

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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FRANKLIN COMMUNITY ADVOCATES, INC.,  
7867 South 83rd Street  
Franklin, WI 53132,

WOODLAKE VILLAGE HOMEOWNERS ASSOCIATION  
224 North 76<sup>th</sup> Street  
Milwaukee, WI 53213

**Case No. 22-CV----**

CHAD and KARYN ZOLECKI  
11763 West Loomis Road  
Franklin, WI 53132

JEFF and DANELLE KENNEY  
12302 West Loomis Court  
Franklin, WI 53132

RYAN and RACHEL RINGWELSKI  
11838 West Ryan Road  
Franklin, WI 53132

NICK and MAGGIE POPLAR  
11856 West Ryan Rd  
Franklin, WI 53132

TOM and ALICE BENNING  
11720 West Ryan Road  
Franklin, WI 53132

MIKE and JOANNE ZOLECKI  
11835 West Ryan Road  
Franklin, WI 53132

ERIC and MICHELLE BALCEROWSKI  
11930 West Ryan Road  
Franklin, WI 53132

Plaintiffs,

v.

CITY OF FRANKLIN  
9229 West Loomis Road  
Franklin, WI 53132,

Defendant.

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## COMPLAINT

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Now comes Plaintiffs as named above and as and for their complaint against Defendant CITY OF FRANKLIN state and allege as follows:

### NATURE OF ACTION

1. This is a challenge to the actions of the City of Franklin and its officials regarding misuse of the City's authority under state and federal law to award public funds and subsidy to preferred and favored private property owners in the City and in so doing intentionally or with reckless disregard cause direct economic injury to the taxpayers of the City and in particular plaintiffs who own property adjacent and near the site of a proposed 152,000 SF slaughterhouse facility. The City, through its officials, has repeatedly misrepresented the factual basis and purpose of making governmental decisions including in particular rezoning and land use determinations and the establishment of Tax Incremental Districts. This has included the borrowing of public funds and the use of those funds to build certain infrastructure for the sole benefit of private favored landowners and with the knowledge that doing so would be detrimental to and negatively impact the value and use and enjoyment of the private property of Plaintiffs. The underlying intent and motive of the City and its officials' actions is in fact unrelated to and unsupportive of any legitimate public purpose and raises the inference that governmental actions and decisions, and the use of governmental power and authority, was used to benefit public officials in their personal capacities.

## PARTIES

2. Plaintiff Franklin Community Advocates, Inc., ("FCA") is a Wisconsin Non Profit Corporation established under Wis. Stats. § 181 *et seq.* with its principal place of business at 7867 South 83rd Street, Franklin, WI 53132. FCA has several members including all its fellow Plaintiffs.

3. Plaintiff Woodlake Village Homeowners Association ("Woodlake HOA") is a Wisconsin LLC with its principal place of business at 224 North 76<sup>th</sup> Street, Milwaukee WI 53213. Woodlake HOA is a member of FCA and represents and acts on behalf of its members, which includes 60 residential properties located approximately 1.6 miles northeast of the proposed Strauss meat processing facility. As described herein and shown by the record in this matter, the development of the meat processing facility pursuant to the SUP/CUP will intrude and disrupt the quiet enjoyment of, diminish the value of, and cause direct and material injury and harm to Woodlake HOA and its member properties.

4. Chad & Karyn Zolecki are citizens, property tax payers, and owners of the property located at 11763 West Loomis Road, Franklin, WI 53132. They are also members of FCA. Their property is within approximately 50 feet of the proposed meat processing facility property and development of that facility if allowed to proceed pursuant to the SUP/CUP will intrude and disrupt the quiet enjoyment of, diminish the value of, and cause direct and material injury and harm to their private residential property.

5. Jeff & Danelle Kenney are citizens, property tax payers and owners of the property located at 12302 West Loomis Court, Franklin, WI 53132. They are also members of FCA. Their property is within 450 feet of the proposed meat processing facility property and development of that facility if allowed to proceed pursuant to the SUP/CUP will intrude and

disrupt the quiet enjoyment of, diminish the value of, and cause direct and material injury and harm to their private residential property.

