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Lawrence Fuchs vs Joel W. Robbins

NEXT CASE IS A CONSOLIDATED CASE. FUCHS VERSUS ROBBINS AND MIAMI BEACH OCEAN RESORT, INC. VERSUS ROBBINS. MR. MEL ENCAMP, YOU MAY PROCEED.

MR. CHIEF JUSTICE. MAY IT PLEASE THE COURT. MY NAME IS JOSEPH MELLICHAMP. I AM ASSISTANT ATTORNEY GENERAL REPRESENTING THE DEPARTMENT OF REVENUE IN THIS MATTER. THIS CASE INVOLVES THE LEGISLATIVE IMPLEMENTATION OF ARTICLE 7 SECTION 4. THIS IS A NONSELF EXECUTING PROVISION, AND IT IS BASICALLY UNCHANGED FOR THE PART THAT WE ARE DISCUSSING, TODAY, FROM ARTICLE NINE SECTION I OF THE 1885 CONSTITUTION IN A MOST SIGNIFICANT WAY. THE MOST SIGNIFICANT THING THAT HAS CHANGED IS THAT IS THERE A REQUIREMENT THAT, WHEN THE LEGISLATURE MAKES THE RECOMMENDATIONS FOR THE JUST VALUATION OF ALL PROPERTY, THEY DO IT BY GENERAL LAW, UNDER THE OLD CONSTITUTION, THERE WAS NOT SUCH A RESTRICTION, AND THAT IS, ALSO, A RECOGNITION OF THE PROHIBITION IN ARTICLE III SECTION 11, WHICH PREVENTS SPECIAL LAWS AND GENERAL LAWS OF LOCAL APPLICATION, CONCERNING THE ASSESSMENT OF THE COLLECTION OF TAXES. OTHER THAN THAT, THERE IS NO CHANGE. NOW, THE STATUTES INVOLVED IN THIS CASE ARE TWO. THE FIRST IS SEX 12.001 -- THE FIRST IS SECTION SHUN 192.001-12, WHICH DEFINES REAL PROPERTY. THEY DEFINE REAL PROPERTY AS BUILDINGS, FIXTURES AND IMPROVEMENTS. THIS IS THE SAME DEFINITION THAT HAS EXISTED SINCE 18956789 THE SECOND STATUTE IS SECTION 192.042-1. THIS COURT, IN THE COLLIER COUNTY CASE, CALLED THIS PART OF THE TIMING SCHEME OF THE LEGISLATURE FOR THE ASSESSMENT AND COLLECTION OF TAXES. IT IS BASICALLY THE SAME STATUTE AS EXISTED SINCE 1961, WHICH IS PRIOR TO THE '68 AMENDMENT, AND THAT WAS --

I AM SORRY. WAS THERE ANY DISCUSSION AT THE TIME OF THE '68 AMENDMENT THAT YOU FOUND ANYWHERE, WITH REGARD TO THE CONCEPT OF THIS SUBSTANTIAL COMPLETION, AND AS IT RELATES TO VALUATION?

NO, YOUR HONOR, BUT IF WE TAKE THE -- AND THAT IS VERY IMPORTANT. IF WE TAKE, HOWEVER, THE INVITATION OF THE THIRD DISTRICT, IN THEIR SECOND OPINION, WHICH WE CONTEND IS INCORRECT, THEY INVITE US, AND THEY PRESENT US WITH THE KEY TO THIS CASE. WHEN THEY SAY THAT ONE NEEDS TO LOOK AT AN OUNCE OF HIS HISTORY, WHICH IS WORTH A POUND OF LEGAL LOGIC, AND IF WE TAKE THE HISTORY OF THE DAY, 1968, WE LOOK AT THIS COURT'S DECISION IN THE DICKINSON CASE, WHERE THIS COURT SAID THAT THERE WAS SOOETING RESENTMENT BY TAXPAYERS AND MOUNTING RESISTANCE TO PROPERTY TAX EXCESSES. NOW, THERE WAS A STATUTE IN PLACE WHICH IS OUR 192.042-1, THAT SAID IMPROVEMENTS THAT ARE NOT SUBSTANTIALLY COMPLETE WILL BE PUT ON THE ROLE IN THE YEAR IN WHICH THEY ARE COMPLETE. THIS IS A REASONABLE INTERPRETATION OF THE WORD IMPROVEMENT. IF YOU REMEMBER THE DEFINITION OF REAL PROPERTY, IT SAYS BUILDINGS, FIXTURES AND IMPROVEMENTS. THE WALKING AROUND, PEOPLE ON THE STREET, MEANING OF THOSE TERMS IS IT IS COMPLETE. WELL, IN 1961, THE LEGISLATURE MADE IT VERY CLEAR THAT, IF IT IS NOT COMPLETE, IT GOES ON THE ROLE THE NEXT YEAR. NOW, GETTING BACK TO THE HISTORY THAT THIS COURT LAID OUT THAT WAS THE GENESIS FOR THIS 1966 LEGISLATIVE ELECTIONS, AND THE MANDATE TO THAT LEGISLATURE TO DO SOMETHING ABOUT TAXES, AND WHAT DID THEY DO? IN JULY OF 1968, THEY PASSED THREE JOINT RESOLUTIONS, OF WHICH ARTICLE VII SECTION 4 WAS PART OF, AND THEY PASSED IT RIGHT AFTER THIS COURT'S DECISION IN CULL BETTER SON, KNOWING FULL -- CULBERSON, KNOWING FULL WELL WHAT THAT THE COURT HAD SAID IN THAT CASE. NOW, THOSE AMENDMENTS GO TO THE PEOPLE. THEY KNOW THE BENEFITS OR DEBT RIMENTS OF THIS TIMING STATUTE. LET ME EXPLAIN A FEW OF THEM TO YOU. IN THE TAXING

