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City National Bank of Florida v. Miami-Dade County

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS CITY NATIONAL BANK VERSUS MIAMI-DADE.RD 100 YOU MADE -- YOU MAY PROCEED.

GOOD MORNING. I AM THOMAS BOLF, REPRESENTING THE PETITIONERS OF THE CITY NATIONAL BANK TRUST AND DOCTOR AND MRS. WEBER. I WANT TO THANK THE COURT FOR ALLOWING US TO BE HERE THIS MORNING. THIS IS A CONDEMNATION MATTER, AFFECTING A PIECE OF PROPERTY WORTH APPROXIMATELY $5 MILLION. IT IS DIRECTLY IMPACTING A CORNER OF THAT PROPERTY, WHICH IS ABOUT A NINE-IRON FROM JOE ROBBIE STADIUM ON 24th AVENUE. IT IS A COMMERCIAL PIECE OF PROPERTY, THE CORNER BEING EARMARKED FOR A SERVICE STATION, ACCORDING TO ALL THE EXPERTS, WHICH IS WORTH ABOUT $1 MILLION, ACCORDING TO THE TESTIMONY BELOW.

BEFORE YOU GET INTO THE FACTS WE ARE FAMILIAR WITH THE FACTS, BUT COULD YOU ADDRESS THE BASIS FOR THIS COURT'S JURISDICTION. WHAT IS THE MY I DPAD -- WHAT IS THE MIAMI-DADE COUNTY CASE? WHICH CASE DOES THAT DIRECTLY AND EXPRESSLY --

IT IS FOUR CASES THAT I HAVE CITED IN MY REPLY BRIEF, WHICH SUGGESTS THAT EXPERT'S COMPENSATION OR THE ATTORNEYS FEES BEING PAID, UNDER THE STATUTE IN EFFECT IN 1993 --

DO YOU READ THE THIRD DISTRICT CASE AS ANNUNCIATING THAT BRIGHT-LINE RULE OR SIMPLY SAYING THAT, IN THIS CASE,, ATTORNEYS FEES WERE NOT WARRANTED?

THE ATTORNEYS FEES AND EXPERTS FEES, AGAIN, ARE BOTH BEING IMPACTED HERE. THEY SAY THAT, BECAUSE WE STRUCK THIS THEORY, THIS REASON FOR COMPENSATION BELOW, YOU ARE NOT ENTITLED TO COMPENSATION FOR PURSUING THAT CLAIM. AND THAT IS DIRECTLY CONTRARY TO HODGES, WHICH SAYS, IF THE QUESTION IS CLOSE, AND THREE OR FOUR OTHER CASES, IF THE QUESTION IS CLOSE, IF IT IS REASONABLE TO PURSUE THE CLAIM, THEN THE CONDEMN KNEE IS ENTITLED TO COMPENSATION FOR HER EXPERTS.

BUT THERE ARE THREE OTHER RULES UNDER THIS STATUTE, THAT EXISTED AT THE TIME THAT YOU SOUGHT FEES. SON THAT YOU DIDN'T HAVE TO PREVAIL ON THE CLAIM.

YES, MA'AM.

TWO, THAT THE ISSUE, THE UNDERLYING ISSUE HAD TO BE CLOSE CLOSE.

AT LEAST THAT IS WHAT THAT CASE SAYS. I AM NOT SURE I WOULD EVEN GO THAT FAR BUT YES, MA'AM.

AND, THREE, THAT IT HAD TO BE REASONABLE.

THE CLOSE AND REASONABLE, I DON'T REALLY DIFFERENTIATE BETWEEN THE TWO OF THOSE. WAS IT REASONABLE TO PURSUE THE CLAIM? IF IT WAS REASONABLE TO PURSUE THE CLAIM, ALL OF THE CASES SAY YOU ARE ENTITLED TO COMPENSATION COMPENSATION.

ALL OF THE CASES IN THE THIRD DISTRICT DIDN'T SAY ANYTHING ABOUT A RULE THAT, JUST BECAUSE YOU DIDN'T PREVAIL, YOU DIDN'T GET IT. AREN'T THEY IMPLICITLY SAYING THAT IT WASN'T REASONABLE FOR YOU TO PURSUE THIS CLAIM?

I THINK THAT THAT IS WHAT THE THIRD DISTRICT CONCLUDED. IT IS THE ONLY WAY I CAN RECONCILE THAT WITH THE RECORD, AND, OF COURSE, THE TRIAL COURT JUDGE HERE MADE SPECIFIC FINDINGS THAT INDEED IT WAS REASONABLE. THAT WAS SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE. THAT WAS NEVER ADDRESSED BY THE THIRD DCA, SO THAT IS THE CONCERN HERE IS THAT WE HAVE CASE LAW WHICH SAYS, ON BEHALF OF CONDEMNEES, THAT IT IS DIFFICULT TO ADVISE THEM, AT THE BEGINNING OF THE CASE, THAT IF YOU DON'T PREVAIL, THEN YOU MAY BE RESPONSIBLE FOR THE EXPERTS FEES THAT YOU INCUR. THAT WOULD BE A SIGNIFICANT CHILLING EFFECT UPON MANY SMALL BUSINESS OWNERS, MANY SMALL PROPERTY OWNERS, IN PURSUING THEIR CLAIMS. THAT IS A VERY SEVERE PROBLEM AND ONE FOR WHICH I HAVE CERTAINLY RECEIVED MANY TELEPHONE CALLS, IN ANTICIPATION OF TODAY'S ARGUMENT.

THE STATUTE HAS CHANGED, AS FAR AS SAYING THAT, AS FAR AS ATTORNEYS FEES --

YES, MA'AM.

SO THIS CASE, AS FAR AS IT AFFECTS ATTORNEYS FEES, WOULD NOT, IN THE FUTURE, WHAT THE THIRD DISTRICT HAS DONE, WOULD BE CORRECT, NO MATTER, WHAT AS TO ATTORNEYS FEES.

AS TO ATTORNEYS FEES, EXCEPT FOR CASES WHICH ARE STILL PLODING THROUGH, UNDER THE OLD STATUTE BACK IN THAT CHANGE, EITHER IN '94 OR '95, I BELIEVE. THAT IS NOW BASED ON A PERCENTAGE OF THE BENEFITS ACHIEVED, EXCEPT FOR OTHER CIRCUMSTANCES. THERE ARE OTHER CLASSES OF CASES THAT ARE STILL PAID ON AN HOURLY BASIS, SO THOSE CASES CAN STILL BE IMPACTED BY THIS RULING, AND THOSE TYPICALLY INVOLVE DISPUTES BETWEEN A LANDLORD AND A TENANTS FOR FOR INSTANCE, TRYING TO DETERMINE THE CORRECTNESS OF HOW THE MONIES ARE APPORTIONED, SO THE CONCLUSION IS IF IT WAS UNREASONABLE FOR THE TENANT TO PURSUE RECEIVING SOME OF THESE PROCEEDS, THE CITY NATIONAL CASE WOULD STAND FOR THE FACT THAT FEES WOULD NOT BE RECOVERABLE UNDER THOSE CIRCUMSTANCES. IT HAS A CONTINUING CONCERN AND A SMALLER NUMBER OF CASES, BUT IT DOES CONTINUE TO HAVE A CONCERN, AND AS MUCH AS THAT IS A CONCERN, IT IS ALSO, OF COURSE THE EXPERTS FEES WHICH ARE OF CONCERN HERE. THE THIRD DISTRICT SEEMINGLY CONCLUDED, AS YOUR HONOR NOTED, THAT, AND THE ONLY WAY I CAN RECONCILE IT, IS THAT IT SHOULD NOT HAVE BEEN PURSUED. THIS CLAIM SHOULD NOT HAVE BEEN PURSUED, AND I THINK THAT THAT DOES A DISSERVICE TO THE TRIAL JUDGE HERE, WHO MADE A SPECIFIC FINDING, AND IT SAID THE COURT FINDS THAT, PURSUING THE SEVERANCE DAMAGE CLAIM HERE IN WAS REASONABLE AND JUSTIFIED UNDER THE CIRCUMSTANCES.

