STATE OF MINNESOTA

COUNTY OF DODGE

DISTRICT COURT

THIRD JUDICIAL DISTRICT
Case Type: Other Civil

Court File #_____

CASE TITLE:

Lowell Trom, and Evelyn Trom,

Plaintiffs,

v.

County of Dodge, Dodge County Board of Commissioners, and Masching Swine Farms, LLC,

Defendants.

SUMMONS

THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon Plaintiffs' attorneys an answer to the Complaint which is herewith served upon you within twenty (20) days after service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

YOU ARE HEREBY NOTIFIED that this case may be subject to Alternative Dispute Resolution (ADR) processes under Rule 114 of the General Rules of Practice for the District Courts. The Court Administrator or your attorney can provide you with information about ADR options and a list of neutrals available in your area. ADR does not affect your obligation to respond to the Summons and Complaint within twenty (20) days.

LAW OFFICES OF JAMES P PETERS PLLC

Dated: January 7, 2015

By: _____

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STATE OF MINNESOTA

COUNTY OF DODGE

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Lowell Trom, and Evelyn Trom,

Plaintiffs,

v.

COMPLAINT

County of Dodge, Dodge County Board of Commissioners, and Masching Swine Farms, LLC,

Defendants.

Plaintiffs, for their Complaint against Defendants, state and allege as follows:

PARTIES

1. Plaintiff Lowell Trom is an individual who is a resident of Dodge County, Minnesota and who owns improved real property and family farm in Dodge County that is located at, and commonly referred to as, 12451 – 700th Street, Blooming Prairie, Minnesota 55917. Plaintiff Lowell Trom was born on the home place at the family farm on April 10, 1929, over 85 years ago. His parents, Elmer and Marie Trom, moved onto the family farm in about 1925.

2. Plaintiff Evelyn Trom is an individual who is a resident of Dodge County, Minnesota and who also owns improved real property and family farm in Dodge County that is located at, and commonly referred to as, 12451 – 700th Street, Blooming Prairie, Minnesota 55917.

3. Plaintiffs Lowell and Evelyn Trom have spent their entire lifetimes building their farm and farming operations in Westfield Township, Dodge County, Minnesota.

4. Defendant County of Dodge is a political subdivision of the State of Minnesota, which is created and existing pursuant to Minn. Stat. Ch. 373 ("County"). The County acts through an

appointed Planning Commission ("PC"), as provided for in Section 18.4 of the County Zoning Ordinance, and an elected Board of Commissioners, which is comprised of 5 members ("Board"), including the Board Chair, Rodney Peterson. The County is also a delegated County for purposes of administration of the feedlot program of the Minnesota Pollution Control Agency ("MPCA") under Minnesota Rules, Chapter 7020.

5. Upon information and belief, Defendant Masching Swine Farms, LLC ("LLC"), is a limited liability company organized under Minnesota law, which owns land and intends to operate a proposed hog confinement facility on the 6 acres in Westfield Township, Dodge County, Minnesota ("Project"), and having an agent of Nick Masching, whose mailing address is 71884 150th Avenue, Hayfield, Minnesota 55940.

JURISDICTION AND STANDING

6. This Court has jurisdiction for this appeal action pursuant to the jurisdiction established by the Dodge County Zoning Ordinance, Section 18.13.12, which Zoning Ordinance and jurisdiction from a decision on a conditional use permit is authorized by Minn. Stat. 394.301 and has been recognized by *Toby's of Alexandria, Inc. v. County of Douglas*, 545 N.W.2d 54 (Minn. App. 1996), *review denied* (Minn. May 21, 1996).

7. This Court also has general jurisdiction over the claims asserted in this action in that, among other things, the proposed Project has its principal place of business proposed for Westfield Township, Dodge County, State of Minnesota.