SCHEME THAT THE LEGISLATURE HAS LAID OUT AND HAS BEEN THERE SINCE, BASICALLY, 1895, ON JANUARY 1 IS TAX DAY. THIS WHOLE PROCEDURE HAS TO HAVE A BEGINNING AND AN END, AND IT IS VERY LOGICAL. ON THAT DAY THEY TAKE A PICTURE OF YOUR PROPERTY. AND WHATEVER CONDITION IT IS ON THAT DAY, IS WHAT IS GOING TO BE TAXED. SO LET'S TAKE THE INDIVIDUALS THAT VOTED FOR THIS AMENDMENT. THEY HAVE A HOME. JANUARY 1, IT IS BUILT. THEY CLAIM HOMESTEAD EXEMPTION ON IT. THEY ARE GOING TO GET A TAX BILL FOR WHATEVER THAT HOUSE IS WORTH, MINUS HOMESTEAD EXEMPTION. HOWEVER, AND THIS IS ADDRESSING SOME OF THE ARGUMENTS OF THE APPELLEE ABOUT THE DOWN SIDES TO THIS TIMING STATUTE. IF THAT HOME IS DESTROYED OR PARTIALLY DESTROYED IN AUGUST BY A HURRICANE, THAT PERSON STILL IS GOING TO GET THE SAME TAX BILL FOR HIS HOUSE BACK IN JANUARY. IF THAT HOUSE IS NOT SUBSTANTIALLY REBUILT ON JANUARY OF THE NEXT YEAR, UNDER THIS TIMING STATUTE, HE WILL GET A TAX BILL FOR THE DIRT BUT NOT FOR THE IMPROVEMENT THAT IS NOT AN IMPROVEMENT. UNDER THE APPELLEE'S THEORY, HE WILL GET TWO BILLS. HE WILL GET ONE BILL FOR A HOUSE THAT IS NOT THERE AND A SECOND BILL FOR A HOUSE THAT IS NOT COMPLETE. NOW, IS IT A PERFECT SYSTEM? NO. IF YOUR HOUSE IS THERE ON JANUARY 1, YOU ARE SUBJECT TO TAX. IF YOU START BUILDING YOUR HOUSE ON JANUARY 2, AND YOU COMPLETE IT BY, LET'S SAY, JULY 1, YOU ARE NOT GOING TO GET TAXED FOR THE HOUSE. IS IT A PERFECT SYSTEM? NO. THE APPELLEE IS COMPLAINING OF THE POLICY OF THE LEGISLATURE NOT TO CAPTURE THESE THINGS. ONE OF THE AMICI PUT IN THEIR BRIEF, THE LEAGUE OF CITIES, THAT IS ONE OF THE THINGS THAT THE LEGISLATURE HAS DEALT WITH OR TRIED TO DEAL WITH IN THIS AREA AND DECLINED, SAID PARTIAL YEAR ASSESSMENT, WHICH WOULD CAPTURE IMPROVEMENTS THAT WERE NOT SUBSTANTIALLY COMHAD PLEAT ON JANUARY 1 -- COMPLETE ON JANUARY 1, WOULD PUT AN ADDITIONAL \$5.5 BILLION I DON'T KNOW OF VALUE ON THE ROLE. NOW -- ON THE ROLL. NOW, GETTING BACK TO 1968, DID THE PEOPLE GO TO THE POLLS, WHEN THEY WERE HAVING, AS THIS COURT CHARACTERIZED IT, SEETHING RESENTMENT FOR EXCESS TAXES AND VOTE TO CHANGE THE LAW, WHERE THEY WOULD RECEIVE THE TAX BILLS WE ARE TALKING ABOUT, IS IT REASONABLE TO ASSUME, AND THIS IS THE OUNCE OF HISTORY, IS IT REASONABLE TO ASSUME THAT THEY WANTED TO CHANGE THE SITUATION WHERE, IF THEY OR THEIR CHILDREN STARTED BUILDING THEIR HOUSE IN OCTOBER, AND IT WAS HALF BUILT ON JANUARY 1, THEY WANTED THEMSELVES OR THEIR CHILDREN TO RECEIVE A TAX BILL FOR HALF A HOUSE, UPON WHICH THEY COULD NOT GET HOMESTEAD EXEMPTION. WE SUBMIT THAT THAT IS NOT REASONABLE, SO IN ANSWER TO YOUR QUESTION, HISTORY IS OUR BACKGROUND. IT IS REASONABLE TO ASSUME, IN THE DAY, AT THE TIME THAT THIS WAS BEING DONE, THAT THE PEOPLE DIDN'T MEAN FOR THIS ARTICLE TO CHANGE THAT STATUTE, AND THE ONLY THING IN THE HISTORY --

THE STATUTE WAS -- MY MEMORY IS, IT WAS PASSED IN '61.

CORRECT, SIR.

WHAFS THE TAX SCHEME -- WHAT WAS THE TAX SCHEME IMMEDIATELY PRIOR TO THE '61 ADOPTION OF THIS STATUTE?

I DO NOT KNOW, YOUR HONOR. I DO NOT KNOW IF THERE HAD BEEN PROBLEMS WITH PROPERTY APPRAISERS PUTTING PARTIALLY COMPLETE STRUCTURE ON THE TAX BILLS OR NOT. I DO NOT KNOW.

WAS THE ARTICLE VII, SECTION 4, WAS THAT PART OF THE CONSTITUTIONAL REVISION COMMISSIONS?

THE LEGISLATURE.

THE LEGISLATURE.

YES, YOUR HONOR.

SO IS THERE AN ARGUMENT, THEN, THAT IF THE LEGISLATURE WANTED TO ELIMINATE THE SUBSTANTIAL COMPLETION, THEY COULD HAVE DONE IT BY LAW? THAT THEY DIDN'T NEED A CONSTITUTIONAL AMENDMENT?

THEY COULD CHANGE THE DEFINITION OF PROPERTY.

CHANGE THE --

WELL, AGAIN, AT THIS POINT, WITH THIS HISTORY, THIS COURT TEACHES US, UNDER THE FLORIDA BOATERS CASE, THAT WHEN YOU LOOK AT THE LEGISLATIVE DEFINITION OF WORDS IN THE CONSTITUTION, AND IN THAT PARTICULAR CASE IT WAS THE WORD "BOAT", YOU NEED TO GO BACK IN HISTORY AND SEE WHAT THE PEOPLE MEANT, WHEN THEY ADOPTED THE CONSTITUTION.

I AM SAYING THAT THE STATUTE THAT THE THIRD DISTRICT HAS DECLARED UNCONSTITUTIONAL, THAT WAS PASSED IN 1961, THAT IF THERE WAS AN INTENT IN ARTICLE VII, SECTION 4, TO DO AWAY WITH THAT STATUTE, WHICH IS, I GET THE ARGUMENT OF THE THIRD DISTRICT TO BE, THAT THAT '68 AMENDMENT RENDERED THAT STATUTE UNCONSTITUTIONAL.

THAT IS WHAT THEY HELD.

I AM JUST SAYING THERE WOULD HAVE BEEN NOTHING TO PREVENT THE LEGISLATURE, IF THAT IS PART OF WHAT THEY WERE TRYING TO DO, TO HAVE CHANGED THE STATUTE.

AT THAT TIME THEY COULD HAVE CHANGED THE STATUTE, YES.

DO WE HAVE ANYTHING ABOUT WHAT THE VALID SUMMARY WAS FOR THE 1967868 AMENDMENT ON THAT PARTICULAR -- FOR THE 1968 AMENDMENT ON THAT PARTICULAR HISTORY --

NO, YOUR HONOR, THE ONLY THING THAT I HAVE BEEN ABLE TO FIND OUT, AND IT IS IN THE A.M. CUSS BRIEF, THE HOMEOWNERS, IS THAT THE LEGISLATURE DID RE-- THE AMICUS BRIEF, THE HOMEOWNERS, DID MOVE AROUND AND REDID THE PORTIONS OF THE TAX STATUTE THAT WERE NO LONGER VALID, AND THE COMMITTEE THAT DID THIS WAS THE HOUSE COMMITTEE ON ADVALOREM TAXATION, AND IN THE -- AS YOU GO THROUGH THE ACT, YOU WILL SEE IT, AT THE END OF EACH SECTION, COMMITTEE COMMENTS. THE CHAIRMAN OF THAT COMMITTEE WAS SANDY DELLENBERG, THE SAME INDIVIDUAL THAT WROTE THE COMMENTS FOR THE CONSTITUTION, AND THE COMMENT AFTER THE SECTION THAT CONTAINS 192.042 READS THIS SECTION SETS THE EFFECTIVE -- 192.042 READS THIS SECTION SETS THE EFFECTIVE DATE FOR ALL FORMS OF PROPERTY. THAT IS WHAT WE CAN FIND THAT TIES IN TO THIS COURT'S DECISION IN COLLIER COUNTY, AND, YOU KNOW, THE QUESTION RAISED ABOUT THAT CASE, WELL, THE CONSTITUTIONALITY WASN'T RAISED IN THAT CASE. THAT IS CORRECT, BUT THIS COURT'S VIEW OF THAT STATUTE DIDN'T NEED TO HAVE A CONSTITUTIONAL QUESTION TO SEE IT FOR WHAT IT WAS. AND THAT WAS IT IS PART OF A VERY UNIQUE TIMING SCHEME FOR THE ASSESSMENT AND COLLECTION OF PROPERTY.

