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Sunset Harbour North Condominium Association v. Joel Robbins

CHIEF JUSTICE: THE FIRST CASE ON THE COURT'S DOCKET THIS MORNING IS SUNSET HARBOUR NORTH CONDOMINIUM ASSOCIATION , VERSUS JOEL ROBBINS.

AROUND ALDO IF COUNSELL READY TO PROCEED, YOU MAY PROCEED.

GOOD MORNING. MY NAME IS ARNALDO VELEZ , AND I AM HERE ON BEHALF OF APPELLANT, AND THE QUESTION, GENERAL ISSUE AT HAND , CONCERNS THE VALIDITY OF A STATUTE.THE QUESTION IS WHETHER A STATUTE THAT WAS ENACTED AS REGULATION , VIOLATES THE JUST VALUATION CONCEPT OR ENABLING PROVISIONS OF ARTICLE IV SECTION 7 O F THE FLORIDA CONSTITUTION.

LET ME ASK YOU IN THIS CASE , WAS THE REAL PROPERTY UNDERLYING THE CONSTRUCTION , WAS THAT TAXED?

THAT I S TAXED. THERE IS NO ISSUE THAT THAT , THE CRITERIA WAS PROPERLY APPLIED TO THE REAL PROPERTY. THERE MAY BE SOME CONFUSION IN THE RECORD REGARDING THAT IS, BUT WE ARE ONLY TALKINGABOUT THE IMPROVEMENTS , WHETHER THE IMPROVEMENTS THAT WERE NOT SUBSTANTIALLY COMPLETE WERE TO BE ELIMINATED FROM THE TAX ROLL, AS REQUIRED BY THE MANDATEOF THIS PARTICULAR PIECE OF LEGISLATION.

WHAT WAS THE TEXAS ON THELAND IN THIS CASE?

YOUR HONOR, I CANNOT FATHOM THAT FROM THE PARTICULAR RECORD. THE ONLY NUMBER THAT APPEARS IS A \$20 MILLION FIGURE , BUT I CAN FAIRLY CONCLUDE THAT THAT INCLUDES THE REAL PROPERTY.

WAS THERE ANY DISPUTE AS TO WHETHER THE IMPROVEMENTS WERE SUBSTANTIALLY COMPLETE? IS THAT A N UNDISPUTED FACT IN THE RECORD?

TP EARS IT APPEARS FROM THE STATE OF THE RECORD, IN LIGHT OF THE JUDGE'S ORDER, THAT THE CONSTRUCTION THAT WAS NOT COMPLETE , WAS NOT CONTESTED. YOU WILL SEE THAT IN A N ORDER GRANT ING SUMMARY JUDGMENT. THERE IS A STATEMENT TO THE EFFECT THAT THE CERTIFICATE OF COMPLETION HAD NOT BEEN ISSUED AND SOME OF THE CONSTRUCTION WAS NEVER FINISHED. THAT IS WHY WE ARE HERE ON THE LEGAL CASE.

WE ARE HERE WITH REFERENCE TO THE CONSTITUTIONALITY OF THIS SCHEME, THAT CORRECT?

THAT IS CORRECT. THERE HAS BEEN A SUBISSUE THAT WAS RAISED , WHICH WAS AROSE OUT THE PRODUCT OF THE PUBLICATION OF AN INTEREST IN G ARTICLE, MS. WEBER'S ARTICLE THAT APPEARED IN "THE FLORIDA BAR JOURNAL" IN MAY 2003, REGARDING STANDING,WHICH IN MY VIEW EARNED PERHAPS A STANDING ISSUE , AND THE HOMES FOR THE AGE !!ING DISCUSSES THIS POINT. YOU MIGHT WANT TO VISIT THAT , BECAUSE IT HAS PLENARY REVIEW OF THIS ENTIRE MATTER AND WAS THE CAUSE

IT WAS NOT AN ISSUE RAISED BELOW .

NO. I WILL FREE ADMIT THAT THE STANDING WAS NOT CONTESTED AND WE PROCEEDED ON THAT

BASIS , BEFORE THE TRIALCOURT.

NOW, REALLY, THE QUESTION PRESENTED HERE, I S WHETHER THIS STATUTE , WHICH SAYS THAT THERE SHALL , THAT THE PROPERTY HAS NOT VALUE FROM AN AD VALOREM STANDPOINT , CAN BE SQUARED WITH THE CONSTITUTION 'S REQUIREMENT THAT ALL PROPERTY BE VALUED AT JUST VALUE , CORRECT?

THAT'S CORRECT.

AND WE HAVE ADHERED T O A DEFINITION IN OUR CASES , OF JUST VALUE , AS BEING FAIR MARKET VALUE.

THE CASES SEEM TO INDICATOR DO INDICATE THATIT IS SYNONYMOUS WITH FAIR MARKET VALUE.

IN ORDER FOR US TO , REALLY, GO FORWARD ON A BASIS THAT THE PROPERTY , AS OF JANUARY 1 , WHICH HAS BEEN CONSTRUCTED , HAS NO VALUE , WE JUST ARE PERPETUATING A FICTION , ISN'T THAT RIGHT?

NO. I WOULD NOT SUGGEST. MY VIEW

IT DOES HAVE SOME VALUE.

MY VIEW OF THAT , IS THAT IT IS THE CONSTITUTION WE ARE DEALING WITH. IT IS NOT THE STATUTE. WE GO TO THE CONSTITUTION. THE CONSTITUTION IS INTENDED TO BE ADAPTED TO THE VARIOUS CRISIS THAT FAC E THE AFFAIRS.I AM REMINDED OF ALEXANDER HAMILTON .

WHAT I AM CONCERNED ABOUT IS WE HAVE FOUND THE JUST VALUE IN ONE CASE IN WAL-MART VERY SPECIFICALLY , AS CONSTRUED TO MEAN FAIR MARKET VALUE.

THAT IS THE WAY IT HAS BEEN INTERPRETED , BU T THE TEXT OF THE CONSTITUTION AND THE HISTORY AND CIRCUMSTANCES WHICH MUST BE TAKEN INTO ACCOUNT , SEEM TO INDICATE THAT JUST VALUE IS A CONCEPT OF BROADER DIMENSION.

SO WE WOULD HAVE TO RECEDE FROM OUR EARLIER DEFINITION OF JUST VALUE.

NOT NECESSARILY . THEY COULD ALL BE HARMONIZED. ALL THESE DECISIONS IN THE TAX CASES , G O BACK TO THE ENABLING AND EMPOWERING OF THE LEGISLATURE , WHERE IT IS PECULIAR TO THE LEGISLATURE TO PRESCRIBE REGULATIONS THAT WILL AFFECT A JUST VALUATION.THAT JUST VALUATION, THEN , LIES WELL WITHIN THE PROVINCE OF THE LEGISLATURE. ALBEIT THAT IN THE PAST , YOU MAY HAVE TOUCHED UPON THIS AND SAID IT IS A FAIR MARKET VALUE OR BOOK VALUE OR THINGS LIKE THAT, YOU WILL SEE THE WORDS IN THE CONSTITUTION AND THE PEOPLE HAVE NOT CHANGED THIS , ATANY TIME , STILL TO BE JUS T VALUE, NOT FAIR MARKET VALUE .

YOU YOU WOULD RECOGNIZE THAT WE ARE NOT HERE EVALUATING WHETHER, WHAT WAS ASSESSED WAS A FAIR MARKET VALUE . WE ARE HERE ON SOLELY THE QUESTION AS TO WHETHER A STATUTE WHICH SAYS THAT THE PROPERTY SHALL HAVE NO VALUE , MEETS THE CONSTITUTION.

EXACTLY.

AND IF WE HELD THAT IT , THAT THE CONSTITUTION DID PERMIT THERE TO BE AN APPRAISAL , THEN IT WOULD BE AN APPRAISAL OF WHAT THE FAIR MARKET VALUE WAS , UNDERTHE FACTORS AS ENUNCIATE !!ED BY THE LEGISLATURE , CORRECT?