6. Ryan & Rachel Ringwelski are citizens, property tax payers and owners of the property at 11838 West Ryan Road, Franklin, WI 53132. They are also members of FCA. Their property is within approximately 450 feet of the proposed meat processing facility property and development of that facility if allowed to proceed pursuant to the SUP/CUP will intrude and disrupt the quiet enjoyment of, diminish the value of, and cause direct and material injury and harm to their private residential property.

7. Nick and Maggie Poplar are citizens, property tax payers and owners of the property at 11856 West Ryan Road, Franklin, WI 53132. Mr. Poplar is also a member of FCA. Their property is within approximately 450 feet of the proposed meat processing facility property and development of that facility if allowed to proceed pursuant to the SUP/CUP will intrude and disrupt the quiet enjoyment of, diminish the value of, and cause direct and material injury and harm to his private residential property.

8. Tom and Alice Benning are citizens, property tax payers and owners of the property at 11720 West Ryan Road, Franklin, WI 53132. They are also members of FCA. Their property is within approximately 500 feet of the proposed meat processing facility property and development of that facility if allowed to proceed pursuant to the SUP/CUP will intrude and disrupt the quiet enjoyment of, diminish the value of, and cause direct and material injury and harm to their private residential property.

9. Mike and Joanne Zolecki are citizens, property tax payers and owners of the property at 11835 West Ryan Road, Franklin, WI 53132. They are also members of FCA. Their property is within approximately 350 feet of the proposed meat processing facility property

and development of that facility if allowed to proceed pursuant to the SUP/CUP will intrude and disrupt the quiet enjoyment of, diminish the value of, and cause direct and material injury and harm to their private residential property.

10. Eric and Michelle Balcerowski are citizens, property tax payers and owners of the property at 11720 West Ryan Road, Franklin, WI 53132. They are members of FCA. Their property is within approximately 450 feet of the proposed meat processing facility property and development of that facility if allowed to proceed pursuant to the SUP/CUP will intrude and disrupt the quiet enjoyment of, diminish the value of, and cause direct and material injury and harm to his private residential property.

11. Defendant City of Franklin is a municipal and governmental body established under the laws of Wisconsin including chap 62 stats., and associated municipal laws and has its principal place of business at 9229 West Loomis Road, Franklin, WI 53132.

### **JURISDICTION**

12. The acts giving rise to the claims described herein occurred in this District. Those claims include violations of the federal and Wisconsin Constitution and are properly pursued by the named Plaintiffs pursuant to federal question jurisdiction under 28 U.S.C §1331 et seq. Wisconsin State and applicable federal law authorize any aggrieved person and adjacent property owner or tax payer the right to challenge the decision of a municipal body regarding determinations that cause injury to their constitutional rights including their right to own, hold and maintain their private property.

### **FACTS REGARDING CITY'S ACTIONS TO BENEFIT FAVORED PROPERTY OWNERS**

13. Based on a new 2009 comprehensive development plan, in 2014, City officials determined they would focus on encouraging new development in three areas of the City

including the Loomis Road corridor between Ryan Road and the Muskego border. One specific developer, Bear Development, was made privy to this plan.

14. In August 2016, Bear Development purchased 164 acres of land on both sides of Loomis Rd, covering most of the proposed development corridor. Bear paid \$710,000 for the total acreage. At that time, representatives of Bear stated that, “Bear Development has been looking at the land for two years, ... there is demand for both single and multi-family housing in Franklin, ... plus the potential for retail or business park space. *See Exhibit 1 – Public Statements by Bear Development.*

15. In 2017 the City produced an initial aerial plan view depicting what the proposed overall redevelopment of the Loomis Road property would look like. The focus was on new residential subdivisions, in keeping with the existing surrounding uses and the nature of the lands in the area, as well as the introduction of smaller business and commercial developments bordering busy Loomis Road. *See Exhibit 2 Aerial Plan of Business Park.*

16. In 2018 the Mayor of the City begins to finalize his true plans in private discussions with Bear Development (the new land owner) and Strauss Brands (a medium sized local business) to create an off the books agreement to develop a 152,000 square foot slaughterhouse, with an approved additional 130,000 square foot expansion on land in this Loomis Road corridor.