WELL, YOU AGREE, THOUGH, THAT IN COLLIER COUNTY THE ISSUE AS TO THE WISDOM OF THE STATUTE OR THE CONSTITUTIONALITY WAS ABSOLUTELY NOT IN FRONT OF US.

YES. YES, YOUR HONOR. THE WISDOM OF THE OPINION, HOWEVER, I FULLY SUPPORT. ON THAT ISSUE. BECAUSE IT IS CORRECT. IT IS A TIMING STATUTE. AND IF I MAY, THIS ENTIRE TIMING SCHEME IS BASED ON JANUARY 1, TO START WITH, THAT HAS A DATE OF JULY 1 FOR THE COMPLETION OF THE ROLE BY THE PROPERTY APPRAISER, WHO, THEN, SENDS A ROLL TO THE DEPARTMENT OF REVENUE, FOR APPROVAL OR DISAPPROVAL. HE NOTIFIES THE TAXING ENTITIES OF THE VALUES. AFTER THE APPROVAL OF THE ROLL, TRIM NOTICES GO OUT. THE TAXING ENTITIES HAVE THEIR HEARINGS ONSETING MILLAGES. THE MILLAGES ARE SET. THEY KNOW HOW

MUCH MONEY THEY ARE GOING TO GENERATE THE NEXT YEAR, AND THEY SET THEIR OWN BUDGET BY OCTOBER 1. IT IS A VERY TIGHT TIMING SEQUENCE. AND WHAT THE LEGISLATURE HAS DONE, IN THIS, IS SAY, AS OF JANUARY 1, JUST LIKE THE ORDINARY MEANING OF THOSE WORDS, UNDER THE DEFINITION OF REAL PROPERTY, BEING BUILDINGS, FIXTURES AND IMPROVEMENTS, THAT IMPROVEMENTS GO ON IN THE YEAR IN WHICH THEY ARE COMPLETED. THIS IS A REASONABLE INTERPRETATION. THIS WAS THE INTERPRETATION AT THE ADOPTION OF THE CONSTITUTION, AND IT IS TOTALLY UNREASONABLE TO THINK THAT THE PEOPLE, WITH THIS ARTICLE, WANTED TO CHANGE THAT, AND IN 1968, SUBJECT THEMSELVES TO WHATEVER THAT AMOUNT WOULD BE, THE 5.5 BILLION, TODAY, WOULD BE AN EQUALLY LARGE SUM IN 1968. SUBJECT THEMSELVES TO THAT AMOUNT OF TAX, WHEN THE WHOLE PURPOSE WAS TO RELIEVE THEMSELVES OF IT. AND THAT SAME FEELING AND SAME VIEW IS PREVALENT, TODAY, WITH THE "SAVE OUR HOMES" AMENDMENT AND THE TAX CAP. THEY DIDN'T MEAN FOR THIS THING TO CHANGE, NOT WHEN THEY WENT TO THE BALLOT BOX. ARTICLE VII, SECTION 4 DOES NOT CHANGE THIS STATUTE, DOES NOT MAKE IT UNCONSTITUTIONAL. I WOULD LIKE RESERVE THE REST OF MY TIME FOR REBUTTAL.

YOU MAY DO SO. THANK YOU.

MAY IT PLEASE THE COURT. I AM REPRESENTING THE PROPERTY APPRAISER FOR DADE COUNTY, JAY WILLIAMS. THIS STATUTE, WHAT YOU CALL A TIMING MECHANISM, A GUIDE TO PROPERTY APPRAISERS, AN EXEMPTION, A CLASSIFICATION. IT DOESN'T MATTER WHAT YOU CALL IT. IT, IN NO WAY, IS REASONABLY CALCULATED TO LEAD TO A FINDING OF JUST VALUE ON THESE PROPERTIES, WHICH THIS COURT HAS, TIME AND AGAIN, DEFINED AS THE AMOUNT A WILLING SELLER WOULD PAY TO A WILLING BUYER FOR THESE PROPERTIES, THAT IS FAIR MARKET VALUE. THIS STATUTE IS BASED ON AN OLD VIEW OF THE LAW THAT THE LEGISLATURE COULD SUBJECTIVELY LOOK AT WHAT IS FAIR IN DECIDING HOW TO PROVIDE GUIDELINES FOR JUST VALUE. THOSE CASES COME FROM THE MAXY CASE, WHERE THIS COURT, BACK UNDER THE OLD CONSTITUTION, SAID IT WAS CLEAR THAT TREES, IN THAT CASE, WHICH WERE ON THE PROPERTY, DIDN'T ADD ANY VALUE TO THE PROPERTY EXCEPT FOR THE PURPOSES OF SALE, AND THAT THE LEGISLATURE COULD DISCARD THE PURPOSES FOR SALE. WELL, THE ENTIRE CRUX OF FAIR VALUE OR JUST VALUE, NOW, IS PURPOSES OF SALE. WE LOOK TO SEE WHAT AN APPROPRIATE SALES PRICE WOULD BE FOR PROPERTY, AND WHEN WE LOOK AT PROPERTY, AS IN THIS CASE, THIS TAXPAYER PAID OVER A MILLION DOLLARS FOR THIS BUILDING IN ITS BOARDED-UP CONDITION, ADDED EXTENSIVE AMOUNTS OF MONEY TO IT PRIOR TO JANUARY 1, VALUED, ITSELF, AT OVER \$10 MILLION ON JANUARY 1. IT WAS UNDISPUTED THAT THE ASSESSMENT OF OVER \$3 MILLION WAS THE PROPERTYER ASSESSMENT AND THAT -- WAS THE PROPER ASSESSMENT OF THAT PROPERTY AND THAT LED TO COURT TO WILL VALUATION OF ZERO DOLLARS ON THIS PROPERTY.

WOULDN'T YOU AGREE, THOUGH, THAT THIS IS A MORE COMPLICATED SCHEME OF VALUE ON THIS PROPERTY WHICH WE HAVE SAID IS JUST VALUE EQUATES TO THAT. NOW YOU HAVE SAID THAT YOU ARE GOING TO HAVE TO DEVELOP A SCHEME WHERE, WHEN I AM PROFITS ARE IN A CERTAIN PERCENTAGE OF COMPLETION, THAT YOU ARE GOING TO HAVE TO DETERMINE WHETHER OR NOT IS THERE A MARKET FOR FACILITIES THAT ARE INSERT PERCENTAGES OF COMPLETION, AND THEN THIS IS GOING TO BE A VERY COMPLEX, YOU KNOW, THING THAT -- A WHOLE NEW, REALLY, MARKET SCHEME OUT THERE, AND THEN ADDED TO THAT, AREN'T YOU GOING TO HAVE COMPLICATIONS, FOR INSTANCE, IN FIGURING OUT ISSUES LIKE HOMESTEAD EXEMPTIONS, YOU KNOW, WHEN PEOPLE, WITH REFERENCE TO PRIVATE REST DEBZ -- RESIDENCES, WHEN PEOPLE ACTUALLY, THEN, OCCUPY A HOME LIKE THAT, AND IT IS GOING TO REQUIRE, REALLY, A WHOLE NEW THEORY OR PRACTICAL APPLICATION TO THESE THINGS? I MEAN WOULD YOU AGREE?

