


COMMISSION AGENDA:

9.5.13 #14a.

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney 

SUBJECT: Notice of New Lawsuit and Defense of the Same by the County Attorney
in the Case of Ronald C. Jacobs and Sharon K. Jacobs v. Pinellas County
Circuit Civil Case No. 13-CA-009922, Div. G

DISTRIBUTION: David E. Scott, Executive Director of Environment & Infrastructure

DATE: September 5, 2013

NOTICE: THIS IS TO ADVISE THE BOARD OF COUNTY COMMISSIONERS THAT THE
ABOVE-REFERENCED LAWSUIT WAS FILED AGAINST THE COUNTY AND THE
COUNTY ATTORNEY'S OFFICE WILL DEFEND THE SAME.

DISCUSSION: Ronald C. and Sharon K. Jacobs filed suit against Pinellas County claiming
inverse condemnation and breach of contract alleging Pinellas County failed to remediate the
Martin Borrow Pit in accordance with the multi-party mitigation agreement as well as the
Temporary Construction Easement between Plaintiffs and the County. Plaintiffs contend the
County's actions have resulted in flooding of Plaintiffs' property and seek monetary damages.

This suit is pending in Hillsborough County.

A copy of the Complaint (without attachments) is attached hereto.

JLB:CDP:gm
Attachment

3

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

RONALD C. JACOBS and
SHARON K. JACOBS,

Plaintiffs,

v.

Case No. 13-CA-009922, Div. G

PINELLAS COUNTY, a political subdivision
of the State of Florida,

Defendant.

COMPLAINT

Plaintiffs, RONALD C. JACOBS and SHARON K. JACOBS, sue Defendant, PINELLAS COUNTY, a political subdivision of the State of Florida, and states as follows:

**COUNT I
INVERSE CONDEMNATION**

1. Plaintiffs, RONALD C. JACOBS and SHARON K. JACOBS, at all times material hereto, were and are residents of Hillsborough County, Florida.
2. Plaintiffs, RONALD C. JACOBS and SHARON K. JACOBS, are the owners of certain real property located in Hillsborough County, Florida, which property is more particularly described on Exhibit "1" attached hereto.
3. Defendant, PINELLAS COUNTY, is a political subdivision of the State of Florida.
4. PINELLAS COUNTY at all times material hereto was the owner of a "borrow pit" (the "Borrow Pit") situated within the geographical confines of Hillsborough County located adjacent to Plaintiffs' property.
5. The actions complained of herein occurred within Hillsborough County.
6. This is an action against PINELLAS COUNTY in inverse condemnation for the unlawful taking of Plaintiffs' property, which has a value substantially in excess of \$15,000.00.

7. PINELLAS COUNTY previously entered into a "Mitigation Agreement" with Hillsborough County, the Hillsborough County Environmental Protection Commission and the Florida Department of Environmental Protection, in which Pinellas County agreed to obtain title to the Borrow Pit to mitigate and restore it to conform with state requirements for an excavated borrow pit. Pursuant to the terms of the Mitigation Agreement, the County was required to restore the perimeter of the borrow pit by creating a bank with a side slope no steeper than four (4) feet horizontal to one (1) foot vertical.

8. The "Borrow Pit" property was acquired by Pinellas County in accordance with the terms of the Mitigation Agreement by Warranty Deed dated November 25, 1998. A copy of the Warranty Deed is attached as Exhibit "2" hereto.

9. As part of its mitigation and restoration activities, PINELLAS COUNTY sought to obtain a temporary construction easement over the south 75 feet of Plaintiffs' property for the alleged purpose of grading the easement area to "create a gentle slope for the borrow pit." The sloped area was to include the south 65 feet of the temporary construction easement. Defendant prepared an "Agreement for Exchange" to obtain the necessary temporary construction easement from the Plaintiffs. A copy of that agreement is attached as Exhibit "3" hereto. Pursuant to Exhibit "C" of the Agreement for Exchange, the operating level of the lake was represented as being at a level of twenty-two (22) feet.

10. Plaintiffs executed a Temporary Construction Easement Agreement on or about May 31, 2000, a copy of which is attached as Exhibit "4" hereto. Pursuant to the terms of the Easement, it expired five (5) years from the date signed by Plaintiffs. This agreement was subsequently amended and extended by the Amendment to Temporary Construction Easement Agreement signed by the Plaintiffs on March 4, 2005, a copy of which is attached as Exhibit "5" hereto.

