Coastal Development of North Florida, Inc. vs City of Jacksonville Beach

NEXT CASE ON THE COURT'S DOCKET IS COASTAL DEVELOPMENT VERSUS THE CITY OF JACKSONVILLE.

MR. MALIN.

THANK YOU, YOUR HONOR. MY NAME IS HUNTER MALIN. I AM HERE WITH JEFFREY HEEKIN AND ERIC McALILEY. WE ARE HERE TO ARGUE BEFORE THE COURT TWO WAYS FOR THE PETITIONER TO WIN THIS CASE. NUMBER ONE IS THAT THIS COURT AGREES WITH OUR POSITION THAT THE STANDARD OF REVIEW FOR A SMALL-SCALE COMPREHENSIVE PLAN AMENDMENT IS STRICT SCRUTINY OR COMPETENT SUBSTANTIAL EVIDENCE, AS DEFINED IN THE SNYDER OPINION. THE SECOND WAY IN WHICH WE CAN WIN IS THAT, EVEN IF THIS COURT FINDS THAT THE PROPER STANDARD OF REVIEW IS FAIRLY DEBATABLE, THE CIRCUIT COURT JUDGE FOUND THAT THE CITY OF JACKSONVILLE BEACH DID NOT PRESENT EVEN ENOUGH EVIDENCE TO MEET THAT FAIRLY DEBATABLE STANDARD OF REVIEW, SO WE WOULD WIN, EVEN UNDER THAT STANDARD. I WOULD LIKE TO BEGIN BY DISCUSSING WHY THE PROPER STANDARD OF REVIEW SHOULD BE COMPETENT, SUBSTANTIAL EVIDENCE.

BEFORE YOU GET TO THIS STANDARD OF REVIEW, IF SNYDER WERE TO APPLY TO A SMALL PLAN AMENDMENT, SNYDER HAS A BURDEN OF PROOF THAT SAYS THAT IT IS PRESUMED THAT, IF YOU ASK FOR REZONING, AND IT IS WITHIN THE PLAN AMENDMENT, THEN THE BURDEN SHIFTS. HERE YOU HAVE GOT AN AMENDMENT THAT, WHERE THE ZONING PLAN DOES NOT ALLOW FOR THIS PARTICULAR TYPE OF DEVELOPMENT. WOULDN'T YOU HAVE TO REFORMULATE THE SNYDER PROOF AS TO WHOSE BURDEN IT IS, EVEN TO SMALL PLAN AMENDMENTS? HOW WOULD IT FIT IN? DO YOU UNDERSTAND WHAT I AM ASKING?

YES, YOUR HONOR. MY SHORT ANSWER IS, NO, YOU WOULD NOT HAVE TO REFORMULATE THE SNYDER DECISION. THE REASON IS THE FIRST BURDEN OF PROOF FOR THE DEVELOPER IS TO SHOW THAT THE APPLICATION IS CONSISTENT WITH THE COMPREHENSIVE PLAN.

BUT THE WHOLE IDEA IS THAT IT IS NOT CONSISTENT WITH THE PLAN. THAT IS WHY YOU NEED THE PLAN AMENDMENT.

A SMALL SCALE AMENDMENT IS CONSISTENT WITH THE FAX, GOALS, POLICIES OF THE PLAN. IN FACT, BY DEFINITION, IN 83.187, A SMALL SCALE AMENDMENT CAN ONLY CONSTITUTE CHANGE TO THE FUTURE LAND USE ELEMENT OF THE LAND USE PLAN, AND AS DEFINED IN THE CODE, THAT IS A COMPLETELY SEPARATE ELEMENT FROM THE WRITTEN TEXT, GOALS AND OBJECTIVES, AND BY DEFINITION, IT CANNOT CONSTITUTE A CHANGE TO THOSE GOALS, SO WHEN YOU MAKE AN APPLICATION FOR A SMALL-SCALE AMENDMENT, WHAT THE APPLICANT IS SAYING, THE COMPREHENSIVE PLAN WAS DRAWN UP WITH CERTAIN GOALS AND POLICIES, AND THEN THERE WAS A FUTURE LAND USE ELEMENT, WHICH HAS, IN IT, THE CERTAIN LAND USE DESIGNATIONS, WHICH ARE CONSIST CONSISTENT WITH THOSE GOALS AND POLICIES, AT THE TIME OF ADOPTION OF THE PLAN. OVER TIME, CIRCUMSTANCES CHANGE, DATA CHANGES. THERE ARE ERRORS, AND PEOPLE CANNOT ANTICIPATE WHAT THE FUTURE WILL BRING FOR 20 YEARS. BECAUSE OF THOSE CHANGED CIRCUMSTANCES, AND CONSISTENT WITH THE EXISTING POLICIES, WHICH WERE ADOPTED, THE APPLICANT IS SAYING THESE NEW CHANGED CIRCUMSTANCES JUSTIFY A NEW LAND USE DESIGNATION, WHICH IS CONSISTENT WITH THE WRITTEN TEXT.

THAT SOUNDS PRETTY CONSISTENT TO ME. THAT MAY BE WHAT YOU HAVE TO ESTABLISH, BUT THAT SOUNDS LIKE A FAR MORE SOPHISTICATED PROCESS, WHICH IS, I GUESS, WHY THE ADMINISTRATIVE CODE SETS UP THAT YOU CAN, EVEN, HAVE THIS REVIEWED, WITHIN THE CONFINES OF THE ADMINISTRATIVE PROCEDURE ACT, BUT I AM, STILL, TRYING TO SEE HOW THAT WOULD BE, LIKE, SOMETHING THAT, UNDER A SNYDER TYPE OF ANALYSIS, COULD GO TO CERT REVIEW IN THE CIRCUIT COURT AND HAVE THIS VERY LIMITED REVIEW IN THE APPELLATE COURT. I DON'T WANT TO GET YOU -- THAT HAS BEEN SOMETHING THAT I HAVE BEEN CONCERNED ABOUT, HOW SNYDER WOULD APPLY TO YOU. I DON'T WANT TO TAKE UP ALL OF YOUR TIME ON THAT.

WHILE YOU ARE INTERRUPTED ON THAT, AND BECAUSE, AS JUSTICE PARIENTE SAYS, THAT SOUNDS LIKE A VERY SOPHISTICATED ANALYSIS, HOW ABOUT GIVING US A -- REFRESH OUR MEMORIES. GIVE US A FACTUAL CONTEXT, NOW, OF WHAT IS GOING ON IN THIS CASE, AS FAR AS WHAT THE COMPREHENSIVE PLAN PROVIDED WHAT THE ZONING WAS AND WHAT YOUR DEVELOPMENT WAS REJECTED, PROPOSED, AND IN TERMS OF THE NEED FOR A ZONING CHANGE WITHIN THAT. GIVE US A LITTLE THUMBNAIL SKETCH, HERE, SO THAT WE CAN PUT A LITTLE MEAT ON THE BONES, AS WE ARE TALKING ABOUT THESE ISSUES, IN A REAL CONTEXT. WOULD YOU DO THAT FOR US?

YES, YOUR HONOR. THE PETITIONERS OWN PROPERTY ON NORTH THIRD STREET, WHICH IS A VERY BUSY INTERSECTION AND HAS, REALLY, DEVELOPED OVER TIME. THEY OWN APPROXIMATELY 2.8 ACRES ON NORTH THIRD STREET, AND THEY ARE ASKING TO REDEVELOP PLUS OR MINUS 1.7 ACRES OF THAT LAND, FROM RESIDENTIAL, WHICH IS IT IS CURRENTLY ZONED, TO A COMMERCIAL OFFICE SPACE, WHICH IS A LOW DENSITY COMMERCIAL ZONING. THE REASON THEY ARE ASKING --

IS THE SURROUNDING AREA ALL RESIDENTIAL? IS THAT -- DO WE KNOW THAT IS, FROM THIS RECORD?