LET ME ASK YOU THIS. WE ARE TALKING ABOUT SEVERANCE DAMAGES HERE, CORRECT?

YES, MA'AM.

AND GENERALLY SEVERANCE DAMAGES ARE THE DIFFERENCE BETWEEN THE VALUE OF YOUR PROPERTY PRIOR TO THE CON TEM NATION AND THE VALUE OF YOUR PROPERTY AFTER THE CON TEM NATION, CORRECT?

THAT IS A COMBINATION. THE LAND TAKEN AND SEVERANCE DAMAGES. THAT ADDS UP TO THE TWO THAT YOU JUST DESCRIBED.

AND IF YOU ARE TALKING A PIECE OF PROPERTY THAT WAS ALREADY DEVELOPED, YOU CERTAINLY WOULD HAVE -- YOU PROBABLY WOULD HAVE BUSINESS DAMAGES THEN, AS OPPOSED TO SEVERANCE DAMAGES, BUT LET'S ASSUME THIS PIECE OF PROPERTY WAS A COMPLETED PLAN TO DO SOMETHING WITH THIS PROPERTY, AND BY TAKING THIS CORNER PORTION OF IT, YOU WOULD NOT BE ABLE TO COMPLETE THOSE PLANS. AS THEY NOW EXIST.

YES, MA'AM.

THAT WOULD BE A PART OF YOUR SEVERANCE DAMAGES, CORRECT?

THAT CERTAINLY WOULD BE THE -- DADE COUNTY MAY NOT AGREE WITH THAT, BUT THAT WOULD CERTAINLY BE MY POSITION.

SO IN THIS INSTANCE, SINCE THERE ARE NO PLANS, WHY, EXPLAIN TO ME WHY WE SHOULD BE OR THE COURT SHOULD HAVE CONSIDERED SPECULATIVE USE OF THE PROPERTY.

OKAY. WELL, OBVIOUSLY WE DIDN'T CONSIDER IT TO BE SPECULATIVE, SO IF I CAN ADJUST THE QUESTION IN THAT REGARD, BUT VACANT PROPERTY IS VALUED, BASED ON WHAT SOMEONE CAN DO WITH THAT PROPERTY. EVERY TIME SOMEONE GOES OUT THERE AND A DEVELOPER LITERALLY INVESTS MILLIONS OF DOLLARS, HE OR SHE CAN DECIDE WHAT IS TO BE PUT ON THAT PROPERTY, WHAT IS THE HIGHEST AND BEST USE OF THAT PIECE OF PROPERTY. DADE COUNTY'S APPRAISER, BEFORE ANY OF US WAS INVOLVED, CONCLUDED THE HIGHEST AND BEST USE WAS FOR THE DEVELOPMENT OF OUT PARCELS ALONG THIS FRONTAGE, AND HIS CONCLUSION WAS THAT IF THIS TAKING WOULD AFFECT THE TAKING OF THOSE OUT PARCELS, THAT WOULD BE SEVERANCE DAMAGES BEFORE WE GOT INVOLVED. THAT IS A VERY ACCURATE WAY OF PURSUING THESE CASES.

THAT IS A PART OF THIS RECORD.

YES, MA'AM. ABSOLUTELY. ALL FIVE OF THE EXPERTS THAT TESTIFIED BEFORE THE TRIAL JUDGE AT THE FEE HEARING, ALL OF WHOM HAD OVER 20 YEARS OF EXPERIENCE IN CONDEMNATION, ALL TESTIFIED THAT THIS WAS THE TYPICAL WAY IN WHICH THESE TYPES OF CASES WERE HANDLED, BOTH WHEN THEY WORK FOR THE PROPERTY OWNER AND WHEN THEY WORK FOR THE GOVERNMENT. THAT TESTIMONY WAS UNREBUTTED. ABOUT SIX MONTHS BEFORE THIS CASE WAS FILED, THE FOURTH DISTRICT DECIDED THE CASE OF PARTIKA, AND THE PARTIKA SAID, SPECIFICALLY IN DEALING WITH SITE PLANS, MOST ON THIS POINT, SPECIFICALLY SAID THAT THE BEST EVIDENCE OF WHAT YOU CAN USE, DO WITH PROPERTY, BEFORE AND AFTER THE TAKING.

AND DID THAT CASE INVOLVE AN APPROVED SITE PLAN OR A PROPOSED SITE PLAN?

BOTH, YOUR HONOR. IT INVOLVED A -- IT WAS A PIECE OF PROPERTY THAT WAS ACTUALLY RESIDENTIAL, BUT THE HIGHEST AND BEST USE WAS DEEMED TO BE COMMERCIAL, AND SO THE ANALYSIS WAS WHAT CAN YOU DO, BEFORE AND AFTER, IN LIGHT OF THE CHANGES THAT ARE BEING IMPOSEED, AND IN FACT THE COURT THERE REVERSED THE TRIAL COURT FOR EXCLUDING THE SITE PLANS, SO I HAVE GOT A SITUATION WHERE, LITERALLY, A HANDFUL OF MONTHS BEFORE THIS CASE IS FILED, I AM PURSUING A CASE WITH A FAIRLY SIGNIFICANT AMOUNT OF MONEY INVOLVED, IN WHICH THE COUNTY IS USING THE SAME PROCEDURE. MY EXPERTS ARE TELLING ME THAT THIS IS THE RIGHT PROCEDURE TO USE. I HAVE GOT A CASE THAT IS DECIDED THAT REVERSED A TRIAL COURT FOR EXCLUDING THOSE SITE PLANS. AND IN LIGHT OF THOSE PIECES OF INFORMATION, AND IN ADDITION, DADE COUNTY DID NOT PRESENT ANY EXPERT TESTIMONY THAT IT WAS UNREASONABLE TO PURSUE THIS, SO I HAVE A SITUATION WHERE I AM HANDLEING THIS CASE FOR THESE PROPERTY OWNERS, AND I THINK I AM ON PRETTY GOOD GROUNDS, AND IF THE TEST IS WAS IT REASONABLE TO PURSUE IT, I HAVE GOT A SIX-MONTH-OLD APPELLATE OPINION THAT TELLS ME I CAN DO THIS, SO I DON'T THINK IT IS UNREASONABLE FOR ME TO PURSUE THIS CLAIM IN THE MANNER IN WHICH IT WAS PURSUED. THERE IS NO EVIDENCE IN THE RECORD, NO TESTIMONY BY ANY EXPERTS THAT SAY IT WAS UNREASONABLE.

BUT RIGHT NOW THE LAW IS, AT LEAST IN THE THIRD DISTRICT, THAT YOU CAN'T SEEK SEVERANCE DAMAGES, BASED ON A CONCEPTUAL SITE PLAN.

THAT'S RIGHT. BASED ON THE OPINION THAT CAME OUT OF THIS CASE.

YOU ARE NOT ASKING US IN THIS OPINION, SINCE WE HAVE ALREADY REJECTED TAKING THE

CASES AS A CONFLICT CASE, TO REVISIT THAT UNDERLYING SITUATION, THE UNDERLYING ISSUE, AND THAT SORT OF MAKES THIS SORT OF A WEIRD POSTURE FOR THIS CASE TO BE IN FRONT OF THIS COURT.

