

IN THE CIRCUIT COURT OF THE  
TWENTIETH JUDICIAL CIRCUIT IN AND  
FOR COLLIER COUNTY, FLORIDA

THE CITY OF NAPLES, FLORIDA, A  
FLORIDA MUNICIPAL CORPORATION;

Plaintiff,

VS.

CASE NO.

OUTLOT F PARKSHORE, LLC, a Florida  
Limited Liability Company; VILLAGE ON  
THE BAY, LLC, a Florida Limited Liability  
Company; VENETIAN BAY YACHT CLUB  
CONDOMINIUM ASSOCIATION, INC., a  
Florida Corporation; AND, VENETIAN BAY  
NORTH YACHT CLUB CONDOMINIUM  
ASSOCIATION, INC., a Florida Corporation;

Defendants.

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**COMPLAINT**

Plaintiff, THE CITY OF NAPLES, FLORIDA, a Florida Municipal Corporation, sues  
Defendants, OUTLOT F PARKSHORE, LLC, a Florida Limited Liability Company; VILLAGE  
ON THE BAY, LLC, a Florida Limited Liability Company; VENETIAN BAY YACHT CLUB  
CONDOMINIUM ASSOCIATION, INC., a Florida Corporation; and, VENETIAN BAY  
NORTH YACHT CLUB CONDOMINIUM ASSOCIATION, INC., a Florida Corporation, and  
says as follows:

**Parties, Jurisdiction, Venue**

1. This is a complaint for Declaratory Relief, Nuisance, and Injunction, with respect  
to a failing seawall in the Venetian Bay area of Naples, Florida.

2. THE CITY OF NAPLES, FLORIDA, is a Florida municipal corporation, in Collier County, Florida, with a principal address of 735 8<sup>th</sup> Street South, Naples, Florida 34102.

3. OUTLOT F PARKSHORE, LLC, is a Florida Limited Liability Corporation, with a principal address of 4200 Gulf Shore Blvd. N, Naples, Florida 34103.

4. VILLAGE ON THE BAY, LLC, is a Florida Limited Liability Corporation, with a principal address of Naples, Florida, with a principal address of 4380 Gulf Shore Blvd. N., Naples, Florida 34103.

5. VENETIAN BAY YACHT CLUB CONDOMINIUM ASSOCIATION, INC., is a Florida Corporation, with a principal address of 2685 Horseshoe Drive, Suite, #215, Naples, Florida 34104.

6. VENETIAN BAY NORTH YACHT CLUB CONDOMINIUM ASSOCIATION, INC., a Florida Corporation, with a principal address of 4450 Gulf Shore Blvd. N, Naples, Florida 34103.

7. This Court has jurisdiction pursuant to Chapter 86, Florida Statutes.

8. Venue is proper as the parties, the property in question, and the causes of action all lie in Collier County, Florida.

9. All administrative remedies have been exhausted, waived, or are not required to be pursued.

### **GENERAL ALLEGATIONS**

10. The Plat of Park Shore Unit 2<sup>1</sup> (“Unit 2 Plat”) and the Plat of Park Shore Unit 5<sup>2</sup> (Unit 5 Plat”) as well as other recorded and unrecorded documentation, show that a seawall of about 2 feet in width is generally located within a 3-foot wide platted series of outlots that are

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<sup>1</sup> Plat of Park Shore Unit 2, recorded in Plat Book 8, Pages 54 and 55, of the Public Records of Collier County, Florida.

<sup>2</sup> Plat of Park Shore Unit 5, recorded in Plat Book 12, Pages 39 and 40, of the Public Records of Collier County, Florida.

privately owned (being outlots “A” through “F”), in Venetian Bay, Naples, Florida. (Hereinafter the “Seawall”).<sup>3</sup>

11. The Seawall meanders from lying totally within the platted outlots to encroaching outside their boundaries and within the City of Naples Gulf Shore Boulevard right-of-way from a few inches to as much as 1 ½ feet.

12. The Seawall was in place prior to platting.

13. The Seawall was privately owned prior to platting.

14. The Seawall remained privately owned after platting.

15. It is apparent from the dedication language on the face of the Plat of Unit 2 and Unit 5 that the only public dedications that were reserved to the public were certain the right-of-ways and easements.

16. There is nothing contained in the plat dedication language of the Unit 2 Plat that dedicated or conveyed the seawalls or the repair and maintenance responsibility for them to the City or to the public.

17. There is nothing contained in the plat dedication language of either the Unit 2 or the Unit 5 Plat that dedicated or conveyed the seawalls or maintenance responsibility for them to the City or to the public.

