

MOVE ON TO THE NEXT CASE IN OUR DOCKET, BILL FURST VERSUS SUSAN DEFRANCES.

>> WE NOW GO TO POSEN CONSTRUCTION -- BILL FURST VERSUS SUSAN DEFRANCES. YOU ARE RECOGNIZED.

>> MAY IT PLEASE THE COURT. JASON LESSINGER ON BEHALF OF PROPERTY APPRAISER BILL FURST. THE CASE ON APPEAL THE SECOND DISTRICT HAS DETERMINED PROPERTY IS ALWAYS SUBJECT TO BACK ASSESSMENT AND IDENTIFIABLE PROPERTY YOUR IMPROVEMENT IS SKIPPED ENTIRELY.

THIS RULING CREATES THE INEVITABLE RESULT NOT ONLY THE CASE OF BAR BUT WILL DO SO IN THE FUTURE BECAUSE IT WILL ALLOW CERTAIN TAXPAYERS TO AVOID BACK TAXES IF A CLERICAL ERROR DOES NOT -- IDENTIFIABLE PROPERTY WHILE OTHER TAXPAYERS WHO MAY SUFFER A CLERICAL ERROR THAT DOES WOULD BE SUBJECT TO THAT ASSESSMENT.

PRIOR DECISIONS HAD FOCUSED ON ERRORS IN JUDGMENT VERSUS CLERICAL ERRORS TO DETERMINE WHEN ASSESSMENTS ARE ALLOWED. THE SECOND DISTRICT CREATED A NEW CATEGORY OF PROPERTY THAT IS MISTAKENLY UNDERVALUED WHICH IS NOT SUBJECT TO BACK ASSESSMENT. THE PROBLEM IS ERRORS IN JUDGMENT, CLERICAL ERRORS ALSO FOCUS ON PROPERTY THAT WAS UNDERVALUED.

IT IGNORES PREVIOUS DISTINCTION IN CLERICAL ERRORS AND FOCUS ONLY ON THE WORDS ESCAPE TAXATION, THAT IS NOT IN THE OPERATIVE STATUTE.

THE SECOND DISTRICT REACHES THIS RESULTS.

>> IN THIS PARTICULAR STATUTE IS THERE ANYTHING, THE TEXT OF THE STATUTE THAT SUPPORTS THE DISTINCTION BETWEEN CLERICAL

ERRORS AND ERRORS BASED ON
EXERCISE OF JUDGMENT.
>> NOTHING IN OPERATIVE STATUTE
193 ADDRESSES THAT,
YOU HAVE TO LOOK AT 197.122 TO
GET CLERICAL ERRORS OR ERRORS OF
OMISSION.
>> IS THAT SOMETHING DIFFERENT?
DOES THAT STATUTE NOT APPLY
HERE?
IS THAT CORRECT?
>> IT APPLIES TO THE EXTENT IT
IS A STATUTE USED TO CORRECT THE
ERROR THAT TOOK PLACE IN THIS
CASE.
THAT WAS AN ISSUE AT THE TRIAL
COURT.
>> THAT DOESN'T APPLY TO BACK
TAXES.
>> DOES NOT APPLY TO BACK TAXES.
THE STATUTE YOU ARE DEALING WITH
ADDRESSES BACK TAXES THAT SHOULD
HAVE BEEN ASSESSED WHEN THEY
WERE NOT.
>> IN THE WAY YOU BRIEFED AND
ARGUED THIS IS CLEAR AS FAR AS
YOUR AUTHORITY FOR ISSUING BACK
TAXES YOU ARE RELYING ONLY ON
193.092.
>> THAT IS CORRECT.
THAT STATUTE IS MANDATORY IN
NATURE.
IF THE STATUTE SAID IDENTIFIABLE
PROPERTY ESCAPES TAXATION.
THAT IS WHAT THE STATUTE SAID.
THE STATUTE DOESN'T SAY THAT.
THE STATUTE SAYS ANY TAX SHOULD
BE COLLECTED AGAINST ANY
PROPERTY, MAKE THE ASSESSMENT.
THOSE ARE THE CRITICAL WORDS IN
THE STATUTE.
>> WITH THE ASSESSMENT NOT
LAWFULLY MADE?
>> IT WAS LAWFULLY MADE UNDER
197.122.
>> THE ORIGINAL ASSESSMENT, THE
ONE THAT WAS WRONG, WAS IT
LAWFULLY MADE, YOU FOCUS ON THE
FIRST CLAUSE IN THE STATUTE,
MIGHT HAVE BEEN LAWFULLY

ASSESSED BUT WASN'T LAWFULLY
ASSESSED.

DOES THAT CONDITION SATISFY
HERE?

>> IT ISN'T SATISFIED.

THE TAXES STATE COULD HAVE BEEN
LAWFULLY ASSESSED BUT FOR THE
CLERICAL ERROR.

>> WOULD ALSO BE TRUE FOR
JUDGMENT ERROR, RIGHT?

IN TERMS OF THE WORDS OF THE
STATUTE, IF I GO BACK AND SAY I
COULD HAVE LAWFULLY EXERCISED MY
JUDGMENT, HERE IS AN EXTRA BILL,
ISN'T THAT THE IMPLICATION OF
YOUR ARGUMENT?

YOUR EQUALLY THE WORD LAWFULLY
WITH INCORRECTLY.

>> I'M NOT EQUALLY THE WORD
LAWFULLY WITH CORRECTLY.

