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City of Winter Springs vs State of Florida

GOOD MORNING, AND WELCOME TO THE FLORIDA SUPREME COURT. THE ORAL ARGUMENT CALENDAR THIS FRIDAY MORNING. WE BEGIN WITH THE CASE CITY OF WINTER SPRINGS, AND, I BELIEVE, MR. ENGLAND, YOU ARE GOING TO PROCEED.

MR. CHIEF JUSTICE. MAY IT PLEASE THE COURT. MY NAME IS ARTHUR ENGLAND. I AM HERE ON BEHALF OF THE CITY OF WINTER SPRINGS. THIS IS A BOND VALIDATION CASE FOR A SPECIAL ASSESSMENT FOR A DISTRICT, INVOLVING, REALLY, TWO QUESTIONS, WHETHER THERE WAS A SPECIAL BENEFIT TO THE PROPERTYS WITHIN A DISTRICTS THAT WAS CREATED AND WHETHER THE BENEFITS AND THE ASSESSMENT, PARDON ME, THE ASSESSMENT, WAS FAIRLY AND REASONABLY APPORTIONED. I THINK A SMALL PICTURE WOULD BE IN ORDER, MENTALLY OF THE TUSKAWILLA DISTRICT. IT IS NOT A COUNTY-WIDE DISTRICT. IT IS A SECTION -- I SAID CITY WIDE -- OF THE CITY OF WINTER SPRINGS. IT IS IS A SMALLER AREA, LESS THAN AFTER, I BELIEVE, CLOSER TO THARD. IT HAS A LOT OF RESIDENCES IN IT, 4,000 OF THEM. NINTH PERCENT OR MORE ARE SINGLE-FAMILY HOMES. THERE IS A COUNTRY CLUB, AND THERE ARE SOME CONDOMINIUM AND DUPLEX FACILITIES, WHERE MORE THAN ONE FAMILY LIVES. IT HAS ABOUT SEVEN OR EIGHT ENTRANCE ROADS, WHICH ARE PART OF THE PROJECT, BY THE WAY, TO IDENTIFY THE COMMUNITY, WITH WALLS NAMING THEM THERE. THE MAIN STREET THROUGH IT IS CALLED WINTER SPRINGS BVED BAD -- BOULEVARD, AND VERY CLEARLY THE LARGEST PORTION OF THE NEW LIGHTING, THE UPGRADED LIGHTING, THE BEAUTIFICATION WILL BE ALONG THAT MAIN ROAD, BUT THERE IS SIGNAGE, OUT ON THE SIDE, ON THE SIDE STREETS, THAT IS A PART OF THIS, SOME BEAUTIFICATION THERE. CERTAINLY THE AESTHETICS AND THE SAFETY ARE GOING TO BE AFFECTED BY THE ENTIRE COMMUNITY. THERE WILL BE WALL IDENTIFICATIONS AT THE ENTRANCEWAYS, SO THAT THE COMMUNITY IS KNOWN, AND THE OTHER THING THAT YOU NEED TO KNOW, BY WAY OF BACKGROUND, AND IT IS SPELLED OUT, IN THE BRIEFS, IS HOW THIS GOT TO BE A DISTRICT WHICH HAD A SPECIAL ASSESSMENT. THIS WAS COMMUNITY-DRIVEN, THE TUSKAWILLA, HAD A CITIZENS' GROUP, AND THEY WANTED TO DO THIS FOR THEMSELVES MUCH THE IMPETUS FOR IT, THEY HAD MEETINGS. THEY CONTACTED THE CITY. THE CITY APPOINTED AN ADVISORY OF CITIZENS, WITHIN TUSKAWILLA. THEY GOT CONSULTANTS THAT WERE EXPERTS HIRED BY THE CITY AND BY THE ADVISORY GROUP, ALL LEADING TO A SERIES OF MEETINGS, PUBLIC MEETINGS, AND THE GOVERNMENT OF THIS -- AND THE DEVELOPMENT OF THIS TAXATION DISTRICT. WE BELIEVE THAT THIS IS A QUINTESSENTIAL TAX DISTRICT.

IS THIS A NORMAL PRACTICE THAT A COMMUNITY COULD GET TOGETHER, LIKE THIS, AND BECOME A TAX DISTRICT, IN ORDER TO MAINTAIN THE ROADS AND OTHER PUBLIC AREAS?

IT IS, YOUR HONOR, AND FOR A VARIETY OF PURPOSES. SOMETIMES COMMUNITIES, SMALL PARTS OF COMMUNITIES DO IT FOR GUARD SERVICES, AS YOU SAW, IN THE RUSHFELD CASE. SOME DO IT FOR BEAUTIFICATION, BUT, YES, THIS IS WHAT SPECIAL TAX DISTRICTS ARE ALL B.

IS THERE ANY KIND OF REQUIREMENT THAT THE COMMUNITY HAS TO BE OF A CERTAIN SIZE OR THAT IT HAS TO TAKE UP A CERTAIN PORTION OF THE CITY OR ANYTHING?

NO. IT DEPENDS --

JUST ANY COMMUNITY COULD DO IT?

IT DEPENDS ON YOUR CITY AND YOUR COUNTY, WHAT THE LOCAL RULES ARE, BUT THE ANSWER IS, YES, THERE IS NO REQUIREMENT. THERE IS NO LIMITATION. AND YOU WILL NOTE, JUSTICE QUINCE, YOU WILL NOTE THAT THERE IS NO CHALLENGE, HERE, TO THE VALIDITY OF THE PROCESS OR THE BOUNDARIES OF THE DISTRICT. IT IS JUST WAS THIS DESIGNED TO BENEFIT PARTICULAR PROPERTIES AND DID THEY GET A FAIR APPORTIONMENT? AND THE ANSWER TO THAT IS YES. AS I SAY, THIS IS --

BUT THAT IS NOT WHAT THE TRIAL COURT HELD, IS IT?

THAT'S RIGHT.

NOW, TELL US --

THAT SHOULDN'T BE --

WHEN YOU HAVE THE CITY MAKING THIS DETERMINATION, ON THE ONE HAND, AND, THEN, IT IS CHALLENGED IN THE TRIAL COURT, AND THE TRIAL COURT MAKES A DETERMINATION TO THE CONTRARY, WHAT IS OUR STANDARD OF REVIEW? ONE OF THE DECISION BY THE CITY OR THE DECISION BY THE COURT?

YOU HAVE BEEN VERY CLEAR ON THAT, PARTICULARLY IN THE LAST THREE YEARS, AND JUSTICE HARDING, I INVITE YOU TO REREAD THE OPENING PARAGRAPHS OF MY REPLY BRIEF. THE ANSWER IS YOUR TEST THAT YOU IMPOSE IS ABSOLUTELY NOT WHAT THE CIRCUIT JUDGE DID, BUT WAS THE COMMUNITY, GOVERNMENT OR COUNTY OR CITY, WAS THE DECISIONS THAT THEY MADE, IN THE TWO AREAS THAT WE ARE CONCERNED ABOUT, PALPBLY ARBITRARY? IT IS NOT A QUESTION OF WHETHER THERE IS COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT THE LEGISLATIVE BODY. YOU MADE THAT CRYSTAL CLEAR THREE TIMES IN THE LAST FIVE YEARS AND SAID IT OVER, AGAIN, SO I KNOW THE TRIAL JUDGE, WE LIKE TO SAY, WENT OFF THE RAILS A LITTLE BIT, BUT WE THINK HE WAS WRONG. HE APPLIED THE WRONG TEST. THERE IS NOTHING TO SUGGEST HE WAS APPLYING THE TEST WHICH YOU HAVE IDENTIFIED, WHICH IS, ALL RIGHT, CITY FATHERS, IS WHAT YOU HAVE DONE IN APPORTIONING AND SELECTING THE SPECIAL BENEFIT PROPERTIES PALPBLY ARBITRARY?

