

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

GERALD GAGLIARDI
and KATHLEEN MACDOUGALL

CASE NO: 16-CV-80195

Plaintiffs,

vs.

THE CITY OF BOCA RATON,
FLORIDA, a Florida Municipal
Corporation,

Defendant.

**FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF AND
INJUNCTIVE RELIEF, DAMAGES AND DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiffs, GERALD GAGLIARDI and KATHLEEN MACDOUGALL, (hereinafter "Plaintiffs"), by and through their undersigned attorney and files this their First Amended Complaint and sue Defendant, THE CITY OF BOCA RATON, FLORIDA. (hereinafter the "CITY" or "Defendant" or "Government") and allege as follows:

1. This Court has original jurisdiction over these claims pursuant to 28 U.S.C. §1331.
2. This Court has authority to grant the requested declaratory judgment pursuant to 28 U.S.C. §2201 and Fed. R. Civ. P 57.
3. This Court has authority to issue the requested injunctive relief pursuant to 42 U.S.C §1983 and Fed. R. Civ. P. 65.
4. This Court has authority to award attorneys' fees and costs pursuant to 42 U.S.C. §1983.

5. This Court has personal jurisdiction over the Defendant because the alleged incidents occurred within the district of this Court.

6. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. §1391.

STATEMENT OF JURISDICTION

7. This is an action for Declaratory and Injunctive relief seeking a declaration that the Defendant has been engaging in activities that have established and continue to establish religion contrary to the prohibition contained in the First Amendment of the United States Constitution, which is made applicable to the CITY through the Fourteenth Amendment to the United States Constitution. In addition, Defendant is violating Plaintiffs' constitutional rights to equal protection and to due process in the land use process through a preference for religion and by the CITY not following governing procedures and practices. This discriminatory preference, favoring one religious organization, violates the right of citizens--believers and non-believers alike--to government neutrality pursuant to the Equal Protection Clause of the Fourteenth Amendment. Defendant also has failed to apply the law of the CITY to the religious organization and created unconstitutional legal classifications and established a precedent that will require a preference for religious land use applicants in the future in order to treat all religious applicants neutrally following these unconstitutional actions. Thus, through the CITY action, a singular religious group has been provided promotion, endorsement, and secret reinforcement of its religion and its religious mission through the corrupt dealings of the CITY at the expense of Plaintiffs. Plaintiffs are forced to suffer

personal injury and pay for and endure such government promotion, endorsement, and reinforcement of a sectarian organization in violation of the First Amendment. Plaintiffs' rights under the Equal Protection and Due Process Clauses are also subject to a continuing constitutional violation.

8. Defendant is concurrently violating Plaintiffs' rights under Article I, §3 and Article I, §9 of the Constitution of the State of Florida.

PLAINTIFFS

9. Plaintiff, GERALD GAGLIARDI, is a citizen and resident of the United States, and resides and is domiciled in the City of Boca Raton, Palm Beach County, Florida. Plaintiff, GERALD GAGLIARDI, is a member of a Christian religion. Plaintiff, GERALD GAGLIARDI, resides at 801 West Fern Drive, Boca Raton, FL 33432. Plaintiff's residence is in a single-family residential area and is approximately 100 yards from the real property which is the beneficiary of the Defendant's unconstitutional acts. The area of Plaintiff's residence is known as Por La Mar and is part of the "Seaside Village" of the City of Boca Raton, more specifically referenced herein. Plaintiff, GAGLIARDI has resided in Por La Mar for 15 years.

10. Plaintiff, KATHLEEN MACDOUGALL, is a citizen and resident of the United States and resides and is domiciled in the City of Boca Raton, Palm Beach County, Florida. Plaintiff, KATHLEEN MACDOUGALL, is a member of a Christian religion. Plaintiff, MACDOUGALL, resides at 161 NW Wavecrest Court, Boca Raton, FL 33432. Plaintiff's residence is in a single-family residential area and is approximately 300 yards from the real property which is the beneficiary of the Defendant's unconstitutional acts.

The area of Plaintiff's residence is known as, Riviera and is part of the "Seaside Village" of the City of Boca Raton, more specifically referenced herein. Plaintiff, MACDOUGALL has lived in Riviera for a total of 18 years. The Riviera Civic Association is comprised of Por La Mar, Riviera and Sun & Surf and was established in the 1970's to safeguard the quality of life issues for the "Seaside Village".

