UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RODNEY and CATHERINE MARIE JENSEN
3301 S.E. Frontage Road,
Mount Pleasant, Wisconsin, 53177,

MICHAEL and MARY J. SCHMIDT
10514 County Line Road,
Mount Pleasant, Wisconsin, 53177,

ROGER STURYCZ
11604 County Line Road,
Mount Pleasant, Wisconsin, 53177,

ALFREDO and ERLINDA ORTIZ
4408 90th Street,
Mount Pleasant, Wisconsin, 53403,

TODD and TRACEY BLODGETT
13320 County Line Road,
Sturtevant, Wisconsin, 53177,

JOSEPH and KIMBERLY JANICEK
4204 Highway H,
Sturtevant, Wisconsin, 53177,

Case No. 18-CV-46

CONSTANCE and RICHARD RICHARDS
12910 County Line Road,
Mount Pleasant, Wisconsin, 53177,

Plaintiffs,

vs.

VILLAGE OF MOUNT PLEASANT
a Wisconsin municipal corporation,
8811 Campus Drive,
Mount Pleasant, WI 53406,

DAVID DEGROOT
Village President of Mount Pleasant,
in his individual and official capacity,
8811 Campus Drive,
Mount Pleasant, WI 53406,

VILLAGE OF MOUNT PLEASANT COMMUNITY
DEVELOPMENT AUTHORITY,
a body politic and commission established
under Wisconsin and municipal laws,
8811 Campus Drive,
Mount Pleasant, WI 53406,

Defendants.

FIRST AMENDED COMPLAINT

Now come Plaintiffs, above captioned, by and through their attorneys Eminent Domain Services, LLC, by Attorney Erik Olsen, and for their FIRST AMENDED COMPLAINT state and allege as follows:

1) This is a 1983 case showing violations of the Plaintiffs' constitutional rights to equal protection, private property, and due process. The Plaintiffs' constitutional rights are being violated by the Defendants ("the Village"), and will be further violated, if not enjoined, as shown in this FIRST AMENDED COMPLAINT.

FACTS

2) On July 26, 2017 Governor Walker announced plans to use public funds and to otherwise facilitate the construction of a massive, privately owned, factory complex in Southeast Wisconsin ("Foxconn").

3) As widely reported in the news, Foxconn is a manufacturer of computers, screens, and other products ("Televisions") that has, to date, largely operated in Asia, with a history of building and operating large factories that create substantial, and sometimes severe, environmental impacts.

4) On July 27, 2017 Governor Scott Walker and Foxconn Founder and CEO Terry Gou signed a Memorandum of Understanding (MOU).

5) On July 28, 2017 Governor Walker called a Special Session of the Wisconsin State Legislature to consider legislation designed to facilitate and attract the Foxconn factory project to Wisconsin by authorizing the creation of one (1) electronics and information technology manufacturing zone ("EITM zone").

6) By September 12, 2017 the legislation had passed both the Wisconsin State Legislature and the Wisconsin State Senate.

7) On September 18, 2017 Governor Walker signed the Legislation, 2017 Act 58, into law ("the Legislation").

8) The Legislation provides for financial incentives designed to attract Foxconn to Wisconsin, and also eases environmental safeguards and requirements within the one (1)

EITM zone. For example, the legislation removes the requirement of completing an environmental impact statement ("EIS") and also allows for the filling and alteration of wetlands in the EITM zone, in some cases without any oversight or approval at all, and for a degree of protection from the Wisconsin Court System.

9) A prominent magazine reported, "Wisconsin Just Gave Foxconn $2.85 Billion — and Protection From Its Court System — to Build a TV Factory."[1] Unlike the plan in the *Kelo* case, which was comprehensive and included public elements such as walking trails and a museum, the plan at issue in this case is purely private, and for the benefit only of private enterprise.