WELL, THERE IS NO QUESTION IT IS GOING TO REQUIRE SOME ADDITIONAL WORK, BUT LET ME ADD SOME THINGS TO. THAT FIRST OF ALL, THE SOLUTION TO A CONSTITUTIONAL PROBLEM IS NOT TO SAY, WELL, WE JUST IGNORE THE CONSTITUTION, IF IT CREATES ADDITIONAL WORK. FOR EXAMPLE, I BELIEVE OUR CONSTITUTION TRIES TO PROVIDE AN ADEQUATE EDUCATION FOR ALL

OF OUR CHILDREN. WE ALL KNOW THE PROBLEMS THIS STATE HAS HAD WITH THAT, BUT THE SOLUTION IS NOT TO SAY LET'S CLOSE THE SCHOOLS.

WHERE WOULD YOU TELL US THAT THE VOTING PUBLIC, BACK IN 1968, WHEN THIS STATUTE, IN EFFECT, WAS INVALIDATED, WHERE WAS THE PUBLIC PUT ON NOTICE THAT THIS PARTICULAR STATUTE WAS GOING TO BE INVALIDATED, IF YOU PASS THIS CONSTITUTIONAL --

THE PUBLIC WASN'T PUT ON NOTICE SPECIFICALLY FOR THIS, ANYMORE THAN IT WAS FOR SOME OF THE OTHER STATUTES THAT WERE IN EXISTENCE AT THE TIME OF THE NEW CONSTITUTION, WHICH THIS COURT STRUCK DOWN AS BEING VIOLATE I HAVE OF THE NEW CONSTITUTION. -- VIOLATE IVE OF THE NEW CONSTITUTION, AND AS TO THE POINT WHICH MY OPPONENT WAS TALKING ABOUT AS TO THE SEETHING TAXPAYERS, I BELIEVE YOU CAN LOOK AT THAT AT ANOTHER ANGLE. THE TAXPAYERS MIGHT WELL NOT HAVE BEEN HAPPY WITH FINDING OUT THAT, BY ALLOWING A LARGE STRUCTURE, AS A HOTEL, SUCH AS BIG CORPORATE BUILDINGS, TO ESCAPE TAXATION, EVEN THOUGH THEY ARE ENTITLED TO ALL OF THE POLICE PROTECTION AND FIRE PROTECTION THAT EVERYONE ELSE IS, TO ALLOW ALL OF THAT VALUE TO COME OFF OF THE ROLLS, WHICH IS ESTIMATED TO BE APPROXIMATELY \$110 MILLION-A-YEAR OR \$60 MILLION-A-YEAR, DEPENDING ON THE ESTIMATE, WHICH ALLOWING THOSE TO COME OFF THE ROLLS WOULD INCREASE THE MILLAGE ASSISTED TO ALL OF THE OTHER TAXPAYERS, BECAUSE AS THIS COURT HAS HELD, ONE PERSON'S EXEMPTION IS ANOTHER PERSON'S BURDEN, AND IT IS NOT PROPER AND EQUITABLE, UNDER A DEMOCRATIC SOCIETY, TO SHIFT THE BURDEN FROM ONE TAXPAYER TO ANOTHER TO LIFT MILLAGES, UNLESS THAT BURDEN IS PROVIDED FOR IN THE CONSTITUTION.

BUT YOU AGREE THAT NONE OF YOU HAVE BEEN ABLE TO POINT OUT TO US ANY DISCUSSION IN EITHER THE PUBLIC LITERATURE OR THE LEGISLATIVE DEBATES, PUBLIC DEBATES, THAT THIS STATUTE WOULD BE INVALIDATED OR CHANGED. YOU AGREE? THERE IS NOTHING OUT THERE --

AS FAR AS THE WRITTEN CONSTITUTION SPECIFICALLY TO THIS STATUTE?

THAT IT IS GOING TO INVALIDATE.

I AGREE, BUT LET ME TURN TO ONE ARGUMENT THAT JUSTICE PARIENTE TALKED ABOUT, AND THAT IS SHE SAID THAT, IF THE LEGISLATURE, IN ENACTING THIS NEW PROVISION TO THE CONSTITUTIONAL -- TO THE VOTERS, COULD HAVE ELIMINATED THAT STATUTE, THEY COULD HAVE DONE SO, BUT MORE IMPORTANTLY, IF THEY HAD WISHED TO KEEP THIS AS A SPECIAL PROPERTY OR A SPECIAL EXEMPTION, THEY COULD HAVE INCLUDED IT IN THE CONSTITUTIONAL PROVISION, EXACTLY AS THEY DID WITH AGRICULTURAL LANDS AND RECREATIONAL LANDS, AND IT WAS THIS COURT'S FINDINGS ALL ALONG, IN NUMEROUS CASES, ARCHER AGAINST MARSHAL, THE VALENCIA CENTER CASE AND ALL OF THE OTHER CASES, THAT BY PUTING IN THERE THE SPECIFIC THINGS THAT THEY WISH TO BE ALLOWED TO BE ASSESSED ON SOMETHING OTHER THAN FULL FAIR MARKET, WILLING SELLER, WILLING BUYER VALUE, THAT THEY EXCLUDED THE OTHER THINGS, AND THERE IS NO SPECIFIC LISTING OF SUBSTANTIAL -- IN SUBSTANTIALLY COMPLETED BUILDINGS, AND THEREFORE THEY SHOULD BE EXCLUDED.

WHAT I AM HAVING TROUBLE WITH IS THE FACT THAT, AS YOUR OPPONENT ARGUED, WE HAVE HAD, IN FLORIDA, ALL OF MY LEGAL CAREER, A TIMING STRUCTURE FOR TAXES. PROPERTY TAXES. FOR INTANGIBLE TAXES THAT, FOR BETTER OR FOR WORSE, IS AN ARBITRARY TIMING MECHANISM. I MEAN, THERE IS NOTHING AS ARBITRARY AS VALUING INTANGIBLE TAXES ON JANUARY 1, WHEN THE VALUE OF MY STOCKS GENERALLY GO DOWN ON JANUARY 2. BUT THE FACT OF THE MATTER IS THIS WHOLE SCHEME IS BUILT UPON THE FACT THAT CERTAIN THINGS HAPPEN AT CERTAIN TIME PERIODS, AND WE HAVE BEEN DOING THAT FOR -- NO ONE -- I TO IT THERE WASN'T, REALLY, A SERIOUS CHALLENGE TO THE FACT THAT THIS WENT INTO EFFECT IN 1961. IN FACT IT WAS SOMEWHAT OF A SIMILAR SCHEME, MY RECOLLECTION, PRIOR TO THAT, AND IN 1968, WE HAD A CONSTITUTIONAL ADOPTION, AND UNTIL 1998, WE HAVE BEEN ROCKING ALONG

HERE, IN FLORIDA, ON THIS BASIS. NOW, AREN'T WE GOING TO, REALLY, DESTABILIZE THE WHOLE SCHEME, IF WE SUDDENLY COME UP WITH THE FACT THAT THE TAX APPRAISERS ARE GOING TO GO OUT AND VALUE HOUSES THAT ARE BARREL OUT OF THE GROUND, ON JANUARY 1, ON SOME TYPE OF, I GUESS, COST APPROACH?