NO. THE WAY THE CASES SPEAK TO THIS IS THAT THIS IS A POLICY CALL . A POLICY CALL THAT IS TO BE MADE BY THE LEGISLATURE. YOU CAN TAKE AND HARMONIZE EVERY SINGLE TAX CASE IN FLORIDA , AND YOU SEE THAT THE REAL ENGINE THAT DRIVES THIS MECHANISM , THE ONE THAT ALL OF THIS WAS EMPOWERED TO, WAS THE LEGISLATURE.

WELL , THE POLICY CALL , OF COURSE, HAS TO BE CONSISTENT WITH THE PROVISIONS OF THE CONSTITUTION. IS THAT CORRECT?

THAT'S CORRECT.

SO WOULD YOU GIVE US AND ARTICULATE , YOUR VIEWS OF WHAT THE POLICY WAS THAT WAS BEING ESPOUSED BY THE LEGISLATURE IN THIS INSTANCE , AND THEN DEMONSTRATE FOR US , HOW THAT MEASURES WITH THE PROVISIONS OF THE CONSTITUTION THAT HAVE BEEN CITED BY JUSTICE WELLS. WOULD YOU DO THOSE TWO THINGS. IN OTHER WORDS TELL US WHAT YOU BELIEVE THE POLICY WAS , BEHIND THESE PROVISIONS THAT THE LEGISLATURE ENACTED , AND THEN DEMONSTRATE TO US , ALL RIGHT , HOW THEY MEASURE WITH THE CONSTITUTIONAL PROVISIONS IN QUESTION.

YOU WILL SEE , IN YOUR OWN DECISIONS WHERE YOU TOOK JUDICIAL NOTICE OF THE TAXPAYER REVOLT , THE SEETHING RESENTMENT TO TAXATION, AND IN IT , YOU WILL , ALSO, THROUGH THE COURSE OF HISTORY , YOU WILL SEE THAT THIS STATUTE ORIGINALLY ENACTED BACK IN 1961 AND GOING THROUGH VARIOUS MODIFICATIONS BUT BEING CARRIED OVER AT EXACTLY THE SAME TIME, WHEN THE REVISIONS WERE BEING AFFECTED TO THE CONSTITUTION. YOU WILL NOT SEE ANY INTENT IN ANY OF THESE REVISIONS , IN ANY OF THE SUBMISSIONS OF THE PEOPLE THAT THEY WERE GOING TO GO AHEAD AND BE TAXED GREATER AND THAT THEY WERE GOING TO OBLITERATE OR DO AWAY WITH THIS PARTICULAR SECTION.

WHAT WAS THE PURPOSE OF THE SECTION , AND , AGAIN , HOW DOES THAT MESH WITH THE CONSTITUTIONAL MESH WITH THE CONSTITUTIONAL PROVISION?

THE PURPOSE IS ESTABLISHING A BEGINNING POINT FROM WHICH WE HAVE TO GO FORWARD. IT IS THE ENABLING SECTION OF, TO ENABLE THE LEGISLATURE TO SAY WHAT IS PROPERTY AND TO DEFINE ALL OF THESE THINGS , BUT LEAVING IT UP PECULIARLY TO THE LEGISLATURE , SO THAT THE PEOPLE IF THEY WANT TO CHANGE IT, CAN DO SO THROUGH THE LEGISLATURE. THAT IS REALLY THE WAY IT WAS DONE .

I GUESS I AM NOT MAKING MY QUESTION CLEAR. WHAT DO YOU VIEW TO BE THE PURPOSE OF THE LEGISLATURE IN ENACTING THESE PROVISIONS THAT APPEAR TO ACCEPT THE IMPROVEMENTS MADE TO THE PROPERTY , EVEN DURING A TIME

YES. YES.

WHEN THE IMPROVEMENTS HAVE SUBSTANTIAL VALUE, AND SO WHAT IS THE PURPOSE OF THE LEGISLATURE ACTING , IN THAT RESPECT?

THE LEGISLATURE

HOW DOES THAT MESH WITH THE CONSTITUTIONAL PROVISIONS THAT JUSTICE WELLS HAS CITED TO YOU?

THE LEGISLATURE HAS SAID , HAS PRESCRIBED , WE ARE NOT GOING TO GET INTO THE DEBATE OF APPRAISING THESE , THE ADMINISTRATIVE PROBLEMS ATTENDANT TO THESE INCOMPLETE IMPROVEMENTS. WE ARE NOT GOING TO LET THE LEGISLATORS APPRAISE THAT DEBATE. WE DON'T WANT THAT. INASMUCH AS THEY ARE NOT GETTING THE FULL BENEFIT OF THIS PARTICULAR STRUCTURE AT THIS TIME , THE TAXATION ON THAT WILL BE DEFERRED UP UNTIL

THE TIME THAT IT IS SUBSTANTIALLY COMPLETE.

HOW DOES THAT MESH WITH THE CONSTITUTIONAL PROVISION THAT JUSTICE WELLS HAS CITED TO YOU?

THAT IS QUITE CONSONANT WITH MY VIEW OF WHAT A JUST VALUATION SCHEME AND THIS APPLIES TO EVERYONE , ALL STRUCTURE, NOT SINGLING OUT ANY TAXPAYER OR THE LIKE.

YOU REQUESTED THAT THE MARSHAL REMIND YOU OF WHEN A CERTAIN AMOUNT OF TIME WAS UTILIZED, AND HE HAS DONE THAT BY TURNING ON THE RED LIGHT.

JUST ONE QUESTION. ARE YOU RELYING ON THE FACT THAT THIS COURT UPHELD A SIMILAR STATUTE , PRIOR TO THE MOST RECENT AMENDMENT TO THE CONSTITUTION , BECAUSE, AND TELL ME IF THAT IS THE CASE , WHAT PRINCIPLE OF CONSTITUTIONAL CONSTRUCTION WOULD ALLOW THAT TO BE A CONSIDERATION .

YOU ARE REFERRING TO THE DECISION WHICH DID UPHOLD THE VALIDITY OF THE STATUTE , AND I ALSO IN MY REVIEW LAST NIGHT, REALIZED THAT THERE WAS A DECISION WRITTEN BY ALTO ADAMS , WHEN HE WAS , I BELIEVE , ON THE FOURTH , THE SECOND DISTRICT, THAT LATER CAME UP HERE FOR REVIEW BEFORE JUSTICE DREW ON THE SAME STATUTE.

HAS THAT CASE BEEN CITEED?

YES. IT IS IN THE BRIEFS.IT IS IN THE BRIEFS .

CHIEF JUSTICE: OKAY. THANK YOU . GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM LOUIS HUBENER WITH THE OFFICE OF THE ATTORNEY GENERAL, REPRESENTING THE DEPARTMENT OF REVENUE . I HAVE ESSENTIALLY TWO POINTS TO MAKE THIS MORNINGAND NOT MUCH TIME TO MAKE THEM, BUT THEY REALLY ADDRESS THE QUESTION THAT YOU ASKED , JUSTICE WELLS , AND THE QUESTION THAT YOU ASKED, ABOUT THE COURT'S PREVIOUS DECISION. AND I DO BELIEVE THAT YOU ARE NOT RIDING WRITING ON A CLEAN SLATE. YOU DECIDED THE CULBERTSON DECISION IN JUNE 1968 , JUST AS THE LEGISLATURE WAS MEETING . AND YOU UPHELD THAT STATUTE AS A TEMPORARY POSTPONEMENT OF ASSESSMENT AND FOUND THAT IT MET THE JUST VALUATION REQUIREMENT OF THE 1985 CONSTITUTION. IT MUST B E PRESUMED THAT THE LEGISLATURE KNEW OF THAT DECISION, AND WITHIN A FEW DAYS OF IT , THE LEGISLATURE PROPOSED AMENDMENTS TO THE CONSTITUTION THAT MADE NO CHANGE TO THE JUST VALUATION LANGUAGE. SO THERE IS NOTHING TO INDICATE THAT THE PEOPLE INTENDED TO OVERRULE CULBERTSON AND CERTAINLY NOTHING TO INDICATE THAT THEY INTENDED TO IMPOSE AN ADDITIONAL TAX BURDEN ON THEMSELVES.

