IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT,
IN AND FOR COLUMBIA COUNTY, FLORIDA

ROBERT K. BROWN and CAROL C. BROWN,

Plaintiffs,

vs. CASE NO. 2016-CA-000223

COLUMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida and the SUWANNEE RIVER WATER MANAGEMENT DISTRICT,

Defendants.
_____/

AMENDED FINAL JUDGMENT-FINDING NO TAKING

THIS CAUSE having come before the Court for trial without a jury on February 5 - 9, 2019, on Count I of Plaintiffs' Second Amended Complaint and Demand for Jury Trial to determine whether Defendant Columbia County ("Defendant") had taken the property ("the Property") of Plaintiffs Robert K. Brown and Carol C. Brown ("Plaintiffs") by inverse condemnation; and if a taking is found to have occured, to then determine the nature and extent of the property rights taken; and the date of the taking. See Foster v. City of Gainesville, 579 So. 2d 774, n.2 (Fla. 1st DCA 1991) (explaining the issues that must be decided by a court, rather than a jury, in an inverse condemnation proceeding).

More particularly, the issues presented in this case are: (1) whether and to what extent the County's construction of a portion of Bascom Norris Drive in 2005 resulted in the flooding of Plaintiff's commercial Property, amounting to a "taking." Plaintiffs allege that Defendant took Plaintiffs' property via inverse condemnation by flooding without

providing full compensation, and; (2) whether the Plaintiffs are barred from seeking relief due to the applicable statute of limitations.

Plaintiffs contend, and have the burden to prove, that Defendant took Plaintiffs' property by inverse condemnation when Defendant constructed Bascom Norris Drive in a manner that resulted in the flooding of Plaintiff's property.

Defendant denies the allegations of inverse condemnation by flooding and sets forth an affirmative defense to the inverse condemnation action asserting, and with the burden to prove, that the Plaintiffs have not complied with the applicable statute of limitations and are, therefore, barred from obtaining relief herein.

FINDINGS OF FACT

After consideration of the trial testimony and exhibits filed in this case, as well as all written submissions of counsel, the Court makes the following findings of fact based upon the more persuasive and convincing force and effect of the entire evidence presented at trial:

History of Commercial Use of the Property and Flooding Conditions

1. The Property at issue in this case is a parcel of real property approximately ten (10) acres in size containing seven buildings, six of which are currently in use, built between 1959 and 1980 located at 1524 Northwest Main Boulevard, Lake City, Florida. [Trial Tr. pgs. 64, 66 - 70 (Feb. 5, 2019)].

2. The Property includes a retail sales operation (Building 1); the former boat display room, which is currently used by a commercial tenant for a flea market/merchandise, and has an overhang area which wraps around Building 4 (Building 2); storage room (Building 3); the building from which the Plaintiffs run their business, including two parts rooms, a parts

counter, two offices, a storage room and two restrooms (Building 4); auto mechanic shop (Building 5); building not currently in use (Building 6); and storage (Building 7). [Trial Tr. pgs. 75 - 77 (Feb. 5, 2019)]. The Property also contains improved parking areas and a pond.

3. The Property is located adjacent to US 41, a State Road under the jurisdiction of the Florida Department of Transportation ("FDOT"), running north to south along the easterly border of the Property. The Property, as depicted in a LiDar Map, is also located in relatively close proximity to and north of a set of triple culverts under US 41, which serves as the point of conveyance to the northeast for all stormwater generated in a sub-drainage basin that is approximately 320 acres in size. [Trial Tr. pgs. 735 - 736 (Feb. 7, 2019); Def. Ex. 40, LiDAR Map].

4. The LiDar Map is a topographical map depicting various elevations within the drainage basis with the dark blue areas being the lowest elevation and the red areas being "extremely higher elevations than the blue areas" [Trial Tr. Pg. 735].

5. The LiDar Map establishes and depicts the Property as being generally lower in elevation than surrounding properties in the drainage basin, particularly properties to the south of the Property, and is located near the low point for the drainage basin at issue, which is the US 41 triple culverts. [Def. Ex. 40, LiDAR Map]. Chad Williams, County Engineer for Columbia County, Florida testified that:

> *There's about a 40 foot elevation difference between the high elevation to those culverts trying to get underneath U.S. 41. 40 feet. That's about 200 acres, again, of travelling north underneath the triple culverts.* [Trial Tr. Pg. 735].

6. The Property's buildings are also lower than the centerline of US 41. [Trial Tr. pgs. 786 - 787 (Feb. 7, 2019)].

7. The LiDar Map also contains added overlays depicting the boundaries of the drainage basin (black lines) and the city limits (red lines) with the general northerly direction of the flow of water represented by blue arrows that are consistent. As depicted, approximately 200 of the total 320 acres in the drainage basin are south of Bascom Norris Road, almost all being within the city limits of Lake City.

8. Stormwater, once it passes through the FDOT triple culverts, must then pass through several smaller sized culverts under an active rail line before continuing onto the north. [Trial Tr. pgs. 735 - 736 (Feb. 7, 2019)]. The County does not own or maintain either US 41 or its associated drainage ditches or drainage structures. [Trial Tr. pgs. 745, 748 (Feb. 7, 2019)]. Nor does the County own or maintain the rail line or the culverts under the rail line. [Trial Tr. pgs. 738 - 739 (Feb. 7, 2019); Def. Ex. 262 and 263].

9. Historically, the Property has been in Plaintiff Robert Brown's family and used for various commercial business enterprises. Plaintiff, Robert Brown's parents opened Brown Tire Company on the Property in the late 1950s and then Brown Dodge in 1967. [Trial Tr. pgs. 67 - 68 (Feb. 5, 2019)]. Plaintiffs acquired title ownership to the Property in 2001 from Robert Brown's mother but had already been operating a commercial business on the Property since 1976 when they opened Bob's Marine Village, a business that performed marine services and sold boats, motors, and trailers. [Trial Tr. pg. 69 (Feb. 5, 2019)]. Plaintiffs also operated Brown Tire Company and a Yamaha motorcycle dealership at the Property. Plaintiffs closed or sold these businesses in 2002 for economic reasons unrelated to flooding. [Trial Tr. pgs. 70 - 71 (Feb. 5, 2019)].

10. The drainage of water from the Property's parking areas with occasional water intrusion into buildings has been a long-standing issue on the Property. From 1976 through

2001, the Property experienced flooding and drainage issues of which the Plaintiffs were aware. [Trial Tr. pg. 86 (Feb. 5, 2019)]. As early as 1977, Plaintiff Carol Brown testified that water would back up on the Property's parking lot and then drain. [Trial Tr. pgs. 86 – 87 (Feb. 5, 2019)]. Flooding issues on the Property continued from the late 1970s up through the early to mid-1990s and water would come onto the Property quite often, including water intrusion in the showroom and service bay. [Trial Tr. pgs. 90 – 91 (Feb. 5, 2019); pgs. 208-09].

11. The Plaintiffs filed a prior lawsuit in 1995 against Columbia County alleging permanent flooding of the Property that occurred every time there was a heavy rain. In that suit Plaintiffs sought both injunctive relief and monetary damages. [Trial Tr. pgs. 199 – 204 (Feb. 5, 2019)].

12. Carol Brown testified that in 1996 the County performed work on Virginia Street at a location downstream from the US 41 triple culverts. The roadway was "opened up" to allow for drainage and then a larger sized culvert was installed under this roadway, which she claimed had the effect of lessening the back up of water onto the Property. [Trial Tr. pgs. 93 – 94 (Feb. 5, 2019)]. From 1996 through 2001, although Carol Brown testified that issues with standing water on the Property seemed to be less frequent, there was no mention as to whether these issues ceased during this time period. [Trial Tr. pgs. 93 – 95 (Feb. 5, 2019)]. In 2001, the first lawsuit was resolved via mediation with a written Settlement Agreement, wherein the County admitted no liability and assumed no affirmative obligation to perform any future maintenance activities pursuant to that agreement. [Def. Ex. 9].

13. However, according to Carol Brown, despite the 2001 settlement, the Browns were unsure as to whether the drainage issues were solved because the County continued

working on drainage issues in 2002 by cleaning up beavers, beaver dams and "other things" in the basin area to the north of U.S. 41 and the Triple Culverts. [Trial Tr. pg 96].