10) On November 10, 2017 Governor Walker and Foxconn Chairman Terry Gou signed a contract to provide up to $2.85 billion in state income tax credits to the company for the factory project.

LACK OF PUBLIC PURPOSE

11) The project is not a public purpose or use, the beneficiaries of the project are the private enterprises, and any benefits to the inhabitants of Mount Pleasant, Racine County, or the State of Wisconsin are purely incidental, in fact, the calculations made by the State of Wisconsin indicate that the project will place a huge burden on Wisconsin taxpayers for decades, in fact it is uncertain if the project will *ever* monetarily benefit the public. Furthermore, it is uncertain how many jobs the project will actually create. In short, it is uncertain that the project will benefit the public at all, and whatever benefits do accrue to the public are merely incidental.

[1] New York Magazine 09/21/17 http://nymag.com/daily/intelligencer/2017/09/wisconsin-gave-foxconn-preferential-treatment-in-its-courts.html

12) Beginning around October of 2017, the Plaintiffs received letters from the Village of Mount Pleasant ("Mount Pleasant") indicating that their land, as well as the homes and business facilities situated thereon, would be acquired by the Village for the Foxconn project and that 'relocation agents' would be visiting in the near future to discuss each of the Plaintiffs vacating their homes.

13) In late November 2017, Mount Pleasant and Racine County approved financing and entered into a developer's agreement with Foxconn, the developer's agreement appeared to have been prepared and edited shortly before it was approved by Mount Pleasant, raising questions among the Plaintiffs about how well it had been considered.

14) One of the terms of the developer's agreement is that the Village is required to acquire approximately 2900 of acres of land ("the Acquisition") from various landowners for use in the Foxconn project.

15) The Acquisition is shown in the attached Exhibit A, which, along with all of the exhibits to this complaint, is incorporated by reference as though fully set forth herein.

16) As of February 13th, 2018, the Village has already acquired many of the parcels in the Acquisition area, and construction has already begun. The vibrations from the construction are so intense at times that items in the home of Joseph and Kimberly Janicek vibrate and move.

17) As evidenced in the breakneck speed at which the Legislation and project were approved and implemented, and the fact that key decision making tools such as an

Environmental Impact Statement were skipped, it is beyond dispute that a substandard amount of study and deliberation preceded the project and its implementation.

18) Part of the Acquisition will be directly conveyed to Foxconn. Foxconn, in turn, will be able to sell some of the land it receives to third parties for a profit.

19) Another part of the Acquisition will be held by the Village or its instrumentalities for Foxconn's possible future acquisition.

20) Part of the Acquisition will be used for road and utility expansion project purposes.

21) The Village needs a strip of land from the front of each of the Plaintiffs' properties for the roads, however, the Village is taking the position that once the new roads are built, it will not allow the Plaintiffs access between the roads and their properties. Apparently, the Village is going to block off the Plaintiffs' driveways and not let the Plaintiffs build new driveways. This is a way of "landlocking" the Plaintiffs, and thereby forcing the Plaintiffs to convey their property to the Village so that the Village can, in turn, convey the land to Foxconn or hold it for the future conveyance to Foxconn ("the Landlocking Scheme").

22) The Landlocking Scheme is a pretext designed by the Village to circumvent Wis. Stat. § 32.03(6)(b) which provides that "Property that is not blighted property may not be acquired by condemnation by an entity authorized to condemn property under s. 32.02 (1) or (11) if the condemnor intends to convey or lease the acquired property to a private entity." The Village has made a final decision to use the Landlocking Scheme to acquire the Plaintiffs' property.

23) In order to implement the Landlocking Scheme, access rights are being acquired which are not necessary, desirable, or lawful, and are in fact a pretext to force the acquisition of the portions of Plaintiffs' land which will not be directly utilized for the road and utility expansion project so that it can be conveyed to Foxconn, or held for Foxconn's benefit, as required by the developers agreement.

