

For Immediate Release:



FRANKLIN COMMUNITY ADVOCATES
ADVOCATING FOR A BETTER WORLD TOGETHER

Contact:

Marcelino Rivera III, Executive Director

Franklin Community Advocates, Inc. (FCA)

advocates@franklincommunityadvocates.org

franklincommunityadvocates.org

FCA's LEGAL CHALLENGE UPDATED

December 24th, 2020, Franklin, WI– Seven pages of supplemental material, and multiple exhibits have been added to [Franklin Community Advocates'](#) Lawsuit (Case 2020CV007031) initially filed on December 1, 2020 opposing Strauss Brands' Special Use application approval. The filing was amended late Wednesday afternoon with Milwaukee County Clerk of Circuit Court.

The amendment specifically compounded information around “impermissibly high risk of bias” of Mayor Steve Olson. Exhibit G. contains several screenshots and pictures of text messages from Franklin Mayor Steve Olson. Many of these text messages targeted the wife of a Franklin resident.

In the recent weeks there has been a number of articles and information released giving heavy credence to concerns raised by citizens provided at the multiple City Hall meetings and calling into question “inconsistencies between Strauss' words and actions.” Strauss' treatment of employees, animals and environment has been called into question and documentation has surfaced pointing out misalignment with the company's claims.

A [CNN](#) article on December 11th reported on a former employee alleging she contracted COVID-19 at Strauss, because they failed to implement required protections. “They found the perfect moment to fire us. ... They used us. We all feel used. They knew the situation. They knew everything about our lives. They said there was no problem,” she says. “Why is it that when someone complains about their rights, they get fired?”

Strauss also appeared before the Planning Commission on December 17th to address remedying a 2015 expansion of the parking lot at their existing facility that “impacted conservation easement areas on the property including wetland setbacks.” The encroachment was noticed while reviewing the file for the site and current aerials of the property after April of 2020 when the applicant contacted the Department of City Development. A city staff report said, “The nature of the encroachment is serious, as it is into a recorded conservation easement which constitutes a legal commitment by the applicant to protect natural resources.”

December 10th, USDA released documents on their website showing a “Humane handling and Slaughtering” violation occurred on November 23rd, 2020 at Strauss' existing facility that resulted in operations being shut down for two days. The [letter](#) from the USDA stated “The observations detailed above indicate an egregious violation of the humane handling requirements.”

To use the words of Randy Strauss, CEO of Strauss Brands, “If history is an indicator for the future we will manage our new facility as we have done with the old...” We cannot blindly trust this company to build a massive new facility designed to slaughter initially up to 500 head of live cattle per day, near upscale residential areas, with wetlands and several significant watersheds nearby. The new facility as approved would initially be 152,035 square feet. Strauss also intends to seek an expansion of the new facility in the relatively near future so as to add an additional 112,000 square feet of operational space and an additional 47,000 square foot truck maintenance facility. This is a total of 311,035 square feet, which is in excess of 7 acres of building.

To date, there has not been a single formal impact study provided by Strauss, or required by the City of Franklin, before giving approval of this project to move forward. The Indian Community School (ICS) has stepped up to conduct the [environmental impact study](#) both Strauss and the city failed repeatedly to provide. Despite being censored, and not being recorded on the [YouTube stream](#), one of the speakers at the December 15th Common Council meeting summed up this issue quite brilliantly:

"Am I the only one in this room that feels deeply embarrassed and remorseful, that between Strauss and the city, we couldn't find a way to produce an objective study to address the concerns of this school and so many of our citizens? Seriously folks, a grade school had to take on the responsibility? "

Franklin Community Advocates will continue to advocate for equality, transparency, holding city officials accountable and growth within the community. Please join us in making a difference. As a non-profit organization, we depend on donations to fund our operations and keep us going. Donations can be made at Franklincommunityadvocates.org

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FILED
12-24-2020
John Barrett
Clerk of Circuit Court
2020CV007031
Honorable Lindsey Grady-
23
Branch 23

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

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

WOODLAKE VILLAGE HOMEOWNERS ASSOCIATION
224 North 76th Street
Milwaukee, WI 53213

Case No. 20-CV-7031

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

Honorable Lindsey Grady

(Amended Summons & Complaint)

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

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

STEVE VALLEE and COLLEEN DOMASK
11808 West Loomis Road
Franklin, WI 53132

NICK 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

DEAN REIN
11700 West Ryan Road
Franklin, WI 53132

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

MELINDA HAMDAN
11900 West Ryan Road
Franklin, WI 53132

Plaintiffs,

v.

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

Defendant.

AMENDED SUMMONS AND COMPLAINT

THE STATE OF WISCONSIN, to each Person named above as a Defendant:

You are hereby notified that the Plaintiffs named above has filed a lawsuit or other legal action against you. The Amended Complaint, which is attached and is served upon you this day, states the nature and basis of the legal action.

