

COMMISSION AGENDA

1.14.14 # 17C

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

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Notice of New Lawsuit and Defense of the Same by the County Attorney
in the Case of Jean F. Rossignol and Patricia G. Rossignol v. Pinellas County
Circuit Civil Case No. 13-11100-CI-13

DISTRIBUTION: Virginia Holscher, Bureau Director, Risk Management
David E. Scott, Executive Director, Department of Environment & Infrastructure

DATE: January 14, 2014

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. FURTHER, THAT THERE ARE POTENTIAL COUNTERCLAIMS THAT MAY BE ASSERTED AGAINST PLAINTIFF, AND POTENTIAL THIRD PARTY CLAIMS THAT MAY BE ASSERTED AGAINST THE COUNTY'S GENERAL CONTRACTOR AND DESIGN ENGINEER.

DISCUSSION: This is an action sounding in a taking and an inverse condemnation arising from the Park Street Bridge replacement project. Cone & Graham, Inc. is the County's general contractor on the project. Kissinger Campo & Associates Corp. is the County's design engineer on the project. Plaintiffs allege that as a result of certain acts and omissions by the employees of the general contractor, portions of plaintiffs' property have been improperly taken without just compensation. The County's contracts with the general contractor and the engineer require the general contractor and the engineer defend and indemnify the County for claims arising out of the acts and omissions of their employees. During the course of the construction project it was discovered that the Plaintiffs encroached into the County's right-of-way without prior permission or approval of the County.

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

JLB:JAP

Attachment

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

JEAN F. ROSSIGNOL and
PATRICIA G. ROSSIGNOL.

Plaintiffs,

CASE NO: _____

vs.

DIV: _____

PINELLAS COUNTY, FLORIDA, a
Political Subdivision of the State of Florida,

Defendant.

_____ /

COMPLAINT

Plaintiffs, JEAN F. ROSSIGNOL and PATRICIA G. ROSSIGNOL, his wife,
(hereinafter referred to as the "Plaintiffs") by and through undersigned counsel, hereby files this
Complaint for Inverse Condemnation against and suing Defendant, PINELLAS COUNTY,
FLORIDA, a political subdivision of the State of Florida (hereinafter "PINELLAS COUNTY");
and allege:

PARTIES , JURISDICTION AND VENUE

1. This is an action for inverse condemnation for the taking of private property rights
protected under Article X, Section 6 and Article I, Section 9, of the Florida Constitution, as well as
Articles V and XIV of the United States Constitution.

2. Plaintiffs seek compensation in excess of \$15,000 for the unlawful acquisition of
its property and property rights and for deprivation of their constitutionally protected property
rights. This Court has jurisdiction under Article V, Section 5, Florida Constitution and Section
26.012, Florida Statutes.

3. Venue is proper in St. Petersburg, Pinellas County, Florida pursuant to Sections
47.011 and 47.051, Florida Statutes.

4. Plaintiffs are, and at all times pertinent to this action have been, residents of Pinellas County, Florida, whose residence is 510 Park Street North, St. Petersburg, Florida 33711, and is sui juris.

5. Defendant, PINELLAS COUNTY, is a political subdivision of the State of Florida having the power of eminent domain.

GENERAL ALLEGATIONS

6. Plaintiffs are the owners of the certain real property, located at 510 Park Street North, St. Petersburg, Pinellas County, Florida 33710 (the "Property"). The boundary survey and corresponding legal descriptions of Plaintiffs' Property are attached as composite Exhibit "A."

7. The Plaintiffs have entered into exclusive, continuous and open possession of the Property since the time it purchased the same, has since maintained the Property, and have made extensive and renovations to the improvements thereto, primarily consisting of a 10,206 square foot single family residence, an 2,572 square foot detached garage, and pool. The Property was added to the National Register of Historic Places in 1980 (Property Reference Number: 80000963). The property is listed on the National Register of Historic Places as the "Casa Coe da Sol". The Historic Property was designed and built in 1931 by famed Florida Architect Addison Mizner and is the only "Addison Mizner" home located on the West Coast of Florida. It is the last large Florida villa built by Mizner before his death in 1933. Furthermore, the property consists of a 300 foot concrete sea wall and 3 foot wide sea wall cap built in 2010.

