



Property Owners in Lakeshore Estates, Lakeshore Village, Pirate's Harbor, Treasure Isle, Rigolets Estate, and the Salt Bayou Area file suit in Civil District Court

Residents seeking halt to concrete crushing operation and damages caused by illegal activity in their neighborhoods

January 17, 2011

Contact C. Brylski (504) 897-6110

More than 60 property owners in Slidell's Lakeshore Estates Subdivision filed suit today in Civil District Court to stop the operation of an illegal concrete dump and crushing operation they allege is creating a nuisance, threatening their property values, and harming the well-being of their families.

Tammany Holding Company, NASDI, and Bertucci Contracting Company, among others, are named as defendants because of their involvement with the concrete crushing operation.

Residents of neighboring Lakeshore Village PUD, Pirate's Harbor Subdivision, Treasure Isle Subdivision, Rigolets Estate Subdivision, and the Salt Bayou area are also represented in the suit, which seeks immediate injunctive relief from the silica dust, noise, nuisance, and trespass associated with the operations, as well as damages related to health and environmental damages caused by the operations.

Attorneys Mike Stag and John Fontenot of Smith Stag, LLC said the residents of Lakeshore Estates Subdivision were forced to take legal action because Tammany Holding Company, which developed Lakeshore Estates Subdivision and is also hosting the concrete dump and crushing operations, is violating the residential covenant it signed with property owners of the million-dollar, waterfront homes of that particular gated community.

Residents produced documentation showing the work is occurring at least six days a week, starting as early as daybreak and not stopping until well past 6 p.m.

Major points associated with the lawsuit are these:

1. Though the project's purported purpose is to use portions of the old Twin Spans to build a land bridge and protection barrier in Lake Borgne and Bayou Sauvage, the project is taking place without an impact study of human, environmental, and ecological concerns;
2. The site in Lakeshore Estates is not the only site available to host the operations and was chosen primarily as a business contract for Tammany Holding Company;

3. Tammany Holding Company has written covenants with property owners which prohibit this type of industrial activity;
4. Property owners are constantly subjected to high levels of airborne silica dust and noise emanating from the operations;
5. The operations are being conducted in a manner that violates LA DEQ regulations and St. Tammany Parish ordinances;
6. The airborne silica dust has contaminated the homes of the residents and has generated adverse health effects; and
7. Property owners have had their home values drop by more than 40 percent since the operations began.

GENERAL FACTUAL BACKGROUND ABOUT LAKESHORE ESTATES

AREAS OF CONCERN

Lakeshore Estates Subdivision (“Lakeshore Estates”) is a gated community in St. Tammany Parish. Lakeshore Estates is located at the northeastern edge of Lake Ponchartrain, where the current I-10 Twin Spans meet the lakeshore. It is part of Lakeshore Estates PUD¹, a master-planned community.

Lakeshore Village PUD, Pirate’s Harbor Subdivision, Treasure Isle Subdivision, Rigolets Estate Subdivision, and the Salt Bayou Area all border Lakeshore Estates PUD.

The land comprising Lakeshore Estates and Lakeshore Estates PUD was originally owned by Tammany Holding Company. Both Lakeshore Estates and Lakeshore Estates PUD were developed by Tammany Holding Company. Both Lakeshore Estates and portions of Lakeshore Estates PUD were developed prior to Hurricane Katrina.

TWIN SPAN RECONSTRUCTION FOLLOWING HURRICANE KATRINA

On August 29, 2005, Hurricane Katrina made landfall in southeast Louisiana as a Category 4 hurricane, bearing winds in excess of 145 mph. As a result of Hurricane Katrina, much of St. Tammany Parish, including the original I-10 Twin Spans, sustained serious damage.

The Louisiana Department of Transportation & Development (“DOTD”) accepted a bid on September 9, 2005 to reconstruct the original I-10 Twin Spans. Phase 1 of the project was to reestablish two-way traffic on the eastbound span within 45 days. Scavenged bridge segments from the westbound span were used to fill in gaps in the eastbound span. On October 14, 2005, the eastbound span was reopened to traffic with one lane in each direction. Phase 2 of the project was occurring concurrently with Phase 1 and involved repairs to the westbound span.

¹ PUD is a zoning designation that stands for Planned Unit Development. However, it is being used in this particular instance (Lakeshore Estates PUD) as part of the name associated with a particular area of land. This explanation applies to Lakeshore Village PUD as well.

