STATE OF WISCONSIN
SUPREME COURT
Case No. 2015AP001258

GOLDEN SANDS DAIRY, LLC,

Plaintiff-Respondent-Petitioner,

ELLIS INDUSTRIES SARATOGA, LLC,

Plaintiff,

v.

TOWN OF SARATOGA, TERRY A. RICKABY, DOUGLAS PASSINEAU, PATTY HEEG, JOHN FRANK AND DAN FORBES,

Defendants-Appellants,

RURAL MUTUAL INSURANCE COMPANY,

Intervenor.

Review of April 13, 2017 Decision of the Court of Appeals, District IV, Appeal No. 2015AP001258

Wood County Circuit Court Case No. 12-CV-0389, The Honorable Thomas Eagon Presiding

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BRIEF OF PETITIONER GOLDEN SANDS DAIRY, LLC

Submitted by:

Jordan J. Hemaidan, SBN 1026993
Daniel A. O'Callaghan, SBN 1042866
Joseph D. Brydges, SBN 1079318
MICHAEL BEST & FRIEDRICH LLP
P.O. Box 1806
Madison, WI 53701-1806
608.257.3501

Brian G. Formella, SBN 1012637
ANDERSON, O'BRIEN, BERTZ,
SKRENES & GOLLA
1257 Main Street
P.O. Box 228
Stevens Point, WI 54481-0228
715.344.0890

Attorneys for Plaintiff-Respondent-Petitioner Golden Sands Dairy, LLC

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

When a permit applicant secures vested rights by filing a valid building permit application for a project (Wisconsin's "Building Permit Rule"), does the law protect the applicant's right to both construct the project buildings and use the project land in the lawful manner described in the building permit application?

The Circuit Court answered yes, concluding that the Building Permit Rule protects the applicant's right to not only construct the buildings but also to use the project land in the manner identified in the permit application.

The Court of Appeals answered no and reversed the Circuit Court, concluding that the Building Permit Rule does not protect an applicant's right to use the project land in the manner identified in the permit application.

INTRODUCTION

In 2012, after a period of due diligence, Golden Sands, LLC and Ellis Industries Saratoga, LLC ("Golden Sands") invested millions of dollars in the development of a proposed large-scale dairy farm (the "Farm") in Wood County, Wisconsin. From the outset, the Farm was conceived,

developed and described as an integrated dairy and crop farm. (R.59, ¶ 16.) Feed and forage for the cows are grown in the crop fields. (R.59, ¶ 17.) Cows are housed and milked in multiple buildings located on the Farm. (*Id.*) Nutrients in the form of manure from the Farm's cows are then used to fertilize the Farm's crop fields. (*Id.*)

Golden Sands' substantial investment in the Farm included acquisition of 6,388 acres of land necessary to develop and operate the Farm (the "Farm Property") – and the preparation of numerous and complex permit applications to state agencies and other jurisdictions. The entirety of the Farm Property is located within the Town of Saratoga (the "Town") and, at the time, was in the "Unrestricted" zoning district of the then-applicable Wood County Zoning Ordinance. (R.59, ¶ 8; R.60, Ex. A: 55, 65, Ex. B, ¶¶ 6-7, Exs. C-D.) Under the Unrestricted zoning classification, all of the Farm Property could be used "for any purpose whatsoever, not in conflict with law." (R.60, Ex. C at 5.)

While development of the Farm ultimately requires multiple permits at the local, county and state levels, the sole permit required from the Town was a building permit for the seven agricultural buildings necessary to operate the Farm.

Having satisfied itself through its due diligence that a large-scale dairy farm was a permitted use of the Farm Property, Golden Sands submitted its application for a building permit (the "Building Permit Application"). (R.59, ¶¶ 7-9; R.60, Ex. A: 55; Ex. B, ¶¶ 6-7, Ex. C; R.60, Ex. A: 56-57.) The Town unlawfully withheld the building permit from Golden Sands, using that period of time to obtain zoning authority and enact a new zoning ordinance that prohibited agricultural use of the entire Farm Property. (R.60, Ex. B, ¶ 22, Ex. F; R.29, ¶¶ 103-104; R.32, ¶¶ 103-104.)

To protect the investment Golden Sands made in reliance on the zoning laws that were in effect when it filed its Building Permit Application, Golden Sands filed two lawsuits against the Town within weeks of each other. (R.60, Ex. B; R. 1-2.) In the first, a mandamus action ("*Golden Sands I*"), Golden Sands sought and obtained a writ requiring the Town to discharge its ministerial duty to issue the building permit. (R.60, Ex. B.) In the second action, from which this appeal arises ("*Golden Sands II*"), Golden Sands sought a declaration on the scope of the rights protected by issuance of its building permit – that the law allows it to proceed with development and operation of its Farm as

compliant with the "Unrestricted" zoning classification that was in place when Golden Sands filed the Building Permit Application. (R.2.)

After the Circuit Court issued a writ of mandamus ordering the issuance of the building permit in *Golden Sands I* – a decision the Court of Appeals upheld – the Circuit Court granted Golden Sands summary judgment on the vested rights question presented in this case. The Circuit Court concluded that because Golden Sands satisfied the longstanding bright-line Building Permit Rule, it therefore acquired vested rights both to build the Farm's seven agricultural buildings and to farm the entirety of the Farm Property as described in the Building Permit Application. (R.82; R.86: 91; App. 015-017.)

In *Golden Sands II* the Court of Appeals reversed the Circuit Court, holding that while Golden Sands' filing of its Building Permit Application triggered a vested right to construct the buildings that were the subject of its Building Permit Application, it did not also trigger a vested right to farm the Farm Property. In so narrowly interpreting the bright-line Building Permit Rule, the Court of Appeals stripped Golden Sands of its right to rely on existing zoning

laws. This Court should reverse the Court of Appeals' holding and reinstate the trial court's decision. Left uncorrected, the Court of Appeals' decision will not only work a manifest injustice in this case, it will gut the bright-line Building Permit Rule that this Court recently affirmed in *McKee Family I, LLC v. City of Fitchburg*, 2017 WI 34, 374 Wis. 2d 487, 893 N.W.2d 12.

