

STATE OF INDIANA	)		IN THE STARKE CIRCUIT COURT
	)	SS:	
COUNTY OF STARKE	)		CONTINUOUS TERM, 2020
THE BOARD OF COMMISSIONERS OF STARKE COUNTY, INDIANA	)		
<i>Plaintiff</i>	)		
VS.	)	CAUSE #. 75C01-2011-PL-_____	
	)		
BAUGH MIDWEST COOPERATIVE, Inc., And BAUGH NORTH CENTRAL COOPERATIVE, Inc.	)		
<i>Defendants</i>	)		

**COMPLAINT**

THE BOARD OF COMMISSIONERS OF STARKE COUNTY, INDIANA hereby files their complaint against defendants BAUGH MIDWEST COOPERATIVE, Inc., and BAUGH NORTH CENTRAL COOPERATIVE, Inc. and in support says:

**PART ONE: PARTIES AND SUBJECT PROPERTY**

1. Plaintiffs, the Board of Commissioners of Starke County (the “Commissioners”) constitute the duly elected executive body of the County of Starke, State of Indiana.
2. Defendant **Baugh Midwest Cooperative, Inc.** (“Baugh Midwest”) is the title owner in fee simple of approximately three hundred and twenty (320) acres of real property situated in Starke County, referred to herein as the “Hamlet West” property.
3. The Hamlet West property is more particularly described as follows:

**Parcel A.** A parcel of land in the NW ¼ of Section 28, Township 34 North Range 2 West of the 2<sup>nd</sup> PM in Davis Twp., Starke County, Indiana described as follows: Commencing at the Southwest corner of the NW ¼ of Section 23 thence easterly on the South line of the NW ¼ of Section 23, a distance of 243 feet; thence North and parallel with the West line of the NW ¼ of said Section 23, a distance of 243 feet to the West line of the NW ¼ of said Section 23; thence Southerly on the West line of the said NW ¼ of Section 23, a distance of 170 feet to the point of commencing.

**Parcel B.** All that part of the W ½ of Section 23, T 34 N, R 2 W of the 2<sup>nd</sup> PM in Starke County, Indiana lying south of the Pittsburgh, Fort Wayne and Chicago Railroad EXCEPT the West 110.415 acres of the West ½ of Section 23, lying South of the Pennsylvania Railroad right-of-way in T 34 N, R 2 W of the 2<sup>nd</sup> PM, Starke County Indiana, more particularly described as follows, to wit: Commencing at the Southwest corner of Section 23, T 34 N, R 2 W of the 2<sup>nd</sup> PM, thence East 160 rods to the half Section line; thence North along the half Section line 244 rods to the South line of the right-of-way of the Pennsylvania Railroad; thence in a northwesterly direction along the South line said right-of-way to the West line of said Section 23; thence South along the said West Section line a distance of 277 rods to the place of beginning, subject to all legal highways.

**Parcel C.** The West 110.415 acres of the West half of Section 23, lying South of the Pennsylvania Railroad right-of-way in T 34 N, R 2 W of the 2<sup>nd</sup> PM, Starke County, Indiana, more particularly described as follows, to wit: Commencing at the Southwest corner of Section 23, T 34 N, T 2 W of the 2<sup>nd</sup> PM; thence East 160 rods to the half Section line; thence North along the half Section line 244 rods to the South line of the right-of-way of the Pennsylvania Railroad; thence in a northwesterly direction along the South line of said right-of-way to the West line of said Section 23; thence South along the said West Section line a distance of 277 rods to the place of beginning, subject to all legal highways.

EXCEPT: A parcel of land in the NW ¼ of Section 23, T 34 North, R 2 West of the 2<sup>nd</sup> PM in Davis Township, Starke County, Indiana described as follows: Commencing at the Southwest corner of the NW ¼ of Section 23, a distance of 243 feet; thence North and parallel with the West line of the NW ¼ of Section 23, a distance of 170 feet; thence westerly and parallel with the South line of the NW ¼ of Section 23, a distance of 243 feet to the West line of the NW ¼ of Section 23; thence Southerly on the West line of the NW ¼ of Section 23, a distance of 170 feet to the point of commencing.

ALSO EXCEPT, a part of the W ½ of Section 23, T 34 N, R 2 W, Starke County Indiana, described as follows: Commencing at the northwest corner of the SW ¼ of said section; thence South 87 degrees 32 minutes 58 seconds East 38.83 feet along the north line of said quarter section to the east boundary of U.S. 35; thence South 2 degrees 30 minutes 00 seconds West 2,239.05 feet along the boundary of said U.S. 35 to the point of beginning of this description; thence South 3 degrees 12 minutes 38 seconds East 251.25 feet; thence South 21 degrees 54 minutes 30 seconds East 133.11 feet to the north boundary of County Road 500 North; thence North 87 degrees 32 minutes 53 seconds West 20.00 feet along the boundary of said U.S. 35; thence North 2 degrees 28 minutes 40 seconds East 8.28 feet along said boundary to the northeastern boundary of the intersection of said County Road 500 North and U.S. 35; thence North 43 degrees 28 minutes 16 seconds West 83.45 feet along the boundary of the intersection of said County Road 500 North and said U.S. 35; thence North 2 degrees 30 minutes 00 seconds East 305.00 feet along the boundary of said U.S. 35 to the point of beginning.

