

STATE OF INDIANA) IN THE MONROE CIRCUIT COURT
) SS:
COUNTY OF MONROE) CAUSE NO. 53C06-1905-PL-001125

MONROE COUNTY, INDIANA and)
MONROE COUNTY PLAN)
COMMISSION,)
)
Plaintiffs,)
)
vs.)
)
WILLIAM J. HUFF, II, as Trustee of)
The William J. Huff, II Revocable Trust)
Declaration, Dated June 28, 2011, and)
NICOLE E. HUFF, as Trustee of the)
Nicole E. Huff Revocable Trust)
Declaration, Dated June 28, 2011,)
)
Defendants.)

**DEFENDANTS' ANSWER TO PLAINTIFFS'
AMENDED VERIFIED COMPLAINT AND COUNTERCLAIMS**

William J. Huff, II, as Trustee of the William J. Huff, II Revocable Trust Declaration, Dated June 28, 2011, and Nicole E. Huff, as Trustee of the Nicole E. Huff Revocable Trust Declaration, Dated June 28, 2011 (the "Huffs"), by counsel, for their Answer to Plaintiffs', Monroe County, Indiana (the "County") and Monroe County Plan Commission (the "Plan Commission"), Amended Verified Complaint, state as follows:

Jurisdiction

1. The Monroe Circuit Court is a court of general jurisdiction.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

2. The Monroe Circuit Court has original and concurrent jurisdiction in all civil cases.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

3. The Monroe Circuit Court is vested with subject matter jurisdiction over this case by Ind. Code § 36-7-4-1014(e) and Monroe County Building Code § 430-20.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

4. The Monroe Circuit Court has personal jurisdiction over the Huffs by virtue of the fact that they own real property in Monroe County which is the subject of this litigation.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

5. Monroe County is the proper venue for this cause of action.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations made in this paragraph.

Factual Allegations

6. The Huffs are the record owners of real property located in Sections 7, 12, 13, and 30 of Township 7, Range 1 East, in Monroe County, Indiana (hereinafter, “the Huff Property”).

ANSWER: The Huffs admit the allegations contained in paragraph 6.

7. The Huff Property, which is generally located between Shady Side Drive and the shore of Monroe Reservoir, is more specifically described in the “Special Warranty Deed” and Exhibit A thereto as Tracts I through VII. A copy of the “Special Warranty Deed” is attached hereto and marked for identification as **Exhibit A** (excluding Grantor’s Articles of Conversion).

ANSWER: The Huffs admit the allegations contained in paragraph 7.

8. Tracts I through V of the Huff Property are accessible through two easements for private driveways through Lot 1, Lot 2, and the Common Nature Preserve of The Shores Subdivision.

ANSWER: The Huffs admit the allegations contained in paragraph 8. The Huffs further answer that the easements referenced in this paragraph are not the only easements or points of access to the Huff Property.

9. Easements for private driveways through Lot 1, Lot 2, and the Common Nature Preserve of The Shores Subdivision that provide access to Tracts I through V of the Huff Property were created by a "Grant of Easement," dated March 12, 1990, and recorded on February 15, 2017, in Deed Record Book 371, pages 33-40, in the office of the Monroe County Recorder.

ANSWER: The Huffs admit the allegations contained in paragraph 9. The Huffs further answer that the easements referenced in Paragraphs 8 and 9 are not the only easements or points of access to the Huff Property.

10. Use of the easements for private driveways through Lot 1, Lot 2, and the Common Nature Preserve of The Shores Subdivision that provide access to Tracts I through V of the Huff Property is limited to the construction and development of not more than four (4) of the six (6) single family residences.

ANSWER: The Huffs deny the allegations contained in paragraph 10.

11. Access to the public portion of South Shady Lane is provided to Tract VI of the Huff Property through a mutual easement with adjacent landowners, dated

December 20, 1965, and recorded on January 3, 1966, in Deed Record 057, pages 417-419, in the office of the Monroe County Recorder.

ANSWER: The Huffs admit the allegations contained in paragraph 11.

12. Two parcels (2.45 and 41.50 acres) of real property conveyed by “Limited Liability Company Warranty Deed” from Chumley, LLC to the Huffs, both dated April 20, 2017, and recorded on April 25, 2017 (hereinafter, “Chumley Tracts”), in the office of the Monroe County Recorder, do not benefit from a Grant of Easement, dated and recorded on March 12, 1990, in Deed Record Book 371, pages 33-40, in the office of the Monroe County Recorder. A copy of each “Limited Liability Company Warranty Deed” for the Chumley Tracts has been made a part of **Exhibit A**, which is attached hereto.

ANSWER: Paragraph 12 calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs lack information or knowledge sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore deny the same.

13. On May 4, 2017, Iamur Wright, who is a co-owner of Ohio River Veneer, LLC, filed an application with the Monroe County Planning Director (“Planning Director”) for a logging permit for the Huff Property and Chumley Tracts.

ANSWER: The Huffs admit the allegations contained in paragraph 13.

14. The Huffs joined, by written consent, the application for logging permit filed by Mr. Wright, on May 4, 2017, for the Huff Property and Chumley Tracts.

ANSWER: The Huffs admit the allegations contained in paragraph 14.

15. On June 2, 2017, Planning Director Larry J. Wilson notified Mr. Wright and Mr. Huff in writing that the application for a logging permit for the Huff Property and Chumley Tracts could not be approved until the issue of whether the proposed logging activities were allowed under the easement was resolved by agreement of the parties or court order.

ANSWER: The Huffs admit the allegations contained in paragraph 15.

16. On August 21, 2017, the Huffs withdrew from the logging application filed by Mr. Wright for the Huff Property (193.30 acres, more or less) and Chumley Tracts (44 acres, more or less).

ANSWER: The Huffs admit the allegations contained in paragraph 16.

17. On September 25, 2017, the Monroe County Planning Department (“Planning Department”) was informed by neighbors that construction equipment had been moved onto a tract of land (11.35 acres) owned by Scott and Maria Wilhelmus (“Wilhelmus Property”), located at the end of Shady Side Drive, adjacent to the easements for the Huff Property.

ANSWER: The Huffs lack information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 17, and therefore deny the same.

18. On September 25, 2017, Planning Department staff visited the Wilhelmus Property to investigate the reported placement of construction equipment on the property and found that the area was being staged for earth-moving and vegetative removal activity.

ANSWER: The Huffs deny the allegations contained in paragraph 18.

19. No permits for logging or site development activities had been issued for the Wilhelmus Property or Huff Property, so Planning Department staff posted “stop-work” orders on the Wilhelmus Property and entry points to the Huff Property on September 25, 2017. Copies of photographs of the posted “stop work” orders are attached hereto and marked for identification as **Exhibit B**.

ANSWER: The Huffs admit that “stop work” orders were posted on the Huff Property on September 25, 2017, but deny any inferred allegation that the activities conducted on the Huff Property required a permit for logging or site development activities.

20. On September 26, 2017, the Planning Director received the following e-mail from attorney Thomas R. Malapit, Jr.:

From: Tom Malapit [mailto:tom@mandmlegal.com]
Sent: Tuesday, September 26, 2017 8:02 AM
To: Larry Wilson <lwilson@co.monroe.in.us>
Cc: Barry Andrew Hall <drew@mandmlegal.com>
Subject: Stop Work Order

Mr. Wilson,

Please be advised that I have been retained by Mr. Joe Huff to represent him in the matters involving his real estate in Monroe County. It has come to my attention that you posted a Stop Work Order on his property yesterday. I ask that you please provide to me the purpose and legal authority you have to issue such a Stop Work Order. Thank you in advance for your anticipated cooperation in this regard.

Thomas R. Malapit, Jr.

Partner



A copy of this email and related emails are attached hereto and marked for identification as **Exhibit C**.

ANSWER: The Huffs admit the allegations contained in paragraph 20.

21. The Planning Director responded to counsel's inquiry with the following e-mail:

From: Larry Wilson
Sent: Tuesday, September 26, 2017 10:52 AM
To: Tom Malapit
Cc: Barry Andrew Hall; David Schilling; Jason Eakin; Tammy Behrman
Subject: RE: Stop Work Order
Attachments: 825.pdf

Dear Mr. Malapit:

Yesterday we were informed by neighbors that construction equipment had been moved onto a 11.35 acre tract owned by Scott and Maria Wilhelmus located at the end of Shady Side Drive. Our inspectors visited the site yesterday and reported that it appears the area is being staged to begin earth-moving and vegetative removal activity. No permits for either logging or site development activities have been issued for either the Wilhelmus tract or the adjacent real estate owned by the Huff Trust. As is our practice where it appears land disturbing or construction activity is beginning without a permit, we posted a "stop work" order. This provides the opportunity for the contractor and land owner to apply for the appropriate State and local permits. As long as the "stop work" order is followed, we typically do not issue fines.

By letters dated August 21, 2017, the Huffs withdrew their applications to log their tracts. It is my understanding that no agreement has been reached with the landowners along Shady Side to expand the easements previously granted to Terre Haute Realty to allow timber removal. In the absence of approved logging permits, we would treat any land disturbance or vegetative removal activity as **Land Disturbing Activity** which is defined by our ordinance as follows:

Land Disturbing Activity. *Any man-made change of the land surface including clearing, cutting, excavating, filling, or grading of land or any other activity that alters land topography or vegetative cover, but not including agricultural land uses such as planting, growing, cultivating and harvesting crop, growing and tending gardens and minor landscaping modifications.*

Minimally, land disturbance activities require the issuance of a grading permit. However, the Wilhelmus tract and most of the Huff Trust real estate is within the Environmental Constraints Overlay Area which prohibits vegetative removal and soil disturbing activity on slopes greater than 12%. I have attached a copy of Monroe County Zoning Ordinance Chapter 825: ENVIRONMENTAL CONSTRAINTS OVERLAY ZONE. In these cases, site plans are reviewed to verify no land disturbing activity is occurring in slope restricted areas.

Please let me know if you have questions.

