



MEMORANDUM

TOWN OF PONCE INLET – PLANNING & DEVELOPMENT DEPARTMENT

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Code Enforcement Board
THROUGH: Drew Smith, Town Attorney
FROM: David Hooker, Code Enforcement Officer
DATE: January 6, 2017
DATE OF MEETING: January 23, 2017

Case Number: 37606
Address: 4702 South Peninsula Drive
Owner: Jeanne & Carlos Posada

Alleged Violation:

Clearing of wetland area and clearing into the shoreline conservation easement without permits or inspection approvals.

Code of Ordinance

Section 34.2 – Retention of sand, soil and construction debris

Land Development Code

Section 4.8.3.B – Wetlands

Section 4.8.6 – Buffer Requirements

Section 4.10.4.D – Tree/vegetation protection and removal

Section 10.1.12 – Wetland Alteration permit

Brief History:

This case originally started in February 2015 for land clearing without permits or inspection approvals. From the records that were found it appears that the owner applied for and was granted removal of Brazilian pepper trees that were located on the property.

Recently, the owner has requested a lot split and during an onsite inspection by staff it was noticed that a dumpster was located on the property and recent land clearing took place especially in the wetland areas.

Department of Environmental Protection (DEP) has visited the site and met with the owner on December 23, 2016.

DEP has informed staff that some replanting of 15 Mangroves which shall be done no later than April 1, 2017.

Recommendation:

The property owner to be found in non-compliance. Furthermore, the must apply for a permit to do further work within the wetland area.



Town of Ponce Inlet

4300 S. Atlantic Avenue
Ponce Inlet, Florida 32127
Phone: (386)236-2182
Fax: (386) 322-6717

NOTICE OF HEARING

JEANNE & CARLOS POSADA
240 N PENNSYLVANIA AVE, #201
WINTER PARK FL 32789

December 21, 2016

Method of Delivery: Via USPS Certified Mail
7010-2780-0003-0472-5264

RE: CODE ENFORCEMENT BOARD – NOTICE OF HEARING – CASE NUMBER 37606
PROPERTY LOCATION: 4702 S PENINSULA

Dear JEANNE & CARLOS POSADA:

The Ponce Inlet Code Enforcement Board was created pursuant to Florida Statutes, Chapter 162 and Chapter 2, Article V of the Town's Code of Ordinances with the purpose of facilitating the enforcement of the town's code and rendering quick and fair decisions concerning violations of this code.

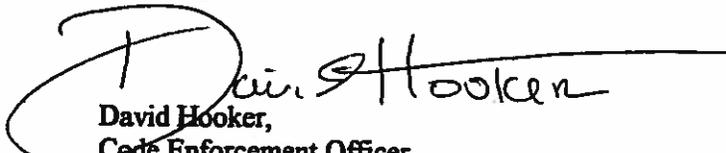
You are hereby notified that Case Number 37606 will be heard at a public hearing to be held at 9:30 am on Monday, January 23, 2017 before the Town of Ponce Inlet Code Enforcement Board, in the Council Chambers located at 4300 S Atlantic Avenue, Ponce Inlet, Florida.

You are hereby requested to appear before the Code Enforcement Board on Monday, January 23, 2017. Failure to attend this hearing shall be deemed as a waiver of the violator's right to contest the imposition of fines. You have the right to obtain an attorney at your own expense to represent you before the board should you desire.

If you wish to appeal any decision of the Board you will need a recorded copy of the proceedings, and, therefore, may need to ensure that a verbatim record of the proceedings, including all testimony and evidence, is made. The entire proceedings will be recorded. Should you desire, you may employ a court reporter, but it must be at your expense.

If you have any further questions, please contact the Code Enforcement office within five (5) days of receipt of this notice at (386) 236-2187.

Kind Regards,


David Hooker,
Code Enforcement Officer
/dh



Town of Ponce Inlet

4300 South Atlantic Avenue
Ponce Inlet, Florida 32127
Phone: (386) 236-2150
Fax: (386) 322-6717
www.ponce-inlet.org

NOTICE OF VIOLATION

JEANNE & CARLOS POSADA
240 N PENNSYLVANIA AVE, #201
WINTER PARK FL 32789

December 21, 2016
Via 1st class US Mail &
Certified Return Receipt US Mail
7010-2780-0003-0472-5264

RE: 4702 S PENINSULA; Code Enforcement case #37606

Dear JEANNE & CARLOS POSADA:

Please be advised that a code violation is hereby issued for the property at 240 N PENNSYLVANIA AVE, #201 in Ponce Inlet, Florida, having the parcel ID #6419-07-00-0200 and legally described as: LOT 1 EXC N 112 FT AS MEAS ON E/L COLLEY SUB MB43 PG 111 PER OR 4866 PG 4380 PER OR 5344 PG 1164 PER OR 5870 PGS 1243-1245 INC.

