

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR WAKULLA COUNTY, FLORIDA

RANDOLPH NELSON and MARY L.
NELSON, his wife; and JOHN PROBERT
and DOLORES PROBERT, his wife,
individually and on behalf of a class of all
others similarly situated,
Plaintiffs,

CASE NO.: 03-93-CA

vs.

WAKULLA COUNTY, FLORIDA, a
political subdivision of the State of Florida,
Defendants.

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT
OF CLASS ACTION AND HEARING**

TO: All property owners in Wakulla County who paid the yearly \$35 special assessment levied by Wakulla County upon improved real estate for Emergency Medical [Ambulance] Services and who wish to receive a refund [in the event any refund is ordered] of any payments of such assessment that were actually paid on or after March 31, 1999. [The Statute of Limitation or nonclaim limits any potential refund recovery to only those payments of the special assessment that were actually paid on or after the said date March 31, 1999.] For all payments of the special assessment made prior to March 31, 1999, no recovery thereof is permitted under the statute.

YOU ARE NOTIFIED that:

(1). This lawsuit was filed on March 31, 2003 by Randolph and Mary Nelson; W J. and Josephine C. Jackson; C.A. Harrison and Yvonne P. Metcalf; Jim and Sally Ann Cooper and John and Dolores Probert, individually, and also on behalf of a proposed class of all other similarly situated property owners in Wakulla County who paid the yearly \$35 special assessment levied by Wakulla County upon improved real estate for Emergency Medical [Ambulance] Services and who wish to receive a refund [in the event any refund is ordered] of any payments of these assessments that were actually paid on or after March 31, 1999. The plaintiffs filed this lawsuit for themselves and also proposed therein to represent all other similarly situated Wakulla County property owners as a class of additional plaintiffs. The court determined that the Nelsons and Proberts would be qualified class representatives to represent those who later did not vote/elect to not remain members of such a class. Designated as class representatives, they will represent, with their counsel, designated as class counsel, all those who fit the description of those to whom this notice is addressed who wish to remain a member of the class and be so represented and do not vote/elect to exclude themselves and not thus remain a class member.

(2). The defendant is Wakulla County, a political subdivision of the State of Florida and governing administrative body and representative body of all citizens and taxpayers in Wakulla County, Florida.

PURPOSE OF NOTICE AND BRIEF HISTORY

(3). You are being notified of the pending lawsuit so that you may determine whether you wish to remain an additional plaintiff and remain in the class being represented by the class representatives and class counsel or whether you do not wish to remain an additional plaintiff and be a member of the class and be so represented and thereby vote/elect to exclude yourself and not remain a class member. This notice is also to advise you that if you remain as an additional plaintiff and member of the class that a settlement has been proposed that, if you remain as a member of the class, will be binding upon you. The purpose of this notice is to inform you that the pending lawsuit and the proposed settlement will affect the rights of all to whom this notice is addressed. This notice describes the rights and options you have regarding the pending lawsuit and the proposed settlement. This notice is not any expression of any opinion by the court as to the merits of any claims or any defenses asserted by any party in this action, or the fairness or adequacy of the proposed settlement. This notice also advises you of a hearing that is scheduled in this case on January 28, 2009 at 3:00 p.m. EST in the main courtroom of the Wakulla County Courthouse. **YOU MUST TAKE ACTION IMMEDIATELY TO RESPOND TO THIS NOTICE.**

(4). The action began on March 31, 2003 upon the filing of the complaint. The plaintiffs sought a declaratory judgment that Wakulla County Ordinance 85-6 and its Resolutions which it enacted to levy special assessments against all improved real property within the county for Emergency Medical (Ambulance) Services were invalid. Plaintiffs also sought a refund of such special assessments, as well as, injunctive relief. By Ordinance 03-02 Wakulla County had repealed said assessments effective January 1, 2003. Upon plaintiff's Motion For Summary Judgment the court granted a Declaratory Judgment on September 8, 2003 that the Ordinance and its' special assessments were invalid constituting an impermissible unconstitutional tax under the controlling appellate decision, North Fort Lauderdale v SMM Properties, handed down by the Supreme Court of Florida on August 22, 2002. The court denied injunctive relief as being unnecessary. The question of whether any refund of said assessments should be ordered and, if so, how much any refund would be has not been determined by the court.

