

**Fourth DCA Holds That Property Owners Did Not Meet Essential Pre-Requisites to Bring a Claim under the Bert J. Harris Act**

DHBH Atlantic LLC and 60 ½ LLC (the “Appellants”) are affiliated companies that own adjacent parcels in the City of Delray Beach (the “City”). In February 2015, the City adopted an ordinance that restricted the maximum building height in the area where the Appellants’ parcels were located to thirty-eight feet and a maximum of three stories. The City reevaluated the ordinance in 2018, but did not change the thirty-eight foot, three-story height limitation. The City provided notice to all affected property owners that reminded them they had only one year from receipt of the notice to pursue any rights established under the Act. A few days before expiration of the one-year deadline, the Appellants submitted a joint claim letter to the City under the Act. In this letter, the Appellants asserted that prior to the 2015 ordinance, the two companies had entered a joint development plan to construct a four-story hotel on the property. The Appellants collectively sought \$8,400,000 for the actual loss of fair market value of their properties based on an appraisal that valued the joint property with the proposed hotel against the value of the property with a three-story hotel.

The City denied the claim and the Appellants filed their complaint in lower court. The City moved to dismiss the Appellants’ complaint with prejudice on the grounds that the appraisal was defective and the one-year period in which to initiate a claim under the Act had expired, so Appellants could no longer fix the defect. Following a hearing, the trial court granted the motion to dismiss, finding that the appraisal wrongfully valued the parcels together despite not being under common ownership and the appraisal was improperly based on loss in value from the 2015 ordinance rather than the 2018 ordinance.

Appellants appealed to the Fourth DCA. The Fourth DCA found that, by submitting a joint claim, the Appellants were requesting compensation for property they did not own. Without legal title to all the property, Appellants could not make a joint claim for relief that did not differentiate their respective claims based on the property legally owned by each entity. The Fourth DCA also agreed that the lower court’s dismissal of the complaint with prejudice was proper. Under the Act, the determination of the fair market value of the property must be measured at the time when the governmental action first affected the property. The Fourth DCA held that no claim for compensation under the Act could have been accurately determined using an appraisal of value from 2015—three years before the governmental action was in effect. Lastly, the Fourth DCA found that because Appellants made a legally deficient claim, the only fix would be for DHBH and 60 ½ to separately submit their claims. However, if that were to occur, any new claim submitted to the City and the court would be outside the one-year statute of limitations. Therefore, the trial court properly dismissed the Appellants’ claim with prejudice.