

IN THE SIXTH JUDICIAL CIRCUIT IN AND FOR
PASCO COUNTY, FLORIDA

CASE NO.

HARLAN FARMER and VIRGINIA
FARMER, his wife,

Plaintiffs,

51-2007-~~CA~~ 7191-WS
G

v.

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

Defendant.

COMPLAINT FOR INVERSE CONDEMNATION

Plaintiffs, HARLAN FARMER and VIRGINIA FARMER, his wife, (hereinafter referred to as "FARMERS") by and through their undersigned attorney, sue the Defendant, PASCO COUNTY, FLORIDA, a Political Subdivision of the State of Florida, (hereinafter referred to as "COUNTY") and allege:

1. This is a claim for inverse condemnation which is brought pursuant to Article X, Subsection 6 (a) and Article I, Section 9 of the Florida Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

2. This Court has jurisdiction pursuant to Article V, Section 5, Florida Constitution and Florida Statute 26.012. FARMERS seek full compensation and damages from the COUNTY for the unlawful appropriation and physical invasion of their constitutionally protected property rights. The compensation and damages sought herein are substantially in excess of \$15,000.00.

3. At all times material hereto, the FARMERS are and were the owners of real property located at the northeast quadrant of U. S. Highway 19 North and Springer Drive in Pasco County, Florida. Said property will hereinafter be referred to as the "SUBJECT PROPERTY" and is more particularly described in Exhibit "A", attached hereto and incorporated herein by reference.

4. PASCO COUNTY is a political subdivision of the State of Florida and, as such, is vested with the power of eminent domain.

5. In approximately September 1958, the COUNTY, through its West Pasco County Mosquito Control Division approached the FARMERS and requested permission to construct a north-south ditch inside the eastern boundary of the FARMERS' SUBJECT PROPERTY for mosquito control purposes. A copy of the Property Owners Mosquito Control Permit form for this work, dated September 16, 1958, was issued to the FARMERS which HARLAN FARMER signed and gave to the agent of the COUNTY. The COUNTY never provided a signed copy back to the FARMERS. An unsigned copy of that Permit is attached hereto as Exhibit "B" and incorporated herein by reference.

6. The aforementioned Permit contained a handwritten notation at the bottom, which was drafted by the agent of the COUNTY, which provided in relevant part "in this case, ditch along and inside East line of Lot 2, Port Richey Acres, Unit 2, to existing ditch., to clean existing ditch to U. S.19 Highway, and to refill new ditch along street on South side of Property." Said notation clearly indicated that the Permit contemplated construction of a new ditch along and inside the East line of the FARMERS' SUBJECT PROPERTY, where no ditch previously existed.

7. Said Permit further specifically provided: "Be it further understood that this agreement will not be binding in the case of future desired development of this property by owner."

8. As evidenced by the language of the subject Permit, the subsequent construction of the ditch along the eastern boundary of FARMERS' SUBJECT PROPERTY was with their express permission, which was temporary in nature and, by its own terms, was not to be binding in the case of future desired development of the SUBJECT PROPERTY by the FARMERS.

9. Pursuant to the foregoing Permit, the COUNTY later constructed a single 36-inch x 60-inch RCP conveyance structure under Springer Drive, which artificially directed and conveyed water from the south through a north-south ditch. Said ditch breached a ridgeline to the south and conveyed drainage through the FARMERS' SUBJECT PROPERTY, which would not have naturally flowed there.

10. After installation of the aforementioned culvert under Springer Drive, the COUNTY periodically approved private development projects upstream, and to the south of the SUBJECT PROPERTY, without requiring adequate stormwater retention.

11. As a result of the permitting of this upstream development, without adequate stormwater retention, and the inadequacy of the pipe referred to in Paragraph 9 hereinabove, upstream developments, including, but not limited to, the Suncoast Gateway Mobile Home Park were flooded during rain events. This fact was confirmed by County Administrator John J. Gallagher in a letter dated July 27, 2005 to Ms. Pricilla Cline regarding flooding of that Mobile Home Park. A copy of that letter,

marked Composite Exhibit "C" is attached hereto and incorporated herein by reference.

12. In Gallagher's subject letter, he stated in relevant part:

For your information, the County has identified the culvert at Rees Street and Springer Drive as a constriction in the regional drainage conveyance system. On July 26, 2005, the Board of County Commissioners authorized County staff to replace this culvert with a larger size consistent with the culverts at Ridge Road and under U. S. 19. Replacement of this culvert should significantly improve drainage in this area.