8. Defendant, PINELLAS COUNTY, initiated construction activities to replace a bridge and culvert adjacent to 510 Park Street and Admiral Farragut Academy in St. Petersburg, Florida on approximately June 15, 2013. The project is referred to by PINELLAS COUNTY as the "Park Street Bridge Reconstruction Project" (PID: 000180A/2162). The Pinellas County Engineering Plan Profile is incorporated and attached hereto as Exhibit "B."

9. Since the project began PINELLAS COUNTY took a temporary construction easement and has been operating equipment and machinery on the Plaintiffs' property. The equipment and machinery produce vibrations causing severe cracks in the structures and finishes throughout the house. Furthermore, PINELLAS COUNTY has been occupying and working on the he Plaintiffs' sea wall which is now sinking as a result.

10. The work has further produced extremely loud noise and noxious smoke and odors making life intolerable at the residence. The work became especially intense on or about August 3, 2013. Some of the activities taking place on the temporary construction easement are (1) installing and removing steel sheet pile with hydraulically driven vibratory hammers, (2) installing concrete seawall sections by water jetting with non-isolated diesel driven pumps supplying the jetting water, (3) 24/7 dewatering activities requiring the running of non-insulated diesel engines coupled with hydraulic pumps and (4) other miscellaneous activities associated with the bridge and roadway widening work.

11. As part of the construction project at issue, PINELLAS COUNTY, unlawfully and without full compensation therefore, physically invaded and appropriated a portion of the Plaintiffs' property for the purpose of building the new culvert and bridge. PINELLAS COUNTY has operated equipment and machinery, performed labor, and physically constructed permanent improvements on the property taken.

12. PINELLAS COUNTY is a political subdivision of the State of Florida with the powers of eminent domain granted pursuant to Florida Statute. Thus, PINELLAS COUNTY has the power to acquire private property for a public purpose under Florida's eminent domain statute, Chapter 127, Florida Statutes, as a condemning authority.

13. PINELLAS COUNTY is well aware of Florida Statutes Sections 127 and 73.015, the requirements associated therewith, and the proper method of proceeding to acquire private

property under said mandates.

14. Furthermore, due to the proximity of the project to both the Plaintiffs' property and the basin, PINELLAS COUNTY was well aware the Park Street Bridge Reconstruction Project could not be constructed unless PINELLAS COUNTY physically invaded and appropriated the Plaintiffs' property.

15. Notwithstanding the foregoing and PINELLAS COUNTY'S eminent domain power, PINELLAS COUNTY decided to physically invade and appropriate the private property.

16. On or about September 23, 2013, PINELLAS COUNTY took and removed approximately 5 square feet of property from the ROSSIGNOLS' for the purpose of building permanent improvements (culvert and bridge); and physically connecting the culvert to the Plaintiffs' sea wall and property. Taking into consideration the sea wall is sinking, the results will be catastrophic.

18. PINELLAS COUNTY never sought permission from the Plaintiffs to appropriate any of the property and associated actions as set forth in this complaint.

19. The actions of PINELLAS COUNTY as set forth above are an unconstitutional, scheme to acquire the Plaintiffs' Property in complete derogation of any and all mandatory statutory procedures governing the method under which real property and property rights must be acquired by a condemning authority under the Florida Constitution and statutes.

COUNT I
PERMANENT PHYSICAL TAKING

20. The Plaintiffs reallege the allegations set forth in paragraphs 1 through 19 above, as though fully set forth herein.

21. This is an action in inverse condemnation for the taking of private property rights protected under Article X, Section 6 and Article I, Section 9, of the Florida Constitution, as well

as Articles V and XIV of the United States Constitution.

22. Plaintiffs seeks compensation in excess of \$15,000.00 for the deprivation of its constitutionally protected rights. This Court has jurisdiction under Article V, Section 5, Florida Constitution and Section 26.012, Florida Statutes.

