

Francis Bork and Mary Lane Bork  
S1777 County Road U  
Cochrane, Wisconsin,

Plaintiffs,

v.

WRIT OF CERTIORARI

Case No.: 12 CV 103  
Case Code: 30955

BUFFALO COUNTY, WI  
CIRCUIT COURT  
FILED

NOV 21 2012

ROSELLE M. SCHLOSSER  
CLERK OF COURT

Buffalo County Zoning Board of Adjustment,

Defendant.

TO: Buffalo County Zoning Board of Adjustment  
Buffalo County Courthouse  
407 South Second Street, Alma, Wisconsin  
Attention: Dale Klopp, Chairperson

An action having been commenced in this Court pursuant to the provisions of Wisconsin Statute §59.694(10) by the Plaintiffs named above, which action seeks the remedy available by certiorari to appeal a decision of the Buffalo County Zoning Board of Adjustment ("Board") dated October 29, 2012 as to the application by the Plaintiffs for a special use permit (the "Conditional Use Permit") to permit the manufacturing and processing of a natural mineral resource on the Property, being Buffalo County Zoning Case Number 2012-10 (the "Proceeding"); and

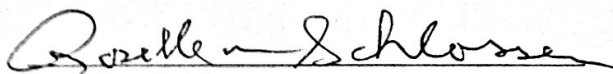
The Complaint in said action alleges that the Board, in not addressing the application for the Conditional Use Permit individually, but rather as if the Plaintiff's property and lands owned by the other landowners were one parcel, the Board did not act according to law. The Complaint in said action represents that the Board, in denying the Plaintiffs' application for a Conditional Use Permit the Board did not act according to law; acted arbitrarily; acted unreasonably; acted according to its will and not its judgment; made a decision that was not based on evidence one might reasonably use to make the determination in question; made findings and determinations that were not based on the record before it; and made findings and determinations that were contrary to findings and determinations made by the Board in other, similar proceedings dealing with applications similar to the application in the Proceeding based on evidence in those proceedings that was similar to the evidence in the Plaintiffs' matter. The Complaint in said action also alleges that contrary to the requirements of Wisconsin Statute §59.694(3), the Board failed to immediately file in the office of the Board minutes of the proceedings as to the Application, thus depriving the Plaintiffs' of the opportunity provided by said statute to examine the public record on said proceeding.

Pursuant to Wisconsin Statute §59.694(10), this Court is to review the record in the proceeding and, if necessary for the proper disposition of the matter, may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The Court may reverse or affirm, wholly or partly, or may modify, the decision brought for review.

NOW, THEREFORE, the Buffalo County Zoning Board of Adjustment is required and ordered to transmit and return to this Court, within 60 days of service of this Writ upon it, the originals or certified or sworn copies of all of the papers and records of the Proceeding of the Buffalo County Zoning Board of Adjustment ("Board") to which this writ relates, and all minutes, transcripts, evidence, orders, judgment, entries made in the matter, all to be arranged in their chronological order.

WITNESS, the Honorable James J. Duvall, Judge of Buffalo County Circuit Court, and the seal of the Court, at the Courthouse in Alma, Buffalo County, Wisconsin, this 21 day of November, 2012.

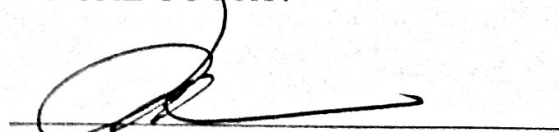
Clerk of Circuit Court  
Buffalo County, Wisconsin

  
Roselle Schlosser

ENDORSEMENT OF ALLOWANCE BY THE JUDGE

On the application of Joseph R. Mirr, attorney for the Plaintiffs, and the Complaint seeking the Remedy Available by Certiorari of the Plaintiffs, filed November 21, 2012, the above writ of certiorari is hereby allowed to issue.

BY THE COURT:

  
Honorable James J. Duvall  
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

BUFFALO COUNTY

**Francis Bork and Mary Lane Bork**  
S1777 County Road U  
Cochrane, Wisconsin,

Plaintiffs,

v.