STATEMENT OF THE CASE

I. GOLDEN SANDS REASONABLY RELIED ON THE "UNRESTRICTED" ZONING DESIGNATION THAT APPLIED TO THE FARM PROPERTY.

In 2011, Golden Sands began to evaluate the potential purchase of the Farm Property for use as a dairy farm. (R.59, ¶ 4; R.60, Ex. A: 52-53.) Golden Sands reviewed the zoning and land use restrictions governing the Farm Property and found no zoning ordinances – nor any proposed zoning ordinances for that matter – that would prohibit or otherwise restrict agricultural use. (R.59, ¶¶ 7-8; R.60, Ex. B., ¶¶18-19.) Indeed, the Farm Property was located in the "Unrestricted" zoning district of the then-applicable Wood County Zoning Ordinance. (R.60, Ex. F.) Based on this due diligence, Golden Sands negotiated contracts to purchase the

Farm Property for several million dollars. (R.59, ¶ 12; R.60, Ex. A: 55, Ex. B ¶ 20.) Also in 2011, and at the additional cost of hundreds of thousands of dollars, Golden Sands engaged a team of design professionals, consultants and other experts to assist in the preparation of a comprehensive set of permit applications required for the development and operation of the Farm. (R.59, ¶ 9; R.60, Ex. A: 55-56.)

The activities associated with the effort to develop the Farm spanned the better part of a year, and included surveying land, studying the physical characteristics of the property and the region, researching technical specifications, conducting soil tests, evaluating test results, writing reports, preparing environmental assessments, developing a nutrient management plan for land spreading organic fertilizers, designing the required components of the dairy, drafting engineering plans and specifications, and preparing a comprehensive set of permit applications to the Town, Wood County, and the Wisconsin Department of Natural Resources. (R.59, ¶¶ 10-11; R.60, Ex. A: 55, Ex. B, ¶ 20.)

On June 6, 2012, Golden Sands submitted its Building Permit Application to the Town to construct the buildings necessary to operate the Farm. (R.59, ¶ 13; R.60, Ex. A: 56,

Ex. B, ¶ 20; App.054.) At the same time, Golden Sands also filed various additional applications for the state and local permits it would need to build and operate the Farm. (R.59, ¶ 14, Exs. B-E; R.86: 68; *See* App.056-068 (extract of some of the materials attached to Building Permit Application).) The applications Golden Sands submitted on June 6, 2012 included, among other things, the Building Permit Application to the Town, the Application for a Permit to Wood County to Construct an Animal Waste Storage Facility, the Wisconsin Pollutant Discharge Elimination ("WPDES") Permit Application to the Wisconsin Department of Natural Resources ("WDNR"), and Applications for High Capacity Wells for the Farm. (*Id.*)

The WPDES Permit Application included: (i) The Nutrient Management Plan governing the land spreading of manure and other nutrients from the Farm's dairy production facility on the Farm's crop fields, (ii) a Request for Approval of Plans and Specifications for the Farm's manure handling and storage facilities, (iii) an Environmental Analysis Questionnaire response, summarizing the project, providing maps, and providing information in response to a series of WDNR questions relating to potential environmental impact,

and (iv) a Storm Water Notice of Intent. (*Id.*) The Environmental Analysis Questionnaire specifically explained the fully-integrated nature of the Farm:

> This proposal is for a new operation – Golden Sands Dairy, LLC – that will integrate dairy farming into newly developed irrigated potato and vegetable production land.
>
> . . .
>
> This proposal is environmentally-sized to allow for advanced manure handling and nutrient recycling systems. Dairy crop production enhances the sustainable farming methods of potato production systems. These practices reduce wind erosion by utilizing limited tillage practices on the field corn silage crops and having multiple years in alfalfa production in each rotation. Further, soils organic properties are built through the conversion of pine plantation to irrigated farm land and the addition of organic fertilizer and manure solids to further reduce wind erosion.
>
> Reduced nutrient leaching will be a benefit of the new farm by harvesting forages and using the recycled nutrients from the cow manure in the following crop years, thereby greatly reducing the amount of commercial fertilizer applied each year. As noted above, the combination of forage crops and the application of recycled nutrients increase the organic matter in the soil, which is needed in these sandy soils formerly planted to pine. Runoff, while not a significant issue on these sandy soils is virtually non-existent when dairy farming is introduced into the system due to the amount of surface residue and soil conditioning during forage production years.
>
> . . .
>
> Upon completion of all phases of construction, all of the irrigated agricultural land in the farm's nutrient management plan will implement this more sustainable form of agriculture. . . .

(R.60, Ex. D, Vol. D-1.)

This statement and all of the other materials enumerated above were filed with the Building Permit Application. They show that from the beginning, Golden Sands envisioned, planned for, and most importantly invested heavily in a single, integrated project – a Farm that grows crops, feeds cows, milks cows, and fertilizes crops. Golden Sands' June 6, 2012 Building Permit Application also plainly identified the "Project Location" and "Lot area" as the "6,388 ac" comprising the Farm Property. (R.59, Exs. A-B; R.60, Ex. B; App.054.)

To ensure that the Building Permit Application clearly conveyed the extent of the proposed development, Golden Sands attached to the Building Permit Application a scale map showing the proposed geographical boundaries of the Farm, including both the crop fields and the location of the seven agricultural buildings. (R.59, Ex. D-1; App.055.) The Nutrient Management Plan attached to the Building Permit Application included color map foldouts of every single field Golden Sands would use for cultivation of crops and land spreading of animal-produced nutrients on the Farm Property. (R.59, Ex. D-1.)

II. THE COURT OF APPEALS AFFIRMS THE CIRCUIT COURT'S ISSUANCE OF A WRIT OF MANDAMUS.

When Golden Sands submitted the Building Permit Application to the Town, the Town did not have a zoning ordinance, nor did it even possess the requisite authority from its electors to enact a zoning ordinance. (R.60, Ex. B, ¶ 17.) Rather, land use within the Town was governed solely by Wood County's zoning ordinance. (R.59, ¶ 8; R.60, Ex. A: 55, 65, Ex. B, ¶¶ 6-7, Exs. C-D.) On the date Golden Sands filed the Building Permit Application and for months after the Farm Property was within Wood County's "Unrestricted" zoning district, in which any lawful use – including agricultural use – was permitted.

On July 19, 2012, some six weeks after Golden Sands filed the Building Permit Application and the other applications for governmental permits for the Farm, and in direct reaction to Golden Sands' Building Permit Application, the Town adopted an ordinance imposing a moratorium on "plan review, building permit issuance, construction and related activities that are inconsistent with existing land use." (R.60, Ex. B, ¶ 22, Ex. F.) On July 27, 2012, Golden Sands filed a petition for a writ of mandamus seeking to compel the

Town to discharge its ministerial duty to issue a building permit for the buildings Golden Sands would construct for its proposed Farm. (R.86: 4; *see* R.60, Ex. B.) After a three-day evidentiary hearing and subsequent briefing, the Circuit Court found that the June 6, 2012 Building Permit Application met all applicable requirements of the Town's building code prior to the Town's July 19, 2012 moratorium, that the Town had unlawfully withheld the building permit, and on those grounds ordered the Town to issue it forthwith. (*Id.*) The Town appealed, and the Court of Appeals upheld the Circuit Court's decision in *Golden Sands I*. *Golden Sands Dairy, LLC v. Fuehrer,* No. 2013AP1468 (Wis. Ct. App. July 24, 2014). The Town did not seek this Court's review of *Golden Sands I*.

