

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

ANA CAMPOS, an individual, PEOPLE FOR
THE ETHICAL TREATMENT OF ANIMALS
INC., a Virginia Non-Stock corporation; and
ANIMAL RIGHTS FOUNDATION OF FLORIDA
INC., a Florida Not-for-Profit corporation;

Case No.

Plaintiffs,

v.

CITY OF FORT LAUDERDALE,

Defendant.

_____ /

**RULE 9.100 PETITION FOR WRIT OF CERTIORARI AND COMPLAINT
FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

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FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Petitioner, ANA CAMPOS (“Campos” or “Petitioner”), by and through undersigned counsel, hereby files her Petition for Writ of Certiorari against Respondent, the City of Fort Lauderdale (“City” or “Respondent”), and alleges as follows:

1. Petitioner seeks through the Court’s appellate review jurisdiction, a Writ of Certiorari pursuant to Rule 1.630, Fla.R.Civ. P. and Rule 9.100 (c)(2), Fla. R. App. P., challenging the City's Final Development Review Committee Certificate of Compliance, Case No. R18066 (the “Development Order”), on the grounds that it: (1) was entered in violation of Petitioner’s due process rights, (2) is not supported by competent substantial evidence; and (3) is a departure from the essential

requirements of law. *See City of Deerfield Beach v. Valliant*, 419 So. 2d 624, 626 (Fla. 1982) (setting forth the standard of review application to petitions for writ of certiorari).

2. Campos owns and operates a business at 3032 East Commercial Boulevard, Fort Lauderdale, Florida 33308, and resides near and proximate to the proposed aquarium. Campos has substantial interests at issue in this litigation, those interests being: the enforcement of her constitutional procedural due process rights to a full quasi-judicial hearing on the approval of the aquarium application; enforcement of the City's Unified Land Development Regulations ("ULDR") relating to the City's approval of the Development Order; and protecting the health and safety, and environmental and natural resources. These interests are sufficient to confer standing in this case.

3. Respondent is a Florida municipal corporation located in Broward County, Florida.

4. Venue is proper in this Court pursuant to Florida Statutes Section 47.011.

5. Copies of the record proceedings relied upon by Petitioner in support of this Petition for Writ of Certiorari are set forth in the Appendix to Petition for Writ of Certiorari and incorporated herein by reference. All reference to the Appendix take the format "A-X", where X is the number of the appropriate page of the Appendix.

6. This Court has jurisdiction over this certiorari petition pursuant to Article V, Section (5b) of the Florida Constitution and Florida Statutes Section 26.016(2)(a) as the DRC's issuance of the Development Order proceeding was quasi-judicial. As a rule, local agency action that is not otherwise subject to review under the Administrative Procedure Act is reviewable via certiorari only if it is quasi-judicial, not legislative. *Broward County v. G.B.V. International*, 787 So.2d 838 (Fla. 2001).

7. Upon this Court's determination that this Petition states a prima facie basis for relief, this Court should issue an order to show cause directing the City to demonstrate why a Writ of Certiorari should not be issued. *Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Bd. of County Comm'rs*, 810 So. 2d 526, 530 (Fla. 2d DCA 2002).

COUNT I: PETITION FOR WRIT OF CERTIORARI JURISDICTION

Statement of the Facts and the Case

8. On September 19, 2018, SeaQuest Ft. Lauderdale, LLC ("SeaQuest") submitted a complete application seeking a development permit for approval to redevelop a formal 22,387 square foot retail establishment at the Galleria Mall into an "interactive aquarium" (the "Aquarium").

9. Specifically, SeaQuest submitted a Site Plan Level II (SP-II) Development Permit Application (the "Application"), requiring review and approval by the Development Review Committee ("DRC"), which committee is made up of

representatives from various departments within the City to ensure compliance with the City's ULDR. A focus of the Application was approval to change the use of the location from a retail establishment to an aquarium. **See Appendix, Tab 1, A.2; Tab 2, A.10 - A.12; Tab 6, A.32 – A.34.**

10. On October 23, 2018, the DRC conducted a public meeting. The public was permitted to comment, but not question any witnesses or present expert testimony.

