

Southern District Holds that Plaintiff Can Acquire Property Interest in a Permit That a Local Government Has Not (Yet) Issued.

West Flagler is a partnership that formed to build and operate a jai alai and gambling facility in the City of Miami ("City"). West Flagler worked with the City to find a location that was properly zoned for a gambling facility. The City sent 18 separate letters to West Flagler, which confirmed that the specific property was properly zoned for use as a gambling facility ("zoning letters"). The state Division of Pari-mutuel Wagering issued a permit to West Flagler to operate their gambling facility based on these letters and was later given a demolition permit by the City. The Miami City Commission ("Commission"), however, passed an ordinance requiring the developer of a gambling facility to receive approval from the Commission by a four-fifths vote. The ordinance applied retroactively and the City Building Department refused to process West Flagler's building permit until they received a four-fifths affirmative vote from the Commission. West Flagler brought suit in federal court. The City moved to dismiss West Flagler's complaint on a number of legal theories, which included arguing that West Flagler did not have a vested property right.

The City argued that West Flagler did not have a constitutionally protected property interest to construct and operate a gambling facility based on the City's issuance of the 18 zoning letters. The City argued that the majority of cases involving a property interest in the issuance of a permit involve situations where the local government issues a permit, and then subsequently changes the law. The court, however, did not find this factor dispositive. The court found West Flagler adequately alleged a claim of equitable estoppel, which, under Florida law, may create a property interest in obtaining a permit even when a local government has not yet issued the permit.

To allege equitable estoppel a plaintiff must allege that he or she (1) relied in good faith, (2) relied upon some act or omission of the government, and (3) has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right acquired. The court held that West Flagler adequately alleged equitable estoppel because it reasonably relied on the 18 zoning letters in pursuing its plans to construct a gambling facility, and spent substantial sums of money obtaining a gambling permit from the state.