

TAB 2

POINT PAPER

POTENTIAL LAWSUIT – DITCH LOCATED AT 1732 17TH ST. W. MARCH 17, 2008

ISSUE: There is a drainage ditch located along the west side of the property located at 1732 17th Street West. This ditch carries stormwater from nearby properties to Lake Rowlett. One of the property owners has advised the City that he believes that the City has no right to the land upon which the ditch lies, and has requested that, in exchange for an easement of record, the City fund his connection to City sewer services (the home utilizes a septic system). One of the property owners has stated that he is prepared to file a lawsuit for inverse condemnation or trespass if the City does not agree to some form of compensation for use of the property

BACKGROUND: The property owners purchased the home in December of 2004. There is photographic evidence that this ditch has been present on the property since at least 1980, so the property owners certainly had knowledge of the presence of the ditch when buying the home. Further, in as much as the ditch has been utilized in this manner for more than 20 years, the City may have a prescriptive easement or other legal right to use the property for drainage purposes.

The City has received the attached correspondence from the property owner's attorney, requesting that the City pay for connection of the home to City sewer services, in exchange for an easement of record for utilization of the ditch. A spreadsheet delineating the costs associated with this connection is attached.

The City Attorney reports that there is a firm legal basis supporting utilization of the ditch for stormwater drainage into Lake Rowlett. She has researched relevant legal issues and is prepared to generally discuss them. Given the potential for litigation, however, Commissioners may choose to contact the City Attorney individually with specific questions.

Staff requests that City Commission provide them with direction in this matter.

**GRIMES GOEBEL GRIMES
HAWKINS GLADFELTER & GALVANO, P.L.**
ATTORNEYS AT LAW

Caleb J. Grimes
John D. Hawkins
Leslie Horton Gladfelter
William S. Galvano
Derin A. Parks
Sacha Ross
Shannon A. Treadway

March 11, 2008

E. Glenn Grimes 1888 - 1967
Clyde C. Goebel 1921 - 1991
William C. Grimes 1918 - 2007

Of Counsel For
Criminal Matters:
Neil G. Taylor

VIA FACSIMILE & U.S. MAIL

Michele S. Hall, Attorney
505 25th Street West
Bradenton, FL 34205

Re: Frank Brunner / City of Palmetto

Dear Michele:

This letter follows my letter of February 27, 2008, in which my client and I agreed, as a courtesy to the City, to forebear from further legal activity, in order to minimize further expense associated with issues regarding the drainage canal on my client's property. We requested that you provide us with the written recommendation of staff (Public Works and Legal) by March 7th, 2008, so that we may prepare for the City Commission meeting on March 17th. As indicated in my prior letter, we would like to know whether or not the City is prepared to move forward with the agreement we reached on February 15th, when my client and I met with you and Mr. Lukowiak. At the meeting on February 15th, we were led to believe we had a reasonable agreement and that staff would present the agreement to the Commission for approval on February 18th.

On February 19th, following the City Commission meeting on February 18th, you verbally requested more time. Your letter on February 22nd confirmed your request for, "30 days to research the issue before deciding on a course of action". Our request for staff's and legal's recommendation by March 7th was to provide us with ample time in case the City did not accept the contingent agreement on February 15th. Our request for your recommendation was made in good faith and should not be deemed unreasonable given that over three (3) weeks have lapsed since we came to our contingent agreement.

We hope that we are able to conclude this matter on March 17th, as was initially agreed upon at our meeting on February 15th. In any event, we would appreciate the courtesy of a response to my February 27, 2008 letter so that we may proceed accordingly.

Should you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

GRIMES GOEBEL GRIMES HAWKINS
GLADFELTER & GALVANO, P.L.

By: 
William S. Galvano, Esquire

**SIGNED IN HIS ABSENCE
TO AVOID DELAY**

WSG/cd
cc: Mayor Larry Bustle, City of Palmetto
City of Palmetto Commissioners
Client

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Bradenton, FL 34206

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Of Counsel For
Criminal Matters:
Neil G. Taylor

February 27, 2008

Michele S. Hall, Attorney
505 25th Street West
Bradenton, FL 34205

Re: Frank Brunner

Dear Michele:

This letter follows our conversation of February 19th and your February 22nd letter. Please be advised that I have had an opportunity to discuss this matter with my client. At this time, we will agree to forebear from any further action until March 7, 2008, at which time we would expect the review of this matter to be completed. In addition, we would also request that Staff's and Legal's recommendations to the Commission be made available to us at that time. In the event we are in agreement on how to resolve this matter we can then plan on a March 17th Commission Hearing. Finally, we believe this should be sufficient time to bring this matter either to a head or a resolution given that it has been pending for well over a year.

In the meantime, should you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

GRIMES GOEBEL GRIMES HAWKINS
GLADFELTER & GALVANO, P.L.

By: 
William S. Galvano, Esquire

WSG/cd

cc: Client

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February 22, 2008

William S. Galvano, Esq.
Grimes Goebel Grimes Hawkins
Gladfelter & Galvano, P.L.
P.O. Box 1550
Bradenton, Florida 34206

Re: Frank Brunner ditch

Dear Mr. Galvano:

During our telephone conversation on February 19th, I informed you that the Palmetto City Commission had discussed the above matter at a public meeting held the preceding evening. I related to you the Commission's request that you allow the City 30 days to research the issue before deciding upon a course of action, and that Mr. Brunner not incur further legal fees during that time. Although you indicated to me that you would recommend that your client agree to the City's request, I have yet to hear back from you.