ARE YOU SAYING THAT CULBERTSON INTERPRETED THE SAME EXACT LANGUAGE OF JUST VALUATION , AS , THAT THIS STATUTE IS CONSISTENT WITH THAT.

THE JUST VALUATION LANGUAGE DOES NOT CHANGE , AND JUST CANNOT BE PRESUMED. I THINK THE PRESUMPTION MUST BE TO THE CONTRARY, THAT THE PEOPLE DID NOT INTEND TO ASSUME A NEW TAX BURDEN AT A TIME THAT THIS COURT RECOGNIZED THERE WAS SEETHE !!ING RESENTMENT ABOUT TAXES.

AND THE STATUTE , IT HAS BEEN RENUMBERED , BUT IT HAS NOT CHANGED IN SUBSTANCE.

NOT MATERIALLY, FOR PURPOSES OF THIS CASE , AND THEY COULDN'T EVEN ASSERT THEIR HOMESTEAD EXEMPTION , IF THE IMPROVEMENTS , IF THEY WERE UNABLE TO LIVE IN THE HOUSE WHILE REPAIRS OR IMPROVEMENTS WERE BEING MADE OR IF A NEW HOUSE WAS BEING BUILT.

THAT GOES BACK TO WHAT JUSTICE ANSTEAD WAS ASKING ABOUT , POLICY REASONS THAT WOULD AFFECT THE ENTIRE CONSTITUTIONAL CLAIM, THAT IF YOU CAN'T CLAIM YOUR HOMESTEAD EXEMPTION, THEN YOU ARE GOING TO END UP HAVING, BEING TAXED MORE THAN SOMEBODY THAT , WHOSE HOME WOULD BE COMPLETE, SO WOULD THAT BE A POLICY REASON FOR THAT STATUTE THAT IS , ALSO , CONSONANT WITH THE CONSTITUTION?

YES. I THINK THAT IS A POLICY REASON FOR THE STATUTE , BUT MY POINT IS , WHAT DID THE PEOPLE, WHAT WERE THEY INTENDING , WHEN THEY APPROVED THE SAME CONSTITUTIONAL LANGUAGE.

AT THE TIME OF THE EARLIER DECISION INTERPRETING THE PRIOR STATUTE, WAS THE DEFINITION OF JUST VALUATION , THE SAME AS WE SAY IT IS NOW, AND THAT IS FAIR MARKET VALUE IN.

THE FIRST CASE IN WHICH YOU ADOPTED FAIR MARKET VALUE , WAS WALTER V SCHULER, IN 1965. THAT CASE WAS EXTENT , WHEN THE COURT DECIDED EXIGENT , WHEN THIS COURT DECIDED CULBERTSON , THREE YEARS LATER.

WE ARE SAYING THIS PROPERTY, WHICH THE IMPROVEMENT WAS NOT COMPLETE BUT HAD SOME FAIR MARKET VALUE , WE WOULD STILL ENGAGE IN THE FICTION THAT IT HAD NO MARKET VALUE.

THERE IS NOT MUCH SET FORTH IN THE CULBERTSON DECISION . CULBERTSON SPEAKS OF JUST VALUATION.

CULBERTSON ACTUALLY GOES ON THE BASIS THAT IT , THAT THE 19 , THE 1885 CONSTITUTION, AND THAT IT IS A TIMING QUESTION.

RIGHT . AND THAT GOES - -

BUT THE WORLD CHANGED WITH THE 1968 CONSTITUTION , AND WE ARE NOT EVEN DEALING WITH THE SAME CONSTITUTION , IN TOTALITY . AND THE WORLD HAS CHANGED, ALSO , WITH CAPS , CORRECT ?

I THINK THAT IS FAIR. YES. BUT I THINK IT STILL GOES TO THE INTENT OF THE PEOPLE AT THAT TIME , WHICH THIS COURT HAS SAID IN GRAPE VERSUS BRYANT AND NUMEROUS OTHER CASES , AS THE INTERPRETATION.

YOU ARE SAYING THE DEPARTMENT OF REVENUE , AS OPPOSED TO THE ATTORNEY GENERAL UPHOLDING THE LAW ON BEHALF OF THE STATE OF FLORIDA , AND WHY WOULDN'T THE DEPARTMENT OF REVENUE WANT SOMETHING, AN INTERPRETATION OR HAVE THE STATUTE UNCONSTITUTIONAL , WHICH WOULD, THEN , BRING MORE REVENUE INTO THE STATE? WHAT IS THE , OR , IN OTHER WORDS, WHAT ARE THE PRACTICAL PROBLEMS WITH NOT HAVING ONE CUT OFF DATE , LIKE , JANUARY 1?

I THINK THERE ARE PRACTICAL PROBLEMS, AND THIS STATUTE IS WHAT MAKES THE PROCESS WORK , AND THAT IS WHY IT SHOULD BE UPHELD . BECAUSE THE LEGISLATURE HAS THE CONSTITUTIONAL ROLE TO PLAY IN THIS , AND THIS TIME !!ING STATUTE IS THAT. IT IS A REFINEMENT OF THE LEGISLATIVE DEFINITION OF PROPERTY, AND IT TELLS US WHEN IMPROVEMENTS BECOME PROPERTY FOR PURPOSES OF JUST VALUATION. NOW , I THINK THE LEGISLATURE HAS AUTHORITY , AS I SAID, TO MAKE THIS PROCESS WORK, AND THERE ARE SEVERAL REASONABLE ASSUMPTIONS UNDERLYING THE STATUTE THAT THE LEGISLATURE COULD HAVE MADE. THE LEGISLATURE COULD REASONABLY BELIEVE THAT IT WAS SIMPLY IMPOSSIBLE FOR A PROPERTY APPRAISER TO DETERMINE, ON JANUARY 1 , ONE DAY OF THE YEAR, THE EXACT STATUS OF EVERY ONGOING IMPROVEMENT IN A COUNTY, AND BY THAT , I MEAN EVERY BUILDING BEING

IMPROVED , EVERY BUILDING BEING RENOVATED , EVERY HOUSE BEING BUILT , EVERY HOUSE BEING REPAIRED.

BUT DOESN'T THAT BEG THE QUESTION , BECAUSE THEY STILL HAVE TO DETERMINE ON JANUARY 1 , WHETHER A BUILDING IS SUBSTANTIALLY COMPLETE, SO THAT DOESN'T ANSWER THE QUESTION.

WELL, NO , IF YOU THROW OUT THE STATUTE , THAT IS WHAT YOU ARE GOING TO HAVE TO DETERMINE , THE EXACT STATUS OF CONSTRUCTION AND WHAT VALUE IT ADDS TO THE PROPERTY. ON ONE DAY OF THE YEAR.

BUT CAN THE DIFFICULTY IN APPRAISAL TRUMP THE CONSTITUTIONAL PROVISION THAT SAYS ALL PROPERTY SHALL BE ASSESSED AS JUST VALUE IN.

I THINK IT CAN , BECAUSE THIS IS A STATUTE THAT MERELY DEFERS THE TIME AT WHICH YOU DETERMINE WHAT THE JUST VALUE OF THE IMPROVEMENT IS. IT DOESN'T WIPE IT OUT. IT DEFERS IT

IT WIPES IT OUT FOR THAT TAX YEAR.