11. Plaintiffs are taxpayers of the City of Boca Raton and the Federal government.

DEFENDANT

12. The Defendant, THE CITY OF BOCA RATON, is a municipal corporation existing under the laws of the State of Florida and is within the jurisdiction of this Court.

FACTS

13. The CHABAD of East Boca, Inc. (hereinafter "CHABAD") sought acquisition of residential properties in a residential area of the CITY known as the "Golden Triangle" for the stated purpose of building a synagogue.

14. The Golden Triangle is a residential neighborhood on the mainland of Florida where houses of worship are permitted as of right. The Golden Triangle is a predominantly residential neighborhood that was platted in 1925. There are two houses of worship in the Golden Triangle area and they are St. Gregory's Episcopal Church and the First United Methodist Church.

15. On or about 2007, the CHABAD was engaged, through a member, or its members, in a potential acquisition of residential properties in a residential area of the CITY known as the "Golden Triangle".

16. The CHABAD intended to assemble contiguous single-family residences for uses of religious purposes, including conducting religious services, operation of a religious school and other functions for the public consistent with the religious beliefs of the CHABAD.

17. The Golden Triangle area was, in 2007, zoned for single-family residences and was adjacent to a CITY Community Redevelopment project known as "Mizner Park." Mizner Park consisted of a mixture of high-end retail establishments, restaurants, and residential apartments and forms a major source of revenue for the CITY.

18. When the intentions of the CHABAD, as alleged in paragraph 17 herein, became known to the general public, opposition groups were formed by residents of the Golden Triangle residential area to voice objections to the CITY's permitting of the CHABAD's religious operations in their Golden Triangle neighborhood. Such opposition acts and conduct were motivated by religious animus together with a desire to protect the residential quality of the Golden Triangle neighborhood.

19. In late 2007, the CITY introduced Ordinance No. 5014 to allow "places of worship" as a permitted use in a single-family zoning district such as the Golden Triangle. At this time, the majority of places of worship were then located in single-family zoning districts but were not the subject of any land use restrictions in those districts. Ordinance No. 5014 would have allowed the CHABAD to introduce its full program of its religious activities into the Golden Triangle neighborhood, only subject to additional parking requirements as set forth in Ordinance No. 5014.

20. The Golden Triangle neighborhood input at public hearings, in the media, and in direct private conversations with elected officials of the CITY and the Golden Triangle opposition groups was extremely contentious in that the Golden Triangle residents expressed the desire to completely prohibit any and all CHABAD operations in their neighborhood.

21. The CITY was also concerned with the proposed location of the CHABAD being in close proximity to the CITY's Mizner Park project which was the venue of numerous public concerts and events and which was an attraction where the general public would stroll the sidewalks of Mizner Park, frequent outdoor dining and retail establishments.

22. The conflict which then existed between the Golden Triangle community, the CHABAD, and the City was the focus of much publicity and led to secret internal and nonpublic discussions between the CITY, CHABAD representatives and attorneys for the Golden Triangle residents and a local developer who was the owner of real property located at 770 Palmetto Park Road (hereinafter the "SEASIDE VILLAGE PROPERTY"), which is at issue in this case. The SEASIDE VILLAGE PROPERTY, at that time, was zoned B-1, which permitted construction of a "place of public assembly" with certain restrictions including very specific parking requirements and floor area ratios but did not permit construction of a "place of worship" such as the CHABAD.

23. The CHABAD, encouraged by and in private agreement with a developer and City officials, abandoned its plan to build in the Golden Triangle neighborhood, as a

result of pressure from the neighborhood residents, and instead identified property in the "Seaside Village."

24. The Seaside Village is the portion of Boca Raton that is on a barrier island with limited access from the mainland. Seaside Village is a high-hazard coastal area with increasingly frequent Intracoastal flooding according to the Federal government.

25. The CITY has characterized the area development of Seaside Village as a low-rise, mixed-use village with first-floor retail and residential above. The CITY has been intent on preserving historic buildings and the "Seaside Village" environment while the federal government has been involved in identifying it as a hazardous area with potential for flooding.