THE ERROR IN JUDGMENT, THE
PROPERTY APPRAISER TRIES TO BACK
ASSESSED FOR THAT ERROR IN
JUDGMENT IS NOT A LAWFUL
ASSESSMENT.

IF YOU HAVE AN ERROR IN
JUDGMENT, PROPERTY BUT APPRAISER
IS NOT ALLOWED TO GO BACK AND
CORRECT IT.

IT IS NOT A LAWFUL ASSESSMENT.

IT IS A LAWFUL ASSESSMENT IF
THERE'S A CLERICAL ERROR, VALUE
ESCAPING TAXATION, 97.122 ALLOWS
IT TO BE DIRECTED, STATES THOSE
TAXES ARE VALID AND THEN YOU GO
TO 193.092, HERE IS SOME AD
VALOREM TAX THAT SHOULD HAVE
BEEN COLLECTED NOT BECAUSE OF
THE STATE AND PROPERTY
APPRAISERS SHALL MAKE THE
ASSESSMENT AND THEN THERE IS A
DISCUSSION ABOUT HOW THEY DO
THAT AND WHEN THE PROPERTY
ESCAPES TAXATION BUT YOU FOCUS
ON THE STATUTE WHEN TAXES SHOULD
HAVE BEEN ASSESSED CAN BE
ASSESSED.

>> IF IT WAS BY THE PROPERTY LAW
APPRAISER OFFICE THE WHOLE
PROPERTY, WOULD THERE BE A

LAWFUL ASSESSMENT OF THE
PROPERTY?

>> IT WAS ENTIRELY OMITTED FROM
THE ROLE, IT WASN'T SENSED.

>> WITH YOUR ARGUMENT THE SAME
HERE, WITH A PROGRAMMING ERROR,
BECAUSE OF THE PROGRAMMING ERROR
TO ANY PROPERTY ASSESSMENT.

WAS THERE AN ARGUMENT THERE WAS
NOT A LAWFUL ASSESSMENT BECAUSE
OF THE COMPUTER CONVERSION ERROR
MADE BECAUSE THE STATUTE IS
APPLICABLE.

>> AN INCORRECT ASSESSMENT MADE,
LAWFUL OR UNLAWFUL AT THE TIME
THE STATE WAS MADE.

>> IT SAYS LAWFULLY ASSESSED OR
COLLECTED.

NO QUESTION THE LOWER AMOUNT WAS
LAWFULLY COLLECTED BUT I DON'T
SEE HOW IT WAS LAWFULLY ASSESSED
IN LIGHT OF ARTICLE 7 OF THE
CONSTITUTION THE COMMANDS JUST
EVALUATION WHICH IS FAIR MARKET
VALUE.

IF YOU ASSESS SOMETHING THAT IS
NOT JUST VALUE THAT IS NOT AN
ASSESSMENT IN ACCORDANCE WITH
THE CONSTITUTION, AND UNLAWFUL
ASSESSMENT OR NOT MEETING LAWFUL
ASSESSMENT REQUIREMENT.

>> IT IS AN INCORRECT ASSESSMENT
WHICH IS UNLAWFUL UNDER THE
CONSTITUTION WHICH IS WHY IT
SHOULD BE CORRECTED.

IT SHOULD HAVE BEEN LAWFULLY
ASSESSED.

IT IS AN ERROR IN JUDGMENT
RESULTING IN ACCESS AND THAT IS
NOT A LAWFUL ASSESSMENT.

>> I UNDERSTAND WHAT QUESTIONS
MY COLLEAGUES ASKED YOU BUT LET
YOU DOWN A PATH THAT SHOWS THERE
IS NO DIFFERENCE BETWEEN
CLERICAL ERRORS AND ERRORS IN
JUDGMENT BECAUSE YOU COULD
ALWAYS SAY THE CONSTITUTION
REQUIRES FAIR MARKET VALUATION,
I GOT IT WRONG, THE ACTUAL FAIR
MARKET VALUATION IS X AND HERE

IS YOUR EXTRA BILL.

>> THE PURPOSE OF THIS STATUTE AS STATED IS TO ENSURE IT TAKES -- SPEAKS THE TRUTH WHEN THERE'S A CLERICAL ERROR THAT RESULTS IN ASSESSMENT THAT IS INACCURATE AND DOES NOT MEET THE CONSTITUTIONAL MANDATE, THIS ALLOWS THE PROPERTY APPRAISER TO FIX IT SO THAT JUST VALUE IS REFLECTED.

THE SECOND DISTRICT HAS USED THE CORE X OPINION TO REACH THE RESULT THEY REACHED, BUT THEY HAVE DONE SO BY FOCUSING ON THE FACT OF THAT CASE AND EFFECTIVELY IGNORED THE BROADER LEGAL CONCEPTS THEY WERE TRYING TO ENFORCE.

THAT THE BASIC PRINCIPLE OF TAXATION THAT EVERYONE PAYS THEIR FAIR SHARE.

POSEN CONSTRUCTION 0 -- SUSAN DEFRANCES IS NOT PAYING HER FAIR SHARE.

SHE IS THE BENEFICIARY OF A COMPUTER GLITCH THAT GAVE ATTACKS --

>> YOUR ARGUMENT ABOUT FAIR SHARE MEANS ANY ERROR IS CORRECTABLE.

IT SEEMS TO ME IS A BROAD PURPOSE ARGUMENT THAT HAS NO LIMITATION BASED ON EXERCISE OF JUDGMENT VERSUS CLERICAL ERROR. THESE ARGUMENTS DON'T FIT TOGETHER VERY WELL.

