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Clerk of Circuit Court
Washington County, WI
2025CV000103

**STATE OF
WISCONSIN**

**CIRCUIT
COURT**

**WASHINGTON
COUNTY**

WE LOVE FARMINGTON, U.A., and
ANDREW WILLETTS,

Plaintiffs,

v.

TOWN OF FARMINGTON,

Defendant,

SHALOM WILDLIFE SANCTUARY, LLC
(d/b/a Shalom Wildlife Zoo),

Defendant/Third-Party Plaintiff,

v.

LEANN BEEHLER, and
RONALD J. KAHN,

Third-Party Defendants.

Case No.: 2025-CV-103

Case Code: 30701, 30607

Classification: Declaratory Action,
Administrative Review

**DEFENDANT SHALOM WILDLIFE SANCTUARY, LLC'S BRIEF IN SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

Plaintiffs Andrew Willetts and the front group “We Love Farmington” (whose members are Willetts and neighbors Leann and Bruce Beehler) filed a sprawling complaint against Shalom Wildlife Sanctuary, LLC and the Town of Farmington. The Plaintiffs raise all manner of objections to a recent conditional use permit that the Town granted Shalom, even contending that Shalom has been violating a CUP that dates back to 1986. In a nutshell, the Plaintiffs allege that Shalom—a widely popular zoo and wildlife sanctuary—is not permitted to operate as a commercial zoo and the recent CUP should not have been granted.

While Plaintiffs are wrong at every turn, the dispute is now academic. In December 2025, the Town amended its Zoning Code to add a definition of “zoological activities” as a permitted use under the Zoning Code. In other words, Shalom no longer needs a *conditional* use permit, as

its activities are expressly *permitted*. Plaintiffs' claims are thus now moot, and none of the mootness exceptions apply.

On top of that, Plaintiffs also lack standing to pursue the claims at issue. Neither of the Plaintiffs have been "aggrieved" by the Town's decision to grant the CUP to Shalom, and thus neither have suffered an injury in fact. And because the Plaintiffs have not alleged any pecuniary loss or misuse of funds by the Town, taxpayer standing does not apply. In fact, Willetts and his family have moved out of Washington County since the lawsuit was filed, which is dispositive to his position as a Plaintiff in this case.

There are other fatal flaws to this lawsuit. It is well-settled law that certiorari review is the appropriate mechanism to challenge zoning decisions by local governments. Plaintiffs elected to pass on that established procedure (perhaps seeing that the standard of review was insurmountable) and instead elected to file seven claims for declaratory relief. But it is not proper to ask a circuit court to "declare" a CUP invalid; one must instead seek a certiorari review of the decision to grant the CUP. Hence, Plaintiffs lose on procedural as well as substantive grounds.

For the reasons set forth in greater detail below, this Court should grant Shalom's motion for summary judgment and dismiss Plaintiffs' Amended Complaint with prejudice.

BACKGROUND FACTS

This section will walk through the conditional use permit at issue in this case, Plaintiffs' contentions with that permit, and the Town of Farmington's subsequent amendment of its Zoning Code.

Shalom and the Conditional Use Permit

David and Lana Fechter are the owners and members of Shalom Wildlife Sanctuary, LLC (d/b/a Shalom Wildlife Zoo) ("Shalom"). (Declaration of David Fechter Dec. ¶2.) (hereinafter "Fechter Dec.") David and Lana acquired the property at 1901 Shalom Drive in the Town of

Farmington on May 9, 1981. (Fechter Dec. ¶3.) The property at 1901 Shalom Drive consists of the following parcels, which total 129.75 acres:

T4_071200F008 (20.15 acres)

T4_0701 (40 acres)

T4_070000A (11.15 acres)

T4_0707 (30.12 acres)

T4_070800A (15.26 acres)

T4_050000A (3.07 acres)

T4_070500A (10 acres)

(Fechter Dec. ¶4.) All of these parcels are zoned “agricultural” by the Town. (Id.) Shalom presently leases these properties from David and Lana Fechter. (Fechter Dec. ¶5.)

In March 1995, the Town granted David and Lana a conditional use permit for the property at 1901 Shalom Drive. (“1995 CUP”). The 1995 CUP allowed the Fechters to utilize the 1901 Shalom Drive property to engage in the following activities:

Allow the applicants to sell the following items out of their garage: firewood, deer feeders, deer feed, birdhouses, bird feed, plants, prairie seed, trees, wood products (walking sticks, crafts), ceramics, quilts, Native American products, stained glass, wax pinecones, cement art, painted clay pots, produce (pumpkins, indian [sic] corn, etc.)

(Fechter Dec. ¶¶7-8, Ex. 1.)

In August 1996, David Fechter wrote to the Town Clerk to state his desire that visitors to 1901 Shalom Drive be allowed to “view nature and wildlife for educational and enjoyment purposes” while making a “minimal donation.” (Fechter Dec. ¶9, Ex. 2.) David inquired whether such activity required a conditional use permit. (Id.) On August 28, 1996, the Town Clerk responded that a conditional use permit was not required for such activity, but that if Shalom’s operations “should turn into a larger scale adventure,” the matter may require “further review.” (Fechter Dec. ¶10, Ex. 3.)

On March 11, 2024, the Town granted a second conditional use permit to David and Lana Fechter (“2024 CUP”). The 2024 CUP was for the property at 1901 Shalom Drive, Parcel T4-070000A, and granted the following conditional uses:

To allow the applicants to have guided tours, Christmas tours, animal activities (zoo related). Gift shop, Outside Grill and Golf Cart Rentals. Normal business hours 9:00 a.m. to 5:30 p.m. 7 days a week, April thru December. May have special times [on] occasional weekends.