Within 45 days of receiving this Amended Summons if you are the State, or an officer, agent, employee or agency of the State, and 20 days otherwise, you must respond with a written Answer or otherwise respond and take action as defined and described in Chapters 802 and 806 of the Wisconsin Statutes and applicable law, to the Amended Complaint. The Court may reject or disregard an Answer or other response that does not follow the requirements of the statutes. The answer or other response must be sent or delivered to the Court, whose address is, Milwaukee County Circuit Court, 901 North Ninth Street, Milwaukee, Wisconsin 53233 and to Joseph R. Cincotta, Attorney for Plaintiffs, whose address is 400 East Wisconsin Avenue, Suite 205, Milwaukee, WI 53202. You may have an attorney help or represent you.

If you do not provide a proper answer or other required response within 20 days or 45 days, whichever is applicable to you, the Court may grant judgment against you for the award of money or other legal remedy requested in the Amended Complaint as allowed by law, and you may lose your right to object to anything that is or may be incorrect in the Amended Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 23rd of December 2020

Electronically Signed by Joseph R. Cincotta
Joseph R. Cincotta
State Bar No. 1023024
Attorney for Plaintiff

P.O. Address:

400 East Wisconsin Avenue - Suite 205

Milwaukee, WI 53202

414-416-1291

jrc4@chorus.net

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12-24-2020
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Franklin, WI 53132,

Defendant.

AMENDED COMPLAINT

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

NATURE OF ACTION

1. This is a challenge to the validity of a Special Use Permit/Conditional Use permit (“SUP/CUP”) granted on November 2, 2020 by the City of Franklin to Strauss Brands, LLC (“Strauss”) allowing for the development and construction of a meat processing and slaughtering facility in the City. The proposed processing facility is part of a larger proposed development known as Loomis Business Park. The processing facility directly abuts a residential subdivision and is very near several existing private homes that have long been zoned R-1 residential. The project is very controversial and if allowed to proceed will very clearly cause harm and injury to the surrounding properties.

2. The proposed SUP/CUP was rejected by a vote of 4-2 at the initial vote of the Common Council on October 20, 2020. However, Strauss soon thereafter undertook a vigorous plan to undo that rejection. It met with a key common council member who later made the motion for reconsideration and voted to approve. It continued to work in secret with the City’s

Mayor, who continued his effort to expressly disparage and undermine citizens who objected to the project. It enlisted others in the community to appear at the November 2, 2020 hearing on reconsideration and at that hearing continued to assert conclusions and facts about the proposed development that were not true or lacked a reasonable basis in fact.

3. The SUP/CUP was brought up for consideration at the November 2, 2020 hearing. While many statements were made about the project, there was a woeful lack of substantial evidence to demonstrate and support approval of the SUP/CUP under the requirements within the City's ordinances. Despite this, the Common Council voted 3 to 3 on the motion to approve. The Mayor, who had very openly and publicly made his views known in favor of the project for many weeks and months prior to the Council meetings, and beyond that used social media to criticize and disparage those who objected, voted to approve, breaking the tie 4-3. The City has subsequently taken the position that the SUP/CUP has been approved. Plaintiffs continue to strongly object to the project and hereby challenge the procedural and substantive basis for its current approval. Plaintiffs seek review in this Court of the claims alleged and stated herein.

PARTIES

4. 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.

5. Plaintiff Woodlake Village Homeowners Association ("Woodlake HOA") is a Wisconsin LLC with its principal place of business at 224 North 76th 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.

6. 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.

7. 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 250 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.

8. 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 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.

9. Nick Poplar is a citizen, property tax payer and owner of the property at 11856 West Ryan Road, Franklin, WI 53132. Mr. Poplar is also a member of FCA. His 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 his private residential property.

10. Steve Vallee and Colleen Domask are citizens, property tax payers and owners of the property at 11808 West Loomis 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.

11. 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 1200 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.

12. 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 700 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.

13. Dean Rein is a citizen, property tax payer and owner of the property at 11700 West Ryan Road, Franklin, WI 53132. He is also a member of FCA. His property is within approximately 1100 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.

14. 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 1200 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.

14A Melinda Hamdan is a citizen, property tax payer and owner of the property at 11700 West Ryan Road, Franklin, WI 53132. She is also a member of FCA. Her property is within approximately 1300 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 her private residential property.

15. 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.

16. Strauss Brands, LLC is a Wisconsin Limited Liability Company with its existing place of business at 9775 South 60th Street, Franklin, WI 53132. Strauss is the developer of the proposed meat processing facility. The facility is to be located at property identified as Tax Key No. 891-1083-000 and which parcel is located on and abutting the future Monarch Drive in the City of Franklin. Strauss is, upon information and belief, owned and/or controlled by a Texas based equity holding company known as Insight Equity Holdings, 1400 Civic Place, Suite 250, Southlake, Texas 76092-7641.

JURISDICTION

17. The acts giving rise to the claims described below occurred in this County and those claims are properly pursued by the named Plaintiffs pursuant to Wis. Stats. § 62.23(7)(f) and (8) and City Ord § 15-10.0501. Those provisions permit any aggrieved person and adjacent property owner or tax payer the right to challenge the decision of a municipal body regarding the grant or denial of a special use permit/conditional use permit, which permit allows for a use of property contrary to the City's ordinances and/or contrary to state statute or other applicable law. Because this matter seeks declaratory relief, it is also brought pursuant to and governed by Wis. Stats. § 806.04 and applicable law.