WELL , I THINK THAT IS ANOTHER REASONABLE ASSUMPTION THAT THE LEGISLATURE COULD HAVE MADE , THAT EVERY CASE IS DIFFERENT. EVERY CASE IS AN ARGUMENT , EVERY CASE , WHEN YOU ARE TALKING ABOUT THE VALUE OF SOME MINIMAL CONSTRUCTION , EVERY CASE IS A POTENTIAL APPEAL TO THE VALUE ADJUSTMENT BOARD. EVERY CASE IS A POTENTIAL LAWSUIT.

IF YOU SAY THAT THE STATUTE IS MERELY A TIMING MECHANISM TO EFFECTUATE THE PROCESS, COULD THE LEGISLATURE DELAY FOR A YEAR , AFTER COUPS AFTER OCCUPANCY , THE FULL

I DON'T THINK THAT WOULD BE REASONABLE.

IS IT A QUESTION OF REASONABLE, OR IS IT A QUESTION OF

I THINK IT IS A QUESTION OF WHAT IS A REASONABLE EXERCISE OF THE LEGISLATIVE AUTHORITY AND WHAT THEY COULD HAVE REASONABLY ASSUMED ABOUT THIS PROCESS , AND WHAT THEY CAN DO TO MAKE IT WORK .

AND WITH THE ABSENCE OF A RECORD , WE REALLY DON'T KNOW THE DIFFICULTY. I MEAN, WE ARE ASSUMING POLICY FROM ARGUMENT, BUT BECAUSE NO RECORD WAS DEVELOPED BELOW , WE REALLY DON'T KNOW THE EXTENT OF THE DIFFICULTY

THAT IS TRUE BUT I WOULD ANALOGIZE TO THE STANDARD THAT APPLIES , AND WHEN THAT STANDARD APPLIES, IT IS A MATTER OF WHAT THE LEGISLATURE COULD HAVE ASSUMED , IRRESPECTIVE OF WHAT THE EVIDENCE MIGHT BE , AND I THINK THAT APPLIES TO THE LEGISLATURE 'S EXERCISE OF ITS CONSTITUTIONAL AUTHORITY HERE.

FINDING THE STATUTE UNCONSTITUTIONAL IS NOT A RATIONAL BASIS TEST. IT IS WHETHER IT IS CONSISTENT OR INCONSISTENT WITH THE EXPRESS LANGUAGE OF THE CONSTITUTION.

WELL , THIS STATUTE DOES , IT DOES RESULT IN A DETERMINATION AND ASSESSMENT OF JUST VALUE. IT IS , AS THE COURT SAID IN CULBERTSON, A TEMPORARY POSTPONEMENT OF THAT ONLY , AND IT MAKES THE PROCESS WORK . THE LEGISLATURE COULD HAVE DONE SOMETHING ELSE ? PROBABLY IT COULD HAVE. I AM NOT GOING TO TELL YOU WHAT , BECAUSE I DON'T KNOW WHAT WOULD MAKE THE PROCESS MORE OR LESS MANAGEABLE , BUT THIS STATUTE DOES THAT, AND IT IS BASED ON REASONABLE ASSUMPTIONS. I SEE MY TIME IS UP. IF THERE ARE NO

FURTHER QUESTIONS , I WILL COME BACK FOR REBUTTAL. THANK YOU.

CHIEF JUSTICE: THANK YOU .

GOOD MORNING , MR . CHIEF JUSTICE. MAY IT PLEASE THIS HONORABLE COURT , MY NAME IS TOM LOGUE , ALONG WITH JAY WILLIAMS MY CO-COUNSEL, I REPRESENT JOEL W ROBBINS, THE PROPERTY APPRAISER OF DADE COUNTY . YOUR HONOR

LET ME ASK YOU THE SAME QUESTION, WE ARE NOT DEALING WITH THE IMPROVEMENTS , THE TAXATION OF THE LAND RIGHT NOW , RIGHT? THAT LAND WAS TAXED , AND CONTINUES TO BE TAXED , AND HAS ALWAYS BEEN DETERMINED TO HAVE VALUE.

UNDER THE STATUTE THAT WE ARE CHALLENGING , THE LAND IS TAXED .

BUT EVEN THIS THIS CASE THE LAND WAS TAXED .

YEAH.

SO IF WE ARE DEALING WITH A FOUR-ACRE PARCEL OF PROPERTY ON YEAR ONE , THERE IS NOTHING ON THERE , AND IT IS TAXED AS FOUR-ACRE PARCEL OF PROPERTY , WHETHER , DEPENDING ON THE ZONING THAT IT HAS OR WHATEVER, AND YEAR TWO , YOU START BUILDING A HOUSE ON IT BUT YOU HAVEN'T COMPLETED IT. THE ONLY ISSUE IS WHETHER THAT ADDITIONAL , THERE IS ANY ADDITIONAL VALUE TO THAT INCOMPLETE HOUSE, BECAUSE WE ARE STILL TAXING THE LAND THERE.

YES.

SO THE QUESTION IS A LOT NARROWER, I THINK , THAN IF THERE IS NO VALUE , EVEN, PLACED ON THE LAND.

THERE IS THE FACTUAL ISSUE OF DOES THE IMPROVEMENT ADD VALUE . THERE WOULD BE FACTUAL CIRCUMSTANCES WHERE AN IMPROVEMENT DOESN'T ADD VALUE .

HELP US UNDERSTAND HOW THIS OPERATES. CERTAINLY AS THEY BRING THE PROCESS OF CONSTRUCTION , YOU MUST BRING YOUR MATERIALS TO THE SITE, SO CERTAINLY IF YOU ARE GOING TO BUILD , ONCE THOSE ARE ALREADY LOADED ON A VEHICLE IN TRANSPORT TO THE SITE, IT HAD SOME VALUE , BECAUSE YOU ARE NOT GOING TO HAVE TO HAVE THE COST OF SHIPMENT. ONCE WE PLACE THE MATERIALS ON THE SITE , THEN ON THE SITE , THEN CERTAINLY THAT IS GOING TO ADD VALUE, BECAUSE WE ARE NOT GOING TO HAVE TO DO THAT IF YOU ARE GOING TO BUILD, SO WHERE DOES IT BEGIN AND WHERE DOES IT END , WITH REGARD TO DO YOU START PLACING VALUE , DO YOU START COSTING OUT THE CINDER BLOCKS THAT ARE USED IN THE SOUTH FLORIDA AREA TO CONSTRUCT THE DWELLING. DO WE THEN MEASURE HOW MUCH WOOD IS ON SITE AND HOW MUCH BUILDING MATERIALS? WHERE DOES THAT BEGIN AND WHERE DOES THAT END?

THIS IS VALUING IMPROVEMENT TO LAND, WHICH MEANS IT HAS TO BE IMPROVEMENT ON LAND. IT IS NOT JUST MATERIALS DEPOSITED OR STORED ON LAND.

WHERE DOES THAT BECOME , AS SOON AS THE FOUNDATION IS POURED, THEN THE FOUNDATION IS PART OF THE LAND. WHERE DO WE START? ONCE WE PUT THE STAKES IN TO STAKE OUT THE FOUNDATION , IS THIS HOW THIS OPERATES?

I THINK WE WOULD DO IT EXACTLY THE WAY THE MARKET DOES IT , AND I THINK THE LAW DOES BEST WHEN IT DEVELOPS TAILS WITH THE BUSINESS REALITY WHEN IT DOVE-TAILS WITH THE BUSINESS REALITY. WHAT WOULD A BUSINESS MAY PAY? THE FACT THAT THERE IS A

FOUNDATION, DOES THAT IMPROVE THE LAND ? IF IT A HOCKEY RING FOUNDATION IN SOUTH FLORIDA , THAT DOESN'T IMPROVE THELAND BECAUSE THERE IS NO MARKET FOR HOCKEY RINKS .

WHERE DO YOU THINK THE COMPS?

JUST LIKE IN EVERY OTHER APPRAISAL.

