



To: Mayor Ashton J. Hayward, III
Council President Spencer and Members of City Council

From: Lysia H. Bowling, City Attorney *LHB*

Date: November 6, 2017

Re: Notice of Lawsuit Filed and Legal Advice Relating to November 6, 2017 Legislative Action Item nos. (17-00595, 17-00613, 17-00614, 17-00615 and 17-00616)

The City of Pensacola has been served today, November 6, 2017, at 11:57 a.m. with the attached lawsuit which was filed in Circuit Court on November 3, 2017, styled *Daniel D. Lindemann and Gerald W. Holzworth v. The City of Pensacola, the City of Pensacola Community Redevelopment Agency and the Florida Fish and Wildlife Conservation Commission*.

In light of this lawsuit, I recommend that November 6, 2017 Legislative Action Item nos. 17-00595, 17-00613, 17-00614, 17-00615 and 17-00616 be pulled from the agenda and no discussion take place regarding these items.

Please be reminded of provisions in the City's Public Officials Insurance Policy that are applicable to this lawsuit:

The City's Public Officials Insurance Policy identifies the "Insured" as (1) the City of Pensacola; (2) all past, present or future duly elected, appointed or employed officials; (3) employees and (4) all persons providing services to the insured under a mutual aid or similar agreement with specific qualifiers. Should a claim arise, the provisions of the policy relating to the defense and settlement of claims provides, among other things, that the Insured does not admit liability for a claim without the Insurer's written consent. Additionally, the policy provides that the **Insured will do nothing that may prejudice the Insurer's position** or potential or actual rights of recovery.

Should a breach of the aforementioned provisions occur, this could result in the Insurer declining coverage, which would put the City of Pensacola taxpayers at risk for any claims that may arise. Therefore, knowledge of the provisions of the policy should be taken into consideration before any assertions or statements are made by the Insured as it relates to the lawsuit.

It would be best to maintain the past practice of not publicly discussing matters of litigation.

Should you have any questions concerning this matter, please feel free to contact me.

cc: Eric W. Olson, City Administrator
Don Kraher, Council Executive

Attachment: Lawsuit filed November 3, 2017

See 586
11/6/17 11:57 +

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

DANIEL D LINDEMANN ,et al.

PLAINTIFF,

Vs.

CASE NO: 2017 CA 001704

DIVISION: K

THE CITY OF PENSACOLA ,et al.

DEFENDANT,

SUMMONS

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint in the above styled cause upon the defendant **THE CITY OF PENSACOLA 222 W MAIN STREET PENSACOLA, FL 32502**

Each defendant is hereby required to serve written defenses to said complaint on plaintiff's attorney(s), whose address is

**ROBERT A EMMANUEL
EMMANUEL SHEPPARD & CONDON
30 S SPRING ST
PENSACOLA, FL 32501**

within **20 days** after service of this summons upon you, exclusive of the day of service, and to file the original of said written defenses with the Clerk of said Court either before service on said attorney or immediately thereafter. If you fail to do so, a default will be entered against you for the relief demanded in the complaint.

Witness, my hand and the seal of this Court on this **6th day of November, 2017**

PAM CHILDERS

CLERK OF THE CIRCUIT COURT

By: *Bob Sheps*

Deputy Clerk



* Except when suit is brought pursuant to Section 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to be inserted as to it is 40 days. When suit is brought pursuant to Section 768.28, Florida Statutes, the time to be inserted is 30 days.

**IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT IN AND FOR
ESCAMBIA COUNTY, FLORIDA**

DANIEL D. LINDEMANN and
GERALD W. HOLZWORTH

Plaintiffs,

v.

Case No. 2017 CA 001704
Division: K

THE CITY OF PENSACOLA,
THE CITY OF PENSACOLA COMMUNITY
REDEVELOPMENT AGENCY, and
THE FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION

Defendants.

COMPLAINT FOR DECLARATORY RELIEF

COMES NOW, Plaintiffs, DANIEL D. LINDEMANN ("Lindemann") and
GERALD W. HOLZWORTH ("Holzworth", and collectively with Lindemann
"Plaintiffs") and in support of this Complaint for Declaratory Relief state as follows:

Background Facts

1. Plaintiffs seek declaratory relief that is within the jurisdiction of the Court pursuant to Chapter 86, Florida Statutes, or pursuant to other law.
2. Lindemann is a resident of Escambia County, Florida.
3. Lindemann is an owner of certain real property in Escambia County, Florida commonly known as 24 N. Palafox Street, Pensacola, Florida ("Lindemann Property").
4. Holzworth is a resident of Escambia County, Florida.

5. Holzworth is an owner of certain real property in Escambia County, Florida commonly known as 729 W. Zarragossa Street, Pensacola, Florida ("Holzworth Property").

6. Defendant, The City of Pensacola ("City") is a Florida municipal corporation within Escambia County, Florida.

7. Defendant, The City of Pensacola Community Redevelopment Agency, is a Florida body corporate and politic within Escambia County, Florida.

8. Defendant, The Florida Fish and Wildlife Conservation Commission ("Commission") is an agency of the State of Florida with its principal office in Leon County, Florida.

