UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

HARRY A. LAIRD, IV, **CASE NO.**

Plaintiff,

vs.

BOARD OF COUNTY COMMISSIONERS, WALTON COUNTY, FLORIDA; CINDY MEADOWS, individually; and LARRY JONES, individually,

Defendants.

_____/

COMPLAINT

Plaintiff, HARRY A. LAIRD, IV, hereby sues Defendants, BOARD OF COUNTY COMMISSIONERS, WALTON COUNTY, FLORIDA; CINDY MEADOWS, individually; and LARRY JONES, individually, and alleges:

JURISDICTION

1. This is an action for damages, injunctive and equitable relief, costs, and attorney's fees, brought under the First Amendment to the United States Constitution, through 42 U.S.C. s. 1983, and under Florida's public employee whistleblower statute, §112.3187, *et seq*., Fla.Stats.

2. Jurisdiction of the court is invoked pursuant to 28 U.S.C. §1343(a)(3), in that this action seeks to redress the deprivation, under color of state law, of rights secured to Plaintiff by the First Amendment to the Constitution of the United States.

3. Jurisdiction of this court is also invoked pursuant 28 U.S.C. §1331 (federal question jurisdiction), 28 U.S.C. §1343 (civil rights claim jurisdiction), and 28 U.S.C. §1367 (supplemental jurisdiction).

CONDITIONS PRECEDENT

4. Plaintiff has satisfied all conditions precedent to filing this action, if any.

THE PARTIES

5. At all times pertinent hereto, Plaintiff, HARRY A. LAIRD, IV, has been a resident of Walton County, Florida. He was employed by Defendant BOARD OF COUNTY COMMISSIONERS, WALTON COUNTY, FLORIDA, at all times pertinent hereto, and is *sui juris*.

6. At all times pertinent hereto, Defendant, BOARD OF COUNTY COMMISSIONERS, WALTON COUNTY, FLORIDA ("the COUNTY"), has been authorized and existing under the laws of Florida, and has been an "employer" as that term is used under the law or laws set forth above.

7. At all times pertinent hereto, Defendant, CINDY MEADOWS, has been employed as a county commissioner within Defendant COUNTY, has taken action in violation of the First Amendment to the United States Constitution within the jurisdictional boundaries of this court, and is *sui juris*. She is sued in her individual capacity.

8. At all times pertinent hereto, Defendant, LARRY JONES (collectively with Defendant MEADOWS, "the INDIVIDUAL DEFENDANTS"), has been employed by Defendant COUNTY, has taken action in violation of the First Amendment to the United States

Constitution within the jurisdictional boundaries of this court, and is *sui juris*. He is sued in his individual capacity.

GENERAL FACTS

7. Plaintiff was an employee of Defendant COUNTY for a period of approximately ten years through his wrongful termination on or about July 21, 2015. For the pertinent period through his termination, Plaintiff held the position of flood plain manager within Defendant COUNTY's Department of Planning and Development, in which position he was responsible for reviewing initial permit applications along with initial architectural plans, and then issuing or denying permits pursuant to applicable law. In that position, Plaintiff reported directly to Wayne Dyess, Defendant COUNTY's Director of Planning. Dyess in turn reported directly to Defendant JONES, the County Administrator. JONES reported to the Board of County Commissioners ("BOCC"). In addition to Plaintiff's direct report to Director of Planning Dyess, he was also subordinate to and occasionally given instructions by Mac Carpenter, Defendant COUNTY's planning manager. Carpenter also reported directly to Dyess.

8. During the period of approximately 2004 to 2008, both Defendants MEADOWS and JONES were elected members of the BOCC. In or around 2008, Defendant MEADOWS vacated the position on the BOCC. In or around 2012, Defendant JONES vacated his position on the BOCC only later to be appointed to the position of County Administrator. After four years of not being a commissioner, Defendant MEADOWS once again ran for election in 2012, and was once again elected to the BOCC as the commissioner representing District 5.

