

STATE OF INDIANA) IN THE MONROE CIRCUIT COURT
)SS:
COUNTY OF MONROE) Case Number: 53C08-2006-MI-000958

ANDREW GUENTHER, individually)
and in his capacity as appointed member of the)
Bloomington Plan Commission,)

And)

WILLIAM ELLIS, in his capacity as Chairman)
of the Monroe County Indiana Republican Party)
Petitioners,)

v.)

CITY OF BLOOMINGTON, INDIANA,)
And)

JOHN HAMILTON, in his official capacity)
as Mayor for the City of Bloomington, Indiana,)

And)

CHRISTOPHER COCKERHAM, in his)
capacity as contested member of the Bloomington)
Plan Commission,)

And)

NICHOLAS KAPPAS, in his capacity as)
contested former member of the Bloomington)
Plan Commission,)
Respondents.)

AGREED FACTUAL STIPULATIONS

Respondents City of Bloomington, John Hamilton, Christopher Cockerham, and Nicholas Kappas (“City”) by their attorney, Daniel Dixon, and Petitioners Andrew Guenther and William Ellis (“Petitioners”) by their attorney, Carl Lamb, hereby stipulate and agree as indicated below. The parties further agree that the mere submission of the following stipulations does not constitute an agreement as to the relevancy of any particular stipulation to the instant proceeding:

1. Andrew Guenther is a resident of City of Bloomington, Monroe County, Indiana.

2. William Ellis is a resident of Monroe County, Indiana.
3. The City of Bloomington, Indiana is an Indiana municipality duly organized pursuant to the laws of the State of Indiana.
4. William Ellis is the Chairman of the Monroe County, Indiana, Republican Party.
5. John Hamilton is the Mayor of the City of Bloomington, Indiana, and a resident of the City of Bloomington, Indiana.
6. Nicholas Kappas is a resident of the City of Bloomington, Indiana.
7. Christopher Cockerham is a resident of the City of Bloomington, Indiana.
8. The City of Bloomington Plan Commission consists of ten members. Five of the ten members are appointed by the Mayor. Pursuant to Bloomington Municipal Code and Indiana Code, no more than three of the five mayoral appointees may be of the same political party.
9. Nicholas Kappas was a member of the City of Bloomington Plan Commission from February 10, 2016, through January 6, 2020.
10. Nicholas Kappas held one of the five seats appointed by the Mayor.
11. Nicholas Kappas's seat on the City of Bloomington Plan Commission was previously held by Christopher Smith.
12. Christopher Smith was on the City of Bloomington Plan Commission from January 2, 2012, through January 5, 2016.
13. During his term on the City of Bloomington Plan Commission, Christopher Smith was affiliated with the Republican Party of Monroe County, Indiana.
14. During and before Nicholas Kappas's term on the City of Bloomington Plan Commission, Nicholas Kappas did not vote in a primary election.

15. During and before Nicholas Kappas's term on the City of Bloomington Plan Commission, Nicholas Kappas did not claim a party affiliation.

16. During and before Nicholas Kappas's term on the City of Bloomington Plan Commission, Nicholas Kappas was not certified as a member of a political party by the chairman for any such political party.

17. Nicholas Kappas's seat on the City of Bloomington Plan Commission remained vacant from the expiration of his term on about January 6, 2020, through April 16, 2020.

18. After Nicholas Kappas's term on the City of Bloomington Plan Commission expired, three of the five mayor-appointed seats were held by Democrats, one of the five mayor-appointed seats was held by a Republican, and the seat held by Nicholas Kappas was vacant.

19. On April 16, 2020, William Ellis appointed Andrew Guenther to the vacant seat on the City of Bloomington Plan Commission formerly held by Nicholas Kappas claiming authority to make the appointment pursuant to Indiana Code, Section 36-1-8-10.

20. On April 16, 2020, Andrew Guenther was affiliated with the Republican Party of Monroe County, Indiana.

21. The City of Bloomington rejected William Ellis's appointment of Andrew Guenther to the City of Bloomington Plan Commission.

22. On May 7, 2020 Mayor John Hamilton appointed Christopher Cockerham to the vacant seat on the City of Bloomington Plan Commission.

23. On May 7, 2020, Christopher Cockerham claimed affiliation with the Republican Party.

24. In 2019, Christopher Cockerham voted in the Monroe County Democratic Party primary election.

25. Prior to May 7, 2020, Christopher Cockerham requested, received, completed, and submitted his ballot for the 2020 Republican Party primary election to the office of the Monroe County Circuit Court Clerk.

26. In-person voting in the 2020 Indiana Primary had been scheduled to occur on May 5, 2020, but was delayed until June 2, 2020, due to the COVID-19 pandemic.

27. On May 7, 2020, Christopher Cockerham was not certified by the chair of the Monroe County Republican Party as a member of the Republican Party.

28. Mayor Hamilton reaffirmed his appointment of Christopher Cockerham to the City of Bloomington Plan Commission on June 3, 2020.

29. Christopher Cockerham first occupied the Plan Commission seat vacated by Nicholas Kappas during the Plan Commission meeting on June 8, 2020.

30. William Ellis and Andrew Guenther objected to the appointment of Christopher Cockerham to the City of Bloomington Plan Commission.

31. On September 19, 2018, Andrew Guenther was appointed to the City of Bloomington Environmental Commission by Mayor John Hamilton.

32. Andrew Guenther remains an active and voting member of the City of Bloomington Environmental Commission.

33. Andrew Guenther was a member of the City of Bloomington Environmental Commission at the time William Ellis appointed him to the Plan Commission.

34. Nicholas Kappas was a member of the City of Bloomington Environmental Commission from June 4, 2015, through January 30, 2019.

35. Nicholas Kappas's appointment to the City of Bloomington Plan Commission was not challenged prior to the instant litigation.

36. Andrew Guenther voted in the 2019 Monroe County Republican Party primary election, which was the most recent primary election he voted in prior to his appointment by Ellis.

37. On January 2, 2021, Andrew Guenther publicly resigned from the Republican Party.

AGREED BY:

/s/ Daniel A. Dixon

Daniel A. Dixon
Attorney No. 30585-53
Assistant City Attorney

Michael Rouker
Attorney No. 28422-53
City Attorney

Larry D. Allen
Attorney No. 30505-53
Assistant City Attorney

Attorneys for Respondents

Carl Paul Lamb
Attorney No: 10286-53

Matthew Fox
Attorney No. 31713-49

Attorneys for Petitioners