

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

JUDIE BAKER and DAVID HOLDMAN,)
)
Plaintiffs,)

v.)

TERRI PORTER, in her capacity)
as Director of the City of Bloomington)
Planning and Transportation)
Department of the City of Bloomington,)
and JIM GERSTBAUER, in his capacity)
as the Building Commission of the)
Monroe County Building Department,)

Defendants.)

AMENDED VERIFIED COMPLAINT FOR MANDATE

Plaintiffs, Judie Baker and David Holdman, by counsel, for their Complaint against Defendants, Terri Porter and Jim Gerstbauer, allege as follows:

1. This is an action for mandamus under Indiana Code 34-27-3-1 et seq.
2. Plaintiffs are residents of Monroe County, Indiana.
3. Defendant, Terri Porter, is the Director of the City of Bloomington Planning and Transportation Department, located in Monroe County, Indiana.
4. Jim Gerstbauer is the Building Commissioner for the Monroe County Building Department in Monroe County, Indiana.
5. Plaintiffs filed a Demolition Application, seeking a demolition permit from the Monroe County Building Department for the property located at 523 W. Seventh Street, Bloomington, Indiana, in Monroe County (the "Property"), on May 17, 2019.

6. The Property is located within the corporate boundaries of the City of Bloomington.
7. Properties within the City of Bloomington are subject to zoning review by the City of Bloomington.
8. After the City's zoning review is completed, the City issues a certificate of zoning compliance ("CZC"), allowing the permit to be issued by the Monroe County Building Department.
9. The City of Bloomington deemed the Property was subject to demolition delay, which allows the City to delay issuing a CZC for a period of 90 days.
10. After the 90 days expired, the City of Bloomington did not issue a CZC.
11. Pursuant to Bloomington Municipal Code 20.09.230(d)(2), after the 90 day period ends, the City is required to issue a CZC unless the Property was designated historic or was placed under interim protection: "After expiration of the waiting period provided for herein, which shall include early termination of the waiting period, a certificate of zoning compliance authorizing demolition shall be issued if owner has submitted a complete application and all other requirements of the Bloomington Municipal Code are met."
12. The Property was not designated historic or placed under interim protection.

Count I - Action for Mandate Against Terri Porter

13. Plaintiffs incorporate by reference paragraphs 1-12 as if fully set forth here.
14. Terri Porter must and is able as Planning Director to issue CZCs.
15. Terri Porter has refused to issue a CZC after demand by Plaintiffs.
16. By reason of Terri Porter's refusal to issue a CZC, Plaintiffs have been

damaged.

Count II - Action for Mandate Against Jim Gerstbauer

17. Plaintiffs incorporate by reference paragraphs 1-12 as if fully set forth here.
18. Jim Gerstbauer must and is able as Building Commissioner to issue demolition permits.
19. Jim Gerstbauer has refused to issue a demolition permit after demand by Plaintiffs.
20. By reason of Jim Gerstbauer's refusal to issue a building permit, Plaintiffs have been damaged.

Count III - Frivolous Defense Against Terri Porter

21. Plaintiffs incorporate by reference paragraphs 1-12 as if fully set forth here.
22. Defendant, Terri Porter, has brought and continues a defense that is frivolous, unreasonable, or groundless.
23. Plaintiff's are entitled to their attorney fees incurred in this action if they are the prevailing party pursuant to IC 34-52-1-1.

WHEREFORE, Plaintiffs, Judie Baker and David Holdman, pray for judgment requiring the Defendant, Terri Porter, in her capacity as the Director of the City of Bloomington Planning and Transportation Department, to issue a certificate of zoning compliance on the Property; requiring Defendant, Jim Gerstbauer, in his capacity as Building Commissioner for the Monroe County Building Department, to issue a demolition permit for the Property; awarding Plaintiffs their attorney's fees; and for all

other appropriate relief.

Verification

I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT THE ABOVE REPRESENTATIONS ARE TRUE.

David Holdman as attorney in fact
Judie Baker
David Holdman
David Holdman

Respectfully submitted,
FERGUSON LAW

/s/ David L. Ferguson
David L. Ferguson, No. 8111-53
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

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

David B. Schilling
dschilling@co.monroe.in.us

Michael Rouker
roukerm@bloomington.in.gov

Larry D. Allen
allenl@bloomington.in.gov

/s/ David L. Ferguson
David L. Ferguson, No. 8111-53

FERGUSON LAW
403 East Sixth Street
Bloomington, IN 47408-4098
Phone: (812) 332-2113
Fax No: (812) 334-3892
DLF@ferglaw.com