

June 17, 2021

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Jim Summerbell, Planning Director  
Planning & Zoning Department  
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**Via e-mail**

Re: Proposed SeaQuest Development at the Mall at Stonecrest

Dear Manager Jackson and Director Summerbell,

I am writing on behalf of PETA and its more than 6.5 million members and supporters worldwide, including over 75,000 within the Atlanta, Georgia, metropolitan area, to request that the City Manager's Office investigate SeaQuest Holdings, LLC (SeaQuest) for conducting unauthorized business within the City of Stonecrest (City) in violation of the City Code (Code). I further request that the Planning & Zoning Department refuse to issue any zoning approvals for SeaQuest at the proposed Stonecrest location because such use would violate the City's zoning ordinance.

SeaQuest has [announced](#) that it will be opening a new location—its 10th in the country—at the former Sears building at the Mall at Stonecrest later [this month](#). On its [website](#), SeaQuest has begun selling annual admission “passports” and offering event bookings for this new location. Conspicuously, however, the intended site for this location reportedly remains under the ownership of the City and has [not yet been sold](#) to the company developing and managing the Mall at Stonecrest, [let alone transferred to SeaQuest](#) as the tenant. Moreover, public records reveal that the City has no documents pertaining to SeaQuest, demonstrating that SeaQuest has not obtained—or even applied for—any of the permits and approvals it would need to operate within the City. As detailed in the attached Appendix, SeaQuest has been conducting unauthorized business within the City without a business occupation tax certificate, in violation of the Code. Moreover, the ongoing sale of tickets to this proposed location could defraud consumers because the City's zoning ordinance does not allow SeaQuest—an indoor interactive aquarium and petting zoo—at the proposed Stonecrest location.

The requirements for new businesses to operate within the City are clear—just as clear as the zoning restrictions prohibiting aquariums and zoos within the Mall at Stonecrest. Yet, SeaQuest has blatantly disregarded these

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requirements by selling tickets to an indoor aquarium and petting zoo facility, which it claims will be open this month. I urge the City to quickly put an end to SeaQuest's doomed bid and to hold the company accountable for any and all violations of the Code.

I would welcome the opportunity to discuss this matter further and look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Molly Johnson', with a long horizontal flourish extending to the right.

Molly Johnson  
Counsel, Captive Animal Law Enforcement

## APPENDIX

SeaQuest is a chain of for-profit aquariums, petting zoos, and animal exhibitions whose business model relies on reckless direct contact between visitors and wild animals. Unlike traditional petting zoos, SeaQuest’s facilities are entirely indoors, typically inside shopping malls.

SeaQuest’s owner, Vince Covino, has a history of questionable business practices and resulting sanctions that should give the City serious cause for concern. For example, in 2012, the Financial Industry Regulatory Authority (FINRA) fined Covino \$5,000 and suspended him for 30 days for purchasing a home from a client with seller financing, thus borrowing money from the client in violation of FINRA’s rules. Ex. 1 (FINRA Letter of Acceptance, Waiver and Consent, Feb. 9, 2012). Later that same year, the Idaho Department of Insurance revoked Covino’s license to sell insurance in the state and fined him \$1,000 for failing to disclose the FINRA action on his renewal application, which he submitted under penalty of perjury. Ex. 2 (Findings of Fact and Conclusions of Law, Idaho Department of Insurance, Dkt. No. 18-2751-12, July 2, 2012). This license revocation was also based, in part, on at least 10 “actions involving loans made to Mr. Covino which became delinquent and were settled and compromised at significantly less than the original loan amounts,” causing his creditors to lose “approximately \$3 million based on his speculation and financial irregularities.” *Id.* (finding that these “failed transactions and unpaid loans demonstrate untrustworthiness and financial irresponsibility which has resulted in a source of injury and loss to others”). Similarly, in 2017, the Idaho Department of Finance fined Covino [\\$5,000](#) for failing to disclose his 2012 FINRA disciplinary action to SeaQuest investors and for permitting an unlicensed agent to conduct business on SeaQuest’s behalf. Ex. 3 (Agreement and Order, Idaho Department of Finance, Dkt. No. 2017-7-05, March 17, 2017).

Most recently, Covino’s “untrustworthiness and financial irresponsibility” were on display in Fort Lauderdale, Florida, during his botched attempt to develop a SeaQuest aquarium at the Galleria Mall. In June 2018, SeaQuest announced that it would open a new location at the Galleria Mall later that year and began selling tickets to the public. Ex. 4 (SeaQuest Fort Lauderdale Press Release, June 6, 2018). A month later, SeaQuest *finally* registered with the Florida Secretary of State, allowing it to *legally* conduct business within the state. Ex. 5 (SeaQuest Fort Lauderdale LLC Application to Transact Business, July 6, 2018). Then, in September 2018—after selling tickets for more than three months—SeaQuest submitted an application to the city seeking the development permit needed to build the facility. Ex. 6 (Development Review Site Plan Application, Sept. 19, 2018).

