

*Dunedin v. Pirate's Treasure, Inc.*, No. 2D17-3017, 2018 WL 1769152 (Fla. 2d DCA Apr. 13, 2018)

### **Local Governments Do Not Owe a Duty to Convey Accurate Information Regarding Their Codes**

In *Dunedin v. Pirate's Treasure, Inc.*, the Second DCA held that a City is not required to convey accurate information concerning whether a proposed site plan complies with the existing development code. Pirate's Treasure sought approval from the City to renovate its commercial property to accommodate a refurbished marina and restaurant. Representatives of the parties met to discuss the site plan and proper procedures to gain approval of the project. Pirate's Treasure believed that after the meeting, the City's final approval of the site plan was "never in question," and prepared a costly and time-consuming site plan.

After Pirate's Treasure submitted the plan, the City informed Pirate's Treasure of its concerns with the proposed restaurant's square footage and sufficiency of parking. The City then approved the marina redevelopment, but not the restaurant development and told Pirate's Treasure to submit a new application in compliance with a revised development code that came into effect a year after Pirate's Treasure's original submission of the site plan. In response, Pirate's Treasure sued the City for fraud and negligent misrepresentation because the City knew or should have known the falsity of its assurances that the Pirate's Treasure site plan would be approved. The trial court dismissed the fraud claim with prejudice and denied, as a matter of law, the City's motion to dismiss the negligent misrepresentation claim. The City then appealed to the Second DCA.

The appeals court concluded that in order to create governmental tort liability, there must be either an underlying common law or statutory duty of care with respect to the alleged negligent conduct. The court found no such duty and Pirate's Treasure did not produce law establishing a duty. Therefore, the City bore no statutory or common law duty to furnish Pirate's Treasure accurate information regarding the city code. This decision was consistent with other Florida courts, which have also declined to hold governmental entities liable for failure to maintain and provide accurate information in public records.