



ELIZABETH W. AGHAYAN  
WILLIAM A. BOND  
MATTHEW A. BUSH  
EDWARD P. FLEMING  
R. TODD HARRIS  
BRUCE A. McDONALD

MICHAEL L. FERGUSON  
(1938-2020)  
WILLIAM J. GREEN  
(1943-2012)

REPLY TO:  
EDWARD P. FLEMING

flemingservices@pensacolalaw.com  
Fax: (850) 477-4510

April 14, 2022

**Via email: [jgill@florida-law.com](mailto:jgill@florida-law.com)**

Jeffrey P. Gill, Esquire  
Vernis & Bowling of Northwest Florida, P. A.  
315 S. Palafox Street  
Pensacola, FL 32502-6908

Re: Hawkshaw v. City of Pensacola  
Our File No. EPF-21-0019

Dear Jeff,

I was shocked to learn late yesterday that your client, in violation of the time-honored and statutorily-recognized rule that settlement conferences are privileged and confidential, provided an inaccurate and incomplete chronology of those confidential discussions to the Pensacola City Council. I will assume you were unaware that this was occurring, and would not have condoned this action.

As you know, the City Council last year gave an after-the-fact approval of an administrative action that ran roughshod over the Parks and Recreation Board, the Planning Board, and the entire review process for the Gateway Redevelopment District. Those requirements are intended to assure that for any and all new developments:

1. Timely notice is given to neighbors of a proposed development that impacts their property; and
2. All development meets design, aesthetic, and use requirements enacted by law, including submission to and approval by the Planning Board. This would have included site development that included removal of protected oak trees.

In endorsing executive actions that bypassed these requirements, the City Council placed two restrictions on this illegal development: (1) it would remain there for a

maximum of one year measured from Memorial Day, 2021; and (2) the toilet trailer would be open to the public during park hours.

Your client immediately violated that second restriction, converting the 365-day eyesore into “event use” only, keeping it locked except for about 10 days a year. Your client had, in the past, used temporary toilets, as do other event sponsors in downtown parks. There was no reason that could not have continued, as your client did not want full-time use of the toilet trailer as it recognized security concerns, and the potential for the toilet trailer being a magnet for vagrants.

Your client now seeks to violate the maximum one year time-limitation<sup>1</sup> imposed by City Council as well. As late as February 2nd, you and counsel for the City were representing to the Court that the “temporary toilet trailer” would not be allowed to be there beyond one year measured from first use, which was Memorial Day of 2021, and therefore no harm would be done by the fact that it is not an allowed use in the Gateway Redevelopment District, and was not approved by the Planning Board or the Parks and Recreation Board. See Exhibit “2,” excerpt from the City’s Motion to Dismiss, a Motion that was DENIED.

The confidential settlement negotiations narrative also ignores the fact that your client has not pledged a single dime for a properly designed, properly permitted, toilet facility. Or that your client took the position that fund raising was not its concern.<sup>2</sup> Your client failed to mention that my client has pledged \$50,000 in cash, as well as contribution of tens of thousands of dollars in design fees, and a willingness to jointly work with your client in a fundraising effort, including joint efforts to have the City fund a public bathroom with public funds. That offer was rejected.

The idea that adjoining property owners must pay for a properly permitted public facility, or else have an unpermitted and unlawful, toilet trailer adjacent to their property, is an absurdity. Why not allow the sponsors of the sea food festival to place a toilet trailer in Seville Square for 365 days a year unless and until the surrounding restaurants, businesses and homeowners fund a public restroom? That would be an absurdity. So is demanding that the surrounding property owners at Admiral Mason Park fund a public bathroom, or live with an illegally located toilet trailer adjacent to their property. Meanwhile, the party who seeks the restrooms has not pledged a dime. More importantly, public restrooms should be funded by the public.

