

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

Emerald Coastkeeper, Inc.,

Plaintiff,

vs.

Case No.: 2021-CA-002847

Division No.: _____

**Escambia County, Board of County
Commissioners, W.M. Bell and Company, Inc.,
a Florida Corporation & Industrial Boulevard
Office Park, Inc., a Florida Corporation,**

Defendants.

PLAINTIFF'S VERIFIED EMERGENCY MOTION FOR TEMPORARY INJUNCTION

Plaintiff, Emerald Coastkeeper, Inc. ("Plaintiff" or "Coastkeeper"), through undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.610, respectfully moves this Court to issue an emergency temporary injunction restraining the Defendants, W.M. Bell and Company, Inc. ("W.M. Bell") and Industrial Boulevard Office Park, Inc. ("Industrial Boulevard"), from cutting down certain oak trees protected under the Escambia County Land Development Code (LDC) and Comprehensive Plan (Comp Plan) pending final resolution of this action. Plaintiff states as follows in support:

Background

1. Plaintiff filed this action under section 163.3215(3), Florida Statutes, seeking to prevent the removal of a number of protected oak trees including an 85" DBH Heritage Oak existing upon the Defendants' property that the Defendants intend to develop as a self-storage facility. This case is a statutory action seeking a judicial determination that the County issued its site plan development order authorizing the Defendants to remove the protected trees in question is inconsistent with the Comp Plan. Plaintiff asserts that the site plan development order is

inconsistent with the Comp Plan because it violates numerous provisions of the LDC affording these trees protected status and the County failed to verify that the criteria for removal was met for each of the seventeen protected trees.

2. Plaintiff brings this motion for a temporary injunction to preserve the status quo—namely, for the protected trees to remain standing on site alive—until this Court decides the issues by final judgment following a trial.

Verified Statement of Facts

3. Defendants, W.M. Bell and Industrial Boulevard, own the site in question, comprised of three (3) improved parcels along North Palafox Street. Defendant, W.M. Bell, currently operates A+ Mini Storage on one of the parcels. The parcels are identified in the site plan development order as Escambia Co. Parcel ID Nos.: 351S307402000000; 351S307402000001; 381S303001004009.

4. Seventeen (17) trees are all protected trees under the LDC and are situated on two of the subject properties, including one 85” DBH Heritage Live Oak believed to be the largest standing live oak tree in Escambia County, Florida.

5. On August 8, 2021, Escambia County, through its Development Services Department, issued a Site Plan Development Order to A+ Mini-Storage of Pensacola with an identification number #21072891PSP. A copy of the Site Plan Development Order is attached as **Exhibit 1**.

6. The Site Plan Development Order (#21072891PSP) covers development on the Defendants’ three adjacent, but separate parcels, as if these were one unified development. The three separate parcels are those identified in paragraph 3 above. A+ Mini Storage of Pensacola appears only to currently operate on one of the three parcels.

7. On August 25, 2021, Coastkeeper timely appealed Site Plan Development Order #21072891PSP claiming it violated the Land Development Code and Design Standard Manual.

8. At a Board of Adjustment ("BOA") hearing on September 20, 2021, a motion was made and seconded to dismiss Coastkeeper's appeal based on lack of standing. The motion passed. The letter attached as **Exhibit 2** was the written communication documenting BOA action on Coastkeeper's Appeal.

9. On September 28, 2021, upon application by the Defendant, W.M. Bell, and in reliance on the Site Plan Development Order (#21072891PSP), Escambia County issued a Land and Tree Management Permit (#21094095PLM) in favor of W.M. Bell, authorizing the Defendants to immediately proceed with the physical cutting-down and removal of the protected trees in question. A copy of Land and Tree Management Permit (#21094095PLM) is attached as **Exhibit 3**.

10. On October 19, 2021, Coastkeeper timely filed its Complaint. The Clerk assigned a case number and issued the Summons at 4:12 p.m. October 27, 2021. The Summons, Complaint and copy of this motion were sent to a process server on October 28, 2021 for proper service on all Defendants.