I AGREE WITH THE LAST COMMENT. IT IS AN UNUSUAL SITUATION. IT WOULD CERTAINLY NOT OFFEND ME IF THE COURTANT WANTED TO REVISIT -- IF THE COURT WANTED TO REVISIT THAT, BUT CERTAINLY BEFORE THIS COURT IS THE EXPERT EXPERT'S FEES AND COSTS. CERTAINLY WOULD WELCOME THAT OPPORTUNITY, BUT IRONICALLY, IF THIS PIECE OF PROPERTY WAS A QUARTER MILE UP THE ROAD ON 27th AVENUE, I WOULD GET MY SITE PLANS IN BECAUSE I AM IN THE FOURTH DISTRICT. I AM IN BROWARD COUNTY AT THAT POINT IN TIME.

SO THEY MAKE A DISTINCTION BETWEEN --

I SUPPOSE.

-- BETWEEN WHETHER IT WAS THE ACTUAL PIECE OF PROPERTY THAT WAS CONDEMNED THAT YOU ARE LOOKING AT WHAT THE HIGHEST AND BEST USE IS, VERSUS SEVERANCE DAMAGES. THAT IS WHAT THE THIRD DISTRICT --

I SUPPOSE, AND REALLY THE EMPHASIS ON THE SITE PLANS, I THINK OVER -- HAS KIND OF TOOK OVER THE CASE, BECAUSE ALL THE EXPERTS, WHEN YOU ARE LOOKING AT A PIECE OF PROPERTY, HAVE TO CREATE SOME SORT OF A DEVELOPMENT PLAN TO VALUE THAT PIECE OF PROPERTY. WE HAD AN EXISTING SITE PLAN THAT HAD BEEN DEVELOPED OVER A NUMBER OF YEARS, THAT HAD BEEN DEVELOPED THROUGH THE USE OF INTERACTION WITH BUYERS ABOUT PARCELS, AND WE HAD CONTRACTS ON SOME OF THESE OUT PARCELS, AND THIS SPECIFIED WHAT IT IS THAT THEY WANTED TO SEE ON THIS PIECE.

BUT THE CONCEPTUAL SITE PLAN WAS THE LINCHPIN OF YOUR SEVERANCE DAMAGE CLAIM THAT, ONCE THAT WAS STRICKEN BY THE COURT, YOU DIDN'T HAVE AN ALTERNATIVE PLAN TO SAY, BUT WAIT A SECOND. I STILL CAN'T DEVELOP THIS AS WE WOULD HAVE, YOU KNOW, IN ANY NUMBER OF WAYS, SO DOESN'T THAT SORT OF WEAKEN YOUR ARGUMENT THAT THIS IDEA THAT THIS OLDER SITE PLAN WAS GOING TO BE THE BASIS FOR YOUR SEVERANCE DAMAGE CLAIM, BUT ONCE THAT WASN'T IN, YOU DIDN'T HAVE AN ALTERNATIVE WAY TO SUGGEST THAT THE VALUE OF THE PROPERTY NOT TAKEN WAS REDUCED BECAUSE OF WHAT WAS TAKEN.

WELL, OBVIOUSLY THAT SIGNIFICANTLY AFFECTED OUR CASE, BECAUSE AT THAT POINT IN TIME, WE BASICALLY SAID WE ARE DONE, BECAUSE IF I CAN'T SHOW A JURY A PLAN DEMONSTRATING WHY IT IS THAT, WITH 610 FEET OF FRONTAGE I CAN DIVIDE THAT INTO FOUR OUT PARCELS OF 150 FEET EACH, WHICH ALL OF THE EXPERTS IN THE COUNTY SAID THAT IS THE TYPICAL DESIGN. WHEN YOU COME THROUGH WHAT STRANGE TAKING THAT CUTS OFF 116 FEET OF FRONTAGE, NOW WHAT DO YOU DO?

SO YOU WOULD ADMIT, THEN, THAT IF YOU DIDN'T EVEN HAVE THIS, IF YOU DIDN'T HAVE A CONCEPTUAL SITE PLAN, YOU WOULDN'T HAVE HAD AWAY TO ESTABLISH A REDUCED VALUE, SO IT WOULD HAVE BEEN SPECULATIVE.

WHETHER IT WAS A CONCEPTUAL SITE PLAN THAT WAS ALREADY DEVELOPED, OR IF IT WAS SOMETHING THAT, WHEN THIS TAKING OCCURRED THAT, THE EXPERTS, AGAIN, FOR BOTH SIDES PUT TOGETHER, THAT IT IS IMPORTANT TO UNDERSTAND THAT THE MARKETPLACE IS THE SOURCE OF THIS SITE PLAN. IT IS NOT TO MY CLIENTS. IT IS NOT EXPORT. IT IS WHAT THE MARKETPLACE DEMANDS. THE MARKETPLACE DEMANDS, WHEN YOU ARE ON A COMMERCIAL FRONTAGE SUCH AS 27th AVENUE, AND IT IS DEEP ENOUGH, THAT YOU HAVE OUT PARCELS IN FRONT AND RETAIL BEHIND. SO THIS SITE PLAN IS BASED ON THE MARKETPLACE DEMANDS.

WHY COULDN'T YOU HAVE PRESENTED THAT KIND OF TESTIMONY THEN?

I NEEDED TO HAVE SOME WAY TO DEMONSTRATE TO THE JURY THAT, BEFORE WE COULD DO THIS WITH THE PROPERTY, NOW WE ARE NO LONGER GOING TO BE ABLE TO DO THAT BECAUSE OF A SUBSTANTIAL TAKING OUT OF THE CORNER. THE CORNER OUT PARCEL NOW HAS ITS FRONTAGE REDUCED BY 75 PERCENT. IT IS NOT GOING TO WORK ANYMORE, AND IF I CAN'T HAVE A PICTURE, IN ESSENCE, TO SHOW THE JURY, IT IS NOT, THERE IS NO WAY THAT I CAN, THEN, DEMONSTRATE TO THE JURY THAT THIS IS GOING TO BE A DAMAGE TO THIS PIECE OF PROPERTY. THAT WAS THE PROBLEM THAT I WAS CONFRONTED WITH AT THE TRIAL, IS THAT OUR CASE PRESUMED, I MEAN, AGAIN, WE WERE THREE OR FOUR YEARS INTO THE CASE BEFORE DADE COUNTY MOVED TO STRIKE. WE WERE THE MORNING OF THE TRIAL AND ON THE MORNING OF THE TRIAL, THE TRIAL JUDGE ADMITTED THESE SITE PLANS, SO IF THE ISSUE WAS, WAS IT REASONABLE TO PURSUE IT, I MEAN BUT FOR A MISTRIAL THAT OCCURRED ON THE FIRST TRIAL, THESE SITE PLANS WERE IN EVIDENCE AT THE TRIAL, SO I THINK IT WAS -- IT WASN'T UNREASONABLE FOR US TO PURSUE. THE TRIAL JUDGE SAID IT WAS UNREASONABLE INITIALLY. I HAD EXPERTS ON EACH SIDE THAT SAID THAT THAT WAS THE WAY TO DO IT. I HAD SIX EXPERTS ON EACH SIDE, AND THE EXPERTS SAID WAS IT REASONABLE TO PURSUE IT? THAT THE WAS THE CIRCUMSTANCE REASONABLE TO PURSUE THIS CLAIM, AND THAT CASE WAS DECIDED ADVERSELY BY THE TRIAL JUDGE, AND HE SUBSTANTIATED THAT WITH SEVEN SPECIFIC FINDINGS OF FACT OF WHY HE THOUGHT IT WAS REASONABLE TO PURSUE THIS. DADE COUNTY HAS NEVER --

IT SEEMS TO ME, IN ANSWER TO JUSTICE PARIENTE'S QUESTION, THAT WE WOULD HAVE TO DIG DOWN IN THIS CASE, AND REACH THAT ISSUE, BEFORE WE COULD GET TO THE MAIN ISSUE HERE, WHICH IS THE UNDERLYING DETERMINATION BY THE THIRD DISTRICT, AS TO THE ATTORNEYS FEES AND COSTS. ISN'T THAT RIGHT?

