UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:25-cv-81053-ARTAU

390 JUPITER, LLC, a Florida limited liability company,

Plaintiff

v.

TOWN OF JUNO BEACH, a municipal corporation,

Defendant.

_____/

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO COUNT I (VOID FOR VAGUENESS, AS DRAFTED) AND INCORPORATED MEMORANDUM OF LAW

Plaintiff, 390 JUPITER, LLC, by and through undersigned counsel and pursuant to Fed. R. Civ. P. 12(c) and S.D. Fla. L.R. 7,1, moves this Honorable Court for judgment on the pleadings as to Count I.[1] In support, Plaintiff states as follows:

I. SUMMARY AND BACKGROUND

Plaintiff is a property owner challenging the constitutionality of Sections 34-268 and 34-4 (together, the "Ordinance") of the Juno Beach Municipal Code (the "Code"), a land use provision regulating scenic rooftop viewing areas. The Ordinance states that any **"open air…feature which is an integral part of the principal structure"** is deemed to be part of a rooftop "Tower" and therefore limited to 225 square feet.

Plaintiff contends the Ordinance is too vague to pass constitutional muster because it uses terms that are undefined, ambiguous, and conflict with other sections of the Town Code. Count I (Void for Vagueness, as Drafted) is a facial attack on the plain language of the Ordinance.

[1] Counts II through VI are not at issue in this motion

The pleadings are closed. While certain facts in this action are disputed, none of those facts are material to Count I, which can be adjudicated based on the pleadings and the strict language of the Ordinance. Plaintiff seeks judgment on the pleadings as to Count I.

II. ADMITTED FACTS, THE TEXT OF THE LAW, THE EXHIBITS, AND DOCUMENTS SUBJECT TO JUDICIAL NOTICE

Plaintiff is a property owner that submitted to the Town an application to construct a scenic rooftop viewing area with a floor area greater than 225 square feet. Compl. ¶ 27; Answer ¶ 27; Compl. Ex. A [ECF 1-1, public record refiled as ECF 9-2 for clarity and completeness]

Plaintiff's proposed rooftop feature had no walls or roof. [ECF 1-1, refiled as ECF 9-2]

Plaintiff asserted that in plain English, the proposed feature is aptly characterized as a roof *deck* or a rooftop *balcony*. *Compl.* ¶30.

The Town Code does not restrict the size of balconies or decks and, to the contrary, provides that decks and balconies are exempt from all floor area calculations:

> For the purposes of this Chapter, the following terms and words are hereby defined.
> …
> *Floor area, total*, means the sum of the gross horizontal area of all of the floors of a building measured from the exterior faces of exterior walls and/or supporting columns. Such areas **shall exclude** a basement or subbasement as defined; open plaza, **balcony** or **deck areas**; and off-street parking within or under the building.

Section 34-4, Municipal Code of Juno Beach (emphasis added).

The Town denied Plaintiff's application, issuing the denial letter attached to the Complaint as Exhibit C. [ECF 1-3] The Town's denial letter reasoned that the proposed feature was a rooftop "Tower" rather than a roof deck or rooftop balcony, stating: "Staff has completed its review of plans for…390 Jupiter Lane…Tower features are limited to 225 square foot area limit, per Section 34-268. The proposed appears to exceed this limit… 'Tower' means an open air or enclosed structural feature which is an integral part of the principal structure…" [ECF 1-3]

> The complete definition of "Tower," set forth in Section 34-4, is as follows:
>
> *Tower* means an **open air** or enclosed structural **feature which is an integral part of the principal structure**, and whose **floor area**, from outside wall to outside wall, is limited in size. Such structural feature is intended to provide additional scenic viewing opportunities.

(emphasis added).

Based on the conclusion that the floor area of the proposed feature exceeded 225 square feet, the Town disallowed the construction and instructed Plaintiff to "ensure that the tower area is no more than 225 square feet in area." Compl. Ex. C [ECF 1-3]

At its core, the Town's denial letter is based on the conclusion that Plaintiff's proposed rooftop viewing area was "an open air…feature which is an integral part of the principal structure." *Id.* It is that provision which Plaintiff challenges here, arguing a) the concept of an *open air feature* conflicts with the concepts of *balconies* and *decks*, which are not subject to any size limitation under the Code; and b) the term "an integral part of the principal structure," as used to define a *Tower*, is vague and without any clear meaning or definition.