11. At the October 23, 2018 DRC public meeting, the City issued a comment report, including the following statement:

The primary proposed use appears to operate as an animal exhibition. Please note animal exhibits are not permitted uses in the Boulevard Business (B-1) zoning district. An aquarium typically relates to tanks or enclosures which contain fish and other water creatures and plants while the proposed plans include a variety of mammals and bird species. Please provide a narrative explanation of how this use is permitted within the B-1 zoning district.

See Appendix, Tab 3, A.25; Tab 7, A.42 – A.43; Tab 8, A.44 – A.45; Tab 9, A.46 - A.49; Tab 10, A.50 – A.52; Tab 11, A.53 – A.55.

12. On November 2, 2018, in an attempt to circumvent the intent of the ULDR and force its non-conforming aquarium use into a museum classification, SeaQuest submitted revised conceptual plans to DRC, color coding and breaking down the square footage of the proposed use. “The estimated sf breakdown is 55% non-animal and 45% animal, for exhibit area.” **See Appendix, Tab 4., A.29 – A.30.**

13. Ella Parker, Urban Design & Planning Manager, appropriately reacted as follows:

“typical museums have a primary focus on the procurement, study and display of objects (whether they are institutionally categorized as art, scientific, natural or other). However, I think we can deduct that this is not the primary commitment for this applicant. We gave them a possible out and they ran with it, but I think we have to ask ourselves about the intent of the primary use, and to qualify it as a museum is misleading.”

See Appendix, Tab 10, A.50 – A.52; Tab 11, A.53 – A.55.

14. On January 31, 2019, SeaQuest revised its Application, amending only the description of its proposed use from “aquarium” to “museum” as follows:

The use, which is a combination of museum, private recreation, and retail, is permitted in the Boulevard Business (B-1) zoning district. Similar to the Museum of Discovery and Science which is permitted to have aquatic tanks and animal exhibits, Seaquest will have various animal exhibits that will enhance and compliment (sic.) the overall educational and entertainment experience at the facility.

See Appendix, Tab 6 A.32-A.41; see also Tab 12, A.56 (*increasing the number of animal exhibits to the November 2, 2018 floor plan*).

15. On February 4, 2019, the DRC issued the Development Order approving “Change of Use: Retail to Museum/Recreational Facility/Entertainment.” The conditions of approval are silent as to any restrictions or limitations relating to the amount of animal enclosures ensuring that a non-conforming aquarium will not be operated in the B-1 zoning district. **See Appendix, Tab 5, A.31.**

Standard of Review and Legal Argument

16. The Florida Supreme Court established that approval of a specific development proposal, site plan, or other similar final development order for a

specific parcel by local government are quasi-judicial, not legislative decisions, which are reviewable by petition for writ of certiorari. *Park of Commerce Associates v. City of Delray Beach*, 636 So.2d 12 (Fla. 1994); *Board of County Commissioners of Brevard v. Snyder*, 627 So. 2d 469 (Fla. 1993); *Deerfield Beach v. Valliant*, 419 So. 2d 624 (Fla. 1982).

17. The standard of review at the Circuit Court’s analysis of certiorari claims is three-fold:

- (1) Was procedural due process afforded;
- (2) Was there competent substantial evidence to support the decision; and
- (3) Did the action below meet the essential requirements of law.

Deerfield Beach v. Valliant, 419 So. 2d 624 (Fla. 1982).

18. First, procedural due process was not afforded. Campos was not allowed a quasi-judicial hearing prior to City Approval. Specifically, Campos was denied the right to participate, and to present sworn and expert testimony to the City on this quasi-judicial application. Quasi-judicial hearings require that all affected parties are “given a fair opportunity to be heard in accord with the basic requirements of due process. *Walgreen v. Polk County*, 524 So.2d 1119 (Fla 2nd DCA 1988). Procedural due process in Florida requires additional safeguards in quasi-judicial hearings including the ability to present evidence, cross-examine witnesses, and be informed of all facts on which the commission or committee acts. *Gulf & Eastern Development Corp. v. City of Fort Lauderdale*, 354 So.2d 57 (Fla. 1978).

