NEXT CASE ON THE COURT'S CALENDAR IS BROWARD COUNTY VERSUS G.B.V. INTERNATIONAL, LIMITED.

YOU MAY PROCEED.

MAY IT PLEASE THE COURT. I AM TAMARA SCRUDDERS, REPRESENTING BROWARD COUNTY. WITH ME, TODAY, IS CHIEF APPELLANT COUNSEL FOR BROWARD COUNTY ANDREW MEYERS. I HAVE RESERVED FIVE MINUTES FOR REBUTTAL. IN HAINES CITY VERSUS HAGUES, THIS COURT MADE CLEAR THAT THE SCOPE OF SERIOUS YEAR REVIEW IN A -- OF CERSIORY REVIEW IS NARROW IN SCOPE. THIS COURT CAN LOOK AT WHETHER DUE PROCESS WAS DENIED, AND IN THIS CASE THE DISTRICT COURT WENT WELL BEYOND THAT SCOPE OF REVIEW AND LOOKED AT WHETHER THE CIRCUIT COURT AND THE BOARD OF COUNTY COMMISSION HAD BEFORE IT COMPETENT JUDICIAL EVIDENCE TO SUPPORT ITS DECISION. THAT WAS THE FIRST ERROR, BUT THEN THE DISTRICT COURT COMPOUNDED THAT ERROR BY DIRECTING THE CIRCUIT COURT TO DIRECT THE COUNTY COMMISSION TO APPROVE THE PLATED ISSUE, AND THAT WAS IN CLEAR CONFLICT WITH TAMIAMI TRAIL AND 50 YEARS OF ISSUE IN THAT CASE.

IS THERE ANYTHING IN THE CIRCUIT COURT AS TO WHETHER THIS WAS A QUASI JUDICIAL DECISION OR A LEGISLATIVE DECISION, BY REASON OF DIDN'T THE TRIAL JUDGE MAKE SOME STATEMENT THAT THIS WAS --

ABSOLUTELY. I DON'T THINK THERE WAS CONFUSION IN THE CIRCUIT COURT. THE CIRCUIT COURT EXPRESSLY DECIDED THAT THE DECISION THAT WAS BEING MADE BAY THE COUNTY COMMISSION WAS A LEGISLATIVE DECISION. ACTUALLY THE CIRCUIT COURT DECIDED ON SEVERAL GROUNDS IN THE COUNTY'S FAVOR, BUT ONE OF WHICH WAS THAT THE DECISION BEING MADE BY THE COMMISSION AT THIS TIME WAS LEGISLATIVE INNATE, AND THEREFORE --

THERE WOULDN'T BE CERSCIORARY IN THAT.

EXACTLY AND THAT WAS THE FINDING OF THIS COURT IN THAT. THIS TERMS 6 THE REMEDY, JUSTICE -- OF THE REMEDY, JUSTICE WELLS, THE CIRCUIT COURT WASN'T EVEN LOOKING AT THE APPEAL OF THE MANDAMUS ACTION. IT WAS DENIED BOTH ON THE MERITS AND AS A MARTYR OF LAW THE CIRCUIT COURT FOUND IT WASN'T AVAILABLE. SO THE DISTRICT COURT OF APPEAL, EVEN IF SE -- CERIORARY AND THE REMEDIES PROVIDED THERE IN, BUT WE HAVE ASKED YOU, HERE, TO, ALSO, LOOK AT ALTERNATIVE WHETHER CERSCIORARY IN THE FIRST INCIDENCE, AS THE DISTRICT COURT OF APPEAL FOUND, AND THE PLAN PLAT AND -- AND THE PLAT APPLICATION WAS LABELED JUDICIAL. AND AS TO WHAT TYPE OF DECISION WAS BEING MADE HERE ON THIS PLAT APPLICATION --

WHAT I AM INTERESTED IN IS, FIRST, WHAT IS THE COUNTY'S POSITION ON WHETHER THIS WAS A U.S. AM CASE OR A SNYDER CASE?

EXACTLY AND OUR POSITION WAS THAT THIS WAS MORE AKIN TO USAM, AND FOR THIS REASON. YOU HAVE TO LOOK AT WHAT HAPPENED HERE. WHAT THIS G.B.V. HAD WAS FIVE UNITS AN ACRE AND THEY WANTED TO GET TO TEN, AND THEY CHOSE THE PROCESS BY HOW THEY WERE GOING TO GET THERE, SO THEY CAME TO THE COUNTY COMMISSION AND SAID PLEASE GIVE WAS LAND USE PLAN TO TEN UNITS AN ACRE AND THE COUNTY COMMISSION SAID ABSOLUTELY NOT, AND BY THE WAY THE DISTRICT COURT OPINION SAID AT THAT TIME STAFF PREPAREDED APPROVAL. STAFF DID NOT PREPARED APPROVAL AT THAT POINT, BECAUSE STAFF SAID IT WOULD CREATE AN INCOMPATIBLE DENSITY IN THE AREA. SO THE DISTRICT COURT SAID, NO, WE ARE NOT GOING

TO GIVE YOU TEN UNITS AN ACRE, AND AFTER MUCH DISCUSSION AND WAIVER BY THE COUNSEL THAT IT WOULD NOT SEEK FLEXIBILITY, THE BOARD GRANTED SIX UNITS AN ACRE AND SAID WE WILL GIVE YOU SIX UNITS AN ACRE ON THIS PROPERTY, AND IF THERE IS ANY DOUBT ABOUT THAT, G.B.V. SAID I KNOW YOU DENIED ME TEN. I KNOW YOU GAVE ME SIX, BUT PLEASE GIVE ME FLEXIBILITY -- FLEXIBILITY TO COME BACK AND SEEK TO YOU TO GO BACK TO SIX AN ACRE WITHIN SIX MONTHS.

LET ME SEE IF I CAN GET THIS IN CONTEXT. THERE WERE SEVERAL DECISIONS MADE HERE. THE FIRST WAS MADE BY THE CITY AGREED TO GO AHEAD AND TRANSMIT THE PROPOSAL.

THAT WAS ACTUALLY BY THE COUNTY.

NOW, THAT, DO YOU AGREE THAT THAT WAS LEGISLATIVE?

ABSOLUTELY.

THERE WAS ANOTHER DECISION MADE ON MAY 1, WHERE THE CITY AMENDED THE PLAT.

THE COUNTY.

THE COUNTY AMENDED IT. DO YOU AGREE THAT THAT IS LEGISLATIVE?

ABSOLUTELY.

THERE WAS A THIRD DECISION MADE RELATIVE TO THE APPROVAL OF THE PLAT. DO YOU AGREE THAT THAT IS ADMINISTRATIVE AND QUASI?

NO. NO. I DON'T.

JUDD SNIRBL.

NO, I DON'T, AND HERE IS -- AND JUDICIAL?

NO, I DON'T, AND HERE IS WHY, JUSTICE SHAW. WE ARE TAKING THE POSITION THAT YOU HAVE TO LOOK AT THE NATURE OF THE BOARD'S DECISION, RATHER THAN JUST SAYING THIS WAS A PLAT APPLICATION. THIS INVOLVED CONSIDERATIONS THAT WERE PROSPECTIVE AND FORWARD THINKING, BECAUSE IT INHERENTLY INVOLVED THE LAND USE PLAN AMENDMENT THAT TOOK PLACE PREVIOUSLY BY THE COUNTY, WHEN THE COUNTY GAVE THE LAND USE PLAN AMENDMENT, IT SAID WE WILL DO THIS. WE WILL GIVE YOU THE LAND USE PLAN AMENDMENT, UNDER THE IMPRESSION, AND YOU CAN CALL IT A MISUNDERSTANDING OR A MISREPRESENTATION, BUT THEY WERE UNDER THE IMPRESSION THERE WOULD BE NO FLEXIBILITY, SO --

WELL, IF THIS, THIS, THIS AND THIS IS DONE, THE PLAT IS APPROVED.

