

STATE OF WISCONSIN

CIRCUIT COURT

WINNEBAGO COUNTY

RADTKE CONTRACTORS INC.
A Wisconsin Corporation,
6408 Cross Road
Winneconne, WI 54986

Plaintiff,

Case No. 16-CV-_____
Case Code: 30701, 30704, 30954

v.

WISCONSIN DEPARTMENT OF
TRANSPORTATION
4802 Sheboygan Ave.
Madison, WI 53705

and

WISCONSIN DEPARTMENT OF
TRANSPORTATION
Northeast Region
944 Vanderperren Way
Green Bay, WI 54304-5344

Defendants.

VERIFIED COMPLAINT

Plaintiff Radtke Contractors Inc. for its complaint against Defendant, the Wisconsin Department of Transportation, alleges as follows:

PARTIES

1. Plaintiff Radtke Contractors Inc. (“Radtke”) is a corporation organized and existing under the laws of the State of Wisconsin with its principal place of business located at 6408 Cross Road, Winneconne, Wisconsin 54986.

2. Defendant Wisconsin Department of Transportation (“WisDOT”) is an agency of the State of Wisconsin with its principal office located at 4802 Sheboygan Avenue, Madison, Wisconsin 53705.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the WisDOT under Wis. Stat. § 801.05(1).

4. Additionally, venue is proper in this County under Wis. Stat. §§ 801.50(2)(a) and (b), as it is the County in which the conduct complained of arose and it is the County where real property that is the subject of the claim is situated.

FACTUAL ALLEGATIONS

Radtke

5. The Radtke family started Radtke over fifty years ago, and it remains a family-owned business.

6. In total, Radtke employs nearly 100 workers in three main divisions: the Marine Division, the Bridge Division, and the Excavation Division.

7. The Marine Division is the most successful of the three.

8. The other two construction divisions as well as the overhead structure of Radtke depend upon the Marine Division.

9. If the Marine Division is forced out of business, Radtke and its affiliated businesses likely cannot survive.

10. Radtke's Marine Division provides critical services to its customers on the Lake Winnebago system.

11. The Lake Winnebago system follows the Wolf River south from New London through Partridge Lake, Lake Poygan, Lake Winneconne, Lake Butte des Morts, Lake Winnebago and north on the lower Fox River up to Appleton.

12. The Lake Winnebago system extends through Outagamie, Winnebago, Fond du Lac, and Calumet Counties.

13. Radtke's Marine Division provides design, manufacture, construction, and installation of seawalls, wharves, jet-ski lifts, and permanent and seasonal docks and boatlifts to property owners along the Lake Winnebago system.

14. Radtke also performs pile driving, dredging, and rock rip rap service, among other things.

15. Radtke serves hundreds of customers every year including businesses, cooperatives, public service companies, clubs and associations, parks, municipalities, state agencies, and private families.

16. Some of Radtke's Marine Division customers include: Butte des Mort Sanitary District; the City of Kaukauna; the City of Menasha; the City of Neenah; the City of Omro; the City of Oshkosh; High Cliff State Park; the Village of Howard Public Works; Neenah Parks & Recreation Department; the City of New London; the City of Oshkosh; the Town Of Algoma; the Town of Omro; the Town of Wolf Rive; the Village of Fremont; the Village of Kimberly; the Village of Winneconne; the Wisconsin Department of Natural Resources; the Wisconsin Department of Administration; and Winnebago County Parks Department.

17. There are no other nearby marine contractors of similar size and capability to Radtke.

18. If Radtke were forced to close its Marine Division, waterfront property owners on the Lake Winnebago system risk losing the full use and enjoyment of their property.