III. THE CIRCUIT COURT DECLARES THAT GOLDEN SANDS HAS A VESTED RIGHT TO AGRICULTURAL USE OF THE FARM PROPERTY.

The remedy in *Golden Sands I*, as in any mandamus action, was limited to the court ordering the government to discharge a ministerial duty – here, the Town's issuance of a building permit. Accordingly, two weeks after Golden Sands filed its mandamus action, Golden Sands filed this action on

the basis of the same underlying facts, seeking a declaration that Golden Sands acquired vested rights in agricultural use of the Farm Property when it filed the complete Building Permit Application. (R.1-2; R.86: 67-68, 90-91.)

After extensive briefing and argument, the Circuit Court granted Golden Sands' motion for summary judgment, concluding that Golden Sands' Building Permit Application triggered a vested right to agricultural use of the Farm Property as described in the Building Permit Application, and that the Town's new zoning ordinance could not be retroactively applied against Golden Sands. (R.86: 67-68, 90-91.) The Circuit Court's order was grounded in the ultimate findings that (i) Golden Sands' Building Permit Application submission documented Golden Sands' intent to use the Farm Property – a geographic area defined with specificity – for an agricultural use that was allowed under the Wood County zoning ordinance then in place; and (ii) that the proposed agricultural use described with specificity in the Building Permit Application was integrally related to the structures for which the Building Permit Application was submitted. (R.86: 67-68, 90-91.)

IV. THE COURT OF APPEALS REVERSES THE CIRCUIT COURT, CREATING A NEW LIMITATION ON WISCONSIN'S BRIGHT-LINE BUILDING PERMIT RULE.

The Town appealed the Circuit Court's decision that Golden Sands acquired a vested right under the bright-line Building Permit Rule to use the Farm Property for agricultural purposes. The Court of Appeals reversed, holding that "Golden Sands has not established a vested right to the nonconforming agricultural use of the 6388 acres" identified in the Building Permit Application. *Golden Sands Dairy, LLC v. Town of Saratoga*, No. 2015AP1258, at ¶ 2 (Wis. Ct. App. Arp. 13, 2017). In so holding, the Court of Appeals has left Golden Sands with an almost useless right to construct the Farm's buildings without the right to operate its Farm. To protect Golden Sands' legitimate, investment-backed expectation of developing and operating its Farm, this Court should reverse the Court of Appeals' holding and reinstate the trial court's decision.

STANDARD OF REVIEW

The Court reviews the circuit court's decision to grant summary judgment in favor of Golden Sands *de novo* and "independently of the determinations rendered by the circuit court and the court of appeals." *McKee Family I, LLC v. City of Fitchburg*, 2017 WI 34, ¶ 27, 374 Wis. 2d 487, 893 N.W.2d 12 (citation omitted). "Summary judgment is appropriate when there is no genuine issue as to any material fact and a party is entitled to judgment as a matter of law." *Id.* Significantly, the Town did not appeal or challenge any of the Circuit Court's factual findings. Thus, the only issue presented for appeal is a purely legal one: the extent of vested rights that were triggered by Golden Sands' properly-filed Building Permit Application. The Court also reviews this question of law *de novo*. *Id.* ¶ 28.

ARGUMENT

The Court of Appeals in *Golden Sands II* articulates an unprecedented limitation of the bright-line Building Permit Rule. It held that to trigger vested rights to agricultural use of the Farm Property, Golden Sands was required to meet the "active and actual" use test.

By acknowledging that Golden Sands' right to construct buildings was triggered by the filing of its complete Building Permit Application, but subjecting Golden Sands' agricultural use of the Farm Property to the active and actual use test, the Court of Appeals has essentially rendered the bright-line Building Permit Rule a nullity. The application of two different vested rights tests to a single development – one test for constructing buildings and another test for using the project land – fatally undermines the policy of the bright-line Building Permit Rule, which is to protect legitimate investment-backed expectations in property development. The Court of Appeals' decision also creates, without justification, a class of property owners who might otherwise be putting the land to active and actual use but for the ned to obtain other permits – in this case, the state-level permits required for construction and operation of large-scale dairies.

The Court of Appeals' decision also upsets the longstanding balance between local governments' ability to lawfully regulate land use and the protection of legitimate investments by tacitly approving a local governments' imposition of land use limitations only after a developer relied on the absence of such limitations. If the Court of

Appeals' decision is allowed to stand, local government will be empowered to defeat legitimate investments in property by using the filing of a building permit application as the shotgun start of a race to choke off the project, which is precisely what the Town did in this case. It is fundamentally unjust to require Golden Sands to show active and actual physical use of the Farm Property prior to the Town's zoning law change, especially when the Town conceived, and in a rush, codified that change in direct reaction to Golden Sands' filing of the Building Permit Application.

The Court of Appeals' application of two distinct vested rights doctrines to the same project has no foundation in vested rights jurisprudence. This Court's bright-line Building Permit Rule precedents seek to foster an atmosphere of certainty and predictability for all those who invest in future property development in this state and the local jurisdictions that host them, not just for buildings, but for the land whose use is integrally bound up with the buildings. Above all, the Building Permit Rule is designed to protect legitimate investments in future land use while also protecting a local government's legitimate prospective regulation of land use. That is the balance to be struck in this case. As shown

below, the active and actual use test is for different circumstances. While it too is designed to protect legitimate investment-backed expectations, the active and actual use test is employed in the context of a use that has already been established, rather than a proposed use for which a building permit application has been submitted.

I. THE BRIGHT-LINE BUILDING PERMIT RULE BECOMES USELESS IF IT DOES NOT PROTECT THE RIGHT TO USE THE PROJECT LAND.

A. The Bright-Line Building Permit Rule Was Created To Protect A Developer's Right To Use Its Property In The Manner Set Forth In The Application.

Wisconsin is in a minority of jurisdictions that clearly recognizes the vesting of rights to a given land use at the earliest point in time – upon the submission of a complete and fully compliant building permit application. 4 Arden H. Rathkopf & Daren A. Rathkopf, *Rathkopf's Law of Zoning and Planning* § 70:16 (2014). Thus, the submission of a complete and legally compliant building permit application is the temporal focus of a vested rights analysis in Wisconsin. *Lake Bluff Housing Partners v. City of S. Milwaukee,* 197 Wis. 2d 157, 172, 540 N.W.2d 189 (1995). This approach has been articulated in cases like *Lake Bluff* and most recently

expressed by this Court in *McKee Family I, LLC v. City of Fitchburg*, 2017 WI 34, 374 Wis. 2d 487, 893 N.W.2d 12.

