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FILED

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT, AT NASHVILLE

2009 OCT -2 PM 2: 44

RICHARD R. ROOKER, CLERK

[Signature] R.C.

JAMES C. BRADSHAW III and SARAH
GUENZER BRADSHAW,)

Plaintiffs,)

v.)

FIRST PRESBYTERIAN CHURCH,
NASHVILLE, TENNESSEE)

Defendant.)

CIVIL ACTION NO. 09C3468

JURY DEMAND

VERIFIED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Come the Plaintiffs, James Campbell Bradshaw III and Sarah Guenzer Bradshaw, and for Complaint against Defendant First Presbyterian Church would show the Court as follows:

1. Plaintiffs are citizens and residents of the City of Oak Hill in Nashville, Davidson County, Tennessee, residing at 875 Robertson Academy Road.
2. Defendant First Presbyterian Church, Nashville, is a church organized pursuant to the principles of the Presbyterian Church (U.S.A.), with its principal place of business at 4815 Franklin Road in the City of Oak Hill in Nashville, Tennessee, 37220. Defendant's governing body is the Session, which consists of all ministers and elders in active service, and is governed by officers elected by the congregation.

JURISDICTION AND VENUE

3. The Court has jurisdiction over the subject matter of this action pursuant to Tenn. Code Ann. § 16-10-101 *et. seq.*, and venue of this action is proper in Davidson County, Tennessee, pursuant to Tenn. Code Ann. § 20-4-107.

FACTUAL BACKGROUND

4. Plaintiffs own and reside on a 1.12 acre parcel of land in the City of Oak Hill, Nashville, Davidson County, Tennessee, located at 875 Robertson Academy Road. Plaintiffs' land is improved with a residence in which Plaintiffs and their children reside and make their home. In addition to a home, Plaintiffs' land is also improved with a carport, an outbuilding, lawns, gardens, shrubbery, landscaping, and similar fixtures and improvements.

5. Defendant owns and occupies approximately 55 acres of land in the City of Oak Hill, Nashville, Davidson County, Tennessee, located at 4815 Franklin Road.

6. The City of Oak Hill is a residential community. Defendant uses its property at 4815 Franklin Road for the purpose of operating a church, private school, and a commercial recreation center. The church and private school are nonconforming uses which are permitted to exist and continue to exist pursuant to conditional use permits approved and overseen by the City of Oak Hill. Upon information and belief, Plaintiffs allege that the commercial recreation center is not an allowed nonconforming use under the laws and ordinances of the City of Oak Hill, nor is it permitted to exist or operate under an authorized conditional use permit issued by the City of Oak Hill.

7. Beginning in 1999 and continuing through the present, Defendant has engaged in numerous expansive construction projects at 4815 Franklin Road, some of which were not approved, regulated, or overseen by the City of Oak Hill. During the course of their various construction projects over the last ten years, Defendant has, among other things, graded, filled in, paved, built on, increased impervious surface area, and substantially raised the elevation of its numerous acres of land at 4815 Franklin Road. Defendant has extensively paved large expanses of its land for use as parking lots and has otherwise increased impervious surfaces through the elevation and widening of its roads. Defendant has constructed large buildings and

improvements throughout its approximately 55 acre parcel, creating large additions of impervious areas. Defendant has filled-in areas adjacent to the Middle Fork of Browns Creek which flows through Defendant's property and onto Plaintiff's and has channelized said creek. Defendant filled in existing wetland and natural detention areas with fill dirt and other material to create recreation fields. Defendant has raised the elevations of existing roads and replaced existing drainage pipes in state-protected streams with pipes of larger diameter without proper permits from the State of Tennessee, designs, or consideration of downstream property owners. Defendant created curbing along its back driveway which directs and channels storm water runoff away from the detention pond on its property and onto Plaintiffs' property. Some of the various construction projects were conducted without the approval, regulation, or oversight by the City of Oak Hill.

8. By raising the elevation of its land and roads, paving over surfaces, adding other significant impervious improvements, filling in wetland areas adjacent to the Middle Fork of Browns Creek, and channelizing said creek, Defendant has left the land so that water can only insufficiently soak into the ground, and Defendant has failed to provide adequate mitigation and drainage facilities. As a result, Defendant has accelerated, increased, and changed the natural flow of surface and subsurface waters occurring during rainy periods.