26. Palm Beach County follows FEMA guidelines as it relates to development within the floodplain, including any manmade changes to the land such as grading and extraction of soil for underground parking. With respect to the CHABAD complex, the CITY did not consider that the development may not increase flooding or create a dangerous situation on neighboring properties.

27. The project as imposed by the CITY has zero green space needed to absorb rain water, flooding is therefore inevitable even the slightest of storms can cause problems for the surrounding homeowners.

28. The Florida coast barrier island of which Seaside Village is a portion, runs along the Southeast Coast of Florida, from below Miami up to north of Stuart, Florida. It is an unbroken string that runs along the mainland. Each community has chosen the

character of the barrier island in its jurisdiction, from all-residential, to mixed residential and small restaurants and stores, to high rises and commercial development.

29. The communities along the Boca Raton barrier island share their paradise with beach lovers, cyclists, walkers, swimmers and surfers. The atmosphere is beach-oriented, casual, and relaxed. When one crosses the bridge from the SEASIDE VILLAGE PROPERTY to the mainland and Boca proper, the world reverts back to a faster pace, more intense development, construction, and traffic. In contrast to Seaside Village, including Riviera and Por La Mar, the Golden Triangle is part of that more urbanized area of the CITY.

30. The site chosen instead of the Golden Triangle neighborhood was real property located at 770 Palmetto Park Road, (the "SEASIDE VILLAGE PROPERTY"), which is a small vacant piece of land consisting of only 0.81 acres of developable property and that is approximately 400 feet from the Palmetto Park Road Intracoastal Waterway bridge.

31. The SEASIDE VILLAGE PROPERTY is accessible from the mainland via the Palmetto Park Road Intracoastal Waterway bridge which is considered an essential evacuation route for Seaside Village and the adjacent neighborhoods. The Palmetto Park Road Intracoastal Waterway bridge is approximately 400 yards from the residence of Plaintiff, MACDOUGALL and approximately 150 yards from the residence of Plaintiff, GAGLIARDI. The Spanish River Bridge is two miles north from the Plaintiffs' residences and will soon have increased congestion when a newly constructed I-95 access will open.

The Camino Real access is approximately one mile from the Plaintiffs' residences and requires crossing two bridges to access the mainland.

32. A1A, East Palmetto Park Road and the Palmetto Park Road bridge are owned and operated by both Palm Beach County and the State of Florida. The County was not informed of the exact scope of the CHABAD complex and therefore was unable to assess the likely impact of daily tour buses, school buses, catering vans, cars and pedestrians converging on this emergency access route.

33. The CHABAD has advertised its building project online under the name, "My Israel." During a March 2015 fundraiser, over 200 vehicles converged on the SEASIDE VILLAGE PROPERTY, snarling area traffic and requiring police assistance.

34. The CHABAD initially represented its building project as a "synagogue," but ultimately disclosed it would be a complex of uses including a proposed building, a college, state-of-the-art interactive public "museum," café, gift shop, day care, and offices.

35. The CHABAD's ambitious plan will produce more traffic and parking issues for the Por La Mar neighborhood and will burden access to the mainland where fire and emergency services are located, alter property values, and impose noneconomic damages on Plaintiffs by forcing them to find more convoluted and lengthier exits from Por La Mar and Riviera and increased impediments for emergency vehicles to get to the Por La Mar and Riviera neighborhoods in the event of personal emergencies or the flooding that is increasingly a problem for the barrier island and Seaside Village.

36. Fire Station 3 is located at 100 South Ocean Boulevard (A-1-A). Free access to East Palmetto Park Road and the Palmetto Park Road Bridge is essential.

37. The Boca Raton Seaside Village has two elements and three bridges: (a) on the south end, condominiums and high-rise buildings and (b) in the middle and north end, low-rise buildings including residential, restaurants, and stores, and open beach and parks. The SEASIDE VILLAGE PROPERTY was located in the latter area.

38. The SEASIDE VILLAGE PROPERTY is a small vacant piece of land consisting of only 0.81 acres of developable property. The surrounding areas of the SEASIDE VILLAGE PROPERTY consisted of small commercial structures averaging less than 20 feet in height and neighborhoods zoned for single-family residences adjacent to the SEASIDE VILLAGE PROPERTY. This area is commonly known as the "Seaside Village" of the City of Boca Raton. The CITY itself characterized the area development as a low rise nature that includes a mixed use village with first floor retail and residential above. In all, the CITY in 2006, was intent on preserving historic buildings and the "Seaside Village" environment. The proposed CHABAD complex did not meet this neutral community purpose and vision as proposed.

