

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WILLIAM JACKSON, *et al.*,

Plaintiffs,

v.

VILLAGE OF WINNETKA.

Defendant.

Case No. 24 C 3576

Hon. LaShonda A. Hunt

ORDER

For the reasons set forth in the statement below, Defendant’s motion to dismiss Plaintiffs’ First Amended Complaint (Dkt. 55) is granted as to all federal claims, which are dismissed with prejudice. The Court declines to exercise supplemental jurisdiction over the state law claims, which are dismissed without prejudice to timely refile in an appropriate forum.

STATEMENT

I. Background

Plaintiffs are residents of, and property owners in Winnetka, Illinois. (Am. Compl. ¶ 1). This action arises from the passage of Zoning Ordinance MC-01-2024 by Defendant Village of Winnetka in February 2024, adding new regulations that restrict Plaintiffs’ ability to develop the portions of their private property immediately adjacent to and extending along the Lake Michigan shoreline (the “Ordinance”). (*See generally id.*). Plaintiffs contend the Ordinance constitutes a regulatory taking of their property without just compensation under federal and state law.

Plaintiffs originally filed their complaint in May 2024. (Compl., Dkt. 1). After the Court granted Defendant’s motion to dismiss, (Order, Dkt. 47), Plaintiffs amended their complaint to add new facts and additional theories of liability. (Am. Compl., Dkt. 51). Plaintiffs now challenge the Ordinance as an as applied and facial unconstitutional taking under the Fifth Amendment of the U.S. Constitution (Count I), an unlawful inverse condemnation under Article I § 15 of the Illinois Constitution (Count II), unlawful eminent domain under the Fifth and Fourteenth Amendments (Count III) and Article I § 2 of the Illinois Constitution (Count IV), for being unconstitutionally vague (Count V), and as being an as applied and facial due process violation under the Fourteenth Amendment and 42 U.S.C. § 1983 (Count VI) and the Illinois Constitution Article 1 § 2 (Count VII). (*See generally id.* ¶¶ 98-179).

Defendant now moves to dismiss the Amended Complaint. (Def.’s Mot, Dkt. 55, Def.’s Mem. in Support, (“Mot.”), Dkt. 56). Because Plaintiffs’ allegations are still insufficient to state a federal claim, the amended complaint is also dismissed.

II. Analysis

The Court dismissed the initial complaint on ripeness grounds. (*See generally* Order, Dkt. 47). Familiarity with that decision is presumed. Specifically, the Court held the case was not ripe for adjudication because Plaintiffs did not allege that they had “(1) submitted any development plans to Defendant since the adoption of the Ordinance for any of their properties, (2) applied for any variations, exceptions, or waivers from the Ordinance’s lakefront regulations, or (3) been denied any building permits or zoning approvals to undertake any construction activity on any of their properties, even though those are options afforded under the Ordinance.” (*Id.* at 330 (citing *Palazzolo v. Rhode Island*, 533 U.S. 606, 619-21 (2001); *Hodel v. Virginia Surface Min. & Reclam. Ass’n*, 452 U.S. 264, 297 (1981))).¹ Such allegations are required where a plaintiff’s claims are “based on a law or regulation which is alleged to go too far in burdening property” *See Palazzolo*, 533 U.S. at 620. Those same concerns are implicated in Plaintiffs’ amended complaint.

A. As Applied Challenges

Starting with Plaintiffs’ as applied challenges to the Ordinance, Plaintiffs added nothing new to the Amended Complaint that alter the Court’s ripeness concerns with the original Complaint. Plaintiffs add allegations that assessments performed on their properties uniformly “confirm[ed]” decreased property values consistent with tens of thousands of square feet of “lost . . . developable land.” (Am. Compl. ¶ 75). But no Plaintiff has alleged that they tried to develop any property on any of the land—much less the entirety of it. Such conclusory allegations do not show that their claims are ripe for adjudication.

Plaintiffs nonetheless assert that their claims may still proceed because the Ordinance is “intentionally structured to make meaningful development impossible,” (Pls.’ Opp. to Mot. at 655 (“Opp.”), Dkt. 59), such that pursuing permits, waivers, or variances under the Ordinance would be futile, (Compl. ¶ 110). Such futility, they argue, not only renders the Ordinance facially unconstitutional, but it also renders their claims exempt from the exhaustion requirements that typically must be met before a claim is ripe. (Opp. at 655-57). Basically, Plaintiffs say the Ordinance so clearly precludes the development they claim is now prohibited that they need not even show they tried to do it.