(Fechter Dec., Ex. 4.) The Fechtters were also required to “[f]ollow Federal and State regulations” and “[k]eep current all licensing USDA – DNR.” (Id.)

In July 2024, David and Lana’s son, Dr. Buckley Fechter, purchased the property located at 1809 Shalom Drive. (Declaration of Dr. Buckley Fechter ¶3.) (hereinafter “Buckley Dec.”) The property at 1809 Shalom Drive consists of the following parcels, which total 13.43 acres:

T4_0699 (12.31 acres)

T4_069900B (1.12 acres)

(Id.) The parcels, likewise zoned “agricultural” by the Town, were subject to a 1986 CUP granted to the previous owners.¹ (Dkt. 16, ¶¶81–85.) Shalom is presently leasing these properties from Buckley Fechter. (Buckley Dec. ¶4.)

In November 2024, David and Lana Fechter submitted a conditional use permit application for all of the parcels at 1809 and 1901 Shalom Drive.² (Fechter Dec. ¶12, Ex. 5.) The requested use was for: “agricultural/zoo, animal education, encounters, seminars, events including weddings/corporate/private.” (Id.)

¹ The 1986 CUP’s relevancy to the present action is dubious, although one of the Plaintiffs’ claims is anchored upon it. (Dkt. 16, ¶¶81–90.) The CUP, in relevant part, prohibited commercial activity on the property. (*Id.*, ¶¶83, 85.)

² The application lists seven tax keys, the first five of which are connected to 1901 Shalom Drive, and the last two of which are 1809 Shalom Drive. (Fechter Dec., Ex. 5) There is a typo on the fourth tax key, which should read “T4_070800A.” (Fechter Dec., ¶13.)

A vote was scheduled at the Town Board meeting for December 10, 2024. (Fechter Dec. ¶14, Ex. 6.) However, the Town Board was unable to vote at the meeting due to the unruly and disruptive behavior of those opposed to the permit application. (Fechter Dec. ¶15.) The vote was tabled until January 14, 2025. (Id.) Ultimately, the Town Board adopted the conditional use permit at the January 14, 2025 Town Board meeting (“2025 CUP”). (Fechter Dec., ¶16, Ex. 7)

The 2025 CUP was granted as to the following activity:

Amendment to existing Conditional Use Permit David and Lana Fechter- To allow the Zoo to continue to operate as the Shalom Wildlife Sanctuary/Zoo under the Conditional Use Permit with many zoo related activities and include additional property recently obtained adjacent to the existing zoo. Zoo activities may include: Live animal exhibits, hosting animal education/encounters, educational learning seminars, events including wedding/corporate/private, gift shop sales, food sales, tours, golf cart rentals, outdoor recreation activities, drive through tours, holiday lighting tours/events.

Normal Operational Hours- 8:00am-9:30pm 7 days a week

Amendment is also to include parcels located within 1809 Shalom Dr property, currently owned by Buckley Fechter.

(Fechter Dec., Ex. 7.)

The Plaintiffs’ Claims

On February 13, 2025, the unincorporated association We Love Farmington, U.A. (“WLF”)—whose members are Leann Beehler, Bruce Beehler, and Andrew Willetts—filed its initial complaint to challenge the Town’s decision to grant the 2025 CUP, naming the Town as the sole defendant. (See Dkts. 3; 23, ¶2.) In May 2025, Plaintiffs filed an Amended Complaint, adding Shalom as a Defendant.³ (Dkt. 16, ¶¶3, 5-A.)

Plaintiffs’ claims for declaratory relief challenge the Town Board’s decision to grant Shalom a conditional use permit. (See Dkt. 16.) Namely, the Plaintiffs claim the Town acted unlawfully because: (1) the 2025 CUP extended beyond the scope of the CUP application; (2) the

³ And in September 2025, Shalom filed a counterclaim against Willetts and WLF for abuse of process and injury to business. (See Dkt. 36.)

2025 CUP does not allow Shalom to operate as a commercial zoo; (3) the Town granted the 2025 CUP without following the Ordinance's procedures; (4) the Town granted the 2025 CUP without substantial evidence; (5) the 2025 CUP violates a 1986 CUP granted to the previous owners of 1809 Shalom Drive; (6) the Town did not consider floodplain regulations and law when it granted the 2025 CUP; and (7) the Town Zoning Code does not allow Shalom to possess wild animals.

Since filing, however, the Town amended its Zoning Code to allow zoological activities as a permitted use. Moreover, Andrew Willetts and his family have moved out of the Town of Farmington. (Declaration of Matthew M. Fernholz, Ex. 8) (hereinafter "Fernholz Dec.")

Town of Farmington Zoning Code

The Town of Farmington Zoning Code ("Code") regulates the Town's zoning and use ordinances. *See* Farmington, Wis., Zoning Ordinance § 13-1-4 (2025).⁴ One type of zoning district in the Code is the "Agricultural" district. *Id.*, 13-1-45. The Code lists permitted uses of agriculturally zoned land as well as conditional uses. *Id.* At the time that this suit was brought, Shalom relied upon one of the listed conditional uses for "agritourism" to request a CUP for the zoo and it required a state permit to have exotic animals on its property. (*See* Dkt. 23, ¶64.); Ord. § 13-1-45(f) (2024).