13. The Board of County Commissioners' authorization of July 26, 2005 to County staff to replace the subject culvert under Springer Drive "with a larger size consistent with the culverts at Ridge Road and under U. S. 19" was without the knowledge or permission of the FARMERS and against their will.

14. Furthermore, the COUNTY, without the permission of the FARMERS, placed large pumps adjacent to their property to convey stormwater from the ditch south of Springer Drive over the roadway and into the ditch on the FARMERS SUBJECT PROPERTY. Said pumping, which occurred during the storms of 2004, significantly increased the peak discharge rates and volumes of flow onto and through the FARMERS' SUBJECT PROPERTY.

15. As a direct and proximate result of the foregoing unauthorized flooding of FARMERS SUBJECT PROPERTY by the COUNTY, their property experienced significant flooding and erosion of the ditch, thereby significantly increasing its size and encroachment into their SUBJECT PROPERTY.

16. Sometime after October 2005, on a date unknown to the FARMERS, but well known to the COUNTY, the COUNTY, as authorized by its Board of County

Commissioners on July 26, 2005, removed the single 36-inch x 60-inch RCP from under Springer Drive and replaced it with triple 53-inch x 34-inch ERCP's, thereby substantially increasing the peak discharge rate and volume to the FARMERS' SUBJECT PROPERTY. Said new pipes provided for a flow rate of 212 cfs, which was significantly greater than the capacity of the prior single pipe.

17. Prior to construction of the aforementioned triple replacement culverts, the COUNTY was required to apply for and obtain an Environmental Resource Permit (ERP) from the Southwest Florida Water Management District (SWFWMD) and a Drainage Connection Permit from the Florida Department of Transportation (FDOT). The COUNTY undertook construction and installation of the triple replacement culverts referred to in Paragraph 16 hereinabove without obtaining the necessary ERP from SWFWMD in direct violation of Chapter 40, D-4.041 (b) F.A.C., Rules of the Southwest Florida Water Management District and Chapter 14-86, F.A.C., Rules of the Florida Department of Transportation, which has resulted in substantial erosion to the FARMERS' SUBJECT PROPERTY and an unlawful physical taking thereof.

18. On June 5, 2007, undersigned counsel sent a Certified Letter to the County's Engineer, Bipin Parikh, P.E. complaining of the unauthorized construction of the triple culverts and resulting flooding and erosion of the FARMERS' SUBJECT PROPERTY. Pursuant to the terms of the Property Owners Mosquito Control Permit attached hereto as Exhibit "B", the COUNTY was advised that the FARMERS' then wished to develop their SUBJECT PROPERTY. Said letter also formally revoked the permission granted in the subject Permit attached hereto as Exhibit "B" and demanded that the COUNTY restore the SUBJECT PROPERTY to its pre-existing condition to

accommodate the planned development thereof. A copy of said notice letter is attached hereto as Composite Exhibit "D" and incorporated herein by reference.

19. On September 25, 2007, after a series of discussions with the COUNTY, Assistant County Attorney, Nicki H. Spirtos, sent undersigned counsel a letter denying any liability for the foregoing activities. A copy of that denial is attached hereto as Exhibit "E" and incorporated herein by reference.

20. As evidenced in Gallagher's letter of July 27, 2005, attached hereto as Composite Exhibit "C", the COUNTY has designated the culverts under Springer Drive and the ditch on the FARMERS' SUBJECT PROPERTY as part of its "Regional Drainage Conveyance System." Accordingly, the COUNTY has unlawfully appropriated a portion of the FARMERS' SUBJECT PROPERTY for a public purpose without the payment of just compensation therefore, in direct violation of Article X, Subsection 6 (a) of the Florida Constitution.

21. More specifically, the COUNTY has unlawfully taken and appropriated a drainage easement over and through the portion of the FARMERS' SUBJECT PROPERTY currently encumbered by the ditch and has also appropriated adjacent portions of the FARMERS' property which have periodically flooded as a result of the COUNTY'S utilization of the SUBJECT PROPERTY for stormwater drainage and retention.

22. Because of the nature and extent of the physical appropriation and utilization of the portion of the FARMERS' property encumbered by the ditch, it is tantamount to a taking of the fee simple interest therein.