NO. I DO NOT BELIEVE WE ARE GOING TO DESTABILIZE AT ALL. FIRST OF ALL, THE SCHEME WILL NOT CHANGE AT ALL. THE STATUTE, IF YOU READ IT, SAYS ALL PROPERTY, REAL PROPERTY, SHALL BE ASSESSED ON JANUARY 1 OF EACH YEAR. IMPROVED PROPERTY NOT SUBSTANTIALLY COMPLETED SHALL HAVE NO VALUE PLACED THERE ON. IT DOES NOT SAY WE DON'T ASSESS INCOMPLETE PROPERTIES ON JANUARY 1. IT SAYS ALL PROPERTY IS ASSESSED ON JANUARY 1. THE DIFFERENCE IS NOT THE TIMING. THE DIFFERENCE IS THE ASSESSMENT YOU GIVE IT. IT SAYS INCOMPLETE STRUCTURE SHALL HAVE NO VALUE PLACED THERE ON. THE PART OF THE STATUTE THAT IS UNCONSTITUTIONAL IS NOT THE TIMING PART OF IT. IT IS THE VALUATION PART. ALL PROPERTY OBVIOUSLY INCLUDES BUILDINGS IN WHATEVER STATEMENT OF COMPLETION THEY ARE. MR. MELLICHAMP IS TRYING TO MAKE SOME SORT OF AGO ARGUMENT THAT TO DEFINE IT, YOU CAN'T INCLUDE BUILDINGS, BUT IN THE BOAT CASE, YOU CAN'T DEFINE BOATS IN A WAY THAT DOESN'T INCLUDE BOATS AND YOU CAN'T DEFINE BUILDINGS IN A WAY THAT DOESN'T INCLUDE BUILDINGS, SO THE PROBLEM WITH THE STATUTE IS THE VALUATION ASPECT, WHICH SAYS THAT THERE SHALL BE NO VALUE PLACED THERE ON, NOT THAT IT SAYS THESE BUILDINGS, THESE TYPES OF STRUCTURE SHALL BE ASSESSED ON A DIFFERENT DATE. IT IS CONCEDED THAT JANUARY 1 IS NOT A PERFECT SYSTEM FOR EVERYONE, BUT THERE IS NO PRACTICAL WAY TO ASSESS PROPERTY ON EVERY SINGLE DAY OF THE YEAR AND DO IT 365 DAYS, BUT THESE TYPES OF PROPERTIES ARE ABLE TO BE VALUED. PEOPLE THAT BUY INCOMPLETE PROPERTIES VALUE THEM ALL THE TIME. THIS TAXPAYER VALUED THE PROPERTY WHEN IT MADE ITS PURCHASE AND THE BUILDING WASN'T ABLE TO BE USED FOR THE PURPOSE FOR WHICH IT WAS CONSTRUCTED. APPRAISERS ARE TRAINED. THEY KNOW HOW TO DO THESE THINGS. IT MAY REQUIRE SOME ADDITIONAL TRAINING, BUT THE COST OF THE ADDITIONAL TRAINING WILL BE MORE THAN OFFSET BY THE REVENUES GATHERED, BY THE MORE EQUAL DISTRIBUTION OF THE TAXING AUTHORITY, AND BY THE FACT THAT A SOLUTION TO A DIFFICULT PROBLEM IS NOT JUST TO THROW IT AWAY, AND THERE ARE CASES, AARON OUGHTCAL COMMUNICATION -- AERONAUTICAL COMMUNICATIONS CASE AND THE TRUMP CASE THAT SPECIFICALLY STATE THAT, JUST BECAUSE A PROPERTY IS DIFFICULT TO VALUE OR EVEN WHEN THERE IS NO ONGOING VALUE OF THE PROPERTY OF THE AERONAUTICAL CASES, IT DOES NOT MEAN THAT WE ARE NOT ABLE TO ASSESS THESE PROPERTIES AT THEIR FULL MARKET VALUE.

LET ME ASK, YOUR OPPONENT SAID AN OUNCE OF HISTORY BEING WORTH A POUND OF LAW AND SOMETHING THAT I THINK WE DO KNOW ABOUT THE TIMES WHEN THE CONSTITUTION WAS BEING REVISED, AND NOT SO MUCH THE POINT THAT YOUR OPPONENT IS MAKING, ABOUT PEOPLE BEING AGAINST TAXES, WHATEVER, AS I PERCEIVE IT TO BE, BUT DON'T WE KNOW THAT, AT THE TIME THE CONSTITUTION WAS BEING REVISED AND VOTED ON BACK THEN, THAT THERE WAS A GREAT DISPUTE AROUND THE STATE ABOUT THE JUST VALUATION BEING DIFFERENT. FOR INSTANCE IN ONE COUNTY, AN APPRAISER MIGHT, INDEED, BE PRAISING THE RESIDENCE OR THE HOTEL -- APPRAISEING THE RESIDENCE OR THE HOTEL AT 100% OF VALUE, BUT IN THE COUNTY RIGHT NEXT DOOR, THE APPRAISER WAS ASSISTING IT AT ONLY 40% OR -- ASSESS IT AT ONLY 40% OR WHATEVER, AND SO ON AND SO ON, AMONGST THE 68 OR 69 OR 67, HOWEVER MANY COUNTIES THERE ARE. AND CAN'T WE, BECAUSE THAT WAS GOING ON, AND THAT WASN'T A DISPUTE ABOUT COMPLETE OR INCOMPLETE OR ABOUT A DATE OR ANY OF THAT. IT CLEARLY WAS ABOUT EXISTING PREMISE THAT EVERYBODY KNEW THAT THEY HAD A PARTICULAR VALUE, AND THAT THERE WAS THIS UNEVEN PRACTICE THAT HAD GONE ON FOR YEARS AMONGST APPRAISERS, THAT I HAVE JUST DESCRIBED, AND THAT THAT WAS A VERY MUCH TOPIC OF DEBATE AND DISPUTE AT THAT TIME, AND THAT THE HOPE WOULD BE THAT THIS AMENDMENT WOULD RESOLVE THAT, AND THAT NO LONGER COULD AN APPRAISER JUST ASSESS AT 40% OR WHATEVER AFTER THAT, AND WHY, SINCE WE KNOW THAT WAS GOING ON, THEN WHY NOT, BY IMPLICATION, WOULDN'T WE KNOW THAT THIS OTHER ISSUE WAS NOT PART OF THE THEORY BEHIND THE

CONSTITUTIONAL CHANGES?

WELL --

YOU UNDERSTAND?

I DO UNDERSTAND YOUR QUESTION, AND I THINK IT CALLS FOR CONJECTURE. I MEAN YOU, YOURSELF, ASKED FOR IMPLICATION, AND AS THE COURT KNOWS, THE WAY WE INTERPRET THE CONSTITUTIONAL PROVISIONS IS BY THE LANGUAGE OF THE CONSTITUTION, ITSELF, AND WE ARE GUIDED BY THE PRECEDENCE OF THIS COURT, AND THIS COURT HAS TOLD US THAT, BY INCLUDING THOSE TYPES OF PROPERTIES THAT ARE TO BE ASSESSED EITHER BY CHARACTER OR USE OR AT A CERTAIN PERCENTAGE OF VALUE OR TO BE EXEMPT FROM TAXATION, THAT THE NEW CONSTITUTION PROVIDED THAT THE LEGISLATURE COULDN'T EXEMPT ANY OTHER TYPES OF PROPERTY, AND THAT IS THE STANDARD BY WHICH WE GO BY, RATHER THAN TRYING TO GO BACK AND RECREATE HISTORY.

DO YOU AGREE THAT, INsofar AS LOOKING AT THE LEGISLATIVE HISTORY OF THIS CONSTITUTIONAL AMENDMENT, THAT THIS IS -- WAS THE GREAT DEBATE GOING ON AT THE TIME?