III. LEGAL STANDARD GOVERNING JUDGMENT ON THE PLEADINGS

"Federal Rule of Civil Procedure 12(c) provides that '[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.'" *IMX, Inc. v. E-Loan, Inc.*, 748 F. Supp. 2d 1354, 1356 (S.D. Fla. 2010) (granting partial judgment on the pleadings in favor of plaintiff). "Judgment on the pleadings is proper when no issues of material fact exist, and the movant is entitled to judgment as a matter of law." *Id*. (citing *Ortega v. Christian,* 85 F.3d 1521, 1525 (11th Cir.1996)); *Edible IP, LLC v. Am. Zurich Ins. Co*., 2025 WL 3254886, at *3 (N.D. Ga. Sept. 29, 2025) (granting judgment on the pleadings in favor of Plaintiff).

"A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." Fed. R. Civ. P. 10(c). Thus, "[i]n resolving a motion for judgment on the pleadings,

the Court considers the entire pleadings: the complaint, the answer, and any documents attached as exhibits." *Eisenberg v. City of Miami Beach*, 54 F. Supp. 3d 1312, 1319 (S.D. Fla. 2014).

Additionally, "In rendering judgment, a court may consider …any judicially noticed facts. *Cunningham v. Dist. Attorney's Office for Escambia Cty.*, 592 F.3d 1237, 1255 (11th Cir. 2010); *see also Melendez v. Bank of Am. Corp.*, 2018 WL 1092546, at *1 (S.D. Fla. Feb. 2, 2018). "In particular, the Court may 'take judicial notice of and consider documents which are public records.'" *Eisenberg*, 54 F. Supp. at 1319 (S.D. Fla. 2014) (citing *Day v. Taylor*, 400 F.3d 1272, 1275-76 (11th Cir. 2005)).

IV. THE TEXT: CONFLICTS, AMBIGUITY, AND CIRCULARITY WITHIN THE ORDINANCE

"The starting point for all statutory interpretation is the language of the ordinance itself." *E.g. In re ACF Basin Water Litigation*, 467 F. Supp. 3d 1323 (N.D. Ga. 2020 (*citing United States v. DBB, Inc., 180 F. 3d 1281* (11th Cir. 1999)). Canons of construction may aid a Court's construction "as presumptions about what an intelligently produced text conveys." *Heyman v. Cooper*, 31 F. 4th 1315 (11th Cir. 2022). All pertinent provisions of a State or local law must be read together and Florida's Supreme Court has held: "We have recognized as axiomatic the principle that all parts of a statute must be read together in order to achieve a consistent whole. When possible, we must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another." *Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006).

The Tower Ordinance recognizes two categories of scenic viewing areas: open air features *which **are*** an integral part of the principal structure; and open air features which *are **not*** an integral part of the principal structure. A separate provision of the Code, the definition of "Floor area" quoted *supra*, recognizes two more types of scenic viewing areas: *decks* and *balconies*, which are recognized 22 separate times throughout the Code and are widely permitted throughout the Town,

including on rooftops.[2] Read as a whole, the Code therefore recognizes that four (4) separate categories of scenic viewing areas exist: 1) *balconies*; 2) *decks*; 3) open air features which are *not* an integral part of the principal structure; and 4) open air features which *are* an integral part of the principal structure.

Only the fourth category falls within the definition of a *Tower* and is limited to 225 square feet. The other three categories are not subject to the Tower Ordinance, which only applies to those features meeting the definition of a Tower. No other Code provision imposes any separate size limitation on *decks* or *balconies* or *open air features* not an integral part of a principal structure.

To understand what the Code requires and prohibits, a reader must be able to understand what makes a scenic rooftop viewing area an "open air feature" rather than a *deck* or *balcony*. Likewise, a reader must be able to understand what makes a particular feature "*an integral part of the principal structure*." Otherwise, a reader has no way of knowing how to build a scenic rooftop viewing area in excess of 225 square feet as the Code contemplates. There is no way for a reader to understand those distinctions here because the text of the Ordinance is totally unclear.