23. As a further direct and proximate result of the COUNTY'S unlawful physical taking of private property and property rights from the FARMERS, the remaining portion of their parent tract has been severally damaged and depreciated in value and has been rendered unsuitable for development for its highest and best legally permissible use, to wit: commercial development.

24. A further damage to the FARMERS' SUBJECT PROPERTY and parent tract is the bifurcation of said property caused by the alignment and expansion of the ditch caused by erosion.

25. There are no administrative remedies available to FARMERS for the COUNTY'S unlawful taking and they have performed all conditions precedent to the bringing of this action, including the demand letter attached hereto as Exhibit "D".

26. As a direct and proximate result of the COUNTY'S physical taking of a portion of FARMERS' SUBJECT PROPERTY for the conveyance of public stormwater and the severance damages to the remainder of their SUBJECT PROPERTY caused by the taking, FARMERS have been required to retain the services of the undersigned attorney to prosecute this action and they have become obligated to pay him a reasonable fee for his services, for which they look to the COUNTY for reimbursement. Additionally, it will be necessary for FARMERS to retain the services of experts to assist in the preparation of these claims, including, but not limited to, real estate appraisers, architects, engineers, contractors, photographers, land surveyors, land planners, and others for which they are also entitled to be reimbursed by the COUNTY. FARMERS seek recovery from the COUNTY of all their expert witness

fees, attorney's fees, costs and other expenses necessarily incurred in the prosecution of this action.

WHEREFORE, Plaintiffs, HARLAN FARMER and VIRGINIA FARMER, his wife, pray the Court will:

1. Enter an Order of Taking against the Defendant, PASCO COUNTY, FLORIDA, declaring that the COUNTY has physically and permanently acquired the portion of the FARMERS' SUBJECT PROPERTY encumbered by the COUNTY'S drainage ditch, without the payment of full and just compensation therefore, and that FARMERS' are entitled to secure full compensation from the COUNTY, pursuant to the laws and Constitution of Florida and the U. S. Constitution.

2. Enter an Order requiring the COUNTY to survey and determine the exact amount of property and legal description of the property which it has physically appropriated from the FARMERS for the drainage ditch.

3. Enter an Order requiring the COUNTY to appraise the value of the aforementioned Drainage Easement taken from FARMERS, together with severance damages to their remaining property caused by the taking and to immediately thereafter deposit said sum into the Court Registry, together with interest thereon from the date of taking.

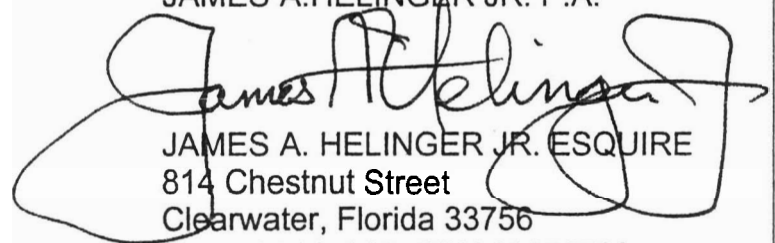
4. Empanel a jury to determine full compensation for the unlawful taking of said property and property rights from FARMERS by the COUNTY, including severance damages to their remaining property and improvements constructed thereon.

5. Impose statutory interest on the award from the effective date of taking.

6. Enter an Order awarding all fees and costs necessarily incurred by the FARMERS, in the prosecution of this action, including a reasonable fee for the services of their undersigned attorney.

DATED this 17th day of December, 2007.

LAW OFFICES OF
JAMES A. HELINGER JR. P.A.



JAMES A. HELINGER, JR. ESQUIRE
814 Chestnut Street
Clearwater, Florida 33756
FBN: 00145200 SPN 00063793
727-443-5373

PRINTED BY LAWYERS' TITLE GUARANTY FUND, ORLANDO, FLORIDA

Warranty Deed

SAM Y. ALLGOOD, JR.
Attorney at Law
122 WEST MAIN STREET
NEW PORT RICHEY, FLORIDA

STATUTORY

This Indenture, Made this *8th* day of _____, A. D. 19 60, Between
GEORGE I. MELTER, individually and as Attorney in Fact for HATTIE MELTER,
his wife of the county of Nassau, State of New York, part 1es of the first part, and
M. HARLAN FARMER and VIRGINIA FARMER, his wife
whose post office address is Route #1, Box #1474, Port Richey,
of the County of Pasco, in the State of Florida, part 1es of the second part.

