SUPREME COURT OF FLORIDA

MICCOSUKEE VILLAGE SHOPPING CENTER, et al.

Petitioner,

vs.

Case No. 82,175

STATE OF FLORIDA, DEPT. OF TRANSPORTATION,

Respondent.

original

INITIAL BRIEF OF PETITIONER MICCOSUKEE VILLAGE SHOPPING CENTER, LTD.

ALAN E. DeSERIO, ESQUIRE
Fla. Bar No. 155394
BRIGHAM, MOORE, GAYLORD, SCHUSTER & MERLIN
777 South Harbour Island Blvd.
Suite 900
Tampa, Florida 33602
(813)229-8811

JOSEPH W. FIXEL, ESQUIRE
Fla. Bar No. 0192026
211 South Gadsden Street
Tallahassee, Florida 32301
(904)681-1800
Attorneys for Petitioner

TABLE OF CONTENTS

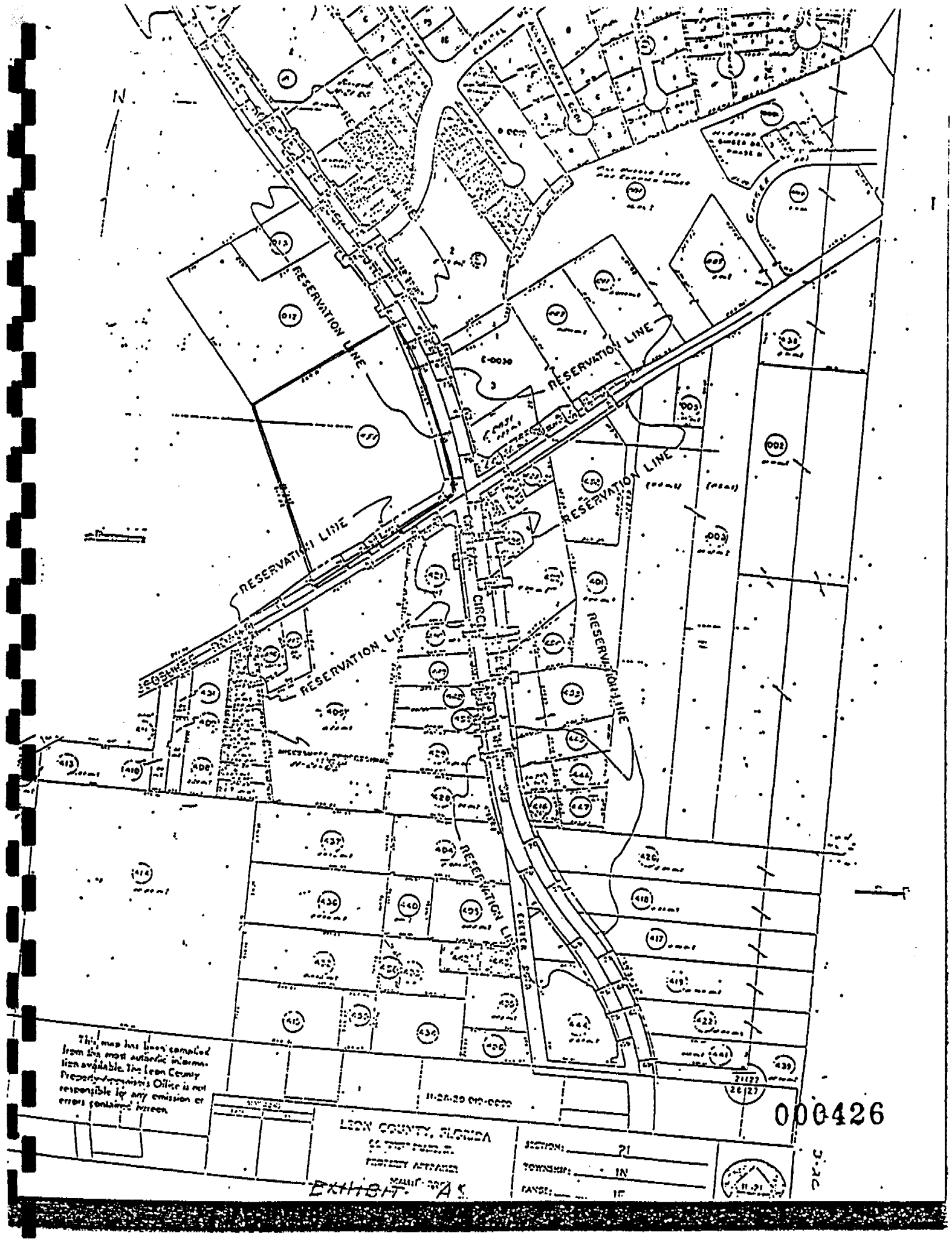
TABLE OF AUTHORITIES

Cases:

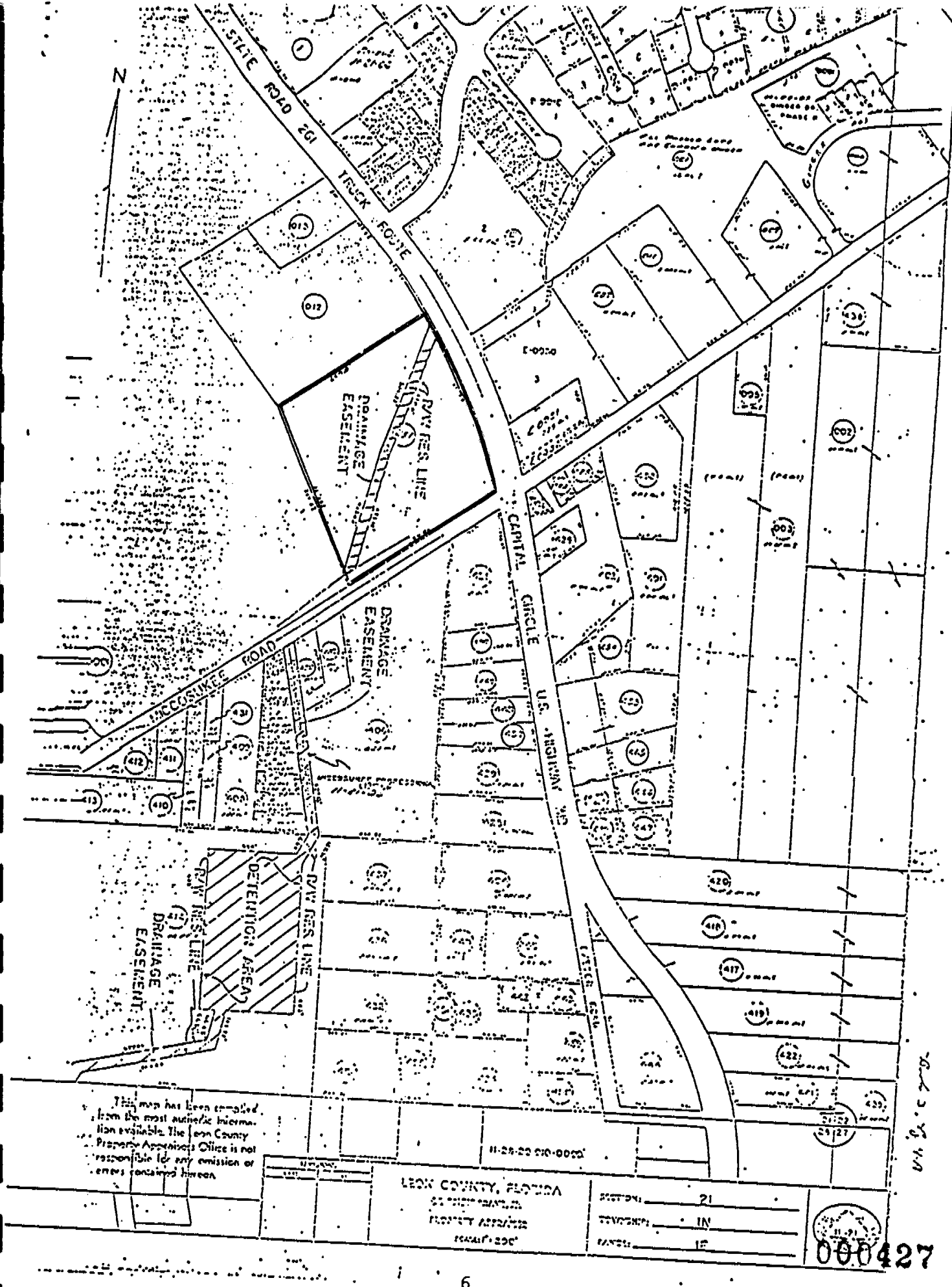
STATEMENT OF CASE AND FACTS

The Complaint filed in this cause (A:1-28) alleges that a vacant tract of land owned by Miccosukee Village, was burdened with maps of reservation filed by the DOT, pursuant to § 337.241, Fla. Stat. (1988), in October 1988 and July 1989. (Paragraph 6). Attached to the Complaint, as exhibits, were a certified copy of a warranty deed containing a full legal description of the property and copies of the maps of reservation. (Exhibits A; C; D). Exhibits C and D reflect, as alleged in the Complaint, that the maps of reservation covered a significant portion of the owners' property and bisected the property into two segments.[1] It was alleged that the owners' property was being reserved in order to prevent any use of the property until the DOT's plans for construction of the Capital Circle project could be finalized and implemented. (Paragraph 7). The Complaint further alleged that § 337.241, Fla. Stat. (Supp. 1988), prohibited any construction or the issuance of any development permits for a five year period, which could be extended for an additional five years; that the statute denied the owner the right to construct upon or develop the property covered by the map of reservation, "freezing" the development of the property for the benefit of the DOT; and that the statute did not require the DOT to acquire the property during the ten year period, or go forward with the project for which the property had been reserved. (Complaint, paragraphs 8; 9; 10).

[1] Reduced versions of these maps are found on the following pages. The maps of reservation are highlighted in yellow. The property has been outlined in red.


N
RESERVATION LINE
RESERVATION LINE
RESERVATION LINE
RESERVATION LINE
RESERVATION LINE
RESERVATION LINE
RESERVATION LINE
CIRCLE
CREEK
This map has been compiled from the most authentic information available. The Leon County Property Appraiser's Office is not responsible for any omission or errors contained herein.
LEON COUNTY, FLORIDA
PROPERTY APPRAISER
SECTION: 21
TOWNSHIP: 1N
RANGE: 1E
EXHIBIT "A"

000426


N
STATE ROAD 261 TRUCK ROUTE
DRAINAGE EASEMENT
R/W RES LINE
CAPITAL CIRCLE
U.S. HIGHWAY 90
TALLAHASSEE ROAD
DRAINAGE EASEMENT
DETENTION AREA
R/W RES LINE
R/W RES LINE
DRAINAGE EASEMENT
This map has been compiled from the most authentic information available. The Leon County Property Appraiser's Office is not responsible for any omission or errors contained herein.
LEON COUNTY, FLORIDA
SECTION: 21
TOWNSHIP: 1N
RANGE: 1E
000427