WE DO, YOUR HONOR. BUT WHAT WE KNOW IS THAT ONLY THE AREA TO THE SOUTH AND WEST IS RESIDENTIAL. THE AREA TO THE EAST HIS OFFICE SPACE, AND THE AREA TO THE NORTH IS, ALREADY, ZONED COMMERCIAL, SO THIS WOULD BE SIMILAR TO A BUFFER ZONE, WHICH HAS BEEN REFERENCED IN VARIOUS OPINIONS BY THIS COURT, AND AS WE HAVE SAID IN-FILL. THE REASON IT IS IMPORTANT THAT THIS PROPERTY BE REZONED IS BECAUSE OF THE CIRCUMSTANCES, WHICH THE PLAN WAS DEVELOPED TO NOW, IS NO LONGER FEASIBLE OR SAFE TO DEVELOP THIS PARCEL OF LAND RESIDENTIALALLY, BECAUSE THE DRIVEWAYS WOULD FRONT ON TO THIRD STREET, WHICH IS NOT QUITE AN INTERSTATE, BUT IT IS A MAJOR INTERSECTION, WITH QUITE HEAVY TRAFFIC, SO IT WOULD BE VERY DANGEROUS FOR FAMILIES TO HAVE THEIR KIDS RUN OUT OF THE DRIVEWAY AND INTO THIRD STREET, AND THE OTHER IMPORTANT THING IS NO PROPERTY ALONG THIRD STREET HAS BEEN DEVELOPED RESIDENTIALALLY, FOR 37 YEARS, BECAUSE OF THE SAFETY PROBLEM. GOING BACK TO THE STANDARD OF REVIEW --

BUT, STILL, IN ORDER TO DO THIS, YOU HAVE TO AMEND THE MAP, ISN'T THAT CORRECT?

YES, YOUR HONOR.

AND THAT IS, REALLY, WHERE YOU -- THE CRUNCH COMES, HERE, IS WHETHER, BY REASON OF THE AMENDMENT TO THE MAP, THAT THIS IS A REZONING, WITHIN THE CONCEPT OF SNYDER, OR WHETHER THIS IS AN AMENDMENT TO THE PLAN. I MEAN, IT IS NOT THAT -- THAT IS PRETTY BASICALLY IT, ISN'T IT?

YES, YOUR HONOR. THE PLAN IS MADE UP OF VARIOUS ELEMENTS, AS SET FORTH IN SECTION 163.3177, AND AFTER DEFINING THE FIVE MAJOR ELEMENTS, INCLUDING THE TEXT AND THE POLICIES, IN SUBSECTION SIX, THE LEGISLATURE GOES ON TO INCLUDE THE FOLLOWING ELEMENT, A FUTURE LAND USE MAP ELEMENT, AND WHAT THEY SAY ABOUT THE FUTURE LAND

USE MAP IS THE FUTURE LAND USE PLAN SHALL BE BASED ON SURVEY STUDIES AND DATA IN THE AREA, INCLUDING THE AMOUNT OF LAND REQUIRED TO ACCOMMODATE ANTICIPATED GROWTH AND THE PROJECTED POPULATION OF THE AREA.

ABOUT -- BUT WHAT IS YOUR CONCEPT, HERE, NOW, OF WHAT THE LEGISLATURE WAS DOING, IN TERMS OF THE SMALL TRACTS. DO YOU THINK -- I MEAN, IS IT YOUR PERSPECTIVE ON THIS THAT THE SMALL TRACKS WERE -- TRACTS WERE ACCEPTED OUT OF THIS WHOLE CONCEPT OF THE COMPREHENSIVE PLAN, OR WAS JUST -- THIS JUST A SUBSET OF A DIFFERENT TYPE OF REVIEW BUT, STILL, WITHIN THE IDEA THAT IT HAD TO BE IN CONFORMITY WITH THE COMPREHENSIVE PLAN?

I AGREE WITH YOUR SECOND POINT, YOUR HONOR. THE FUTURE LAND USE MAP IS, STILL, A PART OF THE PLAN, BUT IT IS SEPARATE FROM THE WRITTEN TEXT AND POLICIES, WHICH THE AMENDMENT HAS TO BE CONSISTENT WITH.

BUT -- IT SEEMS TO ME THAT IS THE HARD POINT HERE, IS THAT IN ORDER TO GET THIS, WHICH WE WERE INTENDING TO DO IN USUP, ARE NOT SO COMPLICATED THAT IT TAKES A BAND OF LAWYERS TO FIG OUT WHERE YOU COME. IT IS PRETTY -- IT FIGURE OUT WHERE YOU COME. IT IS PRETTY SIMPLE TO SAY THAT THE COUNTY, IF YOU AMEND ANY PART OF THE PLAN, THAT, THEN, IT IS A CALL BY THE LOCAL AGENCY, AND THAT IS A LEGISLATIVE MATTER. HOWEVER, IF IT IS CONSISTENT WITH THE PLAN, THEN IT IS -- IT IS SOMETHING THAT THERE OUGHT TO BE THE QUASI-JUDICIAL PROTECTIONS. TELL ME WHY THAT ISN'T WHERE WE OUGHT TO BE.

BECAUSE AN AMENDMENT TO ONLY THE FUTURE LAND USE DESIGNATION IS NOT AN AMENDMENT TO THE WRITTEN POLICIES THAT WERE CAREFULLY THOUGHT OUT AND SUBJECT TO COMMENT ON VARIOUS LEVELS, AND THAT IS THE SAME PROCESS THAT IS DRAWN UP FOR AN AMENDMENT, A LARGE SCALE PLAN AMENDMENT, THE TRANSMITTAL AND ADOPTION AND COMMENT, BY SEVERAL LEVELS, AT THE REGIONAL AND STATE LEVEL, AND IT IS NOT DECIDED ONLY AT THE LOCAL LEVEL.

IS THAT -- IN GOING INTO THE KIND OF REVIEW THAT IS CONTEMPLATED, AS I UNDERSTAND IT, THERE IS, WITH THE LARGE SCALE PLAN AMENDMENT, THERE IS, AGAIN, DCA REVIEW. IN A REZONING, WHICH IS WITHIN THE LAND USE PLAN, YOU HAVE GOT TRADITIONAL ZONING LAW THAT APPLIES. BUT IN THIS, AS JUSTICE WELLS SAYS, SUBSET, AS I UNDERSTAND, THE STATUTE HAS BEEN EXPLAINED IN SOME AMICUS BRIEFS WE HAVE IN ANOTHER CASE. IT IS -- THERE IS A LEVEL OF REVIEW CONTEMPLATED. THIS IS A PUBLIC PROCEEDING. INDIVIDUALS CAN COME BEFORE THE COMMISSION OR WHATEVER THE APPLICABLE BODY, TO EXPLAIN THEIR OPPOSITION TO WHY THEY DON'T THINK THE MAP SHOULD BE AMENDMENT. WHY THIS SMALL PLAN AMENDMENT SHOULDN'T BE GIVEN, AND THEN THERE IS, ALSO, FURTHER REVIEW, THROUGH THE ADMINISTRATIVE PROCEDURE ACT. NONE OF THIS IS APPLICABLE FOR A SIMPLE REZONING, IS IT?

NO, YOUR HONOR.

SO ISN'T THAT -- DOESN'T THAT TELL US SOMETHING ABOUT THAT THE LEGISLATURE WAS NOT SENDING A MESSAGE THAT THESE SHOULD BE TREATED LIKE REZONING, BUT THAT, PERHAPS, THEY DIDN'T NEED THE FULL-BLOWN TYPE OF REGIONAL AND STATEWIDE REVIEW THAT A FULL PLAN OR A LARGE PLAN AMEND NEEDED?

I THINK THE LEGISLATURE WAS SENDING A MESSAGE THAT, BECAUSE A SMALL SCALE AMENDMENT IS ONLY OF LIMITED IMPACT, IT CAN ONLY BE TEN ACRES OR LESS, THAT IT CAN BE SUBJECT TO A DECISION AT A QUASI-JUDICIAL TYPE OF PROCEEDING, AND THAT IS WHY THEY ACCEPTED OUT THE IN ING AT THERAL LEVELS OF RE-- THE INTEGRAL LEVELS OF REVIEW, WHICH ARE RESERVED FOR LARGE-SCALE AMENDMENTS.

