From:	Tom Willan
To:	Violante, Todd; Bollig, Jerome; Doolan, Michele; Smith, Sarah; Kiefer, Timothy; Peters, Steven
Cc:	Julia Willan; Lane, Roger
Subject:	RE: Issue at the January 25th ZLR Committee meeting
Date:	Friday, February 4, 2022 6:40:59 PM
Attachments:	document 31-1 plaintiffs filed brief in support of 59e motion.pdf plaintiffs accepted filed reply brief.pdf

I know Mr. Bollig said we wouldn't talk about wedding barns, but Mr. Lane wants to claim something about wedding barns that is backed up by an official court record addressing the wedding barn Mr. Lane brought up. There is a whole section of truthful arguments made to the Seventh Circuit court of appeals on wedding barns. Mr. Lane was a defendant in that suit. Look on page 21 of the court of appeals document and document 31-1 page 3 of the district court document, clearly explains the real reason for the email to Mr. Lane bringing up wedding barn. Sorry I have to add this, but please make both documents and this email part of the record. I would like to point out my "practices" deal with the truth because it is the easiest way to remember what has happened and what was said. Please consider these documents in determining the credibility of Mr. Lane.

Thanks, Tom and Julia Willan

From: Violante, Todd <Violante@countyofdane.com>
Sent: Friday, February 4, 2022 5:28 PM
To: Bollig, Jerome <Bollig.Jerry@countyofdane.com>; Doolan, Michele <Doolan.Michele@countyofdane.com>; Smith, Sarah <Smith.Sarah@countyofdane.com>; Kiefer, Timothy <Kiefer.Timothy@countyofdane.com>; Peters, Steven <Peters.Steven@countyofdane.com>
Cc: Tom Willan <tom@ironmanbuildings.com>; Julia Willan <julia@ironmanbuildings.com>; Lane, Roger <lane.roger@countyofdane.com>
Subject: RE: Issue at the January 25th ZLR Committee meeting

Zoning & Land Regulation Committee Members,

In anticipation of this coming Tuesday's (February 8) ZLR work meeting, in follow up to the January 25 public hearing testimony on rezone 11788 by Tom and Julia Willan, I recommend that the email below and attached communication be added to the record on this petition. If the committee supports this recommendation, it would require a formal motion of the committee.

I am also including Mr. and Mrs. Willan in this email for their awareness. The Willans may like an opportunity to respond, and the committee may wish to consider allowing a sufficient opportunity to do so.

Committee members, please do not 'reply to all,' as such electronic communication could

create a 'walking quorum' and run the risk of becoming an open meetings violation. Again, this rezone petition is on this coming Tuesday's work meeting agenda.

Thank you, take care, and have a pleasant weekend.

Todd

NOTE: The Dane County Planning & Development Department office is currently closed in response to the COVID-19 pandemic. Staff are working remotely and can be reached via email during regular business hours. This is the best way to communicate with our staff. We're also checking voicemail throughout the day, so please don't hesitate to call, and we'll get back to you as soon as possible. Thank you for your patience and understanding.

More information and updates can be found on our website:
https://danecountyplanning.com/

Todd A. Violante, AICP, Director
Dane County Planning & Development Department
Room 116, City-County Building
210 MLK, Jr. Blvd.
Madison, WI 53703-3342
Phone: (608) 266-4021
Cell: (608) 535-7520
Fax: (608) 267-1540
Email: violante@countyofdane.com
https://danecountyplanning.com/

From: Lane, Roger <lane.roger@countyofdane.com>
Sent: Monday, January 31, 2022 4:13 PM
To: Bollig, Jerome <Bollig.Jerry@countyofdane.com>; Doolan, Michele <Doolan.Michele@countyofdane.com>; Smith, Sarah <Smith.Sarah@countyofdane.com>; Kiefer, Timothy <Kiefer.Timothy@countyofdane.com>; Peters, Steven <Peters.Steven@countyofdane.com>
Cc: Violante, Todd <Violante@countyofdane.com>
Subject: Issue at the January 25th ZLR Committee meeting

Dear Committee members,

At the January 25th ZLR Committee meeting there were statements made by one of the petitioners that claimed that I was untruthful with regards to the information that I provided to the Committee. During the discussion regarding Petition 11788, I stated that I had previous discussions with Mr. Willan, landowner, regarding turning his barn on his property into a wedding barn. Mr. Willan state

that my statement was false and he never had such conversation.

As staff to the Committee, I pride myself on being very truthfully with the Committee and strive to provide accurate information so that the Committee can make the best decision on a petition. Mr. Willan's statement casts doubt on this trust.

To support my statement that I made on January 25th, I have attached correspondence between Mr. Willan and myself regarding using the barn on his property for wedding events. This is just one of many examples of Mr. Willan's practices.

If you have any questions or concerns, I would be more than happy to discuss the matter.

Sincerely,

Roger Lane
Dane County Zoning Administrator
(608) 266-9078

Please note that the Dane County Planning & Development office is currently closed in response to the COVID-19 pandemic.
Staff are working remotely and can be reached via email during regular business hours. This is the best way to communicate with us. Staff will be as responsive as possible.
We will also be checking work phone voicemail intermittently throughout business hours.
More information and updates can be found on our website: https://danecountyplanning.com/

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THOMAS M. WILLAN AND
JULIA A WILLAN
4407 Vilas Hope Rd,
Cottage Grove WI 53527

Plaintiff,

CASE NUMBER 19-CV-345

vs.

COUNTY OF DANE, DCZ,
JOE PARISI, TODD VIOLANTE,
ROGER LANE, PAM ANDROS,
SARAH JOHNSON
210 Martin Luther King Jr Blvd
Madison WI 53703

Defendants.

PLAINTIFFS BRIEF IN SUPPORT OF 59e MOTION TO RECONSIDER

Respectfully Submitted,

Thomas M Willan, Pro Se
4407 Vilas Hope Rd
Cottage Grove WI 53527
tom@ironmanbuildings.com
608-438-3103

STANDARD OF REVIEW FOR A RULE 59(e) MOTION

Rule 59(e) allows a litigant to file a "motion to alter or amend a judgment."1 The time for doing so is short—28 days from entry of the judgment, with no possibility of an extension. See Fed. Rule Civ. Proc. 6(b)(2) (prohibiting extensions to Rule 59(e)'s deadline). The Rule gives a district court the chance "to rectify its own mistakes in the period immediately following" its decision. White v. New Hampshire Dept. of Employment Security, 455 U. S. 445, 450 (1982). In keeping with that corrective function, "federal courts generally have [used] Rule 59(e) only" to "reconsider[] matters properly encompassed in a decision on the merits." Id., at 451.

In particular, courts will not address new arguments or evidence that the moving party could have raised before the decision issued. See 11 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §2810.1,pp. 163–164 (3d ed. 2012) (Wright & Miller); accord, Exxon Shipping Co. v. Baker, 554 U. S. 471, 485–486, n. 5 (2008) (quoting prior edition).

The motion is therefore tightly tied to the underlying judgment. The filing of a Rule 59(e) motion within the 28-day period "suspends the finality of the original judgment" for purposes of an appeal. FCC v. League of Women Voters of Cal., 468 U. S. 364, 373, n. 10 (1984) (internal quotation marks ———— — 1The complete text of the Rule reads: "A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." 2By contrast, courts may consider new arguments based on an "intervening change in controlling law" and "newly discovered or previouslyunavailable evidence." 11 Wright & Miller §2810.1, at 161–162 (3d ed. 2012). But it is rare for such arguments or evidence to emerge within Rule 59(e)'s strict 28-day timeframe. and alterations omitted

Without such a motion, a litigant must take an appeal no later than 30 days from the district court's entry of judgment. See Fed. Rule App. Proc. (FRAP)4(a)(1)(A). But if he timely submits a Rule 59(e) motion, there is no longer a final judgment to appeal from. See Osterneck v. Ernst & Whinney, 489 U. S. 169, 174 (1989). Only the disposition of that motion "restores the finality" of the original judgment, thus starting the 30-day appeal clock. League of Women Voters, 468 U. S., at 373, n. 10 (internal quotation marks omitted); see FRAP 4(a)(4)(A)(iv) (Aparty's "time to file an appeal runs" from "the entry of the order disposing of the [Rule 59(e)] motion"). And if an appeal follows, the ruling on the Rule 59(e) motion merges with the prior determination, so that the reviewing court takes up only one judgment. See 11 Wright & Miller §2818, at 246; Foman v. Davis, 371 U. S. 178, 181 (1962). The court thus addresses any attack on the Rule 59(e) ruling as part of its review of the underlying decision. Cite as: 590 U. S. ____ (2020)

THIS CASE IS NOT ABOUT WEDDING BARN USAGE RIGHT AND THE DEFENDANTS HAVE MISLEAD THE COURT INTO MISAPPLYING THE LAW TO THIS CASE

This case is clearly not about a wedding barn usage as the court ruled in the its decision to dismiss. This is about the plaintiffs systematically being sentenced to essentially life sentence by the State of Wisconsin to unconstitutional behaviors by a Dane County zoning system fraught with no oversite where, a single unelected official is allowed unappeased to stalk, harass, trespass, make false allegations, and ultimately take constitutionally protected vested permitted agricultural rights away that were purchased with the property, all under a guise of for the good of the community without any due process. For seven years the defendants led by Defendant Lane have taken upon themselves to do everything that has been said about them in every court filing by the plaintiffs. The defendants want this court to take their eyes off the true facts of this case with this wedding barn side show thing that isn't before the court. The wedding Barn request story was the only way the plaintiffs could get a response from Defendant Lane and DCPD regarding the June 28, 2018 email nobody would respond to.

The undisputed facts are that the plaintiffs purchased Agricultural property rights with their investment backed property that this case is about, because they were in the agricultural accessory business. Under Wisconsin law the plaintiffs agricultural property rights they purchased became vested rights under the law when they purchased their building permit in 2012 under AG-EX1 zoning to start renovating their agricultural accessory barn, which vested their property to be used for all Agricultural accessory uses listed under AG-1EX.