In *McKee*, this Court succinctly summarized Wisconsin's bright-line Building Permit Rule as follows:

> Wisconsin follows the bright-line building permit rule that a property owner's rights do not vest until the developer has submitted an application for a building permit that conforms to the zoning or building code requirements in effect at the time of application.

Id. ¶ 4 (citing *Lake Bluff Hous. Partners*, 197 Wis. 2d at 172). This straightforward rule focuses on building permit applications as defining the point in time at which the right to develop property has vested. *Golden Sands II*, in contrast, separated the building from its *use* and declared for the first time in Wisconsin jurisprudence that the "rights" that vest under the bright-line Building Permit Rule stop at the right to construct the building alone and do not include the right to use the property tied to the building permit application.

Golden Sands II holds that the only vested right Golden Sands acquired was the construction of the Farm buildings, and observed: "Wisconsin law provides that a strictly compliant building permit application can establish a vested right to build a structure under the then-existing zoning classification, but that same law does not clearly address the

topic of property use." *Golden Sands II*, ¶ 17. Citing *Lake Bluff*, the Court of Appeals held that any vested rights that exist under the Building Permit Rule are solely for "purposes of building or altering a structure." *Id.* ¶ 15. On the contrary, the Court of Appeals' narrow interpretation of *Lake Bluff* and related jurisprudence improperly restricts the bright-line Building Permit Rule, compromises the policies underpinning that rule, and is out of step with this Court's prior holdings on vested rights.

In *Lake Bluff*, for example, the construction of the proposed buildings and the proposed use of the property were inextricably linked. The applicant in *Lake Bluff* filed an application seeking a building permit to construct seven apartment buildings, each with eight dwelling units on land zoned for multi-family apartments of that size. *Lake Bluff*, 197 Wis. 2d at 162. The *Lake Bluff* applicant asserted that it had acquired a vested right to continue with the multi-family development notwithstanding subsequent rezoning that restricted the *use* of the property to single-family residences. *Id.* at 167. Although the *Lake Bluff* applicant failed to satisfy the bright-line Building Permit Rule because its building permit application was not in strict compliance with

applicable codes before the change in zoning, the issue litigated in *Lake Bluff* very clearly involved not only the construction of buildings but the right to use the property identified in the building permit application for the specified purpose. Simply put, nothing in *Lake Bluff* suggests that an applicant's right to construct a building and right to use the project land identified in its building permit application ought to be evaluated separately under the bright-line Building Permit Rule, or that one standard out to be applied to construction of the buildings and another to the use of the project property.

The same is true in other Building Permit Rule cases that this Court and the Court of Appeals have previously considered. For example, in *Rosenberg v. Village of Whitefish Bay*, 199 Wis. 214, 225 N.W. 838 (1929), this Court considered whether the property owner had acquired vested rights to *use the land* for hotel or apartment purposes. In *State ex rel. Schroedel v. Pagels*, 257 Wis. 376, 43 N.W.2d 349 (1950), this Court considered whether the property owner had acquired vested rights to *use the land* for a garden-apartment complex. In *Des Jardin v. Town of Greenfield,* 262 Wis. 43, 53 N.W.2d 784 (1952), this Court considered

whether the land owner had a vested right to *use his land* for residential living in a trailer. In *Town of Cross Plains v. Kitt's "Field of Dreams" Korner, Inc.*, 2009 WI App 142, 321 Wis. 2d 671, 775 N.W.2d 283, the Court of Appeals considered whether the tavern operator had a vested right to *use the property* for providing adult entertainment.

Rather than reflect an examination and application of the policies underlying vested rights cases, the Court of Appeals' decision appears to be grounded in what it believed were important hypothetical questions (which have already been answered by *McKee*) about the nature and extent of Golden Sands' proposed agricultural use:

> For instance, how much and what parts of the purportedly associated land are necessary to allow the applicant to use the proposed building for its intended purpose? Why should the mere identification of purportedly associated land in a building permit application mean that all such land may be used in service of the proposed building? Should it matter whether the applicant asserts that all such identified land is necessary to the functioning of the building? Should a municipality be bound by such an assertion? In the apartment situation, could an owner/applicant use nearby property, merely identified in an application, to construct a new parking lot for residents, a use consistent with prior, but not current zoning? Importantly, how would a municipality determine the extent to which such identified property could be used in service of the apartment buildings?
>
> More generally, assuming for argument's sake that the use of purportedly associated land should sometimes be a part of the vested rights acquired by the filing of a building permit application in strict compliance with zoning and building code requirements,

> why should a municipality be bound by the applicant's mere identification of land? When it comes to giving land nonconforming status, should there not be, at a minimum, a mechanism for determining whether all such identified land is in fact necessary?

Golden Sands II, ¶¶ 21-22.

Some of these questions fall within the ambit of the WDNR's permit review process, not any zoning law. Others are legally irrelevant to a vested rights analysis. Still others stand in direct conflict with the fundamental notion of private property rights, including the notion that government somehow gets a say in whether a proposed development is necessary, even though the development is in complete harmony with existing zoning at the time of the building permit application. Despite the inapposite nature of these questions, *Golden Sands II* implicitly concludes that the lack of answers puts Golden Sands' investment outside the protection of the bright-line Building Permit Rule.

Having focused on these improper questions in reaching its decision, the Court of Appeals failed to explore or to establish any basis in Wisconsin law for its refusal to protect Golden Sands' right to use the Farm Property for farming under the bright-line Building Permit Rule. The absence of any construction/use distinction in Wisconsin's

Building Permit Rule cases makes sense because a vested right to construct buildings without the vested right to use the land is a meaningless right because it fails to vindicate legitimate investment-backed expectations.

Vested rights doctrines exist to protect a developer's right to *develop and use* property under an existing zoning classification – not simply the right to construct a building. *McKee*, 374 Wis. 2d 487, ¶ 43. Golden Sands thus asks this Court to make explicit that which has been implicit in the Building Permit Rule all along – that the Building Permit Rule vests an applicant with the right to construct buildings but also the right to use the land identified in the building permit application in the manner described in the application, consistent with zoning in effect at the time the application is filed.

