

# Hopping Green & Sams

Attorneys and Counselors

## **BERT J. HARRIS, JR., PRIVATE PROPERTY RIGHTS PROTECTION ACT** **PROCEDURAL PROCESS AND TIME LINE**

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- STEP 1:**
- (a) Not less than 150 days (or 90 days if the property is classified as agricultural pursuant to s. 193.461) prior to filing a claim, the owner must present a claim to the head of the governmental entity.
  - (b) With the claim, the owner must include a bona fide, valid appraisal that supports the claim and demonstrates a loss in fair market value for the property.
  - (c) If the action is the result of a process that the resolution of all issues requires the involvement of more than one governmental entity, the owner must present the claim to each entity.
- STEP 2:**
- (a) The governmental entity must provide written notice of the claim to all parties to any administrative action giving rise to the claim and to contiguous property owners.
  - (b) Within 15 days, the governmental entity must notify the Florida Department of Legal Affairs of the claim, including name, address, and telephone number of a government employee where more information can be obtained.
- STEP 3:**
- (a) Within 150 days (or 90 days if the property is classified as agricultural pursuant to s. 193.461), the governmental entity (or entities) must make a written settlement offer to effectuate:
    - 1. An adjustment of regulations controlling development;
    - 2. An increase of densities or intensities of allowable land use;
    - 3. A transfer of development rights to other property;
    - 4. A land swap;
    - 5. Mitigation or payments in lieu of mitigation;
    - 6. Locating development on the least sensitive portion of the property;
    - 7. Conditioning use of the property;
    - 8. Requiring that issues be addressed on a comprehensive basis rather than a single use or development;
    - 9. Issuance of development order, a variance, special exception, or

- other extraordinary relief;
10. Purchase of property or interest therein; or
  11. Make no changes to governmental action.

(b) If a settlement is accepted, the parties enter into Agreement. The Agreement must protect the public interest served by the regulations at issue, and be the appropriate relief needed to prevent the inordinate burden to the real property at issue.

(c) If the Agreement contravenes the application of a statute, the parties must file an action in circuit court for approval by the court to ensure that the relief protects the public interest served by the statute, and is the appropriate relief necessary to prevent an inordinate burden on the real property at issue.

**STEP 4:** During the 150-day period, unless a settlement is reached, the governmental entity must issue a ripeness decision identifying allowable uses of the property. The ripeness decision is the final action needed to move forward under this act.

**STEP 5:** (a) If the owner rejects settlement offer and ripeness decision, the owner may file claim for compensation in circuit court.

(b) The court determines whether property owner was inordinately burdened and percentage of responsibility for each governmental entity.

(c) A governmental entity (but not the property owner) may take an interlocutory appeal of the circuit court decision. If the entity loses, however, it owes reasonable attorneys' fees to the property owner (but not to any other governmental entity). If the appeal is successful, the governmental agency is not entitled to an award of attorneys' fees and costs.

**STEP 6:** (a) After determination of the percentage of responsibility and resolution of the responsible entities, a jury determines compensation amount by deducting the difference in the fair market value before the action and the fair market value as inordinately burdened, considering the settlement offer and ripeness decisions.

(b) Reasonable prejudgment interest is awarded to a prevailing property owner and runs from the date of filing of the claim. Consideration may not be given to business damages relative to any use that the action has restricted or prohibited.

(c) The prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

**STEP 7:** Within 15 days, the governmental entity must notify the Florida Department of Legal Affairs of any settlement or judgment.