

STATE OF INDIANA)
)SS:
COUNTY OF MONROE)

IN THE MONROE CIRCUIT COURT VI

CAUSE NO. 53C06-2303-CT-000633

JOSEPH BRADLEY DAVIS,
Plaintiff,

v.

CITY OF BLOOMINGTON,
Defendants.

**ORDER GRANTING MOTION TO DISMISS and ORDER DENYING MOTION FOR
DE NOVO ADMINISTRATIVE REVIEW OF NOTICES OF VIOLATION & ORDER
FOR ABATEMENT**

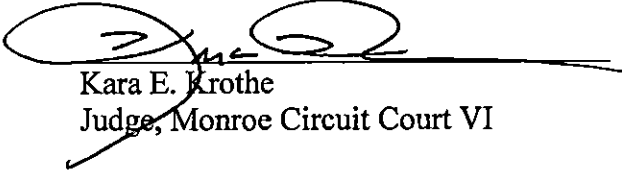
The Defendant, by counsel, has filed a Motion to Dismiss, requesting the Court to Order the dismissal of the case. Plaintiff filed a Motion for De Novo Administrative Review of Notices of Violation & Order for Abatement. Hearing was held on the Motions on August 3, 2023. Plaintiff, Joseph Bradley Davis, appeared in person and self-represented, Defendant, City of Bloomington, appeared by counsel Christopher Wheeler. Argument was heard and the Court finds and Orders as follows:

1. A motion to dismiss under Trial Rule 12(b)(6) tests the legal sufficiency of the complaint, rather than the facts supporting the complaint. *Allen v. Clarian Heath Partners, Inc*, 980 N.E.2d 306, 308 (Ind. 2012); *Meyers v. Meyers*, 861 N.E.2d 704, 705 (Ind. 2007).
2. A trial court must grant a motion to dismiss under Trial Rule 12(b)(6) if the facts alleged in the complaint are incapable of supporting relief under any set of circumstances. *McPeak v. McArdle*, 888 N.E.2d 171 (Ind. 2008).
3. Plaintiff's Count I states that he was issued a building permit for the installation of a photovoltaic solar array. Nothing is alleged in this count that could arise to a cause of action.
4. Plaintiff's Counts II, III, and IV relate to Notices of Violation that occurred around September 7, 2022 and October 7, 2022. Plaintiff failed to appeal within the time required under I.C. § 36-1-6-9(f) regarding any issues related to the Notices of Violations issued by the City of Bloomington Housing and Neighborhood Department. These claims are therefore untimely.
5. Plaintiff's Count V failed to state the dates for the decisions of the City of Bloomington Planning and Transportation and does not seek judicial review of those notices of violation.
6. Plaintiff's Counts VI-IX reference decisions made by the City of Bloomington Board of Zoning Appeals but does not seek judicial review of those decisions.

7. Filing fees were waived in this case and Plaintiff is therefore not entitled to reimbursement for filing fees.
8. Plaintiff asks for punitive damages. To collect any type of damages the Plaintiff would have to state a claim upon which damages could be awarded. Generally though, “[c]ourts have also been reluctant to impose punitive damages on government entities in part because the penalty falls ultimately on innocent taxpayers”. *Brownsburg Cmty. Sch. Corp. v. Natore Corp.*, 824 N.E.2d 336, 345 (Ind. 2005). “Government entities do not possess or form a state of mind and are not deterred by punitive damages”. *World Productions, Inc. v. Capital Improvements Board of Managers of Marion County*, 514 N.E.2d 634 (Ind. Ct. App. 1987).
9. Plaintiff appeals the City of Bloomington Board of Public Works Order for Abatement issued on March 14, 2023. A trial court’s review of an administrative decision is limited to a determination of whether the board’s action was: arbitrary, capricious, an abuse of discretion, not in accordance with the law, or unsupported by substantial evidence. In determining whether an administrative decision is supported by substantial evidence, the trial court must examine the whole record to determine whether the board’s decision lacks a reasonably sound basis of evidentiary support. *Natural Resources Commission, etc. v. Sullivan*, 428 N.E.2d 92 (Ind. 1981). A reviewing trial court may not, without a finding supported by evidence of an arbitrary and capricious ruling by an administrative board, preempt that board’s function. *City of Marion v. Alvarez*, 277 N.E.2d 916 (Ind. Ct. App. 1972). The Complaint makes no allegations and provides no grounds for why the abatement order should be disturbed.
10. Plaintiff requests to have this court determine the applicability of I.C. § 36-7-8-3. That statute clearly does not apply to the circumstances in Plaintiff’s complaint. I.C. § 36-7-8-3 relates to the establishment of county building departments and applies only to unincorporated areas of the county. Plaintiff seeks relief from an abatement order issued by the Bloomington Board of Public Works through Bloomington Municipal Code Title VI which addresses prohibition from throwing, placing or scattering garbage, recyclable materials and yard waste on real property located within the incorporated areas of the City of Bloomington. Title VI does not relate to building codes or housing standards. Plaintiff has not alleged any facts that he has begun construction of any structure on his property or suffered any damages by any action taken by any governmental entity in relation to any construction of anything on his property.
11. Lastly, Plaintiff filed a Motion for De Novo Administrative Review of Notice of Violation & Order for Abatement. The Court denies this motion. “A trial court has no power to hear a statutory appeal de novo in the common law sense and weigh the evidence or arrive at its own independent opinion or judgment.” *New Albany v. Whiteman*, 234 N.E.2d 646, 648 (Ind 1968). In a review of an administrative act or order “the burden is on the complainant to establish the invalidity of the administrative action and, in doing so, a trial court may not merely substitute its judgment for that of the administrative body[,][i]t may not interfere with the exercise of the discretionary authority of that body, unless it is made to appear that it acted in the exercise of that discretion in an arbitrary, capricious, fraudulent, or otherwise illegal manner. *Id.*

12. Therefore, the Court grants the Defendant's Motion to Dismiss for failure to state a claim under Indiana Trial Rule 12(b)(6).
13. The Court denies Plaintiff's Motion for De Novo Administrative Review of Notice of Violation & Order for Abatement.
14. The Court's Order on Motion for Preliminary Injunction that was issued June 30, 2023 is now rescinded and the Defendant is no longer enjoined from executing its abatement order.

SO ORDERED, this 8th day of August, 2023.



Kara E. Krothe
Judge, Monroe Circuit Court VI

DISTRIBUTION:
Plaintiff
Defendant