**IN THE SUPERIOR COURT OF FULTON COUNTY**
**STATE OF GEORGIA**

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| SOUTH RIVER WATERSHED ALLIANCE, INC., EDWARD "TED" TERRY AND AMY TAYLOR,<br><br>Plaintiffs,<br><br>v.<br><br>ATLANTA POLICE FOUNDATION, INC.,<br><br>Defendant. | CIVIL ACTION<br>FILE NO. 2023cv376181 |

**ORDER DENYING PLAINTIFFS' MOTION FOR EMERGENCY TEMPORARY RESTRAINING ORDER TO STOP UNAUTHORIZED CLEARING**

The above-captioned case came before the Court on Plaintiffs' Motion for Emergency Temporary Restraining Order to Stop Unauthorized Clearing (the "Motion"). On February 16, 2023, the Court held a hearing on the Motion. Plaintiffs South River Watershed Alliance, Inc., Edward "Ted" Terry, and Amy Taylor (collectively, "Plaintiffs") and Defendant Atlanta Police Foundation, Inc. ("Defendant" or "APF") were represented by counsel. Upon consideration of the pleadings, evidence, and argument of counsel, this Court **DENIES** the Temporary Restraining Order ("TRO")

## I. Factual Background

The City of Atlanta's (the "City") Public Safety Training Center (the "Training Center") is being developed on property owned by the City located in unincorporated DeKalb County, Georgia (the "Property"). (Aff. of Rob Baskin at ¶¶ 2-4.) The Training Center will feature a comprehensive curriculum, state-of-the-art training facilities, and an extensive campus designed to provide those sworn to serve and protect with state-of-the-art training, continual opportunities for citizen engagement, and a core of career-long

education programs and community initiatives that fulfill the City's mandate that public safety is rooted in law enforcement's commitment to citizens' civil rights and physical safety. (Id. at ¶ 3.) The Property was the original site of the City's Public Training Center over fifty years ago, and the Property has been continuously used as the outdoor tactical training site for the Atlanta Police Department ("ADP") and Atlanta Fire Department ("AFD"). (Id. at ¶ 4.) The City authorized the APF as its agent to lead the development efforts to construct the Training Center for the City's use for the APD, AFD, and corrections' departments training needs. (Id. at ¶ 5.)The City's current training facilities are inadequate and need to be replaced as soon as possible. (Id. at ¶ 6.)

On January 31, 2023, DeKalb County issued a Land Disturbance Permit ("LDP") for the Property. (Aff. of Alan Williams at ¶ 5.) The land disturbance activities will occur in multiple phases. Currently, APF is installing its erosion and sediment control measures Best Management Practices ("BMP's") consisting of silt fence installation, tree save fencing, and construction entrances. (Id. at ¶ 6.) After the Training Center is completed, much of the subject property will remain undisturbed green space and forestry. (Id. at ¶ 7.)

## II. Discussion

**The Automatic Stay Under DeKalb County Ordinances Does Not Apply.**

Plaintiffs have filed suit to stop all work at the Property while the DeKalb County Zoning Board of Appeals ("ZBA") considers an appeal of the County-issued land disturbance permit ("LDP") for the subject property. (Complaint, ¶¶ 7, 10-11, Requested Relief (a) and (b).) The Property is owned by the City of Atlanta but located in unincorporated DeKalb County, Georgia, and the Atlanta Police Foundation, Inc. will lead the development efforts to construct the Training Center (Complaint, ¶ 18; Aff. of Rob

Baskin at ¶¶ 3-4.) The Public Safety Training Center will be used by the City of Atlanta to serve a variety of training needs of the City's police, fire, and corrections' departments. (Aff. of Rob Baskin at ¶¶ 3, 5.)