B. Golden Sands′ Vested Rights Claim Rests Firmly On The Policies Underlying The Bright-Line Building Permit Rule.

This Court most recently explained the policy underlying the bright-line Building Permit Rule – and the concept of vested rights generally – when it reasoned in *McKee* that "[u]nderlying the vested rights doctrine is the

theory that a developer is proceeding on the basis of a reasonable expectation." *McKee*, 374 Wis. 2d 487, ¶ 42 (citations omitted). The Court then clearly stated that the bright-line Building Permit Rule is the best way to protect a developer's expenditures based on its reasonable expectation while still protecting (and indeed deferring to) a municipality's right to regulate land use:

> Wisconsin applies the bright-line building permit rule because it creates predictability for land owners, purchasers, developers, municipalities and the courts. *See, e.g., Guertin v. Harbour Assurance Co.*, 141 Wis. 2d 622, 634-35, 415 N.W.2d 813 (1987) (explaining that bright-line rules provide predictability and protect all parties). It balances a municipality's need to regulate land use with a land owner's interest in developing property under an existing zoning classification. A municipality has the flexibility to regulate land use through zoning up until the point when a developer obtains a building permit. Once a building permit has been obtained, a developer may make expenditures in reliance on a zoning classification.

Id. ¶ 43.

As this Court acknowledged, a municipality has the near absolute right and "broad discretion to enact zoning ordinances and land use regulations for a variety of purposes." *Id*. ¶ 35. However, "[t]he 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." *Id.* ¶ 37 (citations

omitted). This bright-line rule, and the balance of interests underlying it, echoes the policy rationale in previous Building Permit Rule cases – to protect a developer's investment-backed expectation that it will be able to actually use the property in the manner described in its application.

In sum, because the interest in developing property articulated in *McKee* is tied to a zoning classification, it is necessarily tied to the intended use of the property described in the building permit application. And because the interest is tied to use of the property, it must logically extend to all of the property the developer has assembled to effectuate that use, again, so long as that property is identified in a complete building permit application and the proposed use conforms to any zoning classifications in effect at filing. *See id.* ¶ 43. Indeed, common sense dictates that it is the economic activity resulting from the anticipated use of the property that is protected, not the anticipation of simply building a structure without any certainty about how it and the land surrounding it can be used.

Golden Sands' predicament perfectly illustrates the need to interpret the bright-line Building Permit Rule in this way. If the goal of the bright-line Building Permit Rule as

articulated in *McKee* is to protect a landowner's legitimate, investment-backed expectations while balancing that right with a local government's right to regulate land use, there is no logical reason to apply a more demanding test to determine vested rights. By applying the Building Permit Rule, Golden Sands' legitimate expectations are protected, since no farmer could be expected to seek to construct seven large agricultural buildings for the purpose of housing animals to be fed and supported by surrounding land if the farmer could not also invest with confidence in farming the surrounding land. Second, no violence is done to the policy of preserving the Town's ability to regulate land use because, as this Court noted in *McKee*, the Town was free to regulate land use up until the time a building permit application is filed. In this case, the Town did not take the opportunity to regulate land use beyond the County's "Unrestricted" zoning classification prior to Golden Sands' submission of its Building Permit Application. Indeed, the Town had not even gone so far as to obtain zoning authority from its electorate prior to Golden Sands' submission.

As discussed above, the Court of Appeals' refusal to extend the bright-line Building Permit Rule to protect Golden

Sands' investment-backed expectations in the development of the Farm Property seems strongly influenced by its concerns over the scale of the proposed Farm and the Town's opposition to the development, as evidenced by the Court of Appeals' reliance on broad hypothetical questions about the project. But the Court of Appeals' reliance on uncertainty over such matters stands in direct contravention to this Court's explicit rejection of a "case-by-case" analysis under the Building Permit Rule. *See McKee*, 374 Wis. 2d 487, ¶ 44. Just as *McKee* rejected the idea of imposing a case-by-case analysis of a developer's expenditures in evaluating vested rights, the same rationale holds true for evaluations based on the scope and details of a project because such fragmented analysis "would create uncertainty at the various stages of the development process" to the detriment of all parties. *Id.*

Even if such an analysis were necessary, the undisputed and unappealable record in this case demonstrates that there was no attendant uncertainty in Golden Sand's Building Permit Application because, as detailed in the Statement of the Case above, the full scope and integrated nature of the Farm project was well documented and readily apparent on Golden Sands' application to the Town. Again,

the Building Permit Application defined the "Project Location" and "Lot area" as a parcel of land totaling 6,388 acres within the Town (referred to throughout this brief as the "Farm Property"). The 6,388 acre Farm Property encompasses the entirety of the proposed development: everything from the agricultural fields that will be used to grow feed, to the buffer acres that will be left around farmed fields, to the land on which the milking parlor will be situated.

The reason Golden Sands included this detail in its Building Permit Application is obvious – the seven buildings identified in the Application are useless to Golden Sands absent the attendant right to actually farm the 6,388-acre Farm Property in accordance with its zoning classification at the time the Building Permit Application was filed. As discussed above, every policy underlying the Building Permit Rule and vested rights in general (e.g., certainty, fairness, economic development) lead to the conclusion that the bright-line Building Permit Rule is appropriately extended to cover this situation and, more broadly, to protect a developer's reasonable investment-backed expectations in the land use

associated with and properly identified in its building permit application.

To hold otherwise would gut the Building Permit Rule because no developer would ever construct buildings without first ensuring it can use the associated land for its intended purpose consistent with its investment. As such, Golden Sands is not arguing for a new doctrine, new test, or even a new rule. Rather, it is simply seeking application of the existing bright-line Building Permit Rule to the facts of this case consistent with the policies and principles underlying the Rule. *See Tony Spychalla Farms, Inc. v. Hopkins Agric. Chem. Co.*, 151 Wis. 2d 431, 444 N.W.2d 743 (Ct. App. 1989) (holding that there is no extension of law when a circuit court applies an existing rule to the facts of the case before it).

II. THE BRIGHT-LINE BUILDING PERMIT RULE PROTECTS REASONABLE INVESTMENTS IN FUTURE LAND USE, WITHOUT REGARD TO ACTIVE AND ACTUAL USE OF THE LAND.

A. The Building Permit Rule Serves As A Trigger To Protect Future Use While The Active And Actual Use Test Serves A Different Purpose.

While the Court of Appeals applied the bright-line Building Permit Rule to hold that Golden Sands has the right

to construct the farm buildings, it then applied the "active and actual use" test to determine whether Golden Sands acquired a vested right in the proposed agricultural use of the Farm Property – a test that courts use to evaluate pre-existing non-conforming uses. *See Golden Sands II*, ¶ 14. No Wisconsin precedent requires a developer to satisfy both tests where a proper building permit application has been submitted, and dual tests should not be imposed in this case.