DESCRIPTION OF VIOLATION: CE-UNPERMITTED WORK, specifically, clearing of wetland area and clearing into the shoreline conservation easement without permits or inspection approvals.

Therefore, you are hereby cited with the following violation(s) of the Ordinances of the Town of Ponce Inlet:

Code of Ordinance

Section 34-2. - Retention of sand, soil and construction debris on construction sites.

(a) It is the intent of this section to prevent the migration and movement of loose sand, soil and construction debris from construction sites as a result of strong winds and heavy rains. It is the further intent of this section to prevent any traffic hazards and the occurrence of accidents involving serious personal injury or death as a result of such hazards by requiring that construction sites within the town adopt measures that will prevent the migration and movement of loose sand, soil and construction debris onto neighboring properties and adjoining roads.

(b) A temporary solid, nonporous fence measuring at least six feet high shall be placed around the perimeter of all construction sites in the town, except the side facing the beach on coastal properties, prior to any construction, excavation and demolition, in order to prevent the migration and movement of loose sand, soil and construction debris from such construction sites to neighboring properties or adjoining roads as a result of high winds and heavy rains. Fencing shall also be sufficiently high to be above any sand level on the property. The fence will be constructed of concrete, properly braced plywood, stockade or board and batten fences. The design engineer or architect shall certify that the fence will withstand 110 mile per hour wind while ensuring Ponce Inlet citizens the greatest value for their dollar.

loads. Fences will be painted tan with no advertisement. Street addresses will be placed on the fence near the entrance of the construction site. Plastic fabric material or snow fencing is prohibited. Those sections of fence that must be removed to allow entry or exit of equipment or materials will be replaced as soon as possible and in any event replacement shall be completed prior to the end of the same workday that the fence is removed.

(c) The method of compliance shall be demonstrated to the building official prior to the issuance of a permit. The building official may waive the requirement of this section if windblown sand, soil or debris is not a potential problem, i.e., construction does not include site work exposing sand or the property is surrounded sufficiently by heavy vegetation to preclude drifting or blowing of sand, soil or debris.

(d) Where permitted construction is not in compliance with the provisions of this section, the chief building official shall issue a stop work order prohibiting further construction until compliance with this section is demonstrated, and in periods of emergency or severe weather may require or take emergency, temporary measures to prevent the movement or migration of sand, soil or construction debris, etc., onto neighboring properties or adjoining streets and charge the permittee the reasonable cost of taking such measures. These requirements for fences shall in no way relieve the owners of vacant properties from providing fences as described in this section or vegetation to prevent migration of sand, soil, debris, etc., to adjacent properties or streets. Property owners are responsible for maintaining the property so as not to create a nuisance or unsightly condition to occur on either his property or adjacent properties. The requirements for fencing and the standards for fence construction affect all construction sites, including those presently under construction upon the effective date of the ordinance from which this section is derived.

(e) Any person violating any of the provisions of this section shall, upon conviction thereof, be subject to the penalties designated in section 1-11. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such under this section

Land Development Code

Article 4

Section 4.8.3.B - Wetlands.

Permit requirements.

1. Applicability of wetland alteration permit.

a. No person shall engage in any activity which will remove, fill, drain, dredge, clear, destroy or alter any wetland or wetland buffer on any lot without obtaining a wetland alteration permit in accordance with this section. A wetland alteration permit may be issued concurrent or in conjunction with other land development permits.

b. Construction of a single-family dwelling on upland which does not alter by removing, filling, draining, dredging, clearing or destroying any wetland or wetland buffer does not require a wetland alteration permit.

2. *Pre-application.* An applicant is encouraged to arrange a pre-application conference with the director to discuss the proposed wetlands alteration and the scientific method utilized to evaluate and justify any wetlands alteration prior to submitting a formal application to the director.