24) The Village would not be expanding the roads in the Acquisition area at all, or undertaking the utility expansion projects in the Acquisition area at all, if not for the Foxconn project, the road and utility expansions are being specifically undertaken for the benefit of Foxconn.

25) In no event would the Village be landlocking the Plaintiffs if not for the Village's ulterior motive to force the Plaintiffs to sell to Foxconn.

26) The road and utility expansion projects are directly related to, for the benefit of, and intertwined with the Foxconn facility, and are of a size and type such that it is a de facto private purpose.

27) Pursuant to Wisconsin law, "Property that is not blighted property may not be acquired by condemnation by an entity authorized to condemn property under s. 32.02 (1) or (11) if the condemnor intends to convey or lease the acquired property to a private entity." Wis. Stat. § 32.03(6)(b).

28) None of the land in the area of the Acquisition is blighted.

29) Wis. Stat. § 32.03(6)(b) was passed in response to *Kelo vs. New London*, and was intended to prevent government from taking private property for the direct benefit and convenience of private enterprise.

30) All of the land in the area of the Acquisition is being acquired for the direct benefit and convenience of private enterprise, namely, Foxconn, there are no intertwined public uses such as parks or marinas like those that were present in the *Kelo* plan.

31) The Village's implementation of the Landlocking Scheme would theoretically work to acquire the land of any or all of the landowners in the Acquisition area, the Village's policy of interpreting and implementing Wisconsin law in this manner, against only some of the Landowners in the Acquisition area is wholly arbitrary and without a rational basis.

32) The Village's application of state law to implement the Landlocking Scheme creates two classes of people: those who are protected from eminent domain for projects where their land will be conveyed to private entities, and those who are not so protected.

33) The Village's application of state law to implement the Landlocking Scheme, and decision to offer some Landowners (but not the Plaintiffs) option packages where the Landowners will be paid seven to ten times the value of their property creates an additional two classes of people in the Acquisition area, those who are paid lucrative sums many times greater than they could receive on the open market for their land, and those who must face eminent domain.

DECISION MAKING

34) According to information promulgated by the Wisconsin Economic Development Corporation, Exhibit B, the Foxconn facility will be roughly the same size as Sauk City, and:

- Three times the size of the Pentagon.
- Four times the size of the Chrysler Headquarters and Tech Center in Detroit.
- Five times the size of the Boeing plant in Everett, Washington.
- Bigger than the world's largest airport, the Dubai International Airport.

35) On 01/04/18, the Wisconsin State Journal reported that "Wisconsin's decision to lift restrictions on filing state-protected wetlands for Foxconn Technology Group is already paying off for the company in the early stages of its plan for a sprawling manufacturing complex ... Wetlands are valued because they prevent flooding, purify groundwater and provide wildlife habitat."[2]

36) The Journal Sentinel reported that: "Foxconn Technology Group's plans for a sprawling manufacturing facility pose an array of environmental challenges, ranging from the way it will handle chemicals to the impact a plant of its size will have on the surrounding watershed ... in Asia, the Taiwan-based company, the world's largest contract manufacturer of consumer electronics, has grappled with pollution problems, particularly in China, where it serves as a contract manufacturer to Apple and other technology companies. A Wisconsin plant, like its facilities in Asia, would run through massive

[2] Wisconsin State Journal, 01/04/18 "First environmental exemption clears Foxconn to fill 26 acres of wetlands"
http://host.madison.com/wsj/news/local/govt-and-politics/first-environmental-exemption-clears-foxconn-to-fill-acres-of-wetlands/article_c5b0dd02-dd4b-5f38-8686-00c58d7354f8.html

volumes of water that would have to be cleaned before and after production. Also, many potentially polluting chemicals are needed to build liquid crystal display panels for TV sets, laptops and wireless telephones. The fabrication of LCD components typically includes the use of zinc, cadmium, chromium, copper and benzene — a widely used organic solvent, according to experts. The Department of Natural Resources says it has not been briefed by the company on potential contaminants."[3]

37) The Foxconn project will substantially impact the environment in the area where the Plaintiffs reside.

