

- Holdman and Baker for failure to obtain a CZC is frivolous and cannot be upheld.
2. Porter's objection alleges that she would be prejudiced by not being permitted to conduct necessary discovery. However, Porter fails to explain what information she needs to justify her failure to issue a CZC, which is required by the Bloomington Municipal Code.
 3. Porter further fails to inform this Court that Holdman and Baker have proposed conducting depositions of Porter and other City officials on March 6, 2020, in the BZA action. The City has stated it is available for depositions and has indicated its possible interest in deposing Baker and Holdman on the same date. When counsel for Baker and Holdman indicated they intended to conduct those depositions under both the BZA action and this action (which counsel had previously informed the City of the same on January 7, 2020), the City's attorney (who also represents Porter in this action) stated that the depositions would not be "part of the mandamus action" and that "we'll have to do a different set of depositions, RFPs, interrogatories, etc. for the mandamus action." See emails from Mike Rouker dated February 24, 2020.
 4. The City's position regarding discovery is contrary to the Trial Rules. Indiana Trial Rule 30(A) states that "[a]fter the commencement of the action, any party may take the testimony of any person, including a party." Leave of the Court is required in the first twenty (20) days after service of the summons and complaint upon any defendant.
 5. Indiana Trial Rule 32 states that "any part or all of a deposition, so far as admissible under the Rules of Evidence applied as though the witness were then

present and testifying, may be used against any party who was present or represented at the taking of the deposition, by or against any party who had reasonable notice thereof or by any party in whose favor it was given” in accordance with the rules. This includes the use of a deposition of a party “by an adverse party for any purpose.”

6. Formal discovery has been conducted in the BZA action by both the City and Holdman and Baker. The City issued written discovery to Holdman and Baker on November 15, 2019, and Holdman and Baker responded on December 5, 2019. The City has sent no further written discovery since that time. Nothing has prevented the City from conducting further written discovery in the BZA action or in this action.
7. Pursuant to Indiana Trial Rule 33(A), “Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.” Pursuant to Indiana Trial Rule 34(B), a Request for Production of Documents “may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party”
8. No case management plan has been requested by Porter. Regardless, a case management plan is not required to be issued by the Court before a party can conduct discovery, and typically a case management plan only indicates the deadline by which discovery must be completed. As stated, the Trial Rules allow discovery to be conducted at any time after the commencement of an action

upon service of the summons.

9. Depositions can be conducted at any time after an action is commenced. During the first 20 days, a party desiring to take a deposition must request leave of Court. Indiana Trial Rule 30.
10. Porter has not alleged a reason justifying the delay of this action. It has not been prevented from conducting discovery and, in fact, has conducted discovery in the BZA action.

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

Respectfully submitted,
FERGUSON LAW

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Attorney for Plaintiffs, David Holdman and
Judie Baker

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2020, electronically filed the foregoing document using the Indiana E-Filing System (IEFS) and the forgoing document was served upon the following person(s) via IEFS:

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