Please contact me as soon as possible to confirm that we are in agreement. I look forward to working with you to resolve this matter.

Sincerely,

Michele S. Hall

cc: C. Lukowiak, Public Works Director

1/28/2008

**GRIMES GOEBEL GRIMES
HAWKINS GLADFELTER & GALVANO, P.L.**
ATTORNEYS AT LAW

COPY
Clyde C. Goebel 1921 - 1991
William C. Grimes 1918 - 2007

1888 - 1967
1921 - 1991
1918 - 2007

Caleb J. Grimes
John D. Hawkins
Leslie Horton Gladfelter
William S. Galvano
Derin A. Parks
Sacha Ross
Shannon A. Treadway

January 24, 2008

Of Counsel For
Criminal Matters:
Neil G. Taylor

RECEIVED

JAN 28 2008

**PUBLIC WORKS
DEPARTMENT**

*Send
Mushels
this letter
to Jim*

Chris Lukowiak, Public Works Director
Department of Public Works
600 17th Street West
Palmetto, FL 34221

Re: Frank Brunner

Dear Mr. Lukowiak:

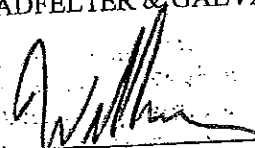
I hope you had a good holiday season. This firm represents Frank Brunner regarding your letter dated November 13, 2007 in reference to his property. Please be advised that he specifically disputes that any portion of his property is subject to de factor easement by the City of Palmetto ("City"), whether by use, claim or maintenance. In addition, Mr. Brunner specifically refutes that at the time of his purchase that there was any notice, constructive or actual, that the City was or intended to use the property in question. Nor was anything of that nature reflected on any of the closing documents. Instead, the property in question has continuously been owned and maintained by my client and his predecessors. In addition, the use of a portion of Mr. Brunner's property for drainage by the City is a trespass thereon. As Mr. Brunner has stated to you in the past, he would like to find an amicable solution for the mutual benefit of all parties involved; however, short of finding such solution, he will have no alternative but to close off the property to drainage and eject the City pending compensation from the City for any use thereof and the establishment of a proper and legal easement, license or other form of ownership.

I have reviewed this situation in light of the legal requirements for the City to claim an easement by prescription or other form of adverse possession and, based on the history of this property, I am confident that we would able be to defend against the same. As you know, a formal dispute will only result in escalated time and expense for all parties involved (note, a successful inverse condemnation claim will result in the City paying both their own fees and costs, as well as the legal fees and costs of my client).

Therefore, we request an informal mediation with you, and whoever else is a decision maker with regard to this issue at the City, to seek a meaningful resolution. Please provide some available dates.

Sincerely,

GRIMES GOEBEL GRIMES HAWKINS
GLADFELTER & GALVANO, P.L.

By: 
William S. Galvano, Esquire

WSG/cd

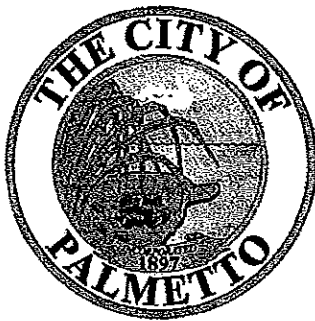
cc: Client

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Department of Public Works
600 17th Street West
Palmetto, Florida 34221
Phone (941) 723-4580 • FAX: (941) 723-4539
Suncom 599-4580

November 13, 2007

Mr. Frank Brunner
173217th Street West
Palmetto, FL 34221

Dear Mr. Brunner:

I appreciate your patience as the City has researched the many aspects of the issues you have raised with regard to the appropriate storm water rates for your property.

First, please note that standard storm water rates apply for parcels that have 2,500 square feet of impervious area. City staff has visited your property and confirmed our measurements with plat sheets, and your property does, in fact, have more than 2,500 square feet of impervious surface (please see attached). As such, your rate will remain at \$14.12 per month with the current rate structure.

Secondly, you have advised that you are ready, willing and able to negotiate / discuss mitigating the city's impact on your property, by way of the City's general benefit from Lake Rowlett and the existence of the drainage ditch on your property. Again, City staff has researched historic documents and photos and determined that this ditch has been in existence, and serving the general community, for many years. While there is no formal agreement or easement that provides for drainage onto your private property, as noted in your email of September 6, 2007, you purchased the property with the full knowledge of this historically established ditch. In as much as the City has adversely and continuously used a portion of your property for drainage purposes for more than twenty years, the City has a de facto easement and can continue to rely upon this ditch as part of the public drainage system.

Especially in the current period of financial austerity, it would be unreasonable for the City to consider the installation of new utilities onto your property as compensation for continued benefit of the existing ditch.

Please advise me if you require additional information.

Sincerely,

Chris Lukowiak
Public Works Director

CL:MH:gj

Cost Associated with the Installation of Sewer Service to 1732 17th St. West

Grinder Pump/LS	\$10,000
Pipe	\$1,500
Connection Fees	\$2,402
Attorney Fees	\$1,200
Labor	\$2,056
<u>Equipment</u>	<u>\$4,736</u>
Total	\$21,894

Note This cost analysis does not include the monthly electric cost associated with a grinder pump operation.