39. The most recent use of the SEASIDE VILLAGE PROPERTY was for a small French restaurant, which operated from an historic single 1920's family residence. The restaurant operated with 6700 square feet of commercial space for thirty years.

40. The restaurant operation had a de minimis effect on the immediate neighbors, including the Plaintiffs herein. The restaurant operated during the evening hours and had adequate parking and had a minimal traffic affect in the neighborhood.

41. In January 2008, the CITY through its City Council, based upon public opposition to Ordinance No. 5014, and despite having legal advice that Federal law and

existing land development law justified such Ordinance, declined to proceed with consideration of the previously introduced Ordinance No. 5014. On March 25, 2008, the CITY's manager stated at a public meeting of the CITY's Council that CITY staff was "working" on the issue of "places of worship" and that a report by the CITY's staff would be brought to the CITY's Council in May or June 2008.

42. On or about the same time as the CITY decided to defer action on Ordinance No. 5014, the CHABAD was concurrently engaged in discussion with the owner of the SEASIDE VILLAGE PROPERTY (hereinafter the "Developer") which discussions related to the potential construction of the CHABAD complex on the SEASIDE VILLAGE PROPERTY. At this time, however, the CHABAD, the Developer and the CITY were aware that the CHABAD could not be constructed on the SEASIDE VILLAGE PROPERTY due to the existing City zoning which prohibited "places of worship" and due to the intensity of the use the complex would impose on the Seaside Village next to the Palmetto Park Road Intracoastal Waterway bridge's access to the barrier island.

43. In a political act to placate and appease the residents of the Golden Triangle, to alleviate concerns of the CITY of impact of the CHABAD on Mizner Park, to financially benefit the developer of the SEASIDE VILLAGE PROPERTY, and to unconstitutionally advance and create a special privilege for the CHABAD, the CITY, through its Manager, ignored its required procedures and without regard to the constitutional rights of Plaintiffs, initiated a change of the Code of the CITY.

44. The CITY, through its Manager, directed its Planning and Zoning Staff (a/k/a the Development Services staff) to perform all work necessary, including staff reports and

staff recommendations to change by Ordinance the permitted use, of the SEASIDE VILLAGE PROPERTY to include "places of worship." This secretly planned change of permitted use, mandated to the CITY staff, was for the sole purpose to allow construction of the CHABAD's religious complex on the SEASIDE VILLAGE PROPERTY.

45. After the undisclosed agreement by the CITY for the CHABAD to abandon its plans to conduct religious activities in the Golden Triangle and Mizner Park area, the CHABAD and the CITY agreed, in private conversations, to construction of the CHABAD to be located at the SEASIDE VILLAGE PROPERTY.

46. With the secret directive given to develop a process outside the governing law to ensure that the CHABAD be allowed to build on the SEASIDE VILLAGE PROPERTY, CITY staff advanced the issue by composing new definitions for permitted "uses" under the definition of "Places of Public Assembly" as then contained in the CITY's Code of Ordinances.

47. On May 28, 2008, without the promised report regarding prior Ordinance No. 5014, without any public comment on Ordinance No. 5014, and without any discussion by the CITY's Council at a public meeting, or hearing, on the issue of "places of worship," the CITY introduced Ordinance No. 5040 which *limited* "places of worship" in a residential district (in other words, the opposite of previously proposed Ordinance No. 5014) and *added* "places of worship" in the City Code definition of "Places of Public Assembly" thus now prohibiting the CHABAD from building its religious complex in the Golden Triangle but allowing the CHABAD to be built on the SEASIDE VILLAGE PROPERTY. Ordinance 5040 was tailor-made for the CHABAD to benefit.