The Property

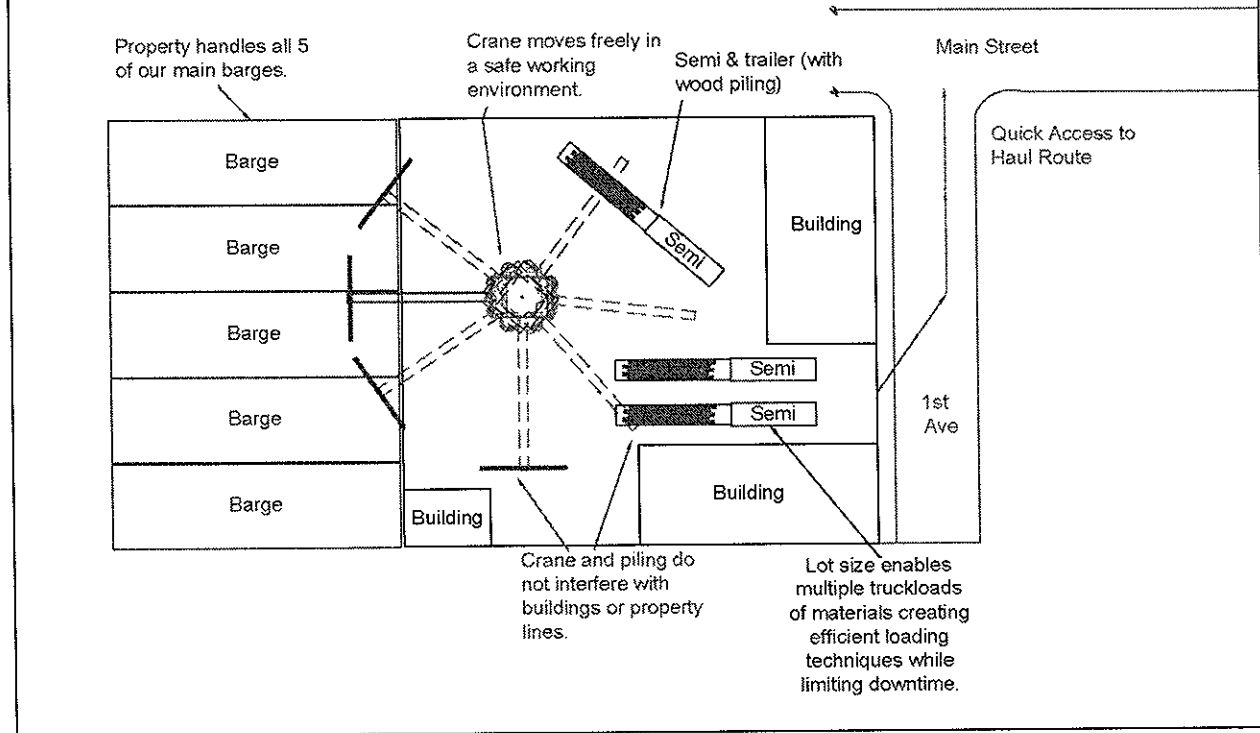
19. Radtke operates its Marine Division from three contiguous parcels at 15-21 East Main Street in Winneconne, Wisconsin (the "Property").

20. In total the Property measures .559 acres or 24,350 square feet with about 150 feet of frontage on the Wolf River.

21. Radtke uses the three parcels as a single unit.

22. Below is an accurate depiction of the Property as it now exists:

Before DoT Acquisition



23. The river frontage provides Radtke access to the Lake Winnebago system.
24. The Property is uniquely situated in a “safe harbor” on the Wolf River, protected from wind and waves, and at a suitable water depth for Radtke’s operations.
25. Radtke operates two tugboats and five crane barges, which it moors on Wolf River.
26. WisDOT’s expert appraiser concluded that “[t]he work barges are essential and significant components of Radtke . . .” **Exhibit H.**
27. The tugs and barges would be useless, however, unless Radtke has some viable way of loading the barges, and placing and moving the barges into and out of the Wolf River.

28. For the purposes described in Paragraph 26, above, Radtke operates a large crane, as depicted in the graphic set forth in Paragraph 21, above.

29. The crane permits Radtke to place and move tugboats and barges into and out of the Wolf River.

30. The crane also permits Radtke to load those barges with equipment and materials needed for projects.

31. The crane has the capability of turning 360 degrees.

32. Loading the barges requires that the crane be able to turn at least 180 degrees to transport items from the stock yard to the moored barges, as depicted above.

33. Occasionally, Radtke needs two cranes to place and move barges into and out of the Wolf River.

34. Currently, the Property has the minimum square footage to accommodate the use of a crane as it allows the crane to turn 360 degrees, which enables the crane to operate in its full capacity.

35. In addition, the Property offers enough space for barge and tugboat repair, seasonal storage of customer's docks and boatlifts, and temporary storage of construction materials.

36. In its current configuration, the Property has enough river frontage to allow Radtke to moor five 30' by 115' barges along the riverfront.

