

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT, IN AND FOR ORANGE
COUNTY, ORLANDO, FLORIDA

CASE NO.:

WILDE CYPRESS BRANCH, BOGGY
BRANCH, CROSBY ISLAND MARSH,
LAKE HART, LAKE MARY JANE AND
ALL OTHER AFFECTED ORANGE
COUNTY WATERS; AND CHARLES
O'NEAL, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF SPEAK UP WEKIVA,
INC. ON BEHALF OF THE WATERS OF
ORANGE COUNTY,

Plaintiffs,

v.

BEACHLINE SOUTH RESIDENTIAL,
LLC, AND NOAH VALENSTEIN, IN HIS
OFFICIAL CAPACITY AS SECRETARY
OF THE FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Defendants,

_____ /

COMPLAINT

Plaintiff, CHARLES O'NEAL ("O'Neal") through undersigned counsel, files this Complaint, individually in his official capacity as President of Speak Up Wekiva, Inc., and on behalf of Wilde Cypress Branch, Boggy Branch, Crosby Island Marsh, Lake Hart, Lake Mary Jane and all other affected Orange County Waters, against Defendants, BEACHLINE SOUTH RESIDENTIAL, LLC. ("Beachline"), and NOAH VALENSTEIN ("Valenstein") in his Official Capacity as Secretary of the Florida Department of Environmental Protection.

Plaintiff seeks declaratory and injunctive relief, specifically declarations that Defendant Beachline's proposed "Meridian Parks Remainder" development violates Section 704.1 of the

Orange County Charter, and further to enjoin Defendant Valenstein, in his official capacity as Secretary of the Florida Department of Environmental Protection (“Florida DEP”) from issuing wetlands dredge and fill permits to Defendant Beachline for the Meridian Parks Remainder development under Section 404 of the federal Clean Water Act (“CWA”), as delegated to the Florida DEP. Plaintiff further seeks a declaration that Defendant Valenstein, in his official capacity as Secretary of Florida DEP, be required to apply Orange County Charter Section 704.1 before issuing any wetlands dredge and fill permits under Section 404 for any proposed development in Orange County.

Parties

1. Plaintiffs Wilde Cypress Branch, Boggy Branch, Crosby Island Marsh, Lake Hart and Lake Mary Jane are Waters of Orange County and thereby possess rights as defined in Orange County Charter Section 704.1 A.

2. Plaintiff O’Neal is an adult resident of Orange County and has resided in Orange County for more than a year and is otherwise sui juris. He brings this action in his official capacity as President of Speak Up Wekiva, Inc., a water protection organization. Plaintiff thus has standing to bring this action under Section 704.1 (B) of the Orange County Charter.

3. Defendant Valenstein is the Secretary of the Florida Department of Environmental Protection and is sued in his official capacity.

4. Defendant Beachline is a limited liability company which is engaged in land development, and has a principal address of 4901 Vineland Road, Suite 450, Orlando, Orange County, Florida 32811.

Jurisdiction and Venue

5. This Court has jurisdiction to adjudicate this case pursuant to §§ 86.011 and 86.021, Florida Statutes, as this is an action for declaratory judgment.

6. Orange County, Florida is a proper venue pursuant to § 47.011, Florida Statutes, as the cause of action accrued in Orange County, and Defendant Beachline has a principal place of business in Orange County.

7. The amount in controversy in this matter is greater than \$30,000.00, excluding costs and attorney's fees.

Facts Giving Rise to Complaint

Orange County Charter Section 704.1

8. Orange County, Florida is a charter county under Article VIII, Section 1 (g) of the Florida Constitution.

9. The Orange County Charter, Article VII, Section 702, provides that a Charter Review Commission ("CRC") shall be appointed by the Board of County Commissioners and serve a four-year cycle. The Orange County Charter provides that the CRC may, during its term, place proposed amendments and revisions of the Charter on the ballot at general elections. Such amendments or revisions do not require the approval of the Board of County Commissioners.

10. On or about June 21, 2019, Plaintiff, individually and on behalf of Speak Up Wekiva, filed a proposed Orange County Charter Amendment initially titled "the Right to Clean Water".

11. On July 10, 2019, in a duly noticed public hearing, the full Orange County Charter Review Commission voted to create a committee of commissioners to study the proposed Right to Clean Water amendment and to make a recommendation on whether it should be approved by the full commission. The assigned committee consisted of five members: a retired NASA engineer, three attorneys, and a marine biologist who is a biology professor at the University of Central Florida.