FACTUAL BACKGROUND

8. Pursuant to Minn. Stat. 394, Dodge County adopted and has amended from time to time the Dodge County Zoning Ordinance ("Ordinance") to regulate land uses within the

County, including hog confinement feedlots, such as the proposed Project of the LLC in Westfield Township. The Township has not adopted any zoning regulations.

9. Among other things, Section 16 of the Ordinance includes specific performance standards for conditional use permits ("CUP") for feedlots, among other uses. Section 16 established the current performance standards for feedlots effective as of November 13, 2012.

10. These performance standards for feedlots include Section 16.24.3, Information Requirements for a Feedlot Conditional Use Permit, which requires a complete application from the applicant to include all manure management plan ("MMP") information, including USDA aerial photos of all manure application sites, acreage reports and written land spreading agreements where the applicant does not have the minimum acreage to apply animal waste.

11. Section 16.2.1 of the Ordinance establishes that all feedlots must meet all performance standards to include all applicable Federal, State and County laws, rules and regulations, as well as the provisions of any permit.

14. Section 16.24.1 of the Ordinance requires a Certificate of Compliance from the MPCA for any new feedlot, including any change of ownership of any feedlot.

15. Section 16.24.6 of the Ordinance requires that manure application rates shall comply with the best management practices established by the USDA NRCS, the U of MN Department of Agricultural Engineering and the MPCA.

16. Section 18.13.5 of the Ordinance requires applicants for a CUP to submit a complete application, with the fee for the CUP and supporting information that contains all required information or sufficient information for the permit to be issued and, in the event that the application is incomplete, requires the County to return the application to the applicant for the

complete information or for the fee.

17. Section 18.13.5 states that applications will not be considered complete until the fee for the CUP is submitted with the application.

18. Section 18.13.6 Ordinance requires the County to forward to the PC only a completed application for a CUP.

19. Section 18.13.13 prohibits the County from reconsidering a similar application for a CUP within six (6) months from the date of its denial.

20. On about February 10, 2014, Nick Masching and Roger Toquam submitted a written conditional use permit application for the proposed Project ("February Application") pursuant to the Ordinance and Minn. Stat. 394. The Application was and incomplete and deficient for failure to include a number of necessary items of information required by the Ordinance.

21. The February Application sought approval for the construction and operation of the proposed Project that would house about 2,400 hogs between 55 and 300 pounds. The proposed Project represents 720 animal units under State of Minnesota rules (.30 multiplier) and 960 animal units under County and federal rules (.4 multiplier). Toquam proposed by the Project to split off 6 acres of land and to locate the site of the hog confinement next to his neighbors' homes and farm sites instead of close to his own so that the negative impacts of the proposed hog confinement Project would impact his neighbors' property instead of his own.

22. According to calculations that compare human waste with that waste generated from animals, the proposed Project would generate the manure equivalent to the waste generated by a city of about 7,200 people. Dodge County currently has a population of around 20,000 people so that this one Project would generate about 1/3 of the waste produced by the entire human

community of Dodge County.

23. Section 18.7.1 of the Ordinance requires that a public hearing take place on applications for CUPs and only allows for such public hearings in circumstances where the County has received a complete application for a CUP with the required fee.

24. On April 8, 2014, the County Board held a meeting on the proposed Project based upon an incomplete Application in violation of the Ordinance and refused to continue the matter.

25. On April 8, 2014, the Board approved the deficient Application for the Project without any discussion or analysis, without taking a hard look at the relevant issues, based on an incomplete application and in a manner that was arbitrary, capricious, and unreasonable.

26. In May 2014, an appeal of the issuance of the CUP by the County was taken to the Dodge County District Court under the jurisdiction established by the Ordinance.

27. In June and July 2014, the Project submitted various information required about the Project to the County Feedlot Officer, which included a June 23, 2014 application for an MPCA Feedlot Permit known as the Construction Short Form Permit ("MPCA Application").

28. The MPCA Application affirmatively represented, among other things, to the County and the MPCA that all manure ownership would be transferred from the Project, that the Project would generate 1.1 million gallons of liquid manure each year and that the Project had available 300 acres for land application of the liquid manure under written agreements at agronomic rates.