The term *open air feature* is not defined in the Ordinance or anywhere else within the Code. Neither are the terms *deck* and *balcony*, even though they are referenced 22 times throughout the Code and permitted throughout the Town. *See* n. 2 *supra*. The same is true for the term "integral part of the principal structure" – it is not defined anywhere in the Code, and the Code provides no context to aid a reader in understanding what makes a particular feature "integral" to a principal structure. A reasonable reader has no textual basis in the Code to distinguish or understand the pertinent terms.

[2] Exhibit E to the Complaint shows a rooftop *deck* measuring 913 square feet. [ECF 1-5, refiled as ECF 9-6]. Exhibit D to the Complaint [ECF 1-4, refiled as ECF 9-5] shows a rooftop *balcony* measuring 486 square feet. Those documents are properly considered on a motion for judgment on the pleadings. Fed. R. Civ. P. 10(c); *Eisenberg*, 54 F. Supp. at 1319 (S.D. Fla. 2014).

A reasonable reader fares no better by resort to the plain meaning of those terms. Merriam Webster's Thesaurus describes the terms "Deck" and "Balcony" as follows:

> "Deck, noun
> as in *balcony*
> A flat roofless structure attached to a building.
> Synonyms and similar words: balcony, porch, terrace, verandah, sundeck, veranda, stoop, gallery, lanai."

> "Balcony, noun
> as in *deck*
> A flat roofless structure attached to a building.
> Synonyms and similar words: deck, terrace, porch, verandah, sundeck, veranda, gallery, stoop, lanai."

Those concepts are in direct conflict with the concept of an *open air feature* as a reasonable person would understand it – that is, as an outdoor feature exposed to the open air.

The plain meaning of the term "integral" is equally unhelpful, with Merriam Webster's thesaurus defining "integral" as:

> "Integral, adjective
> …
> Essential to completeness…Lacking nothing essential: Entire"

There is also nothing in the plain meaning of the term 'integral" to aid a reader in understanding when or why a particular scenic rooftop viewing area might be deemed "integral" to a single-family home and therefore part of the Tower. Indeed, an *open air* rooftop feature without any roof, plumbing, air conditioning, walls, or windows, could not be described as *integral* to a single-family home in any common English sense of the word.

Further compounding the uncertainty, the separate definition of *Floor area* quoted *supra* expressly states that balconies and decks are **excluded** from all calculations of floor areas under the Code. *See* Section 34-4 ("*Floor area, total*, …shall exclude…balcony or deck areas…"). A reasonable reader could not be blamed for reading the definition of "Floor area", recognizing that

his or her proposed rooftop feature meets the basic meaning of a *deck* or *balcony*, and concluding that the feature is not counted toward floor area calculations, i.e. it will not be subject to any floor area limitation. That reasonable conclusion would be reinforced by the fact that the terms in question are undefined within the Code itself.

Viewed slightly differently, if a reader were to read the Tower Ordinance and the definition of "Floor area" together, he would reasonably conclude that the term "Tower" is totally circular. That is, the term "Tower" purports to measure the *floor area* of open air features – more commonly described in plain English as decks or balconies, which are expressly excluded from all floor area calculations based on the definition of "Floor area." Stated even more simply, there is no way to measure the floor area of a feature which – by definition – *is not counted when measuring floor areas.* A reader could not be blamed for being unable to reconcile the conflicts.

To be sure, the Code is crystal clear that ***at least some*** scenic outdoor features are allowed to exceed 225 square feet: those that are deemed *decks*, *balconies*, and *open air features* not an integral part of the principal structure. *See* n. 2 *supra*. But the Code fails to provide any basis for a reader to understand what distinguishes the terms. Accordingly, a Town resident has no idea how to design a home to ensure an outdoor feature is not inadvertently deemed *an open air feature which is an integral part of the principal structure* and therefore restricted in terms of size.

In sum, property owners have no objective way to understand the requirements of the law or conform their conduct to the requirements of the law. They are at the mercy of government officials to construe the Code as they see fit on a case-by-case basis.