BUT IF THE PLATEAU-.

IT IS ADMINISTRATIVE. YOU -- BUT IF THE PLAT --

IT IS ADMINISTRATIVE. YOU DO THE URI'S AND CROSS YOUR T'S AND THE -- YOU DOT YOUR I'S AND YOU CROSS YOUR T'S AND THE PLAT IS APPROVED.

IT WASN'T JUST A PLAT APPLICATION, THE LAST HEARING WE ARE TALKING ABOUT. IT WAS A PLAT APPLICATION THAT EXPRESSLY ASKED THIS COMMISSION TO COUNTERMANNED AN EARLIER LEGISLATIVE DETERMINATION THAT HAD BEEN MADE TO GIVE THEM SIX UNITS AN ACRE. G.B.V. DIDN'T COME IN AT THE LAST HEARING AND ASK FOR TEN UNITS AN ACRE -- I AM SORRY. NINE

UNITS AN ACRE. THEY DIDN'T JUST SAY WE HAVE FIVE. WE HAVE GOT FOUR FLEXIBILITY UNITS FROM THE CITY OF COCONUT CREEK, AFTER TELLING THE BOARD WE WOULD DO THIS AND RUNNING TO THE CITY TO GET WHAT THEY WANTED. THEY DIDN'T ASK FOR NINE. THEY ASKED FOR THE PLAT TO BE APPROVED AT TEN. THAT INVOLVED THE LAND USE PLAN, THE ONE UNIT AN ACRE THAT THIS COMMISSION GAVE TO G.B.V., THAT THERE WOULD BE NO FLEXIBILITY AFTERWARD, BASED ON THE REPRESENTATIONS LAID BY -- REPRESENTATIONS MADE BY G.B.V.'S COUNSEL AND THE LAND USE PLANT ASKED THE COUNSEL TO COUNTERMANNED AN EARLIER DETERMINATION.

STOP RIGHT THERE FOR A MINUTE, BECAUSE YOU ARE COVERING A LOT OF TERRITORY IN A HURRY.

YES, SIR.

LET ME COME BACK. WOULD YOU AGREE THAT AN ORDINARY PLAT APPLICATION, UNDER OUR CASE LAW, WOULD BE GOVERNED BY THE QUASI JUDICIAL STANDARD? THAT IS OF COMING IN AND SEEKING A PLAT, UNDER EXISTING ZONING AND DENSITY, PERMISSIBLE, JUST GETTING THE LAND PLATED, BASED ON SORT OF AN EXISTING RIGHT, UNDER THE ZONING AND DENSITY THAT, ORDINARILY A PLAT APPLICATION WOULD BE UNDER THE QUASI JUDICIAL STANDARD?

ORLANDO NEARLY YES, BUT I THINK THAT, JUST LIKE IN THE CORN CASE, YOU HAVE TO LOOK AT WHAT TYPE OF DECISION WAS ACTUALLY MADE BY THE BOARD AT THE TIME.

I AM TRYING TO WORK OUR WAY THROUGH THIS.

OKAY.

IF YOU TAKE THAT, AT LEAST FOR THE PURPOSES OF MY QUESTION, THE RULE, WITH REFERENCE TO WHAT I, FOR LACK OF A BETTER PHRASE, CALL AN ORDINARY PLAT APPLICATION, WHAT DISTINGUISHS THIS CASE? IN OTHER WORDS WHAT WAS GOING ON IN THIS CASE THAT SAYS THIS WASN'T AN ORDINARY PLAT APPLICATION AND THAT WE SHOULD APPLY, THEN, A LEGISLATIVE RULE OR SOME OTHER RULE TO THIS?

THREE THINGS, ONE OF WHICH, AS I HAVE ALREADY DISCUSSED THAT, THIS INHERENTLY INVOLVED THE LAND USE AMENDMENT TO THE BROWARD COUNTY'S COMPREHENSIVE PLAN. THIS INVOLVED THAT UNIT PER ACRE THAT THE COMMISSION DAVE, BACK IN MAY OF 1996, WHERE THE COMMISSION DID SO UNDER THE IMPRESSION, BASED ON THE REPRESENTATIONS THERE WOULD BE NO FURTHER FLEXIBILITY, SO WHEN THEY MADE THE DECISION TO APPROVE THIS PLAT OR NOT, THEY WOULD, IF APPROVING IT AT TEN, BE COUNTERMANEDING -- COUNTERMANNEDING THEIR EARLIER LEGISLATIVE DETERMINATION.

THE EARLIER LEGISLATIVE DETERMINATION HAD BEEN TO APPROVE IT AT SNITION.

AT -- AT SIX?

BASED ON NO FURTHER FLEXIBILITY. BY THE APPLICANT.

WHAT IS IT IN THE RECORD THAT DEMONSTRATES THAT AFFIRMATIVELY?

TWO THINGS. FIRST OF ALL THE CIRCUIT COURT DID FIND THAT, SPECIFICALLY IN ITS ORDER, AND IT FOUND THAT, BASED ON THE FACT THAT COUNSEL FOR G.B.V. SAID, TO THE COMMISSION, AT THE HEARING, WE HAVE WAIVED IT. WE HAVE WAIVED. THE COMMISSION VOTED TO DENY AT TEN UNITS AN ACRE THEN AT SIX UNITS AN ACRE, AND THEN AT PAGE 70, IN 1996, AT PAGE 70 IN THE TRANSCRIPT, HE SAYS TO THE COMMISSION PLEASE GIVE ME SIX UNITS AN ACRE, SO I CAN COME BACK TO YOU, AGAIN, TO YOU, COUNTY COMMISSION, SEEKING A FURTHER LAND USE PLAN

COMMITMENT, LEADING HIM TO BELIEVE THAT HE WASN'T GOING TO GO TO THE CITY AND GET THEM TO BE WHAT WASN'T GOING TO BE. THE ONE THING THAT IS CLEAR WHEN YOU LOOK AT THIS RECORD IS THAT THE COUNTY WOULD HAVE DONE NOTHING TO ASSIST THIS APPLICANT TO GET TO TEN UNITS AN ACRE, AND WE BELIEVE THAT IS THE MOST IMPORTANT POINT AS TO WHY THIS WASN'T THE NARCO SITUATION. THERE WAS NO STIPULATION BY THE PARTIES THAT ALL OF THE REQUIREMENTS HAD BEEN MET, AND IT IS MORE --.

THE COUNTY FILED A WRITTEN RESPONSE TO THE APPLICATION FOR MAN DAME NEWS IS.

THE COUNTY FILED -- YES. IN THE CIRCUIT COURT WE DID.

WHAT WAS THE ESSENCE OF THE WRITTEN RESPONSE?

IN THE CIRCUIT COURT? TO THE APPLICATION FOR MANDAMUS. IT ADDRESSED, ACTUALLY, SEVERAL THINGS, ONE THE MERITS, WHICH INCORPORATED ALL OF THE CERCIORARY ELEMENTS, WHICH IS ONE OF THINGS THAT WE HAVE GONE INTO. ON THE MANDAMUS, ON THE MERITS AND THE MATTER OF LAW, MANDAMUS ISN'T AVAILABLE, BECAUSE THERE IS ANOTHER ALTERNATIVE REMEDY.

GOOD IT CONTAIN THE ASSERTIONS THAT YOU ARE MAKING, NOW, WITH REFERENCE TO THE MANDAMANT, WITH REFERENCE TO THE FLEX?

I THINK THAT IS WHAT THE CIRCUIT COURT SET OUT IN HER ORDER?