38) The Wisconsin Supreme Court has recognized that "it must be considered that the legislature intended to recognize the rights of Wisconsin citizens to be free from the harmful effects of a damaged environment where it can be shown that the person alleging injury resides in the area most likely to be affected by the agency action in question." *Wisconsin's Environmental Decade, Inc. v. PSC*, 69 Wis. 2d 1, 230 N.W.2d 243 (1975).

39) Section 1.11 of the Wisconsin Statutes mandates an EIS stating that, “All agencies of the state shall: Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the human environment, a detailed statement, substantially following the guidelines issued by the United States council on environmental quality under P.L. 91−190, 42 USC 4331, by the responsible official on: 1. The environmental impact of the proposed action … .” Wis. Stat. § 1.11 (2)(c) (emphasis added).

[3] Milwaukee Journal Sentinel, 08/21/17 "Foxxconn Deal Raises Wide Array of Environmental Questions" Accessed 01/04/18 at https://www.jsonline.com/story/news/local/wisconsin/2017/08/21/foxconn-deal-raises-wide-array-environmental-questions/575898001/

40) State, local, and municipal laws have created a property right to a rigorous, thorough, and comprehensive decision making process prior to allowing a development project of the magnitude of the Foxconn project.

41) The Foxconn project has been exempted from the requirement of an environmental impact statement because the Legislation dictated that permitting and approvals within the EITM zone are per se not major actions and therefore not subject to Wis. Stat. § 1.11. The Defendants have adopted a policy of using the Legislation to avoid the EIS requirements altogether. The Defendants have not completed an EIS.

42) Additionally, the Legislation had the effect of exempting the EITM zone from many of the valuable environmental protections that are usually applicable under Wisconsin law, and the Defendants have adopted a policy of using the Legislation to avoid these requirements altogether.

43) Mount Pleasant applied the laws in such a way as to avoid having to engage in a rigorous, thorough, and comprehensive decision making process prior to making the final decision to enter into the developers agreement and undertake the project.

44) The other landowners in Mount Pleasant, and in the State, are entitled to, and receive from their government, a rigorous, thorough, and comprehensive decision making process prior to making the final decision to enter into a project that will have a substantial impact on the environment.

45) In this way, the Village deprived the plaintiffs of the rigorous, thorough, and comprehensive decision making process that they had a right to for such a large and environmentally impactful decision.

46) Although the Plaintiffs will be displaced by the project, they intend to stay in the area because of community, family, and business ties and thus will live in the immediate vicinity of the Foxconn plant, which is the area that will most likely be impacted by the project.

47) At a minimum, the Plaintiffs have been deprived by the Village of the reasoned and structured decision making process for large, environmentally impactful decisions, that every other landowner in Mount Pleasant, the County, and the state expects and receives.

48) Possibly, the Defendants' policies of waiving the basic procedural and substantive protections will lead to the Plaintiffs living in a polluted and degraded area with the accompanying irreparable harm to health and the environment which would have otherwise been preventable.

OPTION PACKAGES

49) The Defendants offered some of the Landowners, but not the Plaintiffs, options under which the Village optioned their property based on a formula which resulted in the optionees being compensated approximately seven times (but in some cases as much as ten times) the fair market value of their property (the “Option Packages”). Exhibit A shows the optioned properties shaded in pink.

50) As of the date of this filing, the Village has bought and paid for most, if not all, of the optioned properties.

51) Therefore, the option property Landowners have received a very generous payout on an expedited basis, whereas the Plaintiffs are in a precarious and uncertain situation.

52) The Plaintiffs have not been been offered Option Packages.

53) Recently a press release from the Village indicated that the Village now intends to pay the plaintiffs 1.4 times (140%) the value of their properties.