ISN'T IT A LITTLE EASIER TO GET COMPS FROM BUILDINGS THAT HAVE BEEN OCCUPIED AND SOLD, AS OPPOSED TO TRYING TO FIND COMPS OF PARTIALLY COMPLETED BUILDINGS THAT HAVE BEEN SOLD? WHAT I SEE IS A REAL NIGHTMARE OF BATTLES OVER VALUATION.

JUDGE, IF WE CAN GET COMPS THAT, IS GOOD, BUT A LOT OF TIMES WHEN WE VALUE PROPERTY, WE CAN'T GET COMPS , AND A LOT OF TIMES WHEN BUSINESSES VALUE PROPERTY FOR TAX PURPOSES, THEY CAN'T GET COMPS. A LOT OF TIMES YOU CAN GET COMPS HERE, IN THIS SCENARIO .

LET ME ASK YOU THIS. YOU WOULD AGREE THAT, WHAT YOU ARE ADVOCATING WAS BEING ADVOCATED HERE BY THE APPRAISERS , IS SOMETHING THAT IS TOTALLY DIFFERENT THAN WHAT WE HAVE DONE IN FLORIDA , SINCE BEFORE , SINCE 1885, CORRECT?

SINCE 1961 , YOUR HONOR.

WELL , SINCE 1961. DID WE DO IT 13W69 61? DID WE APPRAISE THINGS WHERETHEY WERE GOING TO , WERE NOT SUBSTANTIALLY COMPLETE?

MY RESEARCH WOULD INDICATE THAT THAT WAS , THAT PROPERTY WAS APPRAISED . THE BASIS OF MY RESEARCH IS THIS STATUTE EXISTS , WASCREATED IN 1961. I SEARCHED AND COULD NOT FIND ANY KIND OF PREDECESSOR TO THE STATUTE.

WELL , WE ACCEPT THAT IT HAS BEEN GOING ON SINCE 1961. I BELIEVE IT HAS PROBABLY BEEN GOING ON MUCH LONGER THAN THAT, BUT , AND SO WHAT WE HAVE IS NOT ONLY THIS METHOD THAT HAS BEEN , THE WAY WE HAVE DONE BUSINESS I N FLORIDA SINCE THAT TIME , BUT IT DOESN'T JUST AFFECT CONDOMINIUMS. IT AFFECTS, A S JUSTICE PARIENTE SAID , THE LITTLE OLD LADY IN TENNIS SHOES , WHO IS BUILDING HER RETIREMENT HOME , AND, I N LEESBURG , AND IS GOING TO,THEN , HAVE TO PAY , BEFORE SHE GETS THE BENEFIT OF HOMESTEAD EXEMPTION. THAT IS A PROBLEM, ISN'T IT?

WELL , THERE IS A HARSH RAMIFICATION TO OUR ARGUMENT , AND THAT HARSH RAMIFICATION IS THIS GRANDMOTHER WOULD HAVE TO PAY TAXES JUST LIKE EVERYONE ELSE , BUT WE WOULD ASK YOU TO KEEP IN MIND THAT THERE ARE OTHER GRANDMOTHERS WHO MAY BE NEEDING THE GOVERNMENT'S SERVICES FROM A LOCAL GOVERNMENT THAT THESE TAX DOLLARS WOULD PROVIDE.

THE SCHEME IS THAT , AS SOON AS THAT PERSON IS ABLE TO USE THAT AS A HOME , THAT PERSON GETS HOMESTEAD EXEMPTION. THAT IS THE SCHEME , RIGHT?

MY ANECDOTAL EXPERIENCE IS ALMOST EVERYONE WHO IS BUILDING A HOME , NOT EVERYONE BUT ALMOST EVERYONE , HAS A HOMESTEAD, SO THEY COULDN'T GET TWO HOMESTEADS ANYWAY.

WE DON'T HAVE ANY RECORD ON THAT PART .

TO BE FAIR, JUDGE , I WOULD ALSO BE A LITTLE CONCERNED WITH LETING THAT ISSUE, KIND OF THE TAIL WAG THE DOG. IT IS A TREMENDOUS AMOUNT OF VALUE.

WHAT I AM CONCERNED IS THE LOGIC OF THE SITUATION , I CERTAINLY AGREE WITH , BUT I AM ALSO CONCERNED, THOUGH, WITH A CATAclysmic CHANGE IN THE MANNER IN WHICH WE HAVE DONE THIS FOR SO LONG IN THIS STATE , UPON WHICH PEOPLE HAVE BUILT EXPECTANCIES.

A COUPLE OF POINTS , JUDGE. FIRST , I AM LOOKING AT THIS PLAQUE THAT SAYS SAT CITO DON RECTI. AS SOON AS IT IS DONE RIGHT , THIS COURT WOULD MAKE A CALL TOTALLY ON THE MERITS , BUT AS YOU INDICATED HISTORICALLY, THIS STATE IS DIFFERENT THAN IT WAS SINCE 1961 , IN TERMS OF DEVELOPMENT AND IN TERMS OF THE TYPE OF DEVELOPMENT.

LET'S GO BACK. IT'S NOT JUST A QUESTION OF WE DID IT AND IT WAS NEVER CHALLENGED BEFORE TODAY. A STATUTE THAT PREVIOUSLY EXISTED BEFORE THE 1968 CONSTITUTION WAS EXPRESSLY UPHELD BY THIS COURT AS BEING CONSISTENT WITH THE JUST VALUATION LANGUAGE. THE CONSTITUTION , THEN , IS AMENDED WITH NO CHANGE IN THE LANGUAGE. WHAT, WE WOULD BE ESSENTIALLY RECEDING FROM PRECEDENT THAT THIS COURT SET OVER 40 YEARS AGO. HOW DO YOU RESPOND TO THAT?

YOUR HONOR , I HAVE TO DISAGREE WITH MY FRIENDS. FIRST OF ALL , THIS STATUTE IS NOT THE SAME STATUTE. LIKE EVERY TAX BREAK , IT HAS EXPANDED. IN THE '68 CONSTITUTION, IT IS NOT THE SAME CONSTITUTION.

I KNOW IT IS NOT THE SAME CONSTITUTION, BUT AS TO THE RELEVANT TERMS THAT WE WERE INTERPRETING, WHAT WAS THE SIGNIFICANT DIFFERENCE BETWEEN THE STATUTE THEN, THE STATUTE NOW , AND THE PROVISION OF THE CONSTITUTION THEN AND NOW?

THE STATUTE , LIKE EVERY TAX BREAK , HAS EXPANDED . INITIALLY IT DEALT ONLY WITH NEW PROPERTIES BEING BUILT. NOW IT DEALS WITH RENOVATIONS . BUT MORE IMPORTANTLY , THE CONSTITUTION HAS CHANGED. AS THIS COURT HELD IN INTERLOCK EN, IN INDER LOCK EN, THIS COURT REJECTED THE RATIONALE OF LANIER VERSUS OVERSTREET, WHICH WAS DECIDED UNDER THE 1885 CONSTITUTION. THE COURT WENT ON IN INTERLOCK EN. THE COURT HOLDS THAT 1964 CREATES A NEW TAX UNIVERSE. THE COURT WENT ON AND CREATED A NEW CONSTITUTIONAL, THE PLATED LOTS LAW.

BUT THAT LAW ALLOWED SIMILAR PROPERTY TO BE VALUED DIFFERENTLY. IT TREATED THE SAME TYPE OF PROPERTY DIFFERENTLY. WHAT WE ARE DOING HERE IN THIS STATUTE, IT TREATS EVERY PROPERTY THE SAME, DOES IT OR DOES IT NOT?

BUT, YOUR HONOR, THE POINT I WOULD LIKE TO MAKE IS THAT THE PLATED LOTS LAW WAS CITED AS AN EXAMPLE BY THIS COURT , AS A PERMISSIBLE REGULATION UNDER THE 1885 CONSTITUTION, BUT IT WAS DECLARED UNCONSTITUTIONAL BY THIS COURT, UNDER ARTICLE VII SECTION 4.