14. In 2004, the Plaintiffs experienced flooding of the Property with water intrusion into buildings as a result of Hurricane Jeanne. [Trial Tr. pgs. 97 – 98 (Feb. 5, 2019)].

Construction of Bascom Norris Drive

15. Construction of the portion of Bascom Norris Drive relevant to these proceedings, and its associated drainage features and conveyances, was completed in 2005. [Trial Tr. pg. 485 (Feb. 6, 2019); Joint Pretrial Stipulation, pg. 7 at ¶ 13]. Since the completion of the relevant portions of Bascom Norris Drive in 2005, there have been no changes to the road's stormwater and drainage system through the installation or removal of drainage features such as culverts, ditch blocks, or stormwater ponds. Id.

16. Bascom Norris Drive intersects with US 41 south of Plaintiffs' Property (though not directly adjacent) and, as mentioned previously, is located within a drainage basin that includes the Plaintiffs' Property together with approximately 320 acres. [Trial Tr. pg. 735 (Feb. 7, 2019)]. Again, as set forth herein, approximately 200 acres of the drainage basin is south of Bascom Norris Drive, and is within the City of Lake City. Id. Stormwater travels north from this area to the US 41 triple culverts. Id. Historically, stormwater from the south flowed north to reach the US 41 triple culverts and did so well before the construction of Bascom Norris Drive.

17. In March of 2005, while the construction of Bascom Norris Drive was in progress and ongoing, a rain event occurred where the Plaintiffs observed water that backed up from the US 41 ditch/swale onto their Property from the triple culvert area. [Trial Tr. pgs. 184 – 185 (Feb. 5, 2019)]. Plaintiff Carol Brown took video of the standing water in the Property's parking lot area and also of the ditches and areas along Bascom Norris Drive as it was under

construction. This included the flow of water through two newly installed culvert pipes and from the south to the north side of Bascom Norris Drive. [Trial Tr. Pgs. 216 – 217 (Feb. 5, 2019); Def. Ex. 334].

18. Also, in 2005, and after construction had begun on Bascom Norris Drive, the Plaintiffs were seeking to get out of their business. [Trial Tr. pg. 71 (Feb. 5, 2019)]. They listed the Property for sale and obtained a Contract for Sale. The parties to the contract failed to close because of the presence of waste tires on the Property and not because of the Property's history of flooding. [Trial Tr. pgs. 181 – 183 (Feb. 5, 2019); Def. Ex. 33]. In August 2005, Plaintiffs sold their marine sales and service business to a Mr. Coleman and a Mr. Stevens who leased portions of the Property from the Plaintiffs. [Trial Tr. Pg. 183 (Feb. 5, 2019)].

19. Plaintiffs were not at the Property on a regular basis during the time-period of August 2005 through April 2009 while Mr. Coleman and Mr. Stevens leased the Property, but still maintained ownership of the Property, maintained an office space and an RV on the Property, and would still visit the Property from time to time. [Trial Tr. pg. 183 (Feb. 5, 2019)]. In April 2009, Plaintiffs repossessed the Property from Coleman and Stevens. [Trial Tr. pg. 71 (Feb. 7, 2019)]. After repossession, the Plaintiffs resumed active regular presence on the Property through the operation of a marine service and repair business. [Trial Tr. pg. 184 (Feb. 5, 2019)].

20. During the time period of 2008 through June of 2012, the Plaintiffs rented buildings on the Property to others to conduct automotive towing, service and repair activities. Plaintiffs leased Building 5 to James Daniels who operated Mac Repair and Towing from October 2008 through June of 2010 and then to Tony Bennett to perform automotive repair from January of 2012 up through the date of trial. [Def. Ex. 469 at Interrogatory #3].

21. Carol Brown denied that Coleman or Stevens notified the Plaintiffs of flooding of the Property while they were in possession.

22. Carol Brown denied awareness of any drainage or flooding problems on the Property from 2005 (after she observed flooding in March of 2005) to 2009, when the Plaintiffs retook possession of the Property, or any thereafter even up until Tropical Storm Debby ("T. S. Debby"), which occurred in July of 2012. [Trial Tr. pgs. 100 and 215 - 216 (Feb. 5, 2019)].

23. However, Carol Brown also testified that she was not able to enter into a written lease with Mr. Bennett (and others) due to the Property's flooding issues and the inability to guarantee that items that tenants had in the buildings would not be ruined by water intrusion into the buildings. [Trial Tr. pgs. 76 – 77 (Feb. 5, 2019)]. Ms. Brown further testified that tenants were aware of flooding issues, and that water had come into buildings previously, and that tenants experienced flood waters in buildings but did not leave due to the flooding. Id.

24. It is the Court's view, based upon the form of the questions directed to Ms. Brown regarding her surmise of certain tenants' knowledge of flooding and her answers to those questions, that it is not clear to this Court as to whether or when any impacts on the tenants from the claimed post-2005 flooding occurred. No tenants were called to testify.

25. The Court heard unrebutted testimony by the County's engineering experts regarding rainfall events indicating that significant rainfall events occurred after the construction of Bascom Norris Drive but before T.S. Debby. [Trial Tr. pgs. 882 – 883 (Feb. 8, 2019)]. Even the Plaintiff's expert testified that if all the Bascom Norris Drive's drainage features listed as deviations to the permitted design plans were in place, he could think of no reason that flooding would not have existed from 2005 through T. S. Debby in June of 2012. [Trial Tr. pg. 626 (Feb. 7, 2019)]. Yet, the Plaintiffs do not site to any flooding event during that period.

26. Accordingly, against the backdrop of expert testimony that there was heavy rainfall and expected flooding during those six to seven years; at the very least, the Plaintiff's testimony, if accurate, leads to the logical conclusion that, during that period, there was no basis to even suspect that the dynamics of the as-built Bascom Norris Drive were enhancing the speed and/or volume of drainage in the basin versus pre-construction drainage.

27. Based upon the totality of the evidence, including but not limited to, Carole Brown's testimony that no flooding occurred during the period 2005-2012, the history and pattern of pre-Bascom Norris Drive flooding, the testimony by Defendant's expert that significant rain fall occurred during the period 2005-2012 (T.S.Debby), and even the testimony of Plaintiff's expert that some flooding on the property should have occurred during the period 2005-2012, the Court finds, more likely than not, that there was no amount or nature of flooding, during the period from March of 2005 until T.S. Debby in 2012, that would have triggered any concern that the construction of Bascom Norris Drive was causing flooding that would not have occurred but for that construction.

Tropical Storm Debby

28. T. S. Debby was a named tropical storm event and natural disaster which resulted in unusual and extreme amounts of rainfall over the Lake City area, beginning June 24, 2012, totaling 16.26 inches, categorizing the storm in the magnitude of a 200- to 500-year rainfall event. T. S. Debby caused widespread flooding with property damage throughout Columbia County, including at the subject Property. [Trial Tr. pgs. 742 - 743 (Feb. 7, 2019); Joint Pre-Trial Stipulation, pg. 7 at ¶s 21 and 22]. Plaintiffs also testified that flooding as a result of T. S. Debby was the worst they had ever experienced and that T. S. Debby was a record rainfall event for the area. [Trial Tr. pgs. 200 – 221, 334 (Feb. 5, 2019)].

29. The Plaintiffs believed that there was an issue with Bascom Norris Drive due to the T. S. Debby flooding event and their observations during that event. [Trial Tr. pgs. 100, 105 (Feb. 5, 2019)]. Neither of the Plaintiffs have expertise in engineering or stormwater drainage. Carol Brown admitted that no engineering expert ever told her that the Property would not have flooded during T. S. Debby if Bascom Norris Drive had not been constructed and that it was not unusual for the Property to experience flooding during named storm events. [Trial Tr. pg. 221 (Feb. 5, 2019)].

30. Carol Brown testified that she contacted County officials within days of the T. S. Debby storm event to express concerns related to the flooding experienced at the Property as a result of the storm event and her belief that Bascom Norris Drive construction somehow caused or contributed to the flooding their Property experienced during T. S. Debby. [Trial Tr. Pgs. 109, 140 (Feb. 5, 2019)]. Plaintiffs' communications with the County relating to flooding of the Property were primarily with County Commissioner Ronald Williams and former County Administrator Dale Williams. [Trial Tr. pgs. 139 - 140 (Feb. 5, 2019)].

