

IN THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

LARUE AND LORI ELLIS,
Husband and wife;

Plaintiffs,

v.

CASE NO. 2015-CA-1413
Division: CV-B

THE CITY OF JACKSONVILLE,
et al.,

Defendants.

_____ /

**CITY OF JACKSONVILLE'S ANSWER AND
AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT**

Comes now Defendant, the City of Jacksonville (the "City"), by and through the undersigned counsel, and files this Answer in this cause showing the following:

GENERAL ALLEGATIONS

The Parties

1. Admitted for jurisdictional purposes only; admitted that Exhibit A to the Amended Complaint is a legal description and address, which speak for themselves.
2. Admitted that the City is a municipal corporation established under the Laws of Florida. The remainder is denied.
3. Without knowledge.
4. Without knowledge.
5. Without knowledge.
6. Without knowledge.
7. Without knowledge.

8. Without knowledge.
9. Without knowledge.
10. Without knowledge.
11. Without knowledge.
12. Without knowledge.
13. Admitted as to venue only.

The Property

14. Without knowledge.
15. Without knowledge.
16. Without knowledge.

The Improvements

17. Admitted that the Sandalwood Canal is a stormwater conveyance used the City.

The remainder is denied.

18. Admitted.
19. Denied.
20. Admitted that the City improved Sandalwood Canal. The remainder is denied. .
21. Without knowledge.
22. Admitted that City retained CDM as the professional consultant. The City denies

all remaining allegations of Paragraph 22 to the extent such allegations are inconsistent therewith.

23. Without knowledge.
24. Without knowledge.
25. Without knowledge.

26. Denied.

27. Admitted that stormwater is being deposited into the Sandalwood Canal. The remainder is denied.

28. Without knowledge.

29. Denied.

30. Denied.

31. Without knowledge.

32. Without knowledge.

33. Admitted that proper notice to the City was provided; however, denies all remaining allegations of Paragraph 33 to the extent such allegations are inconsistent therewith.

34. Without knowledge.

COUNT I
(Trespass by the City)

35. The City realleges its responses to paragraphs 1-34, as if fully set forth therein.

36. Without knowledge as to Plaintiff's possessory status. The remainder is denied.

37. Denied.

38. Without knowledge.

39. Denied.

40. Denied.

41. Denied.

42. Without knowledge.

43. Denied.

COUNT II
(Private Nuisance Against the City)

- 44. The City realleges its responses to paragraphs 1-34, as if fully set forth therein.
- 45. Denied.
- 46. Denied.
- 47. Without knowledge.
- 48. Denied.
- 49. Denied.
- 50. Denied.
- 51. Without knowledge.
- 52. Without knowledge.
- 53. Without knowledge.
- 54. Denied.
- 55. Denied.
- 56. Denied.
- 57. Denied.

COUNT III
(Public Nuisance against the City and SJRWMD)

- 58. Admitted for jurisdictional purposes only.
- 59. The City realleges its responses to paragraphs 1-35, as if fully set forth therein.
- 60. The City expressly refers to the Statute cited in Paragraph 60 for its terms and denies all allegations of Paragraph 60 to the extent such allegations are inconsistent therewith.
- 61. The City expressly refers to the Statute cited in Paragraph 61 for its terms and denies all allegations of Paragraph 61 to the extent such allegations are inconsistent therewith.

62. The City expressly refers to the Statute cited in Paragraph 62 for its terms and denies all allegations of Paragraph 62 to the extent such allegations are inconsistent therewith.

63. The City expressly refers to the Statute cited in Paragraph 63 for its terms and denies all allegations of Paragraph 63 to the extent such allegations are inconsistent therewith.

64. Denied.

65. Denied.

66. The City expressly refers to the Statute cited in Paragraph 66 for its terms and denies all allegations of Paragraph 66 to the extent such allegations are inconsistent therewith.

67. Denied.

68. Denied.

COUNT IV
(Inverse Condemnation Against the City)

69. The City realleges its responses to paragraphs 1-34, as if fully set forth therein.

70. Admitted for jurisdictional purposes only.

71. The City expressly refers to the definition of inverse condemnation cited in Paragraph 71 for its terms and denies all allegations of Paragraph 71 to the extent such allegations are inconsistent therewith.

72. The City admits that it voluntarily participated in the design and funded construction of improvements to Sandalwood Canal and denies the remaining allegations of Paragraph 72.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

COUNT V
**(Professional Negligence in the Design of the Improvements
against CDM, Pittman, HNTB,
Bowen Engineer, the Gibbs Group, Alderman, Bowen, Gibbs and Nichols)**

79. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

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GENERAL DENIAL

The City denies any and all allegations contained in Plaintiffs' Complaint that were not directed toward the City and all allegations that were not specifically admitted herein.

AFFIRMATIVE, SPECIAL AND/OR ALTERNATIVE DEFENSES

1. The City alleges that Plaintiffs' Amended Complaint and each cause of action therein fails to state a cause of action against the City upon which relief can be granted.

