

# The Legal Scoop on Southwest Florida Real Estate

## What options are available to challenge denial of a land use application in Florida?



By Jeff Wright



Whether you are involved in rezoning land or obtaining a special exception, conditional use, variance, development order, or other entitlement to land in Florida, you will likely need approval from the local government where the property is located. But what if your request is denied? This article explores some of the common remedies available to an applicant in the event their application is denied.

If your application is denied, it's important to know your options. While some jurisdictions have administrative remedies available for an applicant to exhaust (e.g., rehearing, reconsideration, administrative appeals, etc.), others may not. It is important to be familiar with local rules, including

land regulations, ordinances, administrative codes, and any applicable staff interpretations. Exhaustion of available non-judicial remedies is an important consideration in any potential land use challenge.

In addition to exhaustion of any available local remedies, the following is a brief overview of some common legal remedies that could be available to an applicant in the event of a denial:

## **Petition for writ of certiorari**

This process involves filing a fairly-detailed petition with the local circuit court within 30 days from the date of the denial. It can take many months, even years, to conclude. This is the typical “zoning appeal,” and the standard of review is whether the local government’s decision is supported by competent substantial evidence, whether there were any procedural due process violations, and whether the decision maker followed the essential requirements of the law. *See Deerfield Beach v. Vaillant*, 419 So.2d 624 (Fla. 1982). Each party typically pays its own legal fees.

## **“Consistency challenge”**

Under Section 163.3215, Florida Statutes, a request for “declaratory, injunctive, or other” relief is a court challenge that must be filed within the later of:

1. 30 days following rendition of the order of denial, or
2. exhaustion of available administrative appeals.

The standard of review is whether the decision is inconsistent with the comprehensive plan, although recent court cases have drawn into question the scope of the term “inconsistent” (*see Imhof v. Walton County*, 328 So.3d 32 (Fla. 1st DCA 2021); *see also Heine v. Lee County*, 221 So.3d 1254 (Fla. 2d DCA 2017)). Notably, the prevailing party is entitled to recover legal fees.

## **Filing a Bert Harris claim**

This remedy is found under § 70.001 of the Florida Statutes. The standard of review is “when a specific action of a governmental entity has inordinately burdened an existing use or real property or a vested right to a specific use of real property” and grants relief to a property owner, which may be based on loss of fair market value resulting from a denial. An appraisal and notice to the governmental entity are required. Additionally, there are some definitions and nuances in the statute that must be followed. A prevailing property owner may be entitled to legal fees.

# FLUEDRA



The Florida Land Use and Environmental Dispute Resolution Act (commonly referred to as “FLUEDRA”) is found at § 70.51, Florida Statutes. It allows a property owner to file a request for “accelerated” mediation based on an “unreasonable” decision or “unfair burden” on their property that results from a local government development order (including denials, but excluding comprehensive plan amendments) or enforcement action (including code enforcement cases).

This dispute resolution procedure requires the applicant to file a request for relief, agree with the local government on a mediator (splitting costs and each party paying its legal fees), and then attempt to resolve the dispute informally. If an informal resolution is not achieved, the mediator serves as a “special magistrate” and, after a hearing, forwards a recommendation to the governing body to approve, deny, or modify the decision under review. The “parties” are the local government and the applicant. Neighbors can be “participants,” but they are not parties to the mediation. The time for seeking judicial review is tolled until the local government acts upon the special magistrate’s recommendation.

There are tight timelines in the FLUEDRA statute, which can be waived or extended by agreement of all parties. FLUEDRA is designed as a relatively quick and efficient alternative to seeking review in court, but if not successful, it can prolong ultimate resolution.

## Summary

Not all land use applications are correctly decided, and it is occasionally necessary to challenge an adverse decision. Every jurisdiction, and every application, is unique and available remedies can vary significantly based on local practice and custom.

The above is a general overview of common remedies that may exist following an application denial. As with all legal challenges, having a qualified and experienced attorney protecting your best interests is important to pursuing and preserving your rights.

Those needing assistance with a Florida land use appeal or other challenges may contact me at [jeff.wright@henlaw.com](mailto:jeff.wright@henlaw.com) or by phone at 239-344-1371.

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