

STATE OF WISCONSIN
MILWAUKEE COUNTY
CITY OF OAK CREEK

OAK CREEK NEIGHBORS UNITED, U.A.,
2597 West St. Johns Way
Oak Creek, WI 53154,

Claimant,

v.

CITY OF OAK CREEK
8040 South 6th Street
Oak Creek, WI 53154,

Respondent

NOTICE OF CIRCUMSTANCES AND CLAIM

Now comes the Claimant Association, Oak Creek Neighbors United, U.A., by its undersigned Counsel and as and for its Notice of Circumstances and Claim against the City of Oak Creek, states and alleges as follows:

NATURE OF ACTION

1. This matter is a challenge to a decision to approve an amendment to the City of Oak Creek Comprehensive Plan and associated spot rezoning of certain property located in the southwestern corner of the City of Oak Creek on south 27th street and Elm Road. The subject property was rezoned and the Comprehensive Plan amended to benefit the owner, and only the owner, of the subject property. This was done and approved by the Oak Creek Common Council over the objection of several hundred citizens and the alderman for the district so that a huge 74,000 SF “Buc-ees” refueling and convenience/novelty store can be built on the site. The Comprehensive Plan amendment and rezoning will allow for the Buc-ee’s development but represents an obvious departure from the existing zoning and long planned use of the subject

property and this area of the City. These approvals are illegal spot zoning and should be declared void by the Court.

PARTIES

2. Claimant, Oak Creek Neighbors United, U.A. (“OCNU”) is a Wisconsin Unincorporated Association established under Wis. Stats. § 184 *et seq.* with its principal place of business at 2597 West St. Johns Way, Oak Creek, WI 53154. OCNU includes multiple members that are residents, property owners and taxpayers of the City and live and own properties near the proposed development and in particular will be negatively impacted by substantial increase in traffic on Oakwood Drive, which is the only local road over which users and customers of the proposed Buc-ees can access the proposed 74,000 SF store.

3. The rezoning and associated *ad hoc* amendment to the City Comprehensive Plan, if permitted to remain in place, will be detrimental to and injure the properties within the surrounding neighborhoods including, in particular, the properties of several members who own and live at their homes in the St. John’s subdivision, located directly to the north of the subject property and proposed development. The massive increase in traffic through their subdivision and adjacent to several members properties will quite dramatically interfere with their use and quiet enjoyment of the properties, will diminish and negatively impact their growing property values, and otherwise injure and harm them. The members of OCNU will incur special damages should the rezoning and Comprehensive Plan amendment remain in place and the development proceed, and thus have standing to pursue claims against the rezoning and Comprehensive Plan approvals by the City as set forth herein.

4. Respondent City of Oak Creek is a municipal and governmental body established under the laws of Wisconsin including Wis. Stats. §62.23 *et seq.* and whose principal place of business is at 8040 South 6th Street, Oak Creek, WI 53154.

JURISDICTION

5. This claim is brought pursuant to the Declaratory Judgment statute within Wis. Stats. § 806.04, and the provisions within Wis. Stats. § 62.23(7)(f) and (8) other applicable law including as applicable Wis. Stats. § 893.80. The subject property is located within this County and the claims arise from the decision of the City. Claimant and its members have been injured and have standing to pursue its remedies through this claim.

FACTS COMMON TO CLAIMS FOR RELIEF

6. Despite massive objections the City of Oak Creek Common Council, at a meeting on March 18, 2025, approved a rezoning of the properties located at 10700, 10820 and 10840 South 27th street at the corner of Elm Road in the City of Oak Creek. The City also approved an associated amendment to its established 2020 Comprehensive Plan, which was required because the proposed rezoning was clearly inconsistent with that Plan. (hereinafter “CP”). An aerial view of the site and surrounding properties is filed herewith as Exhibit A

7. Rezoning that are inconsistent with the local government’s CP are prohibited by state law under Wis. Stats. § 66.1001. However, undeterred by the objections of many of its long-time residents, citizens, and taxpayers, and the blatant inconsistency of the proposed rezoning with its own CP, the Common Council went ahead and approved the rezoning and amendment after a public hearing on March 18, 2025.

8. The City’s actions to approve the rezoning and CP amendment were done solely for the benefit of the private property owner and developer of the subject parcels, and are thus illegal spot zoning. This is shown by the following.