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<sup>1</sup> I would note that to try to circumvent flood elevation requirements would have required classifying the toilet trailer as an “RV,” which it is not, and allowing it to be there no more than 180 days. See Exhibit “1”

<sup>2</sup> I do not understand where raising funds is somehow the duty of the victims of an illegal development, but that the party who participated in, and wanted that illegal development, has no duty to seek funds to follow the lawful processes spelled out in the City’s land use ordinances.

Jeffrey P. Gill, Esquire  
April 14, 2022  
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I would note that when one council member, as allowed under Roberts Rules of Order, sought to make a motion to reconsider and/or modify the vote to allow this illegal development, she was told by the City Attorney, Susan Wolff, that the matter could not be discussed as it was in litigation. On Ms. Wolff's recommendation, it was removed from the agenda *without debate*. Yet the agenda item tonight is asking for a modification of the earlier vote to increase the time allowed for this illegal development from one year to two while litigation is pending. In fact, we anticipate that this case will be scheduled for dispositive motions and/or a trial within the next 90 days. I would assume that the same rule applies tonight; i.e., no discussion of an issue in litigation. I have, accordingly, instructed my client not to appear. I would also note that none of the requisite notices to adjacent landowners to this proposed development have been given. For that reason alone, it should be rejected.

At the start of this litigation, I was told by then-city-attorney Susan Wolff that her "marching orders" were to not get in the way of an agreement between your client and mine. Based on that statement, I arranged a settlement conference between me, a representative of my client, your client's representative and its then-attorney Ed Holt at the Fosko Coffee Shop. An agreement in principal was reached over a handshake at that meeting. I accurately put the terms of that agreement in writing. When I pressed Mr. Holt regarding the status of signing the agreement, he did not say he objected to any portion of the memorandum, but rather said it was "shot down by the City," and we would have to negotiate with the City. That account by Mr. Holt is supported by the memos attached hereto as Exhibit "3." I felt a little like "Charlie Brown" in the Peanuts cartoon who went to kick the ball only to have it pulled away.

I would also note that the acting city attorney sent Jonathon Bilby an email stating that the proposed agreement by my client and yours was somehow seeking to "undo" all the work he had done, because it called for an "events only" toilet trailer. I would be open to it being brought in just for events," Mr. Bilby replied. That would be a better option in the floodplain." (Exhibit "4") It should be noted that Mr. Bilby had earlier pointed out that to get around floodplain requirements, the toilet trailer would have to be deemed an "RV," and could not remain in place for a maximum of 180 days. (Exhibit "5") It is, of course, not an RV, and has been in place far longer than 180 days.

The City's attorney has taken the position during this litigation that the City was not bound to follow its own ordinances. Or, to use the oft-repeated phrase, "rules for thee but not for me." That position has been soundly rejected by the Court. See Exhibit "6" for a copy of that Order.

The City, by necessity, had to live or die on its "the rules do not apply to us" defense, as it is clear that the rules governing applications, permits, plan review and

Jeffrey P. Gill, Esquire  
April 14, 2022  
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approval, were not followed by the City in this unlawful “joint-venture” development at Admiral Mason’s Park.

If yet another “one-year” illegal development is approved by the City tonight, we will need to amend our complaint to add this new illegality. Please let me know if you will stipulate to that amendment.

Sincerely,



Edward P. Fleming

EPF/ccc  
Attachments

cc: Charlie Pepler, City Attorney

<image001.png>

Florida has a very broad public records law. As a result, any written communication created or received by City of Pensacola officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.