31. Former County Administrator Dale Williams confirmed that the Plaintiffs contacted him following T. S. Debby regarding their belief that Bascom Norris Drive contributed to the flooding experienced during the storm. [Trial Tr. pg. 370 (Feb. 6, 2019)]. Dale Williams met with engineers regarding the Plaintiffs' claims related to Bascom Norris Drive and these engineers did not indicate to him that Bascom Norris Drive was a contributing factor. [Trial Tr. pg. 380 (Feb. 6, 2019)]. Dale Williams denied ever telling the Plaintiffs that the County was responsible for the flooding the Property experienced as a result of T. S. Debby. [Trial Tr. pg. 380 (Feb. 6, 2019)].

32. While the County explored the possible acquisition of the Property with the City of Lake City, FDOT, and the SRWMD as a potential multi-agency drainage project for the area in general, that potential acquisition of the Property was not being investigated due to any belief on the part of the County that Bascom Norris Drive contributed additional stormwater to the area. [Trial Tr. pg. 382 (Feb. 6, 2019)]. Rather, it was an attempt by local government to assist two citizens and potentially address other, unrelated public issues. [Trial Tr. pg. 384 (Feb. 6, 2019)]. Dale Williams testified that he never represented to the Plaintiffs that the County would in fact purchase the Property as he did not have the authority to purchase real property without approval of the Board of County Commissioners, which never occurred. Id. In fact, Williams provided a letter to Plaintiffs advising them of this fact. [Def. Ex. 18]. In May of 2013, shortly after this letter was issued, Plaintiffs retained legal counsel regarding their T. S. Debby flooding claims. [Trial Tr. Pg. 276 (Feb. 5, 2019)]. No testimony was presented regarding pre-suit negotiations after counsel was retained.

Conditions of Property Post Tropical Storm Debby

33. Plaintiffs provided testimony at trial and through their sworn responses to Interrogatories claiming flooding of the Property after T.S. Debby occurred and was in the nature of a back up of water from the south at the area of the U.S. 41 triple culverts to the north along the US 41 ditch system and onto their Property. The Plaintiffs identified the following nine (9) additional dates of post-T.S. Debby claimed flooding: August 17, 2012; March 24, 2013; September 6, 2014; October 30, 2014; May 24, 2017; June 19, 2017; July 22, 2017; August 14, 2017; and September 11, 2017. [Def. Ex. 476 at Interrogatory # 1].

34. Only two dates after T. S. Debby involved claims of water intrusion into buildings on the Property: July 22, 2017 and September 11, 2017, the Hurricane Irma storm event. All

other claimed flooding events involve standing water on the Property's parking lot or under building overhangs. For all events, the Plaintiffs acknowledge the water drained from the Property in a matter of hours and at least the end of the same day. [Trial Tr. pg. 227, 241, 243 (Feb. 7, 2019)].

35. Photographs and video for the following dates were entered into evidence at trial: June 25 and 26, 2012 (T. S. Debby); August 17, 2012; March 24, 2013; September 6, 2014; May 24, 2017; July 22, 2017; and September 11, 2017 (Hurricane Irma). No videos were introduced into evidence at trial for the following claimed flooding events: October 30, 2014; June 19, 2017; or August 14, 2017.

36. Plaintiff, Carol Brown testified there was no flooding event significant enough to video or otherwise document from October 20, 2014 through May 24, 2017. [Trial Tr. pg. 247 (Feb. 5, 2019)]. Plaintiffs also did not document any flooding events on the Property from September 11, 2017 up to the date of trial on February 5, 2019.

37. The Plaintiffs did not maintain any logs or written notations of dates of alleged flooding events at the Property. [Trial Tr. pg. 246 (Feb. 5, 2019)]. Carol Brown compiled written descriptions of the claimed dates of flooding, portions of property affected, timing and progression in Plaintiffs' Interrogatory Responses based upon her review of photographs and videos alone, but these notes were not contemporaneous. [Trial Tr. pg. 226 (Feb. 5, 2019)].

38. Plaintiff, Carol Brown admitted that the videos dated August 17, 2012, March 24, 2013 and September 6, 2014 do not show a "back-up" of water from the US 41 triple culverts north and onto the Property, claiming instead that the video was only taken after the back-up event. [Trial Tr. pgs. 227 - 245, Pltf. Exs. 11 and 12 (Feb. 5, 2019)]. However, her testimony was inconsistent with the written description of the events provided in Interrogatories, and her

contemporaneous narration contained on these videos. She also admitted that on September 6, 2014 she did not personally observe water backflowing onto the parking lot. [Trial Tr. pg. 242 (Feb. 5, 2019)].

39. For the date of May 24, 2017, Plaintiff Carol Brown reviewed all videos for that date and admitted none of the videos depicted water backing up from the US 41 culverts and onto the Property, stating that she must have been confused. [Trial Tr. pg. 247 - 252 (Feb. 5, 2019)]. The Court finds that video admitted into evidence for May 24, 2017 and Plaintiff's narration on these videos are inconsistent with the descriptions provided in her responses to Interrogatories. [Trial Tr. pgs. 247 – 253 (Feb. 5, 2019), Def. Exs. 385, 387, 388 and 390].

40. As to the Hurricane Irma event, an appraiser, Constance Covert, performed a site inspection of the Property on September 15, 2017, four days after the Hurricane, in conjunction with a property appraisal assignment from Columbia Bank for a refinancing of the Property. Ms. Covert testified that both Plaintiffs were present during the site visit. [Trial Tr. pg. 1043 (Feb. 8, 2019)]. During her September 15, 2017 site visit, Ms. Covert did not observe significant standing water conditions on the Property and the Plaintiffs business was in operation. [Trial Tr. pgs. 1043 – 1044 (Feb. 8, 2019)]. She was not made aware of any flooding issues that had impacted the Property recently and did not observe Property conditions that appeared to be affected by flooding or that gave her cause for concern. [Trial Tr. pgs. 1044 – 1045 (Feb. 8, 2019)].

Plaintiffs' Use of the Property Post T. S. Debby

41. Since T. S. Debby and up until trial, Plaintiffs have continued to operate their marine service and repair business on the Property. This commercial business has generated gross revenues that have generally increased over this time period. [Def. Exs. 329 – 330]. Carol

Brown testified that there was a total of five to six days after T. S. Debby that business operations were impacted or unavailable due to the presence of water on the Property. [Trial Tr. Pgs. 169 – 170 (Feb. 5, 2019)].

42. Carol Brown represented to her bank within the past year that the Plaintiffs' business operated on the Property was growing [Trial Tr. pg. 267 (Feb. 5, 2019] and also represented in personal financial disclosures made to her bank that the Property was worth more after T. S. Debby than she represented on personal financial disclosures submitted prior to T. S. Debby. [Trial Tr. pg. 265 (Feb. 5, 2010)]. She also represented to her bank that rental income generated from the Property had increased post-T. S. Debby. [Trial Tr. pg. 265 (Feb. 5, 2019)]. Records from Columbia Bank show that despite the bank's knowledge of the claimed flooding issues on the Property that the Plaintiffs have been able to renew and extend loan financing with the bank accepting the Property as sufficient collateral in its current condition. [Def. Exs. 448 – 449].

43. Following T. S. Debby, the Plaintiffs have continuously rented buildings on the Property to third parties for commercial uses that have included automotive repair, upholstery repair, and a thrift shop. The automotive repair and thrift shop respective uses of the Property were active and ongoing on the Property as of the date of trial along with the Plaintiffs' marine service and repair business. [Trial Tr. pg. 264 (Feb. 5, 2019)].

44. Tenants, although not subject to written lease agreements, have paid rents to the Plaintiffs for their use of the Property and no evidence or testimony was presented to the Court that any tenant ended their rental of space on the Property due to flooding issues. [Trial Tr. pgs. 264 – 265 (Feb. 5, 2019)].

45. Commercial and business use of the Property has been continuous and ongoing since the early 1950s. This includes all times after T. S. Debby in 2012 up to and including the dates of trial. The Court finds the Property continues to maintain a beneficial and reasonable use.