Legal Authority

11. The purpose of a temporary injunction "is not to resolve disputed issues, but rather to preserve the status quo pending final hearing on the merits." *City of Miami Beach v. Kuoni Destination Management, Inc.*, 81 So.3d 530, 532 (Fla. 3d DCA 2012); see also *Milin v. Northwest Florida Land, L.C.*, 870 So.2d 135 (Fla. 1st DCA 2003); *Pescod v. Wells Road Veterinary Medical Center, Inc.*, 748 So.2d 1095 (Fla. 1st DCA 2000) (accord).

12. A temporary injunction is warranted where the movant establishes: "(1) that it will suffer irreparable harm unless the status quo is maintained; (2) that it has no adequate remedy at law; (3) that it has a substantial likelihood of success on the merits; and (4) that a temporary injunction will serve the public interest." *Village of North Palm Beach v. S&H Foster's, Inc.*, 80 So.3d 433, 436 (Fla. 4th DCA 2012); see also *DePuy Orthopaedics, Inc. v. Waxman*, 95 So.3d 928, 938 (Fla. 1st DCA 2012).

13. These rules apply equally where a temporary injunctions is sought to prevent the irreparable harm that will result from destroying a stand of environmentally unique and ecologically valuable protected trees, including the largest Heritage oak tree recorded in Escambia County, Florida. See, gen., *Binnicker v. Leeper*, 138 Fla. 738 (Fla. 1939).

WHEREFORE, Plaintiff, Emerald Coastkeeper, Inc., respectfully requests this Court issue a temporary injunction prohibiting and restraining each of the Defendants from proceeding with any of the work set forth in Land and Tree Management Permit (#21094095PLM), including damaging, destroying or removing any of the trees located on site, pending final resolution of this action; together with any further appropriate relief.

VERIFICATION

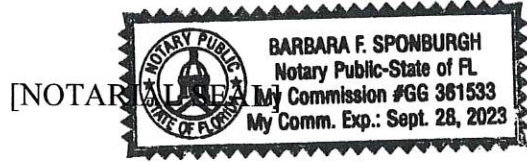
Before me, the undersigned authority, duly authorized to administer oaths and take acknowledgments, personally appeared LILA F. DAVIDSON, who, after being first duly sworn, deposes and says that she is the President for Plaintiff, EMERALD COASTKEEPER, INC., and that, in such capacity, she has authority to make this verification on behalf of Plaintiff, and that she has read the foregoing and the facts alleged therein are true and correct to the best of her knowledge and belief.

EMERALD COASTKEEPER, INC.

BY: 

LILA F. DAVIDSON, PRESIDENT

The foregoing instrument was sworn to and acknowledged before me this ^{29th} 28 day of October 2021, by Lila F. Davidson, who is the President of EMERALD COASTKEEPER, INC., () who is personally known to me or (X) who has produced Fl. Driver license as identification.




NOTARY PUBLIC

Dated this 29th day of October, 2021.



WILLIAM J. DUNAWAY
Florida Bar No. 0021620
Primary Email: wdunaway@clarkpartington.com
Secondary Email: bsponburgh@clarkpartington.com
CLARK PARTINGTON
125 East Intendencia Street
Pensacola, FL 32591-3010
Phone: 434-9200 / Fax: 432-7340
Attorney for Plaintiff

EXHIBIT 1



SITE PLAN DEVELOPMENT ORDER

Project: A+ Mini-Storage of Pensacola

Location: 6155 N. Palafox Street

Development Review #: 21072891PSP

Property Reference #s: 35-1S-30-7402-000-000; -7402-000-001; -3001-004-009

Future Land Use: C

Zoning District: HC/LI

Flood Zone: X

PROJECT DESCRIPTION

Construction of a an additional 23,984 sq.ft. (footprint) of self-storage buildings to increase the capacity for an existing multi-building storage facility within a 3-parcel 10.24-acre development site. The net increase in site impervious cover will be accommodated by an increase in capacity of an existing on-site stormwater pond. The site will retain paved access to Palafox Street. No additional potable water or sanitary sewer connections are required.