54) However, under Wisconsin law, increases in property value caused by the project are not taken into account for eminent domain purposes. This is called the project influence rule.

55) Land speculation has already caused property values in the project area to rise more than 140%.

56) This means that if the plaintiffs accept the proposal that the Village has publicly made, they will not even be able to buy a property similar to their current property: if they want to live in the same area, they will be forced to downgrade.

57) The Defendants created and applied the policy under color of state law, of offering Option Packages to some Landowners, but not offering Option Packages to the Plaintiffs in this case for entirely arbitrary, irrational, and unlawful reasons such as favoritism.

58) The Defendants propose to pay the Plaintiffs based on a formula of 1.4 times their property value, which will compensate the plaintiffs 1/5th or less of the pro rata compensation that their similarly situated neighbors are receiving, or, if the Plaintiffs refuse the Defendants' offer, the Defendants will use Wisconsin's eminent domain laws to

take the plaintiffs' property and compensate the Plaintiffs based on a legal framework that will provide 1/7th or less of the pro rata compensation that their similarly situated neighbors are receiving. Neither approach offered by the Defendants will adequately compensate the Plaintiffs for their losses, or even bring them close to the pro rata prices paid to the Plaintiffs' neighbors.

PLAINTIFFS

59) The plaintiffs are: RODNEY JENSEN AND CATHERINE MARIE JENSEN, adult residents of the State of Wisconsin who own approximately three (3) acres of land, where their primary residence is located, at and around 3301 S.E. Frontage Road, Mount Pleasant, Wisconsin, 53177; MICHAEL AND MARY J. SCHMIDT, adult residents of the State of Wisconsin who own approximately two point nine one (2.91) acres of land, where their primary residence is located, at and around 10514 County Line Road, Mount Pleasant, Wisconsin, 53177; ROGER STURYCZ, an adult resident of the State of Wisconsin who owns approximately one and a half (1.5) acres of land, where his primary residence is located, at and around 11604 County Line Road, Mount Pleasant, Wisconsin, 53177; ALFREDO AND ERLINDA ORTIZ, adult residents of the State of Wisconsin who own approximately two (2) acres of land, where their primary residence is located, at and around; TODD AND TRACEY BLODGETT, adult residents of the State of Wisconsin who own approximately one point four (1.4) acres of land, where their primary residence is located, at and around 13320 County Line Road, Sturtevant, Wisconsin, 53177; JOSEPH AND KIMBERLY JANICEK, adult residents of the State of Wisconsin who own approximately one and a half (1.5) acres of land, where their primary residence and businesses including a limousine company and a trucking company are located, at and around 4204 Highway H, Sturtevant, Wisconsin, 53177; CONSTANCE AND RICHARD RICHARDS, adult residents of the State of Wisconsin who own approximately five point seven three (5.73) acres of land, where their primary residence is located, at and around 12910 County Line Road, Mount Pleasant, Wisconsin, 53177.

60) Together, the Plaintiffs own approximately 18.04 acres of land in the Acquisition area.

61) The Plaintiffs will be displaced from their homes as a result of the Acquisition.

62) Notwithstanding the fact that the Acquisition will displace the Plaintiffs, they currently intend to relocate only short distance away because of their substantial ties and interests in and to the community.

63) The Plaintiffs currently enjoy on their properties the privacy and quiet pleasures of rural life in their homes, including but not limited to outdoor activities in the area such as snowmobiling, boating, gardening, dog walking, hiking, outdoor family events, swimming, fishing, hunting, and the aesthetic enjoyment of things as simple as sunsets.

DEFENDANTS

64) VILLAGE OF MOUNT PLEASANT, a Wisconsin municipal corporation, 8811 Campus Drive, Mount Pleasant, WI 53406.

