

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA

BALDWIN COUNTY COMMISSION,

Plaintiff,

vs.

MICHAEL A. TOBIAS, JR.,

Defendant.

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Civil Action No: CV-2017-901454

FINAL JUDGMENT, ORDER AND CONSENT DECREE

The Plaintiff, BALDWIN COUNTY COMMISSION, and the Defendant, MICHAEL A. TOBIAS, JR., hereby agree to the entry of this Order and Consent Decree in this matter, and the Court having considered the request of the parties, the pleadings and the motion for the entry of order and consent decree, it is hereby ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

Defendant is an owner and is in possession of certain real property located at 21231-B County Road 68, Baldwin County, Alabama, bearing Tax Parcel Identification No. 05-41-02-03-0-000-003.005, and also being described in Instrument No. 1321841 in the Probate Records of Baldwin County, Alabama, as follows ("Defendant's Property" or the "subject property"):

The West 300 of the South 750 feet of the following described real property:

The West Half (W1/2) of the Southeast Quarter (SE1/4) of the Northwest (NW1/4) Quarter of Section 3, Township 5 South, Range 4 East, Baldwin County, Alabama; LESS and EXCEPT the following: Commencing at the Northwest corner of the West Half (W1/2) of the Southeast Quarter (SE1/4) of the Northwest (NW 1/4) Quarter of Section 3, Township 5 South, Range 4 East, Baldwin County, Alabama; thence run South 90°00'00" East, 687.76 feet

to a point; thence run South 00°05'18" East, 834.85 feet to the point of beginning; thence continue South 00°05'18" East, 471.00 feet to a point on the North right-of-way line of County Road 68; thence along the North right-of-way line of said county road, South 89°33'38" West, 371.00 feet to a point; thence run North 00°05'18" West, 471.00 feet to a point; thence run North 89°33'38" East, 371.00 feet to the point of beginning.

It being the intent of the Grantor that the Southeast corner of the parcel herein conveyed shall correspond with the Southwest corner of the excepted parcel described above, and that the South 471.00 feet to the East boundary of the parcel herein conveyed shall be on the same line as the West boundary of the excepted parcel described above, and that West boundary of the parcel described above shall run along the West line of West Half (W1/2) of the Southeast Quarter (SE1/4) of the Northwest (NW1/4) Quarter of Section 3, Township 5 South, Range 4 East, Baldwin County, Alabama.

2. Defendant's property is situated in Baldwin County Planning District 12, which is a zoned area of Baldwin County.
3. Under the Baldwin County Zoning Ordinance applicable to Planning District 15, the Defendant's property is zoned RA, Rural Agriculture.
4. On February 10, 2012, Defendant submitted a Land Use Certificate Application to Baldwin County to build a 60 foot x 120 foot x 16 foot building for storage/personal use. The approved Land Use Certificate Application reflects in red that the building was approved, "For Personal use only. No commercial activity permitted."
5. Defendant has been operating and/or allowing the operation of a commercial powder coating and sandblasting business on the subject property.
6. On information and belief, Defendant has operated and/or allowed the residue and dust from the commercial operations on his property to invade neighboring properties.

7. Defendant's property is zoned RA, which does not permit commercial powder coating and sandblasting operations to be conducted on the subject property. The following are permitted uses within the RA District pursuant to § 3.2.2 of the Baldwin County Zoning Ordinance (the "Zoning Ordinance"):

- (a) The following general industrial uses: extraction or removal of natural resources on or under land.
- (b) The following transportation, communication, and utility uses: water well (public or private).
- (c) Outdoor recreation uses.
- (d) The following general commercial uses: animal clinic and/or kennel; farm implement sales; farmers market/truck crops; nursery; landscape sales; country club.
- (e) The following local commercial uses: fruit and produce store.
- (f) The following institutional uses: church or similar religious facility; school (public or private).
- (g) Agricultural uses.
- (h) Single family dwellings including manufactured housing and mobile homes.
- (I) Accessory structures and uses.

8. The following uses are conditional uses allowed in the RA District pursuant to § 3.2.4 of the Zoning Ordinance:

- (a) Transportation, communication and utility uses not permitted by right.
- (b) Institutional uses not permitted by right.

9. Pursuant to § 3.2.2 of the Zoning Ordinance, the commercial uses allowed in the RA District pursuant to the Zoning Ordinance do not include powder coating or sandblasting businesses.

10. On September 26, 2016, the Baldwin County Planning and Zoning Department issued a Notice of Zoning Violation ("E-16017") to Defendant and against the subject property. Defendant did not appeal the finding of a violation and failed to rectify the violation and bring the property into compliance.

11. On March 2, 2017, an application for rezoning of the subject property was heard by the Baldwin County Planning and Zoning Commission, and said application was forwarded to the Baldwin County Commission for a final determination. (See Staff Report and Planning Commission Minutes, attached as Exhibits 3 and 4).

12. On April 18, 2017, the Baldwin County Commission voted to deny the rezoning of the subject property. (See County Commission Minutes, attached as Exhibit 5).

13. The property remains in violation of the Zoning Ordinance to date.

14. Defendant has been given ample time and opportunity to bring the use of the property into compliance and has failed to comply.

15. The Defendant has operated and/or allowed the operation of an commercial powder coating and commercial sandblasting operation on his property, or allowed such uses, among other uses.

16. Defendant's property is zoned RA, which does not permit commercial powder coating or sandblasting operations to be operated on the subject property.

