UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KAREN A. BABCOCK,
Plaintiff,

v. **Case No. 21-C-0691**

TOWN OF SUGAR CREEK, et al.,
Defendants.

DECISION AND ORDER

Plaintiff Karen Babcock, who owns property in a subdivision of the Town of Sugar Creek, Wisconsin, brings this action against the Town and other property owners in the subdivision. The plaintiff alleges that a Town ordinance is unconstitutional and that the Town has discriminated against her in violation of the Equal Protection Clause. The plaintiff does not bring federal claims against the other property owners. Instead, she alleges that the other property owners, in conjunction with the Town, have taken actions that interfere with her state-law property right to maintain and improve the shared private roads that provide access to her properties. Before me now are the parties' motions for summary judgment.

I. BACKGROUND

The plaintiff owns four parcels of property in a subdivision known as Blue Wing Estates, which is located within the Town of Sugar Creek, Wisconsin. The plat for the subdivision was approved by the Town Board on February 21, 1927. Parcels of property within the subdivision were intended for residential use, but many of them, including the plaintiff's, remain undeveloped.

The plat of the subdivision creates several private roads. The roads that abut the plaintiff's parcels are primitive. They are unsurfaced and covered with grass. The plaintiff describes one of the roads, Norman Avenue, as uneven, sloping, and sometimes impassable. (Babcock Decl., March 28, 2022, ¶ 18, ECF No. 97.) She states that when she drives on the road, tree branches and bushes scrape her vehicle, and she must drive less than five miles per hour. (*Id.*) A portion of Norman Avenue has a gravel surface, but that surface ends before the road reaches the plaintiff's properties.

The plat for the subdivision states that the roads are owned by the abutting property owners, with an easement in favor of all other owners that allows them to traverse the roads. The relevant language of the plat provides as follows:

> That the title or fee to all roads and ways within said subdivision is vested in the owners of the property abutting thereon, subject to the right or easement of all other owners of property in said subdivision, their lessees, licensees, servants and invitees to pass over and across the same, on foot or with animals or vehicles. That all of said roads are to be privately maintained by the abutting land owners of property.

(Complaint, Ex. A.)

In approximately 2010, the plaintiff's father, Robert Rutzen, began clearing the roads within the subdivision by cutting vegetation. Two other property owners within the subdivision, Robert Limosani and Amy Odette, who are defendants in the present case, objected to Rutzen's activities and filed a lawsuit in Walworth County Circuit Court against Rutzen, Babcock, and the Town of Sugar Creek (among others). Limosani and Odette sought to either terminate the easement created by the plat or obtain a declaration stating that Rutzen's road-clearing activities violated the terms of the easement. Rutzen and the Town of Sugar Creek opposed the request to terminate the easement.

On August 16, 2011, the circuit court entered an order granting motions for summary judgment filed by Rutzen and the Town and dismissing Limosani's and Odette's suit on the merits. The court's written decision stated that the issue presented was whether a Wisconsin statute of limitations "bar[red] the subdivision owners from claiming easement rights." (ECF No. 81-8 at 4.) The court then cited large excerpts from Rutzen's and the Town's briefs regarding the validity of the easement before stating that it agreed with Rutzen and the Town. The court did not explicitly find that Rutzen had the right to cut vegetation on parts of the road that did not abut his own properties, but it dissolved a temporary restraining order that it had previously granted that prevented Rutzen from cutting vegetation. (*Id.* at 2, 6.) Babcock believes that the Walworth County Circuit Court litigation established that she has a legal right to mow the grass, trim the trees, and otherwise maintain and improve the roads that lead to her properties, including parts of the roads that do not abut her properties.

While the 2010 litigation was pending, Limosani and Odette proposed that the Town adopt an amended ordinance relating to unimproved roads. On April 18, 2011, the Town enacted the proposed ordinance, entitled "An Ordinance to Regulate Construction on Unimproved Roads."[1] (ECF No. 89-9.) The ordinance has a lengthy preamble explaining that the purpose of the ordinance is to ensure that roads leading to dwellings can accommodate vehicles used by emergency services such as fire and police departments and civil services such as mail delivery and waste removal. (*Id.*) The

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[1] The parties describe this ordinance as an "amended ordinance." (Pl. PFOF ¶ 23 & Def. Resp.) However, the parties do not explain how the amended ordinance differs from any prior ordinance that may have been in force.

preamble notes that many unimproved roads have insufficient base to support these vehicles or are too narrow to allow such vehicles to pass, and that unimproved roads are inadequately maintained and plowed, which further inhibits access.

Section 2 of the ordinance regulates the issuance of building permits for dwellings located on unimproved roads. It provides as follows:

> Section 2. Prohibition. No new residential dwelling requiring a building permit shall be constructed under the following circumstances:
>
> A. When such construction would result in three (3) or more residential dwellings;
>
> B. Located on an unimproved road shown on a plat or certified survey map; and
>
> C. Which road is not dedicated to and accepted by the Town;
>
> D. Unless such lot or tract of land has direct frontage on a road meeting the standards of a town road.

(ECF No. 89-9.) Section 3 of the ordinance regulates construction and other activities on unimproved roads. It provides as follows:

> Section 3. No construction, work, tree cutting or any other act related to any and all platted or unplatted roads shall be commenced unless and until a survey of said platted or unplatted road has been completed and provided to the Town Building Inspector and/or Town Highway Commissioner for his/her review and approval, provided said official in his/her discretion believes said survey is necessary. Notification shall be provided by Registered or Certified Mail by the individual obtaining the survey to all adjacent property owners prior to commencing said construction, work, tree cutting, or any other act. Proof of said mailing shall be provided to the Town Clerk of the Town of Sugar Creek. any and all fees for said review shall be paid pursuant to the Town Driveway Ordinance.

(*Id.*) The ordinance also contains a provision (Section 4) allowing the Town Board to make exceptions to the ordinance's requirements in the case of "unnecessary hardship." It provides as follows:

> Section 4. Modifications. The Town Board may approve or conditionally approve a modification from some or all provision [sic] of this Ordinance only when an unnecessary hardship exists.
>
> The Town Board may approve or conditionally approve a modification when the property owner demonstrates that:
>
> A. The alleged hardship is based upon conditions unique to the property rather than considerations personal to the property owner; and
>
> B. The alleged hardship is not self-created;
>
> C. The alleged hardship does not comport with the purpose of this Ordinance; and
>
> D. The proposed modification is not contrary to public policy.
>
> The Town Board must approve, conditionally approve, or deny a request for modification from the provisions of this Ordinance.