12. Over the next seven months, the Right to Clean Water committee met eleven times, heard public comment, and reviewed extensive literature including facts demonstrating that the Wekiva River and Econlockhatchee River, as well as many other Orange County water bodies including Lake Apopka, were deteriorating and, in fact, classified by the Florida Department of Environmental Protection as "impaired." The committee further heard testimony and received evidence that the conditions of the two rivers and Orange County water bodies—including wetlands-- generally were declining and unsustainable.

13. The committee also heard testimony and received evidence that although these Orange County rivers and water bodies were ostensibly protected by multiple state statutes and regulations, these state laws failed to stop or even meaningfully slow the deterioration of these water bodies, regardless of Article II, Section 7 of the Florida Constitution which requires that "Adequate provision shall be made by law for the abatement of air and water pollution." The committee found that adequate provision had not been made by the State to protect its water bodies. During these meetings there was extensive discussion and revision of the proposed amendment language. All of the meetings were attended by the Charter Review Commission legal counsel, who participated extensively in the crafting of the final Right to Clean Water proposed amendment.

14. On January 20, 2020, the Right to Clean Water committee approved a final version of the amendment, now titled "Section 704.1—Right to Clean Water, Standing and Enforcement," and unanimously voted that the final amendment language be recommended favorably for passage by the full Charter Review Commission.

15. On March 4, 2020, in a duly noticed public meeting, the full Orange County Charter review commission voted 9-5 in its second and final reading of the language to approve the amendment and place it on the November 3, 2020 ballot in Orange County.

16. On November 3, 2020, the voters of Orange County overwhelmingly approved the amendment by a margin of 89.2%.

17. The complete text of the new charter provision, Article 7, Section 704.1, is as follows:

Section 704.1 – Right to Clean Water, Standing and Enforcement.

A. Natural Rights of Orange County Waters and Citizens.

(1) The Wekiva River and Econlockhatchee River, portions of which are within the boundaries of Orange County, and all other Waters within the boundaries of Orange County, have a right to exist, Flow, to be protected against Pollution and to maintain a healthy ecosystem.

(2) All Citizens of Orange County have a right to clean water by having the Waters of Orange County protected against Pollution.

B. Standing, Private Right of Action.

Orange County, municipalities within Orange County, any other public agency within Orange County, and all Citizens of Orange County shall have standing to bring an action in their own name or in the name of the Waters to enforce the provisions of this Section of the Charter. Such actions shall be filed in the Ninth Judicial Circuit Court in and for Orange County, Florida, or, where jurisdiction exists, in the United States District Court, Middle District of Florida, Orlando Division.

C. Violations.

It shall be unlawful and a violation of this Section of the Charter for any governmental agency, non-natural person or corporate entity to intentionally or negligently pollute the Wekiva River and Econlockhatchee Rivers within the boundaries of Orange County, or any other Waters

within the boundaries of Orange County. Violations include the Pollution of Waters which exist exclusively on private property owned by the same person(s) or entity, but only where Pollution thereon interferes with or causes Pollution of other Waters within Orange County or unreasonably interferes with or is injurious to the health and welfare of others. This Section of the Charter applies only to violations that occur after the effective date of the amendment as provided in Subsection (H).

D. Remedies.

(1) Remedies for violations of this Section of the Charter shall be injunctive and/or other equitable relief, including but not limited to a writ of mandamus requiring the violator, to the greatest extent reasonably possible, to restore the Waters at issue to the condition as it existed prior to being polluted by the violator. The prevailing party shall be entitled to recover its reasonable costs, including costs of expert witnesses.

(2) Attorneys' fees are not compensable unless the court determine that the action brought under this Section of the Charter is frivolous, vexatious, or is brought solely for the purpose of harassing the defendant. If such a finding is made, the Court may also award reasonable attorneys' fees to the defendant as a sanction.

E. Exception.

The provisions of the Section shall not apply to Constructed Wetlands.

F. Definitions.

(1) "*Citizen*" or "*Citizen of Orange County*" means an adult resident of Orange County with legal residence in the United States who has resided within the county for at least one (1) year prior to filing an action under this Section.

(2) “*Constructed Wetland*” means a non-natural swimming pool and any artificial wetland that uses natural processes involving wetland vegetation, soils, and their associated microbial assemblages to treat domestic wastewater, industrial water, greywater or stormwater runoff, to improve water quality.

(3) “*Flow*” shall have the same meaning as in FLA. STAT. Sec 373.042.