(5). If the case did go to trial, it is expected that Wakulla County will argue and present testimony and other evidence that (1) the special assessments were enacted and levied in good faith as the law existed in 1985 when Wakulla County's tax millage rate was near or at the maximum of ten (10) mills; (2) that the special assessment did not discriminate among improved owners and provided a general benefit (ambulance services) to the citizens of Wakulla County even if there was no direct benefit to the specific parcel of property involved; (3) that the funds collected have all been spent and are not on hand to be paid back by refund to each taxpayer; (4) Wakulla County would face a substantial hardship if it has to refund the special assessments (which total approximately \$1,400,000) plus the substantial costs involved in making the refunds; (5) the only way Wakulla County may be able to pay the refunds would be to increase the millage rate to levy additional taxes on all property in the county in future years until the refunds and costs have been paid; (6) there was no need for this action to declare such assessment invalid as the county abolished the special assessments effective January 1, 2003 after the Supreme Court decision and the lawsuit only adds to the cost of making any refunds (7) many taxpayers in Wakulla County may not want a refund if they are content the special assessment has been declared invalid and repealed, or if property taxes will be raised to pay for the refunds, or if they were happy to have paid the special assessments for the emergency ambulance services provided; (8) the amount of the yearly assessment on each parcel for ambulance services was \$35 and for most taxpayers the maximum potential refund would be for 4 years, a total of \$140, if the property was owned all 4 years (1999-2002); however, any taxpayer who actually paid the assessment on or after March 31, 1999 (delinquent after March 31) would

potentially be entitled to a refund for 5 years; (9) each refund would have a proportionate share of the attorneys' fees and litigation expenses subtracted from it. Wakulla County has the burden of persuasion and proof concerning whether any refunds should not be ordered.

It is anticipated that the plaintiffs on behalf of themselves and the members of the defined class they represent, will argue and present testimony and other evidence that (1) the special assessments were not enacted and assessed by the county in good faith; (2) that the county knew or should have known that the purpose of the assessment provided no direct benefit to the property parcels assessed and thus the county should have known they were invalid; (3) that the special assessments were discriminatory as to certain taxpayers as they were also assessed against property parcels that were otherwise exempt from ad valorem taxation under the \$25,000 homestead taxation exemption and were not assessed against non-improved properties; (4) even after the Florida Supreme Court's decision in the summer of 2002, the county continued to collect special assessments levied for 2002 up until September 30, 2003; (5) that Wakulla County over estimates the costs involved in making any refunds that may be ordered; (6) the making of such refunds, including the costs of making the refunds, will not create a substantial burden or hardship upon Wakulla County as the county will be able to pay the refunds from available property tax millage authority without exceeding the prescribed millage rate cap; (7) that it was necessary to obtain a judicial determination that the Wakulla County assessments were invalid in order to seek an entitlement to a refund since Wakulla County did not voluntarily offer any refund when it repealed the assessment; (8) that it is not economically feasible for each member of the class to bring their own action to recover the relative small amounts of refund that may be due but which are nevertheless a significant amount to many taxpayers on fixed or with limited incomes, and (9) that the proceedings in the class action require that all persons who may be entitled to any refund be given an opportunity to not participate in the proceedings and the refund, if they elect to do so, and that thereby all citizens who paid the assessment will have been given notice and the right to determine their own individual course of action with respect to these proceedings and any refund.