Parking: no net addition

Protected trees: 17 (343 in DBH) removed

Handicap parking: none

Mitigation trees: 68.6 by fee payment

STANDARD PROJECT CONDITIONS

1. This Development Order for site plan approval "authorizes the applicant, subject to the continuing obligation of the approval terms and conditions, to commence the proposed use or activity. Use or activity other than that approved, or failure to comply with approval terms and conditions is a violation of the Land Development Code (LDC) and is subject to enforcement and the penalties prescribed." [LDC Sec.2-1.4(c)(1)]
2. This Development Order shall be effective for a period of 18 months from the date of approval. Site plan approval shall automatically expire and become null and void if a permit for the approved development has not been obtained from the Building Services Department (BSD) within the effective period and no extension has been applied for. After issuance of such permit, site plan approval shall only terminate upon permit expiration or revocation by the BSD. The Planning Official or Board of Adjustment may grant one extension to the original effective period of the Development Order as prescribed by the LDC, but application for such extension must be submitted before termination of the initial 18-month period. If the Development Order expires or is revoked, allocated capacities will be withdrawn and made available to other applicants. If the applicant chooses to proceed with development of the project site, a new site plan application must be submitted for review, approval, and capacity allocations subject to code provisions and Level of Service conditions at the time of the new application.

3. All specifications and requirements expressed or implied by note or drawing in the site development plan approved with this Development Order must be fulfilled.
4. After the issuance of this Development Order, it is unlawful to modify, amend, or otherwise deviate from the approval without first obtaining written authorization from the approving authority. Unless specifically established in the LDC or provided through successful appeal; modification of an approval, including its terms and conditions, requires a new application for review. Approved uses or activities modified without authorization are subject to the penalties and increased fees specified by the Board of County Commissioners. No certificates of occupancy or similar acceptance of site conditions by the County shall be issued for any unauthorized land use or development activity. Modifications to approvals may be requested by the applicant as prescribed within the applicable provisions of the LDC, but engineering designs shall only be accepted from the Engineer of Record. [LDC Sec. 2-1.4 (c) (5)].
5. No development activities may commence in areas regulated by state or federal agencies unless all required state and federal permits, or proof of exemption, have been obtained and a copy provided to the County.
6. This Development Order alone does not authorize site development to commence. A valid Escambia County Building Permit must be obtained prior to any building construction. Site development as described on the approved site plan, including protected tree removal and grading, may occur under the authorization of the Building Permit. However, commencement of such activity prior to issuance of a Building Permit will require a separate **Pre-construction Site Work Permit** or, if no Building Permit is applicable, will require a separate **Parking Lot Permit** obtained from the Building Services Department, with erosion control, tree protection, and all other provisions of the approved site plan fully applicable and enforced.
7. Proof of application from the Emerald Coast Utilities Authority (ECUA) for connection to its sewage system, or from the Escambia County Health Department for an Onsite Sewage Treatment and Disposal System (OSTD), must be obtained prior to issuance of a Building Permit.
8. A copy of this Development Order and the approved site development plan must be maintained and readily available on site once any land disturbance has begun. Approved building construction plans must also be on site once any building construction has begun.

SPECIAL PROJECT CONDITIONS

1. A contribution in the amount of \$24,010 as the required protected tree removal mitigation shall be made to Escambia County's Tree Restoration fund prior to release of this development order. Of the total, \$5950 is uncapped mitigation for removal of an 85-inch DBH heritage live oak and \$18,060 is mitigation not exceeding the 25 caliper inches per acre cap for removal of 16 other protected trees not mitigated by on-site replacement.

Development Review Committee (DRC) Final Determination

Having completed development review of the **A+ Mini-Storage of Pensacola** application referenced herein, in accordance with requirements of applicable Escambia County regulations and ordinances, the DRC makes the following final determination:

Approve The development plan is approved. The applicant may proceed with the development subject to the project description and project conditions noted herein. Use other than that described, or conditions not satisfied, constitute a violation of this Development Order and render it void. Further, this approval does not constitute approval by any other agency.