IN THE RESPONSE?

YES. NOT ONLY PART OF THE RESPONSE BUT, ALSO, PART OF THE CIRCUIT COURT'S DETERMINATION AS TO WHY CERCIORARY -- WELL, SHE FOUND ON SEVERAL DIFFERENT BASIS IN THE CIRCUIT COURT A, ONE ONE OF THEM WAS THAT CERCIORARY WASN'T APPROPRIATE AND SHE, ALSO, FOUND MANDAMUS WASN'T APPROPRIATE FOR THAT REASON. I AM NOT SURE I AM UNDERSTANDING YOUR QUESTION, AND I AM HOPING I HAVE ADDRESSED IT.

JUSTICE QUINCE HAD A QUESTION.

WHEN THEY HAVE ALLEGED ALLOWED THE G.B.V. TO -- WHEN THEY HAVE ALLOWED THE GBV TO HAVE SIX UNITS PER ACRE DRTION THAT CHANGE THE COMPREHENSIVE PLAN, ITSELF?

YES. IN MAY OF 1996, AND THE QUESTION WAS THEY AMENDED THE COMPREHENSIVE PLAN TO GIVE THEM SIX UNITS AN ACRE.

THAT IS WHAT YOU CONTEND. SINCE THEY HAVE ACTUALLY CHANGED THE COMPREHENSIVE PLAN THAT, IS WHAT MADE THIS LEGISLATIVE VERSUS QUASI JUDICIAL?

NO QUESTION, BACK IN MAY OF 1996. I THINK EVEN G.B.V. WOULD AGREE THAT THAT WAS A LEGISLATIVE DETERMINATION. THE NEXT HEARING, WHEN THE PLAT APPLICATION CAME BEFORE THE BOARD OF COUNTY COMMISSION, ABSOLUTELY INVOLVED THAT LAND USE PLAN AMENDMENT. A CONDITION OF WHICH WAS WE WILL GIVE YOU SIX, UNDER THE AGREEMENT THAT YOU WON'T GO AND FLEX, SO IF THE COMMISSION HAD MADE THE DETERMINATION, IN NOVEMBER OF 1996, TO APPROVE THE PLAT, THEY WOULD, IN ESSENCE, BE COUNTERMANNEDING WHAT THEY DECIDED A FEW MONTHS PRIOR, WHICH WAS WE WILL ONLY GIVE YOU SIX IF YOU WON'T GO FLEX, BECAUSE THEY ONLY WANTED TO GO TEN UNITS AN ACRE. THE LAND USE COMMISSION BELIEVED THAT THE DENSITIES WERE INCOMPATIBLE.

I AM TRYING TO DETERMINE WHETHER OR NOT THE SECOND APPEARANCE BEFORE THE COMMISSION WAS ACTUALLY A REQUEST TO CHANGE THE COMPREHENSIVE PLAN OR WHETHER

IT WAS SIMPLY A REQUEST TO ALLOW THIS PARTICULAR PLAT TO HAVE TEN UNITS PER ACRE, AS OPPOSED TO CHANGING THE ENTIRE PLAN.

THAT WAS THE ISSUE, AND THEY CAME IN SAYING PLEASE GIVE US A PLAT APPLICATION, WANTING TO IGNORE THE CONDITION UPON WHICH THE LAND USE AMENDMENT HAD BEEN MADE, SO IN ESSENCE THEY WERE ASKING THE COMMISSION, IN NOVEMBER OF 1996, TO SAY, OKAY, WE WILL LEGISLATIVELY, NOW, REMOVE THIS CONDITION TO THE UNIT THAT WE GAVE YOU, AND THAT WOULD BE A LEGISLATIVE DETERMINATION, AND THAT IS WHY, WHEN THEY CAME IN ASKING FOR TEN UNITS AN ACRE, THIS WAS A LEGISLATIVE DECISION. IT INVOLVED THE COMPREHENSIVE PLAN, AND THE LEGISLATIVE DETERMINATION.

EVEN THOUGH THEY DIDN'T ACTUALLY ASK TO CHANGE THE COMPREHENSIVE PLAN, AS I UNDERSTAND IT. WHAT THEY WERE ASKING FOR WOULD HAVE CHANGED THE COMPREHENSIVE PLAN.

APPROVING THIS PLAT, NO QUESTION, WOULD HAVE BEEN A CHANGE IN THE LEGISLATIVE DETERMINATION PREVIOUSLY MADE BY THE COUNTY COMMISSION, AND THIS --

I THINK JUSTICE QUINCE IS GETTING AT, ACTUALLY, THE PLAN WAS CHANGED, MAY 1, TO THE SIX UNITS, WASN'T IT?

YES, IT WAS.

SO IT HAD ALREADY BEEN CHANGED.

IT HAD BEEN CHANGED, WITH THE CONDITION THAT -- ON NOVEMBER 12, APPROVING THE PLAT WAS NOT CHANGED IN THE COMPREHENSIVE PLAN.

BUT BACK IN MAY OF 1996, WHEN THE LAND USE PLAN AMENDMENT WAS DONE, IT WAS DONE WITH THE CONDITION THAT NO FURTHER FLEX WOULD BE HAD. THE APPLICANT ASKED FOR THAT BIRD IN HAND. PLEASE GIVE ME SIX UNITS AN ACRE SO I CAN COME BACK TO YOU. WHEN IT CAME BACK IN NOVEMBER OF 1996, TO THIS COMMISSION FOR PLAT APPLICATION, THEY WOULD HAVE BEEN DOING THE EXACT OP SID OF WHAT -- OPPOSITE OF WHAT THE CONDITION WAS, THE LEGISLATIVE DETERMINATION WAS, SEVERAL MONTHS PRIOR. AND FOR THAT REASON --

BECAUSE THEY OBTAINED THE FLEX FROM THE CITY, AS OPPOSED TO DEALING WITH THE COUNTY ON FOR THAT. THAT IS WHAT MAKES THAT CHANGE?

WELL, I AM SORRY. I DON'T UNDERSTAND THE QUESTION.

IT APPEARS THAT THE PLAN HAD BEEN APPROVED AS JUSTICE SHAW HAD INDICATED, IN MAY, AND, REALLY, WHAT YOU ARE ARGUING IS, BECAUSE THEY HAD GONE TO THE CITY TO OBTAIN THE FLEX UNITS, THIS AMOUNTED TO AND WAS TANTAMOUNT TO A CHANGE IN THE PLAN, BECAUSE THEY HAD ALREADY OBTAINED THOSE FLEX UNITS?

BECAUSE THEY WERE ASKING THE COMMISSION TO FORGET ABOUT THE CONDITION THAT WAS PLACED ON GIVING THEM SIX UNITS AN ACRE. AGAIN, THEY GOT FIVE TO SIX -- EXERCISE -- EXACTLY.

BECAUSE THEY HAD GONE TO THE CITY TO OBTAIN THE FLEX UNITS, THERE FOR TRANSFORMS IT, IN YOUR VIEW, INTO LEGISLATIVE.

WE MIGHT HAVE A DIFFERENT SITUATION HERE, IF THEY HAD COME BACK AND SAID PLEASE GIVE US NINE UNITS AN ACRE. THAT WASN'T THE REQUEST. THE REQUEST WAS, OKAY, NOW GIVE US TEN. THEY DID EXACTLY WHAT THEY LED THE COMMISSION TO BELIEVE WOULD NOT BE DONE.

THAT WOULD BE A LEGISLATIVE DETERMINATION.

COUNSEL. JUSTICE PARIENTE.

