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Florida Dept. of Revenue v. Joseph C. Howard

THE LAST CASE THIS MORNING ON THE COURT'S DOCKET IS FLORIDA DEPARTMENT OF REVENUE VERSUS HOWARD. ARE THE PARTIES READY, AND I UNDERSTAND IN THIS CASE, THERE IS A DIVISION OF TIME ON THE APPELLEES. THANK YOU.

GOOD MORNING. I AM LOUIS HUBENER WITH THE OFFICE OF THE ATTORNEY GENERAL, REPRESENTING THE DEPARTMENT OF REVENUE IN THIS APPEAL. THIS CASE REPRESENTS A CHALLENGE OR PRESENTS A CHALLENGE TO THE CONSTITUTIONALITY OF SECTION 193.016 FLORIDA STATUTES, WHICH PRESCRIBES A PROCEDURE FOR EVALUATION OF TANGIBLE PERSONAL PROPERTY. TO REFRESH YOUR MEMORY OF THAT, IT REQUIRES THAT A PROPERTY APPRAISER CONSIDER A VALUE ADJUSTMENT BOARD'S DECISION OF THE PREVIOUS YEAR, IF THAT BOARD HAS REDUCED THE PROPERTY APPRAISERS ASSESSED VALUE OF THE TANGIBLE PERSONAL PROPERTY, AND THAT REDUCTION WAS NOT SUCCESSFULLY APPEALED TO A COURT. AND FURTHER, IF THE PROPERTY APPRAISER IN THAT ENSUING YEAR, INCREASES THE VALUE OVER THE BOARD'S DETERMINATION, HE OR SHE MUST STATE THE REASONS THEREFORE, THAT IS FACTS THAT WERE NOT PREVIOUSLY CONSIDERED BY THE BOARD.

CAN YOU, I DIDN'T SEE IN YOUR BRIEF, BUT BEFORE YOU GET INTO THE MERITS OF THAT ISSUE, WHAT HAPPENS IF WE FIND, AS APPARENTLY, I THINK, THE TRIAL COURT DID, THAT ONE SENTENCE IS CONSTITUTIONAL. ANOTHER IS NOT. CAN THE STATUTE BE SAVED IN THAT EVENT, BY STRIKING THROUGH THAT SECOND SENTENCE, OR IS IT JUST UNCONSTITUTIONAL?

I BELIEVE THAT IT CAN BE. FOR THIS REASON, THE FIRST SCENARIO REQUIRES THAT THE PROPERTY APPRAISER CONSIDER THAT AND THE SECOND REQUIRES HIM TO CONSIDER DIFFERENT FACTS.

CORRECT ME IF I AM WRONG, BUT I THINK THE TRIAL COURT SAID THAT THE FIRST SENTENCE IS CONSTITUTIONAL BUT THE SECOND IS NOT.

RIGHT. BECAUSE THE SECOND ONE INTERFERED WITH THE PROPERTY APPRAISER'S DISCRETION.

COULD YOU JUST HELP ME OUT ON THIS, BECAUSE IN TERMS OF WHAT APPEARS TO BE AN ENTIRELY ARBITRARY DISTINCTION, LET'S LEAVE ASIDE THE CONSTITUTIONAL ISSUE THAT ALL PROPERTY MUST BE ASSESSED AT JUST VALUE, ACCORDING TO UNIFORM CRITERIA. WHAT IS A POSSIBLE RATIONALE FOR GIVING PREFERRED TREATMENT TO TANGIBLE PROPERTY THAT HAS BEEN REVIEWED BY THE VALUE ASSESSMENT BOARD? I LOOKED THROUGH THE LEGISLATIVE HISTORY. I MEAN, WHAT --

THERE ISN'T ANY, THAT I AM AWARE OF, BUT I THINK --

THAT SORT OF HELD, IN TERMS OF LOOKING AT THE SCHEME AND, REALLY, REALIZING THE IMPORTANCE OF ASSESSMENT AT JUST VALUE, IT CONCERNS ME THAT THERE IS NO, EVEN, ARTICABLE REASON FOR PUTTING TANGIBLE PROPERTY IN THIS PLACE AND NOT REAL PROPERTY AND THEN NOT GIVING DEFERENCE IF IT WAS THE CIRCUIT COURT THAT REDUCED AN ASSESSMENT.

THAT WAS ABOUT THE LAST THING I WAS GOING TO ADDRESS, BECAUSE I THINK WHAT THE CASE

COMES DOWN TO, REALLY, IS WHETHER THERE IS A RATIONAL BASIS, WHETHER THE RATIONAL BASIS TEST IS MET, AND THAT TEST DOES NOT REQUIRE THE LEGISLATURE TO JUSTIFY EVERY DISTINCTION THAT CAN BE MADE, WITH RESPECT TO THE STATUTE. IT MERELY REQUIRES THAT THE STATUTE SERVE A LEGITIMATE STATE INTEREST, AND I THINK THAT THE INTEREST IS THIS, THAT REAL PROPERTY, IN ALMOST ALL CASES, APPRECIATES IN VALUE. IT IS ALWAYS GOING UP EXCEPT IN THE RAREST CIRCUMSTANCE, AND JUST THE OPPOSITE IS TRUE OF TANGIBLE PERSONAL PROPERTY. THAT IS ALWAYS TRUE, IT IS ALWAYS DECLINING IN VALUE, SO THAT WHEN A PROPERTY APPRAISER IN AN ENSUING YEAR, RAISES THE ASSESSMENT ON TANGIBLE PERSONAL PROPERTY, THAT IS GOING AGAINST THE DECISION OF THE BOARD. THAT IS A VERY UNUSUAL CIRCUMSTANCE. AND ALL THE STATUTE REQUIRES IS FOR THE PROPERTY APPRAISER TO EXPLAIN THAT, TO ASSERT FACTS THAT HAVEN'T BEEN CONSIDERED PREVIOUSLY BY THE BOARD. I THINK IT TENDS, THE LEGISLATURE COULD REASONABLY ASSUME THAT REQUIRING THE PROPERTY APPRAISER TO DO THAT, MAY WELL TEND TO REDUCE THE NUMBER OF APPEALS TO A VALUE ADJUSTMENT BOARD.

BUT DOESN'T THIS ACTUALLY, IT SEEMS TO ME, THAT, WHAT WE HAVE HERE, IS THAT THE VALUE ADJUSTMENT BOARD'S DECISION TRUMPS ANY OF THE OTHER FACTORS THAT ARE LISTED IN THE STATUTE, THAT YOU HAVE TO APPRAISE IN ORDER TO COME UP WITH THE ASSESSMENT VALUE OF THE PROPERTY. ISN'T THAT WHAT HAPPENS HERE?

IT DOESN'T, IN THE ENSUING YEAR, DOES IT TRUMP ALL THOSE FACTORS?

DOES IT?

NO. NO. I THINK WHAT THE POSITION THE PROPERTY APPRAISER IS, IN THE ENSUING YEAR, IS THAT HE GOES BACK AND APPLIES ALL THOSE FACTORS, AND THEN IF HE -- IF THIS OTHER FACTOR APPEARS, THE ONE WHERE YOU HAVE THE VALUE ADJUSTMENT BOARD REDUCING IT.

HAS REACHED A CERTAIN VALUE. WELL, THAT, IF THAT IS NOT APPEALED, THAT SHOULD BE PRESUMPTIVELY, A CORRECT FINDING FOR THAT PARTICULAR CASE.

