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## **Suzanne M. Boschen vs. City of Clearwater**

GOOD MORNING, LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. JUSTICE ANSTEAD ANN LEWIS ARE NOT ABLE TO BE WITH US FOR ORAL ARGUMENT, BUT THEY WILL PARTICIPATE IN THE RESOLUTION OF THE CASE. THESE PROCEEDINGS ARE VIDEOTAPED, AND THEY WILL HAVE THE OPPORTUNITY TO VIEW THE ARGUMENT. THE FIRST CASE ON THE COURT'S CALENDAR IS SUZANNE BOSCHEN VERSUS THE CITY OF CLEARWATER. MR. MAGUIRE.

MR. CHIEF JUSTICE AND JUSTICES. I AM PATRICK MAGUIRE. I REPRESENT APPELLANT, SUZANNE BOSCHEN. SHE HAS ASKED ME TO EXPRESS HER APPRECIATION FOR THE COURT'S CONSIDERATION OF HER PLEA. FOR MYSELF, I AM HONORED FOR BEING HERE. I WOULD LIKE TO RESERVE FIVE MINUTES FOR REBUTTAL. THIS CASE INVOLVES A FINAL APPEAL REGARDING CERTAIN REVENUE BONDS OF THE CITY OF CLEARWATER. CITY OF CLEARWATER, APPELLEE, PETITIONED THE COURT FOR RESOLUTION OF REVENUE BONDS, NOT TO EXCEED \$12 MILLION, FOR A PROJECT KNOWN AS THE 1999 GATEWAY TO THE BEACH ENTRY WAY PROJECT. MS. BOSCHEN CHALLENGED THE ISSUE ANSWER OF THE BONDS -- THE ISSUANCE OF THE BONDS, BASED ON LACK OF AUTHORITY BY THE CITY TO ISSUE THOSE BONDS, FOR FAILURE TO HOLD A REFERENDUM, IN ACCORDANCE WITH THE CITY'S CHARTER. RECOGNIZE THAT THIS CASE HAS LITTLE OR NOTHING TO DO WITH THE REST OF THE STATE OF FLORIDA, BUT FOR THE CITY OF CLEARWATER AND TO ITS CITIZENS, THIS PARTICULAR CASE IS A MATTER FOR THEM, BECAUSE IT IS THEIR CHARTER OF CONSTITUTIONAL PROPORTIONS. ARTICLE NINE PROVIDES THAT ANY PROJECT FOR WHICH REVENUE BONDS ARE TO BE ISSUED, AND THAT PROJECT EXCEEDS \$1 MILLION, REQUIRES THAT IT GO TO REFERENDUM. THAT IS ALL PROJECTS, EXCEPT FOR THOSE FOR HEALTH AND SAFETY.

HAD NOW, HOW WOULD YOU HAVE US -- WOULD YOU HAVE US DEFINE HEALTH AND SAFETY AS RESTRICTED TO THE ESSENTIAL GOVERNMENT FUNCTIONS? IS THAT YOUR ARGUMENT, OR IS IT A BROADER DEFINITION, AND, STILL, COULD EXCLUDE THIS PROJECT?

I BELIEVE THAT THE LAW IN THE BACKGROUND OF REVENUE BONDING IN THE STRAFL AND LOOKING AT THE CONSTITUTIONAL CASES OF THE PAST, ESSENTIAL GOVERNMENT SERVICES WERE THE TEST FOR HEALTH AND SAFETY. ALL GOVERNMENTS FUNCTIONS SHOULD BE FOR THE BENEFIT OF THEIR CITIZENS. HEALTH AND SAFETY CAN BE BROADLY DEFINED INSERT CONTEXTS AND INCORPORATE ALL GOVERNMENTAL SERVICES, BUT BECAUSE THIS IS AN EXCEPTION, IT HAS TO BE OF A MORE LIMITED SCOPE. I BELIEVE THAT CERTAIN ESSENTIAL GOVERNMENTAL FUNCTIONS ARE EXEMPTED FROM THIS BONDING REQUIREMENT, WHERE THERE IS SUCH NECESSITY, SUCH GOVERNMENTAL SERVICES ARE REQUIRED, THAT, YES, WE ARE SAYING THAT IT MUST BE SOME ESSENTIAL GOVERNMENTAL PURPOSE, IN ORDER TO EXEMPT OUT OF THE REFERENDUM REQUIREMENT. THE LANGUAGE OF THE -- I DON'T THINK THERE IS ANY OTHER INTERPRETATION WHICH CAN BE MADE OF THE CHARTER, OTHER THAN THAT, SO, YES, WE WOULD SAY THAT AN ESSENTIAL GOVERNMENTAL PURPOSE IS REQUIRED, AND CERTAINLY THE SCOPE OF THIS PROJECT, WHICH INVOLVED CONSTRUCTING A \$2.1 MILLION FOUNTAIN, ALMOST \$2 MILLION INLAND ESCAPING, AND REALIGNING ROADS AND ADDING A ROUNDABOUT ARE NOT SIMPLY ESSENTIAL GOVERNMENTAL PURPOSES WHICH WOULD EXEMPT OUT OF THE REFERENDUM APPROVAL. IN FACT THIS IS EXACTLY THE KIND OF PROJECT THAT WOULD NEED TO GO FOR APPROVAL. THE ROADS DID NOT NEED TO BE DONE. AS A MATTER OF FACT, THE REPORT REFLECTS THAT THE PRIMARY PURPOSE OF THE PROJECT IS ECONOMIC REDEVELOPMENT OF THE BEACH AND NOT MAXIMIZING TRAFFIC FLOW, AND THE PROJECT HAS TWO PRINCIPLES.

GOING BACK TO THE ESSENTIAL GOVERNMENTAL SERVICES, IF THE TERM THAT IS USED, WHICH IS FOR THE PUBLIC HEALTH AND SAFETY, IS NOT EQUATED FOR ESSENTIAL GOVERNMENTAL SERVICES, THEN HOW DO YOU VIEW THIS PROJECT? SINCE WE ARE TALKING ABOUT ROAD CONSTRUCTION AND RECONFIGURE EWING ROADS, SO -- RECONFIGURING ROADS, SO IT WOULD ALLOW FOR PEDESTRIAN MOVEMENT, AREN'T WE TALKING ABOUT PUBLIC SAFETY?

I THINK THE PUBLIC SAFETY ISSUE, AND IF THERE HAD BEEN ANY RECORD TO ESTABLISH THAT THERE WAS SOME DIRE NEED, SOME TRUE THREAT TO THE PUBLIC SAFETY IN THE RECORD, THEN THAT MIGHT, YOU MIGHT BE ABLE TO EXTEND THAT PRINCIPLE THAT FAR. HOWEVER, IT WAS CLEAR FROM THE RECORD THAT THE PROPOSED PROJECT WOULD NOT BE ANY SAFER. WOULD NOT BE ANYMORE EFFICIENT. AS A MATTER OF FACT WAS LIKELY TO BE LESS EFFICIENT THAN THE EXISTING ROAD SYSTEM.