19. Second, the record does not constitute competent substantial evidence to support the issuance of the Development Order. The City knowingly and erroneously relied upon the materials submitted by SeaQuest, which describe the aquarium as a museum for the sole purpose of bypassing the City's ULDR permitted use restrictions. **See Appendix, Tab 1, A.1 – A.9; Tab 2, A.10 – A.19; Tab 3, A.20 – A.28; Tab 4, A.29 – A.30; Tab 5, A.31; Tab 6, A.32 – A.41; Tab 12, A.56.**

20. SeaQuest's proposed aquarium project is situated within the B-1 Zoning District wherein an "aquarium" is not a permitted use. Throughout SeaQuest's permit application, it characterized its proposed use as an aquarium numerous times and emphasized the interactive animal exhibits planned for the facility. In order to circumvent the issue of its truly unpermitted use, Seaquest re-described its aquarium use as a museum use in order to fall within the permitted uses prescribed by the City's ULDR. While the City identified and discussed the misleading nature of the use's reclassification, it nevertheless approved the change of use. **See Appendix, Tab 1, A.1 – A.2; Tab 2, A.10 – A.12; Tab 3, A.28; Tab 4, A. 29 – A.30; Tab 6, A.32 – A.35; Tab 8, Tab 9, Tab 10, Tab 11.**

21. Finally, the City's DRC approval of SeaQuest's Application failed to observe the essential requirements of law. The mere re-description from "aquarium" to "museum" does not change the fact that SeaQuest's primary proposed use is an animal exhibition, which is not permitted within the B-1 zoning district. The

proposed floor plan reveals the numerous tanks and animal enclosures that reflect the true animal exhibition use and are not typical of a museum use. Section 47-6.11 of the City's ULDR, lists the permitted and conditional uses of the Boulevard Business (B-1) District. The City is required to review all applications to ensure competent and substantial evidence exists to support the approval of a change of use application. Therefore, the instant approval fails to meet an essential requirement of law contained in the City's ULDR.

WHEREFORE, Petitioner respectfully requests this Court to: (1) exercise jurisdiction over the parties to the subject matter of these proceedings; (2) determine that this Petition for Writ of Certiorari demonstrates a preliminary basis for relief; (3) issue an Order to Show Cause directed to the City requiring that it respond to this Petition; (4) issue a Writ of Certiorari quashing the Development Order after receiving the City's Response hereto and conducting a hearing; (5) declare that the City's issuance of the Development Order violated Petitioner's due process rights, is not supported by substantial competent evidence, and departed from the essential requirements of the law; (6) award Petitioner her reasonable attorneys' fees and costs incurred in connection herewith; and (7) enter an order for such other and further relief as this Court deems just and proper.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
PURSUANT TO SECTION 163.3215, FLORIDA STATUTES**

Plaintiffs, Ana Campos (“Campos”), People for the Ethical Treatment of Animals Inc. (“PETA”), and Animal Rights Foundation of Florida Inc. (“ARFF”) (collectively referred to herein as the “Plaintiffs”) by and through undersigned counsel, sue Defendant, the City of Fort Lauderdale, (“City” of “Defendant”), pursuant to Section 163. 3215 Florida Statutes, and allege as follows:

Nature of the Proceedings

22. This is an action seeking declaratory and injunctive relief under Florida Statutes Section 163.3215 (Local Government Comprehensive Planning and Land Development Regulation Act), relating to the Final Development Review Committee Certificate of Compliance erroneously entered in Case No. R18066 (the “Development Order”) on February 4, 2019, approving a “Change of Use: Retail to Museum/Recreational Facility/Entertainment”. **See Appendix Tab 5, A.31.** The project consists of 22,387 square foot space within the Galleria Mall to be used as an “interactive aquarium”.

Parties, Jurisdiction, and Venue

23. Plaintiff, Campos, owns and operates a business located at 3032 East Commercial Blvd, #131, Fort Lauderdale, Florida 33308 and resides approximately three (3) miles from the proposed aquarium site. Plaintiff, Campos, appeared before the DRC, the entity that approved the contested development order, to express her concerns with the site plan and change of use application.

24. Plaintiff, PETA, is a Virginia non-stock corporation authorized to transact business in Florida. Plaintiff, PETA, is an “aggrieved or adversely affected party” under §163.3215, Florida Statutes, which will suffer an adverse effect to interests protected or furthered by City of Fort Lauderdale’s Comprehensive Plan, including interests related to protection of animals, health and safety, and environmental and natural resources. PETA’s interest exceeds in degree the general interest in community good shared by all persons.

