

**IN THE CIRCUIT COURT OF THE
SIXTEEN JUDICIAL CIRCUIT IN AND
FOR MONROE COUNTY**

**THOMAS F. COLLINS and PATRICIA COLLINS, T/E;
DONALD DAVIS; AURELIA DEL VALLE and MARIA
DEL VALLE, T/E; HILL FAMILY INVESTMENTS, INC.;
RICHARD J. JOHNSON and JOANN C. JOHNSON, TIE;
ROBERT A. LOMRANCE; JOSEPH MAGRINI and ELDA
S. MAGRINI, TIE; KEITH P. RADENHAUSEN; FRANK J.
SCHNEIDER, MARY ANN RICKLIN and ROSEMARY
RIORDAN, T/C; HUBERT TOST and MARILYN TOST,
T/E and SAMUEL L. BURSTYN, P.A.**

Plaintiffs,

vs.

**MONROE COUNTY, a Political Subdivision of the State of
Florida,**

Defendant.

CASE NO. CA-M-04-379

ANSWER

Defendant, MONROE COUNTY, by undersigned counsel answers the First Amended Complaint and alleges:

1. The jurisdictional and venue allegations of paragraph 1 are admitted. Defendant denies each and every allegation of paragraph 1 not herein expressly admitted.
2. The jurisdictional and venue allegations of paragraph 2 are admitted. Defendant denies each and every allegation of paragraph 2 not herein expressly admitted.
3. Paragraph 3 contains legal conclusions that require no answer. To the extent that paragraph 3 is deemed to contain allegations of fact, the same are denied.

PARTIES

4. Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 4, and based on said lack of knowledge or information denies said allegations.
5. Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 5, and based on said lack of knowledge or information denies said allegations.

6. Defendant admits that the Board of Commissioners of Monroe County is the governing body of Defendant. Except as so admitted, Defendant denies each and every allegation in paragraph 6.

SUBJECT PROPERTIES

7. Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 7, and based on said lack of knowledge or information denies said allegations.

8. Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 8, and based on said lack of knowledge or information denies said allegations.

9. Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 9, and based on said lack of knowledge or information denies said allegations.

10. Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 10, and based on said lack of knowledge or information denies said allegations.

11. Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 11, and based on said lack of knowledge or information denies said allegations.

12. Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 12, and based on said lack of knowledge or information denies said allegations.

13. Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 13, and based on said lack of knowledge or information denies said allegations.

14. Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 14, and based on said lack of knowledge or information denies said allegations.

15. Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 15, and based on said lack of knowledge or information denies said allegations.

16. Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 16, and based on said lack of knowledge or information denies said allegations.

17. Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 17, and based on said lack of knowledge or information denies said allegations.

18. Paragraph 18 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 18, and based on said lack of knowledge or information denies said allegations.

19. Paragraph 19 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 19, and based on said lack of knowledge or information denies said allegations.

20. Paragraph 20 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 20, and based on said lack of knowledge or information denies said allegations.

21. Paragraph 21 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge

or information to admit or deny the allegations of paragraph 21, and based on said lack of knowledge or information denies said allegations.

22. Paragraph 22 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 22, and based on said lack of knowledge or information denies said allegations.

23. Paragraph 23 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 23, and based on said lack of knowledge or information denies said allegations.

24. Paragraph 24 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 24, and based on said lack of knowledge or information denies said allegations.

25. Paragraph 25 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 25, and based on said lack of knowledge or information denies said allegations.

26. Paragraph 26 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 26, and based on said lack of knowledge or information denies said allegations.

27. Paragraph 27 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 27, and based on said lack of knowledge or information denies said allegations.

28. Paragraph 28 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 28, and based on said lack of knowledge or information denies said allegations.

29. Paragraph 29 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 29 and based on said lack of knowledge or information denies said allegations.

30. Paragraph 30 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 30, and based on said lack of knowledge or information denies said allegations.

31. Paragraph 31 contains legal conclusions that require no answer. To the extent that such allegations are deemed to contain allegations of fact, Defendant lacks sufficient knowledge or information to admit or deny the allegations of paragraph 31, and based on said lack of knowledge or information denies said allegations.