37. The Property currently has suitable access to Main Street (Wisconsin Highway 116) off of First Avenue.

38. However, as set forth below, all of this is about to change as WisDOT has taken 73% of the Property's river frontage and 57% of the Property's overall square footage.

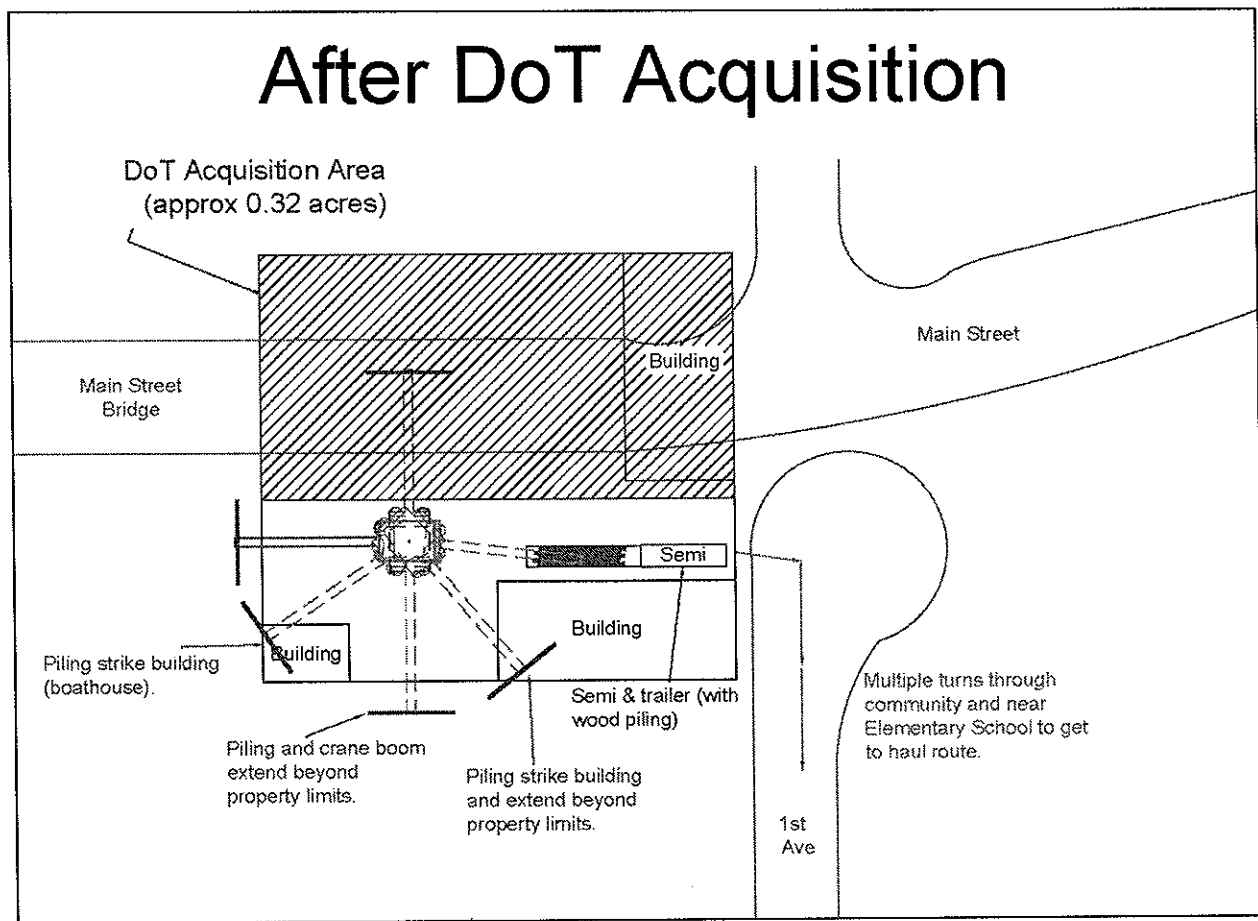
39. The remnant cannot accommodate Radtke's Marine Division.

WIS 116 Wolf River Bridge Project

40. WisDOT proposes to construct a new bridge over the Wolf River on Main Street (Wisconsin Highway 116) in Winneconne (the "Project").

41. As depicted in Paragraph 42 below, the Project entails taking over half of the Property and over two-thirds of the Property's river frontage.'