In October 2025, the Town passed a resolution to "Initiate Amendments to the Text of the Zoning Code." (Fernholz Dec., Ex. 9.) On November 11, 2025, the Board reviewed the amendments and took public comments. (Fernholz Dec., Ex. 10.) On December 9, 2025, the Board voted unanimously to adopt the amendments to the Zoning Code. (Fernholz Dec., Ex. 11-12.)

⁴ The Farmington Zoning Ordinance will be abbreviated to "Ord." in future citations. The Ordinance was first adopted October 18, 2005, but amended December 9, 2025. All citations are to the most current version of the Ordinance unless otherwise stated. Access to the Ordinance can be found here: <https://storage.googleapis.com/juniper-media-library/393/2025/11/Zoning-Ordinance.pdf>

The Zoning Code was amended in a number of ways pertinent to this case. Most significantly, the Code now has a permitted use for “[z]oological activities” on agricultural-zoned parcels. Ord. § 13-1-45(b)(23). It added the following definition to the Code:

Zoological activities include zoos and sanctuaries, defined as operations for the care, exhibition, preservation, and breeding of animals, with associated educational programs on parcel(s) of land containing in the aggregate not less than 100 acres of land. This includes internal development and redevelopment of new exhibits, visitor centers, trails, parking lots, accessory retain and footprint expansion upon the acquisition of adjacent agricultural zoned parcels or subdivision of existing parcels. Zoological activities, may include but are not limited to visitor centers, parking lots, trails, educational facilities, food/beverage sales, special events, weddings, or similar uses, and accessory retail sales such as gift shops.

Ord. § 13-1-8(b)(153). The Code also removed the state permit requirement for exotic animals on parcels five acres or greater. Ord. § 13-1-45(f).

These changes to the Code have fundamentally changed the nature of this suit, as will be discussed below.

STANDARD OF REVIEW

Summary judgment is appropriate when the movant demonstrates that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Wis. Stat. § 802.08(2). Courts considering a motion for summary judgment are to consider “pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits” *Id.*

To defeat a motion for summary judgment, “the nonmoving party must demonstrate more than a mere existence of some alleged factual dispute; there must be a genuine issue of material fact.” *Physicians Plus Ins. Corp. v. Midwest Mut. Ins. Co.*, 2002 WI 80, ¶18, 254 Wis. 2d 77, 646 N.W.2d 777. A fact is “genuine” if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *McNally v. Capital Cartage, Inc.*, 2018 WI 46, ¶24, 381 Wis. 2d 349, 912 N.W.2d 35 (quoting another source). A “material” fact is “one that impacts the

resolution of the controversy.” *Strasser v. Transtech Mobile Fleet Service, Inc.*, 2000 WI 87, ¶32, 236 Wis. 2d 435, 613 N.W.2d 142 (citing another source). In determining whether there are genuine issues of material fact, courts draw “all reasonable inferences” in favor of the nonmoving party. *Id.*

ARGUMENT

The Code’s addition of “zoological activities” as a permitted use for agricultural land first and foremost renders Plaintiffs’ claims moot, as each of them rest upon the need and existence of a CUP for Shalom to operate as a zoo. Even if they were not moot, however, the Plaintiffs’ claims fail on two other fronts: Plaintiffs lack standing to bring the claims and are not entitled to the relief they seek. Accordingly, summary judgment should be granted and the Plaintiffs’ claims should be dismissed.

I. PLAINTIFFS’ CLAIMS ALL RELY UPON THE APPLICATION OF PREVIOUS CUPS THAT ARE NOW IRRELEVANT

All of Plaintiffs’ claims rest upon the premise that Shalom’s use of the parcels at issue are not permitted uses and, therefore, Shalom requires a CUP to operate. But with the amendment to the Town’s Code, all of Shalom’s uses are now permitted uses. Because of this, Plaintiffs’ claims are moot and should be dismissed.

A. The Plaintiffs’ Claims are Moot

An issue is moot when “a determination is sought which, when made, cannot have any practical effect upon an existing controversy.” *City of Racine v. J-T Enter. of Am., Inc.*, 64 Wis. 2d 691, 700, 221 N.W.2d 869 (1974) (internal quotation omitted). Here, the amendment to the Code has rendered Plaintiffs’ issues moot. This is because: (1) the Code now states “zoological activities” are a permitted use of land; (2) Shalom’s activities are all “zoological activities” under the Code; and (3) once a conditional use becomes a “permitted” use, the conditional use terminates.

As is typical for a municipality, the Town's Zoning Code contemplates two different types of land usages: permitted and conditional. *See* Ord. § 13-1-8(b)(137). Permitted uses "allow a landowner to use his or her land, in said manner, as of right." *Town of Rhine v. Bizzell*, 2008 WI 76, ¶19, 311 Wis. 2d 1, 751 N.W.2d 780. Use as of right means that "the property owner has the right to establish the use so long as it conforms to the standards and criteria of the zoning ordinance." *Id.*, ¶50; *see also* Ord. § 13-1-8(b)(138). Conditional uses, unlike permitted ones, are not uses of right; instead, conditional uses are those uses "which the community will sanction only in a controlled manner," which is typically done through the issuance of a CUP. *Bizzell*, 311 Wis. 2d 1, ¶20; *see also* Ord. § 13-1-8b (32).

The parcels at issue here are zoned for agricultural use. (Fechter Dec. ¶4) The Code governing agricultural-zoned parcels lists permitted and conditional uses. *See* Ord. § 13-1-45. Before the amendment to the Town's Zoning Code on December 9, 2025, Shalom relied upon a listed conditional use for agritourism to apply for CUPs to allow them to operate their zoo and wildlife sanctuary. It was those previous CUPs that Plaintiffs challenge in all seven of their claims.

