

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION**

WALDEN LAKE, LLC, a Florida
limited liability company,

Plaintiff,

v.

Case No.: 23-CA-16857

Division: P

CITY OF PLANT CITY, a Florida
municipal corporation,

Defendant.

_____ /

**ORDER DENYING DEFENDANT’S MOTION TO DISMISS
PLAINTIFF’S COMPLAINT FOR DECLARATORY RELIEF**

THIS CAUSE is before the Court on the Motion to Dismiss Plaintiff’s Complaint for Declaratory Relief (“Motion”) (Doc. 9), filed by Defendant, City of Plant City (“Defendant” or “Plant City”), on January 10, 2024. Plaintiff, Walden Lake, LLC (“Plaintiff” or “Walden Lake”) filed a response in opposition on January 25, 2024 (Doc. 10). The Court held a hearing on the Motion on March 27, 2024, at which counsel for both parties were present.

The Court has carefully considered the Motion, Response, the court file, the arguments of the parties, and applicable law. Because the Court finds that the Plaintiff has established the existence of a justiciable controversy cognizable under the Declaratory Judgment Act, § 86.011 *et seq.*, Florida Statutes, Defendant’s Motion is denied.

A. Brief Background.

Last year, the Florida Legislature passed Senate Bill No. 102, codified in part at § 166.04151, Florida Statutes, and colloquially known as the “Live Local Act.” The bill was signed into law on March 29, 2023, and became effective July 1, 2023. Under the statute, “[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 rental development are, for a period of at least 30 years, affordable” § 166.04151(7)(a), Fla. Stat. (2023).

Walden Lake is the owner of 319.26 acres of real property located in Plant City (hereinafter, “the Property”). On September 29, 2023, Walden Lake submitted an application under the Live Local Act for the development of a mixed-income, multifamily project on the Property. (Compl., Ex. D.) According to the Complaint and Plaintiff’s application, the multifamily development Walden Lake proposes to build complies with the various provisions of the Live Local Act in all respects. Among other things, Walden Lake submits that (1) the Property is zoned for commercial, industrial, or mixed use; (2) forty percent of the units in the proposed development will meet the definition of affordable housing for a period of at least 30 years; and (3) the proposed development meets the density and height restrictions currently allowed under existing law with respect to the Property. *See* § 166.04151(7)(a)-(c), Fla. Stat. (2023).

In connection with its application, Walden Lake submitted a preliminary plat and requested that it be processed in accordance with Section 7(d) of the Live Local Act. Under that subsection, proposed developments authorized under the statute:

must be administratively approved and no further action by the governing body of the municipality is required if the development satisfies the municipality’s land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements.

Id. § 7(d). Plaintiff contends that, in accordance with the above provision, the proposed development complies with both the City of Plant City Comprehensive Plan and its Land Development Code. (Compl., Ex. D, at p. 1.)

In a 6-page letter from Plant City’s Planning and Zoning Coordinator, dated October 27, 2023, Plant City rejected Walden Lake’s application for streamlined approval of its preliminary plat pursuant to the Live Local Act. (Compl., Ex. F). The letter asserts, among other things, that “the Live Local Act does not apply” to the Property. *Id.*, p. 6. In addition, the letter advises Walden Lake that Plant City considers its application to be incomplete, and that Walden Lake must engage in additional steps in order for Plant City to consider an administrative approval of the proposed development. *Id.*, p. 4.

Plaintiff now seeks a declaration regarding two threshold issues: (1) whether the Live Local Act applies to its Property; and, if so, (2) what procedures must be followed given the statutory mandate that qualifying developments be “administratively approved” without the need for further action by the governing body of the municipality as set forth in Section 166.04151(7)(d).

B. Legal Standard.

A motion to dismiss a complaint for declaratory judgment is not a motion on the merits; rather, it is a motion only to determine whether the plaintiff is entitled to a declaration of rights. *See People’s Tr. Ins. Co. v. Franco*, 305 So. 3d 579, 583 (Fla. 3d DCA 2020). A complaint for declaratory judgment should not be dismissed if the plaintiff establishes the existence of a justiciable controversy cognizable under the Declaratory Judgment Act. *See Murphy v. Bay Colony Prop. Owners Ass’n*, 12 So. 3d 924, 926 (Fla. 2d DCA 2009) (citing *Thompson v. Fla. Cemeteries, Inc.*, 866 So.2d 767, 769 (Fla. 2d DCA 2004)). In making this determination, “the

trial court must accept the material allegations as true and is bound to a consideration of the allegations found within the four corners of the complaint.” *Id.* (citations omitted).