48. Public hearings on Ordinance No. 5040 were held by the CITY on July 22, 2008, August 26, 2008, September 8, 2008 and finally on September 9, 2008 at which time Ordinance No. 5040 was adopted by the CITY. At no time were the secret meetings and agreed-upon arrangements between the CITY, the Developer, and the CHABAD disclosed to the public, or to these Plaintiffs. Nor was their purpose to reconfigure CITY law by placing new restrictions in residential neighborhoods for houses of worship and expanding "uses" for houses of worship under "places of public assembly" disclosed to the public, or to these nearby neighboring Plaintiffs. Further, at no time was it disclosed to the public that the adoption of Ordinance No. 5040 was done for the primary purpose of advancing the religion of the CHABAD regardless of public safety and at the expense of Seaside Village, Riviera, and Por La Mar.

49. After the Plaintiffs' deprivation of due process and equal protection, and the CITY's violation of the Plaintiffs' First Amendment rights arising from the undisclosed agreement between the CITY, CHABAD, and the Developer, to change the permitted uses of the SEASIDE VILLAGE PROPERTY in September of 2008, it was still necessary for the CITY to continue to engage in conduct in violation of the Constitution. The CITY, to consummate its illegal, secret agreement with the CHABAD and the Developer, needed to grant numerous unlawful variances and favorable, intentional and erroneous interpretations of the CITY's Code in order to finally issue all necessary approvals to allow the construction of the CHABAD's religious project. In these acts, the CITY continued to grant the CHABAD numerous and special privileges in violation of Plaintiffs' constitutional rights of due process, equal protection, and rights arising under the First Amendment.

50. The continuing conduct of the CITY created ongoing constitutional violations.

51. After obtaining the illegal change of use on the SEASIDE VILLAGE PROPERTY through Ordinance No. 5040, the CHABAD filed applications to construct a two-story, 18,364 square foot "place of public assembly", (which now permitted a "place of worship") on the SEASIDE VILLAGE PROPERTY including the CHABAD's religious meeting area, religious display areas and parking structure. The first floor of the Complex was proposed to house a religious services area with seating capacity of 156 people, a chapel, social hall, children's playroom, kitchen and a bookstore/gift shop.

52. The second floor of the Building included additional seating for religious services and administrative offices. Also proposed on the second floor was a 5,967 square foot religious "exhibition area." The CHABAD complex application included, a requested variance to increase the height of the Building to 40 feet 8 inches, which exceeded the maximum allowable Building height of 30 feet on the SEASIDE VILLAGE PROPERTY.

53. The CHABAD proposed inadequate parking to suit the multiple needs in its application.

54. While the CHABAD introduced an intense, but smaller plan into the public process, online it sought to raise funds by outlining a much more ambitious plan to become an attraction entitled "My Israel."

55. CITY mandated parking requirements exceeded the inadequate parking proposed by the CHABAD application. A variance for parking and access to the CHABAD

was granted by the CITY. The Building and improvements of the religious structure now encompassed 95% of the SEASIDE VILLAGE PROPERTY area, far in excess of any other building in a similar B-1 zoning district. (All of the proposed improvements are referred to as the "Project" or "Complex".)

56. A secular proposal of similar size and impact would not have received the special treatment accorded the CHABAD by the CITY. No other religious entity has ever received similar CITY assistance in exceeding established land use laws, Ordinances and regulations in the history of the CITY.

57. Based on the mandate from the CITY's manager, and recommendations of the CITY staff, the Planning and Zoning Board of the CITY conducted a final public hearing on May 7, 2015 on the application of the CHABAD. Based upon the prior undisclosed agreement between the CITY, the Developer and the CHABAD, all benefiting the CHABAD, and in derogation of Plaintiffs' rights, the Planning and Zoning Board approved the CHABAD Complex. Such approval was based on the CITY staff's pre-determined and directed recommendations in order to move the CHABAD's C omplex plans from the Golden Triangle area to the Developer's property, (the "SEASIDE VILLAGE PROPERTY"). Considerations of an accurate analysis of traffic, emergency service access, and flood impact were not taken into account in this approval.

58. At its May 27, 2015 meeting, the CITY Council again, based on the CITY staff recommendations, as directed by the CITY's manager, approved an increased height of the Building which completed approval of the CHABAD application with the CITY's deviations, variances and knowingly erroneous interpretations of the CITY rules,

regulations, laws and ordinances, all conducted to advance the religious purposes of the CHABAD.