Prefabricated steel bridge spans were used on the westbound bridge in two areas to replace destroyed segments and segments used on the eastbound span. The west span reopened on January 6, 2006, returning four lanes of traffic to flow once again.

Following the extensive damages from Hurricane Katrina, it was decided that the original I-10 Twin Spans were too vulnerable to storm surge and that the long term solution would be to construct two new spans. Ground was broken on July 13, 2006 on the project. The first span opened to eastbound traffic on July 9, 2009. On April 7, 2010, the second span was opened to traffic, and the original I-10 Twin Spans were permanently closed to traffic. However, all 6 lanes of the current I-10 Twin Spans did not open until September 8, 2011.

The original I-10 Twin Spans were slated for demolition upon their closure in April of 2010. Demolition of the original I-10 Twin Spans will generate in excess of 244,000 tons of concrete. The material is set to be split among four users, CPRA, LADWF, St. Tammany Parish, and a contractor. CPRA will utilize the majority of this material in order to create shoreline protection along Lake Borgne. CPRA will also place portions of the material along Bayou Sauvage to decrease the rate of land erosion. The LADWF will construct a fishing reef. St. Tammany Parish will also create a fishing pier. Lastly, the chosen contractor will take possession of the remaining concrete bridge material.

LAKESHORE ESTATES AND THE SPAN DEBRIS

In connection with the repair work of the original I-10 Twin Spans and the construction of the current I-10 Twin Spans, Tammany Holdings Company entered into a lease with the DOTD, whereby an undeveloped portion of Lakeshore Estates PUD that is directly adjacent to Lakeshore Estates would be **used as a staging area**. The staging area is located along East End Boulevard in the vicinity of Marina Villa East.

Subsequent to their closure and in connection with their demolition, portions of the original I-10 Twin Spans were offloaded and stored at the staging area. In or about April of 2011, the process of reducing in size by various means, including use of large industrial crushers and/or grinders, portions of the original I-10 Twin Spans that were being stored at and/or brought to the staging area began. The concrete crushing activity taking place at the staging area is still underway.

CONCRETE CRUSHING OPERATION

NASDI entered into a contract with DOTD to remove the original I-10 Twin Spans ("Contract").² In connection with the Contract, the bridge pieces are brought to

² In connection with the Contract, NASDI entered into subcontracts with the following: Traffic Solutions, Disposal Services, Cabildo Staffing, and E-1 Electric. Traffic Solutions is to provide, install, remove, and dispose of signs, mobilize the site, and provide supplies. Disposal Services is to provide roll-off trucking

the staging area by barge.³ Once the bridge pieces are placed at **the Lakeshore Estates PUD staging area**, they are sorted, reduced in size, ground into smaller sizes, placed in metal rebar mattresses, and transported from the staging area to a land bridge in Lake Borgne and/or to Bayou Sauvage (“Mattress Project”).⁴

The work performed under the Contract and the Mattress Project typically takes place each weekday from 6 a.m. to 6 p.m. However, this work also takes place during night and weekend hours at times.

The work performed under the Contract and the Mattress Project produces extremely high levels of concrete dust and particulate matter composed of quartz and other forms of crystalline silica. Uncontrolled (silica) dust becomes airborne and is blown from the staging area. This (silica) dust accumulates on the properties of the **residents of those individuals living within the Areas of Concern**, including, but not limited to, on their homes, cars, boats, etc., in their pools and ponds, and in their homes. The airborne (silica) dust also causes adverse health effects for these residents via contact to the skin and eyes and via inhalation.

The work also generates high levels of noise. The noise levels are in excess of those set forth in the St. Tammany Parish Ordinances for the maximum permissible sound levels by receiving land use.

The work generates high levels of vibrations and movement of the ground. This has resulted in cracks at various points in the concrete slabs and homes of some residents.

On a typical day, the (silica) dust, noise, and vibrations emanating from the concrete crushing operation can be seen, heard, and felt throughout the Areas of Concern. The (silica) dust, noise, and vibrations are sufficient to cause physical discomfort and annoyance to the residents in the Areas of Concern, thereby constituting a nuisance.

RELIEF SOUGHT

In the lawsuit, the residents of the Areas of Concern are referred to as Petitioners. Petitioners will initially seek preliminary injunctive relief for the purpose of bringing the operations into compliance with applicable statutes, regulations, and ordinances, particularly those related to the environment and nuisance. Petitioners will, however, ultimately seek to have the operations cease

and disposal. Cabildo Staffing is to provide individuals for labor. E-1 Electric is to provide for removal and transportation of electrical equipment.

