

Shands v. City of Marathon, 3D17-1859, 2019 WL 73650, at *1
(Fla. 3d Dist. App. Jan. 2, 2019)

Third DCA Reverses Shands Key R060 Case for More Fact-Finding

In *Shands v. City of Marathon*, Rodney Shands et al. (“the Shands”) sued the City of Marathon (the “City”) for inverse condemnation, claiming that the current zoning regulations deprived them of all or substantially all economic use of their property and thus resulted in a regulatory taking of their property without just compensation.

The Shands purchased Little Deer Key (now known as Shands Key) in 1956, thirty years before any state land use policies existed. In 1986 Monroe County adopted the land development regulations which changed Shands Key’s zoning designation from General Use to Conservation Offshore Island. In 2004, the Shands filed an application for a dock permit. The City denied their application because the land use regulations prohibited development in areas within the Conservation Offshore Island zoning district. The Shands disputed this determination.

Additionally, the City of Marathon adopted a Rate of Growth Ordinance (“ROGO”)—a point system that is intended to slow down the rate of development. The ROGO system was addressed in a similar case, *Breyer v. City of Marathon*. In *Breyer*, the Third DCA granted the City summary judgment because the property in question was awarded ROGO points and thus not denied of all economically beneficial use. The trial court ruled against the Shands, based on *Breyer*.

The Shands appealed the trial court’s decision, arguing that the regulation at issue constituted a taking of their property. Unlike in *Breyer*, the record in this case contains no valuation of the ROGO points. Without a valuation of the ROGO points, the court could not determine whether the facts of *Breyer* were distinguishable from the Shands’ situation. Therefore, the court reversed for more fact-finding.