But the amendment to the Code added a new *permitted* use for "zoological activities." *See* Ord. § 13-1-45(23). The Code, therefore, now gives landowners of agriculturally zoned parcels the ability to use the parcels for "zoological activities" as of right, for which they do not need to acquire a permit or permission.⁵ *See Bizzell*, 311 Wis. 2d 1, ¶¶19–20, 50. Furthermore, the Ordinance now does not require a state permit for exotic animals on parcels of five acres or more. Ord. § 13-1-45(f).

⁵ They do, of course, need to comply with the Zoning Ordinance's conditions for permitted uses, which in this case, include area, height, and yard requirements, as well as an animal requirement. *See* Ord. § 13-1-45(e), (f). As also stated above, the Code now only prohibits lots of less than five acres from using the land for exotic animals. Ord. § 13-1-45(f). So Shalom is not in violation of this requirement.

By way of reminder, the definition of “zoological activities” includes “zoos and sanctuaries” with “exhibits, visitor centers, parking lots, trails, educational facilities, food/beverage sales, special events, weddings, or similar uses and accessory retail sales such as gift shops.” Ord. § 13-1-8(b)(153). Shalom’s uses of the challenged parcels all fall into the category of “zoological activities.” Between the 1809 and 1901 Shalom Drive properties, Shalom operates as a zoo and sanctuary sitting on roughly 143 acres that is home to a variety of animals. (Fechter Dec., ¶6.) Shalom hosts educational programs and seminars on the property for school children. (Id.) It also operates a restaurant and plans to open an event space for weddings and corporate events. (Id.) All of these uses squarely fit within the permitted use of agricultural land for zoological activities.

Finally, the Code states that “[c]onditional use(s), when replaced by permitted use(s), shall terminate.” Ord. § 13-1-21(d)(4). Thus, when the Town amended the Code to permit zoological activities, making Shalom’s once-conditional use of the parcels for its zoo and sanctuary permitted uses, the conditional use of the parcels terminated. Logically, this means Shalom cannot violate any conditional uses that were once applicable to the parcels by using the land as a permitted zoological activity. Hence, Plaintiffs’ claims are moot.

All of the Plaintiffs’ seven claims center upon the Town’s determination to grant Shalom a CUP. Specifically, the Plaintiffs challenge that when the Board granted the CUP it erroneously applied the Farmington Zoning Code, its decision to grant the 2025 CUP was not supported by substantial evidence, it violated a different CUP on the same property by issuing the 2025 CUP, and the 2025 CUP permitted illegal, prohibited uses. (*See* Dkt. 16.) But now that the uses for which the 2025 CUP was necessary are permitted, and all prior CUPs terminated, any decision regarding the Town’s process for granting a CUP, the CUP’s validity, or what the CUP permitted would have no practical effect upon the controversy. If the Court were to decide in Plaintiffs’

favor, Shalom would still be able to run its zoo and sanctuary on the property as a permitted “zoological activity.” If the Court were to decide in the Town and Shalom’s favor, Shalom would still be able to run its zoo and sanctuary—not because it confirmed the appropriateness of the 2025 CUP, because there is no longer any *conditional* use—but because it would be engaged in a permitted “zoological activity.” In other words, any decision the Court could reach would result in the same outcome for the same reason: Shalom could use its land as a zoo because it is a permitted use under the Code; any decision would not have any practical effect on the controversy.⁶

In the interest of judicial economy, then, there is no reason the Court should entertain the claims. This is made even more evident when considering the exceptions to mootness. The issue does not fit into an exception that would warrant the Court to exercise its discretion to decide a moot question.

B. Plaintiffs’ Claims Do Not Fit Into a Mootness Exception

Mootness is a doctrine founded upon judicial economy. *See State ex rel. La Crosse Tribune v. Cir. Ct. for La Crosse Cnty.*, 115 Wis. 2d 220, 228–29, 340 N.W.2d 460 (1983). This is because it is generally considered in the interest of judicial economy “to avoid litigating issues that will not affect real parties to an existing controversy.” *Id.* In some narrow instances, however, it is judicially economical for a court to decide a moot issue. *Id.* This broadly occurs “if matters of serious public concern” which “are likely to cause judicial disputes in the future are not resolved when a factual basis on which a judicial declaration may be made to guide future conduct is presently before the court.” *Id.* Wisconsin courts have stated five “exceptional or compelling circumstances” that advise courts when this may be so: (1) when it is of great public importance; (2) involves the constitutionality of a statute; (3) when it arises “so often a definitive decision is

⁶ This is especially so for the Willetts: no decision could have a practical effect upon them or their alleged interests since they have since moved away from the property neighboring Shalom. (Fernholz Dec.¶2.)

essential to guide the trial courts”; (4) when it is likely to arise again and should be resolved to avoid uncertainty; and (5) when it is “capable and likely of repetition and yet evades review.” *Portage Cnty. v. J.W.K.*, 2019 WI 54, ¶11, 386 Wis. 2d 672, 927 N.W.2d 509 (internal quotations omitted). None of these exceptions apply here.⁷

The exception to mootness for public importance requires something more than public concern or interest; it must be a matter of “publici juris.” *See State v. Kohler*, 202 Wis. 352, 232 N.W. 842, 843 (1930) (“While in a popular sense the issues in this case are matters of great public importance, in the sense that the public is keenly interested, they are not questions publici juris in the sense in which that term is used in the law.”). An issue of publici juris is one that concerns a “public right.” *State ex rel. Bolens v. Frear*, 148 Wis. 456, 134 N.W. 673, 681 (1912). Plaintiffs have not alleged that the Town’s decision to grant the CUP affected any public rights, and they cannot. The issue is “fact-specific,” revolving around the Town’s actions in the granting of a single CUP, and the facts surrounding the Town’s grant of CUPs generally will necessarily “be different in each case.” *J.W.K.*, 386 Wis. 2d 672, ¶30 (reasoning that an issue was not one of public importance because it was “fact-specific” and the issue would be “different in each case”). Deciding the issues in this case will not affect the rights of the public at large.

