

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STEVEN NORDBECK and MELISSA NORDBECK, husband, and wife; TIFFANY URENA, ELIZABETH WHITE; TROY GOLDBERG; GERALD COSENTINO and LYNN COSENTINO, husband, and wife; MATTHEW MONROE and MISTY MONROE, husband, and wife; WARD NETSCHER; BRIAN MURPHY and TARA MURPHY, husband, and wife; WILLIAM A. JAMIESON; PAUL J. GIANNOTTI; and BRANDON PERTILE,

Case No. 2022-CA-4745

Division B

Plaintiffs,

v.

HILLSBOROUGH COUNTY, FLORIDA, a
political subdivision of the State of Florida,

Defendants.

**PLAINTIFFS' EMERGENCY MOTION FOR
TEMPORARY INJUNCTION**

Plaintiffs, STEVEN NORDBECK and MELISSA NORDBECK, husband, and wife; TIFFANY URENA; ELIZABETH WHITE; TROY GOLDBERG; GERALD COSENTINO and LYNN COSENTINO, husband, and wife; MATTHEW MONROE and MISTY MONROE, husband, and wife; WARD NETSCHER; BRIAN MURPHY and TARA MURPHY, husband, and wife; WILLIAM A. JAMIESON; PAUL J. GIANNOTTI; and BRANDON PERTILE, move the Court under Fla. R. Civ. Pro. 1.610, to enter a temporary injunction against Defendant, HILLSBOROUGH COUNTY, and state:

I. INTRODUCTION

1. Plaintiffs bring this Motion to enjoin Defendant Hillsborough County from issuing, or continuing the issuance/efficacy, of the Development Order which is the subject of this case (“DO Approval”), and to suspend the DO Approval pending resolution of the underlying case.
2. The DO Approval, a subdivision construction plan approval for a proposed 194-unit residential development on property within the Keystone-Odessa Rural Area (“Rural Area”) as designated by the County (the “Project”) - was approved by the County on May 5, 2022. A copy of the DO Approval, signed by Rick Cabrera, PE, CFM, Manager, Engineering Review, Development Services Department, is *attached hereto as Exhibit “A”* and incorporated herein by reference. A copy of the first page of the construction plans approved by the DO Approval is *attached hereto as Exhibit “B”* and incorporated herein by reference.

II. PERTINENT FACTS

3. The owner of the property on which the Project is being undertaken is Taylor Morrison of Florida, Inc. a Florida for-profit corporation (“Taylor Morrison”). Taylor Morrison is currently working on the Project, clearing and recontouring land, and conducting construction work for extension and installation of water and sewer utility lines.
4. Taylor Morrison is relying upon the Approved DO which authorizes the current construction work.
5. The Approved DO was challenged by the Plaintiffs as inconsistent with the Unincorporated Hillsborough County Comprehensive Plan (“Comprehensive Plan”) and therefore in violation of state and local law. *See Amended Complaint.*

III. APPLICABLE LAW

The Court has broad discretion in granting a motion for temporary injunction, *Sacred Family Invests., Inc. v. Coral Supermarkets, Inc.*, 20 So. 3d 412, 415 (Fla. 3d DCA 2009), and is “guided by established rules of the principles of equity jurisprudence, in view of the particular facts presented in each case.” *Muss v. City of Miami Beach*, 312 So. 2d 553, 554 (Fla. 3d DCA 1975).

A preliminary injunction may be entered if the movant establishes four elements: (1) the likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) a substantial likelihood of success on the merits; and (4) consideration of the public interest. *Avalon Legal Info. Services, Inc. v. Keating*, 110 So. 3d 75, 80 (Fla. 5th DCA 2013). It is not necessary to show that irreparable harm has already occurred, but only that there is a reasonable probability that such harm will occur unless the unlawful action is prevented. *City of Pompano Beach v. Yardarm Rest.*, 509 So. 2d 1295, 1297 (Fla. 4th DCA 1987). The temporary nature of such an injunction is germane to the Court’s inquiry, as “the purpose of a temporary injunction is not to resolve disputed issues, but to preserve the *status quo* pending a final hearing on the merits.” *TJ Mgmt. Group, LLC v. Zidon*, 990 So. 2d 623, 625 (Fla. 3d DCA 2008). The status quo preserved by a temporary injunction is the last peaceable noncontested condition that preceded the controversy. *Garcia v. Dumenigo*, 46 So. 3d 1085, 1087 (Fla. 3d DCA 2010). In the instant matter the status quo is the Project property in its predevelopment state.

IV. ARGUMENT

A. Plaintiffs Will Suffer Irreparable Harm.

Plaintiffs will suffer irreparable harm if an injunction is not granted because the construction of the Project improvements are permanent and irreparable, and because the

extension of utility lines into the Rural Area are permanent and irreparable improvements. The uniquely rural land is being altered, trees have been removed, and utility lines are being extended into the Rural Area in violation of the Comprehensive Plan and Florida Statutes.

