

Success in Litigating Local Permit Denials: Alternative Theories of Obtaining Justice

by Scott A. McLaren and Jeffrey W. Glasgow

When an aggrieved applicant decides to challenge a local government's denial of a rezoning/permit request, he or she needs to be creative in a litigation strategy. This article discusses how to prepare for possible litigation at an administrative hearing before a local governing body and discusses litigation strategies and techniques to maximize the applicant's chance of success.

Properly Preparing for Possible Litigation at the Administrative Level

A local government's decision on a rezoning application or request for a development permit is considered a quasi-judicial decision in most circumstances.¹ The most common way to challenge a local government's quasi-judicial decision is through a petition for writ of certiorari under Florida Rule of Appellate Procedure 9.100.²

Because a petition for writ of certiorari is an appellate remedy, a court's certiorari review of a local government's quasi-judicial decision will be limited to the evidence presented to the local government at the time the decision was made — typically at a public hearing. Therefore, when an applicant presents his or her case to the local governing body, the applicant must make certain all evidence and arguments supporting the application are introduced into the record and submitted to the local government at the time the ruling is made. If the applicant fails to include particular evidence or arguments in the initial presentation to the local government, the applicant could be precluded from relying on that evidence or argument if he or she subsequently appeals an adverse ruling on the application.³ Further, in order to preserve the record, the

applicant should confirm that the transcript of any public hearing is properly preserved digitally, by videotape or, if necessary, by a court reporter.

Time at a public hearing is often a critical factor. Usually, there is insufficient time to present all evidence and argument to support a rezoning/permit application. In this instance, the applicant should focus on the evidence and arguments that emphasize the strongest points of the application, giving special attention to those that will be politically palatable to the decisionmaker(s). Arguments that are more adversarial in nature or arguments and evidence that cannot be submitted due to time constraints should be submitted in written form to the clerk of the local governing body *prior* to its ultimate decision. Submitting this evidence in written form prior to the public hearing (to be included in the record of the proceedings) will typically avoid the undesirable "confrontation" at the public hearing, and will also protect the applicant by preserving all evidence and argument for later consideration by an appellate tribunal.⁴

Exhausting Administrative Remedies

If a local government denies a rezoning/permit application, the first step in the litigation process is to determine whether the applicant has the right to an administrative appeal under the applicable local ordinance(s). Often, ordinances allow a rejected applicant to appeal an adverse land use decision to a board of zoning appeals or to the local government's governing body (if the appeal is from a lower tribunal, such as a historic preservation board, etc.). An aggrieved applicant should be careful to review these ordinances soon after the permit application is denied be-

cause some jurisdictions impose very restrictive time constraints upon a potential appellant.⁵ Likewise, some local ordinances are rather vague as to whether a right to an administrative appeal exists, and as to which board, if any, is the appropriate one to hear such appeals.

In most circumstances, prior to filing any type of lawsuit in state or federal court, an applicant must exhaust all available remedies/appeals at the local government level.⁶ Thus, it is imperative that an aggrieved applicant file an appeal before any board or administrative officer that might

30-day deadline has been repeatedly held to be a jurisdictional deadline — one that cannot be extended even by agreement of the parties.⁸ Accordingly, when a local ordinance is vague as to whether an administrative appeal exists within the framework of the local government, an applicant should protect all potential remedies by simultaneously filing a petition for writ of certiorari in federal or state court at the same time as filing an administrative appeal with any local governmental body, department, or official that might have jurisdiction over an administrative appeal.

conceivably have jurisdiction over such appeal. If the local ordinance is vague or ambiguous, and suggests that the applicant might have an administrative remedy before more than one local board or officer, the applicant should protect any judicial remedies by filing the administrative appeal before all boards, officers, or departments that may have jurisdiction.