BUT WHAT IS PALPABLE? CAN YOU GIVE ME AN EXAMPLE OF WHAT WOULD BE PALPBLY ARBITRARY?

I CAN'T, EXCEPT FROM THE CASE LAW, AND I KNOW, JUSTICE WELLS, THAT YOU AND JUSTICE HARDING HAVE BEEN CONCERNED IN THREE CASES, THAT ARE QUITE DIFFERENT FROM THIS. THOSE WERE COUNTYWIDE ASSIST LITTLE -- ASSESSMENTS, WHICH MASQUERADE AS ASSESSMENTS BUT WERE, REALLY, ADVALOREM TAXES, AND LET ME DRAW THE DISTINCTION TO SHOW WHY THOSE FELL ON THE TAX SIDE BUT THIS DOESN'T, AND USE THE PRINCIPLE, SO YOU CAN GROUND YOURSELVES IN THIS. THIS IS A DISTRICT THAT IS A COMMUNITY NO DIFFERENT FROM KILARN HERE, IN TALLAHASSEE. THIS IS EQUIVALENT TO THE CITIZENS OF KALARN COMING TO TALLAHASSEE AND SAYING WE WANT A BIGGER SIGN IN FRONT OF KILARN FOR IDENTIFICATION. WE ARE A SPECIAL COMMUNITY HERE. WE WANT OUR SPECIAL ROAD, KILLARNEY WAY, WHICH IS SIMILAR TO WINTER SPRINGS BOULEVARD. WE WANT TO PAVE AND WANT THE SPRINKLERS FIXED AND IDENTIFY OURSELVES ON THE ROAD, SO FOLKS REQUEST CAN FIND THEMSELVES IN AND OUT OF KILLARN, AND IT IS FOR US, BECAUSE IT WILL ENHANCE THE VALUE OF OUR HOMES. KILLARN IS DIFFERENT, BECAUSE IT HAS PREDOMINANTLY RESIDENTIAL AND A FEW MULTIPURPOSE, AND THOSE PEOPLE DID IT FOR THEMSELVES, IN TUSKAWILLA, EXACTLY THE SAME AS IF THE PEOPLE WENT TO THE CITY FATHERS, AND SO, JUSTICE WELLS, IN ANSWER TO YOUR QUESTION, THIS IS NOT A CASE OF THE CITY OF TALLAHASSEE SAYING WE ARE GOING TO DO THIS IN AN UNIQUE AREA AND BYPASS CHURCH RESTRICTIONS, BYPASS HOMESTEAD REQUIREMENTS, IN ORDER TO LEVY A TAX. THIS IS THE COMMUNITY SAYING WE WILL PAY FOR IT!

EXCUSE ME. GO AHEAD, JUSTICE SHAW.

IS THERE ANY REQUIREMENT THAT THERE BE ANY APPORTIONMENT BY THE CITY, AS TO THE BENEFITS? DOES THE CITY HAVE TO SAY APPORTION HOW THESE BENEFITS WOULD ACCRUE TO THE PROPERTY OWNERS?

NO.

OR CAN THERE BE A GENTLEIZED STATEMENT THAT, WOULD THIS BE SUFFICIENT, A GENTLEIZED STATEMENT THAT PROPERTY VALUES WILL BE ENHANCED? WOULD THAT BE SUFFICIENT?

IT IS, IF THE CITY HAS GONE THROUGH A VALUATION MECHANISM THAT RELATES THE BENEFIT TO THE PROPERTIES. AGAIN, THE COURT, UNANIMOUSLY, FOR YOURS -- FOR YEARS, HAS BEEN CRYSTAL CLEAR ON THERE IS NO ONE METHODOLOGY. THERE HAVE BEEN ATTEMPTS AT ADVALOREM TAXATION, AT PROPERTY ASSESSMENT-BASED TAXES PER UNIT, BUT YOU HAVE SAID, OVER AND OVER AGAIN, THERE ARE AS MANY SYSTEMS AS THE MIND OF MAN CAN DWOOS, AS LONG AS THE -- CAN DEVISE, AS LONG AS THE CITY FATHERS WERE NOT ARBITRARY IN THEIR SELECTION OF A METHODOLOGY, IT IS OKAY, AND WE ARE NOT GOING TO SECOND-GUESS IT, AND WHAT DO THEY DO HERE? THEY HIRED A GOVERNMENTAL GROUP, WHO WENT OUT AND THEY TOOK ENGINEERING STUDIES OF TRAFFIC REPORTS, AND THEY SAID WE THINK THE BEST MECHANISM IS ONE THAT IS GENERALLY USED AMONG APPRAISERS. IT IS GENERALLY USED IN PROPERTY SITUATIONS AND, INDEED, IT WAS RUSHED IN THE RUSHFELD CASE, BASED ON INDIVIDUAL UNITS, AND IT IS PROPORTIONALIZED IN THE DISTRICT, AND THEY TOOK EVERY SINGLE HOUSE IN THE TUSKAWILLA DISTRICT, AND THEY AVERAGED THE SQUARE FOOTAGE. THEY DO NOT HAVE AN OBLIGATION, JUSTICE SHAW, TO PROPORTIONAL PROPORTIONALIZE BY HOUSE. DOES IT IMPROVE THE PROPERTY, WHETHER IT IS AN 18 00 SQUARE FOOT OR A 5,000 SQUARE FOOT HOUSE IN TUSKAWILLA, DOES IT IMPROVE IT TO HAVE BETTER SAFETY, WHEN THEY COME IN ON A ROAD AT NIGHT THAT IS WELL LIT? AND THAT IS PART OF THIS. YOU WILL FIND THAT PEOPLE WHO OBJECT TO THIS ARE DWELLING, PRINCIPLY, ON ROADS, BUT IT IS SAFETY, TOO. EVERY SINGLE PERSON NOW HAS GREATER LIGHTING. THEY FILLED IN THE WATTAGE. THERE ARE GAPS IN THE LIGHTING, YOU WILL FIND IN THE RECORD. THEY BETTER PUT SIGNAGE, SO FOLKS CAN FIND THEMSELVES AROUND, ALL OF WHICH ARE PERFECTLY GOOD PURPOSE OZ, IN ADDITION TO IMPROVE -- PURPOSES, IN ADDITION TO IMPROVING THE ROADWAY, ITSELF.

YOU SAID THEY COULDN'T GIVE ARBITRARY PROPORTIONMENT HERE. LET ME RUN A HYPOTHETICAL BY YOU, TO SEE IF WE CAN --

SURELY.

ONE OF THE MOST POPULAR FORMS OF THESE SPECIAL ASSESSMENT DISTRICTS HAS BEEN DOWNTOWN DEVELOPMENT AUTHORITIES OR DOWNTOWN REDEVELOPMENT AUTHORITIES THAT HAVE BEEN GOING ON FOR YEARS. WOULD YOU AGREE?

ABSOLUTELY. WE HAVE A CASE THAT SAYS THAT THAT IS PERFECTLY FINE. DOWNTOWN INFRASTRUCTURE.