IF YOU SAY THIS TEN-ACRE TRACK, NOW WE ARE GOING TO AMEND IT, AND THE NEXT PERSON

COMES IN AND SAYS, NOW THAT YOU HAVE CHANGED THE CHARACTER OF THIS NEIGHBORHOOD, NOW WE ARE THE NEXT ONE OVER. WE WANT OUR TEN-ACRE PLAN, AND ISN'T THAT, REALLY, THE ARGUMENT AS TO WHY THIS IS MUCH MORE, EVEN THOUGH IS A SMALLER PIECE OF PROPERTY, THAT IT HAS A LARGER POTENTIAL EFFECT ON THE OVERALL LAND USE PLAN?

I DON'T BELIEVE WE HIM END UP WITH THAT DOMINO EFFECT, BECAUSE THE LEGISLATURE HAS SAID THAT ONLY UP TO 120 ACRES PER YEAR CAN BE AMENDED, PURSUANT TO THE SMALL SCALE AMENDMENT PROCESS N ADDITION, SOME EVIDENCE MUST BE SHOWN THAT THE PROPOSED AMENDMENT IS CONSISTENT WITH THE WRITTEN TEXT AND GOALS AND POLICIES OF THE PLAN.

YOU INDICATED THAT, EVEN IF WE APPLY THE LEGISLATIVE STANDARD, HERE, THAT YOUR CLIENT, STILL, SHOULD PREVAIL. WOULD YOU ADDRESS THAT.

YES, YOUR HONOR. THE EVIDENCE OFFERED AT THE -- BOTH LEVELS OF LOCAL GOVERNMENT HEARINGS, WE OFFERED FOUR EXPERT OPINIONS, WHO PROVIDED SIGNIFICANT DATA, REGARDING THE CIRCUMSTANCES. ONE OF THOSE EXPERTS HAD PARTICIPATED IN THE ADOPTION OF THE PLAN. THE CITY DID NOT CROSS-EXAMINATION ANY OF THOSE EXPERTS AND DID NOT OFFER ANY EVIDENCE OR DATA OR ANYTHING, SUGGESTING THAT THE CIRCUMSTANCES AND DATA WE WERE OFFERING WERE INCORRECT. THE ONLY THINGS THAT WERE OFFERED BY THE CITY WERE TESTIMONY BY THE PUBLIC, THAT SEVERAL COURTS HAVE HELD THAT MERE TESTIMONY BY THE PUBLIC, WHICH IS NOT BASED ON FACTS, IS NOT SUFFICIENT TO MEET THE FAIRLY DEBATABLE STANDARD, AND, ALSO, THEY SUBMITTED THEIR STAFF REVIEW REPORT, WITHOUT ANYONE TO TESTIFY ABOUT THE REPORT, AND WITHOUT ANYONE TO AUTHENTICATE THE REPORT, SO THAT, ITSELF, WAS NOT EVIDENCE. THERE WAS NO CROSS-EXAMINATION. THERE WAS NO BASIS TO DETERMINE IT, AND IT CONFLICTED WITH SEVERAL POINTS WHICH WERE FACT. SO THE CITY DID NOT OFFER EVIDENCE, AND AS THE THIRD DISTRICT COURT SUGGESTED, IN DEIBS, THAT, IN MOST CASES THE STANDARD OF REVIEW FOR A SMALL SCALE AMENDMENT IS NOT, REALLY, MATERIAL, BECAUSE THE CITY OFTEN FAILS ITS BURDEN TO PRESENT EVIDENCE. IN FACT, IN THIS CASE, THE CHAIRMAN OF THE CITY COUNCIL STATED THAT THIS IS A QUASI-JUDICIAL PROCEEDING, AND IF WE DON'T PRESENT OUR OWN EVIDENCE, WE ARE GOING TO -- THERE IS GOING TO AND LAWSUIT, AND WE ARE GOING TO LOSE, SO THE CITY RECOGNIZED THAT IT NEEDED TO PRESENT EVIDENCE.

THAT IS IF WE ARE GOING TO TALK ABOUT THE QUASI-JUDICIAL, BUT NOW I AM ASKING YOU TO ACCEPT THE LEGISLATIVE STANDARD. HAVEN'T THE COURTS, TRADITIONALLY, NOT REQUIRED LEGISLATIVE BODIES TO SUBMIT EVIDENCE? THAT IS THAT WHATEVER THE LEGISLATIVE REASONS, THEY MAY BE OUT THERE, BUT THEY DON'T HAVE TO BE SUPPORTED BY EVIDENCE PRESENTED AT AN EVIDENCE YEAR -- AT AN EVIDENTIARY HEARING. HASN'T THAT BEEN ESSENTIALLY THE LAW, THAT AS LONG AS A RATIONAL BASIS CAN BE FOUND?

THIS COURT, IN USUM, STATED THAT IT MUST MEET A FAIRLY DEBATABLE STANDARD, AND THAT IS THAT THERE MUST BE SOME EVIDENCE THAT WOULD SUPPORT THE POSITION. YOUR HONOR, I SEE --

ISN'T THAT WHAT WOULD HAPPEN IN A COMPLAINT FOR -- I MEAN, YOU WOULD HAVE THAT HEARING BEFORE THE CIRCUIT COURT, IN THE NORMAL COURSE OF EVENTS, AND EACH SIDE WOULD BE ABLE TO PUT ON EVIDENCE CONCERNING THAT, AND THEN THERE WOULD BE AN APPEAL TO THE APPELLATE COURT? WOULDN'T THAT BE HOW IT WOULD WORK?

YOUR HONOR, I AM AFRAID I DO NOT UNDERSTAND YOUR QUESTION.

IN OTHER WORDS, IF YOU -- YOUR EVIDENCE, IN A QUASI-JUDICIAL REVIEW BY THE CIRCUIT COURT, THERE IS NO NEW EVIDENCE TAKEN, BUT IF A COMPLAINT IS FILED IN THE CIRCUIT COURT, ARE YOU PROHIBITED FROM -- IS THE CIRCUIT COURT PROHIBITED FROM LOOKING AT EVIDENCE, WHEN THE COMPLAINT FOR -- IS FILED IN THE CIRCUIT COURT?

ON REVIEW OF A LOCAL LAND USE DECISION?

CORRECT.

YES, YOUR HONOR. THEY WOULD NOT BE ABLE TO LOOK AT NEW EVIDENCE. ONLY WHAT THE RECORD EXISTED.

I MEAN, IN A FAIRLY DEBATABLE DISCUSSION, FOR INSTANCE, WOULDN'T THE CITY BE FREE, JUST TO CONTEND, WITHOUT PUTTING ON ANY ADDITIONAL EVIDENCE, OTHER THAN WHAT IS IN THERE, THAT OUR SIMPLE POLICY OF TRYING TO MAINTAIN THE INTEGRITY OF AN IDENTIFIED RESIDENTIAL ZONING AREA, IS -- THAT IS OUR POLICY, AND THAT, CERTAINLY, THAT IS A FAIRLY DEBATABLE REASON TO REFUSE TO REZONE HERE. THAT IS -- THE MAP SHOWS IT THAT WAY. THAT THAT IS WHAT OUR POLICY IS. WOULDN'T THE CITY BE ENTITLED TO MAKE THAT KIND OF ARGUMENT, AND WITHOUT PRESENTING -- YOU KNOW, TALKING ABOUT EVIDENCE HERE. OBVIOUSLY THERE WOULD HAVE TO BE FACTS. FACTS, PERHAPS, IN THE SENSE OF WHAT THE MAP SHOWED AND WHAT EXISTED ON THE GROUND, BUT NOT EVIDENCE IN THE SENSE OF HAVING TO CALL ON EXPERT WITNESS OR WHATEVER. WOULDN'T THAT BE THE KIND OF THING THAT A COURT WOULD HAVE TO CONSIDER, IF THE CITY MADE AN ARGUMENT THAT WAY?