MISSING THE COHESIVENESS OF YOUR ARGUMENT.

>> THERE IS A NEED FOR THE TAX FORM TO BE COMPLETE.

A NEED FOR THOSE FIGURES TO BE FINAL AND WHEN THE PROPERTY APPRAISER EXERCISES THE JUDGMENT DETERMINATION REASONABLE PEOPLE CAN DIFFER AS TO WHAT THE JUDGMENT IS, THE PROPERTY APPRAISER NEEDS TO GO BACK AND FIX THEIR ERROR IN JUDGMENT BECAUSE THAT WOULD BE INHERENTLY

UNFAIR, WHEN THE PROPERTY APPRAISER EXERCISE THEIR JUDGMENT AND THE JUDGMENT IS NOT CARRIED ON TO THE ROLE DUE TO A CLERICAL ERROR THAT IS WHAT THIS IS INTENDED TO FIX.

>> THE PRINCIPLES WE ARE TALKING ABOUT CUTTING IN BOTH DIRECTIONS, THEY TIED THE REASONING OF THEIR DECISION BACK TO THE WORDS OF THE STATUTE, THE PROPERTY APPRAISER, TO INDEPENDENTLY ASSESS, IN THE LAND AND THE IMPROVED PART ESCAPES TAXATION, THE COURT GRANTED THAT DECISION IN THE WORDS OF THE STATUTE.

>> THE COURT WAS TRYING TO ENFORCE THE BROADER PRINCIPLE OF LAW AND UNIQUE FACTS REQUIRES THEM TO SAY YOU KNEW THE HOTEL WAS THERE, YOU KNEW THERE WAS TAX LIABILITY AND WE ARE NOT GOING TO LET YOU CREATE A CUTE ARGUMENT ABOUT REAL PROPERTY AND YOU ASSESSED THE LAND, THE IMPROVEMENT WAS ON THE LAND AND THERE CANNOT BE A SEPARATE ASSESSMENT AND THEY ADDRESSED THE FACT OF THAT CASE AND MISTER FRANCIS WAS DOING THE SAME THING, SHE'S GOING TO DEPORT AND SAID THE FACT THAT CASE ADDRESS IN THAT CASE IMPROVEMENT. SUSAN DEFRANCES IS THANKS AND YOU CAN DO THAT IN MY CASE I RAISE THE SAME ARGUMENTS, YOU CAN'T TELL WHICH LOT WAS SKIPPED SO YOU CAN'T IDENTIFY IT. IT IGNORES THE BROADER CONCEPT, THE FACT THAT SHE IS IN THE SAME POSITION AS THE HOTEL OWNER. VALUED AT MILLIONS OF DOLLARS, TAX BILL FROM \$2,000.

>> WHAT WOULD THE PRINCIPLE BE, IF THE LOGIC OF YOUR POSITION IS BASICALLY THE LAW REQUIRES THE ASSESSMENT TO BE DONE RIGHT AND THEREFORE AN ASSESSMENT THAT IS NOT DONE RIGHT IS UNLAWFUL AND

CAN BE FIXED, HOW WOULD THAT TELL THE PROPERTY APPRAISERS WHAT THEY HAVE TO DO BECAUSE IT IS A MANDATORY STATUTE AND ALSO GIVE CERTAINTY TO THE TAXPAYERS SO THEY WOULDN'T BE SUBJECT FOR THE NEXT THREE YEARS, THE TAX APPRAISER SAYING WE REALIZE WE COULD HAVE LAWFULLY ASSESSED MORE AND USE YOUR EXTRA BILL, HOW -- DOZEN SEEM LIKE A CLERICAL VERSUS JUDGMENT LINE, THAT IS NOT STATUTORY AND IT DOESN'T SEEM LIKE A PRINCIPAL DISTINCTION.

WHAT SHOULD THE RULE BE ACCORDING TO YOU?

>> WHEN VALUE ESCAPES TAXATION DUE TO A CLERICAL ERROR OR AN ERROR OF OMISSION, AND ASSESSMENT IS PROPER.

WHEN THE PROPERTY APPRAISER EXERCISES THEIR JUDGMENT AND MAKE THE JUDGMENT DETERMINATION THAT CANNOT GO BACK AND BE 6 TO. IT SHOULD REMAIN BASED ON THE TYPE OF ERROR.

AND THE PROPERTY APPRAISERS CORRECTLY ASSESS, EXERCISE THEIR JUDGMENT AND THE REASON THAT CORRECTLY EXERCISED JUDGMENT IS NOT END UP ON THE ROLE IS DUE TO A KEYPUNCH ERROR OR CLERICAL ERROR OR IN THIS CASE A COMPUTER SYSTEM TRANSFER DATA ERROR.

UNDER THOSE CIRCUMSTANCES THE TAXPAYER IS GETTING A WINDFALL AND THAT IS WHERE THE LINE SHOULD BE DRAWN.

>> LET ME ASK YOU ABOUT THE LANGUAGE IN THE STATUTE REGARDING ESCAPING TAXATION. THAT IS NOT THE ONLY LANGUAGE, IN THE CONTEXT OF THE STATUTE AND CONSIDER THAT LANGUAGE IN THE CONTEXT OF THE FIRST SENTENCE THAT MAKES REFERENCE TO LAWFULLY ASSESSED OR COLLECTED AND SO ON.