25. Plaintiff, ARFF, is a Florida not-for-profit corporation, with its principal business address located at 1431 N. Federal Highway, Fort Lauderdale, Florida 33304. Plaintiff, ARFF, is an “aggrieved or adversely affected party” under §163.3215, Florida Statutes, which will suffer an adverse effect to interests protected or furthered by City of Fort Lauderdale’s Comprehensive Plan, including interests related to protection of animals, health and safety, and environmental and natural resources. ARFF’s interest exceeds in degree the general interest in community good shared by all persons.

26. Defendant, the City, is now, and at all times material was, a municipal corporation organized and existing under the laws of the State of Florida, and located in Broward County, Florida.

27. The City is mandated to follow the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part

II, Florida Statutes, (the “Growth Management Act”) including the statutory requirement to adopt a local government comprehensive plan and land development regulations.

28. The proposed aquarium use is located within the City of Fort Lauderdale, Florida at 2554 East Sunrise Boulevard, Suite 2108, Fort Lauderdale, Florida.

29. The Certificate of Compliance is a development order pursuant to the City of Fort Lauderdale’s ULDR, Section 47-24.1 and section 163.3164(15), Florida Statutes.

30. The Circuit Court has jurisdiction of the subject matter of this action pursuant to sections 163.3215 and 86.011, Florida Statutes (2005), and venue is properly laid in Broward County, Florida.

31. All conditions precedent to the institution of this action have been performed, have occurred, or have otherwise been waived.

Facts Common to All Counts

32. Pursuant to the requirements of the Ch. 163, Part II, Florida Statutes, the City has adopted a comprehensive plan and its ULDR to govern and regulate land use and development decisions within the City.

33. SeaQuest is a national chain of aquariums with locations in Colorado, Utah, California, Nevada, and Texas. These aquariums are interactive and place a heavy emphasis on direct contact with animals, including stingrays, iguanas, otters,

tortoises, capybaras, goats, sloths, pigs, chickens, ducks, and birds. These facilities are typically located in shopping malls.

34. On September 19, 2018, SeaQuest submitted an application to the City for a development permit for approval to redevelop a former Lord & Taylor retail location within the Galleria Mall to a 22,387 square foot “SeaQuest Interactive Aquarium” (the “Proposed Aquarium”).

35. SeaQuest’s development permit application rose to a Site Plan Level II review specifically because there was a requested change of use from retail to aquarium.

36. The Proposed Aquarium is located within the City of Fort Lauderdale’s B-1 Zoning District.

37. Pursuant to the ULDR 47-6.11, an aquarium use is not a permitted use within the B-1 Zoning District.

38. On October 23, 2018, there was a public meeting—public comment was also accepted prior to this meeting—where the DRC discussed and heard testimony on the permit application. The public was overwhelmingly opposed to SeaQuest. A formal DRC comment report was issued following this meeting, which, among other things, stated:

The primary proposed use appears to operate as an animal exhibition. Please note animal exhibits are not permitted uses in the Boulevard Business (B-1) zoning district. An aquarium typically relates to tanks or enclosures which contain fish and other water creatures and plants while the proposed plans include a variety of mammals and bird

species. Please provide a narrative explanation of how this use is permitted within the B-1 zoning district.

39. In response to the DRC Comments, the Applicant attempted to re-classify itself, calling itself a “museum”. Specifically, on January 31, 2019, SeaQuest submitted revised information on their permit application in which they described their facility as “a combination of museum, recreation facility, and retail, with animal exhibits proposed as a component of and accessory to the primary uses.” This revised information attempted to downplay the animal exhibits, stating that “[f]or example, the proposed facility will feature educational areas such as a Science, Technology, and Engineering and Math exhibit and a dinosaur exhibit, as well as a variety of tanks with otters, fish, and other animals and bird and reptile enclosures.” **See Appendix, Tab 6, A.32 -A.41.**

40. Notably, the description in the January 31, 2019 narrative directly contradicts SeaQuest’s Floor Plan illustrating the proposed use’s focus on animal exhibits. **See Appendix Tab 12.**

41. On February 4, 2019, City’s DRC issued the Certificate of Compliance granting the Change of Use requested in the Application. However, the evidence submitted to the City’s DRC illustrates that the approval should not have been granted.