The defendants in this case know all about the vested permitted property rights we own, and yet they still are allowed to unconstitutionally keep them from their rightful owners, under a guise of a wedding barn fallacy they created. We are filing an amended complaint with this filing to show, the court, the defendants that we have stated a claim for relief that this court has legal jurisdiction to hear this case. As we have stated in every filing, this case is not about the wedding barn, it is about the constitution and our rights. This court has an obligation and legal duty to allow this case to go forward now with full disclosure to discovery including the issues in the courts denied motion for mootness. We have tried your

honor to just get the County to give us our vested permitted property rights back, and we will go on with life. They are the ones that have chose to unconstitutionally take our purchased, owned vested permitted property rights without any due process and smear us, terrorize us along the way with false allegations. Essentially your honor, the question on appeal will be, "Under color of law, can Dane County zoning department take away vested permitted property rights away ex parte based upon a card mailing that sets no date or time for a hearing, all while the property owner objected by email that the zoning department admits they received, but does not respond to, do their actions violate the plaintiffs rights under the 5th amendment for taking property rights and 14th amendment to the constitution for substantive due process, procedural due process, and discrimination under a class of one theory? Does the District court have jurisdiction under federal law to hear our case? We say yes to both, Dane County violated our constitutional rights and this court has jurisdiction? The seventh circuit case law says yes Dane County violated our constitutional rights and this court has jurisdiction! The Supreme Court of the United States caselaw say's yes Dane County violated our constitutional rights and this court has jurisdiction!

THIS CASE IS A FEDERAL CASE BECAUSE THE DEFENDANTS CHOSE TO ARBITRILLY TAKE AWAY CONSITUTIONALLY PROTECTED VESTED PERMITTED PROPERTY RIGHTS EX PARTE

We here to review the decisions of a federal District Court decision that upheld the constitutionality of Dane County Zoning laws authorizing the summary ex parte seizure of the plaintiff's vested permitted property rights in their possession under a zoning law that allows comprehensive zoning revisions without any guidance to protect constitutionally protected vested permitted rights of the property owners.

The central focus of this case starts with Dane County exceeding its statutory authority during the comprehensive revision of chapter 10 DCO by not providing any preemptive Due process prior to extinguishing vested permitted property rights. We believe the Supreme Court of the United States precedence under Fuentes v. Shevin, 407 U.S. 67 (1972), will support that the Dane County Zoning ordinances and the Wisconsin Zoning provisions used during the Comprehensive revisions are invalid under the Fourteenth Amendment because they work a deprivation of property without due process of law

by denying the right to a prior opportunity to be heard before vested permitted property rights are taken from the possessor.

Don't let the Defendants fool this Court into thinking, that the Plaintiffs forfeited those rights by not attending the town and County meetings listed in their Class 2 notification. It is a material fact that neither option advanced by the defendant's arguments provide the preemptive due process required by the Fuentes v. Shevin, 407 U.S. 67 (1972), court. Material fact is the post card notification provided by the defendants was the only personal notification presented and that notification never provided a date and time to be heard. (Document #: 7 Filed: 05/30/19 Page 6 of 24)

Procedural due process in the context of this case requires an opportunity for a hearing before the State authorizes its zoning departments to seize vested permitted property rights in the possession of a person upon the application of another, and the minimal deterrent effect of the court challenge under a post card mailing requirement against unfounded applications for a rezoning classification that takes vested permitted agricultural rights away, constitutes no substitute for a pre-seizure hearing. Pp. 407 U. S. 80-84.

(a) From the standpoint of the application of the Due Process Clause, it is immaterial that the deprivation may be temporary and nonfinal because a court can overturn the ordinance.

(b) The possessory interest of Plaintiffs in this case, who had made substantial installment payments on their vested agricultural permitted property, and substantial investment in their agricultural barn, is sufficient for them to invoke procedural due process safeguards notwithstanding their lack of full title to the property.

(c) The Defendants and Court erred in rejecting appellants' constitutional claim on the ground that "the procedures 'due' in zoning cases are minimal." River Park, Inc. v. City of Highland Park, 23 F.3d 164, 166 (7th Cir. 1994). and therefore did not require due process protection, as the Fourteenth Amendment imposes no such limitation. The broadly drawn provisions here involved serve no such important a state interest as might justify summary seizure. Pp. 407 U. S. 90-93.

The zoning provisions used for taking vested permitted property rights away by the Dane County Zoning department defendants after the plaintiffs good faith attempt on June 28, 2018, by emailing a petition for zoning change, did not amount to a waiver of the appellants' procedural due process rights, those provisions neither dispensing with a prior hearing nor indicating the procedure by which repossession was to be achieved. D. H. Overmyer Co. v. Frick Co., 405 U. S. 174, distinguished. Pp. 407 U. S. 94-96.

UNDER MCKINNEY,

In McKinney, the court noted that "a procedural due process violation is not complete 'unless and until the State fails to provide due process'. . . . In other words, the state may cure a procedural deprivation by providing a later procedural remedy; only when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise." Id., at 1557 (citation omitted). Accord, Flint Elec. Membership Corp., 68 F.3d at 1313. If an adequate state process is available to rectify the deprivation, the purported violation is not actionable under section 1983. Flint Elec. Membership Corp., 68 F.3d at 1313. In this case, once the ordinance taking away the vested permitted property rights away were adopted by the Dane County board, neither the Dane County ordinance nor the state of Wisconsin provided any state process to rectify the taking. In fact the Supreme court said once the property was taken, it became actionable in the federal courts. See Knick v Township of Scott

For more than a century, the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right, they must first be notified." Baldwin v. Hale, 1 Wall. 223, 68 U. S. 233. See Windsor v. McVeigh, 93 U. S. 274; Hovey v. Elliott, 167 U. S. 409; Grannis v. Ordean, 234 U. S. 385. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U. S. 545, 380 U. S. 552.

The primary question in the present cases is whether those post card mailings are constitutionally defective in failing to provide for hearings "at a meaningful time." The Wisconsin comprehensive zoning process guarantees an opportunity for a post-seizure hearing if the aggrieved party shoulders the burden

of initiating one. But the Wisconsin statute provides for notice or an opportunity to be heard before the seizure. The issue is whether procedural due process in the context of this cases requires an opportunity for a hearing before the State authorizes its agents to seize property rights in the possession of a zoning department upon the post card notification created arbitrarily by a biased zoning administrator.

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not

Page 407 U. S. 81

only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment -- to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a public party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference. See Lynch v. Household Finance Corp., 405 U. S. 538, 405 U. S. 552.

The requirement of notice and an opportunity to be heard raises no impenetrable barrier to the taking of a person's possessions. But the fair process of decision making that it guarantees works, by itself, to protect against arbitrary deprivation of property. For when a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say, substantively unfair and simply mistaken deprivations of property interests can be prevented. It has long been recognized that "fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . . [And n]o better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it."

Joint Ant-Fascist Refugee Committee v. McGrath, 341 U. S. 123, 341 U. S. 170-172 (Frankfurter, J., concurring).

If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be

Page 407 U. S. 82

awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. "This Court has not . . . embraced the general proposition that a wrong may be done if it can be undone." Stanley v. Illinois, 405 U. S. 645, 405 U. S. 647.

This is no new principle of constitutional law. The right to a prior hearing has long been recognized by this Court under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the form of a hearing "appropriate to the nature of the case," Mullane v. Central Hanover Tr. Co., 339 U. S. 306, 339 U. S. 313, and "depending upon the importance of the interests involved and the nature of the subsequent proceedings [if any]," Boddie v. Connecticut, 401 U. S. 371, 401 U. S. 378, the Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect. E.g., Bell v. Burson, 402 U. S. 535, 402 U. S. 542; Wisconsin v. Constantineau, 400 U. S. 433, 400 U. S. 437; Goldberg v. Kelly, 397 U. S. 254; Armstrong v. Manzo, 380 U.S. at 380 U. S. 551; Mullane v. Central Hanover Tr. Co., supra, at 339 U. S. 313; Opp Cotton Mills v. Administrator, 312 U. S. 126, 312 U. S. 152-153; United States v. Illinois Central R. Co., 291 U. S. 457, 291 U. S. 463; Londoner v. City & County of Denver, 210 U. S. 373, 210 U. S. 385-386. See In re Ruffalo, 390 U. S. 544, 390 U. S. 550-551.

"That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event."

Boddie v. Connecticut, supra, at 401 U. S. 379-379 (emphasis in original).

Page 407 U. S. 83

The Dane County zoning prejudgment zoning classification statutes fly in the face of this principle. To be sure, the requirements that a party seeking to take away vested property rights mail a post card out, allege nothing, that he is entitled to his property rights, and open himself to possible liability in damages if he is wrong, serve to deter wholly unfounded zoning classifications that take away vested permitted property rights. But those requirements are hardly a substitute for a prior hearing, for they test no more than the strength of the applicant's own belief in his rights.

Since his public gain is at stake, the danger is all too great that his confidence in his cause will be misplaced. Lawyers and judges are familiar with the phenomenon of a party mistakenly but firmly convinced that his view of the facts and law will prevail, and therefore quite willing to risk the costs of litigation. Because of the understandable, self-interested fallibility of litigants, a court does not decide a dispute until it has had an opportunity to hear both sides -- and does not generally take even tentative action until it has itself examined the support for the plaintiff's position. The Wisconsin statutes do not even require the officials in charge of issuing a zoning classification that take away vested permitted property rights to do anything other than mail a post card.

The minimal deterrent effect of the public paying for litigation is, in a practical sense, no substitute for an informed evaluation by a neutral official. More specifically, as a matter of constitutional principle, it is no replacement for the right to a prior hearing that is the only truly effective safeguard against arbitrary deprivation of property. While the existence of these other, less the statutes provide for the issuance of

zoning classifications where state agents can seize a person's possessions, simply upon the ex parte post card mailing that claims a right to the vested permitted property rights. The Wisconsin statute provides for notice to be given to the possessor of the property by post card but fails to give the owner of the vested permitted property rights an opportunity to challenge the seizure at any kind of prior hearing. The question is whether these statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law. But if the root principle of procedural due process is to be applied with objectivity, it cannot rest on such distinctions. The Fourteenth Amendment speaks of "property" generally. And, under our free enterprise system, an individual's choices in the marketplace are respected, however unwise they may seem to someone else. It is not the business of a court adjudicating due process rights to make its own critical evaluation of those choices and protect only the ones that, by its own lights, are "necessary."