FACTS REGARDING REVIEW AND GRANTING OF THE SUP/CUP

18. Strauss Brands, LLC ("Strauss") is seeking to develop a new large meat processing facility in the City of Franklin. As described in the Special Use Permit, the facility would operate as follows:

[The facility is] designed to process 250 to 500 head of cattle per day, which will include cattle pens, a harvest floor, carcass coolers, fabrication areas, packaging areas, warehouse areas, shipping docks, operations offices, employee welfare spaces and associated mechanical support facilities and spaces, upon property located at the southwest corner of the intersection of West Loomis Road and the new Monarch Drive (Lot 83 of Ryan Meadows Subdivision, approximately 30.2 acres), bearing Tax Key No. 891-1083-000.

A true and accurate copy of the SUP/CUP is filed herewith as Exhibit A.

19. The new facility would be located within the Loomis Business Park located on the southwest corner of the City. The Loomis Business Park was intended to be a mix of uses and include some commercial office and business uses, not industrial uses. In addition, the City already has an established business park located adjacent to the Freeway on the east side of the City. However, rather than locate the Strauss facility at the existing business park, the City encouraged Strauss to locate at the Loomis Business Park location amid farms, wetlands, and residential subdivisions.

20. The new facility as approved would initially be 152,035 square feet. Strauss also intends to seek an expansion of the new facility in the relatively near future so as to add an additional 112,000 square feet of operational space and an additional 47,000 square foot truck maintenance facility. This is a total of 311,035 square feet, which is in excess of 7 acres of buildings and/or paved area.

21. Strauss has historically operated a meat processing facility in the City of Franklin for many years. It operates that facility from its property located at 9775 South 60th Street, Franklin, WI 53132 and pursuant to a Conditional Use Permit granted by the City in 1971.

22. The existing facility is for all intents and purposes, a slaughterhouse. While at recent public hearings representatives of Strauss attempted to deflect direct questions regarding

this issue, they finally conceded that the company slaughters animals as part of the operation of its current facility.

23. Similarly, the new facility, while proposed for a very different area of the City will be a slaughterhouse roughly 4 times the size of the current facility. Meat processing and slaughterhouse operations such as that being proposed are considered “industrial land uses.”

24. The property being proposed for the new 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. *Aerial plan views showing the subject property and surrounding area is filed herewith as Exhibit B.*

25. As shown in Exhibit B, the residential properties of several of the individual plaintiffs are very close to the proposed facility, in particular, the Zoleckis and Vallee/Domask are directly across the street from the entrance of the site. Several of these properties are within approximately 50-400 feet of the Strauss property. These residential properties have existed and been occupied for well over 10 years. As the record below reflects, facts were submitted into the record showing that these properties will suffer substantial impairment and diminution in value likely to be in excess of \$100,000 each should the project be allowed to continue. As included in the record, it is the opinion of certain of the plaintiffs that they will not be able to sell their property *at all* should the SUP/CUP and the project be allowed to proceed.

26. The property proposed for the Strauss facility was until recently farmland, and zoned agricultural, residential or business. The City has asserted that the Strauss parcel was changed from “Conservancy/Residential” to “Manufacturing/Industrial M-1” in 2018. However, current county land use records show that the property with the Tax Key that is subject of the SUP/CUP remains zoned R-1 Residential. *See Exhibit C filed herewith.* In addition, no

information in the record has been discovered that shows an amendment to the City Comprehensive Plan/Master Plan for this area. City staff note that the area is designated as “Business Park.”

27. Strauss had previously attempted to develop its new facility at another subsidized development known as Century City and located in the central city of the City of Milwaukee. This proposal was strongly opposed by residents and property owners. When City of Milwaukee Alderman agreed to oppose the development, Strauss withdrew its proposal in October 2019. Despite claims of job creation resulting from the new facility, the City of Milwaukee determined that a meat processing/slaughterhouse was not appropriate for a neighborhood abutting substantial residential properties and uses.

28. After its effort to build a new facility at Century City ended, Strauss turned its attention to expanding in Franklin.

29. Upon belief, during the period after October 2019 and through the Spring of 2020 Strauss and its representatives met with the Mayor and other officials in private or unrecorded meetings at the City’s offices and otherwise to discuss the proposed facility.

30. Strauss 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.

31. Strauss submitted certain supporting documents with its application.

32. Upon information and belief, Strauss also communicated with City elected and other officials to try to persuade them to approve the SUP/CUP.

33. Upon information and belief, 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 – the application calls for a “kill floor”;
- (ii) No requirements for job creation;
- (iii) Claims that local residents will be employed - only 3 current residents of Franklin work at current facility;
- (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.

34. The Strauss project only became known to the citizens of Franklin and in particular to plaintiffs in late 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.

35. Many citizens including the individual plaintiffs organized and began to further investigate the proposal. As part of that it was learned that several required federal and state permits from EPA, WDNR, and MMSD had not been applied for and upon belief have still not been applied for by Strauss.

36. 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. This included the Mayor and at least one other alderperson.