I AM NOT SURE I UNDERSTAND YOUR HONOR'S --

I MEAN, WE ARE GOING TO HAVE TO -- THAT IS THE UNDERLYING ISSUE WHICH HAD PREVIOUSLY BEEN DECIDED BY THE THIRD DISTRICT, BEFORE THIS PARTICULAR CASE CAME ALONG.

RIGHT. RIGHT. I AM ASSUMING THAT THE THIRD DISTRICT IS, THAT THE TRIAL COURT, WHEN CONSIDERING HIS ATTORNEYS FEES AND COST, IS STUCK WITH WHAT THE THIRD DISTRICT DID AND HAS TO ACKNOWLEDGE THAT OR HAVE ANY CONCERNS WITH THAT, BUT THE CASE LAW IS THAT YOU LOOK AT NOT ONLY THAT BUT, ALSO, IN THE CIRCUMSTANCES WAS IT REASONABLE TO PURSUE IT. THAT IS REALLY THE TEST THAT SEEMS TO HAVE BEEN ADOPTED HERE. IF IT IS A 57.105 TYPE OF SITUATION, IF I AM DOING SOMETHING THAT IS PLAINLY INAPPROPRIATE, THEN I CAN UNDERSTAND, AND THERE IS SOME CASE LAW THAT INDICATES THAT.

YOU ARE IN YOUR REBUTTAL TIME.

THANK, JUDGE. APPRECIATE IT. MR. GOLDSTEIN.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT, JUSTICES, CHIEF JUSTICE WELLS. MY NAME IS TOM GOLDSTEIN, ASSISTANT COUNTY ATTORNEY REPRESENTING MIAMI-DADE COUNTY. I WOULD LIKE, FIRST, TO DIRECT THE COURT'S ATTENTION, IN MY BRIEF, I HAVE FILED AS PART OF THE APPENDIX, VARIOUS SITE PLANS THAT WERE CREATED FOR THIS PROPERTY, WAY BEFORE THE COUNTY WAS INVOLVED IN THE TAKING, AND ON PAGE R-355, THERE IS A SITE PLAN INDICATED "ALTERNATIVE 5". THAT SHOWS THE COURT A PARCEL TOTALLY, EXCUSE ME, TOTALLY TAKEN UP WITH LANDSCAPING. NO USE OF THAT PARCEL.

BEFORE WE GET TOO FAR INTO THAT, DO YOU AGREE THAT WE ARE GRAPPLING WITH THE REASONABLENESS OF COUNSEL'S ACTION IN SUBMITTING HIS SIGHT PLAN? IS THAT THE GRAPPLEMENT OF IT, WHETHER THE ACTIONS WERE REASONABLE?

JUDGE, I DON'T THINK THAT REALLY IS THE ISSUE. I DON'T THINK THE ISSUE HAS EVER BEEN

WHETHER A PARTICULAR SITE PLAN IS ADMISSIBLE TO SHOW THAT A PIES OF PROPERTY CAN, IN FACT, BE SUBDIVIDEDED. IT WAS NEVER A QUESTION, THE COUNTY'S APPRAISER, THEIR APPRAISER, EVERYONE IN THIS CASE SAID THIS PROPERTY IS SUBJECT TO BEING SUBDIVIDEDED. BASED ON THAT, THEY BOTH ARRIVED AT $10 A SQUARE FOOT FOR THIS PIECE OF PROPERTY. IT COULD BE SUBDIVIDEDED OR SOME OTHER PERSON COME ALONG, A LAND PLANNER, AND SAY, YOU KNOW WHAT? THIS IS A GREAT PLACE FOR A WALGREENS. IT WILL TAKE UP THE ENTIRE PROPERTY.

HE HAS THESE SITE PLANS THAT HAVE BEEN SUBMITTED AT ONE TIME, AND HE HAS A CASE THAT SAYS THAT THEY WOULD BE, SHOULD BE CONSIDERED.

THE --

RELYING UPON THAT, WASN'T IT REASONABLE THAT HE WOULD PUT THESE IN?

THE REASON I SAY THE SITE PLANS, PER SE, WERE NOT THE REAL ISSUE HERE, IS THE ADMISSION OF SITE PLANS THAT SAY THIS IS THE VARIOUS THING THAT IS COULD BE DONE. IT COULD BE SPLIT INTO THREE. IT COULD BE SPLIT INTO A FOURTH. IT COULD BE SPLIT IN TWO. ANY NUMBER OF THINGS COULD BE DONE. IT WAS USED AS A PIECE OF PROPERTY, IT WAS FOR SALE AS AN ENTIRE PIECE OF PROPERTY. THE FOR-SALE SIGN IS STILL ON THERE, TODAY, FOR THE ENTIRE PIECE OF PROPERTY, BUT THE ISSUE THAT HAPPENED HERE WAS THEY TOOK A COMPLETELY FICTITIOUS CONCEPTUAL SITE PLAN AND SAID I NOW HAVE A PIECE OF PROPERTY ON WHICH I CAN PUT A GAS STATION. IN FACT, HERE IS THE GAS STATION WE WERE GOING TO PUT. HERE IS WHAT IT WOULD HAVE LOOKED LIKE, AND HERE IS WHAT IT IS GOING TO LOOK LIKE IN THE "AFTER" SITUATION, AND HERE IS WHAT ALL OF THESE OTHER OUT PARCELS LOOK LIKE, AND NOW THE APPRAISER IS GOING TO SAY THIS PIECE, THE OVERALL PROPERTY IS WORTH $10. NOW THEY START GOING INTO THIS IS WORTH TWENTY, THIS IS WORTH TWELVE, THIS IS WORTH TWELVE, THIS IS WORTH TWELVE, AND THE BACK PIECE IS WORTH $6.97, AND IN THE-AFTER" SITUATION, ALTHOUGH THIS IS WORTH TWENTY, IT IS A SMALLER PARCEL NOW, WE HAVE RECONFIGURED, AND AS RESULT OF RECONFIGURING, I AM GOING TO CREATE A FICTITIOUS SITE PLAN TO CREATE THE SEVERANCE DAMAGE, THAT IS WHERE YOU GET INTO SPECULATION AND CONJECTURE. INSTEAD OF GOING OUT IN THE MARKETPLACE AND SAYING HERE IS A PIECE OF PROPERTY THAT WE HAVE FOUND, SEVERAL PIECES, THAT HAVE A SIMILAR SHAPE AND SIZE, TO THE PROPERTY HERE, AND WE CAN SHOW THAT THAT PROPERTY WOULD SELL ON THE MARKETPLACE FOR SOMEWHAT LESS THAN THE PIECE OF PROPERTY IT WAS -- THAT WAS NOT IN THAT PARTICULAR CONFIGURATION. THAT IS THE WAY YOU TRY A CASE IN IMMINENT DOMAIN. YOU DON'T GO OUT AND MAKE UP ALL THESE ISSUES, IN ORDER TO CREATE A WHOLE CLOAK OF SEVERANCE DAMAGE.

IF HE SAID THIS IS WHAT I WOULD HAVE DONE WITH THIS PROPERTY AND THIS IS HOW IT CAN BE MAXIMIZED, THE VALUE OF IT, AND THIS IS WHAT I PROPOSED TO DO IT, THEN YOU TOOK IT.