WHEN WE LOOK AT THE WORDS ESCAPE

TAXATION IT DOES NOT BRING TO MIND A TOTAL FAILURE TO HAVE TAXATION, ESCAPE SUGGESTS TOTAL FAILURE TO BE SUBJECTED TO TAX. WHAT YOU ARE SUGGESTING TO INTERPRET THE STATUTE A DISTINCTION BETWEEN CLERICAL AND EXERCISE JUDGMENT, NOTHING IN THE TEXT OF THE STATUTE THAT SUPPORTS THAT.

IT SEEMS WHAT YOU ARE ARGUING, SO MANY BETTER WAYS THE LEGISLATURE COULD EXPRESS THAT AND THE PARTICULAR LANGUAGE THEY HAVE CHOSEN IN THIS SECTION PARTICULARLY THE PARTS OF IT THAT REFERRED TO ESCAPE TAXATION.

CONSIDERING THAT ASSESSMENT LANGUAGE, WHAT THEY ARE TALKING ABOUT WHAT MIGHT HAVE BEEN LAWFULLY ASSESSED, TAXES THAT MIGHT HAVE BEEN LOST.

>> FORGET --

>> YOU ARE IN YOUR REBUTTAL TIME.

>> THANK YOU.

>> COUNSEL?

>> MAY IT PLEASE THE COURT. MY NAME IS SHERRI JOHNSON FOR SUSAN DEFRANCES.

THE DISTRICT COURT HELD ASSESSMENTS, BACK ASSESSMENTS ARE ONLY AUTHORIZED FOR PROPERTY OMITTED FROM THE TAX ROLE, NOT JUST PROPERTY THAT IS SIMPLY UNDERVALUED.

THIS IS CONSISTENT WITH THE PLAIN LANGUAGE OF THE STATUTE WHICH IS PHRASED THAT ONLY ALLOWS BACK ASSESSMENTS FOR PROPERTY THAT ESCAPES TAXATION. IT IS CONSISTENT WITH REVENUE REGULATIONS THAT IMPLEMENT THE STATUTE.

THE DEPARTMENT OF REVENUE REGULATIONS GIVE INSTRUCTIONS TO THE PROPERTY APPRAISER FOR HOW TO IMPLEMENT IT AND SPECIFICALLY PROVIDE THE PROPERTY APPRAISER

TO MAKE A SEPARATE ASSESSMENT FOR EACH YEAR THAT THE PROPERTY HAS BEEN ENTIRELY OMITTED FROM THE TAX ROLE.

THERE IS NO OTHER PROVISION FOR PROPERTY THAT IS UNDERVALUED OR PARTIALLY OMITTED.

IT IS JUST FOR PROPERTY THAT IS ENTIRELY OMITTED FROM THE TAX ROLE.

THE PROPERTY APPRAISER IN THIS CASE WANTS TO EXPAND THE BACK ASSESSMENT STATUTE TO INCLUDE PROPERTY THAT IS MISTAKENLY UNDERVALUED IN A PRIOR TAX YEAR. AND THEY'RE WILLING TO STRIKE A BALANCE.

>> IF THAT APPLIED ONLY TO PROPERTY THAT HAD NOT BEEN ASSESSED, MAY HAVE ESCAPED ASSESSMENT, IT SAYS ESCAPE TAXATION.

IT IS MORE PROBABLY THAN YOU SUGGEST.

YOU HAVE A SITUATION WHERE BECAUSE OF COMPUTER ERROR PROPERTY WAS ASSESSED BUT CLEARLY NOT TAXED AS IT SHOULD HAVE BEEN BECAUSE OF COMPUTER ERROR SO DOESN'T THE STATUTE SUPPORT THE CLAIM?

>> THE PROPERTY DID NOT ESCAPE TAXATION UNDER THE STATUTE. IT WAS TAXED.

I DON'T BELIEVE THAT LANGUAGE A STRONGER DISTINCTION.

>> IF IT IS A COMPUTER ERROR IN THIS CASE INSTEAD OF ASSESSING WHAT SHOULD HAVE BEEN 1000 ACRES.

THERE WAS A COMPUTER ERROR. INSTEAD OF 1000, IT SHOWED 10 SO THAT THERE WAS AN ASSESSMENT AND TAX.

SHOULD THAT BE EXCLUDED FROM THE STATUTE UNDER YOUR ARGUMENTS?

>> THAT WOULD NOT BE SUBJECT TO BACK ASSESSMENT.

THE LEGISLATURE HAS HAD THE OPPORTUNITY TO CONSIDER THOSE

ISSUES, AND I WOULD SUGGEST THAT THEY DID ACTUALLY CONSIDER THEM TO SOME EXTENT--

>> SO BUT IN MY HYPOTHETICAL, WHY IN MY EXAMPLE WOULDN'T THERE HAVE BEEN 990 ACRES ESCAPED TAXATION UNDER THE STATUTE AND--

[INAUDIBLE CONVERSATIONS]

>> SURE.

I'M ASSUMING YOUR HYPOTHETICAL, THAT THE PROPERTY IS ONE PARCEL AND IT WAS JUST AN ERROR IN THE SIZE WHICH IS WHAT THE SITUATION WAS IN THIS CASE.

OBVIOUSLY, IF YOU HAVE MULTIPLE PARCELS OF PROPERTY AND YOU HAVE A PARCEL THAT'S NOT ASSESSED, SURE.