29. The MPCA Application indicated that no land application agreements were attached.

30. The County also received from the Project on June 23, 2014, a Manure Management Plan Requirements when Ownership of Manure is Transferred form, which indicated, among other things, yes to: "is there enough land potentially available for spreading manure in accordance with

allowable rates?"

31. On July 7, 2014, the County Feedlot Officer certified and approved in the Feedlot Permit Application Review Checklist that the ownership of the manure would be transferred, that 300 acres were available for transfer of ownership and that 300 acres would be adequate to handle the amount of manure transferred based on nitrogen rates. The County lacked necessary analysis for this conclusion, which was arbitrary.

32. On July 7, 2014, the County Feedlot Officer completed a Manure Management Plan Reviewer's Checklist and documented that the County considered as "not applicable" the need for maps or aerial photos of field locations and acreage, totals for the acres needed and field specific nutrient management information.

33. On August 15, 2014, the County Feedlot Officer issued the MPCA feedlot permit for the Project.

34. On August 22, 2014, the Project was put on written notice, and the County was given written notice, that an appeal was filed in the District Court challenging the April 2014 CUP for the Project and that the Project would proceed at its own risk in proceeding ahead with construction under a legal challenge pending even where the County was, as alleged in the Complaint, preliminarily wrong in approving the CUP for the Project.

35. On November 18, 2014, the Dodge County District Court issued an Order and Judgment vacating the CUP issued by the County to the Project.

36. On November 20, 2014, Defendant LLC applied to the County for a new CUP for the same Project that was the subject of the vacated CUP ("November Application").

37. The November Application was made on a new application form prepared by the

County which, contrary to the requirements of the Ordinance, purports to allow the Project to belatedly submit required information (including regarding manure management plans) rather than include the information up front in the application as the Ordinance requires.

38. The County immediately began processing the November Application in violation of the Ordinance requirement of necessary information required by the Ordinance regarding adequate acres for manure spreading available for this Project under exclusive land spreading agreements for land spreading of liquid manure at manure application rates that comply with the best management practices established by the USDA NRCS, the U of MN Department of Agricultural Engineering and the MPCA.

39. The County immediately began processing the November Application in violation of the Ordinance requirement of a six month waiting period for resubmission of a denied CUP.

39. Upon information and belief, the November Application either lacked the required CUP fee, or the County intended to waive the required fee for the November Application, and the County immediately began processing the November Application in violation of the Ordinance requirement that an application must include the CUP fee.

40. Upon information and belief, the County planned and intended as of November 21, 2014 to fast track approval of the CUP for the Project and to conduct no fair and impartial quasi judicial process with involvement of meaningful public input for the processing of the November Application. As of November 21, 2014, the County predetermined that the County would approve a CUP for the Project based on the November Application.

41. By the morning of November 21, 2014, less than 24 hours after receiving the incomplete November Application, the County had: a) prepared a Staff Report recommending approval of the

CUP for the Project; b) scheduled a special meeting of the Planning Commission for December 11, 2014 to approve the CUP for the Project; and c) included the CUP on a rescheduled Board meeting set to reconvene specifically for this CUP on the afternoon of December 11, 2014 following the PC public hearing to approve the CUP for the Project.

42. Upon information and belief, the County Board has publicly acknowledged that, in over 10 years of administering the Ordinance relative to feedlot applications, the County has only once denied a CUP for a feedlot and in that one instance thereafter approved the CUP for that one project once it agreed to change its location by about 25'.

43. Upon information and belief, approval of this CUP would be no different.

44. The Staff Report prepared by the County on the CUP for the Project is a one-sided advocacy report in support of the CUP generated for the purpose of securing approval of the CUP.

45. By 9:15 a.m. on the morning of November 21, 2014, the County had already received comments from at least one agency stating no concerns with the CUP for the Project.