Engineering Analysis of Flooding

46. As noted above, the County action upon which the Plaintiffs base their physical invasion taking claim, is the construction of Bascom Norris Drive in 2005. The Court finds that this particular action by the County—the construction of the relevant portion of Bascom Norris Drive—did not cause a diversion of stormwater onto the Property or contribute to flooding on the Property, for the reasons detailed below.

Plaintiffs Have Failed to Prove that the Construction of Bascom Norris Drive Changed the Amount of Water Flows to the Triple Culverts at US 41 as Compared to the Pre-Construction Condition

47. Significantly in this case, Plaintiffs failed to present an analysis supported by calculations or data of the conditions prior to the construction of Bascom Norris Drive at the control point in this case, the Triple Culverts at US 41. Without this data for the before condition, it is not possible to compare the post construction conditions for the purpose of demonstrating additional stormwater reaching the control point, thereby leading to the alleged "backup" of water onto Plaintiffs' Property. Instead, Plaintiffs' engineering expert, Michael Yuro, centered his analysis on certain deviations between the as-built condition of Bascom Norris Drive from the set of permitted plans approved by the Suwannee River Water Management District ("SRWMD").

48. The SRWMD issued an Environmental Resource Permit (ERP) related to the construction of Bascom Norris Drive based upon a set of design drawings ("permitted design").

At the time of completion of construction in 2005, no as-built surveys were submitted to SRWMD by the County. During site visits in conjunction with their work in this action, both Yuro, and the County's engineering expert, Robert Burleson, noted certain deviations from the permitted design plans consisting primarily of additional culverts under the road, absence of ditch blocks, and a stormwater pond that does not function as designed. [Trial Tr. pgs. 483 - 486 (Feb. 6, 2019); pgs. 889 – 891 (Feb. 8, 2019)]. In 2017, the SRWMD was informed about the deviations and the lack of as-built survey and requested submissions of the same from the County. [Trial Tr. pg. 865 (Feb. 8, 2019)].

49. Thereafter, an as-built survey of Bascom Norris Drive was prepared, which documented discrepancies between the permitted design and the as-built condition of Bascom Norris Drive. The County then provided the SRWMD with required Certifications, along with the as-builts. [Trial Tr. pg. 866 (Feb. 8, 2019)]. Due to the deviations, the SRWMD required that the County provide it with reasonable assurances regarding whether the stormwater management system of Bascom Norris Drive in the as-built condition met the criteria for peak flow attenuation and water quality treatment contained in Chapter 40B-4, Florida Administrative Code. [Trial Tr. pg. 867 (Feb. 8, 2019)].

50. Stormwater modeling analysis was performed by the County's engineering expert, Robert Burleson, and provided to the SRWMD in an October 2018 Report [Def. Ex. 49] to demonstrate to the SRWMD that peak flow attenuation criterion were met for Bascom Norris Drive in its as-constructed condition.

51. Burleson's modeling included a basin-wide analysis that compared the conditions in the drainage basin as they existed before construction of Bascom Norris Drive, i.e., the pre-condition, to the conditions after construction at a critical location, the US 41 triple culverts.

Burleson utilized both a pre-existing and recent stormwater model available from the SRWMD that was developed by Amec Foster Wheeler for FEMA ("FEMA Model") of the as-built condition for the basin. [Trial Tr. pgs. 893 - 902 (Feb. 8, 2019)]. Burleson then developed a pre-construction conditions model based on modifications to the FEMA Model. Id.

52. Burleson's model inputs and outputs were submitted to and reviewed by the SRWMD along with the Report summarizing the results for the pre-condition versus post-condition for fourteen (14) storm events required by both FEMA and the SRWMD. [Trial Tr. pgs. 894 – 895 (Feb. 8, 2019)]. The SRWMD reviewed the October 2018 Report and modeling data and determined that the County provided reasonable assurances that Bascom Norris Drive met the criteria for peak flow attenuation and water quality treatment contained in Chapter 40B-4, Florida Administrative Code in the as-built condition. [Trial Tr. pg. 869 (Feb. 8, 2019)].

53. Burleson reached an initial opinion based upon his pre-modeling review of plans and calculations that the construction of Bascom Norris Drive did not add a significant amount of new stormwater flow to the triple culverts at US 41. [Trial Tr. pg. 889 (Feb. 8, 2019)]. Burleson's initial opinions were confirmed by stormwater modeling for fourteen (14) storm events, which indicated that the as-built condition of Bascom Norris Drive did not cause an increase in peak stages at the US 41 triple culverts, as compared to the pre-construction condition. [Def. Ex. 49].

54. Burleson ran additional storm events through the same models, a total of sixty-two (62) storm events, encompassing storm events ranging in magnitude from one-year, two-year, five-year, ten-year, twenty-five-year, fifty-year, one hundred-year magnitude events and a single five-hundred-year storm event. [Trial Tr. pgs. 913 - 914 (Feb. 8, 2019)]. Burleson's additional model runs included all storm events modeled in Plaintiffs' expert Yuro's modeling.

For fifty-nine (59) out of the sixty-two (62) storm events, the as-built condition reflected lower peak stages at the US 41 triple culverts than the pre-construction condition. [Trial Tr. pgs. 914 – 915 (Feb. 8, 2019); Def. Ex. 503]. In other words, less water reaches the triple culverts following construction of Bascom Norris Drive than reached the same point prior to the road's construction. Though three of the storm events did reflect differences where the pre-condition stage was lower by 0.01 to 0.03 feet than the as-built condition, this amount was not significant in Burleson's engineering opinion, and would not be enough additional flow to result in a back-up of water from the US 41 triple culverts onto the Property. [Trial Tr. pgs. 915 – 916 (Feb. 8, 2019)].

55. The Court finds that the opinions of the County expert, Robert Burleson, are credible and supported by data that confirm the construction of Bascom Norris Drive did not add significant amounts of new water flows to the triple culverts at US 41 and construction of the road did not exacerbate or increase flooding on the Property.

56. Plaintiffs' expert engineer, Yuro's opinion was that the construction of Bascom Norris Drive was contributing to flooding of the Property because more water is getting to the US 41 triple culverts at a faster rate as compared to the permitted design. [Trial Tr. pg. 504 – 505 (Feb. 6, 2019)]. The Court finds that Yuro's opinion and supporting modeling is flawed as it is based upon an erroneous comparison of the as-built condition to an engineered road design plan rather than to the actual pre-construction basin condition. Yuro did not perform any engineering calculations or stormwater modeling analysis of the rate stormwater flow or maximum peak stages at the US 41 triple culverts prior to the construction of Bascom Norris Drive for any storm events. He testified that he could have performed this pre-condition versus post-condition analysis, but did not. [Trial Tr. pg. 581 (Feb. 7, 2019)].

57. The Court rejects Yuro's implicit assumption that the permitted design equated to the pre-condition. Yuro admitted that the engineering calculations he reviewed for the original permitted design were only for the road's project area and did not include a basin wide analysis (in a basin that exceeds 300 acres in size). Yuro did not speak to the design engineer about the assumptions and engineering choices made in the permitted design and agreed that the permitted design's stormwater configurations were not the only way for a roadway to be designed and constructed to meet pre/post permitting requirements. [Trial Tr. pg. 585 (Feb. 7, 2019) and pg. 648]

58. On cross-examination Mr. Yuro was presented with Exhibit 71, depicting the pre-development basin and general flow, and asked if the as-designed plans and the features in the permitted set of plans that he did modeling on, "had changes all along this route to the historical flow or the historical condition of the basin". Yuro's reply that, "I don't think [emphasis added] the design plans changed the historical surface water flow of the basin" is not persuasive and even falls short of being competent and substantial evidence that the resultant water flow dynamics set forth in the permitted design were designed or even expected to equate to pre-construction water drainage.[Trial Tr. pg. 644(16-25)].

59. Further, the HydroCad stormwater modeling results submitted by Yuro do not uniformly support Yuro's general opinion. The HydroCad modeling results indicate that in a majority of fifty (50) to one hundred (100) year storm events the as-built condition of Bascom Norris Drive actually performs better than the permitted design with regard to peak stages at the US 41 triple culverts. [Pltf. Ex. 81]. Yuro also opined that the Property would experience flooding with water intrusion into buildings whenever the peak stage at the US 41 triple culverts exceeded an elevation of 167.89, the lowest finished floor elevation on the Property. [Trial Tr.

pgs. 607 – 608 (Feb. 7, 2019)]. Based upon Yuro's opinion of when flooding with water intrusion into buildings should be expected to occur, the HydroCad model results reflect that for a majority of the storm events modeled, 37 out of the 56, the Property should experience flooding with water in buildings based upon expected maximum peak flows at the US 41 triple culverts even if the County constructed the roadway according to the permitted design.