(*Id.*) Finally, the ordinance contains an enforcement provision:

> Section 5. Enforcement.
>
> A. This Ordinance shall be enforced by the building inspector who shall withhold and refuse to issue building permits for structures that do not comply with this Ordinance.
>
> B. Any person who violates this Ordinance shall be subject to a forfeiture in the minimum amount of $100.00, up to a maximum amount of $300.00. Each day a violation takes place or continues shall constitute a separate offense. Citations shall be authorized by the Town Board to be issued by the Town Attorney.
>
> C. The Town Board may authorize filing suit in Circuit Court seeking an injunction for violations.

(*Id.*)

Since 2011, the plaintiff has continued to mow grass, trim trees, clear brush, and otherwise maintain the unimproved roads that lead to her properties, including portions of the road that do not abut her properties. The plaintiff has also moved her neighbors' personal property, such as trash cans, from areas that she believes are part of the right

of way. The plaintiff states that her actions preserve her ability to use the roads to access her properties.

On April 18, 2016, Babcock attended a Town Board meeting and complained that her neighbors were placing obstructions in the roads that prevented her from accessing her parcels. On May 6, 2016, the Town Attorney sent Babcock a letter that contained the following response:

> Please be advised that I have received information that you have made complaints to the Town Clerk and Town Highwayman that there are obstructions contained within the road right of way. Particularly, that there are some flowers and a few rocks located within the road right of way. It is my understanding that these few minor items do not obstruct your ingress or egress to any of your properties. Therefore, please be advised that the Town of Sugar Creek will take no action with regards to any of these alleged obstructions at the present time.
>
> Please do not contact any of the Town employees regarding this particular matter in the future. I thank you in advance for your cooperation in this matter.

(ECF No. 82-1.)

Approximately one year later, Jeffrey and Lena Glassel, who own parcels on Norman Avenue in the vicinity of the plaintiff's parcels, attended a Town Board meeting to complain of Babcock's maintenance activities on the road. In August 2017, the Town Attorney sent letters to Babcock demanding that she cease those activities until she obtained approval from the Town Board. (ECF No. 89-2 & 89-3.) The letters stated:

> It has come to our attention that an issue has arisen with your continuing to cut trees and mow the area of Norman Avenue. These activities are causing problems and issues with the individuals that reside along Norman Avenue. Therefore, the Town hereby demands that you cease and desist these activities until further order and approval of the Town Board.

(*Id.*) After receiving these letters, Babcock hired a third party to mow the roads. In September 2017, one of the Glassels, along with Limosani and Odette, complained to the

Town about Babcock's actions. In response, the Town Attorney sent a third cease-and-desist letter. This letter stated:

> [I]t has now come to our attention that rather than mowing the area known as Norman Avenue yourself, you are now choosing to hire someone to mow.
>
> These activities are continuing to cause problems and issues with the individuals that reside along Norman Avenue.
>
> Therefore, the Town hereby demands that you cease and desist hiring someone to mow Norman Avenue, or taking any further action with regard to Norman Avenue until further order and approval of the Town Board.

(ECF No. 89-4.) But Babcock continued her maintenance activities on the road. On June 14, 2018, while Babcock was trimming trees, the Glassels called the county sheriff and asked to have Babcock charged with trespassing.

More recently, Babcock formed the intent to construct a residence on her parcels on Norman Avenue. She states that it is not practical to build a residence on the portion of Norman Avenue that abuts her properties unless the road is improved by extending the gravel surface that ends before it reaches her property. For that reason, Babcock obtained a proposal from a paving company to install a gravel surface along the unimproved portion of Norman Avenue and along parts of other unimproved roads in the subdivision that lead to her properties. Some parts of the roads that she proposes to improve abut her properties, but she also intends to improve parts of the road that do not abut her properties. The plaintiff contends that improving these other parts of the roads is necessary to provide access to her properties from the nearest public road.

On April 10, 2019, the plaintiff filed an application with the Town for a soil erosion control permit. A Town ordinance required her to obtain this permit before commencing work on her road-improvement project. In her application, the plaintiff proposed to grade

the roads and apply eight inches of gravel over a 15-foot wide, 650-foot long section. The plaintiff's application included a survey of the roads. The plaintiff and the Town agree that the Town Plan Commission reviewed the plaintiff's application for the permit on May 9, 2019. (Pl. Resp. to Town Prop. Finding of Fact ("PFOF") ¶ 49.) The minutes of the May 9th meeting indicate that the Commission understood the plaintiff's application as being one for "[r]oad modification." (ECF No. 81-14 at 2.) The Commission noted that the proposed improvements would not bring the road up to town-road standards, which required a minimum of 22 feet of width, three inches of blacktop, and twelve inches of gravel. The Committee voted to recommend that the Town Board deny the road-modification request as presented "based on the specifications of Sugar Creek improved roads." (*Id.*) The minutes do not reference an application for an erosion control permit or the standards for granting or denying such a permit. On May 20, 2019, the Town Board accepted the Plan Commission's recommendation and denied the plaintiff's request for "[r]oad modification." (ECF No. 81-15 at 1 (minutes of Town Board meeting).) The plaintiff and the Town agree that this action by the Board amounted to a denial of the plaintiff's application for an erosion control permit. (Pl. Resp. to Town PFOF ¶ 52.)

Although the Town denied the road-modification request because the plaintiff's proposed improvements would not have brought the roads up to town-road standards, the relevant meeting minutes of the Plan Commission and the Board do not reference the Ordinance to Regulate Construction on Unimproved Roads or state that the permit was denied based on that ordinance. (*See* ECF Nos. 81-14 & 81-15.) Indeed, the terms of the unimproved-roads ordinance do not apply to applications for erosion control permits. Rather, as outlined above, Section 2 of that ordinance applies to applications for building

permits for residential dwellings. As far as the record in the present case reveals, the plaintiff has never applied for a building permit for the residence she proposes to construct on her properties or been denied a building permit based on Section 2 of the unimproved-roads ordinance.