42. Plaintiffs challenge the Final DRC Certificate of Compliance entered in Case No. R18066 (the Development Order”) on February 4, 2019, approving a “Change

of Use: Retail to Museum/Recreational Facility/Entertainment”. See **Appendix, Tab 5, A.31**. The project consists of 22,387 square foot space within the Galleria Mall to be used as an “interactive aquarium”.

43. The basis for Plaintiffs’ challenge is premised upon the facts that the Development Order:

A. will adversely impact the interests of the Plaintiffs that are protected and furthered by the City’s comprehensive plan, including interests related to health and safety, and environmental and natural resources.

B. is inconsistent with the City’s Comprehensive Plan; and

C. harms Plaintiffs to a greater degree than the larger community, causing Plaintiffs to seek a declaration and permanent injunction against the issuance of any development orders, permits, and/or other development approvals, pursuant to the City Approval or the Change of Use approved within the Certificate of Approval.

Standing and Standard of Review Under Fla. Stat. § 163.3215

44. Florida Statutes Section 163.3215 provides all Plaintiffs in this action with standing and authorization for a *de novo* proceeding challenging the consistency of the Development Order with the City’s Comprehensive Plan.

45. Specifically, Section 163.3215(3) provides as follows:

Any aggrieved or adversely affected party may maintain a *de novo* action for declaratory, injunctive, or other relief against any local government to challenge any decision of such local government granting or denying an application

for, or to prevent such local government from taking any action on, a development order, as defined in s. 163.3164, which materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan adopted under this part. . . .

Fla. Stat. § 163.3215(3).

46. Florida Statutes Section 163.3215(2) expands the traditional common law standing test with a new broader statutory standing test for citizen enforcement of comprehensive plans and states as follows:

As used in this section, the term ‘aggrieved or adversely affected party’ means any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons. The term includes the owner, developer, or applicant for a development order.

Fla. Stat. § 163.3215(2).

47. A person’s standing to bring a challenge under section 163.3215(3) thus depends on (1) whether the interests the person alleges are “protected or furthered by the local government comprehensive plan”; if so, (2) whether those interests “exceed in degree the general interest in community good shared by all persons”;

and (3) whether the interests will be adversely affected by the challenged decision. *See id*; *see also Education Development Center, Inc. v. West Palm Beach County*, 751 So. 2d 621 (Fla. 4th DCA 1999) (noting that Section 163. 3215 is a remedial statute and as such is to be liberally construed to ensure standing to any party with a protected interest under the comprehensive plan).

48. Plaintiff, Campos, has standing to bring this action as she resides approximately three (3) miles from the site of the proposed Aquarium. She is an aggrieved and adversely affected party, who will suffer an adverse effect to her interests related to health and safety and environmental and natural resources as a result of the Development Order to a greater degree than other members of the community. Furthermore, section 163.3215, Florida Statutes gives Campos, a citizen with adversely affected interests, a significantly enhanced standing to challenge the consistency of the Development Order with the Comprehensive Plan. *Nassau County v. Willis*, 41 So.3d 270, 276 (Fla. 1st DCA 2010).

49. Plaintiffs, PETA and ARFF, likewise meet the liberalized standing requirements of Section 163.3215, as they are adversely impacted by the Development Order to a greater extent than the community at large. *See Putnam County Environmental Council, Inc. v. Board of County Commissioners of Putnam County*, 757 So.2d 590, 502 (Fla. 5th DCA 2000) (recognizing that non-landowning individual or organization have standing under Section 163.3215 when the “alleged

adverse interest . . . exceeds in degree the general interest in community good shared by all persons.”).

50. PETA and ARFF represent the interests of its members who are concerned with protecting animals, health and safety, and environmental and natural resources. The construction of the project contemplated in the Development Order approved by the DRC will negatively impact those interests.