V. MEMORANDUM OF LAW

a. The Void for Vagueness Doctrine

"Vague laws contravene the first essential of due process of law…" *United States v. Davis*, 588 U.S. 445, 451 (2019). Indeed, "[i]n our constitutional order, a vague law is no law at all." *Id.* at 447. "[The Supreme Court's] doctrine prohibiting the enforcement of vague laws rests on the twin constitutional pillars of due process and separation of powers." *Id*. at 451.

"The void-for-vagueness doctrine reflects the principle that a statute which either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process law." *Harris v. Mexican Specialty Foods, Inc*., 564 F.3d 1301, 1310 (11th Cir. 2009). "It is a basic principal of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). "The vagueness doctrine applies to non-legislative enactments and those that do not carry criminal penalties." *Ross v. Orlando*, 141 F. Supp. 2d 1360, 1364 (M.D. Fla. 2001); *Boyce Motor Lines v. United States*, 342 U.S. 337 (1952).

A law may be void for vagueness for two (2) reasons: "(1) the contested law is so unclear that no person of ordinary intelligence would be able to read the law and understand what conduct it prohibits, or (2) the law is so unclear that it effectively empowers police officers, judges, and juries to enforce the law on an ad hoc, subjective, arbitrary, or discriminatory basis." *Fl. Action Committee v. Seminole Cty.*, 212 F. Supp 3d 1213, 1224 (M.D. Fla. 2016).

First Consideration: Notice to A Person of Ordinary Intelligence

While "we can never expect mathematical certainty from our language," it must be "clear what the ordinance as a whole prohibits." *Grayned*, 104 U.S. at 110. "[B]ecause we assume that

man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Id.* at 108. "Vague laws may trap the innocent." *Id.*

"It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits…" *Harris*, 564 F. 3d at 1311. Especially fatal is vagueness within *the definitions* of what, precisely, is prohibited. *Id*. (distinguishing void for vagueness cases based on critical distinction of whether the parties cited "any vagueness in the definition of the prohibited conduct.").

It is the definitions (and lack thereof) which are at issue here and create uncertainty as to what is prohibited and what is allowed.

As set forth in Section III *supra*, a property owner undeniably has a right to build a *balcony* or a *deck* on his roof in excess of 225 square feet, as well as an *open air feature* in excess of 225 feet provided it is not "an integral part of the principal structure." However, the Code provides no guidance, context, or definitions as to what makes a particular feature a *deck* or *balcony* rather than an *open air feature*; or what makes a feature *an integral part of the principal structure*.

Like the text of the Code, the plain meaning of the terms is totally unhelpful, as discussed in Part III above. A scenic rooftop feature like Plaintiff's proposed feature here meets the plain English definition of both *balcony* and *deck*, and a reasonable person could not be blamed for expecting such a feature would not be subject to any size limitation. That conclusion is only bolstered by the separate definition of *floor area*, which expressly provides that *balcony* and *deck areas* will not be counted when calculating floor areas under the Code. Likewise, as described in Part III above, the plain meaning of the term "integral" is of no aid in understanding when or why a scenic rooftop viewing area might be deemed an *integral part of the principal structure*.

Taken as a whole, even when aided by the plain meanings of the terms in question, the Code simply does not allow a person building a home to distinguish roof decks, rooftop balconies, open air features which are *not* an integral part of a principal structure, and open air features which *are* an integral part of a principal structure. For failing to provide notice as to what is prohibited and what is permitted, the Ordinance is void for vagueness as drafted.

Second Consideration: the Risk of Ad Hoc, Subjective, and Discriminatory Enforcement

"Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them." *Grayned* at 108. "A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Id*.; *Harris*, 564 F. 3d at 1311. That is, a law may "authorize[] or even encourage[] arbitrary and discriminatory enforcement." *Wollschlaeger*, 848 F. 3d 1293, 1319 (11th Cir. 2017).

A law may not "leave[] determination of what is legal behavior to the unfettered and arbitrary discretion of the individual person in authority…" *Gardner v. Ceci*, 312 F. Supp. 516, 518 (E.D. Wis. 1970). Such a law "does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat." *Id.*

Critical to this Motion, a finding that a law violates Due Process does not require that the government actually exercise its unfettered discretion in an arbitrary and capricious manner but, rather, it merely requires that the challenged law create such an opportunity. *Sears, Roebuck & Co. v. Forbes/Cohen Fl. Properties, L.P.*, 223 So. 3d 292, 301 (Fla. 4th DCA 2017) ("For a government policy to be unconstitutional, it is not necessary that the record reveal that the governing body or its members have in fact acted capriciously or arbitrarily. It is the opportunity,

not the fact itself, that will render an ordinance vulnerable."); *see also Drexel v. City of Miami Beach*, 64 So. 2d 317 (Fla. 1953).