9. On a day in or about mid-January 2015, in the normal course of performing his job duties and specifically while reviewing the project file of Lakeside at Blue Mountain for the

Coastal Dune Lake Protection Zone requirements, Plaintiff came upon a single page memorandum authored in 2008, a copy of which he has not retained ("the Memo"). The Memo was authored by Melissa Ward, who at the time held the position of planner, and directed to Pat Blackshear, who at the time held the position of Director of Planning (the position current held by Dyess). The subject addressed in the Memo was a forty-one (41) acre plat then being developed by a developer by the name of McCormick, in connection with which the developer was required either to dedicate 5% of the land for a public use, such as a park, or alternatively to pay a "recreational fee" of 5% of the value, such value determined by Defendant COUNTY's public appraiser. According to the Memo, the developer had opted to pay the 5% fee, and the appraiser had valued the plat at just under $13 million, making the required fee approximately $614,500. However, based on what the author of the Memo described as "a decimal point error"—which explanation was never believed by Plaintiff--rather than being invoiced and paying a fee of approximately $614,500, the developer had been invoiced and paid a fee of approximately $614.50. Therefore, based on the Memo, from a point in time at least as far back as around 2008, Defendant COUNTY's treasury had a deficit or deficiency of approximately $614,000.

10. Having reviewed the Memo, and based on Ward's dismissal some years after authoring the Memo for a transgression, Plaintiff understood to be far less serious than an approximate $614,000 shortfall in collection, Plaintiff never inferred from the Memo the likelihood that Ward was paid off by the developer in connection either with the substantial under-invoicing or in connection with any failure to bring the fact thereof to anyone's attention. However, Plaintiff did infer from the Memo the possibility that someone in Defendant

COUNTY's employ senior to Ward may have benefitted personally from such under-invoicing, and may have instructed Ward not to take action thereon over and above having authored the Memo.

11. At the time that Plaintiff discovered the Memo, he was working with the Lakeside at Blue Mountain file on a large work table within a sizable work area, with a number of his colleagues close by. After Plaintiff showed the Memo to some of his co-employees, one such co-employee, by the first name of Vivian, commented by stating that she remembered that event, and that "it got resolved." At least at the moment it was uttered, Plaintiff understood the phrase "it got resolved" to potentially mean that the approximately $614,000 deficit had subsequently been recognized and collected.

12. Within approximately two minutes of Plaintiff finding the Memo, Dyess approached him inquiring what he had found, Plaintiff showed Dyess the Memo, and Dyess stated that he had "never seen it," instructed Plaintiff to "put it [the Memo] back in the file," and informed that he would "ask about it." Plaintiff did as instructed, returning the Memo to the file in which he had found it. Plaintiff does not recall whether Dyess made a photocopy of the Memo for himself, and Plaintiff made no copy for himself.

13. Thereafter, Dyess in fact made a number of calls, including one to Mark Davis, Defendant COUNTY's County Attorney. On information and belief, Dyess also forwarded copies of the Memo both to Davis and to Defendant COUNTY's Finance Department.

14. Either that very afternoon or within one or two days thereafter, Dyess approached Plaintiff, inquired further about his finding the Memo, and asked various questions, including,

"where did you find this [the Memo], again?" Plaintiff responded to the various questions asked by Dyess. On information and belief, Deyss was getting information for County Attorney Davis.

15. On information and belief, County Attorney Davis and/or Defendant COUNTY's Department of Finance contacted the office of the State Attorney shortly thereafter, and an investigation into the content of the Memo-specifically into the developer's fee underpayment of approximately $614,000—was initiated by the State Attorney.

16. In connection with the investigation of the content of the Memo by the State Attorney's office, in or about late April or May 2015, Plaintiff was called by telephone and asked to appear for questioning at the State Attorney's office. Plaintiff in fact appeared as requested, and was questioned for approximately forty-five (45) minutes by the combination of Assistant State Attorney Greg Anchors and State Attorney's office investigator Candice Bearden. The questioning addressed the subject of Plaintiff's finding of the Memo.

17. Following his discovery of the Memo and reporting of the same to his superior – and all the more so following Plaintiff's participation in the investigation thereof by the State Attorney's office – Plaintiff began having his professional judgment openly questioned by Defendants MEADOWS and JONES, among others, and being subjected to a hostile work environment. As a result of such questioning and hostile environment, on February 24 2015, Plaintiff applied for a transfer from the position of flood plain manager to a position outside of the Department of Planning and Development Services, the same being the position of beach maintenance manager. Plaintiff did not even receive an interview, as the job was awarded to Defendant JONES' son-in-law, who, upon information and belief, is less qualified than Plaintiff for that position.