After the Town denied the plaintiff's request to improve the roads, the plaintiff resumed her maintenance activities and continued to mow the grass and cut the brush along portions of the roads, including portions that did not abut her properties. On July 29, 2019, after the surrounding landowners again complained to the Town about the plaintiff's activities, the Town Attorney sent the plaintiff another cease-and-desist letter. (ECF No. 82-5.) This letter was more detailed than the prior letters, and it accused the plaintiff of trespassing and violating Section 3 of the unimproved-roads ordinance. Because the letter is central to the plaintiff's challenge to Section 3 of the ordinance and her equal-protection claim, I reproduce it nearly in full:

> Please be advised that it is my understanding that despite prior warnings and citations being issued, you continue to mow lawn and cut brush on other people's property.
>
> The Blue Wing Estates Subdivision was platted in or around 1927, approved by the Town of Sugar Creek, and recorded with the Walworth County Register of Deeds on February 21, 1927. The plat divides the subdivision into 13 blocks which are separated by several roads and further divided into various lots. None of the roads marked on the plat are designated as private roads and the recorded plat states:
>
> > "That the title of [sic] fee to all roads and ways within said subdivision is vested in the owners of the property abutting thereon, subject to the right or easement of all other owners of property in said subdivision, their lessees, licensees, servants and invitees to pass over and across the same, on foot or with animals or vehicles. That all of said roads are to be privately maintained by the abutting landowners of property . . ."

The Town of Sugar Creek owns Lot 6 of Block 13, which is the community park. The Town has not formally accepted Rawlins Avenue, Norman Avenue or Byron Street. Nor has the Town made any improvements to those roads. Furthermore, those roads are not listed in the Town's historical records and have never existed in the Wisconsin Department of Transportation's records. Several of the roads in the Blue Wing Estates Subdivision have been developed to varying degrees. The Town of Sugar Creek has developed Ravine Drive and Taylor Avenue as marked on the plat, and residents of the subdivision have developed parts of Norman Avenue and Rawlins Avenue into grassy paths or graveled ways.

The Town of Sugar Creek Ordinance regulating construction on unimproved roads provides in Section 3 as follows:

> "No construction, work, tree cutting or any other act related to any and all platted or unplatted road shall be commenced unless and until a survey of said platted or unplatted road has been completed and provided to the Town Building Inspector and/or Town Highway Commissioner for his/her review and approval, provided said official in his/her discretion believes said survey is necessary. Notification shall be provided by Registered or Certified Mail by the individual obtaining the survey to all adjacent property owners prior to commencing said construction, work, tree cutting, or any other act. Proof of said mailing shall be provided to the Town Clerk of the Town of Sugar Creek. Any and all fees for said review shall be paid pursuant to the Town Driveway Ordinance."

First off, by your actions, you are in violation of Section 3 of the Town of Sugar Creek Ordinance to regulate construction on unimproved roads. By mowing the grass, you are doing work on the unimproved road without a survey of that road being provided to the Town Building Inspector for his review and approval. You have not provided any notification by Registered or Certified Mail to the adjacent property owners. Diane Boyd, the Town Clerk, has not received proof of the mailing. You have paid no fees to the Town for their review.

Secondly, pursuant to the language in the Blue Wing Estates Subdivision, the owners of the property abutting on the roads and ways are the owners of the roads. The language set forth in the plat indicates that the people who abut a particular portion of road own that part of the road.

It is the Town's position that you are trespassing on the property owned by the adjacent property owners by cutting the grass, cutting brush, etc. The plat indicates that the roads are to be "privately maintained by the abutting landowners of property.'' Therefore, it is up to the abutting landowners to maintain the roadways. The plat for Blue Wing Estates Subdivision does not

> give you the right to maintain the roads upon which other owners are abutting. It only gives you the right to maintain the roads upon which your property abuts, which is not the roadway you are repeatedly traversing.
>
> The Town of Sugar Creek again demands that you hereby cease and desist this type of activity or we will be forced to pursue appropriate action, including an action for an injunction.

(ECF No. 82-5.) After the plaintiff received this letter from the Town Attorney, she stopped trimming the brush and trees along the road.

The plaintiff commenced the present lawsuit in June 2021 against the Town and the owners of other parcels of property within the subdivision, including the Glassels, Limosani, and Odette. The only federal claims in the complaint are asserted against the Town. Specifically, the plaintiff alleges three claims against the Town under 42 U.S.C. § 1983. First, she contends that Section 2 of the unimproved-roads ordinance, as applied to her, amounts to a taking of property without just compensation in violation of the Fifth Amendment (which applies to the Town through the Due Process Clause of the Fourteenth Amendment). Here, the plaintiff contends that it would not be economically feasible to build a residence on her properties if she had to bear the expense of improving the roads to town-road standards, and that therefore the Town's ordinance has deprived her of her ability to use the land for its intended purpose. Second, the plaintiff mounts a facial challenge to Section 3 of the ordinance, in which she contends that the ordinance is unconstitutionally vague in two respects: (1) the meaning of the terms "work . . . or any other act related to any and all platted or unplatted roads" is not discernable; and (2) the ordinance grants unbridled discretion to the Town Building Inspector and Town Highway Commissioner and therefore permits arbitrary and discriminatory enforcement. Third, the plaintiff contends that the Town has violated the Equal Protection Clause in various

respects, including by taking the side of her neighbors in the dispute over whether she has the right to maintain the roads.

In her equal-protection claim, the plaintiff focuses on the Town's actions with respect to the Glassels. In 2015, the Glassels paved the driveway to the residence that sits on their parcels within the subdivision. As part of the paving project, the Glassels paved the portion of Norman Avenue that abuts their parcels. The Town contends that the Glassels did not ask it for permission before they paved their portion of Norman Avenue, but the plaintiff apparently thinks that they did. This is based on the Glassels' pro se submission to this court, in which they state that they "went through the proper channels with the town" for approval of their driveway project. (Pl. Resp. to Town PFOF ¶ 25 & ECF No. 91 at 2.) Prior to paving their driveway, the Glassels sent letters to other property owners in the subdivision, including the plaintiff, which notified them that they were going to pave their driveway and the access area in front of their properties. The plaintiff did not object to the Glassels' paving project before construction commenced. However, after the project was finished, the plaintiff complained to the Town that the project resulted in a drop-off from the pavement to the ground that interfered with her use of Norman Avenue. (Babcock Decl., March 28, 2022, ¶ 3.) In response to the plaintiff's complaint, the Town Chairman visited the property and inspected the pavement, but the Town has taken no action against the Glassels.