17. By the end of 2018, the City created a new aerial graphic of what this acreage would now look like, but still failed to mention or address the addition of a giant slaughterhouse, or any possible heavy industrial users for this quiet, rural part of town, furthest from the freeway. The area was now named the Loomis Business Park, and a 30 acre parcel was to be created for a

supposed “manufacturer” with whom Bear Development was in active discussions to be a tenant for the new business park. *See Exhibit 3 Revised Aerial Plan for Business Park.*

18. Also in 2018, the City undertook actions to establish a Tax Increment District to cover the newly dubbed Loomis Business Park.

19. The City hired a consultant to generate a study and analysis ostensibly supporting the creation and adoption of the TID district. The TID district was to be titled TID 6.

20. The City’s consultant provided analysis stating that the use of public funds, which would be money borrowed by the City from the private market, to build roads and other infrastructure in TID 6 was necessary and appropriate and complied with the State law requirements to allow the use of such public funds. In reality, the TID met none of the 3 legal requirements for its creation. The City failed to state how farmland and protected wetlands could possibly be considered “blighted.” They also failed to clarify how land already owned by a developer, with plans for residential development in place, could possibly be considered otherwise “undevelopable” without TIF financing. Finally, the City forgot to acknowledge that a side agreement was already in place to create a giant slaughterhouse on the land, and not only would that development not benefit the entire community, it would in fact have the reverse effect, by creating something undesirable, a likely noise and odor nuisance that would actually lower surrounding property values. *See Exhibit 4 – CohnReznick Economic Devaluation Preliminary Study.*

21. The City’s consultant also stated that the proposed development within TID 6 would result in higher tax base for the City. However it failed to explain that the establishment of TID 6 meant that the taxpayers and property owners of property lying outside TID 6 would not realize any benefit from the purported increased tax base for up to 20 years but that the

private property owners who were involved in the development of TID 6 would see immediate and substantial benefits and financial gains.

22. During its review of the proposed TID district the City made certain statements regarding the future use of the Loomis Road property. Bear was also encouraged to make public statements and did so through its president who indicated that the development would be residential and also that a “manufacturer is in talks to fill a new building on about 30 acres.” The manufacturer was known to the City at this time to be Strauss Brands, which did not qualify under the business designation of a manufacturer, and was kept from the public, in seeming acknowledgement of how unpopular the idea would be with the citizens and taxpayers of Franklin. *See Exhibit 5 – Public Comments of Bear Development.*

23. The statements made by the City’s consultant for the TID asserted that the overall development would include 75 residential homes and claimed that those residences would provide opportunities for housing for the workers that were anticipated to be employed in the TID district.

24. This conclusion was absurd as no more than 3 Franklin residents were ever employed by Strauss, and the wages paid would not allow such workers to purchase or rent the residential homes being proposed for the TID district which had starting prices of \$500,000.

25. In addition to these inaccurate and erroneous assertions, the property in TID 6 failed to qualify for inclusion in a TID because it was not blighted in any way or otherwise limited or of a character under the TID law, Wis. Stats. § 66.1105, that would justify inclusion of the property in a TID district. Indeed, Bear had already purchased the land and began to create plans for an initial subdivision more than a year prior to the adoption of TID 6.



26. Despite all this, the City went forward and reviewed and adopted TID 6 in fall 2018. Most meetings were held in closed session, ostensibly to not tip off developers or others to the plan. Ironically it was only the citizens and taxpayers who were kept in the dark, as both Bear and Strauss were privately kept abreast of the details throughout the process.

27. With the adoption of TID 6, the City continued its actions to benefit private property owners at the expense of taxpayers including Plaintiffs. By overlaying the TID on land already purchased by Bear Development, then agreeing to pay for all needed infrastructure on said land, and rezoning most of the land “industrial”, the City increased the value of Bear’s land holdings by roughly 1600% in 2 years.

28. Ultimately, representatives of Bear thanked the Mayor for the actions taken to enable Bear’s development. Bear had much to be thankful for. As a result of the City’s actions, Bear was able to sell 30 acres of property to Strauss Brands for \$2.1 million in March of 2019. Bear had purchased all 164 acres of the Loomis Road property only two years prior for \$710,000.