II. MOTION TO DISMISS STANDARD

In assessing the merits of the defendant's motion to dismiss, which was filed pursuant to Federal Rule of Civil Procedure 12(b)(6), the court begins with the premise that the complaint generally need not contain anything more than "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). It simply must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atlantic Corp. v. Twombly, ___U.S.____, 127 S. Ct. 1955, 1969, 167 L. Ed. 2d 929 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)). So long as the factual allegations in the complaint "raise a right to relief above the speculative level," the complaint will withstand a 12(b)(6) challenge. Twombly, 127 S. Ct. at 1965. In assessing the motions, the court must also assume that all well-pleaded allegations in the complaint are true. Twombly, 127 S. Ct. at 1965.

Finally, "[a] complaint is subject to dismissal under Rule 12(b)(6) when the allegations - on their face - show that an affirmative defense bars recovery on the claim." Marsh v. Butler County, Ala., 268 F.3d 1014, 1022 (11th Cir. 2001).

A. Due Process - Generally

In McKinney v. Pate, 20 F.3d 1550 (11th Cir. 1994) (en banc), cert. denied, 513 U.S. 1110 (1995), the court addressed the viability of section 1983 claims premised on the Due Process Clause of the Fourteenth Amendment. The court stated: The Due Process Clause of the Fourteenth Amendment provides "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Supreme Court's interpretation of this clause explicates that the amendment provides two different kinds of constitutional protection: procedural due process and substantive due process. Cf. Zinermon v. Burch, 494 U.S. 113, 125, 110 S. Ct. 975, 983, 108 L. Ed. 2d 100 (1990). A violation of either of these kinds of protection may form the basis for a suit under section 1983. Id. The substantive component of the Due Process Clause protects those rights that are "fundamental," that is, rights that are "implicit in the concept of ordered liberty," Palko v. Connecticut, 302 U.S. 319, 325, 58 S. Ct. 149, 152, 82 L. Ed. 288 (1937). [ ] The Supreme Court has deemed that most--but not all—of the rights enumerated in the Bill of Rights are fundamental; certain unenumerated rights (for instance, the penumbral right of privacy, see Planned Parenthood v. Casey, 505 U.S. 833, ----, 112 S. Ct. 2791, 2807, 120 L. Ed. 2d 674 (1992)) also merit protection. It is in this framework that fundamental rights are incorporated against the states. A finding that a right merits substantive due process protection means that the right is protected "against 'certain government actions regardless of the fairness of the procedures used to implement them.'" Collins v. City of Harker Heights, 503 U.S. 115, ----, 112 S. Ct. 1061, 1068, 117 L. Ed. 2d 261 (1992) (quoting Daniels v. Williams, 474 U.S. 327, 331, 106 S. Ct. 662, 665,

The plaintiffs claim is actionable in Federal Court under numerous reasons. The filed amended complaint now matches the plaintiff's response to the defendants motion to dismiss filed on August 16, 2019. If this court or the defendants feel that they need some more detail to the First amended complaint we will file a second amended complaint. We are Pro se litigants who are doing our best to get justice where we have been wronged by the defendants and we believe our cause of action can go forward.

CLASS OF ONE CAUSE OF ACTION

The Equal Protection Clause gives rise to a cause of action on behalf of a "class of one" where the plaintiff does not allege membership in a class or group, but alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for such treatment. See, e. g., Sioux City Bridge Co. v. Dakota County, 260 U. S. 441. The Clause secures every person within a State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by a statute's express terms or by its improper execution. Id., at 445. Village of Willowbrook v. Olech, 528 U.S. 562 (2000) Here, Willans allegations that the Dane County defendants intentionally refused to answer the June 28, 2018 email from them when it answered and assisted a similarly situated neighbor property owner, the knaptons to obtain and operate their agricultural accessory business and that the disparaging treatment of the willans vested permitted property rights was irrational and arbitrary extinguished by ordinance.

Dane County ultimately gave to one while refusing to return the Willans vested permitted property rights.

The Court of Appeals found that in this case respondent had alleged an extra factor as well-a factor that the Court of Appeals called "vindictive action," "illegitimate animus," or "ill will." 160 F.3d 386, 388 (CA7 1998). And, in that respect, the court said this case resembled Esmail v. Macrane, 53 F.3d 176 (CA71995), because the Esmail plaintiff had alleged that the municipality's differential treatment "was the result not of prosecutorial discretion honestly (even if ineptly-even if arbitrarily) exercised but of an illegitimate desire to 'get' him." 160 F. 3d, at 388.

We have alleged ill will and disparaging treatment wholly unrelated to any zoning classification that was granted to one and not the other.

WHEREFORE, Plaintiffs, JULIA AND THOMAS WILLAN, respectfully request that this Court to read our submittals, our brief to deny the plaintiffs motion to dismiss filed on August 16, 2019 and enter judgment in their favor over this matter and against Defendants, COUNTY OF DANE, JOE PARISI, TODD VIOLANTE, ROGER LANE, PAM ANDROS, SARAH JOHNSON, as well as any other relief this Court deems appropriate. Dated this 23rd day of June, 2020.

RESPECTFULLY SUBMITTED:

Julia A Willan

PRO SE Plaintiffs

21-1617

United States Court of Appeals for the Seventh Circuit

Thomas M Willan and Julia A Willan,

Plaintiffs-Appellants,

v.

DANE COUNTY, et al.,

Defendants-Appellees,

On Appeal from the United States District Court
for the Western District of Wisconsin
Case No. 19-CV-0345
Honorable William Conley

APPELLANTS' REPLY BRIEF

Thomas M Willan
Pro se Litigant
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TABLE OF AUTHORITIES

Cases Page(s)

INTRODUCTION

We want to address a couple house cleaning issues that are part of the record that Julia and I feel the need to address to this court. The District Court Judge references a letter that was sent to the chief justice of the 7th circuit to get the case moving along. (S.A. 3 P.19, 20) It is our position that Judge Conley is an honorable, competent District Court Judge who has been hood winked by the defendant's false narrative about a preferred wedding barn zoning case. Before we filed the complaint we tried to get the judges attention with a letter (DKT 35) and a follow up call to the clerk. We asked the clerk to tell the judge to decide and we were told by the clerk. "They don't tell a judge anything". So, under the court's rules, the only way to get the judges attention is file a formal misconduct complaint. Unfortunately, we felt helpless after nine months and had to file a complaint.

We want to point out we do not believe the honorable Judge Conley did anything wrong other than forgetting to docket in his personal calendar a deadline to get a decision out. We gracefully accept Judge Conley's sincere explanation and apology (S.A. 3 P.19, 20) in his decision and want to express our sincere apology for not having a more pristine complaint that dispelled any inferences to the Court that this was a preferred zoning decision case about a wedding barn. As this appeal clearly points out, the Willans are not, nor have they ever challenged any wedding barn decision in a federal district court.

Essentially summing this case for the Court into simplicity, is to think of this as a chicken and egg case, where the Willans owned a lawful chicken,(Vested property

rights) and eggs(permitted property rights), the defendants(Government) stole the Willan's lawful chicken and eggs, then put a regulation by ordinance only against the Willans, that they can never again have any chicken or eggs on their property, unless they buy the stolen chicken and eggs back from the defendants and if they choose to take back their stolen chicken utilizing their eggs without buying their stolen chicken and eggs back, the defendants will prosecute the Willans for enjoying their fee simple title chicken and eggs. This is a per se chicken and egg taking by illegal foxes in the chicken house!

THIS CASE IS A FEDERAL CIVIL RIGHTS CASE BECAUSE IT IS A PER SE TAKING SEE CEDAR POINT NURSERY v. HASSID 594 U. S. ____ (2021)

The label "vested right" is a shorthand and conclusory label in property law for important property rights resulting from prior transactions, contracts, and uses of property. The concept has a long and winding history as an integral part of American property law, from the earliest days of the union. See, e.g., Vanhorne's Lessee v. Dorrance, 2 Dall. 304, 311, 1 L. Ed. 391 (C.C.D. Pa. 1795) ("It is immaterial to the state, in which of its citizens the land is vested; but it is of primary importance, that, when vested, it should be secured, and the proprietor protected in the enjoyment of it. The constitution encircles, and renders it a holy thing."); Fletcher v. Peck, 10 U.S. 87, 135 (1810) ("When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot devest those rights."); Wilkinson v. Leland, 27 U.S. 627, 658 (1829) ("We know of no case, in which a legislative act to transfer the property of A. to B.

without his consent, has ever been held a constitutional exercise of legislative power. . . On the contrary, it has been constantly resisted as inconsistent with just principles, by every judicial tribunal in which it has been attempted to be enforced."). The concept of vested rights has not had just a single home in the law. It has evolved primarily as a doctrine of state common law or constitutional law, and it also can be embodied in state and local zoning and similar statutory schemes. See, e.g., Bickerstaff Clay Products Co. v. Harris County, 89 F.3d 1481, 1487 (11th Cir. 1996) (doctrine of vested rights applied by district court derived from doctrine of equitable estoppel); Lakeview Development Corp. v. City of South Lake Tahoe, 915 F.2d 1290, 1294-95 (9th Cir. 1990) (vested rights doctrine was concept of state law, a species of government estoppel); Lake Bluff Housing Partners v. City of South Milwaukee, 540 N.W.2d 189 (Wis. 1995) (detailing the concept of vested rights in Wisconsin law); Wis. Stat. § 59.69(10)(a) (prohibiting new zoning ordinances from interfering with existing lawful uses).

As a concept in federal constitutional law, vested rights emerged long before the Supreme Court recognized regulatory takings under the takings clauses of the Fifth and Fourteenth Amendments. See, e.g., In re Taylor, 102 F. 728, 730 (7th Cir. 1900) (noting that if appellant had vested right in property in question, it could not be taken away without due process and a hearing in court); City of Chicago v. New York, C. & St. L. R. Co., 216 F. 735, 738 (7th Cir. 1914) ("And of course a vested property right cannot be taken away without just compensation or due process of law."), citing Grand Trunk W.R. Co. v. South Bend, 227 U.S. 544 (1913); Chicago

Title & Trust Co. v. Bashford, 97 N.W. 940, 941 (Wis. 1904) (devesting of vested right in property would violate due process clause of Fourteenth Amendment).