From: Jonathan Bilby <JBilby@cityofpensacola.com>  
Sent: Thursday, December 17, 2020 12:13 PM  
To: Heather Lindsay <HLindsay@cityofpensacola.com>  
Cc: Kerrith Fiddler <KFiddler@cityofpensacola.com>  
Subject: Veterans Park Discussion

Heather,

Thank you for listening to me describe the situation that has been brought up regarding the proposed Veterans Park bathroom facility. What has been proposed is a mobile type facility that would be moved in and out of the park in advance of a tropical storm system. The unit is on a trailer chassis and does not meet the Florida Building Code or our wind speeds. It appears to be designed as a temporary facility that is designed for 80 mph wind speeds. Minimum wind speed is 140 mph for a Category I structure in accordance with Chapter 16 of the Florida Building Code. This is also located in an AE-7 Flood Zone which Chapter 12-10 requires a minimum 10' NAVD elevation. The Board is proposing quick disconnect utilities, and a plan for removal when a storm is coming. I am laying out this option and some concerns along with another option which would be a more viable permanent option. We would have to get the Mayor on board and the Veterans park board to agree on option 2 but it would be better overall for the City.

Option 1. Removable Structure, Placed on a concrete pad. Not compliant with the Florida Building Code or permitted and inspected by Inspection Services.



1. This would require a variance to the elevation, anchoring and flood design provisions of our local Flood ordinance. This would be required to be reported to FEMA and likely cause us to lose some credit points in our CRS program. This may result in a change in the discount for flood insurance premiums. I have never seen a successful variance to this degree in my 10 years as a Floodplain Administrator. It is possible but up to the Board of Adjustments. This is my biggest concern with this option as a variance has far reaching consequences. Please reference 12-10-7 for variances and appeals. Considerations and conditions would have to be weighed by the BOA. If the Board of Adjustments denies the variance we could be left with only option 2.

2. The structure proposed does not comply with Florida Statutes 553.355 which governs modular buildings. If it is truly removable, it may need to be tagged and registered with the DMV. I am not sure of the legalities of this.

3. Inspection Services could not issue a permit on this type of Structure. We are charged with ensuring that structures meet the Florida Building Code for wind and flood, which this building is not designed for, and Statute 533, and Chapter 14 of the City Code. Permit-wise, we would only issue a permit for the electrical power pole that would service the facility. Also Accessibility and egress, and life safety provisions may not meet the Florida Building Code. None of the licensed personnel in Inspections could approve or inspect the facility and be on record for it. I am not sure of the liability aspects with a situation like this.

4. These types of structures are designed and typically used for short term temporary use during festivals, group functions or during remodels. This application could not be considered a temporary use as Flood Hazard area 12-10-15 governs maximum time for placement in a flood hazard area as 180 days for RV's and Park Trailers.

5. This is in the Gateway Review District and would need approval by the Planning Board for aesthetics prior to placement.

6. A plan for removal would need to be drafted which specifically

addresses removal in advance of a storm and any penalties for not removing. The mayor wants Legal to draft this.

Pros: Cheaper, No permitting or Inspections other than power pole.

Cons: Possible ramification to Flood Program, possible liability issues if someone gets hurt, tougher path for variance from floodplain.

Option 2. A permanent facility that complies with the Florida Building Code. This option is more costly but better overall for the City. The Board would need to find a manufacturer that has Florida engineering for 140 mph minimum.

1. This option would require a foundation design by a licensed engineer. The unit would be bolted to the foundation and inspected for compliance.
2. Variance to the Floodplain ordinance would be applied to the BOA for the freeboard requirement only. This is the additional 3' above the floodplain. I have seen this type of variance issued before. This option still has consequences with our flood program and still could result in loss of credits in the CRS program. This has to be reported to FEMA.
3. Finished floor elevation of the restroom would be at 7' NAVD. The City surveyor could determine elevation at the park location prior to placement. Derrick mentioned that the elevation is close to 7' NAVD so elevating would be minimal.
4. Inspections would issue permits and a Certificate of occupancy and the building would be left in place as a permanent structure
5. Gateway review would still apply to this.