In addition to her federal claims against the Town, the plaintiff asserts various state-law claims against her neighbors and the Town. First, she brings claims under the Wisconsin Constitution against the Town. Second, she seeks a declaratory judgment providing that, under state property law, she has a right to maintain, improve, and use the

roads that provide access to her parcels. Finally, she seeks injunctive relief against her neighbors and the town that would prevent them from placing obstructions in the roads or otherwise interfering with her attempt to use and maintain the roads.

Before me now are motions for summary judgment and partial summary judgment filed by certain parties. First, the plaintiff has filed a motion for partial summary judgment on her claims that Sections 2 and 3 of the unimproved-road ordinance are unconstitutional and on her claim that she has a state-law property right to maintain and improve the roads. (The plaintiff does not move for summary judgment on her equal-protection claim.) Second, the Town has moved for summary judgment on all the plaintiff's claims against it. Third, Limosani and Odette have moved for summary judgment on the plaintiff's claims against them. Finally, the Glassels have filed a pro se submission in which they seek summary judgment on the plaintiff's claims against them. (ECF No. 85.)

II. DISCUSSION

The claims over which this court has original jurisdiction are the plaintiff's claims that the unimproved-roads ordinance is unconstitutional and that the Town denied the plaintiff equal protection of the laws by treating her neighbors more favorably than it treated her. *See* 28 U.S.C. § 1331. To the extent that the court may exercise jurisdiction over the plaintiff's state-law claims against the Town and her neighbors, it would be pursuant to the supplemental-jurisdiction statute, 28 U.S.C. § 1367. As explained below, the Town is entitled to summary judgment on the plaintiff's federal claims. Because the federal claims will be dismissed, I will relinquish any supplemental jurisdiction I may have had over the state-law claims. *See* 28 U.S.C. § 1367(c)(3).

A. Summary Judgment Standard

Summary judgment is required where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). When considering a motion for summary judgment, I view the evidence in the light most favorable to the non-moving party and must grant the motion if no reasonable juror could find for that party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 255 (1986).

B. As-Applied Takings Challenge to Section 2

Section 2 of the unimproved-roads ordinance generally prohibits the construction of a residence requiring a building permit on property that does not have frontage on a road meeting the standards of a town road. The plaintiff contends that Section 2 is unconstitutional as applied to her because it results in a taking without just compensation in violation of the Fifth Amendment. (Pl. Br. in Supp. at 2–3, ECF No. 79.) The plaintiff relies on Supreme Court cases applying the doctrine of "unconstitutional conditions" to the takings arena. *See, e.g., Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604–11 (2013). Under these cases, the government may not condition a building permit or other government benefit on the applicant's agreeing to surrender property to the government unless a "nexus" and "rough proportionality" exists between the property that the government demands and the social cost of the applicant's proposed land use. *Id.* at 605–06. The Supreme Court has described governmental demands for property that do not satisfy the nexus and rough-proportionality requirements as "[e]xtortionate demands for property." *Id.* at 607.

In the present case, the Town has not made any demand for the plaintiff's property. All that the Town has done is deny her permission to improve private roads. The reason

for the denial was not that the plaintiff refused to transfer property to the Town in exchange for permission to modify the roads, but that the proposed improvement would not have brought the roads up to the standards of a town road. Improving the roads to town-road standards would not have required the plaintiff to transfer any property to the Town. The Town did not, for example, demand that the plaintiff improve the roads and then dedicate them to the Town. Nor did the Town demand that the plaintiff transfer different property to the Town in exchange for permission to improve the roads or that she make a monetary payment to the Town in lieu of transferring property. *See Koontz*, 570 U.S. at 612 (holding that "monetary exactions" in the form of "in lieu of" fees must satisfy nexus and rough proportionality requirements).

The plaintiff seems to contend that the Town wanted to coerce her into improving the roads to town-road standards so that it would not have to use eminent domain to obtain the roads and then pay its own engineers and contractors to do the improvement work. (Br. in Supp. of Summ. J. at 5.) There is no evidence, however, that the Town had any freestanding desire to improve the roads within the Blue Wing Estates subdivision. The thrust of the Town's decision was that *if* someone was going to improve the roads, *then* the roads had to be improved to town-road standards. But the Town was indifferent as to whether any improvements would occur. In any event, no matter what the Town's motive may have been, it remains the case that the Town did not condition its approval of the plaintiff's proposal on her dedicating property to the Town or making a monetary payment to the Town in lieu of a dedication of property. Because the Town did not attempt to extort property from the plaintiff in exchange for a government benefit, it did not commit a taking that falls within the "unconstitutional conditions" line of takings cases.

Although the "unconstitutional conditions" cases do not apply to the plaintiff's taking claim, other takings cases do, namely, those involving regulatory takings. A regulatory taking occurs when, although the government does not directly appropriate private property, it regulates the property so heavily that the burdens associated with the regulation become a taking. *See, e.g., Murr v. Wisconsin*, __ U.S. __, 137 S. Ct. 1933, 1942 (2017); *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978). The plaintiff's takings claim involving Section 2 of the ordinance alleges a regulatory taking. The plaintiff alleges that if she cannot obtain a building permit for a dwelling on her property unless she first improves the road that leads to her property to town-road standards, then she will have been deprived of all economically beneficial use of her property. That is so, she contends, because the cost of improving the roads would be greater than the cost of constructing the house, which would make building the residence economically infeasible, and because there is no other economically beneficial use of the properties. *See Lucas v. S. Car. Coastal Council*, 505 U.S. 1003, 1015 (1992); *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005) (regulation that deprives a property owner of all economically beneficial use of a property is a *per se* taking).