10. The City took actions in confidential meetings with the developer of Buc-ees and the owner in the fall of 2024 and before that time. The plan to develop Buc-ees was discussed

and a strategy adopted to approve the project despite its inconsistency with the existing zoning and CP.

11. These meetings and the content were not shared with the public.

12. As a result of these meetings the City and staff realized that the operation of Buc-ee's would require allowing car washes and liquor sales in the store. Not wanting to draw attention to the plan for the Buc-ees, City staff and officials scheduled certain items for consideration in late fall and winter of 2024. Those items were designed to amend the municipal code to allow for alcohol purchases and car washing within certain zoning districts. Those changes ended up matching the zoning uses that Buc-ees would need to operate its store at the subject property under the planned rezoning. In effect, these actions of the City were put forward as City-wide issues when in fact they were pursued and adopted to facilitate the Buc-ees development, but without revealing that plan.

13. After that time City officials failed to provide any general notice that this proposed 74,000 ft development was in the process of being reviewed by City staff internally, and would soon be scheduled for public meetings, even though City Staff had already decided to push for its approval.

14. The City then scheduled the issues for review by the Plan Commission in January 2025.

15. By January 1st, 2025, the City had still not provided general or specific notice about the proposed Buc-ees or the plan to seek an amendment to the 2020 CP or the associated rezoning.

16. Eventually, the City planned to hold a Plan Commission meeting on January 28, 2025 to consider the proposed rezoning and CP amendment. That meeting occurred but very minimal notice was provided to property owners - only three (3) business days - and only those

who are required to be informed by statute were provided notice ahead of the January 28th hearing. Certain property owners were not informed through mailed notice or otherwise, and learned of the massive project through news reports by the City Administrator that made it sounds as if was already a “done deal.” Upon information and belief, this was done by the City to avoid, to the extent possible, significant citizen attendance at the January 28th hearing.

17. This intent was further shown in that at the January 28th hearing the Mayor, as Chair of the Plan Commission, was obviously frustrated by the appearance of many citizens and what he came to realize would be objections to the rezoning and CP amendment, and the Buc-ees project in general.

18. The Mayor initially stated he would not allow public comment but later relented as the hearing proceeded and allowed it, but for only 2 minutes per speaker.

19. At the January 28th Plan Commission meeting City staff provided a memorandum recommending approval of the rezoning and the CP Amendment. However, the recommendation was not based on actual facts and made unsupported speculative conclusions that failure to approve the amendment and the rezoning would lead to a devaluation of the subject property and no development in the future.

20. At the Plan Commission meeting two members who are unelected but have engineering expertise recommended that a safety study be performed before any further action was taken on the issues. When the applicant was asked about this they were evasive and admitted they had not done a safety study. Unfortunately, the remainder of the Plan Commission and staff stated that a safety study would delay the project, clearly demonstrating their view point that approving the project was a given, and had to be accomplished quickly to satisfy Buc-ees and the property owner. The Mayor accepted Buc-ee’s evasive answers and lack

of response and dismissed the request for a safety study. The Plan Commission approved by a 6 to 2 vote, with the two engineering members voting against.

21. The applicant and City staff both minimized the traffic impact from the proposed Buc-ees at the Plan Commission hearing stating that the number of trips per day would be between 4,000 and 8,000. They knew at that time that their own estimates were between 9,000 and 12,000. They also claimed traffic impact was not relevant to the issues related to the amendment to the comprehensive plan and the rezoning. This was absurd and erroneous as it is obviously relevant because the entire purpose of the rezoning and CP amendment is to facilitate the operation of one particular business that is based on massive traffic coming to its store.

22. The matter was then scheduled for a further hearing at the full Common Council. However, in the interim, the Plan Commission voted to recommend approval of other proposed amendments to the City code as referenced above that would allow car washes and alcohol sales in certain zoning use districts. These changes happened to be applicable to the same zoning use district that Buc-ees needed to develop its building. This was done strategically so as to avoid having those issues, liquor sales and car washing, be focused on at the upcoming public hearing that was specifically noticed as pertaining to the Buc-ees development. The City orchestrated a change to the City Code so as to avoid identifying that there were being put in place for the benefit and to facilitate the Buc-ees development.

23. The two issues – the rezoning and CP amendment - were then scheduled for further public hearing at the full Common Council on March 18, 2025.

24. As the matter proceeded many citizens and property owners including several members of Plaintiff made repeated requests for information from the City as well as the Wisconsin DOT regarding traffic and other matters.