The Takings Clause of the Fifth Amendment, applicable to the States through the Fourteenth Amendment, provides: "[N]or shall private property be taken for public use, without just compensation." The Founders recognized that the protection of private property is indispensable to the promotion of individual freedom. As John Adams tersely put it, "property must be secured, or liberty cannot exist. "Discourses on Davila, in 6 Works of John Adams 280 (C. Adams ed. 1851). This Court agrees, having noted that protection of property rights is "necessary to preserve freedom" and "empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for them." Murr v. Wisconsin, 582 U. S. ___, ___ (2017) (slip op., at 8).

When the government, rather than appropriating private property for itself or a third party, instead imposes regulations that restrict an owner's ability to use his own property, a different standard applies. Id., at 321–322. Our jurisprudence governing such use restrictions has developed more recently. Before the 20th century, the Takings Clause was understood to be limited to physical appropriations of property. See Horne v. Department of Agriculture, 576 U. S. 351, 360 (2015); Legal Tender Cases, 12 Wall. 457, 551 (1871). In Pennsylvania Coal Co. v. Mahon, 260 U. S. 393 (1922), however, the Court established the proposition that "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." Id., at 415. This framework now applies to use

restrictions as varied as zoning ordinances, Village of Euclid v. Ambler Realty Co., 272 U. S. 365, 387–388 (1926), orders barring the mining of gold, United States v. Central Eureka Mining Co., 357 U. S. 155, 168 (1958), and regulations prohibiting the sale of eagle feathers, Andrus v. Allard, 444 U. S. 51, 65–66 (1979). To determine whether a use restriction effects a taking, this Court has generally applied the flexible test developed in Penn Central, balancing factors such as the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the government action. 438 U. S., at 124.

Our cases have often described use restrictions that go "too far" as "regulatory takings." See, e.g., Horne, 576 U. S., at 360; Yee v. Escondido, 503 U. S. 519, 527 (1992). But that label can mislead. Government action that physically appropriates property is no less a physical taking because it arises from a regulation. It is whether the government has physically taken property for itself or someone else—by whatever means—or has instead restricted a property owner's ability to use his own property. See Tahoe-Sierra, 535 U. S., at 321–323. Whenever a regulation results in a physical appropriation of property, a per se taking has occurred, and Penn Central has no place. But Nollan clarified that appropriation of a right to physically invade property may constitute a taking" even though no particular individual is permitted to station himself permanently upon the premises." 483 U. S., at 832. CEDAR POINT NURSERY v. HASSID 594 U. S. ____ (2021)

The zoning regulation implemented by the defendants in this case, appropriates a permanent right to the defendants to invade the Willans' agricultural property to

stop them from using their vested agricultural rights and therefore constitutes a per se physical taking. The regulation grants Dane County zoning a right to physically enter and occupy the Willan's agricultural land 365 days per year to stop them from using their property for agricultural purposes. Rather than restraining the Willans' use of their own property, the regulation appropriates for the enjoyment of Defendants the owners' right to use their property for agricultural purposes and exclude the zoning department from prosecuting them from doing what was totally legal under the AG-1 EX and AG-2 zoning classification. More recently, in Horne v. Department of Agriculture, we observed that "people still do not expect their property, real or personal, to be actually occupied or taken away." 576 U. S., at 361. CEDAR POINT NURSERY v. HASSID 594 U. S. ____ (2021)

In this case the Dane County board by ordinance has physically appropriated the vested agricultural rights the Willans were legally accustomed to using to operate Ironman Buildings to the Dane County Zoning defendants for their personal enjoyment to expressly "secure unjust zoning convictions" under the new zoning ordinance that was adopted that took away the Willans Vested agricultural rights. How is this possible? The complaint alleges,

41. That Defendant Lane's deliberate and malicious actions under color of law to harass, stalk, terrorize, trespass, issue stop work orders, change zoning classifications without due process, forcing the plaintiffs to litigate a right he illegally changed under color of law, in 2013 and again in 2019, that these deliberate, malicious actions of the defendants have continued to violate the Plaintiffs property rights under the 4th 5th and 14th amendment to the United States Constitution and the Constitution and laws of Wisconsin.

141. Specifically, these Defendants actively participated in, or personally caused, misconduct in terms of abusing Plaintiffs in a manner calculated to coerce and

manipulate the plaintiffs property into substandard Dane County zoning classification to **secure unjust zoning convictions**. Said misconduct was motivated by **personal animus and constituted purposeful discrimination**; it also affected the plaintiffs in a grossly disproportionate manner vis-a-vis similarly-situated citizens(Knaptons) under Dane County zoning regulations.

142. As a result of this violation, Plaintiff suffered injuries, including but not limited to emotional distress, as is more fully alleged above.

143. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiffs constitutional rights.

144. The misconduct described in this Count was undertaken pursuant to the policy and practice of the Dane County Zoning in the manner described more fully above.(see complaint S.A. 5 P.48)

The complaint clearly read that Dane County Defendants deliberately have illegally classified the plaintiffs into a substandard zoning district taken the plaintiffs vested property rights away with out due process so they can now permanently occupy the Willan's property with the permanent threat of prosecuting the Willans and putting them in jail for using their fee simple title property for Agricultural accessory purposes as the property has been used for 75 plus years.

Does this go to far?

The comprehensive ordinance revisions regulation as applied to the Willan's property appropriates the zoning department defendants a right to invade the Willan's property, take away their vested property rights, and threaten them with prosecution if they use their vested agricultural rights and therefore constitutes a per se physical taking. The regulation as adopted grants Dane county zoning officials a right to physically enter and occupy the Willan's agricultural land for 365 days per year. Rather than restraining the Willan's use of their own property, the regulation appropriates for the enjoyment of Dane County zoning defendants the

owners' right to exclude. The right to exclude is "one of the most treasured" rights of property ownership. Loretto v. Teleprompter Manhattan CATV Corp., 458 U. S. 419, 435 (1982). According to Blackstone, the very idea of property entails "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." 2 W. Blackstone, Commentaries on the Laws of England 2 (1766). In less exuberant terms, we have stated that the right to exclude is "universally held to be a fundamental element of the property right," and is "one of the most essential sticks in the bundle of rights that are commonly characterized as property." Kaiser Aetna v. United States, 444 U. S. 164, 176, 179–180 (1979); see Dolan v. City of Tigard, 512 U. S. 374, 384, 393 (1994); Nollan v. California Coastal Comm'n, 483 U. S. 825, 831 (1987); see also Merrill, Property and the Right to Exclude, 77 Neb. L. Rev. 730 (1998) (calling the right to exclude the "sine qua non" of property).

Given the central importance to property ownership of the right to exclude, it comes as little surprise that the Court has long treated government-authorized physical invasions as takings requiring just compensation. The Court has often described the property interest taken as a servitude or an easement. The physical appropriation by the government of the vested agricultural rights in that case was a per se taking, even if a regulatory limit with the same economic impact would not have been. Id., at 362; see supra, at 6. "The Constitution," we explained, "is concerned with means as well as ends." 576 U. S., at 362. 576 U. S., at 361. CEDAR POINT NURSERY v. HASSID 594 U. S. ____ (2021)

In this case it is a material fact that the defendants have taken away and claimed the Willan's vested agricultural property rights by reclassifying the willan's property into zoning district RR-2 by exacting a "quintessential police power to protect the public health, safety and welfare(Defendants Doc 12 P.33) It is also a material fact the Willans complaint alleges

Specifically, these Defendants actively participated in, or personally caused, misconduct in terms of abusing Plaintiffs in a manner calculated to coerce and manipulate the plaintiffs property into substandard Dane county zoning classification to **secure unjust zoning convictions**. Said misconduct was motivated by **personal animus and constituted purposeful discrimination**; it also affected the plaintiffs in a grossly disproportionate manner vis-a-vis similarly-situated citizens(Knaptons) under Dane County zoning regulations.

At the pleading stage of the litigation in this case. the defendant's reason above is accepted as true reason of their actions, however the Willans allegation in the complaint has a completely different version that must be accepted as true also, and that is a conflict of material facts left for the summary judgement motions or triable for a jury.

I may not be an attorney, but I have read the rules of civil procedure, and more caselaw than I care to remember, the rules expressly require the litigants to prove an allegation as part of litigation. Since June 28, 2018 the Willans have asked the defendants to explain why they took away the Willan's vested agricultural rights away? (See defendants exhibit DKT 23-4 and 23-6) If it pleases the court, the Plaintiffs for over two and a half years now finally find out that the defendants have said they used their quintessential police power to protect the public health,

safety and welfare(Doc 12 P.33) but yet there is not one scintilla of evidence presented to the district court in support of their contention!

As a matter of law, this contention of material fact is not supported with any proof in the record. That is because the Willans have never done anything wrong that would even come close to harming the public health, safety and welfare of any citizen now or ever in their lawful property usage. The defendant's reason is nothing but a made up false justification of hyperbole that the defendants get to use by ordinance to continue terrorizing the Willan family.

Doesn't that "shock the conscience"? That a government zoning department defendants can manipulate the comprehensive ordinance paperwork presented to the approving board to take away vested property rights even though they haven't presented one scintilla of evidence that the Willans were harming the public health, safety and welfare justifying the taking away of vested property rights? The defendant's actions in this case clearly fits into the precedence legal definition of "shock the conscience".

THE DEFENDANTS DID NOT HAVE A COMPREHENSIVE ORDINANCE REVISION TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE, THEY HAD ONE BECAUSE THE TOWNS OF DANE COUNTY DID NOT LIKE THE WAY THEY OPERATE

Here is a short history and civic lesson on how the comprehensive ordinance came about by Dane County in this case. The citizens in unincorporated towns were

forced by state law to be tied into Dane county zoning with no way out. In 2015 or so the towns became disillusioned by the Dane County zoning departments defendant's militant incompetence, so, some of the towns wanted to opt out the Dane County Zoning scheme and have their own local zoning. Under current state law at that time, Towns could not opt out of Dane County zoning, so they petitioned the state legislature a few years back to write a law that would give local control back by allowing the unincorporated towns the right to opt out of Dane County zoning. Supporters of an opt-out have said it's necessary because Dane County government is controlled by residents of urbanized areas who oppose significant development in any rural parts of the county, and that zoning autonomy would help towns grow their tax base to pay for services. Dane County was vehemently opposed to it, and county officials are offering to rewrite the county's zoning ordinance in an effort to stop the state Legislature from voting on a bill that would allow towns to opt out of shared zoning control.

County Executive Joe Parisi and County Board Chairwoman Sharon Corrigan made the offer in a letter last week to the bill's lead sponsors, Rep. Keith Ripp, R-Lodi, and Sen. Scott Fitzgerald, R-Juneau.

