

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

DON L. PARO, JR., as Trustee
of the GALE E. PARO TRUST,
and OLDE CITY DEVELOPERS, LLC,

Plaintiffs,

CASE NO.:

v.

THE CITY OF PENSACOLA, FLORIDA;
and BILL WEEKS, in his official capacity
as INSPECTION SERVICES ADMINISTRATOR
OF THE CITY OF PENSACOLA, FLORIDA,

Defendants.

PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

COMES NOW, the Plaintiffs, DON L. PARO, JR., as Trustee of the GALE E. PARO TRUST, and OLDE CITY DEVELOPERS, LLC, pursuant to Rule 1.610, Fla. R. Civ. P., and hereby move for a preliminary injunction against Defendants, THE CITY OF PENSACOLA, FLORIDA, and Mr. Bill Weeks, in his official capacity as INSPECTION SERVICES ADMINISTRATOR of the City of Pensacola, Florida, and in support state as follows:

FACTUAL BACKGROUND

1. This is an action for declaratory and injunctive relief seeking this Court's determination of the effect of the failure of the City of Pensacola Architectural Review Board ("ARB") to timely render a decision on an application for a permit for demolition of a structure.

2. This Motion is made on an emergency basis due to the scheduled hearing planned on June 15, 2016, before the Zoning Adjustments Board of the appeal filed by a third party who

is not a party to this action. If this matter is permitted to be heard, the likely outcome would result in inconsistencies, and this matter is proper and ripe to be resolved by this Court.

3. On or about October 23, 2014, the City of Pensacola, through its City Council, adopted and codified the most recent version of the Pensacola, Florida Code of Ordinances including § 12-13-3 (hereinafter referred to as “the code”), establishing the Architectural Review Board, which governs the various districts of the City of Pensacola and which covers, among the other districts, the Pensacola Governmental District, as a regulated district. The real property at issue in this dispute was and is at all times material hereto within the boundaries of the Governmental District.

4. This portion of the code, under which the ARB exists and from which its authority is derived, contains the provisions of § 12-13-3(E), which provides that “it shall be the duty of the [ARB] to approve or disapprove plans for buildings to be erected, renovated, or razed which are located, or are to be located within the historical district or districts and to preserve the historical integrity and ancient appearance within any and all historical districts...” The districts covered by this provision include the Governmental District in which the subject property is located.

5. The Code specifically approves and adopts procedures for review and decision by the ARB, set forth more fully in § 12-13-3(G), which states, “the board shall promptly review such plans and shall render its decision on or before thirty-one (31) days from the date that plans are submitted to the board for review.” In addition, section (I) explicitly provides for a plan of action in the event the board fails to make a determination: “If no action upon plans submitted to the board has been taken at the expiration of thirty-one (31) days from the date of submission of the plans to the board for review, such plans shall be deemed to have been approved, and if all

other requirements of the city have been met, the building official may issue a permit for the proposed building.”

6. On two separate occasions the ARB failed to make a determination as to the requested permit. At the March 17, 2016, meeting, the ARB failed to make a decision regarding the property, and instead tabled the determination for a one month period in order to consider additional possibilities with respect to preservation of the structure on the property. On April 21, 2016, the ARB again failed to make a determination as to the plans submitted for the property. The decision was tabled for an additional 60-day period in direct violation of the aforementioned requirements contained in Sec. 12-13-3(G) and (I) of the Ordinance, which requires the ARB to render a decision within 31 days of the submission of the plans. Both times, the ARB elected to table the decision, first for a period of approximately 30 days, then the second time for a period of approximately 60 days. During these meetings, members of the ARB also indicated that they would not agree to issue the demolition permit at future meetings.

7. In late April of 2016, the Plaintiffs sent their request for the permit for demolition to be issued pursuant to the language of § 12-13-3 due to the failure of the ARB to render a decision on the application. On or about April 28, Mr. Vernon Stewart, the Public Information Officer for Pensacola, issued a statement to the Pensacola News Journal that characterized the act of the ARB to table the decision to comply with the requirements of the § 12-13-3 with respect to the ARB’s duty to “render its decision” on or before 31 days of the submission of the application.