Witnesseth, That the said parties of the first part, for and in consideration of the sum of
-----TEN----- Dollars,
and other good and valuable considerations to them in hand paid by said parties of the second part, the receipt
whereof is hereby acknowledged, have granted, bargained and sold to the said part 1es of the second part,
heirs and assigns forever, the following described land, situate, lying and being in the County of Pasco
in the State of Florida, to-wit:

Lots One (1) and Two (2), Block "A", Unit #2, PORT RICHEY
ACRES SUBDIVISION, Pasco County, Florida; said lots, block,
unit, and subdivision being numbered and designated in
accordance with the plat of said subdivision which appears
of record in Plat Book 6, page 2 of the Public Records of
Pasco County, Florida.

RECORDED AND
INDEXED
MAY 11 1961 PM 2:07
Clerk of Circuit Court
CLERK OF CIRCUIT COURT



and the said part 1es of the first part do hereby fully warrant the title to said land, and will defend the
same against the lawful claims of all persons whomsoever.

In Witness Whereof, The said part 1es of the first part have hereunto set their hands and
seals the day and year first above written.
Signed, sealed and delivered in our presence:

George I. Melter
M. Harlan Farmer

Sam Y. Allgood, Jr. (Seal)
Individually and as Attorney in
Fact for HATTIE MELTER, his wife.

(Seal)

(Seal)

STATE OF FLORIDA
COUNTY OF PASCO
I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments.

PROPERTY OWNERS MOSQUITO CONTROL PERMIT

Having been duly informed of the mosquito breeding problems in Pasco County, the undersigned hereby grants permission to the West Pasco County Mosquito Control Division:

ste * The right to do what they deem necessary in the line of ditching, filling, grading, spraying and making necessary roads, etc., to make mosquito control more effective. In accordance with ditching or grading plans as submitted and marked Project No. 5. Also the right of ingress and egress to my property to do this work and to maintain same.

The above mentioned operations to be exclusively for mosquito control measures and consistent with practical engineering.

It is clearly understood the expense of above mentioned operations will be paid for by the West Pasco County Mosquito Control Division, and will place the undersigned under no financial obligation.

Be it further understood that this agreement will not be binding in the case of future desired development of this property by owner.

Please execute and return to:

PASCO MOSQUITO CONTROL
P. O. Box 91
PORT RICHEY, FLORIDA

Legal Description of Property:

Range: 16 E.

Township: 25 S.

Section: 28

Owner: Mr. Harlan Farmer

Signed:

Date: September 16, 1958

Note: in this case, ditch along and inside East line of Lot 2, Port Richey acres, unit 2, to existing ditch., to clean existing ditch to U.S. 19 Highway AND TO REFILL NEW DITCH ALONG STREET ON SOUTH SIDE OF PROPERTY

Signed:



PASCO COUNTY, FLORIDA

DADE CITY 352 521-4274
LAND O'LAKES 813 996-7341
WEST PASCO 727 847-8115
FAX 727 815-7010

COUNTY ADMINISTRATOR'S OFFICE
WEST PASCO GOVERNMENT CENTER
7530 LITTLE ROAD, SUITE 340
NEW PORT RICHEY, FL 34654-5598
E-MAIL: padmin@pascocountyfl.net

July 27, 2005

Ms. Priscilla Cline
6120 Cheers Drive
Port Richey, FL 34664

RECEIVED

AUG 05 2005

Re: Suncoast Gateway Mobile Home Park

Dear Ms. Cline:

As you are aware, the County received grant funding from the Natural Resources Conservation Service (NRCS), to remove storm-related debris from designated drainage channels. Storm debris is generally defined as downed trees and branches. The NRCS has allowed the County to also remove vegetation that has accumulated around the debris. Additionally, in some instances it has been necessary to remove sediment in the channel in order to reach the debris. The work in the Magnolia Valley Drainage Conveyance System is almost complete.

The stormwater retention pond owned and maintained by the Suncoast Gateway Mobile Home Park does not have any storm-related debris, therefore the County is not allowed to use NRCS funds to clean the pond. If the residents and management of the MHP are concerned about sediment in the pond, they are encouraged to hire a firm to complete the desired work.

The culvert under Ridge Road is also not blocked by storm-related debris and therefore, NRCS funds cannot be utilized. However, Ridge Road is County-maintained, as is the culvert. The Public Works Department has cleaned the culvert this summer and they will continue to inspect and maintain the culvert as necessary.