The Complaint also alleged that the map of reservation left the property, within the reserved area, with no utility or economically beneficial use; denied the owner the investment-backed expectations it had with regard to the property; and denied the substantial beneficial use of the owners' property. (Complaint, paragraphs 11; 12; 13).

In paragraph 15, the Complaint referred to the decision rendered by the Florida Supreme Court in Joint Ventures, Inc. v. Department of Transportation, 563 So. 2d 622 (Fla. 1990). In describing the character of the decision it was alleged that the court ruled that, § 337.241(2) and (3), Fla. Stat. (1987), unconstitutionally permitted the state to take private property in violation of the United States and Florida Constitutions and that the Supreme Court ruled that the map of reservation provisions did not advance a legitimate state interest.

In Paragraphs 17 and 18 of the Complaint, citing to the Supreme Court ruling in Joint Ventures, Inc., the owners alleged that the filing of the map of reservation pursuant to the unconstitutional statutory provision, resulted in a temporary taking of their property without payment of full compensation. If further alleged that because the statutory provisions failed to advance a legitimate state interest, the filing of the map of reservation constituted a temporary taking of the owners' property.

The Motion for Summary Judgment (A:31-34), citing to the decisions of Joint Ventures, Inc. v. DOT, 563 So. 2d 622 (Fla. 1990) and Orlando/Orange Cnty Expressway Auth. v. W & F Agrigrowth

-Fernfield, Ltd., 582 So. 2d 790 (Fla. 1991), alleged that there were no material facts in dispute with regard to the fact that the map of reservation provisions failed to advance a legitimate state interest and, therefore, the application of those provisions to the subject property constituted a "taking" in violation of the United States and Florida Constitutions. There were no allegations in the motion relating to the economic impact that the maps of reservation had upon the property.

At the hearing on the Motion for Summary Judgment (A:377-423) counsel for the DOT agreed that there were two tests to determine if a "taking" of private property had occurred, "[o]ne being an economic test. The other being a non-economic test." (TR:11). Counsel for the DOT then continued:

> The economic is whether the regulation denies an owner economic, viable use of his property. And the non-economic test, that being whether the ordinance or regulation advances legitimate state interest. And both of these are very important. (Emphasis supplied). (TR:11).