BUT IN ANY OTHER SITUATION, THE PROPERTY APPRAISER ISN'T REALLY BOUND BY WHAT THE APPRAISAL WAS FOR THE YEAR BEFORE, IS HE?

HE IS NOT BOUND IN THIS INSTANCE. HE IS JUST BOUND TO EXPLAIN WHY HE IS GOING UP.

DO WE NEED MORE OF A FACTUAL BASIS HERE? THERE WAS A MOTION FOR JUDGMENT IN THE PLEADINGS. THERE WAS NO DISCOVERY TAKEN, NO TESTIMONY GIVEN, AND THERE ARE A LOT OF HYPOTHETICALS THAT ARE GOING TO BE THROWN OUT BY OUR QUESTIONS AND IN YOUR BRIEFS.

THE JUDGMENT ON THE PLEADINGS, I WOULD POINT OUT THAT ON FRIDAY, I RECEIVED A BUNCH OF SUPPLEMENTAL AUTHORITY THAT APPEARS TO RAISE AN ISSUE UNDER ARTICLE VII SECTION 2, WHICH NONE OF THE APPELLEES EVER PREVIOUSLY RELIED ON THAT, GETS INTO TAX RATES AND UNIFORMITY OF TAX RATES, WHICH IS A ENTIRELY DIFFERENT QUESTION. IT HAS NOT BEEN ASSERTED AND WASN'T IN THE BRIEFS. IT WASN'T IN THE SECOND AMENDED COMPLAINT. I MENTIONED IT IN THE REPLY BRIEF, JUST TO SHOW, JUST TO SAY THAT THERE IS AN UNIFORMITY REQUIREMENT BUT IT IS NOT UNDER SECTION 4, WHICH IS WHAT YOU HAVE RELIED ON. IT IS UNDER SECTION 2.

IN THE OLD CONSTITUTION, THERE WAS, PRIOR TO THE RECENT CONSTITUTION, A REQUIREMENT OF UNIFORMITY.

RIGHT, AND THERE IS A REQUIREMENT --

THE UNIFORM DENOUNCED JUST AS TO RATES.

RIGHT. UNDER ARTICLE VII SECTION 2, WHICH THEY HAVE NEVER RELIED ON, SO I DON'T THINK THAT IS PROPERLY BEFORE THE COURT.

IS IT YOUR POSITION THAT THE PROVISIONS OF THE STATUTE COULD BE RESTATED IN A NEUTRAL WAY, AND THAT IS WHETHER OR NOT THE PROPERTY HAS BEEN SUBJECT TO REVIEW OF THE BOARD IN A PREVIOUS YEAR, AND THEN, IF SO, WHAT WERE THE CONSEQUENCES OF THAT?

WELL, I THINK, YOU MEAN THAT THE LEGISLATURE DO SOMETHING MORE THAN REQUIRE THE PROPERTY APPRAISER TO EXPLAIN?

I AM TALKING ABOUT THE UNIFORMITY REQUIREMENT NOW. THAT IS THAT, IN EACH CASE, YOU SHOULD ALSO DETERMINE WHETHER OR NOT THIS PROPERTY WAS EXAMINED BY A VALUE ADJUSTMENT BOARD, AND IF SO, WHAT WAS THE OUTCOME OF THAT, BECAUSE THAT --

YOU MEAN THE VALUE ADJUSTMENT BOARD MIGHT HAVE AFFIRMED THE PROPERTY APPRAISER IN THE PREVIOUS YEAR.

RIGHT.

WELL, I WOULD EXPECT THAT, IF THAT HAD OCCURRED, THAT WOULD BE THE STARTING POINT FOR THE PROPERTY APPRAISER'S ASSESSMENT. YOU KNOW, EVEN IF THE STATUTE DIDN'T SAY THAT. BUT HERE AGAIN, I THINK THAT THE STATUTE IS FOCUSED ON THE VERY UNUSUAL SITUATION WHERE DECLINING PROPERTY IS SUDDENLY, YOU KNOW, ADJUSTED UPWARD, AND ALL THAT IS BEING ASKED IS THAT THERE BE AN EXPLANATION FOR THAT. I DON'T THINK THERE IS --

LET ME ASK YOU A BASIC QUESTION, BECAUSE I LOOK AT SECTION 193.011, AND THE EIGHT FACTORS LISTED THERE, SEEM DESIGNED TO AND PLAY TO REAL PROPERTY, AND SOME OF THEM SEEM EXCLUSIVELY FOR REAL PROPERTY. DO PROPERTY APPRAISERS NEVERTHELESS, USE THOSE FACTORS FOR PERSONAL PROPERTY, AND WHICH CAN YOU USE?

I AGREE WITH YOUR OBSERVATION 100 PERCENT, AND I THINK IT IS THE POINT THAT THERE IS NOT REALLY A CONSTITUTIONAL, IT REALLY ILLUSTRATES THE POINT THAT THERE IS NOT REALLY A CONSTITUTIONAL ISSUE HERE IN TERMS OF UNIFORMITY, BECAUSE ARTICLE VII SECTION 4 DOES NOT SAY THAT PROPERTY FOR AD VALOREM TAX ASSESSMENTS THAT REAL AND INTANGIBLE SHALL BE EVALUATED ACCORDING TO THE SAME CRITERIA. THE LEGISLATURE HAS DONE. THAT THEY HAVE LUMPED EVERYTHING TOGETHER IN 193.001, BUT THERE IS NO CONSTITUTIONALITY FORMAL REQUIREMENT THAT YOU CAN FIND IN SECTION 4, THAT SAYS YOU CAN APPLY, YOU SHALL APPLY THE SAME CRITERIA TO REAL PROPERTY AS TO TANGIBLE PERSONAL PROPERTY. IT JUST DOESN'T SAY. THAT NOW, THE LEGISLATURE HAS LUMPED THEM ALL TOGETHER IN 193.011, AND THE CASE LAW SAYS THAT THE PROPERTY APPRAISER HAS TO CONSIDER ALL THOSE IN MAKING EVALUATIONS, BUT IT DOESN'T SAY THAT THE PROPERTY APPRAISER HAS TO APPLY THEM. I MEAN, CLEARLY SOME OF THEM DON'T APPLY. I MEAN, THERE IS, ONE OF THE FACTORS IS LOCAL LAND USE REGULATION OR BUILDING MORATORIUM. I COULDN'T EXPLAIN TO YOU HOW THAT APPLIES TO BUSINESSES, FILE CABINET.

WHEN THE PROPERTY APPRAISER COMES OUT WITH AN ASSESSMENT, WE DON'T REALLY KNOW HOW EACH THE FACTORS WERE CONSIDERED OR WEIGHED, UNLESS IT IS THE SUBJECT OF A CHALLENGE, CORRECT?

THAT'S CORRECT.