Applying two distinct vested rights tests as the Court of Appeals did in this case is not only bad policy, it is unnecessary. The active and actual use doctrine and the Building Permit Rule both seek to protect the same interest – the right to rely on zoning regulations currently in effect. However, the active and actual use doctrine protects individuals or entities who are engaged in a conforming use that later becomes non-conforming due to a change in zoning. *See Town of Cross Plains v. Kitt's "Field of Dreams" Korner, Inc.*, 2009 WI App 142, ¶ 18, 321 Wis. 2d 671, 775 N.W.2d 283 (Wisconsin statutes and law "enabling counties to pass comprehensive zoning ordinances prohibited the discontinuance of *existing* trade or industry uses of buildings and premises"). Said differently, it protects property owners

currently engaged in a specific conforming use from retroactive application of a zoning classification rendering that use unlawful. *Des Jardin v. Town of Greenfield*, 262 Wis. 43, 46-47, 53 N.W.2d 784 (1952) (imposing common law protection of *existing* uses against retroactive zoning prior to enactment of continuing use statutes).

In contrast, the bright-line Building Permit Rule protects individuals or entities planning to engage in a use that is conforming at the time their application is filed but which, as the result of intervening action by local government, would be nonconforming at the time the buildings are constructed and the operation up and running. *McKee*, 374 Wis. 2d 487, ¶ 43. Again, the Building Permit Rule is not merely about the right to construct a building. The "building permit" in the Building Permit Rule is a trigger for something larger and more important than the right to construct buildings. Submission of a complete building permit application marks the date on which the law first recognizes a developer's right to rely on the then-existing zoning classification in order to develop his or her property in the manner described to the municipality in the permit application. Per this Court's recent holding, "Wisconsin

applies the bright-line building permit rule because it creates predictability … [i]t balances a municipality's need to regulate land use with a land owner's interest in developing property under an existing zoning classification." *McKee*, 374 Wis. 2d 487, ¶ 43. Thus, the active and actual use doctrine protects past investment in reliance on zoning while the Building Permit Rule protects current and future investment in reliance on zoning classifications in place at the time of application. Both rules seek to protect property owners, purchasers and developers from knee-jerk reactions by municipalities attempting to zone them out of existence, but they are not interchangeable.

It is only through the application of two separate tests for purposes of ascertaining vested rights that the Court of Appeals came to the conclusion it did; but there was no rational basis or precedent for applying one test for construction of the proposed buildings and another for the proposed use. In creating the artificial distinction between constructing buildings and using property, the Court of Appeals creates the artifice that a developer may invest in one but not the other. As discussed previously, the right to build agricultural buildings without the right to operate a farm

eviscerates clear, investment-backed expectations legitimately grounded in existing zoning classifications. It is unreasonable to expect that Golden Sands would have started farming before obtaining the right to construct the agricultural buildings necessary to operate its Farm. The same principal applies to any project. In this sense, the Court of Appeals manufactured a chicken and egg problem that undermines, not encourages, predictability and certainty of investment in property development.

For example, a developer of a golf course could not reasonably be expected to begin planting fairways and grading greens without first securing the right to construct a clubhouse, pro shop, maintenance facility, and other structures necessary to operate a golf course. Nor would a manufacturer begin preparing a building site without the right to construct the plant, and vice versa. To avoid uncertainty and conflict in the law – and the resultant impact on the investment climate in Wisconsin – this Court should clearly delineate when vested rights are triggered by application of the bright-line Building Permit Rule such as in this case, versus when established uses are preserved by application of the active and actual use doctrine.

B. Applying Separate Vested Rights Tests To A Single Project Also Creates Disparate Protections For Equally Legitimate Investments.

In diminishing the reach of the bright-line Building Permit Rule's protections by piling on an active and actual use requirement, the Court of Appeals has now created two classes of developers: (i) those who have submitted a valid building permit application but who must also satisfy other non-zoning, non-local regulatory requirements before proceeding with the proposed development, and (ii) those who do not. This distinction is not where the bright-line is drawn under Wisconsin's Building Permit Rule, and elevating that distinction to legal significance works injustice.

As discussed in the Statement of the Case above, the record is clear and undisputed that Golden Sands cannot put the Farm Property to its intended agricultural use until it obtains the permits it requires from WDNR for irrigation wells, secures approval from the WDNR for land spreading of manure, and approvals from Wood County and WDNR for construction of the necessary manure handling and storage facilities. None of these regulatory requirements are zoning limitations, and none of them are Town requirements. Yet,

under the Court of Appeals' active and actual use approach, the bright temporal line in the Building Permit Rule is abandoned and the Town is allowed to use the review period for those non-local requirements as an ill-gotten opportunity to adopt zoning authority and disallow agricultural use on the Farm Property.

Significantly, the unfortunate dynamic validated by the Court of Appeals will not affect just Golden Sands. It stands to deprive any developer of protection under the bright-line Building Permit Rule where the proposed use is subject to regulatory requirements in addition to local building and zoning ordinances. This is *precisely* the situation the bright-line Building Permit Rule was designed to protect against.

Although in a slightly different context, this Court has already rejected the notion that non-zoning or building requirements could prevent the vesting of rights under the Building Permit Rule. *State ex rel. Schroedel v. Pagels*, 257 Wis. 376, 43 N.W.2d 349 (1950). In that case, the Wisconsin Supreme Court acknowledged that the village ordinance at issue required, as a prerequisite to the issuance of a building permit, the availability "in an abutting street a main sewer and a water main to which the plans and specifications for such

building provides a connection." *Id.* at 379. The Court expressed "considerable doubt" that such sewer and water improvements existed at the time the developer submitted the building permit application. *Id.* at 382.

But the court declined to express an opinion on that matter, because it concluded that "[t]he [developer's] plans call for a platting of the area so that such structures when erected will abut upon streets to be laid by the [developer] and dedicated to the public" and "that when completed the streets and sewers will conform to the requirements of the village." *Id.* The developer's vested rights were not compromised at all by the fact that, at the time it submitted its building permit application, it still needed to lay out streets, install sewer and water infrastructure in the streets, and dedicate those improvements to the village. There is similarly no reason why WDNR's future processing of Golden Sands' various applications should have any bearing on Golden Sands' vested rights in the prior "Unrestricted" zoning classification. Golden Sands complied with all of the building and zoning requirements that were in place when Golden Sands submitted its applications and that conclusion

will not change regardless of the outcome of WDNR's review of those applications.

The protections afforded by the Building Permit Rule should not be beyond reach simply because there may be regulatory requirements whose satisfaction precludes immediate active and actual use of the land. Imposing the active and actual use requirement on Golden Sands or any other developer who satisfies the Building Permit Rule negates the rule, and frustrates any developer's ability to rely on zoning regulations in place when a valid building permit application is submitted.

C. While The Court Could Reconcile The Building Permit Rule With The Active And Actual Use Doctrine In This Case, Doing So Is Unnecessary.