(4) “*Pollutant*” means any substance or contaminant, whether manmade or natural, that is the source or cause of Pollution.

(5) “*Pollution*” shall have the same meanings as in FLA. STAT. §376.031(17) and Rule 62-520.200(15), Florida Administrative Code, and means the non-natural presence in the Waters of Orange County of any one or more substances, contaminants, noise, or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animals, fish, plant life, and water quality or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(6) “*Waters*” shall have the same meaning as in Rule 62-520.200(25), Florida Administrative Code, and includes, but is not limited to rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water within the boundaries of Orange County, including fresh, brackish, saline, tidal, surface or underground waters. Waters owned entirely by one person or entity are included, but only to the extent the pollution thereon interferes or is injurious to other Waters, property or persons within Orange County.

G. Severability and Conflicts.

The rights and violations provided herein should be interpreted, to the greatest extent possible, in harmony with any superior state or federal law governing the same rights and conduct. To the extent any provision of this Section of the Charter impermissibly conflicts with any superior

state or federal law governing the same conduct, such provision shall be severable, and all other provisions shall remain fully enforceable.

H. Effective Date.

This amendment shall become effective upon passage, which is the date certified by the Supervisor of Elections and shall not require further enabling legislation by the Orange County Board of County Commissioners.

The Meridian Parks Remainder Project

18. On or about November 9, 2020, Defendant Beachline applied to the United States Corps of Engineers for a wetlands dredge and fill permit, Permit Application Number 2020-1109-SAJ-2016-00317 (SP-JSC).

19. On or about January 8, 2021, Defendant Beachline transferred the Permit Application Number 2020-1109-SAJ-2016-00317 (SP-JSC) from the United States Army Corps of Engineers to the Florida Department of Environmental Protection (FDEP). The FDEP Application Number is 0396955-001.

20. Specifically, this permit application requests authorization for Defendant Beachline to fill in approximately 115 acres of Orange County waters for the construction of a mixed-use residential and commercial retail development on approximately 1,923 acres in east Orange County. According to Defendant's application, the proposed development site includes 136.72 acres of Wetland Forested Mixed (630) FLUCFCS classification; 8.22 acres of Freshwater Marsh (641) FLUCFCS classification; and 3.01 acres of Wet Prairie (643) FLUCFC classification.

General Assertions

21. The Meridian Parks Remainder Application violates the rights of the plaintiff water bodies to exist by proposing to dredge and fill 63.23 acres of wetlands on the subject property in order to build houses and commercial development. The stated purpose for doing so is "to achieve

the desired number of lots to make a viable product.” The proposed development would end the existence of these wetlands which “are generally recognized as significantly influencing or positively contributing to the general overall environmental health of vitality of the entire ecosystem of the region.” The proposed development violates the right to exist of the Crosby Island Marsh, Lake Hart and Lake Mary Jane by cutting off and/or restricting the sufficient flow of clean water into these protected bodies of water.

22. The Meridian Parks Remainder Application violates the rights of the plaintiff water bodies to flow by dredging and filling 33.27 acres of streams and wetlands for the purpose of building roadways within the development. This construction of earthen dams crossing streams and wetlands prevents the natural flow of water from the Wilde Cypress Swamp and Boggy Branch on the North to the Crosby Island Marsh and thereby Lake Hart and Lake Mary Jane to the South. This obstruction of flow would similarly impact the rights of the Crosby Island Marsh, Lake Hart and Lake Mary Jane to flow southward into the Kissimmee River.

23. The Meridian Parks Remainder Project Application violates the rights of Orange County Waters to be protected against Pollution by filling 18.84 acres of wetlands to build stormwater ponds. The construction of these ponds in close proximity to the plaintiffs Wilde Cypress Branch and Boggy Branch will pollute both water bodies with chemicals accruing in the stormwater ponds and migrating into the streams and wetlands through the surficial aquifer. Likewise, roadways constructed near these two streams will discharge polluted stormwater into the streams and wetlands thereby violating their right to be protected against pollution. The combined impact of runoff from rooftops and roadways will cause downstream pollution in the Crosby Island Marsh, Lake Hart and Lake Mary Jane - all of which eventually flow into the Kissimmee River, and thus end up polluting Lake Okeechobee, the St Lucie Estuary and the Caloosahatchee River.

