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Advisory Opinion to the Attorney General: Local Government Comprehensive Plans

WHAT IT DOES IS, IN MY JUDGMENT, FARRELLY SUMMARIZES A PORTION OF THE SCOPE FAIRLY SUMMARIZES A PORTION OF THE SCOPE OF THE ACT SECTION IN 163.

163 TELLS US WHAT A COMPREHENSIVE LOCAL PLAN IS THAT IS GOVERNED BY CHAPTER 163. BY CHAPTER 163.

YOUR HONOR, IF CHAPTER 163 PROVIDED A SPECIFIC ELEGANT DEFINITION OF LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLAN, THEN THE SPONSOR WOULD VERY EASILY BEEN ABLE TO, AS IN THE CASE OF OTHER AMENDMENTS, REFERENCE LOCAL GOVERNMENT COMPREHENSIVE PLAN MEANS THE PLAN, AS DEFINED IN SECTION 163.XXX. THERE IS NO SUCH DEFINITION. ONE HAS TO DISCERN, BY READING, I DON'T KNOW, 30 OR 40 PAGES OF THE GROWTH MANAGEMENT ACT, IN ORDER TO ASCERTAIN WHAT A LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLAN IS. THERE IS NO DEFINITION PROVIDED FOR, IN THE STATUTE, THAT COULD HAVE BEEN EASILY REFERENCED.

LET ME UNDERSTAND, THOUGH, THAT WHAT WILL HAPPEN ON THE DAY AFTER THIS IS ADOPTED, IS THAT ANY AMENDMENT TO A 163 COMPREHENSIVE PLAN, WILL HAVE TO, THEN, GO TO A REFERENDUM.

IN LIEU OF THE FINAL ADOPTION HEARING BY THE LOCAL GOVERNING BODY, YOUR HONOR, THAT LEGISLATIVE ACTION WOULD BE TAKEN AT A REFERENDUM OF THE CITIZENS WITHIN THAT LOCAL GOVERNMENT JURISDICTION.

SO YOUR ANSWER TO MY QUESTION IS YES, THAT IT WOULD HAVE TO, BEFORE ANY PLAN COULD BE AMENDED AT ALL, ANY PLAN UNDER 163, COULD BE AMENDED AT ALL, AFTER THIS WAS ADOPTED, IT WOULD HAVE TO WAIT FOR A REFERENDUM VOTE.

YES, YOUR HONOR. ANY CHAPTER 163 PART TWO LOCAL GOVERNMENT COMPREHENSIVE PLAN, BEFORE THE, IT COULD BE AMENDED, THAT THAT LEGISLATIVE ACTION WOULD BE A REFERENDUM OF THE LOCAL GOVERNMENT. IF THE CITIZENS DECIDED THAT THEY DID NOT WANT TO AMEND THEIR PLAN, THEN IT WOULDN'T OBVIOUSLY

I HAVE GOT ONE MORE QUESTION FOR YOU. WOULD THAT, ALSO, BE TRUE OF A 161 PLAN, OF A COUNTY PLAN OF A 171 PLAN, OF A COUNTY PLAN?

THERE IS NO 171 PLAN THAT I AM AWARE OF, JUSTICEWELLS. THE ONLY PLANS THAT ARE REFERENCED ARE THE LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLANS THAT ARE AS DESCRIBED IN CHAPTER 163 PART TWO, AND SPECIFICALLY 163.3167, THE SCOPE OF THE ACT SECTION, AND WHAT WE HAVE DONE IN OUR BRIEF, IS TO PROVIDE THE COURT WITH NUMEROUS STATUTORY AND JUDICIAL APPELLATIONS THAT DESCRIBE THE SAME THING, THAT IS THE PLANS THAT WE HAVE ADOPTED IN FLORIDA SINCE AT LEAST 1985, BUT WE USED TO ADOPT THEM PRIOR TO THE '85 ACT, UNDER THE '75 ACT, BUT THEY DIDN'T HAVE THE SAME MANDATORY EFFECT. WE ALSO CITED CASES IN FLORIDA WHERE PLAN NING HAS GONE BACK EVEN BEFORE THE 1975 ACT, SO OUR CONTENTION IS THAT FLORIDIANS KNOW FULL WELL, WHAT A LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLAN IS.

IF THE DEFINITION IS SOMEHOW CONFUSING IN THE AMENDMENT ITSELF, THEN IT DOES CAUSE A PROBLEM, BECAUSE WE DON'T HAVE THE LEGISLATIVE PROCESS HERE TO WORK OUT THE DEFINITION, BUT LET'S, ASSUMING THAT IT IS AS NARROW OR BROAD IN SCOPE AS YOU SAY AND NOT AS BROAD AS THE OPPONENTS SAY IT IS, AND WE GET PAST A SINGLE SUBJECT CHALLENGE, I WOULD LIKE TO TALK ABOUT THE QUESTION OF WHETHER THE BALLOT SUMMARY IS MISLEADING IN TWO REGARDS. FIRST OF ALL, BY FOCUSING ON THE NATURAL RESOURCES AND ENVIRONMENTAL TYPE OF ISSUES. DOESN'T IT CREATE, FOR THOSE THAT WOULD BE VOTING ON THIS, THE IDEA THAT THERE WILL BE, THOSE WILL BE THE TYPES OF REFERENDA THAT THEY WOULD BE CALLED TO CAST A VOTE ON, RATHER THAN THE PANOPLY OF OTHER ISSUES THAT ARE, COME UP ON A, I GUESS, MUST BE A CONTINUOUS BASIS BEFORE LOCAL GOVERNMENT, SO THAT IS NUMBER ONE, AND MAYBE, IF YOU CAN ADDRESS YOURSELF JUST TO THAT PART, AS TO WHETHER THEY COME ON FOR IT, AS FAR AS TALKING ABOUT NATURAL RESOURCES, IS, REALLY, MISLEADING AS TO WHAT CITIZENS WOULD HAVE TO VOTE ON.

I WILL DO MY BEST TO ANSWER YOUR QUESTION. THE COURT HAS RECOGNIZED, ON A COUPLE OF OCCASIONS, THAT IS THIS COURT, THAT ARTICLE II SECTION 7 OF THE CONSTITUTION, REQUIRES THE LEGISLATURE TO ADDRESS LAND USE, IN ORDER TO MEET REQUIREMENTS SET FORTH THEREIN, SO WHAT WE ARE PROPOSING TO DO IS SIMPLY TO EXPAND UPON THAT PROVISION IN ARTICLE II SECTION 7 AND TO ESTABLISH, AS A MATTER OF STATE POLICY, THAT INCREASED PUBLIC PARTICIPATION WILL, IN FACT, BENEFIT THE STATE IN ITS NATURAL RESOURCES AND SCENIC BEAUTY. NOW, THAT

I UNDERSTAND THAT. THAT'S ONE PART OF IT, BUT THIS WOULD REQUIRE CITIZENS TO VOTE ON EVERYTHING FROM CHANGES IN TRAFFIC PATTERNS OR, YOU KNOW, IN OTHER WORDS, THESE OTHER ISSUES THAT APPARENTLY, A GAIN, CAUSE THERE TO BE LITERALLY THOUSANDS AND TENS OF THOUSANDS OF AMENDMENTS OVER A FIVE-YEAR PERIOD, TO THESE PLANS.