3. *Application.*

a. A wetlands alteration permit application is filed with the director.

b. The director shall determine the completeness of the application within five days of filing. The director will return an incomplete application to the applicant. If the application is determined to be complete, the director shall consider the application received.

c. Upon receipt, the director will review the application and conduct a preliminary site inspection.

d. The director shall approve an application that meets all of the requirements of the LUDC within ten working days of receipt. Upon approval, the director shall return the application to the applicant with approval noted by the director.

e. If the director denies the application, the application shall be returned to the applicant with the reasons for denial noted, within ten working days of receipt.

f. If the director determines that the proposed activity fails to meet the minimum requirements of this article, or if additional information is required, the director will request additional information. The director will provide this request within ten working days after the preliminary site inspection. The applicant may modify the application and/or mitigation plans to prevent or limit the adverse impacts to the wetland or buffer, or file an appeal.

g. If the applicant fails to make the necessary modifications or provide additional information within 60 days, then the director shall deny the permit.

h. The director shall approve the permit within ten working days after receiving the required modifications or additional information, unless the modifications fail to meet the requirements of this section.

i. The director shall notify the applicant immediately after the director approves or denies the application and issues the permit.

Land Development Code

Section 4.8.6 - Buffer requirements.

A. buffer of at least 25 feet in width shall be established adjacent to and surrounding all wetlands. Wetland buffers greater than 25 feet in width may be required if the upland activity adversely impacts the wetlands beneficial functions. The buffer may coincide with the setback on a lot under article 2 (Zoning Districts).

B. Development activities or construction which do not have a significant adverse effect on the natural function of the buffer are allowed within the buffer. Proposed activities within the buffer may be permitted in accordance with this section. The activities or construction which may be permitted include, but are not limited to, pruning, planting of suitable native vegetation, removal of exotic and nuisance pioneer plant species, and the creation and maintenance of walking trails.

Land Development Code

Section 4.8.7 - Mitigation.

A. Mitigation requirements. It is presumed that development activity will have an adverse effect upon wetlands, and that permit conditions are inadequate to avoid potential adverse environmental effects. If the applicant fails to overcome this presumption then mitigation is required. The purpose of mitigation is to offset unavoidable environmental impacts. Mitigation plans should consider the function of existing natural resources and provide comparable functions after mitigation is completed. Mitigation plans should maximize the preservation of existing natural resources.

B. Mitigation priorities. The mitigation plans shall consider the following methods, in order of priority in which they should be used:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action or its implementation;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for the impact by replacing or providing substitute resources or environments through creation of new wetlands, enhancement of existing wetlands or reestablishment of wetlands which are no longer functioning due to significant attention in the past.

C. Mitigation plan contents. Where all or part of a wetland is destroyed or substantially altered by development, a proposed mitigation plan shall include at least:

1. A description of the wetland and buffer to be created or restored, which includes but is not limited to the type and functions of the wetland, the proposed mitigation ratios, species present or to be planted, plant density, anticipated source of plants, soils, and hydrologic regime;
2. A plan for monitoring the success of a created or restored wetland;
3. A detailed written estimate of the cost of the mitigation. The detailed estimate should include costs associated with earthmoving, planting, consultant fees, and monitoring;
4. A detailed plan describing the monitoring and methods of control and maintenance of exotic or nuisance vegetation;
5. Monitoring and replacement to assure a survival rate of 80 percent wetland vegetation for a minimum of three years;
6. An upland habitat as an adjacent buffer on mitigated sites, as provided in section 4.8.6.

D Mitigation requirements.

1. An acceptable mitigation plan shall be reasonably and technically feasible.
2. Mitigation through restoration of other degraded wetlands is preferred over wetland creation.

3. Mitigation should take place on-site or in close proximity to the site, or in areas so designated as provided in subsection 4.8.7.B.

4. An applicant who carries out a compensatory mitigation plan shall grant a conservation easement on the newly created or restored wetland and buffer to protect it from future development. A legal mechanism other than a conservation easement may be deemed appropriate on a case-by-case basis to carry out the purposes of the subsection.

5. A mitigation plan approved by a federal, state, or regional agency is presumed to be acceptable to the director. However, if no such mitigation plan is required by the approved permit from the federal, state, or regional agency, then the director may require a mitigation plan in compliance with this section.

6. Mitigation should not contribute to the production of mosquitoes by creating mosquito larval habitat or by eliminating habitat for predatory fish.