18. By way of example only of the questioning of Plaintiff's professional judgment, on or about May 18 2015, Defendant MEADOWS began bypassing Plaintiff and other staff of Defendant COUNTY, and instead reached out via social media for information regarding a recreational vehicle parked and apparently occupied located on the side Route 395. The social media conversation about that and related topics was condescending to and/or disrespectful of Plaintiff.

19. By way of further example, in or about the last week of June 2015, a complaint about Plaintiff was registered by a District 5 resident by the name of Helms with the office of Defendant MEADOWS. Notwithstanding Plaintiff's utterly appropriate interactions with Ms. Helms, both before and after her complaint to Defendant MEADOWS, Helms appears to have registered a follow-up complaint that Plaintiff was angered by her initial approach to a commissioner. In an email of June 19, 2015 to her executive assistant, Defendant JONES, and Dyess, written without the questioning of Plaintiff or other investigation, Defendant MEADOWS accused Plaintiff of being "'irate' asking why she [Helms] called the commissioner," and asked the recipients of the email to "correct this." Based on his understanding of the "correct this" instruction from Defendant MEADOWS, Dyess approached Plaintiff the following morning, informed of his personal opinion that Plaintiff did nothing wrong, but informed Plaintiff further of Defendant MEADOWS' instruction of Dyess to "correct this." Later that day, specifically on the afternoon of June 20, 2015, in furtherance of Defendant MEADOWS' instruction, Dyess sent Plaintiff an email "memorializ[ing] our discussion from this morning," stating that "it is highly inappropriate to contact a customer to inquire why they called a commissioner," and instructing that Plaintiff "[c]onsider this a formal counseling on this matter."

20. By way of a final example, and one constituting the pretextual reason announced for Plaintiff's termination, in connection with a permit application by the owner of Lot 17 Sugarwood, after a permit issued in November 2014 expired, on or about February 24, 2015, based on his review of architectural plans submitted and applicable code sections, Plaintiff recommended and Dyess approved that as proper hardship relief under the code, a road setback would be reduced from twenty (20) feet to fifteen (15) feet. Apparently following an interim complaint from the Sugarwood Homeowners Association, such setback reduction became the pretext for Plaintiff's termination, which was communicated in a written note signed by Defendant JONES and delivered on the afternoon of July 21, 2015 ("the Termination Note"). On information and belief, Plaintiff was terminated by Defendant JONES on the instruction of Defendant MEADOWS. The Termination Note read as follows:

> On or around July 2, 2015, County Administrator Larry Jones and County Attorney Mark Davis met with the Sugarwood Homeowners Association. During this meeting, they were informed that the setback of a particular house had been changed from 20' to 15'. Later that day, they met with Hal Laird, floodplain manager and the plan reviewer that approved the change, regarding an explanation as to why the change was made. No explanation was provided by Hal that day. Mr. Jones and Mr. Davis directed Hal to provide a written explanation. Two weeks elapsed and when nothing had been received by them, Mr. Jones spoke with Wayne Dyess, Planning Director and advised him of the situation.
>
> It was only after being prompted by Wayne Dyess, Planning Director, that Hal sent a brief email that provided no real explanation for the change. This behavior is unacceptable and will not be tolerated. It is failure to perform job duties and insubordination. Termination of employment is recommended.

21. All three Defendants were aware of the intentional falsehood and therefore the pretextual nature of the Termination Note. Reviewing the same sentence by sentence, it is likely