AND IN THIS CASE, JUST ABOUT THIS FACTUAL RECORD, AND IT GOES TO YOUR ISSUE OF THE STANDING, AS TO THESE PARTICULAR APPELLANTS, APPELLEES, THEY DID NOT, I MEAN, THERE

WAS NO CLAIM THAT THERE WAS SOMEBODY WHO HAD GOTTEN AN UPWARD OR DOWNWARD OR THEY DIDN'T GET THE BENEFIT OF --

WELL, I AGREE WITH YOU, AND I WAS GOING TO START WITH A STANDING QUESTION. I DON'T WANT TO LET IT GET BY, BUT THE LOWER COURTS GAVE IT VERY SHORT SHRIFT, AND I THINK WRONGLY SO, BECAUSE THE APPELLANTS, OR AT LEAST MR. HOWARD AND MR. FOREMAN, WHO WERE THE PLAINTIFFS, RELIED ON THE UNIVERSAL FORM OF AUTHORITY, WHO EXCUSES TAXPAYERS FROM SHOWING INJURY IN THE FORM OF A CONSTITUTIONAL CHALLENGE. IT DOES NOT EXCUSE A TAXPAYER FROM SHOWING NO INJURY, AND HERE THE TAXPAYERS DON'T PAY TANGIBLE PROPERTY, TANGIBLE PERSONAL PROPERTY TAXES AT ALL, SO THEY CAN'T BE IN DOUBT AS TO THEIR RIGHTS UNDER THE STATUTE, AND THEY HAVEN'T ALLEGED THAT THEY SUFFERED ANY INJURY. THERE IS THE SUGGESTION, WHICH IS TOTALLY UNSUPPORTED IN THE AMENDED COMPLAINT, THAT THEIR MILLAGE RATES MIGHT RISE IN THE FUTURE, THAT IS WHOLLY SPECULATIVE, BUT THIS COURT HAS SAID --

WHO WOULD EVER HAVE STANDING TO CHALLENGE THIS? IF SOMEBODY GOT THE BENEFIT OF THE LOWER, YOU KNOW, IF THEY WERE CLAIMING THE BENEFIT OF IT, IT MIGHT BE, AND THE PROPERTY APPRAISER WOULD HAVE TO BE APPLYING THE STATUTE, WE HAVE GOT SOME CASES SAYING, WELL, THEY CAN'T CHALLENGE, THEY CAN'T DEFENSIVELY OR OFFENSIVELY CHALLENGE IT.

WELL, THEY CAN'T IN THEIR OFFICIAL CAPACITY THERE. IS A LINE OF AUTHORITY THAT SAYS THEY CAN CHALLENGE IT IN THEIR PERSONAL CAPACITY.

IF THEY SAY THAT, THEN SO CAN THE APPELLEES HERE.

IF THEY ARE AFFECTED BY IT. I DON'T THINK THAT THE FACT THAT NO ONE CAN SHOW --

COULD THE COUNTY CHALLENGE IT?

PARDON?

COULD THE COUNTY CHALLENGE IT?

IT, THAT IS A POSSIBILITY. IF THEY COULD SHOW SOME INJURY FROM THE STATUTE, THAT, FOR EXAMPLE, THAT IT IS NOT PRODUCING A CORRECT VALUATION OF PROPERTY, THAT IT IS ARTIFICIALLY AND IMPROPERLY LOWERING ASSESSED VALUES.

ON THE RECORD WHAT DO WE HAVE BEFORE US, ALLEGATION WEISS, THAT THERE IS ANYTHING BUT A JUST OR FAIR VALUATION?

WE DON'T. I MEAN, THERE IS NOT EVEN. THAT THERE IS NOT AN ALLEGATION THAT THIS STATUTE RESULTS IN A DETERMINATION OF OTHER THAN JUST VALUE.

THERE IS NO ALLEGATION HERE, FOR INSTANCE, THAT SOMEBODY HAD SIMILAR TANGIBLE PERSONAL PROPERTY AND DIDN'T CHALLENGE IT WITH THE VALUE ADJUSTMENT BOARD OR WHATEVER, BUT THEIR NEIGHBOR, BUSINESS OR WHATEVER, DID CHALLENGE AND GOT A GOOD OUTCOME.

NO. THERE IS NO INFORMATION --

BUT THEY HAVE GOT THE SAME EXACT PROPERTY AND NOW NEXT YEAR THEY END UP, THERE IS NO ATTEMPT TO SET FORTH A FACTUAL CIRCUMSTANCE.

WELL, EVEN IN THAT CIRCUMSTANCE, I MEAN, THAT OTHER PERSON HAS THE SAME OPPORTUNITY

TO GO TO THE VALUE ADJUSTMENT BOARD. I MEAN, HE OR SHE MAY ELECT NOT TO DO SO, BUT THE FACT THAT SOMEBODY EXERCISES THEIR OPTION UNDER ANOTHER STATUTE TO APPEAL --

BUT THERE IS NOT A CLAIM LIKE THAT.

NO, THERE ISN'T, HUH-UH.

BACK TO JUST RATIONALE OF THE SCHEME, IF THE PROPERTY, TANGIBLE PROPERTY OWNER DOESN'T GET A FAVORABLE FINDING FROM THE VALUE ADJUSTMENT BOARD AND THEN APPEALS TO THE CIRCUIT COURT AND GETS ONE THERE, NOTHING IN THE STATUTE PRECLUDES THE PROPERTY APPRAISER FROM ASSESSING IT WHEREVER IT WAS THE YEAR BEFORE, I MEAN, SO DOESN'T THAT SORT OF UNDERCUT YOUR ARGUMENT AS TO THE RATIONAL BASIS FOR THIS STATUTE, SINCE SOMEBODY WHO ACTUALLY WENT ALL THE WAY AND GOT IT DECIDED BY THE CIRCUIT COURT, THEY, DOESN'T, PROPERTY APPRAISER CAN'T CONSIDER, DOESN'T HAVE TO CONSIDER THAT?

WELL, I THINK ANY PROPERTY APPRAISER WOULD CONSIDER THAT, TO START WITH. THE LEGISLATURE MIGHT WELL HAVE THOUGHT THAT YOU ARE NOT GOING TO GET TWO APPEALS LIKE THAT DECIDED IN ONE YEAR, AND THEY JUST, YOU KNOW, DEALT WITH THE SITUATION WHERE THE VALUE ADJUSTMENT BOARD REDUCED PROPERTY, REDUCED THE VALUATION.

THERE IS NOTHING TO PREVENT THE PROPERTY OWNER FROM REMINDING THE TAX APPRAISER WHAT HAPPENED THE LAST YEAR.

I AM SURE HE WOULD. YEAH. ABSOLUTELY. I SEE I AM INTO MY REBUTTAL TIME. THERE IS ONE OTHER MATTER. THEY CLAIM THAT THIS STATUTE INTERFERES WITH THE PROPERTY APPRAISER'S DISCRETION. AGAIN, ALL THE STATUTE DOES IS REQUIRE HIM TO ARTICULATE FACTS. THE PROPERTY APPRAISERS ARE NOT A FOURTH BRANCH GOVERNMENT. THEIR DISCRETION DOES NOT UNBRIDLE THEIR SUBJECT TO DISCRETION AND ALL THEY HAVE DONE IS CONSIDER THIS PARTICULAR SITUATION

CHIEF JUSTICE: DOES THE VALUE BOARD DISCUSS WHY THEY DISAGREE WITH THE REASONS OF THE PROPERTY APPRAISER, SO THE PROPERTY APPRAISER CAN LOOK AT THAT AND SAY HERE IS THE OTHER FACTOR? THE WAY I AM GETTING THIS, IS THERE REALLY ISN'T A WAY IN MANY CASES, WHEN THEY WOULD HAVE NO KNOW IDEA THE VALUE ADJUSTMENT BOARD CAME UP WITH A DIFFERENT VALUATION, AND THAT IS A PROBLEM.

I CAN SEE THAT YOU WOULD HAVE A DECISION IN A VARIETY OF FORMS, SOME TELLING YOU MORE THAN OTHERS.

IF THEY TOLD NOTHING, HOW, THEN, ISN'T THE PROPERTY APPRAISER REALLY BOUND, BECAUSE THEY DON'T EVEN KNOW WHAT WENT INTO IT, SO HOW WOULD THEY KNOW?