I HAVE A MORE BASIC QUESTION. FOR THE LAST 20 MINUTES OR 15 MINUTES, WE HAVE BEEN ARGUING WHETHER THIS IS QUASI JUDICIAL OR LEGISLATIVE. THAT DETERMINATION AS TO WHETHER WE THINK IT IS ONE OR THE OTHER GOVERNS THE FOLLOWING: HOW THE PROCEDURES ARE SUPPOSED TO TAKE PLACE AT THE CITY OR COUNTY COMMISSION LEVEL, WHETHER THE COUNTY ATTORNEY OR CITY ATTORNEY HAS CONFLICTS OF INTEREST, WHETHER THERE ARE DUE PROCESS RECORDED, WHETHER THERE SHOULD BE, LIKE IN HERE, AN ESTOPPEL CLAIM, AFFIRMATIVE DEFENSES. WE HAVE NO WRITTEN ORDER. WE HAVE NOTHING AT THE COMMISSION LEVEL TO SHOW WHETHER THIS IS LEGISLATIVE OR QUASI JUDICIAL, YET WE EXPECT THE PERSON WHO IS HARMED FROM THIS TO, THEN, FIGURE OUT AND GO INTO THE CIRCUIT COURT, ON EITHER AN INJUNCTION OR A DECLARATORY JUDGMENT ACTION THAT HAS NO TIME LIMIT OR A 30-DAY CERT REVIEW, AND THEN THE TRIAL JUDGE, WHO HEARS ONLY A SINGLE TRIAL JUDGE, WHO EITHER DOESN'T KNOW WHETHER HE OR SHE IS SITTING AS AN APPELLATE REVIEWER, IF IT ISS QUASI JUDICIAL OR A DE NOVO REVIEWER, IF IT IS A LEGISLATIVE, AND WHAT TO UNDERSTAND THERE, AND THEN THE APPELLATE COURT IS SUPPOSED TO, IF IT IS, ONE, THEY ARE GOING TO LOOK AT IT, AS THEY DO LOOK AT IT AS AN APPELLATE COURT, IF IT IS LEGISLATIVE, BUT IF IT QUASI JUDICIAL, THEN THEY ONLY GET THE HAINES REVIEW, WHICH IS ESSENTIALLY ALMOST NO REVIEW. CAN YOU TELL ME, FROM A PRACTICAL POINT OF VIEW, IF THERE IS SOMETHING WRONG WITH WHAT WE HAVE SET UP IN SNYDER, IF THIS CASE, WHICH MUST BE GOING ON ALL THE TIME, CAN BE THAT KOMPL INDICATED. -- THAT COMPLICATED.

I THINK IT IS AN UNUSUAL SITUATION, AND BUT FOR THIS QUIRK OF FLEX, WE WOULDN'T BE IN THIS SITUATION. BUT FIRST OF ALL, I THINK THE SAME CONSIDERATIONS WERE DISCUSSED IN USUM, WHERE ONE TYPE OF HEARING WAS GIVEN AND THEN IT WAS DETERMINED THAT ANOTHER TYPE OF HEARING WAS ACTUALLY THE PROCEEDING, AND I THINK YOU HAVE TO GO BACK AND LOOK AT WHAT HAPPENED HERE. IF THE COUNTY COMMISSION HAD --

SO YOU SAY THAT THIS DICHOTOMY THAT WE HAVE CREATED, BETWEEN LEGISLATIVE OR QUASI JUDICIAL IS ONE THAT COMMISSIONS KNOW THAT THEY ARE ACTING LEGISLATIVE OR QUASI JUDICIAL WHEN THEY ARE ACTING AND THAT THE COUNTY OR CITY ATTORNEY KNOWS TO TELL THEM TO DO THIS, BECAUSE IT IS QUASI JUDICIAL, NONE OF THAT WAS DONE IN THIS CASE, CORRECT?

CORRECT.

SO YOU THINK IT HAS CLEARED EVERYBODY THAT THEY KNOW, WHEN THEY ARE WEARING WHAT HAT, WHAT THEY ARE SUPPOSED TO DO AT THE ADMINISTRATIVE LEVEL?

I THINK THERE WAS QUITE A BIT OF CONFUSION AFTER SNYDER, BUT, AGAIN, I THINK THAT SOMETIMES CONSIDERATIONS COMING UP DURING A HEARING AND DETERMINATIONS THAT ARE MADE THAT ARE NOT NECESSARILY QUASI JUDICIAL. FOR INSTANCE --

WE DON'T EVEN KNOW -- THERE WASN'T EVEN A WRITTEN ORDER IN THIS CASE, CORRECT? THE CITY DIDN'T REDUCE TO WRITING WHAT IT WAS DOING AND WHETHER IT WAS DOING IT BASED ON AN ESTOPPEL SITUATION. THERE IS NOTHING IN IT TO HELP GUIDE THE CIRCUIT COURT OR THE APPELLATE COURT.

THAT IS CORRECT, BUT I DON'T THINK THAT CAN PREVENT THE CIRCUIT COURT FROM LOOKING AT THE DECISION THAT WAS MADE, JUST LIKE IN CORN, WHEN A COMMISSION DECIDED, WHEN SOMETHING CAME BEFORE IT, TO SUDDEN EBL -- TO SUDDENLY ENACT A ZONING ORDINANCE TO TRY AND GET AROUND IT. ON REVIEW THAT, DECISION WAS REVIEWED LEGISLATIVELY, BECAUSE IT WAS A LEGISLATIVE ACT, AND THAT IS WHY WE ARE ASKING THIS COURT TO LOOK AT THE

NATURE OF THE DECISION AND WHETHER IT WAS THE NATURE OF THE BOARD. I WOULD LIKE TO RESERVE MY REMAINING TIME.

YOU DON'T HAVE MUCH TIME LEFT. MR. BRADY.

MAY IT PLEASE THE COURT. MY NAME IS JIM BRADY, AND I REPRESENT THE RESPONDENTS IN THIS CASE. LET ME TELL THAT YOU IT IS BEYOND PALE THAT THE APPLICATION PENDING BEFORE THE COUNTY COMMISSION FOR PLAT APPROVAL WAS A QUASI JUDD IRNL PROCEEDING. WE ONLY -- JUDICIAL PROCEEDING. WE ONLY HAVE TO LOOK AT THE COUNTY ATTORNEY'S PRONOUNCEMENTS AT THAT HEARING, WHERE HE TOLD THE COUNTY COMMISSION, YOU CANNOT DO WHAT YOU ARE ABOUT TO DO. WE ONLY HAVE TLOO AT THE COMMISSION -- WE ONLY HAVE TO LOOK AT THE COMMISSIONER'S RESPONSES, PARTICULARLY COMMISSIONER RODSTROM, ON DECEMBER 17, WHERE HE SAID, WITHOUT EQUIVOCATION, IF WE DO WHAT WE ARE ABOUT TO DO, WE HAVE NO CHANCE IN COURT AT ALL. MR. COPELAND, THE COUNTY ATTORNEY HAS TOLD US THAT. HE TURNED TO MR. HOURHAHN, THE STAFF PERSON, AND HE ASKED MR. HOURHAHN, HAS THE APPLICANT MET ALL OF THE CRITERIA UNDER THE REGULATIONS? MR. HOURHAHN'S RESPONSE WAS YES. AT THAT POINT THERE IS NO EQUIVOCATION. THE APPLICANT IS ABSOLUTELY ENTITLED -- ABSOLUTELY ENTITLED TO AN APPROVAL OF THE PLAT. THE RINLT -- THE INTEREST TO BE --.

DOES THIS ARGUMENT MEAN THAT THIS WAS NOT A REQUEST TO CHANGE THE COMPREHENSIVE PLAN?