Sears Roebuck, decided by Florida's Fourth District Court of Appeal, is especially compelling here, invalidating a local land use law because it placed unbridled discretion in the hands of the local government. *Id.* While *Sears Roebuck* is a State Court decision, it applied federal Due Process jurisprudence and is analogous factually and analytically to the present case.

Sears Roebuck involved a local law that required certain tenants to obtain city approval before subdividing their rental spaces, "but fail[ed] to identify any standards or criteria that would govern when approval is to be granted or withheld." 223 So. 3d at 302. "The [law], in other words, grant[ed] the City…unbridled discretion in the matter." *Id.* The Court deemed the law violative of Plaintiff's substantive Due Process rights. *Id.*

Like in *Sears Roebuck*, the Ordinance here vests the Town with unbridled, unfettered discretion to apply the Ordinance on an ad hoc basis – namely, the subjective discretion to decide 1) whether a rooftop feature is "an open air…feature" rather than a roof deck or rooftop balcony; and 2) whether a rooftop feature is "an integral part of the principal structure." In both respects, Town officials possess the unfettered discretion to decide when, why, and on what terms a scenic rooftop viewing area will be permitted to exceed 225 square feet. Such "standardless and discriminatory determination only lends itself to the mischief associated with an unconstitutionally vague statute that allows for arbitrary and discriminatory enforcement." *Florida Decides Healthcare Inc. v. Byrd*, 785 F. Supp. 3d 1086, 1103 (N.D. Fla. 2025).

The second void for vagueness element, just like the first, is violated here and the Ordinance should be deemed void for vagueness as drafted.

b. <u>To Withstand Plaintiff's Challenge Here, the Town Must Offer Some Fair Construction of the Ordinance which is Readily Apparent on its Face and which Does not Require the Court to Re-Write the Law With New Terms</u>

When analyzing a void for vagueness claim as to a local ordinance or state law, principals of Federalism caution that a federal court should not attempt to re-write the law but, rather, evaluate whether a fair construction is readily apparent from the face of the law. *Florida State Conference of Branches and Youth Units of NAACP v. Byrd*, 680 F. Supp. 3d 1291, 1315 (N.D. Fla. 2023). This presents a markedly different analysis than when a court analyses a *federal* statute:

> "[A] Court has a duty to construe statues as constitutional if it can. However, the nature of th[e] Court's duty to narrowly construe a challenged statute varies depending on whether the challenged statute is state or federal law. When a federal law is at issue, [a] Court has a duty to avoid constitutional difficulties by [adopting a limiting construction] if such a construction is fairly possible…If, on the other hand, a state law is at issue, th[e] Court cannot adopt a narrowing construction…unless such a construction is reasonable **and** readily apparent…
>
> **So, the question before th[e] Court is not whether there is any reading that would render the statute constitutional. Nor is it whether there is a possible, plausible, or simply reasonable reading that would render the statute constitutional. Instead, the question is whether there is a constitutional reading of the statute that is both *reasonable* and *readily apparent* and, thus, does not require th[e] Court to rewrite the statute."**

Id. at 1315 (emphasis added); *Dimmitt v. City of Clearwater*, 985 F. 2d 1565, 1572 (11th Cir.1993) ("[A]s a federal court, we must be particularly reluctant to rewrite the terms of a statute."). No defensible reading of the Ordinance can be discerned from the text here.

c. <u>Affirmative Defenses</u>

The Town's Answer includes paragraphs numbered 170-186, which are not labeled as affirmative defenses but appear intended to function as such. All of those arguments are insufficient to foreclose Plaintiff from obtaining judgment on the pleadings as to Count I.