ON WHAT BASIS THOUGH?

THE BASIS? THE BASIS WAS ARTICLE VII SECTION 4 WHICH IS NEW , SETS FORTH WHAT THIS COURT HAS CALLED AN OVER AVERAGING PRINCIPLE THAT ALL PROPERTY AN OVER ARCHING PRINCIPLE THAT ALL PROPERTY BE VALUED FOR TAX PURPOSES.

ALL PROPERTY B E TREATED THE SAME , RIGHT?

I AM SOREY?

DID INTERLOCK ENSAY THAT INTERLOCK ENSAY THAT ALL PROPERTY SHOULD BE TREATED THE SAME?

EXCEPT FOR THE FOUR CONSTITUTIONAL EXCEPTIONS. THE CONSTITUTION CREATED A OVER

ARCH IN G PRINCIPLE.

BUT THAT ESSENTIAL SCHEME HASN'T CHANGED. IT MAY HAVE EXPANDED BUT IT HASN'T CHANGED.

YOUR HONOR , IT HAS CHANGED.

LET ME READ IT. IT SAYS THAT IT IS TRUE THAT THE CONSTITUTIONAL PROVISIONAL ALLOWS THE LEGISLATURE TO PRESCRIBE REGULATIONS FOR THE PURPOSES OF SECURING A JUST VALUATION OF ALL, AND IT IS CAPITALIZED , ALL PROPERTY, BUT SUCH REGULATIONS MUST APPLY TO ALL PROPERTY AND NOT TO ANY ONE PARTICULAR CLASS.

WELL , HERE , OF COURSE , THEY ARE SINGLING OUT IMPROVEMENTS NOT SUBSTANTIALLY COMPLETE FOR FAVORED TAX TREATMENT , BUT IN INTERLOCK EN, THE COURT SAID, A BIG CHANGE FROM THE 1885 TO '68 CONSTITUTION , SETS OUT THE REQUIREMENT JUST VALUE , SEMENTS THAT MEANS FULL MARKET VALUE , AND SAYS WE ARE GOING TO HAVE FOUR CONSTITUTIONAL EXCEPTIONS, AGRICULTURE , RECREATIONAL LAND THAT REFURBISHES LAND AND LIFESTYLE. WHAT THIS COURT ENUMERATED WHICH TAX CLASSIFICATIONS THEY WANT AS RELATED TO OTHER POWERS. IN OTHER WORDS THIS COURT LOOKED AT THE FOUR CONSTITUTIONAL EXCEPTIONS AND SAID ARE PLATED LOTS ONE OF THEM? OKAY. THE LEGISLATURE CANNOT DEEM THAT THOSE PROPERTIES BE VALUED AT LESS THAN FULL FAIR MARKET VALUE.

WHAT IS THE CONSTITUTIONAL YARDSTICK BY WHICH WE ARE GOING TO EVALUATE THIS PARTICULAR STATUTE? IT APPEARS THAT YOUR OPPONENTS SUGGEST THAT THIS IS A TIMING STATUTE, AND WHILE THIS ONE IS ACCEPTABLE BECAUSE IT IS REASONABLE , M Y HYPOTHETICAL WOULD PUT IT OFF FOR A YEAR , THAT IS UNREASONABLE, SO THEREFORE I TAKE IT THAT THEIR POSITION IS THAT THE REASONABLE NATURE OF THE STATUTE MUST BE THE YARDSTICK B Y WHICH IT IS MEASURED. WHAT IS THE STANDARD THAT YOU ARE PROPOSING BY WHICH WE MEASURE THIS TODAY?

I THINK THE STANDARD IS THE CONSTITUTION IS THE TOUCHSTONE AND YOU LAY THE STATUTE NEXT TO IT , AND I N THIS REGARD .

LET'S REDIRECT THE QUESTION. THE STATUTE RIGHT NOW, SAYS JANUARY 1. SO UNDER THE STATUTE , YOU WOULD STILL USE A , EVEN IF YOU ARE SAYING THAT PART OF THE STATUTE IS NOT CONSTITUTIONAL, YOU WOULD STILL SAY THAT DETERMINING FAIR MARKET VALUE ON JANUARY 1, WOULD BE CONSTITUTIONAL , SO IF IT WAS NOT, HAD NO FAIR MARKET , THE IMPROVEMENTS HAD NO FAIR MARKET VALUE ON JANUARY 1 , YOU COULD WAIT A YEAR, UNTIL THE NEXT JANUARY 1 , TO DETERMINE WHETHER IT HAD FAIR MARKET VALUE.

YES, SIR. THAT IS IN THE CONSTITUTION NOW.

THAT IS TIMING , ALSO , ISN'T IT?

THAT IS IN THE CONSTITUTION NOW. IN OTHER WORDS, JANUARY 1 IS THE ASSESSMENT DATE , PURSUANT TO OUR CONSTITUTION.

I WOULD JUST LIKE TO BRIEFLY ASK YOU ABOUT THE STANDING ISSUE, WHICH I KNOW WAS NOT RAISED BELOW , BUT THE PROPERTY

I HIM SORRY. GO AHEAD. ANOTHER PROPERTY APPRAISER , IN DADE COUNTY , DECIDED , I GUESS , A COUPLE OF YEARS AGO , THAT THEY WANTED TO, THEY DIDN'T LIKE THE STATUTE , AND SO THEY STARTED T O APPRAISE THE IMPROVEMENTS THAT WERE NOT SUBSTANTIALLY COMPLETED. WHY IS THAT , WHY SHOULD A GOVERNMENTAL ENTITY BE ABLE TO VIOLATE A STATUTE AND

THEREFORE SET IT UP SO THAT A TAXPAYER HAS TO BE THE ONE TO BE IN A POSTURE TO SUE AND TO GET RELIEF? HOW IS THAT APPROPRIATE, BEGIN OUR JURISPRUDENCE IN THIS AREA?

WELL, LET ME ADDRESS, THEN, FIRST OF ALL, IF I MAY, YOUR HONOR, THE PROPERTY APPRAISER DID APPLY THE STATUTE IN THIS CASE. THE PROPERTY APPRAISER OF DADE COUNTY HAS NEVER REFUSED TO APPLY THE STATUTE.

THE STATUTE SAYS THAT, IF THE IMPROVEMENTS ARE NOT SUBSTANTIALLY COMPLETE, THEY HAVE NO VALUE. HOW DID YOU APPRAISE IT.

IT IS THE POSITION OF THE PROPERTY APPRAISER, THAT THIS BUILDING IS SUBSTANTIALLY COMPLETE.

SO

HUNDREDS OF DAYS.

SO IF THAT IS TRUE, THEN YOU ARE REALLY NOT IN A DEFENSIVE POSTURE, IS IT NOT, BECAUSE THE ISSUE RAISED BY SUNSET WAS THAT THE BUILDING WAS NOT SUBSTANTIALLY COMPLETE, SO TO ANSWER THAT YOU COULD HAVE, IN THE DEFENSIVE POSTURE, SAID YES, IT IS SUBSTANTIALLY COMPLETE, BUT YOU TOOK THE ADDITIONAL STEP TO SAY THAT WE ARE NOT EVEN GOING TO HAVE THAT ARGUMENT BECAUSE THE STATUTE IS UNCONSTITUTIONAL, SO IS IT TRUE THAT THIS IS REALLY A DEFENSIVE POSTURE THAT YOU ARE IN?

YES, YOUR HONOR, IT IS A DEFENSIVE POSTURE.

HOW IS IT NECESSARY?

WE WERE DEFENDANTS IN A LAWSUIT AND WE WERE SUED.

THE ISSUE YOU WERE SUED ON WAS WHETHER THE BUILDING WAS SUBSTANTIALLY COMPLETE. COULD YOU NOT HAVE DEFENDED THE SUIT ON THE ARGUMENT OF SUBSTANTIAL COMPLETION AND NOT HAD TO CHALLENGE THE CONSTITUTIONALITY OF THE STATUTE, IN ORDER TO DEFEND THE SUIT?