PRECISELY, JUSTICE QUINCE. THE COUNTY WANTS TO PUT ALL OF THESE ISSUES, THESE LAND USE ISSUES, IN THE CONTEXT OF COMING TO THEM AND ASKING FOR THE KING'S OR QUEEN'S FAVOR. THAT IS NOT WHAT WE ARE ABOUT. THIS IS A CONSTITUTIONAL ISSUE. THIS IS A PROFOUND CONSTITUTIONAL ISSUE, BOTH THE CONSTITUTION OF THIS STATE AND OF THE UNITED STATES, AND THE INTEREST TO BE PROTECTED HERE IS A RIGHT OF A LAND OWNER TO BE FREE OF THE TYRANNY OF GOVERNMENT AND TO BE ABLE TO EXPLOIT HIS LAND OWNERSHIP RIGHTS, SUBJECT ONLY TO THE REGULATIONS WHICH ARE DULY PASSED AND NECESSARY TO PROTECT THE NEIGHBOR'S RIGHTS, AND WE DON'T HAVE ANY OF THAT HERE. WHAT WE HAVE HAD IS ABSOLUTE COMPLIANCE WITH THE LAND USE REGULATIONS.

WAS THERE AN AGREEMENT, AT THE TIME THAT THE COUNTY AGREED TO SIX, FIRST OF ALL, WAS THE -- WAS THE APPROVAL OF THE SIX UNITS AN AMEND TO THE LAND USE PLAN?

NO. AND LET ME TELL YOU WHY I CAN SAY THAT BUT WHY I THINK, HAVING SAID IT, IT IS NOT RELEVANT TO THE PROCEEDINGS. AND WE HAVE DISCUSSED IT, ALREADY, FROM THE COUNTY'S ARGUMENT. THERE WERE THREE DISTINCT PROCESSES HERE. THE FIRST WAS A CHANGE TO THE LAND USE PLAN AT THE BROWARD COUNTY LEVEL. MR. WAYSTROM, THE ATTORNEY REPRESENT MIGCLIENTS, WAS UNABLE TO SELL THAT POLITICAL DEAL TO THE COUNTY COMMISSION, AND WHY IS IT A POLITICAL DEAL, AND THERE IS NOTHING WRONG WITH THAT EX-PLEINGS PRESSION, IS THAT -- WITH THAT EXPRESSION, IS THAT BECAUSE IT WAS A PURE LEGISLATIVE PROCESS.

LET ME UNDERSTAND THE ORIGINAL REQUEST WAS TO CHANGE THE DENSITY FROM FIVE UNITS TO TEN?

CORRECT, MADAM JUSTICE.

SO WHEN WE GET TO -- I WILL JUST WAIT UNTIL YOU FINISH.

AND MR. WAYSTROM WANTED TO SELL A POLITICAL DEAL. I WANT TEN UNITS AN ACRE APPLIED TO THIS PROPERTY AT THE COUNTY LAND USE PLAN LEVEL. THE COUNTY COMMISSION REFUSED TO DO THAT. THEY GAVE SIX. AT SOME POINT IN THE --

BY GIVING SIX, WASN'T THAT A CHANGE TO THE LAND USE PLAN?

IT WAS, INDEED.

I THOUGHT YOU HAD SAID EARLIER IT WAS NOT.

NO. NO. I THINK I DID NOT SAY IT. IF I DID, I MISSPOKE MYSELF. IN FACT, THAT WAS THE CHANGE TO THE LAND USE PLAN, AND IT HAD FINALITY AT THAT POINT. THE SECOND STEP DID NOT INVOLVE THE COUNTY COMMISSION. MR. WAYSTROM WENT TO COCONUT CREEK, AND COCONUT CREEK, EXERCISEING ITS PROVINCE AND ITS PREROGATIVE, PROVIDED FOUR FLEX UNITS PER ACRE. THAT PROCESS, TOO --

BUT WASN'T THE DEAL TO GO FROM FIVE TO SIX, BASED UPON THE FACT THAT THEY WOULD NOT -- HE WOULD NOT GO AND GET TEN? I MEAN EVERYBODY KNEW HE COULD DO THAT. RIGHT?

YOU HAVE ASKED TWO QUESTION. LET ME ANSWER THE FIRST ONE. WAS THERE AN AGREEMENT? THE ANSWER WAS NO. THE ONLY THING WE KNOW FROM THEORD IS THAT BILL WAYSTROM SAID THAT, IF HE GOT TEN UNITS AN ACRE, TOTAL TENSITY THAT THE APPLICANT WANTED, IN A LAND USE PLAN CONTEXT, THAT HE WOULD NOT FLEX THE PROPERTY. HE DID NOT GET TEN. THERE WAS NO AGREEMENT MADE. BUT IN ANY EVENT, THAT PROCESS CAME TO FINALITY WITH THE CHANGE TO THE LAND USE PLAN AT SIX. THE NEXT PROCESS, AT THE COCONUT CREEK LEVEL, WHICH WAS IN TOTAL CONFORMANCE WITH THE CERTIFIED LAND USE PLAN, WHICH, OF COURSE, IS THE MEASURING OF THE CITY AND THE COUNTY PLAN, THAT CAME TO FINALITY AS WELL. THERE WERE SIX -- THERE WERE FOUR FLEX UNITS GRANTED. THE NEXT PROCESS, WHICH IS A WHOLLY DISTINCT PROCESS, IS THE APPLICATION FOR PLAT APPROVAL. IT IS NOT A REQUEST. YOU MAKE YOUR APPLICATION. YOU COME IN A QUASI JUDICIAL CONTEXT, INVOLVED WITH ALL OF THE LACINGS BEFORE AND AFTER, AND YOU PROVE, BY COMPETENT SUBSTANTIAL EVIDENCE, THAT YOU HAVE MET ALL OF THE OBJECTIVE CITE EAR YEAH. THAT IS NARCO AND THE SAME HAVING TO DO WITH THE SITE PLAN PARK OF COMMERCE.

COME BACK TO YOUR POSITION THAT THERE IS NO NOT ONE SHRED OF EVIDENCE IN THE RECORD HERE THAT THERE WAS ANY AGREEMENT BY YOUR CLIENT THAT, AT THE TIME THE COUNTY GRANTED THE CHANGE IN THE LAND USE PLAN, UP TO SIX, TO NOT SEEK FLEX AT THE CITY LEVEL. THERE IS NOT ONE SHRED OF EVIDENCE TO SUPPORT THAT.

THERE IS NO RECORD BASIS FOR THERE HAVING BEEN AN AGREEMENT REACHED THAT ABOUT WAYSTROM'S OBSERVATION BE -- I THINK IT WAS A NOD OF THE HEAD OBSERVATION THAT, IF HE GOT TEN UNITS, WHICH HE REQUESTED, THAT HE WOULD NOT GO BACK AND FLEX IT OUT.

THE MOST THAT THE RECORD WOULD REFLECT IS THAT, IF YOU GRANT ME THE TEN, I WON'T GO BACK TO THE CITY FOR FLEX.

THAT IS THE MOST YOU CAN TAKE FROM THE RECORD, AND INDEED, THE -- MY CLIENT SUGGESTS THAT DESCRIBING THAT AS AN AGREEMENT IS INAPPROPRIATE TO THE CONCEPT OF LAND USE PLANNING. NOW, IT MAY HAVE SOME --

IF YOU HAVE BEEN GRANTED THE TEN, WHY WOULD YOU HAVE NEEDED THE FLEX? I MEAN, IF -- I GUESS I AM HAVING A HARD TIME, HERE, UNDERSTANDING WHY AN AGREEMENT WOULD BE REACHED OR EVEN A TACIT AGREEMENT THAT, IF YOU GIVE ME TEN, I WON'T FLEX, WHEN TEN IS WHAT YOU WANTED, AND YOU WOULD ONLY NEED THE FLEX IF YOU GOT LESS THAN TEN?