Larry

Larry J. Wilson, AICP,
Director, Monroe County Planning Department
Monroe County Government Center
501 N. Morton St., Suite 224
Bloomington, IN 47404

A copy of this email and its attachments are made a part of **Exhibit C**, which is attached hereto.

ANSWER: The Huffs admit that the image contained in paragraph 21 accurately depicts the email Mr. Malapit received from Mr. Wilson on September 26, 2017. The Huffs further answer that this is only one exchange of many between the parties above and this email does not contain or summarize the entirety of those communications.

22. The Huffs did not apply for logging or site development activities permits, so the “Stop-Work” order issued by the Planning Director on September 25, 2017, remained in place.

ANSWER: The Huffs deny the allegations contained in paragraph 22.

23. During 2017 and 2018, the Huffs and/or their agents, contractors, or employees, conducted excavation activities (“Excavation Activities”) on the Huff Property, including tree and vegetation removal and the preparation of an area on which to place, construct, and/or erect buildings.

ANSWER: The Huffs deny the allegations contained in paragraph 23. The extent of the excavation activities conducted on the Huff Property were all part of the timber harvesting process to fix any damage to the ground from logging trucks.

24. The Huffs and/or their agents, contractors, or employees, subsequently placed, constructed, and/or erected at least two (2) buildings or structures (“Building

Activities”) on the excavated areas of the Huff Property. Copies of photographs showing the buildings or structures are attached hereto and marked for identification as **Exhibit D.**

ANSWER: The Huffs admit they placed a gazebo, a shed, and a pavilion on the Huff Property that were all used exclusively for agricultural production purposes. The Huffs caused the gazebo and pavilion, and the shed has been moved multiple times and on different parcels. The Huffs, however, deny any remaining allegations in paragraph 24.

25. The floor areas of structures which have been placed, constructed, and/or erected by the Huffs on the Huff Property are in excess of one hundred and twenty (120) square feet and are not built on permanent foundations.

ANSWER: The Huffs admit the structures exceeded one hundred and twenty square feet, but they were used exclusively for agricultural production purposes. Neither the gazebo, pavilion, or shed were on permanent foundations and no excavation was performed to erect the structures.

26. On September 12, 2018, an email was sent to Mr. Malapit by the County Attorney David Schilling, advising the Huffs that the Excavation Activities and the Building Activities being conducted on the Huff Property required the issuance of permits for these activities and further that and an inspection by the Monroe County

Zoning Inspector would be required to determine whether there is sufficient buildable area for the placement of structures. A copy of the County Attorney's email and its attachments to Mr. Malapit is attached hereto and marked for identification as **Exhibit E**.

ANSWER: The Huffs admit that Mr. Malapit received the email described in paragraph 26 from Mr. Schilling on September 12, 2018, but deny that any of the facilities referenced above required an improvement location permit. The Huffs deny the remaining allegations in this paragraph.

27. The Huffs have not voluntarily taken the steps necessary to achieve compliance with the Zoning Ordinance by obtaining the required approvals, but rather, through their attorney, have denied that the improvement location permit requirement imposed by Zoning Ordinance § 814-1(A) and refused to accommodate the request for a site inspection by the zoning inspector (**Exhibit E**).

ANSWER: The Huffs deny the allegations in paragraph 27 to the extent the allegations imply that any activities on the Huffs Property required an improvement location permit. The remaining allegations implicate the attorney-client privilege, and are therefore denied.

28. The Huffs did not appeal the “Stop-Work” order on the Huff Property issued by the Planning Director on September 25, 2017, to the Monroe County Board of Zoning Appeals.

ANSWER: The Huffs deny the allegations contained in paragraph 28.

29. The Huffs failed to apply for a building permit or certificate of occupancy as required by the Monroe County Building Code.

ANSWER: The Huffs admit that they did not obtain a building permit or certificate of occupancy, but deny any inferred allegation that they were required to obtain one because the structures on the Huff Property did not involve or affect any electrical, plumbing, ventilating, heating or air conditioning systems or structural elements.

30. On May 8, 2019, the Monroe County Building Commissioner (“Building Commissioner”) Jim Gerstbauer directed that a “notice of requirement” be placed at the entrance of the Huff Property regarding the failure of the Huffs to comply with the requirements of the Monroe County Building Code and directing them to stop work. A copy of a letter from the Building Commissioner to the Huffs’ attorney and a photograph of the posted notice are attached hereto and marked for identification as **Exhibit F.**

ANSWER: The Huffs admit that a notice was posted on the Huff Property on May 8, 2019, but the notice did not direct the Huffs to stop work. The notice stated only that the Building Commissioner had questions regarding the construction, permit status and/or location in relation to the property line setback requirements.

31. The Huffs did not appeal the “notice of requirement” issued by the Building Commissioner on May 8, 2019, to the Board of Commissioners.

ANSWER: The Huffs admit that they did not appeal the notice because it was not a decision or order, and was not appealable as required by the Building Code.

32. Monroe County, Indiana is a political subdivision of the State of Indiana.

ANSWER: The Huffs admit the allegations contained in paragraph 32.

Count I

Violations of the Monroe County Zoning Ordinance

33. The allegations set forth in the preceding paragraphs of this Complaint are incorporated by reference in Count I.

ANSWER: The Huffs repeat and incorporate by reference their responses to the allegations contained in paragraphs 1 through 32 above, as though fully set forth herein.

34. The legislative body of Monroe County has the authority to determine the uses that will be permitted in various zones of the county.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

35. The legislative body of Monroe County has adopted Title 8 of the Monroe County Code (Planning, Development, Land Use and Zoning Subdivision Control Ordinance and Zoning Ordinance).

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

36. Title 8 (chapters 800 through 849) of the Monroe County Code is known as the Monroe County Zoning Ordinance (“Zoning Ordinance”).

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

37. The Monroe County Plan Commission (“Plan Commission”) is a duly authorized advisory plan commission which acts pursuant to Ind. Code §§ 36-7 *et seq.* (Planning and Development), and Zoning Ordinance chapter 822 (Zoning Ordinance:

Advisory Plan Commission), and the Monroe County Planning Department (“Planning Department”) is duly authorized by Zoning Ordinance chapter 824 to enforce the provisions and requirements of the Zoning Ordinance. A copy of Zoning Ordinance chapters 822 and 824 are attached hereto and marked for identification as **Exhibit G**.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

38. The Huff Property is located within the jurisdiction of the Plan Commission and Planning Department.

ANSWER: The Huffs deny the allegations contained in paragraph 38.

39. The Huff Property is subject to the provisions and requirements of the Zoning Ordinance.

ANSWER: The Huffs admit the allegations contained in paragraph 39.

40. Zoning Ordinance §§ 817-1 through -4 govern violations, penalties, enforcement procedures, and remedies for violations of the Zoning Ordinance. A copy of Zoning Ordinance chapter 817 is attached hereto and marked for identification as **Exhibit H**.

ANSWER: The Huffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40, and therefore deny the same.

41. The Plan Commission and Plan Commission Administrator (“Administrator”) are vested with authority by Ind. Code § 36-7-4-1014(a) and Zoning Ordinance § 817-3 to bring an action to enforce the provisions and requirements of the Zoning Ordinance.

ANSWER: The Huffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41, and therefore deny the same.

42. The Plan Commission and Administrator are vested with authority by Ind. Code § 36-7-4-1014(d)-(f) and Zoning Ordinance § 817-4(A) to invoke the remedies for violation of the Zoning Ordinance set forth in paragraphs (1) through (3) of Section 817-4(A).

ANSWER: The Huffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42, and therefore deny the same.

43. Improvement location permits, land use certificates, and site plan approvals required by Zoning Ordinance §§ 814-1, 814-2 and 815-2 are issued by, or on

behalf of, the Administrator. A copy of Zoning Ordinance chapters 814 and 815 is attached hereto and marked for identification as **Exhibit I**.

ANSWER: The Huffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43, and therefore deny the same.

44. The Excavation Activities and the Building Activities conducted on the Huff Property were, and are, subject to the improvement location permit, land use certificate, and site plan approval requirements imposed by the Zoning Ordinance.

ANSWER: The Huffs admit that their activities conducted on the Huff Property fell under the exceptions imposed by the Zoning Ordinances, or were properly taken under the jurisdiction of the State of Indiana relating to forestry. The Huffs deny any inferred allegations that the activities on the Huff Property required any improvement location permits, land use certificates, or site plan approvals, and also deny any remaining allegations in this paragraph.

45. The Huffs were required by Zoning Ordinance § 814-1(A) to obtain an improvement location permit before they constructed, reconstructed, moved, enlarged, demolished, structurally altered any building or other structure, or making any significant land alterations (e.g., streets, drives, parking facilities) on the Huff Property.

ANSWER: The Huffs deny the allegations in paragraph 45.

46. To obtain an improvement location permit for the Huff Property, the Huffs were required by Zoning Ordinance § 814-1(C)(1) to submit a written application to the Administrator.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

47. To obtain an improvement location permit for the Huff Property, the Huffs were required by Zoning Ordinance § 814-1(C)(2) to file for site plan review.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

48. The Huffs have not submitted a written application to the Administrator for an improvement location permit for the Huff Property.

ANSWER: The Huffs admit that they did not submit a written application to the Administrator for an improvement location permit because the activities conducted on the Huff Property did not require an improvement location permit.

49. The Huffs have not filed for a site plan review for the Huff Property.

ANSWER: The Huffs admit that they did not file for a site plan review for the Huff Property because the activities conducted on the Huff Property did not

require an improvement location permit or a site plan review. The agricultural facilities that were previously erected on the Huffs' property were temporary.

50. The Administrator has not issued an improvement location permit to the Huffs for the Huff Property.

ANSWER: The Huffs admit the allegations contained in paragraph 50, but deny any inferred allegations that they were required to obtain an improvement location permit for the activities conducted on the Huff Property.

51. Zoning Ordinance § 814-2(A) prohibits occupancy or use of land, buildings or structures erected, reconstructed or structurally altered until a land use certificate has been issued by the Administrator.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny any allegations or inference that the Huffs were required to obtain a land use certificate for the activities conducted on the Huff Property.