SO LET'S TAKE A TOWN THAT DECIDES THAT THEY ARE GOING TO DO SOMETHING LIKE THAT BUT THAT THEY WANT TO SPREAD THE COST FURTHER. AND A DISTRICT THAT HAS ONE MAJOR THOROUGH FAIR STREET, WITH ALL OF THE COMMERCIAL SHOPS. PERHAPS SOME RESIDENTIAL APARTMENT BUILDINGS, THAT KIND OF THING. AND THEY DO A MAJOR JOB IN THAT DOWNTOWN AREA, AS FAR AS BEAUTIFICATION AND LIGHTING AND THE WHOLE WORKS. BUT THEY DECIDE THAT THEY WANT TO APPORTION THE COST OF THAT OUT INTO THE RESIDENTIAL AREAS THAT ARE CLOSE TO DOWNTOWN, AND, BUT, NOT -- MORE THAN A HALF MILE AWAY, THEY SAY, WELL,

THAT IS TOO FAR, BUT WE ARE GOING TO ASSESS THE PEOPLE THAT LIVE WITHIN A HALF MILE OF DOWNTOWN, EVEN THOUGH ALL OF THE BEAUTIFICATION, LIGHTING --

IS THE CENTER CITY.

IS RIGHT THERE, ON THE MAIN STREET, IN THE CORE OF THE CITY. IS THAT -- WOULD THAT BE PERMISSIBLE, TO ASSESS A HOUSE THAT IS A HALF MILE AWAY, THAT GETS, OBVIOUSLY, SOME IN DIRECT BENEFIT, FROM HAVING A NICE DOWNTOWN CENTRAL AREA, BECAUSE EVERYBODY, PERHAPS, IN THE COMMUNITY, AT SOME POINT, GOES SHOPPING DOWN THERE. PEOPLE ARE ATTRACTED TO THE TOWN, BECAUSE IT HAS A NICE DOWNTOWN. IT MAY IMPACT THE VALUE OF HOMES, BECAUSE TOWNS THAT VERY NICEER AMENITIES, PROBABLY --.

INCREASES THE VALUE.

GENERALLY. WOULD THAT PASS MUSTER?

IT MIGHT NOT. IT MIGHT ACTUALLY BE ARBITRARY, THAT HALF MILE LINE THAT YOU ARE TALKING ABOUT. NOW, YOU DO HAVE THE CASE THAT, IT MAY BE QUESTIONABLE, BUT IT IS THE DECISION OF THE COURT THAT A DOWNTOWN INFRASTRUCTURE CAN BE SUSTAINED. YOURS IS A LITTLE MORE THAN THAT. IT IS AN ATTENUATION, AN ATTEMPT TO MOVE IT OUT, LIKE A GENERAL TAX, REACHING TO A CERTAIN LEVEL. THAT GETS CLOSE TO THE ARBITRARY, BUT THAT, I WOULD SUGGEST, HAS NO RELATIONSHIP TO THIS.

HOW DOES THE PROJECT COMPARE TO WHAT I JUST DESCRIBED?

NOWHERE NEAR. WE HAVE GOT A GROUP OF CITIZENS WHO LIVE IN THEIR OWN COMMUNITY, CONFINED COMMUNITY, IF YOU WILL. IT IS NOT WHAT WILLED AND GAITED, BUT IT IS A -- AND GATED, BUT IT IS A DISTINCT SUBDIVISION. THOSE PEOPLE CAME TOGETHER AND SAID WE WANT TO CREATE A DISTRICT FOR OURSELVES, WHETHER IT WOULD BE FOR GUARD DUTY, FOR GUARDS, BEAUTIFICATION, LIGHTING, SAFETY, AND THE QUESTION IS, IS THAT A GUISE FOR ARBITRARY ARBITRARYNESS? OF COURSE NOT. THAT IS EXACTLY WHAT COMMUNITIES DO ALL OF THE TIME. THAT IS WHAT SPECIAL DISTRICTS SHOULD BE ENCOURAGED TO DO, SO THAT, HYPOTHETICALLY, AGAIN, TO BRING IT BACK TO THIS AREA, SO THAT THE CITY OF TALLAHASSEE DOESN'T TAX EVERYBODY, TO PUT SOME IMPROVEMENTS, WHICH BENEFIT KILARN, WHICH INCREASE THE PROPERTY VALUES THERE, BECAUSE THIS IS THE DESIRABLE SUBDIVISION FOR ANYBODY WHO MIGHT MOVE OR WANT TO LIVE IN THIS AREA.

JUSTICE PARIENTE HAD A QUESTION.

I AM SORRY.

YES. IS IT SIGNIFICANT FOR THE ANALYSIS, BECAUSE YOU ARE SAYING IT IS THE ARBITRARY STANDARD, BUT YOU KEEP ON EMPHASIZING THAT THIS CAME AS A RESULT OF A COMMUNITY-BASED INITIATIVE, REALLY, WHERE THIS --

YES.

-- THIS TAXING DISTRICT IS, ALMOST, TAKING OVER FOR THE PREVIOUS HOMEOWNERS' ASSOCIATION. WHERE, IN OUR ANALYSIS, OR HOW WOULD WE FRAME A TEST THAT WOULD DISTINGUISH A SITUATION WHERE YOU HAVE GOT THE CITY SORT OF DECIDING WE ARE GOING TO DO THIS FOR THIS PORTION, AND THE HOMEOWNERS, REALLY, AREN'T PART OF THE SAY SO, VERSUS THIS SITUATION, WHERE AS YOU HAVE DESCRIBED, THEY HAVE COME TOGETHER, ASKED FOR A SPECIAL TAXING DISTRICT, AND, NOW, THIS BOND -- IS THERE ANYTHING IN OUR CASE LAW OR WHAT YOU SUGGEST IN FRAMING A TEST, THAT WOULD PUT THIS IN A DIFFERENT SITUATION THAN ANOTHER TYPE OF SPECIAL ASSESSMENT?

THE ANSWER IS, NO, THERE IS NOTHING, I WOULD SAY, PER SE, THAT FRAMES THAT.

SOMEHOW THAT SEEMS, IN TERMS OF THE EQUITIES, IT DOES SEEM THAT, WHEN YOU DESCRIBE IT AS A SMALL COMMUNITY THAT IS DISTINCT AND IS GOING TO BE DOING CERTAIN THINGS FOR THE HOMEOWNERS, THAT YOU SEE IT AS DIFFERENT, BUT YOU DON'T SEE ANY WAY THAT WE CAN ARTICULATE --

YOU HAVE CREATED A TEST, BUT IT IS VERY DIFFERENT, AND THE REASON GOES, TO THE TEST THAT YOU PROVIDED, IS IT PALPABLY ARBITRARY? WHAT YOU ARE TEST IS, YOUR TEST HAS BEEN, AND I DON'T THINK THIS HAS CHANGED, SINCE 1914, WE TAKE A LOOK AT THE COMMUNITIES ATTEMPTING TO RAISE A TAX THROUGH THIS MECHANISM, AND WE ASK OURSELVES, IS THIS A STALKING HORSE FOR A GENERAL TAX OR FIRE PROTECTION OR FOR SEWERS OR FOR GOVERNMENTAL PURPOSES? WITHIN THE DOWNTOWN AREA, THE INFRASTRUCTURE, FOR EXAMPLE, OR IS THIS AN ASSESSMENT ON PROPERTIES, IN A DISCREET AREA, IN WHICH THE BENEFIT IS GOING TO FLOW, PRINCIPLY, AND IT DOESN'T HAVE TO BE EXCLUSIVELY, TO THE PEOPLE IN THOSE AREAS, IN TERMS OF PRESENT AND FUTURE VALUE. THAT IS WHERE THE TESTS COME IN, BECAUSE WHEN THE COMMUNITIES RISE UP AND SAYS WE WANT TO DO SOMETHING FOR OURSELVES AND CREATE A DISTRICT WHERE WE TAX OURSELVES, IT IS NOT THE CITY SAYING, WELL, THIS IS A STALKING HORSE FOR SOMETHING. WE WILL TAX EVERYBODY. THAT FUNDAMENTAL TEST OF WHERE THE INITIATIVE CAME, IS NOT IN YOUR CASE LAW. BUT IT CERTAINLY PERMEATES THE CONCEPT, DRAMATICALLY, BECAUSE THE TEST IS, IS IT A GENERAL TAX CREATED BY, IN THIS CASE IT WOULD BE THE CITY OF WINTER SPRINGS. IS THIS A TAX? NO. IT IS DESIGNED FOR PEOPLE WHO WANT TO BURDEN THEMSELVES WITH AN ADDITIONAL \$110 A YEAR, TO ENHANCE THE SAFETY OF THEIR COMMUNITY, WITH BETTER RIGHT.

