

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

JON W. ERICKSON
18917 Spring Street
Union Grove, WI 53182,

And

KAY M. ERICKSON
18917 Spring Street
Union Grove, WI 53182,

File No. _____

Plaintiffs,
vs.

VILLAGE OF YORKVILLE
925 15th Avenue
Union Grove, WI 53182,

Defendant.

COMPLAINT

The Plaintiffs, JON W. ERICKSON and KAY M. ERICKSON, by and through their attorneys, TERRY & NUDO, LLC, by Todd A. Terry, hereby allege as follows:

JURISDICTION

1. That the Plaintiffs assert claims for declaratory and/or damages relief against the Defendant based on (a) the Defendant is in continuing violation of the Plaintiffs' rights under the Fifth and Fourteenth Amendments to the United States Constitution; (b) Federal Civil Rights claims under 42 U.S.C. §1983; (c) violation of the Plaintiffs' rights under Article 1 §13 of the Wisconsin Constitution; and (d) violation of the Plaintiffs' rights under Article 1 §1 of the Wisconsin Constitution.

2. That this Court has jurisdiction of the federal constitutional and statutory questions under 28 U.S.C. §1331.

3. That this Court has supplemental jurisdiction for the state claims asserted herein under 28 U.S.C. §1367.

4. That venue for all causes of action stated herein lies in the Milwaukee Division of the Eastern District of Wisconsin as the acts alleged as a basis for federal claims took place within the boundaries of that District.

PARTIES

5. That JON W. ERICKSON (hereinafter “JON”) is an adult resident of the State of Wisconsin residing at 18917 Spring Street, Union Grove, Wisconsin 53182.

6. That KAY M. ERICKSON (hereinafter “KAY”) is an adult resident of the State of Wisconsin residing at 18917 Spring Street, Union Grove, Wisconsin 53182.

7. That JON and KAY are the owners of Erickson’s Landscape Supply, and its predecessor business, located at 18917 Spring Street, Union Grove, Wisconsin 53182 (hereinafter “ERICKSONS”).

8. That the Defendant, VILLAGE OF YORKVILLE (hereinafter the “VILLAGE”), is a municipal corporation incorporated under Wisconsin Statutes as a Village pursuant to Wis. Stats. §61.

9. That the Town of Yorkville is the predecessor to the Village of Yorkville.

10. That the Town of Yorkville was incorporated as the Village of Yorkville effective April 18, 2018.

11. That the real property which is subject to this action was that which was in the Town of Yorkville and continued in its same location upon incorporation into the VILLAGE.

ERICKSON PROPERTY

12. That JON and KAY are the rightful owners of the real property located at 18917 Spring Street, Union Grove, Village of Yorkville, Wisconsin 53182 (hereinafter the “ERICKSON PROPERTY”).

13. That the ERICKSON PROPERTY is comprised of approximately 38.97 acres and has real property located both on the North and South sides of County Hwy C (Spring Street).

14. That JON and KAY utilize the ERICKSON PROPERTY for their homestead as well as to operate ERICKSONS.

15. That the ERICKSON PROPERTY contains two (2) different zoning districts.

16. That the West side of the ERICKSON PROPERTY (approximately 20 acres) is zoned as B-3.

17. That the East side of the ERICKSON PROPERTY (approximately 20 acres) is zoned as A-1.

TOWN AND VILLAGE ANIMUS TOWARD JON AND KAY

18. That in 2015 JON and KAY received a Notice of Violation for a possible violation of their existing Conditional Use Permit.

19. That the Town and VILLAGE utilize the services of Racine County Development Services (hereinafter “RCDS”) for all zoning, land use regulation, permitting and enforcement.

20. That RCDS staff, Jean Schneider, advised JON and KAY to apply for a modification to their existing Conditional Use Permit and for additional B-3 zoning to the rear of the ERICKSON PROPERTY (hereinafter the “2015 APPLICATION”).