42. Below is a depiction of the post-taking remnant:



43. Radtke will be unable to operate its Marine Division from the post-taking remnant as depicted above.

44. First, the post-taking remnant will afford less than 45-degrees rotation of the crane over the river frontage.

45. The restricted crane rotation would make it impossible for Radtke to transport items from a potential (although inadequate) loading area (near the semi and trailer parking area) to riverfront in a safe and lawful manner.

46. The only ways for Radtke to transport items from the loading area to the riverfront in the post-taking configuration of its property would be to trespass over its residential neighbor to the south, or to trespass over the Main Street traffic to the north. Either mode of operation would be unlawful and unsafe.

47. Without the ability to place and remove tugboats and barges into and out of the Wolf River, and to load those barges with equipment and materials needed for projects, the Property is unusable to Radtke's Marine Division.

48. In fact, since Radtke's business exists only to serve customers on the Lake Winnebago system, WisDOT's threatened actions would force Radtke to default on contractual obligations, close its Marine Division and leave consumers without a comparable service on the Lake Winnebago system.

49. Second, instead of allowing Radtke to moor five 30' by 115' barges along the riverfront, the post-taking remnant would leave only enough frontage for Radtke to moor one barge.

50. Third, the taking dramatically reduces space for: tugboat and barge repair, seasonal storage of customer's docks and boatlifts; and temporary storage of construction materials.

51. The remaining square footage is simply too small to meet Radtke's day-to-day needs.

52. Fourth, the post-taking remnant will also suffer road access issues. Currently, heavy semis and dump trucks can access Radtke's property by turning from Main Street (WIS 116) directly on to South First Avenue.

53. After the taking, however, Main Street will no longer have direct access to South First Avenue.

54. Radtke will need to re-route its traffic (often over length and overweight by annual permit) through residential areas.

55. It is currently unknown whether the residential area can handle this type of traffic or whether local traffic authorities would even permit such access in the future.

56. Radtke repeatedly raised these concerns with WisDOT over the course of a number of years.

57. WisDOT ignored Radtke.

58. WisDOT also denied that the Project will put Radtke's Marine Division out of business.

The Taking and the "Relocation Package"

59. On August 12, 2016, WisDOT began negotiating with the Property's landlord, Executive Investments LLC, which is also owned by the Radtke family. **Exhibit A.**

60. On September 28, 2016, WisDOT sent a 90-day Notice to Vacate letter to Radtke demanding that Radtke move by January 1, 2017. **Exhibit B.**

61. In addition to paying just compensation to the Property owner, Wisconsin Statutes require that a condemner make “a comparable replacement property available to” a condemned property’s occupant that is displaced by a condemnation. Wis. Stat. § 32.05(8)(b), and (c).

62. Under Wisconsin Statutes § 32.19(2)(e)(1):

[A] “[d]isplaced person” means . . . any person who moves from real property or who moves his or her personal property from real property: [a]s a direct result of a written notice of intent to acquire or the acquisition of the real property, in whole or in part or subsequent to the issuance of a jurisdictional offer under this subchapter, for public purposes. . . .

63. Because Wisconsin Statutes § 32.19(2)(e)(1) includes the language “acquisition of the real property, in whole or in part,” it explicitly governs both “total takings” and “partial takings.”

64. When a business is a “displaced person,” the statutes require that the condemnor identify a “comparable replacement business.”

65. Under Wisconsin Statutes § 32.19(2)(c):

“Comparable replacement business” means a replacement business which, when compared with the business premises being acquired by the condemnor, is adequate for the needs of the business, is reasonably similar in all major characteristics, is functionally equivalent with respect to condition, state of repair, land area, building square footage required, access to transportation, utilities and public service, is available on the market, meets all applicable federal, state or local codes required of the particular business being conducted, is within reasonable proximity of the business acquired and is suited for the same type of business conducted by the acquired business at the time of acquisition.

66. As shown above, it is impossible for Radtke to operate its Marine Division from the post-taking remnant.

67. In other words, Radtke is a “displaced person” within the meaning of Wisconsin Statutes § 32.19(2)(e).

68. In addition, Radtke currently stores its own personal property, and the personal property of third-parties, on the Property.

69. If and when the Project moves forward, Radtke will be required to move “personal property” from the Property.

70. Because Radtke would be required to move “personal property” “as a direct result” of WisDOT’s taking, Radtke is a “displaced person” within the meaning of Wisconsin Statutes § 32.19(2)(e).