24. The Meridian Parks Remainder Project Application violates the rights of Orange County Waters to maintain a healthy ecosystem by disrupting the delicate ecological balance between Wilde Cypress Branch, Boggy Branch, Crosby Island Marsh, Lake Hart and Lake Mary Jane. All of these water bodies support numerous species of rare plant and animal life. The dredging, filling and construction of earthen dams for roadways crossing the streams, along with the placement of dense housing and commercial mini-malls in close proximity to these ecological treasures, would make it impossible for all of these water bodies to maintain a healthy ecosystem. The amount of roadway and rooftop pollutants coupled with the loss of wetlands to accommodate this massive man-made intrusion will essentially destroy the balance that each ecosystem has developed in Nature over thousands of years.

25 The proposed development would be north of Lake Hart and would affect waters of the United States associated with the Kissimmee River Hydrological Unit.

26. Multiple environmental groups provided formal objections to this project to the U.S. Army Corps of Engineers, including Orange Audubon Society, The Florida Native Plant Society, and Sierra Club Central Florida. These objections included that this project would negatively impact the Kissimmee River, as well as nearby Lake Hart and Lake Mary Jane, and that it would further negatively impact the surrounding ecosystems of these water bodies, including Moss Park, Isle of Pines Preserve, and Split Oak Forest Mitigation Park. These groups also noted about the effect of the project on migratory wetland birds, including the federally-designated threatened wood stork.

27. Further, Sierra Club Central Florida Group, in its objections filed December 18, 2020, specifically noted that the proposed wetlands impacts would violate Orange County Charter Section 704.1:

The Sierra Club believes the proposed wetland impacts violate Article 7 of the Orange County Charter, Section 704.1. This section provides for the rights to clean water, standing and enforcement and provides for the rights of Orange County waters to exist, flow, and to be protected against pollution and to maintain a healthy ecosystem. This section provides standing to bring an action in their own name or in the name of the waters to enforce the provisions in this section.

28. Effective December 22, 2020, the United States Environmental Protection Agency transferred to the Florida DEP the authority to issue wetland permits in Florida under Section 404 of the federal Clean Water Act.

29. On or about January 8, 2021, Defendant Beachline submitted a request to the Florida DEP to issue wetlands dredge & fill permits for its Meridian Parks Remainder development.

30. The wetlands, freshwater marsh and wet prairie described in paragraph 18 are “waters” within the definition of Orange County Charter Section 704.1 F. (6) and Rule 62-520.200 (25), Florida Administrative Code, which includes “all other waters or bodies of water within the boundaries of Orange County, including fresh, brackish, saline, tidal, surface or underground waters.”

31. Further, Lake Hart, Lake Mary Jane and portions of the Kissimmee River Hydrological Unit are in Orange County, and clearly encompassed within the definition of “Waters” in Section 704.1 F. (6).

32. As asserted below, dredging, filling, paving, and/or constructing over the waters within the Meridian Parks Remainder project would violate Section 704.1 A. (1) by impairing the right of these waters within the Meridian Parks Remainder proposed development, as well as the surrounding waters including Lakes Hart and Mary Jane, and portions of the Kissimmee River Hydrological Unit, to exist, flow, be protected from pollution and to have a healthy ecosystem.

33. Such dredging, filling, paving and/or constructing will further violate Section 704.1 A (2) by violating Plaintiff O'Neal and all Orange County citizens' rights to clean water by having these waters protected against pollution.

34. Additionally, the issuing of these permits by the Florida DEP would violate the public interest requirement of 33 CFR Section 320.4(a)(1), which provides that the decision to issue such permits must be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. The public interest concerning the subject waterways has already been determined in Orange County and that public interest is codified in Section 704.1 of the Orange County Charter, which prohibits the destruction, impairment of flow, pollution and damage to the ecosystems of these waters, some or all of which these permits would allow.

35. Moreover, issuing these permits violates 33 CFR Section 320.4(j) and (j)(2), which provide that the primary responsibility for zoning and land use matters rests with state, local and tribal governments. In this case Orange County Charter Section 704.1 clearly prohibits what the subject permits would allow.

36. Section 704.1 B. provides that any adult who has resided in Orange County for at least one year may bring an action in their own name or on behalf of the "waters" within Orange County, and Section 704.1 D. provides that these individuals may bring an action for "injunctive and/or other equitable relief."

COUNT 1: INJUNCTION UNDER SECTION 704.1 A (1)

37. Plaintiff restates and incorporates by reference paragraphs 1-36 above.

38. Irreparable harm will result to the Orange County waters within the proposed Meridian Parks Remainder, as well as the surrounding waters and their ecosystems described in Paragraphs 18-20, if an injunction is not granted in that, without the issuance of an injunction, the Florida DEP

will consider, and may approve, the subject CWA 404 wetlands permits discussed above. Such approval would result in the impairment of the flow of the subject waters, pollute the waters, harm their ecosystem, and/or destroy them, which would unquestionably violate Section 704.1 A (1).

