

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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Daniel S. Baillargeon d/b/a Baillargeon Properties, LLC,	)	
	)	
<b>Plaintiff.</b>	)	Court File No. 15-CV-209
	)	Case Type: Civil Rights
v.	)	
	)	
<b>Village of Somerset,</b>	)	
	)	
and its village president	)	<b>PLAINTIFF'S FIRST</b>
	)	<b>AMENDED COMPLAINT</b>
<b>Jeffrey Johnson</b> , in his official capacity as Somerset village president,	)	<b>(JURY TRIAL DEMANDED)</b>
	)	
<b>Defendants.</b>	)	
	)	
	)	

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The Plaintiff, Daniel S. Baillargeon, by his attorney Tyler W. Brennan, complains against the above-named Defendants as follows:

**INTRODUCTION**

1. This case concerns real property that has been subject to willful, repetitious, and egregious governmental interference by the Village of Somerset.
2. This case presents an opportunity for this Court to clarify the limits of government's ability to use its powers to transfer private property from the hands of one party to the hands of another, and to ensure that, when local governments take private property for the purpose of future development, such taking is in fact for a valid public use.

3. Defendants, while acting under color of state law in their official capacities for the Village of Somerset, have acted and conspired to deprive Plaintiff of his constitutional rights by taking Plaintiff's property without just compensation.

### **JURISDICTION AND VENUE**

4. The federal claims in this action arise under the 5th and 14th Amendments of the United States Constitution and Civil Rights claims under 42 U.S.C. §§ 1981 *et seq.*

5. The pendent state law claims in this action arise under Article I, §13 of the Wisconsin Constitution and the common law of the State of Wisconsin relating to takings.

6. In addition to the statutes cited above, this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343 (suits arising under federal civil rights statutes) and 28 U.S.C. § 1367 (supplemental jurisdiction). Plaintiff requests declaratory relief pursuant to 28 U.S.C. §§ 2201-2202. Pursuant to 42 U.S.C. § 1988(a), "The jurisdiction in civil...matters conferred on the district courts...for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified

and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause...”

7. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391.
8. The amount in controversy far exceeds any jurisdictional requirement.

#### **PARTIES**

9. Plaintiff Baillargeon Properties, LLC is a Wisconsin limited liability company with its principal place of business at 588 155th Avenue, Somerset, Wisconsin 54025.

10. Plaintiff Daniel S. Baillargeon is an adult resident of the state of Wisconsin and resides at 588 155th Avenue, Somerset, Wisconsin 54025. Daniel S. Baillargeon is the owner, manager, and registered agent of Baillargeon Properties, LLC (hereafter collectively referred to as “Baillargeon”).

11. Defendant Village of Somerset (hereafter “Somerset”) is a municipal corporation organized and existing in Wisconsin. Defendant Jeff Johnson (“Village President”) is currently the village president of Somerset and has been the village president at all times relevant to this complaint.

## FACTUAL BACKGROUND

12. This action concerns a parcel of property located in Somerset, Wisconsin 54025 (Parcel Identification Number (PIN) 181-1009-10-120) that has served as a parking lot for event parking during concerts, festivals, and other attractions for over 20 years. This parcel shall heretofore be referred to as the "Parking Lot."

13. The Parking Lot has a parking capacity of 1,028 vehicles. It is unique in that it is the first parking lot available for out of town visitors, spectators, and other event attendees who enter Somerset from the greater St. Paul/Minneapolis area. Moreover, the Parking Lot is especially attractive to such visitors because it is located immediately adjacent to County Road VV, which is the main highway passing through Somerset. Because of these unique specifications, the Parking Lot has historically been one of the first parking lots to fill up when visitors attend events.

14. Baillargeon's predecessor in interest, M.L. Johnson Development (hereafter "Johnson Development"), was required by the Village of Somerset to satisfy a number of conditions with regard to the Parking Lot in order to obtain approval for a conditional use permit (CUP) to park vehicles. Johnson Development was required to install a fence around the Parking Lot, build a berm on the western side of the lot, and install a turn-lane from County Road VV to reduce highway congestion when accessing the Parking Lot. In total, Johnson

Development was required to pay over \$238,000.00 in improvements for the Parking Lot.

15. In addition to the improvements made, Johnson Development was required to convey a 66' strip along the eastern portion of the Parking Lot to Somerset (identified as, and hereafter referred to as, "Outlot 2"). Outlot 2 is dedicated for "the future use and development" of Somerset. Outlot 2 was reserved solely for potential residential and/or commercial development by Somerset. Its use is restricted "for the benefit of the public" under Wis. Stat. 236.293.

16. To date, no residential and/or commercial development has occurred. In fact, no residential and/or commercial development is plausible because the surrounding property has been converted into either to agricultural land, concert venues, and/or additional parking/camping grounds.