Paragraphs 170, 171, 172, and 177 of the Answer: Overlapping Arguments of Ripeness, Standing, Exhaustion of Remedies, and Finality

In overlapping arguments, the Town argues four (4) separate times that Plaintiff's action is premature because Plaintiff did not pursue this action before the Town Council and a mere staff denial lacks *finality*. Paragraphs 170 and 171, respectively, couch that argument in terms of ripeness and standing. [ECF 44 ¶¶ 170-171] The Town then reframes the prematurity argument again through language of *exhaustion*, arguing Plaintiff did not exhaust its remedies. [ECF 44 ¶ 172] Finally, the Town reframes the prematurity argument a fourth time by arguing that Plaintiff was required to pursue its case to a *final decision maker*, i.e. the Town Council. [ECF 44 ¶ 177] The Town previously raised all four of those arguments in its Motion to Dismiss the Complaint. All are unsupportable as a matter of law.

Regardless of the phraseology utilized by the Town, the Town's prematurity arguments all fail for the same reason: "[A] property owner's rights are violated the moment a governmental decision affecting his or her property has been made in an arbitrary and capricious manner…" *Doty v. City of Tampa*, 947 F. Supp. 468, 472 (M.D. Fla. 1996). The requisite degree of injury, i.e. finality, occurs the moment that "the **initial decisionmaker** has arrived at a definitive position on the issue that inflicts an actual, concrete injury …" *Doty*, 947 F. Supp. at 472 (emphasis added). That rule is equally applicable when the argument is framed as a question of ripeness or exhaustion of remedies. *Doty*, 947 F. Supp. at 471 (holding that neither finality, nor exhaustion, nor ripeness bars a plaintiff's right to challenge a facially unconstitutional law once there has been an initial decision by an initial decision maker).

Here, the Code vests the Town staff with authority to review permit applications, providing that "single family detached dwellings…[are] subject to review only by the town planning and zoning department." *See* section 34-268. Town staff reviewed the application and denied it, issuing

a denial letter which stated: "Staff has **completed its review** of [your] plans…Tower features are limited to 225 square foot [sic] area limit, per Section 34-268. The proposed appears to exceed this limit." Compl., Ex. C [ECF 1-3] (emphasis added). The requisite degree of action by the Town staff – the initial decision maker - is sufficient as a matter of law.

The separate but related concept of "final decision-making authority," as addressed in the Town's paragraph 177, is also no bar here. The Town cites *Monnell v. Dept. of Social Services*, 436 U.S. 658 (1978) for the proposition that a plaintiff must show action by a "final decision maker" or "final policy maker" before bringing a constitutional challenge. However, the Town misreads *Monnell*, which only requires a plaintiff to show action by a final decision maker or final policy maker when challenging an **unofficial custom** of the defendant; that requirement is wholly inapplicable when a plaintiff challenges an **official policy** like a legislative enactment. *Chabad Chayil, Inc. v. Sch. Bd. Of Miami-Dade Cnty.*, 48 F. 4th 1222, 1229 (11th Cir. 2022) (analyzing *Monnell* and explaining: "a plaintiff can establish municipal liability [by] identifying an official policy…or…identifying a municipal official with final policymaking authority… Chabad does not contend that [the defendant] has an official policy…"); *see also Monnell*, 436 U.S. at 690-691 (distinguishing "official policy" from a "custom [which] has not received formal approval…").

Here, Plaintiff has challenged an official policy – a legislative enactment. The concept of a final policy maker is simply not germane, and Plaintiff was sufficiently aggrieved the moment "the initial decisionmaker" – the Town staff - arrived at its decision. *Doty*, 947 F. Supp. at 472.

Paragraph 173: No Constitutional Harm

Paragraph 173 asserts Plaintiff "has not asserted a constitutional harm, a constitutional injury, an infringement of a liberty interest, or the infringement of another fundamental right…" [ECF 44 ¶ 173] The Town previously raised this same argument in its Motion to Dismiss, arguing

this case involves a land use matter implicating only State created rights and not constitutional rights. That argument fails because this action involves a challenge to a legislative act – the Ordinance as drafted. As explained by the Eleventh Circuit Court of Appeals:

> To th[e] general rule that 'areas in which substantive rights are created only by state law are not subject to substantive due process protection,' there is an exception…: Where an individual's state-created rights are infringed by legislative act, the substantive component of the Due Process Clause generally protects him from arbitrary and irrational action by the government.