32. Defendant denies each and every allegation of paragraph 32.

33. Defendant denies each and every allegation of paragraph 33.

COUNT I

34. Defendant re-alleges and incorporates by reference its answers to paragraphs 4 through 33 with the same force and effect as if fully setout herein.

35. Defendant denies each and every allegation of paragraph 35.

36. Defendant denies each and every allegation of paragraph 36.

37. Defendant denies each and every allegation of paragraph 37.

38. Defendant denies each and every allegation of paragraph 38.

39. Defendant denies each and every allegation of paragraph 39.

40. Defendant denies each and every allegation of paragraph 40.

41. Defendant denies each and every allegation of paragraph 41.

42. Defendant denies each and every allegation of paragraph 42.

43. Defendant denies each and every allegation of paragraph 43.

COUNT II

44. Defendant re-alleges and incorporates by reference its answers to paragraphs 4 through 33 and paragraphs 35 through 42 with the same force and effect as if fully set out herein.

45. Defendant denies each and every allegation of paragraph 45.

COUNT III

46. Defendant re-alleges and incorporates by reference its answers to paragraphs 4 through 33 and paragraphs 35 through 42 with the same force and effect as if fully set out herein.

47. Defendant denies each and every allegation of paragraph 47.

48. Defendant lacks sufficient knowledge or information regarding obligations of and between Plaintiffs' and attorneys James S. Mattson and Andrew M. Tobin and therefore denies same. Paragraph 48 contains legal conclusions that require no answer. To the extent that paragraph 48 is deemed to contain allegations of fact, the same are denied. Defendant denies each and every allegation of paragraph 48 not herein expressly admitted.

49. Paragraph 49 contains legal conclusions that require no answer. To the extent that paragraph 49 is deemed to contain allegations of fact, the same are denied.

50. Paragraph 50 contains legal conclusions that require no answer. To the extent that paragraph 50 is deemed to contain allegations of fact, the same are denied.

51. Defendant denies each and every allegation contained in paragraphs 1 through 50 of Plaintiffs' First Amended Complaint except those hereinbefore expressly admitted.

52. Defendant denies the authenticity, relevancy, and materiality of any documents referred to in Plaintiffs' First Amended Complaint.

**FIRST DEFENSE
FAILURE TO STATE A CLAIM**

53. Plaintiffs' First Amended Complaint fails to allege facts sufficient to state a cause of action against Defendant, and fails to state a claim upon which relief can be granted against Defendant, so that Plaintiffs' First Amended Complaint should be dismissed.

**SECOND DEFENSE
FAILURE TO STATE A CLAIM — NO JUSTICIABLE CONTROVERSY**

54. Plaintiffs' First Amended Complaint fails to allege a justiciable controversy, so that Plaintiffs' First Amended Complaint should be dismissed.

**THIRD DEFENSE
SUBJECT MATTER JURISDICTION - MOOTNESS**

55. The Court lacks subject matter jurisdiction because the case is moot. Plaintiffs invoked an administrative remedy that resulted in the recommended purchase of Plaintiffs' properties and which results in all further issues in this matter being moot.

**FOURTH DEFENSE
SUBJECT MATTER JURISDICTION – NO CASE IN CONTROVERSY**

56. The Court lacks subject matter jurisdiction because there is no case in controversy.

**FIFTH DEFENSE
SUBJECT MATTER JURISDICTION – RIPENESS**

57. The Court lacks subject matter jurisdiction because Plaintiffs' claims are premature and not ripe.

- a. Plaintiffs have not demanded offers from Defendant, despite Defendant's recommendation that Plaintiffs' properties be purchased;
- b. Defendant did not make a final decision regarding development approval of Plaintiffs' properties;
- c. Plaintiffs have not submitted applications for development, nor exhausted the administrative remedies required as a constitutional requisite for filing a taking claim;

- d. Plaintiffs have not prepared a Habitat Conservation Plan (HCP) as required by the U.S. Fish and Wildlife Service;
- e. Plaintiffs have not sought administrative relief or exemptions available pursuant to Chapter 163, Florida Statutes; and
- f. Plaintiffs were not barred from applying for and pursuing administrative relief and development approval of the subject properties during the period of the "Temporary and Permanent Takings" alleged by Plaintiffs. At least two Plaintiffs have applications for development pending or approved.