59. On May 27, 2015, the CHABAD approval became final. In granting the final approval of the CHABAD Application and to complete the illegal establishment of the religious project:

a. The CITY knowingly and improperly permitted a prohibited use on the SEASIDE VILLAGE PROPERTY;

b. The CITY willingly and knowingly ignored parking deficiencies of the Building;

c. The CITY knowingly approved a Building which exceeded allowable size of the Building;

d. The CITY willfully and knowingly ignored that the Building was out of character of the neighborhood and injurious to residents in the area including these Plaintiffs;

e. The CITY willfully and knowingly allowed deficient parking for the Building; and

f. The CITY willfully and knowingly approved deviations and variances which did not meet legal criteria.

60. At all times, the CITY was aware of the deficiencies of the Project yet granted deviations from the CITY Code, ignored the mandatory standards of the CITY's Code, authorized an impermissible size and height of the Building and intentionally

interpreted the CITY Code in a manner to improperly advance the religious interest of the CHABAD.

61. The landscape architect for the project resigned because false promotional material was used to gain CITY approval. No trees will line the building and power lines might be at risk due to the height and depth of the building.

62. All such acts of the CITY in approving the CHABAD Project constituted a continuation of the initial violation by the CITY of the Establishment Clause, Equal Protection Clause and Due Process Clause of the United States Constitution.

CAUSES OF ACTION

COUNT I **ESTABLISHMENT CLAUSE VIOLATION**

63. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 62, inclusive, of this First Amended Complaint.

64. The First Amendment of the United States Constitution provides as follows:

“Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the government for a redress for grievances.”

65. The First Amendment’s Establishment Clause requires government neutrality toward religion, Rosenberger v. University of Virginia, 515 U.S. 819 (1995), and forbids the CITY from endorsing one religion, preferring one religion over another, or religion over irreligion. McCreary County v. ACLU, 545 U.S. 844 (2005); Church of Scientology Flag Serv. Org., Inc. v. City of Clearwater, 2 F.3d 1514, 1525 (11th Cir. 1993); Texas Monthly v. Bullock, 489 U.S. 1 (1989); Wallace v. Jaffree, 472 U.S. 38 (1985); Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982).

66. Religious liberty and the right to have the CITY not discriminate in favor of, or against, religion or irreligion applies to these Plaintiffs and all Americans, whether “the infidel, the atheist, or even the adherent of a non-Christian faith such as Islam or Judaism.” Wallace v. Jaffree, 472 U.S. 38, 52-53 (1985).

67. The Fourteenth Amendment, Section 1, of the United States Constitution provides as follows:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Fourteenth Amendment incorporates the First Amendment’s rights against the states and this Defendant through incorporation. Everson v. Board of Education, 330 U.S.1 (1947); Cantwell v. Connecticut, 310 U.S. 296 (1940).

68. The denial of constitutional rights is irreparable injury *per se*.

69. The acts of the CITY complained of herein were made with a reckless indifference to each Plaintiff’s clearly established federal constitutional rights warranting an award of damages for economic and noneconomic harm and punitive damages.

70. The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another. Larson v. Valente, 456 U.S. 228, 244, 102 S.Ct. 1673, 1683, 72 L. Ed 2d 33 (1982).

71. Standing in an Establishment Clause case is not limited to economic injuries but also can be triggered by noneconomic injuries though not merely psychological

injuries such as being offended. Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 486, 102 S. Ct. 752, 766, 70 L. Ed. 2d 700 (1982). If the Establishment Clause violation forces someone to make a change in their behavior, that is a noneconomic injury. "The party who invokes the power [of judicial review] must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally. . . ." Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 477, 102 S. Ct. 752, 761, 70 L. Ed. 2d 700 (1982).

72. Such unconstitutional acts of the CITY in working around the CITY's mandated procedures to granting approval to the CHABAD's religious complex creates personal economic and noneconomic injuries to these two Plaintiffs in that their safety will be directly and negatively affected by impediments to emergency vehicles and services, which are located on the mainland, and increased flooding risks. There will also be traffic intrusion into their neighborhood including members of, and visitors to, the CHABAD parking in front of their residence, and impediments to ingress and egress from the neighborhood. Completion of the CHABAD further will alter the beach-oriented, relaxed, and low-intensity character of the Seaside Village, which is a primary reason for Plaintiffs' home ownership in the Seaside Village. Further, said Plaintiffs will assume the special burden of altering the vehicular and pedestrian access to their residences on a regular and daily basis to avoid the injury created by the CHABAD's religious complex and the

physical and metaphysical impact of avoiding the complex by the need to utilize other, significantly less convenient, public roadways.