Notably, in Fort Lauderdale, the local zoning code prohibited animal exhibits, aquariums, or wildlife entertainment facilities at the Galleria Mall. Ex. 7 (Development Review Committee Report, Oct. 23, 2018) (explaining that “[t]he primary proposed use appears to operate as an animal exhibition. Please note animal exhibits are not permitted uses.”). To evade this explicit prohibition, SeaQuest attempted to [characterize itself as a “museum,”](#) despite simultaneously seeking approval for animal exhibits. Ex. 8 (Internal City of Fort Lauderdale Email, Nov. 6, 2018) (“It is very apparent that the changes to the application were specifically designed to get around the zoning and I think they’re grasping at straws. . .we should be cautious about the primary proposed use which is an aquarium/animal exhibits, acknowledging that these uses were specifically removed from B-1.”). In February 2019—after SeaQuest’s attorneys arranged a meeting with high-level

city officials and executives from the Galleria Mall—the city’s Developmental Review Committee approved SeaQuest’s application, contrary to the initial recommendations of city staff. Ex. 9 (Invitation for Dec. 5, 2018 SeaQuest Meeting); Ex. 10 (Covino email *before* Dec. 2018 meeting) (asking to put state wildlife permitting on hold because “the city of Ft Lauderdale is leaning towards our aquarium not fitting into the zoning set for that mall”); Ex. 11 (Covino email *after* Dec. 2018 meeting) (“We met with the city yesterday and it took an unexpected turn for the better!”); Ex. 12 (DRC Approval, Feb. 4, 2019); Ex. 13 (Internal City of Fort Lauderdale Email, Nov. 2, 2018) (“I don’t see how this is a museum”); Ex. 14 (Email from the Director of the City of Fort Lauderdale Department of Sustainable Development, Nov. 13, 2018) (outlining the “minimum requirements” of a museum, including accreditation by an appropriate body and status as a non-profit organization). PETA promptly commenced litigation against the city challenging this approval. Ex. 15 (Complaint, March 6, 2019); Ex. 16 (Amended Complaint, March 5, 2020) (adding SeaQuest as a party to the litigation).

While PETA’s litigation was pending, the owner of the Galleria Mall (Keystone-Florida Property Holdings Corp.) [sued to evict](#) SeaQuest Fort Lauderdale for violating its lease after Covino’s failure to pay multiple contractors led them to file liens against the property. Ex. 17 (Complaint for Eviction and Damages, Aug. 18, 2020); *see also* Ex. 18 (liens totaling more than \$400,000 in unpaid bills from Oct. 2019 – Nov. 2020). A week later, Covino [released a marketing video](#) on the SeaQuest Fort Lauderdale Facebook page, updating customers on the progress of the site and assuring the public—including, specifically, people who had already bought tickets—that the location would be open in late 2020. Video 1 (Posted Aug. 25, 2020) (“If everything goes ok, [we would have] a late 2020 opening date”). Despite having knowledge of the eviction lawsuit, Covino did not mention it in this video. Indeed, SeaQuest Fort Lauderdale failed to respond to the lawsuit as required, leading the court to enter a default. Ex. 19 (Galleria’s Opposition to SeaQuest Motion to Set Aside Default, Oct. 9, 2020). SeaQuest Fort Lauderdale and its landlord eventually settled their dispute out of court (Ex. 20, Voluntary Dismissal, Feb. 2, 2021), but not before Covino agreed to abandon the Fort Lauderdale project as part of a stipulated dismissal in PETA’s litigation. Ex. 21 (Stipulation of Dismissal, Dec. 8, 2020).

Thus, in December 2020—two and a half years after SeaQuest Fort Lauderdale announced its upcoming opening and started selling tickets to the unsuspecting public—the project was dead. There were no announcements on SeaQuest Fort Lauderdale’s [Facebook page](#) or [website](#) alerting consumers on how to obtain refunds for their previously purchased tickets. A number of savvy consumers filed complaints with the appropriate Florida state agency (Ex. 22), but, considering that some consumers are still asking [when the facility will open](#), it appears unlikely that everyone who purchased advanced tickets to this abandoned facility have received refunds. Ex. 23 (Facebook Post, Sept. 8, 2020) (comment from June 14, 2021 asking “[w]hen are you guys opening?”).

