

Ocean Concrete Inc. v. Indian River Cnty, No. 4D16-3210, 2018 WL 1313420
(Fla. 4th DCA Mar. 14, 2018)

Under Bert Harris Act, Existing Zoning is a Non-Speculative Land Use, and Law of Takings Does Not Apply

In *Ocean Concrete Inc. v. Indian River Cnty*, Ocean Concrete sued the Board of County Commissioners (“BOCC”) after it unanimously voted to adopt amendments to the zoning code that restricted Ocean Concrete’s ability to develop a concrete batch plant on its property. Previously, the land was zoned light industrial, which permitted concrete batch plants. Lands surrounding the property, however, were primarily zoned for residential and limited commercial use.

After public opposition to the proposed batch plant, the BOCC amended the zoning code to eliminate heavy process uses from the light industrial district. The amendment did not provide for any exception for grandfathering of vested rights. On administrative appeal by Ocean Concrete, the Community Planning Director found no vested right to development under the old code. Ocean Concrete then brought a Bert Harris Act claim, which the trial court found was unsupported.

On appeal, the Fourth DCA reversed the trial court’s decision and concluded that Ocean Concrete did have a claim under the Bert Harris Act. Under the Act, an existing use is a reasonably foreseeable, non-speculative land use. First, the court looked to the term “non-speculative,” which examines whether or not the use was foreseeable. This could include the use being expressly provided for in the old code. In this case, the court held there was no need for speculation or analysis because it is non-speculative that someone would follow the zoning code. Because the code allowed for concrete batch plants before it was amended, it was per se compatible with the surrounding land uses.

Next, the court looked to the term “reasonable, investment-backed expectation” for the use of the property. A reasonable, investment-backed expectation is found under the “inordinate burden” category under the Bert Harris Act. This type of expectation depends on the physical and regulatory aspects of the property, which did not render Ocean Concrete’s expectation unreasonable. The trial court’s determination relied on the law of takings, which is “separate and distinct” from Florida case law on the Bert Harris Act. The court held that the trial court erred in its reliance on the law of takings. Ultimately, the court reversed and remanded for the trial court to assess damages under the Bert Harris Act.