65) In relation to all allegations in this complaint, the Village of Mount Pleasant has at all times acted, and threatens to further act, under color of state law. Each instance in this First Amended Complaint where it is alleged that the "Village" or the "Defendants" had some intent or motivation, took some action, refrained from taking some action, did, knew, communicated, or decided some thing, should be understood to mean that the VILLAGE OF MOUNT PLEASANT had that intent or motivation, took that action, refrained from taking that action, did, knew, communicated, or decided that thing, together with the other Defendants.

66) DAVID DEGROOT, an adult resident of the State of Wisconsin who is signatory to the developer's agreement as the Village President of Mount Pleasant, an office which he currently holds, and is therefore responsible for the implementation of the developer's agreement and the Acquisition, he is sued in his individual and official capacity, 8811 Campus Drive, Mount Pleasant, WI 53406.

67) In relation to all allegations in this complaint, David DeGroot has at all times acted, and threatens to further act, under color of state law. Each instance in this First Amended Complaint where it is alleged that the "Village" or the "Defendants" had some intent or motivation, took some action, refrained from taking some action, did, knew, communicated, or decided some thing, should be understood to mean that the DAVID DEGROOT had that intent or motivation, took that action, refrained from taking that

action, did, knew, communicated, or decided that thing, together with the other Defendants.

68) VILLAGE OF MOUNT PLEASANT COMMUNITY DEVELOPMENT AUTHORITY, is a body politic and commission established under Wisconsin and municipal law, 8811 Campus Drive, Mount Pleasant, WI 53406.

69) In relation to all allegations in this complaint, the Village of Mount Pleasant Community Development Authority has at all times acted, and threatens to further act, under color of state law. Each instance in this First Amended Complaint where it is alleged that the "Village" or the "Defendants" had some intent or motivation, took some action, refrained from taking some action, did, knew, communicated, or decided some thing, should be understood to mean that the VILLAGE OF MOUNT PLEASANT COMMUNITY DEVELOPMENT AUTHORITY had that intent or motivation, took that action, refrained from taking that action, did, knew, communicated, or decided that thing, together with the other Defendants.

JURISDICTION & JURY DEMAND

70) This Court has jurisdiction over this action pursuant to Title 28 U.S.C. §§1331 and 1343(3) in that the controversy arises under the United States Constitution and under 42 U.S.C. §1983 and 28 U.S.C. §§2201 and 2202. This Court has authority to award attorneys fees pursuant to 42 U.S.C. §1988. Plaintiff further invokes the supplemental jurisdiction of this Court under 28 U.S.C. §1367(a) to hear and adjudicate state law claims to the extent that any are intertwined with the questions presented in this case. Each and all of the acts (or threats of acts) alleged herein were done by Defendants, or their officers, agents, and employees, under color and pretense of the statutes, ordinances, regulations, customs and usages of state law. The Plaintiffs request a jury.

FIRST CLAIM

(42 U.S.C. SECTION 1983: PUBLIC USE UNDER THE 5TH AMENDMENT TO THE UNITED STATES CONSTITUTION AND DUE PROCESS)

71) Plaintiffs incorporate by reference all of the preceding paragraphs in this First Amended Complaint as though fully set forth herein.

72) The statutes, ordinances, regulations, policies, customs and usages of the Defendants, on their face and as applied or threatened to be applied by the Defendants, the public use requirement of the Fifth Amendment and violate the Due Process Clause by not complying with the Fifth Amendment.

73) Specifically but not exclusively by threatening to deprive and depriving Plaintiffs of their property in an unconstitutional manner without due process of law when the property taken is not for a public purpose.

74) The statutes, ordinances, regulations, policies, customs and usages as pled herein are irrational and unreasonable, imposing unjustifiable deprivations and restrictions on the protected constitutional rights to equal protection, due process and private property. Because the statutes, ordinances, regulations, customs and usages and the application thereof to the Plaintiffs are irrational and unreasonable, their application violates the equal protection and due process guarantees of the Fourteenth Amendment to the United States Constitution and constitutes discrimination intentionally visited on the Plaintiffs by state law actors who knew or should have known that they had, and have, no justification, based on their public duties, for singling the Plaintiffs out for unfavorable treatment thereby acting for personal reasons, with discriminatory intent and effect.