17. Section 21.2.2 of the Zoning Ordinance provides for penalties for violations of the provisions of the Zoning Ordinance and reads as follows:

Any person(s) in violation of these ordinances shall be held responsible for such violation and be subject to the penalties and remedies as provided herein and as provided by law.

18. Pursuant to § 21.2.3 of the Zoning Ordinance, each day that a violation continues to exist constitutes a separate violation of the Zoning Ordinance, and § 21.2.3 reads as follows:

Each and every person who commits, permits, participates in, assists, directs, creates or maintains a violation may be found individually in violation of a separate offense. Each day that any violation continues to exist shall constitute an additional and separate violation.

19. The Defendant has committed, permitted, participated in, assisted, directed, created and/or maintained the zoning violations outlined above on the subject property.

20. Pursuant to § 21.3.8 of the Zoning Ordinance, a violator shall be fined no more than \$150.00 per day per violation of the Zoning Ordinance, and § 21.3.8 reads as follows:

Any person(s) violating any of the provisions herein shall be fined not more than \$150.00 for each separate violation, plus all costs of court, with each day such violation continues constituting a separate violation (see 21.2.3, above). The fines provided for herein shall commence and accrue upon receipt of the Notice of Violation or the expiration of the allowed period for correction, whichever is later. Said fines shall continue to accrue until paid, but shall not accrue on days during which the violation is properly on appeal.

21. Defendant's violations date back to the initial Notice of Violation of September 26, 2016, and fines should be imposed in accordance with the terms of the Zoning Ordinance. As Defendant never appealed that Notice of Violation, fines for those violations are due to accrue from the date of the Notice of Violation to present, subject to the terms of the Zoning Ordinance.

22. The Court hereby determines and declares that the property described above has been used and is being used by the Defendant in violation of the applicable provisions of the Baldwin County Zoning Ordinance, and the violations include, but are not limited to, the following: (1) illegal and unauthorized operation of commercial businesses; (2) illegal and unauthorized use of commercial powder coating and sandblasting businesses; (3) illegal and unauthorized storage and maintenance of vehicles and equipment in the operation of commercial businesses; (4) illegal and unauthorized use and operation of home occupation, including, but not limited to, operation of businesses outside of an enclosed structure, exceeding use limitations based on square footage of primary residence, use of employees or workers, advertising commercial business on property, negatively impacting neighboring properties and failure to use the property primarily as a residence and creating a nuisance in the area.

23. The Defendant shall immediately cease the operation and use of the property for the operation of a commercial powder coating and/or sandblasting operation.

24. The Defendant shall have thirty (30) days from the date of this Order to remove all materials, equipment and vehicles which are located on the subject property in violation of the Zoning Ordinance and restore the subject property to a condition that is in compliance with the Zoning Ordinance. After the thirty (30) day period set forth in Paragraph 25 of this Order, the Plaintiff shall schedule an inspection of the subject property with counsel for the Defendant for the purpose of determining compliance with this Order. This case will be set for status review in March 2019 to review Plaintiff's compliance with this Order.

25. The Defendant shall immediately cease the operation of any commercial business, including, but not limited to, commercial powder coating and/or sandblasting, the operation

of businesses outside of an enclosed structure, exceeding the use limitations based on the square footage of the primary residence and advertising commercial businesses on the property.

26. The Defendant may not employ or hire any persons to work for any businesses on the subject property, and no employees may report to work or park vehicles on the subject property.

27. The Defendant shall comply with all provisions of the Zoning Ordinance and all other applicable laws, rules and regulations applicable to Defendant's use of the property.

28. In the event the Defendant does not comply with the terms of this Order and clean up the property and remove any materials, vehicles and equipment in accordance with this Order, the Baldwin County Commission, or its designee, shall have the authority to enter the subject property and remove all items, vehicles and equipment as directed by this Order and any further orders of this Court and dispose of the same. In that event, the Defendant shall be required to reimburse the Baldwin County Commission for all costs incurred in performing the work pursuant to the orders of the Court. Said amounts shall also be assessed against the property and collected as real property taxes or assessments by the Baldwin County Revenue Commissioner.

29. The Court hereby determines, orders and levies fines against the Defendant in accordance with the Zoning Ordinance in the amount of \$57,000.00. The fine shall be paid by the Defendant as follows: \$6,000.00 shall be paid to the Baldwin County Commission within ten (10) days of the date of this Order, and \$6,500.00 shall be paid in monthly payments in the amount of \$722.22 each beginning on March 1, 2019, and continuing each month thereafter on the first day of each successive month, until the full amount of \$12,500.00 is paid in full. In the event the Defendant fails to comply with the provisions of this Order, the remaining fines in the amount of \$44,500.00 shall be paid to the Baldwin County Commission within thirty (30) days from the date of the violation of this Order. In the event the Defendant complies with the provisions of this Order to the

satisfaction of the Court, the Defendant will not be required to pay the remaining fines in the amount of \$44,500.

30. Defendant is prohibited from engaging in or allowing uses or activities on the property in violation of the Zoning Ordinance.

31. The Court hereby enters an Order granting a permanent injunction enjoining the Defendant from operating an commercial powder coating and/or sandblasting business on the property in violation of the Zoning Ordinance.

32. The Defendant shall pay all costs of court.

DONE this the ____ day of _____, 2019.

CIRCUIT JUDGE