Deny The development plan is denied for the reasons noted below. The applicant may appeal the decision within 15 days from the date below to the Board of Adjustment (BOA) under the provisions of Section 2-1.4 of the Escambia County Land Development Code, and/or submit a new or revised site plan application for review.



Director, Development Services Department Date 8-11-21

EXHIBIT 2



Board of County Commissioners • Escambia County, Florida

Horace L. Jones, Director
Development Services

September 20, 2021

William Dunaway
125 E Intendencia St
Pensacola, FL 32502

RE: Notification of Board of Adjustment (BOA) Action at a Meeting held on September 20, 2021, Case #AP-2021-01, Appeal of Development Review Committee's approval of A+ Storage Development Order Number 21072891PSP.

Dear Mr. Dunaway,

At the September 20, 2021, Board of Adjustment meeting, a motion was made and seconded to dismiss your appeal request based upon lack of standing.

This letter has been notarized should you choose to record it in the Public Records of Escambia County per Florida Statutes, Section 28.222(3)(a).

Should you have any questions or comments, please contact our office.

Sincerely,

A handwritten signature in blue ink that reads "AD Holmer".

Andrew D Holmer
Division Manager

cc: Kristin Hual, Assistant County Attorney
Front Counter Planners

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ESCAMBIA

Andrew D Holmer, who is personally known to me acknowledged the foregoing letter before me
this 22nd day of September 2021.

Signature of Notary Public

Rachel A Whitmire



(Notary Seal)

Name of Notary Printed

Rachel A Whitmire

My Commission Expires: 8/9/24

Commission Number: HH 096753

****This decision DOES NOT determine, imply or confer development rights for any desired use or activity on the specified parcel. Additional review processes and/or permits may be required.****

EXHIBIT 3

LAND AND TREE MANAGEMENT PERMIT

Activities Covered Under Permit: Activities such as clearing, cutting, *excavating, *filling, protected tree removal, grading of land, or any other activity that alters land topography or vegetative cover is covered under this permit, where noted, provided such land disturbing activities do not result in adverse impacts to adjoining properties, waterbodies, watercourses, wetlands, environmentally sensitive lands, adjacent roadways or drainage systems, etc. Construction of infrastructure or addition of impervious area is not covered under this permit.

PERMIT # 21094095PLM

DATE ISSUED: 09/28/2021

LAND DISTURBING TREE BARRIER ISLAND SAND BEACH MOUSE

OWNER/AGENT

WM Beech Co - INC

PHONE #

850-432-5544

OWNER'S ADDRESS

6155 N. PALAFOX

FAX #

PROJECT NAME

A+ Storage Palafox

ZONING

HC/LI

SITE ADDRESS(S)

6155 N PALAFOX

ACREAGE

10.24

PROPERTY REFERENCE #(s)

351S307402000000

ACREAGE TO BE DISTURBED

N/A

AMOUNT OF FILL MATERIAL(s)

N/A

SOURCE OF FILL MATERIAL(s)

N/A

Note, a separate Barrier Island Sand Evaluation &/or "prohibited material" removal Permit may also be required per current Escambia County Land Development Code requirements.

DESCRIBE ALL ACTIVITIES PROPOSED (land disturbance & protected tree removal locations shown on site map)

Tree removal per D.O. and site plan. Fee includes mitigation for 17 trees includes removal of one (1) heritage live oak @ \$5,950

NUMBER of PROTECTED TREES PROPOSED for REMOVAL

17

FEES (office use only)

\$24,115

Land Disturbing: \$216.75, Trees: 2 trees @ \$105 + \$25 each additional tree, Sand Placement: \$55, Beach Mouse: \$216.75

APPROVED DENIED

A.D. Holmer

DATE 09/24/2021

Timothy.R Day, Environmental Programs Manager

COMMENTS

See attachment A

Responsibility of Owner/Agent: If necessary the owner/applicant shall incorporate measures to prevent erosion, sedimentation and/or flooding which may result from land disturbance activities. Silt fences, temporary sediment traps, temporary holding ponds, stabilization of disturbed areas with grass may be required to control erosion, sedimentation and/or flooding. The undersigned is fully aware of these responsibilities and will comply with these requirements. ****The Owner/Agent shall have a copy of the approved permit on the job site at all times.****

The undersigned agrees to grant permission for authorized Escambia County personnel to conduct all necessary site inspections associated with this permit.