THAT WOULD ESCAPE TAXATION, THAT WOULD BE SUBJECT TO BACK TAX. BUT IF YOU HAVE A SITUATION LIKE THE--

[INAUDIBLE]

CASE WHERE THERE WAS ONE PARCEL IS, AND THE ERRORS WERE MADE IN THE SIZE, THE WATERFRONT LOCATION EXPECT EXTENT TO WHICH IT WAS HOMESTEAD THE PROPERTY, THAT PARCEL WAS ASSESSED.

IT WAS JUST, YOU KNOW, THERE WERE SOME MISTAKES MADE.

>> WELL, WOULDN'T THERE BE AN ESCAPE OF TAXATION IN MY HYPOTHETICAL?

>> NO, I DON'T BELIEVE SO BECAUSE THE PROPERTY WAS TAXED. IT WAS JUST TAXED AT-- BECAUSE OF CLERICAL ERROR.

AND, AGAIN, THE LEGISLATURE, I THINK THE LEGISLATURE--

[INAUDIBLE]

I WAS GETTING TO, LOOK AT SUBSECTION--

>> LET ME, LET ME JUST INTERRUPT.

YOU KEEP-- AND ASK, YOU SAY, KEEP SAYING IT WAS TAXED. THE CONSTITUTION REQUIRES AN ASSESSMENT AT FAIR VALUE.

WAS IT ASSESSED AT FAIR-- I
MEAN, AT JUST VALUE?

>> NO, IT WAS THE NOT.
BECAUSE OF THE CLERICAL ERROR.

>> IT WAS ASSESSED IN
CONTRAVENTION TO THE DIRECTIVES
OF THE CONSTITUTION, WHY IS THAT
A LAWFUL ASSESSMENT?

>> THE DETERMINATION OF WHETHER
THE JUST VALUE, WHETHER IT WAS
ASSESSED AT JUST VALUE, I THINK,
IS MADE AT THE TIME OF THE
ASSESSMENT.

AT THE TIME OF THE ASSESSMENT,
IT WAS LAWFUL.

THE FACT THAT ULTIMATELY LATER A
MISTAKE IS DETERMINED TO HAVE
BEEN MADE I DON'T THINK CHANGES
THAT FACT.

JUST LIKE WITH A TAXPAYER, IF A
TAXPAYER DETERMINES A YEAR LATER
THAT THERE WAS A MISTAKE--

>> YOU SAID THAT, BUT, I MEAN,
HOW IS IT A LAWFUL ASSESSMENT IF
IT'S NOT AN ASSESSMENT AT JUST
VALUE WHEN THE CONSTITUTION
REQUIRES THAT ALL PROPERTY BE
ASSESSED AT JUST VALUE?

>> WELL, I BELIEVE THAT IT'S A
LAWFUL ASSESSMENT IN THAT IT'S
COLLECTIBLE, THE PROPERTY
APPRAISER FOLLOWED THE
PROCEDURES AND COLLECTED--

>> I MEAN, BUT IT SAYS LAWFULLY
ASSESSED OR COLLECTED.

I WOULD AGREE WITH YOU THAT
WHATEVER WAS COLLECTED WAS
LAWFULLY COLLECTED, BUT I DON'T
SEE HOW YOU COULD SAY THAT IT
WAS ASSESSED CONSISTENT WITH THE
LAW OF FLORIDA.

>> I THINK-- WELL, WHEN WE TALK
ABOUT A LAWFUL ASSESSMENT URN
THIS STATUTE-- UNDER THIS
STATUTE WHICH, AGAIN--

>> NOT A DEFINED TERM, BUT--
SO--

>> RIGHT.

BUT I READ THE TERM LAWFUL
ASSESSMENT HERE AS BEING ONE

THAT WAS--

>> ANY ASSESSMENT.

>>-- ONE THAT WAS PROPERLY,
FOLLOWED ALL THE PROCEDURES FOR
PROPER COLLECTION OF TAX, I
GUESS.

I SEE IT MORE AS A PROCEDURAL
ISSUE, IS THE WAY I WOULD
INTERPRET IT.

>> I MEAN, THE LOGIC-- AGAIN,
IF YOU LOOK AT IT THAT WAY,
WHICH I THINK IS ONE WAY OR
LOOKING AT IT, ESSENTIALLY
YOU'VE GOT A THREE-YEAR PERIOD
IN WHICH ANY DO-OVER THAT IS
ARGUABLY MORE CONSISTENT WITH
THE JUST VALUATION IS ON THE
TABLE.

WHICH WOULD BE, YOU KNOW, VERY
INCONSISTENT WITH HOW THIS
STATUTE HAS BEEN VIEWED BY THE
COURT BEFORE.

I'M NOT SAYING THAT THAT'S
OBJECTIVELY NOT A POSSIBLE WAY
OF LOOKING AT IT, BUT THAT WOULD
BE A PRETTY STARK DEPARTURE FROM
WHAT WE'VE DONE BEFORE.

>> RIGHT, CORRECT.

AS JUSTICE MUNIZ POINTED OUT, IF
YOU WERE TO INTERPRET THIS AS
MEANING ANY ASSESSMENT THAT WAS
NOT AT VALUE COULD BE SUBJECT TO
A BACK ASSESSMENT, THAT IS
COMPLETELY INCONSISTENT WITH THE
WAY THIS COURT HAS
INTERPRETED--

>> I MEAN, I ALSO DON'T
UNDERSTAND WHY YOU WOULD HAVE TO
REACH THAT CONCLUSION BECAUSE,
YOU KNOW, THERE'S OBVIOUSLY SOME
DISCRETION IN DETERMINING WHAT
FAIR MARKET VALUE IS.

THERE'S A RANGE.