52. Zoning Ordinance § 814-2(B) prohibits the use of land, buildings or structures erected, reconstructed or structurally altered to be changed unless a land use certificate has been issued by the Administrator.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny any allegations or

inference that the Huffs were required to obtain a land use certificate for the activities conducted on the Huff Property.

53. To obtain a land use permit for the Huff Property, the Huffs were required by Zoning Ordinance § 814-3(A) to submit a written application to the Administrator.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny any allegations or inference that the Huffs were required to obtain a land use certificate for the activities conducted on the Huff Property.

54. The Huffs have occupied and/or used the Huff Property.

ANSWER: The Huffs deny the allegations contained in paragraph 54.

55. The Huffs have not submitted a written application to the Administrator for a land use certificate or permit for the Huff Property.

ANSWER: The Huffs admit the allegations contained in paragraph 55, but deny any inferred allegations that they were required to obtain a land use certificate or permit for the activities conducted on the Huff Property.

56. The Administrator has not issued a land use permit to the Huffs for the Huff Property.

ANSWER: The Huffs admit the allegations contained in paragraph 56, but deny any inferred allegations that they were required to obtain a land use certificate for the activities conducted on the Huff Property.

57. The Huffs have violated, and continue to violate, the Zoning Ordinance by conducting Excavation Activities and Building Activities on the Huff Property without the improvement location permits, land use certificates, and site plan approvals required by Zoning Ordinance §§ 814-1, 814-2 and 815-2.

ANSWER: This paragraph call for legal conclusions to which no response is required. To the extent a response is required, the Huffs deny the allegations contained in this paragraph.

58. The violations of the Zoning Ordinance by the Huffs inflicts harm upon Monroe County and the public-at-large, which is certain and irreparable and which will continue if not enjoined.

ANSWER: This paragraph calls for legal conclusions to which no response is required. To the extent a response is required, the Huffs deny the allegations contained in this paragraph.

59. The Huffs' use and occupancy of the Huff Property without the required approvals is contrary to the provisions of the Zoning Ordinance, constitutes an

unlawful violation of this ordinance, and, pursuant to Zoning Ordinance § 817-1, renders the Huff Property a common nuisance.

ANSWER: This paragraph call for legal conclusions to which no response is required. To the extent a response is required, the Huffs deny the allegations contained in this paragraph.

60. The Huffs' continuing violation of the Zoning Ordinance renders the Huff Property a nuisance *per se*.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations contained in this paragraph.

61. There is no other adequate remedy at law or equity other than to enjoin the Huffs, and those working in concert with them from the continued maintenance, use, or occupancy of the buildings or structures on the Huff Property until all required permits and approvals are obtained from the Administrator.

ANSWER: This paragraph calls for legal conclusions to which no response is required. To the extent a response is required, the Huffs deny the allegations contained in this paragraph.

62. Zoning Ordinance § 817-2 provides that each day a violation of the Zoning Ordinance is committed or permitted to continue constitutes a separate ordinance violation.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny any allegations or inference that the Huffs violated the Zoning Ordinance.

63. Each day that the Huffs, or those working in concert with them, have built, located, maintained, used, or occupied the buildings or structures, and/or excavated on the Huff Property in violation of the Zoning Ordinance constitutes a separate and continuing ordinance violation.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations contained in this paragraph.

64. Pursuant to Zoning Ordinance § 817-2 and Monroe County Code § 115-3, the Huffs' violations of the Zoning Ordinance constitute Class B and Class A ordinance violations for which civil penalties of up to one thousand dollars (\$1,000.00) for the first day of violation, two thousand five hundred dollars (\$2,500.00) for the second day of violation, and seven thousand five hundred dollars (\$7,500.00) for the third and each

succeeding day of violation, may be entered by the Court. A copy of Monroe County Code § 115-3 is attached hereto and marked for identification as **Exhibit J**.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph. Answering further, the Huffs note that paragraph 64 misstates the type of violation and the amount per violation as stated in the Zoning Ordinance § 817-2 and Monroe County Code § 115-3.

WHEREFORE, Monroe County respectfully prays that the Court:

A. Enter a Judgment which declares the respective rights and legal obligations of Monroe County and the Huffs, and anyone acting in concert with them, to the effect that each day of excavation and each day of occupancy, use, and maintenance of each of the buildings or structures on the Huff Property prior to the issuance of an improvement location permit, a land use certificate, and a site plan approval for each building or structure by the Administrator constitutes three distinct violations of the Zoning Ordinance;

B. Issue an injunction that permanently and immediately enjoins the Huffs, and anyone acting in concert with them, from maintaining, using, or occupying the buildings or structures on the Huff Property, and/or from allowing or suffering the

same to be done by others, until all required approvals have been obtained from the Administrator;

C. Order the Huffs to remove the buildings or structures from the Huff Property if all required permits and approvals are not immediately obtained from the Administrator;

D. For each provision of the Zoning Ordinance violated by the Huffs, order the Huffs to pay a civil penalty of up to one thousand dollars (\$1,000.00) for their first day of violation of the Zoning Ordinance, a civil penalty of up to two thousand five hundred dollars (\$2,500.00) for the second day of violation of the Zoning Ordinance, and a civil penalty of up to seven thousand five hundred dollars (\$7,500.00) for the third and each subsequent day of violation of the Zoning Ordinance; and

E. Order the Huffs to pay the costs of this action and all other relief deemed appropriate in the premises.

ANSWER: The prayer for relief requires no response. To the extent a response is required, the Huffs deny that the Plaintiffs are entitled to the relief they seek, and deny all allegations in the Plaintiffs' prayer for relief.

Count II

ECO Zone Slope Violations

65. The allegations set forth in the preceding paragraphs of this Complaint are incorporated by reference in Count II.

ANSWER: The Huffs repeat and incorporate by reference their responses to the allegations contained in paragraphs 1 through 65 above, as though fully set forth herein.

66. The Huff Property is located within Area 1 of the Environmental Constraints Overlay Zone (“ECO Zone”), as established and regulated by the Zoning Ordinance chapter 825. Copies of the Monroe County Zoning Map for the Huff Property and Zoning Ordinance chapter 825 are attached hereto and marked for identification as Exhibits K and L, respectively.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

67. The Excavation Activities and the Building Activities conducted on the Huff Property were, and are, subject to the ECO Zone erosion and drainage plan provisions of Zoning Ordinance chapter 825.

ANSWER: The Huffs deny the allegations contained in paragraph 67.

68. The Excavation Activities and Building Activities conducted on the Huff Property constitute a “development” as that term is defined by Zoning Ordinance § 801-2 (Zoning Ordinance: Definitions). A copy of Zoning Ordinance § 801-2 (pages 1 and 12) are attached hereto and marked for identification as **Exhibit M**.

ANSWER: The Huffs deny the allegations contained in paragraph 68.

69. The decision of the Huffs to conduct, or to cause or allow to be conducted, the Excavation Activities and the Building Activities on the Huff Property constitute a development proposal relating to land within the ECO Zone.

ANSWER: The Huffs deny the allegations contained in paragraph 69.

70. With respect to properties located within the ECO Zone, Zoning Ordinance § 8252(A)(4) requires all development proposals and permit applications have an erosion and drainage control plan, which must include measures to minimize erosion during and after construction or development activities.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny any allegations or inference that the Huffs were required to submit a development proposal or permit application for the activities conducted on the Huff Property.

71. The Administrator has not received an erosion and drainage plan for the development of the Huff Property.

ANSWER: The Huffs admit the allegations contained in paragraph 71, but deny any inferred allegations that they were required to submit an erosion and drainage plan for the activities conducted on the Huff Property.

72. Zoning Ordinance § 825-4(A) prescribes maximum land slope, disturbance of natural vegetation, maximum residential density, minimum total lake frontage, and contiguous land requirements which apply to the Huff Property.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

73. The Excavation Activities conducted on the Huff Property involved significant land disturbance and removal of natural vegetation on portions of the property that exceeded the twelve percent (12%) slope limitation of Zoning Ordinance § 825-4(A)(2).

ANSWER: The Huffs deny the allegations contained in paragraph 73.

74. The Huffs have stated their intent to further develop the Huff Property, which includes significant areas of slope that exceeds twelve percent (12%), with buildings, structures, and other improvements.

ANSWER: The Huffs deny the allegations contained in paragraph 74.

75. The Huffs have violated the slope and vegetation removal limitations of Zoning Ordinance § 825-4(A) and are likely to continue to do so.

ANSWER: The Huffs deny the allegations contained in paragraph 75.

76. The Huffs have violated, and continue to violate, the ECO Zone erosion and drainage plan provisions of Zoning Ordinance chapter 825 by conducting Excavation Activities and Building Activities on the Huff Property without the improvement location permits, land use certificates, and site plan approvals required by Zoning Ordinance §§ 814-1, 814-2 and 815-2.

ANSWER: The Huffs deny the allegations contained in paragraph 76.

77. The violations of the Zoning Ordinance by the Huffs inflicts harm upon Monroe County and the public-at-large, which is certain and irreparable and which will continue if not enjoined.

ANSWER: This paragraph calls for legal conclusions to which no response is required. To the extent a response is required, the Huffs deny the allegations contained in this paragraph.

78. The Huffs' use and occupancy of the Huff Property without the required approvals is contrary to the provisions of the Zoning Ordinance, constitutes an unlawful violation of this ordinance, and, pursuant to Zoning Ordinance § 817-1, renders the Huff Property a common nuisance.

ANSWER: This paragraph calls for legal conclusions to which no response is required. To the extent a response is required, the Huffs deny the allegations contained in this paragraph.

79. The Huffs' continuing violation of the Zoning Ordinance renders the Huff Property a nuisance *per se*.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations contained in this paragraph.

80. There is no other adequate remedy at law or equity other than to enjoin the Huffs, and those working in concert with them from the continued maintenance, use, or occupancy of the buildings or structures on the Huff Property until all required permits and approvals are obtained from the Administrator.

ANSWER: This paragraph calls for legal conclusions to which no response is required. To the extent a response is required, the Huffs deny the allegations contained in this paragraph.