ABSOLUTELY NOT, CHIEF JUSTICE PARIENTE. THERE IS NO, THERE, THAT IS THE ARGUMENT THAT THE OPPONENTS WOULD LIKE TO HAVE YOU BELIEVE, THAT CHANGING THE CENTER LINE STRIPE ON A HIGHWAY WOULD BE SUBJECT TO A REFERENDUM VOTE. THAT IS SIMPLY ABSURD AND RIDICULOUS. THE COMPREHENSIVE LAND USE PLANS ARE WELL UNDERSTOOD. THIS COURT, IN THE COASTAL DEVELOPMENT CASE, RECOGNIZE THAT EVEN SMALL SCALE FUTURE LAND USE MAP AMENDMENTS ENTAIL FUNDAMENTAL POLICY DECISIONS THAT ARE A LEGISLATIVE MATTER. WHAT WE ARE PROPOSING TO DO IS TO SUBSTITUTE, AS IS RECOGNIZED IN ARTICLE I SECTION 1 OF OUR CONSTITUTION, THAT THE POWER IS APPARENT IN THE PEOPLE. WE WANT TO DEINVOLVE THAT DELEGATION OF TO DE VOLVE THAT DELEGATION OF POWERS TO CITY AND COUNTY COMMISSION IN THAT AMENDMENT.

THE QUESTION OF AMENDMENTS IN THE SUMMARY, DOESN'T THIS APPEAR TO BE, REALLY, A SUGAR COATING, OR THAT THAT WOULD BE THE NICE BILLBOARD FOR PASSING THIS AMENDMENT, PER HAPS, OR THE ARGUMENT, YOU KNOW, MADE IN FAVOR OF IT, BUT IS IT REALLY THE MEAT OF THE COCONUT? IN OTHER WORDS HAVE YOU NOT ADD LAYER HERE, THAT, REALLY, DISEXTRACTS THE VOTER, AND THEN AFTER THAT, OF COURSE, THERE IS A FAIRLY SPECIFIC STATEMENT, AND HAVEN'T WE CRITICIZED IN THE PAST, EFFORTS TO SORT OF, NOW, LOBBY IN THE BEGINNING AND SAY YOU CAN'T PUT THE FIRST SENTENCE IN EVERY AMENDMENT HERE, THAT YOU ARE IN FAVOR OF CHEF AND APPLE PIE AND OF CHEF AND APPLE PIE -OF CHEF ARE LAY AND OF CHEVROLET AND APPLE PIE IN THE AMENDMENT AND IF PEOPLE REJECT THIS, THEY ARE REJECTING CHEVROLET AND APPLE PIE.

THE SUMMARY DOES NOT PROMISE RELIEF FROM YOUR BAN SPRAWL, JUSTICE ANSTEAD.

WHAT DOES THE FIRST SENTENCE SAY?

THE FIRST SENTENCE SAYS THAT PUBLIC PARTICIPATION, OF THE SUMMARY? SAYS THAT PUBLIC

PARTICIPATION IN LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLANNING BENEFITS FLORIDA'S NATURAL RESOURCES , SCENIC BEA UT Y AND CITIZENS . THAT IS JUST - -

LET ME ASK YOU A QUESTION ON THAT. IS PUBLIC , I S THE PUBLIC CURRENTLY ABLE TO PARTICIPATE IN THE DEVELOPMENT OF THEIR LOCAL COMPREHENSIVE PLAN?

HE YES, SIR, AND THAT IS A LSO RECOGNIZED IN THE TEXT OF THE AMENDMENT. THERE IS NO DIFFERENCE IN SAYING THAT INHUMANE TREATMENT OF ANIMALS IS A CONCERN TO FLO RIDA CITIZENS THAN SAYING THE PUBLIC PARTICIPATION BENEFITS THENATURAL RESOURCES AND BEAUTY .

YOUR OPPONENTS , I THI NK , OBVIOUSLY THEY MA KE THE POINT , WHICH IS , TO ME , OF CONCERN, IS THAT IN THOSECASES , THE VERY PURPOSE OF THE PREG NANT PIG AMENDMENT WAS CRUELTY TO ANI MALS. THE SECONDHAND SMOKE WAS TO PROMOTE A HE ALTH BENEFIT. HERE , IT IS , B Y FOC USING ON SCENIC BEAUTY AND NATURAL RESOURCES , IT IS DEFLECTING THE VOTER FROM UNDERSTANDINGTHAT THEY WOULD BE REQU IRED TO BE VOTING ON A MULTITUDE OF ISSUES THAT HAVE ONLY MARGINAL RELEVANCE TO SC ENIC BEAUTY.

YOUR HONOR, I BEG TO DISAGREE. THERE IS , EVERY DECISION THAT IN VOLVES A COMPREHENSIVE LAND USE PLAN , WILL ULTIMATELY AFFECT THE NATURAL RESOURCES OF THESTATE , IN ONE WA Y OR THE OTHER , ADDING ANOTHER LANE , CHANGING THE LEVEL O F SERVICE. SCHOLARLY SIMILARLY WITH SIMILARLY WITH THE SCENIC BEAUTY. THOSE ARE BR OAD , AND THECOURT HAS RECOGNIZED THAT THE WH OLE CHAPTER 163 PART 2 IS SPECIFICALLY REQUIRED BY ARTICLE II SECTION 7 . THAT IS IN THE PROPERTY RIGHTS CASE, AND I SEE THAT I AM USING MY REBUTTAL TIME AND WE HAVEN'T EVEN ADDRESSED THE FINANCIAL IMPACT STATEMENT CASE, SO WITH THE COURT 'S PERMISSION .

YOU ARE THE ONLY, YOU EXPRESSED CONCERN ABOUT THE FINANCIAL IMPACT STATEMENT , AND I WANT TO MAKE SURE , SINCE THIS IS REALLY THEFIRST TIME THAT WE HAVE HADTHIS ISSUE IN ORAL ARGUMENT , AND YOUR CONCERN , BECAUSE THERE IS NOT A SPECIFIC RANGE OF IM PACTS , THAT THEY HAVE BEEN LE FT TO KIND OF QUESTION WHAT THE IMPACT IS ? IS THAT THE G IST OF YOUR

THAT IS NOT PRECISELY IT. WHAT THE CONSTITUTION AND THE IMPLEMENTING STATUTE REQUIRE IS THAT THERE BE AN ESTIMATE OR STATEM ENT OF PROBABLE IMPACTS NOT SPECULATION OF POSSIBLE IMPACTS. MOREOVER THE STATUTE REQUIRES THAT IT BE CLEAR AND UNAMBIGUOUS, AND IN OUR INSTANCE IT IS NOT. IT IS VAGUE, BE CAUSE THEY DON'T EVEN REFERENCE PLANS O R PLAN AMENDMENTS. THEY REFERENCE CHANGES , AND , A LSO , THEY DON'T REFE RENCE REFERENDA. THEY REFERENCE APPROVAL .

BUT ISN'T SECTION 2 OF THAT , IS WHAT YOU , REALLY , SEEM TO HAVE A PROBLEM WITH, BUT ISN'T WHAT IS REALLY BEING SAID THERE, IS THAT IT DEPENDS ON, IT SAYS , THE ADDITIONAL COST WOULD BE INCURRED BY LOCAL GOVERNMENTS, THE AM OUNT OF WHICH WILL VARY , DEPENDING ON STATUTORY CHAN GES IN THE PROCESSES CHOS EN BY LOCAL GOVERNMENTS , TO OBTAIN APP ROVAL OF COMPREHE NSIVE LAND PLANS, AND ISN'T THAT REALLY A STATEMENT THAT SAYSTHAT, BECAUSE YOU DON'T KNOW HOW MANY REFERENDA THEREMIGHT BE OR HO W YOU AREGOING TO CONDUCT THEM THAT, THAT IS WHY IT IS DIFFICULT TO DETERMINE WHAT THOSE ADDITIONAL COSTS WILL BE?