51. PETA and ARFF have an interest that exceeds in degree the generalized interest of the community at large in the preservation and protection of animals against abuse, neglect, and cruelty. PETA and ARFF spend substantial resources each year advocating on behalf of animals used for exhibition and entertainment. The B-1 zoning district does not permit the use that PETA and ARFF strive to protect against. Yet, despite such restriction, PETA and ARFF have been and will continue to be forced to direct their attention and resources to this property as the City has failed to properly enforce the ULDR as the Development Order, issued by the DRC, is inconsistent with the Comprehensive Plan. *See Save Homosassa River v. Citrus County*, 2 So. 3d 329 (Fla. 5th DCA 2008) (An environmental group and area landowners had standing to bring an action challenging the county’s approval of a property owner’s application to build residential buildings on property adjacent to a river as being inconsistent with the local comprehensive land-use plan where the group sought to protect the river from problems associated with improper and

ineffective stormwater management systems, overpopulation of lands adjacent to the river, and the destruction of wetlands surrounding the river, and the group and landowners all had a direct and demonstrated concern for the protection of the interests furthered by the comprehensive plan that would be adversely affected by allowing a development that violated the plan.).

**COUNT II
DECLARATORY RELIEF
INCONSISTENCY WITH COMPREHENSIVE PLAN**

52. Plaintiffs readopt and re-allege paragraphs 8-15 and 22-51, as if set forth and incorporated herein and further state, by virtue of the disputes between the parties, a justiciable issue has arisen creating a bona fide, actual controversy that invokes the declaratory powers of this court pursuant to Chapter 86, Florida Statutes.

53. A controversy has arisen between the Plaintiffs and the Defendant resulting in the Plaintiffs being in doubt of their rights.

54. The Development Order that approves the development of the SeaQuest Aquarium is inconsistent with the City's Comprehensive Plan as it approved a use prohibited by the ULDR.

55. Defendant City of Fort Lauderdale's approval of the site plan is inconsistent with the following objectives and policies of the city's comprehensive plan for the following reasons:

1. Administration and Implementation Element, Goal 1: The Fort Lauderdale Comprehensive Plan will be used primarily: as a framework to link the planning and implementation of activities in the City.

The DRC approved an aquarium to be located inside a regional shopping mall containing retail, restaurant and office uses. An aquarium use with live exhibits is not compatible with retail, restaurant and office uses. An aquarium is a complex system requiring 24 hours a day, 7 days a week access to insure the animals housed in the exhibits and the public are safe. An aquarium is a high maintenance facility that is an intense use of public resources and utilities, such as water, electricity and traffic. The former retail use of the space that will house the aquarium did not create such a demand upon the local resources and utilities. The record reflects that SeaQuest does not address nor acknowledge the increased intensity resulting from the change of use.

2. Administration and Implementation Element, Concurrency Management System: The City's ULDR provides the regulatory procedures and processes to assure the development orders and permits are not issued unless the necessary public facilities and services are available at the adopted levels or services, concurrent with the impacts of development.

The DRC failed to properly review the impacts of the proposed aquarium to assure that the necessary public facilities and services are available. Live animals, hundreds of thousands of gallons of water, constant electricity demands should have been a focus of the use approved in the Development Order. Because the City has accepted the misclassification of this aquarium as a museum, it failed to properly address the impacts the proposed use will have on neighboring uses and public facilities.

3. Future Land Use Element, Goal 1: Promote the distribution of land uses that will preserve and enhance the character of Fort Lauderdale by establishing land development guides designed to promote environmental protection, meet social and economic needs, provide adequate services and facilities, conserve natural resources, and ensure compatibility of land uses.

The Development Order permits a non-conforming use that negatively impacts the natural resources of the City, from the animals displayed in the exhibits to the thousands of gallons of water required to fill and maintain

the pools and tanks. The aquarium use, housing live animals, is located near restaurant uses and raises potential health and sanitary concerns.

4. Future Land Use Element, Policy 1.1.6: Provide for approximately 197 gallons per capita per day of water service. Actual gallon per day figures shall be adjusted based upon the type of use.

The aquarium will use hundreds of thousands of gallons of water daily in excess of the prior permitted retail use of the space. The City's public utilities are already straining under the intense development occurring within the City. There was no analysis of the water demand created by the aquarium and its impact on the City's infrastructure.

5. Future Land Use Element, Objective 4: DRC shall continue to review development permits in accordance with stated goals, objectives and policies of the comprehensive plan to ensure that new developments are compatible with surrounding land uses.

