



# Trending Land Use Claims

YOU DENIED THE PERMIT, NOW WHAT??

**Presented by**

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Bert J. Harris,  
Jr.  
Private  
Property  
Protection Act

70.001, Fla. Stat.

Statutory cause of action, distinct from law of Takings. When a new law is applied (through government action) which “Inordinately Burdens” an existing use or vested right to a specific use of real property.



## Bert J. Harris Act – cont.

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Statute provides for a claims period wherein within **1 year of the challenged government action**, the claimant property owner must submit an appraisal to the County which demonstrates the alleged loss of value of the property due to the government action.

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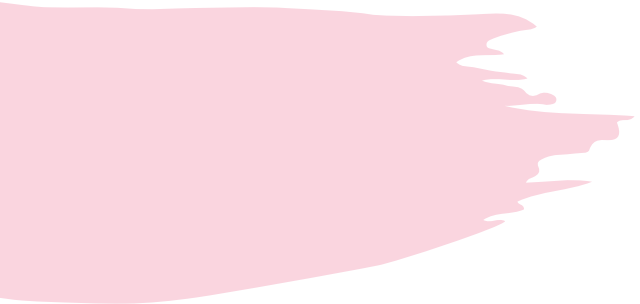
The County has **90 days to evaluate** the claim and during that time must furnish a written statement of allowable uses as well as a settlement offer to the property owner.

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Thereafter, the property owner can file suit under the Act.

# Bert J. Harris Act, cont.

- There is a bifurcated trial process wherein a judge trial is held to determine whether or not the property has been inordinately burdened. .
- If the Court makes that finding, a jury trial is held to determine the amount of compensation to be paid for the owner.
- Attorney's fees are recoverable.
- No statutory limits of liability.
- Coverage issues?



Bert J. Harris  
Act, cont.  
2021  
LEGISLATIVE  
CHANGES

- Significant
- Provide that a property owner who filed a claim (under subsection 4) *retains such entitlement to pursue the claim ... but subsequently relinquishes title to the subject property before the claim reaches final resolution.* (subsection 2)

# Bert J. Harris Act, cont.

## 2021 LEGISLATIVE CHANGES, cont.

- Expanded definition of “government action” to include *acting on an application or a permit or adopting or enforcing any ordinance, resolution, regulation, rule, or policy.* (subsection 3(d))
- Expanded definition of “real property” to include *any surface, subsurface, or mineral estates and “any other relevant interest in the real property.”* (subsection 3(g))
  - Now also seems to pertain to leasehold interests and easements.

# Bert J. Harris Act, cont.

## 2021 LEGISLATIVE CHANGES, cont.

- Reduces the claim period from **150 to 90 days**... and changed the language of the requirement that the property owner submit a “bona fide, valid appraisal” to a *written appraisal report as defined in s. 475.611(1)*. (subsection 4(a)).
- Provides that *[s]ettlement offers made under paragraph 4 (c) shall be presumed to protect the public interest*. (subsection 4(d)).



# Bert J. Harris Act, cont.

## 2021 LEGISLATIVE CHANGES, cont.

- Provides that the *property owner retains the option to **forego a jury** and elect to have the court to determine the award of compensation.* (subsection 6(b)).
- Allows for a prevailing property owner to recover its attorney's fees from the **date of the *presentation of its claim to the head of the governmental entity***, as opposed to the filing of the Circuit Court action. (subsection 6(c)).

Bert J. Harris Act, cont.

2021 LEGISLATIVE CHANGES, cont.

- Allows property owner to trigger “application” of a new law by providing specified written notice to the head of the government entity. (subsection 11(b)).
- County must respond within **45 days** of receipt of the notice.



# Federal Constitutional Claims

BROUGHT UNDER 42 U.S.C. SEC. 1983



## 42 U.S.C. §1983

*Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...*

42 U.S.C.  
§1983, cont.

Plaintiff's prevailing party  
attorney's fees  
recoverable under 42  
U.S.C. §1988.

No statutory limits of  
liability.

# 5<sup>th</sup> Amendment Takings Claims

Taking clause: nor shall private property be taken for public use, without just compensation.

The 5th Amendment of the U.S. Constitution does not prohibit a government from taking private property for public purposes, but it does prohibit taking private property without providing “**just compensation**” for that taking.

# 5<sup>th</sup> Amendment Takings Claims

- Two Types

Regulatory

Physical

# 5<sup>th</sup> Amendment Takings Claims

- REGULATORY TAKINGS CLAIMS

Ordinances.

Permit denial.



# 5<sup>th</sup> Amendment Takings Claims

- Physical Takings Claims-

Cedar Point Nursery v. Hassid

# 4<sup>th</sup> Amendment – Unlawful Seizures

Chmielewski v. City of St. Pete Beach

Inverse  
Condemnation  
Claims

## Florida Constitution

### Article X, Section 6(a)

- No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner.

Inverse  
Condemnation,  
cont.

Contrast with Eminent Domain- County action results in taking, as opposed to County condemning property pursuant to Chapter 73, Fla. Stat.

Court establishes date and extent of taking.

Jury (12 person) establishes value.

No statutory limits of liability.

Prevailing plaintiff's attorney's fees recoverable.



**Ex. Flood cases; drainage/flowage easement.**

# Petition for Writ of Certiorari

“Cert”

Quasi-Judicial  
Determinations

Ex. Denials-  
Permits, Plat  
Approvals, Variances,  
etc.

BOCC sits in quasi-  
judicial capacity, as  
opposed to its typical  
legislative role.

125.022, Fla. Stat.

# 125.022 Development permits and orders

- (1) ***Within 30 days after receiving an application for approval of a development permit or development order, a county must review the application for completeness and issue a letter indicating that all required information is submitted or specifying with particularity any areas that are deficient. If the application is deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information.***
- ***Within 120 days after the county has deemed the application complete, or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing, the county must approve, approve with conditions, or deny the application for a development permit or development order. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure or other extraordinary circumstance. An approval, approval with conditions, or denial of the application for a development permit or development order must include written findings supporting the county's decision. The timeframes contained in this subsection do not apply in an area of critical state concern, as designated in s. [380.0552](#).***

## **125.022 Development permits and orders**

- *(3) When a county denies an application for a development permit or development order, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit or order.*

# Writ of Cert – Standard of Review

## First-tier Review

Due Process (Notice and Opportunity to be heard.)

Essential Requirements of Law- Did administrative body apply the correct law (eg. LDC)

Competent Substantial Evidence- Does the record contain competent substantial evidence to support the Board's decision. (Not whether there is evidence in the record that supports Applicant's position. Court is not to weigh evidence.)





## Writ of Cert – Standard of Review, cont.

Different than an appeal where a Court can correct legal errors.

Typically filed in Circuit Court; however, recently we have seen cases where an unsuccessful applicant has filed federal civil rights claims against County and individual commissioners

(Substantive Due Process and Equal Protection claims), coupled with state law claims, Petition for Writ of Certiorari and Ex Parte Communications (Jennings).

In this instance, the U.S. District Court will have Supplemental Jurisdiction to hear state law claims.



Questions????