

COMMISSION AGENDA:

5.20.08 # 28C

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

FROM: James L. Bennett, County Attorney



SUBJECT: Authority to Defend and Approval of Stipulated Order of Final Judgment in the  
Case of BH Land Acquisitions, LLC v. Pinellas County  
Circuit Civil Case No. 08-5439-CI-7

DATE: May 20, 2008

**RECOMMENDATION:** IT IS RECOMMENDED THAT THE BOARD OF COUNTY COMMISSIONERS AUTHORIZE THE COUNTY ATTORNEY'S OFFICE TO DEFEND THE INTERESTS OF PINELLAS COUNTY IN THE ATTACHED COMPLAINT, AND APPROVE THE ATTACHED STIPULATED ORDER OF FINAL JUDGMENT.

**DISCUSSION:** The attached complaint is an action by a property owner to quiet title on a piece of property. A sketch attached to a deed which conveyed a piece of right-of-way to the County contained references to other property interests or proposed property interests (primarily a drainage easement) in addition to the right-of-way that was conveyed to the County. A title company for the landowner has opined that this creates an interest in Pinellas County. The landowner has filed this suit to remove this perceived cloud on its title.

The legal description contained in the deed conveying the right-of-way to the County does not contain the drainage easement. Accordingly, it is the opinion of the County Attorney's Office that the deed conveyed no interest other than the right-of-way. In order to effectively and efficiently dispose of this action, it is recommended that the Board authorize the County Attorney's Office to defend this action and approve the Stipulated Order of Final Judgment. The Stipulated Order was negotiated with opposing counsel, to protect the County's interests, while allowing the Plaintiff's title to be cleared as to the County's perceived interests.

JLB:DSC

Attachments (2)

H:\USERS\ATYKB41\WPDOCS\Public Works\Real Estate\Litigation\BH Land Acq v Pinellas\BCC memo re authority to defend and stip to fnl judgmt.doc

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA  
CIRCUIT CIVIL DIVISION

BH LAND ACQUISITIONS, LLC,

Case No.:

Plaintiff,

Division:

vs.

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

Defendant.

---

**COMPLAINT**

COMES NOW, Plaintiff, BH LAND ACQUISITIONS, LLC , and files this Complaint to Quiet Title, and sues Defendant, PINELLAS COUNTY, a political subdivision of the State of Florida, and alleges:

1. This is an action to Quiet Title pursuant to Florida Statutes 65.021 and 65.031 in the Plaintiff. as to the following described land located and situated in Pinellas County, Florida, to wit:

See Exhibit "A" attached hereto and incorporated herein (the "Property").

2. Plaintiff is a Florida limited liability company authorized to do business in State of Florida and it owns the Property.

3. Plaintiff deraigns its title to the Property from that certain Warranty Deed recorded in O.R. Book 16162, Page 1120, Public Records of Pinellas County, Florida, a copy of which is attached hereto and incorporated herein as Exhibit "B".

4. A cloud on Plaintiff's title to the Property exists by virtue of that certain Quit Claim Deed to Defendant recorded in O.R. Book 6571, Page 1012, Public Records of Pinellas County, Florida, a copy of which is attached hereto as Exhibit "C" and incorporated herein (the "Phantom Easement").

5. The purpose of the Phantom Easement was to convey to Defendant a right-of-way across the southwesterly 30 feet of the portion of Lot 4, Block 1, plat of Ulmerton as recorded in Plat Book 6, Page 31. Public Records of Hillsborough County, Florida, of which Pinellas County was formerly a part.

6. The Phantom Easement attached a sketch of the right-of-way at O.R. Book 6571, Page 1014.

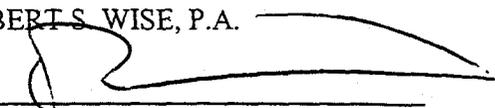
7. Upon information and belief, through mistake or inadvertence, the sketch of the right-of-way also included a sketch of a proposed 15 foot drainage easement over and across a portion of the Property. No such drainage easement was ever executed or delivered by Plaintiff or its predecessors in title to the Property and no such drainage easement was ever accepted by Defendant.

8. Upon information and belief, Defendant disclaims any drainage easement or other claim in the Property.

9. By reason of the foregoing, Plaintiff is the owner, in fee simple, of the Property and is entitled to possession thereof as such owner, free, clear and against the claims of the Defendant by virtue of the Phantom Easement.