37. Over a year ago the Mayor stated to the Milwaukee Business Journal in September 2019 that, “I know we have a deal. We have a signed agreement with Strauss.”

38. 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, had been issued one recent citation by MMSD and had faced employee lawsuits.

40. At the October 20th meeting 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 100 incidents over the past 6 years. *See Exhibit D filed herewith.*

41. The Mayor also knew, or should have known, that in 2015 Strauss failed to follow the City’s required plan regarding expansion of their parking lot at their existing facility. According to the City, Strauss “impacted conservation easement areas on the property including wetland setbacks.”

42. After failing to follow the rules for the parking lot project, Strauss never alerted the city, nor did the City ever follow up. After 5 years, during spring of 2020, the damage discovered, when Strauss made a new proposal for their existing facility.

43. Strauss has also not produced a copy of its current permit allowing it to discharge waste water from its operations.

44. According to the Water Quality Bureau - Wisconsin Department of Natural Resources, MMSD would regulate Strauss’ discharge to sanitary sewer as a Significant Industrial User.

45. Strauss current facility is one of if not the largest water user in the City of Franklin. At the presentation on October 20th representatives of Strauss presented a slide show that showed their “Current Levels (Avg)” for several contaminants were well above the MMSD limits pertaining to Biological Oxygen Demand (BOD) and Total Suspended Solids (TSS) and Fats, Oils, Grease (FOG/HEM).

46. Despite this history, the Mayor has continued to describe Strauss in a highly favorable light and further that approving the project, which will be 4 times the size of the current facility and be located on land above two water sheds, adjacent to wetlands, and wooded areas was “just common sense” and a “done deal.”

47. There continues to be inconsistencies between Strauss’ words and actions. On Strauss’ website, they state, “Our commitment to the welfare of our animals extends throughout the processing phase. Working with renowned animal-welfare advocate Dr. Temple Grandin and Dr. Kurt Vogel, University of Wisconsin-River Falls, we have implemented even higher standards of care in our facility. These improvements minimize stress, increase comfort and improve the safe handling of our calves. Together, we are making a difference.”

48. However, per the USDA, on November 23, 2020, the Federal Food Safety and Inspection Service issued Strauss’s existing facility a “Notice of Suspension.” According to the FSIS, the NOS was issued as a result of violations of 9 CFR § 500.3 including, “handling or slaughtering animals inhumanely such as occurred at your establishment on November 23, 2020.” This included insufficiently stunning a lamb and then cutting its throat before it was unconscious. The inspector noted that the animal was deemed conscious and also that the circumstances indicated an egregious violation of applicable regulations. *See Exhibit E filed herewith.*

49. The Mayor went beyond making public comments favorable to Strauss and in fact consistently acted more like a lobbyist for Strauss in public discussions according to multiple Franklin residents.

50. In the lead up to the initial Common Council meeting of October 20, 2020, the Mayor made statements or agreed with statements that disparaged citizens who had expressed their objection to the Strauss facility.

51. In an email response to an open records request seeking information about the project including the Mayor's own communications about the project the Mayor stated:

As is standard practice, legally required documents are located on the city servers. As for personal communications, Mr. Swendrowski may go Fisch.

See Exhibit F filed herewith.

52. The Mayor's use of the term "Fisch" was not a mistake but suggested a reference to Kevin Fischer, who had posted several very hostile comments against objectors.

53. These statements occurred in advance of or during the meetings of October 20, 2020 and the later meeting on November 2, 2020.

54. At the public meeting on October 20, 2020 and November 2, 2020, the Mayor made disparaging statements directed at those who were opposed to the project in particular Mr. Marcelino Rivera.

55. Mr. Rivera was a lead spokesperson for objectors and is a member of FCA. He was also the target of the vitriolic statements from others known to be aligned with the Mayor and posted on a publicly accessible Franklin Community Forum internet message board. These include suggesting that Mr. Rivera or other objectors be physically harmed stating, "I would love to take some COVID aggression on someone you got my bail money." *See Exhibit G filed herewith at p. 1.* The Mayor is shown sharing this post. *Id.*

56. In another post, the Mayor discusses with another citizen regarding Mr. Rivera and problems with Mr. Rivera potentially organizing objection to the Strauss project “with Wilhelm’s help.” Wilhelm is alderwomen Kristen Wilhelm. *See Exhibit G at p. 2-3.*

57. Another posting includes the Mayor discussing a September 2020 protest that took place outside the Mayor’s home. The discussion includes the Mayor explaining that if people want to protest at Alderwoman Wilhelm’s home that it would be “fine by him.” And that “When the group wants to picket her I’ll ask FPD to stand down.” *See Exhibit G at p. 2-3.*

58. In another exchange with one of the individual plaintiffs, Mr. Benning, the Mayor criticizes Mr. Benning’s wife referring to their comments and objections about the proposed project as a “load of crap.” *See Exhibit G at p. 6.*

59. By making the above-referenced comments and public statements, the Mayor expressly demonstrated his position in favor of the project and against objections and objectors. This demonstrated an impermissibly high risk of bias and/or actual bias that the Mayor had pre-determined that he would vote in favor of the proposed SUP/CUP.