**Parcel D.** All that part of the East ½ of Section 23 in T 34 N, R 2 W of the 2<sup>nd</sup> PM situated south of the right-of-way of the Pittsburgh, Fort Wayne and Chicago Railway Company.

4. Copies of the deeds wherein Baugh Midwest acquired title to the Hamlet West property are attached hereto marked as Exhibits 1, 2, 3 and 4 and each is hereby incorporated herein.

5. The Starke County property record card for the Hamlet West property is attached hereto marked as Exhibit 5 and is hereby incorporated herein.

6. Exhibit 5 (the property record card) shows that tax billings for the property are sent to “Baugh Midwest Cooperative Inc Attn Tax Dept. 1390 Enclave Pkwy, Houston TX 77077”.

7. Plaintiffs’ search of the web presence of the Indiana Secretary of State’s office for the records relating to “Baugh Midwest Cooperative, Inc.” returned no records in that corporate name, but did return records in the name “Baugh North Central Cooperative, Inc.” (“Baugh North Central”)

8. The records showed that Baugh North Central withdrew from doing business in Indiana effective on or about September 21, 2016 as is shown by the **Certificate of Withdrawal**, attached hereto as Exhibit 6 and hereby incorporated herein.

9. The Certificate of Withdrawal (Exhibit 6) shows the address for Baugh North Central as “1390 Enclave Parkway, A-402-351, Houston Texas 77077”.

#### **PART TWO: JURISDICTION AND RELATED MATTERS**

10. This Court possesses personal jurisdiction over Baugh Midwest in this matter pursuant to Ind. Trial Rule 4.4(A)(5), which states that “Any person or organization that is a nonresident of this state...submits to the jurisdiction of the courts of this state as to any action arising from the following acts committed by him or his agent,...(5) owning, using, or possessing any real property or an interest in real property within this state.”

11. Baugh Midwest is properly a defendant in this action.

12. Baugh Midwest is not currently authorized to conduct business in Indiana.
13. To the extent that Baugh Midwest is conducting or has conducted business within the state of Indiana, this Court also possesses jurisdiction over Baugh Midwest pursuant to T.R. 4.4(A)(1).
14. This Court possesses jurisdiction over Baugh North Central in this matter pursuant to Ind. Trial Rule 4.4(A)(5), which states that “Any person or organization that is a nonresident of this state...submits to the jurisdiction of the courts of this state as to any action arising from the following acts committed by him or his agent...(5) owning, using, or possessing any real property or an interest in real property within this state.”
15. Baugh North Central is properly a defendant in this action.
16. Baugh North Central is not currently authorized to conduct business in Indiana.
17. To the extent that Baugh North Central may have conducted business within the state of Indiana, this Court also possesses jurisdiction over Baugh Midwest pursuant to T.R. 4.4(A)(1).
18. Throughout the transactions subject of this Complaint Baugh Midwest functioned as a subsidiary or affiliate of Sysco Corporation, believed to be a Delaware corporation.
19. Throughout the transactions set forth in this Complaint Baugh North Central functioned as a subsidiary or affiliate of Sysco Corporation, believed to be a Delaware corporation.

### **PART THREE: BREACH OF CONTRACT AND UNJUST ENRICHMENT**

20. In late 2005 continuing into early 2006 Defendants, directly and through their officers, agents, employees and corporate affiliates, initiated and maintained contacts and engaged in negotiations with Plaintiffs, Starke County, Indiana.

21. During the same time period Defendants directly and through their officers, agents, employees and corporate affiliates, initiated and maintained contacts and engaged in negotiations with other Starke County based entities including the Town of Hamlet and the Starke County Development Foundation.

22. During these contacts and negotiations, Defendants, directly and through their officers, agents, employees and corporate affiliates represented that they were prepared to undertake the construction of a 600,000 square foot multi-temperature distribution facility, with associated office, refrigeration, rail, utility infrastructure, a transportation building and approximately 1,000,000 square feet of hard surfaces.

23. On or about February 8, 2006 the contacts and negotiations of the above listed entities were reduced to a Memorandum of Understanding (the "MOU"), Marked as Exhibit 7 and hereby incorporated herein.

24. The MOU was signed by William Day, on behalf of the Company. (Exh. 7, p 7)

25. At the time he signed the MOU, William Day was an executive in the Sysco family of corporations.

26. On page 1 of the MOU Defendants or their affiliates, represented that the facility would employ approximately 292 people "with an average income of approximately \$30,500.00 per year" and would result in approximately 150 additional jobs.

27. On page 1 of the MOU Defendant or their affiliates represented that private investment in building improvements at the Hamlet West property would amount to approximately \$45,000,000.00.

