


COMMISSION AGENDA:

9.5.13 # 14b.

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 Karen H. Murphy v. Pinellas County
Circuit Civil Case No. 13-CA-010091, Div. C

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: Karen H. Murphy 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 Plaintiff and the County. Plaintiff contends the County's actions have resulted in flooding of Plaintiff's property and seeks monetary damages.

This suit is pending in Hillsborough County.

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

JLB:CDP:gm
Attachment

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

KAREN H. MURPHY,

Plaintiff,

v.

Case No. 13-CA-010091, Div. C

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

Defendant.

COMPLAINT

Plaintiff, KAREN H. MURPHY, sues Defendant, PINELLAS COUNTY, a political subdivision of the State of Florida, and states as follows:

**COUNT I
INVERSE CONDEMNATION**

1. Plaintiff, KAREN H. MURPHY, at all times material hereto, was and is a resident of Hillsborough County, Florida.

2. Plaintiff, KAREN H. MURPHY, is the owner 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 Plaintiff's 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 Plaintiff's 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 Plaintiff's 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 Plaintiff. 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 new lake was represented as being at a level of twenty-two (22) feet.

10. Plaintiff executed a Temporary Construction Easement Agreement on or about May 4, 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 Plaintiff. This agreement was subsequently amended and extended by the Amendment to Temporary Construction Easement Agreement, attached as Exhibit "5" hereto.

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

12. By May of 2010, the lake level had been raised substantially above the level depicted in the plans provided to Plaintiff. As a direct result of the County's design and construction of the lake property and related drainage structures, Plaintiff's 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 Plaintiff's property.

15. A further consequence of the floodwaters forced onto Plaintiff's property by the Defendant is the complete flooding and saturation of the ground surrounding Plaintiff's home, causing the failure of the septic sewer system that services the residence. The effect of this failure includes, but is not limited to, severe restrictions on the use of showers, washing machines, toilets and dishwasher in the home. As a disabled retired nurse, the Plaintiff is unable to procure alternate housing and has been forced to remain in the house under unsanitary and unsafe conditions. As a further direct consequence of the flooding caused by the Defendant, a majority of Plaintiff's pastureland is unsuitable for livestock and Plaintiff is unable to obtain the customary amount for boarding of horses on the portion of her property that is not flooded.

16. The flood waters forced onto Plaintiff's property by the Defendant have rendered the home, barn and pasture land unsafe, unsanitary and unmarketable. The flooding is

permanent in nature and constitutes a taking of Plaintiff's property in violation of Article X, Section 6 of the Florida Constitution.

17. Plaintiff has been required to retain the undersigned attorney and has agreed to pay said attorney a reasonable fee for the services rendered herein, for which she is entitled to be reimbursed by the Defendant. Additionally, it will be necessary for the Plaintiff 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. Plaintiff seeks 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 Plaintiff, KAREN H. MURPHY, prays:

- a. The Court will, in a bifurcated proceeding, declare that the aforesaid real property owned by Plaintiff 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 Plaintiff for the taking of her real property described herein, together with all damages to Plaintiff's 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. Plaintiff realleges and reavers 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. Plaintiff realleges and reavers paragraphs 7 through 10.

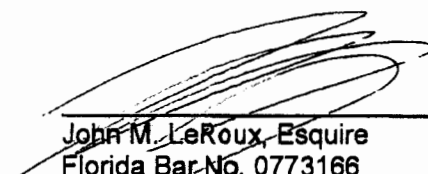
21. Under the terms of the "Exchange Agreement," the Plaintiff provided the County with a "temporary" easement for the purpose of construction activities undertaken by the County to re-grade and re-slope the perimeter of the borrow pit. The County represented that the lake would operate at a natural level of 22 feet, that the Plaintiff would acquire a grassy slope that extends to the new lake, and that the project would improve the natural flow of water and drainage from her property.

22. Plaintiff realleges and reavers paragraphs 11, 12 and 15.

WHEREFORE, the Plaintiff, KAREN H. MURPHY, prays:

- 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: 8/1/13



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