In support of their argument, Plaintiffs point to *Pakdel v. City & County of San Francisco, California*, for the proposition that a claim is ripe when the government has “taken a definitive position fixing what the property owner may or may not do with the land.” (Opp. at 660 (citing *Pakdel v. City & Cnty. of San Francisco, California*, 594 U.S. 474 (2021))). Here, they say that the Ordinance “categorically defines what is forbidden” and that Winnetka “publicly confirmed it will enforce the rule as written,” thereby “commit[ing] to a definitive position regarding the use of the property.” (*Id.* at 661). So, according to Plaintiffs, their “constitutional injury is concrete and present, not hypothetical or contingent on further proceedings.” (*Id.*)

¹ Unless otherwise noted, page numbers in citations to the docket reference the “PageID #” in the CM/ECF header of the document, not other page numbers in the header or footer.

True, the *Pakdel* Court notes that the “finality requirement is relatively modest,” but also unambiguously explained that “a plaintiff must show is that there [is] no question . . . about how the regulations at issue apply to the particular land in question.” 594 U.S. at 478. The picture of finality that *Pakdel* paints contrasts with the finality—suggested through futility—in the Amended Complaint here. The issue in *Pakdel* involved a city regulation requiring building owners to provide tenants lifetime leases when converting a property from a tenancy-in-common ownership arrangement—where all owners technically have the right to possess and use the entire property—to a modern condominium-style arrangement—which provided individual ownership to certain parts of the building. *Id.* at 475-75. There, the owners “requested that the city either excuse them from executing the lifetime lease or compensate them for the lease.” *Id.* at 476. And critically, “[t]he city refused both requests, informing petitioners that failure to execute the lifetime lease violated the [program] and could result in an enforcement action.” *Id.* (internal quotations omitted).

In contrast, here, no Plaintiff has requested anything from Defendant. The closest Plaintiffs come to suggesting their claims are ripe are where they allege a *non-plaintiff’s* application to repair her pre-existing deck was rejected under the Ordinance. (Am. Compl. ¶ 56). But Plaintiffs do not allege they took any action from which they can point to any of their own non-theoretical injury.

The Court also disagrees with Plaintiffs that *Unity Ventures v. Lake Cnty.*, 841 F.2d 770 (7th Cir. 1988) is irrelevant here. In *Unity Ventures*, the 7th Circuit noted that:

In land use challenges, the doctrine of ripeness is intended to avoid premature adjudication or review of administrative action. It rests upon the idea that courts should not decide the impact of regulation until the full extent of the regulation has been finally fixed and the harm caused by it is measurable.

Id. at 774 (quoting *Herrington v. County of Sonoma*, 834 F.2d 1488, 1494 (9th Cir. 1987)). There—like here—Plaintiffs “do not allege that [the Defendant] ha[s] ‘taken’ their property.” *Id.*

In direct contradiction to Plaintiffs’ arguments, the 7th Circuit there observed that “futility is not established ‘until at least one meaningful application [under the challenged ordinance] has been made.’” *Id.* at 775 (quoting *Herrington*, 834 F.2d at 1495)). Instead, Plaintiffs assume futility of the process and seek premature relief. Because Plaintiffs offer only conclusory allegations related to a non-plaintiff’s purported experience, their as-applied federal claims are unripe.

B. Facial Challenges

Plaintiffs’ new claims—alleging that the Ordinance is facially unconstitutional—must be addressed regardless of whether the claim is ripe. *Daniels v. Area Plan Comm’n of Allen Cnty.*, 306 F.3d 445, 458 n.13 (7th Cir. 2002) (citing *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 533 (1992) (noting litigants need not meet the “ripeness requirements when solely mounting a pre-enforcement facial challenge to the constitutionality of a statute under the Fifth Amendment.”)). Plaintiffs allege that the Ordinance is facially unconstitutional under the taking clause of the Fifth

Amendment (Count I), the due process clause of the Fourteenth Amendment (Count VI), and because it is unconstitutionally vague (Count V).²

Facial challenges to ordinances and legislative acts are heavily disfavored and are rarely successful. *United States v. Salerno*, 481 U.S. 739, 745 (1987) (“[A] facial challenge to a legislative Act is . . . the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.”); *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470, 494 (1987) (“[T]he constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary.”) (quoting *Hodel v. Virginia Surface Min. & Reclamation Ass’n., Inc.*, 452 U.S. 264, 294-95 (1981)). With that in mind, we turn to Plaintiffs’ specific claims.

