

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.

CITY OF CORAL GABLES, FLORIDA,
a Florida municipal corporation,

Plaintiff,

v.

ASTOR TROLLEY, LLC,
a Florida limited liability company, and
MERRICK MANOR, LLC, f/k/a 4111
LE JEUNE, LLC, a Florida limited
liability company,

Defendants.

COMPLAINT

Plaintiff, City of Coral Gables, Florida (the “City”), hereby sues Defendants, Astor Trolley, LLC (“Astor”), and Merrick Manor, LLC, f/k/a 4111 Le Jeune, LLC (“Le Jeune”) (collectively, the “Defendants”), and in support thereof states as follows:

THE PARTIES AND JURISDICTION

1. This suit seeks declaratory relief within the exclusive jurisdiction of this Court.
2. The City is a Florida municipal corporation with its principal place of business in Miami-Dade County, Florida.
3. Astor is a Florida limited liability company with its principal place of business in Miami-Dade County, Florida. As a result, personal jurisdiction exists pursuant to §§ 48.193(1) (a), and (2), Florida Statutes.

4. Le Jeune is a Florida limited liability company with its principal place of business in Miami-Dade County, Florida. As a result, personal jurisdiction exists pursuant to §§ 48.193(1) (a), and (2), Florida Statutes.

5. Pursuant to §§ 47.011, and 47.051, Florida Statutes, venue is appropriate in Miami-Dade County, Florida. The Defendants have their principal places of business in Miami-Dade County. In addition, upon information and belief all the Defendants operate, conduct, engage in and carry on a business or business venture in Florida. Furthermore, all the Defendants have engaged in substantial and not isolated activity in Florida.

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

GENERAL ALLEGATIONS

7. The City is the owner of the land and building located at 4133 South Le Jeune Road, Coral Gables, Florida (the "City Land").

8. The City Land is currently used by the City for the regular repair, maintenance and storage of the City's eleven (11) vintage trolley-style public shuttle buses (the "Trolleys").

9. Prior to February 2012, the Defendants approached the City in an attempt to acquire the City Land in order to demolish the existing improvements to construct a proposed residential condominium/apartment project to be located on the City Land, as well as adjacent lands already owned or controlled by the Defendants.

10. The City advised the Defendants that it would be willing to convey the City Land to the Defendants if the Defendants could locate a suitable replacement site for the City's use as a facility for the repair, maintenance and storage of its Trolleys (the "Intended Use").

11. Thereafter, Astor undertook the process of locating and securing certain land within the City of Miami (“Miami”) along Douglas Road which Astor determined was suitable for the City’s Intended Use (the “Astor Land”).

The Agreement

12. Accordingly, on or about September 20, 2012, the City and the Defendants entered into a Land Exchange Agreement (the “Agreement”) whereby the City would convey the City Land in exchange for the Astor Land subject to certain contingencies and obligations imposed upon Astor. A true and correct copy of the Agreement is attached hereto as Exhibit “A.”

13. Prior to the exchange of the City Land for the Astor Land, the Agreement requires the Defendants, among other things, to construct a building for the City’s Intended Use in accordance with construction drawings approved by the City. *See* Agreement at § 18(b).

14. Furthermore, the Agreement at § 12(d) requires that Astor “shall comply prior to Closing with all applicable federal, state, county and municipal laws, rules regulations, orders, codes (including, without limitation, the Florida Building Code and the City of Miami Code of Ordinances) and ordinances now or hereafter issued by or in force of all governmental authorities having jurisdiction over the Grantor’s Property (“Applicable Laws”).”

15. The Applicable Laws defined in the Agreement include the City of Miami land development regulations, and specifically, the Miami 21 Code of the City of Miami (a/k/a Miami’s zoning code) (“Miami 21”).

The New Trolley Facility and Uncertain Zoning

16. Pursuant to the Agreement, the Defendants obtained the development approval (warrant) and development permits from the City of Miami that the Defendants determined were needed to construct the new trolley facility on the Astor Property for the City's Intended Use.

17. In or about July, 2012, the Defendants commenced construction of the new trolley facility on the Astor Property.

18. Shortly thereafter, by virtue of organized community opposition, including the filing of a suit to enjoin construction, the Defendants became aware of claims that the commercial Urban Center T5-O zoning on the Astor Land may not permit the City's Intended Use; however the Defendants proceeded with construction of the facility, which is now substantially completed.

19. The City timely notified the Defendants that it was concerned with whether the commercial zoning permitted the City's Intended Use.

20. Thereafter, the City specifically objected to the zoning of the Astor Land on the basis that the City's Intended Use is not a commercial or business use as permitted in the Urban Center T5-O Zone, but rather an "Auto-Related Industrial Establishment" ("government vehicle maintenance facility"), which is only permitted within industrial properties zoned with a "D" (District Zone) designation under the Miami 21 Zoning Code.

21. As a result of having constructed a facility on land with a commercial zoning as opposed to an industrial designation, the City believes the Defendants have failed to comply with the Agreement requiring them to comply with the Miami 21 Code, among other Applicable Law as defined in the Agreement.

22. The Defendants claim that the City's Intended Use is a permitted and authorized use within the Urban Center T5-O Zone, and consequently the parties have adverse positions on a critical condition to the closing under the Agreement.

COUNT I
(DECLARATORY RELIEF)

23. The City realleges and incorporates paragraphs 1 through 21 as though fully set forth herein.

24. Pursuant to the Florida Declaratory Judgment Act (Chapter 86, Florida Statutes), the City seeks a declaration of the following:

- a. Whether the City's Intended Use of the Astor Land is a "government vehicle maintenance facility" and is permitted in the Urban Center T5-O Zone under the Miami 21 Code; and
- b. Whether the Defendants have complied with the terms of the Agreement requiring them to comply with the Miami 21 Code, among other Applicable Laws, as defined in the Agreement.

25. All elements necessary to support a claim for declaratory relief are present here:

- a. There is a bona fide, actual, present, practical need for the above requested declarations;
- b. The requested declarations deal with a present, ascertained, set of facts and there is present controversy as to these facts;
- c. The City's rights are dependent upon the application of law to the underlying facts detailed above;
- d. The parties hereto have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint;

- e. All antagonistic and adverse interests are before the Court; and
- f. The relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity, but stem from an actual controversy.

WHEREFORE, the City seeks a declaration of the following:

- a. Whether the City's Intended Use of the Astor Land is a "government vehicle maintenance facility" and is permitted in the Urban Center T5-O Zone under the Miami 21 Code; and
- b. Whether the Defendants have complied with the terms of the Agreement requiring them to comply with the Miami 21 Code, among other Applicable Laws, as defined in the Agreement.


DATED this 9th day of September, 2013.

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