**SIXTH DEFENSE
STATUTE OF LIMITATIONS**

58. Plaintiffs' First Amended Complaint is barred by the Statute of Limitations. Taking claims must be filed within four (4) years of their accrual or they are barred. Plaintiffs' claims therefore are barred, whether based upon a taking allegedly resulting from (a) the beneficial use process initiated by Plaintiffs in 1997; or (b) other regulations adopted prior to the beneficial use determinations.

**SEVENTH DEFENSE
STANDING**

59. Upon information and belief, all Plaintiffs do not have standing to bring this action.

**EIGHTH DEFENSE
ESTOPPEL**

60. Plaintiffs are barred and precluded from maintaining this action by virtue of estoppel. All Plaintiffs made an application for beneficial use determinations and received a recommendation for purchase. Defendant relied upon Plaintiffs' choice of remedy, did not take further remedial actions, and therefore Plaintiffs are estopped from maintaining this action.

**NINTH DEFENSE
WAIVER**

61. Plaintiffs have waived all legal and equitable right to maintain this action or to be awarded damages in excess of compensation provided by the beneficial use determination

regulations. Plaintiffs pursued the administrative remedy of beneficial use in lieu of applying for development approval. Further, Plaintiffs did not allege any delay, or taking by virtue of delay, in the administration of the beneficial use process. Finally, Plaintiffs did not contest Defendant's recommendation of purchase, which resulted from the beneficial use determination procedure invoked by Plaintiffs. Accordingly, Plaintiffs have waived any claim that the beneficial use process resulted in a taking of property without just compensation.

**TENTH DEFENSE
LACHES**

62. Plaintiffs First Amended Complaint is barred by laches by reason of the unreasonable delay that Plaintiffs created (a) by failing to seek administrative relief or to pursue applications for development approval prior to applying for relief pursuant to the beneficial use process; (b) by delaying the expeditious processing of beneficial use determinations; (c) by failing to demand an offer of purchase following the beneficial use determinations of Defendant; and (d) by the untimely filing of this action.

**ELEVENTH DEFENSE
FAILURE TO JOIN INDISPENSABLE PARTIES**

63. Plaintiffs have failed to join all parties needed for a just adjudication in that Plaintiffs have failed to join the State of Florida and the United States. The complained of regulatory and administrative actions of Defendant resulted from state-and federally-mandated land use and environmental requirements.

**TWELFTH DEFENSE
IMPROPER PARTIES**

64. Upon information and belief, Plaintiffs have improperly joined persons as Plaintiffs where such persons may not have common issues of law and/or fact.

**THIRTEENTH DEFENSE
PARTIES IN INTEREST**

65. Upon information and belief, all Plaintiffs are not real parties in interest.

**FOURTEENTH DEFENSE
NUISANCE**

66. The complained of actions of Defendant prevent a nuisance and were necessary to comply with Federal, State, and County laws.

**FIFTEENTH DEFENSE
CONTRIBUTORY CAUSE**

67. If there was delay in processing Plaintiffs' beneficial use determination applications, which Defendant denied and continues to deny, then any such delay was caused or contributed to by the actions or inactions of Plaintiffs.

68. If Plaintiffs were injured or damaged as alleged, which Defendant denied and continues to deny, then the same was caused or contributed to by the actions or inactions of Plaintiffs.

RESERVATION

Defendant reserves the right to plead additional, different, and further defenses learned through discovery or otherwise.

IMMATERIAL PLEADINGS

Pursuant to Fla.R.Civ.P. 1.140(f), the Court should strike all references to court decisions found in paragraphs 33, 35, 38, 39, 42, 45, and 49 of the First Amended Complaint.

WHEREFORE, having fully answered Plaintiffs' First Amended Complaint, Defendant prays that the same be dismissed, that Plaintiffs take nothing thereby, for its costs and expenses herein expended and incurred and for such other and further relief as the Court deems fair in the premises.

/s/
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