25. The traffic impact, in particular the amounts of trips per day on Oakwood Road, which is part of the St. John Subdivision and is very near the proposed site, was misrepresented. On March 14 2025, City Engineer had sent a traffic document to reflect the capacity of Oakwood Rd. This document was from 2022 which failed to include a recent change in traffic volumes from another recent development - Saputo Cheese - that began operations in 2023 right across 27th street. The city engineer also quoted the developer's trip distribution as being 10% local (i.e. non-Freeway users). The applicant's documents provided on March 18, 2025 Common Council meeting claim it would be 15% as local traffic. But both numbers were severely understated given the actual numbers that occur at other existing Buc-ees operations. These numbers were lowered to try to avoid controversy and obtain an approval and the City and staff knew or should have known this fact.

26. In addition, initial statements from City staff were conclusory and addressed traffic only on Elm Road. While Elm Road is even closer to the proposed site that road is only a connection to enter and exit I-94, it does not proceed eastward and so is not a way for local traffic to travel to Buc-ees, which must therefore travel down Oakwood Road. Traffic on Elm Road related to the Buc-ees would not assist in understanding the increase in traffic on Oakwood Road due to more local trips going directly through and past the St. John's residential subdivision in order to get to Buc-ees. This can be seen in the aerial view of the site and surrounding properties and roads in **Exhibit A.**

27. The City through staff initially claimed there was no traffic analysis.

28. Later it was learned that Buc-ees had submitted a traffic study to the WIS-DOT. The City knew this all along.

29. Buc-ees and its representatives have refused to provide that information to the public or the City. The City could demand that information and make it public but has

intentionally refused to do so in an effort to avoid having actual facts about the traffic impact interfere with the approval that it was recommending for the rezoning and the CP amendment.

30. City staff did not insist that the traffic study be provided before the Plan Commission or full Common Council hearings but when the decision to approve was made the City knew the analysis had been filed with WI-DOT. The City knew that it could wait to get WIS-DOT's review of the traffic study submitted by Buc-ee's consultant before it scheduled the CP amendment and rezoning for public hearing. Instead, it accelerated those hearings in order to avoid having more information about the traffic impacts, and to try to avoid having to potentially acknowledge facts that could interfere with a vote in favor of the two zoning changes.

31. In response to repeated requests to provide analysis and information about the traffic counts City staff referenced older 2022 studies that were out of date, and knowingly so.

32. As shown above and in the great record of this matter, Buc-ees and the City have repeatedly misrepresented or changed the numbers regarding the traffic impact.

33. The City staff has not considered and did not consider traffic studies done for recent developments in the City of Franklin, including the Saputo Cheese project, which lies just west and across 27th street and is adjacent to the proposed Buc-ees and the nearby St. John's residential neighborhood. Those development included traffic studies that address the same exact roads at issue with regard to the proposed Buc-ees. Those studies show that existing impacts from the Saputo Cheese and other developments on 27th street have already brought Oakwood Road close to its maximum of 400 cars per hour as admitted by the City's engineer. Again, this impact has been ignored and the suggestion made instead that there is plenty of further capacity available on Oakwood Road. That is not accurate.

34. As public records have shown, the projected traffic coming off the I-94 was grossly over estimated by Buc-ees at 90%. Far more than 10% of its customers will be local

traffic. Indeed, other similar developments show that local customer traffic would be closer to 50%. The City knew this and ignored and effectively adopted Buc-ees incorrect numbers.

35. The daily traffic trips per day will likely be at or over 12,000 trips per day, not the lower amounts (4-8K) being suggested the Buc-ees and the City. Public information regarding other similar Buc-ees shows much higher trips per day. A copy is attached hereto as **Exhibit B.**

36. The idea that only 10% of these daily trips will be from local users is obviously understated. The proposed location of this project will definitely draw, and is clearly intended to draw, local residents from Oak Creek, Franklin, Caledonia, Franksville, residents along Lake Michigan and residents on or near 27th. The I-94 Freeway would not be the preferred route taken for these thousands of potential patrons.

37. The St. John's residential area has homes only 500-1000 feet away from this proposed project. School busses travel down 27th street N/S to Oakwood along with accessibility for EMS to the hospital. There are over 100 homes in close proximity to this project. There will be a significant impact to the safety of St. John's neighborhood and residents on Oakwood and 27th street.