21. That JON and KAY attempted to submit the 2015 APPLICATION to the Town Clerk, prior to any hearing on the 2015 CUP APPLICATION.

22. That the Town Clerk, MICHAEL MCKINNEY (hereinafter “MCKINNEY”), refused to even accept the application from JON and KAY.

23. That within days of JON and KAY’s attempted submission to MCKINNEY, the Yorkville-Union Grove Fire Department conducted an unannounced fire inspection at the ERICKSON PROPERTY (hereinafter the “2015 FIRE INSPECTION”).

24. That the 2015 FIRE INSPECTION was the first one in the forty-four (44) years that JON and KAY have lived at and operated a business at the ERICKSON PROPERTY.

25. That during the 2015 FIRE INSPECTION, fire personnel attempted to inspect the interior of vehicles parked outside at the ERICKSON PROPERTY.

26. That during the 2015 FIRE INSPECTION, fire personnel threatened to call in the State of Wisconsin Fire Inspector for further inspection.

27. That in response to such threat, JON and KAY demanded that a State Fire Inspector inspect the ERICKSON PROPERTY.

28. That within several days of the 2015 FIRE INSPECTION, the State Fire Inspector inspected the ERICKSON PROPERTY and found no violations.

29. That the Yorkville-Union Grove Fire Chief subsequently spoke at the Racine County meeting against the Conditional Use Application and the same was denied, all without JON or KAY being permitted to speak.

30. That in follow up to the Racine County meeting, JON and KAY requested a meeting with the Town Board and with MCKINNEY.

31. That MCKINNEY, through a VILLAGE Trustee, advised JON and KAY there was no need to meet.

32. That in the Spring of 2017, JON and KAY agreed to accept fill at the ERICKSON PROPERTY from a State of Wisconsin Highway Project (the "STATE PROJECT").

33. That JON attended a Town Board Meeting to advise the Town as to the STATE PROJECT (hereinafter the "SPRING 2017 MEETING").

34. That at the SPRING 2017 MEETING, JON advised the Town Board and Plan Commission that fill would be hauled into the ERICKSON PROPERTY as part of the STATE PROJECT.

35. That pursuant to Wis. Stats. §85.193, transportation projects, such as the STATE PROJECT, are not subject to local control or oversight pertaining to fill.

36. That during the SPRING 2017 MEETING, DOUG NELSON (hereinafter "NELSON") was acting in his official capacity as a Plan Commission Member.

37. That when JON explained the STATE PROJECT and filling at the 2017 SPRING MEETING, NELSON became visibly angry and threw his hands in the air.

38. That during the SPRING 2017 MEETING, then Town Board Member, TERRY MCMAHON (hereinafter "MCMAHON") was acting in his official capacity as a Town Board Member and/or Plan Commission Member.

39. That MCMAHON was present when JON explained the STATE PROJECT and filling at the 2017 SPRING MEETING.

40. That MCMAHON reacted to JON'S statement by loudly yelling that the Town would immediately sue JON and KAY.

41. That MCMAHON, after threatening a lawsuit, was subsequently advised by the Town Engineer that the Town had no oversight or control over the fill being hauled into the ERICKSON PROPERTY from the STATE PROJECT.

42. That even after receiving feedback from the Town Engineer, MCMAHON and NELSON both remained visibly upset during the SPRING 2017 MEETING.

43. That NELSON currently serves as the VILLAGE President.

DANIEL MAURICE

44. That DANIEL MAURICE (hereinafter "MAURICE"), at all times relevant hereto, was serving as either a Town Plan Commission Member, Village Plan Commission Member or Village Board Member for the VILLAGE.

45. That MAURICE was appointed as a Town Plan Commission Member on November 13, 2017 and was elected to the Village Board on June 25, 2018.

46. That MAURICE, dating to 2015, had been a customer of ERICKSON'S.

47. That MAURICE was a friend of JON and KAY'S dating to 2015.

48. That, in and around 2015, MAURICE and JON and KAY entered into a sharecropping arrangement whereby MAURICE planted, cultivated, and farmed a portion of the ERICKSON PROPERTY.