60. The County's engineering expert, Burleson, performed the *only* stormwater engineering analysis that actually compared the pre-Bascom Norris Drive basin conditions at the US 41 triple culverts with the post Bascom Norris Drive construction conditions at this critical location. [Trial Tr. pgs. 902 – 903 (Feb. 8, 2019)]. The results of Burleson's analysis support this Court's conclusion that the 2005 construction of Bascom Norris Drive did not result in increases in the amount of stormwater directed to the US 41 triple culverts that would worsen or exacerbate the longstanding pre-existing condition of occasional "flooding" on the subject Property. [Trial Tr. pgs. 911 – 915 (Feb. 8, 2019)].[1]

61. Plaintiffs identified various dates of flooding or standing water conditions occurring on the Property, beginning with T. S. Debby in 2012, which they contend are the result of the construction of Bascom Norris Drive by the County in 2005. [Def. Ex. 476 at Interrogatory # 1.].

62. Again, it is significant in this case that Plaintiffs denied any flooding conditions on the Property from March of 2005 until T.S. Debby in July of 2012. The engineering

[1] While Plaintiffs' expert Yuro criticized Burleson's model assumptions and inputs for an overflow weir contained in the Burleson pre-condition model, Yuro did not attempt to quantify the impact on any of Burleson's modeling results, although Yuro could have. Yuro also did not model the pre-construction condition of the basin to provide a meaningful pre/post condition analysis to the Court, even though he could have. [Trial Tr. pgs. 581, 599 – 600 (Feb. 7, 2019)].

testimony is consistent, that the effects or impacts upon the area's drainage due to the construction of Bascom Norris Drive would have occurred immediately upon the completion of construction in 2005 and that any increase in water to the US 41 triple culverts as a result would have occurred upon the next significant rainfall event. [Trial Tr. pgs. 625 – 626; 881 - 882 (Feb. 7 - 8, 2019)]. Burleson opined that the timing of manifestation of any flooding issues due to the construction of Bascom Norris Drive would have occurred well before T. S. Debby, which occurred between six (6) to seven (7) years following completion of road construction. [Trial Tr. pgs. 881 - 882 (Feb. 8, 2019)].

63. Also, as mentioned earlier herein, Yuro testified that if all the Bascom Norris Drive's drainage features listed as deviations to the permitted design plans were in place, he could think of no reason that flooding would not have existed from 2005 through T. S. Debby in June of 2012. [Trial Tr. pg. 626 (Feb. 7, 2019)].

64. Again, Plaintiffs first date of reported flooding, which they contend was the result of the construction of Bascom Norris Drive in 2005, was T. S. Debby in 2012. Plaintiff Carole Brown has no recollection of any flooding on the premises during the 2005 to 2012 period described above. Plaintiffs provided no engineering testimony, explanation for, or reconciliation of the Plaintiff's claim that there was no flooding on the property during that period versus their own expert's opinion that flooding during that period would have been expected based upon the deviations from the permitted design of the road. The question is begged; if the testimony of Carol Brown is credible, as the Court has previously found, that there was no flooding on the property observed during that period of time, don't those facts, at the very least, cast significant doubt as to Yuro's opinion that, as a result of the deviations from the permitted design of Bascom Norris Drive, flooding would have occurred during that period? It does.

65. Following the completion of Bascom Norris Drive in 2005, and both before and after T. S. Debby, there were numerous rain events equal or greater than those events occurring on dates that the Plaintiffs' reported "flooding" on the Property for which no flooding was reported or documented. [Trial Tr. pgs. 779 – 781; 939 - 940 (Feb. 7 - 8, 2019)]. Both County engineering experts, Chad Williams and Burleson, analyzed rainfall data in the area going back to 2004 to determine if there was a pattern or correlation between the magnitude of rainfall and the Plaintiffs' claimed dates of flooding on the Property. Neither expert could discern such a pattern.

66. Also, Plaintiffs provided testimony in this action of experiencing flooding of the Property on October 30, 2014. [Trial Tr. pgs. 245 - 247 (Feb. 5, 2019); Def. Ex. 476 at Interrogatory #1.]. Yet, the County's experts' unrebutted testimony that there was no recorded rainfall in the Lake City area on October 30, 2014 or for a week before or after this claimed date of flooding, seriously calls into question the reliability of the Plaintiffs' reports of flooding from the US 41 triple culverts, especially for those dates where no photographic or video evidence exists. [Trial Tr. pgs. 779 – 781 (Feb. 7, 2019); Ex. 264].

67. Though T. S. Debby in 2012 was the event that caused the greatest impact to the Property and was understandably concerning to the Plaintiffs given the extent of impact to not only their Property, but to the community in general, the evidence in the record consistently demonstrates that this storm event would have caused flooding on the Property even if Bascom Norris Drive had not been constructed by the County.

68. The rainfall received in the Lake City area from T. S. Debby has an average recurrence interval between 200 to 500-years. [Joint Pre-trial Stipulation at pg. 8, ¶ 22]. All engineering experts agreed that road drainage and stormwater conveyances and systems, i.e.

those for US 41 and Bascom Norris Drive, are not designed to convey stormwater flows generated by 200 to 500-year storm event. [Trial Tr. pgs. 600, 887 (Feb. 7 - 8, 2019)].

69. The unrebutted opinion of the County's engineering expert Robert Burleson was that the Plaintiffs would have sustained significant flooding on the Property as a result of T. S. Debby regardless of the presence of Bascom Norris Drive. [Trial Tr. pgs. 885 – 886 (Feb. 8, 2019)]. Plaintiffs' engineering expert, Yuro did not perform stormwater modeling of T. S. Debby; did not provide opinion testimony that if the County had constructed Bascom Norris Drive according to the design originally permitted by the SRWMD, without deviations, that the Property would not have flooded during T. S. Debby; and did not offer any stormwater modeling data or calculations showing that flooding of the Property would have been lessened during T. S. Debby if the County had constructed the roadway in accordance with permitted design plans. [Trial Tr. pg. 606 (Feb. 7, 2019)].

70. Nor does the evidence support any finding that the construction of Bascom Norris Drive was the cause of the flooding event on July 22, 2017 for which video was submitted into the record. Regarding the video taken on July 22, 2017, both County Engineer Chad Williams and Burleson opined that this flooding event did not appear to be a result of water backing up from the US 41 triple culverts. [Trial Tr. pgs. 782 – 784, 944 – 952 (Feb. 7 - 8, 2019)]. These videos showed water coming onto the northern portion of the Property from the US 41 swale between the Property's two driveway culverts, which was not consistent with a back-up of water from the US 41 triple culverts due to a lack of capacity. For flooding due to a lack of capacity at the US 41 triple culverts, water would be expected to be shown staging up at the southeastern portion of the Property, not in the North between the driveway culverts. Id. In the opinion of Burleson, the containment of water in the US 41 ditch to the south of the Property with

additional capacity in the ditch at that location, as shown in the July 22, 2017 videos, was also inconsistent with flooding caused by a back-up of water from the US 41 triple culverts.

71. Burleson offered a credible unrebutted engineering opinion that a potential cause for the overflow onto the Property shown in the July 22, 2017 video, which was between the Property's two driveway culverts, could be due to a high point in the US 41 ditch, as shown in survey data, that caused water to stage up to the north before passing over the high spot and continuing south to the US 41 triple culverts. Another possible cause could have been a blockage in a driveway culvert. [Trial Tr. pgs. 944 – 952 (Feb. 8, 2019)]. The County is not responsible for maintenance of the US 41 ditches or the Property's driveway culverts located in the US 41 right of way. [Trial Tr. pg. 745 (Feb. 7, 2019)].