WE WERE CHALLENGING THAT, AND THE PARTIES WERE FACTUALLY

YOU WERE CHALLENGING WHAT?

THE PARTIES WERE LITIGATING WHETHER THIS PROPERTY WAS SUBSTANTIALLY COMPLETE OR NOT.

IF THAT IS THE CASE, WHY WOULD WE EVER REACH THE STATUTE, IF YOU CAN DECIDE THE CASE ON SUBSTANTIAL ON THE GROUNDS THAT THIS PROPERTY IS SUBSTANTIALLY COMPLETE, THEN WHAT ARE WE HERE FOR?

JUDGE, THERE ARE SO MANY INTERESTING FACETS BEING RAISED, BUT WE ARE AWARE OF THE JUDICIAL DOCTRINE THAT SAYS THE COURT SHOULD TRY TO DECIDE CASES ON NONCONSTITUTIONAL GROUNDS FIRST, BUT THERE ARE WELL ESTABLISHED EXCEPTIONS TO THAT DOCTRINE. ONE IS A CASE OF GREAT PUBLIC IMPORTANCE AND YOU CAN TELL BY ALL OF THE AMICUS BRIEFS THAT THIS IS OF GREAT PUBLIC IMPORTANCE AND ANOTHER IS RECURRING ISSUE. WE WERE BEFORE THIS COURT IN 2000

EVEN IF IT IS MOOT, I DON'T THINK THOSE ARE THE STANDARDS THAT WE USE TO DECIDE A CASE ON CONSTITUTIONAL GROUNDS, WHEN THERE ARE ALTERNATIVE NONCONSTITUTIONAL

GROUNDS FOR DECISION.

YOUR HONOR, I THOUGHT THERE WERE. I MIGHT BE WRONG, BUT THIS IS A RECURRING ISSUE. ANOTHER PROBLEM I HAVE WITH DECIDING WHETHER IT IS SUBSTANTIALLY COMPLETED, THAT HAS NOT BEEN BRIEFED IN THIS COURT. WE HAVE NO IDEA WHETHER IT IS SUBSTANTIALLY COMPLETE OR NOT.

YOUR HONOR, BEFORE THE COURT IS THE FACIAL ISSUE.

LET ME COME BACK TO WHAT YOU SAID BEFORE, WHICH IS THAT YOU BELIEVE THIS IS A QUESTION OF GREAT PUBLIC IMPORTANCE.

YES, SIR.

OBVIOUSLY IT IS. IT IS A CONSTITUTIONAL. IT SEEMS TO ME, THOUGH, AM I CORRECT THAT YOUR MAIN POSITION IS THAT THE CONSTITUTION CHANGED?

YES, SIR.

IS THAT CORRECT?

AS THIS COURT SAID IN INTERLOCK AND.

HELP ME WITH - - INTERLOCK EN.

HELP ME WITH THIS. IF IT CHANGED TO THE EFFECT, NOW, THAT THIS LONG STANDING PRACTICE, AT LEAST SINCE THE EARLY '60s OR WHENEVER, THEN WHERE WAS ALL THE NOTICE TO THE PUBLIC AND EVERYBODY GIVEN ABOUT THIS? THAT IS IF, INDEED, THIS WAS A CHANGE THAT CAME ABOUT WITH THOSE CHANGES IN THE CONSTITUTION, AT THE TIME THAT YOU ALLEGED THAT THEY OCCURRED, I THINK WE ALL KNOW JUST AS A MATTER OF COMMON SENSE, THAT THAT WOULD HAVE BEEN THE ELEPHANT IN THE ROOM. THAT IS THAT THERE WOULD HAVE BEEN AN ENORMOUS CAMPAIGN BY BUILDERS AND DEVELOPERS AND OTHERS YOU KNOW, TO SAY, YOU KNOW, WAIT A MINUTE. DON'T CHANGE THAT. THERE WOULD HAVE BEEN ALL KINDS OF LITERATURE AND LAW REVIEW ARTICLES AND BAR ARTICLES AND UP IN EDITORIALS, AND NONE OF THAT HAPPENED WITH THIS PASSAGE, DID IT?

WELL, JUDGE

ANSWER MY QUESTION FIRST.

YEAH.

NONE OF THAT HAPPENED WITH THIS, DID IT?

THIS TAX BREAK WASN'T SPECIFICALLY REFERENCED.

WELL, JUST ANSWER MY QUESTION FIRST.

YEAH. THE ANSWER IS

DID IT HAPPEN?

NO. NOT IN THAT

WAS THERE ANY ANNOUNCEMENT OUT THERE, THAT, BYPASSING THIS NEW CONSTITUTION AND THIS PARTICULAR PROVISION, THAT THIS PRACTICE WAS GOING TO BE ELIMINATED? THERE WAS

NONE OF THAT , WAS THERE?

NOT FOR THIS PARTICULAR PROVISION BUT FOR EXISTING TAX BREAKS.

DOES THIS MAKE VERY IMPORTANT ISSUE THAT YOU ARE TALKING ABOUT , NOW , DOESN'T IT DEFY COMMON SENSE , TO THINK IF THE DRAFTERS OF THAT LANGUAGE AND THE ADVOCATES OF THAT AND EVERYTHING, INTENDED FOR THERE TO BE , I MEAN , THIS IS A HUGE THING , AND GRANTED YOU KNOW, THERE IS NO DOUBTABOUT THE EQUITIES , AS FARAS THE STRESS O N LOCAL GOVERNMENT YOU KNOW , AND IN THIS DAY AND AGE THAT , IT IS A HORRENDOUS PROBLEMOBVIOUSLY , BUT I AM HAVING A LOT OF DIFFICULTY WITH YOU PUTTING YOUR EGGS IN THAT BASKET , THAT THIS CATAclysmic CHANGE OCCURRED AT THAT TIME , AND YET NOBODY EVER SAID A WORD ABOUT IT.

JUDGE , DID THE DRAFTERS INTEND TO GRANDFATHER THIS TAX BREAK IN MY IMPLICATION? THE ANSWER IS ABSOLUTELY NOT, AND WE KNOW THAT IN THE WAY THEY HANDLED AGRICULTURE. AGRICULTURE WAS A TAX EXEMPTION PRIOR TO THE '68 CONSTITUTION. THIS COURT UPHELD IT.

YOU ARE SAYING IN ESSENCE, THEN , THAT, UNLESS THE CONSTITUTION WAS ACTUALLY CHANGED TO INCLUDE THIS , THAT IT AUTOMATICALLY EX-EXCLUDES IT , EVEN THOUGH WHEN THE CONSTITUTION WAS CHANGED, THE LAW WAS THERE THAT SAID THAT THIS WAS FINE. THAT PRESS SAYS OR STATUTEHAD BEEN FOUND CONSTITUTIONAL, AND UNLESS YOU GO TO THE CONSTITUTION AND PUT SOMETHING IN THAT CHANGES THAT

BECAUSE THAT IS EXACTLY WHAT THE DRAFTERS INTENDED AND THAT IS EXACTLY HOW THIS COURT

HOW DO WE KNOW THAT?

BECAUSE THAT IS EXACTLYHOW THIS COURT INTERPRETS ARTICLE VII SECTION 4. IN TWO INSTANCES THIS COURT HAS STRUCK DOWN I N VIOLATION OF ARTICLE VII SECTION 4, TAX LAWS THAT EXISTED PRIOR TO THE CONSTITUTION.

THEY WERE BOTH TEMPORARY NOT PERMANENT UNTIL SUBSTANTIAL COMPLETION, WERE THEY NOT?

WELL , JUDGE THAT, GOES BACK TO THIS TIMING ARGUMENT. THEY WERE TIMING STATUTES AS WELL. IN INTERLOCK EN, THIS COURT DECLARED UNCONSTITUTIONAL , THE PLATED LOTS LAW.