(6). Although the court ruled that this case may proceed as a class action, it did not mean that any money or refunds would be awarded for there are contested issues which have not been decided. Rather, the ruling meant that the ultimate outcome of this lawsuit - whether favorable to the plaintiffs or to the defendant - would be binding on all class members; that is, to all persons described who did not later exercise their right to vote/elect to be excluded or opt-out from the class and lawsuit within the time period allowed for this choice. Prior to the scheduling of a trial, the parties have submitted a proposed settlement asserting they wish to avoid the risk and uncertainty of further litigation and the further expense of continued litigation.

PROPOSED SETTLEMENT

(7). Solely for the purpose of submitting the proposed settlement to all those who fit the description of members of the defined class, the court has given preliminary approval for it to be submitted, subject to the further action and the vote or election of those to whom this notice has been sent, and, also, a hearing to be held on January 28, 2009 at 3:00 p.m. EST in the main courtroom of the Wakulla County Courthouse.

(8). Approximately \$1,369,525.00 was collected in special assessments for ambulance services for tax years occurring after March 31, 1999 at the rate of \$35.00 per improved parcel per year. As part of the proposed settlement agreement, a settlement fund of approximately one-half of the total assessment collected or \$715,000.00 will be established to cover all refunds and also attorneys' fees and costs that may be determined and approved by the court if the proposed settlement is given final approval. The settlement fund represents 51.8% of the total amount of assessments collected by the county. The amount of the settlement fund will be reduced by the total

amount of the allowable claims of those exercising their right to vote/elect to opt-out of this lawsuit and not be an additional plaintiff.

(9). Before being reduced by deduction of a proportionate share of the attorneys' fees and costs related to this class action and settlement, the amount of potential refund for each taxpayer would be \$18.14 per year - 51.8% of the \$35.00 assessment. However, any actual refund will be less than this amount, after prorata deduction from each claim of attorneys' fees and costs.

(10). Although the actual amount of attorneys' fees and costs are yet to be determined and approved by the court, a ceiling (maximum) amount of fees and costs has been suggested by the parties in the settlement agreement so that an estimate of the amount of any actual refund might be given to you, if the suggested fees and costs are allowable in full. Based upon the actual time spent by the lawyers in handling this case for the class, they have calculated the amount they will be requesting to be approved and to be first paid from the refund settlement fund to be \$335,000.00. And, in addition, up to \$30,000.00 to pay for the costs of the litigation and refund process. For example, (assuming no opt-outs so there is 100% participation), if these maximum amounts were deducted from the \$715,000 settlement fund amount, the remaining balance of \$350,000.00 thus available for refunds would then give a refund of \$8.88 per parcel per year for each year the assessment was paid after March 31, 1999. The actual amount of any refund will depend on the number of opt-outs and the amount of attorneys' fees and costs determined and approved as allowable but any refund, under this example, would be at least \$8.88

(11). In the proposed settlement agreement, the county did not admit that it had not acted in "good faith" in imposing the subject special assessments or that a financial hardship would not be incurred if the county was ordered to refund such assessments in their entirety. The class representatives, Randolph and Mary E. Nelson and John and Delores Probert would not be receiving any greater refund than the refund other class members might receive.

ELECTIONS / OPTIONS

(12). You have several choices to select from in deciding how to respond to this notice: (1) do nothing and thereby remain, unless you opt-out, without any claim or entitlement thereto; (2) exclude yourself by opt-out; or, (3) remain, make a claim and object or remain and make a claim with no objection. If you do nothing you will automatically remain and be a member of the class as a plaintiff in this lawsuit. You will also automatically remain and be a member of the class as a plaintiff in the lawsuit unless you exercise your right to vote/elect to opt-out by timely returning for filing the enclosed Election To Opt-Out. Those who remain will be bound by any judgment ultimately entered in the lawsuit and all their claims released.