72. As to other dates of reported flooding or standing water, including in Plaintiffs' parking area, the record evidence is insufficient to demonstrate that construction of Bascom Norris Drive was the cause of that flooding. The Property has no engineered stormwater systems and issues with standing water in the parking areas are long-standing and pre-date construction of Bascom Norris Drive. [Trial Tr. pg. 570 (Feb. 7, 2019)]. It is neither unusual nor unexpected for stormwater to be present in or flowing through ditches and swales during and following rain events. [Trial Tr. pgs. 761 - 762 (Feb. 7, 2019)].

73. The Court finds persuasive County Engineer Chad Williams' opinion that the presence of ponded water on the Property's parking areas does not indicate a back-up of water from the US 41 triple culverts onto the Property as standing water on the parking area could be due to stormwater from rain falling onto the Property's buildings and impervious surfaces that rests in low areas due to a lack of hydraulic energy needed to move the water to the US 41 roadside swale. [Trail Tr. pgs. 764 – 765 (Feb. 7, 2019)]. Plaintiffs' engineering expert, Yuro

did not perform an analysis of the amount of stormwater generated on the Property and was not tasked with performing an analysis of the Plaintiffs' Property to suggest drainage improvements or modifications. [Trial Tr. pgs. 569 - 571 (Feb. 7, 2019)].

74. After weighing expert opinion and analysis testimony, as well as considering the lay testimony regarding the conditions on the Property, video and photographic evidence, and all other evidence submitted in its totality, this Court determines that Plaintiffs have failed to demonstrate that the County's construction of Bascom Norris Drive resulted in a diversion of stormwater which caused, exacerbated, or increased flooding on the Property during the period 2005 until the date of trial.

FINDINGS OF LAW

There is No Taking; Plaintiffs have not been Denied any and all Reasonable or Beneficial use of the Property

75. It is the Plaintiffs' contention that the County's construction of Bascom Norris Drive in 2005 resulted in a taking of the Plaintiffs' property by flooding. [Joint Pre-Trial Stipulation at pg. 2]. The County maintains that the Plaintiffs have not been substantially denied any and all beneficial and reasonable use of the Property, and that the Plaintiffs have not established that the construction of Bascom Norris Drive by the County in 2005 is the cause of any flooding affecting the Property, and therefore, the Property has not been taken or appropriated by any action of the County.

76. Based on the evidence submitted at trial, and for the reasons more fully set forth below, the Court determines that Plaintiffs have failed to meet their burden to show a taking of their Property by a preponderance of the evidence.

77. In Florida, for flooding to rise to the level of a permanent "taking", the flooding must constitute a permanent invasion of the land amounting to an appropriation different in degree or character from damage to property, *and* must substantially deprive the owner of *any* reasonable or beneficial use of the property, as compared to merely impairing the property's use. See Drake v. Walton County, 6 So. 3d 717 (Fla. 1st DCA 2009) (stating there is a taking of private property when a county "directs a concentrated flow of water from one property onto another, permanently depriving the owner of all beneficial enjoyment of their property."); Associates of Meadow Lake, Inc. v. City of Edgewater, 706 So. 2d 50, 52 (Fla. 5th DCA 1998) (recognizing a cause of action for inverse condemnation as a result of flooding, if "substantial periodic flooding occurred and was expected to recur," and such flooding denied property owner of "*any* reasonable use of its property" (emphasis in original)); Department of Transportation v. Donahoo, 412 So. 2d 400, 403 (Fla. 1st DCA 1982) (citing Department of Transportation v. Burnette, 384 So. 2d 916 (Fla. 1st DCA 1980) (holding that a taking cannot result unless there has been "a permanent invasion of the land amounting to an appropriation different in degree or character from damaged property, and substantially depriving the owner of the land's beneficial use as compared with merely impairing its use" (internal quotations omitted)); Diamond K Corp. v. Leon County, 677 So. 2d 90, 91 (Fla. 1st DCA 1996) (upholding trial court's determination of no taking because of a lack of evidence that action by Leon County *permanently* deprived Diamond K of *all* beneficial use of its property (emphasis supplied); VLX Properties, Inc. v. Southern States Utilities, Inc., 8, 510 (Fla. 5th DCA 2001) (Cobb, J., concurring) (upholding the trial court's ruling of no taking based upon the factual finding that the plaintiff, VLX, was not ousted from all reasonable and beneficial use of its property by the flooding); cf. Elliot v. Hernando County, 281 So. 2d 395, 396 (Fla. 2d DCA 1973) (finding that, on a motion to

dismiss, plaintiff's complaint sufficiently stated a cause of action for inverse condemnation when it alleged that, as a result of the diversion of the natural flow of rain water onto property being utilized for a residential dwelling that the dwelling and property had been rendered unusable and in an unsanitary condition); Hillsborough County v. Gutierrez, 433 So. 2d 1337, 1340 (Fla. 2d DCA 1983) (upholding, in part, an inverse taking claim based upon testimony that prior to flooding, a portion of the landowners' property was used for farming fruit trees and vegetables, but since the flooding, that area was useless for farming purposes and had become a veritable mud land).

78. To prove a permanent taking as has been alleged in this case, the plaintiff must show something more than a mere injury to property. See Associates of Meadow Lake, 706 So. 2d at 51. The property must be rendered useless. Leon County v. Smith, 397 So. 2d 362, 364 (Fla. 1st DCA 1981). "Fleeting and sporadic" events are not sufficient to prove a permanent taking. Fla. Fish & Wildlife v. Daws, 256 So. 3d 907 (Fla. 1st DCA 2018). There must be an appropriation of property as distinguished from damage to property. Kendry v. State, 213 So. 2d 23 (Fla. 4th DCA 1968); see also Ridge Line, Inc. v. United States, 346 F.3d 1346, 1355 (Fed. Cir. 2003) (providing that to prevail on an inverse condemnation claim, a plaintiff "must establish that treatment under takings law, as opposed to tort law, is appropriate under the circumstances."); Sanguinetti v. United States, 264 U.S. 146 (1924) ("[I]n order to create an enforceable liability against the Government, it is at least necessary that the overflow be the direct result of the structure, and constitute an actual, permanent invasion of the land, amounting to an appropriation and not merely an injury to the property."); Beck v. City of Evansville, 842 N.E.2d 856 (Ind. Ct. App., 2006) (determining there was no compensable inverse condemnation claim where homeowners in low lying areas suffered only short-term interference with the use of

their homes based on two occasions of heavy rainfall and flooding, and were able to continue to live in their homes).

79. Plaintiffs cannot cite to any precedent of the Florida courts where standing water for mere hours on commercial property, generally in parking areas and drainage features, was found to be a permanent taking of that property where an active business and commercial tenants have continued to operate on the property during all relevant time periods. Even flooding of longer duration may not constitute a taking where the property owner is not denied any and all reasonable use. See Hansen v. City of Deland, 32 So. 3d 654 (Fla. 5th DCA 2010) (determining no compensable taking occurred where the City's pumping of water in response to consecutive hurricanes was the cause of standing water partially flooding the property for 15 months, but did not affect the house or the driveway). Nor are a couple instances of flooding attributable to unusual rain events or tropical systems where the storm event exceeds the relevant road design standards a basis for a permanent taking claim. Cf. Drake, 6 So. 3d at 720 (recognizing that the case would be in a "completely different posture" had the property simply been flooded by the hurricane itself, and that it was the County's action in response to the storm which caused the flooding and resulted in the Court's determination of a taking); see also Beck, 842 N.E.2d 856 (determining there was no taking where the property is naturally low-lying, and the homeowners experienced only short-term interference with the use of their homes after a severe thunderstorm produced torrential rain, causing some roads to be impassible); Allianz Global Risks U.S. Ins. Co. v. State of N.H., 13 A.3d 256 (N.H. 2010) (determining Plaintiff failed to prove a taking where the property was flooded during an extraordinary rainfall of up to ten inches, causing extensive damage to personal and real property, where there was evidence the flooding was the result of rare and unusual events), Diamond K Corp. v. Leon County, 677 So.2d 90 (Fla. 1st

DCA 1996)(holding that no taking occurred as a result of flooding of a creek in the appellant's property because the appellant had not shown that a continuing physical invasion occurred, depriving it of all reasonable use of its property).