According to Plaintiffs, two provisions of the DeKalb County Code of Ordinances, Section 7.5.2(D) and Appendix B, Section 1131(f), provide for an automatic stay during the pendency of the ZBA appeal. (Plaintiffs' Ex. 4.; Plaintiffs' Ex. 7.) The Court, however, cannot address this argument because Plaintiffs failed to submit certified copies of the DeKalb County Code of Ordinances. This failure is fatal to any motion that relies on a County code.

The Court cannot take judicial notice of an ordinance, or adjudicate a claim based on an ordinance, unless the ordinance is a certified copy. Woodstone Townhouses, LLC v. S. Fiber Worx, LLC, 358 Ga. App. 516, 524 (2021) (city ordinance); Sweeney v. Lowe, 325 Ga. App. 883, 883 (2014) (county ordinance). See also O.C.G.A. § 24-2-221 ("When certified . . . and in the absence of contrary evidence, judicial notice may be taken of a certified copy of any ordinance . . . as representing an ordinance . . . duly approved by the governing authority and currently in force as presented."). More particularly, the Court cannot consider an uncertified ordinance in the context of the injunctive relief Plaintiffs seek. Leger v. Ken Edwards Enterprises, Inc., 223 Ga. 536, 539 (1967). Because the stay-related ordinances are the basis for that injunctive relief – and because the Court cannot take judicial notice of these ordinances in the form that Plaintiffs have introduced them into the record – the Motion fails.

But, even if the Court addressed the merits of Plaintiffs' argument for an automatic stay under the DeKalb County ordinances Plaintiffs have cited, this argument nonetheless fails on the merits as well. Section 7.5.2(D) of the DeKalb County Code states, in pertinent

part, that "if the action or decision appealed from permits land disturbance or construction activity to commence or continue on residentially zoned property, the appeal stays the land disturbance or construction activity until the zoning board of appeals issues a decision on the appeal." Section 1131(f) is identical. Both provisions are DeKalb County zoning ordinances.

In essence Plaintiffs here seek to subject the City of Atlanta property to be used for City operations to DeKalb County zoning ordinances. This is not permissible under the law. Property owned by a governmental entity for governmental purposes is exempt from local zoning ordinances. Evans v. Just Open Gov't, 242 Ga. 834, 836 (1979). "In Georgia, it has been held that property owned by the state or county, and used for a governmental purpose, is exempt from municipal zoning regulation." Macon-Bibb Cnty. Hosp. Auth. v. Madison, 204 Ga. App. 741, 741-42 (1992). Accord City of Decatur v. DeKalb Cnty., 256 Ga. App. 46, 48 (2002) (holding that county-owned property used for governmental purposes is not subject to municipal zoning regulation and noting that "zoning is to be distinguished from other regulations with which a developer must comply, such as requirements for a building permit" because "each type of regulation is independent of the other and seeks to accomplish its purpose by a different means").

**Standard for TRO**

Just because the Court has found that the stay restriction does not immediately preclude the work from going forward does not mean that the Plaintiff is automatically denied access to a TRO. Indeed, "an interlocutory injunction is a device used to maintain the status quo of the parties pending final adjudication of the case and should not be granted except in clear and urgent cases where there is a vital necessity to prevent a party from being damaged and left without a remedy." Drawdy CPA Servs., P.C. v. North GA

CPA Servs., P.C., 320 Ga. App. 759, 760–61 (2013).

The trial court is vested with broad discretion in determining whether temporary injunctive relief is appropriate, though the power to do so "shall be prudently and cautiously exercised." Mays v. S. Res. Consultants, Inc., 299 Ga. 216, 218 (2016); O.C.G.A. § 9-5-8. In exercising its discretion, the trial court should consider four factors:

> (1) whether there exists a substantial threat that a moving party will suffer irreparable injury if the injunction is not granted; (2) whether the threatened injury to the moving party outweighs the threat and harm that the injunction may do to the party being enjoined; (3) whether there is a substantial likelihood that the moving party will prevail on the merits at trial; and (4) whether granting the interlocutory injunction will not disserve the public interest.