29. For its part, Strauss also participated in private non-public discussions with the City and in particular the Mayor regarding its own plans. The City guaranteed to provide the enormous amount of water required for a giant slaughterhouse, while also agreeing to very limited or no restrictions on the volume of “meat harvesting” at the site. The City also agreed to attach the required SUP to the property and not the applicant, as is normally done, in order to make the investment more valuable and more easily sellable for Strauss.

30. Upon information and belief the Mayor promised Strauss that he would ensure that it obtained an approval to build a new 152,000 SF slaughterhouse in TID 6.

31. In 2019, the City and Strauss entered into contractual developer's agreements whereby the City in effect promised to approve any permits necessary to allow Strauss to construct its new slaughterhouse, in exchange for a minimum tax guarantee.

32. The City had a direct conflict in that the developer's agreements called for Strauss to make certain minimum property tax payments to the City in the future if the slaughterhouse project was granted necessary permits and constructed. However, the City was the party in charge of authorizing any required permits.

33. None of these issues were publically discussed at City Council meetings and instead City officials continued to suggest that the new Strauss slaughterhouse would be consistent with the uses required by the City's Comprehensive Plan and otherwise.

34. It was not until late 2019 and early 2020, that Franklin residents even became aware of any Strauss deal. When Strauss attempted to cut an even better deal with the City of Milwaukee, Franklin's Mayor began making public statements to the press regarding the new Strauss slaughterhouse project planned for the new Loomis Business Park.

35. The Mayor explained in a business journal article from 2019 that the project was a "done deal." Strauss had not even applied for its required Special Use Permit at this time.

36. The property expressly rezoned and created as a TID for the new Strauss slaughterhouse facility is located in an area of the City that has *not* historically ever been used for industrial purposes. The current surrounding properties are either unimproved, conservancy or residential in nature.

37. As shown in Exhibit 11 the residential properties of all of the individual plaintiffs are very close to the proposed facility, including the Zoleckis, the Poplars, the Kenneys, and the Ringlewskis who are all within 500 feet of the proposed slaughterhouse. Chad and Karen

Zolecki's property is located just across the street from the entrance to the proposed Strauss slaughterhouse. These residential properties have existed and been occupied for well over 10 years. These properties will suffer substantial impairment and diminution in value likely to be anywhere from \$70,000 to \$150,000 based on the current size and value for the nearest homes should the slaughterhouse project be allowed to continue. *See Exhibit 4 – Preliminary Devaluation Study.*

38. The City through the Mayor and otherwise during the period after October 2019 and through the Spring of 2020 met with Strauss and its representatives and other officials in private or unrecorded meetings at the City's offices and otherwise to discuss the proposed slaughterhouse facility.

39. The proposed project was finally though quietly made public in spring of 2020. Strauss thereafter applied for what the City of Franklin denotes as a "Special Use Permit" on April 15, 2020. They filed amended applications increasing the size of the proposed facility on July 29, 2020.

40. Strauss submitted limited supporting documents with its application.

41. Information conveyed by Strauss and its representatives during these meetings as well as information within its documents supporting its application are not accurate and contain information that is false. This includes but is not limited to:

- (i) Misrepresenting whether cattle will be killed on the site, and what the eventual volume of meat harvesting is intended to be – the application calls for a "kill floor"
- (ii) No requirements for job creation
- (iii) Claims that local residents will be employed - 3 Franklin residents are the most ever employed by Strauss at anyone given time
- (iv) Exaggerations and inconsistent assertions and statements on the cost of the project

- (v) Inaccurate and unsupported predictions on the increase in tax base that would result from the construction of the project at the subject property.

42. Information conveyed by the Mayor and select Alders at these meetings, proved to be not only prejudicial, and a clear conflict of interest, but also false. They include, but are not limited to:

- (i) Statements that Strauss is a locally owned, family company – Strauss is owned by an investment firm in Texas;
- (ii) Statements that Strauss put limited burden on the police department – over the course of 6 years, more than 100 calls had been responded to by police at the current Strauss facility, some as significant as involving firearms and death threats;
- (iii) The Mayor stated he was unaware of any complaints filed against Strauss, although he was copied on an email regarding the latest noise complaint from one of the neighbors near the existing, much smaller facility, and was aware of OSHA complaints, DNR violations, MMSD violations, USDA violations causing a 2 day shutdown and unpermitted construction issues with both their site as well as their current building.