I THINK THE PROPERTY APPRAISER KNOWS WHAT HE HAS ARGUED TO THE VALUE ADJUSTMENT BOARD IN THE PREVIOUS YEAR, IN A GIVEN APPEAL, AND SO THOSE WERE THE FACTS THAT WOULD HAVE BEEN CONSIDERED, AND IF THERE IS A REDUCTION, THEN, THE PROPERTY APPRAISER WOULD, UNDER THE STATUTE, HE SHOULD IDENTIFY SOME OTHER FACTS THAT WOULD SUPPORT.

THE PROPERTY OWNER HAD TO SET OUT A BASIS FOR THEIR CLAIM, TOO. BEFORE THE VALUE ADJUSTMENT BOARD.

WELL, EXACTLY.

THERE IS A REASON WHY THE VALUE ADJUSTMENT BOARD SHOULD ACT, RIGHT?

THERE IS SOMETHING GOING TO BE SOME KIND OF RECORD, AND I THINK THE PROPERTY APPRAISER SHOULD KNOW WHAT IT IS.

ISN'T THE ASSESSMENT PRESUMED TO BE CORRECT AND THE BURDEN OF PROOF EITHER CLEAR AND CONVINCING EVIDENCE, IT USED TO BE HIGHER BUT NOW IS IT CLEAR AND CONVINCING?

IF, WELL, THE STATUTE THAT CONTROLS THAT IS 193.301, AND IF THE PROPERTY, IF THE ASSESSMENT IS ENTITLED TO A PRESUMPTION OF CORRECTNESS, THEN IT IS CLEVER AND CONVINCING. IF IT IS NOT, IT IS JUST --

PREPONDERANCE. WHAT IS IT IN THIS CASE FOR TANGIBLE?

WELL, THIS STATUTE DOES NOT CHANGE 194.301, SO AS FAR AS I CAN TELL YOU, IT IS THE SAME. I MEAN, EVEN IF THE PROPERTY APPRAISER DOES NOT DO WHAT THIS STATUTE SUGGESTS HE SHOULD DO, THE OTHER STATUTE ABOUT THE BURDEN OF PROOF IS NOT CHANGED, SO THE PROPERTY OWNER IS GOING TO HAVE TO GO THROUGH THE SAME THING AGAIN.

CHIEF JUSTICE: I THINK WE ARE PROBABLY, NOW THAT WE HAVE LET YOU HAVE ALL OF THAT REBUTTAL TIME, YOU ARE PROBABLY OUT OF IT BUT NOT QUITE.

THANK. WE WOULD ASK THAT YOU REVERSE.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS EVAN LANGBEIN ON BEHALF OF THE TAXPAYERS JOSEPH HOWARD AND JOYCE FOREMAN. WITH ME TODAY IS TOM LOGUE AND GAY WOOD, WHO REPRESENT THE PROPERTY APPRAISERS OF MIAMI-DADE AND BROWARD COUNTY

CHIEF JUSTICE: ARE YOU INTENDING TO SPLIT UP THE ISSUES OR YOU ARE NOT INTENDING TO DIVIDE --

NOT SPLIT UP THE ISSUES. I THINK THE PROPERTY APPRAISERS PROBABLY HAVE A DIFFERENT VIEW OF THE STATUTE THAN THE TAXPAYER MIGHT, SO I AM GOING TO TRY TO THE EXTENT THAT IT IS POSSIBLE, TO FOCUS ON THE TAXPAYERS' VIEW OF THIS STATUTE.

WHY DON'T WE START WITH THE STANDING ISSUE HERE, AND AS I UNDERSTOOD HIS ARGUMENT, IS THAT THESE PEOPLE WHO BROUGHT THIS CHALLENGE, DON'T EVEN PAY INTANGIBLE PERSONAL PROPERTY TAX, AND SO WHY SHOULD THEY BE ABLE TO BRING THIS ACTION?

BECAUSE THEY PAY REAL ESTATE AD VALOREM TAXES, YOUR HONOR, AND THEY ARE ARGUING THAT THE STATUTE INSIDIOUSLY DISCRIMINATES AGAINST A CATEGORY OF TANGIBLE PROPERTY OWNERS WHO DO NOT GET A REDUCTION FROM THE PRIOR YEAR.

SO WHAT IS THE BASIS? IS THIS BASIS BECAUSE THERE IS NO JUST VALUE CONSIDERATION OR JUST A PROCEDURAL MECHANISM?

BOTH.

WHAT IS THE EVIDENCE THAT THIS STATUTE DOESN'T RESULT IN A JUST VALUATION? IT MAY BE DIFFERENT FROM THE STANDARD OF THE PROPERTY APPRAISERS, BUT WHAT IS THE DIFFERENCE IN THE STANDARD JUST VALUATION?

IT WAS NOT APPEALED BELOW OR AT THE TRIAL COURT IN THE FIRST DISTRICT THAT, THERE DOES NOT NEED TO BE A JUST BASIS BECAUSE WE ARE TALKING ABOUT THE CONSTITUTIONAL VALUE ON THE STATUTE.

THE STATUTE DOESN'T SAY A JUST VALUATION, LIKE INTERLACHEN OR WHATEVER, WHERE

THERE WERE DIFFERENT JUST VALUATIONS AND YOU COULDN'T DISTINGUISH. IT SAYS THE SAME PROPERTY AND IT GOES TO THE ADJUSTMENT BOARD. SO BASICALLY HOW IS IT ANYTHING DIFFERENT THAN ARGUE THAT WE DON'T, FROM THE PROPERTY APPRAISERS' STANDPOINT, WE WON'T GIVE AN ASSESSMENT AND WE DON'T HAVE TO BE, GIVE ANY CONSIDERATION TO THE VALUE EW ADJUSTMENT BOARD. ISN'T THAT BASICALLY THE ARGUMENT, NOT WHETHER THE VALUE ADJUSTMENT BOARD'S ASSESSMENT IS BEST OR NOT.

I THINK THEIR ARGUMENT IS, IS THAT THIS IS A NINTH FACTOR TO BE TAKEN INTO ACCOUNT WITH PERRY MATERIA IN CONNECTION WITH 193.016 AND WE DISAGREE WITH THAT.

WHY ISN'T THAT A NEUTRAL FACTOR THAT, IT REALLY IS PROVIDING, IF, IN OTHER WORDS, FOR THERE TO BE CONSIDERATION, IF THERE WAS A VALUE ADJUSTMENT BOARD PROCEEDING, AND IF THERE WAS, WHAT WAS THE OUTCOME? NOW, WHY DOESN'T THAT APPLY ACROSS THE BOARD, TO ANYBODY THAT HAS TANGIBLE PERSONAL PROPERTY, AND WHY WOULDN'T IT BE OBVIOUS THAT THAT WOULD BE SOMETHING THAT THE PROPERTY APPRAISER WOULD CONSIDER, AND, OF COURSE, IN THE CASE WHERE THERE WAS, YOU KNOW, THEN, CONSIDER WHAT THE OUTCOME WAS, BECAUSE IF SOMEBODY HAD ARGUED THEIR ROW OF 20 FILE CABINETS WERE 40 YEARS OLD, AND THAT THE PROPERTY APPRAISER HAD TREATED THEM AS IF THEY WERE BRAND NEW, AND WHATEVER THE CURRENT RETAIL PRICE IS OR SOMETHING LIKE THAT, AND THEY HAD MADE A MISTAKE, THAT THEY WERE 40 YEARS OLD, AND THE VALUE ADJUSTMENT BOARD HAD AGREED WITH THE PROPERTY OWNER ABOUT THAT, AND THEN THERE HAD BEEN AN APPEAL, AND THAT HAD BEEN AFFIRMED, AND WE HAVE EVEN TALKED ABOUT IF IT GETS TO COURT, AND THERE IS SOME KIND OF A FINDING, THAT THE 40-YEAR-OLD FILE CABINETS ARE, CANNOT BE ASSESSED THE SAME VALUE AS BRAND NEW FILE CABINETS, WOULDN'T A PROPERTY APPRAISER HAVE TO BE OUT OF THEIR GOURD TO NOT TAKE THAT INTO CONSIDERATION, IF THAT ACTUALLY HAD OCCURRED?