YOU CONCEDE THAT, IF THIS ROAD CONSTRUCTION WOULD MAKE IT SAFER FOR EITHER TRAFFIC OR FOR PEDESTRIANS, IF THAT WERE THE CASE, THEN THAT IS PUBLIC SAFETY.

YES.

OKAY. NOW, WE ARE NOT SUPPOSED TO GET INTO REWEIGHING FACTS. OUR REVIEW OF A CASE LIKE THIS IS EVEN LESS THAN IF THIS WAS A REGULAR TRIAL AND CIRCUIT COURT, ISN'T IT?

ABSOLUTELY. I AM NOT ASKING, AND I THINK THIS IS WHERE THE PROBLEM AROSE AT THE TRIAL COURT LEVEL. I THINK THE COURT WAS LOOKING AT THE DECISION TO DO THIS PROJECT AS A DISCRETIONARY FUNCTION OF THE LEGISLATIVE BODY, AND THE COURT WAS NOT GOING TO INTERFERE WITH THAT. WE WERE NOT CHALLENGING THE LEGISLATIVE DISCRETION. WHAT WE WERE CHALLENGING IS THE AUTHORITY, AND UNLESS THE CITY ESTABLISHED THAT THIS PROJECT AROSE TO THE LEVEL OF ESSENTIAL GOVERNMENTAL SERVICES, THEY WERE NOT EXEMPTED OUT OF THE REFERENDUM REQUIREMENT.

SEE, BUT, I THINK YOUR PROBLEM IS YOU ARE GOING SO NARROW, BECAUSE THE ESSENTIAL GOVERNMENT FUNCTIONS IS REALLY NOT A TEST THAT IS USED ANYMORE, SO FOR YOU TO BE ABLE TO ESTABLISH THAT THE PUBLIC'S HEALTH AND SAFETY IN THE CHARTER IS EQUATED WITH THAT, I THINK, IS AN ENORMOUS HURDLE. NOW, IF THE ARGUMENT WAS PUBLIC HEALTH AND SAFETY JUST CAN'T INCLUDE ALL ROAD CONSTRUCTION, THIS IS AN ECONOMIC DEVELOPMENT PROJECT, AND IF THEY HAD WANTED ECONOMIC DEVELOPMENT, TO BE ABLE TO BE A PURPOSE FOR A BOND, WITHOUT A VOTE, THEY WOULD HAVE PUT IT IN, SO CLEARLY WE HAVE GOT TO GET NEAR OTHER THAN JUST ANY -- NARROWER THAN JUST ANY ROAD CONSTRUCTION, SO I THINK MY PROBLEM AND I THINK WHAT JUSTICE QUINCE IS GETTING AT IS BY SAYING, IF IT IS NOT AN ESSENTIAL GOVERNMENT FUNCTION, WHICH, REALLY, IF YOU LOOK AT THE DECISIONS YOU HAD TO -- THE GOVERNMENT HAD TO ALMOST BE SHUT DOWN BEFORE YOU COULD FUND IT, THAT THAT IS JUST SO NARROW, WHEREAS PUBLIC HEALTH AND SAFETY IS BROADER. NOW, YOUR QUESTION, I GO BACK TO YOU, IS IT SO BROAD AS TO ENCOMPASS ALMOST ANYTHING, OR DOES IT STILL HAVE A NARROW DEFINITION BUT NOT AS NARROW AS THE OLDEST EVENINGS GOVERNMENT FUNCTIONS?

WELL, I UNDERSTAND THAT THE OLDEST EVENINGS GOVERNMENTAL PURPOSE DOCTRINE WAS ABANDONED. THE APPELLEE ARGUED THAT HOWEVER THE SITUATION IN THE CITY OF CLEARWATER, THEY ADOPTED IT, AND AT THE TIME THEY ADOPTED IT, THAT IS WHAT THE LAW WAS. IF YOU HAD TO REFER TO ANYTHING, IT WOULD BE THAT DOCTRINE. THAT IS WHAT WAS PLACED IN THERE. IT IS A LIMITATION.

WHAT LONG IS THERE, AND I ASSUME YOU ARE SAYING IN THE CITY CHARTER?

YES. CITY CHARTER.

WHAT LANGUAGE IS IN THERE THAT WOULD LEAD US TO ACCEPT YOUR ARGUMENT THAT ESSENTIAL GOVERNMENTAL SERVICES WAS ADOPTED?

IF YOU LOOK AT THE TERM "HEALTH AND SAFETY" AND THE CASES THAT ARE CITED IN THE BRIEFS AND EVEN THE APPELLEE'S TRIAL COURT BRIEF, THEY CITED TWO CASES, FOR THE DEFINITION OF PUBLIC HEALTH AND SAFETY, IN THE CONTEXT OF BONDING REQUIREMENTS, BOTH OF THOSE CASES INVOLVED A FIRE BOAT AND THE PROVISION OF WATER SERVICES. THESE WERE ESSENTIAL GOVERNMENTAL PURPOSES. THAT IS WHAT THE LAW IS LAID DOWN, IN DEFINING PUBLIC HEALTH AND SAFETY, IN THE AREA OF BONDING. IT HAS BEEN DEFINED AS, SO, IF THE CITIZENS OF CLEARWATER ADOPT A CHARTER AND THEY REQUIRE ALL PROJECTS IN EXCESS OF \$1 MILLION TO GO TO REFERENDUM, AND THEY CREATE AN EXCEPTION, OBVIOUSLY IT WAS INTENDED THAT THAT EXCEPTION BE NARROW. NOT A BROAD -- BECAUSE, IN THE CASE OF MANATEE, I THINK THIS COURT STATED THAT, IF -- IT MAY NOT BE WISE. IT MAY NOT BE WHAT ANYONE WOULD PREFER. BUT THE LANGUAGE PLACED THERE BY THE CITIZENS IS THE PASSWORD. IT IS -- IT WOULD BECOME AN OBSOLETE CHIBOLITH, I THINK WAS THE WORD IN THE MANATEE CASE. THE CITIZENS PLACED IT THERE, AND THE CITY HAS NO MORE AUTHORITY THAN THAT GRANTED TO IT BY ITS CITIZENS.

IS THIS A TYPICAL CHARTER PROVISION? IN OTHER WORDS IF WE WERE TO LOOK AT CHARTER PROVISIONS AROUND THE STATE, IS IT TYPICAL THAT THERE IS A REQUIREMENT FOR VOTER APPROVAL, EXCEPT FOR, OR IS IT THE RULE THAT MOST OF THE TIME THAT BONDS, IF THEY ARE NOT FOR ADVALOREM TAXES, CAN BE FLOATED WITHOUT A VOTER REQUIREMENT?