28. These and other representations by the Defendants directly and through their officers, agents, employees and corporate affiliates induced Starke County to take actions,

provide incentives and to invest public funds in infrastructure improvements as specified and required by Defendants and their corporate affiliates. See MOU Section 2.

29. Plaintiffs performed its commitments under the MOU, at Plaintiff's expense using public funds.

30. Plaintiffs invested at least **\$1,000,000.00** of county public funds in causing to be installed the water and sewer extensions and related facilities to serve the Hamlet West property as specified in the MOU (See MOU Section 1(b)(5-8), and MOU Exh D).

31. Plaintiffs invested at least **\$600,000.00** in roadway improvements induced by specification in the MOU. (See MOU Exh D).

32. Defendants directly and through their officers, agents, and corporate affiliates agreed to perform numerous specific acts in Section 3 of the MOU.

33. In Section 3(e) of the MOU, the 'Company' agrees to "connect to and become a user of the sewage works and waterworks" and to pay pursuant to the "schedule or rates and charges applicable to other users of such services".

34. Neither Defendants nor any of their affiliated companies ever commenced any construction or development at the Hamlet West property.

35. Neither Defendants nor any of their affiliated companies ever made any substantial private investments in the Hamlet West property.

36. Neither Defendant, nor any of their affiliated companies hired employees at the Hamlet West property.

37. Defendants and their affiliated companies failed to perform as represented in the MOU.

38. Defendants have listed the Hamlet West property for public auction with Concierge Auctions (conciergeauctions.com) and with Williams & Williams with auction scheduled for November 11, 2020 as shown in Exhibit 8.

36. Both the Concierge and the Williams & Williams listings state: "Hamlet West offers a wide variety of amenities and a logistically significant location in close proximity to a number of key transportation routes".

37. The Williams & Williams listing (Exh. 8) also states "Utilities located at site".

38. Defendants did not provide any substantial funding for the utilities or amenities at the Hamlet West property.

39. For Defendants or their affiliates to convert the public investment in the Hamlet West property into their private profit would constitute unjust enrichment.

40. In addition, and in the alternative, Defendants breached their contractual obligations to Starke County under the MOU.

41. In addition, and in the alternative Plaintiffs assert the theory of *quantum meruit*, for the reasonable and fair value of the amenities provided to the Hamlet West property be rendered as a judgment in Plaintiffs' favor and against Defendants, jointly and severally.

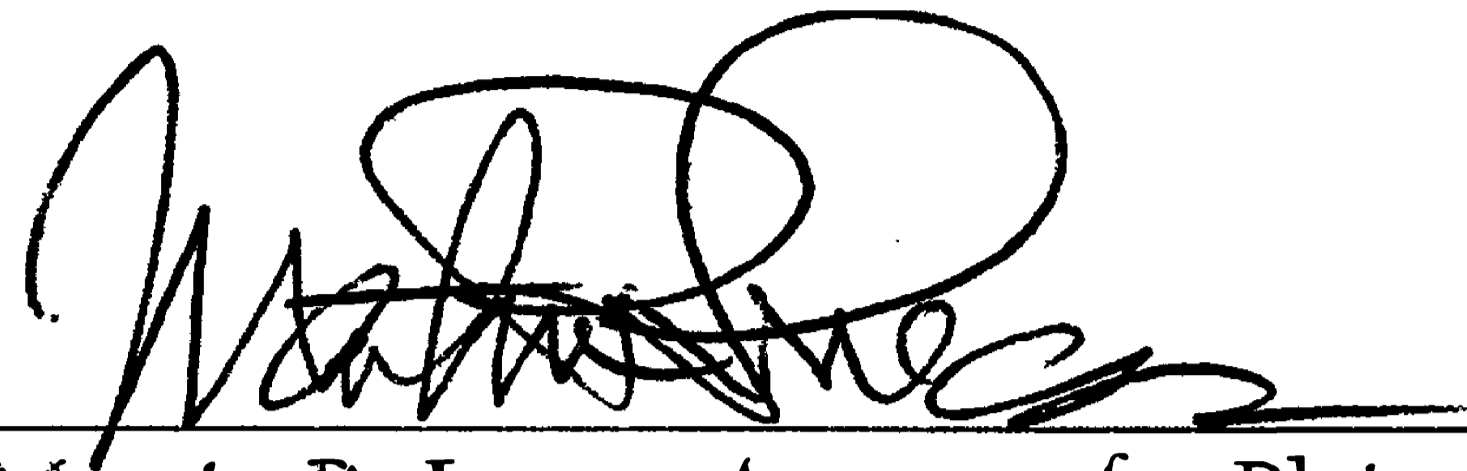
**WHEREFORE** Plaintiff Board of Commissioners of Starke County, Indiana respectfully request judgment in the amount of One Million, Six Hundred Thousand Dollars (\$1,600,000.00) against Defendants, jointly and severally, and in favor of Plaintiffs, and for all other relief under the facts and circumstances of this matter.



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Charles Chesak, President,  
Board of Commissioners of Starke County Indiana, Plaintiff

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Martin R. Lucas', written over a horizontal line.

Martin R. Lucas, Attorney for Plaintiff

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