

# **Bond Case Briefs**

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## **PLANNING & DEVELOPMENT - FLORIDA**

### **Herbits v. City of Miami**

**District Court of Appeal of Florida, Third District - October 26, 2016 - So.3d - 2016 WL 6249116**

Residents brought action against city and property developer seeking declaratory and injunctive relief regarding developer's plans to lease and develop public land for use as a mega-yacht marina, hotels, and retail and commercial space.

The Circuit Court dismissed action. Residents appealed.

The District Court of Appeal held that:

- Residents lacked standing to pursue claim alleging that city violated city charter by failing to lease property to developer with a return to the city of fair market value;
- Residents lacked standing to pursue claim alleging that city violated city charter by deviating from property development request that it advertised in its request for proposal (RFP) and approved in a referendum;
- Residents insufficiently alleged claims for violations of city citizens' bill of rights; and
- Residents were not permitted to bring claim alleging that agreement between city and property developer to enter into a ground lease should be terminated.

Residents did not and would not suffer any special injury in connection with their claim alleging that city violated city charter by failing to lease property to a developer with a return to the city of fair market value, and thus residents lacked standing to pursue claim, even though residents might have been in closer proximity to the alleged adverse traffic conditions caused by the completed project. Injuries alleged by residents were in substance zoning, land use, and permitting objections to project, and city's alleged failure to obtain a fair market rental for property would not have affected residents in a manner different in kind, not merely greater in degree, than it affected other residents throughout city.

Residents did not and would not suffer any special injury in connection with their claim that city violated city charter by deviating from property development request that it advertised in its request for proposal (RFP) and approved in a referendum, and thus residents lacked standing to pursue claim. Injuries alleged by residents were in substance zoning, land use, and permitting objections to project, and injuries residents would have suffered were injuries as a result of the development itself, not as a result of fact that city allowed or may have allowed developer to develop a project materially different from project specified in RFP.

Residents insufficiently alleged claims against city and property developer for violations of city citizens' bill of rights for concealing appraisal information from the public regarding true rental value of project, concealing differences between project as described in city's request for proposal (RFP) and referendum and project as it was later renegotiated, and concealing fact that changes in project required an updated notice and RFP solicitation process, absent any allegation that any final and legally binding lease terms for project site were in place, or that original RFP process was

subverted or corrupted.

Residents were not permitted to bring claim alleging that agreements between city and property developer to enter into a ground lease should be terminated as a result of the failure to begin construction by a certain date, where residents were neither parties to agreements nor third party beneficiaries to agreements.

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