80. Testimony and evidence presented at trial failed to establish a denial of any and all reasonable use of the Property due to occasional standing water on the Property during and after rain events. Rather, the evidence demonstrates that the Property has been continually used for commercial and business purposes since 1959, both prior to and since the Property experienced flooding during T. S. Debby. At all times since Bascom Norris Drive was constructed in 2005 up until trial, the Property has been used by the Plaintiffs and others to conduct commercial businesses. Testimony was that there were at most five to six days during which business could not be conducted on the Property, and that was following the most significant event by far, T. S. Debby. [Trial Tr. pgs. 169 – 70 (Feb. 5, 2019)].

81. Not only has the Plaintiffs' business continued to operate at the Property since T. S. Debby, but it has generally increased its gross income in recent years. Plaintiffs reported to their bank in recent years that the business is growing, that the property is worth more than on disclosures prior to T. S. Debby, and that rental income has increased on the Property. [Trial Tr. pg. 265 (Feb. 5, 2019)]

82. Plaintiffs have rented buildings and space on the Property to others for commercial uses from 2005 until trial in February 2019 with the Plaintiffs receiving rental income over this same period. [Trial Tr. pgs. 75 – 77 (Feb. 5, 2019)]. New business uses have been conducted on the Property since the Property suffered flooding during T.S. Debby, such as upholstery repair and a thrift shop. [Trial Tr. pgs. 75 – 76 (Feb. 5, 2019)]. No testimony was

provided that any tenant left or ended their rental of space on the Property due to flooding issues. Id.

83. Though expert witness testimony was admitted over Defendant's objection from Courtland Eyrick, a real estate appraiser that the real estate "use" of the Property was substantially diminished during flooding events, this opinion testimony does not change the result here. Eyrick's opinion was based on his understanding of Plaintiffs' reports of flooding conditions on their Property and historic use, and Yuro's engineering analysis. Eyrick had not observed the flooding conditions of the Property first hand, had no knowledge of any specific days the business could not operate on the Property, and had no professional expertise himself on issues of causation. In rebuttal, the County presented testimony of a second real estate appraiser, Shannon Deal, who came to the opposite conclusion, that the Property maintained a reasonable and beneficial use, consistent with the highest and best use of the Property.

84. As the trier of fact, the Court has made its independent factual determinations based on the evidence submitted, including the testimony of the Plaintiffs and the various engineering opinions, and has applied the applicable legal standard to those facts in reaching its conclusions of law. See Palm Beach v. Palm Beach County, 460 So. 2d 879 (Fla. 1984). The testimonies of the real estate appraisers were admitted into evidence ostensibly to assist the Court in determining whether the reasonable and beneficial use of the property was maintained or substantially diminished as to its reasonable and beneficial use. Ultimately, and upon further close inspection by the Court, the offered appraisers' opinions were outside the scope of the appraisers' expertise and mere conclusions essentially telling the trier of fact how to decide the case rather than assisting the Court in determining the issue. Id at 882. Accordingly, the Court

finds that neither of the appraisers' testimonies were competent and substantial evidence and are given no weight.

85. Even if there were some short and temporary impairment of use during claimed flooding events, it is undisputed that the Property is still being actively used as commercial property. The trial testimony presented to the Court does not meet the higher and more onerous standard required to support a permanent inverse condemnation claim of substantial deprivation of any and all reasonable or beneficial use of the Property. Consequently, the Plaintiffs are unable to meet the second element required to prove a permanent taking as Plaintiffs have not been denied any and all reasonable or beneficial use of the Property due to the asserted physical invasion of flooding.

Plaintiffs Failed to Prove County Caused Flooding of the Property

86. The courts of this state have found a taking of private property when a county "directs a concentrated flow of water from one property onto another, permanently depriving the owner of all beneficial enjoyment of their property." Drake v. Walton County, 6 So. 3d 717 (Fla. 1st DCA 2009). Proof that a governmental body has affected a taking of property is an essential element of an inverse condemnation action. South Florida Water Management District v. Basore of Fla., Inc., 723 So. 2d 287, 288 (Fla. 4th DCA 1999). Flooding caused by a hurricane event or other unusual storm event outside of the engineering design standards does not by itself demonstrate a taking. Cf. Drake, 6 So. 3d at 720. Instead, Plaintiffs must prove that an action of the County caused a diversion of stormwater resulting in an appropriation of the Property.

87. It is also important to note the limitation regarding the scope of this action. The only cause of action asserted against the County is whether its actions resulted in a taking of the Plaintiffs' Property. This is not an action for enforcement of the permit. See Chs. 120, 373, Fla.

Stat. A portion of the evidence introduced by the Plaintiffs attempted to demonstrate a failure of the County to comply with certain permit conditions of the SRWMD regarding the construction of Bascom Norris Drive in 2005.[2] Because this is an action in inverse condemnation, the relevant inquiry is not whether the County met the requirements of the SRWMD permit, but whether Bascom Norris Drive *as constructed in 2005* resulted in a taking of the Property by the County making drainage changes that directed new stormwater onto the Property.

88. Plaintiffs' inverse claim in this case is based solely on the construction of Bascom Norris Drive by the County in 2005. As such, Plaintiffs must prove that construction of the road by the County was the cause of flooding on Plaintiffs' Property.

89. The Court notes that standing water in the Property's parking areas and occasional water intrusion into buildings has been a long-standing issue that pre-dates the construction of Bascom Norris Drive. In addition, Plaintiffs' Property experienced flooding in named tropical storm events prior to the construction of Bascom Norris Drive. These are not new conditions of the Property.

90. After consideration of the expert opinion testimony, testimony of the Plaintiffs, as well as other evidence submitted at trial including the video and photographic evidence, the Plaintiffs failed to show by a preponderance of the evidence that Bascom Norris Drive, as-built, increased stormwater flows to the US 41 triple culverts, in amounts that resulted, and would continue to result, in diversion of stormwater onto the Property, as compared to the condition before construction.

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[2] The County submitted evidence that although there were deviations from the permitted design and a delay in submitting as-built certifications to the SRWMD that the County submitted reasonable assurances that Bascom Norris Drive met the peak flow attenuation requirements in the as-built condition, which the SRWMD accepted. [Trial Tr. pg. 870 (Feb. 8, 2019)].

91. The court notes that it reaches this conclusion, in part, due to the failure of Plaintiffs' engineering consultant, Yuro, to perform an engineering analysis of the pre-condition (prior to construction of Bascom Norris Drive) as compared to the post-construction condition supported by calculations or data. Yuro's comparison to a permitted design not actually constructed was not the appropriate comparison to make for the causation analysis. Plaintiffs failed to present evidence of sufficient weight to support a determination that the road construction increased flows as compared to the pre-construction condition in an amount significant enough to cause a physical invasion diversion of water onto the Plaintiffs property during rain events. To the contrary, the County's expert provided a comprehensive analysis that fully supports the County's position that Bascom Norris Drive had little to no impact whatsoever on the flows of water to the triple culverts.

92. The flooding of Plaintiffs' Property during T. S. Debby or other named tropical events does not support Plaintiffs' claim of inverse condemnation. The flooding of this Property during named storm events is not unusual and is a condition that pre-dates the construction of Bascom Norris Drive. The evidence is clear that T. S. Debby was a historic rainfall event in the area, and that many properties were impacted by flooding from T. S. Debby. The evidence is also clear that Plaintiffs' Property would have flooded during T. S. Debby even if Bascom Norris Drive had never been constructed by the County.

93. The Plaintiffs lay testimony regarding their observations and experiences with stormwater on, in, and around the Property are insufficient to demonstrate that the construction of Bascom Norris Drive was the cause in fact of flooding of the Property. Further, the video and photographic evidence presented does not depict flooding of the Property caused by a back-up of water from the US 41 culverts in any storm event other than T.S. Debby.

94. After considering and weighing all evidence and testimony presented in its totality, the Court concludes the Plaintiffs' failed to meet their burden of demonstrating by a preponderance of the evidence that the County's construction of Bascom Norris Drive directs a concentrated flow of water onto the Property causing flooding of the Property that did not exist prior to the construction of the subject roadway.

Denial of Statute of Limitations Affirmative Defense

95. The Defendant herein has raised the violation of the statute of limitations as an affirmative defense. The issue is near moot given the above findings by the Court, however, the ruling is important in the event the Court's prior rulings set forth herein result in a remand by the First District Court of Appeal.