**SUMMONS**

**Buffalo County Zoning Board of Adjustment,**  
407 South Second Street  
PO Box 492  
Alma, Wisconsin

Case No. 12 CV 103

Case Code 30955

Defendants.

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, 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 Clerk of Courts, whose address is Buffalo County Courthouse, 407 South Second Street, P.O. Box 68, Alma, Wisconsin, 54610-0068, and to the Plaintiffs' attorneys, Ruder Ware, L.L.S.C., by Joseph R. Mirr, whose address is 402 Graham Avenue, P.O. Box 187, Eau Claire, Wisconsin 54702-0187. You may have an attorney help or represent you.

BUFFALO COUNTY, WI  
CIRCUIT COURT  
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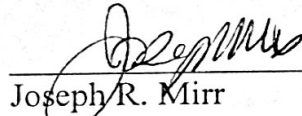
ROSELLE M. SCHLOSSER  
CLERK OF COURT

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.

Dated this 19<sup>th</sup> day of November, 2012.

RUDER WARE  
Attorneys for Plaintiffs

By:

  
\_\_\_\_\_  
Joseph R. Mirr  
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STATE OF WISCONSIN

CIRCUIT COURT

BUFFALO COUNTY

**Francis Bork and Mary Lane Bork**

S1777 County Road U

Cochrane, Wisconsin,

Plaintiffs,

**COMPLAINT SEEKING THE REMEDY  
AVAILABLE BY CERTIORARI**

v.

Case No.: 12 CV 103

**Buffalo County Zoning Board of Adjustment,** Case Code: 30955

Defendant.

Francis and Mary Lane Bork, by their undersigned attorneys, for a complaint against the Buffalo County Zoning Adjustment Board, allege as follows:

1. Francis Bork and Mary Lane Bork, (the "Plaintiffs") are adult residents of Buffalo County, Wisconsin, residing at S1777 County Road U, Cochrane, Wisconsin.

2. Plaintiffs are the owners of real estate in the Town of Montana, Buffalo County, Wisconsin located in the:

SE ¼ - SE ¼, Section 26; NE ¼, Section 35; SE ¼ - NW ¼, SE ¼, of Section 35, Township 22 North, Range 11 West (the "Property").

3. The Property consists of 337.2 acres is and currently designated by the Buffalo County, Wisconsin Zoning Ordinance (the "Ordinance") as being part of the Agricultural (A) District designated in the Ordinance.

4. Defendant, Buffalo County Zoning Board of Adjustment (the "Board"), is a board of adjustment within the meaning of Wisconsin Statute §59.694.

5. The principal place of business of the Board is at the Buffalo County Courthouse, 407 South Second Street, Alma, Wisconsin, and the chairperson of the Board is Dale Klopp.

6. Section 41.1 of the Ordinance provides that the following uses may be permitted as a conditional use in the Agricultural (A) District upon issuance of a special use permit:

Manufacturing and processing of natural mineral resources indigenous to Buffalo County incidental to the extraction of sand and gravel and the quarrying of

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limestone and other rock for aggregate purposes, including the erection of buildings, and the installation of necessary machinery and equipment incidental thereto, but not the storage of cement, asphalt, or road oils or the mixing of concrete or black top or related materials, provided that any county, town or municipal government or its agent may store or mix such materials when incidental to the improvement of highways or streets.

7. Section 210 of the Ordinance provides that:

"Any use listed as a conditional use in this ordinance shall be permitted only upon application to the Zoning Administrator and issuance of a Special Use Permit by the Board of Adjustment. A Special Use Permit shall be issued only upon satisfaction of the requirements listed herein, in addition to all other requirements of this ordinance. All such uses are hereby declared to possess such unique and special characteristics that each specific use shall be considered as an individual case."

8. Section 212 of the Ordinance provides that:

Standards Applicable to all Conditional Uses

In passing upon a Special Use Permit application, the Board of Adjustment shall consider the following factors:

1. The location, nature, and size of the proposed use.
2. The size of the site in relation to it.
3. The location of the site with respect to existing or future roads giving access to it.
4. Its compatibility with existing uses on land adjacent thereto.
5. Its harmony with the future development of the district.
6. Existing topography, drainage, soils types and vegetable cover.
7. Its relationship to the public interest, the purpose and intent of this ordinance and substantial justice to all parties concerned.