Plaintiffs face an “uphill battle” in pursuing facial challenges to regulations as regulatory takings given the difficulty demonstrating that the mere enactment of a piece of legislation deprived the owner of economically viable use of his property. *Suitum v. Tahoe Reg’l Plan. Agency*, 520 U.S. 725, 736 n.10 (1997). But there are at least two categories of regulatory action that constitute facially unconstitutional takings “compensable without case-specific inquiry” *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992). The first includes regulations that require the property owner to suffer a physical “invasion”—however minor—of their property. *Id.* There has been no physical invasion of Plaintiffs’ properties, so this first category is inapplicable. The second, and only category at issue here, is where the “regulation denies all economically beneficial or productive use of land.” *Id.*

Plaintiffs argue that when making the determination of whether a regulation “goes too far” in depriving a property owner of his property rights, “courts weigh the [*Penn Central*] factors,” (Opp. at 656 (citing *Lucas*, 505 U.S. at 1071)). But Plaintiffs’ citation here is to the *Lucas* dissent. And critically, the dissent’s point on the weighing of the *Penn Central* factors was expressly qualified by the majority. The Court there acknowledged that while the *Penn Central* factors are “keenly relevant to takings analysis generally,” assessing a facial challenge requires adhering to the rule that “all economically beneficial uses” be precluded. *Lucas*, 505 U.S. at 1019, 1019 n.8 (emphasis in original). Over the dissent’s criticism that this rule is “wholly arbitrary,” the Court still held that it applied, accepting that it could “occasional[ly] result” in “strange” results, like where a “landowner with 95% loss will get nothing, while the landowner with total loss will recover in full.” *Id.* at 1019 n.8.

Here, Plaintiffs allege that assessments performed after the Ordinance passed revealed the “loss of developable land” that cumulatively decreased their properties’ values by tens of millions of dollars. (Am. Compl. ¶ 75). These allegations reveal a fatal problem with their legal theory because they acknowledge that the land was not deprived of “all economically beneficial uses” as *Lucas* requires. 505 U.S. at 1019, 1019 n.8. Indeed, these allegations admit that the properties are

² Plaintiffs also contend that the Ordinance is facially unconstitutional under Article I of the Illinois Constitution (Counts II and VII). But given the Court’s dismissal of the federal claims providing the basis for jurisdiction, there is no need to reach the merits of any state law claims.

still worth tens of millions of dollars, even if the properties lost every dollar of value alleged. (Am. Compl. ¶ 75). Such allegations cannot support a facial challenge to the Ordinance.

C. Due Process

Plaintiffs' procedural due process claims also fail. "Procedural due process generally requires only notice and an opportunity to be heard." *Black Earth Meat Mkt., LLC v. Vill. of Black Earth*, 834 F.3d 841, 850 (7th Cir. 2016) (citing *Dusenbery v. United States*, 534 U.S. 161, 167 (2002)). Plaintiffs' allegations that Defendant conducted a public hearing, took testimony from residents, and conducted multiple other public meetings shows that Plaintiffs had numerous opportunities to be heard prior to Defendant adopting the Ordinance. (Am. Compl., ¶¶ 8-26).

And the application required by the Ordinance provides further opportunities for Plaintiffs to be heard, both through the application itself, and if needed, appeals and review of decisions on applications. (Dkt. 51-1, Am. Compl., Ex. 1, Ordinance at 391, 409).³ This contradicts Plaintiffs' allegations that either process—the process leading to the Ordinance's adoption or the process of the application itself—is facially unconstitutional for depriving them of due process.

The substantive due process claims fare similarly. Generally, "to state a substantive due process claim, a plaintiff must allege a deprivation of a 'protected life, liberty or property interest.'" *Indiana Land Tr. #3082 v. Hammond Redevelopment Comm'n*, 107 F.4th 693, 699 (7th Cir. 2024) (quoting *Zorzi v. Cnty. of Putnam*, 30 F.3d 885, 894 (7th Cir. 1994)). "Unless a governmental practice encroaches on a fundamental right, substantive due process requires only that the practice be rationally related to a legitimate governmental interest, or alternatively phrased, that the practice be neither arbitrary nor irrational." *Gen. Auto Serv. Station v. City of Chicago*, 526 F.3d 991, 1000 (7th Cir. 2008).

Defendant argues only that any substantive due process claim should be dismissed because it is not ripe, but makes no argument related specifically to the deficiency of the facial challenge of the statute on substantive due process grounds. But Plaintiffs' allegations on this count are conclusory and they do not discuss much less develop the issue in their opposition brief. (*See, e.g.*, Am. Compl. ¶ 137 ("Winnetka's failure to comply with Sections 30/10-5-15 and 30/10-5-10 of Illinois' Eminent Domain Act prior to enacting MC-01-2024 and its implementing Regulations deprived Plaintiffs and other residents of their procedural and substantive due process rights under the Fifth and Fourteenth Amendments to the United States Constitution, and therefore MC-01-2024 and its implementing Regulations are invalid and cannot be enforced."); *id.* ¶ 158 ("[a] violation of substantive due process occurs when a zoning ordinance deprives a person of a fundamental right, or is not rationally related to a legitimate government interest. Zoning ordinances cannot be arbitrary or irrational.")).