Davis v. VCP S., LLC, 297 Ga. 616, 621–22 (2015). The "trial court must balance the conveniences of the parties pending the final adjudication, with consideration being given to whether greater harm might come from granting the injunction or denying it." Univ. Health Servs., Inc. v. Long, 274 Ga. 829, 829 (2002).

**There Is No Threat That Plaintiffs Will Suffer Irreparable Injury If the TRO Is Not Granted.**

Plaintiffs allege that development of the Training Center may cause increased sediment pollution in Intrenchment Creek, the stream that runs near the Property. (Verified Compl. for Injunctive Relief to Stop Unauthorized Clearing at ¶ 64.) Plaintiffs "also enjoy observing wildlife around and flying over the project site and are concerned clearing the forested site will lessen the opportunity to observe wildlife." (Id.)

A showing of irreparable injury is "the sine qua non of injunctive relief," and the "asserted irreparable injury must be neither remote nor speculative, but actual and imminent." Siegel v. LePore, 234 F.3d 1163, 1176 (11th Cir. 2000). As the Court noted during the hearing held on the Motion, the irreparable injury claimed by Plaintiffs is

speculative and predictive. Plaintiffs argue that future development of the Training Center site may put more silt in Intrenchment Creek and may cause their enjoyment of nature around the site to be lessened in the future.

Plaintiffs do not allege that the work already done on the site has caused them irreparable injury or that the work being done on the site is causing them irreparable injury. Rather, Plaintiffs assert that this Court should enjoin the development of the Training Center to prevent the possible future harm they fear to the creek and surrounding area. Plaintiffs' argument is "entirely speculative, and speculative allegations regarding future harm are insufficient for demonstrating irreparable harm." Parker v. Haer, Civ. Action No. 1:21-CV-04808-LMM, 2022 WL 1694285, at *2 (N.D. Ga. Feb. 25, 2022).

The Project has been approved by both DeKalb County and the Georgia Environmental Protection Division ("EPD"). (Complaint, ¶ 7; Affidavit of Anna Truszczynski, ¶ 10). Furthermore, approving the Project allows for a certain amount of sediment within legal limits to enter Intrenchment Creek during the development process. DeKalb County and EPD evaluated the project and determined that it could be legally developed within the requirements of the DeKalb County development code and the Clean Water Act.

Therefore, even if Plaintiffs are correct and some sediment will enter the creek, this does not in and of itself constitute a cognizable injury as a matter of law. Since showing irreparable injury is absolutely required to obtain injunctive relief, the Plaintiffs are not entitled to the issuance of a TRO. Siegel, 234 F.3d at 1176.

**The Balancing of Harms Weighs Against the Entry of a TRO.**

A trial court may issue a temporary restraining order or interlocutory injunction to

maintain the status quo if, "by balancing the relative conveniences of the parties, it determines that they favor the party seeking the injunction." Hampton Island Founders, LLC v. Liberty Capital, LLC, 283 Ga. 289, 293 (2008) (citing Bernocchi v. Forcucci, 279 Ga. 460, 461 (2005)). "There must be some vital necessity for the injunction so that one of the parties will not be damaged and left without adequate remedy." Id.

Here, the balance of harm favors Defendant. As discussed above, the potential harm to Plaintiffs if the Court does not issue a TRO is remote, hypothetical, and speculative: Intrenchment Creek might have some additional sediment deposited in it, and Plaintiffs might enjoy the area around Intrenchment Creek less. Furthermore, the "injury" of which Plaintiffs complain is really no injury, as the Training Center is being developed legally under the applicable permit granted to APF by DeKalb County and approved on multiple occasions by the EPD.