The letter asks that the Assembly bill and its Senate companion be set aside in exchange for an overhaul of the county's zoning ordinance. they blamed the outdated ordinance as the reason people were opting out and as a way to keep all the towns from abandoning their zoning department. (see Wisconsin State Journal article January 21, 2016)

Despite the Defendant county's strenuous objections, the Wisconsin legislature ultimately passed the law and the governor signed it into law Wis. Stat 59.69(5m) Termination of county zoning. So, the defendants in an effort to get some of the defecting towns back under Dane County zoning control and in an effort to keep the ones they had in line, they started a process to a complete comprehensive revision ordinance. There were 9 towns who did not adopt the comprehensive ordinance, unfortunately for the defendants The Town of Cottage Grove did adopt the new ordinance, thus making the ordinance a final decision as far as regulating the Willans property.

As part of that nuts and bolts of the process to have a comprehensive revision the County zoning defendants had to use the following Dane County ordinance as their authoritative back drop to assign new zoning district permitted property rights with old zoning district permitted property rights.

DCO 3.07 REPEAL OF GENERAL ORDINANCES.

(2) Effect of Repeals. The repeal or amendment of any provision of this code or of any other ordinance or resolution of the county board shall not:

(a) Affect any rights, privileges, obligations or liabilities which were acquired or incurred, or which had accrued under the repealed or amended provisions, unless the county has expressly reserved the right to revoke such right, privilege, obligation or liability. (1) All general ordinances heretofore adopted by the County

Board of the County of Dane are hereby repealed. Zoning ordinances adopted are not expressly excluded or exempt from this ordinance or State law.

Dane County zoning ordinance 3.07 was in effect when the zoning department defendants had to identify and create new zoning districts for the new ordinance conducive with vested permitted right usage. Using the permitted rights associated with the current zoning districts at that time as their guide, they had to create a side-by-side comparison of permitted rights of each new zoning district, so the permitted uses coincide with the former ordinance zoning district. This task is nothing more than a simple data base sorting exercise comparing the new to the old and assigning the new ordinance zoning classification based upon permitted rights in the old and sending out post cards with the correct zoning classification that doesn't affect any rights, privileges, obligations or liabilities which were acquired or incurred, or which had accrued under the repealed or amended provisions.

Unfortunately for Dane County residents, the defendants tried to smoke one by the Willans by deliberately assigning the zoning district RR-2 that excludes and makes it illegal to use their property for permitted agricultural rights. Immediately on June 28, 2018 the Willans put the defendants on notice. This is where the beginning of conspiracy in this case against the Willans begin for the defendants, and this is how it works.

As a matter of law, under the Dane County comprehensive revision ordinance the defendants were the ones that drafted the ordinance based upon their policy job duties. We would assume the government policy would require that the ordinance

drafted would have to follow, a formal written process and procedure document that was created by the defendants on how to handle a property that does not match permitted property rights old to new. Anything else would be unconstitutional arbitrary assigning.

Dane County through discovery refuses to turn over any policy or procedure they used or deny one even exists.(DKT 23-4 defendants exhibit) It is obvious that Dane County ran the permitted right data base query to determine what classification was going to be assigned to each property owner prior to the infamous post card notification going out in June of 2018, some 6 months before the ordinance was adopted by the board. The next step to due process provided the Willans on the post card and on Dane County's website, was for the property owners to contact the defendants. Mr. Willan sent on June 28, 2018, telling the defendants, the zoning that they were proposing was a mistake on the county's classification, and they need to contact the Willans in writing as to what they are going to do about it. (S.A. 5 P. 39 ¶46)

It is an undisputed material fact that both Defendant Lane and defendant Andros were both equally notified, equally received notification and were equally responsible for fixing their error they created in classifying the Willan's property in a zoning district that does not permit agricultural uses. Neither contacted the Willans nor changed the classification back to a zoning district with permitted agricultural zoning rights before the comprehensive revisions were adopted by the

County board, so the Willans could not lawfully operate Ironman Buildings from the property as they were accustomed to under the former zoning district.

The defendants point out in their brief that the Town of Cottage Grove was involved in the process, we absolutely we agree they were involved. However, under Wisconsin case law, "the primary authority to enact, repeal, and amend a zoning ordinance is at the county, not town, level. The county is responsible for any liabilities that may arise from adoption. No liability arises to a town from the town's approval of a county ordinance enacted following the repeal of a prior effective ordinance. M & I Marshall Bank v. Town of Somers, 141 Wis. 2d 271, 414 N.W.2d 824 (1987). That does not go to say that the towns culpability is barred if it is determined the Town of Cottage Grove was involved in the conspiracy and it does not mean the Willans cannot sue them later if it is determined they were directly involved. It just means until we get direct evidence that the Town violated the Willan's civil rights, they cannot be held liable for the county's legally authorized zoning actions that took vested property rights.

"ANIMUS" IS ALLEGED IN THE COMPLAINT

The complaint references that Dane County Zoning Administrator defendant Lane has no degree. This material fact goes to credibility of his qualifications and to rational motive of his continued animus towards the Willans. For 7 years as the complaint alleges, "Defendant Lane's deliberate and malicious actions under color of law to harass, stalk, terrorize, trespass, issue stop work orders, change zoning classifications without due process, forcing the plaintiffs to litigate a right he

illegally changed under color of law, in 2013 and again in 2019, that these deliberate, malicious actions of the defendants have continued to violate the Plaintiffs property rights under the 4th, 5th and 14th amendment to the United States Constitution and the Constitution and laws of Wisconsin." This allegation in the complaint clearly meets the illogical and animus standard in any of the 7th circuit cases. See Esmail v. Macrane, 53 F.3d 176 (7th Cir. 1995) The defendants claim 'the Willans have not plead factual allegations supporting irrationality. The factual allegation to harass, stalk, terrorize, trespass, issue stop work orders, change zoning classifications without due process, forcing the plaintiffs to litigate a right he illegally changed under color of law, in 2013 and again in 2019" are actions of fact. It clearly shows a plausibility of Lanes lack of professional qualifications as a zoning administrator was directed by formal or informal county policy.

During a sworn deposition testimony by Defendant Lane on June 1, 2017 (S.A. 6 P.87-92) where Mr. Lane was asked if he had a zoning degree, in which he replied, "I don't believe there is a zoning degree per se, where he was asked by the plaintiff, "do you have a college degree?" In which defendant Lane, replied "no".

Credibility is the life blood of a person's character. It is a material fact, Dane County had an audit (DKT 27-1, 27-2) done of the entire planning and zoning department. Dane County identified the problems in that audit then hired defendant Lane to fix the problems associated with the zoning department giving out contradictive information and implement policies and procedures consistent with the audits recommendation. (Dkt 27-1) Through our discovery process we

asked specifically for all implemented process and procedures associated with the audit and used during the comprehensive revisions to determine what standards were used and Dane County have refused to supply them or state none exist. See documents (DKT 23-4)

The plaintiffs actually told Mr. Bitar in a May 4, 2020 letter that "his clients may have a very legitimate legal reason why they did what they did and have never provided an answer." (DKT 23-6, P 4,5). The defendants still have not provided that answer to us, or the courts "why did you take away our vested agricultural rights?

THE DEFENDANT'S ARGUMENTS ABOUT PREFERED WEDDING BARN ZONING ARE CLEARLY ERRONIOUS

The complaint filed (DKT1 S.A. 5) in this case reads "Since 2010, the plaintiffs own and operate an Agricultural accessory business called Ironman Buildings LLC out of a Barn Office . (IMB) Ironman buildings, sells and contracts to build agricultural accessory barns directly to farmers, all around Wisconsin, Illinois and Iowa. They moved IMB to the property in 2011." (S.A. 5 P. 36 ¶ 7) The complaint has only one reference to the word "Wedding Barn" (S.A. P. 41 ¶ 59) and it clearly says the Willans are **not** requesting a zoning permit for a "Wedding barn". The Willan's reply brief on the defendant's motion to dismiss (Dkt 13) doesn't even have the words in it! It would only seem logical that the Willans clarification in the actual complaint unambiguously spells out that the Willans were not challenging a "wedding barn preferred zoning decision", but the rest of the complaint clearly and

unambiguously lays out the circumstances for which they are pursuing this cause of action.

The defendants brief (ID defendants 12 Filed: 06/10/2021) references “Wedding Barn” 10 times and the words “preferred zoning” 9 times in their brief. These are two made up words by the defendants, used in their fairytale to the court to enhance and convince a federal district judge to dismiss the complaint in this case. Unfortunately, their false story of the facts and law convinced a perfectly fair and honest district court judge into believing that the Willans were disgruntled with some “wedding barn” decision story they created, which brings us to this point and time in the universe.

We understand how these things work, Dane County has a very competent lawyer in Mr. Bitar, who argued Murr v Wisconsin before the United States Supreme court and won. However, he has also argued some losers including a case called Golden Sands Dairy LLC v. Town of Saratoga, 381 Wis. 2d 704, 710 (Wis. 2018) using the same law he argues in this case. Mr. Bitar and his colleagues can talk a big legal deal, hell they almost had us convinced we were challenging a “wedding zoning decision”, until we reread the complaint, the actual law, thousands of pages of caselaw, and then remembered the material facts of what actually happened in this case.

The Willans will assume some of the responsibility for Judge Conley’s interpretation because our complaint and arguments could have been more pristine, however we are not attorneys, we are victims of a corrupt zoning department that

crossed the line by taking vested agricultural property rights away without due process, making this a ripe federal case. The complaint in this case might be somewhat disjointed at times, however it unambiguously states a federal claim against the defendants for taking the Willans vested agricultural rights away. If the defendants, after all the arguments and documents filed in this case, claim they still do not really understand what we are claiming as a matter of law under 7th circuit jurisprudence, a plaintiff gets to file an amended complaint spelling in more depth what we are claiming.

The defendants brief (DOC 12) in this case is a continuation of mislabeling the facts, using caselaw arguments that have been debunked and rejected by the highest court in Wisconsin, the Supreme Court, and just ignoring the legal facts of Zinn and Eberlie, the Willans talked about in their first brief submitted (DOC 8 P 25,33,35,36,38,39,40,42) as being controlling thus making this case a final decision as far as federal court jurisdiction.