DO NOTHING - If you throw this in the trash and do nothing, failing to exercise your rights either to vote/elect to opt-out or to file a claim, you will automatically remain, unless you opt-out, and be a member of the class as a plaintiff in the lawsuit but you will not be entitled to participate in any recovery that might be made as a result of trial or settlement of this lawsuit and any amount awardable but unclaimed by you will be chargeable for a prorata share of the attorneys' fees and costs of litigation.

OPT-OUT - If you do not wish, for whatever reason, to remain a member of the class and be an additional plaintiff in the suit, you can vote/elect to opt-out. If you opt-out (1) you will not be bound by any judgment entered in the lawsuit; (2) you may pursue whatever claim you may have independent of the lawsuit; (3) you will not participate in any recovery that might be made as a result of trial or settlement of this lawsuit nor participate in any further proceedings therein; and, (4) you

will not be chargeable for any prorata portion of the attorneys' fees and costs of representation; and, (5) the total amount of potentially refundable special assessments you paid (before any deduction for attorneys' fees and costs) will be taken out of and removed from the money available for settlement so that your's will not and cannot be used in the lawsuit or its settlement. This option would include those to whom this notice is sent who disagree with the filing of the lawsuit as a class action and thus they do not favor nor support the lawsuit filed as a class action nor the proposed settlement. The number that vote/elect to opt-out will be considered by the court at the hearing on whether the suit should be decertified as a class action, with the individual filing plaintiffs solely responsible for the fees and costs of their representation, or, if not, whether the proposed settlement should be given final approval.

REMAIN - If you want to remain a member of the class and be an additional plaintiff you should not return the Election To Opt-Out for filing. By remaining a class member and plaintiff (1) you will be bound by any judgment entered in the lawsuit, (2) you will not be able to present any claim you may have in any other manner or lawsuit; (3) you will be entitled to participate in any recovery that might be made as a result of trial or settlement of this lawsuit, if you file a timely claim; and, (4) the class representatives and their attorneys will act as your representatives and counsel for the purpose of this lawsuit and the fees and costs of representation will be prorata deducted from your claim. The attorneys designated as class counsel are:

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|------------------------|-------------------------|----------------------------|-----------------------|
| William C. Owen | Douglas S. Lyons | Samuel R. Neel, III | Lance Gerlin |
| 241 Pinewood Drive | Marsha Lyons | 730 East Park Avenue | 325 N. Calhoun Street |
| Tallahassee, FL 32303 | Lyons & Farrar, P.A. | Tallahassee, FL 32301 | Tallahassee, FL 32301 |
| (850) 513-0600 | 325 N. Calhoun St. | (850)425-8310 | (850) 222-8811 |
| | Tallahassee, FL 32301 | | |
| | (850)222-8811 | | |

By remaining a class member you may also seek to intervene individually, with or without a lawyer; file a timely claim by fully completing and returning the enclosed Proof Of Claim form; and also file any objection you may have to the adequacy of the representation of the *designated class* representatives or class counsel or to any aspect of the proposed settlement, including the award of attorneys' fees and costs. The number that file claims without objection and the number that object and the reasons for objection will be considered by the court at the hearing to determine whether the proposed settlement should be considered and given final approval. To be considered and heard at the hearing the enclosed Statement of Objection must be timely completed and returned for filing.

(13). Each class member who remains and qualifies for a refund and wants to receive one, must file a written proof of claim on the enclosed form labeled Proof of Claim. In order to qualify to receive a refund, you must own or have owned a piece of property upon which you paid the special assessment for EMS (ambulance) services on or after March 31, 1999. If you qualify, you must fill out, date, sign and return the Proof of Claim form to the Clerk by December 15, 2008. The address of the clerk is on the form. While the form does not have to be notarized, you will be verifying that you have filled out the Proof of Claim form under penalties of perjury. If you qualify for a refund and are the current owner of the property, the refund will be a credit against the county's assessment of next year's ad valorem taxes upon that property. If you no longer own the property, a refund check will be mailed to you at the address shown on the Proof of Claim form. If you qualify for a refund and do not return the Proof of Claim at all or do not mail it to the Clerk by December 15, 2008 you will not receive any refund.

