IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO.

HOWLAND STATION CONDO DEVELOPERS, L.L.C., a Florida limited liability company,

Plaintiff,

v.

CITY OF DELTONA, FLORIDA, a municipal corporation formed and existing under the laws of the State of Florida,

Defendant.
_____/

COMPLAINT FOR DECLARATORY JUDGEMENT

Plaintiff HOWLAND STATION CONDO DEVELOPERS, L.L.C. ("Howland Station") sues Defendant CITY OF DELTONA, FLORIDA ("City") and alleges:

PARTIES, JURISDICTION AND VENUE

1. This matter invokes the Court's jurisdiction to render declaratory judgments pursuant to § 86.011, Florida Statutes (2025).

2. The amount in controversy exceeds fifty thousand dollars, exclusive of interest, attorneys' fees and costs.

3. The actions giving rise to this matter occurred in Volusia County, Florida, such that venue is proper in this Court.

4. Howland Station is a Florida limited liability company duly authorized to conduct business in the State of Florida.

5. The City is a municipal corporation formed and existing under the laws of the State of Florida.

6. All conditions precedent to the bringing of this action have occurred, have been waived or would be futile.

NATURE OF THE RELIEF SOUGHT

7. Howland Station seeks a declaration that its Site Plan and Final Plat applications must be reviewed under a prior version of the City's code based on the City's representations and actions as explained in this Complaint.

STATEMENT OF FACTS

8. Howland Station is the owner of the real property generally located at 1600, 1620, 1625, 1630 and 1635 Martin Luther King Jr. Boulevard and 3015 Howland Boulevard, all in the City of Deltona, Florida ("Property"). The Property is also identified as tax parcels 8108-03-00-0010, 8108-03-00-0040, 8108-03-00-0050, 8108-03-00-0060, 8108-03-00-0080, and 8108-00-00-0039.

9. Howland Station submitted applications to the City to develop the Property as a mixed-use residential project consisting of 125 age restricted affordable housing rental units and future commercial development.

10. The proposed project is consistent with Fla. Stat. §166.04151, Florida's Live Local Act, and the version of Chapter 76 of the City's Code of Ordinances in effect when Howland Station submitted the relevant development applications.

11. The age restriction of residential units would comply with the Housing for Older Persons Act.

12. As committed in the approvals for the Housing Revenue Bonds issued by the Housing Finance Authority of Volusia County, at least 40 percent of the residential units in the

proposed multifamily development will be rental units that, for a period of at least 30 years, are affordable as defined in Fla. Stat. §420.0004.

13. A Land Use Restriction Agreement was entered into as of December 1, 2024, in conjunction with the closing of the $19,800,000 in Housing Revenue Bonds issued by the Housing Finance Authority of Volusia County.

14. On March 29, 2023, Governor DeSantis signed the Live Local Act into law which took effect on July 1, 2023 (as amended).

15. The Live Local Act's preemption of local zoning is set forth in §166.04151(7), which specifically requires that "a municipality must authorize multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial, or mixed use if at least 40 percent of the residential units in a proposed multifamily development are rental units that, for a period of at least 30 years, are affordable as defined in s. 420.0004 . . . For mixed-use residential projects, at least 65 percent of the total square footage must be used for residential purposes."

16. The Property is zoned commercial.

17. On January 16, 2024, the City adopted Ordinance 04-2024, establishing City Code Chapter 76 relating to affordable housing regulations and the Live Local Act.

18. Prior to the City's adoption of Ordinance 04-2024, Howland Station met with City staff on multiple occasions to verify the intended scope of Ordinance 04-2024 and confirm that Howland Station's proposed development would comply with the requirements of Chapter 76.

19. On August 6, 2024, Howland Station submitted an application for Final Plat (SD24-0014) and an application for Final Site Plan (SP24-0009) approval.

20. On August 12, 2024, the City sent Howland Station a sufficiency letter for SD24-0014 stating that staff found the application to be "sufficiently complete and [was] therefore accepted by staff for review."

21. Also on August 12, 2024, the City sent Howland Station a sufficiency letter for SP24-0009 stating that the staff found the "application to be sufficiently complete and [was] therefore accepted by staff for review."

22. Howland Station closed and funded the purchase of the Property in late October 2024 based on the City's representations of sufficiency of the applications.

23. On October 25, 2024, Howland Station adopted and recorded a Declaration of Land Condominium ("Declaration") to subject all the Property to a unified restrictive covenant to ensure compliance with the applicable affordability requirements, which states:

> 11.8 Affordable Housing and Mixed-Use. The Condominium is intended to constitute a mixed-use multifamily development including affordable housing pursuant to F.S. §166.04141(7), compliant with Sec. 76-4. of the Code of Ordinances City of Deltona, Florida (the "Code"), and the provisions of F.S. §166.04151(7). In connection with building permit issuance for Units 2 and 3, the Developer shall execute and deliver, and if necessary, the Unit Owners shall join in and execute and deliver, to the City of Deltona for recordation in the public records, on a form approved by the city attorney and Developer, a covenant, declaration of restriction, or other deed restriction in favor of the City of Deltona ensuring compliance with the applicable affordability requirement, to be recorded in the public records in accordance with Sec. 76-4. of the Code.