E. Mitigation ratios.

1. In determining the replacement acreage ratios for restored or created wetlands, the director shall consider, but is not limited to, the following criteria:

- a. The length of time that can be expected to elapse before the functions of the impacted wetlands functions have been restored or offset.
- b. Any special designation or classification of the water body, including but not limited to Outstanding Florida Waters, Aquatic Preserves, or Class II.
- c. The type of wetland to be created and the likelihood of successfully creating that type of wetland.
- d. Whether or not the affected wetland is functioning as natural, healthy wetland of that type.
- e. Whether the wetland is unique for that watershed.
- f. The presence or absence of exotic or nuisance plants within the wetland and adverse effects those plants have on the wetlands beneficial functions.
- g. Whether the proposed project eliminates or changes the wetland from one type to another.

h. The amount and quality of upland habitat preserved as conservation areas or buffer.

2. Except as provided in subsection 4.8.7.D.5, the mitigation ratio for created or restored wetlands shall be at least 4:1.

3. The minimum mitigation ratio for wetlands which have been harvested for timber within five years prior to submittal for a development order review is five acres of created or restored wetlands to one acre of adversely impacted wetland.

Section 4.10.4. D - Tree/vegetation protection and removal.

D. Standards.

1. Criteria for determining extent of tree and vegetation protection and removal. To determine the amount of tree or vegetation removal permitted, the town shall review applications based on the factors below. If necessary, the town may request applicants to submit additional information addressing these factors.

- a. The actual or intended use of the property;
- b. The desirability of preserving any tree by reason of its size, age, or other outstanding quality, such as uniqueness, rarity, or status as a specimen, historic or landmark tree;
- c. The extent to which the area would be subject to increased water runoff or environmental degradation due to removal of the trees;
- d. The need for visual screening in transitional/buffer areas between different types of uses; from non-residential service areas and structures; and from glare, blight, or other unsightliness; or any other affront to the visual or aesthetic sense in the area;
- e. The effect that changes to the natural grade will have on the trees to be preserved;
- f. The extent to which a reasonable design effort has been made to save as many of the existing trees found on-site as possible and to work with the existing grades; and
- g. The extent to which site design considerations, including the relocation of roads and utilities, have been incorporated into the project.

2. Standards for clearing and grading activities.

a. The town may authorize clearing and grading (including excavating and/or filling) within the designated protected zone to accommodate required drainage improvements, when a licensed civil engineer shows that the improvements cannot feasibly be located outside the buffer or when grading activities are necessary or desired to restore natural contours and vegetation, enhance buffers and/or improve supplemental landscaping where no vegetation currently exists.

b. When grading necessitates the removal of protected vegetation, the minimum disturbance feasible shall be allowed.

c. Disturbed areas shall be replanted with native species that will mature to an area of like mass within two years.

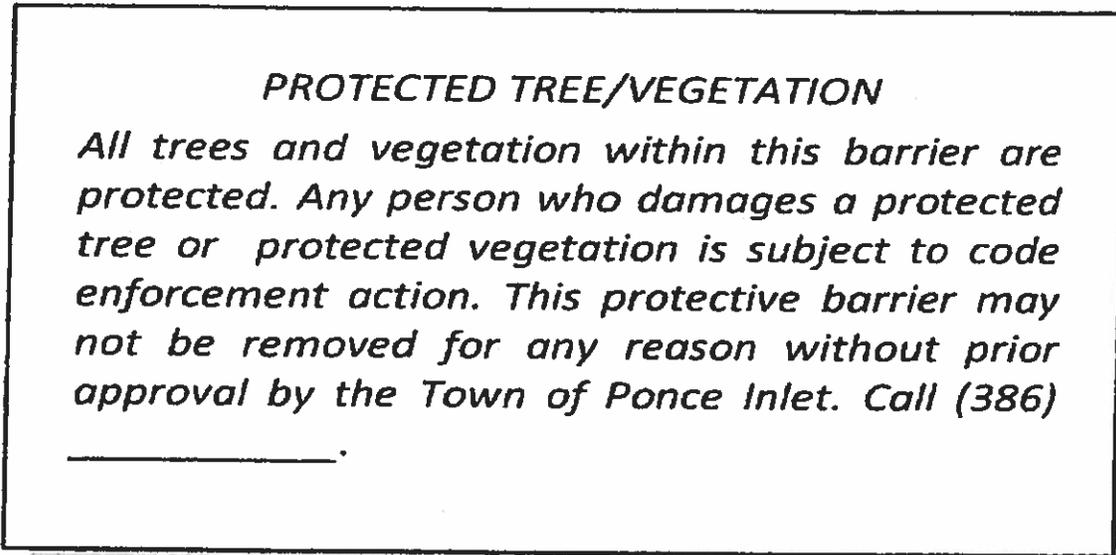
3. Vegetation in wetland areas. There shall be no clearing, grading, or removal of native vegetation within any wetland or required wetland buffer, except where authorized by section 4.8.3 of the LUDC.

