

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

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

WOODLAKE VILLAGE HOMEOWNERS ASSOCIATION
C/O President David Sorensen
8669 South Deerwood Lane
Franklin, WI 53132

Case No. 22-CV-413

CHAMPIONS VILLAGE HOMEOWNERS ASSOCIATION
C/O President Stephen Van Goethem
S97W13172 Champions Drive
Muskego, WI 53150

STONEBRIDGE COMMUNITY ASSOCIATION
C/O. President Russell Anderson
W138 S9720 Rockridge Court
Muskego, WI 53150

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

FRANK and CHERI CISTARO
S96 W13205 Linksway Court
Muskego, WI 53150,

STEPHEN and PAMELA GRANDE
S97 W13656 Stonebridge Way
Muskego, WI 53150,

Plaintiffs,

v.

CITY OF FRANKLIN
9229 West Loomis Road
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 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 result of this has been to favor one set of taxpayers and property owners, the developers within the TID, and directly and knowingly injure another set of tax payers, those that own property on the boundary of and surrounding the TID. 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 Franklin Plaintiffs.

3. Plaintiff Woodlake Village Homeowners Association ("Woodlake HOA") is a Wisconsin LLC with its principal place of business being Woodlake Subdivision located at the intersection of Deerwood Lane and Loomis Road in the City of Franklin and with a business address of 8669 South Deerwood Lane, Franklin WI 53132. Woodlake HOA by and through its president Dave Sorensen 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 and TID 6 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. *See Exhibit 4 – Cohn/Reznick Property Value Impact Report*

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 1/3 of a mile of the proposed meat processing facility property and development of that facility if allowed to proceed pursuant to the SUP/CUP and TID 6 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. The Zolecki's are among the most highly impacted as they are very close to the project site. *See Exhibit 4 – CohnReznick Report and Exhibit 4A at aerial depiction of impacted properties and schedule of loss in values.*

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 1/3 of a mile of the proposed meat processing facility property and development of that facility if allowed to proceed pursuant to the SUP/CUP and TID 6 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. The Kenneys are among the most highly impacted as they are very close to the project site. *See Exhibits 4 and 4A.*

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 1/3 of a mile of the proposed meat processing facility property and development of that facility if allowed to proceed pursuant to the SUP/CUP and TID 6 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. The Ringwelskis are among the most highly impacted as they are very close to the project site *See Exhibits 4 and 4A*.

7. Nick and Maggie Poplar are citizens, property tax payers and owners of the property at 11856 West Ryan Road, Franklin, WI 53132. The Poplars are also members of FCA. Their property is within 1/3 of a mile of the proposed meat processing facility property and development of that facility if allowed to proceed pursuant to the SUP/CUP and TID 6 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. The Poplars are among the most highly impacted as they are very close to the project site. *See Exhibits 4 and 4A*.

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 1/3 of a mile of the proposed meat processing facility property and development of that facility if allowed to proceed pursuant to the SUP/CUP and TID 6 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. The Bennings are among the most highly impacted as they are very close to the project site. *See Exhibits 4 and 4A*.

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 1/3 of a mile of the proposed meat processing facility property and development of that facility if allowed to proceed pursuant to the SUP/CUP and TID 6 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. The Zoleckis are among the most highly impacted as they are very close to the project site. *See Exhibits 4 and 4A*

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 1/3 of a mile of the proposed meat processing facility property and development of that facility if allowed to proceed pursuant to the SUP/CUP and TID 6 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. The Balcerowskis are among the most highly impacted as they are very close to the project site. *See Exhibits 4 and 4A.*

11. Champions Village Homeowners Association is an Association of homeowners and tax payers who own property within 1 mile of the proposed slaughterhouse and the property covered by the Tax Incremental District further described herein (“TID 6.”) It is led by its President, Stephen Van Goethem at S97 W13172 Champions Drive, Muskego, WI 53159. Champions represents 200 households and has joined this matter as a plaintiff on behalf of those members. The further development of TID 6 and in particular the development of the Slaughterhouse will substantially and materials impact and cause a loss in property value to the homes of the members of Champions HOA. *See Exhibits 4 and 4A.*

12. Stonebridge Community Association is an Association of homeowners and tax payers who own property within 1 mile of the proposed slaughterhouse and the property covered by Tax Incremental District further described herein (“TID 6.”) It is led by its president Russell Anderson at W138 S9720 Rockridge Court, Muskego, WI 53150. Stonebridge represents 38 households and has joined this matter as a plaintiff on behalf of those members. The further development of TID 6 and in particular the development of the Slaughterhouse will substantially

and materials impact and cause a loss in property value to the homes of the members of Stonebridge. *See Exhibits 4 and 4A.*

13. Plaintiffs Frank and Cheri Cistaro are citizens, state tax payers and owners of the property at S96 W13205 Linksway Court, Muskego WI 53132. Their property is within 1 mile of a mile of the proposed slaughterhouse and development of that facility if allowed to proceed pursuant to the SUP/CUP and TID 6 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. *See Exhibits 4 and 4A.*

14. Plaintiffs Stephen and Pamela Grande are citizens, state tax payers and owners of the property at S97 W13656 Stonebridge Way, Muskego WI 53132. Their property is within 1 mile of a mile of the proposed slaughterhouse and development of that facility if allowed to proceed pursuant to the SUP/CUP and TID 6 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. *See Exhibits 4 and 4A.*

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.