SECOND AND THIRD CLAIM

(42 U.S.C. SECTION 1983: EQUAL PROTECTION AND SUBSTANTIVE DUE PROCESS)

75) Plaintiffs incorporate by reference all of the preceding paragraphs in this First Amended Complaint as though fully set forth herein.

76) The statutes, ordinances, regulations, policies, customs and usages of the Defendants, on their face and as applied or threatened to be applied, by Mount Pleasant and David DeGroot, violate the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment.

77) First, specifically but not exclusively, by creating two classes of people, those who are protected from the taking of private property for non-public purposes, or paid substantially above market rates for their property, and those who are not.

78) The Plaintiffs fall into the unfavored group, their property is slated for taking through eminent domain or under threat of eminent domain even though some or all of it will be conveyed to a private entity, or used for road and utility projects that are entirely interwoven with the private entity's private interests and which would not be happening but for the project.

79) This classification has a direct bearing on the fundamental interest in private property and equal protection of the laws. The Defendants have no rational basis to justify the creation of these classes. The Defendants' creation of these classes is irrational and wholly arbitrary.

80) The statutes, ordinances, regulations, policies, customs and usages of the Village, on their face and as applied or threatened to be applied, by the Village, deprive the Plaintiffs of valuable rights in the form of the right to equal protection, due process, and to be protected from takings of their land for private purposes.

81) The statutes, ordinances, regulations, policies, customs and usages as pled herein are irrational and unreasonable, imposing unjustifiable deprivations and restrictions on the protected constitutional rights to equal protection, due process, and private property. Because the statutes, ordinances, regulations, customs and usages and the application thereof to the Plaintiffs are irrational and unreasonable, their application violates the equal protection and due process guarantees of the Fourteenth Amendment to the United States Constitution and constitutes discrimination intentionally visited on the Plaintiffs by state law actors who knew or should have known that they had, and have, no justification, based on their public duties, for singling the Plaintiffs out for unfavorable treatment thereby acting for personal reasons, with discriminatory intent and effect.

FOURTH AND FIFTH CLAIMS

(42 U.S.C. SECTION 1983: EQUAL PROTECTION AND DUE PROCESS)

82) Plaintiffs incorporate by reference all of the preceding paragraphs in this First Amended Complaint as though fully set forth herein.

83) The statutes, ordinances, regulations, policies, customs and usages of the Defendants, on their face and as applied or threatened to be applied, by Defendants, violate the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment.

84) Second, specifically but not exclusively, by creating two classes of people, those who are protected from possibly polluting and environmentally disruptive projects through the rigorous, reasoned, and structured decision making process exemplified in Wis. Stat. § 1.11 and other environmental safeguards and regulations, and those who are not.

85) The Plaintiffs fall into the second group, because the requirement of an EIS and the rigorous, reasoned, and through, decision making process has been circumvented by the Village, and the Plaintiffs have thereby been denied due process and equal protection of the laws.

86) This classification has a direct bearing on the fundamental interest in private property, due process, and equal protection of the laws. The Defendants have no rational basis to justify the creation of these classes. The Defendants' creation of these classes is irrational and wholly arbitrary.

87) The statutes, ordinances, regulations, policies, customs and usages of the Defendants, on their face and as applied or threatened to be applied, deprive the Plaintiffs of valuable rights in the form of the right to be protected from environmental harms and careless, unstructured decision making for large possibly environmentally impactful decisions, unlike everybody else in the State who is protected under the Wisconsin Statutes.