THERE ARE SO MANY DIFFERENT TYPES OF BONDS, APPELLEE, BEING BOND COUNCIL, COULD PROBABLY ADDRESS THAT QUESTION FAR BETTER THAN I COULD. THIS IS THE ONLY BOND CASE I HAVE EVER DONE. THIS IS THE ONLY TIME I HAVE DEALT WITH THIS CHARTER PROVISION. BUT IT DOES APPEAR THAT THE CASE LAW INDICATES THAT, WHERE THERE IS GOING TO BE A REVIEW OF THE AUTHORITY, THAT AUTHORITY IS GOING TO BE CONSTRUED AGAINST THE GOVERNMENTAL BODY, AGAINST THE TAXING AUTHORITY, AND IN FAVOR OF THE VOTER.

LET ME ASK YOU THIS. IF WE WANT TO FIND SOME MIDDLE GROUND, HERE, THAT IT DOESN'T HAVE TO BE AN ESSENTIAL GOVERNMENTAL SERVICES, AS THAT TERM WAS USED IN THE PAST, BUT THAT SIMPLY ANY ROAD CONSTRUCTION THAT A CITY WANTED TO BUILD WOULD NOT NECESSARILY FIT THE PUBLIC SAFETY REQUIREMENT, WHERE DO YOU THINK THIS OUGHT TO FALL?

OBVIOUSLY I AM AN ADVOCATE OF MY POSITION, BUT I UNDERSTAND THE COURT'S QUANDRY IN THIS PARTICULAR CASE, BECAUSE YOU DO HAVE ROADS. THERE ARE SOME OLD CASES WHICH INDICATE THE ACQUISITION OF RIGHT-OF-WAY IS NOT EVEN AN ESSENTIAL GOVERNMENT PURPOSE. WELL, WE KNOW THAT THAT, PROBABLY, IS LONG GONE. HOWEVER, IF THIS ROAD PROJECT, ITSELF, HAD BEEN ESTABLISHED AS AN ABSOLUTELY NECESSARY PROJECT FROM THE SAFETY STANDPOINT, I WOULD SAY TO THIS COURT THAT BONDING FOR THAT ASPECT OF THE PROJECT, WHICH IS FOR THE ROAD, WOULD BE APPROPRIATE, BUT BONDING FOR A \$2.1 MILLION FOUNTAIN AND \$2 MILLION OF LANDSCAPING AND ANSWER LATER ASPECTS WOULD NOT -- AND ANCILLARY ASPECTS WOULD NOT BE.

IN THIS INSTANCE, WHILE THERE HAS BEEN A CERTAIN NUMBER OF ACCIDENTS AT THIS PARTICULAR PLACE, I BELIEVE, BUT IT WAS NOT ONE OF THE TEN HIGHEST ACCIDENT INTERSECTIONS IN THE CITY, IF IT HAD FALLEN WITHIN ONE OF THE HIGHEST ACCIDENT INTERSECTIONS, WOULD YOU CONSIDER THAT, THEN, AN ABSOLUTE NECESSITY TO RECONFIGURE YOUR THIS ROADWAY?

I THINK, IF THE RECORD HAD REFLECTED SOME DIRE NEED FOR THE PUBLIC SAFETY, YES, I WOULD AGREE WITH THAT, BUT THE --

I GUESS THE QUESTION, THEN, BECOMES HOW HOW DIRE IS DIRE?

WELL, THE RECORD REFLECTS THAT THE CITY'S OWN TRAFFIC STUDY INDICATED THAT THERE WERE NO MAJOR OPERATIONAL DIFFICULTIES AT THIS PARTICULAR LOCATION, THAT THE PROPOSED PROJECT WOULD BE LESS EFFICIENT THAN THE EXISTING ROAD SYSTEM. THAT IS WHAT TROUBLES THE VOTERS IN CLEARWATER.

SEE, IF I AM UNDERSTANDING THIS, THIS WAS AN ONE-WAY INTO THE BEACH AND ANOTHER WAY OUT. IS THAT WHAT IT WAS? TRADITIONAL YOU DRIVE IN. YOU DRIVE OUT. AND NOW THEY ARE GOING TO HAVE ONE OF THESE, A ROUNDABOUT? IT IS FOR THE CONSTRUCTION OF A ROUNDABOUT.

AND A LANDSCAPING AND ECONOMIC ENTRY WAY TO THE BEACH PROJECT.

AND BEFORE THIS CONSTRUCTION, WHAT WAS THE CONFIGURATION?

THE CONFIGURATION, ACCORDING TO THE TRAFFIC STUDY, THERE WAS ONE WAY IN AND ONE WAY OUT AND SIGNAL OPERATIONS AND AN OPERATING LEVEL OF BEACH SERVICES.

IF THERE WAS SUPPORT THAT THERE WAS A PUBLIC NEED TO CHANGE THE TRAFFIC PATTERN HERE, AND WE HAVE EVIDENCE TO THE CONTRARY, WHAT SHOULD WE DO WITH IT? WHAT ARE WE TO DO WITH IT?

I THINK THE ISSUE IS THE AUTHORITY OF THE CITY. IF THERE IS A CONFLICT, AS TO WHETHER OR NOT THERE WAS -- THEY HAD MET THEIR BURDEN OF PROOF TO ESTABLISH THAT AUTHORITY, THEN THE BEST COURSE OF ACTION IS TO ALLOW THE VOTERS WHO HAVE RESERVED, TO THEMSELVES, CERTAIN POWERS, TO HAVE THAT GO TO REFERENDUM AND GRANT THAT AUTHORITY, I DON'T BELIEVE THAT THE RECORD REFLECTS THAT THE CITY HAS ESTABLISHED THAT THERE WAS AN ESSENTIAL GOVERNMENTAL PURPOSE TO BE SERVED OR THE HEALTH AND SAFETY WAS NECESSARY FOR THIS PARTICULAR PROJECT, SO I --

GO BACK TO WHERE, IF THERE IS ANY EVIDENCE IN THE RECORD THAT WE WOULD BE WEIGHING, WHAT HAS ALREADY GONE ON?

I AM NOT SURE -- IF THE ISSUE IS A BURDEN OF PROOF, THE CITY NEEDED TO ESTABLISH, BY CLEAR AND CONVINCING EVIDENCE, THAT THEY HAD AUTHORITY TO TAKE THESE BONDS TO ISSUE THE BONDS, WITHOUT REFERENDUM, AND WHILE THERE MAY BE SOME EVIDENCE, THERE IS NOT SUFFICIENT EVIDENCE TO ESTABLISH OR BRING THEMSELVES WITHIN THE EXCEPTION OF THE REFERENDUM REQUIREMENT OF THE CHARTER.

FOR APPELLATE PURPOSES, SHOULDN'T WE BE CONCERNING OURSELVES WITH WHETHER OR NOT THERE IS COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT THE FINDING OF THE FACT FINDER? THAT THERE ARE SEVERAL HEALTH AND SAFETY CONCERNS. SHOULDN'T OUR REVIEW BE LIMITED TO THAT, OR DO YOU AGREE WITH THAT?