Counsel for the DOT subsequently stated that it was their position that "the Plaintiffs have not been denied substantial economic use of the property" (TR:15), and that the question of whether a deprivation of substantial economic use of the property had occurred was a question of fact to be resolved by the trial court at a hearing on the "taking" issue. (TR:22).

Later during that same hearing the following colloquy took place between the trial judge and counsel for DOT:

> THE COURT: But, at least, as to the issue of taking, doesn't Joint Ventures read in conjunction with the Agrigrowth case, doesn't that pretty much dictate that the recordation of the map of reservation is by law, a taking?
>
> MR. PANTALEON: Your Honor, I would agree that to the extent that Agrigrowth is an out-cropping from the district court, Fifth District, that just by the mere recordation there exists a temporary taking." (Emphasis supplied). (TR:23)

In the Order Granting Summary Judgment (A:424-427)) the trial court did not rule that a "taking" had occurred because the owner had been denied the substantial economic beneficial use of the property. Rather, the order merely stated that "the temporary takings were accomplished by the application of the reservation maps to the Plaintiff's property." In support of this finding the trial court cited to the decisions of **Joint Ventures, Inc. v. Dep't of Transp.**, 563 So.2d 622, 625 (Fla. 1990) and **Orlando-Orange Cnty Expressway Auth. v. W & F Agrigrowth-Fernfield, Ltd.**, 582 So.2d 790 (Fla. 5th DCA 1991). Attached to the Order were reduced versions of the two maps of reservation that were imposed upon the property.

On appeal the District Court entered an opinion on March 22,

1993,[18 Fla.L.Weekly D827](A:428) affirming the summary judgment based upon this Court's decision in Joint Ventures,Inc. v. Department of Transportation, 563 So. 2d 622 (Fla. 1990), as interpreted by the decision of Orlando/Orange County Expressway Authority v. W. & F. Agrigrowth-Fernfield, Ltd., 582 So. 2d 790 (Fla. 5th DCA 1991), rev. denied, 591 So. 2d 183 (Fla. 1991). The District Court also cited as authority the decision of Tampa-Hillsborough County Expressway Authority v. A.G.W.S. Corp., 608 So. 2d 52 (Fla. 2d DCA 1992), which is currently pending before this Court in Case No. 80,656. The District Court then certified a question to this Court, which slightly modified that posed in the A.G.W.S. Corp. case:

> WHETHER [BY VIRTUE OF THE HOLDING IN JOINT VENTURES, INC. v. DEPARTMENT OF TRANSPORTATION, 563 SO. 2D 622 (FLA. 1990),] ALL LANDOWNERS WITH PROPERTY INSIDE THE BOUNDARIES OF INVALIDATED MAPS OF RESERVATION UNDER SUBSECTIONS 337.241(2) AND (3), FLORIDA STATUTES (1987), ARE LEGALLY ENTITLED [IN INVERSE CONDEMNATION ACTIONS] TO RECEIVE PER SE DECLARATIONS OF TAKING AND JURY TRIALS TO DETERMINE JUST COMPENSATION.

On rehearing, the District Court withdrew its previous opinion, this time reversing the summary judgment. 621 So.2d 516.(A:429-430). The District Court based its decision upon Department of Transportation v. Weisenfeld, 617 So. 2d 1071 (Fla. 5th DCA 1993)[Judges Goshorn, Peterson, Diamantis dissenting], wherein the 5th District receded from its prior decision in W & F Agrigrowth-Fernfield, Ltd., 582 So. 2d at 790. The District Court did not adopt the majority opinion rendered in Weisenfeld, but opted for the specially concurring opinion of Judge Griffin, which viewed

this Court's opinion in Joint Ventures, Inc. as invalidating the map of reservation statute on "due process" grounds.

The Petitioner, Miccosukee Village Shopping Center, timely filed a Notice to Invoke Discretionary Jurisdiction. This Court accepted jurisdiction of the cause on November 10, 1993.

SUMMARY OF ARGUMENT

Contrary to the assumption of the District Court, this is not a "regulatory takings" case. The imposition of a map of reservation which freezes property in its current state for ten (10) years is an act of "**eminent domain.**" Government acquisition of private property interests for the purpose of furthering a public project or enterprise is an exercise of the power of eminent domain requiring full compensation therefor. Art. X, Sec. 6(a), Fla. Const.; Fifth Amendment, U.S. Const.