YES. AND THERE WOULD BE NO -- IF THIS STATUTE IS STRUCK DOWN, IT DOESN'T CREATE ANY FURTHER PROBLEMS. IF THE PROPERTY APPRAISER ASSESSES AN INCOMPLETE STRUCTURE AT MORE THAN 100%, THE TAXPAYER HAS THE EXACT SAME RECOURSE HE DOES NOW, WHICH IS FIRST TO THE ADJUSTMENT BOARDS AND THEN TO THE COURTS. IF PROPERTY APPRAISERS IN ONE COUNTY ARE ASSESSING AT LESS THAN THE COMPLETE VALUE OF THE PROPERTY AND OTHERS ARE ASSISTING -- ASSESSING IT FULL, THEN THAT WOULD BE THE PROBLEM WE HAD BACK THEN, WHICH IS THAT WE PUT THE DEPARTMENT OF REVENUE AND OTHER THINGS IN PLACE TO AT TO ASSESS COUNTY BY COUNTY AND THE MILLAGES CHANGE.

IT YOUR ARGUMENT THAT ARTICLE VI. SECTION 4 -- ARTICLE VII, SECTION 4, THAT THAT SHOULD SECURE A JUST VALUATION OF ALL PROPERTY, THAT THAT IS AN AMBIGUOUS STATEMENT THAT ALL PROPERTY INCLUDES ALL PROPERTY, EVEN IF THE STRUCTURE IS NOT SUBSTANTIALLY COMPLETE, AND THAT IT DOESN'T CALL FOR STATUTORY OR CONSTITUTIONAL CONSTRUCTION? IS THAT YOUR ARGUMENT?

EXACTLY THAT IS MY ARGUMENT. I DON'T KNOW HOW YOU CAN CALL -- I DON'T KNOW HOW YOU CAN CALL PROPERTY REAL PROPERTY.

EVEN UNDER THAT ARGUMENT, IF THAT WERE THE CASE, THEN EVEN IF THE PEOPLE OF THE STATE OF FLORIDA DID NOT INTEND TO CHANGE THE SUBSTANTIAL COMPLETION STATUTE, IT DOESN'T MATTER IF THE CONSTITUTIONAL AMENDMENT IS CLEAR AND UNAMBIGUOUS IN THE TERMS USED.

THAT IS ABSOLUTELY CORRECT, YOUR HONOR. IT IS FUNDAMENTAL THAT WE ARE ALL GUIDED BY OUR CONSTITUTION AND OUR CONSTITUTIONAL LANGUAGE. THAT IS THE FUNDAMENTAL ORGANIC DOCUMENT OF THE STATE UNDER WHICH WE ARE GOVERNED, AND THE CONSTITUTION IS NOT AMBIGUOUS. IT SAYS ALL PROPERTY SHALL BE ASSESSED AT JUST VALUE, WHICH IS FAIR MARKET VALUE AS DETERMINED BY THIS COURT. IT DOESN'T SAY ALL PROPERTY EXCEPT WHERE THE LEGISLATURE THINKS IT SHOULDN'T BE FAIR. IT DOESN'T SAY ALL PROPERTY EXCEPT WHERE IT MAY CREATE SOME DIFFICULTIES IN ASSESSMENT. IT SAYS ALL PROPERTY, UNLESS IT IS SPECIFICALLY EXEMPTED OR SPECIFICALLY SET FORTH AS PROPERLY CLASSIFIED DIFFERENTLY, WHICH IS THE AGRICULTURAL, RECREATIONAL LANDS, AQUIFER LANDS.

THERE IS NO PRINCIPLE THAT SAYS, IF THERE IS LEGISLATION IN EFFECT AT THE TIME OF A GIVEN CONSTITUTIONAL AMENDMENT, THAT SOMEHOW THAT HAS TO BE LOOKED AT IN TRYING TO DETERMINE THE SCOPE OF THE AMENDMENT?

THAT, AT BEST, WOULD ONLY COME INTO PLAY, IF THERE WAS AMBIGUITY, AND THIS COURT HAS STRUCK DOWN STATUTES WHICH WERE IN EFFECT AT THE TIME OF THE '68 CONSTITUTIONAL REVISION, TAX STATUTES THAT WERE NOT SPECIFICALLY MENTIONED IN ANY OF THE LEGISLATIVE LITERATURE.

GOING BACK TO I ASKED ABOUT THIS BALLOT SUMMARY. THAT IS WHATEVER THE LEGISLATURE WOULD HAVE PUT WITH IT THAT WOULD HAVE GONE -- THAT MUST EXIST SOMEPLACE IN THE ARCHIVES, BUT THAT IS SOMETHING THAT WOULD HAVE GONE ON IN THE ACTUAL AMENDMENT, AND WE LOOK, ALL THE TIME, AS TO WHETHER -- WHAT CONSTITUTIONAL AMENDMENT, WHETHER THE BALLOT SUMMARY IS MISLEADING. IF THE BALLOT SUMMARY SAID, IN GOING BACK TO WHAT JUSTICE ANSTEAD SAYS, THAT THE PURPOSE OF THIS AMENDMENT IS TO DO THIS, THEN AREN'T WE IN A SITUATION, REALLY, TAKING, AGAIN, REALLY, THWARTING THE WILL OF THE PEOPLE, AND DO WE -- SO WE JUST DON'T KNOW THAT? AGAIN, YOU DID NOT FIND A BALLOT SUMMARY ANY PLACE?

I DID NOT FIND THAT AND WE DON'T KNOW. THAT WHAT WE DO KNOW IS THAT THE CONSTITUTION SAYS THAT ALL PROPERTY SHOULD BE ASSESSED AT ITS FAIR MARKET VALUE. I BELIEVE IT WAS THE CAPITAL CITY COUNTRY CLUB CASE THAT THIS COURT OVERRULED, AT THE TIME THAT THE CONSTITUTIONAL CHANGE EXISTED AT THE TIME, WAS OVERRULED UNDER SECTION 4.

WHAT IS THAT STATUTE?

MY LACK OF SLEEP IS PREVENTING ME FROM RECALLING IT EXACTLY. I AM SORRY. I WOULD NOT BE ABLE TO TELL YOU EXACTLY WHICH ONE THAT WAS.

IS THERE SOMETHING ABOUT THE CONCEPT OF CONSTRUCTION AND IMPROVEMENTS THAT IS SOMEWHAT DIFFERENT THAN JUST CONSTITUTIONAL CONCEPT OF PROPERTY? FOR EXAMPLE, IF WE HAVE SOMETHING JUST BEGINNING, AND WE HAVE GOT 13 ROWS OF BLOCKS ALREADY INSTALLED. IF THEY STOP, THAT CERTAINLY MAY DETRACT FROM THE PROPERTY AS OPPOSED TO INCREASE ITS VALUE, BECAUSE SOMEONE MAY NEED TO COME IN AND REMOVE IT. YOU MAY HAVE SITUATIONS WHERE ALL THE BLOCK IS ON THE SITE. ALL THE TRUSSES ARE ON THE SITE. AT WHAT POINT DO THOSE BECOME IMPROVEMENTS? DO WE HAVE TO HAVE SOMETHING THAT DEFINES WHEN THEY BECOME IMPROVEMENTS OR WHEN THEY BECOME FIXTURES ON THE PROPERTY OR WHATEVER? WHAT DO WE LOOK TO? WE COULD HAVE THE ENTIRE STRUCTURE, JUST NOT ASSEMBLED YET.

THOSE ARE THE KINDS OF SITUATIONS THAT WOULD BE JUDICIALLY OR ADMINISTRATIVELY WORKED OUT BY THE DEPARTMENT OF REVENUE. I THINK THE CONCEPT OF IMPROVEMENTS IN REAL STATE GENERALLY ARE THOSE IMPROVEMENTS THAT ARE AFFIXED TO THE LAND AND PERMANENT STRUCTURE.

WE DON'T HAVE A CONSTITUTIONAL DEFINITION OF THAT, THOUGH, DO WE?

