

001591



MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners

DATE: July 23, 2001


FROM: City Attorney


CONSENT

SUBJECT: Woodland Partners, Inc. v. City of Gainesville;
Alachua County Circuit case no. 01-01-CA-2286

Recommendation: The City Commission authorize the City Attorney to represent the City in the case styled Woodland Partners, Inc. v. City of Gainesville; Alachua County Circuit case no. 01-01-CA-2286.

On June 22, 2001, the City Attorney's Office received a Summons and Complaint from Jack M. Ross, Esquire, on behalf of Woodland Partners, Inc. Plaintiff alleges that the City killed and/or cut three hundred and eight trees and removed them from Plaintiff's property. Woodland Partners, Inc. also alleges that they are damaged by the costs of replacement of trees, the loss in value of the property, additional expenses, delay of development, and other administrative costs.

Prepared by: 
Debra S. Babb,
Assistant City Attorney

Submitted by: 
Marion J. Radson,
City Attorney

2001 JUL 24 PM 3:40
CITY OF GAINESVILLE
CITY COMMISSION

11945

IN THE CIRCUIT/COUNTY COURT OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR ALACHUA COUNTY, FLORIDA
CIVIL DIVISION, ALACHUA COUNTY COURTHOUSE
201 East University Avenue - Post Office Box 600
Gainesville Florida 32602

PHONE (352) 374-3636 • FAX (352) 358-3207

A TRUE COPY

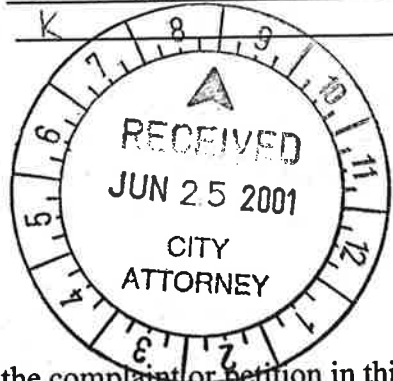
SEVEN M. OELRICH, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at 4:00, on the 22 day
of July, 2001
By P. Bernal
As Deputy Sheriff

2001 JUN 22 11:20 AM

Woodland Partners, Inc.
PLAINTIFF

-vs-
The City of Gainesville
DEFENDANT

Case No.: 2001-CA-2286
Division: K



SUMMONS

THE STATE OF FLORIDA
To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint or petition in this action on defendant

City of Gainesville
% Wayne Bowers, City Manager
200 E. University Ave.
Gainesville, FL 32601

Each defendant is required to serve written defenses to the complaint or petition on plaintiff's attorney whose name and address is

Jack M. Ross, LSA
P.O. Drawer 1168
Gainesville, FL 32602

within ³⁰~~20~~ days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

WITNESS my hand and the seal of said Court on June 20, 2001.

see the attor



J.K. "Buddy Irby
Clerk of Circuit Court

By Breanna Davis
Deputy Clerk

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Alachua County Court Administrator at (352) 374-3648, within 2 working days of your receipt of this summons. If you are hearing or voice impaired, call 1-800-955-8771.

IN THE CIRCUIT COURT, EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

CIVIL DIVISION

WOODLAND PARTNERS, INC.

Plaintiff,

vs.

THE CITY OF GAINESVILLE,

Defendant.

CASE NO: 01-01-CA-2286
DIVISION: K

PLAINTIFF'S COMPLAINT

COMES NOW Plaintiff, Woodland Partners, Inc., by and through its undersigned attorney, and as its Complaint against Defendant, The City of Gainesville, alleges:

GENERAL ALLEGATIONS

1. This is an action for damages that exceed \$15,000.00 excluding interest and attorneys' fees.
2. Plaintiff, Woodland Partners, Inc., is a Florida corporation doing business in Alachua County, Florida.
3. Defendant, The City of Gainesville, is a municipal corporation created by the State of Florida.
4. Plaintiff is the owner of certain real property located west of Tower Road in Alachua County, Florida.
5. On or prior to March 27, 2000, Defendant, by its employees and/or agents acting in the course and scope of their employment, came upon Plaintiff's property, killed and/or cut

three hundred and eight trees, and removed those trees from Plaintiff's property.

