

STATE OF INDIANA)
)
) SS: IN THE MONROE CIRCUIT COURT
COUNTY OF MONROE) CAUSE NO. 53C08-1912-MI-002936

JUDIE BAKER and DAVID HOLDMAN,)
))
 Plaintiffs,))
))
 v.))
))
TERRI PORTER, in her capacity)
as Director of the City of Bloomington)
Planning and Transportation)
Department of the City of Bloomington,)
and JIM GERSTBAUER, in his capacity)
as the Building Commission of the)
Monroe County Building Department,)
))
 Defendants.)

**MOTION FOR ONE HOUR BENCH TRIAL PRIOR TO MARCH 19, 2020,
ON MANDAMUS**

Plaintiffs, Judie Baker and David Holdman, by counsel, move the Court for an immediate bench trial on their Amended Verified Complaint for Mandate. In support of their Motion, Plaintiffs state:

1. Judie Baker and David Holdman filed their Verified Complaint for Mandate on December 17, 2019.
2. On February 20, 2020, Plaintiffs filed a Motion for Leave to Amend Complaint, which was granted on February 20, 2020. The only addition in the Amended Verified Complaint for Mandate is Plaintiffs' request for attorney fees from Defendant, Terri Porter, for her provision of a frivolous, unreasonable, or groundless defense. The substance of the mandamus request did not change.
3. An action for mandate compels a public officer to perform any "(1) act that the

law specifically requires; or (2) duty resulting from any office, trust, or station.”

Ind. Code 34-27-3-1.

4. In this case, Baker and Holdman are seeking the Court to order Defendant, Terri Porter, to issue a Certificate of Zoning Compliance (CZC) for the property located at 523 W. Seventh Street, Bloomington, IN (the “Property”), as she is required to do by the Bloomington Municipal Code and which is her duty under Indiana law, by virtue of position as the Director of the City of Bloomington Planning and Transportation Department.
5. Baker and Holdman filed for a Demolition Application seeking a demolition permit for the Property on May 17, 2019.
6. Pursuant to Bloomington Municipal Code 20.09.230(d)(2), after the 90 day period ends, the City is required to issue a CZC unless the Property was designated historic or was placed under interim protection: “After expiration of the waiting period provided for herein, which shall include early termination of the waiting period, a certificate of zoning compliance authorizing demolition shall be issued if owner has submitted a complete application and all other requirements of the Bloomington Municipal Code are met.” Compl. ¶ 11; City’s Answer ¶ 11 (“The Bloomington Municipal Code speaks for itself and therefore no response is required.”).
7. It is undisputed that the Property was not designated historic or placed under interim protection within the 90 days. Compl. ¶ 12; City’s Answer ¶ 12.
8. It is undisputed that the City did not issue a CZC for the Property after the 90 days expired. Compl. ¶ 10; City’s Answer ¶ 10.

9. The City is assessing and prosecuting a fine against Plaintiffs in the amount of \$83,500. See Exhibit 1, Notice of Violation and Fines for Violations of Title 20 of the Bloomington Municipal Code.
10. The fine will be appealed to the Bloomington Board of Zoning Appeals on March 19, 2020.
11. The interests of justice would be served by hearing this matter and obtaining a decision of this Court regarding the CZC before the Board of Zoning Appeals hearing.
12. It is anticipated that a Bench Trial would take one hour.

Wherefore, Plaintiffs, Judie Baker and David Holdman, by counsel, request that this Court set this matter for a Bench Trial at the earliest possible date to allow the Court to make a ruling on or before March 19, 2020, and for all other appropriate relief.

Respectfully submitted,
FERGUSON LAW

/s/ David L. Ferguson
Attorney David L. Ferguson, No. 8111-53
Attorney for Plaintiffs, David Holdman and
Judie Baker

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2020, electronically filed the foregoing document using the Indiana E-Filing System (IEFS) and the forgoing document was served upon the following person(s) via IEFS:

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