38. It is clear that the traffic impacts are being minimized by the applicant and the City regarding total trips per day and the traffic coming from local customers, who will primarily be using Oakwood Road. Current residents report having a hard time retrieving their mail even under current traffic conditions. This project, which is designed to encourage massive increases in trips per day versus the other business uses in the area, will put major pressure on Oakwood Road. The large increase in traffic on Oakwood will substantially impact the safety and daily use and enjoyment of the owners and residents of the many homes on Oakwood, and within the surrounding neighborhood. The increases will also likely deter further residential development

and instead lead to further freeway based commercial operations seeking to build on that land, further harming the many nearby residents.

39. After numerous concerns were reported to the City about the traffic impact to Oakwood Road, but after the March 18th public hearing, the City added traffic counters to Oakwood Road from March 27th - April 3rd. However, these were placed during the week that the Oak Creek/Franklin School District had spring break. There is reduced traffic on the road during this time period due to no school, and many families traveling for the spring break week. City staff was fully aware of this and thus that the number would not be representative and would likely be much lower than actual.

40. In addition, the submissions by the applicant misrepresented the nature and size of the wetlands on the subject property. This was pointed out to City staff but they ignored it.

41 In addition City staff indicated that the WDNR would be contacted about this project ahead of the rezoning but that did not occur. That was inconsistent with the approval process used by the City for another recent development located on Ridgeview drive in the City. In that matter, which was taken up by the Plan Commission most recently in February 2025, the City required that permits allowing for filling of portions of those wetlands be applied for and obtained from WDNR before the project would be approved. The WDNR denied those permits and the project is being changed as of the date of this pleading. That property was zoned M-1 and the City took a prudent and necessary approach in that case given the presence of wetlands. However, it has taken the opposite and a much more lax approach towards the Buc-ee's proposal.

42. Indeed, the City has done no investigation of wetlands issues or other issues related to impact to the Root River or other environmentally sensitive areas that are connected to the site.

43. In addition, at the January 28th Plan Commission meeting and the later public hearing on March 18th it was clear that the decision to approve the CP amendment and the rezoning had been predetermined by a majority of the common Council City. At these meetings Staff made recommendations to approve both the CP amendment and the spot rezoning but did not provide any substantial evidence or actual factual support for its judgment that they should be approved. The Staff stated in its prehearing memorandum, and at the hearings, that the decisions were purely legislative, essentially inviting the Common Council members to vote not based on the facts but on their own political calculations.

44. Both in their pre-hearing memos and at the hearings themselves, the City staff failed to even reference the applicable City Zoning code ordinances that govern amendments to the zoning map, nor to any standard at all that should be applied to amending the CP. The specific ordinance governing rezoning was addressed in Plaintiff's objection letter submitted before the March 18th hearing. But despite all these concerns and being advised of its own governing ordinance, City staff ignored any discussion of the applicable legal standard.

45. However, one alderman in favor at the January 28th meeting did reference one of the plain language requirements contained in the ordinance, which is whether there had been a change in circumstances or challenges faced in the recent past justifying the change in the zoning map. The alderman referenced the construction of Elm Road off of I-94 and claimed that was a new condition that justified the rezoning.

46. This was specious because the current zoning for the property, as well as the uses declared to be in the public interest under the Comprehensive Plan, had been adopted in 2020 and at that time the plan for the Elm Road on/off-ramp was already well known and had been incorporated into the previous and the 2020 CP. Public records show that the WIS-DOT had plans to create the Elm Road exit as of 2007, well before the latest comprehensive plan

amendment was updated in 2020. The City knew the Elm Road on/off ramp was coming and planned when it reviewed its earlier CP and thus when adopted its most recent CP and zoning for the subject property in 2020. As the 2020 CP shows, the City deemed it would be suitable to have the land preserved for Business park use and also for targeted Residential expansion, and for the A-1 agricultural zoning to be maintained.

47. It seems apparent that the alderman who spoke had been prepared ahead of time to raise the idea that the construction of Elm Road was a “changed” condition justifying the rezoning and the CP amendment. However, that alderperson knew, or should have known, when he made his comments that the on/off ramp at Elm Road had been planned well before the adoption of the current version of the comprehensive plan. It thus had been incorporated into the 2020 CP and the existing zoning of the subject property and therefore could not reasonably be considered a changed condition supporting a rezoning or amendment to the comprehensive plan. This was, based on the facts known to date, a made-up response in an attempt to present a plausible basis for approval. It instead reflects an intent to approve the project despite the facts and applicable law in order to benefit the property owner and Buc-ees.