The other two potentially relevant exceptions both apply when the issue is likely to reoccur. While the “avoiding uncertainty” exception applies when the issue is likely to arise no matter the parties,⁸ the “capable of repetition, yet evading review” exception “is limited to situations

⁷ Plaintiffs are not raising any challenges to the constitutionality of a statute, so that will not be addressed in the body of this motion. Additionally, as since the issue is before this Court and not an appellate one, the third exception is inapplicable and will also not be addressed.

⁸ *See Outagamie Cnty. v. L.X.D.O.*, 2023 WI App 17, ¶19, 407 Wis. 2d 441, 991 N.W.2d 518 (addressing a moot issue under the “avoiding uncertainty” exception because it would “clarify and provide guidance in evaluating [similar challenges] in other cases, which will be of practical assistance to other litigants.”); *S.G. v. Wisconsin Dept. of Child. & Fam.*, 2025 WI App 32, ¶¶20 n.14, 22, 416 Wis. 2d 447, 21 N.W.3d 764.

involving a reasonable expectation that the *same* complaining party would be subjected to the *same* action again.” *J.W.K.*, 386 Wis. 2d 672, ¶30 (emphasis in original) (internal quotations omitted).

As to the “avoiding uncertainty” exception, as stated above, the issues Plaintiffs challenge in this case are incredibly fact-specific, involving the Town’s decisions about granting a single CUP. Plaintiffs do not challenge the Town’s CUP-granting process more generally; they challenge the Town’s application of that process in this particular instance. Deciding whether the Town acted lawfully or not in granting this CUP does not resolve any uncertainty regarding how they will grant or deny different CUPs in the future.

As to the “evading review” exception, the Town Board’s amendment of the Zoning Code has foreclosed any “reasonable expectation” that the same claims will arise again. Plaintiffs’ claims center upon the Town’s action of granting Shalom the CUP to operate as a zoo. With the changes to the Code, the Town cannot again affect Plaintiffs through the actions they challenged; that is, the Town will not go through the process of granting a CUP to Shalom for zoo-like activities again. The challenged actions will not—and cannot—repeat.

II. THE PLAINTIFFS DO NOT HAVE STANDING BECAUSE THEY ARE NOT “PERSONS AGGRIEVED,” AND DO NOT QUALIFY FOR TAXPAYER STANDING

In the event the Court decides to address the claims in the Amended Complaint, Plaintiffs do not have standing to bring their claims either through the general standing requirement or the taxpayer standing doctrine. This is because Plaintiffs are not aggrieved by the Town’s decision to grant the CUPs, nor have the Town’s decisions resulted in pecuniary loss to them as taxpayers.

A. Plaintiffs are Not “Aggrieved”

Plaintiffs do not qualify as “aggrieved persons” under the Town Zoning Code or the applicable state statute. Under Chapter 68, municipal decisions, including the granting of permits,

are reviewable under the procedures in the Chapter.⁹ Wis. Stat. § 68.01. Chapter 68 states that a “person aggrieved” is “any individual. . . [or] corporation, association . . . [w]hose rights, duties or privileges are adversely affected by a determination of a municipal authority.” § 68.06.

The Wisconsin Supreme Court has stated that “aggrieved” is a term of art in statutes for purposes of standing and should be interpreted consistently across the board. *See Brown v. Wisconsin Elections Comm’n*, 2025 WI 5, ¶13, 414 Wis. 2d 601, 16 N.W.3d 619. A person “aggrieved” under Wisconsin law is one who has “an interest recognized by law in the subject matter which is injuriously affected by the judgment.” *Id.*, ¶14 (quoting another source). The party claiming the injury must therefore show that: (1) it suffered “a threatened or actual injury as a result of the decision” (an injury in fact); and (2) that the “injury [is] recognized by law.” *Id.*

Courts consider whether there is an injury in fact based upon the claim the plaintiff is making. *Id.*, ¶28 (stating that the injury-in-fact inquiry “centers on a textually driven analysis of the language of the specific statute cited by the petitioner as the source of its claim to determine whether that statute recognizes or seeks to regulate the interest advanced by the petitioner.” (internal citations omitted)). Injuries in fact, while they can be “remote in time or . . . will only occur as an end result of a sequence of events set in motion by the . . . action challenged,” they cannot be “hypothetical nor conjectural.” *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶21, 402 Wis. 2d 587, 977 N.W.2d 342.

Plaintiffs’ claims revolve around the alleged unlawfulness of the Town Board’s actions in granting the CUP. They cite for authority Wisconsin’s Declaratory Judgment Act, which has as its purpose affording “relief from uncertainty and insecurity with respect to rights, status and other

⁹ The standing requirements of an “aggrieved party” under the Zoning Code and Chapter 68 are essentially identical. *Compare* Ord. § 13-1-94 *with* Wis. Stat. § 68.06. In this way, the Town did not depart from the Chapter’s requirements, but conformed to them. The definition of “person aggrieved” in the Chapter is therefore applicable here.

legal relations.” Wis. Stat. § 806.04(12). Relevant here, it allows for judicial determination of “any question of construction or validity arising under” a statute or ordinance for “[a]ny person . . . whose rights, status or other legal relations are affected by” it. *Id.*, § 806.04(2). What legal right, status, or relation of the Plaintiffs is affected by the Town’s decision? Before the Town granted the CUP, Plaintiffs owned their property with its bundle of rights, and now after the decision, they still do. No legal status or relationships between Plaintiffs and the Town or Shalom are implicated. And, as to Willetts, this is even more true since he and his family have moved away from their abutting property. Put simply, Plaintiffs lack an injury in fact by way of the Declaratory Judgment Act.

