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John Barrett
Clerk of Circuit Court
2020CV007031

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

FRANKLIN COMMUNITY ADVOCATES, INC.,
WOODLAKE VILLAGE HOMEOWNERS ASSOCIATION
CHAD and KARYN ZOLECKI, JEFF and DANELLE KENNEY,
RYAN and RACHEL RINGWELSKI,
STEVE VALLEE and COLLEEN DOMASK
NICK POPLAR, TOM and ALICE BENNING
MIKE and JOANNE ZOLECKI, DEAN REIN
ERIC and MICHELLE BALCEROWSKI
MELINDA HAMDAN

Plaintiffs,

v.

CITY OF FRANKLIN,

Defendant,

And

STRAUSS BRANDS, LLC,

Intervening Defendant.

**Case No. 20-CV-7031**

Honorable Hannah Dugan

**NOTICE OF MOTION AND MOTION TO COMPLETE THE RECORD AND FOR AN EXTENSION OF THE BRIEFING SCHEDULE**

**PLEASE TAKE NOTICE** that**,** Plaintiffs Franklin Community Advocates and all the other individual plaintiffs as named above ("FCA") hereby move the Court as follows:

1. To require the City to gather and include existing documents and information that are material to the issues in this matter into the currently incomplete record previously provided to the Court.

2. Adjust the current briefing schedule to allow for time to gather and complete the record.

The basis for this motion is as described below and in the accompanying affidavit.

## *I. Providing a Complete Record to the Court.*

This case requires review of a local decision by the Franklin Common Council and is presented to the Court on a certiorari review. However, that does not mean that the review can be conducted without the complete record. The Court has the complete power to require and indeed must require that the record of the proceedings below be complete and accurate. *See* Wis. Stats. § 227.55 ("the agency in possession of the record for the decision under review shall transmit to the reviewing court the original or a certified copy of the entire record, including all pleadings, notices, testimony, exhibits, findings, decisions, orders, and exceptions…"

The Courts have made clear what seems obvious, which is that due process requires a complete record:

> "The right to a hearing and a record sufficient for judicial review to determine whether the exercise of the administrative power was capricious or arbitrary is fundamental. … in those cases where the judicial branch has the jurisdiction to review the action of the legislative function the facts which lie within the knowledge of the agency must be disclosed in the record so that the record is complete and adequate for a judicial review to determine whether the action was arbitrary, capricious or discriminatory.

*See State ex rel Ruffalo v. Common Council of City of Kenosha*, 38 Wis.2d 518, 524 (1968); *See also e.g, Allenergy Corp. v. Trempealeau County Land Use Committee*, 375 Wis.2d 329, 371-72 (2017) (In making this determination, we may look to the whole record. "[A] reviewing court should consider the context of the evidence when determining whether it supports a municipality's action." *citing Oneida Seven Generations Corp. v. City of Green Bay*, 2015 WI 50, ¶45, 362 Wis.2d 290, 865 N.W.2d 162. "Once a court chooses to consider a petitioner's petition on the merits, due process requires the court to base its decision on a complete record of the proceedings below and on briefs submitted by the parties. *State ex rel Kaufman v. Karlen* 278 Wis.2d 332, 337 (Ct.App. 2004).

Here, as described in the accompanying affidavit of David Sorensen, important information known to exist has been kept from the record. This includes the lack of a record of many of the statements made and facts submitted by members of the public before and at the October 20th 2020 and November 2, 2020 hearings. Recall that the City Council voted 4-2 ***against*** this slaughterhouse permit at the October 20th hearing. There was a very good basis to do so, including the lack of admissible information and evidence from the applicant meeting the requirements of the ordinance, and perhaps moreso the strength and volume of the facts and information provided the many members of the public who spoke at the hearings. Much of this material has not been included in the record provided to the Court

In addition, as described in the accompanying affidavit, a large amount of documentary evidence has been withheld or not included that is important to Plaintiffs' claims. *See Affidavit of D. Sorensen at ¶ 1-7.* This includes not providing significant documents showing public postings by the Mayor disparaging objecting citizens and vouching for the applicant, Strauss Brands. *See Affidavit at ¶ 6(f).* This is particularly outlandish because earlier in the case Plaintiffs made a motion asking to take discovery regarding the Mayor's nasty public statements. Those statements are relevant to Plaintiffs' claim that there was a lack of adequate due process due to an impermissibly high risk of bias. The Defendants argued against allowing for discovery in part by claiming that the public record already contained sufficient information of the Mayors public statements. *See Record at Efiling Doc No. 42 at pp. 20-21, 18.*

Also, even though this Court did not allow for discovery pursuant to an earlier motion, that decision explicitly did not and does not dispose of Plaintiff's underlying due process claim. Nor does it mean that the record can be minimized to keep information from the Court. Indeed, that was the Defendants point in their earlier briefing – "there is no need for discovery because

the records showing bias already exit." To make that argument then but to not supply that information into the record now is totally unacceptable.

The Court is fully empowered to require that the record be complete and Plaintiffs are requesting that the Court order as such and adjust the schedule in this matter accordingly.

Dated this 2nd day of July, 2021

*Electronically Signed by Joseph R. Cincotta*

Joseph R. Cincotta
State Bar No. 1023024
Attorney for Plaintiffs

**P.O. Address:**
400 East Wisconsin Avenue - Suite 205
Milwaukee, WI 53202
414-416-1291 jrc4@chorus.net