88) The statutes, ordinances, regulations, policies, customs and usages as pled herein are irrational and unreasonable, imposing unjustifiable deprivations and restrictions on the protected constitutional rights to equal protection, due process and private property. Because the statutes, ordinances, regulations, customs and usages and the application thereof to the Plaintiffs are irrational and unreasonable, their application violates the equal protection and due process guarantees of the Fourteenth Amendment to the United States Constitution and constitutes discrimination intentionally visited on the Plaintiffs by state law actors who knew or should have known that they had, and have, no justification, based on their public duties, for singling the Plaintiffs out for unfavorable treatment thereby acting for personal reasons, with discriminatory intent and effect.

SIXTH AND SEVENTH CLAIMS

(42 U.S.C. SECTION 1983: EQUAL PROTECTION AND DUE PROCESS)

89) Plaintiffs incorporate by reference all of the preceding paragraphs in this First Amended Complaint as though fully set forth herein.

90) The statutes, ordinances, regulations, policies, customs and usages of the Defendants, on their face and as applied or threatened to be applied, by the Defendants, violate the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment.

91) Third, specifically but not exclusively, by creating two classes of people, those who are compensated for the acquisition of their land using option packages priced on the basis of a formula that pays seven times (but in some cases up to 10 times) the fair market value of the property acquired, and those whose property is going to be acquired through a buyout at 1.4 times their property value, resulting in compensation 1/5th or less of the pro rata rate that their neighbors are being compensated, or through eminent domain under which they will be compensated a fraction (1/7th to 1/10th) of what their similarly situated neighbors are being compensated.

92) The Plaintiffs fall into the second group, because for reasons which are irrational and wholly arbitrary, the Plaintiffs have not been offered option packages in parity to their neighbors, wherefore, the Plaintiffs have been discriminated against, denied due process, and denied the equal protection of the laws.

93) This classification has a direct bearing on the fundamental interest in private property, just compensation, due process and equal protection of the laws. The Defendants have no rational basis to justify the creation of these classes.

94) The statutes, ordinances, regulations, policies, customs and usages of the Defendants, on their face and as applied or threatened to be applied, deprive the Plaintiffs of constitutional rights to due process, private property, and equal protection.

95) It is arbitrary and irrational to compensate some landowners using a formula that pays them seven times to ten times the fair market value of their property, and other similarly situated landowners a fraction of this amount.

96) The statutes, ordinances, regulations, policies, customs and usages as pled herein are irrational and unreasonable, imposing unjustifiable deprivations and restrictions on the protected constitutional rights to equal protection, due process and private property. Because the statutes, ordinances, regulations, customs and usages and the application thereof to the Plaintiffs are irrational and unreasonable, their application violates the equal protection and due process guarantees of the Fourteenth Amendment to the United States Constitution and constitutes discrimination intentionally visited on the Plaintiffs by state law actors who knew or should have known that they had, and have, no justification, based on their public duties, for singling the Plaintiffs out for unfavorable treatment thereby acting for personal reasons, with discriminatory intent and effect.

WHEREFORE, Plaintiffs prays that this Court:

(a) Enter judgment against the defendant;

(b) Enter a declaratory judgment declaring the acts of the Defendants to be a violation of Plaintiffs' constitutional rights to due process, equal protection, and private property;

(c) Issue a declaratory judgment declaring that the developer's agreement is unconstitutional on its face because it deprives the Plaintiffs of the equal protection of the laws;

(d) Issue a temporary restraining order, and a preliminary and permanent injunction enjoining Defendants, their agents, servants, employees, officers and any others on their behalf from violating Plaintiffs constitutional rights as pled herein;

(e) Award Plaintiffs their costs, interest and reasonable attorneys' fees for this action pursuant to 42 U.S.C. §1988 and other relevant statutes; and,

(f) Order such other and further relief as the Court deems just and proper under the circumstances.

Dated this 13th day of February, 2018.

__/s/Erik S. Olsen_____
Erik S. Olsen
SBN 1056276
erik@eminentdomainservices.com

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