81. Zoning Ordinance § 817-2 provides that each day a violation of the Zoning Ordinance is committed or permitted to continue constitutes a separate ordinance violation.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny any allegations or inference that the Huffs violated the Zoning Ordinance.

82. Each day that the Huffs, or those working in concert with them, have built, located, maintained, used, or occupied the buildings or structures, and/or excavated on the Huff Property in violation of the Zoning Ordinance constitutes a separate and continuing ordinance violation.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

83. Pursuant to Zoning Ordinance § 817-2 and Monroe County Code § 115-3, the Huffs' violations of the Zoning Ordinance constitute Class B and Class A ordinance violations for which civil penalties of up to one thousand dollars (\$1,000.00) for the first day of violation, two thousand five hundred dollars (\$2,500.00) for the second day of violation, and seven thousand five hundred dollars (\$7,500.00) for the third and each succeeding day of violation, may be entered by the Court.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph. Answering further, the Huffs note that paragraph 83 misstates the

type of violation and the amount per violation as stated in the Zoning Ordinance § 817-2 and Monroe County Code § 115-3.

WHEREFORE, Monroe County respectfully prays that the Court:

A. Enter a Judgment which declares the respective rights and legal obligations of Monroe County and the Huffs, and anyone acting in concert with them, to the effect that each day of excavation and each day of occupancy, use, and maintenance of each of the buildings or structures on the Huff Property prior to the issuance of an improvement location permit, a land use certificate, and a site plan approval for each building or structure by the Administrator constitutes three distinct violations of the Zoning Ordinance;

B. Issue an injunction that permanently and immediately enjoins the Huffs, and anyone acting in concert with them, from maintaining, using, or occupying the buildings or structures on the Huff Property, and/or from allowing or suffering the same to be done by others, until all required approvals have been obtained from the Administrator;

C. Order the Huffs to remove the buildings or structures from the Huff Property if all required permits and approvals are not immediately obtained from the Administrator;

D. For each provision of the Zoning Ordinance violated by the Huffs, order the Huffs to pay a civil penalty of up to one thousand dollars (\$1,000.00) for their first day of violation of the Zoning Ordinance, a civil penalty of up to two thousand five hundred dollars (\$2,500.00) for the second day of violation of the Zoning Ordinance, and a civil penalty of up to seven thousand five hundred dollars (\$7,500.00) for the third and each subsequent day of violation of the Zoning Ordinance; and

E. Order the Huffs to pay the costs of this action and all other relief deemed appropriate in the premises.

ANSWER: The prayer for relief requires no response. To the extent a response is required, the Huffs deny that the Plaintiffs are entitled to the relief they seek, and deny all allegations in the Plaintiffs' prayer for relief.

Count III

Building Code Violations

84. The allegations set forth in the preceding paragraphs of this Complaint are incorporated by reference in Count III.

ANSWER: The Huffs repeat and incorporate by reference their responses to the allegations contained in paragraphs 1 through 84 above, as though fully set forth herein.

85. On February 26, 1988, Monroe County established the Monroe County Building Department by adoption of Ordinance 88-2.

ANSWER: The Huffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85, and therefore deny the same.

86. On March 11, 1988, Monroe County established the Monroe County Building Code (“Building Code”) by adoption of Ordinance 88-3.

ANSWER: The Huffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86, and therefore deny the same.

87. Monroe County received approval of the Building Code from the Indiana Fire Prevention and Building Safety Commission on April 5, 1988.

ANSWER: The Huffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87, and therefore deny the same.

88. The Building Code is codified at Chapter 430 of the Monroe County Code. A copy of Building Code chapter 430 is attached hereto and marked for identification as **Exhibit N.**

ANSWER: The Huffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 88, and therefore deny the same.

89. The development of the Huff Property is subject to the Building Code.

ANSWER: The Huffs deny the allegations contained in paragraph 89.

90. Building Code § 430-8(A) requires issuance of a permit before “construction, alteration or repair of any building or structure which involves or affects any electrical, plumbing, ventilating, heating or air conditioning systems or structural elements” may begin.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

91. An application for a building permit must be submitted on forms prescribed by Building Code § 430-7 and provided by the Monroe County Building Commissioner.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

92. Building Code § 430-9 requires that all work done under a building permit be in “full compliance” with, among other legal requirements, the Zoning Ordinance and all required fees paid.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph that the Huffs did not fully comply with the Building Code or the Zoning Ordinances.

93. Building Code § 430-16 provides that no certificate of occupancy for any building or structure will be issued unless the building or structure is determined, after a final inspection, to have been erected, altered or repaired in compliance with Building Code chapter 430, and a valid land use certificate has been issued for the proposed use and occupancy of the building or structure by the Monroe County Plan Administrator.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response required, the Huffs deny the allegations in this paragraph that the Huffs did not comply with the Building Code.

94. Building Code § 430-18 prohibits a property owner, among others, from erecting, constructing, enlarging, altering, repairing, improving, removing, converting, demolishing, equipping, using, occupying or maintaining any building or structure in violation of the provisions of Building Code chapter 430.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response required, the Huffs deny the allegations in this paragraph that the Huffs did not comply with the Building Code.

95. The Huffs' Building Activities on the Huff Property included the construction of buildings and structures that involved or affected electrical, plumbing, ventilating, heating or air conditioning systems or structural elements.

ANSWER: The Huffs deny the allegations contained in paragraph 95.

96. The Huffs' Building Activities were, and are, subject to the building permit and certificate of occupancy requirements of the Building Code.

ANSWER: The Huffs deny the allegations contained in paragraph 96.

97. Neither the Huffs nor anyone acting on behalf of the Huffs have obtained a building permit relative to the Building Activities.

ANSWER: The Huffs admit the allegations contained in paragraph 97, but deny any inferred allegations that they were required to obtain a building permit.

98. Neither the Huffs nor anyone acting on behalf of the Huffs have obtained a certificate of occupancy relative to their use and occupancy of the buildings and structures placed, constructed, erected, and maintained on the Huff Property.

ANSWER: The Huffs admit the allegations contained in paragraph 98, but deny any inferred allegations that the activities on the Huff Property required a certificate of occupancy.

99. By virtue of the foregoing, the Huffs have violated, and continue to violate, at least Building Code §§ 430-8 and 430-16.

ANSWER: The Huffs deny the allegations contained in paragraph 99.

100. Monroe County has authority to bring a civil action if a person violates the Building Code, pursuant to Ind. Code § 36-1-6-4(a) and Building Code § 430-18, and invoke the remedies set forth in I.C. § 36-1-6-4(b) and Building Code § 430-20.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

101. Pursuant to Building Code § 430-20, the Building Commissioner shall, in the name of Monroe County, bring in an action in the Monroe Circuit Court, for mandatory and injunctive relief to enforce and secure compliance with any order of the Building Commissioner.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph that this lawsuit should have been brought against the Huffs.

102. The violations of the Building Code by the Huffs inflicts harm upon Monroe County and the public-at-large, which is certain and irreparable and which will continue if not enjoined.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

103. There is no other adequate remedy at law or equity other than to enjoin the Huffs, and those working in concert with them from the continued maintenance, use, or occupancy of the buildings or structures on the Huff Property until all provisions of the Building Code have been complied with.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Huffs deny the allegations in this paragraph.

104. A person who violates the provisions of Building Code chapter 430 or violates a lawful order given by the Building Commissioner in connection with the provisions of Building Code chapter 430 commits a Class C Ordinance Violation, with each day such a violation is committed a Class C Ordinance Violation is committed.

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response required, the Huffs deny the allegations in this paragraph that the Huffs violated any provisions of the Building Code.

105. Pursuant to Monroe County Code § 115-3(A)(3), a judgment of not more than “Five Hundred Dollars (\$500.00) may be entered for the person’s first violation constituting a Class C Ordinance Violation and One Thousand Five Hundred Dollars (\$1,500.00) for a second or subsequent violation of the same provision of the Code or ordinance[.]”

ANSWER: This paragraph calls for a legal conclusion to which no response is required. To the extent a response required, the Huffs deny the allegations in this paragraph that the Huffs violated any provisions of the Building Code or Zoning Ordinance.

WHEREFORE, Monroe County respectfully prays that the Court:

- A. Enter a Judgment which declares the respective rights and legal obligations of Monroe County and the Huffs to the effect that:
1. The placement, construction, or erections of each of the buildings and structures on the Huff Property that are subject to the Building Code constitutes a distinct violation of the building permit requirement of Section 430-8 of the Building Code; and
 2. Each day of occupancy of each of the buildings and structures on the Huff Property prior to the issuance of a Certificate of Occupancy for the buildings and structures constitutes a distinct violation of Section 430-16 of the Building Code.
- B. Issue an injunction that permanently and immediately enjoins and restrains the Huffs from using and occupying the buildings and structures on the Huff

Property, and/or from allowing or suffering the same to be done by others, until all required permits and certificates have been obtained from the Building Commissioner;

C. Order the Huffs to pay a civil penalty for each day of occupancy of the buildings and structures on the Huff Property for each violation of the Building Code in the maximum penalty amounts authorized by Monroe County Code § 115-3; and

D. Order the Huffs to pay the costs of this action and all other relief deemed appropriate in the premises.

ANSWER: The prayer for relief requires no response. To the extent a response is required, the Huffs deny that the Plaintiffs are entitled to the relief they seek, and deny all allegations in the Plaintiffs' prayer for relief.

AFFIRMATIVE AND OTHER DEFENSES

The Huffs assert the following affirmative defenses:

1. This Court does not have subject matter jurisdiction in this matter.
2. Plaintiffs fail to state a claim upon which relief may be granted.
3. Plaintiffs' claims and/or damages, if any, are barred and/or limited in whole, or in part, under the doctrine of unclean hands.
4. The monetary damages the Plaintiffs seek are not available under Zoning Ordinance § 817-2.