SIGNATURE OF OWNER/AGENT*

Mark Zell

DATE

9/28/21

*A signed letter authorizing agent to act on the property owner's behalf will be required prior to processing.

Disclaimer: Escambia County shall not be held responsible for any losses or damages in the event that activities covered under this permit negatively impact adjacent properties, waterbodies, watercourses, wetlands, environmentally sensitive lands, adjacent roadways or drainage systems, etc.

Attachment A

LDC 2-1.4 (c) (4)

(4) *Risk in proceeding.* The decisions of approving authorities in the LDC compliance review are final unless overturned through a valid appeal process. The county shall issue authorizations for uses and activities according to the decisions of these authorities. The applicant bears all risk in proceeding with an approved use or activity while the approval remains subject to appeal.

TREE #	DIA	TYPE	STATUS
1	85"	OAK	REMOVE
2	20"	MAGNOLIA	REMOVE
3	22"	OAK	REMOVE
4	18"	OAK	REMOVE
5	20"	PECAN	REMOVE
6	14"	OAK	REMOVE
7	16"	OAK	REMOVE
8	16"	OAK	REMOVE
9	15"	OAK	REMOVE
10	14"	OAK	REMOVE
11	14"	OAK	REMOVE
12	16"	OAK	REMOVE
13	16"	PECAN	REMOVE
14	12"	OAK	REMOVE
15	14"	OAK	REMOVE
16	14"	OAK	REMOVE
17	15"	OAK	REMOVE
18	24"	OAK	REMAIN
19	30"	OAK	REMAIN
20	48"	TWIN OAK	REMAIN
21	24"	OAK	REMAIN
22	20"	OAK	REMAIN
23	14"	OAK	REMAIN

TREE MITIGATION CALCULATIONS:

REMOVAL OF THE 258" NON-HERITAGE TREES:

$258" / 2 = 129"$ OF MITIGATION REQUIRED.

SITE LIMIT: $7.7 \text{ ACRES} \times 25" = 192.5"$

$129" < 192.5"$; THEREFORE 129" OF MITIGATION REQUIRED.

$129" / 2.5" = 51.6$ TREES ARE REQUIRED FOR MITIGATION.

$51.6 \text{ TREES} \times \$350.00 = \$18,060$ TO BE PAID INTO THE TREE FUND.

REMOVAL OF THE 85" HERITAGE TREE:

$85" \times 0.5 = 42.5"$ OF MITIGATION REQUIRED.

$42.5" / 2.5" = 17$ TREES REQUIRED FOR MITIGATION.

$17 \text{ TREES} \times \$350.00 = \$5,950$ TO BE PAID INTO THE TREE FUND.

NOT PLANTING ANY MITIGATION TREES ONSITE, THE TOTAL TO BE PAID FOR TREE MITIGATION IS $\$18,060 + \$5,950 = \$24,010$

Attachment A

LDC 2-1.4 (c) (4)

(4) *Risk in proceeding.* The decisions of approving authorities in the LDC compliance review are final unless overturned through a valid appeal process. The county shall issue authorizations for uses and activities according to the decisions of these authorities. The applicant bears all risk in proceeding with an approved use or activity while the approval remains subject to appeal.

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11	14"	OAK	REMOVE
12	16"	OAK	REMOVE
13	16"	PECAN	REMOVE
14	12"	OAK	REMOVE
15	14"	OAK	REMOVE
16	14"	OAK	REMOVE
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REMOVAL OF THE 85" HERITAGE TREE:

85" X 0.5 = 42.5" OF MITIGATION REQUIRED.

42.5"/2.5" = 17 TREES REQUIRED FOR MITIGATION.

17 TREES X \$350.00 = \$5,950 TO BE PAID INTO THE TREE FUND.

NOT PLANTING ANY MITIGATION TREES ONSITE, THE TOTAL TO BE PAID FOR TREE MITIGATION IS \$18,060 + \$5,950 = \$24,010.