NO. WE DO NOT. BUT I DON'T THINK WE CAN SAY THAT, JUST POINT-BLANK, THEN THEN, BECAUSE A BUILDING, IN THIS CASE A BUILDING THAT WAS ONCE OPEN, COMPLETE AND OPERATING AS A MOTEL, WHICH WAS, THEN, BECAUSE OF ECONOMIC SITUATIONS WHEN MIAMI BEACH WASN'T DOING SO WELL, BOARDED UP, AND THEN WHICH SOMEONE PAID OVER A MILLION DOLLARS FOR, I DON'T THINK THERE IS ANY WAY TO, THEN, ARGUE THAT THAT IS NOT REAL PROPERTY.

I KNOW. BUT WE HAVE TO ESTABLISH WHAT THE CONSTITUTION MEANS. AND IT IS FAR BROADER THAN THIS ONE HOTEL THAT MAY HAVE BEEN ABANDONED. IT IS EVERY MOTHERS AND FATHERS HOME THAT IS BEING CONSTRUCTED AS WELL, SO WE HAVE A PRINCIPLE THAT IS GOING TO BE APPLIED. YOU CAN'T VIEW IT ONLY AS A COMPLETED HOTEL AND SOMEBODY WALKED OFF FROM

IT.

I THINK, IN THE MAIN -- REAL PROPERTY, JUST AS THE DEFINITION READ BY MR. MELLICHAMP, ARE THOSE THINGS WHICH ARE ATTACHED AND PERMANENT RESPECT AS PART OF THE PERMANENT PROPERTY.

CAN THE LEGISLATURE SAY WHAT THOSE ARE?

AS LONG AS THE DEFINITION IS REASONABLE. BUT YOU CAN'T --

IF THERE IS SOMETHING UNREASONABLE BY SAYING THAT A STRUCTURE NOT SUBSTANTIALLY COMPLETED, IF THAT IS THE TEST, IF THEY CAN DO WHAT IS REASONABLE, THAT IT IS NOT, SHOULD NOT BE CONSIDERED AS AN IMPROVEMENT, UNTIL YOU CAN DO SOMETHING WITH IT. IS THAT UNREASON SNBL.

I THINK THAT IS VERY UNREASONABLE. HOW CAN YOU SAY THAT PROPERTY, EVEN THOUGH YOU CAN'T USE IT, IS NOT PROPERTY?

WELL, THE REAL PROPERTY IS THERE. WE ARE TALKING ABOUT THE VALUATION OF THE IMPROVEMENTS.

REAL PROPERTY INCLUDES, IN ALL DEFINITIONS.

I UNDERSTAND THAT, BUT YOU TAX THE LAND. THE SAND YOU ARE GOING TO TAX. THE QUESTION IS ARE YOU GOING TO TAX WHAT IS SETTING THERE. CORRECT?

REAL PROPERTY HAS ALWAYS, SINCE THE BEGINNING OF PROPERTY LAW, IF I REMEMBER MY LAW SCHOOL COURSE CORRECTLY, INCLUDED THE CONCEPT OF THE BUILDINGS THAT ARE PERMANENTLY ATTACHED TO THE PROPERTY, NOT JUST REAL ESTATE, NOT JUST DIRT, ITSELF.

THAT IS WHAT I AM ASKING. CAN THE LEGISLATURE, THEN, SAY AT WHAT STAGE IT BECOMES A FIXTURE OR IMPROVEMENT AND AT WHAT STAGE IT IS NOT. YOU ARE SAYING IT CANNOT OR THE TEST IS WHETHER IT IS REASONABLE. WHICH ONE?

I AM SAYING THAT THEY CANNOT SAY THAT A HORSE IS A PIG, BUT TO SAY THAT BLOCKS ARE ON THE SITE AND THEY ARE NOT YET AFFIXED TO THE PERMANENT STRUCTURE, I THINK THAT IS CLEARLY WITHIN THE LEGISLATURE'S PROVINCE TO SAY THAT IS NOT REAL PROPERTY. IF THEY SAY A BUILDING IS THERE. IT HAS BEEN CONSTRUCTED. IT HAS GOT A FOUNDATION FORM IT HAS GOT WALLS, AND -- BUT BECAUSE IT CAN'T BE USED, PERHAPS, THE PLUMBING ISN'T WORKING OR SOMETHING THAT, THAT IS NOT REAL PROPERTY, I THINK THAT WOULD BE AN UNREASONABLE DEFINITION BY ANYONE'S STANDPOINT, BECAUSE IT IS NOT -- ALL TIED TO ANY CONCEPT OF WHAT CONSTITUTES REAL PROPERTY.

THANK YOU.

JUST ONE QUICK. BUT THE FACT THAT THAT IS HOW THE LEGISLATURE HAD DEFINED IT, AT THE TIME THAT THIS 1968 AMENDMENT WAS PASSED, DOESN'T THAT, THEN, PROVIDE FURTHER SUPPORT FOR THE ARGUMENT THAT THAT IS WHAT WAS BEING INCORPORATED AS THE DEFINITION?

I THINK IT DOES, AND THE LEGISLATURE'S DEFINITION, THEN, AS MR. MELLICHAMP, SAID, WAS THE SAME AS IT IS NOW. REAL PROPERTY INCLUDES IMPROVEMENTS TO THE LAND. IMPROVEMENTS ARE THOSE THINGS WHICH HAVE BEEN PERMANENTLY AFFIXED TO THE LAND. THE DEFINITION OF REAL PROPERTY DOESN'T SAY IMPROVEMENTS THAT CAN BE USED FOR THE PURPOSE FOR WHICH THEY WERE ASSERTED, AND IF THAT WAS THE DEFINITION, THEN I THINK

THAT IS NOT A REASONABLE DEFINITION OF THE TERM REAL PROPERTY, AS ANYBODY, INCLUDING THE CITIZENS, WOULD UNDERSTAND THAT DEFINITION, LOOKING AT IT IN THE CONSTITUTION.

THANK YOU, MR. WILLIAMS. MR. MELLICHAMP. REBUTTAL?

MR. MELLICHAMP, HOW ABOUT RESPONDING TO YOUR OPPONENT'S ANALYSIS HERE THAT THIS IS NOT, REALLY, A MATTER OF A TIMING PROBLEM BUT RATHER IT IS A MATTER OF JUST APPLYING THE PLAIN MEANING OF WHAT THE CONSTITUTION SAYS, AND THAT IS THAT THERE IS A JUST VALUATION OF ALL PROPERTY, AND THAT WHEN YOU -- THE LEGISLATURE COMES ALONG AND SAYS THAT CERTAIN PROPERTY SHALL HAVE NO VALUE THAT, THAT JUST IS NOT -- IS A SITUATION IN WHICH THAT IS NOT A TIMING MATTER. THAT IS JUST A MATTER OF NOT GIVING THE CONSTITUTION ITS PLAIN MEANING.