AND SO AS LONG AS THERE WASN'T
AN ABUSE OF DISCRETION, SO, YOU
KNOW, MR. LESSINGER SAID ANY
EXERCISE OF JUDGMENT, BUT I
WOULD SAY AS LONG AS IT WAS
WITHIN THE RANGE OF REASON SO
THAT YOU COULDN'T SAY CLEARLY--

WHICH YOU CAN HERE-- THAT THIS IS NOT A JUST VALUATION, THAT YOU WOULD SAY IT'S LAWFUL.

I MEAN, THE PROPERTY APPRAISER EXERCISED THE DISCRETION AND DETERMINED THAT IT WAS A JUST VALUATION.

IT WASN'T AN ABUSE OF DISCRETION, IT'S WITHIN THE RANGE OF WHAT JUST VALUE IS, SO THAT WOULD BE A LAWFUL ASSESSMENT AS OPPOSED TO ONE THAT YOU CAN LOOK AT AND SAY NO REASONABLE PERSON COULD SAY THAT THIS WAS A JUST VALUE ASSESSMENT, SO IT'S NOT LAWFUL ARE.

I MEAN, I DON'T KNOW WHY IT WOULD OPEN UP THE DOOR TO LOOK AT EVERYTHING AGAIN.

>> YOUR HONOR, ONE THING I WANT TO POINT OUT IS SUBSECTION 3. I'D LIKE YOU TO TAKE A LOOK AT SUBSECTION 3 OF THE STATUTE BECAUSE I THINK THAT WILL GIVE YOU MORE INSIGHT INTO THE LEGISLATURE'S INTENT.

IN 2010 AFTER KORASH, AFTER THESE CASES HAD ALL HAPPENED, THE LEGISLATURE AMENDED THE STATUTE THAT ADDED SUBSECTION 3, AND BASICALLY WHAT IT DOES IS PREVENTS THE APPRAISER FROM BACK ASSESSING IF THE OWNER COMPLIED WITH ALL NECESSARY IF PERMITTING REQUIREMENTS.

UNDER THIS AMENDMENT EVEN KORASH, EVEN THE MOTEL WOULDN'T BE SUBJECT TO BACK ASSESSMENT. THE LEGISLATURE, TO ME, BY DOING THAT DETERMINED EVEN IF THE ENTIRE IMPROVEMENT IS OMITTED DUE TO CLERICAL ERROR, IT CANNOT BE BACK TAXED REGARDLESS OF WHETHER THERE'S A WINDFALL OR AN ERROR IN THE JUST VALUE OF THE PROPERTY.

BECAUSE THIS STATUTE IS INTENDED TO PROTECT THE TAXPAYERS FROM THAT KIND OF SURPRISE

ASSESSMENT.
NOT SURPRISE ASSESSMENT, BUT NEW
ASSESSMENT.

SO I THINK THAT THE NOTION OF
THE PROPERTY APPRAISER, YOU
KNOW, RECEIVING A WINDFALL DUE
TO A MISTAKE BY THE PROPERTY
APPRAISER, THAT WAS NOT A
CONCERN BY THE LEGISLATURE.
AND I THINK BY PUTTING THOSE
PROTECTIONS IN HERE FOR PROPERTY
THAT WAS COMPLETELY OMITTED FROM
THE TAX ROLL SENDS A MESSAGE
THAT THEIR INTENTION HERE IS TO
PROTECT TAXPAYERS AS WELL AS TO
INSURE A FAIR TAX ROLL.

AND, AGAIN, THE ERRORS IN THIS
CASE WERE NOT OF THE TYPE UNDER
THE PLAIN LANGUAGE OF THE
STATUTE WHICH REQUIRES ESCAPE
TAXATION, THIS IS NOT A
SITUATION WHERE THERE WERE
MULTIPLE PARCELS AND SEVERAL
WERE LEFT OFF THE TAX ROLL.
THIS IS ONE WHERE THERE WAS A
PARCEL THAT WAS ASSESSED, THERE
WERE MISTAKES THAT WERE MADE,
BUT THE TAXES WERE ASSESSED
AGAINST THIS ENTIRE PARCEL.
THE KORASH COURT DISTINGUISHED
BETWEEN TAXES THAT INCREASED THE
AMOUNT ONLY AND BACK TAXES THAT
ADDED IMPROVEMENT THAT WAS
ACCIDENTALLY OMITTED.

I BELIEVE THE SECOND DISTRICT,
THEY WERE CORRECT IN FOLLOWING
KORASH IN THAT THIS STATUTE IS
NOT MEANT TO ALLOW THE PROPERTY
APPRAISER TO COLLECT ERRORS IN
AMOUNT.

IT'S JUST TO ALLOW PROPERTY
APPRAISERS TO CORRECT ERRORS IN
PROPERTY THAT IS LEFT OFF THE
PROPERTY.

AND THAT'S THE ONLY CASE WHERE
THIS COURT HAS EVER REALLY
CONSIDERED THIS ISSUE, AND I
THINK IT'S IMPORTANT THAT THIS
COURT FOLLOW THAT PRECEDENT.
THE COURT IN THAT, IN KORASH

ALSO SPECIFICALLY IT RATED THAT A BACK ASSESSMENT IS PROPER UNDER THE STATUTE ONLY IF THERE'S NO JUDGMENT BEING EXERCISED-- WHICH I THINK WE'VE ALL AGREED ON-- AND THE PROPERTY IS NOT THERE OR INCLUDED OR IS JUST LATE BEING ENROLLED AND BILLED.