48. What also occurred related to the above was that the City staff and City Administrator did not correct the alderman. That was done intentionally as part of an effort to suggest that there was a genuine basis under the ordinance to justify the rezoning and the change to the CP. But in fact, the alderman knew, as did City staff and the City Administrator, or should have known, that there was no adequate factual basis to support the proposed rezoning or the CP amendment, which is also why City staff did not reference the applicable ordinances or provide any basis for meeting those requirements in its report and recommendation to the Plan Commission or the Common Council.

49. In addition, the City has not evaluated the impact to the tax base of approval of one large commercial development versus the increase in tax base and other benefits that could occur through the development of further housing, though they claimed that tax base would increase from the proposed Buc-ees. An email from an alderman confirms that “potential property tax revenue on Buc-ee’s is substantially below our normal target for development”

50. City staff also did not acknowledge that this area of the City is noted in the 2020 CP as being targeted for future housing. See *Exhibit C* - *Copy of excerpt from 2020 CP*. This point was made to the City through Plaintiff’s written objection ahead of March 18, 2025 Common Council hearing but was ignored.

51. Since the March 18th hearing and approvals, the City has continued to delay in providing information about traffic analysis. They have also not responded to questions by Plaintiff pointing out that the traffic analysis conducted for projects in Franklin only a few years ago show significant increases of traffic due to those developments, and that the City had not considered those at the at the hearing. Currently further approvals have been scheduled for review and potential approval by the City without waiting for the WIS-DOT report on the apparently “secret” traffic study that Buc-ees has filed with WIS-DOT but is refusing to provide to the City and the public.

52. What has also become known based on review further records is that on August 23, 2022 City of Oak Creek Planning Commission members and the Mayor rejected a conditional use permit for a gas station in this same area of the City. That was based on its view that the City already had more than enough gas stations in this area. The Buc-ees project brands itself as a carnival like novelty destination but is, operationally, a truly giant refueling operation that will add 120 new gas pumps to the area, which the Mayor recently explained are not needed, along with 24/7 operations.

FIRST CLAIM FOR RELIEF
(Illegal Spot Zoning)

53. The allegations above are incorporated in this claim for relief.

54. The City is not permitted to engage in illegal spot rezoning or make *ad hoc* unsupported changes to its Comprehensive Plan.

55. Wisconsin law requires as follows in order to approve a spot zoning.

The standard which we must follow in determining whether a municipality's action amounts to illegal spot zoning is as follows: ... Spot zoning to be accomplished through rezoning should ***only*** be indulged in where it is in the public interest and not solely for the benefit of the property owner who requests rezoning, absent any showing that a refusal to rezone will in effect confiscate his property by depriving him of all beneficial use thereof.... *Rodgers*, 55 Wis.2d at 573, 201 N.W.2d 29 (citation omitted). This approach has been followed whenever the court is confronted with an allegation that illegal spot zoning has taken place. *Id.*

Step Now Citizen's Group, 264 Wis.2d at 681-81 (Ct.App.2003).

56. Here, as the facts described above show and as will be shown as this matter proceeds, the rezoning and the associated amendment to the City Comprehensive Plan are not in the public interest and are being pursued, and were approved, solely for the benefit of the property owner and the developer of the proposed Buc-ees.

57. The approvals are thus improper and illegal spot zoning and should be declared as such by the City the approvals voiding.

SECOND CLAIM FOR RELIEF
(Violation of City Ord. § 178.0804)

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

59. The City's zoning code controls rezoning of areas of the City under Ord. § 178.0804(3)

(3) Zoning text amendment/rezoning/Official Map of the City of Oak Creek amendment review criteria. The decision to amend the Zoning text, Zoning Map, and/or Official Map of the City of Oak Creek is a matter of legislative discretion that is not controlled by any single review criterion. In making recommendations and decisions on Zoning text amendments/rezonings/Official Map of the City of Oak Creek amendments, the Plan

Commission and Common Council **must consider all relevant factors, including at minimum the following three criteria:**

a. Whether the proposed amendment is consistent with the policy and intent of the Comprehensive Plan.

b. Whether the proposed amendment corrects an error or inconsistency or is necessary to meet the challenge of a changed or changing condition.

c. Whether the proposed amendment is deemed necessary and appropriate based on the policy and intent of City plans, other than the Comprehensive Plan.

See Oak Creek Ord. § 178.0804(g)(1)- (3).