WHEREFORE, Plaintiff, BH LAND ACQUISITIONS, LLC, prays that this Honorable Court enter a judgment pursuant to Florida Statutes 65.021 or 65.031 quieting title in said Plaintiff to the Property and declaring the Plaintiff to be the legal owner in fee simple absolute forever, removing the cloud on Plaintiff's title to the Property and grant such other and further relief as this Court deems just and proper.

ROBERT S. WISE, P.A.

By: 

Robert S. Wise, Esquire  
1205 West Fletcher, Suite A  
Tampa, Florida 33612  
(813) 968-8668  
Attorney for Plaintiff  
Florida Bar No. 327220

## EXHIBIT A

Lot 2, Block 8 and a portion of Lot 1, Block 8, Ulmerton, according to the plat thereof as recorded in Plat Book 6, page 31, of the Public Records of Hillsborough County, Florida, of which Pinellas County was formerly a part, less road right-of-way, being more particularly described as follows:

Being at the Southwest corner of Lot 2, Block 8, of said Ulmerton; thence N 00°41'18" W, along the Westerly boundary line of said Lot 2 extended, a distance of 186.93 feet; thence, departing said Westerly boundary line run N 89°19'27" E, a distance of 296.73 feet to a point on the Westerly right-of-way line of 95th Street (56' R/W); thence S 00°40'33" E, along said Westerly right-of-way line, a distance of 193.00 feet to the Southeast corner of said Lot 2; thence departing said Westerly right-of-way line, run N 89°30'14" W, along the Southerly boundary line of said Lot 2, a distance of 296.84 feet back to the Point of Beginning.

Together with the right to use the non exclusive ingress and egress easements and the perpetual drainage easements recorded in O.R. Book 13411, page 1477; O.R. Book 13411, page 1475; O.R. Book 13411, page 1431 and O.R. Book 13411, page 1479, Public Records of Pinellas County, Florida.

35.50  
6.85-

Prepared By and Return to:

Fidelity National Title Insurance Company  
5690 W. Cypress Street, Suite A  
Tampa, FL 33607

File No. FT54-07009873

Property Appraiser's Parcel I.D. (folio) Number(s)  
11/30/15/93348/008/0020

### WARRANTY DEED

THIS WARRANTY DEED made and executed Feb. 18, 2008, by DPM, LLC, a limited liability company existing under the laws of Connecticut, and having its principal place of business at 85 Commerce Street, Glastonbury, CT 06033, hereinafter called the grantor, to BH Land Acquisitions, LLC a Florida limited liability company, whose post office address is 13136 95th Street, Largo, FL 33773, Florida, hereinafter call the grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to the instrument and the heirs, legal representative and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantor, for and in consideration of the sum of \$10.00 and other valuable consideration, receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the grantee, all that certain land situated in Pinellas County, Florida, to wit:

See EXHIBIT A attached hereto and made a part hereof.

Subject to easements, restrictions, reservations and limitations of record, if any.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining.

TO HAVE AND TO HOLD the same in Fee simple and non-exclusive easement rights forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2007.

Warranty Deed (Corporation)

EXHIBIT

"B"

IN WITNESS WHEREOF, the grantor has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers duly authorized, the day and year first above written.

SIGNED AND SEALED IN THE PRESENCE OF THE FOLLOWING WITNESSES:

*Peter Jay Allen*  
(Witness Signature) as to Daniel A. DelMastro  
PETER JAY ALLEN  
(Print Name of Witness)

*Laura B. Flanagan*  
(Witness Signature) as to Daniel A. DelMastro  
Laura B. Flanagan  
(Print Name of Witness)

*Peter Jay Allen*  
(Witness Signature) as to Richard Montovani  
PETER JAY ALLEN  
(Print Name of Witness)

*Laura B. Flanagan*  
(Witness Signature) as to Richard Montovani  
Laura B. Flanagan  
(Print Name of Witness)

*Peter Jay Allen*  
(Witness Signature) as to Daniel Pandiscia  
PETER JAY ALLEN  
(Print Name of Witness)

*Laura B. Flanagan*  
(Witness Signature) as to Daniel Pandiscia  
Laura B. Flanagan  
(Print Name of Witness)

State of Conn  
County of Hartford

The foregoing instrument was acknowledged before me this 18 day of Feb. 2008, by Daniel A. DelMastro as Member of DPM, LLC, to me known to be the person(s) described in or who has/have produced driver's license as identification and who executed the foregoing instrument and he/she/they acknowledged that he/she/they executed the same.