9. Section 214 of the Ordinance provides that before issuing a Special Use Permit, the Board of Adjustment shall hold a public hearing.

10. On or about March 27, 2012, Plaintiffs filed an application pursuant to Section 210 of the Ordinance (the "Application") with the Buffalo County Zoning Administrator for a special use permit (the "Conditional Use Permit") to permit the manufacturing and processing of a natural mineral resource on the Property.

11. The case number of 2012-10 was assigned to the Application by the Zoning Administrator.



12. At the same time as the Application was filed, five (5) similar applications seeking the same relief as to their properties were filed by the following persons who also own lands in the Town of Montana, Buffalo County, Wisconsin: Dennis G. Bork and Debra S. Bork; Robert L. Baecker and Bruce P. Baecker; Richard Allemann and Victoria Allemann; Marlene Baecker; and Loretta Palkowski and Michael Palkowski (collectively, the "Other Landowners").

13. The Board held a public hearing as to the Application on May 9, August 9, and September 26, 2012.

14. The public hearing on the Application was held in conjunction with public hearings as to five (5) other applications filed by the Other Landowners.

15. The Board denied the Application by a written decision dated October 29, 2012 (the "Decision").

16. The Decision did not address the Application as to the Property individually, but rather as if the Property and the lands owned by the Other Landowners were one parcel.

17. Wisconsin Statute §59.694(10) provides that:

Certiorari. A person aggrieved by any decision of the board of adjustment, or a taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board, commence an action seeking the remedy available by certiorari. The court shall not stay the decision appealed from, but may, with notice to the board, grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

18. The Plaintiffs are persons aggrieved by the Decision.

19. In not addressing the Application as to the Property individually, but rather as if the Property and the lands owned by the Other Landowners were one parcel, the Board did not act according to law.

20. In denying the Application, the Board did not act according to law.

21. In denying the Application, the Board acted arbitrarily.

22. In denying the Application, the Board acted unreasonably.

23. In denying the Application, the Board acted according to its will and not its judgment.

24. In denying the Application, the Board made a decision that was not based on evidence one might reasonably use to make the determination in question.

25. In denying the Application, the Board made findings and determinations that were not based on the record before it.

26. In denying the Application, the Board made findings and determinations that were contrary to findings and determinations made by the Board in other, similar proceedings dealing with applications similar to the Application based on evidence in those proceedings that was similar to the evidence in the Plaintiffs' matter.

27. Contrary to the requirements of Wisconsin Statute §59.694(3), the Board failed to immediately file in the office of the Board minutes of the proceedings as to the Application. As of this date, no minutes of such proceedings have been so filed, thus depriving the Plaintiffs' of the opportunity provided by said statute to examine the public record on said proceeding.

WHEREFORE, the Plaintiffs demand that:

A. This Court issue a writ of certiorari requiring the Buffalo County Zoning Board of Adjustment to transmit and return to this Court the originals or certified or sworn copies of all papers, evidence, and documents of the Board from the proceedings relating to the Application and the Decision described above;

B. Upon return of such writ, that this Court, in accordance with the provisions of Wisconsin Statute §59.694(10), if necessary for the proper disposition of the matter, take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as the Court directs, which shall constitute a part of the proceedings upon which the determination of the Court shall be made;

C This Court reverse the Decision of the Board and grant the Plaintiffs the Conditional Use Permit sought by them in the Application; and

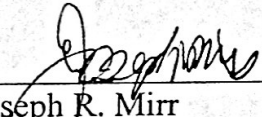
D. This Court grant them such other or further relief as allowed by law or as is just and equitable.



Dated this 19<sup>th</sup> day of November, 2012.

RUDER WARE  
Attorneys for Plaintiffs

By: \_\_\_\_\_

  
Joseph R. Mirr  
State Bar No. 1014661

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