

**Second DCA Reverses Circuit Court, Holding that Sub-Parcel,
Not Entire DRI, is Subject to Takings Claims**

In 2008, Appellant, Lake Lincoln, LLC, purchased a 10.32-acre parcel (the “Property”) located in Manatee County (“County”) from Tara-Manatee, Inc. (“Tara-Manatee”). The Property is located within the 1,124-acre Tara Development of Regional Impact (“DRI”) that was created in 1980 by Tara-Manatee. At the time of acquisition, the property was vacant and undeveloped.

In 2009, Appellant wished to alter the entitlements of the Property by: (1) creating a 3.32-acre sub-parcel (“Subphase III-BB”); (2) rezone Subphase III-BB from Planned Development Residential to Planned Development Commercial; (3) transfer existing commercial and/or residential entitlements from other DRI subphases to Subphase III-BB; and (4) add an adult assisted living facility to Subphase III-BB. Appellant also sought other unrelated changes to the DRI, including the addition of adult assisted living facility uses to other designated areas and clarification on permissible locations for storage warehouses.

The County denied Appellant’s requests in 2010. The Appellant then filed suit in 2012 alleging a permanent regulatory taking arising under article X, section (6)(a), of the Florida Constitution. In 2019, after settlement negotiations, the County ultimately approved the rezoning of Subphase III-BB to allow for limited residential/residential support uses. In the time leading up to the settlement, the Property’s use was restricted to wetlands and open space. Appellant subsequently amended their original complaint to allege a categorical regulatory taking for the almost nine-year period between the original denial and subsequent approval.

Prior to evaluating a takings claim, the subject of the alleged taking must be determined. The Florida Supreme Court has set forth three factors to consider: “physical contiguity, unity of ownership, and unity of use.” *Dep’t of Transp., Div. of Admin. v. Jirik (Jirik II)*, 498 So. 2d 1253, 1255 (Fla. 1986). In evaluating physical contiguity and unity of ownership, circuit court held that the entire DRI was subject to the takings claims solely on the fact that the Property and broader DRI share common development entitlements.

On Appeal, the Second DCA held that the circuit court failed to account for the fact that Appellant owned no property adjacent to the Property nor did Appellant have control over the remaining DRI property. Additionally, the circuit court failed to apply the relevant sub-factors to determine the unity of use. The Second DCA focused their review on the unity of use element. The unity of use sub-factors to consider include the: (1) owner’s intent; (2) property’s adaptability; (3) dependence between parcels; (4) property’s highest and best use; (5) zoning; (6) land’s appearance; (7) land’s actual use; and (8) possibility of tracts being combined in use in the reasonably near future. The Court stated Appellant intended for the Property to be a standalone commercial property and its development was not dependent on any adjacent properties. Additionally, a commercial development is consistent with the surrounding area and is the highest and best use of the property. They pointed out that there was no realistic possibility of the Property being combined with other tracts in the reasonably near future, given the extent of the DRI build-out that had already occurred. Thus, the Second DCA reversed and remanded the issue due to the circuit court’s failure to properly apply the law to determine the subject of the takings claim.