THE COURTS COULD CONSIDER THAT, AND THAT IS ONE PROBLEM WITH HAVING A FAIRLY DEBATABLE STANDARD FOR THIS TYPE OF DECISION. BECAUSE IT IS ONLY REVIEWED AT THE LOCAL LEVEL, AND BASICALLY A DECISION COULD BE MADE, WITHOUT EVIDENCE, SO IT WOULD LEAD TO INCONSISTENT RESULTS AND INCONSISTENT APPLICATION AFTER FAIRLY DEBATABLE STANDARD.

THIS IS VACANT LAND, BY THE WAY?

YES, YOUR HONOR. YOUR HONOR, I WOULD LIKE TO --

THANK YOU. MR. GRAESSLE.

I AM BILL GRAESSLE, ON BEHALF OF THE RESPONDENT, YOUR HONORS,, ON BEHALF THE CITY OF JACKSONVILLE BEACH. IT IS A GREAT HONOR TO BE HERE.

TELL US WHAT YOU INTENDED, IN HAVING THIS SPECIFIC KIND OF SPECIAL CATEGORY FOR TEN ACRES NOT MORE THAN 120 ACRES COUNTYWIDE.

YOUR HONOR, MY TAKE, OUR POSITION, IS SIMPLY THAT WHAT WAS DONE BY WHAT WE CALL THE SMALL SCALE AMENDMENT PROCESS, THE APPLICABILITY OF WHICH IS LEFT OPEN BY FOOTNOTE SIX IN THIS COURT'S USUM DECISION, WAS SIMPLY TO GIVE LOCAL GOVERNMENTS AN EASIER OPTION FOR DEALING WITH PLAN AMENDMENTS THAT WERE OF A CERTAIN SIZE OR LESS. THE ENTIRE PREMISE, AND LET ME BACK UP ONE STEP, THE MENALLE CASE IS PRESENTLY PENDING BEFORE THE COURT. I WOULD ENCOURAGE YOU TO READ THE AMICUS BRIEF FILED BY THE DEPARTMENT OF COMMUNITY AFFAIRS ON THAT CASE, ON A NUMBER OF POINTS, THAT MR. MALIN AND I DEALT WITH, SPECIFICALLY IN THIS CASE, IN A VERY METHODICAL FASHION, INCLUDING THIS ONE. THIS IS NOT THE FIRST TIME THE LEGISLATURE HAS TOYED WITH THE MORE STREAMLINED PROCESS FROM THE NORM, WHICH IS THAT, TWICE A YEAR, YOU CAN AMEND THE PLAN. THE POINT IS THAT THIS PROCEDURE DID NOT GIVE THE LAND OWNER HAD SOME RIGHT THAT IT DID NOT PREVIOUSLY LACK, AND THAT IS ONE OF THE TWO MAJOR FAULTY PREMISE OF THE PETITIONER'S ARGUMENT IN THIS CASE T ALLOWS A COMPREHENSIVE PLAN TO BE CHANGED, BY A LAND USE MAP, IN A MORE STREAMLINED WAY, WITH A LITTLE LESS NOTICE, BUT IN TERMS OF THE STATE, IN USUM, THIS COURT POINTED OUT THAT, WHEN YOU ARE GOING TO CHANGE A PLAN, THERE IS AN ENTIRE PANOPLY OF PROCEDURAL STEPS THAT HAVE TO BE GONE THROUGH, FOR THE PURPOSE OF ENSURING THAT A LOCAL GOVERNMENT'S DECISION TO ALTER WHAT THIS COURT HAS IMPLICITLY RECOGNIZED AS THE, QUOTE, CONSTITUTION GOVERNING FUTURE LAND

USES OF LOCAL COMMUNITIES' PLANNED AREA, THAT IT COMPLIES WITH THE PROVISIONS OF CHAPTER 163. THE STRICT SCRUTINY, WHICH IS REFERENCED IN REPEATED CASES, WAS RECOGNIZED BY THIS COURT AS STRICT SCRUTINY, TO ENSURE THAT A LOCAL GOVERNMENT'S ZONING AND LAND USE PROVISIONS COMPLY WITH CHAPTER 163, NOT ANYTHING TO DO WITH WHETHER A LAND OWNER IS USING HIS PROPERTY AS THE LANDOWNERS HERE, BELOW, SUGGESTED THEY HAD A RIGHT TO DO, FOR THE, QUOTE, HIGHEST AND BEST USE. THAT IS A RED HERRING. THE REALITY IN THIS CASE, AND I WANT TO CORRECT SOMETHING IN THE RECORD, TO MAKE SURE WE ARE FACTUALLY COMMUNICATING. MR. MALIN STATED IT BACKWARDS, AND I AM SURE IT WAS SOMEWHAT -- -- IT WAS UNINTENTIONAL. THIS PROPERTY, ON THIRD STREET, FROM THE EAST PROPERTY AND THIS OWNER'S PROPERTY, REPRESENTS THE BORDER FROM WHERE COMMERCIAL DEVELOPMENT IS ALLOWED ON THE EAST SIDE OF THIRD STREET AND WHERE IT IS ALL RESIDENTIAL. YOU KEEP GOING A FEW BLOCKS EAST ON THIRD STREET, AND YOU GET TO THE ATLANTIC OCEAN. ALL OF THE PROPERTY FROM HIS CLIENT'S PROPERTY ALL THE WAY PAST TO THE ST. JOHNS COUNTY LINE, ALL THE WAY TO SOLANO ROAD IN THE EAST SIDE OF ST. JOHNS COUNTY IS RESIDENTIAL PROPERTY. IT HAS BEEN HISTORICALLY RESIDENTIAL AND IT IS CURRENTLY RESIDENTIAL AND IT IS ON THE FUTURE LAND USE MAP TO REMAIM RESIDENTIAL. THAT WAS A POLICY DECISION THAT WAS MADE, AFTER MUCH DEBATE, AND THE APPROVAL OF AN INITIAL PLAN, TO ASSURE THAT IT COMPLIES WITH EVERYTHING, AND IT IMPLICITLY CARRIES, WITH IT, A FINDING OF A MULTITUDE OF HOURS AND THOUSANDS OF DOLLARS OF TIME AND MONEY SPENT, TO DEVELOP A PLAN THAT MEETS STATE MUSTER. THE REVIEW PROCESS THAT THIS COURT ADJUSTED IN USUM AND WHAT IS STREAMLINED BUT STILL AVAILABLE HERE, UNDER THE SMALL SCALE PROCESS, IS ONLY WHEN A CHANGE TO THAT PLAN IS GOING TO BE MADE, AND THAT IS THE SECOND READ HERING. MY POINT IS THAT -- THE SECOND READ HERING. MY POINT -- THE SECOND RED HERRING. SIMPLY BECAUSE THE SIZE OF THE PROPERTY IS SMALLER AND THE IMPACT IS SUPPOSEDLY LIMITED, BECAUSE TAKING A 1.7 ACRE PARCEL OF PROPERTY ON THE EDGE OF THE RESIDENTIAL AREA, ON THE EAST SIDE OF A1A IN THE CITY OF JACKSONVILLE BEACH, HAS A RIPPLE EFFECT, WHICH GOES WELL BEYOND SIMPLY THE PROPERTY AT ISSUE, AND THAT IS THE EXACT RATIONALE THAT THIS COURT SAID, IN USUM, WAS IMPORTANT.

WHAT DO YOU SEE AS THE PHILOSOPHICAL BASIS FOR SNYDER? WE HAVE GOT A FOCUS, THERE, DON'T WE, ON THE FACT THAT YOU ARE ONLY DEALING WITH A SINGLE LAND OWNER AND SMALL PIECE OF LAND AND THAT, UNDER THOSE CIRCUMSTANCES, THE -- THAT LAND OWNER OUGHT TO BE ABLE TO HAVE THE PROTECTIONS THAT ARE BEGIN, IN A QUASI-JUDICIAL PROCEEDING AND REVIEW.

