

Bachteler, James J

BCC 9-14-16 #43

From: Greenleaf, Kim
Sent: Monday, September 12, 2016 2:15 PM
To: BoardRecords
Subject: Struthers's Formal Objection to Stormwater Assessment Fees and Taxes
Attachments: Struthers's formal objection to stormwater fees 2016.09.10.pdf, ATT00001.txt

Follow Up Flag: Follow up
Flag Status: Completed

Kimberly H. Greenleaf
Executive Aide to Commissioner Dave Eggers Pinellas Board of County Commissioners, District 4
315 Court Street, Clearwater, FL 33756
727-464-3276 office
727-464-3022 fax
kgreenleaf@pinellascounty.org

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-----Original Message-----

From: James Martin [mailto:jim@jamesmartinpa.com]
Sent: Saturday, September 10, 2016 1:39 PM
To: Woodard, Mark S <mwoodard@co.pinellas.fl.us>; Justice, Charlie <cjustice@co.pinellas.fl.us>; Long, Janet C <JanetCLong@co.pinellas.fl.us>; Gerard, Pat <pgerard@co.pinellas.fl.us>; Eggers, Dave <deggers@co.pinellas.fl.us>; Seel, Karen <kseel@co.pinellas.fl.us>; Morroni, John <jmorroni@co.pinellas.fl.us>; Welch, Kenneth <kwelch@co.pinellas.fl.us>
Cc: Mackesey, Brendan <bmackesey@co.pinellas.fl.us>
Subject: Struthers's Formal Objection to Stormwater Assessment Fees and Taxes

September 10, 2016
By email and US Mail

Surface Water Assessment Fee
Pinellas County Board of County Commissioners
Charlie Justice, Chairman, cjustice@pinellascounty.org
Janet C. Long, Vice Chairman, JanetCLong@pinellascounty.org
Pat Gerard, pgerard@pinellascounty.org
Dave Eggers, deggers@pinellascounty.org
Karen Williams Seel, kseel@pinellascounty.org
John Morroni, jmorroni@pinellascounty.org
Kenneth T. Welch, kwelch@pinellascounty.org
Mark S. Woodard, Pinellas County Administrator, mwoodard@pinellascounty.org
315 Court Street
Clearwater, FL 33756

2016 SEP 12 PM 2:22
BCC: JAMES J. BACHTELER

Dear Ladies and Gentlemen:

In accordance with the legal notice published in the Tampa Bay Times on August 24, 2016, this letter sets forth written objections to the stormwater assessment fees and taxes levied on the above parcels.

The facts are stated in my July 27, 2016 letter, which read as follows:

I represent Ron Struthers and his wife Becky and their entities Cross Bayou Commerce Park, LLC and Landbayou LLP. In 1984 the Struthers donated 457,859 square feet of tidal land to Pinellas County at the request of the County Administrator for drainage. Now my clients are being charged to drain into the very tidal land they gave to the County. This is grossly unfair, unwarranted, and illegal.

The Struthers owned 1,357,111 square feet of land in unincorporated Pinellas County between Park Boulevard and the tidal waters at the confluence of of Cross Bayou Canal and St. Joe's Creek.

In 1984 the Struthers received the enclosed 12/4/84 letter from County Administrator Fred Marquis stating the County's interest in acquiring a portion of that land. My clients then conveyed 457,859 square feet of the land to the County by the enclosed 12/14/84 deed, as a charitable contribution and without consideration. These lands are 100% pervious, undeveloped land.

Then in 1986 the Struthers granted the enclosed drainage easement to Pinellas County for public use of a ditch along the east 20 feet of my clients' land and an additional 20 feet for maintenance of the ditch. The easement was not exclusive so my clients retained the right to use it for stormwater drainage of their own lands.

A few years later the Struthers developed part of the remaining 899,252 square feet of their land with an industrial park, car wash and retail space. It was designed to drain directly into the adjacent tidal waters of Cross Bayou Canal and St. Joe's Creek, including the land donated to the County.

Pinellas County and the Pinellas Park Water Management District have had the use of the donated property for drainage purposes for 30 years without compensation being paid to my clients.

Nevertheless, in the last 10 years, the District has taxed my clients, and my clients have paid, a total of \$84,985 to the District in taxes as a result of the property being located within the Pinellas Park Water Management District, even though none of the surface waters from my clients' land drains into facilities maintained by the District.

In addition, since 2013, the County has been charging a non-ad valorem fee for surface water management in the unincorporated areas, and in the last three years, my clients have paid a total of \$53,730 to Pinellas County for Unincorporated Surface Water fees, even though my clients' land drains directly into tidal lands. This County fee is in addition to the PPWMD taxes.

My clients have paid a grand total of \$135,715 to the County and PPWMD in the last 10 years for drainage fees and taxes despite the fact that my client's property directly drains surface waters into the tidal waters of Cross Bayou Canal and St. Joe's Creek and despite the fact that the County and District are using the very land that my client conveyed to the County, without compensation, to use as part of the public's surface water drainage systems.

No stormwater services are provided to my clients by either the County or the District. My clients deal with stormwater on the site by directly draining it to tidal waters.

My clients have applied for mitigation credits as to the County stormwater fee and have provided all information requested by County staff, but staff has not approved the application and it appears that the County intends to bill my clients again on the 2016 tax billing.