JURISDICTION

16. 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 or nearby 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**

17. 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 initially made privy to this plan.

18. 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.*

19. 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.*

20. 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.

21. 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.*

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

23. 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.

24. 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.

25. Regarding TID 6, the City through its officials 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 or but for TIF financing. City officials also did not acknowledge that a side agreement was already in place to create a giant slaughterhouse on the land. The also failed to acknowledge or discuss in public that the 152,000 SF first phase of the new slaughterhouse would not benefit the entire community and in fact would have the opposite affect by creating something undesirable and a likely noise and odor nuisance. City

officials did not acknowledge that the proposed development would actually lower surrounding property values but instead suggested and stated it would not. This was false and knowingly so at the time. The negative impact on surrounding property values has been demonstrated by Plaintiffs expert analysis of the negative impact of the proposed Slaughterhouse on the surrounding private properties. *See Exhibit 4 – CohnReznick Property Value Impact Report Final.*

26. The City’s consultant for TID 6 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 just outside TID 6 and generally in the City 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.

27. During its review of the proposed TID district the City made certain statements regarding the future use of the Loomis Road property. Bear development 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 acknowledgment of how unpopular the idea would be with the citizens and taxpayers of Franklin. *See Exhibit 5 – Public Comments of Bear Development.*

28. The statements made by the City’s consultant for the TID asserted that the overall development would include 79 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.

29. This conclusion was absurd as no more than 3 Franklin residents were ever employed by Strauss, only 8 of the 273 potential jobs would be “white collar” jobs, and the remaining 265 jobs would be related to the killing, processing, and eventual clean up from harvesting of 500 head of live cattle per day. These jobs (97% of them) pay wages between \$14-\$17 per hour. This level of wages would not allow such workers to purchase or rent the residential homes being proposed for the TID 6 which had starting prices of \$500,000.

30. 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.

31. Despite all this, the City went forward and reviewed and adopted TID 6 in fall 2018. They did so knowing that the TID was not needed to allow for the development that had already begun in the area and also knowing that the TID was contrary to the intent of the TID/TIF law and the underlying redevelopment statutes in Wisconsin and not for a genuine public purpose.

32. Consistent with the underlying intent and purpose for the TID, 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.

33. 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.

34. 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.

35. 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 salable for Strauss.

36. 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 whether or not it complied with ordinance requirements.

37. 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.

38. 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.

39. None of these issues were publicly 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.

40. 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.

41. 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.

42. 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.

43. As shown in Exhibit 11 the residential properties of all of the individual plaintiffs are within 1/3 of a mile of the proposed facility. 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 and many other properties will suffer substantial impairment and diminution. This is likely to be in the range of \$35,000 to \$160,000, based on the current estimated Zillow value for each of these homes,

should the slaughterhouse project under TID 6 be allowed to continue. In total the City of Franklin is poised to lose \$7,369,946 in property value and tax base and the City of Muskego is poised to lose \$14,243,680 in property value and tax base should the slaughterhouse project under TID 6 be built in the currently proposed location. The total loss in property values will exceed \$21.5 million. *See Exhibit 4 – CohnReznick Report and Exhibit 4A at schedule of losses.*

44. 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.

45. 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.

46. Strauss submitted limited supporting documents with its application.

47. 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.

48. 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.

49. 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.

50. The final Strauss development only became publicly 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.

51. 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.

52. 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.*

53. 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.*

54. 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.*

55. The Mayor also disparaged and criticized objectors to the proposed slaughterhouse. In one public post the Mayor stated that he would tell the Franklin Police Department to "stand down" if a protest took place at the home of another alder who was known to be against the project and the process that had occurred to approve it.

56. 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.

57. 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.

58. 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.

59. 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.

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

61. 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.

62. 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.

63. 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.

64. 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*

65. 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.

66. 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 an irreconcilable conflict. It exacerbated the situation by actually going forward to approve the permit.

67. Since the filing of this action further investigation has revealed additional facts showing the improper intent of the City's actions to establish TID 6 and to try to force the development of a massive slaughterhouse in the heart of that district.