For your information, the County has identified the culvert at Rees Street and Springer Drive as a constriction in the regional drainage conveyance system. On July 26, 2005, the Board of County Commissioners authorized County staff to replace this culvert with a larger size consistent with the culverts at Ridge Road and under U.S. 19. Replacement of this culvert should significantly improve drainage in this area.

PLAINTIFFS' COMPOSITE EXHIBIT "C"

If you have any questions or require additional information, please contact Michele L. Baker, Program Administrator for Engineering Services at (727) 847-8140, Extension 8756.

Sincerely,



John J. Gallagher
County Administrator

JJG/MLB/d/enl05090

cc: The Honorable Mike Fasano, State Senator, District 11, 8217 Massachusetts Avenue,
New Port Richey, FL 34653-3111
Bipin Parikh, P.E., Assistant County Administrator (Development Services)
Michele L. Baker, Program Administrator for Engineering Services
File (MLB)

Law Offices of
JAMES A. HELINGER, JR., P. A.
814 CHESTNUT STREET
CLEARWATER, FLORIDA 33756

JAMES A. HELINGER, JR

TELEPHONE (727) 443-5373
FAX (727) 443-3643
helingerlaw@aol.com

June 5, 2007

Bipin Parikh, P.E.
Pasco County
7530 Little Road
New Port Richey, Florida 34654

RE: My Clients: Mr. and Mrs. Harlan Farmer
Illegal Flooding by Pasco County of their
property located in the NE Quadrant of
U. S. 19 and Springer Drive
Port Richey, Florida

Dear Mr. Parikh:

I have been retained by Mr. and Mrs. Harlan Farmer in connection with Pasco County's unlawful flooding and erosion of their above referenced property resulting from Pasco County's construction of significant culverts under Springer Drive. A review of records of the Southwest Florida Water Management District indicate that the construction of the foregoing culverts was undertaken without a proper application to , or the issuance of a permit by that agency.

Dating back to September 16, 1958, Mr. and Mrs. Farmer were approached by the West Pasco County Mosquito Control Division to allow it to create a small ditch through their subject property for mosquito control purposes. A copy of that Permit is attached hereto for your information and reference. Of particular importance is the last provision of this permit which provides "**Be it further understood that this agreement will not be binding in the case of future desired development of this property by owner.**" The initial ditch was created with the express permission of my clients and Pasco County accordingly never acquired any prescriptive rights thereto.

My clients now wish to develop their property. Toward this end, they recently entered into a contract to sell the property for commercial development. Unfortunately, because of the unlawful appropriation by Pasco County of a significant portion of my clients' property for public drainage, the ditch has frustrated and precluded my clients' development efforts and the contract fell through.

This letter will serve as a formal revocation of the previously granted Property Owners Mosquito Control Permit dated September 16, 1958. Furthermore, demand is hereby

Bipin Parikh, P.E.
Page Two
June 5, 2007

made that Pasco County immediately restore the property to its pre-existing condition by eliminating the ditch which now bisects their property. With the unauthorized construction of additional culverts in 2006, the outfall through my clients' property has caused significant erosion. Accordingly, time is of the greatest essence in resolving this problem.

Pursuant to Section 119.07, Florida Statutes, this letter will also serve as a request for all of Pasco County's records regarding the installation of the subject culverts under Springer Drive. This request includes, but is not limited to the following documents:

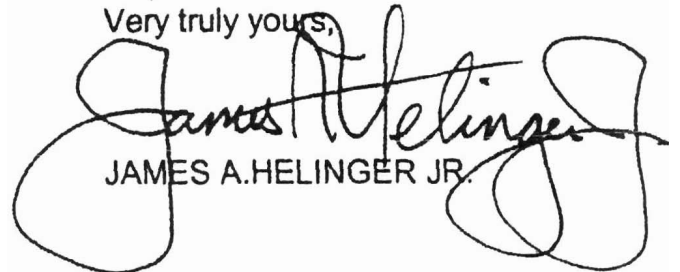
1. Any and all applications to the Southwest Florida Water Management District for the construction of any culverts under Springer Drive.
2. Any and all permits issued by the Southwest Florida Water Management District to Pasco County for construction of any culverts under Springer Drive.
3. Any and all drainage calculations utilized to size the subject culverts.
4. All contracts for the construction of the subject culverts under Springer Drive.
5. All correspondence received, or made by Pasco County, in connection with drainage or flooding complaints which led to the construction of the original culvert under Springer Drive and the subsequent construction of additional culverts in 2006.
6. All studies made or received by Pasco County in connection with upstream flooding or the construction of the subject culverts under Springer Drive.
7. All maintenance records for the subject culverts under Springer Drive.