Witness my hand and official seal in the County and State last aforesaid this 18 day of February, 2008.

DPM, LLC, a Connecticut limited liability company

BY: *[Signature]*  
Daniel A. DelMastro, Member

BY: *[Signature]*  
Richard Montovani, Member

BY: *[Signature]*  
Daniel Pandiscia, Member

Address:  
85 Commerce Street  
Glastonbury, CT 06033

*Laura B. Flanagan*  
NOTARY PUBLIC  
My Commission Expires:

LAURA B. FLANAGAN  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MAY 31, 2012

Warranty Deed (Corporation)

EXHIBIT "B"

COPY

State of Conn  
County of Hartford

The foregoing instrument was acknowledged before me this 18 day of Feb., 2008, by Richard Montovani, as Member of DPM, LLC, to me known to be the person(s) described in or who has/have produced driver's license as identification and who executed the foregoing instrument and he/she/they acknowledged that he/she/they executed the same.

Witness my hand and official seal in the County and State last aforesaid this 18<sup>th</sup> day of February, 2008.

Laura Flanagan  
NOTARY PUBLIC  
My Commission Expires: **LAURA B. FLANAGAN**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES MAY 31, 2012

State of Conn.  
County of Hartford

The foregoing instrument was acknowledged before me this 18 day of Feb., 2008, by Daniel Pandiscia, as Member of DPM, LLC, to me known to be the person(s) described in or who has/have produced driver's license as identification and who executed the foregoing instrument and he/she/they acknowledged that he/she/they executed the same.

Witness my hand and official seal in the County and State last aforesaid this 18<sup>th</sup> day of February, 2008.

Laura Flanagan  
NOTARY PUBLIC  
My Commission Expires:  
**LAURA B. FLANAGAN**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES MAY 31, 2012

EXHIBIT A

Lot 2, Block 8 and a portion of Lot 1, Block 8, Ulmerton, according to the plat thereof as recorded in Plat Book 6, page 31, of the Public Records of Hillsborough County, Florida, of which Pinellas County was formerly a part, less road right-of-way, being more particularly described as follows:

Being at the Southwest corner of Lot 2, Block 8, of said Ulmerton; thence N 00°41'18" W, along the Westerly boundary line of said Lot 2 extended, a distance of 186.93 feet; thence, departing said Westerly boundary line run N 89°19'27" E, a distance of 296.73 feet to a point on the Westerly right-of-way line of 95th Street (66' R/W); thence S 60°40'33" E, along said Westerly right-of-way line, a distance of 193.00 feet to the Southeast corner of said Lot 2; thence departing said Westerly right-of-way line, run N 89°30'14" W, along the Southerly boundary line of said Lot 2, a distance of 296.84 feet back to the Point of Beginning.

Together with the right to use the non exclusive ingress and egress easements and the perpetual drainage easements recorded in O.R. Book 13411, page 1477; O.R. Book 13411, page 1475; O.R. Book 13411, page 1481 and O.R. Book 13411, page 1479, Public Records of Pinellas County, Florida.

EXHIBIT

"B"

# This Indenture

Please read herein, the term "party" shall include the heirs, personal representatives, assigns and/or assigns of the respective parties herein; the use of the singular number shall include the plural, and the plural the singular; the use of any gender shall include all genders; and, if used, the term "year" shall include all the same periods described if more than one.

Made this 5th day of August A. D. 19 87  
Between  
Carl Clark

Pinellas and State of Florida, of the County of  
and party of the first part,  
Pinellas County, a political subdivision of the State of Florida.

Witnesseth, that the said party of the first part, for and in consideration of the sum of ten dollars and other good and valuable consideration Dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents does remise, release and quitclaim unto the said party of the second part all the right, title, interest claim and demand which the said party of the first part has in and to the following described lot, piece or parcel of land, situate lying and being in the County of Pinellas State of Florida, to wit:

Lands described in "legal description" attached hereto and by this reference made a part hereof.

01 Cash 11 Chg  
40 Rec 110  
41 PS 55  
43 Int  
Tot 55

RECEIVED BY THE CITY CLERK  
CITY OF CLEARWATER, FLORIDA  
AUG 31 9 48 AM '87  
TOTAL 0.55 CASH

To Have and to Hold the same, together with all and singular the appurtenances thereto belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, Read and Delivered in Our Presence:  
William A. ...  
Lisa N. ...  
Carl Clark

State of Florida,  
County of }  
I Herby Certify That on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Carl Clark

to me well known to be the person described in and who executed the foregoing instrument and he acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed.  
Witness my hand and official seal at City of Clearwater  
County of Pinellas and State of Florida, this 5th  
day of August A. D. 19 87.