The DRC failed to evaluate the site plan in accordance with the stated goals, objectives and policies of the Comprehensive Plan. DRC approved the proposed Change in Use based on Sea Quest's self-serving re-classification as "museum" use instead of "aquarium" use. A museum has no excessive water and electricity demands. An aquarium is not a permitted use within the City's B-1 zoning district. An aquarium is a unique use that cannot reasonably be equated to a museum. An aquarium is incompatible with the retail, restaurant and office uses within the Galleria Mall as it will generate noise, smells and have other undesirable impacts on its neighbors.

6. Future Land Use Element, Objective 1.29: The City shall continue to recommend against proposed land use plan amendments for the purpose of recognizing nonconforming uses, which are incompatible with surrounding uses.

The DRC's approval violates this Objective of the Comprehensive Plan in that an aquarium is not a permitted use in the City's B-1 zoning district and the housing of live animals is wholly incompatible with retail, restaurant and office uses.

56. The staff's report regarding the consistency of the site plan with the comprehensive plan is nothing more than conclusions with no data or analysis that establishes a basis for the recommendation.

57. The City of Fort Lauderdale wrongly contends that its action in approving the site plan is consistent with the city's comprehensive plan, because it is not consistent with the provisions cited herein.

58. There is a bona fide present and practical need for a declaration as the site plan will adversely impact the Plaintiffs as set forth herein.

59. A declaration regarding these adverse and antagonistic interests is appropriate in light of the conflicting positions, which directly affect whether and under what conditions the proposed aquarium is developed.

60. Plaintiffs have no adequate remedy at law, and there is an actual, practical and present need for declaratory judgment.

61. Pursuant to Chapter 86, Florida Statutes, this court has jurisdiction to declare rights or other equitable or legal relations between these parties.

62. Plaintiffs request this Court to settle and afford relief from insecurity and uncertainty with respect to their rights and status regarding the approval of the site plan contrary to the city's comprehensive plan.

63. Plaintiffs seek a declaration regarding the validity of the development order. No other legal remedy is available to the plaintiffs in the resolution of this controversy.

WHEREFORE, Plaintiffs request the court enter judgment declaring that the City of Fort Lauderdale acted contrary to the requirements of the City's Comprehensive Plan when it issued the Development Order in Case No. R18066 approving the nonconforming aquarium use; reverse, set aside and vacate the Development Order; award attorneys' fees and costs of this action to Plaintiffs; and; grant Plaintiffs such other and further relief as the court may deem just, proper, and necessary.

**COUNT III
INJUNCTIVE RELIEF
INCONSISTENCY WITH COMPREHENSIVE PLAN**

64. Plaintiffs readopt and re-allege paragraphs 8-15 and 22-51, as if set forth and incorporated herein.

65. Assuming that the court finds in favor of the Plaintiffs in Count II, Plaintiffs respectfully request the Court grant an injunction enjoining the City from further processing or issuing any development permits allowing construction pursuant to Development Order in Case No. R18066 at 2554 East Sunrise Boulevard, Suite 2108, Fort Lauderdale, Florida.

66. This is a count for permanent injunctive relief seeking to enjoin the implementation of the Development Order.

67. Unless restrained, Defendant will issue further development permits authorizing the development of the SeaQuest Interactive Aquarium.

68. Immediate and irreparable injury, loss and damage will result to the Plaintiffs by this action of the City because unpermitted aquarium use will create conflict between these incompatible uses of the land.

69. The public interest is clearly served when a municipality is required to follow its own laws and regulations, including its comprehensive plan and land development regulations.

70. This action is the Plaintiffs' remedy as set forth in Section 163.3215(3), Florida Statutes.

71. All conditions precedent to the maintenance of this action have been satisfied by the plaintiffs or have been waived by the conduct of the city.

WHEREFORE, Plaintiffs respectfully request the Court: (1) issue a permanent injunction against the issuance of any development orders, permits, and/or other development approvals pursuant to the Development Order in Case No. R18066 at 2554 East Sunrise Boulevard, Suite 2108; (2) award attorneys' fees and costs of this action to Plaintiffs; and (3) grant Plaintiffs such other and further relief as it may deem just, proper, and necessary.

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

The undersigned hereby certify that this brief was prepared utilizing a 14-point Times New Roman font in compliance with the requirements of Fla. R. App. P. 9.210(a)(2).

HACKLEMAN, OLIVE & JUDD, P.A.

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