71. As a consequence, WisDOT is required by statute to identify a “comparable replacement business.”

72. Recognizing its obligation under Chapter 32 to offer Radtke a comparable business location, WisDOT sent a so-called “relocation package” to Radtke on October 7, 2016.

Exhibit C.

73. The relocation package proposed that Radtke could relocate its business to a parcel located at 266 S. Broadway in Green Bay (the “Green Bay Parcel”).

74. The Green Bay Parcel is not a “comparable replacement business” within the meaning of Wisconsin Statutes § 32.19(2)(c).

75. The Green Bay Parcel is located approximately 55 miles away from the Property and is, therefore, not “within reasonable proximity of the business acquired” as required by Wisconsin Statutes § 32.19(2)(c).

76. As a consequence, the Green Bay Parcel not “within reasonable proximity of the acquired business if necessary to retain existing or new clientele.” Wis. Admin. Adm. 92.01(7)€;

77. Further, the Green Bay Parcel is not located on the Lake Winnebago system and therefore is not “functionally equivalent with respect to . . . access to transportation” within the meaning of Wisconsin Statutes § 32.19(2)(c) because there is no suitable way for Radtke’s

barges to travel from Green Bay to the Lake Winnebago system where Radtke's customers are located.

78. In sum, the Green Bay Parcel is not "adequate for the needs of the business," as required by Wisconsin Statutes § 32.19(2)(c).

79. In a November 16, 2016 letter, Radtke's counsel identified these deficiencies in the proposed comparable replacement business location and demanded that WisDOT identify a "comparable replacement business," as required by the statutes.

80. In response, WisDOT made no attempt to justify the Green Bay Parcel as functionally equivalent to Radtke's existing business location. Instead, after realizing that the Green Bay Parcel was unsuitable, WisDOT shifted its position and now claims that Radtke is not a "displaced person."

81. WisDOT bases its assertion upon the false belief that Radtke can somehow continue to operate the Marine Division from the post-taking remnant.

82. On November 28, 2016, WisDOT sent Radtke a 30-day Notice to Vacate.

Exhibit D.

83. Telephonically, WisDOT requested additional evidence that the post-taking remnant was inadequate for Radtke's Marine Division.

84. Radtke provided this information on December 15, 2016 and demanded that WisDOT withdraw the Notice to Vacate.

85. On December 22, 2016, WisDOT extended the Notice to Vacate through January 13, 2017. **Exhibit E.**

86. On December 27, 2016, counsel for WisDOT called Radtke's counsel to discuss Radtke's objections to the proposed relocation package.

87. During this conversation, WisDOT disclosed, for the first time, that it has no intention of seeking a writ of assistance to eject Radtke after WisDOT completed the taking.

88. According to WisDOT, the taking would have the effect of terminating Radtke's lease and, as a result, WisDOT would not need to take any further action or obtain a writ of assistance before commencing work on the Project.

89. Wisconsin Statutes § 32.05(8)(c), of course, states: "[t]he condemnor may not require the persons who occupied the premises on the date that title vested in the condemnor to vacate until a comparable replacement property is made available" (emphasis added).

90. WisDOT has not—and cannot—dispute that Radtke an "occupant" of the Property on the date that title vested in WisDOT.

91. WisDOT refused to disclose how it could eject Radtke from its occupancy without applying for a writ or court order.

92. WisDOT has similarly refused to disclose how it could seize and dispose of personal property owned by Radtke and third-parties without applying for a writ or court order.

93. Nevertheless, the two sides agreed to continue discussions to resolve the issue of finding a comparable replacement business.

94. Accordingly, Radtke agreed to meet with WisDOT representatives on Tuesday, January 17, to discuss potential alternative sites for Radtke's business.

95. At this meeting, WisDOT presented Radtke with the Award of Damages which completed WisDOT's taking of the Property.

96. WisDOT told Radtke that Radtke had 30-days to vacate the Property. **Exhibit F.**

97. Also, at this meeting, all parties agreed that the Green Bay Property was not a "comparable replacement property."

98. In addition, all attendees viewed the barges, docks, and other personal property stored on the Property as of January 17, 2017.

99. This personal property was present on the Property on the January 13, 2017, the date that WisDOT purports to have signed the Award of Damages.