Therefore, my clients request the following at this time:

1. Removal of their property from the Pinellas Park Water Management District and no further assessment of tax against this property. Pursuant to the District's charter, if this requires a special act of the Legislature to change the District boundaries, then my clients request that you seek this.
2. 100% mitigation credit against the Pinellas County stormwater fees so that no fees are assessed against the their property in 2016 and thereafter.
3. Reconvey to them Farm 49 and the adjacent land they conveyed to the County without compensation in 1984.
4. Terminate the drainage ditch easement they granted to the County in 1986.
5. Refund the \$53,730 surface water fees paid to Pinellas County for 2013, 2014 and 2015.
6. Refund the \$84,985 taxes paid to Pinellas Park Water Management District for taxes paid for the last 10 years.

None of the 457,859 square feet of land donated by the Struthers to the County at Cross Bayou Canal and St. Joe's Creek in 1984 was impervious.

The donated land provided not only for stormwater drainage of the Struthers remaining land, but also stormwater drainage for the County and its local governments and districts.

In recent weeks, the County and other local governments have used the donated land in a way that was never anticipated: to receive the discharge of millions of gallons of sanitary sewage water.

For the County to now assess the Struthers' remaining land for stormwater assessment fees to deal with governmental discharges of sanitary sewage is egregious and unconscionable.

The Florida Supreme Court has said that for a fee to be assessed by a government upon land the land must derive a special benefit from the service provided by the government and the assessment fee must be fairly and reasonably apportioned according to the benefits received. *Sarasota County v. Sarasota Church of Christ*, 667 So. 2d 180 (Fla. 1995). The Struthers land does not derive a special benefit from the stormwater service provided by the County, and the assessment fees are not fairly and reasonably apportioned according to the benefits received. In fact, the County failed to even maintain the drainage easement granted by the Struthers to the County, which has further damaged the Struthers's land.

The stormwater assessment fees should be terminated and the law should be repealed, or the fees and laws should be amended in their application to the Struthers remaining land in a way that is reasonable, fair and equitable to them.

Very truly yours,
James W. Martin

cc: Brendan Mackesey, Esq., Asst. County Attorney

James W. Martin, Esq.
James W. Martin, P.A.
540 4th Street North

St. Petersburg, Florida 33701
www.jamesmartinpa.com
jim@jamesmartinpa.com
(727) 823-3479 Fax
(727) 821-0904 Phone

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JAMES W. MARTIN, P.A.

ATTORNEY AT LAW

540 4th Street North
St. Petersburg, Florida 33701
jim@jamesmartinpa.com
www.jamesmartinpa.com
Fax (727) 823-3479
Tel (727) 821-0904

FILED
CLERK OF DISTRICT COURT
JULY 11, 2016

2016 SEP 12 PM 2:20

September 10, 2016

By email and US Mail

Surface Water Assessment Fee

Pinellas County Board of County Commissioners

Charlie Justice, Chairman, cjustice@pinellascounty.org

Janet C. Long, Vice Chairman, janetCLong@pinellascounty.org

Pat Gerard, pgerard@pinellascounty.org

Dave Eggers, deggers@pinellascounty.org

Karen Williams Seel, kseel@pinellascounty.org

John Morroni, jmorroni@pinellascounty.org

Kenneth T. Welch, kwelch@pinellascounty.org

Mark S. Woodard, Pinellas County Administrator, mwoodard@pinellascounty.org

315 Court Street

Clearwater, FL 33756

Re: Struthers's Formal Objection to Stormwater Assessment Fees and Taxes for Parcels
25-30-15-00000-430-0100, 25-30-15-69678-400-4302 and
25-30-15-00000-430-0400

Dear Ladies and Gentlemen:

In accordance with the legal notice published in the Tampa Bay Times on August 24, 2016, this letter sets forth written objections to the stormwater assessment fees and taxes levied on the above parcels.

The facts are stated in my July 27, 2016 letter, which read as follows:

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Nevertheless, in the last 10 years, the District has taxed my clients, and my clients have paid, a total of \$84,985 to the District in taxes as a result of the property being located within the Pinellas Park Water Management District, even though none of the surface waters from my clients' land drains into facilities maintained by the District.

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My clients have paid a grand total of \$135,715 to the County and PPWMD in the last 10 years for drainage fees and taxes despite the fact that my client's property directly drains surface waters into the tidal waters of Cross Bayou Canal and St. Joe's Creek and despite the fact that the County and District are using the very land that my client conveyed to the County, without compensation, to use as part of the public's surface water drainage systems.

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- 1. Removal of their property from the Pinellas Park Water Management District and no further assessment of tax against this property. Pursuant to the District's charter, if this requires a special act of the Legislature to change the District boundaries, then my clients request that you seek this.*
- 2. 100% mitigation credit against the Pinellas County stormwater fees so that no fees are assessed against the their property in 2016 and thereafter.*
- 3. Reconvey to them Farm 49 and the adjacent land they conveyed to the County without compensation in 1984.*
- 4. Terminate the drainage ditch easement they granted to the County in 1986.*
- 5. Refund the \$53,730 surface water fees paid to Pinellas County for 2013, 2014 and 2015.*
- 6. Refund the \$84,985 taxes paid to Pinellas Park Water Management District for taxes paid for the last 10 years.*

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James W. Martin

cc: Brendan Mackesey, Esq., Asst. County Attorney