As explained above, the Court of Appeals' decision to apply multiple vested rights tests to a single project, if upheld, stands to create confusion, unequal protections, and a resultant negative impact on the investment climate in this state. If it were necessary, this Court could reconcile the application of these tests to ensure that their dual application does not diminish rights currently protected by the bright-line

Building Permit Rule. The Court could do so by confirming that significant investments in future uses made in reasonable reliance on existing zoning law and dependent on the approval of pending and duly prosecuted permit applications constitute actual and active use. The basis for doing so could legitimately be ascertained by a synthesis of this Court's precedents.

"The protection of lawful nonconforming uses – that is, uses that are lawful before the enactment of an ordinance but do not comply with the requirements of the new ordinance – arises out of the concern that the retroactive application of zoning ordinances would render their constitutionality questionable." *Kitt's "Field of Dreams" Korner, Inc.*, 321 Wis. 2d 671, ¶ 18 (citations omitted). Where a developer's "substantial rights would be adversely affected" by a change in zoning, the developer is afforded protection. *Id.* ¶ 31 (discussing and citing Wis. Stat. § 59.69(10)(a)). The court of appeals recently described the loss of substantial rights "relating to trade and industry" as meaning that "there has been a substantial investment in the use or that there will be a substantial financial loss if the use is discontinued." *Id.* The active and actual use doctrine

protects a nonconforming use of land where a zoning change adversely impacts "substantial rights" by providing "a vested interest in the continuance of that use" after a change in zoning. *Id.* ¶ 49. To demonstrate its vested interest, the owner or user of the property in question must demonstrate active and actual use of the property at the time of the zoning change. *Id.*

While Wisconsin jurisprudence in this area has focused on physical occupation and use of property, the policies underpinning the doctrine are not so narrow. In fact, the court of appeals itself recognized as recently as 2009 that the early cases laying the groundwork for the law of vested rights in Wisconsin "*concerned financial expenditures to develop a use in reliance on the existing law*, rather than a use that already existed." *Kitt's "Field of Dreams" Korner, Inc.*, 321 Wis. 2d 671, ¶ 21 (emphasis added). *See also Pagels*, 257 Wis. at 380-85 (recognizing vested rights by expenditures for plans and financing made in reliance on existing zoning); *Rosenberg v. Vill. of Whitefish Bay*, 199 Wis. 214, 217, 225 N.W. 838 (1929) (recognizing vested rights by incurring expenses in planning an apartment in reliance on existing zoning). Thus, while Golden Sands never sought protection

of its rights based on active and actual use, there is no reason it would not satisfy the policies underlying that test.

Here, Golden Sands has spent hundreds of thousands of dollars and countless hours to plan and develop the Farm. (R.59, ¶¶ 10-12.) Chief among these efforts is the prosecution of the applications for the necessary local and state federal permits which Golden Sands continues to diligently pursue to this day. (*Id.*) These expenditures effectively approximate the physical "shovel in the ground," because those are active, actual, significant and demonstrable activities undertaken in reasonable reliance on existing zoning law, and are as worthy of protection as any active and actual physical use. Indeed, denying protection to Golden Sands while affording it to property owners engaged in physical use potentially far less extensive than that demonstrated by Golden Sands' investments makes no sense at all.

While reconciliation of the bright-line Building Permit Rule with the active and actual use doctrine in the context of this case as discussed above is thus theoretically possible, articulating it would constitute an unnecessary complication of existing law. The bright-line Building Permit Rule already reconciles the rights in future uses which accrue from the

filing of a building permit application versus rights in established uses protected by the active and actual use doctrine.

III. THE LEGISLATURE'S CODIFICATION OF VESTED RIGHTS REINFORCES THE PRINCIPLE THAT THE RIGHT TO USE PROPERTY IS TRIGGERED BY THE FILING OF A PERMIT APPLICATION.

Five years ago, the Legislature codified certain aspects of common law vested rights by creating Wis. Stat. § 66.10015. This codification effort further supports the conclusion that Golden Sands has established its vested rights and is entitled to agricultural use of the Farm Property under Wood County's then-applicable "Unrestricted" zoning classification. In fact, Golden Sands' entitlement to rely on the pre-existing zoning classification would likely have been protected under the new statutory scheme had its effective date captured Golden Sands' project.

Created by 2013 Wisconsin Act 74 ("Act 74"), which was enacted December 12, 2013, the statute provides that "if a person has submitted an application for an approval, the political subdivision shall approve, deny, or conditionally approve the application solely based on existing requirements, unless the applicant and the political

subdivision agree otherwise." Wis. Stat. § 66.10015(2)(a).

The legislative drafting records[1] make it clear that the purpose of Act 74 was to codify the common law of vested rights. The initial drafting request that was submitted by Senator Frank Lasee's office to the Legislative Reference Bureau legal department articulated the sponsors' intent. (R. 61, Exh. C.) That initial drafting request included the following points:

> - The legislation would "codify current law related to when a property owner's rights to develop his or her property in a desired manner is protected or vested from subsequent changes to local land-use regulations, zoning ordinances and permit requirements."
>
> - "The concept of 'vested rights' recognizes that, at some point in time, it is unfair to change the rules and regulations affecting a property owner's ability to use or develop his or her property."
>
> - "Wisconsin law currently establishes 'vested rights' for changes to both zoning and subdivision regulations."
>
> - "Two problems exist with current law. First, a property owner's vested right to zoning is found in case law, not the state statutes. This is a

[1] The drafting records related to Act 74 are available from the Wisconsin Legislature's Wisconsin Law Archives at https://docs.legis.wisconsin.gov/document/draftingfiles/2013/74. Relevant drafting records are also those associated with the companion bill that was introduced in the Wisconsin Assembly, 2013 Assembly Bill 386, which are available from the Wisconsin Legislature's Wisconsin Law Archives at https://docs.legis.wisconsin.gov/2013/related/drafting_files/assembly_intro_legislation/assembly_bills_not_enacted/2013_ab_0386.

> problem because not all local officials are attorneys and thus they are often unaware of legal standards established in case law. Second, the law is silent as to when a property owner's rights vest with respect to future changes in other types of development regulations and permit requirements at the local level."

(*Id.* (emphasis in original).) Under the heading "Proposed Solution," the drafting request stated:

> To ensure that the rules related to changes in the development-approval process are known by both permit applicants and permit grantors, we recommend that the law be clarified to specifically state that changes to any local land-use regulations cannot be applied to permit applications that have been submitted prior to the effective date of those changes.