³ The barges are provided by Bertucci Contracting Company, LLC, Triple C Towing, LLC, Coastal Logistics, LLC, and McDonough Project Services, LP.

⁴ Work performed at the staging area in connection with the Mattress Project is being performed, at least in part, by Bertucci Contracting Co., LLC.

and desist via a permanent injunction. They will also seek recovery of damages for, among other things, a complete cleaning of homes and property, repairs of cracks in concrete slabs and homes, loss of property value, and general damages.

CLASS ACTION

The portions of the suit related to damages will be addressed as a class action. Petitioners propose to proceed on behalf of the following class of individuals:

All persons who are residents, domiciliaries, and/or located in St. Tammany Parish, State of Louisiana, who have suffered damage to their persons and/or homes from the concrete crushing operations located in Lakeshore Estates, the initial boundaries of which are reported as that area from the concrete crushing operations to a 8,000 foot radius into the surrounding area.

Petitioners will seek damages from Tammany Holding Company, NASDI, Bertucci Contracting Company, and others for their roles in having authorized, operated, and/or failed to prevent the operation of the concrete crushing operation in Lakeshore Estates PUD.

For more information, contact Mike Stag or John Fontenot, Smith Stag LLC (www.smithstag.com) at (504) 593-9600.

RESIDENT SHIRLEY WAGNER

Since Katrina, we have all made sacrifices to rebuild, and we, in this area, certainly understand the emergencies which faced us all in 2005. But at some point, the emergency is over. The lack of proper permitting and government regulation in this project is our worst nightmare. We built our dream home, with the confidence that the covenants and restrictions would protect us. Furthermore, we chose an area where we believed our family, especially our children, would be safe. In 2012, seven years after Katrina, the constant noise of massive equipment and the pervasive dust, even within our home, threaten our health and well-being. We're insecure, we have no privacy or peace of mind and our largest asset is being damaged and devalued. I contacted everyone I could think of, daily. But, in all of my persistence, I was unable to get help from government officials or Mr. Torres. It didn't seem to matter that this project ended up in our living room....."It will be gone in a year or two", is what I was told. That was not good news to me. In closing, due to the inaction of all responsible parties, I have no other alternative but to take legal action to protect my family and my home.

RESIDENT MIKE APPLETON

Bobby Torres sold us all this concept of a gated, million-dollar home community on the lake. We all have signed covenants with him that we will abide by certain rules. The only person not abiding by the rules is him, who changes them constantly at his own will. He's put his pocketbook ahead of the project he sold us. You would think that this operation couldn't have happened due to zoning regulations, but our elected officials chose to ignore the rules and allowed the deal between Mr. Torres and the Department of Transportation. We were very patient and understood the need to quickly rebuild the Twin Span, but the emergency ended when the bridge was completed. Tearing down 5 miles of concrete and crushing is not an emergency and it is not safe, it should not have been located in a residential area. There are other remote sites that could have and should have been used for this operation. As a result of the actions by Bobby Torres and Kevin Davis we have been exposed to airborne pollutants and disruptive noises on a constant basis. We have lost the use and

enjoyment of our home and suffered significant decreases in property value as shown by Assessor Patrica Core awarding us a 40 percent reduction in property value due to nuisance that has been created.

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January 16, 2011

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SUBJECT: NOISE MEASUREMENTS IN LAKESHORE, LOUISIANA
DRAFT REPORT
PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT
CSTI JOB NO. 6165

Dear Mr. Fontenot,

In this letter we summarize the measurements made by Mr. Arno Bommer of CSTI Acoustics of the noise from the concrete crushing operations in Lakeshore, Louisiana.

1. St. Tammany Parish Noise Ordinance

Article IV of Chapter 14 of the St. Tammany Parish Code of Ordinances presents the noise limits. For residential areas the noise limit is 65 dBA during the daytime (7 am to 9 pm Monday through Thursday and 8 am to 10 pm Friday through Sunday). The nighttime noise limit is 60 dBA. The ordinance states:

To determine the sound level, three readings will be taken at the complainant's dwelling or structure and the mean of these readings will determine the actual decibel count.

Section 14-001.00 in Article I states that:

The purpose of these Articles is to define and prohibit conduct that constitutes a "nuisance." Conduct that is defined as a nuisance is expressly prohibited and shall constitute a misdemeanor punishable according to the penalties and provisions set forth in Section 14-00-.00 ...