correct that Defendant JONES and Davis met with representatives of the homeowners association on Thursday, July 2, 2015. It is also likely true that the reduced setbacks on Lot 17 were discussed at that meeting. It is definitely true that a subsequent meeting was held late on the same day, in which meeting Defendant JONES and Davis questioned Plaintiff on the issue. However, Plaintiff provided a detailed explanation in that meeting, expanding orally on the written explanation of the setback reduction in set forth on the permit issued on February 24 2015. Further, after Defendant JONES and Davis instructed Plaintiff to immediately provide written explanation, and Plaintiff responded that he did not know what he might add to the written explanation contained in the permit, Defendant JONES and Davis rescinded the instruction to immediately provide written explanation, and replaced that instruction with one requiring Plaintiff to meet with Dyess during the following week (Friday July 3 2015 was an off-day in celebration of Independence Day), and that Plaintiff and Dyess combine to prepare a written explanation during that week. On July 2, 2015, after Plaintiff's meeting with Defendant JONES and Davis, Plaintiff called Dyess on his county cell phone to discuss the situation. Dyess said, he did not know anything about Plaintiff's meeting with Defendant JONES and Davis, and Plaintiff and Dyess would discuss it early the following week in the office. Plaintiff and Dyess met and addressed the issue on Tuesday, July 7, 2015. Further, after Plaintiff and Dyess met and addressed the issue on Tuesday, July 7, 2015, and Dyess indicated in that meeting that he would check into the matter to determine what was needed, a meeting was held on the general subject of setbacks for Coastal Dune Lakes in Davis' office on Wednesday morning July 8, 2015. Following the meeting, Plaintiff approached Davis, and asked him "if they now had everything they needed arising out of the previous meeting on the Lot 17 setback," and Davis responded that

they did. Then, eight days later, on Thursday July 16, 2015, contrary to his last instruction on the subject delivered by Davis, Dyess informed Plaintiff that he "needed to submit a written response to Jones and Davis regarding Lot 17 immediately." After informing Dyess of his continuing uncertainty as to what to add to the written explanation set forth in the permit, Plaintiff proceeded to consult with senior planner Brian Underwood, and with planning tech Aaron Craker, and to write and forward an email to Dyess, Defendant JONES, and Davis, in which email he repeated and briefly expanded upon the explanation of the setback reduction set forth in the permit. Such series of events is what Defendant JONES characterized as insubordination and a basis for termination.

22. Plaintiff has contracted with the undersigned for representation in this matter. Based on applicable law, Defendants should be made to pay litigation costs and reasonable fees charged by the undersigned in connection herewith.

COUNT I-VIOLATION OF PUBLIC EMPLOYEE WHISTLEBLOWER STATUTE (against Defendant COUNTY)

23. Paragraphs 1-21 above are realleged and incorporate.

24. This count sets forth a claim against Defendant COUNTY under §112.3187, *et seq*., Fla. Stats.

25. As stated more specifically in part above, Plaintiff reported and disclosed violations of law, rules or regulations, and/or malfeasance, misfeasance or gross misconduct to persons both inside and outside of his normal chain of command, and to others having the authority to investigate, police, manage and otherwise remedy the violations that he reported.

26. After reporting these matters and/or participating in investigations, hearings, or

other agency inquiries, as related in part above, Plaintiff was the victim of retaliatory actions set forth in part above.

27. Plaintiff's adverse treatment, including his termination, was a direct adverse result of his reporting violations of laws, rules or regulations, of his reporting malfeasance, misfeasance or gross misconduct, and/or of his participating in investigations, hearings or other inquiries, specified in part above.

28. The actions of all employees and agents of Defendant COUNTY who affected Plaintiff's employment relationship with Defendant COUNTY adversely did so at least in part in retaliation against him for his "whistleblowing" activities.

29. As a direct and proximate result of the actions taken against him by Defendant COUNTY, Plaintiff has suffered injury, including but not limited to past and future wage losses, loss of benefits, and other tangible damages. These damages have occurred in the past, are occurring at present and will likely occur in the future.

COUNT II-FIRST AMENDMENT RETALIATION
(against the INDIVIDUAL DEFENDANTS)

30. Paragraphs 1-21 above are realleged and incorporate.

31. This count sets forth a claim against the INDIVIDUAL DEFENDANTS for First Amendment retaliation, and is brought through 42 U.S.C. §1983. This count is pled in the alternative.

32. The INDIVIDUAL DEFENDANTS operated to violate Plaintiff's rights under the First Amendment. These violations were of the type and character as to which any reasonable person would be aware. Plaintiff's rights to freedoms of speech and expression were violated.

Public employees like Plaintiff have the right to engage in First Amendment activities without the fear of reprisal.