I THINK THE JUSTICES'S CONCLUSION IS CORRECT WITHIN THE FOUR CORNERS OF THE RECORD. IF WE GOT TEN, WE WOULDN'T NEED THE FLEX, BECAUSE WE GOT WHAT WE POLITICALLY SOUGHT. WE DIDN'T GET THAT. WE WENT AND GOT OUR TEN THROUGH ANOTHER PERFECTLY ABOVE-BOARD LEGITIMATE WAY. I WILL TELL YOU, IN THE LAND USE PROCESS, HOWEVER, THAT SO

LONG AS THE ULTIMATE DENSITY DOES NOT EXCEED THAT WHICH IS AVAILABLE UNDER THE LAND USE PLAN, AND LET US SAY IT WAS 15 UNITS, THEN CONCEIVABLY WE COULD HAVE GOTTEN THE TEN AND GONE OVER TO THE CITY AND GOTTEN FIVE MORE, IF THE CITY WAS PLEASED TO DO THAT. THEN WE WOULD HAVE ACHIEVED 15, STILL WITHIN THE LAND USE PLAN, IF THAT WERE ALLOWED. OF COURSE IT WASN'T ALLOWED. THE RECORD REFLECTS THAT WE WERE ASKING FOR THE CHANGE TO TEN, WHICH WOULD HAVE MAXIMIZED IT. WE GOT UNDER TEN, AND THAT WAS AN INSURANCE, IF YOU WILL, THAT WE COULDN'T SOMEHOW GO BACK TO THE CITY OF COCONUT CREEK. BUT ALL OF THAT INVOLVEMENT THAT WE HAVE JUST GONE THROUGH, RELATIVE TO WHO SAID WHAT, WHEN AND WHERE AND WHAT NODZ OF THE HEAD OCCURRED, IS OUTSIDE THE SCOPE OF APPLICATION THAT WAS ULTIMATELY DETERMINED AND NOW BEFORE THIS GRAND COURT, AND THAT IS THE APPLICATION FOR PLAT APPROVAL. THERE IS ONE QUESTION TO BE ASKED. DID THE APPLICANT COMPLY WITH ALL OF THE OBJECTIVE STANDARDS PROMULGATED BY THE COUNTY? THE COUNTY'S ANSWER WAS YES. THE QUESTION STOPS AT THAT POINT. THE ISSUE OF -- I GUESS THERE ARE THREE ELEMENTS HERE. JURISDICTION, SCOPE, AND REMEDY. THE JURISDICTION ATTACHED BY VIRTUE OF THE CIRCUIT COURT, ATTACHED BY VIRTUE OF THE FACT THIS IS CLEARLY A QUASI JUDICIAL PROCESS, HOW DO WE KNOW THAT FROM THE RECORD, BECAUSE THE COUNTY SAID IT WAS A QUASI JUDICIAL PROCESS?

WE GO BACK TO WHEN SHE APPARENTLY GOT SIX. LET'S SAY THE COUNTY DENIED THAT LAND USE CHANGE, SO IT WAS LEFT AT FIVE. IS THAT CORRECT?

THAT'S CORRECT.

COULD YOU GO, THEN, WITH YOUR PLAT APPROVAL AND HAVE A PLAT APPROVAL OF TEN?

IF WE HAD GOTTEN FIVE FLEX UNITS FROM THE CITY OF COCONUT CREEK.

AS I UNDERSTAND IT --

THAT IS THE ONLY WAY WE COULD HAVE GOT THERE.

THE LAND USE PLAN THAT EXITED BEFORE THE COUNTY, IN MAY, MADE THE CHANGE, AND EVERYBODY HERE HAS TALKED ABOUT IT MAKING THE CHANGE UP TO SIX, BUT IF THEY HAD DENIED THAT REQUEST AND LEFT IT AT FIVE, UNDER THE COUNTY'S LAND USE PLAN, WOULD YOU BE IN THE SAME POSITION, WITH REFERENCE TO SEEKING PLAT APPROVAL FOR TEN?

NO. THE ANSWER IS NO. BECAUSE THE COUNTY HAS THE ULTIMATE AUTHORITY OF PLAT APPROVAL IN BROWARD COUNTY, AND THE NOTE ON THE FACE OF A PLAT IS REALLY A REGULATORY DEAL THAT GOES TO IMPACT FEES, BUT THE NOTE THAT WOULD HAVE BEEN ON THE PLAT WOULD HAVE BEEN CIRCUMSCRIBED BY THE FIVE FIVE-UNIT LAND-USE PLAN LIMITATION.

I GUESS MY QUESTION, THEN, IS TRYING TO BREAK DOWN THE ELEMENTS OF ALL OF THIS, IS THAT WHY, IF THE COUNTY NOW HAD IN PLACE A LAND USE PLAN THAT ONLY GAVE YOU FIVE, DO YOU AGREE THAT YOU COULD NOT, THEN, SEEK PLAT APPROVAL TO GET UP TO TEN, IF ALL THE COUNTY DID WAS MAKE A CHANGE TO GIVE YOU SIX, AND NOW HOW DO YOU GET TO TEN FROM SIX, WHEN YOU COULDN'T GET TO TEN FROM FIVE?

BECAUSE OF THE FLEX UNITS, AND I ANSWERED YOUR QUESTION BEFORE, BY SAYING, IF I WENT TO COCONUT CREEK AND GOTTEN MY FLEX UNITS, AND THAT IS THE WAY YOU DO IT, THAT IS INTERNAL TO THE PLAN.

LET ME ASK MY QUESTION AGAIN. IF YOU -- IN MAY, IF YOU HAD BEEN DENIED ANY CHANGE IN THE LAND USE PLAN, AND IT WAS LEFT AT FIVE, COULD YOU STILL, THEN, HAVE GONE TO THE CITY AND GOTTEN THE FLEX APPROVAL AND THEN COME BACK TO THE COUNTY AND GOTTEN

YOUR PLAT APPROVAL FOR TEN?

YES. WE WOULD HAVE BEEN IN THE SAME SITUATION THAT WE ARE TODAY. YES. THE FLEX CONCEPT IS NOT A CITY CITY-BORNE CONCEPT. IT IS IN THE BROWARD LAND USE PLAN --

YOU DIDN'T NEED TO GO TO THE COUNTY AND GET A LAND USE CHANGE IN MAY.

NO. BUT THEN THE QUESTION IS COULD WE HAVE GONE BACK TO THE CITY AND PREVAILED UPON THE CITY TO GIVE UP MORE OF ITS AVAILABLE FLEX UNITS? IT IS LIKE A BANK YOU DIP INTO, AND I SUPPOSE WE CAN INFER FROM THE RECORD THAT THE DECISION WAS WE DIDN'T WANT TO TRY TO HAVE THE CITY GIVE AWAY SOMETHING IT DIDN'T HAVE TO, IF WE COULD GET THE TEN. WE COULDN'T POLITICALLY SELL THAT DEAL. MR. WAYSTROM, THEN, WENT BACK AND GOT THE MINIMUM THAT HE COULD GET TO GET TO THE ULTIMATE VALUE OF THE LAND, WHICH WAS THE TEN, AND THEN WE CAME SEPARATE APPLICATION AND SAID, OKAY, NOW WE WANT TO PLAT. THE COUNTY, OF COURSE, IMPROPERLY, EVEN THOUGH WE MET ALL THE REGULATIONS, IMPOSEED UPON US A REGULATION THAT IS NOT WRITTEN DOWN.

SO YOU DIDN'T NEED THE COUNTY'S LAND USE CHANGE AT ALL, IN THIS SCENARIO, SO LONG AS YOU COULD GET THE CITY TO AGREE.