On the other hand, Defendant demonstrated clear harm will be likely if the Court grants the TRO. Defendant presented evidence that the Training Center site had been subject to disturbances.[1] (Aff. of Rob Baskin at ¶¶ 10-11.) Defendant further presented evidence that after DeKalb County issued the LDP for the Property in January 2023, and following Defendant's efforts to secure the Property, the number of disturbances on and around the site had been reduced. (Aff. of Jessica Bruce at ¶ 6 and Ex. 2.) Thus, the status quo is that the Training Center is being developed according to the approved LDP, and the area around the site is relatively safe and secure.

Therefore, balancing the harm in this case favors Defendant and the denial of the Motion. See Hampton Island Founders, LLC, 283 Ga. 289 at 293.

[1] The property and associated project have been the source of protests and at least two shootings.

**Plaintiffs Do Not Have a Substantial Likelihood of Prevailing on The Merits.**

Plaintiffs argue that DeKalb County should not have issued the LDP for development of the Training Center because the development will cause more sediment to be deposited into Intrenchment Creek than the creek can handle. (Verified Compl. for Injunctive Relief to Stop Unauthorized Clearing at ¶¶ 31-48.) Both DeKalb County and the EPD, however, have concluded multiple times that approval of the development of the Training Center project (the "Project") was proper. Further, Defendant presented evidence from the affidavits of two experts that the development of the Project will not harm the creek. The experts and the regulating authorities agree there is room in the creek for more silt, so if an amount as allowed by the applicable approved permit enters the creek, the creek will not be harmed. Defendant does not appear to be violating any laws, rules, or regulations in its development, and there is no injury to Plaintiffs.

DeKalb County approved the Training Center project and approved its development, and EPD review it twice and approved it twice. Defendant's experts' affidavits confirm that this was appropriate. Plaintiffs previously made the same argument to DeKalb County opposing the approval of the LDP, but the County rejected this argument. (See Defendant's Ex. 11.) Plaintiffs have presented no new evidence to change the result in this Court. By following the guidelines established in the National Pollutant Discharge Elimination System ("NPDES") permit, including the additional safeguards required by EPD, the development and construction of the Project will not cause or contribute sediment to Intrenchment Creek. (Severin Aff. at ¶ 25.)

**Granting the TRO Would Disserve the Public Interest.**

Plaintiffs have failed to show that the grant of a TRO would be in the best interest of the public. As discussed above, Plaintiffs have articulated only a vague, speculative

potential harm to them if the TRO is not granted. The balance of the injuries favors the Defendant as discussed above.

Defendant presented evidence that the Training Center is needed to replace the current inadequate training facilities and that the Training Center will much more effectively meet the needs of APD and AFD. (Baskin Aff. at ¶ 6.) It would disserve the public interest to delay the completion of the Training Center and the benefits to public safety it will bring. This is especially true where the evidence shows that every review of the Training Center development by DeKalb County and the EPD has concluded that the development will meet all sediment and erosion controls and will not endanger the health of Intrenchment Creek or any of the rest of its surrounding environment.

## III. Conclusion

The Court acknowledges the importance of the environmental protections the Plaintiffs raise. The Court must consider, however, the legal standard and issues necessary for resolving this motion. Those considerations weigh heavily toward the Defendant. For the foregoing reasons, the Court **DENIES** the Motion.

Further, during the hearing, Counsel for Atlanta Police Foundation, Inc. stated in open court that his Client would be willing to submit to and pay for daily inspections on the site to ensure that the LDP is being followed and that the project is causing as little disturbance to the land as possible. Therefore, the Courts **ORDERS** the Defendant(s) to immediately (beginning Saturday, February 18, 2023) coordinate daily inspections of the property and to pay for the same.

Finally, as there is an adequate remedy at law (the appeal currently before the Zoning Board) and the temporary restraining order is being denied, this matter is not ripe to appear before this Court. This case is **DISMISSED WITHOUT PREJUDICE**. Once

the appeal has been ruled on, the Plaintiff is still permitted to pursue any recourse authorized by law.

SO ORDERED this 17th day of February, 2023.

Thomas A. Cox, Jr., Judge
Superior Court of Fulton County
Atlanta Judicial Circuit