NOTICE OF HEARING

(14). A hearing to determine the status of this lawsuit and whether the proposed settlement should be considered and given final approval as fair, reasonable and adequate, and attorneys' fees and costs allowed, will be held on January 28, 2009 at 3:00 p.m. before Judge Sauls at the Wakulla County, Florida, Wakulla County Courthouse (main courtroom), Crawfordville, Florida. If the lawsuit continues as a class action, you must remain a member of the class in order to object to any aspect of the proposed settlement, including awards of attorney's fees and costs. If you have an objection to the settlement, you must fill out the enclosed Statement of Objection form and return that form to the Clerk by December 15, 2008. The address of the Clerk is on the form. If you follow the requirements of this paragraph, you may appear the hearing to have your objection heard by the court and present any evidence you may have. If you fail to follow the requirements of this paragraph, you may attend the hearing, but you will not be permitted to raise any objections to the proposed settlement.

(15). This notice is not intended to cover everything about the case or the proposed settlement. For further information about the litigation or the proposed settlement, you may look to the pleadings, orders and other papers filed in this case, all of which may be inspected during regular business hours of the Clerk of the Circuit Court at the Wakulla County Courthouse, Crawfordville, Florida. If you have any questions about this case or this notice, you should contact your attorney. You may direct questions in writing to Douglas S. Lyons, Lyons & Farrar, P.A., 325 N. Calhoun Street, Tallahassee, Florida 32301. You may also direct questions in writing to Stephen E. Mitchell, Mowrey and Mitchell, P.A. 515 N. Adams Street, Tallahassee, Florida 32301-1111, one of the attorneys for the county.

PLEASE DO NOT CALL THE COURT OR THE CLERK OF THE CIRCUIT COURT.

BY ORDER OF THE CIRCUIT COURT, Circuit Judge N. Sanders Sauls, as directed this 2nd day of October, 2008.

Brent X. Thurmond, Clerk of the Circuit Court
MSBU
P. O. Box 400
Crawfordville, Florida 32326

IN THE CIRCUIT COURT
OF WAKULLA COUNTY, FLORIDA

Randolph Nelson, et al.

Plaintiffs,

vs.

Case No.: 03-93 CA

Wakulla County, et al.,

Defendants.

Notice of Class Action and Proposed Settlement

Pursuant to Rule 1.220(d)(2), Florida Rules of Civil Procedure notice is hereby given that a class action has been certified by the Court in a lawsuit involving special assessments paid to Wakulla County for Emergency Medical Services (ambulance) services. Wakulla County has entered into a proposed settlement agreement with representatives of the plaintiff class in the above entitled case. Class members entitled to participate in such settlement include all property owners in Wakulla County who have paid the yearly \$35.00 special assessment levied by the County for Emergency Medical Services since on or after March 31, 1999. Class members participating in this settlement will receive a payment or credit on future taxes equal to a maximum of \$8.88 per assessment per assessment year. The actual amount of any refund will depend on the number of class members electing to opt-out of the class and settlement and the amount of attorneys' fees and costs determined and approved by the Court as allowable. Class members wishing to receive a settlement payment must file a claim with the Clerk of Court at the address below on or before December 15, 2008.

Class members wishing to be opt-out from this settlement or to object to it must file their requests to opt-out or objections with the Clerk of Court on or before December 15, 2008. If you believe you may be a class member and have not yet received mailed notice of this settlement and forms, please contact class counsel, Douglas S. Lyons, Esquire, 325 N. Calhoun St., Tallahassee, Florida 32301, for a more detailed notice of the proposed settlement and instruction concerning what you must do to participate in this settlement. All claims, requests to opt-out, and objections should be mailed to:

Brent X. Thurmond,
Clerk of the Circuit Court
MSBU
P. O. Box 400
Crawfordville, Florida 32326