Firm deadlines are not unique to administrative appeals. Indeed, if an aggrieved applicant wishes to file a petition for writ of certiorari to challenge a quasi-judicial denial of an application, such action must occur within the strict deadline of 30 days following the final administrative action of the local government.⁷ This

The Land Use and Environmental Dispute Resolution Act

Florida's seldom used Land Use and Environmental Dispute Resolution Act (LUEDRA), codified at F.S. §70.51, provides an alternative dispute resolution mechanism for land use and environmental permitting disputes.⁹ The act applies to a person with a legal or equitable interest in real property who files an application for a development permit (including a rezoning) that is denied by the local governing body.¹⁰ If the applicant is aggrieved by the adverse ruling, a request for relief "with the elected or appointed head of the governmental entity that issued the development order" within 30 days of the denial of the

referenced permit.¹¹ Prior to initiating LUEDRA proceedings, an applicant "must exhaust all non judicial local government administrative appeals if the appeals take no longer than four months."¹² If the appeals take longer than four months, an applicant may initiate a proceeding under LUEDRA even if the local administrative appeals have not concluded.¹³

Within 10 days of initiating a LUEDRA proceeding, a special magistrate shall be appointed.¹⁴ If the applicant files a lawsuit prior to initiating a proceeding under LUEDRA, any right to the special magistrate proceeding is waived.¹⁵

Once the applicant invokes LUEDRA's special magistrate proceedings, the special magistrate convenes an informal hearing that is open to the public in which the magistrate shall "focus attention on the impact of the governmental action giving rise to the request for relief" and "explore alternatives to the development order or enforcement action" in order to recommend relief to the applicant.¹⁶ Therefore, the special magistrate — in the context of LUEDRA — "shall act as a facilitator or mediator between the parties in an effort to effect a mutually acceptable solution."¹⁷

If the special magistrate proceeding does not produce an agreed-upon "mediated" solution between the parties, the special magistrate enters a ruling determining "whether the action by the governmental entity or entities is unreasonable or unfairly burdens the real property."¹⁸ The special magistrate then is required to prepare and file with all parties a "written recommendation."¹⁹ If the special magistrate finds the governmental action reasonable, and not unduly burdensome, the proceeding is over.²⁰ But if the special magistrate finds the permit denial unfair or that it creates an unreasonable burden, the special magistrate must issue a recommendation to rectify the governmental action, which can range from, among other things: 1) adjustment or modification of the local government's position; 2) reversal of the local government's decision; 3) transfer of the applicant's development rights; or even 4) purchase of the real property

by the appropriate local governmental entity.²¹

Once the special magistrate provides the recommendation, it is then submitted to the governing body of the applicable local government for review.²² The governing body can accept the recommendation of the special magistrate as submitted and proceed to implementation; modify the special magistrate's recommendation and proceed to implement the modification; or reject the recommendation.²³ Once the local government acts on the special magistrate's recommendation, a dissatisfied landowner may elect to file suit in a court of competent jurisdiction.²⁴ According to subsection (10)(a) of LUEDRA, "initiation of a proceeding [under LUEDRA] tolls the time for seeking judicial review of a local government development order or enforcement action until the special magistrate's recommendation is acted upon by the local government."²⁵

Finally, although subsection (10)(a) of LUEDRA states that initiation of a LUEDRA proceeding "tolls the time for seeking judicial review of a local government development order," Fla. R. App. P. 9.100(c) unequivocally provides that a petition for certiorari *must be filed* within 30 days of the order sought to be reviewed.²⁶ There is uncertainty whether the legislature has the power to "toll" the jurisdictional requirement. In *Peninsular Properties Braden River, LLC v. City of Bradenton, Florida*, 965 So. 2d 160 (Fla. 2d DCA 2007), the Second District held that LUEDRA's "tolling" provision was *not* an unconstitutional infringement on the Supreme Court's procedural rulemaking authority because the procedural "tolling" mechanism contained in subsection (10)(a) of LUEDRA was "intertwined with substantive rights" protected by the act.²⁷ However, because the Supreme Court has not yet reviewed the issue, an aggrieved applicant runs a substantial risk of being "timed out" on a petition for writ of certiorari if the individual chooses to file LUEDRA proceedings in lieu of a certiorari claim.

