

STATE OF ILLINOIS
IN THE CIRCUIT COURT FOR THE TWENTY-FIRST JUDICIAL CIRCUIT
COUNTY OF KANKAKEE



RUSSEL JENSEN)
Plaintiff,)
)
vs.)
)
CITY OF KANKAKEE, a municipal corporation of)
the State of Illinois; CITY COUNCIL OF THE)
CITY OF KANKAKEE,)
)
Defendants.)

No. 11 MR 366

COMPLAINT
COUNT I
(FOR DECLARATORY RELIEF)

NOW COMES the Plaintiff, RUSSEL JENSEN, by and through his attorney, JEROME C. SHAPIRO, and for Count I of his Complaint against the Defendants, the CITY OF KANKAKEE and the CITY COUNCIL OF THE CITY OF KANKAKEE, states as follows:

1. That the Plaintiff, RUSSEL JENSEN is, and at all times herein mentioned was a resident of the City of Kankakee, County of Kankakee, and State of Illinois.
2. That the Defendant, the CITY OF KANKAKEE is, and at all times herein mentioned was a municipal corporation of the State of Illinois.
3. That the Defendant, CITY COUNCIL OF THE CITY OF KANKAKEE is, and at all times herein mentioned was the governing body of the City of Kankakee.
4. That this action is brought under 735 ILCS 5/2-701, et seq.
5. That the Plaintiff, RUSSEL JENSEN is the owner of property located at 2450 Grinnell Road, Kankakee, Illinois (Tax Parcel Identification Number 16-09-34-100-037).
6. That said property is zoned I-2 under the ordinances of the City of Kankakee. A copy of the zoning map of the City of Kankakee delineating the zoning of the Plaintiff's property

is attached hereto and made a part hereof as Exhibit 1.

7. That a crematorium is an allowable use in an I-2 zoning district in the City of Kankakee, provided that the owner of the subject property obtains a conditional use permit from the Defendant, the CITY OF KANKAKEE for such use.
8. That on February 15, 2011, Plaintiff, RUSSEL JENSEN, submitted an Application for a Conditional Use Permit to the Defendant, CITY OF KANKAKEE, requesting that it issue a conditional use permit to him for the construction and operation of a crematorium on the property he owns at 2450 Grinnell Road, Kankakee. A copy of the Application for Conditional Use Permit is attached hereto and made a part hereof as Plaintiff's Exhibit 2.
9. That on March 15, 2011, the City of Kankakee Planning Board conducted a public hearing wherein the Planning Board received evidence and heard public comment regarding the aforesaid Application for Conditional Use Permit.
10. That on April 19, 2011, the City of Kankakee Planning Board again conducted a public hearing at which it received additional evidence and heard additional public comment regarding the aforesaid Application for Conditional Use Permit.
11. That on April 19, 2011 after the close of the above referenced public hearing, the Planning Board of the City of made FINDINGS OF FACT in regard to the Application for Conditional Use Permit submitted by the Plaintiff, RUSSEL JENSEN and thereafter recommended approval of said Application. A copy of the FINDINGS OF FACT and RECOMMENDATION are attached hereto and made a part hereof as Plaintiff's Exhibit 3.
12. That on May 16, 2011, the Defendant, the CITY COUNCIL OF THE CITY OF KANKAKEE, conducted a meeting during which it considered an ordinance approving

the Plaintiff's Application for a Conditional Use Permit. A copy said proposed ordinance is attached hereto and made a part hereof as Exhibit 4.

13. That after discussion, the Defendant, the CITY COUNCIL OF THE CITY OF KANKAKEE voted to table said Application.
14. That on June 6, 2011, the Defendant, the CITY COUNCIL OF THE CITY OF KANKAKEE again held a meeting during which it discussed the aforesaid Application, and voted by an eight (8) to seven (7) vote to accept the "ORIGINAL FINDINGS AND RECOMMENDATIONS OF PLANNING BOARD PB11-05 – AN APPLICATION BY RUSSEL JENSEN REQUESTING A CONDITIONAL USE PERMIT TO ESTABLISH AND OPERATE A CREMATORIUM AT THE PROPERTY COMMONLY KNOWN AS 2450 GRINNELL ROAD".
15. That on June 20, 2011, the Defendant, the CITY COUNCIL OF THE CITY OF KANKAKEE held an additional meeting at which it six (6) to seven (7) to deny the second reading of the ordinance approving the Plaintiff's Application for a Conditional Use Permit, thereby denying the Plaintiff's Application for Conditional Use Permit.
16. That in denying the Application for Conditional Use Permit filed by the Plaintiff, RUSSEL JENSEN, the Defendant, the CITY COUNCIL OF THE CITY OF KANKAKEE made no FINDINGS OF FACT other than those previously made by the City of Kankakee Planning Board as set forth in Plaintiff's Exhibit 3.
17. That the only FINDINGS OF FACT made by any body of the city of Kankakee are those set forth in Plaintiff's Exhibit B and said FINDINGS OF FACT are in support of granting the Plaintiff's Application for Conditional Use Permit.
18. That Defendant, the CITY COUNCIL OF THE CITY OF KANKAKEE denied the