Dane county's arguments to the District Court through this whole case and in their brief to this Court, are that this case is a local "wedding barn" zoning denial case, and because the Willans haven't challenged that decision in state proceedings or applied for new agricultural zoning, the court should dismiss this case.

Think of this case as a crazy hand of Texas hold'em where we have both been dealt our hole cards and the first flop. The defendants want to just tell the dealer after the first flop that they have the best hand, no need to show their cards, and just collect the pot. However, the rules for Texas hold'em like the rules of law are much

more complicated! The Willans have not folded their hand and have paid the ante to see the turn and river card which means this case can go through to legal lawful discovery up to summary judgement motions where we all get to make final bets in order to see the players hole cards. Our hole cards are pocket aces(vested property rights) and the truth, with an ace(the real law) up on the first flop, the defendants hole cards are a duce, seven off suit which amounts to a made up story about "wedding barns" and preferred zoning" with no chance of beating the aces.

The bottom line is the Willans are and have always be suing Dane County for civil rights violations associated with federal equal protection, procedural due process, substantive due process, and taking away vested agricultural property rights that they have been using since 2011 for their agricultural barn building company, Ironman Buildings. All which are included in the Willan's filed complaint, evidence and briefings to the district court.

We can all agree that the standard of review in this case is De novo, From Latin, meaning "from the new." When a court hears a case de novo, it is deciding the issues without reference to any legal conclusion or assumption made by the previous court to hear the case. An appellate court hearing a case de novo may refer to the lower court's record to determine the facts but will rule on the evidence and matters of law without deferring to that court's findings.

The defendants brief wants to argue "deference" to the district court's decisions in this case because the Court accepted the defendant's erroneous version of material facts as explained by them, regarding what this case is not about. However, the

district Courts decisions are also based on a flawed and an erroneous interpretation of the actual material facts of the case because the defendants told the court a fallacy of lies using smoke and mirrors to distort the actual facts of the case.

The defendants have not presented one piece of evidence that the Willans are challenging a wedding barn decision, nor have they presented one piece of evidence explaining why they actually took the Willans vested agricultural rights away. Where in the complaint do the Willans ask for a ruling on a wedding barn? It doesn't exist and the defendants can't point to any because none exists.

THIS IS WHY THE TERM "WEDDING BARN" IS EVEN IN THE CASE

The words "wedding barn" as I told the court in my 59e motion was a ploy to get a written decision regarding our property's zoning. (DKT 31. P 3) The Willans emailed the defendants on June 28, 2018(SA 6 P.57), and we emailed the defendants on February 14, 2019(SA 6 P.58) to inquire into our zoning regarding the comprehensive revisions. We had to wait until the Town of Cottage Grove adopted the comprehensive revisions to get the final decision by Dane County putting an ag restriction on the Willan's property.

As part of the defendant's conspiracy to violate the Willan's constitutional rights, neither defendant Lane nor Defendant Andros would respond to our zoning inquiry even though they were the contact people listed on the Dane County website along with listed on the post card. So, as the complaint say's on March 6, 2019 another email was sent (SA P. 40 ¶ 50. 51) (DKT 23-7 P.13,) because the plaintiffs knowing

that Defendant Lane was hostile towards the Willans would force Lane to respond one way or the other if we brought up a "wedding barn" he would respond. He did finally respond by telling the Willans the final decision of Dane County was that the Willan's property was now zoned RR-2 (DKT 23-7 Defendants exhibit P.14, 15) and wedding barn were not allowed. So, the Willans sent another barrage of emails starting on March 8, 2019 leading up to our March 14, 2019 (SA 5 P. 40 ¶ 50. 58) meeting with the defendants. Right in the complaint it says the Willans are not looking for a zoning permit for a wedding barn (SA P. 41 ¶ 59). The Willans clearly could have attached all the evidence they have, however the rules of civil procedures only requires us to list with specificity as to the actual events at the pleading stage, and as a matter of law it will be assumed that the emails exist and are true and accurate. The defendants do not dispute that all of this took place because they cannot. The record shows, the material facts clearly and unambiguously show the willans are not challenging a wedding barn decision.

THE WILLANS PROPERTY IS LOCATED IN A FARM PRESERVATION DISTRICT.

What does that mean to this court as a matter of law? Zoning is a state creation that lets a municipality like Dane County regulate land use. Under a municipal zoning scheme like Dane County's, all properties are clustered into zoning districts which then break down permitted uses to each property. When Dane County created the new comprehensive zoning ordinance, they created a section in their ordinance DCO 10.220 Farm preservation district. Under the scheme of Farm

preservation, they created a scheme where each property in that district is defined by size and use. Under the new ordinance in the Farm preservation districts of the county, in the use category, small-lot properties DCO 10.221 FP-1 like the Willans own under their previous ag zoning district, cannot now have residences on the property so they cannot be put into that specific district because of the residence restriction, same thing under DCO 10.22 FP-35 the Willans property configurations don't own 35 acres so they don't qualify for that specific zoning district either.

As a matter of law, the only zoning district created by the Defendant County's comprehensive zoning revision scheme in a County designated farm preservation district that met the vested agricultural property rights and a residence like the Willans owned, was FP-B zoning district. The defendants have not and cannot dispute this material fact of the Agricultural zoning districts in a farm preservation district. (S.A. 5 P 35 ¶4)

We clearly agree with the defendants (see defendants 12 P.22) that the State of Wisconsin has granted the Dane county board the right to legislate zoning changes and that the Willans cannot have a wedding barn in the RR-2 zoning district. However, the State does not grant a zoning administrator, and the rest of the defendants the right to prepare an ordinance for adoption by the board that takes away vested property rights.

I am sure now, Dane County zoning realizing the extent that they have gone to in defending the illegal actions of the defendants in this case would have preferred that the Zoning staff defendants would have assigned under the new ordinance the

only correct zoning district in a farm preservation district that kept intact the Willans vested rights to lawfully use their agricultural property as it has been accustomed to use. The Willan's did not create the zoning schemes that took away vested property rights, the defendants did. The Willans gave the defendants fair and lawful notice that FP-B was the only lawful zoning district created by the defendants that kept the Willans vested property rights intact. Not responding to the Willans June 28, 2018 email is fatal to the defendants arguments. The Defendants responded to similarly situated Ed Knapton, and as a matter of law, they should have responded to the Willans.

PROCEDURAL DUE PROCESS REQUIRES A PRIOR HEARING UNDER THE CONSTITUTION BEFORE VESTED AGRICULTURAL PROPERTY RIGHTS MAY BE EXTINGUISED BY UNELECTED ZONING OFFICIALS UNDER A COUNTY WIDE COMPREHENSIVE ZONING REVISION ORDINANCE.

Appellants, whom were purchasers of agricultural property, challenge the constitutionality of the comprehensive ordinance revision statute. Wisconsin Stat 59.69 comprehensive revision statute as applied. These provisions permit a group of unelected zoning officials, without a hearing or prior notice to the other party, to reclassify property owners like the Willans who had a vested interest in an agricultural zoning district to continue to operate their business, Ironman Buildings, with a unregulated comprehensive zoning process without any standards where the county defendants, and not the county board determines through a summary process of ex parte application of an ordinance to the county board, Once the ordinance is passed,

for all intent purposes, any continued agricultural property usage now is subject to civil forfeiture and even arrest by the county sheriff. (see DCO 10.101(d)(e)(f) Administration, Enforcement and Penalties.

There is no way provided by the State of Wisconsin to reclaim possession unless the aggrieved party sue the defendants in a court of competent jurisdiction by posting a retainer fee of several thousand dollars to retain an attorney who knows nothing about zoning laws, in default of which the property right is surrendered to the County, pending a final judgment in the underlying constitutional repossession action. In Wisconsin the aggrieved parties to secure a post-seizure hearing the party losing the property through a zoning process the defendants control must himself initiate a suit to recover the property. He may not post his own counterbond of the seized property rights to regain possession. Never Included in the entire transaction in any printed-form were provisions for the county zoning comprehensive ordinance repossession of the vested agricultural property rights. The District Court judge dismissed and upheld the constitutionality of the challenged due process provision. Now a Three-judge Court of appeals gets to decide the constitutionality of the challenged comprehensive revision provisions. Using Fuentes v. Shevin, 407 U.S. 67 (1972) as the backdrop of those facts to the facts of this case, the court should Hold:

1. The Wisconsin Comprehensive ordinance provisions used by the defendants are invalid under the Fourteenth Amendment since they work a deprivation of property without due process of law by denying the right to a prior opportunity to be heard before vested property rights are extinguished forever. Pp. 80-93.

(a) Procedural due process in the context of this cases requires an opportunity for a hearing before the State authorizes its county zoning departments the power to seize vested property rights being used in the operation of a person's agricultural accessory business upon the application of a zoning administrator, and the minimal deterrent effect of having all the resources of the people's money at their disposal, that being sued against unfounded applications for a zoning district change constitutes no substitute for a pre-seizure hearing. Pp. 80-84.

(b) From the standpoint of the application of the Due Process Clause it is immaterial that the deprivation may be temporary and nonfinal Pp. 84-86.

(c) The possessory interest of appellants, who had made substantial investments, was sufficient for them to invoke procedural due process safeguards notwithstanding their lack of full title to the property. Pp. 86-87.

(d) The District Courts erred in rejecting appellants' constitutional claim on the ground that the vested agricultural property rights seized were not items of "necessity" and therefore did not require due process protection, as the Fourteenth Amendment imposes no such limitation. Pp. 88-90.

(e) The broadly drawn provisions here involved serve no such important a state interest as might justify summary seizure. Pp. 90-93.

2. The Dane County zoning ordinance provisions for repossession of vested zoning rights by the county did not amount to a waiver of the appellants' procedural due process rights, those provisions neither dispensing with a prior hearing nor

indicating the procedure by which repossession was to be achieved. D. H. Overmyer Co. v. Frick Co., 405 U.S. 174, distinguished. Pp. 94-96.

No. 70-5039, 317 F. Supp. 954, and No. 70-5138, 326 F. Supp. 127, vacated and remanded.