AND THAT IS AN EXCELLENT QUESTION, YOUR HONOR. SNYDER DEALS WITH, IMPLICITLY, AND I BELIEVE IT IS SET OUT, AND I DON'T HAVE SNYDER IN FRONT OF ME, TO QUOTE YOU TO THE PAGE, BUT I HAVE ARGUED THIS BEFORE. SNYDER IMPLICITLY RECOGNIZED THAT THERE WERE SOMETHING LIKE 27 POTENTIAL ZONING CATEGORIES AT ISSUE IN THAT CASE, WHICH WERE CONSISTENT WITH THE COMPREHENSIVE PLAN. THE PLAN WILL DESIGNATE THIS AREA, YOU KNOW, LARGE AREAS GOING TO BE, FOR EXAMPLE, RESIDENTIAL IN THE FUTURE. WELL, THERE CAN BE SINGLE FAMILY RESIDENTIAL WITH QUARTER ACRE LOTS. THERE CAN BE SINGLE FAMILY RESIDENTIAL WITH HALF-ACRE LOTS, TOWNHOUSES, DUPLEXES, APARTMENT BUILDINGS. MANY, MANY, MANY, MANY ZONING CATEGORIES CAN BE CONSISTENT WITH A COMPREHENSIVE PLAN, AND A REZONING, BY DEFINITION, UNDER SNYDER, ASKS FROM A CHANGE FROM ONE PERMITTED, CONSISTENT WITH THE PLAN USE, TO ANOTHER, CONSISTENT WITH THE PLAN USE, AND I THINK IT IS VERY IMPORTANT THAT THIS COURT RECOGNIZED, IN USUM, FOOTNOTE FIVE, WE NOTED IN WHICH THE DENIAL OF A ZONING APPLICATION WOULD BE INCONSISTENT WITH THE PLAN, THE LOCAL GOVERNMENT SHOULD HAVE THE DISCRETION TO DECIDE THAT THE MAXIMUM DENSITY SHOULD NOT BE ALLOWED, PROVIDED THE GOVERNMENT APPROVE SOME DEVELOPMENT THAT IS CONSISTENT WITH THE PLAN AND THAT THE SYSTEM IS SUPPORTED BY COMPETENT EVIDENCE. AND THAT IS THE QUOTATION THAT YOUR HONORS MADE, IN USUM QUOTING SNYDER. THE POINT BEING THAT, PHILOSOPHICALLY, THERE IS A WORLD OF DIFFERENCE BETWEEN SAYING WE ARE GOING TO CONSIDER, AT A QUASI-JUDICIAL PROCEEDING, WHERE THE TAKING OF EVIDENCE, ONE

CHANGE TO ANOTHER, THAT IS BOTH OF WHICH ARE PERMITTED IN THE PLAN THIS. COURT TOOK IT A STEP FURTHER IN SNYDER AND SAID, HE HAVE EASTBOUND IF THE LOCAL -- EVEN IF THE LOCAL GOVERNMENT DECIDES THAT THERE IS GOING TO BE A DENIAL OF CHANGE OF USE AND THAT DENIAL IS CONSISTENT WITH THE PLAN, LOCAL GOVERNMENT HAS SOME POWER. IT ALLOWS USE OF THE PLAN AND PROVIDES FOR THE COMPETENCE OF ITS BASIS.

SNYDER VERSUS USUM, WHAT KIND OF REVIEW IS GIVEN AT THE LOCAL LEVEL. THERE SEEMS TO BE, WHEN YOU TALK ABOUT QUASI-JUDICIAL REVIEW, YOU EXPERT THERE TO BE AN INITIAL FACT FINDER AND THERE IS A RECORD. ARE LOCAL GOVERNMENTS APPLYING SNYDER-TYPE CASES, WHERE THEY ARE ACTUALLY TRYING TO COMPLY WITH SOME FORM OF A QUASI-JUDICIAL REVIEW, AND, I GUESS, TO UNDERSTAND, AGAIN, WHEN YOU HAVE SOMETHING LIKE THIS CASE, WHERE IT IS COMING IN TO ASK FOR AN AMENDMENT TO THE PLAN, IS THE HEARING DIFFERENT? I MEAN, IN OTHER WORDS, IF JACKSONVILLE BEACH IS GETTING A REZONING. LET'S JUST TAKE YOUR CLIENT. HOW IS IT DIFFERENT AT THE LOCAL LEVEL? DO YOU HAVE A COURT REPORTER AT ONE AND NOT AT THE OTHER? DO YOU PROHIBIT EXPARTE COMMUNICATIONS IN ONE, NOT AT THE OTHER?

YOUR HONOR --

DOES IT LOOK THE SAME?

I CERTAINLY CAN ONLY SPEAK AS TO MY CLIENT. I CITED, IN THE BRIEF, A NUMBER OF DECISIONS INVOLVING THE CITY OF JACKSONVILLE BEACH'S LAND USE DECISION THAT IS HAVE GONE TO THE FIRST. THIS IS THE FIRST ONE THAT HAS GOTTEN HERE. I WAS, PERSONALLY, THE APPELLATE ATTORNEY RESPONSIBLE FOR ALL OF THOSE, SO I CAN TELL YOU THAT MR. STRATFORD, MY CO-COUNSEL, THE CITY ATTORNEY FOR THE CITY OF JACKSONVILLE BEACH, HIS PHILOSOPHY, AND IT PERMEATES EVERY DECISION THAT HAS EVER BEEN APPEALED, IS ANYBODY THAT WANTS TO SAY ANYTHING, PUT ON ANYTHING, DOES IT. THERE ARE COURT REPORTERS PRESENT. THERE IS NO, QUOTE, CROSS-EXAMINATION. THERE ARE QUESTIONS, OBVIOUSLY, FROM, IN THIS CASE, THE PLANNING COMMISSION MEMBERS AND THEN, ON APPEAL BY THE LAND OWNER, TO THE CITY COUNCIL, BUT THERE IS NO REAL CROSS-EXAMINATION, BUT IN ALL OTHER RESPECTS, WHAT WAS BEING DONE IN THIS CASE, REGARDLESS OF THE MISUNDERSTANDING OR THE NOMENCLATURE BY A NONLAWYER THAT, OH, THIS IS QUASI-JUDICIAL, IS YOU WANT US TO CHANGE SOMETHING, AND WHETHER IT IS A REZONING OR CHANGE TO THE LAND USE MAP, I SUGGEST, IS NOT MATERIAL TO WHAT THE EVIDENCE THAT ANYBODY WANTS TO BRING IS. THE CITY COUNCIL LISTENED TO ANYTHING ANYBODY WANTED TO PUT ON. WHAT IS CRUCIAL ABOUT THIS IS, WHEN A LAND OWNER DOES NOT GET THE RELIEF THAT THEY WANT AND THEY GO TO COURT. THAT IS WHEN IT BECOMES IMPORTANT.

ARE THERE OTHER REVIEWS, THOUGH, THAT A LAND OWNER HAS THROUGH, BECAUSE IT IS A SMALL PLAN AMENDMENT, THAT THEY WOULDN'T HAVE, IF IT IS A REZONING?

YOU WOULD TAKE, FOR EXAMPLE --

I THOUGHT YOU ASKED US TO LOOK AT THE FIRST DCA BRIEF.