NO. UNDER THE LAW OF IMMINENT DOMAIN AND IT IS CHEER IN THE TREATISES THAT THE OWNER'S REGARD TO THE PROPERTY IS TOTALLY INADMISSIBLE. IT IS WHAT THE MARKET WOULD DO. THE MARKET SAYS I WOULD BUY THAT PIECE OF PROPERTY FOR $10 A SQUARE FOOT.

BUT THE COUNTY COULDN'T DO THAT AT THE TIME THIS CASE WAS TRIED.

I AM SORRY?

AT THE TIME THIS CASE WAS TRIED, WAS IT CLEAR THAT HE COULD NOT USE THAT APPROACH?

I THINK IT WAS ABSOLUTELY CLEAR. IF YOU COME INTO A COURT OF LAW AND YOU SAY I AM GOING TO PRESENT MY PLANS TO BUILD SOMETHING, AND THEN I AM GOING TO DAMAGE MY PLANS TO BUILD SOMETHING, WHAT PROBATIVE VALUE CAN I SHOW TO THE COURT, TO THE

JURY, WITH REGARD TO THIS? I AM SITTING HERE SAYING WAIT A MINUTE. DO YOU LIKE THIS PLANS OR MAYBE YOU LIKE THIS GUY'S PLANS, OR MAYBE THERE IS A THIRD PERSON THAT HAS ANOTHER PLAN.

IF HE COULD NOT DO THAT, WHY DID THE COUNTY WAIT UNTIL THE DAY OF TRIAL, TO MOVE TO, IN LIMINE TO EXCLUDE THAT PLAN?

THE WAY THIS CASE WENT, YOUR HONOR, WAS BASICALLY WHEN WE FILED OUR LAWSUIT, WE DEPOSITED THE $95,000 IN THE REGISTRY OF THE COURT, AND FROM THEN ON, THERE WAS REALLY NOTHING BETWEEN COUNSEL. NO DISCUSSION, WITH REGARD TO ANYTHING. THEN WE WENT TO MEDIATION, AND THE MEDIATION, THE FIRST TIME WE GET THIS INFORMATION FROM THEM, FROM THEIR APPRAISER. WE ARE LOOKING AT THIS AND SAY WHAT IS THIS. HOW THEY WENT ABOUT DOING THIS. AND THEN WE HAD TO TAKE THE POSITIONS. WE HAD TO FIND OUT ALL WE COULD FIND OUT ABOUT THIS CASE, AND WHY THEY WERE DOING THIS. FOR EXAMPLE WE TOOK THE LAND PLANNER'S DEPOSITION, AND WE ASKED THE LAND PLANNER WAS THIS PARTICULAR PROPERTY, THIS SITE PLAN, IS IT SET IN STONE? IS THIS IT? IS THIS THE ONLY THING YOU CAN EVER DO WITH THIS PROPERTY, AND HE SAID I DON'T KNOW. AND THEN IN THE REPLY BRIEF, MR. BOLF SAYS ALL SITE PLANS ARE CONCEPTUAL AND PRELIMINARY AND YOU CAN ALWAYS CHANGE THEM. YOU CAN ALWAYS DO WHATEVER YOU WANT WITH THEM, SO BEFORE WE COULD MAKE ANY STATEMENTS WITH REGARD TO THIS, WE HAD TO FIND OUT WHAT OUR CASE WAS ABOUT AND FIND OUT THE ESTABLISHMENT OF WHAT THEIR CASE WAS, AND AT THAT POINT WE SAID NOW IS CLEAR THAT THIS ENTIRE CASE IS BASED ON SPECULATION AND CONJECTURE, BASED ON A CONCEPTUAL SITE PLAN, BECAUSE IT WASN'T APPROVED, AND EVEN THE COURT BELOW, IN ITS FIRST OPINION, OF COURSE, SAID THAT COUNSEL COULD NOT BELIEVE THAT THIS WAS AN APPROVED SITE PLAN. IT WAS NEVER APPROVED.

WHAT ABOUT THE FOURTH DISTRICT CASE, THOUGH, THAT, IS IT THE SAME KIND OF SITE PLAN AS THIS WAS?

UNFORTUNATELY, YOUR HONOR, THE PARTIKA CASE, WHEN YOU READt THE UNDERLYING SITE PLAN WAS. I UNDERSTAND WHAT COUNSEL SAID, BUT THAT IS NOT IN THEh8: THE CASE, ITSELF. THAT CASE SAYS NOTHING ABOUT THE THINGS THAT COUNSEL INDICATED TO THIS COURT. I DON'T KNOW WHAT THAT SITE PLAN SHOWED. I DON'T KNOW IF IT WAS, LIKE, A SINGLE PARCEL. I DON'T KNOW IF THAT PARCEL, IN FACT, WAS JUST A SMALL PIECE THAT WAS A COMMERCIAL PIECE, OUT OF WHICH THEY TOOK A BIG CHUNK. I DON'T KNOW ANYTHING ABOUT IT, AND NEITHER DOES ANYONE ELSE, READING THAT CASE, AND ONE CAN'T JUST ASSUME, HAVING READ THAT CASE, THAT THEY WERE FACING -- BASING THEIR ENTIRE SEVERANCE DAMAGE ON A CONCEPTUAL SITE PLAN. WE DON'T KNOW. THEREFORE --

WHAT IF I, AS THE OWNER, HAD SEVERAL DIFFERENT PLANS FOR DEVELOPMENT, BUT I INTRODUCED EVIDENCE TO SAY BUT THIS IS THE PLAN THAT I WAS GOING WITH. AND NOW I AM NOT GOING TO BE ABLE TO GO WITH IT. YOU ARE SAYING THAT, UNDER THE LAW, IT IS CLEAR AND ALWAYS HAS BEEN CLEAR THAT I COULD NOT PRESENT THAT AS A CLAIM FOR SEVERANCE DAMAGES?

YES. THAT IS THE LAW. THE TREATISES ARE CLEAR THAT THE OWNER OF THE PROPERTY'S PLANS, WHAT HE HAD IN HIS MIND THAT HE WANTED TO DO OR EVEN ON PAPER WAS NOT ADMISSIBLE. OTHERWISE YOU ARE ALWAYS GETTING INVOLVED, LIKE, WELL, YOU ARE TAKING THAT PERSON'S PROPERTY, AND THAT HAS BEEN IN MY FAMILY FOR THOUSANDS OF YEARS AND I AM IN LOVE WITH THIS PROPERTY. BUT THAT IS NOT THE ISSUE. THE ISSUE IS WHAT IS THE MARKET VALUE OF THAT PROPERTY, AS IT SETS THERE ON THE DAY OF THE TAKING. ON THE DAY OF THE TAKING, THIS WAS A VACANT, UNDEVELOPED, UNSUBDIVIDEDED PIECE OF PROPERTY PROPERTY.

SO IF A SITE PLAN HAD BEEN APPROVED, THAT WOULD NOT HAVE BEEN DISPOSITIVE, EITHER.