COUNT II

**EQUAL PROTECTION VIOLATIONS UNDER
THE FOURTEENTH AMENDMENT**

73. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 62, inclusive, of this First Amended Complaint.

74. The Fourteenth Amendment, Section 1, of the United States Constitution provides as follows:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; not deny to any person within its jurisdiction the equal protection of the laws.”

The Fourteenth Amendment incorporates the First Amendment’s rights against the CITY through incorporation. Everson v. Board of Education, 330 U.S.1 (1947); Cantwell v. Connecticut, 310 U.S. 296 (1940).

75. The denial of constitutional rights is irreparable injury *per se*.

76. The acts of the CITY were made with a reckless indifference to each Plaintiff’s clearly established federal constitutional rights warranting an award of damages together with punitive damages.

77. The Fourteenth Amendment Equal Protection clause requires that those who are similarly situated cannot be treated differently with respect to Constitutional and fundamental rights. Hunter v. Erickson, 393 U.S. 385, 89 S. Ct. 557, 21 L. Ed. 2d 616

(1969). The CITY treated the CHABAD differently and preferentially because of its religious affiliation.

78. On information and belief, the CITY has not provided the same privileges to a secular developer seeking to place a similarly intense project in Seaside Village.

79. Approval of the CHABAD by the CITY's Planning and Zoning Board and CITY's Council, constituted a continuation of the initial violation by the CITY of the equal protection rights provided by the Constitution of the United States.

80. The CITY's secret deal with the CHABAD to work around the required procedures, to fail to take into account the safety, flood, and traffic concerns posed by the complex, to propose and enact land use laws to benefit the CHABAD and to further the religious discriminatory motives of the Golden Triangle neighbors, violates the Plaintiffs' rights to equal treatment and neutrality by the government based on religion and community citizenship.

81. Such unconstitutional acts of the CITY in the granting of approval to the CHABAD in violation of existing procedures and providing the CHABAD with benefits not available to other builders creates a dual-system land use process and results in personal injury to these two Plaintiffs in that they will be directly and negatively affected by traffic intrusion into their neighborhood that will affect safety and emergency services availability and Seaside Village character, including members of, and visitors to, the CHABAD parking in front of their residences. Completion of the CHABAD further will alter the beach-oriented, relaxed, and low-intensity character of the Seaside Village, which is a primary reason for Plaintiffs' home ownership in the Seaside Village. Further, said Plaintiffs will

assume the special burden of altering the vehicular and pedestrian access to their residences on a regular and daily basis to avoid the injury created by the religious operation of the CHABAD not allowed to other builders and the need to utilize other, significantly less convenient, public roadways.

COUNT III

DUE PROCESS VIOLATIONS UNDER THE FOURTEENTH AMENDMENT

82. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 62, inclusive, of this First Amended Complaint.

83. The Fourteenth Amendment, Section 1, of the United States Constitution provides as follows:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; not deny to any person within its jurisdiction the equal protection of the laws.”

The Fourteenth Amendment incorporates the First Amendment’s rights against the CITY through incorporation. Everson v. Board of Education, 330 U.S.1 (1947); Cantwell v. Connecticut, 310 U.S. 296 (1940).

84. The denial of constitutional rights is irreparable injury *per se*.

85. The acts of the CITY resulted in deprivation of Plaintiff’s right to due process, and if the CHABAD’s religious complex is permitted to be constructed will result in economic and noneconomic damages to the Plaintiffs.

86. The acts of the CITY were made with a reckless indifference to each Plaintiff's clearly established federal constitutional rights warranting an award of punitive damages.

87. The Fourteenth Amendment Due Process clause is violated by a failure to apply the same procedures to all. The CITY failed to follow governing land use procedures and practices. Royal Palm Real Estate v. City of Boca Raton, Cir. Court of the 15th Jud. Cir. Palm Beach, FL, No. 2015-CA-009676 (June 6, 2016) (holding that CITY failed to follow required processes with respect to the CHABAD application and remanding for new procedures).