100. WisDOT reiterated, however, its belief that WisDOT was not required to identify a comparable replacement property.

101. The two parties agreed that due to zoning restrictions no comparable property exists.

102. Although there are not currently any comparable properties available, the two sides identified a couple candidate properties that were capable of being made comparable if local authorities agreed to rezoning and other substantial improvements were made to the replacement properties.

103. These properties, however, are not currently comparable within the meaning of governing Wisconsin Department of Administration (“DOA”) rules, because neither option is zoned for use by the Marine Division.

104. DOA rules states that a comparable replacement property must “meet[] applicable federal, state or local codes.” Wis. Admin. Adm. 90.01(7)(a).

105. In the interest of moving the parties forward, Radtke agreed to explore the option of purchasing two nearby parcels of land (neither or which is currently for sale) and requesting rezoning from the Village of Winneconne and Chapter 30 permits from the Wisconsin Department of Natural Resources (“WDNR”).

106. The Chapter 30 permits a necessary to complete construction along the shoreline to make the proposed alternate property useable for Radtke’s business.

FILED
02-08-2017
Clerk of Circuit Court
Winnebago County, WI
2017CV000129
Honorable Scott C Woldt
Branch 2

STATE OF WISCONSIN

CIRCUIT COURT

WINNEBAGO COUNTY

RADTKE CONTRACTORS INC.
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Plaintiff,

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Green Bay, WI 54304-5344

Defendants.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above filed a lawsuit against you. The Complaint, which is attached, states the basis of the legal action.

Within forty five (45) days of receiving this Summons and Complaint, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the Statutes. The answer must be sent or delivered to the Court, whose address is Clerk of Courts, Winnebago County Courthouse, 415 Algoma Blvd, Oshkosh, WI 54901 and to Ian A. Pitz, whose address is Michael Best & Friedrich LLP, 1 S Pinckney St #700, Madison, WI 53703, Madison, Wisconsin 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within forty five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

MICHAEL BEST & FRIEDRICH LLP

By: *Electronically signed by Ian A. J. Pitz*
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Attorneys for Plaintiff Radtke Contractors Inc.

107. Because it takes significant time for re-zoning and regulatory permitting, Radtke simply requested that WisDOT extend its Notice to Vacate.

108. By letter of January 19, 2017, WisDOT agreed to “extend” the Notice to Vacate up until February 15, 2017. **Exhibit G.**

109. In reality, this supposed “extension” is illusory.

110. The statutes *automatically* give a condemnee “rent-free occupancy of the acquired property for a period of 30 days, commencing with the next 1st or 15th day of the month after title vests in the condemnor, whichever is sooner.” Wis. Stat. § 32.05(8)(b).

111. Because WisDOT did not acquire the Property until January 13, 2017, the very earliest that Radtke would be required to vacate the Property is February 15, 2017 (even assuming that WisDOT had met the rest of its statutory obligations).

112. Radtke continues to cooperate with WisDOT while WisDOT attempts to find a comparable replacement property.

113. Nevertheless, WisDOT refuses to extend the Notice to Vacate beyond February 15 despite Radtke’s multiple requests.

COUNT I – DECLARATORY JUDGMENT

114. Radtke realleges and incorporates herein fully by reference the allegations set forth in all above paragraphs.

115. Wisconsin Statutes § 32.05(8)(b), and (c) require that a condemnor identify a “comparable replacement property” to “displaced persons,” within the meaning of the statutes.

116. Radtke is a “displaced person” within the meaning of Wisconsin Statutes § 32.19(2)(e).

117. WisDOT falsely asserts that Radtke is not a “displaced person.”

118. To date, WisDOT has only identified the Green Bay Parcel as a potential site for Radtke to operate its Marine Division.

119. The Green Bay Parcel is not a “comparable replacement business,” within the meaning of Wisconsin Statutes § 32.19(2)(c) because the Green Bay Parcel is not:

- i. “adequate for the needs of the business”;
- ii. “within reasonable proximity of the business acquired”; and not
- iii. “functionally equivalent with respect to . . . access to transportation.”

120. An actual justiciable controversy exists between WisDOT and Radtke.

121. Radtke is entitled to a declaratory judgment, pursuant to Wis. Stat. § 806.04, that it is a “displaced person” within the meaning of Wisconsin Statutes § 32.19(2)(e).

122. Radtke is also entitled to a declaratory judgment, pursuant to Wis. Stat. § 806.04, the Green Bay Parcel is not a “comparable replacement business,” within the meaning of Wisconsin Statutes § 32.19(2)(c).