(*Id.*) The Legislative Reference Bureau prepared a "Drafting Request" form for the companion Assembly Bill, 2003 A.B. 386, dated February 7, 2013, which lists the "Topic" of the proposed bill as: "Codify case law that vests a property owner's right to existing zoning regulations upon application for building permit." (R. 61, Exh. D.)

It is apparent that the Legislature followed through on the authors' intent. Under Wis. Stat. § 66.10015(2)(a), a filed application conclusively establishes the developer's vested rights to rely on *all* local regulations, ordinances, rules, or other properly adopted requirements in effect at the time of application, not just pre-existing zoning ordinances.

Moreover, Wis. Stat. § 66.10015(2)(b) provides for a universal vesting date for a project that requires multiple local approvals from multiple political subdivisions:

> If a project requires more than one approval or approvals from more than one political subdivision and the applicant identifies the full scope of the project at the time of filing the application for the first approval required for the project, the existing requirements applicable in each political subdivision at the time of filing the application for the first approval required for the project shall be applicable to all subsequent approvals required for the project, unless the applicant and the political subdivision agree otherwise.

The statute provides that such projects are evaluated against all local regulations that are in place when the developer files its first application for local approval. This requirement demonstrates that the Legislature intended to foreclose any possibility that a local government could change the development regulations in response to a regulatory filing submitted to a different government agency.

Most importantly, the entire framework of the statute was to reinforce the nature of the rights that are triggered, and the interests that are thereby protected, *by the submission of permit applications for property development*. Just like the Building Permit Rule cases, the statute makes no distinction between constructing a building and putting the associated land to the currently authorized use.

While Golden Sands' Building Permit Application did not trigger the statutory protections of Wis. Stat. § 66.10015 because it was filed before the effective date of the Act, the relief Golden Sands seeks in this action is wholly consistent with the Legislature's codification of the vested rights doctrine. Moreover, the relief requested is fully supported by the Legislature's codification of a single vesting date that applies universally to all required local approvals. Here, Golden Sands concurrently submitted a suite of applications to multiple agencies. The zoning classification in place on that submittal date provided for "Unregulated" zoning on the Farm property. Golden Sands has established its vested right to conduct its farming operation pursuant to those pre-existing zoning regulations and this subsequently enacted piece of Wisconsin Statutory law certainly aligns with that conclusion.

CONCLUSION

Golden Sands' right to a building permit vested before the Town took any action to zone the Farm off the map: before the Town's Moratorium, before its Interim Zoning Ordinance, before it obtained permission from its electors to engage in zoning, and before it passed its permanent zoning ordinance. (R.60, Ex. B, ¶¶ 17, 62.) Golden Sands thus satisfied the single requirement of the bright-line Building Permit Rule. When the Town found itself on the wrong side of this bright line, however, the Court of Appeals erased it and with it, Golden Sands' legitimate investment-backed expectations. This is *exactly* the scenario the bright-line Building Permit Rule is meant to prevent.

For these reasons, and all the reasons discussed above, the Court should reverse the decision of the Court of Appeals and hold that Wisconsin's bright-line Building Permit Rule protects an applicant's right to both construct buildings and to use the project land necessarily associated with the buildings

in the lawful manner described in the building permit application.

Dated this 12th day of October, 2017.

MICHAEL BEST & FRIEDRICH LLP

By: */ s / Jordan J. Hemaidan*

Jordan J. Hemaidan, SBN 1026993
Daniel A. O'Callaghan, SBN 1042866
Joseph D. Brydges, SBN 1079318
One South Pinckney Street
P.O. Box 1806
Madison, WI 53701-1806
608.257.3501

Brian G. Formella, SBN 1012637
ANDERSON, O'BRIEN, BERTZ,
SKRENES & GOLLA
1257 Main Street
P.O. Box 228
Stevens Point, WI 54481-0228
715.344.0890

Attorneys for Plaintiff-Respondent-Petitioner Golden Sands Dairy, LLC

CERTIFICATION OF FORM AND LENGTH

I certify that this Brief conforms to the rules contained in Wis. Stat. §§ 809.19(8)(b) and (c) for a Brief produced using a proportional serif font. The length of this Brief is 9,170 words.

Dated this 12th day of October, 2017.

/ s / Jordan J. Hemaidan
Jordan J. Hemaidan

CERTIFICATION OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the Appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that the electronic Brief is identical in content and format to the printed form of the Brief filed as of this date.

A copy of this certificate has been served with the paper copies of the Brief and Appendix filed with the Court and served on all opposing parties.

Dated this 12th day of October, 2017

/ s / Jordan J. Hemaidan
Jordan J. Hemaidan

STATE OF WISCONSIN
SUPREME COURT
Case No. 2015AP001258

GOLDEN SANDS DAIRY, LLC,

Plaintiff-Respondent-Petitioner,

ELLIS INDUSTRIES SARATOGA, LLC,

Plaintiff,

v.

TOWN OF SARATOGA, TERRY A. RICKABY, DOUGLAS PASSINEAU, PATTY HEEG, JOHN FRANK AND DAN FORBES,

Defendants-Appellants,

RURAL MUTUAL INSURANCE COMPANY,

Intervenor.

Review of April 13, 2017 Decision of the Court of Appeals, District IV, Appeal No. 2015AP001258

Wood County Circuit Court Case No. 12-CV-0389, The Honorable Thomas Eagon Presiding

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AFFIDAVIT OF SERVICE

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

I, Jodi Brown, being first duly sworn, state that on October 12, 2017, I caused three (3) true and correct copies of the Brief and Appendix of Plaintiff-Respondent-Petitioner Golden Sands Dairy, LLC to be served upon the following:

Via First Class mail, postage prepaid:

Paul Kent
Stafford Rosenbaum LLP
222 West Washington Avenue, Suite 900
Madison, WI 53701-1784

Remzy D. Bitar
Arenz, Molter, Macy, Riffle & Larson, S.C.
720 North East Avenue
Waukesha, WI 53186

Ryan Braithwaite
Crivello Carlson, S.C.
710 N. Plankinton Avenue, Suite 500
Milwaukee, WI 53203-2404

Monte E. Weiss
Weiss Law Office, S.C.
1017 W. Glen Oaks Lane, Suite 207
Mequon, WI 53092

Thomas D. Larson
Wisconsin REALTORS Association
4801 Forest Run Road, Suite 201
Madison, WI 53704-7337

H. Dale Peterson
John J. Laubmeier
Stroud, Willink & Howard, LLC
25 West Main Street, Suite 300
P.O. Box 2236
Madison, WI 53701-2236

/ s / Jodi L. Brown
Jodi L. Brown

Subscribed and sworn to before me
this 12th day of October, 2017

/ s / Fran M. Wiley
Notary Public, State of Wisconsin
My Commission: expires 11/27/2020