However, the plaintiff's claim that Section 2, as applied to her, effects a regulatory taking is unripe. "When a plaintiff alleges a regulatory taking in violation of the Fifth Amendment, a federal court should not consider the claim before the government has reached a 'final' decision." *Pakdel v. City and County of San Francisco, Cal.*, __ U.S. __, 141 S. Ct. 2226, 2228 (2021) (citing *Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725, 737 (1997)). The final-decision requirement exists because "until the government makes up its mind, a court will be hard pressed to determine whether the plaintiff has

suffered a constitutional violation." *Id.*[2] A decision about a property is final when "there [is] no question . . . about how the regulation at issue applies to the particular land in question." *Pakdel*, 141 S. Ct. at 2230 (internal quotation omitted). This requirement is "relatively modest," meaning that it does not require strict "compliance with an agency's deadlines and other critical procedural rules." *Id.* However, a property owner should "at least resort to the procedure for obtaining variances" and obtain a "conclusive determination" by the government about whether it would allow the proposed development. *Suitum*, 520 U.S. at 737 (quoting *Williamson*, 473 U.S. at 193).

In the present case, the plaintiff's regulatory takings claim is unripe because she has not applied for a building permit for a dwelling on her property, had such a permit denied based on the unimproved-roads ordinance, or sought a hardship exception under Section 4 of the ordinance. Although the plaintiff applied for a soil erosion control permit and the Town denied that application, the plaintiff expressly states that she is not challenging the denial of the erosion control permit in this action.[3] (ECF No. 102 at 13 &

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[2] The final-decision requirement is one of two procedural prerequisites to a federal takings claim that the Court delineated in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). The second prerequisite was that the claimant exhaust whatever procedures existed under state law for seeking just compensation. In *Knick v. Township of Scott, Penn.*, __ U.S. __, 139 S.Ct. 2162 (2019), the Court overruled *Williamson* to the extent that it imposed an exhaustion requirement. However, as cases such as *Pakdel* (which was decided after *Knick*) demonstrate, the Court did not overrule the final-decision requirement.

[3] The plaintiff does not explain why she does not challenge the denial of the erosion control permit. And her decision not to do so is curious. For even if the plaintiff obtains a building permit for the dwelling, that permit would do her no good unless she were able to improve the roads, since the roads in their present state would not provide adequate access to a residence. (Babcock Decl., March 28, 2022, ¶ 19.) In other words, it appears that, to achieve her goal of building a residence, the plaintiff will need both a building permit for the house and a permit for improving the roads.

ECF No. 105 at 1–2.) Moreover, the Town's denial of the erosion control permit does not shed light on how the Town would apply Section 2 to a request by the plaintiff for a building permit. To be sure, it seems relatively clear that, under Section 2, the plaintiff's dwelling could not be constructed unless she first improved the road abutting her properties to town-road standards. That is explicitly stated in the text of Section 2 itself. *See* Ord., § 2.D. But Section 4 of the ordinance provides that the Town Board may grant exceptions in cases of "unnecessary hardship." (ECF No. 89-9 at 2.) At this stage, it is not a foregone conclusion that the Town would refuse to grant the plaintiff a hardship exception if she applied for one. Indeed, if, as the plaintiff contends, the cost of improving the roads to town-road standards would make building a dwelling cost-prohibitive, and there is no economically beneficial use of the property other than as a residence, then the plaintiff would seem to have a strong case for a hardship exception.[4]

Accordingly, because the plaintiff has not applied for either a building permit for the dwelling she proposes to construct or a hardship exception from Section 2's requirement that the dwelling be placed on property having direct frontage on a road meeting the standards of a town road, the plaintiff's claim that the ordinance, as applied to her, effects a regulatory taking is unripe for lack of a final decision. Such claim will be dismissed without prejudice so that the plaintiff can return to the Town and seek a building permit and hardship exception.

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[4] And perhaps any hardship exception would include permission to improve the road leading to her property without improving them to town-road standards. *See supra* note 3.

C. Facial Vagueness Challenge to Section 3

The plaintiff next contends that, for two reasons, the first sentence of Section 3 of the ordinance is unconstitutionally vague on its face. (Pl. Br. in Supp. at 7, ECF No. 79.) First, she contends that a reasonable person cannot determine the meaning of "work . . . or any other act related to any and all platted or unplatted roads," and therefore would be unable to discern when a survey might need to be submitted to Town officials for approval. Second, she contends that the ordinance impermissibly grants discretion to Town officials without specifying standards to guide the exercise of their discretion.

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). In *Grayned*, the Court explained that "[v]ague laws offend several important values." *Id.* First, because a court "assume[s] that man is free to steer between lawful and unlawful conduct, [it] insist[s] that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Id.* "Vague laws may trap the innocent by not providing fair warning." *Id.* (footnote omitted). Second, "if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them." *Id.* "A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Id.* at 108–09 (footnote omitted).[5]

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[5] In *Grayned*, the Court identified a third concern with vague laws, which is that they have the potential to chill First Amendment activity. *Id.* at 109. As discussed in the text, the law in this case does not affect First Amendment rights, so this concern is not relevant here.

The plaintiff brings a facial challenge to the ordinance. Outside of the First Amendment context, such challenges are disfavored. *Planned Parenthood of Ind. & Ky., Inc. v. Marion Cnty. Prosecutor*, 7 F.4th 594, 603 (7th Cir. 2021). Section 3 of the ordinance applies to construction and maintenance work on unimproved roads and therefore does not involve activities protected by the First Amendment. Moreover, the void for vagueness doctrine is applied less strictly when the law does not impose criminal liability. *Sherman ex rel. Sherman v. Koch*, 623 F.3d 501, 520 (7th Cir. 2010). Here, the ordinance creates various civil-enforcement mechanisms, including a fine of $100 to $300 per violation (Section 5.B), but no criminal penalties. And the civil penalties are quite modest, which relaxes the standard even further. *See Milestone v. Town of Monroe, Wis.*, 665 F.3d 774, 785 (7th Cir. 2011) ("Where the penalties for noncompliance are less severe, a high level of clarity generally is not required.") For these reasons, the plaintiff must meet an especially high burden to have Section 3 invalidated as vague on its face. At the very least, she must demonstrate that Section 3 has no "core of understandable meaning." *Trs. of Ind. Univ. v. Curry*, 918 F.3d 537, 540 (7th Cir. 2019). "Some uncertainty at the margins" will not condemn the ordinance. *Id.*

Under the applicable standards, then, the plaintiff must show that the phrase "work . . . or any other act related to any and all platted or unplatted roads" has no core of understandable meaning. Initially, I note that I do not understand the plaintiff to be claiming that the phrase "any and all platted or unplatted roads" is vague; instead, I understand her to be targeting the terms "work" and "any other act related to" the roads. The plaintiff contends that these latter terms are vague because a reasonable person is left to guess at whether such mundane activities as walking or driving on a platted road

is an act requiring the submission of a survey to Town officials. (Br. in Supp. of Summ. J. at 7.)

