

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,

vs.

CASE NO.: 2016 CA 000905
DIVISION: N

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

Defendants.

JUDGMENT FOR DECLARATORY AND INJUNCTIVE RELIEF

THIS CAUSE, having come before this Court for Final Hearing on June 27, 2016, and counsel for the Plaintiffs and for the Defendants being present, and the Court having reviewed the file and pleadings and having heard argument of counsel, and being otherwise advised in the premises, this Court makes the following findings:

1. The Court has jurisdiction over the parties hereto and the subject matter herein.
2. Pursuant to Section 12-13-3 of the Code of the City of Pensacola, Florida (hereafter, the Code or Section ____), the Architectural Review Board shall have as its purpose the preservation and protection of buildings of the Pensacola Historic District, the North Hill Preservation District, the West East Hill Preservation District, the Pensacola Historical Business District and the Governmental Center District.

3. Pursuant to Section 12-13-3, it shall be the duty of the Architectural Review Board to approve or disapprove plans for buildings to be erected, renovated or razed which are located, or to be located, within the historical district or districts and to preserve the historical integrity and ancient appearance within any and all historical districts established by the governing body of the City.

4 Section 12-13-3 sets forth the substantive and procedural requirements for the submission of applications to erect, construct, renovate, demolish, and/or alter an exterior of a building located or to be located in a district within the review authority of the Architectural Review Board and for review of site plans by the Architectural Review Board.

5. Section 12-13-3 requires applications to be submitted to the City's community development department at least twenty-one (21) days prior to the regularly scheduled meeting of the Architectural Review Board and further provides that only upon determination that the application complies with all applicable submission requirements shall the application be scheduled for a hearing and be submitted to the Architectural Review Board for review.

6. Section 12-13-3 (G) (Review and Decision) provides that the Architectural Review Board shall promptly review such plans and render its decision on or before thirty-one (31) days from the date that plans are submitted, to the Architectural Review Board for review.

7. Section 12-13-3 (I) (Failure to Review Plans) provides that if no action has been taken by the Architectural Review Board at the expiration of thirty-one (31) days from the date of submission of the plans to the Architectural Review Board, 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.

8. Section 12-13-3 (G) is mandatory and the Architectural Review Board is not authorized to deviate from the procedure which the City Council provided in the Code.

9. On March 17, 2016, the Plaintiffss plans in connection with its application for a demolition permit for the building or structure located at 302 West Romana Street, Pensacola, Florida 32502 were submitted to the Architectural Review Board for review at its regularly scheduled meeting.

10. The Code required the Architectural Review Board to promptly review the subject plans and render its decision on or before thirty-one (31) days from the date the plans were submitted to the Architectural Review Board, namely on or before April 17, 2016.

11. As of April 17, 2016, the Architectural Review Board had failed to take action upon Plaintiffs' plans and pursuant to the application of the Code, the Plaintiffs' plans were deemed to have been approved on that date.

12. On April 17, 2016, Plaintiffs were entitled to receive approval of its plans by operation of law by the Architectural Review Board's failure to take action on Plaintiffs' plans at the expiration of thirty-one (31) days from the date of submission of the plans to the Architectural Review Board for review, and as such Plaintiffs' plans were deemed to have been approved and were approved by operation of law under Section 12-13-3 (I).

13. The Court determines that the vote by the Architectural Review Board to table the item on April 17, 2016, did not constitute an action by the Architectural Review Board as contemplated by Section 12-13-3 (G) and 12-13-3 (I).

14. This Court finds that the legislative history of the operative Code provisions evidences the Council's mandatory intent of the time frame set forth in Sections 12-13-3 (G) and (I). In developing the code provisions at issue, the City Council struck what it considered to be the proper balance between assisting the Architectural Review Board with enough time to consider historical preservation issues with the investment-backed expectations of developers whose interest is not having plans suspended indefinitely.

15. This Court determines that it is not up to the court or the Architectural Review Board itself to disturb the balance that the City Council has crafted and the Architectural Review Board cannot amend the provisions of 12-13-3 by taking action to table the item in lieu of fulfilling the strict requirements of the Architectural Review Board as required by law to promptly review Plaintiffs' plans and render its decision on the plans on or before thirty-one (31) days from the date the plans were submitted to the Architectural Review Board. This is the exclusive prerogative of the City Council.

16. When Plaintiffs' plans were deemed approved on April 17, 2016, Section 12-13-3 provides that the permit may be approved by the building official, conditioned on the applicant's full compliance with the requirements of the City.

17. This Court concludes that in accordance with Section 12-13-3 of the Code of the City of Pensacola, Florida, Plaintiffs' plans were deemed approved and a demolition

permit shall be issued to the Plaintiffs if Plaintiffs are found by the building official to be in full compliance with the Code.

Based on the foregoing, it is hereupon

ORDERED AND ADJUDGED:

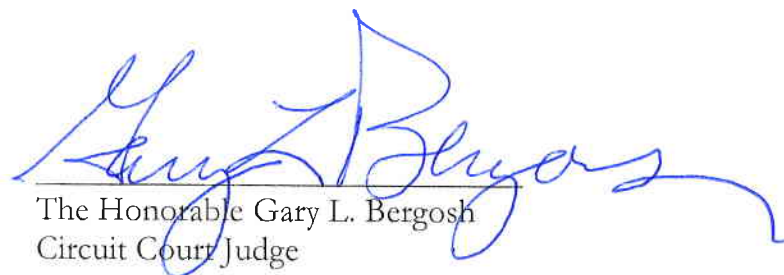
1. This Court declares that the Plaintiffs are entitled to an immediate issuance of a permit for demolition in accordance with the application submitted by the Plaintiffs on February 26, 2016.

2. This Court further Orders that the City of Pensacola and Mr. Bill Weeks, in his official capacity as Inspection Services Administrator of the City of Pensacola, Florida, shall issue a permit for demolition as promptly as administratively possible.

3. This Court further Orders that no stays shall be issued with respect to the issuance of the permit for demolition except by further Order of this Court.

4. This Court shall retain jurisdiction to enter such other and further Orders, without limitation, as deemed necessary to enforce the terms of this Judgment.

DONE AND ORDERED, in Chambers in Pensacola, Escambia County, Florida, on this 1ST day of July, 2016.


The Honorable Gary L. Bergosh
Circuit Court Judge

Copies furnished by email to counsel of record

Benjamin Alexander, Esq., Liberis Law Firm, P.A., for the Plaintiffs

Lysia Bowling, Esq., City Attorney, City of Pensacola, for the Defendants.