-- WITH BETTER LIGHTING AND THAT KIND OF THING.

YOU ARE IN YOUR REBUTTAL TIME.

I WOULD LIKE TO SAVE THE REST OF THE TIME, CHIEF JUSTICE. THANK YOU.

MR. JONES.

GOOD MORNING, YOUR HONOR. MY NAME IS MIKE JONES. I AM HERE ON BEHALF OF THE INTERVENEORS OR THE OBFORCE, IF YOU PLEASE. I THINK -- OR THE OBJECTORS, IF YOU PLEASE. I THINK LITTLE ATTENTION WAS PAID TO THE BACKGROUND, AND I WOULD LIKE TO BACK THAT UP. THERE WAS TESTIMONY BY DON GILMORE, AND THIS IS NOT WHERE THE COMMUNITY CAME TOGETHER --

WOULD YOU MIND RAISING YOUR MICROPHONE?

THIS IS NOT WHERE THE COMMUNITY CAME TOGETHER. THIS IS A COMMUNITY WHERE THE MEMBERS OF THE HOMEOWNERS' ASSOCIATION CAME IN 1990 AND TRIED TO GET THAT THROUGH. IT WAS \$300 A MONTH, AT THAT TIME, I THINK IT WAS -- IT WAS \$3.50 A MONTH, AT THAT TIME, I THINK IT WAS --

EXCUSE ME. WHAT DID YOU SIGH SAY?

THE COST WAS GOING TO BE \$3.50 A MONTH, AND THE COMMUNITY VOTED THAT PROGRAM DOWN, AND SO, NOT TO BE SATISFIED WITH THAT, SOME MEMBERS OF THE HOME OWNERS ASSOCIATION, THEN, RAN THEIR OWN PEOPLE FOR THE CITY COMMISSION, WHO WERE ELECTED, AND THEN IT CAME BACK UP, AGAIN, IN 1996 AND 1997. THAT IS HOW IT GOT INTO THIS POSTURE HERE, AND IT ACTUALLY GOT INTO THE TESTIMONY HERE, ONE OF THE CONSULTANTS ACTUALLY DID A MAIL OUT, IT WASN'T REALLY A BALLOT OR ELECTION, BUT A MAIL-OUT, AND IT WAS VERY

EQUALLY DIVIDED, CONTESTED, SO CLOSE AS TO WHERE THE COMMUNITY CAME TOGETHER. THERE IS NO QUESTION ABOUT THAT.

YOU ARE NOT CONTESTING THAT SPECIAL ASSESSMENT.

NOT CONTESTING THAT. THEY BROUGHT IT UP, AND I WAS ADDRESSING THAT. THE ONLY THING -- YOU KNOW, ONE TIME THEY SAID THAT WE HAVE GOT TO DO THIS FOR THE HEALTH, SAFETY AND WELFARE, WELL, IF EVERYTHING IS DOING FOR THE HEALTH, SAFETY AND WELFARE, THERE AIN'T NONE, AND THAT IS WHAT YOU HAVE GOT HERE. IF THIS IS A SPECIAL BENEFIT, ALL THEY HAVE TO DO IS COME TOGETHER AND SAY THIS IS A SPECIAL BENEFIT, AND THEY CAN DO ANYTHING, AND THAT IS WHAT THEY HAVE DONE. THERE IS NOT ONE FRACTION OF EVIDENCE IN THE RECORD, NOT ONE BIT OF EVIDENCE IN THE RECORD THAT THE COURT CAN PUT ITS FINGER ON AND SAY THEY GAVE A SPECIAL BENEFIT TO THE TAXED PARCELS. NOT A BIT.

BUT I THOUGHT YOU SAID YOU ARE NOT CONTESTING THE FACT THAT IT IS A SPECIAL ASSESSMENT. ISN'T PART OF THE FACT OF IT BEING A SPECIAL ASSESSMENT THAT IT PROVIDES A SPECIAL BENEFIT TO A DISCREET GROUP OF PROPERTY OWNERS?

MAYBE I MISUNDERSTOOD. THERE IS TWO PRONGS TO THE SPECIAL ASSESSMENT, THE BENEFIT AND THE METHODOLOGY, AND WE ARE CONTESTING, BOTH THE BENEFIT AND THE METHODOLOGY. THERE IS NO TESTIMONY AND THERE IS NO EVIDENCE, WHATSOEVER IN THE RECORD THAT, THERE IS ANY SPECIAL BENEFIT TO ALL TAX PARCELS IN THIS. THERE IS A BROAD STATEMENT. YOU USE A STATEMENT BY LIGHTING. WELL, THE CITY MANAGER, ALREADY, SAID THE LIGHTING IS ONLY GOING TO BE ON WINTER SPRINGS BOULEVARD, NORTHERN BOULEVARD, WHICH IS TWICE THE LENGTH OF WINTER SPRINGS BOULEVARD, IS NOT GOING TO HAVE ANY LIGHTING, NOT GOING TO HAVE ANY IMPROVEMENT.

HOW DO YOU DETERMINE WHETHER THE METHODOLOGY IS THE CORRECT METHODOLOGY OR NOT? OPPOSING COUNSEL SAYS THAT ANY ACCEPTED METHODOLOGY --

I THINK THE RECORD RELIES ON. THAT THE RECORD SAYS THAT THEIR OWN CONSULTANT, I CAN'T PRONOUNCE HER NAME, SAYS THAT THIS IS THE FIRST TIME THEY HAVE EVER USED AN ER U IN A - A ERU IN A SPECIAL ASSESSMENT, AND THEIR COMMUNITY TOLD THEM ABOUT IT. YOU HIT A GOOD POINT A WHILE AGO, AND WHAT DO YOU DO, IF YOU HAVE GOT A SMALL TOWN, AND YOU HAVE A MAYOR WHO HAS A BUDDY.

MILES AWAY AND THEREFORE HE IS AN EXPERT, A USED CAR DEALER, AND HE COMES DOWN AND SAYS, BOY, YOU HAVE GOT A \$500,000 PROJECT HERE AND YOU CAN DIVIDE IT UP AND EVERYBODY PAYS A THOUSAND BUCKS AND WE HAVE GOT AN ER U, AND EVERYBODY HAS GOT A SPECIAL ASSESSMENT. HOW DO YOU TAX THAT? YOUR QUESTION IS WHAT IS ARBITRARY? YOU HAVE GOT TO SEE AND LISTEN TO THE EVIDENCE. HOW WAS THAT -- HOW DO THEY ARRIVE AT THAT SPECIAL FINDING? HOW DID THEY GET TO THAT CONCLUSION?