43. This was done knowingly and intentionally. Strauss and the City had agreed privately that while the development of the Slaughterhouse in TID 6 would obviously be detrimental to the use and quiet enjoyment and value of the surrounding residential properties and neighborhood, including those of plaintiffs, the public statements made by the City and Strauss would assert otherwise.

44. The final Strauss development only became publically known to the citizens of Franklin and in particular to plaintiffs in summer 2020. Plaintiffs immediately became

concerned and investigated the proposal. The individual and all plaintiffs strongly disagreed with the idea of what is, in fact, a very large active slaughterhouse being built in the City's more rural west side composed of farms and residential subdivisions.

45. As part of social media activity regarding the project, certain current and former City officials made and posted express commentary about the substance of the proposed facility and their view on whether the SUP/CUP should be granted.

46. As noted above, in September of 2019 the Mayor stated to the Milwaukee Business Journal that, "I know we have a deal. We have a signed agreement with Strauss." *See Exhibit 6 – Public Comments by Mayor.*

47. More recently the Mayor stated his belief that the applicant was a "good corporate citizen." However, the Mayor knew when he made those statements that Strauss' existing operation in Franklin had recently settled an OSHA enforcement action for \$260,000, and had been forced to shut down for several days by the USDA for inhumane handling of animals. *See Exhibits 7 and 8, OSHA Settlement document and USDA Shut-Down Order.*

48. At the October 20, 2020 public common council meeting regarding the proposed Slaughterhouse the Mayor explained that he had researched police incidents at the existing Strauss facility and stated that there had only been 8 incidents. However, a review of the actual public records indicates in excess of 150 incidents over the past 6 years. *See Exhibit 12 filed herewith.*

49. Despite massive protest and objection the City Council ultimately approved a special use permit authorizing the proposed Slaughterhouse. This only occurred after the Mayor orchestrated the reconsideration of the initial 4-2 vote to deny the permit. After the initial denial

of the special permit on October 20, 2020, emails show that the Mayor and his staff were not going to accept the result.

50. Soon thereafter at the meeting on November 2, 2020, an alderperson who had initially voted against the project moved for reconsideration and switched her vote. Under the City's rule, this enabled the Mayor to vote to break the 3-3 tie, which he did.

51. A state court action was filed by Plaintiffs regarding the lack of merit of the special permit approved by the City at the November 2, 2020 meeting.

52. During the past several months further information became public demonstrating that the City and in particular the Mayor knew that the development of the proposed slaughterhouse would not benefit and indeed would injure other taxpayers and private property owners of the City including those of Plaintiff.

53. Further information shows that the Mayor took steps behind the scenes to intentionally alter the proper process of review and approval of the slaughterhouse.

54. As a former City engineer explained in an affidavit:

5. Mayor Olson has acted as the Chair of the PC during my tenure. At PC meetings I was required to attend, I was instructed how to vote, regardless of my professional opinion, or lack of knowledge on a particular item.

6. When the Agenda was cut and dry with no controversial items, the Engineering seat on the PC was permitted to be vacant so long as a quorum could be reached. When controversial items were on the Agenda and the Engineering vote was possibly required to pass an item, either the City Engineer or I was required to attend. This is what occurred prior to the Strauss SUP. The week prior to the PC meeting the City Engineer requested me to cover the meeting, as he had approved vacation for that time. I also had approved vacation during this same period, so I told him I could not. Mayor Olson then revoked my boss' vacation, to make sure someone was present to steer the desired outcome.

55. Another now former employee was ostracized and ultimately left the City and the Mayor's office due to his hostile actions towards her because she opposed the Slaughterhouse project.

56. The arbitrary actions of the City have continued more recently. As a result of the State court action, the Circuit Court required the City to hold completely new hearings on the Special Permit necessary for the slaughterhouse. These hearings were ordered by the State Court to ensure that adequate due process was provided to the citizens and including plaintiffs.