Lewis v. Brown, 409 F. 3d 1271, 1273 (11th Cir. 2005); see also *Dibbs v. Hillsborough County*, 67 F. Supp. 3d 1340, 1352 (M.D. Fla. 2014) ("An exception to the general rule applies when an individual's state created rights are infringed by legislative act.").

Paragraphs 174 and 175: Failure to State a Claim

Paragraph 174 asserts the Complaint "fails to state a claim" because "No controversy now exists as to the Plaintiff's rights to procedural due process…" Plaintiff's Complaint does not contain any cause of action for violation of procedural due process and the Town's Paragraph 174 is wholly inapplicable here.

Similarly, Paragraph 175 asserts "The Complaint fails to state a valid claim. No equal protection claim exists." Plaintiff's Complaint does not contain any cause of action for violation of equal protection and Paragraph 175 is wholly inapplicable.

Paragraph 176: Lack of Jurisdiction

The Town's Paragraph 176 argues "The Court lacks jurisdiction to issue relief because the Complaint does not frame a valid federal claim." For the reasons already discussed *supra* the Ordinance is void for vagueness, presenting a federal claim grounded in due process.

Paragraph 178: Denial that Ordinance is Vague on its Face

The Town's Paragraph 178 is a mere denial, denying that the Ordinance is unconstitutionally vague. A mere denial is not an affirmative defense. *E.g. Dionisio v. Ultimate Images, Inc.*, 391 F. Supp. 3d 1187, 1193 (S.D. Fla. 2019). Moreover, the Town's denial fails here based on the plain language of the Ordinance as discussed *supra*.

Paragraph 179: Greater Tolerance Doctrine

The Town's reliance on the greater tolerance doctrine, the notion that courts should tolerate more vagueness in a civil law than a criminal law, is misplaced here. While it is true that criminal laws are held to an even more exacting standard than civil laws, the void for vagueness standard described *herein* represents a minimum standard of due process and is not limited to criminal laws. *Ross v. Orlando*, 141 F. Supp. 2d 1360, 1364 (M.D. Fla. 2001) ("The vagueness doctrine applies to non-legislative enactments and those that do not carry criminal penalties."); *Boyce Motor Lines v. United States*, 342 U.S. 337 (1952). As explained by Justice Gorsuch, the greater tolerance doctrine does not excuse a violation of the minimum level of due process – even in a civil context:

> What degree of imprecision should this Court tolerate in a statute before declaring it unconstitutionally vague? For its part, the government argues that where (as here) a person faces only civil, not criminal, consequences from a statute's operation, we should declare the law unconstitutional only if it is 'unintelligible.' But in the criminal context this Court has generally insisted that the law must afford ordinary people fair notice of the conduct it punishes. And I cannot see how the Due Process Clause might often require any less than that in the civil context either.
>
> First principles aside, the government suggests that at least this Court's precedents support adopting a less-than-fair-notice standard for civil cases. But even that much I do not see…This Court has made clear…that due process protections against vague laws are 'not to be avoided by the simple label a State chooses to fasten upon its conduct or its statute.' *Giaccio v. Pennsylvania,* 382 U.S. 399, 402 (1966). So the happenstance that a law is found in the civil or criminal part of the statute books cannot be dispositive…[T]he Court has sometimes 'expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe.' But to acknowledge these truisms does

> nothing to prove that civil laws must always be subject to the government's emaciated form of review….
>
> Today's 'civil' penalties include confiscatory rather than compensatory fines, forfeiture provisions that allow homes to be taken, remedies that strip persons of their professional licenses and livelihoods, and the power to commit persons against their will indefinitely. Some of these penalties are routinely imposed and are routinely graver than those associated with misdemeanor crimes—and often harsher than the punishment for felonies. And not only are 'punitive civil sanctions ... rapidly expanding,' they are 'sometimes more severely punitive than the parallel criminal sanctions *for the same conduct*….' Given all this, any suggestion that criminal cases warrant a heightened standard of review does more to persuade me that the criminal standard should be set *above* our precedent's current threshold than to suggest the civil standard should be buried *below* it.

Sessions v. Dimaya, 584 U.S. 148, 175–85, (2018) (Gorsuch concurring) (citations and quotations omitted) (emphasis in original).

