

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF FLORIDA, IN
AND FOR MONROE COUNTY

THOMAS F. COLLINS, *et al.*,

Plaintiffs,

vs.

MONROE COUNTY, *et al*

Defendants.

CASE NO. CA-M-04-379

**PLAINTIFFS' MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT
BY INTERLINEATION**

Plaintiffs move for an Order permitting amendment of their First Amended Complaint by interlineation. The purpose of this amendment is to conform to the U.S. Supreme Court's decision in *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (May 23, 2005), decided six months after the First Amended Complaint was filed.

By separate notice served simultaneously with this motion, Plaintiffs have abandoned their claim for temporary regulatory taking damages for Monroe County's five-to-seven year delay in rendering Beneficial Use Determinations to Plaintiffs. The abandonment of those claims is indicated by conforming amendments to paragraphs 40, 42, and 43 in the First Amended Complaint.

As amended, Paragraphs 34 – 45 of the First Amended Complaint will read as follows (stricken matter is ~~struck through~~, new matter underscored).

COUNT 1 – Temporary Regulatory Taking

34. Plaintiffs re-allege Paragraphs 4 through 33 as if set forth herein.

35. The application of a general zoning law to particular property effects a Taking if the ordinance ~~does not substantially advance legitimate state interests, see *Nectow v. Cambridge*, 277 U.S. 183, 188 (1928), or~~ denies an owner economically viable use of his land, see *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 138, n. 36 (1978). ~~*Agins v. City of Tiburon*, 447 U.S. 255 (1980).~~

36. The time between Plaintiffs' applications for Beneficial Use Determinations and the Defendant's final decisions thereon varied from 5.2 to 7.2 years.

37. The regulations cited by Defendant, in its Resolutions stating Plaintiffs had been deprived of all beneficial use of the Subject Properties, did not materially change between the dates Plaintiffs applied for said determinations and the dates Defendant rendered same.

38. Taking five to seven years to render a Beneficial Use Determination is not a “normal permitting delay,” as that phrase was used by the U.S. Supreme Court in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987).

39. A five to seven year delay in rendering a Beneficial Use Determination does not substantially advance a legitimate state interest. *Agins v. City of Tiburon*, 447 U.S. 255 (1980).

40. Temporary Regulatory Takings of Plaintiffs’ Subject Properties began on the dates Plaintiffs’ ~~applied for~~ Beneficial Use Determinations were rendered.

41. Plaintiffs are entitled to Just Compensation from ~~January 3, 1997~~ the date each Plaintiff’s Beneficial Use Determination was rendered, until the Temporary Taking ends, which will occur when Monroe County either acquires the fee simple title to, or rescinds the offending regulations and allows the development of, the Subject Properties.

42. The compensation to which Plaintiffs are entitled is the full and perfect equivalent of the property taken. *Monongahela Navigation Co. v. United States*, 148 U.S. 312 (1893). This compensation rests on equitable principles and it means substantially that the owner shall be put in as good position pecuniarily as he would have been if his property had not been taken. *Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299 (1923).

43. Defendant is liable to Plaintiffs for Just Compensation for the aforesaid Temporary Regulatory Takings in an amount equal to the Market Rate of Return Plaintiffs could have earned on a sum of money equal to the Fair Market Value each property would have had ~~on~~ January 3, 1997 the date each Plaintiff’s Beneficial Use Determination was rendered, to be determined by a 12-person jury as if there were no Monroe County regulations impeding the immediate development of each Subject Property at its Highest and Best Use, nor any restrictions imposed by any other governmental body acting in collaboration with, or at the request of, Monroe County, minus the Fair Market Value of each property on ~~January 4, 1997~~ the date each

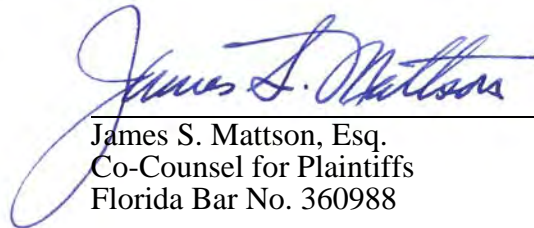
Plaintiff's Beneficial Use Determination was rendered, as encumbered by the regulations cited by Defendant as having deprived Plaintiffs of all beneficial use, said Market Rate of Return to be compounded annually until the Temporary Takings of said properties have ended and Plaintiffs have been paid.

COUNT 2 – Permanent Regulatory Taking

44. Plaintiffs re-allege Paragraphs 4 – 33 and 35 – 42 as if set forth herein.

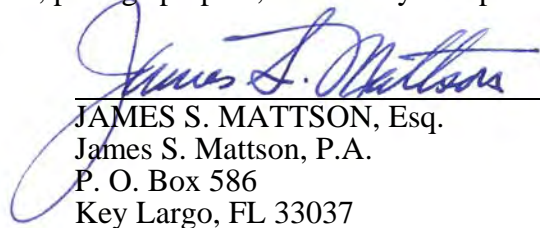
45. Defendant is liable to Plaintiffs for Just Compensation for a Permanent Regulatory Taking of Plaintiffs' properties identified in Paragraphs 7-17 above. *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). Said compensation is equal to the Fair Market Value of the Subject Properties as on the date of the trial in this action, or the date Defendant acquires fee simple title to the Subject Properties, whichever occurs first, said Fair Market Value to be determined by a 12-person jury as if there were no Monroe County regulations impeding the immediate development of each properties at its highest and best use, nor any restrictions imposed by any other governmental body acting in collaboration with, or at the request of, Monroe County.

WHEREFORE, Plaintiffs respectfully pray for an Order GRANTING their Motion for Leave to Amend the First Amended Complaint by Interlineation, as shown in the body of the motion.


James S. Mattson, Esq.
Co-Counsel for Plaintiffs
Florida Bar No. 360988

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing on **Robert Shillinger, Esq.**, Assistant Monroe County Attorney, P.O. Box 1026, Key West, FL 33041-1026, **Robert H. Freilich, Esq.**, Paul, Hastings, et al., 515 S Flower St FL 25, Los Angeles, CA 90071-2201, **Stephen J. Moore, Esq.**, 1500 Traders on Grand Bldg, 1125 Grand Blvd, Kansas City, MO 64106-2511, and **Jonathan A. Glogau, Esq.**, Special Counsel, PL-01 The Capitol, Tallahassee, FL 32399-1050, by facsimile transmission, and by first-class mail, postage prepaid, this 5th day of April 2006.



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