33. Plaintiff, as set forth in part above, engaged in constitutionally protected activity by speaking on matters of public concern and beyond the scope of his job duties, including but not limited to his participation in inquiries and investigations both within and without the agency in which he was employed. Plaintiff conducted some or all of his activities and exercised some or all of the rights listed above in the general public and outside of his work place.

34. After engaging in protected activity as related in part above, Plaintiff was the victim of retaliatory actions as set forth in part above. The INDIVDUAL DEFENDANTS infringed on Plaintiff's constitutionally protected interests under the First Amendment, as set forth in part above. The INDIVIDUAL DEFENDANTS' actions, set forth in part above, were the types of retaliatory conduct that would deter a person of ordinary sensibilities from exercising his or her First Amendment rights. Plaintiff's protected activity was a substantial or motivating factor in the adverse actions taken against him.

35. The conduct of the INDVIDUAL DEFENDANTS was in callous and willful disregard of Plaintiff's constitutional rights, thereby authorizing an award of punitive damages against them.

36. The INDIVIDUAL DEFENDANTS are persons under the laws applicable to this action. The INDIVIDUAL DEFENDANTS are liable, jointly and severally with Defendant COUNTY, for their actions, individually and in concert, which violated the civil rights of Plaintiff under the First Amendment.

37. The INDIVIDUAL DEFENDANTS personally participated in the adverse actions

Against Plaintiff in violation of his First Amendment rights set forth above.

38. The INDIVIDUAL DEFENDANTS were the main participants and/or made the Decisions to act adversely to Plaintiff in his employment after he engaged in protected First Amendment activity.

39. At all times pertinent hereto, the INDIVIDUAL DEFENDANTS were acting under color of state law, and they were doing so when they made the decisions and/or participated in the adverse employment actions against Plaintiff.

40. The INDIVIDUAL DEFENDANTS acted with malice against Plaintiff and/or in Reckless disregard of his clearly established rights under the First Amendment.

41. As a direct and proximate result of the actions of the INDIVDUAL DEFENDANTS, Plaintiff suffered the adverse employment actions set forth above. He suffered lost wages, benefits, and other tangible damages. Plaintiff has also sustained emotional pain and suffering damages, loss of the capacity for the enjoyment of life, and other intangible damages. These losses have occurred in the past, are occurring at present, and are likely to occur into the future. Plaintiff is entitled to punitive damages against the Individual Defendants under this count, as well as to an award of costs and attorney's fees under 42 U.S.C. §1988.

COUNT III-FIRST AMENDMENT RETALIATION (against Defendant COUNTY)

42. Paragraphs 1-21 above are realleged and incorporated.

43. This count sets forth a claim against Defendant COUNTY for First Amendment retaliation, and is brought through 42 U.S.C. §1983. This count is pled in the alternative.

44. Defendant COUNTY operated to violate Plaintiff's rights under the First Amendment. These violations were of the type and character as to which any reasonable person

would be aware. Plaintiff's rights to freedoms of speech and expression were violated. Public employees like Plaintiff have the right to engage in First Amendment activities without the fear of reprisal.

45. Plaintiff, as set forth in part above, engaged in constitutionally protected activity by speaking on matters of public concern and beyond the scope of his job duties, including but not limited to his participation in inquiries and investigations both within and without the agency in which he was employed. Plaintiff conducted some or all of his activities and exercised some or all of the rights listed above in the general public and outside of his work place.

46. After engaging in protected activity as related in part above, Plaintiff was the victim of retaliatory actions as set forth in part above. Defendant COUNTY infringed on Plaintiff's constitutionally protected interests under the First Amendment, as set forth in part above. Defendant COUNTY's actions, set forth in part above, were the types of retaliatory conduct that would deter a person of ordinary sensibilities from exercising his or her First Amendment rights. Plaintiff's protected activity was a substantial or motivating factor in the adverse actions taken against him.

47. Defendant COUNTY retaliated against Plaintiff for his First Amendment activity as alleged herein by taking adverse employment actions against him, as set forth in part above.

48. Defendant COUNTY has deprived Plaintiff of his rights to freedom of speech and expression, protected by the First Amendment.