49. That the sharecropping arrangement had JON, KAY and MAURICE sharing the costs of farming the ERICKSON PROPERTY together with the profits derived from the same.

50. That MAURICE continued farming the ERICKSON PROPERTY through the 2016 harvest.

51. That given the STATE PROJECT, the ERICKSON PROPERTY was unable to be farmed, for the 2017 crop year.

52. That in and around March 2017, KAY contacted MAURICE and advised him that he would be unable to farm the property given the STATE PROJECT.

53. That in KAY'S discussion with MAURICE he was clearly distressed and upset with KAY about his inability to farm the ERICKSON PROPERTY.

54. That in March 2017 MAURICE initiated a conversation with KAY and vehemently asserted that he had already bought seed and fertilizer for the ERICKSON PROPERTY.

55. That on the same day as the March 2017 conversation with KAY, MAURICE also came to the ERICKSON PROPERTY and confronted JON about MAURICE'S inability to farm the ERICKSON PROPERTY, during which time MAURICE was visibly upset and distraught.

56. That during the March 2017 conversation with JON, MAURICE told JON that he could not return the seed or fertilizer that he had purchased for the ERICKSON PROPERTY.

57. That MAURICE subsequently initiated a conversation making clear that he wanted JON and KAY to pay for the seed and fertilizer which MAURICE purchased to use on the ERICKSON PROPERTY.

58. That JON and KAY subsequently acquiesced to MAURICE'S request.

59. That JON and KAY agreed to MAURICE'S request for payment knowing that MAURICE, as a sitting Plan Commission Member, would hold sway over their plans to develop a Business Park on the ERICKSON PROPERTY.

60. That JON and KAY had asked MAURICE to provide them with an invoice for the seed and/or fertilizer to reimburse MAURICE.

61. That from March 2017 through the end of 2017, KAY communicated with MAURICE several times requesting the invoice so they could reimburse MAURICE.

62. That, on or about May 4, 2018, MAURICE came to ERICKSONS and KAY subsequently paid him \$2,000.00 for the seed and fertilizer.

63. That when the above referenced payment was made, KAY still had not received an invoice for the seed.

64. That during the May 4, 2018 meeting with KAY, MAURICE additionally requested that JON and KAY pay him for his lost profits by not being able to farm the ERICKSON PROPERTY.

65. That on June 8, 2018, JON and KAY again acquiesced to MAURICE and KAY personally delivered MAURICE a check for his lost profits in the sum of \$1,939.14 (hereinafter the "LOST PROFITS CHECK").

REZONE AND CONDITIONAL USE PERMIT

66. That in and around May 2018, MAURICE was a member of the Village Plan Commission.

67. That in and around May 2018, the neighbor to the West of ERICKSON, ANDREW BAEHR (hereinafter "BAEHR"), was under contract to purchase 9 acres from JON and KAY (hereinafter the "9 ACRE PARCEL").

68. That BAEHR'S purchase of the 9 ACRE PARCEL was contingent upon BAEHR getting the parcel rezoned to B-3 and the issuance of a Conditional Use Permit to allow storage buildings.

69. That the 9 ACRE PARCEL is located at the Southwest corner of the ERICKSON PROPERTY.

70. That BAEHR proposed to expand his storage facility, which was adjacent to the 9 ACRE PARCEL, known as Storage Authority.

71. That when KAY delivered the LOST PROFITS CHECK to MAURICE, she and MAURICE discussed how good it would be for BAEHR to obtain the Rezone and Conditional Use and MAURICE agreed with the same.

72. That the hearing on BAEHR'S Rezone and Conditional Use was held before the Village Plan Commission on June 11, 2018 (hereinafter the "REZONE HEARING").

73. That MAURICE served in his official capacity as a Village Plan Commission Member at the REZONE HEARING.

74. That MAURICE was vocally and physically opposed to BAEHR'S Rezone and Conditional Use Application and was lobbying other Commission and Board members to vote no.