23. As part of the Park Street Bridge Replacement Project at issue, PINELLAS COUNTY unlawfully and without payment of full compensation therefore, physically invaded and appropriated a portion of Plaintiffs' northern most property for the purpose of constructing a culvert and bridge, and physically constructed permanent improvements thereon. A boundary survey and sketch showing the property taken (highlighted) is attached Exhibit "C."

25. On or about September 23, 2013 PINELLAS COUNTY physically and permanently appropriated approximately 5 square feet of the Plaintiffs' property. PINELLAS COUNTY acknowledges this fact in the Daily Activity Report filed on September 23, 2013 when Pinellas County Inspector Jeff Stern states:

The Contractor placed 8cy (cubic yards) of concrete behind the existing sea wall on private property.

The Daily Activity Report prepared by Jeff Stern is attached hereto as Exhibit "D."

26. The permanent physical improvements constructed by PINELLAS COUNTY on Plaintiffs' subject property include concrete, sheet pilings, and steel associated with the bridge and culvert.

27. The permanent physical improvements constructed by PINELLAS further include sod and permanent fill. The sod has been replaced at least three times as necessitated by numerous and repeated invasions of the property that were intended and foreseeable.

29. As a direct and proximate result of the aforementioned taking of a portion of its subject property and construction of the project at issue, Plaintiffs' remaining property has

suffered severance damages. Plaintiffs demand full compensation for all land and improvements taken, severance damages to the remaining land and improvements, as well as full compensation for any severance damages to the remaining adjacent land and improvements which Plaintiffs own. Plaintiffs claim any such loss in value to the remaining property caused by the taking and construction of the Park Street Bridge Project, and reserve the right to prove such damages more specifically at the trial of this cause and to make such further claims as to the other further damages to the remaining property as may be appropriate.

30. Under Florida Law, Plaintiffs are entitled to be fully compensated for the aforementioned unlawful physical takings and for all resulting severance damages. Said rights cannot be taken by government without the payment of full and just compensation therefore.

31. Plaintiffs have been forced to retain the services of undersigned counsel and the service of experts to assist in the preparation of these claims, including but not limited to, appraisers, architects, engineers, contractors, consultants, photographers, land surveyors, land planners, and others for which it is also entitled to be reimbursed by PINELLAS COUNTY. Plaintiffs seek recovery from PINELLAS COUNTY of all expert witness fees, attorney's fees, costs, and other expenses necessarily incurred in the prosecution of this action.

WHEREFORE, Plaintiffs hereby respectfully requests that this court:

a. Enter an Order of Taking against PINELLAS COUNTY, declaring that, as part of the Park Street Bridge Replacement Project (PID: 000180A/2162)., PINELLAS COUNTY acquired portions of Plaintiffs' property without payment of full compensation and that Plaintiffs are entitled to secure full compensation from PINELLAS COUNTY pursuant to the laws of Florida.

b. Enter an Order of requiring PINELLAS COUNTY to appraise the property taken from Plaintiffs, together with all resulting severance damages, and to immediately thereafter

deposit said sum in the Court registry along with statutory interest.

c. Enter an Order empanelling a twelve member jury to try the issues of full compensation due Plaintiffs from the PINELLAS COUNTY.

d. Enter a post-trial Order awarding attorneys' fees, costs, and interest pursuant to the law.

e. Grant such further relief as this court deems just and proper.

COUNT II
INVERSE CONDEMNATION: TEMPORARY CONSTRUCTION EASEMENT

32. The Plaintiffs reallege the allegations set forth in paragraphs 1 through 19 above, as though fully set forth herein.

33. This is an action in inverse condemnation for the taking of private property rights protected under Article X, Section 6 and Article I, Section 9, of the Florida Constitution, as well as Articles V and XIV of the United States Constitution.

34. Plaintiffs seek compensation in excess of \$15,000.00 for the deprivation of its constitutionally protected rights. This Court has jurisdiction under Article V, Section 5, Florida Constitution and Section 26.012, Florida Statutes.