Pros: Less impact to our Flood program, compliant with the Florida Building Code and City Ordinances. Compliance with accessibility and life safety. No removal in advance of a storm

Cons: Higher cost

There is a possibility that the City or veterans Board can explore. If the area where the unit will be placed is at or above the Flood elevation (7.0' NAVD), a Letter of Map Amendment (LOMA) could be issued by FEMA for the area of the park that qualifies. This is a long shot, but worth a look. I will get with Kerrith and see if our surveyor can get some elevations out at the park in the area where this is proposed. If a LOMA is applicable, the flood ordinance provisions go away and so do the variance requirements. Fingers Crossed. In that case, option 1 becomes more viable. This is something I thought of after our conversation.

I am trying to be open to options and think outside of the box a bit. Let me know your thoughts. Might be good for you, Kerrith and I to discuss further.

Regards,  
Jonathan

Jonathan Bilby, MCP, CFM  
Inspection Services Director  
Visit us at <http://cityofpensacola.com>  
222 W Main St.  
Pensacola, FL 32502  
Office: 850.436-5600  
Fax: 850.595.1464  
[jbilby@cityofpensacola.com](mailto:jbilby@cityofpensacola.com)

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

**DAVID K. BONNELL;  
ROBERT E. BOOTH, JR.; ROBERT B.  
MONTGOMERY; and HAWKSHAW  
DEVELOPMENT GROUP, LLC,**

**Plaintiffs,**

**CASE NO.: 2021 CA 000956**

v.

**GROVER C. ROBINSON IV,  
in his capacity as Mayor of the City  
of Pensacola; and  
VETERANS MEMORIAL PARK  
FOUNDATION OF PENSACOLA, INC.,**

**Defendant.**

**CITY OF PENSACOLA'S OMNIBUS MOTION TO DISMISS PLAINTIFFS'  
AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE  
RELIEF AND RESPONSE TO ALTERNATIVE WRIT OF MANDAMUS**

Co- Defendant, **GROVER C. ROBINSON IV, in his capacity as Mayor of the City of Pensacola** ("City"), files this Motion seeking to Dismiss Plaintiffs' Amended Complaint for Declaratory Judgment and Injunctive Relief, and its Response to the Alternative Writ of Mandamus filed on October 8, 2021, and states:

**INTRODUCTION**

"The nonjusticiability of a political question is primarily a function  
of the separation of powers."

*Baker v. Carr*, 369 U.S. 186, 210, 82 S.Ct. 691, 706,  
7 L.Ed.2d 663 (1962).



the Declaratory Judgment Act. *Accord, Ashe v. City of Boca Raton*, 133 So. 2d 122, 124 (Fla. 2d DCA 1961) (finding taxpayers' declaratory judgment challenging conveyance of property by City to State Board of Education an improper request for an advisory opinion).

Moreover, Plaintiffs' allegation that they are in doubt as to their rights with regard to the temporary mobile restroom is at odds with and repugnant to Plaintiffs' contention that they are entitled to issuance of a writ of mandamus, which is granted where there is a "clear legal obligation" on the part of a public officer to perform a ministerial duty "in a prescribed manner." *Plymel*, 770 So. 2d at 246 (citation omitted). Plaintiffs cannot have it both ways.

### **B. Permanent Mandatory Injunction**

The City has the authority to ensure its park users are able to enjoy public space in comfort on City-owned land. Plaintiffs have not established they have a *clear legal right* because, out of the gate, they do not have standing. Again, Plaintiffs request that this Court issue the extraordinary remedy of permanent injunction based upon allegations that the City did not follow its own ordinances and procedures – the specific injunctive relief requested in the Amended Complaint (Amended Compl. at *ad damnum* Clause, pp. 17-18) – is not enough to satisfy Plaintiffs' standing burden. Plaintiffs cannot establish they do not possess an adequate remedy at law either. If, as Plaintiffs allege, their property values have in fact been threatened, they can bring suit and attempt to seek monetary damages through an action for nuisance.