HOLD FOR:  
PINELLAS COUNTY R/W  
SPECIAL ACCOUNT - AN  
Notary Public  
City Commission Expires  
Notary Public, State of Florida  
My Commission Expires Jan. 14, 1988

Prepared by:  
Sub Error  
816 Court Street  
Clearwater, FL 33816

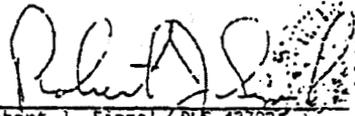
Exhibit "B"

Legal Description

The Southwesterly 30 feet of that portion of Lot 4, Block 1 lying within 90 feet of the centerline of the A.C.L. Railroad. All according to the plat of Uimerton as recorded in Plat Book 6, Page 31 of the Public Records of Hillsborough County, Florida of which Pinellas County was formerly a part.

Prepared by:

SIPPEL, MASTELLER & KRAVET, INC.  
1247 Florida Avenue  
Palm Harbor, Florida 34683

  
Robert J. Sippe, PLS #3798

July 31, 1987  
SMK File #6724  
RS/AS/er

SECTION 11, TOWNSHIP 30 SOUTH, RANGE 15 EAST

NORTH  
SCALE: 1" = 100'

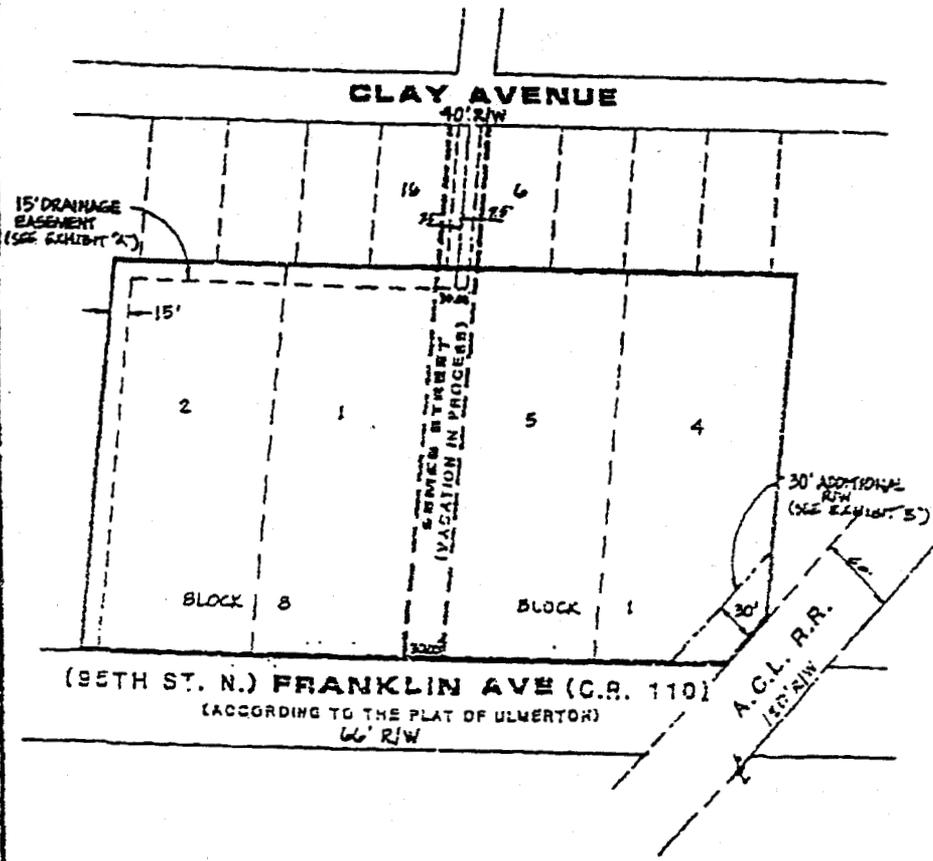


EXHIBIT 'A'  
SKETCH OF PROPOSED  
15' DRAINAGE EASEMENT  
AND FUTURE R/W

	<p><b>SEPPLE, MARTELLER &amp; KRAVET, INC.</b> ENGINEERING • PLANNING • SURVEYING 1247 FLORIDA AVENUE, PALM HARBOR, FLORIDA 33633 813-784-8543</p>
<p>PREPARED BY: RAL DATE: 7-1-97</p>	<p>CHECKED: [Signature] DATE: [Blank]</p>

**IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION**

BH LAND ACQUISITIONS LLC,

Case No: 08-5439-CI-7

**Plaintiff,**

-vs-

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

**Defendant.**

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**STIPULATED ORDER OF FINAL JUDGMENT**

THIS MATTER having come before the Court on the parties Joint Stipulation To Entry Of Final Judgment set forth below, it is thereupon:

ORDERED AND ADJUDGED that:

1. Defendant, PINELLAS COUNTY, admits that the only interest conveyed to it by the deed found at O.R. Book 6571, Page 1012, Public Records of Pinellas County, Florida, is a fee simple absolute interest in the Southwesterly 30 feet of that portion of Lot 4, Block 1 lying within 90 feet of the centerline of the A.C.L. Railroad. All according to the plat of Ulmerton as recorded in Plat Book 6, Page 31 of the Public Records of Hillsborough County, Florida of which Pinellas County was formerly a part.
2. Any interests or proposed interests shown within the sketch found at Pinellas County O.R. Book 6571, Page 1014 other than that described in the preceding paragraph were not conveyed to Defendant, PINELLAS COUNTY, by the

documents found at Pinellas County Official Records Book 6571, Pages 1012 through 1014 inclusive .

3. The Plaintiff's title to the Property:

Lot 2, Block 8 and a portion of Lot 1, Block 8, Ulmerton, according to the plat thereof as recorded in Plat Book 6, page 31, of the Public Records of Hillsborough County, Florida, of which Pinellas County was formerly a part, less road right-of-way, being more particularly described as follows:

Being at the Southwest corner of Lot 2, Block 8, of said Ulmerton; thence N 00°41'18" W, along the Westerly boundary line of said Lot 2 extended, a distance of 186.93 feet; thence, departing said Westerly boundary line run N 89°19'27" E, a distance of 296.73 feet to a point on the Westerly right-of-way line of 95th Street (66' R/W); thence S 00°40'33" E, along said Westerly right-of-way line, a distance of 193.00 feet to the Southeast corner of said Lot 2; thence departing said Westerly right-of-way line, run N 89°30'14" W, along the Southerly boundary line of said Lot 2, a distance of 296.84 feet back to the Point of Beginning.

Together with the right to use the non exclusive ingress and egress easements and the perpetual drainage easements recorded in O.R. Book 13411, page 1477; O.R. Book 13411, page 1475; O.R. Book 13411, page 1481 and O.R. Book 13411, page 1479, Public Records of Pinellas County, Florida.

is not subject to any encumbrances, easements or other interests purportedly created by the deed found at Official Records Book 6571, Page 1012, Public Records of Pinellas County, Florida.

4. Each of the parties shall bear their own fees and costs.

DONE AND ORDERED in Chambers this \_\_\_\_ day of May, 2008.

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HONORABLE LINDA R. ALLAN  
Circuit Court Judge

Copies to: Robert S. Wise, Esquire, Counsel for Plaintiff  
Donald S. Crowell, Sr. Asst. County Attorney, Counsel for Defendant

**JOINT STIPULATION TO ENTRY OF FINAL JUDGMENT**

Defendant, PINELLAS COUNTY, and Plaintiff, BH LAND ACQUISITIONS LLC, by and through their undersigned counsel, do hereby agree and stipulate to entry of the foregoing Stipulated Order Of Final Judgment in case no. 08-5439-CI-7. This agreement is made for the good faith purpose of obtaining final resolution of this matter in an expeditious manner and upon the express condition that such agreement and Stipulated Order contemplates that each of the parties shall be responsible for their own fees and costs.

Respectfully submitted this \_\_\_\_ day of May, 2008.

Robert S. Wise, P.A.

By: \_\_\_\_\_  
Robert S. Wise, Esquire  
1205 West Fletcher, Suite A  
Tampa, Florida 33612  
(813) 968-8668  
Attorney for Plaintiff  
Florida Bar No. 327220

\_\_\_\_\_  
Donald S. Crowell  
Sr. Asst. County Attorney  
315 Court Street  
Clearwater, Florida 33756  
(727) 464 3354  
(727) 464-4147 (fax)  
02069515/176230 SPN/FBN  
Attorney for Defendant  
Pinellas County