Available Judicial Remedies in Circuit or District Court

Once all administrative remedies

have been exhausted and/or all alternative dispute resolution procedures have been employed, the aggrieved applicant must decide to litigate in state or federal court. Because federal courts are much further removed from the political arena than elected state court judges, it is often preferable to file claims seeking redress of adverse permitting decisions in federal court. However, some authorities suggest

that a federal district court can refuse to accept jurisdiction of cases when the primary claims involved in the case involve state — and not federal — theories of recovery.²⁸

It is important for the aggrieved applicant to point out to the court at the outset of the proceedings that any deference to the lower tribunal concerning a land use zoning decision is contrary to longstanding Florida

Affinipay

law. Since 1973, the Florida Supreme Court has consistently held, “[z]oning regulations are in derogation of private property rights of ownership ... and should be interpreted in favor of the property owner.”²⁹

Local governments may attempt to level the playing field by taking the legal position that government action is entitled to a “presumption of correctness” concerning its interpretation of local land use ordinances, citing to authorities involving the Administrative Procedures Act (APA) applicable to state agencies.³⁰ However, F.S. §120.52(1)(c), provides that the APA, and, therefore, the “presumption of correctness,” does *not* apply to municipalities or counties *unless* “they are expressly made subject to [the APA] by general or special law or existing judicial decisions.”³¹ A municipality or county that has not expressly been made subject to the APA by general or special law or existing judicial decision cannot claim either agency status, or a right to a “presumption of correctness.”³²

Local governments also often argue that the *only* challenge to a rezoning/permit denial is a petition for writ of certiorari. However, Florida courts (including the Supreme Court) have ruled repeatedly that a party may bring noncertiorari claims to challenge quasi-judicial action either simultaneously with a petition for writ of certiorari, or in a completely separate lawsuit.³³

That noncertiorari causes of action exist for a litigant seeking redress from quasi-judicial action is also demonstrated by the very narrow scope of review available on a petition for a writ of certiorari. As will be discussed, a court can address only three issues with respect to a petition for a writ of certiorari: Whether there exists competent, substantial evidence to support the decision; whether the correct law was applied; and whether procedural due process was accorded.³⁴ To adopt a legal position that a petition for writ of certiorari is the only available remedy would mean that when a plaintiff applies for any permit of a quasi-judicial nature, the plaintiff gives up its constitutional right to equal protection, to substantive due

process, and to any vested right it possesses.

The proper challenge to an adverse rezoning/permit ruling by a local government depends on which argument presents the strongest likelihood of success. The more common causes of action that may be utilized to challenge quasi-judicial action are discussed below.

• *A “Void for Vagueness” Challenge: A Challenge to the Facial Validity of the Applicable Ordinance/Land Use Regulation* — Florida law requires that terms used in a zoning ordinance make reference to clear, determinable criteria, and if such criteria do not exist, the zoning ordinance is a nullity.³⁵ The legal principle that underlies the requirement for “determinable criteria” is that a land use/zoning ordinance must be sufficiently definite to apprise the applicant how to qualify for the desired permit.³⁶ If a person of common intelligence reviewing the ordinance cannot determine what must be done in order to meet the required criteria, the ordinance is “void for vagueness” because it is vulnerable to subjective discretion on the part of the quasi-judicial board, and can be applied in an arbitrary and discriminatory fashion.³⁷

The Second District’s analysis in *Enriquez v. State*, 858 So. 2d 338 (Fla. 2d DCA 2003), probably provides the clearest statement of the law concerning “void for vagueness” challenges:

A statute [or ordinance] will withstand constitutional scrutiny under a void for vagueness challenge if it is specific enough to give persons of common intelligence and understanding adequate warning of the proscribed conduct. The language must convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice.³⁸

A “void for vagueness” challenge to an ordinance is properly brought as an action for declaratory judgment.³⁹

• *A Challenge to Rezoning/Permit Denial Based Upon Violation of the Applicant’s Vested Rights* — Various causes of action are available to enforce vested rights. The most common method of enforcing vested rights is through a declaratory judgment action.⁴⁰ Additionally, Fla. Const. art. V, §20 authorizes injunctive relief to require that a local government,

inter alia, fairly apply its ordinances through the acceptance and consideration of applications, plans, etc.⁴¹ A petition for writ of mandamus may also be implemented when the local government has no discretion to deny a permit approval because the requested governmental action is ministerial in nature and the applicant has a clear legal right to the requested permit.⁴²

