

IN THE CIRCUIT COURT OF THE 16<sup>TH</sup>  
JUDICIAL CIRCUIT OF THE STATE OF  
FLORIDA IN AND FOR MONROE COUNTY

CASE NO: 2005-CA-314-M

**JEANINE I. MCCOLE, as Trustee,**

**Plaintiff**

**Vs.**

**CITY OF MARATHON,**

**Defendant**

**Vs.**

**STATE OF FLORIDA,**

**Third Party Defendant**

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**ORDER GRANTING DEFENDANTS' JOINT MOTION FOR SUMMARY  
JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SANCTIONS**

**THIS MATTER** came on to be heard upon Defendants **CITY OF MARATHON** and **STATE OF FLORIDA'S** Joint Motion for Summary Judgment. The Court, having reviewed the Joint Motion, the opposition thereto, and having considered argument of counsel, hereby finds and Orders as follows:

- 1. In 1989, WILLIAM and JEANINE MCCOLE** applied to the Department of Environmental Regulation of the State of Florida for a permit to build a single-family residence on property which they had purchased in the **Waloriss Subdivision** in the **City of Marathon** in **1978**. Zoning on the

property was RU-1, allowing single family residences to be constructed. However, in 1986, Monroe County's land development regulations went into effect, which severely restricted development on environmentally sensitive lands. This 1986 land development regulation was not challenged by Plaintiffs.

2. On August 18, 1989, the State of Florida Department of Environmental Regulation issued a notice of permit denial to Mr. & Mrs. MCCOLE, and on September 13, 1989, a development application denial was issued by letter from Monroe County Growth Management Department to Mr. & Mrs. MCCOLE.
3. Based upon the undisputed facts, the Court finds that Plaintiff's taking claim accrued no later than September, 1989. Under the undisputed facts, Plaintiff knew or should have known that the property had lost all reasonable economic use as a result of the express denial by the State of Florida of permission to build a single family residence because of the presence of wetlands, and the similar denial by Monroe County. See Exhibits 2 and 3 to Defendants' Motion for Summary Judgment. Plaintiff's deposition testimony further acknowledges knowing that the property was unbuildable as of 1989.<sup>1</sup>
4. Takings claims accrue when the property owner becomes aware of the harm arising from government action. See Suarez v. City of Tampa, 987

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<sup>1</sup> See Deposition of Jean McCole, p. 43, ln. 23 – p. 45, ln. 17; Plaintiff sought and received property tax relief based on land being unbuildable in 1987.

So.2d 681, (2<sup>nd</sup> DCA 2008, Opinion by Canady, J.). Plaintiff's 2003 application for beneficial use determination did not have the legal effect tolling the statute of limitations, or extending it from the time when it began in 1989, which is when the last element of Plaintiff's cause of action accrued. Section 95.031(c), Fla. Stats.

5. Under the applicable four year statute of limitations, this lawsuit should have been filed by 1993, which is clearly not the case.
6. Accordingly, Defendants' Joint Motion for Summary Judgment is hereby **GRANTED**, by reason of application of the statute of limitations to this action. In light of this disposition, the Court finds that the remaining grounds raised by Defendants for summary judgment need not be reached or considered by the Court at this time.
7. Defendant's Motion for Sanctions is hereby **DENIED**.

**DONE and ORDERED** at Key West, Monroe County, Florida, this 8th<sup>h</sup> day of October, 2008.

David J. Audlin, Jr.  

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DAVID J. AUDLIN, JR.  
CIRCUIT JUDGE

cc: Mark D. Solov, Esq.  
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