Regulatory takings cases assume a valid exercise of the police power. When such a regulation affects private property, the usual inquiry is the economic effect of the regulation. Does it "go too far"? An extensive body of case law has been developed by this Court and the United States Supreme Court which analyzes the economic effect of valid regulations on an *ad hoc* basis to determine if a regulatory "taking" has occurred. These cases are constitutionally and analytically distinct from "freezing" cases. Traditionally, our common law decisions unmask regulatory freezing schemes, exposing them as guileful attempts to acquire private property by legislation without paying for that property.

The Joint Ventures decision, Joint Ventures, Inc. v. Department of Transp., 563 So. 2d 622 (Fla. 1990) (Joint Ventures, Inc. "II"), carefully analyzed the state's map of reservation statute, Sec. 337.241(2)(3), *Florida Statutes* (1988), for what it actually was. This Court took pains to express the important distinction between acts of the police power (regulatory) and actions in the nature of eminent domain (*de facto* condemnation). The failure of the majority and concurring opinions rendered in **Weisenfeld** to grasp this distinction is apparent and has resulted in an opinion that confuses rather than clarifies the law. In **Joint Ventures, Inc.** the map of reservation was clearly exposed as an acquisition by government for a public project. Such an acquisition of private property interests must entail the payment of full compensation to the owner singled out thereby.

The instant case involves the imposition of an maps of reservation onto the private land of the Petitioner for the purpose of freezing development on the property. The Respondent sought to use the map of reservation legislation as a device to hold down future acquisition costs of the proposed Capital Circle project. A separate *ad hoc* determination need not be made in every case where the legislation has been **implemented** since this Court has expressly held the identical legislative device to be an exercise of eminent domain, that, when **actually implemented** as here, will give rise to a claim for compensation.

Assuming, arguendo, the implementation of this map of reservation was not an act of eminent domain as held in Joint

Ventures, Inc. "II", the imposition of this legislative freeze would still be a "taking" requiring compensation. Although ignored by the majority and concurring opinions in Department of Transportation v. Weisenfeld, 617 So. 2d 1071 (Fla. 5th DCA 1993), the United States Supreme Court has held repeatedly that legislation is void on its face as an uncompensated taking, without an *ad hoc* economic inquiry, if the regulation either fails to substantially advance a legitimate state interest or, by its terms, denies the affected landowner all reasonable economic use of his or her property. That a "taking" will occur when either of the two separate and independent standards are established has been reiterated as the "law" on no less than six separate occasions by the United States Supreme Court. Yet, the Fifth District in Weisenfeld simply refuses to abide by these pronouncements even though they are controlling in the determination of a regulatory "taking" under the federal constitution.

This Court found in Joint Ventures, Inc. "II", that the act of reserving private property for public use, in the guise of a mere regulation, was not legislation in the furtherance of a "legitimate state interest." An uncompensated seizure of a private property interest for a public enterprise by means of legislation or regulation is also recognized by the United States Supreme Court as not a "legitimate" state interest. Thus, by definition, a taking has occurred with the implementation of an admittedly "illegitimate" act upon the property of these landowners. Once a

"taking" has been found by the court, compensation must be paid, at least for the duration of the invalid act.

Contrary to the position taken in the specially concurring opinion of Judge Griffin in **Department of Transportation v. Weisenfeld**, 617 So. 2d at 1080-1083, the map of reservation statute was not invalidated "on due process grounds." Id. at 1082. This Court struck down the provision because it was a thinly veiled attempt to "acquire" property under the power of eminent domain, without the payment of full compensation. Due process considerations did not enter into this Court's analysis at all in the **Joint Ventures, Inc.** decision. Even the question certified to this court by the lower court was restated to eliminate any question of a due process violation.[2]

Policy reasons advanced to withhold the right to compensation, such as the possibility of windfalls to affected citizens or the specter of payment of attorneys' fees to nominally successful litigants, are irrational and ineffective. Irrational, because the existing law in Florida protects the government from spurious, non-meritorious claims and penalizes landowners and their attorneys for litigating nominal claims. Ineffective, because the constitutional protection of the Fifth Amendment and Article X, Section 6(a) of Florida's organic law cannot be avoided or evaded by arguments that violations of such protection will cost the government money.

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[2] Compare the question certified to this Court by the District Court in **Joint Ventures, Inc.**, 563 So. 2d at 623, n.1, to the question as restated by this Court in the first paragraph of the opinion. Id. at 623.

The policy reasons requiring compensation for temporary, illegal takings are strong, however. In addition to the unambiguous language of both State and Federal Constitutions mandating compensation for the public's seizure of private property, government must have some economic disincentive to avoid enacting such "guises" as the map of reservation statute herein. Otherwise, the government simply plays a game of enactment-litigation-invalidation-amendment and then further litigation. Our citizenry and our constitutions cannot be so abused.