18. The platted “outlots” as well as the waterways were retained in private ownership by their respective developers (hereinafter, the “Developers”)

19. Each of the Defendants is a successor in interest to the Developers and are the current owners of their respect portions of the Seawall and the underlying fee.

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<sup>3</sup> The seawall is bisected in parts and thus could be considered “seawalls.” So, herein the singular “seawall” refers also to the plural “seawalls”.

20. Any seawall encroachment into the public right-of-way (canal, or water) does not constitute a change in ownership from private to public of the Seawall or underlying fee, nor does it change the attendant underlying responsibility to repair and maintain the Seawall.

21. Section 177.081, Florida Statutes, makes it clear that the City has only has an obligation to maintain the Seawall, if it voluntarily assumed the obligation to do so.

22. The City has never voluntarily assumed the obligation to maintain the Seawall.

23. Responsibility for repair and maintenance of the Seawall is the sole obligation of the respective private owners, the Defendants.

24. Defendants have repeatedly taken the position, in conversations with City representatives and at public meetings, that they neither own nor have any responsibility for the Seawall repair and maintenance.

25. The Defendants are not currently maintaining the Seawall.

26. The Seawall has been in state of disrepair for more than five years.

27. In its current condition, the failing Seawall threatens the integrity of the riparian areas along the Seawall, and will rapidly fail even further.

28. The integrity of the City's public sidewalks, public roads, public utilities, waterways, and public health, safety, and welfare in general, have already been damaged and further threatened by the failing Seawall.

29. If not maintained and repaired the Seawall will fall into an even worse condition, the riparian areas will lose their integrity, and the City's public sidewalks and public roads, public utilities, and waterways will be damaged injuring the public safety, health, and welfare.

**COUNT ONE**  
(Declaratory Judgment)

30. Paragraphs 1 through 29 are incorporated by reference as if fully restated here.

31. This is a count for Declaratory Relief under Chapter 86, Florida Statutes, regarding the ownership and responsibility for repair and maintenance of the Seawall.

32. There is a bona fide, actual, present, and practical need for a Declaration.

33. The Declaration will deal with present, ascertained, or ascertainable state of facts.

34. The rights and responsibilities of the parties are dependent upon the facts and law applicable to the case.

35. The City and the Defendants have an actual, present, adverse and antagonistic interest and are all before the Court.

36. The relief sought is not merely giving legal advice by the courts or the answers to questions propounded by curiosity.

**COUNT TWO**  
(Nuisance)

37. Paragraphs 1 through 29 are incorporated by reference as if fully restated here.

38. The failing Seawall is an imminent threat to the City's right of way, sidewalks, roads, public utilities, and waterways.

39. Defendants had and have a duty to repair and maintain their respective portions of the Seawall in a manner that does not damage or injure adjoining property owners.

40. The Defendants have either intentionally not repaired and maintained their respective Seawall, or they have been negligent in repairing and maintaining their respective Seawalls.

41. Defendants' failure to repair and maintain their respective portions of the Seawall is unreasonable and unwarranted.

42. Defendants' failure to repair and maintain the Seawall is causing and will cause further substantial and tangible injury to the City and public.

43. Failure of the Seawall will cause damage portions of the City's sidewalk system, making it dangerous and unusable.

44. Failure of the Seawall will cause damage to portions of the City's roadway system, making them dangerous and unusable.

45. Failure of the Seawall will cause damage to the City's water and sewer system in its right of way, causing damage to the health and welfare of the City and public.

46. Failure of the Seawall will cause damage to the City's waterways, causing damage to the health and welfare of the City and public.

47. Failure of the Seawall is and will be unsightly, dangerous, and a nuisance to the City and the public health, safety, and welfare.

**COUNT THREE**  
(Injunction)

48. Paragraphs 1 through 29 are incorporated by reference as if fully restated here.

49. The City and the public will suffer irreparable harm unless the Defendants are required to repair and maintain the Seawall.

50. The City and the public do not have an adequate remedy at law.

51. The injury to the City and the public from a failing Seawall outweighs any harm from an injunction requiring the Seawall owners to repair and maintain the Seawall.

52. The issuance of the injunction and a repaired and maintained Seawall will serve the public interest preserve use of the public right of way, prevent damage to the City's utility systems, prevent a hazard to navigation, and will avoid injury to the health, safety, and welfare of the public.

WHEREFORE The City respectfully requests that this Court declare that the Defendants are the owners of their respective shares of the Seawall, that the failing Seawall is nuisance,

order that the Defendants repair and maintain their respect portions of the Seawall, and grant such other relief as is just and proper.

Dated this 11<sup>th</sup> day of May, 2018.

/s/ James D. Fox, Esq.

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