

Simon v. Deer Meadows Homeowners' Ass'n, Inc., No 1D18-2407 2019 WL 3022618 (Fla. 1st DCA July 10, 2019).

First DCA Rules that Buyers Should Raise Concerns About Property Early On or Risk Waiving the Ability to Sue

This case came about because a stormwater pond sat partially on the Simons' private property. The developer built the subdivision in which the Simons' property was located in 1984. The developer submitted the plat to the local government, which accepted responsibility for maintaining the easements and public roads. However, the plat did not depict the pond in question. Because the plat did not depict the pond, the government never assumed responsibility for it.

The Simons purchased the property in 1993. Prior to purchasing the lot, the Simons were aware that the pond was located on the property and had been informed that the prior owner maintained the pond. More than 10 years after the date of purchase, the Simons claimed that the local government should be responsible for maintaining the pond. The local government disagreed with the Simons' assessment. The Simons then filed an inverse condemnation claim arguing that the local government essentially took the part of the pond that was on their property without compensation by allowing stormwater from the public roads to runoff into it.

The Simons' claim ultimately failed both at trial and on appeal. The courts reasoned that if the local government did take the property, the taking occurred before the Simons owned it. The Simons did not receive any separate assignment of rights. The court was also concerned with the fact that the Simons knew prior to buying the property that the pond had been maintained by the previous owner because under these circumstances the Simons might receive a windfall at the expense of the original owner who suffered the loss.

This case highlights that purchasers should consider dealing with condemnation or inverse condemnation in their contracts, as well as closely inspecting properties prior to closing.