

2021 WL 5816416

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District Court of Appeal of Florida, First District.

BLUE WATER HOLDINGS SRC, INC., Appellant,
v.
SANTA ROSA COUNTY, Florida, Appellee.

No. 1D19-4387

|
December 8, 2021

On appeal from the Circuit Court for Santa Rosa County.
Darlene F. Dickey, Judge.

Attorneys and Law Firms

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Opinion

Winokur, J.

*1 Blue Water Holding SRC, Inc. (“Blue Water”) appeals an order granting a motion for summary judgment against it in an action pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act (Harris Act). For the following reasons, we reverse.

I.

Blue Water sought recovery pursuant to [section 70.001, Florida Statutes \(2012\)](#), the Harris Act, for the loss in value of its 158-acre parcel in Santa Rosa County (“the County”) based on the County’s February 2013 denial of a permit to construct and operate a landfill. The Harris

Act provides for recovery of the loss of fair market value when the use of land is inordinately burdened by government action. In accordance with [section 70.001\(4\)](#), on March 25, 2013, Blue Water served its notice of intent to pursue a Harris Act claim and attached two appraisals from Richard Sterner (“Sterner appraisals”) demonstrating the fully permitted value and an appraisal from EquiValue demonstrating the value without permits. Following the 150-day-notice period required by [section 70.001\(4\)](#) and receipt of the County’s statement of allowable uses required by [section 70.001\(5\)\(a\)](#), Blue Water filed suit on September 26, 2013. During the course of litigation Blue Water submitted a new application for an operating permit, which the County granted in September 2017. Blue Water then filed a second amended complaint, amending the claim for damages to include those resulting from an inordinate burden imposed for the temporary delay from February 14, 2013, when the permit was denied, to September 14, 2017, when the permit was granted.

Shortly after, the County moved to dismiss the second amended complaint, claiming that the appraisals attached to the Harris Act notice were inadequate. The trial court denied the motion to dismiss, but later granted summary judgment in favor of the County “due to the lack of valid appraisal(s) of the real property as required by the Bert J. Harris, Jr. Act.”

II.

A trial court’s ruling on a motion for summary judgment is reviewed *de novo*. See [Clay Elec. Coop., Inc. v. Johnson](#), 873 So. 2d 1182, 1185 (Fla. 2003). The construction of statutes, ordinances, and other written instruments is a question of law that is reviewed *de novo*. See [Heart of Adoptions, Inc. v. J.A.](#), 963 So. 2d 189, 194 (Fla. 2007); [Dixon v. City of Jacksonville](#), 774 So. 2d 763, 765 (Fla. 1st DCA 2000).

[Section 70.001\(4\)\(a\)](#) sets forth requirements a property owner must undertake before filing a Harris Act suit and reads in pertinent part as follows:

Not less than 150 days prior to filing an action under this section against a governmental entity, a property owner who seeks compensation under this section

must present the claim in writing to the head of the governmental entity The property owner must submit, along with the claim, a bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property....

never claimed that its ability to evaluate Blue Water’s claim was hampered by the insufficiency of the appraisals. Instead, it said nothing about the sufficiency of the appraisals until long after the suit was filed, after it was far too late for Blue Water to have done anything about it. We need not consider whether the County has forfeited its right to challenge the appraisals under these circumstances, as Blue Water has never made such an argument.

In granting summary judgment, the trial judge found that while Blue Water’s appraisals were “bona fide,” they failed to satisfy the statutory requirements for a variety of reasons.

III.

A.

*2 Before turning to the merits of Blue Water’s appeal, we note how this issue came before the court below. To repeat, the County received the appraisals when Blue Water gave it the Harris Act notice in 2013. The County did not complain then that the appraisals were inadequate. After Blue Water filed suit, the County moved to dismiss the complaint but did not argue that the appraisals were inadequate. Blue Water filed an amended complaint in 2014 and the County moved to dismiss it as well but did not argue that the appraisals were inadequate. It was not until 2018, after Blue Water had filed its second amended complaint, that the County argued that the appraisals were inadequate. In other words, five years after Blue Water filed a Harris Act suit, the County claimed for the first time that the appraisals attached to the notice did not properly comply with the statute setting forth the presuit requirements.

The purpose of the presuit provisions of [section 70.001\(4\)\(a\)](#), and in particular the requirement that the property owner submit an appraisal along with its claim, is to give the governmental entity sufficient information to evaluate the claim in order for the governmental entity to make an appropriate offer to settle the dispute prior to a lawsuit, as set forth in [section 70.001\(4\)\(c\)](#). Cf. *Turkali v. City of Safety Harbor*, 93 So. 3d 493, 495 (Fla. 2d DCA 2012) (affirming dismissal of Harris Act claim because the appraisal submitted with the presuit notice “did not provide the City and the County the means by which to evaluate the potential claim for the purpose of making a settlement offer prior to the filing of a suit”). The County

B.