Furthermore, Plaintiffs cannot demonstrate irreparable harm, a requirement to be granted the injunctive relief they seek. The structure at issue here is temporary, allowed for the period of one year. This is admitted by Plaintiffs' recitations relating to actions or statements made by the City Council. (See Amended Compl. at ¶35). The restroom used by patrons of Veteran's Memorial and Admiral

Dated this 28th day of October, 2021.

Respectfully submitted,

/s/ Robert J. Sniffen

**ROBERT J. SNIFFEN**

Florida Bar Number: 0000795

rsniffen@sniffenlaw.com

/s/ Ryan T. Dyson

**RYAN T. DYSON**

Florida Bar Number: 1026004

rdyson@sniffenlaw.com

**SNIFFEN & SPELLMAN, P.A.**

123 North Monroe Street

Tallahassee, Florida 32301

Telephone: (850) 205-1996

Facsimile: (850) 205-3004

*Counsel for Grover C. Robinson IV, in his capacity  
as Mayor of the City of Pensacola*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 28th day of October, 2021, a true and correct copy of the foregoing was electronically filed in the Florida E-Courts Filing Portal to all counsel of record.

/s/Robert J. Sniffen

**ROBERT J. SNIFFEN**

request, unless otherwise exempt. Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.

From: Heather Lindsay  
Sent: Wednesday, May 19, 2021 9:02 AM  
To: Jonathan Bilby <JBilby@cityofpensacola.com>  
Subject: RE: [EXTERNAL] Re: FW: [EXTERNAL] VMP - Restroom Evacuation Route Plan

Good morning, Jonathan. Did you see the emails about the possible settlement of the litigation over this bathroom trailer? That agreement turns on its head all of this work you have been doing. That agreement allows the trailer only to be on the premises for one-day events and the possession of the trailer is given to the plaintiffs to store the trailer until the foundation needs the trailer for events.

They claim they have a permanent location for a bathroom that is "ideal." Of course, I've seen no drawings or concept on paper. What I recall is that you said a permanent structure would be a problem based on the flood zone.

Would you remind me of those concerns?

To answer your question, I have a full day ahead – how about tomorrow?

Sincerely,  
Heather

Heather F. Lindsay  
Assistant City Attorney  
Visit us at <https://www.cityofpensacola.com>  
222 W Main St.  
Pensacola, FL 32502



Jonathan Bilby </O=CITY OF  
PENSACOLA/OU=EXTERNAL  
(FYDIBOHF25SPDLT)/  
CN=RECIPIENTS/  
CN=E25E3235F0674F719BFACCA  
52B34E9EA>

May 19, 2021 at 09:14 AM

To: Heather Lindsay

3 Attachments  ▾

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Tomorrow works.

I saw the emails regarding the agreement. I know the Council stated that they wanted it open to the public for more than just events. Not sure if Council would have to approve the change. I would be open to it being brought in just for events. That would be a better option in the floodplain.

A permanent structure is acceptable and would be the best for the park.

Regards,  
Jonathan

Jonathan Bilby, MCP, CFM  
Inspection Services Director  
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222 W Main St.  
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Fax: 850.595.1464  
[jbilby@cityofpensacola.com](mailto:jbilby@cityofpensacola.com)

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From: Jonathan Bilby <JBilby@cityofpensacola.com>  
Sent: Thursday, January 7, 2021 1:46 PM  
To: Heather Lindsay <HLindsay@cityofpensacola.com>; Kerrith Fiddler <KFiddler@cityofpensacola.com>  
Subject: RE: Veterans Park Discussion

Heather/Kerrith,

After discussing with the State Floodplain Office, I feel a lot better about the Veterans Park restroom. Their guidance would be to treat it like an RV with no variance. It will need to meet the following:

1. Be road ready with a registration from the DMV like any trailer, or be on site for a maximum of 180 days to qualify as temporary. This would require that the removal plan requires at least one "fire drill" removal each year if no storm event takes place.
2. All plumbing utilities must have backflow prevention.
3. The electrical must be elevated above our freeboard and be ground fault protected. Electrical connection must be quick disconnect cord and plug.
4. There must be a specific plan for removal for an incoming tropical event. The wind speed for this is 70 mph max so it would need to reflect that at least. My belief would be removal at least 48 hours in advance of anticipated landfall or immediately upon being under a Tropical storm warning. Also It would be good to have a removal run each year if there is no event to make sure the procedures stay active and the unit stays road ready. I will be glad to help with this language. I think the Mayor wants Legal to draft the plan for the board.
5. There will be no building permits. Only permits for the plumbing and electrical.
6. We will need an elevation benchmark at the site to make sure the electrical is elevated.

I'm not sure how this affects the other RV prohibitions for the LDC, I also don't know if it sets any kind of precedence for this type of structure, but I'll leave that up to the legal department to look at.

Sec. 12-9-15. - Recreational vehicles and park trailers.



(a) Temporary placement. Recreational vehicles and park trailers placed temporarily in flood hazard areas shall: (1) Be on the site for fewer than 180 consecutive days; or (2) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.

(b) Permanent placement. Recreational vehicles and park trailers that do not meet the limitations in subsection (a) of this section for temporary placement shall meet the requirements of section 12-9-14 for manufactured homes.

(c) Limitations on installation in coastal high hazard areas (zone V). Owners of existing recreational vehicle parks in coastal high hazard areas shall not expand or increase the number of parking sites unless a plan for removal of units from the coastal high hazard area prior to a predicted flood event is prepared and submitted to Escambia County Emergency Management. Recreational vehicle park owners shall notify vehicle owners of the plan for removal.

Let me know if you want to discuss further. All of the above should be met before we issue power for the unit. Not sure of the timeline.

Jonathan Bilby, MCP, CFM  
Inspection Services Director  
Visit us at <http://cityofpensacola.com>  
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Pensacola, FL 32502  
Office: 850.436-5600  
Fax: 850.595.1464  
[jbilby@cityofpensacola.com](mailto:jbilby@cityofpensacola.com)

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**IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA**

**CITIZENS FOR PRESERVATION OF  
ADMIRAL MASON PARK, INC., et al.,**

**Plaintiff/Petitioner,**

vs.

**CASE NO: 2021 CA 000956  
DIVISION F**

**GROVER C. ROBINSON, IV in his capacity  
as MAYOR of the CITY OF PENSACOLA;  
and VETERANS MEMORIAL PARK  
FOUNDATION OF PENSACOLA, INC.**

**Defendants/Respondents.**

---

**ORDER DENYING VETERANS MEMORIAL PARK FOUNDATION'S  
MOTION TO DISMISS AMENDED COMPLAINT**

THIS CAUSE having come before the Court at a duly noticed hearing on February 2, 2022, on "Defendant, Veterans Memorial Park Foundation of Pensacola Inc.'s Motion to Dismiss Plaintiffs' Amended Complaint" ("Motion") the Court having heard arguments of counsel and being otherwise duly advised in the premise, it is

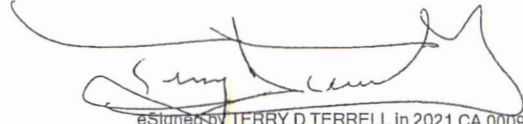
ORDERED and ADJUDGED that

1. The Motion is DENIED for the reasons argued by the Plaintiffs.
2. Veterans Memorial Park Foundation of Pensacola, Inc. shall have until February 25, 2022 to file its answer.





Done and Ordered in Pensacola, Escambia County, Florida on the date  
embedded in the signature below.



eSigned by TERRY D TERRELL in 2021 CA 000956  
on 02/07/2022 10:09:24 MAu6eegv

**Confirmed Copies to:**

Edward P. Fleming, Esquire  
R. Todd Harris, Esquire  
Robert J. Sniffen, Esquire  
Ryan T. Dyson, Esquire  
Jeffrey P. Gill, Esquire