

# THE FLORIDA LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION ACT

Mediation and Arbitration Section

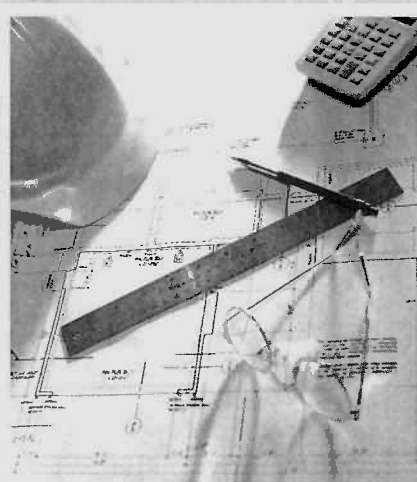
Chairs: Louise B. Fields, Louise B. Fields, LLC, and Gayle B. Carlson, Gayle B. Carlson, P.A.



**Y**our client comes to you after his or her application for a development order has been denied by a local government. Your first inclination is to seek relief in circuit court. However, another non-judicial alternative is available. The Florida Land Use and Environmental Dispute Resolution Act is available to owners<sup>1</sup> who have been denied development orders, re-zonings, variances, and permits, have enforcement actions, or have been granted permits with unacceptable permit conditions issued on or after October 1, 1995.<sup>2</sup> The Act does not apply to actions related to comprehensive plan amendments, and a wetland delineation report advising of possible violations is not a "development order" for purposes of the Act. *Hanna v. EPC*, 735 So.2d. 544, 545 (Fla. 1999).<sup>3</sup>

The Act is voluntary. Any owner who believes that a development order or enforcement action is *unreasonable or unfairly burdens the use of the property* may request relief within 30 days of the receipt of the notice of action or order.<sup>4</sup> Once a request is received, the governmental entity and the affected party must select a mutually agreeable special magistrate and must send the request to the special magistrate within 10 days. The special

magistrate must be a Florida resident and must have experience and expertise in mediation and land use and environmental permitting, land planning, land economics, or local and state government organization and powers.<sup>5</sup> The special magistrate shall hold an informal hearing within 45 days after receipt of the request for relief.<sup>6</sup> During the hearing, the special magistrate first acts as a facilitator/mediator in an attempt to resolve the conflict between the parties, and resolution may be achieved by modifying the owner's proposed use of the property or adjusting the development order or enforcement action.<sup>7</sup> If an acceptable solution is not reached by the parties, the special magistrate considers the facts and circumstances in the request for relief, any responses and any other information produced at the hearing in order to determine whether the action by the governmental entity or entities is



**The Florida Land Use and Environmental Dispute Resolution Act is available to owners who have been denied development orders, re-zonings, variances, and permits, have enforcement actions, or have been granted permits with unacceptable permit conditions issued on or after October 1, 1995.**

unreasonable or unfairly burdens the property.<sup>8</sup> The special magistrate shall file a recommended order within 14 days after the hearing.<sup>9</sup>

There are practical considerations for the lawyer contemplating use of this process. The owner must exhaust all non-judicial local government appeals (if the appeals take no longer than four months) before initiating a proceeding under the Act.<sup>10</sup> Also, a request for relief tolls the time for

seeking judicial review of the local government action until the recommended order is acted upon by the local government or the state or regional agency.<sup>11</sup> This alternative resolution process is probably most successful where parties may not have had an opportunity to get together and discuss settlement options before the local government action was taken. It is probably less desirable when parties have taken firm

*Continued on page 43*

*Continued from page 42*

positions and have no desire to spend additional time or resources trying to reach a compromise. In the latter case, parties are more likely to proceed to circuit court for resolution of their case.

<sup>1</sup> An owner is a "person with a legal or equitable interest in real property who filed an application for a development permit for the property at

the state, regional, or local level and who received a development order, or who holds legal title to real property that is subject to an enforcement action of a governmental entity."

§70.51(2)(d), Fla. Stat.

<sup>2</sup> §70.51(2)(a) and (30), Fla. Stat.

<sup>3</sup> §70.51(2)(a), Fla. Stat.

<sup>4</sup> §70.51(4), Fla. Stat.

<sup>5</sup> §70.51(2)(c), Fla. Stat.

<sup>6</sup> See §70.51(15)(a), Fla. Stat.

Note: parties can agree to extensions of time.

<sup>7</sup> §70.51(17)(a), Fla. Stat.

<sup>8</sup> §70.51(17)(b), Fla. Stat.

<sup>9</sup> §70.51(19), Fla. Stat.

<sup>10</sup> §70.51(10)(a), Fla. Stat.

<sup>11</sup> §70.51(10)(a) and (b), Fla. Stat.



*Author:  
Vivian Arenas-  
Battles, de la Parte  
& Gilbert, P.A.*



## *Trial & Litigation Quarterly Luncheon*

Barry Richard presented "Liberty v. Security" at the HCBA Trial & Litigation section luncheon on February 22, 2012 at the Chester H. Ferguson Law Center. The discussion focused on the loss of constitutionally guaranteed freedoms in the name of national security. Thank you to our sponsor: Trial Consulting Services.



Pictured from left to right: Russell Wills, Trial Consulting Services, LLC; Michael Boucher, Trial Consulting Services, LLC; Ron Hanes, Trombley & Hanes, P.A.; Dick Woltmann, Bay Area Legal Services, Inc.; Barry Richard, Greenberg Traurig; David Knight, Hill Ward Henderson; and Dan Clark, Clark & Martino, P.A.