

Ganson v. Marathon, Florida, et al., No. SC16-1888 (Fla. Apr. 13, 2017) (declining to review *Beyer v. Marathon*, 197 So. 3d 563 (3d DCA 2013)).

Investment Backed Expectation Must Be Clear for Inverse Condemnation Claim

Recently, the Florida Supreme Court denied a petition to review a Third District Court of Appeal decision affirming summary judgment in favor of the City of Marathon and the State of Florida in an inverse condemnation suit.

In 1970, the appellants, Gordon and Molly Beyer (“the Beyers”), purchased an undeveloped nine-acre offshore land in the Florida Keys of Monroe County for \$70,000. At the time of purchase, the property was zoned for General Use, which permitted one single-family home per acre. In 1986, new zoning regulations altered the zoning status from General Use to Conservation Offshore Island and placed the property in the Future Land Use category, which limited the property to one dwelling unit per ten acres. In 1996, the adopted Monroe County Comprehensive Plan (“Plan”) identified the property as a bird rookery and prohibited any development.

In response to the Plan, the Beyers submitted beneficial use determination (“BUD”) applications, first in 1997 and then in 2002 when the City of Marathon assumed jurisdiction of the property. BUD is a process by which the government evaluates the allegation that no beneficial use remains and can provide relief from the regulations by granting additional development potential, providing just compensation or if it so determines, extending a purchase offer for the property. A BUD hearing was heard by a special master who issued an order recommending denial. The special master determined the only allowable use of the property was recreational camping, and that the assignment of sixteen points under the City’s Residential Rate of Growth Ordinance constituted reasonable economic use of the property and held a value of \$150,000. The special master also concluded that the Beyers’ lack of development over the past thirty years despite increasingly strict land use regulations restricted any reasonable expectation that the property would hold a greater development value. Therefore, the City passed a resolution denying the petition because the growth ordinance points and the recreational use reasonably satisfied the Beyers’ investment-based expectations.

The Beyers sued the City for inverse condemnation by asserting that they had been deprived of all or substantially all reasonable economic use of the property by virtue of the changes in land use regulations over the years. The Third District affirmed summary judgment in favor of the City of Marathon, holding that the Beyers had not presented any evidence of any specific plans for developing or improving the land or any other evidence of investment-based expectations since purchasing the property. The Third District affirmed that the award of the growth ordinance points and the allowed recreational use reasonably meets the Beyers’ economic expectations and that the Beyers were not deprived of all economically beneficial use of the property.