BUT YOU ARE ASSESSING THAT, NOT ONLY IS THE EVIDENCE PRESENTED NOT WORTHY OF CONSIDERATION BUT THE PEOPLE MAKING THE DECISIONS ARE NOT WORTHY OF ANY DEFERENCE, AS I UNDERSTAND YOUR ARGUMENT, ARE NOT WORTHY OF ANY DEFERENCE, BECAUSE, SOMEHOW, THEY GOT A MAJORITY OF THE VOTE AND HAVE AN OPPOSING VIEW. HOW ARE WE TO MAKE THAT DETERMINEATION?

I DON'T WANT TO DISTRACT FROM THE ISSUE. I DON'T THINK THAT IS THE CASE, YOUR HONOR. I AM SORRY THAT I MAY HAVE MISSTATED THAT. WHAT I UNDERSTAND THE STANDARD, TODAY, AS IN THE SARASOTA CASE, IN THE CASE OF A SPECIAL BENEFIT, AND THE APPOINTMENT WAS FAIR.

WHAT YOU, AT SOME POINT, DEAL WITH -- YOU SEEM TO BE SUGGESTING THAT THIS TIERING EFFECT, OR THERE IS A DIFFERENT KIND OF BENEFIT THROUGHOUT THE COMMUNITY, LET'S

ASSUME THERE IS A BENEFIT, AND LET'S ADDRESS THAT, BECAUSE I HAVE SOME CONCERNS OF WHAT ARE THE BOUNDARIES OF THIS FAIR APPORTIONMENT, AND IT LOOKS LIKE THE THIRD DISTRICT, IN THE RUSHFELD KIND OF THEORY, HAS SUGGESTED THAT YOU, REALLY, DON'T HAVE TO GET INTO THIS. LET'S MAKE SURE THAT EVERYBODY HAS THE SAME BENEFIT, THAT KIND EVER THING, SO WOULD YOU HELP US A LITTLE BIT, IN DEFINING WHAT THOSE PARAMETERS SHOULD BE. WHAT IS THE PRACTICAL EFFECT? IS THE RUSHFELD KIND OF THEORY SAYING, JUST AS LONG AS YOU SAY WHATEVER IT IS, IT IS OKAY, OR MUST THERE BE SOME TYPE OF MORE SPECIFIC ANALYSIS, MORE DETAILED BREAKDOWN? THAT IS WHERE I HAVE SOME --

WE ARE ALL AWARE OF BAD FACTS MAKE BAD LAW, AND I THINK THE RUSHFELD CASE IS ONE OF THOSE SITUATIONS. THE JUDGE, THERE, ONLY HAD AFFIDAVITS TO DEAL WITH, AND IT WAS A MOTION FOR SUMMARY JUDGMENT, CLEARLY AN IMPROPER PROCEDURE, WHEN YOU GO AGAINST A TAX ASSESSMENT, SO I DON'T THINK THAT FACTUAL SITUATION OR THE PROCEDURAL SITUATION FITS HERE, BUT I WOULD POINT OUT THAT I THINK IT IS INTERESTING. IN THAT CASE, FOR SOME REASON, THE JUDGE LEFT US A DOOR, AND WIDENED. THE RUSHFELD CASE, HE CITED CHARLOTTE COUNTY, THE FISKE CASE, AND HE ADDED TO THIS ARBITRARYNESS THAT YOU ASKED ABOUT. HE ADDED TO THAT, AND I THINK THE REASON THE COURT ADDED TO THAT OR CHARLOTTE COUNTY ADD TO THAT IS THE SAME THAT YOU HAVE: WHAT IS ARBITRARY? AND THEY SAID, THERE, IT IS ABS -- THE FINDINGS WOULD NOT BE TAMPERED WITH, ABSENT A CLEAR SHOWING THAT THEY WERE ARBITRARY, OPPRESSIVE, SKIM NOR -- DISCRIMINATORY, OR WITHOUT BASIS IN REASON. WE HAVE EXPANDED THAT ASH TEMPORARY. -- THAT ARBITRARY. IF YOU WANT TO RELY ON THE RUSHFELD, YOU HAVE EXPANDED IT. ALL WE HAVE TO SAY, NOW, IS IT IS A SPECIAL BENEFIT, AND IT BECOMES A SPECIAL BENEFIT? AND THAT IS WHAT YOU ARE ASKING. WHAT IS ARBITRARY ABOUT THAT THAT ALLOWS US TO SET THAT ASIDE, AS A JUDGE?

BUT IN THIS RECORD, ISN'T THEIR TEST MONEY FROM AN APPRAISER AND SOMEONE ELSE, ON BEHALF OF THE CITY, THAT TALKED ABOUT THEY WENT TO PEOPLE, REALTORS, DEVELOPERS, OTHER PEOPLE, AND MADE SOME ASSESSMENT OF WHETHER OR NOT THERE WOULD BE A BENEFIT, AND I BELIEVE, ALSO, THAT THEY COMPARED THIS TO OTHER PROJECTS OF THIS NATURE, TO SEE WHETHER OR NOT THERE HAVE BEEN ANY BENEFIT CONVEYED TO THE PROPERTY OWNERS, IN THESE OTHER SITUATIONS. WHAT MORE DO YOU CONTEND THE CITY OR THE SPECIAL DISTRICT WOULD HAVE TO DO, IN ORDER TO SHOW THAT THERE WAS -- THERE IS A SPECIAL BENEFIT?

THERE IS TWO PRONGS. AND LET'S ASSUME THAT --

YOU SAID BOTH PRONGS WERE NOT MET. THE FIRST IS A SPECIAL BENEFIT. RIGHT?

WE DON'T BELIEVE THE SPECIAL BENEFIT IS THERE, BUT LET'S ASSUME, IN RESPONSE TO YOUR QUESTION, THAT THAT APPRAISER, WHO CALLED PEEP OLT PHONE AND SAID IS THIS GOING TO BE A GOOD IDEA, AND EVERYBODY SAID, YES, IT IS A GOOD IDEA, AND LET'S ASSUME IT IS A SPECIAL BENEFIT. LET'S ASSUME THAT IS RIGHT, BUT SPECIAL APPORTIONMENT, IN THAT SITUATION, IF YOU LIVE IN A SUBDIVISION, WHETHER IT BE KILLARNEY OR WHATEVER, IS IT FAIR FOR YOU TO BE ASSESSED ON A \$100,000 HOME, THE SAME THING THE GUY DOWN THE STREET IS ASSESSED ON THE \$500,000 HOME? THERE IS A DIFFERENCE. IF THE APPRAISER SAYS EVERYBODY GETS A PERCENTAGE ACROSS THE BOARD THAT, IS NOT A GOOD RETURN. IF YOU ONLY GET \$10,000 FOR YOUR PREMIUM VERSUS \$50,000 FOR YOUR PREMIUM THAT, IS NOT AUTHORITY.

ISN'T THE FEE USUALLY ASSESSED ON A PEROT HOUSE BASIS? NOT A STANDARD WAY FOR --

NO, MA'AM.

ISN'T THAT A STANDARD WAY FOR HOME OWNER'S ASSOCIATION TO SAY ASSESS?

THE CITY MAINTAINED THIS IS A TAXING REVENUE. IT WAS A GENERAL PROJECT.

