

*GSK Hollywood Development Group, LLC v. Hollywood*, No. 4D16-3453, 2018 WL 2049635  
(Fla. 4th DCA May 2, 2018)

**Developer Denied Relief Under Bert Harris Act For Failure to Formally Apply to Develop Property**

In *GSK Hollywood Development Group, LLC v. Hollywood*, the Fourth DCA reversed the trial court's finding that the Bert Harris Act extends to property when the property owner never formally applied for a permit or variance from the zoning plan. Specifically, the court interpreted the language of the then-existing version of the Bert Harris Act to require action of a governmental entity in order for the Act to apply to disputed property.

GSK Hollywood Development Group (GSK) purchased two parcels of land located on Hollywood Beach, intending to develop a luxury fifteen-story condominium on the property called the "Mirador Project." At the time, the property was zoned to permit construction up to 150 vertical feet, sufficient for GSK's planned building. Additionally, the City's Director of Planning and Zoning orally confirmed that the listed zoning was correct.

Two years later, GSK presented the Mirador Project to various city leaders. These leaders subsequently informed GSK that residents of the neighboring condominium association voiced opposition to the project. Soon after, the Mayor introduced, and the City Commission approved, a proposal to reduce building height limits in the Mirador Project's zone to 65 vertical feet.

GSK sued under the Bert Harris Act because the new zoning burdened their use of the property. The appellate court interpreted the then-existing plain language of the Act to establish that a claim under the Bert Harris Act does not ripen until the governmental entity "specifically applies the law or ordinance" to the property in question. This requires an act such as the denial of a permit, variance application, or waiver request. The court reversed the trial court's finding for GSK with instructions to enter judgment in favor of the City.

Of note, after disputes regarding application of the Bert Harris Act, House Bill 383 (2015) amended the Act to clarify that only property owners whose land is the "subject of and directly impacted by" a governmental action may bring a claim under the Act. When the issues in this case began, it was several years prior to the amendment, so the court applied the prior version.