

FILED
01-25-2022
Anna Hodges
Clerk of Circuit Court
2020CV007031

BY THE COURT:

DATE SIGNED: January 24, 2022

Electronically signed by Hannah C. Dugan
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

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

Plaintiffs,

v.

Case No. 20-CV-7031
Honorable Hannah C. Dugan

CITY OF FRANKLIN,

Defendant,

And

STRAUSS BRANDS, LLC,

Intervenor Defendant.

ORDER
MOTION FOR RECONSIDERATION
CORRECTION OF THE RECORD
AMENDED REMAND ORDER FOR FURTHER PROCEEDINGS

A hearing was held via zoom on January 10, 202 before the Hon. Hannah C. Dugan on Defendants Motion for Reconsideration. Appearances were made by Plaintiffs by the Law Offices of Joseph R. Cincotta by Joseph R. Cincotta, Defendant City of Franklin by Municipal Law & Litigation Group, S.C. by Remzy D. Bitar, and Intervenor Strauss Brands, LLC by Stafford Rosenbaum, LLP by Rick A. Manthe.

The Motion for Reconsideration was argued by the parties. The Motion related to the Court's Decision during a hearing on November 16, 2021 to remand the matter for further proceedings before the City. The Motion for Reconsideration was timely and a briefing schedule was followed per local rule.

The Court considered all pleadings and papers on file herein, the arguments by the parties, and the record of proceedings for all motions and hearings.

The Court heard oral argument. Pursuant to Section 805.16 *Wis. Stats.* and Koepsell's *Olde Popcorn Wagons v. Koepsell's Festival Popcorn Wagons*, 275 Wis.2d 397 (Ct. App. 2004) the Standard of Review for Motions for Reconsideration was not met. The Court noted that Defendant had filed documents regarding the scope of the Court's remand which included misstatements of the Court's remand ruling. The Court stated that the record must be corrected by supplemental pleadings for accuracy on remand. Further the court, recognized that, upon review of the Motion for Reconsideration and pursuant to Section 805.16 *Wis. Stats.*, that it would modify the scope of the remand, but not change the decision to remand.

Based on the filings and on argument at the January 11, 2022 hearing, and for reasons stated on the record,

NOW THEREFORE, IT IS HEREBY ORDERED;

1. The Motion for Reconsideration is DENIED.
2. Further it is ordered that counsel for the City must submit a Notice of Motion and Motion for Correction of the Record pursuant to statute and Supreme Court Rule 20:3.3 along with affidavit to correct inaccuracies and/or misrepresentations of fact in the record and pleadings and a proposed Order within 10 days of the January 11, 2022 hearing or the court will schedule an Order to Show Cause hearing.

3. Further it is ordered that the previous remand order is amended and supersedes the November 29, 2021 Remand Order and is as follows:

a. This matter is remanded to the City of Franklin Common Council with instructions to allow for a hearing, noticed and conducted to be held consistent with the City of Franklin's Code and Chapter 62 of the Wisconsin Statutes regarding the review of Special Use Permit applications, and consistent with due process required when reviewing Special Use Permits according to the City's Code, Wisconsin state statutes including Ch. 62 *Stats.*, controlling caselaw and Constitutional requirements for adequate due process.

b. A decision on remand by the common council shall be deemed a separate and distinct final decision for purposes of certiorari review, however such decision may be added to and challenged by Plaintiffs in this action if it is not satisfied by the decision so as to avoid the need for Plaintiff's to commence a new certiorari action.

c. Regardless of the outcome of the action upon remand, and the decision of the Common Council upon remand, all arguments shall be preserved should the parties not resolve this matter.

d. All dates are suspended until such time as the parties advise the Court as to whether the matter has been resolved upon remand. Upon notice that the matter has not been resolved, the Court shall hold a status conference and set a schedule to amend pleadings and/or reestablish a briefing schedule.

e. The Court will retain jurisdiction to review the case based on the administrative record and outcome of the Common Council's action on remand.