Because of the significant erosion being suffered by my clients due to the construction of the additional culverts, I must request that the County advise me within fifteen (15) days from the date of this letter regarding its intentions to cease and desist from draining across my clients' property and restoring it to its pre-existing condition to accommodate planned development of the property. In the event that I do not receive a timely response, then it will be my intention to immediately initiate an Inverse Condemnation suit against Pasco County.

Bipin Parikh, P.E.
Page Three
June 5, 2007

I hope and trust that the County will govern itself accordingly and correct this abuse of my clients' property and property rights. Should you have any questions or comments, please call me immediately.

Very truly yours,



JAMES A. HELINGER JR.

JAHjr:jr

cc: Mr. and Mrs. Harlan Farmer
Mr. and Mrs. Otto Weiner
George Psetas, Esquire
Mr. Mark Ceraolo
Robert Sumner, Esquire
Marcie McDonie, Esquire
John Gallagher, County Administrator
Wojciech M. Mroz, P.E.-Southwest Florida Water Management District
Board of County Commissioners

Encl.

CERTIFIED MAIL/RETURN RECEIPT

PROPERTY OWNERS MOSQUITO CONTROL PERMIT

Having been duly informed of the mosquito breeding problems in Pasco County, the undersigned hereby grants permission to the West Pasco County Mosquito Control Division:

ste * The right to do what they deem necessary in the line of ditching, filling, grading, spraying and making necessary roads, etc., to make mosquito control more effective. In accordance with ditching or grading plans as submitted and marked Project No. 5. Also the right of ingress and egress to my property to do this work and to maintain same.

The above mentioned operations to be exclusively for mosquito control measures and consistent with practical engineering.

It is clearly understood the expense of above mentioned operations will be paid for by the West Pasco County Mosquito Control Division, and will place the undersigned under no financial obligation.

Be it further understood that this agreement will not be binding in the case of future desired development of this property by owner.

Please execute and return to:

PASCO MOSQUITO CONTROL
P. O. Box 91
PORT RICHEY, FLORIDA

Legal Description of Property:

Range: 16 E.

Township: 25 S.

Section: 28

Owner: Mr. Harlan Farmer

Signed:

Date: September 16, 1958

Note: in this case, ditch along and inside East line of Lot 2, Port Richey acres, unit 2, to existing ditch., to clean existing ditch to U.S. 19 Highway. AND TO REFILL NEW DITCH ALONG STREET ON SOUTH SIDE OF PROPERTY

Signed: _____



SEP 27 2007

PASCO COUNTY, FLORIDA

OFFICE OF THE COUNTY ATTORNEY

Robert D. Sumner
County Attorney

Barbara L. Wilhite
Chief Assistant County Attorney

September 25, 2007

Mr. James A. Helinger, Jr.
James A. Helinger, Jr., P.A.
814 Chestnut Street
Clearwater, Florida 33756

Re: Farmer Property and Weiner Property
U.S. 19 and Springer Drive, Port Richey, Florida

W. Elizabeth Blair
Jane M. Fagan
David A. Goldstein
Marcie McDonie
Joseph D. Richards
Anthony M. Salzano
Nicki H. Spirtos
Timothy S. Steele
Kristi Wooden

Dear Mr. Helinger:

In my letter to you dated July 31, 2007, I suggested that you, your clients and their consultants, together with County staff, and I, meet to discuss these issues in further detail.

I will be more than willing to review any factual and/or legal basis for your claim. To date, however, you have not provided any support for why the County would reroute the historical flow of water off of your clients' properties. Your original letter made the claim that the ditch was dug by Pasco County Mosquito Control. The document that you sent to us specifically states it is for permission to clean an existing ditch. Therefore, your assertion is false.

Even assuming, for the sake of argument, that the County dug the ditch in the 1950's (for which you've provided no factual support), what legal support do you have that the historical flow should be changed today, in 2007, fifty years later? And what legal support do you have that the statute of limitations has not run?

I remain willing to receive any information that would support your position. Should you wish to meet to discuss these issues, please do not hesitate to contact me.

Sincerely,

Nicki H. Spirtos
Assistant County Attorney

NHS/cgg

PLAINTIFFS EXHIBIT "E"