46. By 11:17 a.m. on the same morning, the County had received back comments from two other agencies stating no concerns with the CUP for the Project.

47. By 11:15 a.m. on the morning of November 21, 2014, the County had emailed the Staff Report directly to the attorneys who represented the Project in the District Court Appeal and did not communicate at all with the attorneys who represented the neighbors.

48. On November 21, 2014, at around 10:00 a.m., Plaintiffs and their attorneys in the District Court Appeal first received the Order and Judgment vacating the April CUP so that, by the time Plaintiffs first received notice of the Order and Judgment, the County had already put in place the unfair and biased process to fast track approval of a new CUP for the Project.

49. On November 26, 2014, the County first sent out Notice to the public of the special meeting of the PC and the County Board meeting of December 11, 2014 for approval of the CUP.

50. On November 26, the County Feedlot Advisory Committee held a meeting to recommend approval of the issuance of a CUP for the Project.

51. On December 1, 2014, representatives of the Trom Family requested a continuance of the December 11, 2014 PC special meeting and following County Board meeting to the next regular meeting of the PC and next regular meeting of the Board.

52. On December 2, 2014, the County denied the Trom Family request to continue the December 11, 2014 PC special meeting to the next regular meeting.

51. On December 11, 2014 at 1:00 p.m., the County PC held a public hearing on the proposed Project, the contents of which are memorialized in the administrative record.

52. The public hearing held by the PC on December 11, 2014 was not a fair and impartial quasi judicial proceeding.

53. Upon information and belief, the PC is comprised of a majority of feedlot operators and includes the son of Roger Toquam, who has a direct financial interest in the proposed Project based on the sale of land to the Project and the land spreading agreements with the Project for the liquid manure. Toquam participated on the PC at the public hearing on December 11, 2014, despite his father's financial interest in the proposed Project and, although abstaining from the final vote, sat on the PC during the public hearing, participated in the process and was observed to be making facial expressions against persons giving comment opposing the CUP.

54. Upon information and belief, the County allows the PC to use the CUP process for feedlots to press their own agenda and allow additional feedlots to be built in the County without a

fair and impartial quasi judicial process and adequate project review, rather than having a public hearing process designed to take and consider public input from neighboring residents.

55. On December 11, 2014, following the PC public hearing, the County Board approved the issuance of a CUP for the Project.

FIRST CAUSE OF ACTION – APPEAL TO DISTRICT COURT

56. Plaintiffs restate and reallege paragraphs 1 through 55 herein.

57. The County acted unreasonably, arbitrarily, and capriciously and contrary to law in issuing the CUP to the Project based upon the incomplete November Application, a deficient record of decision ("ROD"), an unfair and biased quasi judicial process and without the Board taking a hard look at the relevant issues.

58. The approval of the County on December 11, 2014 of the CUP for the Project is unreasonable, arbitrary and capricious, inconsistent with the applicable ordinances and fails to meet Ordinance standards established by the County. *In re Block*, 727 N.W.2d 166, 180 (Minn. App. 2007); *Sunrise Lake Association, Inc. v. Chisago County Board of Commissioners,* 633 N.W.2d 59 (Minn.App. 2001).

59. The Court should set aside the County's decision to grant the CUP based on the ROD because the decision was unreasonable, arbitrary and capricious, and contrary to law.

60. The Court should set aside the County's decision to grant the CUP on December 11, 2014 because the County did not have and make adequate findings on December 11, 2014 on a complete Application and ROD before the Board at the time of granting the CUP.

61. The County failed to take a hard look at the issues related to manure management, utilized an application form that is contrary to Ordinance requirements, ignored the Ordinance

requirement that required MMP information as part of the application and improperly deferred any MMP analysis to a later process that the county would handle separately.

62. The County relied upon the transfer of ownership form to fully resolve the MMP issues, contrary to the requirements of the Ordinance that required MMP information up front and, in the event that the Ordinance standards are more stringent than the MPCA Feedlot Program Rules, the County should have applied the more restrictive standards.