75. That at the REZONE HEARING, MAURICE repeatedly stated that he believed the Rezone and Conditional Use were solely being sought by BAEHR as a straw man for JON and KAY, believing that once approved, JON and KAY would utilize them.

76. That, at the REZONE HEARING, MAURICE asked the VILLAGE attorney if the Plan Commission could approve the Rezone and Conditional Use and restrict it from being used by JON and KAY if they owned the 9 ACRE PARCEL.

77. That, at the REZONE HEARING, MAURICE was advised by the VILLAGE attorney that the Conditional Use Permit attached to the property and not the owner.

78. That MAURICE was visibly upset and angry when advised by the VILLAGE attorney.

79. That MAURICE voted against the Rezone and Conditional Use Permit.

80. That the Rezone and Conditional Use Permits were subsequently approved by the Plan Commission and Village Board.

81. That the 9 ACRE PARCEL was rezoned from A-1 to B-3.

82. That the B-3 Zoning District, incorporating both the B-1 and B-2 Zoning Codes, specifically allows for self-storage units and small industrial type businesses.

83. That BAEHR'S Conditional Use Permit was for the installation of multiple self-storage units.

84. That despite approvals, BAEHR was unable to close on the 9 ACRE PARCEL.

85. That BAEHR was unable to close given an economic change in his primary business, restaurant ownership.

ERICKSON PLANS

86. That JON and KAY have been working since 2019 to develop the 9 ACRE PARCEL.

87. That JON and KAY have utilized the services of Lynch and Associates to prepare Site Improvement Plans for the 9 ACRE PARCEL (hereinafter the "DEVELOPMENT PLANS").

88. That the DEVELOPMENT PLANS call for the construction of nineteen separate buildings including self-storage units together with small industrial type businesses. Further, attached hereto, incorporated herein and made a part hereof as **Exhibit "A"** are true and correct copies of the DEVELOPMENT PLANS.

89. That JON and KAY'S proposed development is compliant with the current B-3 zoning district permitted uses.

90. That Wisconsin Act 67, adopted and codified within Wis. Stats. §62.23, places substantial restrictions upon municipal bodies in the issuance of Conditional Use Permits.

91. That the VILLAGE, pursuant to Wis. Stats. §61.35, has adopted Wis. Stats. §62.23.

92. That Wis. Stats. §62.23 governs the issuance of Conditional Use Permits and requires “substantial evidence” as opposed to merely personal preferences or speculation in the denial of and conditioning of such authorization.

93. That in November or December 2019, JON and KAY attended a pre-application meeting before the VILLAGE Board on the DEVELOPMENT PLANS and received positive comments from several on the Board, MAURICE’S and NELSON’S animus notwithstanding.

RACINE COUNTY LAND USE/ZONING

94. That RCDS staff had been working with JON and KAY and their engineers, Lynch and Associates, since before March 2020 for engineering and approval of the DEVELOPMENT PLANS.

95. That Lynch and Associates had met regularly with RCDS staff in working on additions, revisions, and corrections to the DEVELOPMENT PLANS.

96. That in March 2020, the DEVELOPMENT PLANS were submitted to RCDS for review and input.

97. That RCDS subsequently requested revisions to the DEVELOPMENT PLANS.

98. That Lynch and Associates undertook work on the requested revisions.

99. That Lynch and Associates’ ability to meet with RCDS staff, given the COVID-19 outbreak, has been limited since March 2020.

100. That despite the COVID-19 outbreak, Lynch and Associates has now been able to meet with RCDS staff and obtain additional input and requested revisions to the DEVELOPMENT PLANS.

101. That Lynch and Associates and counsel for JON and KAY have regularly communicated with RCDS staff and were working cooperatively with staff through April 2021.

NOTICE OF VIOLATIONS

102. That JON and KAY were provided with seven (7) Notice of Violations on or about May 22, 2020 (hereinafter generally the “NOV’s”).