WELL, I WOULD DEFER ON THE MECHANICS OF ASSESSMENT, TO MY COLLEAGUES, YOUR HONOR, BUT I WILL ANSWER YOUR QUESTION THIS WAY. THIS COURT HELD, IN A CASE A LONG TIME AGO CALLED SIMPSON VERSUS MERRILL, AND HAS BEEN FOLLOWED CONSISTENTLY BY THE DISTRICT COURTS OF APPEAL, THAT AN ASSESSMENT IN A GIVEN TAX YEAR, IS MADE AS OF JANUARY 1 OF THAT ASSESSMENT YEAR, AND THE EIGHT CRITERIA OR THE SEVEN CRITERIA AS IT USED TO BE, OF 193.01 --

HOW DOES THE STATUTE HERE CHANGE THAT IN ANY WAY?

BECAUSE IT REQUIRES THE PROPERTY APPRAISER TO CONSIDER A PRIOR YEAR, WHICH IS IRRELEVANT.

IS IT IRRELEVANT, IF IT IS DETERMINATIVE OF SOME FACTUAL CIRCUMSTANCES SUCH AS I HAVE JUST DESCRIBED?

WELL, THE --

ARE YOU SAYING THAT, LET'S TAKE IT ON TO THE COURTS. THE PRIOR YEAR THERE HAD BEEN A DISPUTE ABOUT THE VALUE OF THE FILE CABINETS, AND A COURT HAD FOUND THAT THESE 40-YEAR-OLD FILE CABINETS COULD NOT BE ASSESSED AT THE SAME VALUE AS BRAND NEW ONES.

YES, YOUR HONOR. THAT GOES TO THEISHURE OF THE DATA THAT IS ACCUMULATED IN THE PROCESS OF MAKING AN OPINION AS TO JUST VALUATION. BUT WHAT A VALUE ADJUSTMENT BOARD DOES OR DOES NOT DO OR WHAT A SPECIAL MASTER WHO ACTS FOR THE BOARD DOES OR DOES NOT DO, HAS NO RELEVANCE AT ALL TO THE DETERMINATION OF A PROPERTY APPRAISER'S JUDGMENT.

EVEN IF THERE WAS A FACTUAL RESOLUTION OF SOMETHING?

WELL, HYPOTHETICALLY I SUPPOSE IT COULD, BUT YOU KNOW, I CAN'T CONCEIVE OF IT. IT -- MR. CHIEF JUSTICE

JUSTICE CANTERO HAS A QUESTION.

ISN'T THE PRIORITY HERE THAT WE HAVE DECIDED WE DON'T HAVE A REAL CASE TO LOOK AT, BECAUSE IN A PARTICULAR CASE, A TAXPAYER MAY SAY, LISTEN, THIS PROPERTY APPRAISER MAY HAVE CONSIDERED THIS, BUT HE, BECAUSE HE CONSIDERED THESE FACTORS, HE DIDN'T REACH A JUST VALUATION, AND YOU REALLY NEED TO LOOK AT IT ON A CASE-BY-CASE BASIS, TO SEE WHETHER THE PROPERTY APPRAISER'S CONSIDERATION OF WHAT THE VALUE ADJUSTMENT BOARD DID, IN FACT RESULTED IN A JUST VALUATION IN THE SUBSEQUENT YEAR OR DID NOT, AND THAT IS REALLY WHY WE ARE HAVING THIS CONCEPTUAL PROBLEM, IS BECAUSE WE DON'T HAVE CONCRETE FACTS IN WHICH TO ANALYZE THE CASE.

RESPECTFULLY, YOUR HONOR, I THINK THIS IS AN ISSUE THAT GOES, IS SYSTEMIC. IT GOES TO THE STANDARDS AND THE CRITERIA FOR ARRIVING AT JUST VALUATION, AND IT CREATES --

THE ONLY CONSTITUTIONAL BASIS, I THINK YOU HAVE ASSERTED, AND CORRECT ME IF I AM WRONG, IS THAT THE STATUTE VIOLATES ARTICLE VII SECTION 4, CORRECT?

CORRECT.

AND GETTING TO THAT, THIS GOES FULL CIRCLE TO JUSTICE BELL'S ORIGINAL QUESTION, IS HOW DOES THE REQUIREMENT THAT THE PROPERTY APPRAISER CONSIDER THE VALUE ADJUSTMENT BOARD'S DETERMINATION IN THE PRIOR YEAR, NOT LEAD TO A JUST VALUATION OF THE PROPERTY?

WELL, BECAUSE IT HAS NOTHING TO DO, YOUR HONOR, WITH THE CRITERIA OF 193.011, OF ARRIVING AT A JUST VALUATION, AND IT DISCRIMINATES.

SO WHAT?

WHY SHOULDN'T MY CLIENTS, AS REAL ESTATE PROPERTY OWNERS AND ALL REAL ESTATE PROPERTY OWNERS IN MIAMI-DADE AND BROWARD COUNTY, HAVE THE SAME CONSIDERATION?

YOU HAVEN'T ASSERTED AN EQUAL PROTECTION ARGUMENT. YOU HAVE ASSERT ADD ARGUMENT UNDER ARTICLE VII SECTION 4, WHICH IS A JUST VALUATION ARGUMENT.

BUT UNDER INTERLACHEN, THE DISCRIMINATION UNDER INTERLACHEN, WHICH IRONICALLY WAS DECIDED AND WRITTEN BY JUSTICE ERVIN, WHOM WE HONORED THIS MORNING, BUT THAT DECISION SAYS, YOU SHALL NOT MAKE ANY FORM OF CLASSIFICATION BETWEEN REAL ESTATE AND PERSONAL PROPERTY IN ESSENCE OR ANY OTHER CATEGORY OF PROPERTY. YOU CAN'T DO THAT, UNDER THE 1968 CONSTITUTION.

CHIEF JUSTICE: JUSTICE WELLS.

I WILL PASS, I THINK.

THE 1968 CONSTITUTION REPRESENTED A TREMENDOUS DEPARTURE IN CONSTITUTIONAL LAW IN THE STATE OF FLORIDA, AS RELATES TO TAXATION. THE PRINCIPLE IS THAT ONE PERSON'S TAXATION SHOULD NOT RESULT IN ANOTHER'S TAX INCREASE.