IF THE EVIDENCE PRESENTED RISES TO THE LEVEL TO SUPPORT THE FINDINGS, THEN THERE IS COMPETENT SUBSTANTIAL EVIDENCE IN THE COURT, AND IT SHOULD, OF COURSE MARKS THAT FINDING AND SUPPORT THE TRIER OF FACT. IN THIS CASE THERE SIMPLY WAS NOT SUFFICIENT EVIDENCE. THERE MAY BE ON THE ROADWAY ISSUE, BUT CERTAINLY AS TO THE FOUNTAIN AND THE LANDSCAPING, THIS IS A \$12 MILLION PROJECT.

ONE OTHER QUESTION. CAN WE PARSE IT? -- CAN WE PARSE IT? CAN WE LOOK AT IT AND SAY SOME OF IT WOULD BE OKAY BUT OTHERS WOULD NOT? DON'T WE HAVE TO TAKE IT AS A PACKAGE DEAL?

I DON'T THINK SO. THEY ASKED FOR \$12 MILLION IN REVENUE BONDS, AND THEY SIMPLY DID NOT ESTABLISH THAT THEY NEED \$12 MILLION TO REALIGN THIS ROAD F THE ROADAL ALIGNMENT IS A SAFETYISH -- IF THE ROAD ALIGNMENT IS A SAFETY ISSUE, THEN THERE IS NOT A SAFETY ISSUE TO JUSTIFY A \$12 MILLION BOND ISSUE.

THE LANDSCAPING. LET'S PUT THAT OVER TO THE SIDE AND SAY THAT DIDN'T HAVE ANYTHING TO DO WITH HEALTH AND SAFETY.

A FOUNTAIN. \$2.1 MILLION. THEY HAVE NOT ESTABLISHED THE NEED OR THEIR AUTHORITY TO OBTAIN A FLOAT OF \$12 MILLION IN BONDS FOR THIS PROJECT.

IS THERE ANY CASE LAW THAT WOULD SAY THAT WE CAN PARSE IT IN THAT MANNER? DON'T WE HAVE TO LOOK AT IT AS A WHOLE?

I BELIEVE THERE WAS A RECENT CASE THAT THIS COURT HANDED DOWN, WHERE THEY DID PARCEL OUT, AND I DON'T HAVE THE CITE IN FRONT OF ME RIGHT NOW. HOWEVER, WHEN YOU ASK FOR \$12 MILLION, YOU NEED TO SUPPORT IT, AND THEY SIMPLY DID NOT.

YOU ARE IN YOUR REBUTTAL. IF YOU WANT TO SAVE SOME TIME, YOU MAY.

THANK YOU.

MR. REID.

GOOD MORNING, JUSTICES. I AM ROBERT READ, REPRESENTING THE CITY OF CLEAR -- I AM ROBERT REID, REPRESENTING THE CITY OF CLEARWATER AND WITH ME IS SOME OF THE MEMBERS OF OUR FIRM. WE WANT TO STAND BACK AND THAT TA A LOOK AT THE QUESTIONS. THE SCOPE OF WHAT WE ARE REVIEWING TODAY REALLY HAS TO DO WITH THREE THINGS. WHETHER THE CITY HAS THE AUTHORITY TO ISSUE THE BONDS, WHETHER THE PURPOSE IS LEGAL, AND WHETHER THE BOND ISSUE REQUIRES WITH THE -- WHETHER THE BOND ISSUE COMPLIES WITH THE REQUIREMENTS OF LAW. THE SOLE ISSUE BEING RAISED IS WHETHER THE CITY HAS THE AUTHORITY, UNDER ITS CHARTER, TO ISSUE THESE BONDS WITHOUT A REFERENDUM, AND THAT, REALLY, GOES DIRECTLY TO WHAT THE CHARTER MEANS. NOW --

I GUESS I KIND OF THOUGHT THAT THE ISSUE, HERE, WAS WHETHER OR NOT THE PURPOSE OF THE OBLIGATION IS LEGAL. WHETHER THIS MEETS A LEGAL PURPOSE OR WHICH THE CITY COULD ISSUE BONDS WITHOUT A REFERENDUM.

WELL, I THINK IT IS TWO DIFFERENT ISSUES. IF I MAY, IT WAS ACTUALLY CONCEDED IN THE BRIEFS THAT THE PROJECT IS WITHIN THE MUNICIPAL PURPOSES OF THE CITY OF CLEARWATER. THAT IS NOT DISPUTED. SO IT IS LEGAL FOR THE CITY TO DO THE PROJECT. THE QUESTION IS WHETHER THE CITY HAS THE AUTHORITY, UNDER ITS CHARTER, TO ISSUE BONDS TO FINANCE THE PROJECT. WITHOUT A REFERENDUM. THERE IS NO REQUIREMENT, IN THE CHARTER, NONE HAS BEEN RAISED, THAT THE CITY CAN'T UNDERTAKE THE PROJECT.

BUT IT HAS TO BE FOR HEALTH AND SAFETY. YOU WOULD HAVE TO AGREE WITH THAT, WOULDN'T YOU?

WELL, THE CITY CHARTER, TAKE A LOOK AT THE CHARTER, ITSELF.

DO YOU AGREE WITH THAT?

NOT TO DO THE PROJECT, NO. I DO NOT AGREE WITH THAT.

OKAY.

OKAY. THE CITY IS GRANTED, BY ITS CHARTER, IN ARTICLE I, EXTREMELY BROAD MUNICIPAL POWERS. BASICALLY SAID, CITY, YOU HAVE ALL HOME RULE MUNICIPAL POWERS TO CARRY OUT YOUR MUNICIPAL PURPOSES.

ISN'T JUSTICE SHAW CORRECT, WHEN WE ARE TALKING ABOUT A REFERENDUM. THIS COMES DOWN TO WHETHER OR NOT YOU NEED HAVE A REFERENDUM, IN ORDER TO DO THESE BONDS, CORRECT?

TO ISSUE -- THAT IS THE QUESTION BEFORE THE COURT, TO ISSUE THE BONDS, WHETHER A REFERENDUM IS REQUIRED BY THE CITY CHARTER.

AND IN ORDER NOT TO HAVE A REFERENDUM, IT WOULD HAVE TO MEET THE PUBLIC HEALTH AND SAFETY REQUIREMENT.

WELL, THERE ARE ACTUALLY FOUR EXCEPTIONS TO REFERENDUM IN THE CHARTER: HEALTH, SAFETY, INDUSTRIAL DEVELOPMENT OR REFUNDING.

OKAY.

OKAY. NOW --

WHICH ONE DO YOU SEE THAT THE CITY IS FALLING UNDER?

HEALTH AND SAFETY.

NARROW THIS DOWN.

CLEARLY HEALTH AND SAFETY HERE. NOW --

WHAT IS AN EXAMPLE OF A PROJECT THAT THE CITY WOULD FEEL LIKE IT WOULD REQUIRE A REFERENDUM?