³ The Court may take judicial notice of the Ordinance without converting the motion to dismiss into a motion for summary judgment. *See Newcomb v. Brennan*, 558 F.2d 825, 829 (7th Cir. 1977) ("We hold that matters of public record such as state statutes, city charters, and city ordinances fall within the category of 'common knowledge' and are therefore proper subjects for judicial notice.").

That said, for similar reasons to those described above, Plaintiffs' allegations do not show that they have yet been deprived of any interest. At most, they allege future theoretical injury, either in the form of an application that they assume will be rejected or property values that they assume will diminish. But these allegations are not sufficient to sustain their claim.

D. Vagueness

Last, Plaintiffs claim the statute is facially unconstitutional because it is unconstitutionally vague. The Due Process Clause does not require "perfect clarity and precise guidance" in statutes and ordinances. See *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989). To sustain a vagueness challenge, a plaintiff must show the law "fails to define the offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and it fails to establish standards to permit enforcement in a nonarbitrary, nondiscriminatory manner." *Sherman v. Koch*, 623 F.3d 501, 519 (7th Cir. 2010). The degree of vagueness allowed partly depends on the nature of the ordinance. More vagueness is tolerated in a statute that imposes civil rather than criminal penalties. *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982). There is no suggestion that there are any criminal penalties implicated here.

Where, as here, a contested ordinance does not implicate First Amendment freedoms, "the challenger must show that the law is vague as applied to the facts of the case at hand." *United States v. Brierton*, 165 F.3d 1133, 1139 (7th Cir. 1999). The regulations associated with the Ordinance require that applications for coastal development include a description of the proposed means and methods of accomplishing the work, including how it will minimize "potential adverse impact". (Am. Compl. ¶¶ 147-58). In addition, the Ordinance includes an exception for rebuilding, repairing, and maintaining preexisting non-compliant structures but does not allow such work if it will have an "materially adverse impact" on the Slope Impact Area or Steep Slope Zone. (*Id.*)

Plaintiffs complain that neither "potential adverse impact" nor "materially adverse impact" are defined. While this is perhaps a closer question, even drawing all reasonable inferences in Plaintiffs' favor, these contested provisions are not so vague that a person of ordinary intelligence would not understand what is required. Even to the extent that those terms lack definitions within the Ordinance, vagueness still does not "permeate[] the text of" the Ordinance such that "it is subject to facial attack." *City of Chicago v. Morales*, 527 U.S. 41, 55 (1999). Indeed, in context, an understanding of the common dictionary definitions of potential, material, and adverse would allow an ordinarily intelligent person to determine that an applicant must disclose on their application how work performed will avoid any anticipated detrimental impact on the waterfront slopes that a proposed development may cause. Similarly, property owners seeking to rebuild, repair, and maintain preexisting non-compliant structures should understand that the work will not compromise steep slope stability.

Plaintiffs also complain that the Regulations "give the Engineering Director unfettered discretion to waive permit application requirements for some applicants while requiring additional permit application requirements from others." (Am. Compl. ¶¶ 147-50). Said differently, they claim the Ordinance cannot ensure that enforcement can be imposed "in a nonarbitrary, nondiscriminatory manner," *Sherman*, 623 F.3d at 519, so it is vague in this respect too. But the "constitutional concept of vagueness is successfully invoked only in cases in which a vague

statutory term . . . licenses uncabined discretion by police or other public officers, thus inviting abuse.” *L C & S, Inc. v. Warren Cnty. Area Plan Comm’n*, 244 F.3d 601, 605 (7th Cir. 2001). Plaintiffs’ offer little more than unfounded assumptions to support the contention that the Engineering Director will exercise his or her discretion arbitrarily. Furthermore, they wholly disregard the fact that the appeals process outlined in the Ordinance provides a potential applicant recourse if that occurs. (Dkt. 51-1, Am. Compl., Ex. 1, Ordinance at 391, 409). Plaintiffs’ allegations are conclusory, and the arbitrary discretion of the Engineering Director that they anticipate is, at this point, imaginary.

III. Conclusion

For all the foregoing reasons, Plaintiffs’ Amended Complaint (Dkt. 51) fails to adequately allege plausible federal claims. Accordingly, Defendant’s motion to dismiss (Dkt. 55) is granted and the federal claims (Counts I, III, V, and VI) are dismissed with prejudice. With all federal claims dismissed, the Court declines to exercise supplemental jurisdiction over the remaining state law claims (Counts II, IV, and VII), and they are dismissed without prejudice to timely refile in an appropriate forum.

DATED: September 1, 2026

ENTERED:

A handwritten signature in black ink that reads "LaShonda A. Hunt". The signature is written in a cursive, flowing style. The first name "LaShonda" is written in a larger, more prominent script, and "A. Hunt" follows in a slightly smaller, more compact script. The signature is positioned above a horizontal line.

LASHONDA A. HUNT

United States District Judge