

IN THE SUPREME COURT  
OF THE STATE OF FLORIDA

HAROLD COFFIELD and  
WINDSONG PLACE, LLC,

Petitioners/Plaintiffs,

v.

CITY OF JACKSONVILLE,

Respondent/Defendant.

CASE NO.: SC 09-1070

L.T.: 1D08-3260

---

**RESPONDENT'S JURISDICTIONAL BRIEF**

---

ON APPEAL FROM THE  
FIRST DISTRICT COURT OF APPEALS

---

Submitted by:

RICHARD A. MULLANEY  
GENERAL COUNSEL

DYLAN T. REINGOLD  
Assistant General Counsel  
Fla. Bar No. 544701  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202  
Telephone: (904) 630-1700  
Facsimile: (904)-630-2388

**ATTORNEYS FOR RESPONDENT**

## **TABLE OF CONTENTS**

TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE AND FACTS .....	1
SUMMARY OF ARGUMENT .....	3
ARGUMENT .....	4
I. <u>THIS COURT LACKS JURISDICTION BECAUSE           THERE IS NO EXPRESS OR DIRECT CONFLICT           WITH DECISIONS OF ANOTHER DISTRICT COURT           OR THIS COURT ON THE ISSUE OF THE           STANDARD OF REVIEW.</u> ....	5
II. <u>THIS COURT LACKS JURISDICTION BECAUSE           THERE IS NO EXPRESS OR DIRECT CONFLICT           WITH DECISIONS OF ANOTHER DISTRICT COURT           OR THIS COURT ON THE ISSUE OF THE           REASONABLE,                 INVESTMENT-BACKED           EXPECTATIONS            OF           A       CONTRACT           PURCHASER.</u> .....	7,8
III. <u>CONCLUSION</u> .....	8
CERTIFICATE OF SERVICE/TYPOFACE COMPLIANCE.....	9

## **TABLE OF AUTHORITIES**

### **CASES**

<u>Aravena v. Miami-Dade County,</u> 928 So. 2d 1163 (Fla. 2006) .....	5
<u>Brevard County v. Stack,</u> 932 So. 2d 1258 (Fla. 5 <sup>th</sup> DCA 2006) .....	6,7
<u>Citrus County v. Halls River Dev. Inc.,</u> 8 So. 3d 413 (Fla. 5 <sup>th</sup> DCA 2009) .....	7
<u>City of Jacksonville v. Harold Coffield et al.,</u> 2009 WL 886214 (Fla. 1 <sup>st</sup> DCA 2009) .....	1,2,3,7,8
<u>Crossley v. State,</u> 596 So. 2d 447, 449 (Fla. 1992) .....	5
<u>Holmes v. Marion County,</u> 960 So. 2d 828 (Fla. 5 <sup>th</sup> DCA 2007) .....	7

### **STATUTES**

Fla. Stat. § 70.001 .....	3,6
---------------------------	-----

## **STATEMENT OF THE CASE AND FACTS**

Petitioner, Windsong Place, LLC is the current owner of an approximately two acre parcel of land on the St. Johns River in Jacksonville, Florida (the “Property”). City of Jacksonville v. Coffield et al., 2009 WL 886214 (Fla. 1<sup>st</sup> DCA 2009). Opinion pp. 2, 6. The Property abuts a street known as Windsong Place in the Windsong Place subdivision. Opinion, p. 2. In early 2006, Petitioner Harold Coffield (“Coffield”) entered into a sales contract to purchase the Property. Opinion, p. 2. The sales contract specified a closing date of April 30, 2006 and gave Coffield sixty days to determine whether, in Coffield's “sole and absolute discretion” the Property was suitable for residential single family use. Opinion, p. 2. Coffield intended to develop the Property as an eight single-family lot subdivision. Opinion, p. 2. In the event Coffield determined the Property was not acceptable, the contract could be deemed terminated and the initial deposit returned. Opinion, p. 2.

On February 8, 2006, the Windsong Place Homeowners’ Association filed an application with the City of Jacksonville (the “City”) to close Windsong Place as a public street in order for the subdivision to become a gated community with a private street and to preclude access to Windsong Place from the Property. Opinion, p. 2. Coffield learned of the application

to close Windsong Place on February 15, 2006, “more than five weeks before the agreed deadline for rescinding the contract and recouping his \$25,000 deposit.” Opinion, p. 3.

Despite his knowledge of the pending road closing application Coffield did not exercise his right to terminate the contract, but instead extended the closing date until June 5, 2006. Opinion, pp. 2,5. Coffield “decided to proceed with his development plans nevertheless, based in part on what proved to be his mistaken belief that the City would not grant the application for road closure; and in part on the legal mistake that, even if the City did grant the application and close the public road, he would have title to half of the fee interest underlying the abandoned roadway easement.” Opinion, p. 3.