35. As part of the Park Street Bridge Replacement Project at issue, PINELLAS COUNTY unlawfully and without payment of full compensation therefore, physically invaded and appropriated a portion of Plaintiffs' northern most property for the purpose of using a temporary construction easement in connection with constructing the culvert and bridge. A boundary survey and sketch showing the temporary construction easement taken (highlighted) is attached Exhibit "E."

36. On or about June 15, 2013 PINELLAS COUNTY physically invaded and appropriated the subject property and has done so repeatedly since the inception of the project

for the purpose of operating equipment associated with the Park Street Bridge Replacement Project. In addition to occupying the property, PINELLAS COUNTY placed objects, operated and stored equipment, including but not limited to generators, structures, sensors, equipment, drainage equipment, sod, personnel, and materials, on the Plaintiffs' Property.

38. PINELLAS COUNTY could not have built the project in the right of way and was forced to use the Plaintiff's property due to various factors, including but not limited to, variable water levels in the basin and proximity to private property. PINELLAS COUNTY acknowledges this fact in the Daily Activity Report filed on September 30, 2013 when Pinellas County Inspector Jeff Stern states:

The contractor was going to jet a third pile but had to move the pump onto private property because of the outgoing tide I had them move the pump again.

The Daily Activity Report prepared by Jeff Stern is attached hereto as Exhibit "E."

39. Notwithstanding the foregoing and PINELLAS COUNTY'S eminent domain power, PINELLAS COUNTY decided to physically invade and appropriate the private property without acquiring the rights to do so.

41. Despite the Plaintiffs' requests and demand set forth above, PINELLAS COUNTY has failed and refused to cease using the property taken and continues to unlawfully, illegally and wrongfully possess Plaintiffs' property. Furthermore, the physical invasions have occurred on such a regular basis the sod covering the area has been replaced at least three times.

42. Additionally, PINELLAS COUNTY has, or in the immediate future plans on, continuing the construction of the culvert and bridge on and adjacent to the Plaintiffs' Property and, incident thereto, has, or plans to continue utilizing the property by placing objects, including but not limited to stakes, lines, structures, sensors, equipment, personnel, and materials, on the Plaintiffs' Property.

43. The Plaintiffs have become obligated to employ the services of undersigned counsel and to pay them a reasonable fee for their services, in addition to costs, expert costs and fees in connection with this action. The Plaintiffs are entitled to recover attorneys' fees and costs pursuant to Sections 73.091(2) and 73.092, Florida Statutes.

WHEREFORE, Plaintiffs hereby respectfully requests that this court:

a. Enter an Order of Taking against PINELLAS COUNTY, declaring that, as part of the Park Street Bridge Replacement Project (PID: 000180A/2162), PINELLAS COUNTY acquired portions of Plaintiffs' property without payment of full compensation and that Plaintiffs are entitled to secure full compensation from PINELLAS COUNTY pursuant to the laws of Florida.

b. Enter an Order of requiring PINELLAS COUNTY to appraise the property taken from Plaintiffs, together with all resulting severance damages, and to immediately thereafter deposit said sum in the Court registry along with statutory interest.

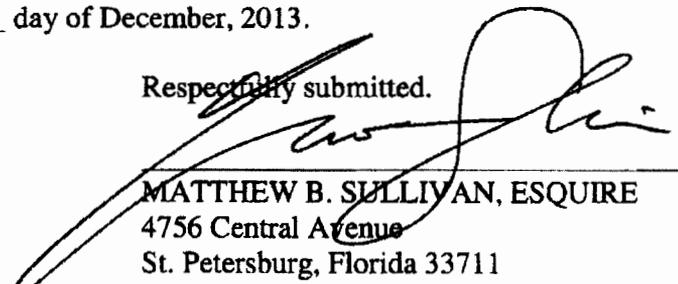
c. Enter an Order empanelling a twelve member jury to try the issues of full compensation due Plaintiffs from the PINELLAS COUNTY.

d. Enter a post-trial Order awarding attorneys' fees, costs, and interest pursuant to the law.

e. Grant such further relief as this court deems just and proper.

DATED THIS 2 day of December, 2013.

Respectfully submitted.



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