While Covino’s unscrupulous conduct in Florida is the most recent example, it barely scratches the surface of controversies associated with Covino and his SeaQuest businesses. Among other incidents:

- In July 2018, the Colorado Department of Agriculture denied SeaQuest’s application for a pet animal care facility license after the company failed three inspections. Ex. 24 (License Denial, July 23, 2018). The department also ordered

SeaQuest to cease and desist operations after finding that the company had been operating without a license since May 9. Ex. 25 (Cease and Desist Order, July 23, 2018).

- In March 2019, Clark County Animal Control cited and fined SeaQuest Las Vegas \$2,000 for possessing unpermitted animals after the company illegally bred two Asian small-clawed otters in violation of its captive wildlife permit. Ex. 26 (Administrative Citation Appeal, March 28, 2019).
- In April 2019, the Colorado Department of Parks and Wildlife suspended SeaQuest Littleton’s state zoological parks license for two years due to the company’s numerous violations of state law and licensure requirements. Ex. 27 (License Suspension Decision, April 1, 2019).
- Between June 2018 and June 2019, more than 40 people were injured by animals at SeaQuest’s Colorado location. Ex. 28 (Injury Reports). In addition, the United States Department of Agriculture (USDA) has cited SeaQuest’s Utah, Texas, and Connecticut locations for violations of the Animal Welfare Act (AWA) associated with animals injuring members of the public or employees. Ex. 29 (USDA Inspection Reports).
- In March 2021, the USDA cited SeaQuest Connecticut for violations of the AWA after an employee hit otters with a metal food bowl. Ex. 30.

Unsurprisingly, Covino appears to be continuing this pattern of lawless and unscrupulous behavior with SeaQuest’s proposed Stonecrest location. Although SeaQuest has apparently not obtained any permits or certificates from the City of Stonecrest (Ex. 31, Public Records Response), last month it [announced to the public](#) that it will be open at the Mall at Stonecrest [imminently](#), going so far as to sell [year-long tickets](#) to this prospective location (which are confusingly “valid for 365 days from Grand Opening *or date of purchase*” [emphasis added]). As set forth in detail below, SeaQuest’s sale of tickets for a Stonecrest location violates the Code’s prohibition on conducting business without a business license. Moreover, SeaQuest’s solicitation of business in Stonecrest and its public representations concerning this planned Stonecrest location are deceptive in light of the fact that SeaQuest has not—and cannot—obtain the necessary approvals to operate at the Mall at Stonecrest pursuant to the City’s zoning ordinance.

#### **I. SeaQuest is conducting unauthorized business within the City of Stonecrest.**

Under Georgia law, a municipality may levy an occupation tax on any out-of-state business that exerts “substantial efforts” within the municipality “for the purpose of soliciting business.” O.C.G.A. § 48-13-7(b)(1). Consistent with this provision, the Code dictates that any person “engaged in a business” within the city, or “in the case of an out-of-state business with no location in Georgia exerting substantial efforts within the city. . . shall pay an occupational tax.” Code § 15.2.1(a); *see also id.* §15.2.8 (businesses “with no location or office in the state” must pay the occupation tax “if the business’ largest dollar volume of business in Georgia is in the city, and the business . . . [h]as one or more employees or agents who exert substantial efforts within the jurisdiction of the city, for the purpose of soliciting business or serving customers or clients”).

While SeaQuest has not yet opened any physical location within the City, it has been selling admission tickets to an intended storefront within the Mall at Stonecrest—tickets that are wholly

prospective and dependent upon SeaQuest’s ability to build and open such a location. Thus, not only has SeaQuest been conducting business within the City by developing and advertising its proposed location, generally, but it has been exerting substantial efforts within the City by soliciting business from Stonecrest customers through its sale of tickets specific to a Stonecrest location. Accordingly, SeaQuest is obligated to pay the occupation tax pursuant to Code Section 15.2.1(a). SeaQuest also appears to satisfy the additional requirement imposed by Section 15.2.8, dictating that a business must pay the occupation tax if its “largest dollar volume of business in Georgia is in the city.” SeaQuest has no other locations in Georgia—planned or existing—apart from its prospective location at the Mall at Stonecrest. In other words, any business SeaQuest is doing within Georgia is within the City.

The Code dictates that “[n]o person shall be engaged in, pursue or carry on *any business* within the city, *in any manner* without having registered the name of the business with the City Manager or his [or her] designee and either paid the taxes as provided by this article or produced ... proof of payment of a local business occupation tax in another state which purports to tax the business’ ... sales or services in this state.” Code § 15.2.3(a) (emphasis added). Although SeaQuest has been openly conducting business within the City, public records reveal that apparently SeaQuest has neither registered its name nor paid the required occupation tax. Ex. 31. Furthermore, SeaQuest does not appear to have registered with the State of Georgia to legally conduct business within the state—similar to how SeaQuest failed to register with the state of Florida until at least a month after it started selling tickets for its planned Fort Lauderdale location.