While Blue Water has not argued that the County forfeited its right to claim that the appraisals were invalid, it has argued that the appraisal requirement is intended to give notice of the claim to the governmental entity. We agree. Again, the purpose of the appraisals under [section 70.001\(4\)\(a\)](#) is merely to provide notice to the government in order to evaluate the claim. See [§ 70.001\(4\)\(c\)](#) (requiring the government to make a settlement offer during the 150-day notice period following receipt of the claim and appraisals). This purpose informs the requirements that the appraisal be “bona fide” and “valid.” See David L. Powell, et al., *A Measured Step to Protect Private Property Rights*, 23 FLA. ST. U. L. REV. 255, 276 n.126 (1995), which states in pertinent part the following:

The requirements that the appraisal be “bona fide” and “valid” allow the governmental entity to whom the appraisal is submitted to exercise some judgment as to the quality of the appraisal. *Id.* [§ 70.001\(4\)\(a\)](#). Since the appraisal requirement is intended to support the claim of the owner, the greater the validity of the appraisal, the greater the likelihood that the governmental entity would rely on the appraisal in evaluating the owner’s claim.

Based on the nature of the litigation here and the statements of various County officials, it is clear that the County was on notice of the loss in fair market value of the landfill prior to Blue Water’s suit, and had accepted the validity of the appraisals, prior to the suit and for five years thereafter. In granting the permit in September

2017, the county commissioners afforded significant weight to the appraisals submitted with the claim. The County cannot claim that they were never on notice of the claimed loss of property value.

Even if the County had claimed that the appraisals were inadequate to permit them to evaluate Blue Water's claim when they were submitted, the trial court erred in concluding that Sterner's appraisals were of "business damages," not real property, and therefore "invalid" under the Harris Act. Business damages relative to any development, activity, or use may not be recovered under the Harris Act. See § 70.001(6)(b). However Blue Water did not have an operating business. Sterner's appraisals showed the value of the permitted land at its best and highest use, a landfill. The appraisals demonstrated a loss in value, not a loss in income.

*3 We also disagree that the Sterner appraisals were not valid appraisals because they were "disavowed." Following the County's denial of the operating permit and vote to include Blue Water's property in a protection area, Sterner wrote a letter indicating that those actions "directly restricted the use of the Property in such a manner that Bluewater will never be able to utilize the Property for its intended purpose." Sterner did not invalidate the earlier appraisals; he confirmed Blue Water's claim that based on the County's actions, the property was no longer worth what it once was.

The trial court erred by adding a requirement that the appraisals must be prepared specifically for Blue Water and as of dates immediately before and after the date the County denied the permit. As discussed above, the bona fide, valid appraisals need only to support the claim and demonstrate the loss in fair market value. Where an appraisal is prepared by a professional appraiser for a bank or other entity, so long as it appraises for fair market value of the land, it meets the requirements of section 70.001(4)(a). Similarly, the appraisals must demonstrate a loss in value tied to the government's action so as to allow the government to evaluate the claim. While an appraisal that shows the value of the land immediately before and after the government's action is more ideal, the

Harris Act does not require that.

Finally, the trial court erred in concluding the appraisals were invalid because the appraisals would not give a jury sufficient information to carry out its function under the Harris Act. Again, the appraisal is merely a presuit requirement to put the government on notice of the claim and allow it to evaluate the claim. The appraisal requirement in no way limits the evidence that would ultimately be presented to the jury. See *Indian River Cnty. v. Ocean Concrete, Inc.*, 308 So. 3d 1010, 1016 (Fla. 4th DCA 2020) (rejecting argument that Harris Act requires the property owner to submit an appraisal but precludes him from testifying at trial about his property's value). Further, once the government provides the statement of allowable uses at the end of the 150-day notice period or the parties engage in discovery, the figures presented to the jury may change from the original claimed loss in value. See § 70.001(5)(a).

Because the appraisals were prepared by a person qualified to provide an expert opinion as to fair market value, and because the appraisals provided sufficient information to allow the County to evaluate the claim for the purpose of determining whether to make a settlement offer at the end of the 150-day-notice period, we find the appraisals, whatever their shortcomings may have been, were valid for the purposes of section 70.001(4)(a). Accordingly, the trial court erred in granting summary judgment on this basis. The summary judgment is reversed, and the case is remanded for further proceedings on the second amended complaint.

REVERSED and REMANDED.

B.L. Thomas and Tanenbaum, JJ., concur.

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--- So.3d ----, 2021 WL 5816416

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