

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

IN THE MONROE CIRCUIT COURT

CAUSENO.: 53C08-1912-MI-002936

JUDIE BAKER & DAVID HOLDMAN,
 Plaintiffs,

vs.

TERRI PORTER, in her capacity as Director of the
City of Bloomington Planning and Transportation
Department,
 Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hearing was held on January 11, 2021. Plaintiffs Judie Baker & David Holdman appeared by counsel Christine Bartlett and Defendant Terri Porter, in her capacity as Director of the City of Bloomington Planning and Transportation Department appeared by counsel Michael Rouker. The court heard arguments on the Parties' cross motions for summary judgment. Upon request of the parties, court takes judicial notice of all prior pleadings and hearings in this case. And the Court after considering all evidence submitted, and being duly advised in the premises, NOW FINDS:

UNDISPUTED FACTS

On May 17, 2019, Plaintiffs submitted a demolition application to the Monroe County Building Department seeking permission to destroy structures at 523 W. 7th Street in Bloomington, Indiana (hereafter "the Property"). The Monroe County Building Department forwarded the application to the City of Bloomington and Transportation Department (hereafter "Planning") for them to consider issuing a Certificate of Zoning Compliance (hereafter "CZC") before the Building Department would consider issuing the demolition permit. The Property was subject to a demolition delay before the City's Historic Preservation Commission (hereafter "Commission"). Bloomington Municipal. Code Section 20.09.230. This allowed the City to delay issuing a CZC for up to 90 days.

The Historic Preservation Commission failed to make a motion to place the Property under interim protection. The City did not issue the CZC upon completion of the 90 days. On or around September 26, 2019 the structures on the Property were demolished. The City issued a Notice of Violation and a fine of \$83,500 to Baker and Holdman on October 16, 2019, based on Baker and Holdman's alleged failure to obtain a CZC. The City later dropped the fine. The County Building Commissioner will issue the demolition permit if the City issues the CZC. On December 17, 2019, Plaintiffs initiated the present mandamus action to compel the City and the County to issue permits for demolition.

STANDARD OF REVIEW AND ANALYSIS

Summary judgment is appropriate only if the pleadings and designated evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Owens Corning Fiberglass Corp. v. Cobb*, 754 N.E.2d 905 (Ind. 2001). On a motion for summary judgment, all doubts as to the existence of material issues of fact must be resolved against the moving party. *Id.* Genuine issues of material fact exist for facts concerning an issue that would dispose of the litigation are in dispute or where the undisputed material facts are capable of supporting conflicting inferences on such an issue. *Sequa Coatings Corp. v. N. Ind. Commuter Transp. Dist.*, 796 N.E. 2d 1216, 1221 (Ind. Ct. App. 2003). “A fact is ‘material’ if its resolution would affect the outcome of the case, and an issue is ‘genuine’ if a trier of fact is required to resolve the parties’ differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences.” *Martin v. Hayduk*, 91 N.E.3d 601, 605 (Ind. Ct. App. 2017).

MOOTNESS AND MANDAMUS

Actions for mandamus in Indiana are filed under 34-27-3-1 and “may be prosecuted against any inferior tribunal, corporation, public or corporate officer, or person to compel the performance of any: (1) act that the law specifically requires; or (2) duty resulting from any office, trust, or station.’

The City argues that the court should grant summary judgment in their favor because this action is moot, the City should not be compelled to issue a CZC for a property that no longer exists. The City cites multiple cases that stand for the principle that mandates may not be issued for the purpose of requiring the defendant to perform useless acts. For example in *State v. Indianapolis Gas Co.*, 71 N.E. 139 (Ind. 1904) the state sought to compel a company to dig wells into land where gas no longer existed. “Certainly a court will not compel a party to perform a useless act.” *Id.* At 140. “The question presented by the appeal is no longer a real one, but has become simply moot or abstract proposition of law, the determination of which will be of not practical importance.” *Id.*

“The long-standing rule in Indiana courts has been that a case is deemed moot when no effective relief can be rendered to the parties before the court. When the controversy at issue has been ended or settled, or somehow disposed of so as to render it unnecessary to decide the question involved, the case will be dismissed.” *Civil Commitment of T.W. v. St. Vincent Hosp. & Health Care Ctr.*, 121 N.E.3d 1039.

The court disagrees that this matter is moot. If Baker and Holdman do not receive the CZC they are still subject to fines for not obtaining the CZC. The City argues that Baker and Holdman can be afforded no relief by the issuance of the CZC, the court disagrees. Although the

Property has been demolished there can still be outstanding legal matters that result from the City not issuing the CZC. Bloomington Municipal Code 20.06.100(A) authorized the City to “revoke or withhold other approvals, certificates and/or permits relevant to the development or use of the site on which the violation has occurred...” Also the City could issue fines for up to two years past the demolition date. While the court understands that the attorney for the City has stated on record that the City will not pursue further fines, this is a Motion for Summary Judgment and therefore not an appropriate forum for settlement terms. The court finds that the City’s Motion for Summary Judgment should be denied.

Plaintiffs argue that pursuant to Bloomington Municipal Code 20.09.230(d)(2), the City must issue the CZC unless the Property was designated historic by the City Council or was placed under interim protection. That code section states that after the 90 day period ends, “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.

In Terri Porter’s deposition filed with the court, when asked why the City had not issued the CZC she answered “[m]y understanding is that the criteria for issuing the zoning compliance is not met” Depo. p. 26. “I have speculation. I can’t ..being under oath, I can’t tell you yes for sure I know..[i] think it has something to do with the lack of council action, but I don’t have clear understanding of the ordinance and all of the criteria in this case.” Depo. p. 27.

Whether or not the Plaintiffs application was proper is a determination of fact. There seems to be a dispute about whether or not the Plaintiffs properly applied for a demolition permit. Therefore, Plaintiffs Motion for Summary Judgment is denied.

CONCLUSION

IT IS THEREFORE ORDERED, that material issues of fact exist that preclude the entry of Summary Judgment as a matter of law. The Court hereby denies the parties Cross Motions for Summary Judgment.

SO ORDERED, this 21st day of April, 2021.



Judge Kara E. Krothe
Monroe Circuit Court VIII

Distribution:

Christine Bartlett for Plaintiff
Michael Rouker for Defendant