24. The Declaration also limits the frontage parcel on Howland Boulevard to commercial uses in compliance with the mixed-use requirements of the Live Local Act and the prior version of Chapter 76:

> 6.4 City's Consent. No amendment shall be made to this Declaration which would cause this Declaration or any Unit to violate the applicable zoning, planning, or land use laws of the City or adversely affect any permits or approvals for the Condominium Property without the City's written consent, as applicable.

> 11.5 Commercial Use. Unit 1 shall be used solely for commercial purposes allowable under then current zoning and applicable governmental restrictions, and no residential development or use (including, but not limited to, use as a private temporary or permanent residence) is permitted thereon, however, such use shall be further limited pursuant to those prohibited uses set forth on Exhibit "F", attached hereto and made a part hereof. Any use of Unit 1, or any portion thereof, other than for the specified uses expressly permitted herein, shall be deemed invalid, void and unenforceable, and Developer, the Association and each Unit Owner shall each have the unrestricted right to seek and obtain any remedies available at law or in equity (including any rights to injunctive relief) to prevent, prohibit and/or enjoin the unpermitted use or threatened use. Developer shall also have all rights and remedies that are contained in this Declaration to enforce compliance herewith that either the Developer or the Association may have hereunder. The foregoing use restrictions are hereby declared, reserved and imposed by the Developer as an equitable servitude and restrictive covenant running with the Land and each Unit, binding upon the Developer and all persons claiming by, through or under them, for the benefit of and as a limitation and burden upon the Land, each Unit, Developer, and all future Owners.

25. On October 21, 2024, the City adopted Resolution 2024-60, "Declaring Zoning in Progress regarding amendments to the Land Development Code to clarify provisions in the Live Local Act, which amended Fla. Stat. 166.04151."

26. On December 23, 2024, the City adopted Ordinance 02-2025 replacing the prior version of Chapter 76 with new regulations, which materially changed the requirements for affordable housing development.

27. That same day, the City's Director of Planning and Development Services sent Howland Station a letter stating that the Site Plan and Final Plat applications were now deemed incomplete and requiring Howland Station to submit updated applications that complied with the amended version of Chapter 76.

28. The December 23, 2024, letter further referenced and required compliance of any future submittals with the requirements of Ordinance 02-2025, including requirements that were not within the City Code prior to the adoption of Ordinance 02-2025.

29. Howland Station timely filed an administrative appeal of the December 23, 2024, letter, which went before the City Commission on February 17, 2025.

30. The City Commission denied the administrative appeal.

31. The City's decision in December 2024 to declare the pending applications incomplete after initially deeming them complete was pretextual and calculated solely to require Howland Station to meet the new code requirements.

32. Howland Station's representatives met with the City numerous times during the application process, including September 18, 2024, October 8, 2024, and November 14th, 2024, but at no point did staff make Howland Station aware that the City was considering revisions to Chapter 76 that would have the effect of precluding the proposed use and development.

33. In fact, to Howland Station's knowledge, there were no other pending applications related to the Live Local Act when the City amended Chapter 76, so the City's obvious intent was to specifically target Howland Station's project.

34. The City acted arbitrarily, capriciously, discriminatorily and illegally in declaring the applications incomplete and is thus estopped from enforcing the new ordinance against Howland Station. *City of Margate v. Amoco Oil Co.*, 546 So. 2d 1091, 1094 (Fla. 4th DCA 1989) ("Where a governmental body acts arbitrarily to avoid its duty by delaying the matter so as to effectuate a change in the law adverse to the application, it is proper for the court to disregard the newly enacted limitations.").

COUNT I: DECLARATORY JUDGEMENT

35. Howland Station incorporates the allegations in paragraphs 1 through 34.

36. This is a cause of action for declaratory judgment under Chapter 86, *Florida Statutes*, seeking a declaration that the City is estopped from apply the amended version of Chapter 76 to Howland Station's project, but must instead apply the version in effect in August 2024 .

37. The City intentionally delayed the project and misled Howland Station in the weeks and months leading up to the City's amendment of its Code.

38. The changes to the City's Code materially preclude development of the project as proposed by Howland Station.

39. The parties are in a dispute as to which version of the City's Code applies to Howland Station's project.

40. The rights of the parties under the Code are dependent upon this declaration, and this declaration is necessary

41. As a result of the foregoing, there is a bona fide, actual, present practical need for a declaration by the Court of the rights and obligations of the parties with respect to the matters discussed herein.

42. In the absence of a declaration, Howland Station will not be able to proceed with its intended development.

43. The declaration deals with a present, ascertained or ascertainable state of facts and a present controversy with respect to the facts, which entitle the parties to a declaration under Chapter 86, *Florida Statutes*.

44. Each of the parties having antagonistic or adverse interests with respect to this declaration are before the Court by way of this action.

45. This action is not filed by Howland Station out of curiosity or for the mere giving of legal advice by this Court.

46. Howland Station is entitled to an award of costs pursuant to § 86.081, Florida Statutes

WHEREFORE, Plaintiff, HOWLAND STATION CONDO DEVELOPERS, L.L.C., respectfully requests that the Court declare that the City is estopped from apply the amended version of Chapter 76 to Howland Station's project, but must instead apply the version in effect in August 2024, together with such other and further relief as this Court deems just and proper.

Dated this 17th day of March, 2025.

/s/ Rebecca E. Rhoden
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