60. Many of the Mayor’s comments and statements in favor occurred well before the various public meetings at which the project was taken up, or during deliberation over the SUP/CUP during the meetings.

61. In addition to the Mayor, other alderpersons made public comments expressing their position in favor of the proposed facility ahead of the scheduled meetings of the Plan Commission and the City Council wherein the issue would be taken up for decision.

62. For its part, at the October 20, 2020 hearing representatives of Strauss made certain statements into the record regarding the proposed meat processing facility.

63. Strauss had also submitted documents into the record before the October 20, 2020 meeting purporting to show that it met all applicable requirements to obtain the SUP/CUP.

64. However, neither the documentary support nor the oral statements made by Strauss provided actual credible and substantial evidence that the proposed meat processing facility would satisfy the requirements of City Ord. § 15-3.0701, including that the development and operation of the proposed meat processing facility would:

“... be in harmony with the purposes of the Unified Development Ordinance and the Comprehensive Master Plan; that it will not have an undue adverse impact upon adjoining property; that it will not interfere with the development of neighboring property; that it will be served adequately by essential public facilities and services; that it will not cause undue traffic congestion; and that it will not result in damage to property of significant importance to nature, history or the like;

65. Staff reports do not provide detailed analysis or scrutiny of the proposed project, nor if alternatives are feasible. Staff reports indicate in a conclusory fashion that the proposed meat packing facility is consistent with the City’s Comprehensive Plan, which designates this area as “Business Park.”

66. The proposed 4-7 acre meat processing facility is not consistent with the existing surrounding uses nor the intent of the City’s Comprehensive Plan covering this area of the City. This is demonstrated by the attached aerial view map contained within the City’s Comprehensive Plan. *See Exhibit H.*

67. Certain alderman and alderwoman explained on the record at the October 20, 2020 Council meeting that the proposed meat processing facility did not satisfy the requirements of Ord. § 15-3.0701. Alderpersons also set forth their concerns that the facts regarding the proposal were not accurate including but not limited to the cost of the project and the asserted increase in tax base that would be achieved by development of the facility.

68. Many individuals who opposed the project appeared at the October 20, 2020 hearing and submitted statements into the record both orally and in writing.

69. These statements included facts regarding the operation of the proposed facility and the impact of the operation of the proposed facility on the use and enjoyment and value of the properties adjacent and near the proposed development. These statements provided substantial evidence that the development of the meat processing facility will cause a significant negative impact to the use and enjoyment of those properties and would significantly diminish the future value of those properties.

70. The facts and conclusions put forward by Strauss were not substantial evidence supporting or demonstrating that the Strauss proposed facility would meet the City's requirements necessary to be granted an SUP/CUP.

71. The facts put forth by many of the objecting parties including by the individual plaintiffs in this matter contained and were substantial evidence showing a material adverse impact on the surrounding properties and the greater community and specifically that the development of the meat processing facility pursuant to the SUP/CUP would materially and substantially diminish and/or impair the future property values of several of the adjacent and neighboring properties.

72. The facts submitted included facts demonstrating that there would be a substantial negative impact on the use and quiet enjoyment and the value of all the plaintiffs' properties. This includes the property of plaintiffs Zolecki, whose property is located directly adjacent to the entrance of the proposed Strauss facility. Several individual plaintiffs will be forced to live directly next door or very close to a meat processing plant should the SUP/CUP be upheld as valid.

73. The SUP/CUP was not approved at the October 20, 2020 Council meeting, losing by a vote of 4-2. Because the vote was not a tie, the Mayor did not vote in accordance with the ordinances and practice of the City. In addition, several property owners had signed a protest petition objecting to the proposed SUP/CUP and demanded that the City only allow for approval of the SUP/CUP if a $\frac{3}{4}$ majority of the Council voted in favor. The City did not follow this requirement, which is codified in its own ordinances at Ord. § 15-9.0100.

74. While the objectors including the individual plaintiffs welcomed the denial of the SUP/CUP, and with it the proposed facility, Strauss soon thereafter undertook an effort to undermine the 4-2 denial.

75. Upon information and belief, Strauss, through its legal counsel and other representatives personally met with certain alderpersons who had voted against the proposal at the October 20th hearing. They also met with the Mayor.

76. Upon information and belief, Strauss worked in concert with the Mayor in the weeks subsequent to the October 20th denial to conceive of and execute a plan to undo that result at a subsequent Common Council meeting.

77. Strauss representatives and the Mayor took actions to pursue their plan. This included the Mayor continuing to make public statements disparaging objectors to the project.

78. At the Common Council meeting of November 2, 2020, the issue of reconsideration of the SUP/CUP was on the agenda.

79. The plan to reconsider the SUP/CUP and to include it on the agenda was an action that the Mayor was strongly in favor of and, upon information and belief, insisted to certain Common Council members that they both agree to bring up a motion for reconsideration and to change his or her vote so that the project would be approved.

80. With respect to both the October 20th and November 2nd meetings, the Mayor did not allow alderpersons to attend those meetings remotely via Zoom or similar application. That was a change from past practice. The City had allowed appearance via Zoom prior to the October 20th and November 2nd meetings. The City has since gone back to allowing remote appearances by alderpersons.