WELL , IT GOES BE YOND THAT TO SPECULATION ABOUT WHAT THE LEGISLATURE MAY OR MAYNOT DO, JUSTICE QU INCE , BUTTHERE IS NO R OOM IN A FIN ANCIAL IMPACT STATEMENT F OR THAT TYPE OF SPECULATION . ONE COULD PROVIDE AN ESTIMATE OF THE PROB ABLE IMPACT AND , PERHAPS , SET FORTH THE ASSUMPTION S THAT WENT IN TO DERIVING THAT EST IMATE , BUT TO SAY, WELL , IT COULD BE THIS OR IT COULD BE THAT.

BUT YOU AGREE THAT THERE WOULD BE, IF THIS PASSES, THAT THERE WOULD BE AN INCREASE IN THE NUMBER OF ELECTIONS HELD ON A YEARLY BASIS. OR DO YOU NOT AGREE WITH THAT?

I DON'T THINK THAT THAT IS A CERTAINTY. I THINK THERE IS A HIGH PROBABILITY THAT, YES

SO HOW WOULD THEY ESTIMATE, HOW WOULD YOU PROPOSE, BECAUSE THIS IS SOMETHING WE HAVE FLEXIBILITY WITH. HOW WOULD YOU PROPOSE THAT THE FINANCIAL ESTIMATING CONFERENCE MAKE THAT PROBABLE RANGE? WOULD YOU START FROM THERE COULD BE, I MEAN, WOULD THEY HAVE TO START TO ANTICIPATE OR FIGURE OUT HOW MANY ELECTIONS THERE WOULD BE?

YES, MA'AM. HOW MANY ELECTIONS THERE WOULD BE AND HOW THEY WILL BE CONDUCTED AND HOW MUCH THEY WILL COST. FOR EXAMPLE IF WE MOVE TO VOTE, MAIL-IN ELECTIONS OR ELECTRONIC BALLOTING, THE COSTS COULD CHANGE.

BUT ISN'T THAT EVEN A POSSIBILITY? HOW COULD YOU BEGIN TO ESTIMATE HOW MANY AMENDMENTS THERE MIGHT BE TO A COMPREHENSIVE PLAN? THAT SEEMS SOMETHING THAT AN ESTIMATING COMMISSION WOULDN'T HAVE A CLUE ABOUT.

WELL, JUSTICE QUINCE, THEY COULD LOOK BACK AND SEE HOW MANY HAVE BEEN ADOPTED IN THE PAST AND DRAW SOME CONCLUSIONS ABOUT THAT, BUT, AGAIN, I DON'T HAVE ANY PROPOSAL ON HOW THEY COULD REWRITE THE FINANCIAL IMPACT STATEMENT. ALL WE ARE ARGUING TO THE COURT, IS THAT IT OUGHT TO BE SENT BACK TO THEM FOR CONFORMANCE WITH THE CONSTITUTION AND THE IMPLEMENTING STATUTE, THAT IT BE CLEAR AND UNAMBIGUOUS AND THAT IT SET FORTH THE PROBABLE IMPACTS. THANK YOU.

MAY IT PLEASE THE COURT. I AM BARRY RICHARD, AND I AM COUNSEL FOR THE FOUNDATION FOR FLORIDA'S FUTURE.

I NOTICE THAT NOBODY IN OPPOSITION, REALLY, ADDRESSED THE FINANCIAL IMPACT STATEMENT. IS THAT SOMETHING WITHIN, IS THE ATTORNEY GENERAL PREPARED TO ADDRESS THAT? I GUESS, OR ARE YOU PREPARED TO ADDRESS THAT?

JUSTICE PARIENTE, I AM NOT, AND I DON'T KNOW, MY CLIENT WAS NOT FOCUSED ON THAT ISSUE AS ONE OF SIGNIFICANCE. WE THOUGHT THE OTHER TWO ISSUES WERE SO OVERRIDING, IT WASN'T NECESSARY TO ADDRESS THAT ONE.

CAN YOU BEGIN BY EXPLAINING TO US, JUST GIVE US SOME EXAMPLES OF THE WIDE RANGE OF COMPREHENSIVE PLAN AMENDMENTS THAT WOULD BE COVERED, AND IT WOULD HAVE TO GO TO THE VOTERS, THAT YOU KNOW, I DON'T THINK IT IS JUST ONES THAT CONCERN SCENIC BEAUTY AND NATURAL RESOURCES. IT SEEMS LIKE THERE IS AN ENTIRE, AS JUSTICE PARIENTE SAID, PANOPLY OF ISSUES THAT ARE CONSIDERED IN COMPREHENSIVE PLAN AMENDMENTS. CAN YOU GIVE US SOME EXAMPLES.

YES, YOUR HONOR, I WILL DO THAT, IF I MIGHT PARENTHETICALLY JUST NOTE THAT AT COUNSEL TABLE WITH ME IS ARTHUR ENGLAND, AND WITH THE COURT'S PERMISSION, ILL FOCUS ON THE SINGLE SUBJECT ISSUE AND MR. ENGLAND WILL FOCUS ON THE BALLOT SUMMARY. HAVING SAID THAT, YES, YOUR HONOR. AS WE ARGUED IN OUR BRIEF, WE BELIEVE THAT, DESPITE THE PROTESTATIONS OF THE PROPONENTS THAT THIS IS LIMITED TO CHAPTER 163 PLANS, IN FACT THE DEFINITION, WHICH IS EMBEDDED WITHIN THE AMENDMENT, ITSELF BUT NOT MENTIONED IN THE SUMMARY, IS SO BROAD AS TO INCLUDE VIRTUALLY EVERYTHING. WHEN YOU READ THE DEFINITION, WHICH IS THAT A LOCAL GOVERNMENTAL COMPREHENSIVE LAND USE PLAN MEANS A PLAN TO GUIDE AND CONTROL FUTURE LAND DEVELOPMENT IN AN AREA UNDER THE JURISDICTION OF A LOCAL GOVERNMENT, THAT IS VIRTUALLY EVERYTHING, EVERY ZONING AMENDMENT, EVERY PROVISION RELATING TO PARKING, EVERY PROVISION RELATING TO THE

USE OF ANY NATURAL RESOURCES.

IF WE ACCEPT THAT THE PROPONENTS SAY THAT IT IS LIMITED TO CHAPTER 163 , ISN'T THE ISSUE OF ITS SCOPE , WOULDN'T THAT BE A QUESTION THAT WOULD BE, I MEAN , WOULDN'T THAT BE SOMETHING SUBJECT TO LITIGATION AFTER THE FACT ? IF THEY ARE CONCEDED THAT IT IS NOT AS BROAD AS TO COVER EVERY ZONING REGULATION , BUT IT IS BROAD , BECAUSE AS WE ARE TALKING ABOUT, THERE ARE A LOT OF AMENDMENTS TO COMPREHENSIVE PLANS , WHY WOULD WE FIND A SINGLE SUBJECT VIOLATION BY LOOKING AND ASSUMING THAT IT IS MUCH BROADER THAN THE PROPONENTS SAY THAT IT IS?