63. The County failed to take a hard look at the MMP issues as to whether the Project had enough acres and that the manure would be applied properly given that the Project would generate about 1.1 million gallons of liquid manure each year, MPCA permitting by the County on the Project in July 2014 approved a total of 300 acres for manure application, and the Project later submitted land spreading agreements in August 2014 for 490 acres of land without any analysis of the number, location and ownership of adequate acres required for application of the manure at agronomic rates in order to prevent excess application of nitrogen and phosphorus.

64. The County failed to analyze the MMP issues despite that, upon information and belief, Toquam and Masching have additional hog barns in the County and limited land for application of manure from the multiple hog barns.

65. The County failed to analyze the MMP issues in that less than 300 acres were available in Westfield Township because the County failed to reduce the 300 acres by the 6 acres for the proposed Project and by acres that should not be included based on setbacks from waterways and other limitations on the 300 listed acres under MPCA Rules, Ch. 7020.

66. During the public comment period, the public commented in writing and at the hearing that 2012 MPCA guidelines recommend as much as 800 acres are needed for the MMP

on the Project for a corn and soybean rotation.

67. Because the Project is under 1,000 animal units and because the County is a delegated County for MPCA, the County the public authority responsible for the MMP so deferral of the MMP issues to the transfer of ownership was abdication of the duty to analyze the information in the first instance as required by the Ordinance. The County failed to ensure that the CUP applicant has an adequate MMP in place to protect the environment from potential surface and/or groundwater contamination prior to issuing the CUP. The manure transferee, Toquam, owns and operates additional swine facilities nearby which also produce substantial manure. The County failed to took a hard look at the MMP when the transferee also can apply manure on the land from his other swine barns. The Zoning Administrator dismissed citizen concerns at the December 11, 2014 hearing about the MMP and stated more than once that this "is the responsibility of the (manure) transferee" and therefore outside the quasi judicial process that the County undertook with regard to the CUP for this Project.

68. The County arbitrarily adopted the new application form sometime in 2014, which new application form allows the Project to defer most of the information required for the process to a later time while the Ordinance requires all of the information up front. The new application form violates the plain language of the Ordinance. As part of the unfair and biased quasi judicial process, the County allowed the November Application to utilize this new application form.

69. The County quasi judicial process and procedure features a combination of danger signals that indicate that the County process on the CUP failed to demonstrate that the County took a hard look at the relevant issues.

70. Roger Toquam's son sat on the PC during the public hearing even though the Project

involved his dad selling the property to Defendant LLC and his dad entering into the land spreading agreements with the Project. Although he abstained from voting, sitting in on the planning commission during the public hearing with the rest of the members gave the appearance of impropriety due to the family financial conflict of interest.

71. The County PC was comprised predominantly of individuals who have a direct financial stake in the feedlot industry. Even though this potential conflict of interest was noted at the public hearing, the PC members refused to recuse themselves and nonetheless voted to recommend approval of the CUP for the project.

72. In order to have a meaningful public comment period on the Project, the County planning director and the feedlot advisory committee should have given their presentations first to lay out all of the information to the public before they commented, instead of giving their presentation after public input. The County failed to follow standard practice in the order of handling the public hearing on December 11, 2014. The appearance was that the County was withholding information and then using the Planning Director to rebut the public comments without first providing the information on the Project up front.

73. During the public hearing on December 11, 2014, the County Planning Director acted as an advocate for the project failed to provide an even-handed analysis of the Project and instead appeared to serve as an agent for approval of the Project in the quasi judicial process.

74. During the public hearing on December 11, 2014, the County Planning Director consistently lobbied and argued for approval of the CUP and discounted all other information in a completely one-sided presentation.