9. Defendant has caused surface waters falling on its land, together with surface water runoff from adjacent lands, to be unnaturally discharged onto Plaintiffs' land. On several occasions during periods of ordinary rainfall in the past thirty-six (36) months, surface waters have been discharged onto Plaintiffs' land in such great quantities that Plaintiffs' land has been flooded to a depth of several inches for many days at a time. Furthermore, the surface water runoff from Defendant's land has left Plaintiffs' land a constant, muddy mess.

10. As a result of such discharges and flooding, Plaintiffs have been greatly damaged. Water from Defendant's property has damaged or destroyed Plaintiffs' landscaping surrounding their residence, and water has infiltrated Plaintiffs' home and its crawlspace, causing mold and mildew and damage to the foundation and supporting structures of Plaintiffs' residence. Water from Defendant's property has caused significant erosion and other damage to Plaintiffs' lawn. Shrubbery and plants have been ruined and lawn and house furnishings have been irreparably damaged. The value of Plaintiffs' property has significantly diminished as a result of the acts and failures to act of Defendant.

11. By causing such discharges and flooding, Defendant has significantly damaged Plaintiffs' property and the value of Plaintiffs' home and real estate. Plaintiffs' have demanded that Defendant compensate Plaintiffs for such damages and install adequate drainage mitigation facilities, but Defendant has failed and refused to pay such compensation or to correct the drainage problems created by its improvements.

12. By maintaining said improvements on its land without adequate mitigation facilities for drainage or surface waters, Defendant is committing a continuing wrong against Plaintiffs for which Plaintiffs have no adequate remedy at law.

13. Representatives of Defendant have appeared before the Board of Zoning Appeals and the Planning Commission of the City of Oak Hill and made numerous misrepresentations to these bodies in order to obtain the necessary approvals for modification of its Conditional Use Permit to allow it to proceed with construction of the various improvements causing damage to Plaintiffs' property.

14. Defendant and its agents, including but not limited to Joe Hodgson and Hill McCallister, have made representations to Plaintiffs that the drainage from Defendant's property

onto Plaintiffs' property will be corrected and "taken back to year zero" and that Defendant will "fix [Plaintiffs'] damages" and will "take care of Plaintiffs' problems" arising out of the drainage from Defendant's property.

15. The foregoing statements, promises, and representations were made to Plaintiffs by representatives of Defendant to defuse Plaintiffs' opposition to Defendant's planned construction projects. Defendant's representations were made to Plaintiffs in the course of proceedings before the City of Oak Hill as part of Defendant's attempts to gain approval of its construction plans. Defendant had a pecuniary interest in securing approval of its multi-million dollar construction projects from the City of Oak Hill, and Defendant's statements to Plaintiffs were made to influence Plaintiffs to refrain from opposing said construction plans.

16. Over the years, Plaintiffs' property has been subjected to numerous other indignities by Defendant. In addition to flooding as detailed above, Defendant has, inter alia, dumped raw sewage so that it floods into Plaintiffs' property, and has allowed vendors to conduct work on Defendant's property in the early hours of the morning, subjecting Plaintiffs' property to an unacceptable noise nuisance.

17. Defendant's actions and inactions have burdened Plaintiffs' property with stigmas requiring Plaintiffs to make numerous disclosures regarding these unfavorable conditions as part of Plaintiffs' obligations under the Tennessee Residential Property Disclosure Act, further impairing the value and marketability of Plaintiffs' residential real estate, all of which have greatly damaged Plaintiffs.

18. As a result of Defendant's actions, Plaintiffs have suffered injuries to their property including, but not limited to, damages to real and personal property, loss of the use and enjoyment of their family home, inconvenience, and emotional distress.

COUNT I - NEGLIGENCE

19. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 18 of this Complaint as if fully set forth herein.

20. Defendant, as an adjoining landowner to Plaintiffs, owed and continues to owe a duty to Plaintiffs to use its property in a manner which does not unreasonably or unnecessarily cause injury to neighboring landowners such as Plaintiffs. As an adjoining landowner to Plaintiffs, Defendant owed and continues to owe a duty to Plaintiffs to not unreasonably alter natural surface and subsurface water drainage to the detriment of adjoining landowners such as Plaintiffs.

21. Defendant intentionally and willfully breached the duties owed to Plaintiffs by accelerating, increasing, and changing the natural flow of surface and subsurface waters across Defendant's land, together with surface water runoff from adjacent lands, causing the water to be unnaturally discharged onto Plaintiffs' land with increased volume and velocity, thereby causing damage to Plaintiffs' property.