I

IN OTHER WORDS MAYBE I SAY THE OPPOSITE, IF WE ASSUME IT IS LIMITED TO 163 , COMPREHENSIVE PLANS , IS THERE STILL A SINGLE SUBJECT VIOLATION?

WITHOUT A DOUBT , YOUR HONOR. AND I AGREE WITH YOU THAT ISSUE OF HOW BROAD IT IS , IS ONE WHICH WOULD BE DETERMINED IN LITIGATION LATER. THAT STILL GOES TO THE QUESTION OF WHETHER OR NOT THE BALLOT SUMMARY ADEQUATELY INFORMS THE VOTERS OF WHAT THIS DOES. HOWEVER , MORE IMPORTANTLY AND IN DIRECT RESPONSE TO YOUR QUESTION, IT IS NOT REALLY AN ISSUE THAT I THINK IS CONTROLLING , WITH REGARD TO SINGLE SUBJECT TODAY , BECAUSE EVEN IF WE WERE TO ASSUME THAT THIS IS LIMITED TO CHAPTER 163 PLANS , IT IS SELF-EVIDENT ON ITS FACE THAT, IT VIOLATES THE SINGLE SUBJECT REQUIREMENT , AND IN FACT , THIS COURT HAS PREVIOUSLY DECIDED CASES THAT I BELIEVE ARE MATERIALLY IN DISTINGUISHABLE FROM THIS ONE IN THAT RESPECT , AND I WILL ILLUSTRATE .

DOES CHAPTER 163 CONTAIN OR ADDRESS A SINGLE SUBJECT?

NO , YOUR HONOR, BUT CHAPTER 163 IS NOT REQUIRED TO, BECAUSE IT IS AN ACT OF THE LEGISLATURE.

BUT THAT IS NOT MY QUESTION.

YES.

ARE YOU SAYING THAT CHAPTER 163 ADDRESSES MORE THAN A SINGLE SUBJECT?

I THINK SO , WITHIN THE CONSTITUTIONAL SENSE. THIS COURT HAS SAID , IT SAID IN THE CASE INVOLVING ADEQUATE FUNDING OF EDUCATION , THAT YOU CANNOT SATISFY THE SINGLE SUBJECT REQUIREMENT , SIMPLY BY PLACING MULTIPLE SUBJECTS UNDER A SINGLE UMBRELLA TITLE.

BUT DOESN'T SUBSECTION 12 OF 163.316-7 , ALREADY PROVIDE FOR LOCAL GOVERNMENTS TO UTILIZE A REFERENDUM PROCESS?

ABSOLUTELY , YOUR HONOR, BUT THERE IS A SIGNIFICANT DIFFERENCE. THAT REFERENDUM PROCESS TODAY , IS STILL SUBJECT TO THE LEGISLATIVE MANDATE, AND BY THE WAY MOST DON'T DO IT, BUT EVEN IF YOU HAVE A LOCAL REFERENDUM, THE RESULT OF THAT REFERENDUM MUST BE CONSISTENT WITH LEGISLATIVE MANDATES UNDER THE FOUR MAJOR PROGRAMS THAT HAVE BEEN PASSED OVER THE PAST THREE DECADES , THAT REQUIRE LOCAL GOVERNMENT TO ENGAGE IN BOTH MINIMAL STANDARDS AND UNIFORM STANDARDS, WITH RESPECT TO THE ENVIRONMENT AND LAND USE REGULATION. THIS WOULD RADICALLY SHIFT THAT, SO THAT THE LEGISLATURE WOULD NO LONGER HAVE THE ABILITY TO MANDATE MINIMUM STANDARDS OR UNIFORMITY, BECAUSE NOW , BY CONSTITUTIONALITY , NO PLAN AND NO AMENDMENT TO ANY PLAN , COULD BECOME VALID , UNLESS APPROVED BY THE LOCAL

VOTERS.

BEFORE WE GET AWAY FROM IT , DO YOU KNOW , CAN YOU TELL US WHETHER THERE HAS BEEN ANY CASE WHICH HAS SAID THAT 171.062 , FLORIDA STATUTE , REFERS TO AN AREA ANNEXED SUBJECT TO A COUNTY LAND USE PLAN OR COUNTY ZONING OR LAND USE REGULATIONS. WHETHER THE COUNTY USE PLAN THAT IS BEING REFERRED TO THERE , IS A 163 PLAN? HAVE WE SAID THAT IN SOME CASE?

I AM NOT AWARE OF ANY CASE, EITHER WAY , YOUR HONOR , I AM NOT AWARE OF WHETHER THERE HAS BEEN A CASE THAT HAS ADDRESSED THAT. IT IS NOT SOMETHING THAT I RESEARCHED IN THE COURSE OF MY PREPARATION.

IN THE STATUTE AS POINTED OUT BY YOUR OPPONENT IN HIS BRIEF, THE STATUTES ARE FULL OF DIFFERENT COMPREHENSIVE PLANS UNDER 403, UNDER 171. THEY ALL REFER TO USE PLANS. I AM JUST INTERESTED IN KNOWING WHETHER WE ARE TALKING ABOUT THE SAME THING IN ALL OF THE SE PLANS , OR WHETHER THERE IS ANY LINKAGE.

WELL, IF YOU LOOK AT THE DEFINITION, IT WOULD ENCOMPASS ALL OF THOSE PLANS.

IN THIS. I DON'T FIND THAT DEFINITION IN 163.

I AGREE WITH YOU, YOUR HONOR. I CANNOT TELL YOU THAT IT DOES. AS I INDICATED , I DON'T THINK IT MAKES A DIFFERENCE, BECAUSE EVEN IF WE LIMIT OURSELVES TO 163, THERE ARE TWO THINGS THAT CANNOT BE DENIED. CLEARLY THIS IS A RADICAL CHANGE IN THE POWER OF LOCAL GOVERNMENT. TODAY ONE OF THE BROADEST EXERCISED AND MOST SIGNIFICANT POWERS OF LOCAL GOVERNMENT, IS THE ABILITY TO CONTROL LAND USE. THIS WOULD PUT A SCREECHING HALT TO A VAST ARRAY OF LOCAL LAND USE REGULATIONS .

HOW DOES THIS REALLY DIFFER FROM THE PROVISION IN 163, THAT SAYS IF YOU ARE GOING TO HAVE AN AMENDMENT TO THE LOCAL PLAN THAT AFFECTS MORE THAN FIVE PIECES OF LAND , BASICALLY, THAT YOU HAVE TO PUT THAT TO A REFERENDUM. NOW , AS I READ THIS PROPOSAL , IT MEANS THAT, IF IT IS FIVE , IF IT IS LESS THAN FIVE , YOU WOULD STILL HAVE TO PUT IT TO A REFERENDUM. WHY ISN'T THAT A PROPER READING OF THIS AMENDMENT, PROPOSED AMENDMENT?

YOUR HONOR , I , YOUR QUESTION GIVES ME SOME CONCERN. I WOULD HAVE TO READ IT AGAIN , BUT MY RECOLLECTION OF 163 IS THAT IT DOES NOT MANDATE A REFERENDUM . ALL THAT IT SAYS IS THAT , IN THE LESSER, THE SMALLER CHANGES , THAT A REFERENDUM IS PROHIBITED , BUT IT LEAVES IT OPTIONAL TO THE LOCAL GOVERNMENT.

IF IT IS FIVE OR LESS. RIGHT.