IT DISCUSSES IT IN MORE ERUDITE DETAIL THAN MINE, AND, AGAIN, 163 PROVIDES, AND LET'S MAKE SURE THAT WE ARE COMMUNICATING THERE. IS ONLY ADMINISTRATIVE REVIEW IF A CHANGE TO THE PLAN IS BEING CONTEMPLATED. THAT MULTILEVEL REVIEW PROCESS THAT THIS COURT ADDRESSED IN USUM, EXIST ONLY WHEN A LOCAL GOVERNMENT WANTS TO CHANGE THE PLAN. THE SAME CONSIDERATIONS BUT A MORE STREAMLINED PROCESS EXISTS IN THE SMALL SCALE AMENDMENT CONTEXT, ONLY IF THE GOVERNMENT WANTS TO CHANGE ITS PLAN. IF A LAND OWNER'S REQUEST TO CHANGE A PLAN, WHETHER LARGE SCALE OR SMALL, IS DENIED, THEIR REMEDY IS TO GO TO COURT, AND THAT IS WHEN IT BECOMES CRITICAL THAT, WHAT STANDARD OF REVIEW A CIRCUIT JUDGE IS TO APPLY IN THE FIRST INSTANCE. JUSTICE ANSTEAD

ASKED OPPOSING COUNSEL QUESTIONS THAT I THINK IS WORTH ME TOUCHING ON BRIEFLY. OKAY. EXCUSE ME. I AM TRYING TO LEARN MY CLOCK. THE ISSUE ABOUT WHETHER THE RECORD THAT WAS BUILT BEFORE THE CITY IS THE SAME RECORD THAT THE TRIAL COURT, IN A DE NOVO PROCEEDING, ON A DECLARATORY AND INJUNCTIVE RELIEF ACTION, USING THE FAIRLY DEBATABLE STANDARD, WAS A QUESTION THAT I HAD STRUGGLED WITH AT THE FIRST DCA, BECAUSE THE DECISION, HERE, BY JUDGE WEBSTER OF THE FIRST DISTRICT IN OUR CASE, AND WHY WE ARE HERE, SAYS WE GRANT THE PETITION -- THAT IS MY PETITION FOR WRIT OF CERTIORARI, REVERSE THE DECISION OF THE TRIAL COURT AND DEMADE DE NOVO FOR THE PETITIONER'S EITHER DECLARATORY OR INJUNCTIVE RELIEF. ANY ORDER OR FINAL REMAND SHALL BE BY APPEAL. I FILED A MOTION FOR REHEARING AND SAID, WAIT A MINUTE. WE BUILT THIS RECORD THAT CLEARLY SHOWS WHY THE CITY OF JACKSONVILLE BEACH SAID THAT WE WERE NOT GOING TO AMEND THE PLAN, AND YOU HAVE, ALREADY, RECOGNIZED THAT IT IS A LEGISLATIVE DECISION. IN PREPARING FOR THIS ARGUMENT, IT HAS BECOME CLEAR THAT WHAT, I BELIEVE, USUM AND OTHER CASES CONTEMPLATE, AND WHAT JUDGE WEBSTER, AT THE FIRST, BELIEVES WEBSTER AND OTHER USES CONTEMPLATE IS THAT, IF IT IS A DENIAL OF A LAND USE PLAN THAT IS CONTEMPLATED, A DENIAL OF THE PLANNED AMENDMENT, THAT THE OWNER'S RIGHT IS TO FILE AN APPEAL AND HAVE TWO TRIALS ON THE INJUNCTIVE RELIEF COMPLAINT, AND IS IT FAIRLY DEBATABLE AND WHAT THE EVIDENCE IS.

IS IT NEW EVIDENCE OR OTHER INFORMATION?

I THINK YOU COULD END UP WITH SOME INTERESTING QUESTIONS IF, FOR EXAMPLE, A LAND OWNER WANTED TO PRESENT SOME EVIDENCE THAT HE DIDN'T PRESENT TO THE CITY IN THE FIRST INSTANCE.

IN SNYDER, THAT IS THE ONLY WAY THESE CASES WERE BEING BROUGHT UP. DO WE KNOW ANYTHING FROM THE PRESNYDER CASE?

I AM SORRY. I AM NOT THAT OLD. I WISH I COULD ANSWER YOUR QUESTION.

WOULD YOU FINISH YOUR THOUGHT THOUGH? I DIDN'T THINK THAT YOU WERE FINISHED.

MY ONLY POINT IS THAT, FROM MY PERSPECTIVE, I MEAN, IF THIS CASE GETS REMANDED AND WE ARE GOING TO DO WHAT THE FIRST DCA SAYS WE ARE GOING TO DO, WHICH IS PROCEED ON THEIR COUNT FOR DECLARATORY AND INJUNCTIVE RELIEF, I WILL BE REPRESENTING THE CITY. I WILL BRING IN MR. LINDORF, THE LAND USE EXPERT FOR THE CITY, AND THAT IS IN THIS RECORD, AND HAVE HIM EXPLAIN WHAT THE POLICIES OF THE CITY OF JACKSONVILLE BEACH ARE. WE WILL INTRODUCE THE LAND USE MAP AND THE COMPREHENSIVE PLAN AND ALL THAT THE PLANNING COMMISSION STAFF AND COMMISSION, ITSELF, USE ON A REGULAR BASIS, TO DETERMINE WHAT PLAN IS WARRANTED, AND WE WILL ARGUE THIS CASE. I DID NOT FIND IT NECESSARY, BUT TAB K OF THE PETITIONER'S INDEX, HERE, CONTAINS THE DISCUSSION, ABOUT THE POLICY, BY THE PLANNING COMMISSION STAFF, THAT I THINK IS IMPORTANT. BECAUSE THIS ATTEMPTED ATTEMPT AT ARGUMENT BY THE PETITIONER THAT, SOMEHOW, THERE IS A REAL DIFFERENCE OF SUBSTANCE THAT HAS SOME LEGAL IMPORT, BETWEEN THE LAND USE MAP AND THE COMPREHENSIVE PLAN, ITSELF, IS A NONEXISTENT DISTINCTION. THE MAP, ITSELF, UNDER 163, IS SUPPOSED TO BE AN INTEGRAL PART OF AND REFLECT WHAT THE POLICIES ARE OF THE COMPREHENSIVE PLAN. PART -- ITS POLICY LU.1.2.2 OF THE CITY OF JACKSONVILLE BEACH'S COMPREHENSIVE PLAN, WHAT IT SAYS IS WE ARE GOING TO ENCOURAGE COMMERCIAL DEVELOPMENT IN THE CITY OF JACKSONVILLE BEACH BY UTILIZING WHAT WE CALL IN FILL DEVELOPMENT, USING THE AVAILABLE VACANT COMMERCIAL SPACE THAT IS ALREADY THERE, RATHER THAN ALLOWING COMMERCIAL AREAS TO KEEP SPRAWLING, RATHER THAN ALLOWING WHAT THE PETITIONERS SEEK HERE, WHICH IS A SPOT REZONING. WE WANT TO START A COMMERCIAL IN A RESIDENTIAL AREA, AND THAT IS ONE OF THE IMPORTANT POLICIES THAT THE CITY OF JACKSONVILLE BEACH HAS. THAT POLICY REASON WAS CLEARLY ARTICULATED IN THE

STAFF'S DENIAL. IT WAS CLEARLY ONE OF THE REASONS THAT THE PLANNING COMMISSION DENIED THE REQUEST FOR A PLAN CHANGE, AND I THOUGHT AND INCLUDED IN MY BRIEF THAT THE PETITIONERS HAVE MUCH TO DO --

ON THAT POINT, JUST FROM A PRACTICAL STANDPOINT, IF THE CIRCUIT COURT IS PROCEEDING IN A REVIEW CAPACITY WITH THE STANDARD OF REVIEW BEING THAT THIS IS COMING UP AS A QUASI-JUDICIAL MATTER, AND ACTUALLY IT IS ORIGINAL ACTION IN THE CIRCUIT COURT, THAT IS, I MEAN, A DIFFERENT CATEGORY OF ANIMAL THAT A LAND OWNER OUGHT TO HAVE AN OPPORTUNITY TO ATTACK, WITH THE RIGHT FRAME OF REFERENCE. I MEAN, ISN'T THAT SORT OF -- ISN'T THAT WHAT THIS COURT DID, IN USUM? IT -- I MEAN, THE BOTTOM LINE OF U.S. UM WAS THAT, BECAUSE THERE WAS SO MUCH CONFUSION IN THIS AREA, WE ARE GOING TO ALLOW A LAND OWNER TO GO BACK AND DO THIS, ON THE BASIS THAT WE DETERMINE --

THAT IS EXACTLY WHAT THE FIRST DCA HAS DONE IN THIS CASE IS REMAND THE CASE FOR A TRIAL DE NOVO, ON THEIR CLAIM FOR DECLARATORY INJUNCTIVE RELIEF. THAT IS THE REMEDY THAT I ADDRESSED A MINUTE AGO THAT, AT FIRST I ARGUED WITH THE FIRST DCA AND ASKED FOR A REHEARING ON THAT, AND SAID IF YOU READ THE RECORD, WE HAVE DONE THAT. WE, AS REASONABLE PEOPLE, BELIEVE WE HAVE DONE THIS AND WE WIN. THEY SAID HUH-UH. YOU GET TO PUT ON YOUR EVIDENCE AND THEY PUT ON THEIRS. YOU GET TO CROSS-EXAMINE YOUR EXPERTS AND THEY GET TO EXAMINE THEIRS.