Under Florida law, vested rights can be created in two circumstances. The first, and more common, scenario occurs when a litigant has reasonably and detrimentally relied upon existing law or an interpretation thereof, creating the conditions of estoppel.⁴³ The doctrine of equitable estoppel will be invoked against a governmental entity when a property owner relies in good faith upon some act or omission of the government, and has made such a substantial change in position that it would be highly inequitable and unjust to destroy the right acquired.⁴⁴

Vested rights may also arise when a municipality has acted in bad faith in taking deliberate measures to deny a permit, license, or other approval to develop real property.⁴⁵ In *City of Margate v. Amoco Oil Co.*, 546 So. 2d 1091 (Fla. 4th DCA 1989), the Fourth District ruled that when a city delayed approval of a permit that satisfied the required criteria and then attempted to pass ordinances to authorize a denial of the permit. Such actions evidenced bad faith on the part of the city and created a vested right to develop the property consistent with the permit application. Likewise, in *Aiken v. E.B. Davis, Inc.*, 143 So. 658 (Fla. 1932), the Supreme Court adopted the principle that a vested right is created when a municipality wrongly singles out a developer and hastily takes action for the sole purpose of preventing the development. As described in *Aiken*, bad faith can be evidenced by enactment of a new ordinance that is targeted toward the proposed (and typically unpopular) development.⁴⁶

• *A Substantive Due Process Claim* — A litigant’s substantive due process rights are protected under the U.S. Constitution by the Fifth and 14th amendments, while the Florida

Constitution provides additional protections to a landowner's substantive due process rights under art. I, §9. While the federal courts have eroded the ability of landowners to bring substantive due process claims to protect property rights under the Fifth and 14th amendments, art. I, §9 of the Florida Constitution is alive and well to protect property owners from arbitrary and/or capricious government actions that adversely affect property rights.⁴⁷ Under Florida law, then, it appears that governmental action that adversely affects property rights is subject to stricter substantive due process scrutiny than the test applied by the federal courts.⁴⁸

Declaratory judgment is the typical state court method of seeking relief for substantive due process violations.⁴⁹ Accordingly, if the aggrieved applicant can prove that the adverse action of local government was pretextual, arbitrary, and/or capricious, and was not substantially related to any legitimate health, safety, or welfare concern, the applicant should consider filing a state law substantive due process claim.

- *An Equal Protection Claim* — If local governmental action treats an applicant differently than other similarly situated landowners/developers without any rational basis, the governmental action violates the applicant's constitutional guarantee of equal protection under the law.⁵⁰ A property owner's right to be treated the same as other similarly situated landowners is derived from the Equal Protection Clause contained in Fla. Const. art. I, §2, and the 14th Amendment to the U.S. Constitution. Equal protection challenges are typically brought in the form of declaratory judgment actions — in state court under F.S. Ch. 86, and in federal court under the Federal Declaratory Judgment Act, 28 U.S.C. §2201.⁵¹ Additionally, a claim for an equal protection violation may be brought under the Civil Rights Act, 42 U.S.C. §§1983 and 1988, in either state or federal court.⁵²

- *A Regulatory "Takings" Claim* — Claims of regulatory "taking" or inverse condemnation are brought pursuant to the Fifth and 14th amendments to the U.S. Constitu-

tion, as well as Fla. Const. art. X, §6.⁵³ Unfortunately, in order to recover on a true "takings" claim, the aggrieved applicant must prove that the governmental action either physically invaded the applicant's property or rendered the applicant's property worthless.⁵⁴

If an aggrieved applicant can satisfy the stringent "takings" analysis, a "just compensation" for the taking or invalidation of the governmental action through a claim for declaratory relief can be sought.⁵⁵ Prior to seeking "just compensation" damages, a litigant must exhaust all available state court remedies for "just compensation," including an inverse condemnation action under Florida law.⁵⁶

- *The Bert J. Harris, Jr., Private Property Rights Protection Act of 1995* — Codified at F.S. §70.001, the Bert Harris Act authorizes a cause of action for an aggrieved property owner who can establish that governmental action — while not rising to the level of a constitutional "taking" — none-

theless "inordinately burdens" his or her property.⁵⁷ As set forth in F.S. §70.001(2):

When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government, as provided in this [act].