ARGUMENT

THE DISTRICT COURT OF APPEAL ERRED IN REVERSING THE ORDER GRANTING SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY. THE RELIANCE OF THE DISTRICT COURT UPON THE SPECIALLY CONCURRING OPINION OF JUDGE GRIFFIN IN THE WEISENFELD DECISION AS A BASIS FOR REVERSAL OF THE SUMMARY JUDGMENT ON LIABILITY WAS ERROR BECAUSE: (1) THE CONCURRING OPINION HAS INCORRECTLY CONSTRUED AND APPLIED THE DECISION OF JOINT VENTURES, INC. v. DEPARTMENT OF TRANSPORTATION; (2) THE CONCURRING OPINION FAILS TO RECOGNIZE THE DISTINCTION BETWEEN THE EXERCISE OF EMINENT DOMAIN AND THE EXERCISE OF THE POLICE POWER; (3) THE CONCURRING OPINION HAS MISCONSTRUED AND FAILED TO PROPERLY APPLY EXISTING PRECEDENT OF THE UNITED STATES SUPREME COURT ON THE ISSUE OF WHEN A REGULATORY "TAKING" OCCURS.

I. NATURE OF THE CASE: EMINENT DOMAIN OR REGULATORY TAKING.

The Petitioner would adopt the argument set forth at pages 9 through 22 of the Answer Brief of Respondents, A.G.W.S. Corporation

and Dundee Development Group, Case No. 80-656. Judge Griffin's concurring opinion, like that of the majority in **Weisenfeld** has either misunderstood or overlooked the specific analysis set forth in this Court's opinion in **Joint Ventures,Inc.** distinguishing between the power of eminent domain (acquisition) and the police power (regulation). In light of this clear misconstruction of **Joint Ventures,Inc.**, the Petitioner would submit the following additional comments concerning the concurring opinion of Judge Griffin in **Weisenfeld**, 617 So. 2d at 1080-1083.

A. THE HOLDING OF DOT v. JOINT VENTURES, INC.

The majority opinion in **Weisenfeld** clearly recognized that the Supreme Court in Joint Ventures, Inc., found that the map of reservation provisions were definitely not "regulatory" in character, but merely a veiled "attempt" to acquire property without utilizing the provisions of Chapters 73 and 74. In summarizing the holding of **Joint Ventures, Inc.**, the majority in **Weisenfeld** stated:

> In Joint Ventures the Florida Supreme court affirmatively answered the certified question whether subsections 337.241(2) and (3), Florida Statutes (1987) **unconstitutionally provided for an impermissible taking of private property without just compensation**. It held that the statute in question was **not an appropriate regulation under the police power** but was "merely an attempt to circumvent the constitutional and statutory protection afforded private property ownership under the principles of eminent domain." **Weisenfeld**, 617 So. 2d at 1072. (Emphasis Supplied)

So far, so good. The opinion in **Weisenfeld** seems clear enough in its recognition that the map of reservation provisions struck down

by this Court in Joint Ventures, Inc. were nothing more than a "thinly veiled attempt to 'acquire' land" without the formal exercise of eminent domain under Chapters 73 and 74. Suddenly, however, the opinion begins to leave the "real" world, sliding into a fictitious realm that ignores accomplished fact. The first signs of this divergence appear when the majority in Weisenfeld describes the "statutory mechanism" of the map of reservation provisions. There the majority states:

> The mere **"attempt" embodied in the mechanism** to improperly acquire land in the guise of police regulation, thereby circumventing the procedural and substantive safeguards of Chapter 73 and 74, does not automatically equate with a compensable taking." Id. at 1073.

Superficially, this statement seems acceptable enough. After all, the mere enactment of a provision which authorizes the government to do something that is tantamount to an exercise of eminent domain, foregoing all the constitutional niceties generally associated with condemnation actions, could be viewed simply as an "attempt" or a mere temptation to do something that which is generally considered to be constitutionally prohibited. Without delving into the law which permits a statutory provision to be declared facially unconstitutional as a "taking" in violation of the state and federal constitutions by its mere "enactment", [3] let's accept the premise that the "mere enactment" of the map of reservation provisions constituted only an attempt to exercise the

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[3] *Agins v. City of Tiburon*, 447 U.S. 255 (1980)

power of eminent domain. With this assumption in mind, consider the very next sentence in the majority opinion:

> Therefore, *Joint Ventures* does not support the conclusion, as contended by *Weisenfeld*, **that the mere filing of a reservation map** by DOT creates a cause of action on his part. Id. at 1073.

