

Rotonda Project, LLC Summary

By way of brief background:

- The plaintiff bought 150 vacant, noncontiguous residential lots at the height of the local market in 2005 for approx. \$6 million.
- A County utility staff member mistakenly informed the plaintiff's assistant and later, plaintiff's builder that water and sewer was available.
- The plaintiff did nothing further except for a drive by as far as due diligence.
- Water and sewer was not immediately available as the antiquated system that the County had acquired from the developer had never been activated and required substantial repairs/upgrades to render it operable.
- Florida Department of Environmental Protection (FDEP) and the State Department of Health had also entered an order years prior that prohibited on-site septic tank installation in the Rotonda Villas subdivision.
- The County advised the Plaintiff that, up until then, there had been no need or hint of development in the area for years to come.
- Given their desire to build, CCU immediately started the planning process and sewers have since been installed, are fully operational and assessments have been levied.

The Plaintiff claimed that the County had effected a regulatory taking of the property because:

- The County refused to issue building permits to construct 150 residential dwelling units (Note, the County could not issue them as there was no stated plan as to how to dispose of waste).
- The Tax Assessor, relying on maps provided by the original developers, taxed the plaintiff (and others within the Rotonda Villas subdivision) as if his properties had water and sewer.

The County argued at the trial level and on appeal that:

- There was no County regulation from which to find a "taking".
- The only regulation even referred to by the plaintiff was a Resolution authorizing the purchase of all of the system (this being only one small component) from a prior utility.
- That this decision expands the law of inverse condemnation into yet unchartered territory – essentially finding that counties are required to immediately provide utility services upon demand.
- There is no constitutional right to sewer service.
- What precluded the plaintiffs from using its property was a state regulation banning on-site septic tanks.

The Amended Final Judgment:

- Equates to approximately \$8.9M. Costs and attorney fees will be assessed later.
- On October 5, 2011, Charlotte County filed a Motion For Rehearing and Request For Written Opinion.
- Without a written opinion we cannot appeal this matter to the Florida Supreme Court.
- Through its decision, the Second District Court of Appeal has created a new form of inverse condemnation never before recognized which imposes a heavy burden on local government utilities.
- The issue in this case (whether a public utility's failure to immediately repair, place into operation, and then continue to maintain, in the absence of any existing customers or known need, equates to a "taking" of private property) is an issue of great public importance, and has far reaching implications, impacting counties and municipalities throughout the State of Florida.
- The court has determined that utility owners undertake a "duty of care" to each and every property owner within their certificated service area to maintain existing infrastructure, even when there is no power to the area to operate the system. And a breach of that "duty" amounts to a "taking" of property in violation of the State Constitution.
- The trial court's finding greatly expands existing inverse condemnation law in Florida. No other court in this state (or the country) has previously held that a county's failure to provide water/sewer service effects a "taking" of property in violation of Article X, Section 6(a) of the Florida Constitution.