The term "inordinate burden" is defined by the Bert Harris Act as a government action that has so limited the use of real property that the property owner is permanently unable to attain the reasonable, investment-backed expectation for either its existing use or a vested right to a specific, future use, thereby requiring the landowner to bear permanently a disproportionate share of a burden imposed for the good of the public.⁵⁸ The "inordinate burden" standard of the Bert Harris Act is much less stringent than the traditional "takings" analysis pursuant to the Fifth and 14th amendments to the U.S. Constitution and Fla. Const.

St. Denis

art. X, §6. Therefore, landowners can seek compensation for regulatory action of government that reduces the value of their property, even if all economic value of their property is not destroyed.

The Bert Harris Act establishes an explicit procedure to follow in order to ensure notice and the opportunity to resolve disputes amicably. Before filing a complaint for damages under the Bert Harris Act, a property owner must first serve notice of its claim, coupled with a valid appraisal that demonstrates a loss in fair market value for the property.⁶⁹ The claim must be presented to the governmental entity no later than one year after the regulation is “first applied...to the property at issue.”⁶⁰ The one-year period for presentation of claims is a pre-suit condition and not a statute of limitations.⁶¹

After presenting its claim to the appropriate governmental entity, a property owner must wait at least 150 days (or 90 days if the regulated property is classified as agricultural) before filing an action under the Bert Harris Act.⁶² In the interim, the parties are encouraged to discuss resolution of the owner’s claims, and the governmental entity is required to make a written settlement offer.⁶³ Unless the settlement offer is accepted during the prescribed notice period, the governmental entity must issue a “statement of allowable uses” for the affected property, which notifies the owner of all uses of the property that the governmental entity will allow.⁶⁴ The statement of allowable uses “constitutes the last prerequisite to judicial review,” and any property owner who disagrees with the allowable uses delineated in the “statement” may file a lawsuit for damages seeking the diminution in value caused by the governmental action.⁶⁵ If the government fails to issue a statement of allowable uses within 150 (or 90) days, it is deemed a denial for purposes of allowing the property owner to file an action in circuit court under the Bert Harris Act.⁶⁶

• *The Federal Civil Rights Act: 42 U.S.C. §§1983 and 1988* — The Federal Civil Rights Act, codified at 42 U.S.C. §§1983 and 1988, provides

civil remedies (in the form of damages, declaratory relief, injunctive relief, and/or attorneys’ fees) when local governments violate a party’s rights protected by the U. S. Constitution, or by the federal statutes. Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom or usage ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law.

The language of §1983 evidences the intent of Congress to subject any governmental body to a civil suit if, in denying an application pursuant to an ordinance, it deprives a citizen of any rights secured by the U.S. Constitution or federal law. Florida courts have recognized the mandate of Congress in ruling that a §1983 claim is a proper vehicle to challenge quasi-judicial conduct.⁶⁷

Section 1988 provides that a court, in its discretion, may allow the prevailing party in a §1983 claim to recover attorneys’ fees.⁶⁸ Importantly, the “prevailing party” language of the statute has been construed by the courts in a manner that is favorable to §1983 claimants. As set forth by the Fifth Circuit in *United States v. State of Miss.*, 921 F. 2d 604 (5th Cir. 1991), plaintiffs prevailing under §1983 are entitled to attorneys’ fees unless special circumstances would render an award unjust. Meanwhile, a prevailing defendant is entitled to attorneys’ fees only when the plaintiffs’ underlying claim is frivolous or groundless.⁶⁹