Section 14-002.00 in Article I gives the following illustrative enumeration of a nuisance:

(E) All noises and sounds, including animal noises, that are unreasonably loud and intrusive, raucous, jarring or disturbing and which essentially interfere with the right of privacy within one's home or unreasonably interfere with the use of one's residential property ...

2. Louisiana Law

The civil law of Louisiana contains a prohibition against nuisances. It has been determined that “noise constitutes a nuisance subject to an action for damages and injunction when the noise is excessive, unreasonable in degree, and of such character as to produce actual physical discomfort and annoyance to a person of ordinary sensibilities.” *Thornburg v. McMillin*, 392 So2d 1119, 1124 (La. App. 3 Cir. 1980).

3. Sound Measurement Equipment

Sound measurements were made with a Rion NA-28 Sound Level Meter. This is a Type 1 sound meter. It was set on “A-weighting” and the “slow” response as called for in the St. Tammany noise ordinance. The meter was laboratory calibrated within one year and field calibrated before and after the measurements with no drift in the calibration.

4. Measured Sound Levels

Mr. Arno Bommer of CSTI Acoustics made the sound measurements presented in this letter on January 9 – 11. Mr. Bommer is a member of the Acoustical Society of America (ASA) and the Institute of Noise Control Engineering (INCE). He is Board Certified by INCE.

Without the concrete crushing plant in operation, sound levels in the Lakeshore neighborhood are very low. I measured sound levels of 40 to 45 dBA at the east ends of Lakeshore Blvd, Sunset Blvd, and Sunrise Blvd when the plant was not operating. The only sounds audible were the wind in the leaves, crickets, birds, waves, and distant boats and traffic. With lower winds, I expect that sound levels in the neighborhood would be below 40 dBA.

There are many sources of noise at the concrete plant. These include:

1. Tugboats pushing in barges loaded with parts of the old I-10 concrete bridge.
2. Equipment unloading the barges.
3. Equipment breaking up the concrete and removing rebar.
4. Equipment moving concrete pieces from pile to pile as it is processed.
5. Crushers breaking the concrete into small pieces.
6. A loader placing the concrete parts into mesh mats.
7. A crane lifting up the mats and placing them on a truck.

8. A truck moving the mats to another area of the site.
9. Another crane removing the mats from the trucks and piling them for later removal.
10. Assorted vehicles moving around the site and using back-up alarms.

In combination, these different operations create nearly continuous noise that is audible outside and inside of the residences in the Lakeshore neighborhood.

By two residences at the east end of Sunset Blvd and one residence at the east end of Lakeshore Blvd, the following mean sound levels of operations from the concrete plant were measured according to the procedures in St. Tammany Parish noise ordinance: 68 dBA, 70 dBA, and 72 dBA. These measurements all greatly exceed the noise requirement of 65 dBA.

In addition, the character of the sound is highly intrusive including clanging, thumping, banging, alarms, engines revving, etc. These sounds cover up all of the natural sounds in the area and are clearly audible inside the houses and out. Although loudest at the east end of the Lakeshore neighborhood, they are also clearly audible at the western side of the neighborhood. When winds are out of the north to west, the sounds will also be audible in areas to the east and south such as Pirate's Harbor, Treasure Isle, and Rigolets Estates. These noises constitute a nuisance as defined by St. Tammany Parish and the State of Louisiana.

5. Summary

Without the concrete crushing plant operating, sound levels in the Lakeshore neighborhood are naturally quiet. The primary sound are from birds, crickets, waves, and wind in the leaves. Sound levels are typically below 45 dBA.

With the concrete crushing plant operating, there is nearly continuous noise from many different industrial operations that completely cover up the natural sounds. The sound levels from these operations greatly exceed the parish noise ordinance, producing sound levels that can exceed 70 dBA, more than 25 dBA above the natural background sound..

The sounds from the concrete crushing operations are clearly audible both inside and outside of residences. The sounds include clanging, thumping, banging, alarms, engines revving, etc.; these types of sounds are highly annoying and completely out of place in an otherwise quiet coastal community. Due to the level and character of the noise, they constitute a clear nuisance.

Sincerely,

COLLABORATION IN SCIENCE
AND TECHNOLOGY INC.



Lakeshore Estates/Smith Stag (504) 593-9600

Arno S. Bommer