6. As a result of Defendant's actions, 308 trees on Plaintiff's property have died and Plaintiff has been damaged by the cost of replacement of the trees, the loss in value of the property, additional expenses, delay of development, and other administrative costs.

7. By letter of October 10, 2000, Plaintiff gave notice of his claim to Defendant by sending a copy of the Notice certified mail, to Wayne Bowers, City Manager, and to Paula Delaney, Mayor/Commissioner. A copy of the Notice is attached as Exhibit "A".

8. Defendant has denied Plaintiff's claim.

COUNT I

9. Plaintiff realleges all allegations in paragraphs 1-8.

10. Defendant, through its agents and employees, failed to use reasonable care while using herbicide around Plaintiff's trees and failed to use reasonable care in cutting and taking healthy trees from Plaintiff's property.

Wherefore, Plaintiff, Woodland Partners, Inc., demands judgment against Defendant, City of Gainesville, for compensatory damages, prejudgment interest, and recovery of its costs incurred in this action.

COUNT II

11. Plaintiff realleges all allegations in paragraphs 1-8.

12. Defendants' employees and agents trespassed on Plaintiff's property.

Wherefore, Plaintiff, Woodland Partners, Inc., demands judgment against Defendant, City of Gainesville, for compensatory damages, prejudgment interest, and recovery of its costs incurred in this action.

COUNT III

13. Plaintiff realleges all allegations in paragraphs 1-8.

14. Defendant committed theft of Plaintiff's property.

Wherefore, Plaintiff, Woodland Partners, Inc., demands judgment against Defendant, City of Gainesville, for compensatory damages, prejudgment interest, and recovery of its costs incurred in this action.

COUNT IV

15. Plaintiff realleges all allegations in paragraphs 1-8.

16. Defendant converted Plaintiff's trees for their own use.

Wherefore, Plaintiff, Woodland Partners, Inc., demands judgment against Defendant, City of Gainesville, for compensatory damages, prejudgment interest, and recovery of its costs incurred in this action.

COUNT V

17. Plaintiff realleges all allegations in paragraphs 1-8.

18. Defendants' actions constitute a deprivation of Plaintiff's property without due process of law in violation of the Fifth Amendment of the United States Constitution and Article I, §9 of the Florida Constitution.

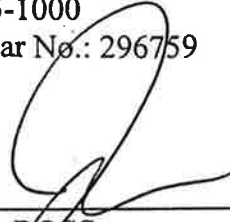
Wherefore, Plaintiff, Woodland Partners, Inc., demands judgment against Defendant, City of Gainesville, for compensatory damages, prejudgment interest, and recovery of its costs and attorneys' fees incurred in this action.

DEMAND FOR JURY TRIAL

19. Plaintiff demands trial by jury on all counts of this complaint.

Respectfully Submitted,

JACK M. ROSS, P.A.
Post Office Box 1168
Gainesville, FL 32602
(352) 375-1000
Florida Bar No.: 296759



JACK M. ROSS
Attorney for Plaintiff

DATED: 6/18/01

LAW OFFICES OF
JACK M. ROSS, P.A.
204 WEST UNIVERSITY AVENUE
SUITE 4
POST OFFICE DRAWER 1168
GAINESVILLE, FLORIDA 32602-1168

TELEPHONE
352/375-1000

FACSIMILE
352/375-6249

JACK M. ROSS
BOARD CERTIFIED CIVIL TRIAL LAWYER

October 10, 2000

Wayne Bowers (Certified Mail Z449 641 300)
City Manager
P.O. Box 490
Gainesville, FL 32602

Paula Delaney (Certified Mail Z449 641 297)
Mayor-Commissioner
P.O. Box 490
Gainesville, FL 32602

Dear Mayor-Commissioner Delaney and Mr. Bowers:

This firm represents Woodland Partners, Inc., on its claim for damages as a result of damage to real property done by Gainesville Regional Utilities and/or its contractors. A claim for those damages was submitted to Gainesville Regional Utilities on May 26, 2000. A copy of that claim is enclosed.