• *Common Law Writ of Certiorari* — A local government’s quasi-judicial rulings are appealable via a common law petition writ of certiorari.⁷⁰ Florida courts have defined the nature and scope of certiorari and characterized it as a limited right of review. Specifically, when reviewing a petition seeking certiorari relief, the circuit court’s scope of review is limited to a three-part determination: 1) Whether procedural due process has been accorded; 2) whether the essential requirements of law have been observed; and 3) whether the lower tribunal’s judgment is supported by competent,

substantial evidence.⁷¹

With respect to the first element, procedural due process merely requires reasonable notice and a fair and meaningful opportunity to be heard.⁷² Florida courts have held that the quality of due process required at a quasi-judicial hearing differs from that accorded at a full judicial hearing.⁷³ Although quasi-judicial proceedings are not controlled by rules of evidence and procedure, certain standards of basic fairness must be adhered to in order to afford due process.⁷⁴ Florida law also mandates that quasi-judicial hearings be conducted in compliance with applicable open meetings and sunshine laws.⁷⁵

The second “element” of the certiorari analysis is whether the “essential requirements of law have been observed.”⁷⁶ When a local government misapplies local ordinances in denying a rezoning/permit application, the local government’s action departs from the essential requirements of law and must be reversed.⁷⁷

Cases that are decided in favor of a landowner on a “departure from essential requirements of law” basis often stem from situations in which the local governing body misconstrues local ordinances in order to satisfy the political demands of its constituents.⁷⁸ Thus, “essential requirements of law” cases often involve the interpretation of local ordinances.⁷⁹

The third criterion of a certiorari analysis is the requirement that the decision be supported by competent substantial evidence. “Competent and substantial” evidence is evidence that a reasonable person would accept as adequate to support a conclusion.⁸⁰ Florida courts have consistently held that generalized statements of opposing local residents who wish for a project to be located elsewhere do not meet the requirement of competent substantial evidence.⁸¹ However, Florida law provides that the existence of any reasonable amount of competent substantial evidence supporting the decision below requires that the quasi-judicial decision be upheld.⁸²

Conclusion

Land use litigation can be protracted and expensive. It is always

best, if possible, to obtain approval of the rezoning/permit by the local governing body, even if the applicant has to make reasonable concessions. If, however, the local government has unreasonable demands, or the politics of the application are such that the local government simply will not properly consider the development request, taking the case to an apolitical branch of government — the judicial branch — certainly provides the aggrieved applicant a much higher probability of success. □

¹ See, e.g., *D.R. Horton, Inc., Jacksonville v. Peyton*, 959 So. 2d 390, 398-399 (Fla. 1st DCA 2007).

² See also FLA. R. APP. P. 9.020 and 9.030; *City of Tampa v. City National Bank of Florida*, 974 So. 2d 408, 409-15 (Fla. 2d DCA 2007); *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 198-99 (Fla. 2003).

³ *Vichich v. Dep't of Highway Safety and Motor Vehicles*, 799 So. 2d 1069, 1073-74 (Fla. 2d DCA 2001).

⁴ See *id.* at 1074 (on a petition for writ of certiorari, the reviewing court considers the evidence in the record of the proceedings of the lower tribunal).

⁵ See, e.g., Tampa, Florida Municipal Code Ch. 1, §1-19 (imposing 15-day deadline to file appeal).

⁶ *Lee County v. Morales*, 557 So. 2d 652, 654 (Fla. 2d DCA 1990).

⁷ FLA. R. APP. P. 9.100(c).

⁸ *Gundlah v. Moore*, 831 So. 2d 780, 781 (Fla. 4th DCA 2002).

⁹ See generally FLA. STAT. §70.51 (2011).

¹⁰ FLA. STAT. §70.51(2), (3).

¹¹ FLA. STAT. §70.51(3), (4).

¹² FLA. STAT. §70.51(10)(a).

¹³ *Id.*

¹⁴ FLA. STAT. §70.51(4).

¹⁵ FLA. STAT. §70.51(10)(a).

¹⁶ FLA. STAT. §70.51(17).

¹⁷ FLA. STAT. §70.51(17) (a).

¹⁸ FLA. STAT. §70.51(17)(b).

¹⁹ FLA. STAT. §70.51(19).

²⁰ FLA. STAT. §70.51(19)(a).

²¹ FLA. STAT. §70.51(19)(b).

²² FLA. STAT. §70.51(21).