81. While the City had the capability of allowing remote appearances for citizens at the October 20th and November 2nd meetings the City Clerk, and upon information and belief with the approval of or at the direction of the Mayor, refused several requests by citizens that the City allow citizens to participate at the October 20th and November 2nd meetings remotely.

82. The Mayor and the Clerk knew that there would be many citizens who wanted to express their objections to the Strauss proposal at the meetings of October 20th and November 2nd. They further knew that many seniors, or citizens that were health compromised in any way would very likely choose not to attend in person, as to do so could put their lives at risk.

83. The Mayor and the Clerk also knew that the State orders/guidance in effect on October 20th and November 2nd prohibited mass indoor gatherings such as that contemplated at the October 20 and November 2nd Council Meetings. *See State DHS Emergency Order No. 3, October 6, 2020 limiting public gatherings between October 6 and November 8, 2020*

84. The Mayor and the Clerk also knew that the October 20th and November 2nd meetings would entitle the public to make comments and speak against approval of the Strauss SUP/CUP because City ordinances at Ord. §19.2(B)(1) require that each meeting provide an agenda item and time for public comment.

85. Despite all this, the City, and upon belief with the approval or at the direction of the Mayor, determined not to provide remote access to citizens who wanted to appear at the

October 20th and November 2nd meeting. That meant that citizens who could not attend in person would only be allowed to observe the meeting, but not actually comment or register their concerns over the Strauss proposal.

86. Upon information and belief, the City could have provided Zoom/remote capability, and, like virtually all private business, should have made that simple accommodation in the interest of public health and safety pursuant to the October 6th DHS Emergency Order #3.

87. The failure to provide the opportunity for citizens to provide public comment via a remote access at the October 20th and in particular November 2nd City Council meetings prevented citizens from participating in those meetings. This included but is not limited to the following persons: Kate Seider, 8675 South Deerwood Lane; Michael Hoppe 8609 South Deerwood Lane; Janice Mille, 8663 South Deerwood Lane; Mary Krystowiak 8647 South Deerwood Lane; Mark Manthe and Casey O'Keefe-Manthe, 8427 South Deerwood Lane; Marlis Seider, 8689 South Deerwood Lane.

88. The meeting November 2nd was not an adequate "Open Session" and was thus not in compliance with Wisconsin's Open Meetings law as provided for pursuant to Wis. Stats. § 19.81 *et seq.*

89. However, with respect to the November 2, 2020 meeting, a portion of the meeting took up and reconsidered the October 20, 2020 denial of the SUP/CUP.

90. City Ordinance only allows for motions for reconsideration to take place at the next "regular meeting" of the City Council.

91. The November 2, 2020 meeting took place on a Monday evening and was not a regular meeting of the City Council, which normally meets on Tuesdays. Further, meetings of the Common Council that occur on Mondays, which are permitted by the Ordinances, are not full

regular Council meetings but rather are deemed to be meetings of the Council sitting as a “Committee of the Whole.”

92. Pursuant to the City’s ordinances governing motions for reconsideration, such a motion was not properly in order at the November 2, 2020 meeting because it was not a “regular meeting” of the Council.

93. Despite the limitations imposed by the requirement of in person appearance, hundreds of citizens took the risk and appeared and spoke in opposition of the project at the October 20th and November 2nd meetings.

94. There were very few comments in favor of the project at the October 20th meeting. However, several representatives and speakers in favor of the project appeared at the November 2, 2020 Common Council meeting. These speakers, for the most part, own businesses in Franklin near the current Strauss facility, but do not actually reside within the City. Many of these individuals had not appeared at the earlier October 20th meeting. Upon information and belief, these individuals were encouraged by the Mayor, through several public forums and directly to attend the meeting and speak in favor of the Strauss project.

95. Despite these efforts no new factual information was submitted into the record of the November 2, 2020 Council meeting sufficient to demonstrate that the proposed Strauss facility satisfied the requirements of Ord. § 15-3.0701 or other applicable provisions.

96. Upon the calling of the vote, a single alderperson switched her vote and cast her vote in favor. This resulted in a 3-3 tie. The Mayor then voted to approve, breaking the tie. The Mayor cast this vote despite stating orally and in writing before the meetings of October 20th and November 2nd that he was in favor of the proposal and expressing his animosity towards many

who objected to the proposal during the weeks and months prior to both the October 20th and November 2nd meetings.

97. When the Alderperson that switched her vote was asked to account for her actions by her constituents, she replied in writing that, “I had intended to vote in favor of the project on October 20th,” also demonstrating a pre-determined bias in favor of the project ahead of the October 20th meeting.

98. The Mayor’s actions and statements to publicly express his position in favor of the Strauss project and against many objectors displayed a strong bias in favor of approving the SUP/CUP.

99. The Mayor’s and others actions taken to pursue reversal of the October 20, 2020 rejected were impermissible and improper pursuant to state statute and common law.