I DON'T THINK THIS WOULD HAVE BEEN DISPOSITIVE, BECAUSE YOU HAVE THE CIRCLE K CASE, WHERE THERE WAS, IN FACT, AN APPROVED SITE PLAN, AND THAT SITE PLAN SHOWED ACCESS TO A ROAD THAT THE COUNTY WAS GOING TO BUILD, AND THEN WHEN THE COUNTY, IN THAT CASE, WENT TO BUILD THE ROAD, THEY SAID THERE IS LIMITED ACCESS AND DID NOT ALLOW THAT PROPERTY ACCESS TO THAT ROAD, AND THE COURT SAID YOU ARE NOT ENTITLED TO ANY DAMAGES AS A RESULT OF THAT, BECAUSE YOU WERE NEVER PERMITTED, AND THAT WAS ONE OF THE ISSUES HERE, IN THIS CASE. YOU HAD NO PERMITS. YOU HAD NO PLANS TO GO FORWARD. YOU HAD NO DEVELOPMENT. YOU HADN'T DONE ANYTHING EXCEPT TRY AND SELL THE ENTIRE PIECE OF PROPERTY TO SOMEBODY, AND MADE A SPECIFIC DECISION NOT TO SEEK APPROVAL OF THIS SITE PLAN, SO IT GIVES YOU MORE FLEXIBILITY, AND THAT WAS CLEARLY STATED BY THE COURT BELOW. AND THAT IS WHY IT IS UNREASONABLE, AS A MATTER OF LAW TO TAKE SOMETHING LIKE THAT, AND CREATE OUT OF WHOLE CLOTH A SEVERANCE DAMAGE. IT IS ALMOST LIKE AN INFERENCE ON AN INFERENCE. YOU CAN'T DO THAT.

THAT FOLLOWS THIS TO AN ULTIMATE CONCLUSION, I GUESS. LET'S SAY HE HAD PART OF HIS PERMITS, AND IN THE PERMITTING PROCESS, HE HAS TO GET 15 DIFFERENT PERMITS FROM THE COUNTY AND CITY, AND HE HAD NINE. COULD HE SUBMIT THAT, THE PLAN THEN?

THAT HYPOTHETICAL, I REALLY CAN'T RESPOND TO, BECAUSE I DON'T KNOW WHAT THOSE PERMITS WOULD BE. IF THOSE PERMITS WERE FOR THE HOTEL, THAT ISN'T REALLY EVEN INCLUDED IN THIS, OR IF IT WAS FOR THE BACK OF THE PROPERTY, WHERE SUPPOSEDLY THEY WERE GOING TO PUT RETAIL, THEN THAT WOULD HAVE NOTHING TO DO WITH THIS PIECE. BECAUSE THIS PIECE WAS ON THE CORNER AND WAS ON A SIGNIFICANT CORNER, IN A SENSE THAT THAT CORNER HAD TO BE STRAIGHTENED OUT, IN ORDER TO MAKE IT A SAFE CORNER, SO OUR POSITION WAS COULDN'T EVEN DO THIS IN THE "BEFORE" CONDITION. YOU HAD A DUTY TO COME IN AND LAY A FOUNDATION, A PREDICATE THAT YOU COULD, IN FACT, CARRY OUT THIS TYPE OF SITE PLAN. IN THE FIRST INSTANCE, BEFORE EVEN CLAIMING DAMAGES AS A RESULT OF OUR TAKING.

I TAKE IT YOUR POSITION IN THIS CASE IS THAT WE HAVE TO ACCEPT, AS A LEGAL, AS THE LAW OF THIS CASE, THAT THIS WAS NOT ADMISSIBLE IN THIS CASE, THIS SITE PLAN.

CORRECT.

THE THIRD DISTRICT DECIDED THAT.

THEY DECIDED IT WAS LEGALLY INADMISSIBLE, AND THEY --

IT BOILS DOWN TO WHETHER IT IS UNREASONABLE, AS A MATTER OF LAW, THAT THE COUNSEL WOULD HAVE DEVELOPED THIS EVIDENCE TO ATTEMPT TO GET IT INTO EVIDENCE. IS THAT A FAIR STATEMENT?

I THINK THAT IS A FAIR STATEMENT, AND THE REASON I AM SAYING THAT IS A FAIR STATEMENT, I HAVE TO GO BACK TO WHAT THE LOWER COURT DID. THE LOWER COURT, IN THIS PARTICULAR INSTANCE, APPARENTLY MADE A DETERMINATION THAT WAS OUR FAULT THAT ALL OF THESE COSTS WERE RUN UP. THAT SOMEHOW AND EXCUSE ME, AN EMINENT DOMAIN LAW, THAT THE COUNTY SHOULD HAVE KNOWN YOU CAN'T WIN, AND THAT THE COUNTY SHOULD HAVE KNOWN THAT YOU HAD TO MAKE A SETTLEMENT OF THIS CASE, BECAUSE IF YOU DIDN'T, THEN YOU WERE BEING UNREASONABLE AND TRANSIGEN, AND YOU WERE BRINGING ALL OF THESE COSTS AND FEES ON YOURSELF, ON YOUR CLIENT BY ARGUING THAT YOU LEGALLY COULDN'T DO WHAT IT WAS YOU WERE ATTEMPTING TO DO.

WELL, IF IT WAS SO CLEAR, THOUGH, WHICH IS WHAT YOU ARE SAYING IS THAT IT WAS SO CLEAR, WHY WOULDN'T THE COUNTY, BEFORE THE FIRST TRIAL, ONCE YOU DID DEVELOP THE FACT, GO FOR SUMMARY JUDGMENT AND GET IT DETERMINED AS A MATTER OF LAW?

THE REASON WE COULDN'T MOVE FOR SUMMARY JUDGMENT, YOUR HONOR IN THIS CASE IS WE WERE NEVER SAYING HE WAS NOT ENTITLED TO PRESENT A DAMAGE AS TO SEVERANCE DAMAGES. WE WERE ALWAYS SAYING YOU HAD TO PRESENT A LEGALLY-ADMISSIBLE SEVERANCE DAMAGE. LIKE I SAID, YOU COULD GO OUT INTO THE MARKET AND FIND PARCEL ELSE THAT WERE SIMILARLY -- PARCELS THAT WERE SIMILARLY SITUATED IN THE SHAPE AND SIZE OF THE PROPERTY AND SHOW THAT THERE WAS A DIFFERENCE IN MARKET VALUE OF THOSE PROPERTIES, VERSUS ONE THAT DIDN'T HAVE THAT SHAPE, BUT THAT WAS NOT WHAT WAS PRESENTED HERE. THEY ACTUALLY HAD THIS PROPERTY SUBDIVIDEDED INTO THREE PARCELS. OKAY. THREE BIG PARCELS. THEY COULD HAVE COME IN AND SAID THE PARENT TRACK, WE ARE GOING TO SAY, IT IS JUST THIS PIECE, AND MAKE SOME PRESENTATION WITH REGARD TO THAT PARTICULAR PIECE THAT IS CLOSEST TO THE PROPERTY THAT IS INVOLVED HERE. THEY COULD HAVE DONE WHAT WAS REQUIRED FOR THEM TO DO THAT I COULD HAVE RESPONDED TO, AS OPPOSED TO GETTING INTO A BATTLE OF VISION AREAS, OF LAND PLANNERS -- OF VISIONARY, LAND PLANNERS AND EVERYONE ELSE, AS TO WHAT THE MARKET WOULD HAVE ACTUALLY SHOWN THE VALUE WAS CONCERNED.

BUT WE HAVE TO GO BACK TO THIS CASE HERE. DO YOU AGREE THAT, AT THE TIME THAT THIS CASE WAS DECIDED, THE LAW WAS THAT A PLAINTIFF IN A CON TEM NATION -- CONDEMNATION CASE DIDN'T HAVE TO PREVAIL ON A PARTICULAR CLAIM, IN ORDER TO GET FEES, TO BE ELIGIBLE AND ENTITLED TO FEES FOR THAT CLAIM, THAT IT IS NOT AN ISSUE OF BEING A PREVAILING PARTY?