CORRECT.

OKAY.

BUT LET ME UNDERSTAND WHAT YOU ARE SAYING IS THAT THERE WAS NO ASSURANCE THAT THE CITY GIVE YOU FIVE. HUH A BETTER CHANCE OF GETTING FOUR FLEX UNITS. ISN'T THAT RIGHT?

YOU CAN INFER THAT FROM THE RECORD. THAT ANALYSIS IS NOT PART OF THE RECORD.

THAT IS SPECULATIVE, BUT THAT IS THE WAY IT WORKS IS THAT IT HELPED YOU TO GO FROM FIVE TO SIX, UNDER THE COUNTY, BECAUSE THAT MEANT YOU ONLY HAD TO GET FOUR FROM THE CITY, IF YOU WANTED TO GO TEN UNITS PER ACRE.

WITHIN THE CONSTRUCT, CITIES TYPICALLY DO NOT LIKE TO REACH INTO THEIR BANK OF FLEX UNITS AND SPEND THEIR FLEX UNITS WHERE THEY DON'T HAVE TO.

I GATHER THAT THESE FLEX UNITS, AT A PREMIUM, BECAUSE THE CITY IS SORT OF TAKING FROM PETER TO PAY TO PAUL. THEY ONLY HAVE A POOL, AND IF YOU GIVE THEM OVER ON THIS SIDE, IN THE GEOGRAPHIC AREA OF THE CITY, DON'T YOU HAVE TO TAKE THEM OUT ON SOME PLACE ELSE?

YOU RUN OUT. THEY ARE SPREAD OUT, THEORETICALLY, BUT, YES, YOU RUN OUT. IF YOU PUT THEM ALL OVER ON PARCEL A, YOU DON'T HAVE ANY IN PARCEL B.

RIGHT. YOU DON'T HAVE ANY ON PARCEL B, SO IT IS TAKING FROM PETER TO GIVE TO PAUL, IN EFFECT.

THAT IS AN APPROPRIATE VIEW.

SO THAT IS WHY THEY ARE AT SUCH A PREMIUM. THAT POOL DOESN'T INCREASE. IT IS FINITE NUMBER OF UNITS THAT ARE THERE, TO BEGIN WITH. IS THAT CORRECT?

UNLESS THE CITY GOES BACK THROUGH ANOTHER PROCESS TO GET MORE, BUT YES.

UNDER THE SCHEME --

LET'S COME BACK TO THE COUNTY HAS NOW DENIED YOUR PLAT OR WHATEVER TERMINOLOGY YOU USE. WHAT DO YOU CONTENT -- CONTEND IS THE NEXT STEP? I ASSUME YOU TAKE IT TO THE CIRCUIT COURT UNDER WHAT STANDARD OF REVIEW?

AS A MATTER OF RIGHT, I TAKE IT, BY CERT, TO THE CIRCUIT COURT, AND YOU CAN LOOK AT HAINES, IN HIS ANALYSIS OF THE PROCESS AS IT DEVELOPED FROM THE 1800S, AND FIND THAT, EVEN THOUGH THIS IS CERCIORARY AS YOUR REMEDY FROM AN ADMINISTRATIVE BOARD, YOUR FIRST STEP IS A MATTER OF RIGHT, WHEREBY THE CIRCUIT COURT STANDS IN AN APPELLATE CAPACITY.

AND THE CIRCUIT COURT REVIEWS THIS, APPLYING WHAT PRINCIPLES?

THE CIRCUIT COURT LOOKS TO SEE WHETHER DUE PROCESS WAS GRANTED AT THE LOWER TRIBUNAL LEVEL. IN THIS CASE THE COUNTY LEVEL, WHETHER OR NOT THE COUNTY HAD COMPETENT, SUBSTANTIAL EVIDENCE UPON WHICH TO MAKE ITS DECISION, AND WHETHER OR NOT, IT IS STATED TWO WAYS, CORRECT LAW WAS APPLIED OR THE COUNTY, THE LOWER TRIBUNAL OBSERVED THE ESSENTIAL REQUIREMENTS OF LAW. NOW, OBVIOUSLY WHEN WE GO TO THE DISTRICT COURT LEVEL, THE COMPETENT SUBSTANTIAL EVIDENCE FALLS OUT. I SUGGEST THAT, IN THE TOTALITY OF THE ANALYSIS, THE QUESTION AT THE CIRCUIT COURT LEVEL, RELATIVE TO EVIDENCE, IS WHETHER OR NOT THERE IS COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THE DENIAL IN THIS CASE. THAT IS THE SCOPE OF REVIEW THAT IS DISCUSSED IN HAINES, AND IT HAS BEEN APPLIED THROUGHOUT, BUT AT A POINT. YOU MOVE TO THE REMEDY OF CERCIORARY, AND IT IS OUR CONTENTION THAT THE REMEDY IN A CASE THAT IS YES OR NO, THE REMEDY ALLOWS THE REVIEWING COURT, IN THIS CASE THE FOURTH DISTRICT COURT OF APPEAL, WHICH WAS VERY RESPECTFUL OF HAINES, TO DIRECT THE LOWER TRIBUNAL TO DO A PARTICULAR THING, AND WHAT IS HAPPENING THERE, I THINK, IS THE RESOLUTION OF THE EERIE TENSION BETWEEN CERCIORARY, IN THE PROCESS THAT HAS NOW DEVELOPED, AND MANDAMUS, WHICH, OF COURSE, WAS THE REMEDY YOU LOOKED TO BACK IN THE SIXTIES AND SEVENTIES TO GET TO THE SAME PLACE, AND THAT IS WHY, IN NARCO REALTY, NARCO REALTY WAS A MANDAMUS CASE. UNDER TODAY'S VIEW OF THE LAW, IT SHOULD HAVE REALLY BEEN A CERCIORARY ACTION.

BUT IF THE DISTRICT COURT'S REVIEW OF WHAT THE CIRCUIT COURT DID, THEY LOOKED TO SEE WHETHER OR NOT THEY WERE AFTERED DUE PROCESS OR -- AFFORDED DUE PROCESS OR APPLIED THE CORRECT LAW. IS THAT CORRECT?

YES.

SO IF WE LOOK AT WHETHER OR NOT THEY APPLIED THE CORRECT LAW -- I ASSUME THAT IS YOUR ARGUMENT IS THAT THE CIRCUIT COURT DID NOT APPLY THE CORRECT LAW, BECAUSE THEY LOOKED AT WHETHER OR NOT THERE WAS SUBSTANTIAL COMPETENT EVIDENCE?

NO. WE CONTEND THE CIRCUIT COURT DID NOT APPLY THE CORRECT LAW BECAUSE IT DID TWO THINGS WRONG. IT LOOKED OUTSIDE THE RECORD AND WENT INTO THIS ESTOPPEL ARGUMENT, WHICH IS AN ARGUMENT OF UNWHOLE CLOTH --

AS TO WHETHER OR NOT THERE WAS AN AGREEMENT OR NOT.

RIGHT. AND THEN IT WENT OUTSIDE THE REGULATORY SCHEME THAT APPLIES TO THE PLAT PROCESS OR STATED ANOTHER WAY, IT DID NOT APPLY AND LIMIT THE PLAT PROCESS TO THE REGULATIONS THAT WERE APPLICABLE, WHICH THE COUNTY SAID HAD BEEN MET. SO --

SO YOU ARE SAYING THAT THEY DID NOT APPLY THE CORRECT LAW.

THAT'S CORRECT.

AND SO THE REMEDY, THEN, WOULD BE, IN THE DISTRICT COURT, WOULD BE TO REMAND IT, THEN, TO THE CIRCUIT COURT TO APPLY THE CORRECT LAW. WOULD IT NOT?