YES, YOUR HONOR. IN 1895, DEALING WITH THE SAME TYPE PROVISION IN ARTICLE IX SECTION 1 THEN, AS IS IN ARTICLE VII, SECTION 4 NOW, IN ARTICLE VII, SECTION 4, YOU HAVE GOT TO START, I RESPECTFULLY SUBMIT, AT THE BEGINNING OF THAT SECTION, WHICH SAYS "BY GENERAL LAW, REGULATIONS SHALL PRESCRIBE, WHICH SHALL SECURE A JUST VALUATION OF ALL PROPERTY." THAT IS NOT A SELF-EXECUTING PROVISION, AND SINCE 1895, THE LEGISLATURE HAS DEFINED REAL PROPERTY MEANS LAND, BUILDINGS, THAT IS A COMPLETE ONE, FIXTURES, THOSE ARE NORMALLY REFERRED TO AS FINISHED, THE NORMAL, ORDINARY MEANING OF THAT WORD, AND OTHER IMPROVEMENTS. AND IN 1961, IN THE TIMING STATUTE, WHICH IS, NOW, 192.042-1 IT SAYS ON JANUARY 1, YOU ARE GOING TO TAX ALL REAL PROPERTY, AS DEFINED IN THE DEFINITIONAL SECTION. YOU CAN'T IGNORE ONE WITHOUT THE OTHER, AND THEN THEY WENT ON TO SAY THAT, IF AN IMPROVEMENT IS NOT SUBSTANTIALLY COMPLETE, THE ORDINARY MEANING, IF IT IS NOT FINISHED, DON'T PUT IT ON JANUARY 1. THAT COVERS BUILDINGS, FIXTURES, ALSO. IF A BUILDING ISN'T COMPLETE, YOU DON'T PUT IT ON. THE DIRT GETS TAXED. THE BUILDING DOESN'T. THAT IS A REASONABLE INTERPRETATION OF THE TERM REAL PROPERTY. THE LEGISLATURE HAS USED IT. THEY HAVEN'T CHALLENGED IT. THAT IS THE NORMAL DEFINITION. YOU LOOK IN A DICTIONARY. ALL THOSE TERMS REFER TO THINGS THAT ARE FINISHED.

SO YOUR ANSWER, THEN, IS THAT WHAT -- THAT THE LEGISLATURE HAS DEFINED REAL PROPERTY AS MEANING ONLY SUBSTANTIALLY I AM PRO.D -- SUBSTANTIALLY-IMPROVED REAL PROPERTY.

REAL PROPERTY IS LAND, TICS FURIOUS AND IMPROVEMENTS, AND THE IMPROVEMENTS HAVE -- REAL PROPERTY IS LAND, FIXTURES AND IMPROVEMENTS, AND THE IMPROVEMENTS HAVE TO BE SUBSTANTIALLY COMPLETE, AND THIS COURT UPHELD THAT STATUTE A VERY FEW DAYS BEFORE THE LEGISLATURE MET IN SPECIAL SESSION, TO AMEND THIS CONSTITUTION, AND CALLED IT --

ARE WE INTERPRETING PROPERTY, IS THAT THE TERM THAT WE ARE INTERPRETING OR NEED TO INTERPRET, TO DECIDE WHETHER THE STATUTE IS CONSTITUTIONAL? THAT IS REAL PROPERTY RATHER THAN JUST VALUATION?

THIS IS NOT A VALUATION QUESTION, YOUR HONOR. THEY HAVE LEAPED ACROSS -- THE TIMING SCHEME AND ALL, YOU FIRST HAVE TO KNOW WHAT YOU ARE GOING TO PUT ON A ROLL, BEFORE YOU EVER GET TO THE VALUE, AND THE LEGISLATURE HAS DEFINED REAL PROPERTY. THEY HAVE DEFINED TANGIBLE PERSONAL PROPERTY.

WHAT I AM SAYING IS, IF THERE IS AN AMBIGUITY OR INTERPRETATION, IT IS NOT IN THE MEANING OF JUST VALUATION. IT IS IN THE DEFINITION OF REAL PROPERTY.

NO, YOUR HONOR. THE WHOLE BASIS OF THE APPELLEE'S ARGUMENT IS THE EXAMPLE THAT THEY KEEP USING, ABOUT THIS HOTEL SOMEHOW ESCAPED TAXATION, AND IT BORE ALL THE BURDENS, THE GOVERNMENT BORE ALL THE BURDENS TO SUPPORT THIS BUILDING, AND THE EXAMPLE THAT I GAVE THE COURT EARLIER, IF YOU START TO BUILD A HOUSE ON JANUARY 2 AND YOU FINISH IT BY JULY 1 OR SEPTEMBER 1, YOU DON'T GET A TAX BILL FOR THAT BUILDING. YOU

DON'T GET A TAX BILL FOR THAT HOUSE. THAT IS THE WAY THE SYSTEM IS SET UP, SO YOU KNOW --

I DON'T THINK THE QUESTION OF WHETHER THIS IS FAIR OR UNFAIR, WHETHER THE TAXPAYERS REALLY THINK THIS IS THE BEST WAY, WHETHER DEVELOPERS ARE GETTING A DEAL, WE ARE LOOKING AT WHETHER THE CONSTITUTION IS CLEAR AS TO WHAT WAS INTENDED IN 1968, AND WHETHER THE -- NOW I AM THINKING THAT IT IS WHETHER THE REAL PROPERTY DEFINITION IS WHAT THE DEFINITION HAD BEEN AT THE TIME, WOULD BE INCORPORATED IN THAT --

YES, YOUR HONOR. I AGREE THAT THAT, AND THAT IS THE ISSUE THAT THE APPELLEE HAS NOT ADDRESSED. AND THAT IS WHETHER OR NOT THE LEGISLATURE CAN IMPLEMENT ARTICLE VII SECTION 4, AND IS THAT IMPLEMENTATION CONSTITUTIONAL. IT IS. BECAUSE WITH THIS SCHEME, THE FIRST STEP IS WHAT ARE YOU GOING TO PUT ON THE ROLLS? THEN WHEN ARE YOU GOING TO PUT IT ON THERE?

WHAT ARE THE LIMITATIONS ON THE LEGISLATURE, IN DEFINING WHAT THIS PROPERTY IS? COULD THE LEGISLATURE COME IN AND SAY STRUCTURES OVER FIVE FLOORS SHALL NOT BE -- THE FLIP SIDE. THE OPPOSITE. WHAT CAN THE LEGISLATURE DO? THAT IS WHAT YOU SEEM TO BE SUGGESTING. A THAT WAS AN EXAMPLE, IN ONE OF THE BRIEFS, ABOUT 15-STORY BUILDINGS, AND THAT WOULD BE ADDRESSED BY THIS COURT, IN ITS INTERLOCKING DECISION, WHERE YOU TREAT LIKE PROPERTIES DIFFERENTLY. THIS IS TREATING ALL IMPROVEMENTS THAT ARE NOT SUBSTANTIALLY COMPLETE, THEY DON'T GO ON THE ROLLS. IN INTERLAKEN, YOU HAD LOTS OWNED BY AN OVER TO DEVELOPER THAT GOT TAXED ONE WAY AND PEOPLE THAT BOUGHT THEM GOT TAXED A DIFFERENT WAY. YOUR EXAMPLE WOULD RUN AFOUL OF THE SAME THING. THIS COURT DID --

I FORM SEARCHING FOR THE BOUNDARIES. WHAT CAN THE LEGISLATURE DO AND WHAT CAN IT NOT DO? THAT IS REALLY WHAT WE ARE TALKING ABOUT HERE THIS MORNING.

THEY CAN DO WHAT IS IN THE STATUTE, YOUR HONOR, BECAUSE THE BOAT CASE DEFINES THE TERM BOAT, WHICH IS ANOTHER TERM IN A CONSTITUTION, YOU LOOK TO A REASONABLE INTERPRETATION AND WHAT THE PEOPLE MEANT, WHEN THEY ADOPTED THE CONSTITUTION, AND IN THIS CASE, THIS DEFINITION WAS KNOWN TO THE PEOPLE, AND IT IS REASONABLE.

THANK YOU, MR. MELLICHAMP. MR. WILLIAMS. WE WILL BE IN RECESS FOR 15 MINUTES. THE MARSHAL: PLEASE RISE.