ACTUALLY THERE WAS AN EXCELLENT KMAMP HE WILL THAT WAS -- AN EXCELLENT EXAMPLE THAT WAS, ONCE BEFORE, BEFORE THIS COURT, IN THE CASE OF KELLY VERSUS THE CITY OF CLEARWATER. THE CITY WAS UNDERTAKING TWO PROJECTS IN DHAS, A NEW POLICE AND EMERGENCY FACILITIES HEADQUARTERS BUILDING, EMERGENCY RESPONSE CENTER, AND A NEW CITY OFFICE BUILDING, A MUNICIPAL SERVICES BUILDING. THE PROJECTS -- THERE WAS NO QUESTION WHETHER THE CITY HAD THE AUTHORITY TO DO THOSE PROJECTS. THE QUESTION WAS VALIDATION OF FUNDING. AT ISSUE WAS THE EMERGENCY RESPONSE FACILITY, NOT THE MUNICIPAL SERVICES BUILDING, BASICALLY A CITY OFFICE BUILDING, WHERE IT WAS CONSOLIDATING ITS PEOPLE, AND THIS, IF YOU TAKE A MINUTE AND GET FRAMEWORK FOR THE CHARTER, HERE, AND I THINK IT MAY BECOME VERY CLEAR HERE, AND I THINK THIS IS WHERE MR. MAGUIRE IS SORT OF MISSING ON THE ESSENTIALIALITY CONCEPT. THE CHARTER BASICALLY SPEAKS, IN ARTICLE I, TO FOUR BROAD AREAS OF MUNICIPAL PURPOSE. HEALTH, SAFETY, CONVENIENCE AND GENERAL WELFARE. CLEARLY IT HAS THE MUNICIPAL POWERS. IT IS WITHIN ITS PURPOSE TO UNDERTAKE ANY PROJECT, HEALTH, SAFETY, CONVENIENCE OF THE CITIZENS OR GENERAL WELFARE, BUT WHEN IT COMES TO BONDING THAT PROJECT, WITHOUT GOING TO THE VOTERS, THE CITY CAN ONLY DO THAT, IF THE PROJECT IS IN HEALTH, SAFETY, INDUSTRIAL DEVELOPMENT OR REFUNDING.

SO THEY HAVE USED DIFFERENT TERMS. SO WOULD YOU SAY THAT, THEREFORE, ANYTHING THAT IS EITHER CONVENIENCE OR GENERAL WELFARE --

WOULD REQUIRE A REFERENDUM.

IS EXCLUDED.

YES, I WOULD.

ECONOMIC DEVELOPMENT IS EXCLUDED.

THAT WOULD PROBABLY BE INCLUDED UNDER INDUSTRIAL DEVELOPMENT. BUT AN INDUSTRIAL DEVELOPMENT, IF I MAY, THE CITY IS ACTING, REALLY, I THINK THE CONCEPT, THERE, IS ACTING AS A CONDUIT, IN OTHER WORDS THAT THE CITY'S ASSETS ARE NOT AT ISSUE, BASICALLY EXERCISEING 159-TYPE POWERS.

THIS IS MY PROBLEM WITH LOOKING AT THIS PROJECT AND UNDERSTANDING OUR LIMITED REVIEW. IT REALLY LOOKS LIKE THERE IS A VERY GOOD PURPOSE, WHICH IS TO IMPROVE THE APPROACH TO THE BEACH AND REVITALIZE THE BEACH. IT IS HARD FOR ME TO BELIEVE THAT A ROUNDABOUT, REALLY, IS A SAFER WAY TO HAVE ACCESS FOR EITHER PEDESTRIANS OR TRAFFIC. USUALLY IT IS ONE WAY BOTH WAYS, AND I AM NOT THE FACT FINDER, BUT IT LOOKS THAT YOU HAVE SORT OF -- IT HAS BEEN DRESSED UP, OF COURSE, WITH THE FOUNTAIN OF \$2 MILLION AND THE LANDSCAPING, AND IT IS GOING TO BEAUTIFY THE WAY YOU GET INTO THIS BEACH. IT IS VERY HARD TO, THEN, MAKE THAT LEAP, AND SAY BECAUSE IT MIGHT MAKE IT A LITTLE BIT SAFER, BECAUSE THERE IS ONE, YOU KNOW, A LITTLE SOMETHING FROM, THAT THAT REALLY WASN'T THE MAJOR PURPOSE THAT, THERE FOR THE WHOLE BOND IS VALID, AND TO GET AROUND WHAT LOOKS TO BE THE PURPOSE OF THIS -- OF THE CHARTER, WHICH IS TO PUT THESE KINDS OF THINGS IN FRONT OF THE VOTERS, AND SO HOW DO YOU ANSWER THAT, IN THIS SITUATION? BECAUSE WE KNOW ALL ROADWAY CONSTRUCTION WOULDN'T FIT IN. WOULD YOU AGREE WITH THAT? I GUESS --

I DON'T NECESSARILY AGREE WITH THAT. NO.

WOULD YOU SAY THAT THE HOLDING HERE IS THAT WE SHOULD SAY ALL PUBLIC, ANY ROADWAY CONSTRUCTION FITS WITHIN PUBLIC HEALTH AND SAFETY, AND THAT ENDS THE QUESTION, AND WE DON'T HAVE TO GET INTO WHETHER THIS IS REALLY MAKING IT SAFER OR NOT?

ACTUALLY THAT WOULD BE COMPLETELY IN LINE WITH PRIOR DECISIONS OF THIS COURT. THAT THE REGULATION OF THE FLOW OF TRAFFIC. BRIDGES, ROADS, PARKING, SIGNALING, SIGNAGE, ALL OF THAT IS CLEARLY IN THE HEALTH AND SAFETY, PRIMARILY SAFETY FUNCTIONS OF THE MUNICIPALITIES, AND THE COURT HAS CONSISTENTLY HELD THAT, SO I THINK, FROM THAT STANDPOINT, I WOULD SAY ROADWAYS ARE IN THAT AREA. AND I THINK, WHEN YOU LOOK AT THE HEALTH AND SAFETY ISSUES, THOSE ARE THE FUNCTIONS OF THE MUNICIPALITY. THOSE ARE THE ONES THAT ARE YITCAL TO THE -- THAT ARE CRITICAL TO THE CITIZENS.

LET'S SAY YOU ARE GOING TO SPEND \$5 MILLION TO BEAUTIFY THE ROADWAY.

I WOULD SAY THEY COULD DO THAT, IF THEY WANTED TO BOND FINANCE IT, THAT WOULD REQUIRE A REFERENDUM.

THAT WOULD REQUIRE A REFERENDUM?

YES, I THINK THAT WOULD.

JUST TO BEAUTIFY.

YES. JUST TO GO IN AND, YES, DO SOME BEAUTIFICATION, YES, UNLESS --

YOU SAY WITHOUT A REFERENDUM?

NO. NO. I WOULD SAY THAT WOULD BE MORE IN THE GENERAL WELFARE AND CONVENIENCE CATEGORY AND WOULD REQUIRE A REFERENDUM. YES. A REFERENDUM. PRIOR TO BONDING IT BUT NOT UNDERTAKING THE PROJECT. THEY CLEARLY HAVE THE MUNICIPAL POWERS TO UNDERTAKE THE PROJECT, BUT BEFORE THEY FINANCE JUST A BEAUTIFICATION PROJECT, WOULD REQUIRE A REFERENDUM.

