

Cascar, LLC v. Coral Gables, No. 3D18-1051 2019 WL 2607425 at *1 (Fla. 3d DCA June 26, 2019).

Third DCA Holds Property Owners Cannot Challenge Ordinances that Have Been Grandfathered Under the Bert Harris Act

This ruling means Bert Harris Act claims will not be successful against local action that is executed pursuant to certain older laws.

Cascar acquired title to a property in 2007. Five years later Coral Gables designated the residence on the property in question as a historic landmark pursuant to a city ordinance enacted in 1984. Later, Cascar applied for a permit to demolish the residence because it did not appeal to buyers. Coral Gables denied Cascar's request primarily because of the residence's historic landmark designation. Cascar argued not being able to remove the structure lowered the property's value and filed a claim under the Bert Harris Act, Chapter 70 of the Florida Statutes. The Bert Harris Act gives property owners an ability to recover damages for overly burdensome government regulation on privately owned land.

Despite the broad rights granted to property owners in the Bert Harris Act, the trial and appeals courts ruled in favor of Coral Gables. Cascar's claim ultimately failed because of a provision in the Bert Harris Act that grandfathered-in certain ordinances. The statute explicitly states that a property owner cannot bring a claim under the Bert Harris Act if he or she is challenging a law, rule, regulation, or ordinance enacted before May 11, 1995. The court of appeals stated even contemporaneous applications of ordinances enacted prior to the May 11, 1995 date are permissible under the Bert Harris Act.