WHAT IS THE WRONG METHODOLOGY? WE ARE NOT EXPERTS IN THIS FIELD, AND IF THERE ARE RECOGNIZED DIFFERENT METHODS FOR DOING IT, HOW ARE WE TO SAY THIS IS A BAD METHODOLOGY AND THIS IS A GOOD METHODOLOGY, AND MAKE THE DETERMINATION. IS THAT WHAT YOU ARE ASKING US TO DO? ARE YOU ATTACKING THE --

I AM NOT ATTACKING THEIR POSITION. I AM JUST SAYING THEY DIDN'T DO. THAT THEY DIDN'T DO A METHODOLOGY. THEY CAME IN AND SAID -- SHE MADE, THE EXPERT SAID HERE IS THE PROJECT. THERE IS 4,000 HOMES. 90 PERCENT OF THEM ARE RESIDENTIAL, AND WE ARE GOING TO -- WE ASSUMED, IN HER WORDS, WE ASSUMED IT WAS -- WOULD BE EQUIVALENT. THAT ASSUMPTION, THAT IT IS EQUIVALENT, I HAVE TO TELL YOU, IS ARBITRARY. THAT IS PLAIN ARBITRARY, BECAUSE HOW CAN SHE MAKE THAT ASSUMPTION, AND, IN FACT, THE RECORD SHOWS THAT, IN SOME PLACES, A BECAUSE IT WAS MULTIFAMILY, WHERE THERE WERE MULTIFAMILY HOMES, THEY ONLY GOT 60 PERCENT ASSESSMENT. THE RECORD IS SOME MULTIFAMILY HOMES HAD MORE SQUARE FOOTAGE THAN A SINGLE FAMILY RESIDENCE HOME. WE ARE PAYING HALF THE PRICE.

THIS IS TUSKAWILLA SPECIAL TAXING DISTRICT.

YES.

AND DOES THIS COVER ALL OF THE CITY OF WINTER SPRINGS?

NO, SIR. IT IS JUST TUSKAWILLA, ITSELF.

TUESDAY CAME WILL, A OUT BY THE GOLF COURSE.

YES.

SURROUNDING THE GOLF COURSE.

WINTER SPRINGS BOULEVARD AND ALL WRAP AROUND ON THE OTHER SIDE.

SO THE PROPERTY THAT IS TO THE WEST OF TUSKAWILLA, THAT IS IN CITY OF WINTER SPRINGS, IS NOT AFFECTED?

NOT AFFECTED BY THIS, EXCEPT THAT THEY USE IT, AND THE CITY MANAGER, HIMSELF, TESTIFIED HE LIVES ON THE WEST SIDE OF TOWN. HE USES THAT DAILY. WHAT WE HAVE ASK WE HAVE -- -- WHAT WE HAVE IS WE HAVE A --

WHAT I AM TRYING TO UNDERSTAND IS THE TRIAL JUDGE MAKES A DETERMINATION, HERE, THAT THE CITY FAILED TO ESTABLISH THE SPECIAL ASSESSMENT CONFERS A DIRECT SPECIAL BENEFIT UPON THE LAND BURDENED BY THE ASSESSMENT. NOW, THE -- WHAT IS IN HERE THAT YOUR CONTENTION, SPECIFICALLY, THAT THEY FAILED TO PROVE, IN ORDER TO SUSTAIN WHAT THE TRIAL JUDGE SAID THERE?

WELL, THE BENEFIT, THE PROPERTY THAT IS BURDENED WITH THE TAX HAS TO HAVE A BENEFIT. GRANTED, IT COULD BE A GUARD GATE OUT FRONT OR IT COULD BE SOMETHING ELSE DIFFERENT, BUT IF IT HAS A GUARD GATE OUT FRONT, THEN THEY HAVE GOT TO APPORTION THAT BENEFIT OR THE ASSESSMENT. IN THIS CASE, IT WAS CLEAR FROM THE TESTIMONY THAT SEVERAL, AS HE POINTED OUT, THERE ARE SEVERAL EXITS TO WINTER SPRINGS BOULEVARD, I MEAN TO TUSKAWILLA, AND A LOT OF PEOPLE USE DIFFERENT EXITS. THEY DON'T EVEN USE TUESDAY CAME WILL AND. THE CITY OF OVEIDO, AS YOU KNOW, IS ON A SIDE OF TUSKAWILLA AND A MAJOR THOROUGH FAIR IS ON THE WEST SIDE -- EXCUSE ME. OVEIDO IS ON THE EAST SIDE. OVEIDO HIGH SCHOOL, WHERE ALL OF THE KIDS IN TUSKAWILLA GO TO SCHOOL AND ALL OF THE

KIDS IN WINTER SPRINGS GO TO SCHOOL. IT IS A MAJOR THOROUGH FAIR. IT IS A MAJOR BOULEVARD. THAT IS HOW THE CITY MANAGER DESCRIBED IT. IT IS USED BY EVERYBODY, SO I, WHO LIVE, AND ONE OF THE TESTIMONY IS THEY LIVE OVER A HALF A MILE AWAY FROM WINTER SPRINGS BOULEVARD, I AM ASKED, THEN, TO PAY FOR THOSE PEOPLE TO TAKE THEIR KIDS BACK AND FORTH TO WINTER SPRINGS BOULEVARD -- TO OVEIDO HIGH SCHOOL ON WINTER SPRINGS BOULEVARD, AND I DON'T EVEN USE IT. I AM NOT SAYING IT IS WRONG. I AM SAYING THAT THERE WAS NO STUDY DONE. THERE WAS NO SUPPORT FOR THIS. IT WAS STRICTLY AN ARBITRARY FINDING. THIS IS WHAT WE ARE GOING TO DO, AND IT WILL SHOW A SPECIAL BENEFIT, NOW, THEY COULD HAVE DONE, IT AND OUR EXPERT TESTIFIED, YES, IT COULD HAVE BEEN DONE A NUMBER OF WAYS, AND YOU COULD HAVE HAD TIERING, IF THAT WERE THE CASE. IT IS TOO EXPENSIVE TO DO A PRAFERL ON EACH -- AN APPRAISE ALOE EACH HOME -- AN APPRAISAL ON EACH HOME, SURELY, BUT THIS IS WITHIN TUSKAWILLA.

ARE YOU SAYING THAT THE SECURITY GATE WOULD BE ARBITRARY?

IF THE SECURITY GATE WAS AT ONE ENTRANCE AND EVERYBODY WENT THROUGH THAT SECURITY GATE, IT WOULD BE OKAY. IF THERE IS ONE ENTRANCE WITH A SECURITY GATE AND SIX OTHER ENTRANCES AND NOBODY USES THE SECURITY GATE, WHAT IS THE BENEFIT?

THE PARK IN THE MIDDLE OF THE SUBDIVISION, IT HAS A PLAYGROUND. DOES IT HAVE TO BE ASSESSED, SO THAT ONLY THE HOUSES THAT HAVE CHILDREN PAY? DO WE HAVE TO --

WE CAN TAKE THAT TO THE EXTREME. WE, ALL, PAY SCHOOL TAX, AND SOME OF US DON'T HAVE KIDS IN SCHOOL.

WE, NOW, TALK ABOUT A COMMUNITY THAT HAS BEEN, WHERE A TAXING DISTRICT HAS BEEN FORMED TO BENEFIT A PARTICULAR COMMUNITY, AND I, STILL, SEE THAT AS SOMEHOW DIFFERENT FROM A SITUATION WHERE A CITY JUST DECIDES, YOU KNOW, WE WANT TO DO THIS FOR THIS PART OF THE -- WE NEED TO BUILD THIS ROAD, AND WE ARE GOING TO JUST TAX THESE PEOPLE.