Paragraph 180: Rational Basis Scrutiny

Paragraph 180 argues the Ordinance should be subjected only to rational basis scrutiny, an argument which the Town previously raised in its Motion to Dismiss. However, the rational basis test is inapplicable because it is the text of the Ordinance, not the purpose, which is at issue here. A defendant's claim that a law has a plausibly rational purpose does not save a law which is textually insufficient to satisfy due process. *E.g. Sears, Roebuck & Co. v. Forbes/Cohen Fl. Prop., L.P.*, 223 So. 3d 292, 301 (Fla. 4th DCA 2017) ("The City argues that it had a rational basis…[However,] [a]lthough the interests described may be a legitimate government interest, the [law's] total lack of guidance would allow for arbitrary and capricious enforcement…"). The controlling standard here is not the rational basis test but, rather, the void for vagueness analysis discussed throughout.

Paragraphs 181-182: The Town Argues the Ordinance Does Not, in Fact, Create a Risk of Arbitrary Application and Enforcement

Paragraphs 181 and 182 merely deny that the Ordinance is constitutionally suspect, asserting the Ordinance does not, in fact, create a risk of arbitrary enforcement. Such arguments

amount to mere denials of liability and are squarely foreclosed by the plain language of the Ordinance as discussed *supra*.

Paragraphs 183-184: Various Equitable Doctrines

In a conclusory manner, the Town's Paragraphs 183 and 184 list ten (10) different equitable and legal doctrines: unclean hands; inequitable conduct; issue preclusion; res judicata; collateral estoppel; equitable estoppel; judicial estoppel; estoppel by judgment; waiver; and merger. The entire conclusory list of doctrines is based on the same immaterial factual argument, which states in pertinent part that "The issues raised in the Complaint were litigated previously in a code enforcement action and determined with finality in favor of the Defendant…The circumstances include the participation of the Plaintiff's principle [sic] in the prior code enforcement matter…"

The fact that an individual, who now holds an interest in the Plaintiff entity, has previously been cited by Code Enforcement officers in Juno Beach has no bearing whatsoever on the pending Motion, which challenges the constitutionality of a local law as drafted. Indeed, as stated by this Court in its Order dated January 12, 2026, "[Plaintiff's] principals are not parties to this suit…" [ECF 42, p. 7 (*citing Ezeamama v. In re Estate of Chibugo*, 390 So. 3d 189, 191 n. 4 (Fla. 3d DCA 2024) ("[A]n LLC is an entity separate from its members[.]")]

Paragraph 185: Laches

In Paragraph 185, the Town argues Plaintiff's action is "time barred or barred by laches [because] the Plaintiff acquired title on or about June 28, 2021 and waited more than four years before filing suit." The Town's timeliness argument here is almost unbelievable given that the Town has separately argued in Paragraphs 170-172 that this action *remains premature*. More importantly, however, Plaintiff's injury occurred when the Town issued its denial letter on June 23, 2025.

Paragraph 186: Sovereign Immunity

The Town's Paragraph 186 alleges the Town "is entitled to sovereign immunity…with respect to any potential claim for damages under state law." Plaintiff has not sought damages here and Paragraph 186 is squarely inapplicable to this action as pled.

VI. CONCLUSION

For the foregoing reasons, the Court should grant judgment on the pleadings as to Count I.

VII. REQUEST FOR HEARING

In accordance with S.D. Fla. L.R. 7.1(b), Plaintiff requests a hearing of one (1) hour to present the issues discussed herein. Oral argument will be helpful to the Court given the already-convoluted nature of the Tower Ordinance itself, including the conflicting provisions and circularity within it. Moreover, the Constitutional case law discussed herein, as it applies to the questions of statutory construction here, is extensive and often complex. Oral argument will aid the Court in evaluating and analyzing the extensive legal framework at issue.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant Plaintiff's Motion for Judgment on the Pleadings as to Count I; hold that the Ordinance is void for vagueness as drafted; reserve jurisdiction to consider remaining issues including Plaintiff's right to recover attorneys' fees and costs; and award any other and further relief the Court deems appropriate.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing is being filed with the Clerk of Court and served this 9th day of February 2026 via the CM/ECF portal on the following counsel of record:

Service List

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