49. Defendant COUNTY Defendant is a person under the laws applicable to this action. Defendant COUNTY is liable, jointly and severally with the INDIVIDUAL DEFENDANTS, for its actions, individually and in concert, which violated the civil rights of

Plaintiff under the First Amendment.

50. Defendant COUNTY misused its power, possessed by virtue of state law and made possible only because it was clothed with the authority of state law. The violations of Plaintiff's rights, as described above, occurred under color of state law and are actionable under 42 U.S.C. §1983.

51. Defendant MEADOWS, as commissioner, and Defendant JONES, as county administrator, personally participated in the actions adverse to Plaintiff and/or in the decisions to engage in such actions, in violation of his rights to free speech and expression under the First Amendment.

52. MEADOWS and/or JONES were the final decisionmakers in the actions taken against Plaintiff complained of herein.

53. Defendant COUNTY, through MEADOWS, JONES, and other employees or agents, also failed to implement adequate hiring, retaining, staffing, training and/or supervisory procedures, as a direct result of which Plaintiff's First Amendment rights were violated.

54. Defendant MEADOWS and/or Defendant JONES had final policymaking authority for the Defendant COUNTY, and were responsible for hiring, retaining, staffing, training, and supervising other employees of the Defendant COUNTY and, when necessary, for investigating alleged wrongdoing by its employees. Alternatively, in the event it were determined that Defendant MEADOWS and/or Defendant JONES did not have final policymaking authority for Defendant COUNTY, one or both nonetheless functioned as the final policymaker for Defendant COUNTY in connection with the allegations herein, their decisions and actions having been rubber-stamped at all higher levels of authority.

55. Defendant COUNTY, after notice of the constitutional violations alleged herein, officially sanctioned the actions and refused to discipline its agents and employees, which refusal established a policy, by a final policymaker, that directly or indirectly resulted in violations of Plaintiff's constitutional rights.

56. Further, Defendant COUNTY ratified the actions of its employees, including the actions of Defendants MEADOWS and JONES, who acted adversely to Plaintiff for the exercise of his First Amendment rights.

57. When Defendant COUNTY ratified MEADOWS' and JONES' actions adverse to Plaintiff, such adverse actions became the official policy of Defendant COUNTY in retaliation for Plaintiff's exercise of the rights set forth above under the First Amendment.

58. The actions by and on behalf of Defendant COUNTY set forth in this count were not unique events of the violations set forth herein. On information and belief, further similar events of wrongful actions on the part of Defendant COUNTY and/or its employees or agents have taken place, such events combining to determine a pattern of similar wrongful and illegal behavior.

59. As a direct and proximate result of the actions of Defendant COUNTY, Plaintiff suffered the adverse employment actions set forth above. He suffered lost wages, benefits, and other tangible damages. Plaintiff has also sustained emotional pain and suffering damages, loss of the capacity for the enjoyment of life, and other intangible damages. These losses have occurred in the past, are occurring at present, and are likely to occur into the future. Plaintiff is entitled under this count to an award of costs and attorney's fees under 42 U.S.C. §1988.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

(a) that process issue and this court take jurisdiction over this cause;

(b) that this court grant equitable relief against Defendants under the count set forth above, mandating Defendants' obedience to the laws enumerated herein and providing other equitable relief to Plaintiff;

(c) that this court enter judgment against Defendants and for Plaintiff awarding damages to Plaintiff from Defendants for Defendants' violations of law enumerated herein;

(d) that this court enter judgment against Defendants and for Plaintiff permanently enjoining Defendants from future violations of law enumerated herein;

(e) that this court enter judgment against Defendants and for Plaintiff awarding Plaintiff costs and attorney's fees as allowed by law;

(f) that this court award Plaintiff interest as allowed by law; and

(g) that this court grant such other and further relief as is just and proper under the circumstances.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues set forth herein which are so triable.

Dated this 4th day of September, 2015.

Respectfully submitted,

/s/ Marie A. Mattox
Marie A. Mattox [FBN 0739685]
MARIE A. MATTOX, P. A.
310 East Bradford Road
Tallahassee, FL 32303
Telephone: (850) 383-4800
Facsimile: (850) 383-4801

ATTORNEYS FOR PLAINTIFF