It is clear, however, that Section 3 does not require submission of a survey to Town officials before a person may walk or drive on a road. That is evident from the context of the statute. The full sentence in which the allegedly vague terms appear provides as follows: "No construction, work, tree cutting or any other act related to any and all platted or unplatted roads shall be commenced unless and until a survey of said platted or unplatted road has been completed and provided to the Town Building Inspector and/or Town Highway Commissioner for his/her review and approval, provided said official in his/her discretion believes said survey is necessary." The key terms are "construction, work, tree cutting, or any other act." Read together, these terms show that the ordinance applies to acts that alter the condition of the road in some respect rather than acts that qualify as using the road. Indeed, it is hard to imagine a sensible person reading this ordinance and wondering whether it means that he or she must obtain permission from Town officials prior to driving or walking on a road. In any event, the ordinance undoubtedly has a core of understandable meaning, in that it clearly applies to acts akin to construction and tree cutting, such as filling potholes, clearing ditches and culverts, and repainting lane markings.

The plaintiff also contends that the ordinance is vague because it does not provide reasonable notice that mowing grass or clearing brush on an undeveloped right-of-way is prohibited. (Pl. Br. in Supp. at 8.) However, it seems relatively clear that these acts qualify as the kind of "work" that may require a survey. These kinds of maintenance tasks affect the condition of the roads; they are not mere uses of the roads. Moreover, one of the

purposes of the ordinance, as stated in its preamble, is to minimize the extent to which unimproved roads prevent emergency and public-service vehicles from accessing structures and people located on them. It is plausible to think that mowing and brush-clearing activities, if not performed properly, could impede access or otherwise have an adverse effect on the condition of the roads, and that therefore permission from Town officials is needed before such work may commence. And again, because the ordinance has a core of understandable meaning, any marginal uncertainty over whether it applies to mowing or brush-clearing does not render it void for vagueness.

I now turn to the plaintiff's argument that Section 3 of the ordinance is invalid because it does not contain standards to guide the Town Building Inspector or Town Highway Commissioner in exercising the discretion conferred to them. Section 3 grants discretion to those Town officials in two ways. First, they have discretion to determine whether a survey is necessary before any construction, work, tree cutting, or other act may be commenced. Second, they have discretion to approve the survey if one is required. The plaintiff contends that both grants of discretion render the ordinance unconstitutionally vague.

It is true that the text of Section 3 does not expressly identify the criteria that the Town Building Inspector and Town Highway Commissioner must apply when exercising their discretion to require and approve a survey. However, those standards may be discerned from the preamble and purpose of the ordinance. *See Grayned*, 408 U.S. at 110–11 (looking to preamble of ordinance to conclude that ordinance was not unconstitutionally vague); *State ex rel. Humble Oil & Refining Co. v. Wahner*, 25 Wis.2d 1, 8 (1964) (noting that a "statement of purpose announced in the preamble" of a zoning

ordinance can provide "sufficient norms" to defeat a vagueness challenge). The purpose of the ordinance, as reflected in its preamble, is to facilitate access to structures and people located on unimproved roads. It is reasonable to infer from this purpose that, in deciding whether a person must complete a survey before commencing construction or other work on an unimproved road, or whether to approve any such survey, the Town Building Inspector or Town Highway Commissioner must consider how the proposed work might affect access to structures and people along the roads. More simply stated, the officials must consider the extent to which the proposed work might impede travel over the roads. Even without the preamble, however, this standard would be implicit in the ordinance. That is so because discretion is granted to Town officials with expertise in the areas of construction and road administration. It is evident that, in granting discretion to these officials, the Town intended for them to use their expertise rather than act on a whim or for reasons unrelated to the safety of the roads or how the proposed work might affect access to properties along them.

Moreover, because the ordinance is narrow in scope and does not purport to regulate sensitive constitutional rights, the danger that the lack of explicit standards will abet arbitrary and discriminatory enforcement is low. Few private citizens perform their own work on roadways, and it is hard to envision many plausible scenarios in which a Town Building Inspector or Town Highway Commissioner could use his or her authority to regulate roadwork to engage in discrimination. If such discrimination does occur, it will be relatively easy for a court to identify it in the context of an as-applied challenge, and therefore facial invalidation of the ordinance is not required. *See Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 503 (1982) (holding that even a

significant risk of discriminatory enforcement did not require facial invalidation of ordinance); *Planned Parenthood*, 7 F.4th at 605 (noting that although a danger of arbitrary enforcement may lead to a successful as-applied challenge, it did not require facial invalidation in a pre-enforcement challenge.)

The plaintiff, however, contends that Section 3 has already facilitated discrimination. She points to the position taken by the Town in connection with her mowing and trimming activities and contrasts it with the Town's rejecting her complaint about the Glassels' placing objects such as flowers and rocks in the right of way. The plaintiff thinks that it was discriminatory for the Town to insist that she submit a survey before mowing the road and trimming the trees but not also insist that the Glassels submit a survey before placing objects on the road. As I explain below in the context of the plaintiff's equal-protection claim, these actions by the Town were not discriminatory. But even if they were, they were not acts of discrimination committed by the Town Building Inspector or the Town Highway Commissioner while exercising the discretion granted to them under Section 3. As far as the record reveals, those Town officials were not asked to decide whether a survey would be needed for the plaintiff's maintenance activities.[6] Instead, the Town Attorney simply cited the ordinance in his letter and expressed his belief (or possibly the Town Board's belief) that a survey was required. (ECF No. 82-5 at 3.) Thus, any discrimination by the Town in this area would not have been facilitated by

[6] One of the letters that the Town Attorney wrote to the plaintiff states that the plaintiff had made complaints to the "Town Highwayman" about the obstructions in the road. (ECF No. 82-1.) For this reason, I will assume that the Town Highway Commissioner determined that the Glassels did not need to submit a survey before placing objects on the road.

the alleged lack of standards to guide the Town Building Inspector and the Town Highway Commissioner in the exercise of their discretion under Section 3.