On August 17, 2006, the City adopted Ordinance 2006-407 closing Windsong Place as a public street. Opinion, p. 5. As a result of the closure of Windsong Place it was no longer possible to develop the Property as an eight single-family lot subdivision. Opinion, p. 6.

On November 20, 2006, Coffield conveyed the Property to the wholly owned entity Windsong Place, LLC and on December 19, 2006, Petitioners Coffield and Windsong Place LLC (collectively referred to as the “Petitioners”), filed a claim in circuit court under the Bert J. Harris, Jr.,

Private Property Rights Protection Act, Section 70.001, Florida Statutes (the “Bert J. Harris Act”). Opinion, p. 6. The trial court determined that Coffield had a vested right to develop the Property as an eight single-family lot subdivision, that development for that purpose was an “existing use” of the Property and that the City had “inordinately burdened” the “existing use.” Opinion, pp. 6-7.

On appeal, the First District Court of Appeals (the “First District”), held that Coffield’s expectation of developing the Property as an eight single-family lot subdivision “was not objectively reasonable” and concluded his assumptions were “incorrect and unsupported.” Opinion, pp. 21-22. Thus the First District overturned the trial court ruling and held that the trial court erred “as a matter of law” in concluding that Petitioners had a vested right to develop the Property as an eight single-family lot subdivision, that development as an eight single-family lot subdivision was an existing use of the Property, and that the City took any action which constituted an inordinate burden or precluded attaining any reasonable, investment-backed expectation under the Bert J. Harris Act. Opinion, p. 22.

### **SUMMARY OF ARGUMENT**

Petitioners claim that this Court has discretionary jurisdiction over this matter because the First District decision in Coffield expressly and

directly conflicts with prior decisions of this Court and other district courts of appeal. However, there are no cases from either this Court or any district court of appeal that actually, much less expressly, conflicts with the First District opinion concerning the basis of review under the Bert J. Harris Act. Additionally, Petitioners argue that the First District decision expressly and directly conflicts with decisions of this Court and other District Courts that hold a specifically performable contract to convey title establishes the purchaser as the beneficial owner of real property. The First District decision did not make a ruling that conflicted with this principle of law. The First District instead held that a buyer had no reasonable, investment-backed expectation under the Bert J. Harris Act, knowing that the City had a pending request to close Windsong Place. There is no case from either this Court or any district court that conflicts, expressly or otherwise, with the First District decision. Thus, this Court lacks jurisdiction and should appropriately deny Petitioners' request for jurisdiction.

### **ARGUMENT**

Petitioners, in the first sentence of their jurisdictional brief, claim that this Court has discretionary jurisdiction over this matter because the First District decision in Coffield expressly and directly conflicts with prior decisions of this Court and other district courts of appeal. However, the

Petitioners are unable to present to this Court a single case which is “irreconcilable” with Coffield. Aravena v. Miami-Dade County, 928 So. 2d 1163, 1166 (Fla. 2006). The determining that the cases were irreconcilable, the Court in Aravena, cited to Crossley v. State, 596 So. 2d 447, 449 (Fla. 1992), a case in which this Court took jurisdiction because the lower court “reached the opposite result on controlling facts.” Id. (Emphasis added). There are no cases from this Court or any district court of appeals that is irreconcilable with Coffield or which reach the opposite result on controlling facts.

**I. THIS COURT LACKS JURISDICTION BECAUSE THERE IS NO EXPRESS OR DIRECT CONFLICT WITH DECISIONS OF ANOTHER DISTRICT COURT OR THIS COURT ON THE ISSUE OF THE STANDARD OF REVIEW.**

Petitioners are unable to cite any case from either this Court or any district court of appeal that directly, much less expressly, conflicts with the First District opinion concerning the basis of review under the Bert J. Harris Act. To support the contention of an express and direct conflict with prior decisions of this Court and other district courts of appeal, the Petitioners cite to several cases decided in completely different contexts, including negligence cases and one promissory estoppel case. Obviously, there is no express and direct conflict with these cases as they are completely



distinguishable. Moreover, there is no express or direct conflict with a decision from this Court or from any district court of appeals with respect to review of a decision involving the Bert J. Harris Act. In adopting the Bert J. Harris Act, the Florida Legislature created a new “separate and distinct cause of action from the law of takings” to provide relief for property owners from actions by governments which “inordinately burden” real property. Sec. 70.001, Fla. Stat. The Legislature expressly defined the relevant terms, such as “vested rights,” “existing uses,” and “inordinate burden,” F. S. § 70.001(3), and expressly provided that judges, not juries, would decide these issues, and gave the government the right to an interlocutory appeal. Thus, Coffield does not involve the type of reasonableness inquiry present in negligence cases or promissory estoppel cases, but instead involves reasonableness in the context of defined statutory terms such as “existing use” and “inordinately burden.”