57. However, Strauss sent a letter withdrawing from the slaughterhouse project on February 17, 2022, the day of the new hearing at the City Plan Commission. Upon information and belief, Strauss's intention to withdraw from the project was known for several months before the February 17th hearing. *See Exhibits 9 and 10, Letter of withdrawal from Strauss and November 2022 Email from Equity Owner*

58. Despite the fact that Strauss – the applicant for the special use permit – had withdrawn, the City Staff and a bare majority of the Common Council went forward with the hearings and made a farce of the entire process by reaffirming their approval of a slaughterhouse special use permit at the March 1, 2022 common council meeting.

59. The City did this in the absence of an actual applicant and completely contrary to plain statutory requirements and the State Court's Order. The new hearings were ordered and intended to provide due process but were instead used by the City to provide even less due process or transparency. By going forward to review and approve the special use permit when there was no applicant present or requesting the permit, the City became the applicant and the regulator for the same matter and put itself in an irreconcilable conflict. It exacerbated the situation by actually going forward to approve the permit.

60. The actions described above were executed by the City through the Mayor and other City officials at the direction of the Mayor and otherwise for the purpose of favoring private land developers and with the understanding and belief that doing so would very likely and directly injure and harm City taxpayers and in particular property owners adjacent and nearby to TID 6, which includes many of the Plaintiffs named above.

**FIRST CLAIM FOR RELIEF**  
**(Violation of Due Process and Equal Protection of the Laws)**

61. The allegations above are incorporated into this claim for relief.

62. The City's actions to establish TID 6 and then amend TID 6 and to enter into developers agreement contracts with private parties were undertaken to provide direct economic benefit to Bear Development, Strauss, and others yet to be discovered.

63. Contrary to the conclusions asserted by the City's consultant that provided the basis justifying the adopting of TID 6 and the developers agreements, the sole purpose of these actions was to benefit private landowners and others yet to be discovered.

64. The City through its officials intentionally misrepresented the true facts regarding its proposed TID and other land use plans.

65. The City's intentional misrepresentations were for the purpose of achieving approval of the TID and other ordinances so that funds could be obtained from the private market through a bond or loan to the City and then given and/or applied for the benefit of favored property owners.

66. This intent was carried out while knowing that the actions to obtain such funds and transfer them to private property owners was not for a proper purpose under the TID law, was not for any proper public purpose, but was for the primary purpose of enriching certain favored



landowners to the detriment of the citizens and taxpayers of the City and in particular to the injury and special damage to the property of plaintiffs.

67. The City's intentional use of governmental authority and power to favor one property owner over the taxpayers of the City, and in this case a select group of nearby property owners including the Plaintiffs, intentionally diminished and hindered the Plaintiffs' use and enjoyment and value of their private property is contrary to the due process and equal protection clauses of the 14<sup>th</sup> Amendment to the United States Constitution.

68. Plaintiffs will be and have been harmed by the City's improper actions. As such Plaintiffs have the right pursuant to 42 U.S.C. § 1983 and otherwise to pursue this claim arising from the City's actions described herein and the resulting violation of Plaintiff's constitutional rights to equal protection and due process of law. Plaintiffs have a constitutional right to seek redress and to protect their private property and seek damages in accordance with law, and by these allegations do hereby seek the remedies described above and as otherwise provided by law.

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**WHEREFORE,** Plaintiff requests the following relief in this matter:

1. That after a trial of the facts in this matter the Court order and adjudge that Plaintiffs' private property rights and rights and privileges under the 14th Amendment have been violated and caused them harm and including but not limited to diminution in their property values and other economic damages.
2. That after a trial of the facts in this matter the Court render judgment in favor of the Plaintiffs in accordance with its orders in No. 1 above
3. That the Court award Plaintiffs all costs of litigation including actual attorneys fees and costs and expenses as provided by applicable law and such other relief as the Court deems appropriate and just.

Dated this 2nd day of April, 2022

Electronically Signed by Joseph R. Cincotta  
Joseph R. Cincotta

State Bar No. 1023024  
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