I BELIEVE IN THESE CASES THAT THEY ARE YES, NO RESPONSES. EITHER YOUR PLAT IS ENTITLED TO APPROVAL OR IT IS NOT ON THE RECORD, AND WHERE THE COUNTY STAFF HAS SAID THAT YOU COMPLY, AND WE, IN LOOKING AT THIS, WE HAVE TO MAKE SURE WE UNDERSTAND THE ROLES. THE COUNTY COMMISSION IS AS THIS JUDICIAL BODY S THEY ARE THE JUDGES. THE STAFF IS THE COUNTY, PERHAPS, ANALOGOUS TO PROSECUTION, AND THE APPLICANT IS THE OTHER PARTY. THE STAFF SAID WE MET ALL THE REGULATIONS. WE SAID WE MET THE REGULATIONS. THE OBJECTIVE FINDERS OF THE FACT AND VIEWERS OF THE LAW ENTERED INTO THE PROCESS AND DID SOMETHING ELSE. THE CIRCUIT COURT, WHEN IT CAME UP FOR REVIEW ON THE CIRCUIT COURT, THEN STEPPED OUTSIDE THE RECORD, WENT INTO SOMETHING ELSE, AND GOT INVOLVED IN THIS ESTOPPEL ISSUE, AND INSTEAD OF SAYING THE APPLICABLE LAW IS -- ARE THE REGULATIONS AS TO THE PLAT, IT WENT SOME PLACE ELSE. IN THE FOURTH DISTRICT, THEY RECOGNIZED THAT VERY PLAINLY AND SAID THIS IS ONE OF THE RARE TIMES THAT WE WILL TAKE CERTIORARY AND OVER OR QUASH THE LOWER, THE CIRCUIT COURT'S POSITION.

COUNSEL, JUSTICE SHAW HAS A QUESTION.

DO YOU SEE ANY CONFLICT BETWEEN BOARD OF COUNTY COMMISSIONERS AND SNYDER AND MARTIN COUNTY VERSUS USUM? THOSE TWO CASES. DO YOU THINK THEY ARE BOTH SAYING THE SAME THINGS? DO YOU SEE WHAT I AM SAYING?

THEY ARE DEALING WITH DIFFERENT -- THEY ARE DEALING WITH THE COLOR OF ISSUES, BUT SNYDER SAYS YOU FIND WHAT THE PROCESS IS BY LOOKING TO THE PROCESS. DO YOU HAVE TO PROVE SOMETHING. IS IT THE APPLICATION OF PREDETERMINED POLICY? 23 IT IS NOT, IT IS LEGISLATIVE. IF IT IS -- IF IT IS NOT, IT IS LEGISLATIVE. IF IT IS, IT IS QUASI JUDICIAL. USUM AGREES WITH THAT, AND IN THAT CASE, FACTUALLY, USUM SAID YOU DIDN'T GET THE LEGISLATIVE PART DONE. THEREFORE YOU CAN NEVER GET TO THE QUASI JUDICIAL.

THANK YOU, COUNSEL. I WILL GIVE YOU AN EXTRA MINUTE, IN LIGHT OF JUDICIAL FUNCTION.

THIS IS ONE PROCESS YOU CANNOT SEPARATE OUT THE LAND USE AMENDMENT FROM WHAT HAPPENED AT THE LAST HEARING. IT IS ONE PROCESS. SECONDLY I WOULD ASK THE COURT TO KEEP IN MIND THAT THIS WASN'T SNYDER. THIS WASN'T THE HALF ACRE THAT WAS INVOLVED. THIS WAS A DEVELOPMENT OF REGIONAL IMPACT. IT INVOLVED HUNDREDS OF UNITS, A SUBSTANTIAL AMOUNT OF OFFICE SPACE.

ON PAGE THREE OF YOUR BRIEF, YOU CITE TO A TRANSCRIPT PAGE 23, WHERE MR. LAYSTROM SAYS AND WE HAVE AGREED TO TAKE AWAY THE ABILITY TO FLEX THE PROPERTY. WE HAVE AGREED TO IT. AT WHAT STEP, AS WE TALKED ABOUT THE THREE STEPS, WHAT STEP OF THE WAY WAS THAT STATEMENT MADE?

THAT STATEMENT WAS MADE AT THE HEARING IN MAY OF 1996, WHEN THEY SOUGHT A LAND USE PERMIT FROM FIVE TO TEN WITH THE COUNTY.

THAT WAS AT STEP ONE.

THERE WERE THREE HEARINGS. IT WAS AT STEP ONE, AT THE LAND USE PLAN AMENDMENT STAGE.

IF IT WAS DETERMINED THAT STEP THREE IS WHERE THE PROBLEM OCCURRED AND IS QUASI JUDICIAL, BUT THERE IS AN ISSUE AS TO WHETHER THERE WAS AN ESTOPPEL BECAUSE OF WHAT HAPPENED AT STEP ONE, UNDER OUR SNIER-USUM -- OUR SNYDER-USUM DICHOTOMY, WHERE IN

THE EVIDENCE DOES -- WHERE, IN THE PROCESS, DOES THE EVIDENCE GET INTRODUCED AS TO WHERE THE ESTOPPEL OCCURRED? ASSUMING WE TAKE THIS AS QUASI JUDICIAL AND THE TRIAL COURT CAN'T TAKE ANY EVIDENCE, HOW DOES THE TRIAL COURT MAKE A DETERMINATION AS TO WHETHER AN ESTOPPEL OCCURRED, IF, UNDER OUR, ASSUMING THAT WE THINK IT IS QUASI JUDICIAL?

I THINK THE TRIAL COURT HAS TO LOOK AT, BEFORE IT EVEN GIBBS, WHAT TYPE OF PROCEEDING IS -- IT EVEN BEGINS, WHAT TYPE OF PROCEEDING IS PROPER HERE, WHETHER IT IS QUASI JUDICIAL. IF IT IS AT ISSUE AS TO WHETHER OR NOT IT IS DETERMINATION, THAT TAKES INTO ACCOUNT THE PROCESS, AND I THINK THAT IS THE FIRST STEP.

THEN CAN IT CONVERT THE CERT INTO A DE NOVO PROCEEDING AND TAKE NEW EVIDENCE?

I THINK HERE THE FIRST STEP HAS TO BE WHAT TYPE OF PROCEEDING IS APPROPRIATE, AND CERTAINLY IN OTHER CASES THE APPELLATE COURTS HAVE WRESTLED WITH WHETHER ONE PROCEEDING WAS PROPER OVER ANOTHER.

LET ME MAKE SURE. THIS PART OF THE RECORD, WHICH JUSTICE PARIENTE JUST REFERRED TO, YOUR OPPONENTS IS CORRECT THAT THAT WHAT WAS -- YOUR OPPONENT IS CORRECT THAT WHAT WAS REALLY BEING TALKED ABOUT THERE WAS NOT WHETHER GOING FROM FIVE TO TEN AND WE AGREE THAT TAKING AWAY THE ABILITY TO FLEX THIS PROPERTY IS NOT ON THE BASIS THAT WE WILL GIVE YOU SIX, IF YOU MAKE THAT DEAL.

I DO NOT AGREE, JUSTICE WELLS, AND I THINK IF YOU LOOK AT PAGE 70 OF THIS PRINT, WHERE COUNSEL FOR G.B.V. BEGGED TO GIVE ME SIX SO I CAN COME BACK TO YOU, PLEASE, NOT TO CITY, THIS WAS CLEARLY THE REFLECTION THAT THAT HAD, AND I WOULD ASK YOU TO LOOK AT PAGE 70 OF THAT TRANSCRIPT.

THANK YOU. WE WILL BE IN RECESS.