22. As a direct and proximate result of Defendant's negligence, Plaintiffs have been damaged in an amount to be proven at trial.

COUNT II - NUISANCE

23. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 22 of this Complaint as if fully set forth herein.

24. Defendant's actions and inactions as alleged above have unreasonably altered natural surface and subsurface water drainage to the detriment of Plaintiffs' property, annoying and disturbing Plaintiffs' free use of their property, and rendering Plaintiffs' ordinary use of physical occupation uncomfortable and unsafe.

25. Defendant is negligently maintaining and operating its property so as to unnecessarily create ongoing damage to Plaintiffs' property, even though it is fully within Defendant's power to operate its property in a non-negligent manner. By and through its negligent and/or intentional actions and inactions, Defendant has accelerated, increased, and changed the natural flow of surface and subsurface waters across its land, together with surface water runoff from adjacent lands, to be unnaturally discharged onto Plaintiffs' land with increased volume and velocity, thereby creating a temporary nuisance causing damage to Plaintiffs' property.

26. Due to the negligent and/or intentional actions of the Defendant, which have caused interference with or changes to the natural flow of water across and underneath Plaintiffs' land, the temporary nuisance created and maintained by the Defendant has created a stigma on Plaintiffs' property that will remain for some period of time even if the flooding is alleviated or abated.

27. As a direct and proximate result of Defendant's negligent and/or intentional actions creating the above described temporary nuisance and stigma, Plaintiffs have been damaged in an amount to be proven at trial.

COUNT III – TRESPASS

28. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 27 of this Complaint as if fully set forth herein.

29. By and through its negligent and/or intentional actions and inactions, Defendant has accelerated, increased and changed the natural flow of surface and subsurface waters across its land, together with surface water runoff from adjacent lands, to be unnaturally discharged

onto Plaintiffs' land with increased volume and velocity, thereby trespassing on and causing damage to Plaintiffs' property.

30. Defendant's actions and inactions constitute trespass on Plaintiffs property resulting in damages to Plaintiffs in an amount to be proven at trial.

COUNT V – VIOLATIONS OF STATUTES AND REGULATIONS

31. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 30 of this Complaint as if fully set forth herein.

32. The Water Quality Control Act of 1977, specifically T.C.A. § 69-3-108 and Tenn. Comp. R. & Regs. 1200-4-7-.04 promulgated thereunder, make it unlawful for any person to alter the physical property of any waters of the State of Tennessee, or to conduct construction which will or is likely to alter the physical property of any waters of the State of Tennessee, without first filing an application for an Aquatic Resource Alteration Permit ("ARAP") from the Commissioner of Environment and Conservation of the State of Tennessee. Under the above authority, the Middle Fork of Browns Creek and the adjacent wetlands qualify as protected "waters."

33. Despite the requirements as stated in the above legal authority, Defendant when it conducted many of its construction projects including, but upon information and belief not limited to its filling in of wetlands adjacent to the Middle Fork of Browns Creek and replacing the culvert under the Church Property Road to which the Middle Fork of Browns Creek flows, violated said authority by failing to file an application for or obtain an ARAP.

34. As the direct and proximate result of Defendant's violations of statutes and regulations Plaintiffs have been damaged in an amount to be proven at trial.

COUNT V – FRAUD AND MISREPRESENTATION

35. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. The representations made to Plaintiffs by Defendant and its agents, as alleged in paragraphs 13, 14, and 15 herein, of both past fact and promises of future conduct, were false. Defendant had either actual or constructive knowledge that said representations were false at the time said representations were made and were made with the intent to deceive the Plaintiffs, or, in the alternative, said representations were negligently uttered and false at the time said representations were made.

37. Defendant's representations were made during the course of transactions in which Defendant had a pecuniary interest. These fraudulent representations were made for the purpose of guiding or influencing Plaintiffs in making their decisions.

38. Defendant's representations were false and were reasonably relied upon by Plaintiffs to their detriment.

39. As a direct and proximate result of Defendant's misrepresentations, Plaintiffs have been damaged in an amount to be proven at trial.