It is at this point that the opinion takes a quantum leap over fact and simple logic to land in a place where an accomplished feat is equated to a mere "attempt." It is a place where the government is permitted, with impunity, to actually fulfill the very purpose for which the statute was enacted, without consequence.

B. ATTEMPT VS. ACCOMPLISHED FACT

The majority and concurring opinions in **Weisenfeld** are clearly blinded to the realization that in the case before it, as in **all** other cases where the government has utilized the map of reservation statute by actually **"filing"** the map, thereby invoking the restrictive provisions of the statute, the scenario presented is no longer a mere "attempt," but the fulfillment of what the statute was enacted to accomplish. If the enactment of the map of reservation provisions is appropriately described as a mere "attempt" to exercise the power of eminent domain, without utilizing Chapters 73 and 74, then simple common sense dictates that the actual **filing** of a map of reservation, pursuant to the map statute, is "in fact" the completion of that "attempt." That being the case, what possible justification can be given for the denial of the opportunity to claim just or full compensation? Clearly, the answer is none! The constitution of Florida mandates that if

the power of eminent domain is exercised, then the opportunity to claim compensation must be provided. "In every eminent domain case the Florida Constitution expressly requires the condemning authority to pay the property owner 'full compensation' for the condemned property." Florida Dept. of Revenue v. Orange County, 18 Fla. L.Weekly S336 (Fla. June 17, 1993).

C. REGULATION vs. EMINENT DOMAIN

If, as recognized by the majority and concurring opinions in Weisenfeld, this Court in Joint Ventures held that the map of reservation provision was not "an appropriate regulation under the police power," why then does the Weisenfeld majority and concurring opinions proceed to analyze the case as if it involved a "regulatory" taking? Why did the Weisenfeld court reiterate and utilize principles applicable only to the determination of a "regulatory" taking in a setting that it has declared to be non-regulatory in nature? When the power of eminent domain is exercised, it matters not whether the owner has been denied the economically beneficial or productive use of the land. Economic impact is relevant only to the issue of compensation to be paid for the exercise of that power.

II. "PRACTICAL (BUT NOT PROBABLE) CONSIDERATIONS" - THE SPECTER OF WINDFALL RECOVERIES AND UNJUSTIFIED PAYMENT OF FEES AND COSTS.

The Petitioner would adopt the argument set forth at pages 22 through 28 of the Answer Brief of Respondents, A.G.W.S. Corporation and Dundee Development Group, Case No. 80-656.

III. VIEWED AS A REGULATORY TAKING - LIABILITY IN EVERY INSTANCE.

The Petitioner would adopt the argument set forth at pages 28 through 37 of the A.G.W.S. Corporation Answer Brief. However, the Petitioner would stress to this Court again the fact that it need not enter the sometimes bewildering world of regulatory takings law. All of the factors considered when determining if a "regulatory" taking has occurred are totally irrelevant once a determination is made that the power of eminent domain - rather than the police power - has been exercised by the government.

The other considerations mentioned by Judge Griffin's concurring opinion, such as utilizing other remedies that may provide relief from the impact of regulation,[4] are applicable **only** when the regulatory challenge is based upon the contention that the regulation has denied the economic beneficial use of the property. See, **Yee v. City of Escondido**, 112 S.Ct. 1522, 1532 (1992), where the Court rejected considerations of "ripeness" or economic impact when the regulation is challenged on the basis of failure to substantially advance any legitimate state interest.

The section of the A.G.W.S. Corporation Answer Brief (pages 28 through 37) discusses in detail the error of advancing the position that the first prong of the **Agins'** test for a regulatory taking - "failure to substantially advance legitimate state interest"-

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[4] The fact that Judge Griffin's concurring opinion would even suggest that the owner should have utilized the so-called "remedy" provisions of the map of reservation statute (Weisenfeld, 617 So. 2d at 1082, n.8) is amazing and further reveals the clear disregard for the language of the **Joint Ventures, Inc.** opinion, where this Court found that "remedy" provided by the statute was "illusory." **Joint Ventures, Inc.**, 563 So. 2d at 627-628.

concerns a denial of due process, rather than a violation of the compensation clause. The attempt to force this Court's decision in Joint Ventures, Inc. into the "due process" category was made again in Judge Griffin's specially concurring opinion. This approach clearly ignores the question posed by this Court and the answer to that question set forth at the out set of the opinion:

> ...whether subsections 337.241(2) and (3), Florida Statutes (1987), unconstitutionally permit the state to take private property without just compensation. We answer the question in the affirmative, finding those subsections invalid as a violation of the fifth amendment to the United States Constitution and article X, section 6(a) of the Florida Constitution. Id. at 623.