In short, Section 3 has a core of understandable meaning and does not create a serious risk of arbitrary or discriminatory enforcement. Especially considering the ordinance's modest penalties for noncompliance and the fact that it does not regulate First Amendment rights, any lack of clarity at the margins does not require that the law be declared void for vagueness. Accordingly, summary judgment will be granted to the Town on the merits of the plaintiff's due process claim, and the plaintiff's motion for summary judgment on this claim will be denied.

D. Equal Protection Claim

In her remaining constitutional claim, the plaintiff contends that the Town's joining her neighbors in opposing her maintenance and improvement activities on the roads amounted to a denial of equal protection of the laws. In this claim, the plaintiff does not contend that the Town singled her out for unfavorable treatment based on her membership in a protected class. Instead, she brings what is known as a "class of one" equal-protection claim. *See Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). To prevail on such a claim, the plaintiff must show, at a minimum, that: (1) she has been intentionally treated differently from others similarly situated, and (2) there is no rational basis for the difference in treatment. *Id.*; *Fares Pawn, LLC v. Ind. Dep't of Fin. Insts.*, 755 F.3d 839, 845 (7th Cir. 2014). Some authority suggests that the plaintiff must also show that government officials acted with a bad motive, malice, or animus. *See Fares Pawn*, 755 F.3d at 845. However, even if the plaintiff shows that the government acted with an improper motive, the plaintiff cannot prevail if it is possible for a court to conceive of a

rational basis for the difference in treatment. *See Id.* ("[A] given action can have a rational basis and be a perfectly logical action for a government entity to take even if there are facts casting it as one taken out of animosity. If [the court] can come up with a rational basis for the challenged action, that will be the end of the matter—animus or no."); *D.B. ex rel. Kurtis B. v. Kopp*, 725 F.3d 681, 682 (7th Cir. 2013) ("Allegations of improper subjective motive are not enough to state a class-of-one equal-protection claim. The complaint must allege sufficient facts to plausibly show that the plaintiff was treated differently from others similarly situated and that the discriminatory treatment was wholly arbitrary and irrational.").

The plaintiff generally contends that the Town has intentionally treated her differently than her neighbors. In support of this claim, the plaintiff points to several instances of the Town's involvement (or lack of involvement) with the ongoing dispute between the plaintiff and her neighbors concerning the roads in Blue Wing Estates. First, the plaintiff contends that the Town's adoption of the unimproved-roads ordinance at the request of Limosani and Odette was intended to single her out for unfavorable treatment. (Pl. Br. in Opp. at 22, ECF No. 102.) However, the ordinance has a rational basis, and therefore its mere existence does not violate the plaintiff's right to equal protection. As noted above, the ordinance is designed to promote the ability of emergency and public-service vehicles to pass over unimproved roads and reach residences and people located along the roads. The plaintiff contends that the ordinance lacks a rational basis because the government does not have a legitimate interest in regulating "a private road that does not serve any residences." (*Id.*) It is unclear what the plaintiff means by this. Residences, such as the Glassels', are located along Norman Avenue, which is the unimproved road

at the center of the parties' dispute. Moreover, Section 2 of the ordinance applies only when the proposed construction would result in three or more residential dwellings on the road. *See* Ord., § 2.A. To the extent that Section 3 might be overinclusive in that it could apply to some roads with no residences on it, that would not deprive the law of a rational basis. For under rational-basis review, a law need not be narrowly tailored to serve the government's interest. *See, e.g., Zehner v. Trigg*, 133 F.3d 459, 463 (7th Cir. 1997).

Next, the plaintiff contends that, in several respects, the Town intentionally treated her differently than the Glassels. First, the plaintiff notes that Norman Avenue has a gravel surface from its intersection with a public road to the Glassels' residence, and she contends that the Town's denying her a permit to continue the gravel surface to her properties amounts to intentional discrimination. However, the plaintiff points to no evidence in the record establishing when the gravel surface was installed, who installed it, or whether the Town granted the installer a permit. And unless the Town granted the installer a permit, the Town's denying the same permit to the plaintiff could not amount to an intentional difference in treatment.

Second, the plaintiff contends that the Town's responses to the Glassels' complaints about the plaintiff's activities on the road were more favorable than its responses to her complaints about the Glassels', and that this difference in treatment lacked a rational basis. Here, the plaintiff points out that the Town insisted that she stop mowing the lawn and cutting the brush on the road, but it did not take any action when she complained that the Glassels were placing objects in the Norman Avenue right-of-way. In the plaintiff's view, the Glassels' placing objects in the right-of-way counted as "work . . . or any other act related to" the road within the meaning of Section 3, and

therefore the Town should have sent a cease-and-desist letter to the Glassels, just like it sent one to her. But a key difference between the Town's response to the plaintiff's complaints and its response to the Glassels' is that the Town regarded the plaintiff's activities, but not the Glassels', as trespassing. In the Town's view, the subdivision plat provides that each property owner holds title to the segment of the road that abuts his or her property and has the exclusive right to maintain that segment. *See* Town Attorney Letter of July 29, 2019, at 2 ("[P]ursuant to the language in the Blue Wing Estates Subdivision, the owners of the property abutting on the roads and ways are the owners of the roads. The language set forth in the plat indicates that the people who abut a particular portion of road own that part of the road.") This view provides a rational basis for the difference in the Town's responses to the plaintiff's and the Glassels' respective complaints. The Glassels complained about the plaintiff's cutting grass and clearing brush on other people's property, while the plaintiff complained about the Glassels' placing objects on their own property. *Id.* at 1 ("Please be advised that it is my understanding that despite prior warning and citations being issued, you continue to mow lawn and cut brush *on other people's property*." (Emphasis added)); *id.* at 2 ("It is the Town's position that you are trespassing on the property owned by the adjacent property owners by cutting the grass, cutting brush, etc.").