STEWART, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, and MARSHALL, JJ., joined. WHITE, J., filed a dissenting opinion, in which BURGER, C. J., and BLACKMUN, J., joined, post, p. 97. POWELL and REHNQUIST, JJ., took no part in the consideration or decision of the cases.
Fuentes v. Shevin, 407 U.S. 67 (1972)

Based upon the material facts of this case, we present the sound logic of associate Justice Potter Stewart who wrote for the United States Supreme Court in Fuentes v. Shevin, 407 U.S. 67 (1972) which applies to this case in which the court held in favor of due process! This is not a zoning case, this is an abuse of power and an attempt to usurp authority the defendants do not possess by law.

THE DEFENDANTS PLAUSABILITY STANDARD

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw ID Document: 12 Filed: 06/10/2021 Pages: 63 (25 of 63)

the reasonable inference that the defendant is liable for the misconduct alleged.” Id.

At a minimum, the complaint must “give the defendant fair notice of what the claim

is and the grounds upon which it rests." Twombly, 550 U.S. at 555. The district court never dismissed this case for failure to state a plausibility claim. In fact the district court never commented on a plausibility standard. What the district court did was accept the defendant's false narrative arguments that this case was not ripe because the willans did not appeal to the board of adjustments, or apply for a variance, or apply for new zoning, thus not making a final decision under Wisconsin law. We are telling this court as a matter of law, under Zinn(ID DOC 8, P 28,38,42) and Eberlie (ID DOC 8, P 25,33,35,36,39,40) the county's putting the ag restriction on the property makes it a final decision under Wisconsin law and meets the Williamson County criteria. It appears the defendants have conceded this point by not responding to the significance of both cases cited in plaintiffs-appellants brief.

This case is not even close from a legal standpoint. Wisconsin vested property law is the controlling law, not Williamson County. The Willan's complaint lays out a high probability that they have vested agricultural property rights under Wisconsin law. If the Willans have vested property rights under Wisconsin law like the complaint alleges, then the next logical probability is United States Case Law has enforced that vested property rights are clearly and unambiguously protected under the 5th and 14th amendment to the constitution.

You can get no more plausibility to a complaint when the complaint and briefing takes the allegation to a probability. The district court never determined that the Willan's vested property rights were protected by the constitution, because the defendants convinced the court that he should toss the case for Williamson County

final requirement over a false wedding barn narrative. In this case, that is what has happened, and the final decision as a matter of law came when the Town of Cottage Grove adopted the ordinance thus putting an unconstitutional county zoning restriction on the Willans agricultural property after the ordinance was passed.

THE SUPREME COURT OF WISCONSIN IN 2018 REJECTED THE DEFENDANT'S SAME ARGUMENTS REGARDING VESTED RIGHTS, MR. BITAR IS MAKING IN THIS CASE

The defendant's counsel's arguments in this case regarding vested zoning under the Wisconsin bright line rule are the same arguments Mr. Bitar made to the Wisconsin Supreme Court losing the same arguments he makes here in this case. "For the defendants-appellants, there was a brief filed by Remzy D. Bitar" Golden Sands Dairy LLC v. Town of Saratoga, 381 Wis. 2d 704 (Wis. 2018). Golden Sands was an agricultural land use case in Wood County Wisconsin where the town of Saratoga adopted a comprehensive zoning ordinance that took away Golden Sands Dairy vested agricultural property rights to run their dairy on identified land in their building permit application.

The Wisconsin Supreme court said, "We hold that the Building Permit Rule extends to all land specifically identified in a building permit application. Consequently, Golden Sands has a vested right to use all of the Property for agricultural purposes. Therefore, we reverse the decision of the court of appeals." Golden Sands Dairy LLC v. Town of Saratoga, 381 Wis. 2d 704, 710 (Wis. 2018) Our analysis begins with a brief recitation of the Building Permit Rule. We then consider whether the Building

Permit Rule extends to land specifically identified in the building permit application. Finally, we apply the Building Permit Rule to the facts of this case. We conclude that the policies underlying the Building Permit Rule extend to any land specifically identified in the building permit application as part of the project. Consequently, Golden Sands possesses a vested right to use the Property for agricultural purposes, consistent with the zoning regulations in place at the time Golden Sands filed the Application. Golden Sands Dairy LLC v. Town of Saratoga, 381 Wis. 2d 704, 715-16 (Wis. 2018) The "piecemealing" advanced by the court of appeals and Saratoga would require extensive litigation over how much land specifically identified in the building permit application is necessary, which neutralizes one of the primary reasons we adhere to the Building Permit Rule: avoiding lengthy, fact-intensive litigation. See id., ¶ 44. Further, for any business that requires land in addition to structures for its operations, a building permit is nearly worthless if the rights vested by virtue of obtaining a conforming building permit do not extend to the land necessary to put the structures to their proper use. Golden Sands Dairy LLC v. Town of Saratoga, 381 Wis. 2d 704, 721 (Wis. 2018) Therefore, the purpose of the bright-line rule is served when judges focus their inquiry on that which is legally relevant and avoid that which is not. Golden Sands Dairy LLC v. Town of Saratoga, 381 Wis. 2d 704, 721-22 (Wis. 2018)

Mr. Bitar in 2018 to the Wisconsin Supreme Court made the same arguments he is making to this court, in his brief who rejected them in Golden Sands Dairy LLC v.

Town of Saratoga, 381 Wis. 2d 704, 721-22 (Wis. 2018) Mr. Bitar starts out his introduction,

" This case is about the scope of an exception to the general rule that no one has a vested right to existing zoning. In particular, the issue is whether the "Building Permit Exception" recently discussed in McKee Family I, LLC v. City of Fitchburg, 20l7 WI 34,374 Wis. 2d 487,893 N.W.2d 12, applies to properties other than the property for which the building permit has been sought?" (See Brief of Mr. Bitar filed 11-01-2017 in case number Appeal No. 20154P001258)

Now, after losing on those same arguments, Mr. Bitar wants to relitigate his preferred decision in the 7th circuit court of appeals to evidently correct the Wisconsin Supreme Court's decision by claiming there are no vested rights in zoning. Below is an excerpt from Mr. Bitar's filed brief copied and pasted in for the court to compare the same arguments. They are almost word for word that was rejected by the highest court of Wisconsin regarding vested agricultural rights. (See Brief of Mr. Bitar filed 11-01-2017 in case number Appeal No. 20154P001258)

A. There Is No Vested Right To Existing Zoning Because Such Ordinances Protect The Public Welfare Including Property Rights.

Zoning ordinances are part of the police power designed to promote the public safety, health and welfare including the protection of existing property rights. State ex rel American Oil Co., v. Bassent, 27 Wis2d 537, 544, 135 N.W.2d 3L7 (1965) ("this court considered a comprehensive zoning ordinance as justified in the exercise of the police power . . . General welfare was equated with the

stabilization of the value of the property and the promotion of the permanency of desirable home surroundings and of the happiness of the citizens."). See also, State ex rel. Saveland Park Holding Corp. v Wíeland, 269 Wis. 262, 269, 69 N.W.2d 217 (1965) ("zoning results. . . from a realization that the value and usefulness of each parcel, not only to the owner but the community, is vitally affected by the use made of the adjoining parcel.") and Wis. Stat. S 62.23(7)(c) ("zoning purposes include conserving the value of buildings and encouraging the most appropriate use of land."); see also Wis. Stat. $ 60.61(1Xb) (counterpart statute for towns). Zoning ordinances need to evolve with changing conditions of the local community to fulfill those purposes. McKee, 2017 WI 34, n 57. As a result, the well settled law in Wisconsin is that no one has a vested right to existing zoning. The court in Buhler v. Racine Co.,33 V/is. 2d I37, 148, 146 N.W.2d 403 (1966) explained: Property holders have a great interest in zoning, but as this court said in Eggebeen v. Sonnenburg, (1941),239 Wis. 213, I N.W.2d 84, 138 A.L.R. 495 they acquire no vested rights against rezoning because of their reliance upon the original zoning. Indeed, if this were not so no changes in zoning or in comprehensive zoning plans could ever be made to adapt land use realistically to changing times and environment. (Emphasis added) This rule has been consistently applied. Just last term in McKee, this Court reiterated, "reliance on a particular zoning designation applicable to [a landowner's] property does not suffice to give the landowner a vested right to such

designation." 2017 WI 34, T 36. See also, Zealy v. City of Waukesha, 201 Wis. 2d 365,381, 548 N.W.2d 528 (1996) ("Property owners obtain no vested rights in a particular type of zoning solely through reliance on the zoning.")

B. The Building Permit Exception And Nonconforming Use Exception Are Exceptions To The General Rule Against Vested Rights In Zoning.

While acknowledging the general rule, some of the early zoning cases also noted that "where substantial rights had vested prior to the enactment of the law, a landowner may acquire vested rights. State ex rel. Klefisch v. Wisconsin Telephone Co., 181 Wis. 519, 195 N.W. 544, 54g (1923). In Wisconsin, there have been two distinct exceptions that give rise to vested rights in existing zoning. The first exception, which is at issue in this case, is known as the Building Permit Exception. It arises through affirmative authorization by the local government in the form of a building permits " From the very beginning of zoning jurisprudence in this state, then, a building permit has been a central factor in determining when a builder's rights have vested...." Lake Bluff Hous. Partners v. City of S. Mílwaukee,197 Wis. 2d 157 , 172,540 N.W.2d 189 (1995). See also Buhler,33 Wis. 2d at 148 (mere intent to 8 However, building permit approvals arose with the establishment of local municipalities and the creation of regulations governing and restricting land use. develop based on reliance upon original zoning does not amount to vested rights). As this Court summarized last

term: The exception to the rule that zoning does not create vested rights arises when a property owner has applied for a building permit conforming to the original zoning classification. .... In Lake Bluff this court concluded that the developer "obtained no vested rights, because it never submitted an application for a building permit conforming to the zoning and building code requirements in effect at the time of the application." ... McKee,2017 WI 34, n37. For vested rights to attach, therefore, an entity needs to have filed a building permit application, and there must be "strict and complete conformance with applicable zoning and building code requirements" in order to gain the benefit of the vested rights rule attributable to a building permit. Lake Bluff,197. 2d at 174. Vested rights should only be obtained on the basis of strict and complete compliance with zoning and building code requirements, because a builder's proceeding in violation of applicable requirements is not reasonable." Id. at 175. In McKee, this Court made clear that this exception imposed a bright-line test that was based on the submittal of a building permit application. The existence of expenditures and the submission of a "general development plan and a "specific development plan" do not create vested rights in the absence of a building permit. McKee, 2017 WI 34, TT 3, 34, 44, 49. The second exception by which a party may establish a vested right in zoning, although inapplicable here, involves the "actual and active" use rule for nonconforming uses which had already been undertaken at the time of zoning changes. That exception allows for the continuation of a