5. The Plaintiffs' claims do not constitute a public nuisance because of Indiana Code § 32-30-6 *et al.*

6. The foregoing defenses or affirmative defenses are raised by the Huffs without waiver of any other defenses that may come to light during discovery in this case or otherwise. The Huffs reserve the right to supplement or amend their Answer to assert any other defenses or affirmative defenses as they may become available.

WHEREFORE, the Huffs, having fully answered the Plaintiffs' Amended Complaint, request that the Court enter judgment in favor of the Huffs and against Plaintiffs and that they be awarded their costs incurred in this action, plus any other relief permitted under the law.

Respectfully submitted,

/s/ Chou-il Lee

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COUNTERCLAIMS

William J. Huff, II, as Trustee of the William J. Huff, II Revocable Trust Declaration, Dated June 28, 2011, and Nicole E. Huff, as Trustee of the Nicole E. Huff Revocable Trust Declaration, Dated June 28, 2011 (the "Huffs"), for their Counterclaims against Plaintiffs, Monroe County, Indiana (the "County") and Monroe County Plan Commission ("the Plan Commission"), incorporate their Answer to the Plaintiffs' Amended Complaint as if fully restated herein, and further states as follows:

FACTUAL ALLEGATIONS

The Huff Property

1. The Huffs own nearly 250 acres of real property (the "Huff Property") located between Shady Side Drive of The Shores subdivision ("The Shores") and the shore of Lake Monroe.
2. The Huffs purchased a majority of the Huff Property by Special Warranty Deed from Terre Haute Realty, LLC executed on February 10, 2017 for approximately 193 acres.
3. The Huffs purchased additional land by two Limited Liability Company Warranty Deeds from Chumley, LLC, both executed on April 20, 2017 for approximately 45 acres.

4. The Huff Property is accessible through a total of five different easements that were granted to the Huffs when they purchased the property. Some of which, pass through the Shores on South Shady Side Drive and the Shores' main road.

The First Logging Permit Application

5. In April 2017 the Huffs began negotiations with Ohio River Veneer, LLC to hire them to conduct logging activities on the Huff Property.

6. When the County and the Plan Commission first discovered that the Huffs wanted to conduct logging activities on the Huff Property, they did everything in their power to block the Huffs' logging efforts every step of the way.

7. Larry Wilson, Planning Director of the Monroe County Planning Department ("Planning Department"), misrepresented to the Huffs that they were required to have a logging permit for any logging activity conducted anywhere on the Huff Property.

8. Indiana Code § 36-7-4-1103 prohibits "an ordinance or action of a plan commission that would prevent, outside of urban areas, the complete use and alienation of any mineral resources or forests by the owner or alienee of them."

9. Section 1103 defines "urban areas" as "all lands and lots within the corporate boundaries of a municipality, any other lands or lots used for residential purposes where there are at least eight (8) residences within any quarter mile square

area, and other lands or lots that have been or are planned for residential areas contiguous to the municipality.”

10. The majority of the Huff Property is located in a non-urban area, which does not require a logging permit under Indiana Code § 36-7-4-1103(c).

11. Relying on Mr. Wilson’s false statements, the Huffs and Iamur Wright, co-owner of Ohio River Veneer, began preparing a logging permit application for the Huff Property.

12. Mr. Wright was in contact with Tammy Behrman, a Senior Planner with the County, regarding the logging permit application and the required materials needed to complete the application.

13. Mrs. Behrman informed Mr. Wright that the County calculates the urban areas by counting all platted subdivision lots regardless of whether there is a house on the lot or not. But Indiana Code § 36-7-4-1103(b) classifies “urban areas” as “any other lands or lots used for residential purposes where there are at least eight (8) *residences* within any quarter mile square area.”

14. On May 4, 2017, the Huffs and Ohio River Veneer submitted a logging permit application for the Huff Property covering 237 acres. The Logging Permit Application is attached as **Exhibit 1**.

15. On June 2, 2017, Mr. Wilson notified the Huffs and Ohio River Veneer that the logging permit could not be approved until “the Grant of Easement is amended to

expand the permissible uses to allow logging activities or there is a court order that declares that the proposed logging activities are allowed by the existing easement language.” The letter is attached as **Exhibit 2**.

16. In July 2017, the Huffs attempted to have a sit down with The Shades neighbors in hopes of resolving the easement issue, but they were unsuccessful.

17. Ohio River Veneer informed the Huffs that they would not start on the project unless and until the County approved the logging permit because Mr. Wilson made representations to Ohio River Veneer that made the company believe a logging permit was absolutely necessary to conduct any logging activities on the Huff Property.

18. The Huffs worked with District Forester Ralph Unversaw with the Indiana Department of Natural Resources (“IDNR”) to develop a Stewardship Plan subject to the Department’s Best Management Practices, Invasive Species Practice Plan, and Timber Stand Improvement Practice Plan for the logging activities on the Huff Property. All plans are attached as combined **Exhibit 3**.

19. On August 21, 2017, the Huffs sent a letter to Mr. Wilson informing him that they were withdrawing their application for a logging permit because they did not plan on engaging in any logging activities within the limited portion of the Huff Property that is located in the urban area. The letter withdrawing the Huffs’ logging permit application is attached as **Exhibit 4**.

20. Because of the County's refusal to issue the permit and Mr. Wright's reliance on Mr. Wilson's claims that one was absolutely necessary to conduct any logging activity on the Huff Property, Ohio River Veneer refused to start logging. On October 6, 2017, the Huffs had to pay \$7,500 to terminate their contract with Ohio River Veneer and began looking for a new logging company. The Termination of Agreement to Purchase and Mutual Release and Receipt for Money is attached as **Exhibit 5**.

From the Start, the County and the Plan Commission Planned to
Block Any Logging on the Huff Property

21. On June 6, 2017, the Plan Commission held an Executive Committee Meeting and discussed the Huffs' logging permit application. Present at the meeting were Mr. Wilson and Mr. Schilling.

22. According to the Meeting Minutes, the Huffs' Logging Permit was put on the agenda since the application was for "roughly 300 acres on Lake Monroe," and "anytime [they] have any type of activity like that on Lake Monroe it draws a lot of attention." Other members of the Executive Committee ("Committee") noted that Bloomington Mayor John Hamilton sent them a "long email" about the Huffs' permit application and others heard about it at the market. The Meeting Minutes are attached as **Exhibit 6**.

23. The Committee realized that their hands were tied when it came to the Huffs' permit because of state law, Indiana Code § 36-7-4-1103, but that didn't stop them.

24. They discussed some options they shared with Mayor Hamilton on ways to stop the Huffs' logging permit.

25. Among these options included contacting the Indiana Utility Regulatory Commission ("IURC") and the Indiana Department of Environmental Management ("IDEM").

26. Mr. Wilson then shared his "update" with the Committee which was "chopped with good news" because he found a way to deny the Huffs' application for the time being. He explained the easement issues with the Committee and shared the letter he sent to the Huffs and Ohio River Veneer refusing to issue the permit because of the easements.

27. Committee member Julie Thomas said she called Ohio River Veneer to complain about the proposed logging on the Huff Property, which can only be seen as further attempts to disrupt the Huffs' plans to log on their property.

28. The Committee continued to discuss possible ways they could block the Huffs' logging permit in the event the Huffs resolved the easement issue including: classifying the log landings in the application as home sites; contacting DNR Forestry, or if they refused, hiring a consulting firm to assist the Plan Commission in evaluating the logging plan to determine if some of it did not comply with common practices in the County; getting the Army Corps involved; or turning down the permit application because the logging plan essentially served as a development plan.

29. Mr. Wilson admitted, “if they have a logging plan we have no real basis for turning down a logging plan that comes in, follows Best Practices and is consistent with the way logging is practiced in Monroe County.”

30. Despite the fact that the Huffs’ logging plan did exactly that, their application still was not approved.

The County Placed “Stop Work” Orders
on the Huff Property Without Authority

31. On September 25, 2017, the County placed “stop work” orders on the Huff Property.

32. On September 26, 2017, the Huffs’ then attorney, Tom Malapit, emailed Mr. Wilson asking for the County’s purpose and legal authority for issuing the “stop work” order.

33. Mr. Wilson’s email in response stated the “stop work” order was issued because they saw construction equipment and believed “the area was being staged to begin earth-moving and vegetative removal activity” without permits for logging or site development activities.

34. Mr. Wilson further noted that without logging permits, they would treat any land disturbance or vegetative removal activity as land disturbing activity which requires a grading permit. These emails are attached as **Exhibit 7**.

35. The Huffs were not conducting any logging or land disturbing activities on the Huff Property when the “stop work” orders were posted. They were only doing

maintenance on roads that had already been in existence on the Huff Property for many years, which predated the Huffs' purchase of the property. This activity did not constitute land disturbing activity as defined in Mr. Wilson's email in **Exhibit 7**.

36. Additionally, the Huffs' activities fell under some of the exemptions for issuance of a grading permit outlined in Zoning Ordinance § 816(A)(4) & (5) which include "agricultural use of lands" and "forest harvesting occurring in areas classified as rural in accordance with I.C. 36-7-4-1103."

37. The "stop work" orders were used as yet another tactic to put obstacles in the way and make it more difficult for the Huffs to conduct any logging activity on their property.

The Second Logging Permit Application

38. In April 2018, the Huffs, together with Tri-State Timber, LLC submitted another application for a logging permit.

39. Despite submitting all the required materials for a logging permit application, the County continued to employ delay tactics over the course of several months to avoid issuing the Huffs the permit.

40. Every time Mr. Malapit inquired about the status of the permit, the County would respond with a new excuse why it had not been issued yet. These excuses included, among others: requesting a grading permit where one was not required; asking the Huffs to submit a new application for property that was included

in the original application; requesting an updated logging plan; miscalculating and over-extending the slope restricted areas meeting the urban area definition; requiring that the Huffs have the slope restricted areas staked off even though this is not a requirement for a logging permit; requiring the construction of a new roadway where one was not required which would additionally require a grading permit, construction plans, and an erosion control plan; and incorrectly claiming that some parcels were not owned by the Huffs. Emails detailing these delay tactics are attached as **Exhibit 8**.