YOU DON'T ARGUE EW THAT HERE?

NO. I THINK THAT IS WHAT THIS COURT CONTEMPLATED IN USUM AND JUDGE WEBSTER, IN THE FIRST DCA, SPELLED OUT THAT IS WHAT HE DID, FOR THAT VERY REASON, IS SAID, LOOK, IF SNYDER COVERS WHAT WE DO ON JUDICIAL REVIEW OF ZONING DECISIONS, AND THAT BODY OF LAW IS NOW WELL-KNOWN. IF YOU ARE DENIED A ZONING CHANGE AND YOU FEEL AGGRIEVED, YOU FILE A PETITION WITH THE CIRCUIT COURT AND PROCEED FROM THERE.

WHAT THE TRIAL COURT'S RESPONSIBILITY IS, THEN, AFTER ALL OF THAT HAS HAPPENED, IN OTHER WORDS, WHAT --

AT THAT POINT IN THIS CASE?

RIGHT. WHAT DOES THE TRIAL COURT, THEN, SAY, WELL, WHAT IS THE ISSUE THAT I HAVE TO RESOLVE?

THE ISSUE -- WELL, THE COMPLAINT -- THE PETITIONERS FILED A TWO OR THREE COUNT COMPLAINT BELOW. COUNT ONE WAS A PETITION FOR CERTIORARI, CLAIM HAD GONE THAT SNYDER CONTROLLED THIS PLANNED AMENDMENT ISSUE. THAT IS ALL THAT WE HAVE DEALT WITH, ASSUMING THAT YOU ANSWER THE QUESTION IN ACCORDANCE WITH WHAT THE FIRST DCA DID, IN ACCORDANCE WITH OUR SUBMISSION IS THE CORRECT RESULT MANDATED BY USUM. WHAT, THEN, IT LEAVES US WITH, IS WE ARE GOING TO PROCEED AT THE TRIAL COURT LEVEL, IN CIRCUIT COURT, ON COUNT THREE. THEIR COMPLAINT FOR DECLARATORY INJUNCTIVE RELIEF, AND WE ARE GOING TO PRESENT EVIDENCE, THEN THE TRIAL COURT MAKES AN EVIDENTIARY RULING, USING THE STANDARD OF WHETHER OR NOT THE DECISION TO USE A LAND USE CHANGE IS FAIRLY DEBATABLE. IF YOU HAVE A CASE LIKE THE DIEBS CASE, WHICH IS NOTHING MORE THAN TO SHOW, IF YOU HAVE AN ABUSE OF POWER AND THE CITY OR LOCAL GOVERNMENT IS TRYING TO BOW WITH THOSE WITH ECONOMIC POWER TO FORCE ZONING AND PLAN DECISIONS, THEN IT A REZONING, BUT IT IS A HIGHLY DEFERENTIAL DECISION. THIS COURT RECOGNIZED THAT, IN USUM, AND ALL OF THE WAY BACK TO HEDGS, WHICH IS WHAT THE CERTIORARI STATES INLAND USE DECISIONS, THAT THIS IS FOR LOCAL GOVERNMENT, THAT JUDICIAL REVIEW IS MORE NARROW IN THE LEGISLATIVE ARENA, SUCH AS A PLAN AMENDMENT, THAN IT IS IN THE REZONING CONTEXT, BUT THAT IT IS, STILL, PRIMARILY AN ISSUE FOR LOCAL GOVERNMENTS, AND IT IS PRESUMPTIVELY CORRECT, WHICH IS WHY WE HAVE THE BURDENS OF PROOF

ALLEGATION AS WE DO IN SNYDER.

BASICALLY, WHEN WE GET DOWN TO IT, THE DECISION IS THAT, IF IT IS A SMALL PLAN AMENDMENT, YOUR CONTENTION IS THAT IT IS POLICY FORMULATION OR REFORMULATION, RATHER THAN APPLICATION OF ALREADY-EXISTING POLICY.

ABSOLUTELY. I AM SORRY.

GOING BACK TO THE FIRST QUESTION THAT I HAD ASKED YOUR OPPONENT, IS THAT, HOW WOULD SNYDER WORK, THE ACTUAL BURDENS IN SNYDER, IF WE WERE TO APPLY IT TO A SMALL PLAN AMENDMENT?

HOW IT WOULD WORK IS --

WOULD WE HAVE TO REFORMULATE SNYDER?

IT WOULD BE UTTER CHAOS, BECAUSE EVERY TIME SOMEONE ASKS FOR A PLAN AMENDMENT, IN ORDER TO MEET THEIR DESIRED DEVELOPMENT GOAL, THEN YOU WOULD END UP WITH THE SAME -- WELL, WHAT YOU WOULD DO IS YOU WOULD END UP WITH THE CIRCUIT COURT SITTING AS APPELLATE COURTS, REVIEWING THE DECISIONS OF THE LOCAL GOVERNMENT, FINAL ORDERS OF THE LOCAL GOVERNMENT, ON THE SAME CERTIORARI STANDARDS THAT NOW EXIST. THERE WOULD BE NO DE NOVO RIGHT TO PRESENT EVIDENCE ON AN INJUNCTIVE AND DECK ACTION, WHICH IS WHERE WE ARE TODAY. I DON'T THINK THERE IS ANY QUESTION, AND IF I AM WRONG, I WON'T BE THE FIRST TIME, BUT I DON'T THINK THERE IS ANY QUESTION THAT THE RATIONALE FOR USUM POINTS OUT THAT THIS IS A LEGISLATIVE PROCESS, NO MATTER WHETHER IT IS ONE PIECE OF PROPERTY THAT IS 54 ACRES AND HAS THEORETIC I CAN IMPACT, BECAUSE IT IS LARGE, AND I WOULD LOOK TO CONCLUDE -- I WOULD LIKE TO CONCLUDE BY MAKING THE COMMENT THAT I WATCHED THE ORAL TAPE IN USUM, AND IT WAS SAID TO THIS COURT THAT THE FUTURE LAND USE MAP REPRESENTS A BALANCING ACT. THE LOCAL GOVERNMENT HAS TO BALANCE ITS MEAD NEEDS AND ANTICIPATED FUTURE NEEDS, WITH ALL OF THE DIFFERENT AREAS AND ALL OF THE FACTORS THAT GO INTO A COMPREHENSIVE PLAN, OF WHICH THE MAP IS AN INTEGRAL PART. WHEN YOU RIP AWAY ONE OF THOSE AND CHANGE THEM, IT, NECESSARILY, IMPACTS ALL OTHERS, SO I WOULD ENCOURAGE THE COURT TO ANSWER THE QUESTION THAT USUM DOES CONTROL A SMALL SCALE AMENDMENT. THANK YOUR HONORS.

THANK YOU VERY MUCH.

