



ROGO 2024: Regulatory Takings in Monroe County

What is a "regulatory taking," and how is it compensated?

- **Regulatory taking:** occurs when a government regulation restricts the use of private property and eliminates all or virtually all of its economic value. There are two types:
 - **Facial taking:** occurs when the mere enactment of a regulation eliminates all property value.
 - **As-applied taking:** occurs when the application of a regulation eliminates substantially all property value and interferes with the owner's reasonable investment-backed expectations of use.
- Compensation for regulatory takings is pursued in an **inverse condemnation** lawsuit filed by the property owner.
- Regulatory takings can be permanent or temporary.
 - **Compensation for a permanent taking:** fair market value of the property on the date of the taking, plus interest until compensation is paid.
 - **Compensation for a temporary taking:** interest on the property's fair market value from the date the taking begins until the date the taking ends.
 - Attorney's fees and costs may also be awarded if the owner is successful.
- **Bert Harris claim:** related statutory claim for compensation for "inordinate burdens" of existing use or a vested property right that falls short of takings.

What is the concern with ROGO allocations?

- State law restricts the number of allocations under the Rate-of-Growth-Ordinance (ROGO) to limit growth so that permanent residents can evacuate the Florida Keys 24 hours before a major hurricane.
- Monroe County has approximately 2,220 vacant privately owned upland lots that can potentially be developed. If the owners of these lots do not receive allocations, they could file regulatory takings claims, exposing the County to potential liability for compensation. If liability is found, the taxpayers of Monroe County, whether in the incorporated or unincorporated areas, would be responsible in whole or in part for payment of judgments.
- The County's potential takings liability exposure is roughly estimated to be more than \$1 billion.

Is there taking liability for every vacant lot in Monroe County?

No. Each claim would involve an ad-hoc factual inquiry into the economic impact of the regulation on the owner, and the extent to which the regulation interfered with the owner's reasonable investment-back expectations. There are also defenses that the County could assert in each case, including ripeness, statute of limitations, laches, nuisance exception, and third-party liability.

History of taking claims in Monroe County

- Since 1987, approximately 60 regulatory takings and Bert Harris claims were filed against Monroe County. Most of these claims involved multiple lots and owners.
- The County prevailed in all cases except five: *Gonzalez* (filed 1991); *Shadek* (filed 1995); *Galleon Bay* (filed 2002); *Davis/Collins* (filed 2004); *Neuman* (filed 2004)
- Collectively, the claims sought compensation above an estimated \$200 million.

Recommendation of the County Attorney's Office

- Takings liability remains a manageable risk, provided there is a meaningful opportunity for additional development by continuing the ROGO process with additional allocations.
- Managed, slower growth is OK. Developers must reasonably expect delays according to the case law.
- The County should continue attempts to retire development rights through land acquisition and dedication.

For more information on regulatory takings in Monroe County, visit www.monroecounty-fl.gov/rogo2024

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