103. That each of the NOV’s have related to conditions that were either not violations, were subsequently corrected, or conditions that have been in existence for more than twenty (20) years..

104. That JON and KAY have never been fined, convicted nor plead guilty to any violation at the ERICKSON PROPERTY.

105. That counsel for JON and KAY was working with RCDS staff to address VILLAGE concerns relating to the NOV’s by incorporating the same into the overall DEVELOPMENT PLANS.

MICHAEL MCKINNEY

106. That MCKINNEY is the current VILLAGE Administrator and was the prior Town Clerk, and, at all times relevant hereto was serving as either Town Clerk or Village Administrator for the VILLAGE.

107. That in April 2021, MCKINNEY advised RCDS staff that the VILLAGE would not consider a Conditional Use Permit for JON or KAY at the ERICKSON PROPERTY.

108. That in April, 2021, MCKINNEY advised RCDS staff that the VILLAGE was “done” with JON and KAY.

109. That in April 2021, MCKINNEY inquired with RCDS staff as to all violations and Conditional Use Permits issued for the ERICKSON PROPERTY.

110. That in April 2021, MCKINNEY told RCDS staff that the VILLAGE would not issue JON and KAY a Conditional Use Permit under any circumstance.

111. That given a closed session agenda item at the April 26, 2020 Village Board Meeting, upon information and belief, the VILLAGE will seek additional prosecution against JON and KAY.

CONDITIONAL USE PERMIT

112. That JON and KAY, in seeking to develop the 9 ACRE PARCEL, will require a Conditional Use Permit issued by the VILLAGE.

113. That VILLAGE Ordinance §55-1 adopts the Racine County Zoning Code.

114. That Racine County Zoning Ordinance §20-1162 requires the VILLAGE Board to set a Conditional Use Application for public hearing.

115. That Racine County Zoning Ordinance §20-1181 provides the VILLAGE Board the authority to review and act on Conditional Use Permits after an application is received.

116. That given the conduct of MCKINNEY, on behalf of the VILLAGE, any application for a Conditional Use Permit is futile.

117. That, upon information and belief, MCKINNEY is acting upon his own animus and acting at the direction of MAURICE, NELSON and other VILLAGE officials.

CONTINUING ACTIONS BY MAURICE

118. That MAURICE, in the entirety of the duration he has sat on the Plan Commission and the Village Board, upon information and belief, has never disclosed the genesis of his malice toward JON and KAY.

119. That MAURICE, in the entirety of the duration he has sat on the Plan Commission and the Village Board, has never once recused himself from voting on any action pertaining to JON or KAY.

120. That MAURICE has regularly rallied other VILLAGE Board Members, Plan Commission Members and Staff to oppose all actions by JON and KAY.

121. That MAURICE has and continues to demonstrate actual malice and hostility toward JON and KAY.

122. That MAURICE'S hostility is intentional, brought on by personal animus and solely intended to deprive JON and KAY of their rights.

FIRST CAUSE OF ACTION

VIOLATION OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1 §13 TO THE WISCONSIN CONSTITUTION– 42 U.S.C. §1983

123. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth under this count.

124. That the VILLAGE is specifically authorized and empowered under Wisconsin Statutes with condemning authority, as defined within Wis. Stats. §32 and Wis. Adm. Code §92.

125. That JON and KAY have a right of just compensation for property which has been taken by governmental regulation or restriction.

126. That the VILLAGE has made clear that it will not follow the mandatory procedures for considering a Conditional Use Application for JON and KAY laid forth in VILLAGE ordinance and the Racine County Zoning Code.

127. That the VILLAGE in failing to consider and indefinitely denying any opportunity for JON and KAY to obtain a Conditional Use Permit have rendered the 9 ACRE PARCEL useless for the purpose for which it is zoned.

128. The actions by the VILLAGE have deprived JON and KAY of practically all the benefit of the use of their property for the development as planned.