²³ *Id.*

²⁴ FLA. STAT. §70.51(24).

²⁵ FLA. STAT. §70.51(10)(a).

²⁶ FLA. R. APP. P. 9.100(c).

²⁷ *Peninsular Properties*, 95 So. 2d at 162.

²⁸ See *Neumont v. Monroe County, Fla.*, 242 F. Supp. 2d 1265, 1275 (S.D. Fla. 2002) (discussing *Pullman* abstention doctrine); *Boyes v. Shell Oil Prods. Co.*, 199 F. 3d 1260, 1265 (11th Cir. 2000) (discussing *Burford* abstention doctrine).

²⁹ *Rinker Materials Corp. v. City of N. Miami*, 286 So. 2d 552, 553 (Fla. 1973).

³⁰ See *City Nat'l. Bank of Florida v. City of Tampa*, No. 04-6168, 2005 WL 4891057 at *2-3 (Fla. 13th Cir. Dec. 15,

2005) (court rejected a municipality's argument that a "presumption of correctness" applied to the city's construction of its ordinances — and instead ruled that such ordinances "should be interpreted in favor of the property owner").

³¹ FLA. STAT. §120.52(1)(c) (2011).

³² *Cherokee Crushed Stone, Inc. v. City of Miramar*, 421 So. 2d 684, 685 (Fla. 4th DCA 1982).

³³ See, e.g., *Omnipoint*, 863 So. 2d at 199.

³⁴ *Id.*

³⁵ *Henry v. Bd. of County Comm'rs of Putnam County*, 509 So. 2d 1221, 1222 (Fla. 5th DCA 1987).

³⁶ See, e.g., *Park of Commerce Associates v. City of Delray Beach*, 606 So. 2d 633, 635 (Fla. 4th DCA 1992); *aff'd*, 636 So. 2d 12 (Fla. 1994).

³⁷ *Id.*

³⁸ *Enriquez*, 858 So. 2d at 341-42.

³⁹ See *Omnipoint*, 863 So. 2d at 199.

⁴⁰ FLA. STAT. §86.011, *et seq.* (2011).

⁴¹ *Charlotte County v. Vetter*, 863 So. 2d 465, 468-69 (Fla. 2d DCA 2004).

⁴² *City of Lauderdale Lakes v. Corn*, 427 So. 2d 239, 242-43 (Fla. 4th DCA 1983).

⁴³ See *Equity Res., Inc. v. County of Leon*, 643 So. 2d 1112, 1117-19 (Fla. 1st DCA 1994); see also *Corn*, 427 So. 2d at 242-44.

⁴⁴ *Corn*, 427 So. 2d at 243.

⁴⁵ *City of Margate v. Amoco Oil Co.*, 546 So. 2d 1091, 1094 (Fla. 4th DCA 1989); *Aiken v. E.B. Davis, Inc.*, 143 So. 658, 659 (Fla. 1932).

⁴⁶ See also *Dade County v. Jason*, 278 So. 2d 311, 312 (Fla. 3d DCA 1973) (ordering the county to grant plaintiff's application for a building permit that the county had withheld (in bad faith) until a moratorium on such permits had gone into effect).

⁴⁷ See, e.g., *Chicago Title Ins. Co. v. Butler*, 770 So. 2d 1210, 1215-20 (Fla. 2000).

⁴⁸ *Id.*

⁴⁹ *Id.* at 1210.

⁵⁰ See, e.g., *Bannum, Inc. v. City of Fort Lauderdale*, 901 F. 2d 989, 997-99 (11th Cir. 1990).

⁵¹ FLA. STAT. §86.011, *et seq.* (2011); 28 U.S.C. §2201.

⁵² *City National Bank of Florida v. City of Tampa*, 67 So. 3d 293, 297 (Fla. 2d DCA 2011); *Scott v. Polk County*, 793 So. 2d 85, 86-87 (Fla. 2d DCA 2001); *Burnam*, 901 F.2d at 997-99.

⁵³ *Corn v. City of Lauderdale Lakes*, 95 F. 3d 1066, 1072 (11th Cir. 1996).