The Shores Neighbors File a Lawsuit Against the Huffs

41. On April 18, 2018, a couple of the Huffs' neighbors residing in The Shores filed a lawsuit against the Huffs seeking to have the court declare that the easements used by the Huffs did not authorize ingress and egress for commercial logging activity and injunctive relief to enjoin the Huffs from using the easements for commercial logging. The Complaint for Declaratory Judgment and Injunctive Relief is attached as **Exhibit 9**.

42. On May 7, 2018, the trial court granted The Shores neighbors' preliminary injunction. The court ordered that the Huffs be enjoined from using the easements "except for the construction, development and use by the Huffs of single family residential structures, which may include guest and caretaker quarters and other buildings attendant thereto." The court further ordered that the Huffs be enjoined from

using the easements for “commercial logging or for hauling logs or trees, or forestry activity.” The trial court’s order is attached as **Exhibit 10**.

43. On May 11, 2018, Mr. Malapit filed a Notice of Appeal of the trial court’s order granting the preliminary injunction.

44. On March 11, 2019, the Indiana Court of Appeals vacated the trial court’s order granting the preliminary injunction because it was overbroad as it enjoined the Huffs from activities on the Huff Property that would be necessary to develop the property and effectively prohibits them from accomplishing what is explicitly granted in the Grant of Easement.

45. The Court of Appeals noted, “[i]n order for reasonable development or use of the Huff Real Estate, it is clear that some prudent logging and removal of trees will be necessary and that the hauling and removal of trees would be essential in developing the Huff Real Estate as contemplated in the Grant of Easement.” The Court of Appeals decision is attached as **Exhibit 11**.

Further Attempts by the County and the Plan Commission to
Block Logging on the Huff Property

46. On September 12, 2018, Mr. Schilling emailed Mr. Malapit various photos showing that “a prefab building, gazebo components, building materials, and earth moving equipment” had been placed on the Huff Property and warned him that the Huffs were required to obtain an improvement location permit and a site plan approval from the County prior to placing any buildings or structures on the property.

47. Mr. Malapit responded by informing Mr. Schilling that the Huffs were not required to obtain an improvement location permit because the structures Mr. Schilling was referring to fall under one of the exceptions outlined in Zoning Ordinance § 814-1(B)(4). The only structures that were on the Huff Property were used exclusively for agricultural production purposes. Zoning Ordinance § 814 is attached as **Exhibit 12**.

48. On May 8, 2019, a Notice was posted on a tree on the Huff Property with a note from Building Commissioner Jim Gerstbauer which requested that the Huffs contact the Monroe County Building Department regarding the project under way on the property.

49. The Notice further stated, "I have questions regarding the construction, permit status and/or location in Relation to property line setback requirements. Although questions are not uncommon, it is essential they be resolved prior to completion of the project." The Notice is attached as **Exhibit 13**.

50. Nowhere on the Notice from Mr. Gerstbauer posted on the Huff Property did it direct the Huffs to stop work, as the County claims.

51. None of the structures that were on the Huff Property involved or affected any electrical, plumbing, ventilating, heating or air conditioning systems or structural elements.

52. A gazebo, a pavilion, and a shed were located on the Huff Property, and they were used exclusively for agricultural production purposes. The Pavilion kept the

straw dry that was used in the harvesting activities. The gazebo was a safe and sheltered area for agricultural workers to eat. The shed was used to store equipment, gas, oil, grass seed, and tools. The shed was not on foundation, allowing it to be moved around the property multiple times. No excavation activities were conducted when these structures were erected.

53. According to Building Code § 430-18, the “Building Department shall, on receipt of information of the violation of this Chapter, make an investigation of the alleged violation.” The Building Department conducted no investigation. According to the Mr. Gerstbauer, the Building Commissioner, the “Building Department has had little involvement and has limited information” regarding the activities conducted on the Huff Property. The Building Commissioner Records Request is attached as **Exhibit 14**.

54. Since the Plaintiffs alleged that the Huffs violated the Building Code, the Building Commissioner should have served the Huffs with a written work stoppage notice under Building Code § 430-15. But it did not. Instead, only the Notice was posted on the Huff Property indicating that the Building Commissioner had questions for the Huffs. There was no mention of a violation or order to stop work.

55. Building Code § 430-19 provides that all “persons shall have the right to appeal a decision or order of the Building Commissioner.” The Huffs were deprived of any appeal right provided by this section.

56. The County and Plan Commission filed this lawsuit against the Huffs on May 16, 2019.

The IDEM Inspection

57. On May 29, 2019, the IDEM Office of Water Quality conducted an inspection of the private logging operations on the Huff Property in response to numerous complaints concerning clear cutting operations and potential violations of 327 IAC 15-5 (Rule 5).

58. The purpose of Rule 5 is to establish requirements for storm water discharges from construction activities of one acre or more to protect the public health, existing water uses, and aquatic biota. However, the Rule does not apply to persons who are involved in agricultural land disturbing activities or forest harvesting activities.

59. The inspection was conducted by Samantha Wickizer, a storm water specialist with the IDEM Office of Water Quality.

60. After Mrs. Wickizer's inspection, she summarized her findings in an Inspection Summary-Advisory Letter which was mailed to Mr. Huff on June 10, 2019. The Inspection Summary-Advisory Letter is attached as **Exhibit 15**.

61. The Letter indicated the following: a permit was not required for the Huff Property under Rule 5 because active forest harvesting operations were being conducted; gravel drives were installed to minimize sediment tracking from the site; only one section of the property was clear cut because the area was identified by IDNR

as a diseased tree stand that was recommended to be removed; silt fencing was installed along the perimeter of the area adjacent to Lake Monroe; stabilization practices had been implemented and vegetation establishment was underway; on the day of the inspection intermittent rains were occurring, and no active erosion was observed; and no grading operations were observed.

62. The Inspection Summary-Advisory Letter was cc'd to the IDEM Storm Water and Wetlands Section Chief Randy Braun, the IDEM Director of the Southeast Regional Office Mark Amick, and the Monroe County Municipal Separate Storm Sewer System Assistant Connie Griffin.

63. Through a Request for Public Records, the Huffs requested all communications between Mrs. Wickizer and Mrs. Griffin regarding the Huffs. In response to their Request, the Huffs received documents indicating that Mrs. Griffin sent an email to Mr. Schilling and Mr. Wilson on June 10, 2019 that contained a short memo detailing Mrs. Griffin's phone conversation with Mrs. Wickizer regarding the Huff inspection. The documents received through the Request for Public Records are attached as **Exhibit 16**.

64. The memo indicated that the IDEM inspection found: no Rule 5 Permit required because logging/forest not a regulated activity and is exempt from permit requirements; no grading activity noted; in Mrs. Wickizer's opinion, the Huffs have

“gone above and beyond Best Management Practices for logging activity;” and the only structure on the property was a small shed not on foundation.

65. On June 12, 2019, Mrs. Griffin forwarded an email from Mrs. Wickizer containing the Inspection Summary-Advisory Letter to Mr. Schilling and Mr. Wilson which said the site does not require an IDEM permit for land disturbing activities.

Enforcement Procedures Under Zoning Ordinance § 817-3

66. On August 3, 2019, the Huffs filed a Motion to Dismiss the Plaintiffs’ Verified Complaint for Civil Penalty and Permanent Injunction on Ordinance Violations under Indiana Trial Rule 12(B)(1) for lack of subject matter jurisdiction because the County failed to adhere to their own procedures for enforcement as dictated by the Zoning Ordinance.

67. Specifically, the Huffs argued that the County failed to follow the Enforcement Procedures set out in Zoning Ordinance § 817-3 before filing suit. Zoning Ordinance § 817-3 is attached as **Exhibit 17**.

68. Zoning Ordinance § 817-3 requires that the Administrator send written notice to the person responsible for violating any provision of the Zoning Ordinance indicating the nature of the violation and ordering the action necessary to correct it. The final written notice shall state what action the Administrator intends to take if the violation is not corrected. Then, if the violation is not corrected, the Administrator shall seek Board authority to file a lawsuit for violation of the Zoning Ordinance.

69. None of these procedures were followed before the Plan Commission and the County filed this lawsuit.

70. The Huffs never received a formal written notice from the Administrator indicating the nature of the violation and ordering the action necessary to as prescribed by Zoning Ordinance § 817-3(B).

71. The County claims that Mr. Schilling's email to Mr. Malapit on September 12, 2018 constituted adequate notice. But this cannot be because the email makes no mention of specific ordinance violations that the County now seeks to enforce like the need for a land use certificate, erosion and drainage control plan, or the ECO Zone slope variation. The email was also sent by Mr. Schilling and not by the Administrator.

72. The County also never sought approval by the Board of Zoning Appeals (the "BZA") before filing this lawsuit as required by Zoning Ordinance § 817-3(D).

73. In response to the Huffs' argument that the County failed to comply with Zoning Ordinance § 817-3, the County argued that Mr. Schilling was included in the term "Administrator" because the county attorney assists the Administrator with enforcement of the zoning ordinances.

74. The Plan Commission also argued it did not need to seek BZA approval before filing suit because the exception in Zoning Ordinance § 817-3(E) applied. The exception allows the bypass of BZA approval "in cases where delay would seriously

threaten the effective enforcement of the ordinance or pose a danger to the public health, safety or welfare.”

75. The County reasoned that Mr. Malapit’s response to Mr. Schilling’s email that the Huffs do not need an Improvement Location Permit because they fall under one of the exceptions delayed the effective enforcement of the ordinances. Thus, the County didn’t need BZA approval to sue.

76. The County raised this argument for the first time in Plaintiffs’ Brief in Opposition to the Huffs’ Motion to Dismiss. In the original Complaint, Plaintiffs never once made reference to Zoning Ordinance § 817-3. According to Paragraph 3 of the original Complaint, The County stated it had authority to initiate legal proceedings “pursuant to IC 36-7-4-1014 and Sections 817-2 and 4 of the Zoning Ordinance.”

77. On October 3, 2019 the parties appeared for a hearing on the Huffs’ Motion to Dismiss and had oral arguments on these same issues.