Application for Conditional Use Permit filed by the Plaintiff without making any FINDINGS OF FACT in support of its decision.

19. That the denial of the Application by the Defendant, CITY COUNCIL OF THE CITY OF KANKAKEE on behalf of the Defendant, the CITY OF KANKAKEE, was arbitrary, capricious, unreasonable, and denied Plaintiff of the use of his property without due process of law under the Fourteenth Amendment of the Constitution and Article I Section 2 of the Constitution of the State of Illinois.

WHEREFORE, Plaintiff prays as follows:

1. that this Honorable Court enter a Declaratory Judgment, pursuant to 735 ILCS 5/2-701 et seq., FINDING that in denying the Plaintiff's Application for Conditional Use Permit for the construction and operation of a crematorium at 2450 Grinnell Road, Kankakee, the Defendant, the CITY COUNCIL OF THE CITY OF KANKAKEE acted arbitrarily, capriciously, unreasonably;
2. that this Honorable Court FIND and DECLARE that the zoning ordinance of the Defendant, the CITY OF KANKAKEE is unconstitutional, illegal and invalid in that as applied against Plaintiff herein, it constitutes a taking without just compensation in violation of the Constitution of the United States and the Constitution of the State of Illinois;
3. that this Honorable Court FIND and DECLARE that the zoning ordinance of the Defendant, the CITY OF KANKAKEE, as applied against Plaintiff herein, constitutes a taking of the Plaintiff's property due process and without just compensation in violation of the Fourteenth Amendment to the Constitution of the United States and Article I Section 2 of the Constitution of the State of Illinois.

COUNT II
(FOR INJUNCTIVE RELIEF)

NOW COMES the Plaintiff, RUSSEL JENSEN, by and through his attorney, JEROME C. SHAPIRO, and for Count II of his Complaint against the Defendants, the CITY OF KANKAKEE and the CITY COUNCIL OF THE CITY OF KANKAKEE, states as follows:

- 1-19. Plaintiff repeats and realleges paragraphs 1 through 19 of Count I as paragraphs 1 through 19 of this Count II.
20. That the denial of the Application has caused and will continue to cause permanent injury to the Plaintiff to wit: the Plaintiff cannot make use of his property for a purpose allowable in an I-2 zoning district in the City of Kankakee.
21. That Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays as follows that this Honorable Court grant the Plaintiff, RUSSEL JENSEN, preliminary and permanent mandatory injunctive relief by ORDERING the Defendant, THE CITY OF KANKAKEE to issue a Conditional Use Permit to the Plaintiff for the construction and operation of a crematorium on the property he owns located at 2450 Grinnell Road, Kankakee, Illinois.

COUNT III
(FOR DAMAGES)

NOW COMES the Plaintiff, RUSSEL JENSEN, by and through his attorney, JEROME C. SHAPIRO, and for Count III of his Complaint against the Defendants, the CITY OF KANKAKEE and the CITY COUNCIL OF THE CITY OF KANKAKEE, states as follows:

- 1-19. Plaintiff repeats and realleges paragraphs 1 through 19 of Count I as paragraphs 1 through 19 of this Count III.

WHEREFORE, Plaintiff prays as follows that this Honorable Court award the Plaintiff,

RUSSEL JENSEN damages from the Defendants, the CITY COUNCIL OF THE CITY OF KANKAKEE and the CITY OF KANKAKEE resulting from the taking of the Plaintiff's property by the Defendants without due process of law, plus court costs, attorney's fees, expenses resulting from this action.

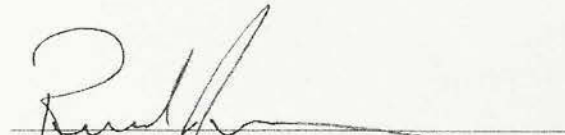


RUSSEL JENSEN

CERTIFICATION

UNDER PENALTIES OF PERJURY, as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated this 23rd day of August, 2011.



RUSSEL JENSEN

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