EVEN -- LET'S JUST TAKE YOUR PARK, AND LET'S PUT IT INSIDE THE TUSKAWILLA BEAUTIFICATION DISTRICT, AND YOU SAY, OKAY, WE ARE GOING TO HAVE A PARK FOR EVERYBODY, AND EVERYBODY IS GOING TO BE ASSESSED THE EQUAL AMOUNT FOR IT. THAT IS DIFFERENT. THAT IS A DIFFERENT SITUATION, BECAUSE YOU ARE IING -- YOU ARE PAYING FOR A PARK FOR YOUR GRANDCHILDREN, YOUR CHILDREN, WHOEVER, TO GO TO THE PARK. BUT EVERYBODY IS BEARING THE EQUAL PURD ABOUT ENOF A SMALL -- BURDEN OF A SMALL PARK.

YOU ARE SAYING THE METHOD METHODOLOGY USED FOR THIS APPORTIONMENT WOULD NOT BE ARBITRARY, EVEN IF THERE WASN'T ANYMORE NEVED THE RECORD THAN EXISTS IN THIS RECORD.

I WOULD ASSUME THAT A PARK THAT PEOPLE USE AND PAY FOR IN A SHORT PERIOD OF TIME IS NOT A \$200 MILLION ASSESSMENT. THIS IS FOR 30 YEARS THIS. IS A 30-YEAR BOND ON YOUR HOME, AND WHILE YOU ARE PAYING THAT, YOUR HOME, IN ALL LIKELIHOOD, IS GOING TO DEPRECIATE. MOST OF THOSE HOMES OUT THERE, NOW, ARE 25 OR 30 YEARS. THEY ARE IN AN AREA THAT THEY ARE NOT GOING STRAIGHT UP NOW.

LET ME GO BACK TO SEE IF I, REALLY, UNDERSTAND THE POINT HERE, IS THAT YOU HAVE GOT THIS BEAUTIFICATION THAT IS BEING PAID FOR BY THE SPECIAL ASSESSMENT, ON THE PEOPLE THAT LIVE IN THE TUSKAWILLA PART OF WINTER SPRINGS. IS THAT CORRECT?

YES, SIR.

AND YOUR POINT IS, AS I UNDERSTAND IT, IS THAT THERE WASN'T ANY BASIS, BEFORE THE CITY

COUNCIL, TO MAKE A DECISION THAT THIS WAS A SPECIAL BENEFIT TO THOSE TAXPAYERS, AS OPPOSED TO THE OTHER TAXPAYERS IN THE CITY OF WINTER SPRINGS. WHO WERE GOING TO DRIVE THROUGH THIS THOROUGH FAIR, WHO WERE GOING TO USE THE PARK. IS THAT YOUR POINT?

YES, SIR. NOTHING MORE THAN TAX. IN THE FISHER CASE, FISHER-DADE, THE COURT SAID THERE MUST BE PROOF OF A PARTICULAR BENEFIT, OTHER THAN MERE DICTUM, FROM THE LEGISLATIVE BODY, AND THAT IS WHAT WE HAVE HERE. WE HAVE, HERE, A DECISION WHERE CONSULTANTS COME INTO ANY SMALL COMMUNITY AND SAY WE ARE EXPERTS, AND WE CAN HELP YOU FUND THIS PROJECT. WE CAN RAISE THE MONEY FOR YOU, AND THIS IS THE WAY WE DO IT, AND WITH ALL DUE RESPECT TO OUR ELECTED BODIES, TODAY, SOME OF OUR SMALLER COMMUNITIES ARE NOT AS ASTUTE AS SOME OF THE LARGER COMMUNITIES OR THE LEGISLATURE, AND THEY BUY THIS EXPERT, AND THE EXPERT SAYS WE CAN DO THIS AND WE CAN DO THAT AND WE CAN DO THIS, AND THEY SAY THIS IS A FINDING, AND THEY DO IT. IN FACT, THE RECORD WILL REFLECT THAT THE EXPERTS DREW THE FINDINGS. THEY, EVEN, MONITORED THE LETTER, DRAFTED THE LETTER FOR THE APPRAISER, SO IT WOULD BE IN THE LEGAL LANGUAGE, AND THEY USED THE LEGAL LANGUAGE "SPECIAL BENEFIT" COME FROM YOUR COURT. SPECIAL BENEFIT. AND IN THE TESTIMONY OF EVERYONE OF THEIR CONSULTANTS, THEY SAID THERE IS NO SPECIAL BENEFIT. IT IS A GENERAL BENEFIT. IT IS A PRIDE OF OWNERSHIP. BUT IT COULD BE OUTSIDE OF THIS COMMUNITY, TOO, ALSO. IT COULD SPILL OVER, BUT THE MOST TELLING, I THINK, THE MOST TELLING TESTIMONY WAS FROM THE CITY PUBLIC WORKS DIRECTOR, KIP LOCKWOOD, AND HE SAID THE IMPROVEMENTS ARE FOR THE PEOPLE THAT USE WINTER SPRINGS BOULEVARD, NOT NECESSARILY THE RESIDENTS. AND THAT IS EXACTLY -- THEY DID NOT FOLLOW THEIR OWN FINDING. THANK YOU.

YOUR HONORS, YOU HAVE HAD, REALLY, EXCELLENT QUESTIONS. THE RESULT THAT YOU HAVE JUST HEARD RECOMMENDED IS THAT KILLARNEY COULD NEVER HAVE A TAXING DISTRICT TO IMPROVE ITSELF, FOR BEAUTIFICATION SAFETY REASONS, PUT THE GUARDS ON THE STREET, BECAUSE THE PEOPLE WAVERLY HILLS MIGHT DRIVE THROUGH KILLARNEY WAY TO GET TO THE SHOPS OR TO GET TO THEIR FRIENDS AT THE FAR END. THAT HAS NEVER BEEN THE TEST. LET ME SEE IF I CAN SYNTHESIZE THE QUESTION, AND I INTEND TO ANSWER YOUR QUESTION THAT YOU PUT TO ME, AS WELL, JUSTICE DAVIS. THIS IS NOT A COMPETENCE LEVEL JUSTICE CASE. THE CITY GOT EXPERTS, HE JUST SAID, TO HELP THEM EVALUATE WHAT WOULD BE A PROPER METHODOLOGY, AND THERE ARE ANY NUMBER OF THEM. IF THEY HADN'T DONE ERU'S BEFORE, IT DIDN'T MATTER. THEY WERE IN THE LITERATURE. THEY WERE IN THE MANUALS, AND THEY DECIDED ON THIS PROJECT, MAYBE FOR THE FIRST TIME -- DIDN'T MATTER -- AND THIS WAS THE ONE THAT MADE THE MOST SENSE, AND THAT IS SOMETHING THAT THIS COURT HAS NEVER, NEVER SECOND-GUESSED, AND THEY GOT THE EXPERTS, AND THEY GOT THE CITIZENS, AND THEY DID EVERYTHING THAT THEY SHOULD, TO MAKE A JUDGMENT THAT THIS WAS AN APPROPRIATE TAX DISTRICT. IT ISN'T A ROAD CASE. IT IS A SAFETY CASE, WITH BETTER LIGHTING, AND THERE ARE PARKS, JUSTICE PAR YEBT, IN TUESDAY CAME -- PARKS, JUSTICE PARIENTE, IN TUSKAWILLA, AND THE CONCESSION THAT THAT WOULD BE DIFFERENT IS A CONCESSION THAT THIS HAS TO TURN IN THE OTHER WAY THAN THE TRIAL JUDGE DID, BECAUSE THE SAFETY FEATURE OF BETTER LIGHTING AND MORE SECURE STREETS GOING THROUGH THE CENTER OF THIS DISTRICT, IS A BENEFIT TO EVERY SINGLE RESIDENT WHO HAS TO VISIT THE PARK OVER HERE, FROM THE COUNTRY CLUB OVER HERE, FROM THEIR HOME OVER HERE. IT BENEFITS EVERYBODY, AND IT DOES NOT HAVE TO BE PROPORTIONAL, DEPENDING HOW CLOSE THEY ARE TO THOSE PARTICULAR LIGHTS. WE ARE TALKING ABOUT BETTER SIGNAGE. WE ARE TALKING ABOUT COMMUNITY IDENTIFICATION. THE ABILITY OF THE PEOPLE, IN THERE, TO SAY WE LIVE IN A COMMUNITY WHICH HAS BEEN IDENTIFIED ON EIGHT DIFFERENT LOCATIONS AS THE TUSKAWILLA DISTRICT, AND IT IS BEAUTIFUL, AND IT IS SAFE. MAY I SPEAK TO YOUR QUESTION, JUSTICE LEWIS. YOU ASKED WHAT ARE THE BOUNDARIES OF FAIR APPORTIONMENT, AND DIDN'T -- YOU DIDN'T PUT IT THIS WAY. THE RUSHFELD CASE, PERHAPS, DID GO A LITTLE TOO FAR. I DON'T HAVE TO EVALUATE THE RUSHFELD CASE TO SAY THAT THE PRINCIPLES THAT WERE APPLIED WERE