COULD THEY, THEN, GOING BACK TO AN EARLIER QUESTION, COULD THEY TAKE THIS \$12 MILLION BOND AND HAVE \$5 MILLION OF IT FOR BEAUTIFICATION, \$7 MILLION FOR ROADWAY CONSTRUCTION, AND WHAT WOULD HAPPEN IF IT HAD BEEN MARKED THAT WAY? THAT IS THIS MUCH IS FOR BEAUTIFICATION. WOULD YOU INVALIDATE THE WHOLE BOND? WOULD YOU SAY YOU ONLY HAVE THE SEVEN MILLION? HOW WOULD A COURT APPROACH THAT?

I THINK YOU WOULD, THERE, HAVE TWO DIFFERENT SEPARATE PROJECTS, AND THAT IS NOT THE ISSUE, REALLY, BEFORE THE COURT TODAY. YOU HAVE AN INTEGRATED PROJECT HERE.

CAN YOU REALLY SAY THERE IS -- FOR THIS FOUNTAIN, THAT IS THE \$2 MILLION FOUNTAIN, DOES THAT HAVE A PUBLIC HEALTH AND SAFETY PURPOSE?

YES, IT DOES. ACTUALLY IT DOES. THE PROJECT, THE TESTIMONY, LET ME -- MR. MAGUIRE HAS TAKEN AND KEEPS ARGUING OFF OF AN INITIAL DRAFT OF A TRAFFIC STUDY THAT WAS DONE BY DKS THAT WAS COMMISSIONED BY THE PUBLIC WORKS STAFF OF THE CITY. THAT INITIAL REPORT WENT FAR BEYOND THE SCOPE THAT THE CITY STAFF HAD REQUESTED OF THE REPORT, AND, IN FACT, WAS MODIFIED, AND THE MODIFIED FINAL REPORT WAS THE ONE THAT THE CITY ENTERED INTO EVIDENCE. MOST OF THESE COMMENTS ARE COMING FROM THAT TRAFFIC STUDY THAT WAS AN INITIAL DRAFT THAT WAS BEYOND THE SCOPE OF THE REPORT AND CONTAINED STATEMENTS THAT JUST WERE NOT RELEVANT. NOW, WHAT WAS IN THE EVIDENCE, TESTIMONY, THE REPORTS, PRIMARILY BY RICHARD BEAR, WHO IS THE DIRECTOR OF THE CITY'S PUBLIC WORKS DEPARTMENT, THIS PROJECT WAS DESIGNED AS AN INTEGRATED UNIT, COMPLETELY IN LINE WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION GUIDES AND MANUALS FOR MUNICIPAL ROAD CONSTRUCTION, FOR THE CONSTRUCTION OF ROADS ABOUT AND FOR THE CONTROLLING -- FOR THE CONSTRUCTION OF ROUNDS ABOUT AND FOR THE CONTROLLING OF TRAFFIC. THIS WAS A HEAVILY CONGESTED INTERSECTION. IT IS THE MAIN AREA TO CLEARWATER BEACH, WHICH IS A MAIN TOURIST RECREATION AREA. YOU HAVE HOTELS AND A LOT OF PEDESTRIANS AND A LOT OF TRAFFIC FLOW. GOAL NUMBER ONE. OKAY. SLOW TRAFFIC DOWN. WHEN YOU SLOW TRAFFIC DOWN, YOU ARE NOT GOING TO ELIMINATE ACCIDENTS, BUT YOU GREATLY DECREASE THE KINDS OF ACCIDENTS.

WELL, I THINK OUR CONCERN IS BROADER THAN JUST FACTS IN THIS CASE, AND SO BEFORE WE GET TO TAKE UP ALL YOUR TIME IN THESE FACTS, YOU KNOW, SOME PLACE ALONG A CONTINUUM, ANYTHING THAT THE CITY DOES TO ITS ROADS COULD BE SAID TO IMPACT UPON THE HEALTH AND SAFETY OF ITS CITIZENS.

I WOULD AGREE WITH THAT.

SO YOU HAVE CONCEDED THAT, IF IT IS JUST FOR BEAUTIFICATION, THAT WOULD NEED A REFERENDUM. ARE WE LOOKING AT \$5 MILLION. IF IT IS \$3 MILLION GOES TO GETTING THIS INTERSECTION REALLY SAFE AND \$2 MILLION GOES TOWARDS BEAUTIFICATION OF IT, DOES THAT NEED A REFERENDUM?

THE TESTIMONY, THE UNFORTUNATE FACTS IN THIS CASE, THE TESTIMONY WAS NOT --

LET'S SAY \$4 MILLION GOES TOWARDS BEAUTIFICATION AND \$1 MILLION GOES TOWARDS THE SAFETY OF IT. DOES IT NEED A REFERENDUM?

TO THE EXTENT IF, WHAT YOU ARE DESCRIBING, THERE, IS TWO DIFFERENT PROJECTS. THE



PROJECT FOR THE ROAD IS IN FURTHERANCE OF THE CITY'S PUBLIC HEALTH AND SAFETY FUNCTIONS. THE BEAUTIFICATION PROJECT, JUST A BEAUTIFICATION PROJECT, STANDING ALONE, IS NOT, IN AND OF ITSELF, IN FURTHERANCE OF HEALTH AND SAFETY.

BUT ALL OF THESE MONIES ARE COMING FROM THE SAME PLACE. THEY ARE.

WELL, THE MONIES ARE COMING FROM THE SAME PLACE. I MEAN FROM THE -- FROM THIS -- IN THIS PARTICULAR PROJECT, IT IS AN INTEGRATED DESIGN. THIS IS NOT A BEAUTIFICATION PROJECT. I MEAN THE LANDSCAPING, THE PEDESTRIAN TRAILS, THE FOUNTAINS ARE RECOGNIZED MECHANISMS TO CONTROL TRAFFIC FLOW.

CITIZENS ARE BEING ASKED TO PAY FOR THIS, WITHOUT GOING THROUGH A REFERENDUM, AND MAYBE THEY DON'T WANT OR TO SPEND THAT TAX MONEY ON THIS BEAUTIFICATION. MAYBE THEY SEE THE VALUE OF THE SAFETY OF THE INTERSECTION OR SOMETHING AND THAT WOULDN'T COST BUT \$1 MILLION.

WELL --

WHY SHOULDN'T THEY BE ENTITLED TO PUT THAT TO A REVEREND SNUM.

BECAUSE THE CITIZENS OF THE -- TO A REFERENDUM?

BECAUSE THE CITIZENS OF THE CITY HAS MADE THEIR EXPRESSION THROUGH THE CHARTER. THROUGH THE CHARTER. THROUGH ENACTMENT OF THE CITY'S CHARTER, IN 1978. OKAY. THE CITIZENS MADE AN EXPRESSION, OVER THE YEARS, THAT CHARTER PROVISION HAS BEEN INTERPRETED CONSISTENTLY, BY THE CIRCUIT COURTS, AND SAYING THAT, IF THE CITY IS ACTING IN FURTHERANCE OF ITS PUBLIC HEALTH AND SAFETY, THE PROJECT MEETS THE EXCEPTION. OKAY. THE CITIZENS --

IS IT A PRIMARY FACT OF THAT, PRIMARILY IN PURSUANCE OF THE HEALTH AND SAFETY, IS PRIMARY NECESSARILY READ INTO THAT?