Clearly, no "due process" question was presented. In fact, the certified question, as posed by this Court, modified the question certified by the District Court, effectively eliminating any due process issue. Id. at 623, n.1. As previously discussed, the remainder of the opinion dealt with the distinctions between the exercise of the power of eminent domain (acquisition) and the police power (regulation). In the end, this Court exposed "the statutory scheme as a thinly veiled attempt to `acquire' land." Id. at 625. The significance the distinctions discussed above was evidently not discerned by the court in Weisenfeld or by the lower court in this cause.

IV. IF A "TAKING" HAS OCCURRED THEN COMPENSATION IS REQUIRED.

The Petitioner would adopt the argument set forth at pages 37 through 42 of the A.G.W.S. Corporation Answer Brief.

V. SOUND POLICY CONSIDERATIONS REQUIRING COMPENSATION.

The Petitioner would adopt the argument set forth at pages 43 through 50 of the A.G.W.S. Corporation Answer Brief.

CONCLUSION

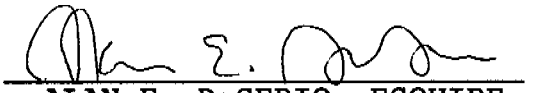
In *Joint Ventures, Inc.*, this Court accurately described the map of reservation provisions as a "thinly veiled" attempt to acquire private property, by-passing the statutory procedures provided for the taking of private property for public use. With the actual filing of the map of reservation, the "attempt" at the exercise of eminent domain was completed. That which was constitutionally prohibited took place as a matter of "fact," the purpose of the map of reservation provisions was fulfilled and the government gained the "use" of private property for a "uniquely public function." This event is clearly ignored by the **Weisenfeld** majority and concurring opinions With the power of eminent domain having been exercised, summary judgment of the issue of liability for the "taking" cannot be denied. Equally true, is the fact that since the power of eminent domain has been exercised, the opportunity to claim compensation must be afforded to the claimant.

The era of the map of reservation seemingly has passed away. With the provisions being declared unconstitutional as a taking of property without payment of compensation, the government made one

effort to amend the provisions before repealing Section 337.241 entirely in 1992. [sec.108, ch. 92-152] However, true to form, the government does not wish to compensate the limited group of private property owners that were victimized by the map provisions in order to provide a "benefit" to the public as a whole. Contrary to the ruling by the **Weisenfeld** court, that is exactly what the compensation clauses of the Florida and United States constitutions were "designed" to do. For a substantial length of time the government has gained the benefit of **using** the Miccosukee Shopping Center property in the furtherance of its uniquely public function. It is now obligated to pay for that "**use.**" To rule otherwise would be tantamount to deleting the compensation clause from the constitution. Recently, this Court confirmed its resolve to enforce the payment of compensation when the power of eminent domain has been exercised. That being the case, the resolution of this cause is quite simple - the majority and concurring opinions in **Weisenfeld** must be quashed as contrary to the law and the "fact" that **the power of eminent domain has been exercised** in this cause. The decision reversing the order of the trial court, on the basis of **Weisenfeld** must, likewise, be reversed and the cause remanded for a determination of full and just compensation for the temporary taking of the owner's property.

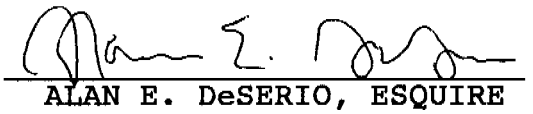
ALAN E. DeSERIO, ESQUIRE
Florida Bar No. 155394
Brigham, Moore, Gaylord,
Schuster & Merlin
777 S. Harbour Island Blvd.,
Tampa, Florida 33602
(813)229-8811

JOSEPH W. FIXEL, ESQUIRE
Florida Bar No. 0192026
211 South Gadsden Street
Tallahassee, Florida 32301
(904)681-1800
Attorneys for Appellee

By: 
ALAN E. DeSERIO, ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to MARIANNE A. TRUSSELL, Assistant General Counsel and THORNTON J. WILLIAMS, General Counsel, Florida Department of Transportation, 605 Suwannee Street, MS 58, Tallahassee, Florida 32399-0458, on this 18th day of November, 1993.

By: 
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