PETA urges the City to investigate SeaQuest’s apparent failure to pay the occupation tax and hold it accountable for all violations of the Code.

## **II. SeaQuest is not an authorized use within the zoning district for the Mall at Stonecrest.**

Despite SeaQuest’s seeming impatience to open a location at the Mall at Stonecrest, the City’s zoning ordinance does not appear to permit SeaQuest to operate at this location.

The Mall at Stonecrest is located at 2929 Turner Hill Road, Stonecrest, Georgia 30038. The specific address for SeaQuest’s planned location—a building formerly occupied by Sears—is 8020 Mall Parkway, Stonecrest, Georgia 30038. According to the City’s zoning map, both addresses are located within the C-1 (Local Commercial) District. *See* Code § 1.1.14. Pursuant to the Code, this district is intended to “provide convenient local retail shopping and service areas.” Code § 2.26.1. “[U]ses authorized within the C-1 (Local Commercial) District are those uses which are designed to serve the *convenience shopping* and *service needs* of groups of neighborhoods.” *Id.* (emphasis added). If a use is not “specifically listed” as permitted in a zoning district, “the director of planning shall have the authority to permit the use if the use is similar to uses permitted” by the zoning ordinance. *Id.* § 4.1.2.

As set forth in section 4.1.3, permitted uses within the C-1 (Local Commercial) District include certain kinds of offices, restaurants, and various types of retail outlets—uses that plainly do not encompass SeaQuest as an aquarium and petting zoo. Other permitted uses include indoor recreation, libraries, and museums. Although SeaQuest’s history suggests that it might seek to represent itself as one of these permitted uses, the definitions for these terms foreclose any such

possibility. The Code defines indoor recreation as “a commercial recreational land use conducted entirely within a building,” such as an “arcade, arena, art gallery and studio, art center, assembly hall, athletic and health clubs, auditorium, bowling alley, club or lounge, community center, conference center, exhibit hall, gymnasium, library, movie theater, museum, performance theater, pool or billiard hall, skating rink, swimming pool, tennis court.” Code § 9.1.3. None of these enumerated examples involve the keeping and exhibition of wild animals.

Similarly, SeaQuest does not fit the definition of a library or museum. Under section 9.1.3, a library is “a public facility, a room or building, for the exhibition and use, but not sale of literary, scientific, historical, musical, artistic or reference materials,” and a museum is “a building or structure that is primarily used as a repository for a collection of art or natural, scientific, or literary objects, and is intended and designed so that members of the public may view the collection.” SeaQuest exhibits living animals—not scientific or cultural “materials” or “objects.” Indeed, this is consistent with how zoning staff in Fort Lauderdale Florida, interpreted SeaQuest’s use prior to being overruled by apparent political considerations. Ex. 14 (Email from the Director of the City of Fort Lauderdale Department of Sustainable Development, Nov. 13, 2018) (explaining that “it is evident that museums typically have a primary focus on the procurement, conservation and display of objects” and that, in order to qualify as a museum, SeaQuest would need to, among other things, be accredited with a museum organization); *see also* Ex. 8 (Internal City of Fort Lauderdale Email, Nov. 6, 2018) (“to qualify [SeaQuest] as a museum is misleading”).

Ultimately, there is no use permitted within the C-1 (Local Commercial) District that provides for an aquarium such as SeaQuest or for the exhibition of wild animals, at all. Accordingly, SeaQuest’s planned location at the Mall at Stonecrest is neither permitted as of right within the C-1 District, nor similar to any permitted use.

### **III. SeaQuest is not authorized to operate within the Stonecrest Area Overlay District.**

In addition to the C-1 (Local Commercial) District, the Mall at Stonecrest is located within the Stonecrest Area Overlay District. The Stonecrest Area Overlay District is divided into five tiers, with the Mall at Stonecrest belonging in “Tier I: High-rise mixed use zone.” Code § 3.5.4(A)(1); *see Id.* § 1.1.14.