I WOULD THINK SO. YES. THAT -- YOU CERTAINLY CAN HAVE -- I MEAN THERE IS NOTHING WRONG WITH HAVING AN ATTRACTIVE ROADWAY, IF YOU ARE REDOING A ROAD WAY. IT DOESN'T MEAN YOU HAVE TO DO IT UGLY TO MAKE IT IN HEALTH AND SAFETY. IN FACT, THE ENVIRONMENT OF THE ROADWAY CAN HAVE ITS OWN IMPACTS, AND, AGAIN, GOING BACK TO THE TESTIMONY IN THIS CASE, THAT WAS UNDISPUTED, THE ROADWAY, THERE WERE VARIOUS PARTS OF THE ENTIRE DESIGN, AND TO SAVE PEDESTRIANS, REDUCE THEIR RISK, TO SLOW TRAFFIC, TRAFFIC CALMING DEVICES, AIR MITIGATION ISSUES, TO FLOW, THIS IS A CONGESTED AREA. PINELLAS IS IN AN AIR WATCH AREA, AND BASICALLY CLOSE TO THE BORDER LINE OF BEING SANCTIONED FOR IT, SO THESE ARE ALL VERY MUCH ISSUES. OKAY. THE FREE FLOW OF TRAFFIC, THE SAFETY OF PEDESTRIANS IN A HEAVY TOURIST AREA, IMPROVEMENT OF AIR QUALITY. THESE ARE CLEARLY IN THE SCOPE OF HEALTH AND SAFETY FUNCTIONS OF THE CITY. THE PROJECT WAS A TOTAL DESIGN PROJECT. IT WAS NOT, WELL, LET'S, YOU KNOW, REDESIGN THE ROADWAY AND OH, BY THE WAY, WE WILL THROW SOME OTHER STUFF IN. EACH OF THE ELEMENTS OF THE PROJECT ARE SPECIFICALLY DESIGNED TO ACHIEVE ONE OF THOSE THREE GOALS. TRAFFIC CALMING AND SLOWING, TO REDUCE SEVERITY OF ACCIDENTS, PEDESTRIAN SAFETY, AIR QUALITY IMPROVEMENT. EVERY SINGLE PIECE OF THE PROJECT WAS DESIGNED, EVERY PIECE, ACTUALLY, HAS ITS FOUNDATIONS IN GUIDELINES SET FORTH BY THE FLORIDA DEPARTMENT OF TRANSPORTATION. THIS, TO ME, IS SOMETHING THAT IS TOTALLY DIFFERENT THAN THE CITY JUST DECIDING LET'S PLANT TREES DOWN OUR ROADWAYS TO MAKE THEM SHADED. YOU KNOW. THAT IS NOT SOMETHING THAT WOULD REALLY BE, IN MY MIND, TOWARD HEALTH AND SAFETY. THAT IS NOT WHAT WE HAVE BEFORE US TODAY. LET ME CHANGE, A LITTLE BIT, AND JUST RESPOND TO A QUESTION THAT JUSTICE PARIENTE ASKED ON COMPARING CITY CHARTERS. WE HAVE ACTUALLY LOOKED AT MANY CITY CHARTERS ACROSS THE STATE. MANY CITY CHARTERS DO

HAVE SOME TYPE OF REFERENDUM REQUIREMENT IN THEM FOR BONDING. SOMETIMES IT IS BY THE SOURCE OF REVENUE. OKAY. SOMETIMES IT IS, AS SOME OF THE CITIES IN THE PANHANDLE, HEAR, FOR EXAMPLE, SAY ALL BONDS. WE DON'T CARE WHAT THE PURPOSE OF THEM IS. WE WANT CITIZENS TO APPROVE THEM. OKAY. MOST CHARTERS DO NOT HAVE AN EXPRESS LIMITATION BEYOND THE CONSTITUTIONAL LIMITATION OF A REFERENDUM REQUIRED, IF YOU ARE PLEDGING ADVALOREM TAXES. THERE IS FULL FAITH AND CREDIT BONDS. SO THIS IS THE EXACT PROVISIONS IN THIS CHARTER ARE NOT THAT COMMON.

IN OTHER WORDS MOST CHARTERS DO REQUIRE THE CITIZENS TO VOTE ON --

THEY EITHER -- MOST CHARTERS ARE SILENT AND DO NOT IMPOSE. OKAY. THOSE THAT DO, THERE ARE A -- THREE OR FOUR THAT I AM AWARE OF, SMALL CITIES. THESE ARE ALL VERY SMALL CITIES THAT SAY WE JUST WANT TO APPROVE ALL BONDS. WE DON'T CARE. OKAY. THERE ARE SOME WHO RESTRICT, BY THE REVENUES. IF YOU ARE PLEDGING CERTAIN TYPES OF REVENUES, THEN YOU MUST -- WE WANT YOU TO BOND THAT OR HAVE A REFERENDUM ON THAT.

SO YOU WOULD AGREE THIS IS A RESTRICTION, AND THEREFORE SINCE IT IS A RESTRICTION, WHY SHOULDN'T THE TERM BE READ RESTRICTIVELY, RATHER THAN EXPANSIVELY, TO GIVE THE VOTERS THE RIGHT TO APPROVE? IF IT IS THE KIND OF PROJECT THAT YOU SAY IT IS, THEN IT OUGHT TO BE SELF-EVIDENT, AND THE VOTERS WOULD APPROVE IT, AND, REALLY, SINCE YOU HAVE NOW CONCEDED THAT, REALLY, ANY ROADWAY CONSTRUCTION WOULD FIT INTO THIS, THEN, IN EFFECT, WE WOULD BE SAYING THAT PUBLIC HEALTH AND SAFETY IS SYNONYMOUS, THAT ROADWAY CONSTRUCTION IS WITHIN IT. NOW, YOU ARE SAYING WE HAVE SAID THAT BEFORE.

YES.

COULD YOU TELL ME WHICH CASES WE HAVE SAID THAT IN, BECAUSE I KNOW SOMETIMES WE USE PUBLIC HEALTH AND SAFETY. THERE ARE SO MANY DIFFERENT CONTEXTS THAT THIS MAY COME UP IN.

THIS WOULD BE -- JUST -- I THINK I AM OUT OF TIME HERE, BUT WELKER VERSUS THE STATE.

WHICH ONE?

WELKER. 93 SO.2D 591.

NOW, THAT WAS NOT IN THE CONTEXT OF A CHARTER PROVISION.

NO. IT WAS NOT IN THE CONTEXT OF THE CHARTER AT ALL. IT WAS A --

ANY OTHER CASE?

THAT IS THE ONE THAT COMES TO MIND.