AND IF IT IS MORE THAN FIVE, IT IMPLICITLY LEAVES IT WITHIN THE LOCAL GOVERNMENT'S OPTION TO HAVE A REFERENDUM, IF THEY DESIRE TO DO SO , BECAUSE ALL IT DOES IS PROHIBIT IT , IF IT IS LESS THAN FIVE. WHAT I THINK , THIS COURT HAS SAID THAT THE ISSUE OF SINGLE SUBJECT IS FUNCTIONAL NOT LOCATIONAL. THE PROBLEM HERE IS IT IS A RADICAL CHANGE IN THE FUNCTIONAL POWER OF BOTH THE LOCAL GOVERNMENT AND OF THE LEGISLATURE .

NOW, THERE WAS SOME ARGUMENT HERE ABOUT THE FACT THAT, BEFORE THE LOCAL GOVERNMENT COULD FINALLY, MAKE A FINAL APPROVAL OF ANY AMENDMENT, THAT YOU HAD TO , OTHER AGENCIES HAD TO LOOK AT IT, AND THE PLAN HAD TO BE IN CONFORMITY WITH THAT. ARE YOU ARGUING NOW THAT, BECAUSE OF THIS , IF THIS AMENDMENT WERE ON THE BALLOT AND PASSED, THAT YOU WOULD NOT GO THROUGH THAT PROCESS ?

WELL , YES, YOUR HONOR. THE REASON , YOU COULD GO THROUGH THAT PROCESS , BUT IN THE

END RESULT , THAT , THAT , YOUR QUESTION GOES RIGHT TO THE CORE OF THE DIFFICULTY HERE. THE WAY THAT THE LAW IS CURRENTLY WRITTEN , THERE ARE TWO LEVELS OF GOVERNMENT THAT HAVE SIGNIFICANT POWERS RELATED TO LAND USE REGULATION. THE LOCAL GOVERNMENT , CLEARLY HAS ESSENTIALLY UNLIMITED POWERS, WITH ONE EXCEPTION , WHICH ARE EXERCISED THROUGH A LEGISLATIVE BODY , THE CITY OR COUNTY COMMISSIONS. THE ONLY EXCEPTION IS THAT THEY MUST REMAIN WITHIN THE SCOPE OF THE MANDATES OF THE FLORIDA LEGISLATURE AND THE IMPLEMENTING ORDERS OF THE STATE EXECUTIVE AGENCIES, AND THE REASON FOR THAT IS

YOUR ARGUMENT IS THIS WOULD BE TAKEN AWAY , IS THAT FROM BOTH OF THEM , YOUR HONOR.

I GUESS THAT WAS YOUR POINT THAT I WANT TO MAKE SURE, SINCE IT IS YOUR SIGNIFICANT POINT THAT, YOU ARE SAYING THAT THIS WILL NOT JUST IMPACT LOCAL GOVERNMENT, BUT IT WOULD ALLOW INDIVIDUAL POPULOUS IN A PARTICULAR LOCATION, TO OVERRULE WHAT IN A PARTICULAR LOCATION, TO OVERRULE WHAT THE STATE LEGISLATURE HAS MANDATED?

ABSOLUTELY.

I GUESS I AM HAVING TROUBLE UNDERSTANDING HOW THAT WOULD OCCUR.

ALL RIGHT. WE NOW HAVE A CONSTITUTIONAL AMENDMENT THAT SAYS NO AMENDMENT TO THE LOCAL COMPREHENSIVE LAND USE PLAN CAN HAPPEN , UNLESS THERE IS A LOCAL REFERENDUM . IT DOESN'T SAY THAT IT IS LIMITED TO THOSE AMENDMENTS INITIATED AT THE LOCAL LEVEL. IT SAYS IT CANNOT HAPPEN PERIOD. SO IF THE FLORIDA LEGISLATURE MANDATES AS IT HAS DONE , THAT YOU MUST INCLUDE IN YOUR LOCAL COMPREHENSIVE LAND USE , CERTAIN MINIMUM STANDARDS, AND THAT YOU MUST COMPLY IN AREAS OF CRITICAL STATE CONCERN WITH CERTAIN REQUIREMENTS IN AREAS OF CRITICAL STATE CONCERN WITH CERTAIN REQUIREMENTS, AND USE COORDINATED MULTICOUNTY AND MULTISTATE EFFORT. THE LEGISLATURE SAYS THAT. IT DOESN'T CHANGE WHAT THIS WOULD DO. IT STILL MEANS THAT , IN THE FINAL ANALYSIS, BEFORE ANY CHANGE CAN BE MADE BY THE LOCAL GOVERNING BODY , THERE MUST BE A PUBLIC REFERENDUM. A PUBLIC REFERENDUM YOU MEAN.

SO YOUR A PUBLIC REFERENDUM.

SO YOUR ASSUMPTION IS , I GUESS, BASED ON A BROADER READING OF THIS THAN YOUR OPPONENTS HAVE SUGGESTED.

NO, YOUR HONOR, I DON'T THINK IT MAKES ANY DIFFERENCE. WHAT I AM SAYING IS THAT THIS AMENDMENT

THE LEGISLATURE CAN IMPOSE REQUIREMENTS ON LOCAL COMPREHENSIVE PLANS?

YES. IF THIS AMENDMENT WERE TO SAY THAT THERE MUST BE A LOCAL REFERENDUM , UNLESS IT IS IMPLEMENTING A LEGISLATIVE MANDATE , THEN I WOULD AGREE THAT IT WOULD BE LIMITED , BUT IT DOESN'T SAY THAT. IT SAYS , BEFORE THERE CAN BE A LOCAL AMENDMENT , THERE MUST BE A REFERENDUM , AND IT DOESN'T MAKE ANY DIFFERENCE WHO MANDATED THE AMENDMENT .

BUT WHAT DOES THE ACTUAL AMENDMENT ITSELF , THERE IS LANGUAGE IN THERE THAT SAYS SUBJECT TO VOTE OF THE ELECTORATES OF THE LOCAL GOVERNMENT BY REFERENDUM , FOLLOWING PREPARATION BY THE LOCAL PLANNING AGENCY , CONSIDERATION BY THE GOVERNING BODY AS PROVIDED BY GENERAL LAW AND NOTICE, ET CETERA , ET CETERA. I MEAN , DOESN'T THOSE PROVISIONS TAKE INTO CONSIDERATION , THOSE THINGS THAT YOU ARE TALKING

ABOUT, THAT THIS COMPREHENSIVE PLAN , EVEN BEFORE IT IS SUB MITTED TO THE VOTERS , MUST F O LLOW WITH LEGISL ATIVE MANDATES BY GENERAL LAW?

I DON 'T READ IT THAT WAY, YOUR HONOR. I BELIEVE THAT , IF YOU READ IT IN CONTEXT , ITS REFERENCE TO GENE RAL LAW IS ONLY WITH RESPECT TO THE PROCEDURAL IMPLEMENTATION OF THE LOCAL REFERENDA , BUT YOU CAN NOT READ THIS ANY OTHER WAY BUT ONE, WHICH IS THAT BEFORE A NEW PLAN, AS THE PROPONENTS SUGGEST , OR AN AMENDMENT CAN POSSIBLY HAPPEN, IT MUST BE APPROVED BY THE VOTERS ON A REFERENDUM, PERI OD. IT IS THE ONLY WAY TO READ IT. THAT MEANS

MR . RICHARD, I KNOW YOU KNOW THAT YOU ARE SIGNIFICANTLY INTO MR . ENGLAND 'S TIME, AND I JUST WANTED TO REMIND YOU. YOU ARE FR EE TO CONTINUE.