NO. I DON'T AGREE WITH THAT STATEMENT. I DON'T AGREE THAT THAT WAS THE BLACK AND WHITE LAW IN THE STATE OF FLORIDA, BECAUSE THERE ARE MANY CASES HERE THAT SAY THAT, IF YOU DON'T PREVAIL ON AN ISSUE OKAY THAT, YOU KNEW OR SHOULD HAVE KNOWN THAT YOU COULD NOT --

BUT NOW YOU ARE GIVING THE CAVEAT. I AM GOING TO GET TO THE CAVEAT, BUT UNLIKE THIS ISN'T A PREVAILING-PARTIES ATTORNEYS FEES, WHERE YOU HAVE TO PREVAIL ON THIS CLAIM, IN ORDER TO GET FEES FOR THIS CLAIM, CORRECT?

THAT IS THE GENERAL.

SO THE CAVEAT IS THAT, THOUGH IT HAS TO BE, HOW WOULD YOU STATE THE LAW? THAT IT HAD TO BE CLOSE OR REASONABLE OR BOTH? WHAT, IF WE WERE TO RESTATE THE LAW, THE LAW WAS, AT THE TIME THAT, IN ORDER TO OBTAIN ATTORNEYS FEES IN A CLAIM THAT YOU DIDN'T PREVAIL ON IN CONDEMNATION CASES, THEN WHAT?

IT HAD TO BE A CLAIM THAT WAS LEGALLY ADMISSIBLE, I WOULD SAY IS A WAY TO LOOK AT IT. IT HAD TO BE LEGALLY ADMISSIBLE IN A COURT OF LAW THAT, YOU DON'T HAVE A RIGHT TO JUST, UNFETTERED RIGHT TO GO OUT --

UNDER THAT THEORY, IT WOULD BE UNREASONABLE,ATH AS A MATTER OF LAW, TO DEVELOP EVIDENCE IN ORDER TO TRY TO ADVANCE A NEW CLAIM, A CLAIM THAT HADN'T ALREADY BEEN ESTABLISHED. I MEAN IT SEEMS TO ME THAT IS A VERY DIFFICULT, AND IN FACT THAT WE ARE SORT OF CONTINUALLY, THE LAW IS CONTINUING TO ADVANCE IN ALL OF THESE AREAS.

I DON'T SEE THAT AS A PARTICULAR PROBLEM IN THE CASE THAT WE HAVE IN FRONT OF US PARTICULARLY. WHEN WE FILE SUIT, WE SAY WE HAVE THE BURDEN OF PROOF TO SHOW THE VALUE OF THE PROPERTY WE ACQUIRED. THE BURDEN SWITCHES, WITH REGARD TO ATTEMPTING TO PROVE DAMAGES THAT YOU OTHERWISE ARE NOT NECESSARILY ENTITLED TO. YOU HAVE TO ACTUALLY PROVE, THE DEFENDANT HAS TO COME IN AND PROVE SEVERANCE DAMAGES. THAT IS THEIR BURDEN. IT IS NOT THE GOVERNMENT'S BURDEN. THE GOVERNMENT SIMPLY RESPONDS AND REBUTS THAT.

BUT I THINK YOU AGREED EARLIER, THAT WHAT REALLY IS THE FOCUS OF THIS CASE IS THE QUESTION OF WHAT IS UNREASONABLE FOR COUNSEL TO DO.

YES. AND THE UNREASONABLE PART HERE DOESN'T FOCUS ON ATTEMPTING TO GET INSIGHT PLANS. THE UNREASONABLENESS HERE FOCUSES ON THE MANNER IN WHICH THEY ATTEMPTED TO SHOW THE SEVERANCE DAMAGES, TO PROVE THE SEVERANCE DAMAGES, BASED ON THAT.

WOULD THE ISSUE OF REASONABLENESS IN A PARTICULAR CASE ORDINARILY BE A MATTER FOR THE TRIAL COURT TO DETERMINE, AS OPPOSED TO THE APPELLATE COURT?

AS LONG AS THE TRIAL COURT IS APPLYING THE LAW. THE LAW IN THIS PARTICULAR CASE, THE STATUTE THE COURT HAD IN FRONT OF IT IN THIS PARTICULAR CASE, HAD A SPECIFIC WAY YOU ARE SUPPOSED TO DETERMINE THESE ISSUES. FOR EXAMPLE, IT SAID YOU HAD TO LOOK AT AND GIVE THE GREATEST WEIGHT TO THE BENEFIT YOU GOT. AND THAT, IN DETERMINING THE NUMBER OF HOURS THAT YOU ARE GOING TO SPEND IN THIS CASE, YOU HAD TO LOOK AT THE BENEFIT, SO IT IS REALLY A BENEFITS ANALYSIS. BASICALLY WHAT IT COMES DOWN TO IS HOW CAN IT POSSIBLY BE REASONABLE TO COME INTO A CASE AND SAY I AM GOING TO SPEND $200,000 TO PROVE $100,000 CLAIM THAN THE TAXPAYERS OF THIS COUNTY OR THE STATE HAVE TO PAY FOR THAT!

NOW YOU ARE TALKING ABOUT WHETHER THE AMOUNT AWARDED WAS REASONABLE, AND THAT IS THE THIRD DISTRICT KNOCKED THE ATTORNEYS FEES CLAIM OUT COMPLETELY. THEY DIDN'T SAY, WELL, IT IS KRES, IT IS RIDICULOUS -- IT IS CRAZY, IT IS RIDICULOUS, IT IS UNREASONABLE TO SPEND $1 ARE 200,000 TO -- TO SPEND $200,000 TO REDUCE A $100,000 CLAIM. THEY SAID YOU DIDN'T WIN. YOU DON'T GET MONEY. ISN'T THAT WHY WE ARE HERE?

ACTUALLY WHAT THE COURT SAID IS IT SENT THE CASE BACK FOR A DETERMINATION ON THE ATTORNEYS FEES. IT DID SAY THAT 75,000 DOLLARS WAS A TOTAL GIVEN, BUT IT SENT BACK TO THE COURT TO MAKE A DETERMINATION AS TO REASONABLE ATTORNEYS FEES, IN LIGHT OF THE OPINION.

BUT IT HELD --

-- OF THE COURT.

BUT IT HELD THAT, IN PREPARING THE FAILED SEVERANCE DAMAGES CLAIM, THAT SHOULD NOT HAVE BEEN INCLUDED IN THE CALCULATION OF EITHER EXPERT WITNESS FEES OR ATTORNEYS FEES.

CORRECT.

THEY HELD THAT, AS A MATTER OF LAW.

YES. AND, WELL --

SO WHEN IT IMPOSE BACK --

-- WHEN IT GOES BACK.

WHEN IT GOES BACK --

THE INSTRUCTION IS THEY ARE NOT TO BE INCLUDED.

RIGHT. AND THE REASON THEY ARE NOT TO BE INCLUDED IS THAT PRUMENT I FEEL AND IMPLICITLY IN -- PRESUMPTIVELY AND IMPLICITLY IN THEIR OPINION, YOU HAVE TO APPLY THE

LAW WHICH IS CONSISTENT WITH AWARDING ATTORNEYS FEES AND COST WHICH IS LOOK AT THE BENEFITS AS THE GREATEST WEIGHT AND LOOK AT THE HOURS THAT WERE SPENT IN THIS CASE AND WHAT THEY WERE SPENT TO DO, AND THE BENEFIT THAT IT GOT TO THE CLIENT, AND, ALSO, THE LAST REQUIREMENT IS WHAT WOULD A LAND OWNER PAY FOR THIS, IF HE HAD TO PAY THOSE COSTS HIMSELF? MR. CHIEF JUSTICE: THANK YOU, MR. GOLDSTEIN.

THANK YOU. MR. CHIEF JUSTICE: REBUTTAL?