SO YOU LOOK AT THE DEPARTMENT OF REVENUE REGULATIONS WHICH INTERPRET THIS STATUTE AS ONLY APPLYING WHEN PROPERTY IS COMPLETELY OMITTED FROM TAX ROLL OR YOU LOOK AT THE ONLY PRIOR SUPREME COURT DECISION ON THIS, ON THESE BACK ASSESSMENTS, BOTH OF THEM IS HAVE DISTINGUISHED BETWEEN INCREASES IN AMOUNTS AND CHANGES THAT ADD PROPERTY TO THE TAX ROLL.

SO IN CONCLUSION, I THINK THE LEGISLATURE COULD PROVIDE FOR BACK A ASSESSMENTS FOR PROPERTY THAT HAS BEEN UNDERVALUED, BUT THEY'VE CHOSEN NOT TO DO SO. THEY COULD PROVIDE FOR BACK ASSESSMENTS FOR ANY YEAR IN WHICH A CLERICAL ERROR WAS THERE, BUT THEY HAVE NOT DONE SO.

AND, IN FACT, AS I POINTED OUT IN 2010 THEY ACTUALLY MADE IT MORE DIFFICULT TO BACK TAX PROPERTY THAT HAS BEEN OMITTED FROM THE TAX ROLL, EVEN AN ENTIRE BUILDING.

>> JUST TO BE CLEAR, YOU'RE NOT CLAIMING THAT YOUR PROPERTY CAN'T BE BACK ASSESSED BECAUSE OF THE 2010 STATUTE?

>> NO.

>> OKAY.

>> NO.

I'M JUST SHOWING THAT AS LEGISLATIVE INTENT, THAT THEY CONSIDERED THE FAIRNESS ISSUE AND APPARENTLY THE LEGISLATURE'S OKAY WITH AN ENTIRE BUILDING BEING OMITTED, YOU KNOW, AS LONG

AS THE TAXPAYER HAD DONE ALL THE PERMITS PROPERLY.

THIS STATUTE ONLY PROVIDES FOR BACK ASSESSMENTS FOR THREE YEARS, ONLY FOR PROPERTY THAT HAS ESCAPED TAXATION.

AND, AGAIN, THIS PROPERTY WAS ASSESSED.

IT WAS ASSESSED, IT WAS TAXED, SERVICE JUST UNDERVALUED DUE TO ERRORS IN THE SIZE, LOCATION AND THE HOMESTEAD CHARACTERISTICS OF THE PROPERTY.

I BELIEVE THE SECOND DCA CORRECTLY HELD THAT IN THESE CIRCUMSTANCES NO PROPERTY HAD ESCAPED TAXATION, AND THEIR OPINION CONSISTENT WITH THE STATUTE, DEPARTMENT OF REVENUE'S REGULATIONS AND THIS COURT'S DECISION IN KORASH, SO I WOULD ASK THAT YOU AFFIRM THE SECOND DCA'S OPINION IN ITS ENTIRETY.

>> THANK YOU, COUNSEL.

WE'LL NOW HEAR REBUTTAL ARGUMENT.

>> THANK YOU, YOUR HONOR.

MS. JOHNSON HAS DIRECTED YOU TO SECTION 3 OF THAT STATUTE.

I WOULD DIRECT YOU TO SECTION 2 WHICH CONFIRMS THE EXPANSIVE NATURE OF THAT STATUTE BECAUSE IT APPLIES TO PROPERTY OF EVERY CLASS AND KIND.

NOW, THE WORD CLASS HAS ESCAPED DEFINITION, BUT KIND SUGGESTS AN EXPANSIVE STATUTE.

AND I WOULD AGAIN GO BACK TO KORASH V. MILLS BECAUSE THE PROPERTY OWNER WAS BASICALLY SAYING, LOOK, I HAD ONE PIECE OF PROPERTY.

IT WAS REAL PROPERTY.

IT CONSISTS OF LAND AND IMPROVEMENT, AND YOU VALUED IT. YOU DON'T GET TO NOW COME BACK AND SAY I'M GOING TO REVALUE YOUR REAL PROPERTY BY ADDING THE IMPROVEMENT THAT WAS THERE THAT YOU MISSED.

AND THE COURT SAID, NO, WE'RE NOT GOING TO LET YOU GET AWAY WITH THAT BECAUSE THE ESCAPE WAS TO CLEAR AND ASCERTAINABLE, THEY MISSED THE IMPROVEMENT.

NOW MS. DEFRANCES IS COMING IN AND SAYING, WELL, THERE WAS NOTHING SKIPPED HERE, SO YOU SHOULD JUST FOLLOW KORASH. THE SAME PRINCIPLE APPLIES. WE DON'T KNOW WHAT LOTS WERE SKIPPED, BUT HER ESCAPE IS JUST AS CLEAR, JUST AS ASCERTAINABLE. HER PROPERTY WAS VALUED AT \$300,000.

I'LL GIVE YOU ANOTHER EXAMPLE, IF THE PROPERTY APPRAISER IN KORASH HAD TWO SEPARATE CARS AND VALUED THEM AND THE ONE CAR WAS NOT LOST EXPECT VALUE WAS ENTERED AT INSTEAD OF \$667,000, IT WAS ENTERED AS \$667.