129. That the action and conduct by the VILLAGE acts as Inverse Condemnation of the 9 ACRE PARCEL owned by JON and KAY.

130. That the actions and conduct by MAURICE, MCKINNEY, NELSON, MCMAHON and the VILLAGE are under color of law and as agents of the VILLAGE.

131. That JON and KAY have been damaged by this Inverse Condemnation and their inability to utilize their property as intended.

132. That the conduct of the VILLAGE is in violation of the Fifth Amendment of the United States Constitution and Article 1 §13 of the Wisconsin Constitution.

133. That the VILLAGE and its agents, acting under color of law, have engaged in a series of actions that have deprived JON and KAY of just compensation for the Inverse Condemnation.

134. That the regulation and failure to consider any conditional use application results in a regulatory taking of the ERICKSON PROPERTY.

SECOND CAUSE OF ACTION

VIOLATION OF THE FOURTEENTH AMENDMENT -EQUAL PROTECTION – TO THE UNITED STATES CONSTITUTION AND ARTICLE 1 §1 TO THE WISCONSIN CONSTITUTION– 42 U.S.C. §1983

135. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth under this count.

136. That under the Equal Protection Clause of the Fourteenth Amendment and Article 1 §1 of the Wisconsin Constitution, the VILLAGE utilized an improper purpose to deny JON and KAY the opportunity to obtain a Conditional Use Permit and fully utilize their property.

137. That BAEHR was situated substantially similar if not identical to JON and KAY when applying for a Conditional Use Permit.

138. That, upon information and belief, other residents of the VILLAGE have been and are similarly situated as JON and KAY and have sought Conditional Use Permits.

139. That the VILLAGE, has treated JON and KAY differently than BAEHR and other Conditional Use Applicants based upon personal animus and/or malice.

140. That the VILLAGE, does not have any compelling interest in justifying the disparate treatment of JON and KAY to serve any legitimate governmental interest.

141. That JON and KAY had been denied the opportunity to process a Conditional Use Permit the same of which has been afforded to multiple other VILLAGE residents prior to them.

THIRD CAUSE OF ACTION

CONSTITUTIONAL VIOLATION – DUE PROCESS – 42 U.S.C. §1983

142. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth under this count.

143. That pursuant to the Fifth Amendment to the United States Constitution, incorporated to the States through the Fourteenth Amendment, the same guarantees that no person shall be deprived of property without due process of law.

144. That the conduct of the VILLAGE in acting to deny a Conditional Use Permit before submission deprived JON and KAY of due process.

145. That pursuant to the Village of Yorkville Village Code, Racine County Ordinances together with Wisconsin Statutes, a process is set forth by which applicants can seek a Conditional Use Permit for the use of their real property.

146. That pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article 1§13 of the Wisconsin Constitution, JON and KAY were entitled to substantive and procedural due process in pursuing the full use and enjoyment of their real property.

147. That the VILLAGE and its agents, acting under color of law, have engaged in a series of actions that have deprived JON and KAY of their rights to be treated fairly, equitably, and consistent with their rights under both Federal and State law.

148. That JON and KAY were specifically denied both substantive and procedural due process under the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

- A. To enter judgment against the Defendant as plead;
- B. To enter judgment declaring that the acts of the Defendant be in violation of the Plaintiffs' Constitutional Rights including equal protection and due process;
- C. To enter judgment in an amount to be determined for damages for the unlawful taking in violation of the Fifth Amendment and Wisconsin Constitutional Claim;
- D. For an award of the Plaintiffs' costs, interest and reasonable attorney's fee for this action pursuant to 42 U.S.C. §1988 and other relevant statutes; and
- E. For such other relief as the court deems just and equitable under the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby request a trial by jury for the issues of fact in this action.

Dated this 28th day of April 2021.

TERRY & NUDO, LLC,
Attorneys for the Plaintiffs

By: 
Todd A. Terry, Attorney at Law
State Bar Number: 1047175

DRAFTED BY:



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