MAY IT PLEASE THE COURT. A SMALL -- THE ADOPTION OF A SMALL SCALE AMENDMENT IS THE SAME PROCESS FOR THE ADOPTION OF REZONING APPLICATION, AND THAT IS EXACTLY WHY IT SHOULD BE THE SAME STANDARD OF REVIEW BY THE CIRCUIT COURT. IT IS A QUASI-JUDICIAL PROCESS. EVIDENCE IS PRESENTED. IT IS BEFORE THE LOCAL GOVERNMENT. THE ELECTORATE IS THERE. DECISIONS MUST BE BASED ON INDEPENDENT THOUGHT AND NOT POPULAR CHOICE, AND THAT IS WHAT IS BEING DECIDED. A SMALL SCALE AMENDMENT. A LARGE SCALE AMENDMENT IS PROTECTEDED, AS INDICATED IN USUM, AS INTEGRATED BY THE PROCESS, WHICH DOES NOT EXIST FOR A SMALL SCALE AMENDMENT. THE CONFUSION WHICH RESULTED, AFTER SNYDER, IN DECIDING PLAN AMENDMENT CASES, WAS BECAUSE COURTS DID NOT UNDERSTAND WHAT STANDARD OF REVIEW TO APPLY, AND BECAUSE THEY WERE FIGHTING WITH THIS FUNCTIONAL ANALYSIS IN SNYDER. THE LEGISLATURE CLEARED YOU CLEARED UP THE NEED FOR FUNCTIONAL ANALYSIS, BY DEFINING WHAT LIMITED IMPACT WOULD BE, BY SAYING THAT A SMALL SCALE AMENDMENT IS ONE OF TEN ACRES OR LESS. THERE WOULD BE NO NEED FOR A FUNCTIONAL ANALYSIS FORM WE ARE ASKING FOR A CONSISTENT RESULT. IT WOULD BE PREDICTABLE, IF IT IS A SMALL SCALE AMENDMENT, A CHANGE ONLY TO THE FUTURE LAND USE MAP AND NOT TO THE WRITTEN TEXT, THEN IT WOULD BE A QUASI-JUDICIAL PROCESS, AS DEFINED BY THE LEGISLATURE, SUBJECT TO SKRICKT SCRUTINY AND COMPETENT REVIEW. IF IT WAS A LARGE

SCALE PLAN AMENDMENT, THEN IT WOULD BE SUBJECT TO USUM.

SO LET ME ASK YOU THIS. IF I UNDERSTOOD WHAT YOUR OPEN OPENENT -- OPPONENT ARGUED, HE IS SAYING THAT, IF YOU DO A REZONING, YOU ARE ASKING FOR A USE THAT IS, ALREADY, A PERMITTED USE FOR THAT PARTICULAR PROPERTY. IT IS WITHIN THE PERMITTED USE, BUT ON THESE SMALL SCALE AMENDMENTS, YOU ARE ASKING FOR A USE THAT WAS NOT A PERMITTED USE. CORRECT? IS THAT THE ESSENCE OF THIS SMALL PLAN AMENDMENT?

WE ARE ASKING FOR A USE WHICH WAS NOT PLACED INTO THE FUTURE LAND USE MAP ELEMENT OF COMP PLAN, BUT IT IS A USE WHICH IS CONSISTENT, WHICH, WITH THE POLICIES THAT WERE ADOPTED --

BUT THE MAP, ITSELF, HAS A USE FOR THE PROPERTY THAT YOU HAVE.

YES, YOUR HONOR.

OKAY.

AND SO YOU ARE ASKING FOR A CHANGE FROM THAT -- WHAT IS ON THE MAP.

YES, YOUR HONOR.

OKAY. AND SO, IF YOU CHANGE WHAT IS ON THE MAP, DOES IT, OF NECESSITY, CHANGE ANYTHING IN THE COMPREHENSIVE PLAN?

IT ONLY CHANGES THE LAND USE MAP ELEMENT BUT NOT THE TEXT, POLICIES OR GOALS. LET ME JUST USE THIS CASE AS AN EXAMPLE. MR. GRAESSLE READ THE LAND USE COMPREHENSIVE POLICY ABOUT IN-FILL DEVELOPMENT. OUR ARGUMENT AND OUR EVIDENCE SHOWED THAT, BASED ON CHANGED CIRCUMSTANCES, OUR -- THE REDESIGNATION OF OUR PROPERTY, TO COMMERCIAL OFFICE SPACE, WOULD BE CONSISTENT WITH THAT EXISTING POLICY. WE ARE NOT ASKING FOR THAT IN-FILL POLICY TO BE CHANGED. THAT POLICY EXISTS. THERE ARE NEW CIRCUMSTANCES. THIRD STREET IS MUCH MORE POPULATED, MUCH MORE BUSINESS-ORIENTED. THE CITY TOOK SUBSTANTIAL PROPERTY, AFTER THEY ADOPTED THE PLAN, SO THAT THAT PROPERTY THEY THOUGHT WOULD BE AVAILABLE FOR OFFICE SPACE IS NO LONGER AVAILABLE, AND THE POLICY, STILL, STACE IN PLACE.

BUT IN THE -- WHEN YOU ARE SEEKING A REZONING, YOUR ARGUMENT THAT IT IS CONSISTENT WITH THE PLAN, IT IS CONSISTENT WITH THE PLAN, AND SO, REALLY, THERE IS NOT A POLICY ISSUE AS TO IS IT OR ISN'T IT. IT IS, BECAUSE IT IS WITHIN THE MAP, BUT WHEN YOU ARE ASKING FOR SOMETHING TO GO FROM RESIDENTIAL TO COMMERCIAL, YOUR ARGUMENT IS, WELL, IT IS OKAY TO DO IT, BECAUSE IT IS CONSISTENT WITH THE OVERALL PLAN, BUT THE APPROPRIATE GOVERNMENTAL ENTITY HAS A RIGHT TO SAY, NO, WE, LOOKING AT OUR MAP, WE THINK THAT THIS IS NOT CONSISTENT, AND THAT IS THE POLICY THAT IS BEING INVOLVED. I MEAN, YOU HAVE GOT TO ESTABLISH, SUCCESSFULLY, THAT IT IS CONSISTENT. THE ZONING PEOPLE SAY, NO, IT IS NOT CONSISTENT, AND THAT IS THE EVALUATIVE PROTEST THAT IS GOING ON. IT IS NOT LIKE A DIFFERENCE. YOU SAY IT IS CONSISTENT AND THEY GO, OH, YOU ARE RIGHT. IT IS CONSISTENT. IT IS INTERPRETIVE, WHETHER IT IS CONSISTENT OR NOT.

YOUR HONOR, I DISAGREE FOR THE PROCESS FOREVER REZONING. SNYDER SAID THE BURDEN OF PROOF IS ON THE LAND OWNER TO SHOW THAT HIS PROPOSED CHANGE WOULD BE CONSISTENT WITH THE POLICIES. THAT IS BECAUSE, ALTHOUGH THE LAND USE WOULD BE PERMITTED BY THE FUTURE LAND USE MAP, THAT DOES NOT NECESSARILY MEAN IT IS CONSISTENT WITH THE POLICIES. YOU HAVE TO, AGAIN, LOOK AT THE DATA AND LOOK AT THE CIRCUMSTANCES THAT EXIST AT THAT TIME, AND IT MAY NOT JUSTIFY GOING TO A PERMITTED USE, BECAUSE IT MAY NOT BE CONSISTS EN. IN OUR CASE, IN A SMALL SCALE AMENDMENT, AGAIN, THE USE MAY NOT

HAVE BEEN PERMITTED, BUT THE PERMITTED USE MAY NOW BE -- I MEAN THE REQUESTED USE MAY, NOW, BE CONSISTENT WITH THE EXISTING POLICY, AND YOU, STILL, HAVE TO GO THROUGH THE SNYDER SHIFTING OF POLICY AND SHOW THAT IS CONSISTENT WITH THE PLAN.

THANK YOU.

THANK YOU, YOUR HONOR.

WE WILL BE IN RECESS FOR 5 MINUTES. THANK YOU VERY MUCH. THE MARSHAL: PLEASE RISE.