ARE YOU ASSUMING, LIKE INTERLACHEN, THERE IS A TAX REDUCTION THAT IS A LESS THAN FAIR MARKET VALUE, AND THAT IS NOT WHAT THE JUST VALUATION IS SPEAKING TO. I KEEP TRYING TO GO TO THAT POINT. INTERLACHEN DEALT WITH A REDUCTION THAT WAS LESS THAN FAIR

VALUE, AND THAT IS NOT WHAT WE ARE ARGUING HERE. THE STATE IN ITS DEFENSE RELIED ON WHAT JUSTICE ERVIN WROTE, SAYING THAT THIS STANDARD STANDS FOR THE CASE THAT THE LEGISLATURE ONLY THEN IS PRECLUDED FROM CLASSIFYING PROPERTY FOR VALUATION PURPOSES AT LESS THAN JUST VALUATION, EXCEPT AS IN THE INSTANCES PROVIDED. THAT IS NOT WHAT WE ARE ARGUING HERE. THE LEGISLATURE IS NOT SAYING VALUABLE TANGIBLE PROPERTY LESS THAN REAL PROPERTY, IS IT?

BUT THE LEGISLATURE IS SAYING TO THE PROPERTY APPRAISERS, TAKE INTO ACCOUNT A REDUCED VALUE FOR A PRIOR YEAR WHICH IS IRRELEVANT. IT IS IRRELEVANT, AS A MATTER OF LAW.

GIVE ME AN EXAMPLE WHERE TANGIBLE PERSONAL PROPERTY WOULD INCREASE IN VALUE, IF IT IS THE SAME PROPERTY FROM THE YEAR BEFORE.

I COULD THINK FOR INSTANCE, I AM THINKING HYPOTHETICALLY, I DON'T HAVE A, PERHAPS, A TANGIBLE EXAMPLE FOR YOU, YOUR HONOR, BUT FOR INSTANCE, I AM SURE THERE ARE MANY BUSINESSES THAT HELD PERSONAL PROPERTY BEFORE 9/11 THAT WERE AFFECTED ONE WAY OR THE OTHER, EITHER THEIR PROPERTY INCREASED DRASTICALLY, DEPENDING ON THE NATURE OF THE BUSINESS AFTER 9/11.

BUT DAY AND NIGHT, BUSINESSES HAVE TANGIBLE PERSONAL PROPERTY ASSESSED ALL THE TIME AND IN THE NORMAL COURSE OF BUSINESS, DOES TANGIBLE PROPERTY INCREASE IN VALUE FROM ONE YEAR OVER THE OTHER? IF THEY HAVE GONE UP 20 PERCENT, GIVE ME A TIME IN THE PAST 100 YEARS WHERE TANGIBLE PERSONAL PROPERTY HAS HAD SIMILAR FLUCTUATIONS LIKE REAL ESTATE HAS HAD IN VALUE?

I AM NOT PREPARE TO ANSWER THAT QUESTION. MAYBE MY COLLEAGUES ARE, BUT I AM NOT.

CHIEF JUSTICE: IF YOU WANT TO DIVIDE USUAL TIME, YOUR TIME IS UP. THANK YOU. IT IS A GOOD ENTRANCE FOR YOU.

MAY IT PLEASE THIS HONORABLE COURT AND CONGRATULATIONS TO YOU, MADAM CHIEF JUSTICE ON YOUR FIRST DAY OF ARGUMENT. I AM IN AWE OF THE ISSUES YOU HAVE TO DEAL WITH. THIS IS KIND OF A SMALL CASE, BUT IT DOES DEAL WITH TAXPAYERS' RIGHTS UNDER OUR CONSTITUTION, AND WITH EVERYTHING ELSE YOU HAVE TO DO, THIS IS IMPORTANT, TOO. IN TERMS OF PROPERTY THAT, PERSONAL PROPERTY THAT DEAPPRECIATES OR APPRECIATES, ARTWORK, POWER PLANTS, AND REALIZE PERSONAL PROPERTY IS A HUGE PART OF OUR TAX ROLL. THE BIGGEST CASES I HAVE EVER DEALT WITH ARE PERSONAL PROPERTY. FP&L POWER PLANT SYSTEM IN DADE COUNTY, \$1.7 BILLION. SOUTHERN BELL'S COMMUNICATION SYSTEM, PERSONAL PROPERTY IN EXCESS OF A BILLION. THIS IS SIGNIFICANT. THERE CAN BE MARKET EVENTS THAT AFFECT THE VALUE OF PERSONAL PROPERTY. TAKE FIBER-OPTIC SYSTEMS. ONCE BROAD BANNED CAME ON, SUDDENLY FIBER-OPTIC SYSTEMS GOT MUCH MORE VALUABLE.

IS THERE ANYTHING IN THIS STATUTE THAT PROHIBITS YOU FROM ARTICULATING THAT, THE NEXT YEAR WHEN YOU RE-ASSESS THOSE PROPERTIES?

ABSOLUTELY, YOUR HONOR.

WHAT?

THIS IS NOT UNIFORM, AND IT DOESN'T RELATE TO FAIR MARKET VALUE.

WHAT DOES UNIFORM RELATE TO, RATE OR VALUATION?

UNDER THE '68 CONSTITUTION, AS ANNOUNCED BY JUSTICE ERVIN IN THE LEADING CASE, IT

RELATES TO VALUE, AND THE COURT SPECIFICALLY SAID THIS.

WHERE IS THAT IN THE CONSTITUTION?

IN INTERLACHEN.

IN THE CURRENT CONSTITUTION.

JUDGE, IT IS IN THE JUST VALUATION PROVISION OF THE CURRENT CONSTITUTION. AND JUSTICE ERVIN LIVED THROUGH THE CHANGE IN THE 1885 CONSTITUTION, TO THE '68 CONSTITUTION. AND HE WROTE THAT THERE WAS A SEA CHANGE IN JUST VALUATION. THE JUST VALUATION PROVISION UNDER 1885 WAS 20 WORDS, AND IT WAS MIXED IN WITH EXEMPTIONS AND MIXED IN WITH UNIFORM VALUATION.

YOU ARE SAYING THAT UNIFORM VALUATION AND JUST VALUATION MEAN THE SAME THING, THAT JUST VALUATION FOR A UNIFORM PIECE OF PROPERTY MEANS THE SAME THING AS UNIFORM VALUATION AS TO CLASSIFICATION OF PROPERTY?

IN OUR OPINION, IT IS SEPARATE FROM ARTICLE IV, BY THE WAY IN 1885 THAT WAS MEASURED. JUSTICE ERVIN, WHO LIVED THROUGH THAT CHANGE, SAID THERE IS A SEA CHANGE IN THE JUST VALUATION PROVISION. BY THE WAY, IT WENT FROM 20 WORDS, THE JUST VALUATION PROVISION, TO 100 WORDS, THEN IT HAS SINCE BEEN AMENDED TO 400 WORDS, SO WHEN THE STATE COMES HERE AND SAYS IT IS THE SAME JUST VALUATION PROVISION, I WOULD CAUTION YOU ABOUT THAT.

IF I COULD OFFER A FEW WORDS. ISN'T THE STATUTE REALLY THE BEST WAY TO CONSIDER THE CONSTITUTIONALITY OF THIS STATUTE, IN AN AS-APPLIED CHALLENGE, WHEN WE ARE DISCUSSING THE FACIAL CONSTITUTIONALITY OF THE STATUTE, WHICH IS APPARENTLY THE ISSUE HERE, DON'T WE HAVE TO DETERMINE WHETHER THERE IS ANY SET OF FACTS UNDER WHICH THE STATUTE WOULD BE CONSTITUTIONAL, AND COULDN'T YOU THINK THAT THERE ARE AT LEAST ONE SET OF FACTS IN WHICH THE STATUTE WOULD PRODUCE A JUST VALUATION?