Petitioners cite to only one case involving the Bert J. Harris Act, Brevard County v. Stack, 932 So. 2d 1258 (Fla. 5<sup>th</sup> DCA 2006). However, there is no express or direct conflict with Stack. In Stack, the Fifth District Court of Appeals simply noted that the lower court had failed to make the required findings under the Bert J. Harris Act and therefore remanded the matter back to the lower court to make the necessary findings. Stack, 932

So. 2d at 1262. In Coffield, the First District did not rule that the lower court did not make the necessary findings. The First District instead ruled that the lower court erred as a matter of law in applying the law to those findings. Opinion pp.21-22. Thus there is no conflict between Stack and Coffield.

The lack of any conflict with the decision in Stack is clear from the rulings made by the Fifth District Court of Appeals since Stack. The Fifth District Court of Appeals has addressed the issue of reasonableness under the Bert J. Harris Act in subsequent decisions that are in fact consistent with the decision made by the First District in Coffield. In Holmes v. Marion County, 960 So. 2d 828, 830 (Fla. 5<sup>th</sup> DCA 2007), the Fifth District Court of Appeals concluded that “time-limited permit cannot create a reasonable expectation” and in Citrus County v. Halls River Dev., Inc., 8 So. 2d 413 (Fla. 5<sup>th</sup> DCA 2009), the Fifth District Court of Appeals noted that a “condominium was not reasonable” given the comprehensive plan designation for the property. Thus, the Fifth District Court of Appeals has also recognized that ultimately the issue of reasonableness must be made as a matter of law based upon the underlying factual findings.

**II. THIS COURT LACKS JURISDICTION  
BECAUSE THERE IS NO EXPRESS OR DIRECT  
CONFLICT WITH DECISIONS OF ANOTHER  
DISTRICT COURT OR THIS COURT ON THE**

**ISSUE OF THE REASONABLE, INVESTMENT-  
BACKED EXPECTATIONS OF A CONTRACT  
PURCHASER.**

Petitioners argue that the First District decision in Coffield expressly and directly conflicts with “long-established precedents of this Court and other District Courts that hold a specifically performable contract to convey title establishes the purchaser as the ‘beneficial owner’ of real property.” Petitioners misrepresent the First District’s decision. The First District decision is not contrary to this principle. The First District opinion simply held that the Petitioners had no reasonable, investment-backed expectation under the Bert J. Harris Act, knowing that the City had a pending request to close the adjacent roadway, Windsong Place. Opinion, p. 21-22. The First District concluded Coffield’s “assumptions that the application would be denied and that, in any event, he would not lose access to a critical portion of the roadway were incorrect and unsupported.” Opinion, pp. 21-22. Again, Petitioners fail to cite to a single Bert J. Harris Act case from either this Court or any district court that expressly and directly conflicts with the First District decision.

**III. CONCLUSION**

For all the reasons stated in this Jurisdictional Brief, the City requests that this Court decline to take jurisdiction of this case as there is no express

and direct conflict with the decisions of this Court or other district courts of appeal.

Respectfully submitted,  
**RICHARD A. MULLANEY**  
**GENERAL COUNSEL**

---

DYLAN T. REINGOLD  
Assistant General Counsel  
Fla. Bar No. 544701  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202  
Telephone: (904) 630-1700  
Facsimile: (904)-630-2388

**ATTORNEYS FOR RESPONDENT**

**CERTIFICATE OF SERVICE**  
**TYPEFACE COMPLIANCE**

I HEREBY CERTIFY that a copy of the foregoing Jurisdictional Brief has been furnished to Jeb T. Branham, Esquire, 333 1<sup>st</sup> Street North, Suite 305, Jacksonville Beach, Florida, 32250, by U. S. Mail this \_\_\_ day of July, 2009; and that this brief uses Times New Roman 14-point font.

**RICHARD A. MULLANEY**  
**GENERAL COUNSEL**

---

DYLAN T. REINGOLD  
Assistant General Counsel  
Fla. Bar No. 544701  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202  
Telephone: (904) 630-1700  
Facsimile: (904)-630-2388

**ATTORNEYS FOR RESPONDENT**