⁵⁴ *Keshbro, Inc. v. City of Miami*, 801 So. 2d 864, 869 (Fla. 2001).

⁵⁵ See *Granite State Outdoor Adver., Inc. v. City of St. Pete Beach, FL*, 322 F. Supp. 2d 1335, 1343 (M.D. Fla. 2004); *Corn*, 95 F. 3d at 1075-76.

⁵⁶ *Reahard v. Lee County*, 30 F. 3d 1412, 1415-17 (11th Cir. 1994); *Granite*, 322 F. Supp. at 1343.

⁵⁷ FLA. STAT. §70.001 (2011).

⁵⁸ FLA. STAT. §70.001(3)(e).

⁵⁹ FLA. STAT. §70.001(4)(a).

⁶⁰ FLA. STAT. §70.001(11).

⁶¹ *Russo Associates, Inc. v. City of Dania Beach Code Enforcement Bd.*, 920 So. 2d 716, 717 (Fla. 4th DCA 2006).

⁶² FLA. STAT. §70.001(4)(a).

⁶³ FLA. STAT. §70.001(4)(c).

⁶⁴ FLA. STAT. §70.001(5)(a).

⁶⁵ FLA. STAT. §70.001(5)(b).

⁶⁶ *Id.*

⁶⁷ See, e.g., *City National Bank*, 67 So. 3d at 297; *Scott*, 793 So. 2d at 86-87.

⁶⁸ *City National Bank*, 67 So. 3d at 300; 42 U.S.C. §1988(b).

⁶⁹ *Id.*

⁷⁰ *City of Tampa*, 974 So. 2d at 410-11; *Omnipoint*, 863 So. 2d at 198-99.

⁷¹ See, e.g., *City of Tampa*, 974 So. 2d at 410; *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

⁷² *Hous. Auth. of City of Tampa v. Robinson*, 464 So. 2d 158, 164 (Fla. 2d DCA 1985).

⁷³ *Jennings v. Dade County*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991).

⁷⁴ *Id.*

⁷⁵ *Evergreen Tree Treasures of Charlotte County, Inc., v. Charlotte County Bd. of County Comm'rs*, 810 So. 2d 526, 531-32 (Fla. 2d DCA 2002).

⁷⁶ *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530-31 (Fla. 1995); *Vaillant*, 419 So. 2d at 626.

⁷⁷ *City of Tampa*, 974 So. 2d at 410-11; *Colonial Apartments, LP v. City of Deland*, 577 So. 2d 593, 598 (Fla. 5th DCA 1991).

⁷⁸ See, e.g., *City of Tampa*, 974 So. 2d at 412-15; *Colonial*, 577 So. 2d at 596-98.

⁷⁹ See *id.* at 412-14; *Rinker*, 286 So. 2d at 553-54.

⁸⁰ *Town of Indialantic v. Nance*, 400 So. 2d 37, 40 (Fla. 5th DCA 1981), *aff'd*, 419 So. 2d 1041 (Fla. 1982); *Lee County v. Sunbelt Equities, II, Ltd.*, 619 So. 2d 996, 1002-04 (Fla. 2d DCA 1993).

⁸¹ *City of Apopka v. Orange County*, 299 So. 2d 657, 659-60 (Fla. 4th DCA 1974); *Pollard v. Palm Beach County*, 560 So. 2d 1358, 1359-60 (Fla. 4th DCA 1990).

⁸² *Butler*, 877 So. 2d at 813; *Orange County v. Lust*, 602 So. 2d 568, 570-71 (Fla. 5th DCA 1992); *Dorian v. Davis*, 874 So. 2d 661, 663-64 (Fla. 5th DCA 2004); *Chicken 'N' Things v. Murray*, 329 So. 2d 302, 305-06 (Fla. 1976).

Scott A. McLaren is a shareholder at Hill Ward Henderson in Tampa, and is board certified in business litigation. He is a Wake Forest Law graduate and has litigated several significant cases involving real property/condemnation issues.

Jeffrey W. Glasgow is an associate at Hill Ward Henderson in Tampa, practicing in the areas of commercial litigation and real property litigation. He is a 2010 graduate of Duke Law School.