The BZA Special Meeting

78. Just hours after the hearing on October 3, 2019, Mr. Wilson sent an email to the BZA indicating that they needed “to schedule a short (10 to 15 minutes) meeting of the Board of Zoning Appeals on Monday, October 7, 2019, to approve decisions on pending litigation.” The Public Notice for the Special Meeting stated that the pending litigation to be discussed, among others, was the Huffs. The BZA emails are attached as **Exhibit 18**. The Public Notice is attached as **Exhibit 19**.

79. The Special Meeting was held in a different location than the BZA's monthly meeting and thus, was not publicly televised as usual. Instead the meeting was recorded.

80. The Huffs obtained a copy of the Special Meeting recording through a Request for Public Records. The recording is attached as **Exhibit 20**.

81. At the Special Meeting, Mr. Wilson and Mr. Schilling first asked the BZA to ratify a special interpretation of the enforcement procedures outlined in Zoning Ordinance § 817-3 as a matter of policy, which they claim has been in practice for twenty years.

82. This "Policy Suggestion" reads: "Direct the Planning Director, as a matter of policy, to utilize the enforcement procedure option set forth in MCC 817-3(E) in cases where a permit has not been applied for, where the existence of a violation is reasonably straight forward, where alleged violators refuse to cooperate or otherwise interfere with the effective enforcement of the ordinance, or where environmental harm, property damage, or public safety is at risk; and, to use the enforcement procedure option outlined in MCC 817-3(A) thought (D) in cases where the Planning Director concludes that administrative expertise would better serve the County's enforcement objectives."

83. The BZA voted to not adopt the new policy suggestion without having more information about the implications such policy suggestions may have.

84. Mr. Schilling and Mr. Wilson next asked the BZA to retroactively ratify Mr. Wilson's decision, as the Director of the Planning Department, to file this lawsuit against the Huffs.

85. Mr. Schilling stated that it wasn't until the day of the hearing on the Motion to Dismiss that they thought it would be helpful to actually have BZA approval. He further admitted that they called the Special Meeting to get approval instead of waiting for the BZA's regularly scheduled monthly meeting because they needed approval as soon as possible in order to file the Amended Complaint before the Huffs filed an answer, which would require the Plaintiffs to seek Court approval to file the Amended Complaint.

86. Mr. Schilling and Mr. Wilson proceeded to feed the BZA false information about how the Huffs' activities were polluting the water and harming the City's water source. They led the BZA into believing that the Huffs' activities posed a risk to public health, even though they both received the results from the IDEM inspection which indicated otherwise. As a result, the BZA voted to approve Mr. Wilson's decision to file this lawsuit.

87. Three days later, the Amended Complaint was filed citing Zoning Ordinance § 817-3, for the first time, as the County's source of authority for bringing the lawsuit.

The Huffs are Responsible
and Vigilant Owners of the Land and Lake

88. The Huffs, like many Bloomington residents, want nothing but the best for Lake Monroe and the property surrounding the Lake.

89. The Huff Property is unique. The Huffs' property line includes the shoreline of Lake Monroe at the Southern Cove of the property, which allows for direct access to the water from the Huff Property.

90. As partial property owners to a small portion of Lake Monroe, the Huffs are devoted to maintaining the health and safety of the Lake.

91. The Huffs ensured that their logging practices incorporated further erosion control protections like maintaining careful control of diseased trees and areas on the property that pose a risk of erosion near the shoreline. Grass seeding around the shoreline also ensures that that soil does not spill into the Lake.

92. Like their approach to logging activities on the Huff Property, the Huffs have gone above and beyond to keep their shoreline healthy and clean.

93. The release of water from the Lake Monroe Dam causes the pool levels to rise and lower, and this has caused accretion, avulsion, and erosion on the shoreline of the Huff Property. The constant water level changes and flooding of the Huff Property uproot many trees and cause them to die along the shoreline. The Huffs' responsible logging activities have abated further erosion issues from the rising water levels due to the Dam.

94. The rising and lowering pool elevation from the Dam also causes large amounts of trash left behind from boaters to build up in the Huffs' Southern Cove and wash up onto the Huff Property.

95. Since this is an ongoing issue, the Huff regularly remove trash and debris from their property, filling countless trash bags weekly.

COUNT I
DEFAMATION PER SE

96. The Huffs re-allege the preceding allegations as if fully restated herein.

97. At the Special Meeting on October 7, 2019, various false statements were made regarding the Huffs and the activities conducted on the Huff Property.

98. Present at the Special Meeting were BZA members Marry Beth Kaczmarczyk, Margaret Clements, Bernie Guerrettaz, and Mark Kruzan, Larry Wilson and Jacqueline Nester with the Plan Commission, and County attorney Dave Schilling.

99. Specifically, these false statement were made when addressing the reasons why the County did not first seek BZA approval before filing suit as required by Zoning Ordinance § 817-3(D). The false statements relevant to this claim are as follows:

- a. At minute 16:57, Mr. Schilling says, "look it appears that land use grading, land disturbing activities are going on there, and I want to make you aware that you have to apply for these grading permits and so forth before you do any site development activity. And they did not stop, and

we have photographs where after those notices were posted, they continued to grade and so forth.”

- b. At minute 19:35, Mr. Wilson says, “and frankly, do I think we need BZA approval when somebody is scraping the land adjacent to Lake Monroe bare? With you know, with inadequate controls, without any permits whatsoever, on steep slopes in an area that’s not shown under logging plans? I don’t think we need BZA approval.”
- c. At minute 27:58, Margaret Clements says, “I just don’t understand why enforcement action hasn’t been taken on the people who have been violating the zoning ordinances so blatantly. It gives a green light for anybody along the shores of Lake Monroe to deforest our ecologically sensitive land and to potentially harm our water supply.”
- d. At minute 29:57, Margaret Clements says, “I feel that it is a hazard to the public health and I do feel that, not feel, but I have research based reasons to believe or know that that’s an environmental hazard.”
- e. At minute 32:36, Mark Kruzan, talking to Dave Schilling says “we’re talking about the case specifically, and you’re trying to box us into we have to protect the Lake.”

- f. At minute 35:10, Margaret Clements says, "I believe that the deforestation can cause problems for the broader community, and I would appreciate it if the County would enforce the Code."
- g. At minute 38:23, Dave Schilling says, "in this case, Larry's concerned about environmental harm."
- h. At minute 41:47, Mr. Wilson says, "We tried contacting the IDEM Commissioner, okay, and nothing, even though they are like clearly under Rule 5."

100. These false communications generally allege that the logging activities conducted on the Huff Property are polluting Lake Monroe, harming the water supply, and creating an environmental hazard.

101. Taken in conjunction with the BZA's discussions of intentional Zoning Ordinance violations, these allegations impute that the Huffs' conduct is criminal.

102. These false and misleading statements were made about environmental hazards and public health risks which undoubtedly constitute a matter of public concern.

103. These false statements were made with actual malice because Mr. Schilling and Mr. Wilson had knowledge of their falsities.

104. Mr. Schilling and Mr. Wilson both received Mrs. Griffin's Memo and the Inspection Summary-Advisory Letter from IDEM storm water specialist Mrs. Wickizer.

These materials indicating the following: no Rule 5 Permit was required; logging/forestry is not a regulated activity and is exempt from permit requirements; no grading activity was noted; the Huffs have gone above and beyond Best Management Practices for logging activity; and on the day of the inspection, intermittent rains were occurring and no active erosion was observed.

105. The truthful facts from Mrs. Griffin's Memo and the IDEM Letter that Mr. Schilling and Mr. Wilson had knowledge of, directly contradict the false statements said at the Special Meeting that the Huffs are polluting Lake Monroe and that they are creating a public health risk to the community by harming the water supply. The Huffs are not scraping the land adjacent to Lake Monroe bare, as the IDEM letter mention, there was no grading activity.

106. Mr. Schilling and Mr. Wilson further acted maliciously by failing to inform the BZA of Mrs. Wickizer's positive findings resulting from the IDEM inspection and by failing to correct the other BZA members' statements that the Huffs' are harming the water supply and creating an environmental hazard.

107. The Special Meeting was open to the public and was publicly recorded which allows anyone from the general public to access it.

108. A reporter from the Herald-Times was also present at the Special Meeting and published an article titled "County board of zoning appeals ratifies decision to sue Lake Monroe property owner despite board member's process concerns." The Herald-

Times article went into detail about what was discussed at the Special Meeting. The Herald-Times article is attached as **Exhibit 21**.

109. The Herald-Times article detailing the Special Meeting was just one of the many media articles that have been published quoting Mr. Schilling and Mr. Wilson's misrepresentations and causing harm to the Huffs' reputation.

110. Further damages can be presumed as a natural and probable consequence of the false statements' criminal imputation on the Huffs' conduct, and those damages continue to accrue.

COUNT II
DEFAMATION PER QUOD

111. The Huffs re-allege the preceding allegations as if fully restated herein.

112. The false statements communicated at the Special Meeting significantly diminish the esteem and good will of the Huffs in the Bloomington community because they led the BZA members and the public at large into believing that the Huffs are polluting Lake Monroe and harming the community's water supply.

113. Such allegations of intentional zoning ordinance violations, in a community like Bloomington, are injurious to the Huffs' reputation and, therefore, carry defamatory imputation.

114. These defamatory statements were made with actual malice because Mr. Schilling and Mr. Wilson had knowledge of their falsities. They both received Mrs.

Griffin's Memo and the IDEM letter from Mrs. Wickizer directly contradicting these statements.

115. Mr. Schilling and Mr. Wilson further acted maliciously by failing to inform the BZA of Mrs. Wickizer's positive findings resulting from the IDEM inspection and by failing to correct the other BZA members' statements that the Huffs' were creating an environmental hazard.

116. The Special Meeting was open to the public and was publicly recorded which allows anyone from the general public to access it.

117. A reporter from the Herald-Times was also present at the Special Meeting and published the Herald-Times article. This had an effect of further publishing the defamatory statements to the public at large.

118. The Herald-Times article detailing the Special Meeting was just one of the many media articles that have been published quoting Mr. Schilling and Mr. Wilson's misrepresentations and causing harm to the Huffs' reputation.