C. Analysis.

The Declaratory Judgment Act provides a mechanism “to settle and to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations.” § 86.101, Fla. Stat. (2023); *Martinez v. Scanlan*, 582 So. 2d 1167, 1170 (Fla. 1991). Relevant here, any person whose rights, status, or other equitable or legal relations are affected by a statute may obtain a declaration of rights, status or other equitable or legal relations thereunder. *See* § 86.021, Fla. Stat. But before declaratory relief may be had, a party seeking such relief must show a justiciable controversy between the parties. Specifically, Plaintiff must show that:

[t]here is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interest are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity

Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 404 (Fla. 1996) (citing *Santa Rosa Cnty. v. Admin. Comm'n, Div. of Admin. Hearings*, 661 So. 2d 1190, 1192-1193 (Fla. 1995) and quoting *Martinez*, 582 So.2d at 1170).

Upon review of the Complaint and attached exhibits, the Court finds the existence of a justiciable controversy that gives rise to declaratory relief. Given Plant City’s position, set forth in its October 27, 2023 Letter, the parties plainly have an actual, present dispute for which Walden Lake has a bona fide need for declaratory relief. Further, it is clear that Plaintiff’s rights, status, or other equitable or legal relations are affected by the statute. The asserted right of the Plaintiff

is dependent upon the facts or the law applicable to the facts and the relief sought by Walden Lake is not merely advisory or based upon curiosity. Construing Plaintiff's request for declaratory relief liberally, as it must; *see* Fla. Stat. § 86.101, the Court finds that Plaintiff has stated a cause of action for declaratory relief.

In reaching this conclusion, the Court finds *Angelo's Aggregate Materials, Ltd. v. Pasco Cnty.*, 118 So. 3d 974 (Fla. 2d DCA 2013), particularly instructive. In that case, the plaintiff and the county disputed which legal framework applied to plaintiff's permit for a landfill. Specifically, plaintiff was in doubt as to whether it had a vested right to proceed with a conditional use permit, or whether the subsequent changes to the land development code required a comprehensive plan land use amendment. Plaintiff sought declaratory relief, wishing to avoid the expense that would result from making a significant investment in seeking a conditional use permit, only to learn the expense was wasted by the need for a comprehensive plan amendment. *Id.* at 974.

The trial court dismissed the action in part because it found that the plaintiff had failed to state a cause of action for declaratory relief. The appellate court reversed, observing that—in light of longstanding Florida Supreme Court precedent—the case was “a quintessential one for declaratory relief.” *See id.* In reaching that conclusion, the appellate court pointed to both the complexity of the issue and the potential harm that plaintiff would incur absent a declaration of rights. *Id.*

Plaintiff's citation to *Orange Cnty. v. Expedia, Inc.*, 985 So. 2d 622 (Fla. 5th DCA 2008) is also on point. That case involved the question whether a taxing agency could obtain a declaratory judgment when in doubt as to the meaning or application of a tax statute and ordinance without first exhausting administrative remedies. *See id.* at 624. Like the case here, at bottom, the parties disputed the meaning and application of the statutory scheme as applied to the facts.

In considering whether declaratory relief was appropriate, the court found that it would be “illogical” to require the parties to submit to a cumbersome, expensive process associated with a tax collection action when declaratory relief could render such collection proceedings moot. Given the parties’ differences as to how the statute should be interpreted, the court concluded that the plaintiff “allege[d] a present and practical need for declaratory relief” and that the “allegations relate the existence of an actual, bona fide, present dispute over the interpretation and effect of the Florida statutes and [] ordinances relating to the plaintiffs’ legal duties” *Id.* at 626.

Here, as in *Angelo’s Aggregate Materials, Ltd.* and *Expedia, Inc.*, the parties have a dispute as to the application of the statute and the appropriate legal framework to be applied with respect to Plaintiff’s application. Specifically, Plaintiff contends that the multifamily unit it seeks to develop falls within the reach of the Live Local Act. Plant City has taken the firm position that it does not. Plaintiff contends that, absent a declaration, it will be required to undertake an expensive and time-consuming process. As the court held in *Angelo’s Aggregate Materials, Ltd.*, this is precisely the type of claim for which declaratory relief is appropriate.¹

Finally, it bears repeating that a motion to dismiss a complaint for declaratory judgment is not a motion on the merits, but a test to determine whether a plaintiff is entitled to such relief in the first instance. Because it is plain that Walden Lake is entitled to a declaration of rights based upon the facts and circumstances presented here, denial of the Motion is warranted.

D. Conclusion.

Based on the foregoing, it is **ORDERED** and **ADJUDGED** that Defendant’s Motion to Dismiss Plaintiff’s Complaint for Declaratory Relief, filed January 10, 2024 (Doc. 9), is **DENIED**.

¹ It should be noted that the Court has located no decision involving the Live Local Act, perhaps due to its recent enactment.

DONE and ORDERED in Chambers in Plant City, Florida on this ____ day of May, 2024.

Electronically Conformed 5/8/2024
Michael Williams

HONORABLE MICHAEL S. WILLIAMS
Circuit Judge

Copies Furnished via JAWS to:

All Counsel of Record