WHEREFORE, Plaintiffs James Campbell Bradshaw III and Sarah Guenzer Bradshaw demand judgment against Defendant First Presbyterian Church, Nashville, and request the following relief:

1. That this matter be tried before a jury of twelve;
2. The Plaintiffs be awarded injunctive relief prohibiting Defendant from committing further acts of negligence, nuisance, and trespass as herein alleged;

3. That Defendants be awarded injunctive relief mandating that the Defendant ameliorate and correct the various uses of its property which have resulted in harm to the Plaintiffs' property;

4. That Plaintiffs be awarded a judgment against Defendant for all property damages sustained by Plaintiffs as a result of Defendant's tortious conduct, as alleged herein, including, but not limited to, diminution of the Plaintiffs' real property's value, the cost of repairing the damage to Plaintiffs' real property and/or restoring same to its condition prior to the Defendant's tortious conduct, damages for the loss of use and enjoyment of Plaintiffs' real property, lost rental value of Plaintiffs' real property, and damages for injury to and destruction of Plaintiffs' personal property;

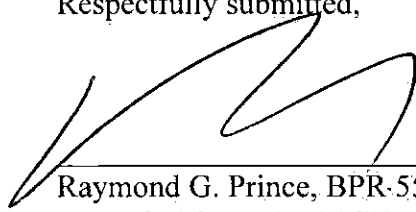
5. That Plaintiffs be awarded a judgment against Defendant for inconvenience and emotional distress;

6. For the discretionary costs of this cause;

7. For the court costs of this cause; and

8. For such other, further, and general relief as this Court deems just and proper.

Respectfully submitted,

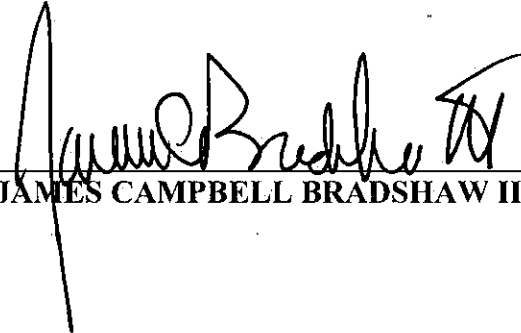


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Counsel for Plaintiffs James C. Bradshaw III and Sarah G. Bradshaw

VERIFICATION

I, **James Campbell Bradshaw III**, after first being duly sworn make oath that the facts and matters stated in the foregoing Verified Complaint are true to the best of my knowledge, information and belief.

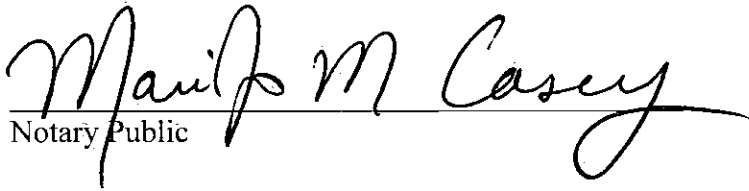


JAMES CAMPBELL BRADSHAW III

STATE OF TENNESSEE)
COUNTY OF Davidson)

Before me personally appeared **JAMES CAMPBELL BRADSHAW III**, in the foregoing Verified Complaint, who makes oath that the statements therein are true to the best of his knowledge, information and belief.

Sworn to and subscribed before me this 30th day of September, 2009.



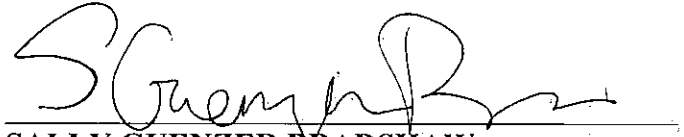
Notary Public

My Commission Expires: 7/24/2010



VERIFICATION

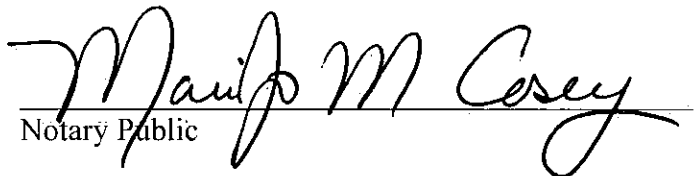
I, **Sally Guenzer Bradshaw**, after first being duly sworn make oath that the facts and matters stated in the foregoing Verified Complaint are true to the best of my knowledge, information and belief.


SALLY GUENZER BRADSHAW

STATE OF TENNESSEE)
COUNTY OF Davidson)

Before me personally appeared **SALLY GUENZER BRADSHAW**, in the foregoing Verified Complaint, who makes oath that the statements therein are true to the best of ~~his~~ her knowledge, information and belief.

Sworn to and subscribed before me this 30th day of September, 2009.


Notary Public

My Commission Expires: 7/24/2010

CLIENTS:BRADSHAW, Jimmy\COMPLAINT (9.28.09) WORD