IT WAS A KEY PUNCH ERROR. WELL, UNDER THAT CIRCUMSTANCE THERE WOULD BE NO BACK ASSESSMENT BECAUSE THERE WAS NO SPECIFIC POT THAT ESCAPED. THE FACT OF THE MATTER IS THE HOTEL WAS DRASTICALLY UNDERVALUED DUE TO CLERICAL ERROR, AND THERE SHOULD BE NO DISTINCTION THERE.

IN BOTH SITUATIONS THE TAXPAYER AVOIDS TAXES THAT THEY SHOULD PAY BASED ON THE NATURE OF THE ERROR.

AND THIS DISTINCTION ABOUT, WELL, DOES IT HAVE TO BE SPECIFICALLY IDENTIFIABLE PROPERTY, IT DEFEATS THE PURPOSE OF THE STATUTE.

>> SO, COUNSEL, GIVEN THAT THIS IS A MANDATORY STATUTE AND IF YOU THINK THAT SORT OF THE BASELINE IS THAT IT HAS TO BE GOTTEN RIGHT, LAWFUL MEANS JUST VALUE, THEN HOW WOULD, HOW WOULD TAX-- HOW WOULD APPRAISERS COMPLY?

WOULD THEY FEEL LIKE THEY HAD A

SORT OF CONTINUING OBLIGATION
FOR THREE YEARS TO SORT OF
REVISIT EVERY ASSESSMENT TO MAKE
SURE THAT IT COULD BE
CHARACTERIZED AS JUST VALUE?
I MEAN, BECAUSE IT'S NOT,
BECAUSE THIS ISN'T JUST A
QUESTION OF AUTHORITY TO CHANGE.
I MEAN, THIS IS A DUTY THAT YOU
HAVE TO DO THIS.

>> ABSOLUTELY NOT, YOUR HONOR.
THE STATUTE ONLY COMES INTO PLAY
WHEN THERE IS AN ERROR OF
OMISSION OR COMMISSION OR WHEN
THERE IS A MATERIAL MISTAKE OF
FACT.

THOSE ARE THE ONLY CIRCUMSTANCES
WHERE THE PROPERTY APPRAISER CAN
GO BACK AND LAWFULLY ASSESS,
BECAUSE THERE WAS A CLERICAL
ERROR, BECAUSE JUST VALUE WAS
NOT OBTAINED.

WHEN IT IS AN ERROR IN JUDGMENT,
WHEN IT IS, WHEN THERE'S AN
ERROR IN JUDGMENT, YOU CANNOT GO
BACK AND REASSESS.

THERE WOULD BE NO CIRCUMSTANCE
WHERE A PROPERTY APPRAISER COULD
LAWFULLY SAY, YOU KNOW WHAT?

I GOT IT WRONG FOR THE LAST
THREE YEARS, UNDER THIS STATUTE
I GET TO GO BACK AND FIX IT.

THE STATUTE ONLY COMES INTO PLAY
WHEN THERE IS A MATERIAL MISTAKE
OF FACT OR THERE IS A CLERICAL
ERROR OR UNDER THE ACTUAL
LANGUAGE OF STATUTE AN ERROR OF
OMISSION OR COMMISSION THAT IS
NOT AN ERROR IN JUDGMENT.

I'VE ALREADY SPOKEN TO WHY THEY
SHOULD BE TREATED DIFFERENTLY
AND WHY THERE'S A NECESSITY THAT
IT SHOULD BE FINAL AT A CERTAIN
DATE.

THE ONLY REASON YOU CAN GO BACK
AND FIX THAT IS, AGAIN, WHEN
THERE'S A CLERICAL ERROR THAT
CAUSES THAT JUDGMENT
DETERMINATION TO BE INACCURATELY
REFLECTED--

>> I DON'T UNDERSTAND HOW THE TERM ERROR OF COMMISSION IS INCONSISTENT BEING AN ERROR OF JUDGMENT.

>> AN ERROR--

>> ACTUALLY, I GET ERROR, I JUST DON'T FOLLOW THAT.

>> AN ERROR OF OMISSION WOULD BE OMITTING A PROPERTY ENTIRELY--

>> I WAS TALKING ABOUT AN ERROR OF COMMISSION.

>> AN ERROR OF COMMISSION WOULD BE WHEN A KEY PUNCH-- WHEN THE PROPERTY APPRAISER DETERMINES THE VALUE WAS \$667,000 IN HIS JUDGMENT AND THEN THE KEY PUNCH OPERATOR WHO'S ENTERING THAT IN THE SYSTEM PUNCHES IN \$200,000. THAT IS AN ERROR OF COMMISSION.

>> WHY COULDN'T THAT ALSO HAVE REFERENCE TO AN ERROR OF, AN ERROR OF JUDGMENT?

>> BECAUSE IT SHOULDN'T UNDER THE LAW.

[LAUGHTER]

>> OKAY.

I GOT IT.

THAT'S VERY CLEAR.

>> AND I BELIEVE I'M INTO MY OVERTIME HERE, SO I WOULD THANK THE COURT FOR YOUR TIME, AND I WOULD REQUEST THAT YOU REVERSE THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL BECAUSE IT CREATES INACCURATE RESULTS BETWEEN TAXPAYERS AND ALLOWS SOME TO ESCAPE TAXES THAT ARE LAWFULLY OWED AND OTHERS WHO CANNOT.

AND IT'S UNFAIR.

THANK YOU.

>> ALL RIGHT.

WE THANK YOU BOTH FOR YOUR ARGUMENTS.

AND THE COURT WILL NOW STAND IN RECESS FOR ABOUT TEN MINUTES BEFORE WE MOVE TO THE NEXT CASE ON TODAY'S DOCKET.