BUT YOU MIGHT GET A JUST VALUATION UNDER THIS STATUTE, BUT IT WOULDN'T RELATE TO THE STATUTE. IMAGINE IF YOU HAD A STATUTE THAT SAID, WHEN YOU ARE VALUING PROPERTY, CONSIDER THE POLITICAL PARTY OF THE OWNER, OR CONSIDER WHO OWNS THE PROPERTY. ARE THEY WEALTHY?

LET'S GET BACK TO THE STATUTE THOUGH. IT SEEMS IF YOU HAVE A PROBLEM IN A PARTICULAR SAYS, IT SAYS THE WAY YOU HAVE APPLIED THE STATUTE TO MY PROPERTY DOES NOT GIVE A JUST VALUATION OF THE PROPERTY BECAUSE OF THE FACTORS THAT THE PROPERTY APPRAISER CONSIDERED AND THE FACTS THAT HE ALLEGED THAT WERE NOT PRESENT BEFORE, THAT DOESN'T GIVE US A JUST VALUATION, BUT TO SAY GLOBALLY THAT IT WILL NEVER GIVE A JUST VALUATION, I MEANS, AREN'T YOU GIVING YOURSELF TOO HIGH OF A BURDEN OF PROOF?

BUT, YOUR HONOR, UNDER THAT SYSTEM THEN, THE LEGISLATURE COULD ENACT A STATUTE THAT SAID CONSIDER WHO OWNS THE PROPERTY, WHEN YOU ARE VALUING IT. IS IT OWNED BY A NASTY WEALTHY PERSON, OR IS IT OWNED BY A VIRTUOUS PERSON?

IF THEY DON'T FEEL IT IS CORRECT AND YOU APPLY YOUR EIGHT CRITERIA, AND THEY GO TO THE VALUE ADJUSTMENT BOARD AND YOU APPLY THE EIGHT METHODS, AND THEY DO THE FULL BORE PROCEEDING, YOU HAVE PRESUMPTIVE EVIDENCE AND CLEAR AND CONVINCING EVIDENCE, AND THE VALUE ADJUSTMENT BOARD ADJUSTS YOUR VALUATION DOWN. THE NEXT YEAR THE EXACT SAME PROPERTY, WHAT THE STATUTE SAYS IS YOU HAVE GOT TO CONSIDER THAT IN YOUR VALUATION, AND IF YOU ARE GOING TO VALUE IT DIFFERENTLY, INSTEAD OF TOTALLY IGNORING IT AND GOING THROUGH THE SAME PROCESS AGAIN, YOU ARE SAYING CONSIDER IT. EXPLAIN TO

ME HOW THAT IS SO.

FLORIDA POWER & LIGHT UNDER THE STATUTES, WE CAN'T APPEAL A BAD REDUCTION, SO IF THEY GOT A \$85 MILLION REDUCTION, WHICH IS 5 PERCENT OF THEIR 1.7 BILLION, WE COULDN'T APPEAL IT, SO THEY WOULD BE ENTITLED TO THAT FOR THE END OF TIME, UNDER THE STATUTE.

WHY? WHY?

BECAUSE THE STATUTE SAYS WE CAN'T APPEAL ALL OF THE BAD DECISIONS. WE ARE LIMITED IN THE BAD DECISIONS THAT WE CAN APPEAL.

BUT THE STATUTE DOESN'T MAKE THE VALUE ADJUSTMENT BOARD ACTION BINDING.

YOUR HONOR, IT DID.

IT DID. READ ME THE PART THAT MAKES IT BINDING.

THE FIRST SENTENCE SAYS THAT THE PROPERTY APPRAISER MUST CONSIDER. THE LEGISLATURE DIDN'T STOP THERE. IF THEY WANTED IT JUST TO BE CONSIDERED, THEY WOULD HAVE IT STOPPED AT THE FIRST SENTENCE.

WHAT LANGUAGE IN THERE MAKES IT BINDING ON THE PROPERTY ASSESSOR?

THE STATUTE SAYS IF THE PROPERTY ASSESS OR IS GOING TO DEPART UPWARDLY, HE MUST SHOW ADDITIONAL REASONS THAT WERE NOT PRESENTED TO THE VALUE ADJUSTMENT BOARD.

HE DOES LIKE YOU DO JUST A MINUTE AGO. YOU SAID WE DON'T HAVE ANY RIGHT TO DO THIS, SO YOU ASSERT THAT.

YOUR HONOR, IF THE STATUTE MEANS THAT, MAYBE IT ESCAPES --

CONTINUE ON YOUR HYPOTHETICAL. WOULDN'T FLORIDA POWER & LIGHT, THEN, HAVE THE ABILITY TO FILE A LAWSUIT OR APPEAL, AND ARGUE THAT THE STATUTE IS UNCONSTITUTIONAL, AS APPLIED TO FPL IN THAT CASE?

WELL, THEY GOT THE REDUCTION, WHICH NOW CAN'T BE APPEALED AND NOW WHICH GETS, AND IT IS AT LEAST THIS HEIGHTENED TREATMENT.

CAN'T THE PROPERTY APPRAISER DO IT THEN? CAN'T PROPERTY APPRAISER APPEAL A LAWSUIT?

UNDER THE LAWS OF FLORIDA, IF IT IS A 5 PERCENT REDUCTION, WE CAN'T APPEAL IT.

CAN'T YOU FILE A LAWSUIT TO APPEAL IT?

NO. THIS WOULD NOT BE DONE. WE WOULD SAY WE COULD NOT DEPART FROM THAT, UNLESS WE SHOW ADDITIONAL REASONS.

SO THERE IS ANOTHER PART OF THE STATUTORY SCHEME THAT SAYS YOU CAN ONLY APPEAL REDUCTIONS IT THAT ARE MORE THAN 5%ENT?

YES, YOUR HONOR. IT IS ACTUALLY A SLIDING SCALE, BASED UPON THE VALUE OF THE PROPERTY. THE OTHER THING THAT SHOWS THAT THIS CRITERIA DOES NOT IN ANY WAY RELATE TO FAIR MARKET VALUE, I MEAN, JUSTICE BELL, NO ONE HAS EVER EXTENDED A LOAN BASED UPON A PRIOR YEAR'S REDUCTION IN VALUE BY THE --

CHIEF JUSTICE: AREN'T YOU SAYING THAT THE VALUE ADJUSTMENT BOARD, THAT THEY ARE

REQUIRED WHEN MAKING AN ADJUSTMENT THROUGH THIS REVIEW PROCESS, TO CONSIDER JUST VALUE? THEY DON'T SAY, I LIKE FLORIDA POWER & LIGHT, AND I WILL REDUCE IT BY A FEW MILLION DOLLARS.

UNDER THE STATUTE --

THE ROLE OF THE VALUE ADJUSTMENT BOARD IS A CHECK ON THE PROPERTY APPRAISER, ISN'T THAT CORRECT?

THE VALUE ADJUSTMENT BOARD IS SUPPOSED TO REVIEW THE DECISIONS OF THE PROPERTY APPRAISER.

TO MAKE SURE IT IS FAIR MARKET VALUE UNIFORMITY, WHEN THEY COME UP WITH THEIR AMOUNT AND IT COULD HAVE BEEN COMPLETED IN THE ELEVENTH MONTH OF THE YEAR THAT THEY HAVE COME UP WITH AN AMOUNT, THAT IS JUST VALUE.

THEY REVIEW TO SEE IF THE PROPERTY APPRAISER ABUSED HIS DISCRETION.

IF THEY REDUCE IT, THEY REDUCE IT TO WHAT, THE JUST VALUE.