This will put City of Gainesville and Gainesville Regional Utilities on formal notice of the claim of Woodland Partners, Inc. We will appreciate your prompt reply to this claim. Thank you.

Sincerely,

JACK M. ROSS P.A.

Jack M. Ross

JMR:sfb

cc: Michael L. Steinberg
Steve Varvel
Raymond O. Monasco, Esq.



PS Form 3800, April 1995

US Postal Service Receipt for Certified Mail		No Insurance Coverage Provided Do not use for International Mail (See reverse)	
Sent to	Paula Delivery	Street & Number	
Post Office, State, & ZIP Code			
Postage	\$ 99	Certified Fee	1.40
Special Delivery Fee		Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.25	Return Receipt Showing to Whom, Date, & Addressee's Address	3.64
TOTAL Postage & Fees	\$ 99	Postmark or Date	7/13/00

Z 449 641 300

PS Form 3800, April 1995

US Postal Service Receipt for Certified Mail		No Insurance Coverage Provided Do not use for International Mail (See reverse)	
Sent to	Paula Delivery	Street & Number	
Post Office, State, & ZIP Code			
Postage	\$ 99	Certified Fee	
Special Delivery Fee		Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered		Return Receipt Showing to Whom, Date, & Addressee's Address	3.64
TOTAL Postage & Fees	\$ 99	Postmark or Date	

Z 449 641 297

Is your RETURN ADDRESS completed on the reverse side?

<p>SENDER:</p> <ul style="list-style-type: none"> Complete items 1 and/or 2 for additional services. Complete items 3, 4a, and 4b. Print your name and address on the reverse of this form so that we can return this card to you. Attach this form to the front of the mailpiece, or on the back. If space does not permit, "Return Receipt Requested" on the mailpiece below the article number. The Return Receipt will show to whom the article was delivered and the date delivered. 		<p>I also wish to receive the following services (for an extra fee):</p> <p>1. <input type="checkbox"/> Addressee's Address</p> <p>2. <input type="checkbox"/> Restricted Delivery</p> <p>Consult postmaster for fee.</p>	
3. Article Addressed to:	Paula Delivery Mayer - Comm P.O. Box 490 Gainesville, FL	4a. Article Number	2449 641 297
5. Received By: (Print Name)	Faith Myers	4b. Service Type	<input checked="" type="checkbox"/> Certified <input type="checkbox"/> Registered <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD
6. Signature: (Address of Agent)	X Faith Myers	7. Date of Delivery	DEC 11 2000
PS Form 3811, December 1994	102595-98-B-0229 Domestic Return Per	8. Addressee's Address (Only if requested and fee is paid)	

your RETURN ADDRESS completed on the reverse side?

<p>SENDER:</p> <ul style="list-style-type: none"> Complete items 1 and/or 2 for additional services. Complete items 3, 4a, and 4b. Print your name and address on the reverse of this form so that we can return this card to you. Attach this form to the front of the mailpiece, or on the back. If space does not permit, "Return Receipt Requested" on the mailpiece below the article number. The Return Receipt will show to whom the article was delivered and the date delivered. 		<p>I also wish to receive the following services (for an extra fee):</p> <p>1. <input type="checkbox"/> Addressee's Address</p> <p>2. <input type="checkbox"/> Restricted Delivery</p> <p>Consult postmaster for fee.</p>	
3. Article Addressed to:	Wayne Bowers Caly Mgr. PO Box 490 Gainesville, FL	4a. Article Number	2449 641 300
5. Received By: (Print Name)	Faith Myers	4b. Service Type	<input checked="" type="checkbox"/> Certified <input type="checkbox"/> Registered <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD
6. Signature: (Address of Agent)	X Faith Myers	7. Date of Delivery	DEC 11 2000
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102595-98-B-0229

Domestic Return Receipt