9. Venue is proper in Escambia County, Florida.

10. The City acquired title to certain real estate located in Pensacola, Florida, consisting of approximately 44 acres immediately south of Main Street and east of Clubbs Street, by virtue of those certain conveyances recorded on January 17, 1945 in Deed Book 195, Page 595 and on August 21, 1974 in Book 829, Page 382, respectively, of the Official Records of Escambia County, Florida. Such real estate is commonly known and hereinafter referred to as "Bruce Beach."

11. In or about 1980, the City designated certain areas of downtown Pensacola as a "blighted area" under Chapter 163, Part III Florida Statutes, and simultaneously identified such areas as the Pensacola Inner City Community Redevelopment Area (as such area has been amended from time to time, the "Redevelopment Area").

12. Bruce Beach is located within the Redevelopment Area.

13. The Lindemann Property is located within the Redevelopment Area.

14. The Holzworth Property is located within the Redevelopment Area.

15. In or about 1980, the City created and declared the Pensacola City Council to be the City of Pensacola Community Redevelopment Agency (hereinafter, the "CRA"), subject to all rights, powers, duties, privileges immunities, responsibilities and liabilities vested in and imposed upon a community redevelopment agency under Chapter 163, Part III Florida Statutes.

16. Despite its common membership, the CRA exists as a separate, distinct and independent legal entity from the Pensacola City Council.

17. The City dedicated and assigned Bruce Beach to the CRA in or about 1980 by virtue of Pensacola City Council Resolutions 36-80 and 55-80, for the purpose of promoting, planning, packaging and accomplishing Bruce Beach's redevelopment. Such dedication and assignment has not since been rescinded or modified and remains in full force and effect.

18. The City, as landlord, and the Commission, as tenant, purported to enter into that certain Lease Agreement for Bruce Beach dated May 12, 2014 (the "Lease"), whereby the Commission agreed to construct and maintain the Florida Gulf Coast Marine Fisheries Hatchery/Enhancement Center ("Hatchery"). A true and accurate copy of the purported Lease is attached hereto as Exhibit A and incorporated herein by reference.

19. The Pensacola City Council approved the purported Lease on behalf of the City at or about the May 8, 2014 Pensacola City Council meeting.

20. The purported Lease was not signed by the mayor of the City as called for by its terms, but rather by the City Administrator, Colleen Castell, whose authority to sign on behalf of the mayor and bind the City is uncertain.

21. The CRA neither approved nor signed the purported Lease.
22. On information and belief, the public notice and invitation for proposals required by Section 163.380(3) Florida Statute were not provided prior to the City's attempted execution of the purported Lease.
23. The purported Lease is for a 30 year term with an annual rent payment due to the City of \$50.
24. As of the date of the purported Lease, the assessed value of Bruce Beach in Escambia County was \$6,959,217.
25. On information and belief, no public hearing was conducted regarding the disparity between the value of Bruce Beach relative to the rental payment called for under the purported Lease, as required under Section 163.380(2) Florida Statutes.
26. Section 20 of the purported Lease relevantly provides as follows:

. . . Commission shall commence construction on the [Hatchery], the public waterfront access and public recreation facilities no later than three (3) years following the execution date of this Lease. **Should Commission fail to commence construction, or become reasonably aware of the inability to commence construction, on or before three (3) years of the execution date of this Lease, the Commission hereby expressly agrees to immediately forfeit all property interests and any rights under this Lease and occupation of the Premises and the Lease shall be void (emphasis added).**
27. May 12, 2017 was the Commission's construction commencement deadline under the terms of the purported Lease.
28. Construction at Bruce Beach has not commenced.
29. To the contrary, bids for work construction work on the Hatchery are not due until on or about December 12, 2017.

Count I – Declaration that the purported Lease is void *ab initio*

30. Paragraphs 1-29 are hereby realleged and incorporated herein by reference.

31. The CRA is a necessary party to effectively dispose of all or any portion of Bruce Beach.

32. The CRA neither approved nor signed the purported Lease.

33. The City, by the purported Lease, attempted to dispose of Bruce Beach for less than its fair value; however, no duly noticed public hearing regarding the forgoing was held prior to the City's attempted execution of the purported Lease, as required by Section 163.380(2) Florida Statutes.

34. The public notice and invitation for proposals required by Section 163.380(3) Florida Statute were not given prior to the City's attempted execution of the purported Lease.

35. Because of the forgoing critical deficiencies, the purported Lease was void from its inception.

WHEREFORE, Plaintiffs respectfully request the Court enter its judgment declaring the purported Lease to be void, *ab initio*, and granting Plaintiffs all further relief just and proper in the premises.

Count II – Declaration that the Lease is void by its terms

36. Paragraphs 1-29 are hereby realleged and incorporated herein by reference.

37. The Commission failed to commence construction as required under the terms of the Lease.

38. As a result of such failure, under the express terms of Section 20 of the Lease, referenced above, the Lease became void as of May 12, 2017.

WHEREFORE, Plaintiffs respectfully request the Court enter its judgment declaring the Lease to be void by its terms, ordering the Commission to immediately forfeit all property interests and any rights under the Lease and occupation of Bruce Beach, and granting Plaintiffs all further relief just and proper in the premises.

Respectfully submitted,

/s/ Robert A. Emmanuel
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