17. The Parking Lot is available for events hosted by Somerset Amphitheater, LLC (hereafter "Amphitheater") as well as other events hosted by the Village of Somerset. Amphitheater is the owner of the land surrounding the Parking Lot. Amphitheater's property contains concert venues, stores, campgrounds and parking lots.

18. Entry into both the Parking Lot and Amphitheater originate via County Highway VV (also identified as "Main Street"). The driveway for Amphitheater is approximately 600 feet to the East of the driveway for the Parking Lot.

19. On May 15, 2012, Baillargeon executed a land contract with Johnson Development to purchase the Parking Lot from Johnson Development for a purchase price of \$275,000.00.

20. Baillargeon first licensed parking spaces during the weekend of May 19-May 21, 2012. That weekend, Amphitheater hosted "Tough Mudder," an obstacle-course themed running event that attracted several thousand visitors.

21. On May 19, 2012, Baillargeon opened his lot and began licensing parking spaces. Shortly after vehicles began entering his property, two police cruisers appeared on behalf of Somerset and blocked access to the Parking Lot. The police cruisers directed traffic to enter and park via Amphitheater's property driveway.

22. Baillargeon learned that the owner of Amphitheater, Matt Mithun (hereafter "Mithun"), had contacted Somerset and requested that access to the Parking Lot be blocked. The police cruisers blocked access to the Parking Lot for approximately two hours, during which time traffic was directed down the road and into Amphitheater's parking lots.

23. Baillargeon subsequently spoke with the police officers and informed them that blocking access to the Parking Lot was unlawful. The police officers eventually left and Baillargeon was able to resume licensing parking spaces.

24. In either late May or early June of 2012—shortly after the "Tough Mudder" event—Mithun contacted the village and requested a driveway permit

through Outlot 2, the entry point for the Parking Lot. Notwithstanding that Mithun already had a driveway located 600 feet to the East of the Parking Lot, Somerset granted Mithun a driveway permit without any notice or hearing. The permit allowed Mithun to use Outlot 2 as a driveway.

25. In June, 2012, Mithun removed the curb on Outlot 2 and created a driveway going through the dedicated parcel. Baillargeon was not previously informed of this, nor was Baillargeon given a chance to be heard. The portion of the curb that Mithun removed was a piece of the intersection that Johnson Development was required to build prior to obtaining its conditional use permit.

26. Although the driveway permit's stated use was for safety vehicles, the driveway subsequently used to re-direct visitors, spectators, and festival attendees around the Parking Lot and into Amphitheaters parking lots.

27. In July or August, 2012, Amphitheater hosted Summer Set Festival. Prior to the festival's opening day, Village President, who was working as head of security for Mithun and Amphitheater, informed Baillargeon that he was not permitted to open the Parking Lot. Village President informed Baillargeon of this without any hearing or any collective action by the Somerset village board.

28. As a result, Baillargeon was not able to park vehicles on Thursday or Friday. At a price of \$15.00 per vehicle per day, Baillargeon lost approximately \$30,000.00 in revenue.

29. Following these events, Baillargeon contacted the village on numerous occasions to resolve the ongoing issues. Baillargeon attended board

meetings and spoke with members of the village board. Baillargeon was repeatedly assured that the issue would be resolved; however, no action has ever been taken on these assurances.

30. Baillargeon has raised concerns over the conflicting financial interests of Village President, who is working as security personnel for Amphitheater. Baillargeon has specifically raised concerns over the disparate treatment of Mithun/ Amphitheater compared to other businesses, including the Parking Lot.

31. On multiple occasions since May 2012, Somerset and/or Village President have directly blocked access to the Parking Lot through the use of police cruisers, private vehicles (including vehicles belonging to Mithun/Amphitheater and being operated by Village President), and hazard cones. While engaging in this conduct, Somerset has also permitted Amphitheater to block access and direct traffic immediately around the Parking Lot via the driveway permit located on Outlot 2.

32. In February, 2015, Baillargeon retained legal counsel and attended a village board meeting and expressed his desire to amicably resolve the conflict.

33. Baillargeon informed the Village of Somerset Board (hereafter "Board") that the village could be subject to liability under the Takings Clause for this conduct. Baillargeon proposed alternative remedies to resolve the conflict.



34. The Village suggested that Baillargeon, by and through his legal counsel, discuss in-person the matter with the village attorney, Anders Helquist (hereafter "Village Attorney").

35. Village Attorney has refused to engage in constructive conversations with Baillargeon or his legal counsel. Village Attorney has evaded in-person discussions and has not offered any alternatives for Baillargeon.

36. On March 17, 2015, Baillargeon's legal counsel attended a Village Board Meeting. Prior to the meeting, Baillargeon's legal counsel was informed that he would be added to the agenda to once again discuss the issues of the Parking Lot being blocked and Outlot 2 being used for private benefit by Amphitheater. However, after a brief presentation, Baillargeon's legal counsel was informed for the first time that there would be no discussion with him regarding the matter.

