

*Florida Department of Environmental Protection v. Beach Group Investments, LLC*, 2016 WL 4132113 (Aug. 3, 2016).

### **Is A Regulatory Takings Claim Ripe? Denial of Permit Alone Is Insufficient**

A recent decision by Florida's Fourth District Court of Appeal illustrates why developers should execute their land development permitting strategy with the assistance of experienced property rights counsel. Florida law requires more than the denial of a permit for a property owner to have an inverse condemnation claim. A regulatory taking may arise when the government enacts a regulation that eliminates all of the beneficial use of a property. Typically, these are situations where the government has passed a rule or denied a permit, preventing the developer from using a property as intended.

In *Florida Department of Environmental Protection v. Beach Group Investments, LLC*, a developer brought suit for inverse condemnation against the Florida Department of Environmental Protection ("FDEP"). The dispute arose over the coastal construction control line, which regulates how close to the coast a development can be built. The developer argued that FDEP's calculation of the line that regulated its property was improper, and that FDEP's permit denial, based on that incorrect line, was a regulatory taking.

The *Beach Group* court found no taking because the developer had not applied for a variance and had not proposed an alternate plan to the proposed townhome development. The court held that the mere denial of a development permit does not necessarily arise to a regulatory taking if the developer fails to seek a variance or propose a different development, such as fewer units or a single family residence. The court also indicated that the ability to apply for a variance was enough to indicate that it would not have been futile to apply (even though there was evidence agency staff had told the applicant that a variance was not allowed under the circumstances).

Consequently, in many circumstances, before bringing a suit for a regulatory taking, a developer should be prepared to show that it attempted to obtain a variance to a rule and proposed alternate uses for its property.