8. On or about May 16, 2016, the Pensacola City Attorney, agreeing with the position taken by the Plaintiffs, determined that the ARB failed to act within the 31 days as required, and as a result, and pursuant to the provisions of the ARB rules, directed the Pensacola

City Planning Department issue the demolition permit. Accordingly, Mr. Weeks issued demolition permits with respect to the property.

9. However, on or about May 17, 2016, an appeal was filed by an individual having no direct interest in the outcome of the case and no connection with the instant dispute. In the Notice of Appeal, the appellant, who is not a resident of Pensacola, claimed to be a person “seriously aggrieved” by the decision of the city to issue the permit, yet lacks any connection to the property or the current dispute, has no interest in the dispute (other than a passing interest that falls far short of constituting legal standing to intervene), and otherwise has filed the appeal for the purpose to create a stay of the issuance of the demolition permit. The appeal is set to be heard by the Zoning Adjustment Board on June 15, 2016. By operation of the filing of the appeal, the demolition permit has been stayed pending resolution of the appeal.

ARGUMENT

10. As a result of the continuing delays and the increasing political entanglement surrounding the issuance of the permit, the Plaintiffs have been prevented from exercising their rights and have had the issuance of the demolition permit improperly delayed.

11. The Plaintiffs are entitled to have the permit for demolition issued, and will continue to be substantially and irreparably harmed by any additional delays and the uncertainties in the issuance of said permit. The subject property to be demolished stands on a particular parcel of property unique in location and character and suited for the intended objectives of the Plaintiffs. Because the character of this real property is unique and cannot be reproduced in any other parcel, monetary compensation alone will not cure the continuing harm to the Plaintiff’s interests in the property.

12. As set forth above, the Plaintiffs have no adequate remedy at law which would address the ongoing harm presently suffered by the Plaintiffs. The only remedy for this harm is the issuance of a demolition permit that would enable the Plaintiffs to move forward with exercising their rights to improve this particular parcel property as intended. Plaintiffs will never be made whole if this unique development opportunity is lost.

13. Plaintiffs have a substantial likelihood of succeeding on the merits of their action for Declaratory Judgment, as the basis for the delays thus far have been no more than political entanglements provided by disinterested parties for the sole purpose of procedurally stalling the rightful process of appeal that Plaintiffs are entitled to. In other words, if not for the improper interference by parties completely lacking standing with respect to this matter, the demolition permits would not have been stayed.

14. In addition, the continuing harm to the Plaintiffs significantly outweighs any potential harm the Defendants may experience if the permit is issued. The Defendants would suffer little to no damage as a result of the issuance of a demolition permit for a structure that is condemnable in its current situation. In fact, the city stands to profit from the efforts of the Plaintiffs to bring additional economic development to the downtown area of Pensacola. Whatever damage the Defendants may suffer is slight in light of the substantial infringement upon the Plaintiffs right to use and develop their own property as desired.

15. Finally, the proper enforcement of established city codes is clearly within the public interest, as the citizens of Pensacola is for whom the code was specifically designed to benefit. In staying the issuance of the permit thus far, the Defendants and third parties have interfered with the clearly delineated procedure for decision and review established for the benefit of public interest. Further, the public interest is in fact most harmed by the Defendants'

and third parties' apparent intention to allow the property to languish indefinitely rather than be utilized for improvement.

WHEREFORE the Plaintiffs respectfully request that this Court enter an Order of Injunctive Relief requiring the issuance of the permit for demolition of the subject structure, and to require the issuance of said permit without further delay.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent to the Defendants, the City of Pensacola, 222 West Main Street, Pensacola, Florida 32502, and Bill Weeks, 222 W. Main Street, Pensacola FL 32502, via process server to be served with the initial service of process, on this 3rd day of June 2016.

/s/ Benjamin Alexander
Benjamin Alexander, Esquire
Florida Bar No.: 61632
balexander@liberislaw.com
LIBERIS LAW FIRM, P.A.
212 West Intendencia Street
Pensacola, Florida 32502
Phone: (850) 438-9647
Fax: (850) 433-5409
Attorney for Plaintiffs