B. Plaintiffs Lack an Adequate Remedy at Law.

Plaintiffs lack an adequate remedy at law to prevent the immediate danger of construction of a subdivision in and extension of central utilities into the Rural Area. Because the work being undertaken at the Project pursuant to the DO Approval is present and continuing and would be neither easily quantifiable nor easily corrected, no remedy at law can undo the injury borne by Defendant's actions. Even when both legal and equitable remedies exist, injunctive relief is proper when a legal remedy would be inadequate to "offer the most expeditious relief." *NRD Investments, Inc. v. Velazquez*, 976 So. 2d 1, 3-4 (citing *McNorton v. Pan Am. Bank*, 387 So. 2d 393, 399 (Fla. 5th DCA 1980)). In the instant matter, injunctive relief is the most adequate remedy to protect Plaintiffs from the immediate and continuing harm being suffered due to Defendants' actions.

C. Plaintiffs Have a Substantial Likelihood of Success on the Merits.

Plaintiffs have a substantial likelihood of success on the merits because the development authorized by the DO Approval is inconsistent with the Future Land Use Element of the Comprehensive Plan for Unincorporated Hillsborough County, Florida, (hereafter "FLUE") which significantly changed growth management rules in unincorporated Hillsborough County. The FLUE is a Chapter/Element of the Comprehensive Plan. A movant establishes a substantial likelihood of success on the merits "if good reasons for anticipating the result are demonstrated."

Chapter 163, Part II, Florida Statutes, the Local Governmental Comprehensive Planning and Land Development Regulation Act (the "Act") requires each local governmental in Florida

to prepare and adopt a local comprehensive plan containing mandatory elements that govern future land uses, protection of natural resources, and other issues. §163.3161, et seq., Fla. Stat. The Act requires that, after a local government has adopted its comprehensive plan, all actions taken by the local government in regard to development orders and all development be consistent with the adopted local comprehensive plan and plan elements thereof. §§163.3161(6) and (7), 163.3194(1)(a), Fla. Stat. *See also* §163.3215(3), Fla. Stat., *see also* Amended Complaint, Paragraphs 36-66 for specific allegations of at least fifteen (15) DO Approval inconsistencies with the Comprehensive Plan and FLUE.

D. A Temporary Injunction Will Serve the Public Interest

If the subdivision construction authorized by the DO Approval is allowed to continue, and later found to be inconsistent with the Comprehensive Plan, the public interest will have been violated. The construction of 194 homes and related improvements would create permanent damage to the Rural Area and the Plaintiffs – once constructed, the land cannot simply be returned to its previous condition. *See Pinecrest Lakes, Inc. v. Shidel*, 795 So.2d 191, 209 (Fla. 2001), where the Court upheld the ordered demolition a newly constructed apartment complex when found to be inconsistent with the local comprehensive plan.

Here, the construction involves not only privately built and owned infrastructure and homes, but public infrastructure as well. The DO Approval authorizes the extension of Hillsborough County water, sanitary sewer and reuse water lines into the Rural Area to serve the Project. Such construction of publicly owned utilities in a protected area in violation of the Comprehensive Plan does not serve the public interest. Pausing such construction until a judicial determination has been made regarding the Project's consistency with the Comprehensive Plan serves the public interest.

E. Bond

The purpose of an injunction bond is to provide sufficient funds to cover adverse parties' costs and damages if the injunction is wrongfully issued. See *Metalmax Cutting Tools, Inc. v. Mill-Tech USA, Inc.*, 794 So. 2d 609 (Fla. 2d DCA 2001). This Court may consider factors other than anticipated costs and damages in setting an injunction bond, including the adverse parties' likelihood of overturning the temporary injunction. *Id.* In the instant matter, it is not possible for Hillsborough County to suffer damages of any kind, beyond an employee being required to re-issue the DO Approval, a minor administrative effort. Therefore, Plaintiffs request that the bond be set at a commensurately small amount.

F. Notice to Defendant is Not Required But Has Been Given

A temporary injunction may be granted without notice to the adverse party if it appears from the specific facts shown by affidavit or verified pleading that immediate, irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition. See Fla. R. Civ. Proc. 1.610(a)(1)(A). However, Plaintiffs have provided Defendant notice of this Motion, by service as noted below.

G. Conclusion

For the reasons stated more fully herein, Plaintiffs have shown that they will suffer irreparable harm if the temporary injunction is not granted, that there is no adequate remedy at law available to Plaintiffs, that there is a substantial likelihood of success on the merits, and that granting the injunction will best serve the public interest. Accordingly, a temporary injunction is necessary and proper to prevent further injury to Plaintiffs.