BUT NOW THIS WOULD PROJECT THAT JUST VALUE INTO FUTURE YEARS, AND ALSO IN TERMS --

ALL THEY HAVE TO SAY IS THIS PROPERTY APPRECIATED BETWEEN NOW AND THAT AND THAT IS WHY WE HAVE NOW PUT IT BACK UP TO WHATEVER AMOUNT. WOULDN'T THAT BE --

WELL, IF, IF THAT IS ALL, IF, IN OTHER WORDS, IF THE PROPERTY APPRAISER CAN JUST GO TO COURT AND SAY YOU KNOW WHAT? THAT WAS LAST YEAR. NOW IT'S THIS YEAR. IF THAT IS ALL WE HAVE TO SHOW, THIS STATUTE IS MEANINGLESS, A AND IF IT DOESN'T HAVE ANY MEANING OR CONTENT, IT PROBABLY DOESN'T VIOLATE THE CONSTITUTION, BUT I CANNOT IN GOOD FAITH TO YOU, ARGUE THAT THE STATUTE IS MEANINGLESS.

SO WOULD YOU AGREE IF WE FIND THE STATUTE CONSTITUTIONAL IF THAT HAPPENED AND THEN IN NOVEMBER, THE VALUE ADJUSTMENT BOARD AFTER HUNDREDS OF THOUSANDS OF DOLLARS OF LITIGATING ON BOTH SIDES OF THE ISSUE OF THE VALUE OF THE PROPERTY THAT, IN JANUARY THE PROPERTY APPRAISER COULD TOTALLY IGNORE THE VALUATION THE VALUE OF ADJUSTMENT BOARD AND START THE BALL ROLLING AGAIN?

THIS COURT HAS SAID THAT EACH TAX YEAR STANDS ON ITS OWN.

YOUR ANSWER IS YES.

ABSOLUTELY AND BY THE WAY THE TAXPAYER AS WELL. WE CAN'T STAND ON DEFENSE AND SAY WE HAD THIS UPHOLD LAST YEAR. THAT IS NO DEFENSE OF AN ASSESSMENT. WE HAVE TO PROVE THAT IT IS FAIR MARKET VALUE, BASED UPON THE COST APPROACH, INCOME APPROACH AND MARKET APPROACH.

SO WHAT IS RATIONAL, IN THIS CIRCUMSTANCE, AS OPPOSED TO REAL ESTATE, WHERE YOU TYPICALLY STATE OR AGREE THAT REAL ESTATE APPRECIATES IN FLORIDA, AS A GENERAL PARTY, AS OPPOSED TO TANGIBLE PERSONAL PROPERTY?

LAND APPRECIATES. IMPROVEMENTS DEPRECIATE.

OVERALL LAND VALUE.

IMPROVEMENTS ARE A BIG PART OF THE TAX ROLL. I MEAN, BUILDINGS HAVE A LIFE, AND THE BUILDING DEPRECIATES EVERY YEAR, BY AND LARGE.

DO YOU CONSIDER THAT IN YOUR EVALUATIONS?

THE COST.

BUT AS A GENERAL PROPOSITION, THE AMOUNT OF MONEY COLLECTED FROM REAL ESTATE VALUATIONS, INCREASES AT A GREATER RATE THAN THE SIMILAR TANGIBLE PERSONAL PROPERTY?

I DON'T KNOW THAT, BUT FOR THE SAKE OF ARGUMENT, LET ME AGREE WITH IT.

MY HOUSE FOR THE PAST THREE YEARS, HAS GONE UP 20 PERCENT A YEAR. I DOUBT IF MY TANGIBLE PERSONAL PROPERTY IN THE HOUSE HAS GONE UP 20 PERCENT A YEAR. IS THERE A RATIONAL BASIS TO DISTINGUISH BETWEEN TANGIBLE AND REAL ESTATE?

NOT AS IT RELATES TO A PRIOR YEAR.

CHIEF JUSTICE: WITH OUR HELP, YOU HAVE USED UP YOUR TIME. THANK YOU. HOW MUCH IS REMAINING? TWO MINUTES REMAINING.

YOUR HONOR, I JUST HAVE ONE OR TWO POINTS HERE, AND THAT IS THAT, AS FAR AS THE INTERLACHEN CASE GOES AND WHAT IT MEANS, I THINK THE COURT CLARIFIED THAT, RATHER DEFINITELY, IN WILLIAMS VERSUS JONES, AND THERE DEFINED WHAT CLASSIFICATIONS MEANT. YOU DON'T HAVE THAT HERE. AND THERE HAS NEVER BEEN ANY CONTENTION IN THIS CASE, THAT THE STATUTE IN QUESTION HERE, LEADS TO ANYTHING OTHER THAN JUST VALUE UNIFORMITY I MEAN, THAT HAS NEVER BEEN AN ARGUMENT, AND I THINK THAT WOULD BE, THERE WOULD BE SOME NEED TO SUBMIT SOME PROOF OF THAT, WHICH HASN'T BEEN DONE. THE OTHER POINT I WOULD MAKE IS THAT, IN TERMS OF APPEALING A DECISION OF THE PROPERTY APPRAISER IN THE SUBSEQUENT YEAR, AS I UNDERSTOOD THE ARGUMENT, THEY SEEM TO THINK THERE IS SOME RESTRICTION ON. THAT THIS STATUTE IS, DOES NOT MAKE THE PRIOR YEAR DETERMINATION BINDING ON THE PROPERTY APPRAISER. THAT IS JUST THE STARTING POINT. AND --

LET ME ASK YOU ONE QUESTION HERE. ONE OF THE ARGUMENT THAT THE APPELLEES SEEM TO HAVE, IS THAT YOU CANNOT HAVE A CRITERIA OR FACTOR THAT ISN'T APPLICABLE ACROSS THE BOARD, SO IS YOUR ARGUMENT, THEN, THAT YOU, THAT THE LEGISLATURE COULD, THEN, PASS SOME OTHER STATUTE, MAKING IT A CRITERIA SPECIFICALLY APPLICABLE TO REAL PROPERTY, AND THAT WOULD BE OKAY?

ABSOLUTELY. YES. NOW, I DON'T, THIS IS NOT THE IMPOSITION, THIS STATUTE DOES NOT IMPOSE AN ADDITIONAL SUBSTANTIVE CRITERION. IT IS A PROCEDURAL STATUTE THAT SAYS CONSIDER THE PREVIOUS YEAR'S VALUE.

ISN'T THAT WHAT 193.011 IS ADJUSTING, THAT YOU CONSIDER. I MEAN, HOW IS THIS DIFFERENT FROM ANY OTHER CRITERIA THAT YOU WOULD CONSIDER, IN DETERMINING WHAT THE JUST EVALUATION IS?

IT DOESN'T ADD TO THOSE N THEORY, THE PROPERTY APPRAISER WOULD PROBABLY GO BACK AND REAPPLY 193.011 AND GET A DETERMINATION, BUT IF IT COMES OUT HIGHER, THEN HE IS BEING ASKED TO JUSTIFY IT, AND FRANKLY THERE IS NOTHING THAT COMMANDS THAT THAT THE SAME CRITERIA BE APPLIED TO REAL PROPERTY AND TO TANGIBLE PERSONAL PROPERTY.

CHIEF JUSTICE: THANK YOU VERY MUCH. YOUR TIME IS UP AND THANK YOU TO BOTH SIDES, AND THE COURT IS IN RECESS UNTIL NINE O'CLOCK TOMORROW MORNING.

MARSHAL: PLEASE RISE.

