, or newspaper in which an advertisement of sale may be published *does not defeat the payment of taxes, interest, fees, and costs due and may be corrected at any time by the party responsible in the same manner as provided by law for performing acts in the first place. Amounts so corrected shall be deemed to be valid ab initio and do not affect the collection of the tax.*

§ 197.122(1), Fla. Stat. (2019) (emphasis added).

Indeed, the last time that this Court addressed whether an error in the assessment of homestead property for prior years could be corrected was in *Smith v. Krosschell*, 937 So.2d 658 (Fla. 2006). There, this Court accepted jurisdiction based on certified conflict between *Robbins v. Kornfield*, 834 So.2d 955 (Fla. 3d DCA 2003), and *Smith v. Krosschell*, 892 So.2d 1145 (Fla. 2d DCA 2005). The certified conflict involved whether an amendment to section 193.155 authorized property

appraisers to retroactively correct errors in the calculation of the base year just value assessment of homestead property. *Krosschell*, 927 So.2d at 660. After oral argument, this Court ordered supplemental briefing to specifically address section 197.122.

Krosschell involved a data entry error that effectively deleted the entire dwelling from the property records and resulted in an assessment as though the property was raw land without any improvements. *Id.* at 559. The Second District Court concluded that property appraisers lacked authority to make a retroactive change to the base year assessment of homesteaded property, relying upon *Smith v. Welton*, 729 So.2d 371 (Fla. 1999). The Second District Court recognized that the legislature had amended section 193.155 subsequent to *Welton* to allow property appraisers to make such a change but concluded that it could not be retroactively applied.[2]

This Court reversed the Second District Court's decision, holding that "section 197.122(1), rather than section 193.155(8)(a), applies to correct the

[2] The amendment authorized the correction of erroneous assessments of homestead property due to a material mistake of fact concerning an essential characteristic of the property by recalculating the just and assessed value for every such year, including the tax year in which the mistake occurred. § 193.155(9)(a), Fla. Stat. (2019). If back taxes are due pursuant to s. 193.092, the corrections made are used to calculate such back taxes § 193.155(9)(c), Fla. Stat. (2019). The same language is included in the ten percent assessment cap statutes. §§ 193.1554(9), 193.1555(9), Fla. Stat. (2019).

computer data entry error which occurred in the instant case and, pursuant to that subsection, Smith possesses the statutory authority to correct the erroneous data and result on the assessment of Krosschell's property 'at any time.'" *Krosschell*, 937 So.2d at 663. This Court concluded that the data entry error was more comparable to the clerical and mathematical errors that could be corrected under section 197.122(1) than the underassessments resulting from errors in evaluation or judgment that could not be corrected. *Id.* at 660.

This Court further discussed the requirement that property be assessed at just value and stated that:

> Thus, under our precedent, an initial value assessment based on a clear and admitted data entry error which eliminates all improvements on the property not only would generate issues of homestead classification status but is not a 'just value' assessment and it does not reflect the 'fair market value' of the property. The 'Save Our Homes' cap on annual assessments applies to homestead property that has been assessed at just value, and the cap is not implicated where there has been a data entry error which has eliminated all improvements from the records. Therefore, a clerical mistake such as the computer data entry error that occurred here produces a base year assessment that does not under these circumstances represent a 'fair market value' of the homesteaded property, and the Save Our Homes cap does not forever 'lock in' the erroneous data and resulting assessment, thereby allowing property owners to forever pay artificially reduced taxes as long as they own the property. *Instead, we conclude that section 197.122(1) applies to correct this error, thereby allowing the appraiser to correct the erroneous data previously entered and erroneously changed to establish forever a "true just*

> *value" upon which the cap can be applied to tax increases in future years.*

Id. at 662 (emphasis added).

In the instant case, an error in assessment resulting from the conversion of the property appraiser's CAMA system to a different software vendor's CAMA system is the exact type of data entry error discussed in *Krosschell* that could be corrected under section 197.122(1). The only factual difference is that the error in *Krosschell* resulted in the omission of the improvement value while the error in the instant case resulted in the failure to assess the land as five separate lots instead of a single lot. There was no change in appraisal judgment, as the parties characterized "what happened as being in the nature or a clerical or administrative error." *DeFrances*, 267 So.3d at 527 n.1. The district court decision allowed the error to be corrected in the current year and future years but not in the year in which the error occurred, giving the taxpayer a significant – and unwarranted – tax break.

CONCLUSION

Based upon the aforementioned arguments and authorities, this Court respectfully is requested to reverse the decision of the Second District Court of Appeal.

Respectfully submitted,

/s/ Loren E. Levy

Loren E. Levy
Fla. Bar No. 0814441
Stuart W. Smith
Fla. Bar No. 1011115
The Levy Law Firm
1828 Riggins Lane
Tallahassee, Florida 32308
Telephone: 850/219-0220
E-mail: *service.levylaw@comcast.net*
geri.smith@comcast.net

Counsel for Amicus Curiae, The Property Appraisers' Association of Florida, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Amicus Curiae has been filed with the Clerk via the Florida Courts E-filing Portal and has been served via the portal on the following on the **1st** day of October 2019:

J. Geoffrey Pflugner, Esquire
Jason A. Lessinger, Esquire
Anthony J. Manganiello, III, Esquire
Icard, Merrill, Cullis, Timm, Furen & Ginsberg, P.A.
2033 Main Street, Suite 600
Sarasota, Florida 34237
E-mail: *jpflugner@icardmerrill.com*
jlessinger@icardmerrill.com
amanganiello@icardmerrill.com

Robert P. Elson, Esquire
Assistant Attorney General
Office of the Attorney General
Revenue Litigation Bureau
The Capitol – PL 01
Tallahassee, Florida 32399-1050
Email: *robert.elson@myfloridalegal.com*
jon.annette@myfloridalegal.com
lisa.ryder@myfloridalegal.com

Sherri L. Johnson, Esquire
Johnson Legal of Florida, P.L.
2937 Bee Ridge Road, Suite 1
Sarasota, Florida 34239
E-mail: *sjohnson@johnsonlegalfl.com*

Bora S. Kayan, Esquire
Assistant County Attorney
Office of the County Attorney
1660 Ringling Boulevard, 2nd Floor
Sarasota, Florida 34236
E-mail: *bkayan@scgov.net*

/s/ Loren E. Levy
Loren E. Levy

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the amicus curiae certifies that the font size and style used in the foregoing amicus curiae brief is 14 Times New Roman and complies with the font requirement of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Loren E. Levy
Loren E. Levy