DID YOU SAY THAT IS --

THAT IS 1957 DECISION.

'93 SO.2D 591.

OKAY. SO WE HAVE NOT CONSTRUED THE TERM IN THE CONTEXT OF A CHARTER PROVISION.

IT WAS CONSTRUING THE TERM IN THE CONTEXT OF WHAT THE AUTHORITY OF A MUNICIPALITY WAS. WHICH IS THE CHARTER IS A PIECE OF THE TOTAL WEALTH OF INFORMATION OF GUIDANCE FOR THE CHARTER, FOR THE CITY.

THANK YOU. YOUR TIME IS CONCLUDED. MR. MAGUIRE, REBUTTAL?

THANK YOU. THE RECORD REFLECTS THAT THE PRIMARY PURPOSE OF THIS PROJECT WAS ECONOMIC REDEVELOPMENT OF THE BEACH AND NOT TRAFFIC FLOW.

NOW, WHERE IN THE RECORD IS THAT?

IN THE APPENDIX. A-11, IT WOULD BE -- IT IS CITED IN OUR STATEMENT OF THE FACTS. APPENDIX A-11 AND, ALSO, IN A A-11, THE PROJECT HAS TWIN PRINCIPLES, A PLACE TO HAVE A QUALITY EXPERIENCE AND A SENSE OF ARRIVAL AT THE BEACH.

NOW, WHERE, IS THAT --

THAT IS IN A-11.

IS THAT A DOCUMENT THAT HE REFERRED TO?

NO. THAT IS NOT. THAT IS IN THE MINUTES OF THE INITIAL DESIGN TEAM MEETINGS FOR THE CITY. THESE ARE CITY MINUTES REFLECTING WHAT THE NATURE OF THIS PROJECT IS.

WAS THERE CONTRARY EVIDENCE TO THAT PRESENTED AT THE HEARING?

NO. I THINK WHAT IS INTERESTING IS, AND I THINK THIS IS THE ISSUE. IF YOU TIE SOME TRANSPORTATION ISSUES TO A PROJECT, THEN THE EXCEPTION CAN OVERWHELM THE RULE. THE RULE IS YOU MUST HAVE A REFERENDUM FOR PROJECTS IN EXCESS OF \$1 MILLION. THE BULK OF THE MONEY SPENT ON THIS PROJECT IS FOR A MOUNTAIN AND LAND -- IS FOR A FOUNTAIN AND LANDSCAPING AND NOT ROADWAY ROADWORK. I DO NOT BELIEVE THEY HAVE ESTABLISHED A NEED OR RIGHT OR AUTHORITY TO ISSUE UP TO \$12 MILLION IN REVENUE BONDS.

YOU SAY THE BULK, THE ACTUAL CONSTRUCTION IS \$7.1 MILLION?

7.1. 7.2. CORRECT.

YOUR OPPONENT SAID THAT YOU WERE REFERRING TO AN OLD DRAFT AND THAT THAT IS NOT, REALLY, THE CURRENT SITUATION.

WHAT IS IN THE RECORD, AND THE DRAFT THAT HE IS TALKING ABOUT IS IN THE RECORD. WE INTRODUCED THOSE ELEMENTS, BECAUSE THOSE ARE PUBLIC RECORD DOCUMENTS THAT I GOT. SOMEWHERE BETWEEN THE TIME I GOT THEM AND THEY APPEARED AT THE HEARING, THOSE DOCUMENTS HAD CHANGED. BUT THE RECORD --

HAD THE DOCUMENTS CHANGED, OR WERE THERE -- AS I UNDERSTOOD IT, THERE WERE DIFFERENT MEETINGS, WHEN ALL OF THIS WAS BEING DISCUSSED. THAT WHAT YOU WERE TALKING ABOUT WAS AT ONE OF THE INITIAL MEETINGS, AND AS THESE MEETINGS WENT ON, THINGS CHANGED.

THERE WAS A CHANGE TO A PARTICULAR DOCUMENT. CERTAIN LANGUAGE WAS REMOVED AT THE REQUEST OF THE CITY, TO THE DESIGN ENGINEERS OR THE CONSULTING ENGINEERS. BUT THE DOCUMENTS THAT I DO HAVE AND WERE PRESENTED IN THE RECORD, CLEARLY STATED CERTAIN THINGS. SOME THINGS WEREN'T CHANGED, BUT THERE IS NOTHING THAT WAS CITED IN THIS RECORD THAT IS NOT PART OF THE PUBLIC RECORDS OF THE CITY OF CLEARWATER. I THINK I HAVE JUST A MOMENT. THE CITY OF CLEARWATER HAS ONE OF GOD'S HUMBLIST TOPOGRAPHICAL FEATURES IN NORTH AMERICA. WE ARE ON THE COAST SOUTH OF VIRGINIA BEACH, VIRGINIA. OUR CITY HALL SETS UPON IT. OUR VOTERS AND CITIZENS PUT IT THERE. THEY DID NOT HAVE TO

HAVE A REFERENDUM TO PUT IN THAT CITY HALL, BUT THE CITY COMMISSION HAS TAKEN THAT CITY HALL HIGHER THAN THE BLUFF. THEY HAVE PLACED THEMSELVES ABOVE THE VOTERS, AND THIS IS SIMPLY THE TIP OF THE ICEBERG OF PROBLEMS IN OUR CITY. THE CITIZENS HAVE A RIGHT TO A REFERENDUM UNDER THE CIRCUMSTANCES OF THIS CASE. NOT ALL CASES DO THEY, BUT IF WE DO NOT HAVE A RIGHT, IN THIS CASE, TO A REFERENDUM, THEN THE EXCEPTION WILL ALWAYS OVERWHELM THE RULE, AND THERE WILL BE NO REASON FOR THE CITY TO COME BACK TO THE CITIZENS. YOU COULD REMAND --

ONE FINAL QUESTION HERE. THE PORTION OF THE PROJECT THAT IS STRICTLY A PART OF ROAD CONSTRUCTION, ARE YOU CONTENDING, ALSO, THAT THAT PORTION OF THE PROJECT SHOULD BE SUBJECT TO REFERENDUM?

BECAUSE IT IS ONLY A PORTION OF IT, IT DOESN'T JUSTIFY \$12 MILLION IN REVENUE BONDS, SO, YES.

THE \$7.1 OR WHATEVER MILLION IS FOR CONSTRUCTION OF THE ROAD.

\$12 MILLION HAS BEEN ASKED FOR. CONSTRUCTION OF THE ROAD, THE FOUNTAIN, THE LANDSCAPING IS ONLY \$7.1. SO WITHIN THE \$7.1 MILLION IS ROAD CONSTRUCTION, SO OF THE \$12 MILLION, ONLY APPROXIMATELY \$2 MILLION IS FOR ROAD CONSTRUCTION. IT SEEMS A BIT EXTREME TO HAVE THAT TAIL TO WAG THAT BIG A DOG. THANK YOU.

THANK YOU, MR. MAGUIRE. THANKS TO BOTH OF YOU FOR ASSISTING US IN RESOLVING THIS.