THAT VIOLATES MY PRO MISE TOYS MR. ENGL AND , BUT HE AND I , B OTH , HAVE LEARNED THAT,IF THE COURT WANTS ANSWERS , THAT IS THE NUMBER ONE PRIORITY, S O IF THERE ARE N O FURTHER QUESTIONS, ILL SIT DOWN. OTHERWISE HE AND I, BOTH , WOULD BE MORE THAN PLEASED TO HAVE ME REM AIN. THANK , YOUR HONOR.

MAY IT PLEASE THE COURT. ARTHUR ENG LAND. APPROXIMATELY HOW MUCH TIME DO I HAVE , YOUR HONOR ? SEVEN MINUTES.I CAN DO THIS.

MR. ENGLAND , I AM NOTSURE THAT MR . RICHARD WAS EVER ABLE TO ANSWER MY QUESTION AS TO WHAT KINDS O F THINGS ARE INCLUDED IN CHANGES TO COMPREHENSIVE PLANS THAT WOULD BE AFFECTED BY THIS AMENDMENT AND THE V OTERS WOULD HAVE TO VOTE ON , ASSUMING FOR THE MOMENT , THAT IT INC LUDES ONLY T RUE COMPREHENSIVE PLAN AMENDMENTS AND NOT ZONING CHANGES O R VARIANCES ? CAN YOU GIVE ME SOME EXAMPLES.

OKAY FORM I WAS WAIT OKAY. I WAS WAITING FOR THE QUESTION. THE ANSWER IS , THE ANSWER IWOULD HAVE GIVEN THAT BA RR Y JUST JUST ABOUT TO GIVE , WAS THAT , HOW IT CHANGES EVERYTHING IS THERE A V ETO POWER AT THE END!

I UNDERSTAND. THAT I AM JUST SAYI NG, CANYOU GIVE ME SOME EX AMPLES OF THE KINDS OF ISSUES THAT THEY ARE GO ING TO BE VOTING ON. WHAT KI NDS OF THINGS ARE INC LUDED WITH IN AN AMENDMENT TO A COMPREHENSIVE PLAN , AS OPPOSED TO A Z ONING CHANGE OR A VARIANCE.

SU RE. HERE IS THE MIAMI-DADE COMPREHENSIVE PLAN, WHICH IS APPENDIX TO OUR BR IEF, AND IF YOU OPEN IT T O PAGE R OAM AND 261 , YOU WOULD S EE A MAP. IT IS THE FUTURE LAND USE MAP. IT HAS TO BE V OTED ON. THIS ONE HAPPENS TO BE AROUND THE MIAMI AIRPORT. THE CITI ZENS ARE GOING TO BE VOTING ON WHET HER THIS IS THE PROPER FUTURE USE OF THE AREA SURRO UNGING THE AIRPORT ROADWAYS.

THEY ARE NOT GOING TO BE VOTING ON THAT , ARE THEY? THEY ARE GOIN G TO BE VOTING IF SOMEBODY WANTS TO AMEND THAT MAP, THAT FUTURE USE. RIGHT NOW THAT AMENDMENT STAYS THE WAY IT IS. EYE I AM TALKING ABOUT AMENDMENTS. REMEMBER, AMENDMENTS HAVE TO BE MA DE. THESE ARE REVIEWED EVERY IS HE NOT TO TEN YE ARS.

ISN'T THAT EVERY SEVEN TO TEN YEARS .

ISN'T ONE OF THE ISSUES IS THAT THE PROPONENTS BELIEVE ALTH OUGH THERE HAVE BEEN COMPREHENSIVE PLANS , THERE HAVE BEEN TOO MANY AMENDMENTS THAT ARE ALTERING THE VERY NATURE OF WHAT IT WAS INTENDED TO DO , WHICH WAS T O K EEP DEVELOPMENT UNDER A CE RTAIN LE VEL, SO THAT THIS IS

NO DOUBT THEIR PURPOSE , YOUR HONOR.

THAT IS THE PURPOSE , AND IT IS PRETTY, SO , WHAT IS WRONG WITH, I MEAN, IF THAT IS THEIR PURPOSE AND WE HAVE ALREADY SEEN LOTS OF THINGS IN THE CONSTITUTION THAT HAVE CHANGED CERTAIN THINGS , WHAT IS IT THAT IS MISLEADING, THEN , ABOUT THE BALLOT SUMMARY?

OK AY. THE BALLOT SUMMARY. WE ARE BACK ON GROUND THAT I WANTED TO DISCUSS.

THAT IS WHAT I THOUGHT YOU

THAT IS WHAT I WANTED TO TALK ABOUT.

I THOUGHT THAT IS WHAT JUSTICE CANTERO'S QUESTION WAS GOING TO , BECAUSE I THINK HE WAS SUGGESTING THAT THERE WAS A LARGER ARRAY OF TYPES OF PLAN AMENDMENTS THAN JUST THOSE THAT DEAL WITH SCENIC BEAUTY.

ALL RIGHT. LET ME GO TO THE BALLOT SUMMARY , IF THAT IS THE FOCUS OF THE QUESTION , BECAUSE STEPPING IN IF YOU IMAGINED YOURSELF FOR A MOMENT, NOT JUST ICES BUT AVERAGE VOTERS STEPPING INTO THE VOTER BOOTH, AND BEAR IN MIND YOU ARE PROBABLY NOT FAMILIAR WITH CHAPTER 163 , LET ALONE 180 AND 365 AND BEAR IN MIND YOU HAVE PROBABLY NOT SAT IN A COUNTY COMMISSION MEETING IN WHICH THE FLUM HAS BEEN CONSIDERED FOR THE NEXT 20 YEARS IN DADE COUNTY. NOW YOU LOOK AT THE BALLOT AND YOU READ PUBLIC PARTICIPATION IN LOCAL COMPREHENSIVE LAND USE PLANNING, BENEFITS FLORIDA'S NATURAL RESOURCES , SCENIC BEAUTY AND CITIZENS. YOU SAY THAT IS WHAT IT IS ALL ABOUT. I SUGGEST TO YOU , FOUR THINGS ABOUT THAT. NUMBER ONE , YOU CAN'T SAY THAT THIS PUBLIC PARTICIPATION BENEFITS , ANYMORE THAN YOU COULD SAY THAT AN ADDITIONAL HOMESTEAD EXEMPTION PROVIDES TAX RELIEF. IT DEPENDS. A VOTE COULD NEGATE THE DEVELOPMENT OF NATURAL RESOURCES .

WE HAD THAT DISCUSSION A FEW MONTHS AGO.

WE DID INDEED. I REMEMBER IT WELL . ALSO, THAT STATEMENT THAT I JUST READ YOU , AND JUSTICE BELL, THIS IS CLOSE TO WHAT YOU WERE TALKING ABOUT.

MR. ENGLAND

IT IMPLIES THERE IS NO PARTICIPATION NOW!

MR. ENGLAND, BUT WHEN YOU LOOK AT IT , THAT IS NOT REALLY THE FIRST SENTENCE , THE FIRST THING THAT VOTER WOULD READ. THE FIRST THING WOULD BE THE TITLE , WOULDN'T IT , THE REFERENDUM REQUIRED FOR ADOPTION AND AMENDMENT OF LOCAL GOVERNMENT PLANS.

ABSOLUTELY.