68. Review of the location and origin of sewerage and other utilities shows that a large approximately 4 foot diameter pipe known as the Ryan Creek Interceptor runs along Ryan Road and is located such that waste water from the proposed Slaughterhouse would be directed into that sewer.

69. The Ryan Creek Interceptor was built by the City approximately 10 years ago. It was built by the City through the use in large part of publicly obtained funds from the State of Wisconsin and other sources. This totaled approximately \$27 million dollars.

70. The RCI and the funds obtained were only available to the City if it promised and represented that the capacity that would be made available from the RCI would not be used for future growth and development.

71. The City provided such assurances but at the time knew that it would be using the RCI for growth of private developments contrary to its assurances to governmental bodies including the US EPA.

72. The RCI was constructed but thereafter remained mostly un-used. The lack of a waste water source caused the build of methane gas. Costly steps had to be taken to try to remediate and mitigate this problem, which was causing gas build up in homes which had been erroneously forced to connect to the system based on existing state sewerage district statutes.

73. Eventually, City officials determined that if a large water user and thus waste water generator was installed and constructed in a location of the City so that its waste water would empty into the RCI, that could help solve the problems with the RCI and also provide a plausible explanation for the City's assurances that it would be not be used merely for private development.

74. This plan lead the City to create the idea that Strauss Brands, which was at the time operating an existing Slaughterhouse operation in another area of the City and was the largest single water user in the City, should relocated to the new site in TID 6 and build a new, much larger, facility.

75. The meetings with Bear Development and Strauss referenced above were undertaken with this idea and goal in mind and lead to promises from the City that it would provide public funding to build out the rural infrastructure to be able to accommodate and subsidize the relocation and development of a new slaughterhouse facility.

76. In addition, because the Slaughterhouse would need massive amount of fresh water for its operations, the City also developed and is implementing a plan to construct a new water tower, estimated to cost \$16 million, in order to provide sufficient water to the proposed slaughterhouse. The costs for this water tower will be borne in large part by City tax payers including Plaintiffs.

77. The scheme described above is designed to avoid accountability for the improper development of the RCI and in particular to avoid accountability for the assurances made by the City when it obtained the \$27 million in funds to have the RCI constructed.

78. The City officials are still determined to pursue this plan even though Strauss has pulled out of the project, indicating the City has a different and improper motive for doing so that

is contrary to merely neutrally regulating land use in the City's territory. The City has always been it appears the driving force behind forcing the development of the Slaughterhouse in TID 6 at the proposed location.

79. Information learned since the filing of the original complaint indicates that the current President of Strauss Brands confronted the Mayor and other City officials and demanded that Strauss be relieved of future property tax burdens and otherwise released of other contractual obligations it has agreed to as part of the City's scheme. This demand was based on the believe and assertion by Strauss that the City had assured Strauss that there would be no issues with building the giant 152,000 SF Slaughterhouse within what was a surrounding residential area and neighborhood. The previous President of Strauss, Mr. Bussen, had stated his concerns to the City numerous times and even went so far as to ask the Mayor, "won't the neighbors be up in arms?" *See Exhibit 13*. Upon information and belief, representatives of Strauss have indicated to the Mayor and others that if the City continued to pursue Strauss, he would reveal what he knows about the City's true intent for the project and the overall development of TID 6.

80. What has also become known is that the City is improperly refusing to provide public records related to the Slaughterhouse project and related actions by the City. Several of the Plaintiffs in this matter made public records requests of the City starting in November of 2020 and February of 2021. Those have still not been responded to in full and a court action was therefore commenced to compel production of those records.

81. Further, when it was learned by Plaintiffs as described above in early November 2021 that Strauss and the City had previously discussed and knew that Strauss was no longer going to build the Slaughterhouse, several plaintiffs by undersigned made further open records requests. These requests sought communications regarding the slaughterhouse project and the

plans as discussed between the City and Strauss Brands and others that are directly relevant to the allegations and claims in this matter. No response of any kind has been received from the City in over 6 months.

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

FIRST CLAIM FOR RELIEF
(Violation of Due Process – Substantive Due Process)

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

84. The City's actions to establish TID 6 and then amend TID 6 and to enter into developers agreement contracts with private parties and other actions described herein were undertaken to provide direct economic benefit to Bear Development, Strauss, and others yet to be discovered, and were implemented knowing, or with reckless disregard for whether, those actions and the outcomes of those actions would diminish the property values of the plaintiffs.

85. Contrary to the assertions of fact and conclusions asserted by the City through its consultant and otherwise that provided the basis justifying the adopting of TID 6, the developers agreements, and the review and approval of permits allowing for the Co-part auto salvage facility and the Strauss Brands Slaughterhouse, the sole purpose of these actions was to benefit private landowners and others yet to be discovered.