88. Approval of the CHABAD Project by the CITY's Planning and Zoning Board and CITY's Council, constituted a continuation of the initial violation by the CITY of the due process rights of the Plaintiffs provided by the Constitution of the United States.

89. The CITY has rules and procedures that are supposed to be utilized in order to protect the interest of all of its residents.

90. These rules exist to comply with the requirements of the Fourteenth Amendment's requirements of due process.

91. Through its secret deal with the CHABAD and the Developer of the SEASIDE VILLAGE PROPERTY, the CITY did not comply with the governing rules and law.

92. As a direct and proximate result of the CITY's actions, the Fifth and Fourteenth Amendment procedural due process rights of the Plaintiffs were violated.

93. As a direct and proximate result of the CITY's actions, the Plaintiffs' Fourteenth Amendment due process rights and protected liberty interests were violated.

94. Such unconstitutional acts of the CITY in the secret scheming with the Developer and the CHABAD and then in obtaining approval of the CHABAD in violation of existing procedures creates a personal injury to these two Plaintiffs in that they will be directly and negatively affected by traffic intrusion into their neighborhoods that will affect safety, including emergency vehicle access, and the Seaside Village character. The Plaintiffs were also injured by the fact that the CITY abandoned its procedural requirements for one applicant, the CHABAD. The complex will increase traffic, which will be generated by individuals including members of, and visitors to, the CHABAD. There is also a likely risk of parking in front of their residence. Completion of the CHABAD further will alter the beach-oriented, relaxed, and low-intensity character of the Seaside Village, which is a primary reason for Plaintiffs' home ownership in Seaside Village. Further, said Plaintiffs will assume the special burden of altering the vehicular and pedestrian access to their residences on a regular and daily basis to avoid the injury created by the religious operation of the CHABAD and the physical and metaphysical.

COUNT IV
VIOLATION OF FLORIDA CONSTITUTION

95. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 62, inclusive, of this First Amended Complaint.

96. Fla. Const. Art. I, §3, "Religious Freedom" reads as follows:

"There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of

the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”

97. Article I, §3 mirrors the Federal constitution. However, Article I, §3 adds a fourth limitation which holds that the CITY must not authorize the use of public moneys directly or indirectly in aid of a religious denomination such as the CHABAD.

98. All of the acts of the CITY’s staff to issue reports, recommendations, studies and approvals required and resulted in the additional expenditure of CITY revenues to aid the CHABAD. But for the unnecessary expenditures, said municipal employees would be available to perform other required duties in a more efficient manner thus resulting in a lesser expenditure of budgeted taxpayer and governmental monies.

99. Article I, §3 of the Constitution of the State of Florida, provides in pertinent part:

“No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”

100. The conduct of the City of Boca Raton, in advancing and establishing religion, violates the letter and spirit of the Constitution of the State of Florida in that all actions by the staff of the CITY in aiding the CHABAD involved extensive expenditure of labor of employees of the CITY who were compensated by tax revenues of the CITY and constitute an unconstitutional use of CITY revenues.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully request that:

- A. This Court assume jurisdiction of this cause.
- B. This Court make a Final Declaration that the acts of the Defendant violated the First Amendment to the Constitution of the United States.
- C. This Court make a Final Declaration that the acts and conduct of the Defendant violated the Due Process and Equal Protection rights of Plaintiffs.
- D. This Court make a Final Declaration that the Defendant violated Article I, §3 of the Florida Constitution.
- E. This Court grant Preliminary and Permanent Injunctive relief against the Defendant enjoining development of the SEASIDE VILLAGE PROPERTY to prevent the injuries of the Plaintiffs.
- F. This Court award Plaintiffs their costs and attorney's' fees pursuant to 42 U.S.C. §1983.
- G. This Court award economic and noneconomic compensatory and punitive damages for the deliberate and contumacious continuing establishment of religion, violation of equal protection and due process, in violation of Plaintiffs' right to be free from unwanted and unwarranted imposition of religion by the Defendant; and
- H. This Court grant such other and further relief as this Court may deem just and proper.

Plaintiffs, GERALD GAGLIARDI and KATHLEEN MACDOUGALL, hereby demand
a trial by jury on all issues.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court by using **CM/ECF** system which will automatically send a notice of electronic filing to the parties of record on this 12th day of August 2016.

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