96. Florida courts apply a four-year statute of limitations to inverse condemnation claims. See § 95.11(3)(p), Fla. Stat. (2011); Judkins v. Walton County, 128 So. 3d 62 (Fla. 1st DCA 2013); Sarasota Welfare Home, Inc. v. City of Sarasota, 666 So. 2d 171, 172 (Fla. 2d DCA 1995); Szapor v. City of Cape Canaveral, 775 So. 2d 1016 (Fla. 5th DCA 2001); Suarez v. City of Tampa, 987 So. 2d 681, 684 (Fla. 2d DCA 2008).

97. The statute of limitations runs from the time the cause of action accrues. § 95.031, Fla. Stat. "The general rule of law is that a property owner must bring an inverse condemnation claim *within four years of the physical invasion* of the property caused by governmental action." Judkins, 128 So. 3d at 64 (citing Sarasota Welfare Home, Inc., 666 So. 2d at 172-73) (emphasis added) Campbell v. State, 44 Fla. L. Weekly D 822, 2019 Fa. App. LEXIS 4799, Case No. 1D18-283 (Fla. 1st DCA March 28, 2019)

98. In this order, the Court made particular factual findings underpinning the Court's ultimate determinations that, from the commencement of construction of Bascom Norris Drive

until the date of the trial herein, the Plaintiffs have (1) failed to demonstrate that the County's construction of Bascom Norris Drive resulted in a diversion of stormwater which caused, exacerbated, or increased flooding on the Property, and (2) failed to demonstrate that the flooding that occurred was substantial and periodic, was expected to recur, and that such flooding denied the Plaintiffs any and all reasonable or beneficial use of the Property due to the asserted physical invasion of flooding.

99. In reaching those findings, the Court determines specifically that there was not sufficient proof of any flooding event or series of flooding events impacting the property, occurring at any time during the construction of Bascom Norris Drive in 2005 or at any time thereafter up until the commencement of T.S. Debby in 2012, that would have given rise to at least a cause of action for inverse condemnation by the Plaintiff.

100. The Defendant argues that the statute of limitations should have begun to run in 2005 when the Defendant's noticed flooding during the construction of Bascom Norris Road. The Defendant essentially maintains that, at that time, the flooding constituted a "physical invasion" that triggered the four-year statute of limitations. Campbell Id. The Court rejects that argument given that the extent of the flooding in 2005 appears to have been limited to the parking lot but did not involve any buildings. The Court finds that neither party established, for their respective purposes, that there was any significant flooding during the period spanning 2005 to 2012.

101. The Defendant also argues that the Dickinson stabilization doctrine, first enunciated in United States v. Dickinson, 331 U.S. 745 (1947) is not applicable to this case and should not have delayed the running of the statute of limitations. The Dickinson stabilization doctrine states that the timely filing of an inverse condemnation action may be excused, under

limited circumstances, if certain factors are present. In Dickinson, the Supreme Court allowed a land owner whose land was subjected to progressive inundation as a result of the construction of a dam which caused rising water levels in a river, over time, to postpone suit until the situation had become stabilized and the consequences of the inundation "had so manifested themselves that a final account could be struck". Id. at 746, 749. In so holding, the Court reasoned that a property owner should not be "required to resort either to piecemeal or to premature litigation to ascertain the just compensation for what is really 'taken.'" Id. at 749.

102. The Defendant points out correctly that Dickinson does not apply where flooding causes "immediate and recognizable damage." Id. at 207. See also Amyx v. United States, 228 Ct. Cl. 876 (1981) and Judkins v. Walton County, 128 So3d 62 (Fla. 1st DCA 2013).

103. The facts in Judkins, Id. are in stark contrast to the facts of this case. In 2002 and 2003, Walton County performed road improvement activity on Holiday Road, which fronts the property. That activity involved alteration to the existing drainage pattern. After the work was completed in 2002, Appellee noticed that the property flooded nearly every time it rained [emphasis added], such that it was impossible to improve the property. While there is some evidence that later projects may have contributed some flood water to the property, Judkins consistently asserted that the property had been unusable since the original road project was completed in 2002. Judkins filed suit an inverse condemnation suit in 2009 against the County.

104. In the instant case, as discussed herein, there is no sufficient proof of any distinct flooding event during 2005 through the moment prior to 2012's T.S. Debby, that caused "immediate and recognizable damage", Dickinson at 207, such that a cause of action for inverse condemnation arose during that span of time. Obviously, the statute of limitations defense would likely have been subjected to further analysis and consideration, if the Court had found

that significant flooding had occurred on the Property during that period, perhaps resulting in a finding of a violation of the statute of limitations.

105. Although the Court finds that the Defendant has not presented facts sufficient to establish that the Plaintiffs should be barred from seeking relief due to a violation of the statute of limitations, the Court finds that the facts do not support a finding that the County should be equitably estopped from asserting the statute of limitations.

106. Under Florida law, equitable estoppel can be applied to estop or bar a party from asserting the statute of limitations as a defense to an action based on its misconduct. "Equitable estoppel is based on principles of fair play and essential justice and arises when one party lulls another party into a disadvantageous legal position." Major League Baseball v. Morsani, 790 So. 2d 1071, 1076 (Fla. 2001).

> Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and inequity, from asserting rights which perhaps have otherwise existed, either of property or of contract, or of remedy, as against another person, who has in good faith relied upon such conduct and has been led thereby to change his position for the worse, and who on his party acquires some corresponding right, either of property, or of contract or of remedy.
>
> The doctrine of estoppel is applicable in all cases where one, by word, act or conduct, willfully caused another to believe in the existence of a certain state of things, and thereby induces him to act on this belief injuriously to himself, or to alter his own previous condition to his injury.

Id. (citations and internal quotation omitted). In order to prove equitable estoppel, Plaintiffs must prove: (1) an affirmative misrepresentation of a material fact by Defendant, which is contrary to a later asserted representation or position; (2) actual and reasonable reliance on Defendant's misrepresentation or misconduct; and (3) a detrimental change in Plaintiff's

position, due to this reliance. Spagnoli v. Medtronic Minimed, Inc., 2009 U.S. Dist. LEXIS 138181 (S.D. Fla. 2009) (discussing Florida law); Riverwood Nursing Ctr., LLC v. Gilroy, 219 So. 3d 996 (Fla. 1st DCA 2017).

107. In this case, the evidence does not demonstrate an affirmative misrepresentation by the County on which the Plaintiffs relied to their detriment. Though representatives of the County may have discussed the possibility of a purchase of the Property with the Plaintiffs and taken steps to see if that was a viable solution pre-suit, such as meeting with other agencies, Plaintiffs were also told that the Board of County Commissioners must approve any purchase of the property. [Trial Tr. pgs. 274 – 275 (Feb. 5, 2019)]. The County Manager testified that he did not tell the Plaintiffs that the County had flooded their property, and stated that he never told the Plaintiffs that the County would buy the Property. The Plaintiffs were in fact specifically told in writing the purchase would have to be approved by the Board of County Commissioners, and such an item was never placed on the agenda of the Board. [Trial Tr. pgs. 274 – 276 (Feb. 5, 2019); Def. Ex. 18].

108. In addition, the Plaintiffs were represented by counsel since at least May 16, 2013. [Trial Tr. pg. 276 (Feb. 5, 2019)]. Pre-suit negotiations between the Plaintiffs and the County that ultimately proved unsuccessful do not support a claim of equitable estoppel. Fletcher v. Dozier, 314 So. 2d 241 (Fla. 1st DCA 1975). There was no testimony or evidence presented showing affirmative misrepresentations, fraud, or other deceptive conduct of County officials. Spagnoli, 2009 U.S. Dist. LEXIS 138181. Thus, no showing of all the required elements of equitable estoppel necessary to defeat the County's statute of limitations defense.

109. The Plaintiffs inverse condemnation claim is not barred by the applicable statute of limitations.

NOW THEREFORE, it is Ordered and Adjudged as follows:

1. Final Judgment is entered on behalf of Columbia County, Florida, and against Robert K. Brown and Carol C. Brown. Defendant, Columbia County, shall go hence without day.

2. The Court reserves jurisdiction for such other relief as requested, including for motions related to attorney's fees and costs.

DONE AND ORDERED in Chambers, at Perry, Taylor County, Florida, this 25th day of July, 2019.

GREGORY S. PARKER
Circuit Court Judge

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