Additionally, Plaintiffs’ allusions to an injury in fact concerning safety are “hypothetical” and “conjectural,” on top of not being a protected right suitable for declaratory judgment. The language of their Amended Complaint, the facts of which we do not concede, belies this point: “[t]he Zoo has over 800 animals many of which are or *could be* quite dangerous *if* not properly kept and cared for” (Dkt. 16, ¶18); “these protective fences *could* easily be damaged . . . *if* not managed and overseen . . .” (*Id.*, ¶21); the perimeter fencing is not tall enough that it “*would* act to prevent the escape of animals . . . and *would* thus allow direct access to adjacent residential properties” (*Id.*, ¶21). (Emphasis added for all). The Plaintiffs acknowledge the Zoo’s existence for the past “30 years.” *Id.*, ¶9. Yet, they do not claim that the animals have ever been dangerous, have not been properly kept, or have escaped. Nor do they claim that the fences have been or are damaged or that they have not been or are not managed or properly overseen. They merely gesture at an improbable anticipated outcome, the possibility of which is not supported by proof or evidence of any kind.

Furthermore, as concerns the second prong of the standing analysis—that the alleged right or interest be protected by law—Plaintiffs have not articulated a right implicated at all, to say nothing of whether such a right is protected by law.

For these reasons, they do not have standing under the general “person aggrieved” standard.

B. Plaintiffs Do Not Allege Pecuniary Loss and Therefore Do Not Qualify for Taxpayer Standing

Taxpayers have standing to sue a municipality when they allege that they “have sustained, or will sustain, some pecuniary loss.” *Fabick v. Evers*, 2021 WI 28, ¶11, 396 Wis. 2d 231, 956 N.W.2d 856 (quoting another source). In the absence of allegations that “the municipality is about to sustain any loss or deprived of . . . funds or property, and that loss to the general taxpayers will follow,” taxpayer standing does not exist. *Stuart v. City of Neenah*, 215 Wis. 546, 225 N.W. 142, 142 (1934). This is because of the doctrine’s rationale, which reasons that a taxpayer “by virtue of his contributions to the funds of the municipality, has an interest in the funds and property” akin to a stockholder in a corporation. *See Milwaukee Horse & Cow Comm. Co. v. Hill*, 207 Wis. 420, 241 N.W. 364, 367 (1932). A taxpayer can therefore challenge a municipality’s spending of taxpayer money to protect the municipality’s “interests and property from spoilation by its own officers.” *Id.* In other words, to rely upon taxpayer standing, taxpayers must allege an injury that results *because they pay taxes*, not because they merely reside within a municipality.

Plaintiffs stated that they are taxpayers of the Town. But now that the Willetts have moved out of Farmington, that is no longer true.¹⁰ (Fernholz Dec., ¶4.) Additionally, it is dubious whether WLF—as an unincorporated association—has or will pay taxes, given its status as a nonprofit organization under Wisconsin Statutes Chapter 184. (Dkt. 16, ¶2.) But even if somehow the organization does pay taxes, the Plaintiffs still do not allege that the Town is spending taxpayer

¹⁰ The Willetts now live in Menomonee Falls, Waukesha County, Wisconsin. (Fernholz Dec., ¶4.)

money—not to mention in a way that injures them—for any of the seven claims they bring. Because of that, any reliance on taxpayer standing fails to give Plaintiffs a foot in the courthouse door.

III. PLAINTIFFS DID NOT BRING THE APPROPRIATE CLAIM AND ARE OTHERWISE NOT ENTITLED TO DECLARATORY RELIEF

Plaintiffs seek declaratory relief for their claims. Because of the statute’s prescription that the mechanism for judicial relief should be a writ of certiorari, and the nature of Plaintiffs’ claims support that mechanism, the Plaintiffs’ declaratory challenge should not be entertained. Even so, Plaintiffs are not entitled to declaratory relief and any declaratory judgment would be an advisory opinion. For this reason also, Plaintiffs’ claims should be dismissed.

A. Certiorari is the Exclusive Mechanism for the Resolution of Plaintiffs’ Claims

The statute which controls judicial review of the Town’s decision, as well as case law on the writ of certiorari, make plain that Plaintiffs should have brought challenges under certiorari and not declaratory relief. Because Plaintiffs failed to follow the prescribed statutory mechanism for relief, their claims should be dismissed.

Municipal decisions are to be challenged by writs of certiorari within 30 days of the municipality’s final determination.¹¹ Wis. Stat. § 68.13. While the statute says that the “remedies” in Chapter 68 “shall not be exclusive,” it does not say the same about the mechanisms, or methods, to pursue those remedies. § 68.01. When a “method of review is prescribed by statute, that prescribed method is exclusive,”¹² and generally “a court lacks jurisdiction where the plaintiff fails

¹¹ See also Wis. Stat. § 59.694(10)(a) (“A person aggrieved by any decision of the board of adjustment . . . may, within 30 days after the filing of the decision in the office of the board, commence an action seeking the remedy available by certiorari.”).