The plaintiff contends that the Town's interpretation of the subdivision plat is legally incorrect. However, for purposes of the plaintiff's equal-protection claim, it does not matter whether the Town's interpretation is right or wrong. Instead, what matters is that the Town applied its interpretation evenhandedly. As far as the record reveals, none of the plaintiff's complaints about the Glassels concerned their interfering with portions of the road that

abut the plaintiff's properties, and none of the Glassels' complaints about the plaintiff involved her activities on her own segments of the road. Accordingly, the Town did not make arbitrary distinctions when it ordered the plaintiff to stop mowing and cutting brush along the entire road but did not require the Glassels to remove objects from the right-of-way in front of their own properties.

Third, the plaintiff contends that the Town treated her differently than the Glassels by denying her the erosion control permit that she needed to install the gravel surface on the roads but allowing the Glassels to pave the portion of Norman Avenue that directly abuts their properties as part of their driveway-paving project. The problem with this argument is that the plaintiff's evidence does not allow a factfinder to draw the conclusion that the Glassels applied to the Town for a permit before paving the road. The Town Clerk states in her declaration that the Glassels did not inform the Town of their intention to pave their part of Norman Avenue as part of their driveway project. (Decl. of Diane Boyd ¶ 17, ECF No. 89.) The plaintiff does not respond to this evidence by submitting a permit application or other documentation showing that the Glassels asked for and received Town permission to pave the road. Instead, she points to the Glassels' unsworn, pro se submission to this court, in which they state that they "went through the proper channels with the town" to get "approval" for their driveway project. (Pl. Resp. to Town PFOF ¶ 25 & ECF No. 91 at 2.) But even if this unsworn submission were admissible for purposes of summary judgment, no evidence in the record establishes what the Glassels regarded as the "proper channels" or indicates what kind of "approval" they received from the Town. Certainly, there is no evidence that the Glassels applied for and received an erosion control permit or any other formal permission from the Town. Thus, a reasonable

factfinder could not conclude that the Town granted formal approval for the Glassels' paving project but denied the same approval for the plaintiff's project.

The plaintiff also notes that she complained to the Town about the Glassels' paving project after it was finished because it created a drop-off from the pavement to the ground, and that the Town inspected the pavement in response to her complaint but otherwise took no action. (Babcock Decl., March 28, 2022, ¶ 3.) The plaintiff contends that because her complaint provided the Town with notice that the Glassels had paved the road, the Town's failure to act could be viewed as a denial of equal protection. (Br. in Opp. at 23.) But there is a difference between denying a permit for a project before it is commenced and failing to take enforcement action for noncompliance with a permit requirement after the project is already complete. Once the project is complete, the Town could rationally decide that the violation is not serious enough to justify an expenditure of resources on enforcement. Thus, evidence that the Town failed to enforce a permit requirement or Section 3 of the unimproved-roads ordinance once it learned that the Glassels had paved their portion of Norman Avenue does not support the plaintiff's equal-protection claim.

Finally, the plaintiff contends that the Town's denial of her application for an erosion control permit was arbitrary because the Town did not follow the procedures set forth in the Erosion Control Ordinance when it entertained her application. *See* Construction Site Erosion & Sediment Control Ordinance of Town of Sugar Creek ("Erosion Control Ordinance"), ECF No. 96-2. However, as discussed in the context of the plaintiff's taking claim, the plaintiff is not challenging the Town's denial of her application for an erosion control permit. (ECF No. 102 at 13 & ECF No. 105 at 1–2.) Instead of seeking relief from that decision, the plaintiff cites the Town's handling of her

permit application as "evidence" that the Town has acted against her for the private benefit of her neighbors. (ECF No. 102 at 24.) But, as explained above, each of the Town decisions that the plaintiff challenges as being motivated by animus either was not a difference in treatment or was supported by a rational basis. Therefore, any evidence of the Town's animus is immaterial. *Fares Pawn*, 755 F.3d at 845; *Kopp*, 725 F.3d at 682.

In any event, I can conceive of a rational basis for the Town's denial of the permit. The plaintiff sought to improve the roads as a first step towards developing her properties. The Town could rationally conclude that if the roads were to be improved for this purpose, then they must meet the standards of a town road so that emergency and public-service vehicles can reach the residences that would eventually be constructed there. Although this purpose might not be stated in the Erosion Control Ordinance, it would have been rational for the Town to act on that purpose in making its decision. The Town's failure to follow the procedures stated in its own ordinance might be a violation of state or local law, but a violation of state or local law does not automatically violate the Equal Protection Clause. *See Muckway v. Craft*, 789 F.2d 517, 523 (7th Cir. 1986) (finding that plaintiff did not state an equal-protection claim by alleging that municipality violated state zoning law). To violate the Equal Protection Clause, the Town would have to treat the plaintiff differently than similarly situated applicants. And in the present case, no evidence in the record indicates that the Town would have granted an erosion control permit to another applicant who proposed to build a residence on the road without bringing the road up to town-road standards.

Accordingly, the Town's motion for summary judgment on the plaintiff's equal-protection claim will be granted.

E. Relinquish Supplemental Jurisdiction

Because I am dismissing the federal claims over which the court has original jurisdiction, I will relinquish supplemental jurisdiction over all state-law claims alleged by or against any party. *See* 28 U.S.C. § 1367(c)(3).

III. CONCLUSION

For the reasons stated, **IT IS ORDERED** that the Town's motion for summary judgment (ECF No. 86) is **GRANTED**, in part, as follows: (1) the plaintiff's taking claim involving Section 2 of the unimproved-roads ordinance is dismissed without prejudice as unripe; (2) judgment on the merits is granted to the Town on the plaintiff's vagueness challenge to Section 3; and (3) judgment on the merits is granted to the Town on the plaintiff's equal-protection claims. In all other respects, the motion is denied.

IT IS FURTHER ORDERED that the plaintiff's motion for partial summary judgment (ECF No. 78) is **DENIED**.

IT IS FURTHER ORDERED that Limosani's and Odette's motion for partial summary judgment (ECF No. 72) is **DENIED**.

IT IS FURTHER ORDERED that all state-law claims by or against any party are dismissed without prejudice because the court has relinquished supplemental jurisdiction over such claims.

FINALLY, IT IS ORDERED that the Clerk of Court shall enter final judgment.

Dated at Milwaukee, Wisconsin, this 13th day of July, 2022.

/s/Lynn Adelman____________
LYNN ADELMAN
United States District Judge