SO THE FIRST THING THAT THE VOTER WOULD READ , WOULD ACTUALLY BE A STATEMENT THAT SAYS THAT WHAT WE ARE LOOKING AT IS A REFERENDUM FOR THE ADOPTION AND AMENDMENT OF LOCAL GOVERNMENT PLANS, WHICH DOES NOT HAVE

ABSOLUTELY, AND THEY WOULD GET THAT OUT OF THE SECOND SENTENCE, ALSO, BUT THERE IS NO REASON TO BELIEVE THEY AREN'T GOING TO READ THE FIRST SENTENCE, BECAUSE YOU HAVE TO ASK YOURSELF WHY - -

I AM HIM SAYING WHAT THEY FIRST READ, HOWEVER , IS NOT

FIRST MAY HAVE BEEN EXCESSIVE. I THINK I CAN PUT THIS IN A COUPLE OF FORMATS THAT MAKE THIS REAL EASY ON THE BALLOT SUMMARY. WHAT IS THE CHIEF PURPOSE? I HAVE NO DOUBT

THAT THE PROPONENTS THINK IT IS ENVIRONMENTAL CONSIDERATIONS , NATURAL BEAUTY , NATURAL RESOURCES , SCENIC BEAU TY, BUT WHAT IS THE CHIEF P URPOSE AS SE CTION 1016 11 REQUIRES, OF THE PROPOSAL ? NOT THE PROPONENTS OF THE PROPOSAL , AND THE ANSW ER TO THAT IS IT IS A FINAL VOTE THAT, IS HIS WO RD, O N ALL ELEMENTS O F A COMPREHENSIVE LAND USE PLAN AMENDMENT O R A NEW PROC ESS. ALL ELEM ENTS. THE LOCATION OF SCHOOLS , THE INTEGRATED MULTIMODAL TRANSPORTATION SYSTEM OF A COMMUNITY , HO USING FRAMEWORK FOR SOC IETY , THE COORDINATION WITH OTHER LOCAL GOVERNMENTS, BE THEY CITIES WITH IN, FOR EX AMPLE , MIAMI-DADE COUNTY , WHICH THERE ARE MA NY, OR THE NEIGHBORING COUNTIES. IT IS ALL THOSE THINGS. SO THE PROPONENTS SAY, WELL , THIS IS JUST A STATEMENT O F PUBLIC POLI CY. AND I BELIEVE THAT WAS FOCUSED ON , CHIEF JUSTICEDID, THIS ISN'T SAYING MARINE RESOURCES BELONG TO ALL THE PEOPLE, WHIC H IS AFINE PUBLIC POLIC Y DECLARES. THIS IS - - DECLARATION. THIS IS SAYING PUBLIC PARTICIPATION WILL BENEFIT , WILL BENEFIT NATURAL RESOURCES.THAT IS AN ACTION STATEMENT. IT IS NOT A DECLARATION OF POLICY. HERE WOULD BE A T RUE PUBLIC POLICY STATEMENT FOR THIS PROPOSAL , AS THE T EXT IS WRITTEN. IT WOULD READ, PUBLIC PARTICIPATION IN LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLAN NING IS IN THE PUBLIC INTEREST . A COMP LETE PUBLIC POLICY STATEMENT WITH NO ADVOCACY . NOW , WHAT DOES THAT DO? IF IT WERE THAT , IT WOULD CHANGE THE FOCUS OF THE DEBATE ! THE ISSUE OF NATURAL RESOURCES WOULD BE IN THE CAMPAIGN ! ALONG WITH WHERE SCHOOLSSHOULD BE. ALONG WITH MA SS TRANSIT. ALONG WITH NEW ST ORM WA TERS AND SEWERS.

SO HUGH D O YOU SO HOWDO YOU, H OW DOES THIS O PENING SENT ENCE DIFFER FROMTHE ONE IN THE , SAY, HIGH-SPEED RAIL , WHERE THEY START OFF SAYING THAT , YOU KNOW , IT WOULD REDUCE TRAFFIC AND INCREASE TRAVEL ALTERNATIVES.

HIGH-SPEED RA IL , T HE OPENING STATEMENT THERE IS HIGH S PEED G ROUND RAIL TRANSPORTATION IS IN THE PUBLIC INTE REST. BINGO!

A FURTHER SENTENCE THAT TALKS ABOUT AND IT WAS ARGUED THAT THEY WAN TED TO REDUCE TRA FFIC AND INCR EASE TRAVEL ALTERNATIVES. HOW DOES THIS DIFFER FROM THAT?

WELL , AGAIN , I WAS ONLY TALKING ABOUT THE FIRSTSENTENCE, BUT THE ANSWER, AND YOU HAVE HIGHLIGHTED THE POINT , IF YOU READ THE SECOND SENTEN CE OF THIS PROPOSAL, IT IS FINE. IT DESCRIBES THE CONTEXT . AND THAT IS THE KEY HERE , BECAUSE WITH , AND YOU COULD JUST COMFORTABLY HAVE WRITTEN THIS TO ELIMINATE THIS FIRST SENTENCE ABOUT ENHANCING

SO THE FIRST SENTENCE IS ELIMINATED .

THEN THAT IS FINE.

THE SUMMA RY WOULD BE FINE?

IT IS FINE , AND THE POINT IS THEY DID N'T, AND THE POINT IS THE REASON IS THERE FOR EXACTLY THE REASONS YOU HAVE ALWAYS SAID YOU DON'T PUT ADVOCACY HE RE. YOU SAVE THAT FOR THE CAMPAIGN, AND THAT IS WHY HAVING LEFT THAT O UT , HAV ING PUT IT HERE IS THE DEBILITATING FA CTOR FOR THIS PROPOSAL, BE CAUSE IT WAS HERE BECAUSE IT WAS EMOTIONALLY CHARGED, BECAUSEIT WAS POLI TICAL RHETORIC . YOUR HONORS, MY TIME IS UP. I JUST REMIND YOU THAT , ASYOU HAVE SA ID IN RE CENT OPINIONS , YOU ASK TWO QUESTIONS A FTER BALLOT SUMMARY. DOES IT FARRELLY INFORM THE VOTE DOES I T FAIRLY INFORM THE VOTERS OF THE CHIEF PURPOSE? THIS ANT DOESN'T THIS ONE DOESN'T BECAUSE IT IS SO BROAD , AND THE SEC OND PURPOSE , IS THE LANGUAGE MISLEADING? AND THIS ONE IS , YOUR HONORS.

CHIEF JUSTICE: THANK YOU VERY MUCH. OKAY.

THANK YOU. THE ADVISORY OPINION ON THE PROPERTY RIGHTS AMENDMENT THAT, IS THE SECOND GO AROUND

LET ME ASK YOU THIS, I NOTICE THAT THIS IS A PROPOSED AMENDMENT TO ARTICLE II SECTION 7, WHICH BEGINS WITH NATURAL RESOURCES AND SCENIC BEAUTY. SO WHY IS THIS AMENDMENT PROPOSED TO BE AN AMENDMENT TO THAT SECTION?