¹² This rule exists so that “courts will honor the legislative plan for review.” *Dawson v. Town of Jackson*, 2011 WI 77, ¶73, 336 Wis. 2d 318, 801 N.W.2d 316. Because of that, “[n]ormally, a party seeking an alternative to a statutorily prescribed method of review must show that the prescribed method is inadequate to resolve the issue presented . . . or inadequate to effect the remedy sought . . .” *Id.*

to follow the requested statutory procedure.”¹³ *Dawson v. Town of Jackson*, 2011 WI 77, ¶69, 336 Wis. 2d 318, 801 N.W.2d 316 (quoting another source) (internal quotations omitted). This rule exists out of deference for the legislature’s policy decision of what type of review is available for particular types of claims. *Id.*

In fact, case law demonstrates why certiorari is the only appropriate mechanism for the Plaintiffs’ claims. The Wisconsin Supreme Court held that “certiorari review is the mechanism by which a court should test the validity of a municipality’s legislative determinations.” *Voters with Facts v. City of Eau Claire*, 2018 WI 63, ¶69, 382 Wis. 2d 1, 913 N.W.2d 131. Zoning and subjects surrounding zoning, such as “classification[s]” and “uses,” are legislative determinations. *Buhler v. Racine Cnty.*, 33 Wis. 2d 137, 146–47, 146 N.W.2d 403 (1966); *Quinn v. Town of Dodgeville*, 122 Wis. 2d 570, 585, 364 N.W.2d 149 (1985). As such, review of municipal zoning decisions are limited to whether the municipality abused its discretion, exceeded its power, or incorrectly applied the law—all questions Plaintiffs are raising, and all appropriately addressed under certiorari review. *See Buhler*, 33 Wis. 2d 137, 146–47; *see also Ottman v. Town of Primrose*, 2011 WI 18, ¶¶34–35, 332 Wis. 2d 3, 796 N.W.2d 411 (“Certiorari is a mechanism by which a court may test the validity of a decision rendered by a municipality . . . The court’s review is limited to: (1) whether the municipality kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question.”).

¹³ It is true that this rule of law is one of “policy, convenience, and discretion” and that the Wisconsin Supreme Court in the *Dawson* case did decide an issue appropriate for certiorari review that was brought as a declaratory judgment “even though the request for a declaratory judgment should have been denied by the circuit court.” *Dawson*, 336 Wis. 2d 318, ¶¶74–75 (internal citations omitted). It did so, however, because it was at the supreme court on review of a published court of appeals decision and the parties had “briefed and argued” the primary issue. *Id.*, ¶75. That is obviously not the situation this case is in now.

Plaintiffs did not assert a claim under certiorari, though, instead asking for declaratory relief, which is designed to afford “relief from uncertainty and insecurity with respect to rights, status and other legal relations” between parties, providing a “remedy which is primarily anticipatory or preventative in nature.” Wis. Stat. § 806.04(12); *Lister v. Bd. of Regents*, 72 Wis. 2d 282, 307, 240 N.W.2d 610 (1976). As discussed above and will be expounded upon below, Plaintiffs are not asking the Court to declare what their legal rights, status, or relations are given the Town’s decision. Instead, they are trying to get the Court to decide questions of certiorari through a declaratory judgment action, despite (1) its inherent ill fit; (2) the statutory prescription for certiorari; and (3) courts’ preference for deciding issues such as this under certiorari. Accordingly, the Plaintiffs’ claims should not be entertained.¹⁴ *See Dawson*, 336 Wis. 2d 318, ¶69.

B. Even Under Declaratory Judgment, the Plaintiffs’ Have Not Alleged a Legally Protected Interest and are Not Entitled to Relief

Even if the Court were to entertain Plaintiffs’ requests for declaratory relief, they have not adequately alleged facts to be entitled to such relief. The claims resting on it, therefore, should be dismissed as failing to state a claim upon which relief can be granted.

The Wisconsin Declaratory Judgment Act exists “to enable controversies of a justiciable nature to be brought before the courts for settlement and determination prior to the time that a wrong has been threatened or committed.” *Lister v. Bd. of Regents*, 72 Wis. 2d 282, 307, 240 N.W.2d 610 (1976). This is so that courts can “avoid . . . separate trials between the same parties

¹⁴ Perhaps Plaintiffs did not bring a certiorari claim because they realized they would face an uphill battle to obtaining one. A writ of certiorari will issue only if there has been: (1) an error; (2) substantial harm; and (3) no delay in bringing the claim. *Consolidated Apparel Co. v. Common Council of City of Milwaukee*, 14 Wis. 2d 31, 36, 109 N.W.2d 486 (1961); *see also State ex rel. Damerow v. Behrens*, 11 Wis. 2d 426, 429, 105 N.W.2d 866 (1960); *State ex rel. Hippler v. City of Baraboo*, 47 Wis. 2d 603, 612, 178 N.W.2d 1 (1970); *State ex rel. Sahagian v. Young*, 141 Wis. 2d 495, 501, 415 N.W.2d 568 (1987). Again, as discussed in the standing section, Plaintiffs have not alleged substantial harm from the Town’s grant of the CUP; they have only alluded to “hypothetical” and “conjectural” harms, unsupported by reasonable inference or evidence, that have never happened in 30 years but “could” occur in the future. For that reason, they would not be entitled to a certiorari claim even if they had brought one.

of issues bearing on the same cause of action” *New Amsterdam Cas. Co. v. Simpson*, 238 Wis. 550, 300 N.W. 367, 369 (1941).