2. If any liability exists on the part of the City to Plaintiff, such liability is to be completely indemnified by CDM Smith, Inc. f/k/a Camp Dresser & McKee, Inc. ("CDM") or the other Engineering Defendants.

3. Plaintiffs' claims, or parts thereof, are barred due to fact that there is no causation between the improvements made and the damages sought in the Amended Complaint. Instead, the alleged damage, if any, to Plaintiffs' property was caused by other factors.

4. At all times material, Plaintiffs were aware of and acquiesced to the stormwater system which, at all times, was situated on and traversed across their property. The stormwater system does not constitute a governmental encroachment on Plaintiffs' property.

5. The City neither caused the property damage or intrusion alleged in the complaint, nor did it undertake any physical activity or occupation on Plaintiffs' property.

6. The stormwater system alleged in the Amended Complaint did not destroy the value of Plaintiffs' property.

7. The perfunctory allegations in the Amended Complaint do not demonstrate either a continuing physical invasion of the property, or a substantial ouster and deprivation of all beneficial use of Plaintiffs' property.

8. Florida's Constitution does not provide just compensation to Plaintiffs for the property damage alleged in the Amended Complaint.

9. The City acquired title to the area occupied by the stormwater system by adverse possession and by prescriptive easement. Plaintiffs knew or should have known about such occupation because it was and always has been open, notorious and visible. What's more, public records have historically documented that the stormwater system is located within a floodway.

10. Plaintiffs fail to assert or establish the propriety of the City's alleged conduct and therefore cannot maintain an action for inverse condemnation.

11. Plaintiffs' claims are barred by the doctrine of laches.

12. Plaintiffs' claim for damages is barred by the doctrine of sovereign immunity.

13. Plaintiffs' claims are barred or reduced in value for failure to mitigate.

14. Plaintiffs' claims are barred to the extent the damage to or occupation of their property was caused by Plaintiffs or a third party unassociated with the City.

15. Plaintiffs' claims are barred by the doctrines of waiver and estoppel.

16. Plaintiffs' claims are barred by the applicable statute of limitations and/or statute of repose, including Section 768.28, Florida Statutes.

17. Plaintiffs damages were caused by their own negligent or improper acts.

Respectfully submitted,

OFFICE OF GENERAL COUNSEL

/s/ Jason R. Teal
Jason R. Teal
Deputy General Counsel
Florida Bar No. 157198
Primary E-mail: jteal@coj.net
Secondary E-mail: JeanH@coj.net
Office of General Counsel
117 West Duval Street, Suite 480
Jacksonville, FL 32202
(904) 630-1700-Telephone
(904) 63-1316-Facsimile
Counsel for Defendant, City of Jacksonville

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of February 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notices of the electronic filing to:

Kevin A. Schoepfel, Esq., C. Popham Decunto, Esq., Durant, Schoepfel, DeCunto & Ratchford, P.A., 6550 St. Augustine Road, Suite 105, Jacksonville, FL 32217 kschoepfel@ds-law.net mlewis@ds-law.net Attorneys for Plaintiffs	Matthew A. Marone, Esq. Weinberg, Wheeler, Hudgins, Gunn & Dial 3344 Peachtree Road, NE. Suite 2400 Atlanta, GA 30326 mmarrone@wwhgd.com aharrison@wwhgd.com Attorneys for CDM Smith, Inc.
William H. Congdon, Esq. General Counsel St. Johns River Water Management District 4049 Reid Street Palatka, FL 32177 wcongdon@sjrwmd.com Attorneys for St. Johns River Water Management District	David S. Johnson, Esq. Shook, Hardy & Bacon 100 North Tampa Street Suite 2900 Tampa, FL 33602 ddjohnson@shb.com aglisson@shb.com ejmeyers@shb.com Attorneys for HNTB Company and Robert Alderman, P.E.

R. Thomas Roberts, Esq. Marshall Dennehey, Warner Coleman & Goggin, P.C. 200 West Forsyth Street, Suite 1400 Jacksonville, FL 32202 <u>rroberts@mdwcg.com</u> <u>lrangulo@mdwcg.com</u> <u>leblackman@mdwcg.com</u> <u>alingersoll@mdwcg.com</u> <u>beraiford@mdwcg.com</u> Attorneys for Bowen Civil Engineering, Inc. and Chantal Bowen	
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I HEREBY FURTHER CERTIFY that on this 26th day of February 2016, a true and correct copy of the foregoing was delivered by U.S. Mail to the following parties who are not registered participants of the statewide E-filing portal:

Pitman-Hartenstein & Association, Inc. Engineers c/o E.H. Pitman, Jr., as Registered Agent 4911 River Point Road Jacksonville, FL 32207	The Gibbs Group, PLLC 7400 Baymeadows Way, Suite 215 Jacksonville, FL 32256
Sheldon E. Gibbs, P.E. 7400 Baymeadows Way, Suite 215 Jacksonville, FL 32256	

/s/ Jason R. Teal _____
Deputy General Counsel