11. During construction of the project, Defendant, its agents and employees removed valuable fill from the Plaintiffs' property which was then sold or provided to third parties, thereby severely reducing the elevation of Plaintiffs' property within the temporary easement area.

12. By May of 2010, the lake level rose substantially above the level depicted in the plans provided to Plaintiffs. As a direct result of the County's design and construction of the borrow pit and related drainage structures, Plaintiffs' property has been permanently inundated with water on and over the "temporary" construction easement area.

13. The drainage structure installed by Defendant on Plaintiffs' property as part of the Defendant's borrow pit reconstruction and reclamation project is depicted on Exhibit "C" of the Agreement for Exchange attached as Exhibit "3" hereto. The drainage structure, identified as a side inlet aluminum riser, was purportedly designed to accept water from Plaintiffs' property and convey it through a pipe into the borrow pit. During the rainy season, the drainage structure and lake do not operate as designed and causes Plaintiffs' property to be inundated with flood waters well beyond the limits of the expired temporary construction easement.

14. Defendant is either unwilling or unable to change and/or modify the borrow pit and its associated drainage structures to prevent the continued flooding of Plaintiffs' property.

15. As a direct result of the flooding caused by the County, the Plaintiffs are unable to utilize large portions of their property throughout the annual rainy season

16. The flooding of Plaintiffs' property is permanent in nature and constitutes a taking of Plaintiffs' property in violation of Article X, Section 6 of the Florida Constitution.

17. Plaintiffs have been required to retain the undersigned attorney and have agreed to pay said attorney a reasonable fee for the services rendered herein, for which they are entitled to be reimbursed by the Defendant. Additionally, it will be necessary for the Plaintiffs to retain the services of experts to assist in prosecution of this action, including the hiring of appraisers, contractors, engineers, photographers, accountants, surveyors and others for which the Plaintiff is entitled to be reimbursed by the Defendant. Plaintiffs seek recovery from the

Defendant of all expert witness fees, attorneys' fees, costs and other expenses necessarily incurred in the prosecution of this action.

WHEREFORE, the Plaintiffs, RONALD C. JACOBS and SHARON K. JACOBS, pray:

- a. The Court will, in a bifurcated proceeding, declare that the aforesaid real property owned by Plaintiffs has been unlawfully taken by the Defendant, PINELLAS COUNTY, contrary to the 5th and 14th Amendments of the U.S. Constitution, and Article X, Section 6(a) of the Florida Constitution, and determine the effective date of said taking;
- b. The Court will empanel a twelve-member jury to determine the full compensation to be paid to the Plaintiffs for the taking of their real property described herein, together with all damages to Plaintiffs' property caused by the taking; and
- c. The Court will grant such further relief as it deems just and proper.

COUNT II BREACH OF CONTRACT


18. Plaintiffs reallege and reaver paragraphs 1 through 5.
19. This is an action for breach of contract for the recovery of damages substantially in excess of \$15,000.00.
20. Plaintiffs reallege and reaver paragraphs 7 through 10.
21. Under the terms of the "Exchange Agreement," the Plaintiffs provided the County with a "temporary" easement for the purpose of construction activities undertaken by the County to re-grade and re-slope the perimeter of the borrow pit. The County represented that the lake would operate at a natural level of 22 feet, that the Plaintiffs would acquire a grassy slope that extends to the lake, and that the project would improve the natural flow of water and drainage of their property.
22. Plaintiffs reallege and reaver paragraphs 11, 12 and 15.

23. In direct contravention of the Defendant's representations and agreement with the Plaintiffs, the Defendant's project has flooded portions of Plaintiffs' property by permanently flooding the temporary construction easement with water and the flooding of additional areas of Plaintiffs' property by inhibiting the natural flow and drainage of water from the Plaintiffs' property.

WHEREFORE, the Plaintiffs, RONALD C. JACOBS and SHARON K. JACOBS, pray:

- a. The Court will enter judgment for damages against the Defendant;
- b. The Court will award fees and costs necessarily incurred in the prosecution of this action, including a reasonable fee for the undersigned attorneys; and
- c. The Court will grant such further relief as it deems just and proper.

Dated: 7/26/13



John M. LeRoux, Esquire
Florida Bar No. 0773166
LAW OFFICES OF JOHN M. LEROUX, P.A.
3090 Charles Avenue, Suite 200
Clearwater, Florida 33761
T: 727.712.1137
E: Pleadings@jmleroux.com
John@jmleroux.com