Among all the uses enumerated in the zoning ordinance, the sole use that provides for animal exhibitions is an “outdoor amusement service facility,” which, “in the Stonecrest Area Overlay District, means any outdoor place ... operated for a fee to the general public where one or more of the following activities take place[:] ... miniature golf, paint ball, vehicle racing, vehicle performances, skeet range, shooting range, rides, carnival, water park, circus, rodeo, bull riding, go-carts, or zoo.” As an initial matter, this use contemplates only “outdoor place[s],” and SeaQuest’s planned location at the former Sears building in the Mall at Stonecrest is an indoor facility. More importantly, however, the zoning ordinance expressly dictates that outdoor amusement service facilities are “prohibited within Tier I: High-Rise Mixed-Use Zone of the Stonecrest Area Overlay District.” *Id.* § 3.5.13(B)(6). Accordingly, SeaQuest’s proposed location at the Mall at Stonecrest appears to be specifically precluded by the zoning ordinance.

#### IV. SeaQuest is not entitled to a variance.

The City’s zoning board of appeals has the authority to “hear and decide applications for variances from the strict application of the [zoning ordinance] where the strict application [thereof] would result in exceptional and undue hardship upon the owner of such property.” *Id.* § 7.5.3. The zoning board of appeals may authorize a variance “*only* upon making *all* of the following findings”: (1) “[b]y reason of [the] shape of a specific lot [or] other site conditions[,] ... strict application of the [zoning ordinance] would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district”; (2) the variance would provide “the minimum necessary to afford relief” and “not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district”; (3) the variance would “not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district”; (4) strict application of the zoning ordinance “would cause undue and unnecessary hardship”; and (5) the variance “would be consistent with the spirit and purpose” of the zoning ordinance. *Id.* § 7.5.3(A)(1)-(5) (emphasis added).

Here, although there is no evidence that SeaQuest has applied for a variance, SeaQuest would be unable to satisfy any—let alone all—of these five criteria if it were to seek a variance. Initially, the specific shape or condition of the building that SeaQuest plans to occupy would not deprive it of any rights enjoyed by other businesses within the Mall at Stonecrest. Instead, a variance authorizing SeaQuest to operate an aquarium and animal exhibition within the Mall at Stonecrest would simply facilitate SeaQuest’s specific [business model of opening locations in shopping malls](#)—not ameliorate any detrimental qualities of the size or shape of the lot. The mere fact that SeaQuest’s business goals conflict with the City’s zoning ordinance does not provide a basis to conclude that enforcement of the zoning ordinance would cause SeaQuest “undue and unnecessary hardship.”

Furthermore, a variance would grant SeaQuest a “special privilege inconsistent with the limitations upon other properties in the zoning district” and belie “the spirit and purpose” of the zoning ordinance. Read together, the provisions applicable to the C-1 (Local Commercial) District and the Stonecrest Area Overlay District clearly convey that the Mall at Stonecrest is not a permissible location for zoos, aquariums, or other animal exhibitions. To permit SeaQuest to operate within the mall would run afoul of these provisions and fundamentally alter the character of these zoning districts.

Finally, granting SeaQuest a variance could be “materially detrimental to the public welfare or injurious to the property or improvements in the zoning district.” As noted above, SeaQuest has amassed numerous [legal violations](#), [customer injuries](#), reports of [animal mistreatment](#), and accompanying [scandals](#) at its locations across the country—despite the fact that the chain only opened in 2016. The City of Fort Lauderdale [bent over backwards](#) to accommodate SeaQuest despite clear prohibitions within its zoning code as well as concerns and objections from city zoning officials. As a result, the city found itself embroiled in litigation, wasting tax payer money to defend a company that eventually abandoned its development and fled the city after its landlord [sued to evict](#) it for not paying its bills. In addition, an untold number of consumers bought tickets to a facility that never opened, and many were forced to file complaints with the state to obtain refunds from SeaQuest. Take heed from Fort Lauderdale’s experience: SeaQuest is not a company



that Stonecrest should go to great lengths to permit within the City. As such, I would urge the City not to issue a variance if SeaQuest submits an application for one.

### **Conclusion**

For all of the reasons set forth above, the City of Stonecrest should not sanction SeaQuest's proposed development at the Mall at Stonecrest. Before even opening for business, SeaQuest has apparently violated the City's Code by selling tickets without an occupation tax certificate. Not only is such conduct unlawful, it is deceptive in light of SeaQuest's failure to obtain any zoning approvals and, indeed, its inability to comply with the City's zoning ordinance. An aquarium or petting zoo is plainly not a permitted use within the C-1 (Local Commercial) District and Stonecrest Area Overlay District, and there is no basis to grant SeaQuest a variance.

Although Covino does not appear to have learned from his failed venture in Fort Lauderdale, the City of Stonecrest should not allow history to repeat itself. PETA requests that the City investigate SeaQuest, hold it accountable for any and all violations of the Code, and foreclose any efforts SeaQuest may make to circumvent the zoning ordinance.