FIRST CLAIM FOR RELIEF

(Error of law – Lack of substantial evidence)

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

101. The City’s Ordinances as set forth at Ord. § 15-3.0701 prohibit the decision-making body of the City to approve a Special Use Permit unless the proposed use satisfies the following requirements.

No special use permit shall be recommended or granted pursuant to this Ordinance unless the applicant shall establish the following:

2... The proposed use and development will not have a substantial or undue adverse or detrimental effect upon or endanger adjacent property, the character of the area, or the public health, safety, morals, comfort, and general welfare and not substantially diminish and impair property values within the community or neighborhood.

102. City ordinances and Wis. Stats. § 62.23(7)(de) require that the applicant for a special use permit/conditional use permit demonstrate through substantial evidence that it

satisfies all applicable requirements prior to being granted a special use permit/conditional use permit.

103. The information and facts provided by Strauss asserting that it satisfied the requirements within Ord. § 15-3.0701(2) were inaccurate in part and/or incomplete. In particular the assertions that the proposed facility would not have a substantial and undue adverse and detrimental effect, and cause a substantial diminution of the values of surrounding private properties were inaccurate, incomplete, inadequate not substantial evidence sufficient to demonstrate and satisfy the requirements of that provision. Further, the proposed project will cause the aforesaid injury and substantial diminution on value.

104. Due to the lack of substantial evidence and/or the inaccuracy of the information provided by Strauss, and because the project will have a substantial and undue adverse effect on nearby properties and the character of the area, and will substantially diminish and impair property values of nearby properties within the neighborhood, approval of the SUP/CUP was contrary to law and lacked sufficient evidence, and the Court may and should therefore declare the CUP void.

SECOND CLAIM FOR RELIEF

(Interference with adjacent developments)

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

106. The City's Ordinances as set forth at Ord. § 15-3.0701 prohibit the decision-making body of the City to approve a Special Use Permit unless the proposed use satisfies the following requirements.

No special use permit shall be recommended or granted pursuant to this Ordinance unless the applicant shall establish the following:

3. No Interference with Surrounding Development. The proposed use and development will be constructed, arranged, and operated so as not to dominate

the immediate vicinity or to interfere with the use and development of neighboring property in accordance with the applicable zoning district regulations.

107. City ordinances and Wis. Stats. § 62.23(7)(de) require that the applicant for a Special Use Permit/Conditional Use Permit demonstrate through substantial evidence that it satisfies all applicable requirements prior to being granted a Special Use Permit/Conditional Use Permit.

108. The information and facts provided by Strauss in particular those showing the proposed site plan, orientation, location and size of the proposed facility and the plan for further expansion of the buildings to eventually cover over 3 acres of land do not provide substantial evidence that the proposed use will not dominate the immediate vicinity or interfere with the use and development of the neighboring property.

109. The proposed site plan, orientation, location and size of the proposed facility and the plan for further expansion of the buildings to eventually cover over 3 acres of land and the development use and operation of an industrial meat packing facility adjacent to a previously planned residential subdivision as shown on Exhibit B, as well as adjacent and very near the existing residential properties of the individual plaintiffs and their neighbors provides substantial evidence that the proposed use will dominate the immediate vicinity and/or interfere with the use and development of the neighboring property contrary to Ord. § 15-3.0701(3).

110. Due to the lack of substantial evidence and indeed the demonstration by substantial evidence that the use and operation of the proposed facility will dominate and interfere with the adjacent properties, approval of the SUP/CUP was contrary to law and lacked sufficient evidence, and the Court may and should therefore declare the CUP void.

THIRD CLAIM FOR RELIEF

(Contrary to applicable zoning)

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

112. The City and the applicant have asserted that the Strauss property that is the subject of the SUP/CUP application is zoned M-1.

113. According to public records, the Strauss parcel is zoned R-1 Residential as shown in Exhibit C.

114. Under Franklin zoning code (known as the “UDO”) a meat packing facility is not a permitted or a special use in the R-1 district.

115. As a result, approval of the SUP/CUP was contrary to law and should therefore declare the CUP void.

FOURTH CLAIM FOR RELIEF

(Inconsistent with Comprehensive Plan
Violation of Wis. Stats. 66.1001)

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

117. Wis. Stats. § 66.1001(3) provides that rezoning of lands to uses that are inconsistent with a municipality’s comprehensive plan is prohibited:

Except as provided in sub. (3m), beginning on January 1, 2010, if a local governmental unit enacts or amends any of the following ordinances, the ordinance shall be consistent with that local governmental unit's comprehensive plan: ...

(g) Official mapping ordinances enacted or amended under s. 62.23(6)

...

(k) City or village zoning ordinances enacted or amended under s. 62.23(7).

118. To be consistent under Wis. Stats. 66.1001(3), an amended zoning ordinance or amended official map must not contradict the objectives, goals, and policies contained in the comprehensive plan.

119. The City Comprehensive Plan designates the area covering the Strauss parcel and the surrounding properties as “Areas of Natural Resource Features and also Business Park.”