86. The City through its officials intentionally misrepresented the true facts regarding the purpose of its proposed TID 6 and other land use plans and approvals.

87. The City's intentional misrepresentations were for the purpose of achieving approval of TID 6 and other ordinances and permits 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.

88. 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 or otherwise, and 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.

89. 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 all the Plaintiffs' use and enjoyment and value of their private property is contrary to the due process clause of the 14th Amendment to the United States Constitution.

90. The City's actions as described herein have violated, and if allowed to remain unremedied or carried out, will violate and infringe on Plaintiffs' constitutional rights and privileges guaranteed to them under the 14th amendment and otherwise including their right to own and protect and preserve the use and value of their private property without irrational, arbitrary and intentional interference by their local government.

91. Plaintiffs have no adequate remedy under state law, and any putative remedy under state law would be futile due to the lack of reasonable and adequate legal doctrines available to injured private property owners arising from the adverse municipal actions described herein under current Wisconsin law.

92. 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 substantive due process of law.

93. Plaintiffs have a constitutional right to seek redress and to protect their private property and to seek damages in accordance with law, and by these allegations do hereby seek the remedies described above and as otherwise provided by law.

SECOND CLAIM FOR RELIEF
(Governmental Action intentionally violating right to equal protection of law).

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

95. The Federal Constitution, pursuant to the 14th Amendment and applicable law, guaranties citizens and private property owners equal protection of the laws.

96. Governmental entities including the City of Franklin are not permitted to act in violation of the Federal Constitution in carrying out and enforcing local law.

97. The City is not permitted to classify or target certain citizens or property owners and tax payers so as to create a separate class that contains only one or several similarly situated citizens or property owners or tax payers for the specific purpose of imposing hostile treatment upon that select group and explicitly treating that group and class of properties owner and tax payers differently and unequally from other favored property owners and tax payers and for no conceivable proper public purpose.

98. The City, buy its actions as described above, through and associated with several governmental actions including approving of TID resolutions, obtaining and distributing public fund, approving permits allowing for certain land uses including a slaughterhouse and junk car salvage yard, all without a proper public purpose or other legal basis and for the purpose of

favoring certain property owners, has engaged in and is engaging in an intentional effort and plan to harm the rights and property interests of the Plaintiffs.

99. The City is treating the Plaintiffs as a select group and class of property owners as described herein solely for the intent of favoring certain other individual private property owners at the expense and to the detriment of Plaintiffs and otherwise for no rational or appropriate public purpose.

100. The actions of the City described above deprive and will deprive the Plaintiffs of equal protection of the laws and violate and will violate the plaintiffs' right to equal protection of the laws and these deprivations and violations have and are causing economic damages to the Plaintiffs and their property for which the Village is responsible.

101. Plaintiffs have the right pursuant to 42 U.S.C. § 1983 and otherwise as provided by law to pursue its claims arising from the City's violation of Plaintiffs' constitutional rights to equal protection of law and to seek damages in accordance with law and by these allegations does hereby seek the remedies described above and as otherwise provided by law.

THIRD CLAIM FOR RELIEF
(Taking contrary to public purpose)

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

103. The City through its actions to propose and approve TID 6 and to propose and approve permits allowing for the development of a new Slaughterhouse facility to be located near Plaintiffs properties knew or should have known that its actions would cause diminution in the value of Plaintiffs properties.

104. The City also knew that as result of TID 6 and other approvals and agreements, Plaintiffs and other tax payers would be required to pay more in property tax to cover costs of

infrastructure and other expenditures incurred by the City to assist in the development of lands in TID 6 for the benefit of Bear Development and Strauss and others.

105. These taxes and loss in value would directly take and convert property of the Plaintiffs as a direct result of the City's actions taken under the color of being official and valid legal actions of the City and without providing any compensation to Plaintiffs.

106. As described herein, the actions of the City to propose and approve TID 6 and approve the development of the Slaughterhouse were not and are not being carried out for a proper public purpose and are therefore an improper taking of private property without compensation under the state and U.S. Constitutions.

107. The taking of Plaintiffs property by the City is being caused by the City's actions under color of law and is without a proper public necessity or purpose and is therefore contrary to and in violation of the 5th Amendment as made effective to the states through the 14th amendment to the United States Constitution.

108. Plaintiffs may directly pursue damages being caused by this improper taking in this Court pursuant to 42 U.S.C § 1983 and hereby do so in this claim.

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 5th and 14th Amendments 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 17th day of May, 2022

Electronically Signed by Joseph R. Cincotta

Joseph R. Cincotta

State Bar No. 1023024

Attorney for Plaintiff

P.O. Address:

2510 East Capitol Drive

Shorewood, WI 53211

414-416-1291

jrc4@chorus.net