

*Boca Center at Military, LLC v. City of Boca Raton*, No. 4D19-2736, 2021 WL 359485 (Fla. 4th DCA 2021)

**Fourth DCA Holds That the City of Boca Raton’s 2010 Comprehensive Plan Amendment Contained Permissive Language That the City Could Consider, but Was Not Required to Adopt**

In 2010, the City of Boca Raton (the “City”) amended its Comprehensive Plan and assigned the Planned Mobility (“PM”) Future Land Use designation to certain areas within the midtown of the City. Among other uses, this designation allows residential development, but the Town did not take any actions to change the actual zoning of the area to comport with the Future Land Use designation. Boca Center at Military, LLC (“Boca Center”) purchased several properties within the midtown area in 2014 subject to this designation.

In 2018, the City voted to indefinitely postpone consideration of supplemental land development regulations (“LDRs”) that, if adopted, would have allowed for multi-family residential development within the PM Future Land Use designation. As a result, Boca Center filed pre-suit Notices of Claim pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act (the “Act”), alleging that the City’s decision burdened the properties by not adopting residential zoning regulations.

In January 2019, the City adopted new zoning regulations of the midtown area that maintained the same zoning that had existed prior to the Comprehensive Plan amendment. Notably, the regulations did not provide for residential development. Boca Center amended its claim and alleged a violation based on the City’s failure to rezone properties to allow residential development following the Comprehensive Plan amendment. The trial court dismissed the lawsuit.

On appeal, the Fourth DCA affirmed the dismissal and held that the amendment provided that the City could consider permitting “mixed use development,” and that it was one of several property uses that may be approved. In doing so, the court explained that the Act “provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state . . . unfairly affects real property,” and relief is predicated on “specific action of a governmental entity [that] has inordinately burdened an existing use of a real property or a vested right to a specific use of real property.” The court found that Boca Center’s lawsuit was predicated on the City’s inaction, rather than a definitive act.

Boca Center argued that the amendment created a reasonable expectation that midtown would be zoned for residential use and that the properties could be developed as multi-family uses. However, the court found that the Comprehensive Plan’s permissive language did not make it reasonably foreseeable to assume the Boca Center’s properties would be zoned for residential use.