4. Vegetation and tree protection methods. Appropriate measures to prevent the destruction or damage of all protected vegetation and trees shall include, but may not be limited to, the following standards:

a. Barriers around designated protected zones.

(1) Prior to any tree removal, clearing, or grading, barriers shall be placed around all designated protection zones and all other vegetation to be preserved. The barriers shall be placed at the tree drip line or around the combined cluster of trees. The town shall inspect the barriers prior to the start of any permitted tree removal, clearing, or grading activity. Barriers shall have adequate strength and stability to remain securely in place throughout the duration of construction activities. No construction activity, debris disposal, or vehicular traffic shall take place within this area.

(2) Placards shall be posted clearly on all barriers identifying them as protected zones and protected trees. The placards shall include the following language:



Land Development Coe
Section 10.1.12. - Wetland alteration permit.

An application for a wetland alteration permit shall be accompanied by three copies of the required submittals, which shall provide the following information.

- A. Concurrent application with development order review. Permit applications processed concurrently with an application for any development order under article 6 of this code shall include a wetland management plan containing the following information:

1. A detailed description of all water bodies, watercourses, and wetlands on-site and a general description of wetlands immediately adjacent to the site and associated hydrologic conditions.
 2. A general description of the upland habitats on-site.
 3. A site survey to scale no greater than one inch equals 50 feet which identifies the landward extent of the wetland boundaries, buffer zones, existing and proposed conservation areas and adjacent off-site conservation areas.
 4. A detailed description of any proposed activity within the jurisdictional wetlands and buffer zones.
 5. A detailed analysis of on-site and/or off-site mitigation areas, if applicable.
 6. A plan for the control of erosion, sedimentation and turbidity during and after construction which describes in detail the type and location of control measures, and provisions of maintenance.
 7. A detailed description of methods to be utilized in meeting the criteria listed in section 4.8.4.
 8. A copy of all other federal, state, and regional permit applications and/or conditions issued for the proposed project.
 9. Other information which the director may reasonably require.
- B. Application without development order review. Except as otherwise provided in subsection A. above, an application for a wetlands alteration permit shall be submitted with the following information:
1. Name, mailing address, e-mail address, and phone number for the property owner and/or agent.
 2. Signature of agent or owner.
 3. Legal description of property and the property appraiser's parcel number.
 4. A scale drawing of the property identifying existing structures, adjacent streets, and water bodies.
 5. A scaled drawing and description of the proposed activity and proposed location.
 6. A copy of all other federal, state, and regional permit applications and/or conditions issued for the proposed project.
 7. A wetland management plan as provided for in subsection A. above, except for the following activities:

- a. A private dock and additions for a single-family residence that does not exceed 500 square feet in total area.
- b. A private boat ramp for a single-family residence that does not exceed 15 feet in width and does not require any filling.
- c. Construction of a seawall in a manmade canal where the seawall will be connected to existing seawalls on adjacent properties.

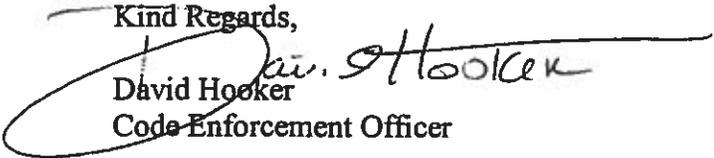
You are requested to correct the aforementioned violations and bring the property into compliance immediately by taking the following actions within five (5) days of the date of this Notice:

1. Secure all permits related to clearing of Brazilian Pepper tress from the Town of Ponce Inlet.
2. Secure all permits through the Town of Ponce Inlet for any alteration permits involving clearing of vegetation within the shoreline conservation easement as well as the wetland areas.
3. Secure alteration permits for work performed with Town of Ponce Inlet
4. Install silt fence around entire project and repair orange snow fencing around trees to drip line on trees being protected.

Please note that this case is being scheduled for a hearing before the Code Enforcement Board of the Town of Ponce Inlet, even if the violation(s) are corrected prior to the Board's hearing. Pursuant to Chapter 162.09(2)(a), Florida Statutes, "A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (1). However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation."

If you have any questions regarding this matter, I can be reached at (386) 236-2187, weekdays from 8:00 a.m. until 4:30 p.m. or via e-mail at dhooker@ponce-inlet.org.

Kind Regards,


David Hooker
Code Enforcement Officer