Declaratory judgments “are not to be advisory in nature but should ‘terminate the controversy and remove an uncertainty.’” *State ex rel. Chiarkas v. Skow*, 160 Wis. 2d 123, 131, 465 N.W.2d 625 (1991) (quoting Wis. Stat. § 806.04(5)). A decision would be advisory “when there is insufficient interest to the plaintiff or defendant to justify judicial determination, where the judgment sought would not constitute specific relief to a litigant or affect legal relations, or where, by reason of inadequacy of parties defendant, the judgment could not be sufficiently conclusive.” *Loy v. Bunderson*, 107 Wis. 2d 400, 411, 320 N.W.2d 175 (1982) (quoting another source). In other words, a party cannot use a declaratory judgment action to have a court “assume various hypothetical states of fact and determine their liability prospectively under each of these states of fact.” *Waukesha Memorial Hosp., Inc. v. Baird*, 45 Wis. 2d 629, 643, 173 N.W.2d 700 (1970).

For a declaratory judgment, the party asking for it must allege that a justiciable controversy exists. *Id.* at 410. A justiciable controversy exists when: (1) one party asserts a claim of right against one with an interest in contesting it; (2) the controversy is between adverse parties; (3) the one seeking it must have a “legal interest in the controversy, that is to say, a legally protectible interest”; and (4) the issue is ripe. *State ex rel. La Follette v. Dammann*, 220 Wis. 17, 264 N.W. 627, 629 (1936). The legal interest requirement is often considered in terms of the standing inquiry. *See City of Madison v. Town of Fitchburg*, 112 Wis. 2d 224, 228, 332 N.W.2d 782 (1983). The ripeness requirement “requires that facts be sufficiently developed to avoid courts entangling themselves in abstract disagreements,” meaning that the “facts must not be so contingent and uncertain.” *Miller Brands-Milwaukee, Inc. v. Case*, 162 Wis. 2d 684, 695, 470 N.W.2d 290 (1991).

To reiterate, Plaintiffs have not claimed a right at all, and even if the Court were to recognize their hypothetical rights of safety, Plaintiffs have not cited to any legal authority protecting those rights. And, even more, the facts potentially implicating those “rights” are contingent and uncertain—*if* a number of things happen that have not happened in Shalom’s 30 years of existence, *then* the adjacent property owners *could* face danger. The facts are contingent upon a series of heretofore unheard-of events and problems that may never come to pass.

But most of all, to come full circle, issuing a declaratory judgment in this case would amount to an advisory opinion. There is no longer any risk that these same parties will litigate the same issues under the same cause of action. That risk was obviated by the amendment to the Town’s Zoning Ordinance. There is no longer a CUP in place; Shalom is operating the zoo, sanctuary, restaurant, and eventual event venue as part of a “zoological activity,” an explicitly permitted use. A decision would not, therefore, terminate the controversy—the amendment did that when it terminated the CUP. The Court’s declaration of any legal rights, status, or relationships would only serve to weigh in on “hypothetical states of fact,” namely what Plaintiffs’ rights would be *if* the Town amended the Code again to remove the zoological use exception, *if* Shalom then re-applied for a CUP, and *if* the Town proceeded in issuing the CUP in the same way it did here. Deciding that moot issue would result in an advisory opinion, and because of Plaintiffs’ already tenuous legal connection to the Town’s decision to grant the CUP, would not affect their legal rights, status, or relationships in any event.

C. The Plaintiff’s Sixth Claim is Doubly Problematic

Finally, the Plaintiffs’ Sixth Claim requires special attention due to its unique oddities. In Claim Six, the Plaintiffs allege the building and potential event space located on the 1809 Shalom Drive parcel are within a floodway/floodplain district and are thus prohibited. (*See* R 16, ¶¶91–100.) This prohibition, they argue, is something that the Town had to consider, it did not, and thus,

the 2025 CUP should be voided. (*Id.*, ¶99.) But this Claim fails for two reasons: (1) the Plaintiffs have not alleged any interest injured by the building’s alleged non-conformance with the floodplain district standards; and (2) the Plaintiffs have not—and cannot—prove that the Town has a legal duty to consider floodplain requirements.

The Plaintiffs’ failure to allege any interest injured by the alleged violation of the floodplain requirements robs them of standing to challenge it. As stated above, standing for challenging municipal decisions requires that an “aggrieved” person—that is, one who has “an interest recognized by law in the subject matter which is injuriously affected by the judgment”—suffer both a threatened or actual injury, and that the injury is protected under the law. *Brown*, 414 Wis. 2d 601, ¶13. Here, the Plaintiffs do not allege that their property would be affected or injured by the alleged floodplain violation, nor do they claim any other interest—legally protected or not—is affected.

Not only that, but the Claim faults the Town for not considering the floodplain without pointing to any cognizable duty in the law for the Town to do so. And, in fact, it is not the Town who considers floodplain districts, but Washington County, which has a separate permitting process. *See* Ord. § 13-1-26 (“[T]he Zoning Administrator shall refer to Washington County all applicants seeking zoning permits for structures or uses which are proposed to be located or conducted within the Shoreland or Floodplain Overlay Districts.”). In other words, while it is within the Town’s province to grant or deny a CUP, it is within the County’s to grant or deny a permit for structures within a floodplain district. Challenging the Town’s alleged failure to consider the floodplain district is asking this Court to answer an irrelevant question. *See Loy*, 107 Wis. 2d at 411.

CONCLUSION

For all the above stated reasons, the Court should dismiss the Amended Complaint.

Dated this 23rd day of January, 2026.

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