39. The subject Orange County waters, through Plaintiff O'Neal, have a clear legal right to the requested relief, or, in other words, a substantial likelihood of success on the merits. The language of Section 704.1 A (1) is clear and unambiguous: these Orange County waters have the right to exist, flow, be protected from pollution, and not have their ecosystems harmed. There is no principled argument that the dredging, filling and/or construction over the subject wetlands and waters described above will not negatively affect their flow, cause them to be polluted, harm their ecosystems, and/or destroy them entirely.

40. Given the nature of this dispute, the Orange County waters do not have an adequate remedy at law. If the proposed development impacts the flow of these waters, their pollution, the damage to their ecosystems, and their potential destruction cannot be remedied by monetary damages or other relief.

41. The public interest will not be disserved by the granting of an injunction in this matter. Indeed, after a lengthy and deliberate charter review process with a large majority of the Orange County charter review commissioners voting in favor of Section 704.1, the voters of Orange County approved the charter amendment by a nearly ninety percent margin, showing the citizens' overwhelming desire to do something about the unrelenting destruction and degradation of Orange County waters.

WHEREFORE, Plaintiff, requests that this Court issue an injunction enjoining Beachline South Residential LLC from building the Meridian Parks Remainder Project and enjoining Defendant Valenstein from issuing the CWA 404 wetlands permits to Defendant Beachline.

COUNT 2: INJUNCTION UNDER SECTION 704.1 A (2)

42. Plaintiff restates and incorporates by reference paragraphs 1-36 above.

43. Irreparable harm will result to Plaintiff O’Neal and Orange County citizens if an injunction is not granted in that, without the issuance of an injunction, the Florida DEP will consider, and may approve, the subject wetlands permits discussed above. Such approval would result in the impairment of the flow of the subject waters described in Paragraphs 18-20, pollute these waters, harm their ecosystems, and/or destroy them, which would unquestionably violate Section 704.1 A (2), which provides that all Orange County citizens have a right to clean water protected from pollution.

44. Plaintiff O’Neal has a clear legal right to the requested relief, or, in other words, a substantial likelihood of success on the merits. The language of Section 704.1 A (2) is clear and unambiguous: all Orange County citizens, of which Plaintiff O’Neal is one, have a right to clean water protected from pollution. There is also no question that the subject waters and wetlands described in Paragraphs 18-20 are included in the Section 704.1 (6) definition of “Waters”. There is no principled argument that the dredging, filling and/or construction over the subject wetlands and waters described above will not cause some degree of pollution to these waters, and thus violate Section 704.1 A (2).

45. Given the nature of this dispute, Plaintiff O’Neal does not have an adequate remedy at law. If the proposed development is allowed to impact the flow of these waters, their pollution, the damage to their ecosystems, and their potential destruction cannot be remedied by monetary damages or other relief.

46. The public interest will not be disserved by the granting of an injunction in this matter. Indeed, after a lengthy and deliberate charter review process with a large majority of the Orange County charter review commissioners voting in favor of Section 704.1, the voters of

Orange County approved the charter amendment by a nearly ninety percent margin, showing the citizens' overwhelming desire to do something about the unrelenting destruction and degradation of Orange County waters.

WHEREFORE, Plaintiff, requests that this Court issue an injunction enjoining Beachline South Residential LLC from building the Meridian Parks Remainder Project and enjoining Defendant Valenstein from issuing the CWA 404 wetlands permits to Defendant Beachline.

COUNT 3: DECLARATORY JUDGMENT FOR VIOLATION OF SECTION 704.1 A. (1), ORANGE COUNTY CHARTER

47. Plaintiff restates and incorporates by reference paragraphs 1-36 above.

48. This is an action for declaratory judgment pursuant to § 86.011, Florida Statutes that Defendant Beachline's proposed wetlands' permits for Meridian Parks Remainder would violate Orange County Charter Section 704.1 A. (1) by violating the rights of the waters within and surrounding this proposed development, as described in Paragraphs 18-20, to exist, flow, be protected from pollution and to maintain a healthy ecosystem.

49. There is a bona fide, actual, present, and practical need for this declaration as Defendant Beachline has already requested Florida DEP to issue these permits, and if the permits are issued and the subject wetlands and waters are dredged, filled, paved and/or otherwise constructed upon, the environmental damage will be lasting and/or permanent.

