

**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

<b>CATEGORY: COMMITTEES/BOARDS/COMMISSIONS/EXAMINERS</b>	<b>CODE NUMBER: AC 2-19</b>
<b>TITLE:</b> Procedural rules for processing claims under the Bert J. Harris, Jr., Private Property Rights Protection Act	<b>ADOPTED: May 15, 1996</b>
	<b>AMENDED:</b>
	<b>ORIGINATING DEPARTMENT: County Attorney</b>

**PURPOSE/SCOPE:** In 1995 the Florida Legislature created a new cause of action to compensate for or otherwise adjust governmental action that may not rise to the level of a constitutional taking but which, nonetheless, inordinately burdens or unfairly affects private property. The Act is intended to protect actual present uses of property and vested rights to specific use of property. It also protects the right to reasonably foreseeable future uses of property under certain circumstances. The new remedy covers County actions as well as those of state and regional governmental agencies.

The purpose of this administrative code is to adopt procedural guidelines for processing claims against the County Filed pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act. The code will outline the protocol for handling such claims up until the time the property owner actually files the claim for compensation in the circuit court.

**POLICY/PROCEDURE:**

9 PRIVATE PROPERTY RIGHTS PROTECTION ACT  
TIME LINE AND DUE DATES

<u>DAY</u>	<u>ACTION</u>
0	The property owner's property is "inordinately burdened" by a new County regulation.
180	Not less than 180 days prior to Filing an action, a property owner must present the claim in writing to the County.
365	Property owner must have filed for relief by serving the County with a proposed Notice of Claim.

RECEIPT OF NOTICE OF CLAIM BY LEE COUNTY

<u>DAY</u>	<u>ACTION</u>
+15	The County Attorney, with the assistance of the affected county department, provides notice of the claim to all parties to any administrative action and to private property owners contiguous to the subject property. The County Attorney also sends a copy of claim to the Attorney General and Department of Legal Affairs.

- +16 - 179 The County Attorney, with the assistance of the affected county department, sends private property owner a final written settlement offer that has been authorized by the Board of County Commissioners. The parties engage in settlement negotiations on the offer. The County Attorney, with the assistance of the affected county department, subsequently issues a written ripeness decision if the settlement offer is not accepted. The ripeness decision identifies all allowable uses for the property. Failure to **issue a** ripeness decision ripens the matter for judicial review. If the private property owner rejects the ripeness decision, he may immediately file judicial action for compensation. Mediation is possible at any time after the claim and prior to the settlement offer.
- +179 Any settlement agreements may be implemented by development order, variance, special exception or extraordinary relief. Parties may agree on relief that exceeds the County's statutory or ordinance authority. Under these circumstances they must file for court approval of **the** settlement in circuit court.
- +180 If matter is not resolved, private property owner must file a circuit court claim for compensation.

SETTLEMENT REACHED OR COURT ORDER ISSUED

DAY            ACTION

- +15 The County Attorney, with the assistance of the affected county department, prepares notice to **Department of** Legal Affairs which includes a copy of the settlement or judgment.

**B.**    **Definitions**

The definitions of the following terms will be the same as those listed in Florida Statutes, Chapter 70 or "Section 70.001":

1. Vested right
2. Existing use
3. Governmental entity
4. Action of governmental entity
5. Inordinate burden
6. Property owner
7. Real property

**C.**    **Procedural Guidelines**

1. **Presentation of claim.** At least 180 days prior to filing suit under the Act, the landowner must present notice of the claim in writing to the Chairman of the Board of County Commissioners. The notice must include a **bonafide** valid appraisal supporting the claim and demonstrating the loss in fair market value to the real property due to the County's action. (All regulating governments may be noticed and joined in this presentation of claim). Presentations of notice of claim will not be accepted if the claim is presented more than one year after the law or regulation is first applied to the property at issue.
2. **Notice to contiguous property owners and participants in related administrative actions.** The County Attorney, with the assistance of the affected county department, will

provide written notice of the claim to all participants in any administrative action that gave rise to the claim and to owners of real property contiguous to the landowners property. The County will rely on the tax rolls in effect at the time the notice of claim is filed with the Chairman of the Board of County Commissioners for the purpose of notifying contiguous property owners.

3. Notice to Department of Legal Affairs. The County Attorney, with the assistance of the affected county department, will report the claim in writing to the Department of Legal Affairs and will provide the Department with the name, address and telephone number of a county employee from whom additional information may be obtained during the **pendency** of the claim and any subsequent judicial action.
4. Settlement Discussions. During the 180 day period following the presentation of Notice of Claim, the County Attorney, with the assistance of the affected county department, may offer to resolve **the** claim by entering into settlement discussions with the property owner. The 180 day notice period may be extended by agreement of the parties.
5. Settlement Offer. After the settlement discussions, the County Attorney, with the assistance of the affected county department, must make a written settlement offer to effectuate one or more of the following actions:
  - a. An adjustment of land development or permit standards or other provisions controlling the development or use of land.
  - b. Increases or modifications in the density, intensity or use of areas of development.
  - c. The transfer of development rights.
  - d. Land swap or exchanges.
  - e. Mitigation, including payments in lieu of on-site mitigation.
  - f. Location on the least sensitive portion of the property.
  - g. Conditioning the amount **of development** or use permitted.
  - h. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
  - i. Issuance of the development order, a variance, special exception, or other extraordinary relief.
  - j. Purchase of the real property, or an interest therein, by an appropriate governmental entity.
  - k. No changes to the action of the County.

If the property owner accepts the settlement offer, the County may implement the settlement offer by:

- a. Appropriate development agreement
- b. Issuing a variance, special exception or other extraordinary relief.

- c. Or by other appropriate method.

The parties to the settlement discussions may craft a settlement that exceeds the County's statutory or ordinance authority. In these cases, the parties must jointly file a judicial action for court approval of the settlement to ensure that the relief granted protects the public interest served by the statute at issue and is the appropriate relief necessary to prevent the County's regulatory effort from inordinately burdening the real property.

6. **Ripeness Decision.** During the 180 day notice period, unless a settlement offer is accepted by the property owner, the **County Attorney**, with the assistance of the affected county department, must issue a written "ripeness decision" which identifies the allowable uses to which the subject property may be put. The County's failure to issue a written ripeness decision during the 180 day notice period will effectively "ripen" the prior action of the County and will operate as a ripeness decision that has been rejected by the property owner. The ripeness decision constitutes the last prerequisite to judicial review.
7. **Rejection of Settlement Offer and Ripeness Decision.** If the property owner rejects the County's settlement offer and the ripeness decision, he may file a claim for compensation in the circuit court in accordance with the provisions of section 70.001, Florida Statutes.

**D. Exemptions**

This procedure does not apply to laws, rules, regulations and ordinances noticed for adoption before May 17, 1995. Subsequent amendments to any laws and rules give cause of action only if the amendment itself causes an inordinate burden. The process is also inapplicable to temporary impacts to real property, impacts to real property occasioned by governmental abatement, prohibition prevention or remediation of public nuisance at common law or noxious uses of private property. This procedure also does not apply to any actions taken by the County which relate to the operation, maintenance, or expansion of transportation facilities and does not affect existing law regarding eminent domain relating to transportation.

**E. Limitation**

Presentations of Notice of Claim will not be accepted if the claim is presented more than one year after the law or regulation is first applied to the property at issue.