123. Radtke is also entitled to declaratory judgment, pursuant to Wis. Stat. § 806.04, that WisDOT is required by Wisconsin Statutes § 32.05(8)(b), and (c) to identify a “comparable replacement property.”

124. Radtke is further entitled to a declaratory judgment that WisDOT cannot eject Radtke from its occupancy without obtaining a writ of assistance from the circuit court in accordance with Wisconsin Statutes § 32.05(8)(b).

125. Radtke is further entitled to a declaratory judgment that WisDOT cannot seize and dispose of personal property owned by Radtke and third-parties without obtaining a writ or other court order authorizing WisDOT to seize and dispose of such personal property.

COUNT II – INJUNCTION

126. Plaintiff realleges and incorporates herein fully by reference the allegations set forth in all above paragraphs.

127. Radtke will suffer irreparable harm unless the Court enjoins WisDOT from proceeding with the Notice to Vacate.

128. Radtke has a valuable business interest at stake in its occupancy of the Property.

129. If the Court fails to enjoin WisDOT from proceeding with the Notice to Vacate, any claim that Radtke may have related to its valuable business interest may be rendered moot.

130. Radtke has no adequate remedy at law.

131. An injunction is necessary to maintain the status quo.

COUNT III-MANDAMUS

132. Plaintiff realleges and incorporates herein fully by reference the allegations set forth in all above paragraphs.

133. Radtke has a “clear legal right” that a comparable replacement property is made available” before WisDOT can require Radtke to vacate the property. Wis. Stat. § 32.05(8)(c).

134. WisDOT has a positive and plain duty to make available a “comparable replacement property” available to Radtke before attempting to remove Radtke from the Property. Wis. Stat. § 32.05(8)(c).

135. Radtke will suffer substantial damages for which it can never be adequately repaid should WisDOT go forward with its planned course of action to remove Radtke from the Property before making a “comparable replacement property” available.

136. Radtke has no adequate remedy at law because the statutes do not ordinarily provide adequate money damages to compensate a condemnee for its full damages.

137. Radtke is entitled to a writ of mandamus requiring WisDOT to make a comparable replacement property available before requiring Radtke to vacate the property.

WHEREFORE, Radtke respectfully requests that this Court enter an Order as follows:

A. A declaration that:

(1) Radtke is a “displaced person” within the meaning of Wisconsin Statutes § 32.19(2)(e);

(2) The Green Bay Parcel is not a “comparable replacement business,” within the meaning of Wisconsin Statutes § 32.19(2)(c);

(3) WisDOT is required by Wisconsin Statutes § 32.05(8)(b), and (c) to identify a “comparable replacement property”;

(4) WisDOT cannot eject Radtke from its occupancy without obtaining a writ of assistance from the circuit court in accordance with Wisconsin Statutes § 32.05(8)(b);

(5) WisDOT cannot seize and dispose of personal property owned by Radtke and third-parties without obtaining a writ or other court order authorizing WisDOT to seize and dispose of such personal property.

B. An injunction prohibiting WisDOT from proceeding with the Notice to Vacate;

C. A writ of mandamus requiring WisDOT to make a comparable replacement property available before requiring Radtke to vacate the property;

D. Awarding Radtke costs and disbursements incurred herein, including a reasonable attorneys’ fee; and

E. Awarding such other and further relief as the Court deems just and equitable.

Dated this 8th day of February, 2017.

MICHAEL BEST & FRIEDRICH LLP

By: Electronically signed by Ian A. J. Pitz
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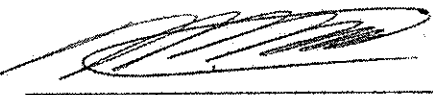
Attorneys for Plaintiff Radtke Contractors Inc.

VERIFICATION

STATE OF WISCONSIN)
) SS:
COUNTY OF WINNEBAGO)

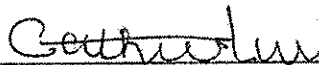
Now comes Michael Radtke, for Plaintiff Radtke Contractors Inc., and after being duly sworn according to law, states that the information contained in this Verified Complaint is true and correct to the best of his current knowledge, information and belief.

Radtke Contractors Inc.

By: 

Michael Radtke

SWORN TO AND SUBSCRIBED in my presence by the above-named affiant at Winneconne, Wisconsin, this 8th day of February, 2017.



Notary Public