THAT IS AN EXCELLENT QUESTION, AND I WAS JUST GOING TO READ YOU THE QUOTE THAT INSPIRED THAT. IT SAYS, THE ADDITIONALLY, THE LEGISLATURE IS REQUIRED, BY ARTICLE I I SECTION 7 OF THE FLORIDA CONSTITUTION, TO REGULATE THE USE OF LAND TO PROTECT FLORIDA'S NATURAL RESOURCES AND SCENIC BEAUTY. END QUOTE. THERE ARE PROVISIONS THAT HAVE GONE INTO THE MISCELLANEOUS SECTION OF THE CONSTITUTION. THE COURT HAS SAID THAT THE PLACE IN THE CONSTITUTION WHERE AN AMENDMENT OR INITIATIVE IS PLACED, IS NOT DETERMINATIVE. ARTICLE II SECTION 7 WAS AMENDED WITH ONE OF THE EVERGLADES PROVISIONS, SO IT SEEMED LOGICAL, GIVEN THE COURT'S PRONOUNCEMENT AND GIVEN THE PREDICATE FOR CHAPTER 163 PART 2 IN ARTICLE II SECTION 7, SINCE WE WERE TALKING ABOUT LAND USE AND COMPREHENSIVE PLANS ADOPTED UNDER THAT STATUTE, TO HAVE THIS BE AN AMENDMENT TO ARTICLE II SECTION 7. THAT IS A STATEMENT OF POLICY. AND THE VOTER IS FREE TO AGREE OR DISAGREE WITH THE PROPOSITION THAT PUBLIC PARTICIPATION WILL IMPROVE PARDON ME.

ADDITIONALLY, THAT SECTION ALREADY SAYS THAT IT SHALL BE THE POLICY OF THE STATE TO CONSERVE AND PROTECT ITS NATURAL RESOURCES AND SCENIC BEAUTY, SO WHY IS IT NECESSARY TO HAVE SUCH A STATEMENT IN THIS SUMMARY? YOU ARE PUTTING IT RIGHT IN THAT SECTION THAT ALREADY HAS THAT STATEMENT IN IT.

I DON'T BELIEVE IT IS ANYMORE NECESSARY TO PUT THAT STATEMENT IN THERE THAN IT WAS IN THE PREGNANT PIGS AMENDMENT, TO STATE, QUOTE, IN HUMAN TREATMENT OF ANIMALS IS A CONCERN TO FLORIDA CITIZENS. IT HAS BEEN DONE DIFFERENT WAYS, JUSTICE QUINCE. IN THE SECONDHAND SMOKE AMENDMENT

EXCUSE ME. THE DIFFERENCE BETWEEN THE PREGNANT PIGS AMENDMENT AND THIS ONE, IS THIS ONE SEEMS TO CONCERN A LOT MORE THAN JUST NATURAL RESOURCES AND SCENIC BEAUTY. IT INCLUDES THAT BUT IT DOESN'T INCLUDE ONLY THAT, WHEREAS THE PREGNANT PIGS AMENDMENT DID INCLUDE ONLY PREGNANT PIGS.

I REJECT THAT PROPOSITION. I THINK ANY LAND USE DECISION IN THE COMPREHENSIVE PLAN AFFECTS THE NATURAL RESOURCES AND SCENIC BEAUTY OF THE STATE.

WE WOULD HAVE TO AGREE WITH SUCH A BROAD DEFINITION OF NATURAL RESOURCES AS YOU JUST PROPOSED, IN ORDER TO DETERMINE THAT IT IS NOT MISLEADING THEN.

IN THE MORMON CASE WHICH IS CITED IN MY BRIEF AND IN THE PROPERTY RIGHTS TWO CASE, THE COURT HAS ALREADY STATED THAT. THIS IS NOT ANY KIND OF A RADICAL CHANGE AS SUGGESTED BY THE OPPONENTS, TO INCREMENT A L.

WOULD YOU ADDRESS MR. RICHARD'S POINT ON THIS SINGLE SUBJECT. I SEE YOUR TIME, BUT I THINK I NEED THAT CLARIFICATION, WHICH IS, IF IT IS A LEGISLATIVE MANDATE, WILL THIS THWART LEGISLATIVE MANDATES TO PLAN SNAEMENTS.

CHIEF JUSTICE PARIENTE, IF THE FLORIDA LEGISLATURE WANTS TO ADOPT A FUTURE LAND USE PLAN FOR TALLAHASSEE, IT HAS THE AUTHORITY TO DO SO. CITIES AND COUNTIES OPERATE UNDER A DELEGATION OF LEGISLATIVE AUTHORITY TO ADOPT THESE PLANS. IF THE LEGISLATURE DECIDES THAT IT WANTS TO DO IT, OR IF IT AS IN THE CASE OF AN AREA OF CRITICAL STATE CONCERN, STATES THAT IT WANTS TO HAVE THE GOVERNOR AND CABINET

SETTING AS THE ADMINISTRATION OF SUCH A PLAN , IT WON'T AFFECT IT. THIS IS ONLY RE VISED WHEN LOCAL GOVERNMENTS MA KE SUCH A DECI SION.

YOU WOULD PUT IN THE CAVEAT, UNLESS IMPLEMENTING A LEGISLATIVE AMENDMENT. ARE YOU SAYING THAT CA VEAT IS I AM POLICE PIT IN THERE?

ON IS IMPL ICIT IN THERE?

ON ITS FACE , YE S, YOUR H ONOR, ON ITS FACE IT ONLY APPLIES TO THE ADOPTION B Y A LOCAL GOVERNMENT. THAT IS A CITY OR A COUNTY. IF THE LEGISLATURE WA NTS TO MAKE THESE DECISION OR H AVE THE GOVERNOR AND CABINET MAKE THEM AS THE ADMINISTRATION COMMISSION , THERE WILL BE NO REFERENDUM , AND THAT IS CLEAR ON THEFACE OF THE AMEN DMENT.

WOULD YOU BR EAK THAT DOWN FOR EXAMPLE, IF THE LEGISLATURE WERE NOT MANDATING A SPECIFIC COMPREHENSIVE LAND USE PLAN BUT HAD EN ACTED LEGISLATION THAT WOULD ADDR ESS WHAT COUNTIES MAY OR MAY NOT DO , WITH RE GARD TO SOME PO RTIONS OF A LAND USE PLAN , WHAT IMPACT WOULD THAT HAVE WITH REGARD TO YOUR MEASURE? IT APP EARS THAT A REFEREND UM , THEN , COULD OVERRIDE THAT REQUIREMENT , I F A PARTICULAR COMMUNITY DECIDED WE DON'T WANT THE LAND USE PLAN. THE COMPREHENSIVE PLAN AS AMENDED AS REQ UIRED BY THE LEGISLATURE , STILL A LOCAL PLAN, IT WOULD, THEN , PROHIBIT THAT , WOULD IT NOT ?

NO , JUSTICE LE WI S . 163.316-7 PAREN 12 , ALREADY AUTHORIZES, TO A L IMITED EXTENT, THIS PROS THESE IS PROPOSED IN THIS IN ITIATIVE , AND, SO, THE LEGISLATURE HAS ALREADY ADOPTED A STATUTE , B ACK I N 1995 , THAT SAYS THAT LOCAL GOVERNMENTS CAN DO THIS. ALL WE ARE DOING IS MAKING AN INCR EMENT AL CHANGE TO MAKE IT APPLICABLE TO ALL COMPREHENSIVE PLAN AMENDMENTS, AND IT DOESN'T MATTER HOW MANY PAR CELS OF LAND ARE INVOLVED , AND I SEE MY TIME HAS EXPIRED. IF YOU HAVE ANY MORE QUESTIONS , HOW EVER , I WOULD BE HA PPY TO ANSWER THEM .

CHIEF JUSTICE: THANK YOU V ERY MU CH AND THANKS TO EVERYBODY FOR THEIR ASSISTANCE ON THIS ISS UE , AND WE WILL TAKE IT UNDER ADVISEMENT. THANK YOU.

THANK YOU , AND WE APPRECIATE THE COURT EXPEDITING THE DECISION. THANK YOU.