AS AN UNLAWFUL CLASSIFICATION NOT TREATING ALL SIMILAR PROPERTY THE SAME, RIGHT?

THE PLATED LOTS LAW SAID PLATED LOTS WILL BE VALUED AT LESS THAN FULL MARKET VALUE , UNTIL SUCH TIME AS 60 PERCENT OF THE LOTS ARE SOLD . THAT IS A TIMING STATUTE.

SO IF ONE INDIVIDUAL OWNED A LOT AS OPPOSED TO SOMEBODY ELSE OWNING SEVERAL LOTS, THOUGH THE PROPERTY WAS THE SAME USE , IT WOULD BE TAXED DIFFERENTLY, CORRECT?

ALSO DEPENDING ON THE TIMING, IN TERMS OF HOW MANY LOTS WERE SOLD .

I WANT T O GO BACK TO CULBERTSON WOULD NOT BE APPLICABLE HERE .

ABSOLUTELY NOT.

BECAUSE THIS WAS NOT INCLUDED IN THE NEW STATUTE , THE CONSTITUTION.

I WOULD SAY CULVERT SON IS OUT THE DOOR , BECAUSEWHEN I T REPUDIATE !!ED THE RATIONALE THAT THE 1885 CONSTITUTION NO LONGER APPLIES.

SO YOUR POSITION IS THAT ANY EXCEPTION TO JUST VALUATION , OTHER THAN THEFOUR IN THE STATUTE, ARE UNCONSTITUTIONAL.

ABSOLUTELY.

INCLUDING FOR DISABLED VETERANS, INCLUDING FOR I A M PROFITS FOR ADA PURPOSES ANDOTHERWISE. EVERY EXCEPTION TO THE FLORIDA STATUTE THAT DOES ANYTHING BUT FULL VALUATION, IS UNCONSTITUTIONAL , WOULD BE THE RESULT OF ACCEPTING YOUR POSITION , CORRECT?

ANY STATUTE THAT I S NOT, WITH THE EXCEPTION ISN'TAAUTHORIZED BY THE CONSTITUTION, YES.

CHIEF JUSTICE: OKAY. WE ARE GOING TO HAVE TO END ON THAT NOTE T O OUR QUESTIONING AND YOUR RESPONSES.WE HAVE USED UP ALL YOUR TIME. THANK YOU VERY MUCH. MR. MARSHAL , HOW MUCH ? APPROXIMATELY THREE MINUTES.

LET ME ASK YOU A QUESTION, AND IF YOU CAN'T ANSWER IT I UNDERSTAND, BECAUSE IT HAS TO DO WITH STANDING, AND I UNDERSTAND IT MAY NOT BE YOUR ISSUE , BUT IF A PROPERTY APPRAISER OR ANYBODY IN THE GOVERNMENT OFFICIAL CAN'T CHALLENGE THE CONSTITUTIONALITY OF A LAW LIKE THIS THAT IS PRO DEVELOPER OR PRO HOMEOWNER , SO THE TAXPAYER WILL NEVERRAISE THE CONSTITUTIONALITY, BECAUSE IT FAVORS THE TAXPAYER , I F THE GOVERNMENT OFFICIAL, THE APPRAISER CANNOT RAISE IT, HOW WILL I T EVER BE DETERMINED?

WELL , I THINK THERE ARE SOME BRIEFS THAT ADDRESSTHAT. THE AMICUS BRIEFS , AND THEY INDICATE THAT, AND I THINKIT IS SO , THAT THE TAXPAYER , EXCUSE ME, THE PROPERTY APPRAISER COULD BRING A SUIT , IN HIS CAPACITY AS AN INDIVIDUAL AND CITIZEN , A S ANY INDIVIDUAL AND CITIZEN.

ISN'T THAT BEING HYPER TECHNICAL?

TAXPAYER STATUS .

THE HYPER TECHNICAL BUT , ALSO , CAN YOU SHARE WITH ME , THESE ARISE IN APPEALS , DO THEY NOT, FROM THESE VALUATIONS THAT GO THROUGH , AND WE HAVE A STATUTE THAT CONTROLS THAT, CORRECT?

RIGHT.

AND IN SUBSECTION 1-A , I T SPECIFICALLY STATES THE PROPERTY APPRAISER DETERMINES AND AFFIRMATIVELY ASSERTS, IN ANY LEGALPROCEEDING, THAT THERE IS A SPECIFIC CONSTITUTIONAL OR STATUTORY VIOLATION , SO IT GIVES AUTHORITY TO RAISE I T , BUT THEN IT PROCEEDS AND THE CLOSING , RAISED , INDICATES THAT NOTHING SHALL AUTHORIZE THE PROPERTY APPRAISER TO INSTITUTE ANY SUIT TO CHALLENGE THE VALIDITY ON THE CONSTITUTIONAL BASIS, SO WHAT DOES THAT INITIAL SENTENCE MEAN, WHEN IT SAYS THAT THE PROPERTY APPRAISER DETERMINES AND MAY ASSERT A SPECIFIC CONSTITUTIONAL VIOLATION? WHAT DOES THAT MEAN ? THIS IS 194.0361-A.

YOUR HONOR , I HAVE TO SAYI AM NOT FAMILIAR WITH THE STATUTE AND I DON'T RECALL IT BEING SPECIFICALLY ADDRESSED IN THE BRIEFS.

WELL , THIS IS ALL PART OF , AND YOUR CITE MENTIONED THE LAW REVIEW ARTICLE THAT APPEARS TO BE SOMEWHAT MISLEADING ON CONSTITUTIONAL ISSUES, AND THAT IS WHAT I AM TRYING , WHAT DOES THAT STATUTE MEAN, IF IT DOESN'TMEAN THAT A PROPERTY APPRAISER

CAN IN SOME WAY ASSERT A CONSTITUTIONAL ISSUE?

WELL , I THINK THAT IT MAY GO TO THE FACTS OF THE INDIVIDUAL CASE , BUT I DON'T KNOW , NECESSARILY READ THAT AS GIVING HIM THE AUTHORITY TO CHALLENGE A STATUTE. MY OTHER REMARK I WOULD LIKE TO MAKE IS THE GREAT RELIANCE HAS BEEN PLACED ON THE INTERLOCK ENCASE , WHICH WAS DECIDED IN INTERLOCK EN, CASE WHICH WAS DECIDED IN 1964 AND I DON'T KNOW HOW THE VOTERS COULD HAVE ANTICIPATED WHAT WAS SAID IN INTERLOCK EN, WHERE THEY HAD THE JUDICIAL PRECEDENT SAYING THAT IT MET THE JUST VALUATION REQUIREMENT. AS ATTEMPTING TO SAY THIS IS A CLASSIFICATION , I THINK THE CLASSIFICATION YOU ARE DEALING WITH HERE , IS REAL PROPERTY AS OPPOSED TO TANGIBLE PERSONAL PROPERTY OR INTANGIBLE PERSONAL PROPERTY, AND THE TIMING STATUTE DOES NOT CREATE ANOTHER QUALIFICATION. IT TREATS ALL ONGOING IMPROVEMENTS IN THE SAME WAY AND SEEKS TO PROVIDE UNIFORM TREATMENT FOR THE M , SO THERE IS NO SPECIAL CLASS HERE.

CHIEF JUSTICE: AS WITH YOUR OPPONENT , WE HAVE HELPED USE UP YOUR TIME.

THANK YOU VERY MUCH.

CHIEF JUSTICE: WE ARE VERY THANKFUL FOR ALL OF YOU, ESPECIALLY IN RESPONDING TO OUR INQUIRIES AND OUR QUESTIONS. THANK YOU VERY MUCH. THE NEXT CASE ON THE COURT'S DOCKET IS STATE VERSUS MATTHEWS. WE ARE GOING TO PAUSE UNTIL THE COURTROOM IS CLEARED.