

First DCA Clarifies the Characteristics of a Valid Appraisal that Satisfy the Pre-suit Requirements of the Bert Harris Act

In 2013, Blue Water Holdings SRC, Inc. (“Blue Water”) sought recovery under the Bert J. Harris, Jr., Private Property Rights Protection Act (the “Act”) against Santa Rosa County (the “County”) for the loss in value of a parcel of land following the County’s denial of a permit to construct and operate a landfill. When Blue Water served its notice of intent to pursue the claim, it attached two appraisals by Richard Sterner (“Sterner”) demonstrating the fully permitted value of the parcel and one appraisal by EquiValue demonstrating the value of the parcel without permits. During the course of the litigation, Blue Water submitted a new application for the permit that was granted in 2017. As a result, Blue Water filed a second amended complaint seeking damages resulting from the burden imposed from the temporary delay between the denial of the 2013 permit and the granting of the 2017 permit. The trial court granted summary judgment in favor of the County “due to the lack of valid appraisal(s) of the real property” as required by the Act.

The First DCA, at the outset, noted that the County did not raise the issue of inadequate appraisals until the second amended complaint was filed, more than five years after the initial suit. Blue Water did not argue that the County forfeited its right to claim the invalidity or the appraisals, but rather it argued that the pre-suit requirement of an appraisal is intended to give notice of the claim to the governmental entity. The First DCA agreed, and noted that in order to satisfy this purpose, the appraisals must be “bona fide” and “valid.” The First DCA, in reversing the grant of summary judgment, found error in a number of the decisions made by the trial court.

First, the First DCA rejected the County’s argument that the appraisals were for “business damages” rather than real property value. Business damages may not be recovered under the Act, but Blue Water did not have an operating business. Because the two Sterner appraisals showed the value of the land at its best and highest use as a landfill, they demonstrated a loss in value, not a loss in income.

Second, the First DCA disagreed that the Sterner appraisals were invalid because they were “disavowed.” Following the County’s initial denial of the permit, Sterner wrote a letter indicating that those actions restricted the use of the property and that Blue Water “will never be able to utilize the Property for its intended purpose.” The First DCA held that this was not a disavowal or invalidation, but rather a confirmation of Blue Water’s assertions.

Third, the First DCA rejected the trial court’s modification of the appraisal process. The trial court erroneously added requirements that the appraisals must have been prepared specifically for Blue Water and “as of dates immediately before and after the date the County denied the permit.” The First DCA held that valid appraisals only need to support the claim—who they are prepared by, such as a bank or other entity, does not affect the validity of the appraisal. Further,

“while an appraisal that shows the value of the land immediately before and after the government’s action is more ideal, the Harris Act does not require that.”

Lastly, the First DCA held that the appraisal is not required to give a jury sufficient information to carry out its decision-making. The appraisal is merely a pre-suit requirement that in no way limits the evidence that could be presented to the jury. Thus, the First DCA reversed the grant of summary judgment against Blue Water.