119. Beyond that, the statements were made at a public meeting.

120. The Huffs have suffered damages, and continue to suffer damages because of the statements.

121. As one example, Mr. Huff owns his own business, which has been negatively impacted by all the media attention this matter is receiving.

122. Mr. Huff has also had to spend more time defending this lawsuit and has spent significantly less time working at his business. This has resulted in financial loss for both the Huffs and the Mr. Huff's business.

COUNT III
INVASION OF PRIVACY – FALSE LIGHT

123. The Huffs re-allege the preceding allegations as if fully restated herein.

124. The false statements and misrepresentations from the Special Meeting portrayed the Huffs in a false light and constituted an invasion of their privacy.

125. At the Special Meeting, Mr. Schilling and Mr. Wilson publicized the Huff matter by spreading the false statements to the BZA at a public meeting where the matter was substantially certain to become one of public knowledge. This is especially so because the public at large has access the Special Meeting recording.

126. Mr. Schilling and Mr. Wilson also notified the media of the Special Meeting which resulted in the Herald-Times article that was published with substantial detail as to the false statements.

127. These false statements and significant misrepresentations from the Special Meeting placed the Huffs before the public in a false light by portraying them as willful Zoning Ordinance violators and polluters of Lake Monroe.

128. This publicity is a severe misrepresentation of the Huffs' character and of the activities conducted on the Huff Property.

129. The IDEM inspection instructs that the Huffs have gone above and beyond Best Management Practices and have been extremely careful in their logging activities to avoid any harm to the Lake.

130. The Huffs worked with the IDNR to put together a Stewardship Plan, Invasive Species Practice Plan, and a Timber Stand Improvement Practice Plan to ensure any logging activities conducted on the Huff Property were done in an environmentally safe manner.

131. The Huffs have further expended their own resources to help keep erosion on the shoreline under control due to flooding from the Dam and continue to clean up the constant flow of trash that washes up onto the Huff Property from boaters.

132. The publicity would be highly offensive to a reasonable person especially considering the community the events took place in. Bloomington prides itself on Lake Monroe, and unfounded allegations that someone is intentionally violating local Zoning Ordinances, scraping the land adjacent to Lake Monroe bare, and harming the drinking water would be highly offensive to any reasonable person in Bloomington.

133. Mr. Wilson as Director of the Planning Department, the members of the BZA, and Mr. Schilling as the County's attorney should reasonably understand that the Huffs are justified in the eyes of the community in feeling seriously offended and aggrieved by the publicity they caused.

134. Mr. Schilling and Mr. Wilson had knowledge of the falsity of the publicized statements because they received the truthful information surrounding the Huffs' activities in June of 2019, four months before the Special Meeting.

135. Mr. Schilling and Mr. Wilson had knowledge of the false light in which the Huffs would be placed by their false statements because they invited the media to the Special Meeting understanding the likelihood of an article being published on the Special Meeting was high. Especially considering the amount of media attention the matter had already received prior to the Herald-Times article.

136. The statements are not true because the findings from the IDEM inspection indicate otherwise.

137. The Huffs have suffered damages in the form of severe harm to their reputation in the community. Bloomington, being such a small and tight knit community, many people are aware of these matters currently surrounding the Huff name. The Huffs, who have family in Bloomington and who are prominent supporters of Indiana University, have felt the impact this has had on their reputation in professional, social, and family relationships.

138. The loss of the Huffs' good will has also lead them to suffer damages, which are ongoing, in the form of emotional distress and humiliation.

COUNT IV – 42 U.S.C. § 1983
VIOLATION OF SUBSTANTIVE DUE PROCESS RIGHTS BY
THE COUNTY AND THE PLAN COMMISSION

139. The Huffs re-allege the preceding allegations as if fully restated herein.

140. The County and the Plan Commission are “person[s]” under 42 U.S.C. § 1983.

141. The County and the Plan Commission’s arbitrary and capricious behavior deprived the Huffs of their constitutionally protected interest in the fair use and enjoyment of their private property.

142. The County is liable because the constitutional violations resulted from a combination of the County and the Plan Commission’s widespread practice of enforcement procedures under Zoning Ordinance § 817-3 and Mr. Schilling and Mr. Wilson’s final decision-making authority.

143. The County and the Plan Commission had every intention of blocking all logging efforts on the Huff Property since they first got wind of the Huffs’ plans. This started a spiral of unreasonable behavior towards the Huffs by the County and the Plan Commission in their attempts to delay any progress on the Huff Property by making it almost impossible for them to get a logging permit.

144. Mr. Wilson lied to the Huffs when he informed them that a logging permit was required for any logging activity conducted anywhere on the Huff Property.

145. The County's continued efforts to block the Huffs' first logging permit led to Ohio River Veneer refusing to conduct any logging on the Huff Property and resulted in the Huffs paying \$7,500 to terminate their contract with them. The Huffs lost a lot of valuable timber and the opportunity to log on their own property as a result.

146. Because of the County's further attempts to block the Huffs' logging permit application, the Huffs had trouble hiring a new logger. Many loggers did not want to get involved in the County's obvious attempts to halt any and all logging activity on the Huff Property. These efforts by the County further deprived the Huffs of their protected interest in the use and enjoyment of their property.

147. After the Court of Appeals vacated the preliminary injunction order in The Shores Neighbors' lawsuit which essentially gave the Huffs the green light to continue logging, the County and the Plan Commission began feeling the pressure and looking for the next available option to continue their sabotaging efforts.

148. Two months later, the County brought this lawsuit in a hurried rush to enforce phantom zoning and building violations and unbelievable civil penalties against dedicated landowners.

149. The County and the Plan Commission's decision to bring this suit was irrational considering the Huffs never received a formal Zoning Ordinance or Building Code violation before getting sued. The allegations in the Amended Complaint are

meritless and provide further proof that the decision to sue was unreasonable and a hurried effort to continue hindering logging activity on the Huff Property.

150. This groundless lawsuit has further deprived the Huffs of their fair use and enjoyment of their property without unreasonable government regulation. To avoid the absurd and irrational fines the County and the Plan Commission allege in the Amended Complaint, the Huffs removed the structures from their property that were used exclusively for agricultural production purposes. The Huffs also ceased all further plans for the Huff Property while defending this suit.

151. The County and the Plan Commission proved just how dedicated they were to halting all logging on the Huff Property when they lied and intentionally misled the BZA to obtain retroactive approval of the County's decision to sue and fraudulently received authority to file the Amended Complaint. Such intentional conduct on behalf of the County and the Plan Commission is egregious and shocks the conscience

152. The County and Plan Commission's arbitrary and unreasonable conduct had no substantial relation to the public health, safety, morals, or general welfare of Monroe County. The County was on notice that the Huffs' logging activity caused no public health risk nor created any environmental harm to Lake Monroe. Without evidence of public or environmental harm, the County's egregious behavior lacks any rational connection to a legitimate government interest.

COUNT VI—42 U.S.C. § 1983
VIOLATION OF PROCEDURAL DUE PROCESS RIGHTS BY
THE COUNTY AND THE PLAN COMMISSION

153. The Huffs re-allege the preceding allegations as if fully restated herein.

154. The County and the Plan Commission are “person[s]” under 42 U.S.C. § 1983.

155. The Huffs have a constitutionally protected property interest in the use and enjoyment of their private property.

156. The County and the Plan Commission’s unreasonable and over burdensome regulation of the Huff Property deprived the Huffs of their protected property interest without the due process of law.

157. The County is liable because the constitutional violations resulted from a combination of the County’s widespread practice of enforcement procedures under Zoning Ordinance § 817-3 and Mr. Schilling and Mr. Wilson’s final decision-making authority.

158. The County and the Plan Commission allege that the Huffs violated the Zoning Ordinance by not obtaining an improvement location permit, a land use certificate, and site plan approvals and also allege ECO zone slope violations. For all of these alleged violations, not once did the Huffs receive any type of formal notice of such violations.

159. The extent of any kind of formal notice of a violation or a County decision were emails from Mr. Schilling or Mr. Wilson to Mr. Malapit informing him of the requirements of certain Zoning Ordinances in relation to activity they assumed was being conducted on the Huff Property. None of these emails were ever sent directly to the Huffs nor did any of them explicitly say the Huffs were violating the Zoning Ordinance.

160. The Amended Complaint also alleges that the Huffs violated the Building Code and that the Building Commissioner posted “stop work” orders on the Huff Property. But the notice the Huffs received from the Building Commissioner indicated that he had questions regarding the activity on the Huff Property, it made no mention of Building Code violations nor did it instruct the Huffs to stop work.

161. Indiana provides procedural protections to challenge municipal decisions such as appealing decisions to the local zoning boards or seeking judicial review of local zoning decisions. But these procedural protections were not available to the Huffs because they never received a notice of violation or a County decision that could be appealed to the BZA or used as the basis for seeking judicial review.

162. Although the procedures due in zoning cases are minimal, the County and the Plan Commission skipped any and all necessary procedures and went straight to the courthouse, thus depriving the Huffs of any ability to receive the process that was

due to them for the deprivation of their property right to use, enjoy, and develop the Huff Property.

RELIEF REQUESTED

The Huffs respectfully requests that the Court:

- A. Enter judgment in favor of the Huffs and against the Plaintiffs;
- B. Order the Plaintiffs to pay compensatory damages in an amount to be determined at a trial of this matter;
- C. Order any equitable relief as may be proper.
- D. Grant such other relief as may be proper.

DEMAND FOR JURY TRIAL

The Huffs, by counsel, respectfully request a jury trial for all issues deemed so triable.

Respectfully submitted,

/s/ Chou-il Lee

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, pursuant to Rule 86(G) of the Indiana Rules of Trial Procedure, a copy of the foregoing has been served via E-Service through the Indiana E-Filing System, this 6th day of January, 2020, to:

David Brian Schilling
Lee Baker
100 W. Kirkwood Avenue, Room 220
Bloomington, IN 47404

/s/ Chou-il Lee

Chou-il Lee