60. The City ordinances require that a rezoning may only be granted upon consideration of the requirements noted above.

61. The City did not consider and properly apply the requirements in § 178.0804 when considering and approving the proposed rezoning of the subject properties from A-1 Limited Agricultural District to “B-6 Interchange Regional Retail District.

62. Regarding subsection (a) the proposed rezoning is directly inconsistent with the policy and intent of the Comprehensive Plan. Amending the Comprehensive plan, as was also proposed and approved, does not cure this error, and is also invalid because it is an *ad hoc* and arbitrary amendment that is contrary to the Comprehensive Plan statute within Wis. Stats. § 66.1001.

63. Regarding subsection (b) the proposed rezoning amendment does not “correct an error or inconsistency” and is not “necessary to meet the challenge of a changed or changing condition.” No facts have been supplied by the applicant or by Staff that would support any finding of any *changed conditions* or *challenges*. A desire by a private property owner to develop a property that is not allowed for under the zoning code is not a “challenge” or “changed condition.”

64. Regarding subsection (c) there is no basis to “deem” this proposed rezoning necessary and appropriate based on the policy and intent of City Plans other than the Comprehensive Plan. Again, there is no factual information in the application or the record at the Plan Commission, or otherwise, that shows that this requirement was raised or discussed, nor are there facts that would support any such finding or determination. Approving the rezoning is contrary to the City’s existing policy and intent for the area and the subject properties, which is to facilitate business park type uses and expanded residential use, and is why the large majority of the subject parcel is being taxed at residential rates.

65. The proposed changes are also contrary to the underlying policy and goals of the Comprehensive Plan.

66. The current zoning is A-1 Limited Agricultural District is intended to provide for the *continuation of general farming and related uses* in those areas of the City that are not yet committed to urban development.

See Comprehensive Plan at p. 16.

67. Buc-ees and the City are trying to change the area to “B-6 Interchange Regional Retail District,” which as shown below is completely contrary to the intent for the A-1 District:

B-6 Interchange Regional Retail District

The B-6 Interchange Regional Retail District is intended to provide for the orderly and attractive grouping of **high-intensity retail, commercial** and mixed uses along the federal interstate highway system.

See Comprehensive Plan at p. 17.

68. The Comprehensive Plan makes clear that any changes to this area should also respect the “scale and character of the surrounding neighborhoods and provide day-to-day shopping needs of nearby households.” A 74,000 SF, 120 pump refueling and tourist novelty store is the opposite of respecting the nearby neighborhoods.

See Comprehensive Plan at p. 41.

69. The Comprehensive Plan also specifically identified this area as being planned for “targeted residential reinvestment.” A massive Buc-ee’s is the opposite of that approach, and will hinder expanded residential development on the parcels to the north of Elm Road. A copy of that land use map from page 35 of the Plan is attached hereto as **Exhibit C**.

70. The City and the applicant are trying to subvert the City’s Comprehensive Plan by seeking an individualized, and essentially *ad hoc* amendment to that Plan exactly contrary to the Plan’s own language. The Plan calls for the Zoning code to implement the Comprehensive Plan, not the other way around:

Amending Development Regulations

The Comprehensive Plan establishes a vision for the community to be attained over the next two decades. As the City’s official policy document, the Plan will serve as the basis for zoning entitlements and amendments completed as the next phase of this project. A holistic update to these development regulations will ensure that every section of the codes consistently and efficiently achieves the vision and goals set forth in the Plan.

See Comprehensive Plan at p.79.

71. The City did not make a specific finding that the rezoning and/or the amendment to the Comprehensive Plan were in the public interest and no facts were presented to or by the City staff, or the Common Council, that could have been a sufficient basis to make such a finding.

72. As shown above, the approvals are thus contrary to the specific requirements in City Ord. § 178.0804(3).

73. As such, the City’s action to approve the amendment to its Comprehensive Plan and to rezone the three parcels that make up the subject property are contrary to law and should be declared as such by the City and voided.

WHEREFORE, Claimant requests the following:

1. Review this matter by the City as a request for declaratory judgment regarding the validity of the City's actions to approve the rezoning request and the amendment to its Comprehensive Plan and in so doing declare the City's actions void as illegal spot zoning.
2. Award costs and attorneys fees as permitted by law and such other relief as determined just and appropriate under law.

Dated this 11th day of April, 2025

Electronically signed by Joseph R. Cincotta

Joseph R. Cincotta

State Bar No. 1023024

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