WHEREFORE, Plaintiffs, respectfully request the entry of an Order:

A. issuing an injunction, pending final adjudication, and a permanent injunction, suspending the DO Approval, and enjoining any activities on the Project property which are authorized by the DO; and

B. such other and further relief as the Court deems equitable and appropriate.

DATED this 30th day of June, 2022

**CRAWFORD, MODICA & HOLT,
CHARTERED ATTORNEYS AT LAW**

/s/ Jimmy D. Crawford

Jimmy D. Crawford

FL Bar No. 38441

Lindsay C. T. Holt

FL Bar No. 41179

702 W. Montrose Street

Clermont, FL 34711

Telephone: 352/432-8644

Facsimile: 352/432-8699

Primary: jcrawford@cmhlawyers.com

Secondary: atitus@cmhlawyers.com

service@cmhlawyers.com

Attorneys for Plaintiffs

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EXHIBIT "A"

(TO EMERGENCY MOTION FOR TEMPORARY INJUNCTION)



Hillsborough County Florida

DEVELOPMENT SERVICES

PO Box 1110
Tampa, FL 33601-1110
(813) 272-5600

Joe Cimino
4260 W Linebaugh Ave
Tampa, FL 33624

BOARD OF COUNTY COMMISSIONERS

Harry Cohen
Ken Hagan
Pat Kemp

Gwendolyn "Gwen" Myers
Kimberly Overman
Mariella Smith
Stacy R. White

COUNTY ADMINISTRATOR

Bonnie M. Wise

COUNTY ATTORNEY

Christine M. Beck

INTERNAL AUDITOR

Peggy Caskey

DEPUTY COUNTY ADMINISTRATOR

Gregory S. Horwedel

**SUBJECT: SUBDIVISION CONSTRUCTION PLAN APPROVAL
PATTERSON RD RESIDENTIAL
FOLIO # 2595.0000, 2599.0000, 2600.0000, 2643.000, 2652.0000, 2646.0000, 2645.0000
ROW-21-0001360 SR#20-0217 S29 /T27 /R17 Project ID# 5549**

Dear Mr. Cimino,

The Construction Plan described below has been approved in accordance with Hillsborough County's Development Review Procedures Manual Subdivision Construction Regulations, Section 4.1.4.1.2.2.2, and the Public Utilities Connections Regulations, Ordinance 92-32, as amended.

Approval will remain in effect until **February 21, 2024**.

Project Title Patterson Rd Residential

Plan Submitted June 24, 2021 Date Review Complete February 21, 2022

Acreage 209.54 Lots 194 Density 0.92

Major Use Single Family Residential Lots

Flood Zone X, A, AE FIRM Panel # 12057C0180H

Base Flood Elevation 35.3'-37.1' NAVD 88 Stormwater Basin Brooker Creek / Double Branch

Water Service N/W # of ERC's 194

Wastewater Service N/W Northwest Regional # of ERC's 194

Road & Segment north side of Patterson Road and west side of McGlamery Road

Natural Resources Permit Required X Yes No

Overlay / Architectural Review Required Yes X No

Proportionate Fair Share Requirement Yes X No

Fire Marshal Plan Review & Permit Required Yes X No

The following agencies have approved with comments/conditions:

EPC, Fire, Natural Resources, Site Engineering, Stormwater, Streets & Addresses, Transportation, Utilities-Const, Zoning

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The General Contractor or Engineer-of-Record shall contact Max Montel, at (813) 335-8149 or MontelM@hillsboroughcounty.org, 48 hours prior to starting any on-site or off-site construction.

Related permit applications for the project shall be released from the Water Department's Service Availability Center upon request of the Developer/Builder and upon payment of the Service Availability fee as established by Rate Resolution. Per Division 7 of the Utility Connections Regulations Ordinance, all water and wastewater capacity fees shall be paid to the Service Availability Center prior to the issuance of a Certificate of Occupancy (CO) or by a date six months after the issuance of the Building Permit or prior to the end of the fiscal year in which the Building Permit is issued, whichever is the earliest date. All meter installation charges shall be paid at the time actual service is requested. Additional information pertaining to the above may be obtained from the Service Availability Center at (813) 272-5977.

Any deviation from these Construction Plans shall require the submission of revised plans for approval by the appropriate reviewing agencies. Approval of the Construction Plans will remain in effect for a two year period as stated in the Development Review Procedures Manual Subdivision Construction Regulations, Section 4.1.4.1.2.2.2.]

If you have any questions concerning this matter, please e-mail Roselia Baddorf at baddorfr@hillsboroughcounty.org or call at (813) 274-6835.

Rick

Cabrera, PE

Digitally signed by

Rick Cabrera, PE

Date: 2022.05.05

11:36:29 -04'00'

Sincerely,

Rick Cabrera, PE, CFM

Manager - Engineering Review

Development Services Department

Project Title Patterson Rd Residential

ID# 5549

cc: Development Services – File Copy
Public Utilities – Inspections
Site Horizontal Inspections]

Streets & Addresses
EPC

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EXHIBIT "B"

(TO EMERGENCY MOTION FOR TEMPORARY INJUNCTION)