nonconforming use, balancing such continuation against the "spirit of zoning, which "is to restrict and eventually eliminate" such uses "as quickly as possible" because they are an anomaly," "suspect" and "therefore circumscribed." Waukesha County v. Pewaukee Marína,Inc., 187 Wis. 2d 18,29,522 N.V/.2d 536 (Igg4); see also Cíty of Lake Geneva v. Smuda,75 Wis. 2d 532,538,24g NI.\M.2d 783 (1977). Under Wisconsin law a party that is "actually and actively using" property in a manner that was permitted prior to a change in zoning has a vested interest in the continued use of that property, as a nonconforming use, notwithstanding azoning change. Town of Cross Plains v. Kitt's Field of Dreams Korner, Lnc.,2009 WI App 142, n 27 , 321 \Mis. 2d 67 l, 77 5 N.W.2d 283. Here, because there was no actual and active use of the lands for agricultural purposes prior to the zoning ordinance, this exception does not apply. The record in this case unquestionably shows both parties agreeing that Golden Sands did not engage in active and actual" agricultural use of the 6,000+ acres of land in the Town before the Town enacted an ordinance precluding such agricultural use. To the contrary, those lands remained in MFL status that precluded agricultural use. Golden Sands even admits that it "never sought protection of its rights based on active and actual use. . .." Pet. Br. pp. 39-40. Before the court of appeals in an argument header, Golden Sands stated very clearly Because Golden Sands Vested Rights Arise from The Submission of a Complete Building Permit Application That Fully Described the Intended Use of Unrestricted Property, There Was

No Requirement For Golden Sands To Engage In Active Use. Golden Sands court of appeals' brief, Section II.F (p. 41). The only reason this issue arises at all is because Golden Sands attempts to engraft inapposite nonconforming use cases like Kítt's Fíeld of Dreams and Waukesha County v. Seítz, 140 Wis. 2d lll,409 N.W.2d 403 (Ct. App 1987) into its Building Permit Exception analysis - claiming that "investments in future uses made in reasonable reliance on existing zoning law. . . constitute actual and active use." Pet. Br. at 38 -39. That has never been the law in Wisconsin. Quite simply, a proposed future use is not an active and actual" use. And because Golden Sands never raised this issue below, it cannot do so now. See Kolupar v. Wilde Pontíac Cadillac, Inc., 2007 WI 98,23,303 Wis. 2d258,275,735 N.W.2d 93 ("[g]enerally, arguments raised for the first time on appeal are deemed waived") (citation omitted). (See Brief of Mr. Bitar filed 11-01-2017 in case number Appeal No. 20154P001258)

This is what the Wisconsin Supreme court said about Mr. Bitar's arguments,

However, we are able to utilize principles from other jurisdictions that adhere to the Building Permit Rule in order to aid our analysis. Those jurisdictions emphasize that the rights vested by a building permit application are to develop the land, not merely build structures. For example, the Building Permit Rule has been interpreted so that it "is well settled that a landowner has a vested right to develop land under the zoning ordinances in effect at the time the permit application is submitted." Manna Funding, LLC v. Kittitas Cty., 173 Wash.App. 879, 295 P.3d 1197, ¶ 28 (2013) (emphasis added). Other courts have underscored the idea that, in the building permit context, use of the land follows use of the buildings. For example, "Georgia courts have concluded that property rights vest when a permit is actually issued for a particular land use and that a later, new zoning ordinance prohibiting that land use is not enforceable against the property owner." Crown Media, LLC v. Gwinnett Cty., 380 F.3d 1317, 1325 (11th Cir. 2004) (emphasis added); see

also WMM Props., Inc. v. Cobb Cty., 255 Ga. 436, 339 S.E.2d 252, 254 (1986) (emphasis added) ("Once a building permit has issued, a landowner has a right to develop the property pursuant to that permit...."). These opinions bolster our understanding that the proper scope of the Building Permit Rule includes the land, not merely the structures.

Saratoga cites two decisions from other jurisdictions for the proposition that the rights vested by building permits do not extend to associated lands, but both are distinguishable.
In Deer Creek Developers, LLC v. Spokane Cty., the plaintiff obtained a site plan for a two-phase residential development, but obtained building permits for only the first phase. 157 Wash. App. 1, 236 P.3d 906, ¶ 6 (2010). After construction began on the first phase, the applicable zoning law was changed such that residential uses were prohibited in the area. The court, applying the Building Permit Rule, held that the developer did not have vested rights to build the second phase because no building permit application was filed for the second phase. Id., ¶¶ 29-30. Conversely, in the present matter, Golden Sands specifically identified the entire project acreage in the Application.

In Huff v. City of Des Moines, the plaintiff obtained a building permit to construct a trailer park, but never obtained the necessary permit to operate a trailer park. 244 Iowa 89, 56 N.W.2d 54, 55-56 (1952). The court held that the plaintiff did not possess a vested right to operate the trailer park. Id. at 95, 56 N.W.2d 54. Huff is inapposite because the issue here is not whether Golden Sands possesses a vested right to permits necessary to operate its farm. Rather, the issue before us is whether Golden Sands possesses a vested right to use the Property for agricultural purposes.

Like in Golden Sands, the issue before this court is whether the Willan's possess a vested right to use the property for agricultural purposes. The defendants continued false argument regarding vested zoning districts as it pertains to this case was rejected by the Wisconsin Supreme Court and needs to be rejected in this case. Contrary to Mr. Bitars arguments in this case regarding vested rights, as a matter of law, the Willans do have a vested right for agricultural zoning and have a constitutional right to use it for agricultural purposes.

SUMMARY OF ARGUMENTS

Based upon all of our arguments we have made and if it pleases the court, the Willans are entitled by the United States Constitution a right to be free to exclude the defendants from taking their vested property rights. In the Willan's complaint there are no questions of a construction of the ordinance adopted by the Dane county board that took away the Willans Vested permitted agricultural rights that would "avoid or modify the constitutional question." Appellant's challenge is not that the statute is void for "vagueness," that is, that it is a statute "which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. . . ." Connally v. General Construction Co., 269 U. S. 385, 269 U. S. 391.

Rather our constitutional attack is that the statute, although lacking neither clarity nor precision, is void for "overbreadth," that is, that it offends the constitutional principle that "a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." NAACP v. Alabama, 377 U. S. 288, 377 U. S. 307. See Aptheker v. Secretary of State, 378 U. S. 500, 378 U. S. 508-509; NAACP v. Button, 371 U. S. 415, 371 U. S. 438; Louisiana ex rel. Gremillion v. NAACP, 366 U. S. 293; Shelton v. Tucker, 364 U. S. 479, 364 U. S. 488; Schware v. Board of Bar Examiners, 353 U. S. 232, 353 U. S. 246; Martin v. City of Struthers, 319 U. S. 141, 319 U. S. 146-149; Cantwell v.

Connecticut, 310 U. S. 296, 304-307; Schneider v. State, 308 U. S. 147, 308 U. S. 161, 165..

The power and jurisdiction of Dane County Zoning, says Mr. Remzy Bitar, is so transcendant and absolute, that it cannot be confined, either for causes or persons, within any bounds. And of this high court, he adds, it may be truly said, Si antiquitatem spectes, est vetustissima; si dignitatem, est honoratissima; si jurisdictionem, est capacissima. It has sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime, or criminal: If that is the law of our democracy so declares this court, then so be it, but I can assure you anarchy in the streets cannot be far behind. The right of acquiring and possessing property, and having it protected, is one of the natural, inherent, and unalienable rights of man. Men have a sense of property: Property is necessary to their subsistence, and correspondent to their natural wants and desires; its security was one of the objects, that induced them to unite in society. No man would become a member of a community, in which he could not enjoy the fruits of his honest labour and industry. The preservation of property then is a primary object of the social compact, and, by the Constitution of the United States, was made a fundamental law.

For 7 years prior to and 2 ½ years after Julia and Tom's vested property rights have been under the wrath of the defendants animus behaviors, not for anything they have done but because the policies adopted by Dane County allows a zoning administrator absolute power to take vested property rights without due process.

We are not free people because the County zoning officials have through a state prescribed law, adopted a comprehensive revision ordinance that took away vested agricultural property rights without due process. We are under an oppressive regime of zoning dictators that have no respect for the rule of law or the constitution. We are salt of the earth people that have done nothing wrong to justify any of the defendant's actions! While we may be up against the greatest odds, using a complete unfair system, we have been called upon to find the courage to stand up against tyranny and oppression perpetrated by the defendants in this case. If it pleases the court, based upon our submissions, evidence and record, we implore this court to give us fair consideration and let us file a new complaint, get to summary judgment motions with ground rules based upon the actual law as applied to the facts of this case.

Plaintiffs, JULIA AND THOMAS WILLAN hereby pray this Honorable Court to remand this case,

1. to set a new trial schedule,

2. where the Defendants motion to stay discovery (RA 19) is denied so we can continue to get our legal discovery, including the documents for in camera inspection in the defendant's motion to seal, (DKT 24).

3. order deposition testimony from everyone, including Defendant Parisi and Russell Barlett who both have pertinent knowledge and information regarding the Willan's claim.

4. order all interrogatories answered truthfully and completely,

5. order all requested computer documents as specifically asked for be freely given.

6. Then we move onto summary judgement motions, which is clearly where we were headed before the court abused it discretion by not allowing us to file an amended complaint or proceed on the original complaint.

7. And anything else the court may determine just and fair

RESPECTFULLY SUBMITTED:

/s/ Thomas M Willan /s/ Julia A Willan

_____

PRO SE Plaintiffs Thomas M Willan and Julia A Willan

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type limitations provided in Federal Rule of Appellate Procedure 32(a)(7). The foregoing brief was prepared using Microsoft Word 2010 and contains 11,287 words in 12-point proportionately spaced Century Schoolbook font.

/s/ Thomas M Willan /s/ Julia A Willan

PRO SE Plaintiffs/ Appellants Thomas M Willan and Julia A Willan

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2021, I electronically filed the foregoing Appellants' reply Brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Thomas M Willan /s/ Julia A Willan

PRO SE Plaintiffs/ Appellants Thomas M Willan and Julia A Willan