37. Baillargeon has continued to raise these issues and concerns to Somerset on multiple occasions during the previous two years. Despite Baillargeon providing notice of these infractions, Somerset has remained inactive, and instead has continued to engage in conduct that is harming Baillargeon.

38. Notwithstanding that access to the Parking Lot has been, and continues to be, eliminated, obstructed, or otherwise impaired by Somerset and Village President, Somerset has refused to take any corrective, preventative, or remedial action.

39. As a result of the willful actions of Somerset and Village President undertaken in reckless disregard of Baillargeon's rights, Baillargeon has been, and continues to be, harmed in the form of lost profits, lost marketability of his property, and an overall depreciation to the value of his property.

## **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **REGULATORY AND/OR TEMPORARY TAKING OF PLAINTIFF'S PROPERTY – WIS. CONST. ART. I, §13**

40. Plaintiff repeats and re-alleges each of the preceding paragraphs as if fully set forth herein.

41. The actions of Somerset, by and through its elected officials, were taken by each of them while acting under color of state law.

42. The actions by Defendants violated Plaintiff's rights and privileges under the state constitution by creating a taking of Plaintiff's property without just compensation in violation of Article I, Section 13 of the Wisconsin Constitution.

43. The actions of Defendants in violation of Plaintiff's constitutional rights resulted in injuries and damages to Plaintiff, including the loss of the full fair market value of the Property and profits that Plaintiff otherwise would have generated through licensing parking spaces.

44. The actions of Defendants while acting under color of state law in violation of Plaintiff's state constitutional rights were carried out maliciously or with reckless disregard of the Plaintiff's rights, thereby entitling Plaintiff to

recover compensatory and punitive damages from Defendants in their official capacities.

**SECOND CAUSE OF ACTION**

**REGULATORY AND/OR TEMPORARY TAKING OF PLAINTIFF'S  
PROPERTY - U.S. CONST. AMEND V.**

45. Plaintiff repeats and re-alleges each of the preceding paragraphs as if fully set forth herein.

46. The actions of Defendants, by and through its elected officials, were taken by each of them while acting under color of state law.

47. The actions of Defendants violated Plaintiff's rights and privileges under the Constitution by creating a taking of Plaintiff's property without just compensation in violation of the Fifth Amendment of the United States Constitution.

48. The actions of Defendants in violation of Plaintiff's constitutional rights resulted in injuries and damages to Plaintiff, including the loss of the full fair market value of the Property and profits that Plaintiff otherwise would have generated through licensing parking spaces.

49. The actions of Defendants while acting under color of state law in violation of Plaintiff's constitutional rights were carried out maliciously or with reckless disregard of Plaintiff's rights, thereby entitling Plaintiff to recover compensatory and punitive damages from Defendants in their official capacities.

**THIRD CAUSE OF ACTION**

**VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS -  
U.S. CONST. AMEND XIV**

50. Plaintiff repeats and re-alleges each of the preceding paragraphs as if fully set forth herein.

51. The actions of Defendants, by and through its elected officials, were taken by each of them while acting under color of state law.

52. The actions of Defendants violated Plaintiff's rights and privileges under the state and by denying Plaintiff equal protection under the law, in violation of the Fourteenth Amendment of the United States Constitution.

53. The actions of Defendants in violation of Plaintiff's constitutional rights resulted in injuries and damages to plaintiff, including the loss of the full fair market value of the property and profits that Plaintiff otherwise would have generated through licensing parking spaces.

54. The actions of Defendants while acting under color of state law in violation of Plaintiff's constitutional rights were carried out maliciously or with reckless disregard of Plaintiff's rights, thereby entitling Plaintiff to recover compensatory and punitive damages from Defendants in their official capacities.

**FOURTH CAUSE OF ACTION**

**VIOLATION OF 42 U.S.C. § 1983 *et seq.***

55. Plaintiff repeats and re-allege each of the preceding paragraphs as if fully set forth herein.

56. As described in detail herein, Plaintiff was deprived of rights secured by the United States Constitution and laws of the United States, and that deprivation was committed under color of state law.

57. For years, Defendants have deprived Plaintiff of his right to his property's value, utility, and/or marketability.

58. Plaintiff has been damaged in an amount to be determined by jury at trial, but not less than \$75,000.00.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court enter a judgment for plaintiff and against Defendants as follows:

1. A judgment in favor of Plaintiff and against Defendants; and
2. A judgment awarding Plaintiff actual and compensatory damages in an amount to be determined by a jury at trial, but not less than \$75,000.00;
3. A judgment awarding Plaintiff exemplary and punitive damages; and
4. A judgment awarding Plaintiff all lost opportunities incurred as a result of acts and/or omissions; and
5. A judgment awarding Plaintiff reasonable attorney fees and costs and disbursements.
6. A judgment awarding Plaintiff any such further relief as this Court deems just and equitable.

*Plaintiff demands a jury trial.*

Dated: April 9, 2015

s/Tyler W. Brennan  
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