75. The Chair of the PC arbitrarily made up and applied rules on public input for the

public hearing on December 11, 2014, which prevented people from having a fair opportunity to comment on the Project. The County had set aside 3 hours for the public hearing (from 1:00 p.m. until 4:00 p.m.). The County arbitrarily made up and announced a rule that allowed only 3 minutes to individuals to comment and only 5 minutes for members of the public to comment who represented a "group". Only about 5-9 people initially signed up to give public comment and eventually there were only about 11 people that spoke at the public hearing. Yet, the PC refused to allow members of the public to speak more than 5 minutes even though they had signed authorizations from numerous other individuals to speak on their behalf. For example, Sonja Trom Eayrs requested permission to speak on behalf of her mother, Evelyn Trom, one of the Plaintiffs. Evelyn Trom suffers from advanced Parkinson's, was unable to attend the hearing and is unable to speak publicly due to her condition. The Chair of the PC summarily denied Sonja Trom Eayrs' request to speak on behalf of others, except for a total of 5 minutes. The PC concluded the public hearing at 1:45 p.m. due to the limited number of people commenting and the arbitrary rules limiting comments as a representative and thereby arbitrarily limited the scope of the proceedings. Because there was no reason given for expediting the hearing, members of the public were left to think that the County arbitrarily limited the public input as part of their fast track process to approve the CUP.

76. Following the PC public hearing, the County Board met immediately afterwards and approved the CUP with minimal discussion or deliberation.

77. The County arbitrarily fast tracked approval of the CUP within 24 hours of receipt without taking a hard look at the relevant factors as is evidenced by the compressed time line, bias and favors granted the Project during the application process.

78. The right to procedural due process is absolute under Minnesota law. Because the public hearing before the PC was unfair as a quasi judicial process, rendering the County's decision to approve the CUP arbitrary and capricious under state law, the CUP must be vacated.

WHEREFORE, Plaintiffs pray for relief as follows:

1. For an Order reversing and vacating the December 11, 2014 issuance of the CUP for the Project by Defendant County;
2. Enjoining the County from issuing any CUP for the Project based upon the incomplete Application for the proposed location;
3. Enjoining Defendant Masching Swine Farms, LLC from operating the Project at the proposed location under the vacated CUP;
4. For allowable costs and disbursements; and
5. For such other and further relief the Court deems appropriate in the circumstances.

LAW OFFICES OF JAMES P PETERS PLLC

DATED: January 7, 2015 By: _____

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ACKNOWLEDGEMENT

The undersigned hereby acknowledges that pursuant to Minn.Stat. Sec. 549.211, costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that it is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass; or committed a fraud upon the Court.

James P Peters #0177623

STATE OF MINNESOTA

COUNTY OF DODGE

DISTRICT COURT

THIRD JUDICIAL DISTRICT
Case Type: Other Civil

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Lowell Trom and Evelyn Trom,

Plaintiffs,

v.

County of Dodge, Dodge County Board of Commissioners, and Masching Swine Farms, LLC,

Defendants.

Court File # _____

NOTICE OF APPEAL TO DISTRICT COURT

Date of CUP Approval: December 11, 2014

TO: Court Administrator
Dodge County Courthouse
22 – East 6th Street, Dept. 12
Mantorville MN 55955

PLEASE TAKE NOTICE that pursuant to Section 18.13.12 of the Dodge County Zoning Ordinance, Minn. Stat. 394.301, and *Toby's of Alexandria, Inc. v. County of Douglas*, 545 N.W.2d 54 (Minn. App. 1996), *review denied* (Minn. May 21, 1996), the above-named Plaintiffs appeal to the Dodge County District Court, State of Minnesota, from the conditional use permit approval of the Dodge County Board of Commissioners granted on December 11, 2014 on the application of Defendant Masching Swine Farms, LLC.

The Dodge County Board of Commissioners issued the CUP following a public hearing before the Planning Commission on December 11, 2014 and at a County Board meeting on December 11, 2014.

The reasons for this appeal are set forth in the Summons and Complaint the allegations of which are incorporated herein by this reference and which documents are filed and served herewith.

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