THANK YOU, YOUR HONOR. HINDSIGHT IS 20/20, AND KNOWING NOW WHAT THE THIRD DCA RULED, IT IS EASY TO SAY THAT THERE FOR IT SHOULD NOT HAVE BEEN PURSUED. I DISAGREE WITH THAT. BECAUSE OF THE TIME, YOU HAVE TO LOOK AT WHAT THE CIRCUMSTANCES WERE THAT WERE PRESENTED. PRESENTED WITH THE SAME INFORMATION TODAY AS I HAD THEN, I WOULD DO THE SAME THING AGAIN. ONE OF THE THINGS --

NOT WITH THE LAW. YOU WOULD DO THE SAME THING?

BEFORE THE THIRD DCA'S DECISION.

OKAY. NOW YOU HAVE THE THIRD DISTRICT'S DECISION. YOUR CLIENT --

AM I IN BROWARD OR DADE?

YOU ARE WHERE YOU ARE.

IN DADE, NO.

YOU WOULD SAY THERE IS NO WAY I CAN'T THINK OF AWAY THAT I CAN PRESENT SEVERANCE DAMAGE CLAIMS, BECAUSE THIS PROPERTY IS EITHER, YOU KNOW, TO BE SOLD AS A WHOLE OR TO BE SOLD AS LOTS, AND I CAN'T SHOW THAT A COMPARABLE PIECE OF PROPERTY WOULD BE WORTH ANY LESS WITH THIS LITTLE PIECE LOST. ISN'T THAT REALLY WHAT THE PROBLEM IS, THAT THERE REALLY WASN'T A REDUCTION IN THE VALUE OF THIS PROPERTY?

THAT IS THE ABILITY TO DEMONSTRATE THAT AND TO PRESENT INFORMATION THAT IS GOING TO BE UNDERSTANDABLE TO A JURY AND THAT, FOR INSTANCE, AND I AM -- LET ME JUST QUOTE FROM WHAT THE COUNTY'S APPRAISER SAID, AND HE SAID, TALKING ABOUT THE LOSS OF FRONTAGE, IF THE LAST SITE IS TOO SMALL TO BE DEVELOPED WITH A RESTAURANT OR CONVENIENCE-TYPE RETAIL USE, THEN THE REMAINED IRSITE WOULD HAVE BEEN -- THE REMAINDER SITE WOULD HAVE BEEN DAMAGED BY THE TAKING. THAT IS WHAT THE COUNTY'S APPRAISER IDENTIFIED. IF THIS IS TOO SMALL, THEN YOU HAVE BEEN DAMAGED.

I DON'T UNDERSTAND WHY, IN LIGHT OF THAT, YOU COULDN'T HAVE STILL DEVELOPED OTHER EXPERT TESTIMONY THAT IT WAS, THAT WOULD SHOW THAT THE REST WAS DAMAGED IN THE MARKETPLACE, IF THAT WAS, IN FACT, THE CASE.

JUDGE, OUR TESTIMONY WAS THAT IF YOU GET BELOW 150 FEET WIDE, WHICH IS BOTH SIDES AGREED WITH THAT, THAT THAT IS SUBSTANDARD H THAT IS NOT WHAT THE MARKETPLACE IS DEMANDING. DADE COUNTY'S ANALYSIS WAS THERE ARE OTHER THIN PARCELS OUT THERE THAT SELL. OKAY. OURS WAS YOU CAN'T DO THAT. IT DOESN'T WORK. AND THIS IS WHY. THEY ARE TOO THIN, AT THIS POINT IN TIME, AND WE HAVE TO TRY TO REARRANGE, TO TRY TO SAVE WHAT WE PERCEIVE TO BE THE MOST VALUABLE PIECE OF PROPERTY, THE SERVICE STATION AT THE CORNER. I DON'T KNOW HOW YOU DO THAT, WITHOUT DEMONSTRATING WITH A PICTURE, AND PERHAPS A SITE PLAN IS TOO FANCY A NAME. THAT IS WHAT THEY CALL IT IN THESE CASES, WITHOUT DEMONSTRATING SOMETHING TO THE JURY THAT SHOWS WHY IT IS THAT THIS IS A BIG PROBLEM NOW. YOU HAVE GOT THIS BIG SWATHE COMING OUT OF THIS BIG PIECE OF PROPERTY. MAYBE A BETTER ATTORNEY CAN FIGURE IT OUT. I HAVE NOT BEEN ABLE TO FIGURE OUT HOW

YOU CAN DEMONSTRATE THAT WITHOUT SHOWING A PICTURE, WITHOUT TRYING TO EDUCATE THE JURY, WHAT ARE THE PROBLEMS THAT ARE CREATED. I STRONGLY DISAGREE WITH THE STATEMENT THAT THIS WAS CLEAR. THE PARTIKA DECISION SPECIFICALLY TALKS ABOUT SITE PLANS BEING ADMITTED. IT SPECIFICALLY SAYS THAT SITE PLANS ARE THE CLEAREST FORM OF EVIDENCE TO DEMONSTRATE THE VALUE OF THE PROPERTY, BEFORE AND AFTER THE TAKING. THAT WAS THE FOURTH DCA DECISION THAT WAS SIX MONTHS OLD WHEN WE PURSUED THIS CASE, SO I STRENUOUSLY DISAGREE THAT THIS WAS CLEAR THAT THIS WAS NOT AN APPROPRIATE WAY TO PROCEED. THIS, THE BOTTOM LINE WITH THE THIRD DISTRICT'S DECISION IS I HAVE GOT A $5 MILLION PIECE OF PROPERTY. THE MOST IMPORTANT PART OF IT IS GETTING SEVERELY AFFECTED, AND THE BUDGET THAT I HAVE TO EXPLAIN THIS TO MY CLIENT, TO COME UP WITH ALTERNATIVES, FOR INSTANCE, THE DOLLAR AMOUNT INVOLVED HERE --.

WOULD YOU AGREE THAT THERE IS A POINT AT WHICH THE INCURRING OF ATTORNEYS FEES IS UNREASONABLE, AS A MATTER OF LAW?

I DON'T KNOW IF I WOULD SAY IT AS A MATTER OF LAW, JUSTICE. I WOULD SAY IT AS A MATTER OF FACT, THAT THAT IS, I MEAN, WELL IT MAY BE MIXED, IN THE SENSE OF IF IT IS PLAINLY CLEAR THAT THIS APPROACH IS NOT RECOVERABLE, AS A MATTER OF LAW, THAT IT IS NOT RECOVERABLE, AND IT WAS KNOWN AT THE TIME, THEN IS THAT A QUESTION OF FACTOR A QUESTION OF LAW? I AM NOT SURE WHICH IT WOULD BE.

BUT EITHER ONE, IT WOULD STILL BE A DECISION THE THIRD DISTRICT WOULD MAKE, IF IT IS A MIXED QUESTION OF LAW AND FACT.

I THINK IT IS THE TRIAL COURT'S DECISION TO MAKE A DETERMINATION OF WAS IT REASONABLE TO PURSUE. I THINK THAT, UNLESS IT IS ABSOLUTELY CLEAR THAT, IN LIGHT OF ALL OF THE CIRCUMSTANCES, IS IT REASONABLE TO PURSUE THIS, WELL, YOU HAVE TO LOOK AT THOSE CIRCUMSTANCES, AND YOU HAVE TO LISTEN TO THE TESTIMONY. MR. CHIEF JUSTICE: THANK YOU, MR. BOLF.

AM I DONE, JUDGE? MR. CHIEF JUSTICE: THANK YOU. AT LEAST YOUR TIME IS OVER. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE, AND THE COURT HIM BE IN RECESS FOR 15 MINUTES -- AND THE COURT WILL BE IN RECESS FOR 15 MINUTES. THE MARSHAL: PLEASE RISE.