50. The declaration deals with a present, ascertained, or ascertainable state of facts or present controversy as to a state of facts. Although Section 704.1 was passed on November 3, 2020, and became effective on the date of passage, there has been no acknowledgment by the Florida DEP that the Department intends to apply Section 704.1 in determining when a wetlands permit should be granted in Orange County.

51. Some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts. As specifically prescribed in Section 704.1 A (1), all Orange County waters have the right to exist, flow, be free from pollution, and to have a healthy ecosystem. These rights depend upon the court enforcing them through a declaratory judgment prohibiting the Florida DEP from granting permits which would impair the waters' flow, pollute the water, injure their ecosystems, and/or destroy them altogether.

52. 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. As discussed above, Section 704.1 A (1) provides that the waters of Orange County have a right themselves to exist, flow, be free from pollution, and to have a healthy ecosystem, and thus the waters themselves have an actual, present, adverse and antagonistic interest in this subject matter. Additionally, as discussed above, Section 704.1 B. provides that Orange County citizens have the right to bring actions in the name of Orange County waters, thus satisfying the requirement of a "person or persons" having an actual, present, adverse and antagonistic interest in the subject matter.

53. As discussed above, the antagonistic and adverse interests of the subject Orange County waters are all before the court by proper process and the relief sought is not merely the giving of legal advice before the courts or the answer to questions propounded from curiosity.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order declaring that Defendant Valenstein, in his official capacity as Secretary of Florida DEP, deny the permit applications of Defendant Beachline for the Meridian Parks Remainder development, along with an award of fees and costs, and granting such further relief as this Court deems just and proper.

COUNT 4: DECLARATORY JUDGMENT FOR VIOLATION OF SECTION 704.1 A. (2), ORANGE COUNTY CHARTER

54. Plaintiff restates and incorporates by reference paragraphs 1-36 above.

55. This is an action for declaratory judgment pursuant to § 86.011, Florida Statutes that Defendant Beachline's proposed 404 wetlands' permits for the Meridian Parks Remainder project would violate Orange County Charter Section 704.1 A. (2) by impairing the rights of Plaintiff O'Neal and Orange County citizens' right to have clean water protected from pollution.

56. There is a bona fide, actual, present, and practical need for this declaration as Defendant Beachline has already requested Florida DEP to issue these permits, and if the permits are issued and the subject wetlands and waters are dredged, filled, paved and/or otherwise constructed upon, the environmental damage will be lasting and/or permanent, and the rights of Plaintiff O'Neal and Orange County citizens will be affected.

57. The declaration deals with a present, ascertained, or ascertainable state of facts or present controversy as to a state of facts. Although Section 704.1 was passed on November 3, 2020, and became effective on the date of passage, there has been no acknowledgment by the Florida DEP that the Department intends to apply Section 704.1 in determining when a wetlands permit should be granted in Orange County.

58. Some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts. As specifically prescribed in Section 704.1 A (2), all Orange County citizens, including Plaintiff O'Neal, have a right to clean water protected against pollution. These rights depend upon the court enforcing them through a declaratory judgment prohibiting the Florida DEP from granting permits which would impair these waters' flow, pollute them, injure their ecosystems, and/or destroy them altogether.

59. 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. As discussed above, Plaintiff O'Neal is an adult resident of Orange County who has legally resided in Orange County for over a year, and thus has standing to bring this action under Section 704.1 B., and

further has a right under Section 704 A (2) to clean water in Orange County protected from pollution.

60. As discussed above, the antagonistic and adverse interests of the subject Orange County waters are all before the court by proper process and the relief sought is not merely the giving of legal advice before the courts or the answer to questions propounded from curiosity.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order declaring that Defendant Valenstein, in his official capacity as Secretary of Florida DEP, deny the permit applications of Defendant Beachline for the Meridian Park Remainder development, along with an award of fees and costs, and granting such further relief as this Court deems just and proper.

WHEREFORE, the Plaintiff, Chuck O'Neal sues the Defendants, BEACHLINE SOUTH RESIDENTIAL, LLC. ("Beachline"), and NOAH VALENSTEIN ("Valenstein") in his Official Capacity as Secretary of the Florida Department of Environmental Protection, for compensatory damages in an amount within the jurisdictional limits of this court, to-wit: in excess of THIRTY THOUSAND (\$30,000.00) DOLLARS, exclusive of interest and costs, and demands trial by jury.

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