120. The uses that are appropriate for these areas according to the City’s Comprehensive Plan including among other requirements that new development:

Protect all Open Lands. The only development allowed in the Open Lands are compatible park, outdoor recreation, open space, trail, and stormwater management facilities as approved by the City, in accord with all existing regulations. Surrounding development shall not create a significant adverse impact upon the visual connections to the natural resource features or to the sustainability of the protected landscape. Surrounding development shall not increase erosion or untreated stormwater runoff of surrounding lands.

121. Business Park uses according to the Comprehensive Plan are intended for limited intensity uses, intended to provide an aesthetically pleasing environment, and a unified design and ownership which exceed 20 acres in size.

122. The rezoning of the Strauss parcel to “M-1 Light Industrial” should attempt to enact such a rezoning amendment is inconsistent with the City’s Comprehensive Plan for these area in the Southwest portion of the City.

123. Due to the inconsistency of a rezoning to M-1, any such rezoning would be contrary to state statute as provided in Wis. Stats. § 66.1001(3) and as a result such rezoning should be declared void and other relief be granted as the Court determines is appropriate.

FIFTH CLAIM FOR RELIEF

(Violation of Due Process – Risk of Bias)

124. The allegations above are incorporated in this claim for relief.

125. Decisions on individual permit applications are not legislative determinations and are instead individualized decisions that are adjudicative in nature.

126. Review and approval of such permits must proceed in accordance with due process and in particular so as not to infringe on and prevent the due process of both applicants for local permits but also affected private property owners.

127. The conduct of City officials including the Mayor strongly and vociferously indicated a strong pre-determined bias by the Mayor and others in favor of the Strauss project and the SUP/CUP.

128. This public and predetermined position in favor of the SUP/CUP created an impermissibly high risk of bias under the doctrine established in *Marris v. City of Cedarburg*, 176 Wis.2d 14 (1993) that the review and approval of the Strauss SUP/CUP at the November 2, 2020 meeting was not undertaken in accordance with the statutory and constitutional requirements of the due process clauses of the state and federal constitutions.

129. As a result the approval of the SUP/CUP arising due to an alderperson moving for reconsideration at the November 2, 2020 meeting and then changing her vote from against to in favor of the SUP/CUP and due to the Mayor of the City casting the deciding vote is contrary to due process and should be declared void by the Court.

SIXTH CLAIM FOR RELIEF
(Violation of Open Meetings Law)

130. The allegations above are incorporated into the claim for relief.

131. The meeting of November 2, 2020 was a public meeting covered by the requirements of Wisconsin's Open Meetings Law.

132. The Open Meetings Law requires that meetings such as and including the November 2, 2020 Franklin City Council meeting be held in Open Session

133. "Open session" means a meeting which is held in a place "reasonably accessible to members of the public and open to all citizens at all times. In the case of a state governmental

body, it means a meeting which is held in a building and room thereof which enables access by persons with functional limitations, as defined in s. 101.13(1).”

134. The City’s failure to allow citizens to make comments remotely during the November 2, 2020 meeting was not adequate under the Open Meetings Law and applicable state health orders and was thus not a meeting held in Open Session in accordance with Wis. Stats. § 19.82(3).

135. The November 2, 2020 meeting violated the requirements and policy of the Open Meetings Law.

136. As a result, and pursuant to Wis. Stats. § 19.97 the Court may and should declare as void the actions taken at the November 2, 2020 City Council meeting, and specifically the approval of the SUP/CUP approved by a vote of 4-3.

SEVENTH CLAIM FOR RELIEF
(Invalidity of Motion for Reconsideration)

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

138. City ordinance only allows for a motion for reconsideration to be in order if raised at the next regular meeting of the City Council.

139. The approval of the SUP/CUP is based on a 4-3 vote at the meeting of November 2, 2020.

140. The ability to take a re-vote on the SUP/CUP was due to an underlying motion for reconsideration being made at the November 2, 2020 meeting.

141. In the absence of the motion for reconsideration, the denial of SUP/CUP would not have been reversed and the result of the October 20, 2020 meeting would have remained the position of the City.

142. Motions for Reconsideration are only properly in order at ‘regular meetings’ of the City Council.

143. The City Council meeting of Monday November 2, 2020 was a meeting of the Committee of the Whole of the Common Council not a regular meeting of the legislative body pursuant to Ord. § 19-2(C).

144. The Motion for Reconsideration taken up by the Council on November 2, 2020 was not properly in order and as result the vote on both the motion to reconsider and the motion to approve are and should be declared void.

WHEREFORE, Plaintiff requests the following relief in this matter:

1. That the Court order that the complete record be prepared and provided to the Court and the parties in legible and audible form to allow for further appropriate review of the claims in this matter.
2. That after a full review of the existing record, and any additional facts allowed by the Court to be added to the record, the Court declare that the SUP/CUP approved and granted by the City allowing for the Meat Processing facility is void for the reasons and pursuant to some or all of the claims for relief as set forth above.
3. That the Court award Plaintiff 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 23rd of December 2020

Electronically Signed by Joseph R. Cincotta
Joseph R. Cincotta
State Bar No. 1023024
Attorney for Plaintiff

P.O. Address:

400 East Wisconsin Avenue - Suite 205
Milwaukee, WI 53202
414-416-1291
jrc4@chorus.net