CORRECT, THAT THERE IS NO REQUIRED ASSESSMENT. IT DOESN'T HAVE TO BE TIERED. IT HAS NEVER BEEN PROPORTIONAL TO VALUE ONLY. IT CAN BE ANY NONARBITRARY METHODOLOGY FOR ALIGNING THE BENEFITS WITH THE PARTICULAR PROPERTIES. THE QUESTION YOU HAVE IS WAS IT ARBITRARY FOR A CITY GOVERNMENT, WHICH HEARD SOME OF ITS CITIZENS DEVELOP AN INITIATIVE TO TAX THEMSELVES FOR THAT WHICH IS UNIQUE TO THEIR DEVELOPMENT AREA, TO ENHANCE ITS VALUE? WAS IT ARBITRARY, BASED ON THE INFORMATION THEY GOT FROM THE CITIZENS AND FROM THEIR EXPERTS, FOR THEM TO SET UP A SPECIAL ASSESSMENT?

UNDER THE WAY THAT THIS IS HEADED, UNDER THE GENERAL REASONING THAT YOUR CASE PUTS FORWARD, YOU COULD HAVE A SPECIAL TAXING DISTRICT TO PROVIDE LIGHTING FOR KILLARN, FOR THE ROAD THAT LEADS INTO KILLARN FROM 319, OUT HERE, FROM THOMASVILLE ROAD, AND THAT WOULD BE PAID FOR BY THE PEOPLE THAT LIVE IN KILL AROUND. THEN THE LIGHTING, OUT ON 319, THAT WOULD BE PAID FOR BY -- CITY OF TALLAHASSEE.

-- THE CITY OF TALLAHASSEE, ON A GENERAL TAX, SO THE PEOPLE IN KILLARN WOULD PAY FOR BOTH.

ABSOLUTELY. IF THEY WANTED THE IDENTIFICATION?

AND THAT WOULD RUN TRUE, HERE, IN THE CITY OF WINTER SPRINGS, SINCE THERE IS A MAIN ROAD THAT RUNS BY TUSKAWILLA, THAT GOES UP TO 1792, SO THAT THE PEOPLE -- 17-92, SO THAT THE PEOPLE THAT LIVE TO THE WEST, WHO USUALLY USE TUSKAWILLA BOULEVARD, AND THE LIGHTING, TO GO OVER TO OVEIDO, THEY GET THE BENEFIT OF WHAT THE TUSKAWILLA PEOPLE PAID, BUT THEY WOULDN'T PAY FOR IT, AND THE PEOPLE THAT WERE -- AND THE PEOPLE IN TUSKAWILLA WOULD HAVE TO PAY FOR BOTH ROADS.

THAT'S CORRECT. THAT'S CORRECT.

AND THAT IS THE WAY IT GOES.

IT IS QUITE COMMON TO HAVE THE GENERAL POPULOUS HAVE ACCESSIBLE AND USABLE, THE LIGHTING, THE SAFETY, THE BEAUTIFICATION, THE OTHER THINGS OF A PARTICULAR DISTRICT. THAT IS NOT UNUSUAL AT ALL, AND THAT IS EXACTLY WHAT THESE ARE FOR. THEY SAID --

IT IS STILL A CONCERN TO ME AS TO WHY WE WOULD LABEL THIS LIGHTING, THERE, IN TUESDAY CAME WILL, A THEN, A SPECIAL BENEFIT.

BECAUSE THE PROPERTIES --

TO THOSE PROPERTIES, AS OPPOSED TO A SPECIAL BENEFIT TO THE PEOPLE THAT LIVE ON THE WEST SIDE, WHO USE IT TO GO OVER TO OVEIDO HIGH SCHOOL.

BECAUSE EVERYDAY, THE PEOPLE IN THAT COMMUNITY HAVE A SAFER COMMUNITY FOR THEIR CHILDREN TO CROSS THE STREETS, TO DRIVE ON TO COME HOME. THE FACT THAT OTHERS USE IT --

SO DO THE PEOPLE THAT USE IT TO GO TO OVEIDO HIGH SCHOOL.

OH, SURE, BUT WE USE THE STREETS BECAUSE THEY ARE PUBLIC, AND THEY ARE ALWAYS GOING TO BE, IN EVERY SPECIAL TAX DISTRICT, PEOPLE WHO GETS THE BENEFIT, INCIDENTALLY, BUT YOU SAID OVER AND OVER AGAIN, AGAIN, SINCE 1930, I THINK THAT, THAT IS NOT AN INHIBITION, AND I JUST HAVE TO COMPLETE MY HALF SENTENCE TO JUSTICE DAVIS, BECAUSE I DIDN'T ANSWER YOUR QUESTION ABOUT WHAT ARE THE BOUNDARIES OF APPORTIONMENT. THE ANSWER IS FOUND IN TWO CASES. THE SARASOTA COUNSI CASE, YOU SAID -- COUNTY CASE, YOU SAID, WAS PALPABLE. IT HAS ALSO GOT TO BE UNEQUAL AND GROSSLY CONFISCATORY, AND THERE IS

NO ANSWER HERE, BECAUSE IT IS NOT CONFISCATORY, AND IT IS NOT UNEQUAL, AND THE TEST OF THE AMOUNT OF BENEFIT THERE, IS NO SUGGESTION IN THIS RECORD THAT THE \$110 A YEAR ASSESSMENT ON THE TUSKAWILLA PROPERTY OWNERS EXCEEDS THE VALUE OF THE LIGHTING, THE SAFETY, THE SIGNAGE, THE BEAUTY, AND THE COMMUNITY IDENTIFICATION, WHICH HAS, NOW, BEEN ESTABLISHED, BY CREATING THE WING WALLS AND IDENTIFYING THAT BODY.

THANK YOU VERY MUCH.

THANK YOU VERY MUCH.