

STATE OF INDIANA) IN THE MONROE CIRCUIT COURT
) SS:
COUNTY OF MONROE) CAUSE NO. 53C06-2210-PL-002156

LAMAR ADVANTAGE GP COMPANY, LLC)
a/k/a LAMAR OUTDOOR ADVERTISING,)

Plaintiff,)

v.)

CITY OF BLOOMINGTON BOARD OF ZONING)
APPEALS,)

Defendant.)

ANSWER

COMES NOW Defendant City of Bloomington Board of Zoning Appeals, by counsel, Michael Rouker, and submits its Answer and Affirmative Defenses to Plaintiffs' Verified Complaint for Judicial Review. Any allegation not specifically responded to below, including allegations that appear in headings, is denied. Bloomington states as follows:

1. Lamar is a limited liability corporation organized and existing under the laws of the State of Delaware.

ANSWER: Defendant is without sufficient knowledge and information to form a belief as to the truth of the allegations.

2. Lamar conducts business in the State of Indiana, doing business from 5711 W. Minnesota Street, Indianapolis, Indiana 46241.

ANSWER: Defendant is without sufficient knowledge and information to form a belief as to the truth of the allegations.

3. Lamar, among other things, owns and operates outdoor advertising signs used for the dissemination of both commercial and noncommercial speech.

ANSWER: Defendant is without sufficient knowledge and information to form a belief as to the truth of the allegations.

4. The City of Bloomington is a municipality organized and existing under the laws of the State of Indiana.

ANSWER: Defendant admits the allegations.

5. The BZA serves as the Board of Zoning Appeals for the City of Bloomington, and the BZA is organized and existing under the laws of the State of Indiana.

ANSWER: Defendant admits the allegations.

6. The BZA is responsible for, among other things, hearing appeals of administrators and approving or denying applications for variances.

ANSWER: Defendant admits the allegations.

7. The BZA conducts its meetings at 401 N. Morton Street, Room 115 in Bloomington, and its mailing address is 401 N. Morton Street, Suite 130, Bloomington, IN 47404.

ANSWER: Defendant admits the allegations.

8. This Court has jurisdiction over this dispute pursuant to Ind. Code § 36-7-4-1602.

ANSWER: Defendant admits the allegations.

9. In July of 2007, the City of Bloomington and Hoosier Outdoor Advertising Corporation ("Hoosier Outdoor") entered into an Agreement Regarding Signs

and Billboards (the "Agreement"). A true and accurate copy of the Agreement is attached hereto as Exhibit A.

ANSWER: Defendant admits the allegations.

10. Pursuant to the terms of the Agreement, Hoosier Outdoor agreed to remove a four panel outdoor advertising sign from South College Avenue and, in exchange, the City of Bloomington agreed to support Hoosier Outdoor's variance petition to construct a two panel outdoor advertising sign at a location acceptable to both Hoosier Outdoor and the City of Bloomington.

ANSWER: Defendant admits the allegations.

11. Sometime after 2007, Lamar acquired certain assets from Hoosier Outdoor, including Hoosier Outdoor's rights under the Agreement.

ANSWER: Defendant is without sufficient knowledge and information to form a belief as to the truth of the allegations.

12. On October 19, 2010, Lamar filed an Application to the BZA for a variance to construct a two panel outdoor advertising sign at 1800 N. Kinser Pike in Bloomington, Indiana. A true and accurate copy of the Application is attached hereto as Exhibit B.

ANSWER: Defendant admits the allegations.

13. As part of the Application, Lamar provided with BZA with a visual depiction of the two panel outdoor advertising sign. A true and accurate copy of the visual depiction is attached hereto as Exhibit C.

ANSWER: Defendant admits the allegations.

14. On December 16, 2010, with the City of Bloomington's support, the BZA heard Case No. V-42-10 and approved Lamar's Application.

ANSWER: Defendant admits the allegations.

15. On January 31, 2011, the BZA issued a Notice of Approval to Lamar. The Notice of Approval stated that Lamar's Application was approved with only two conditions: (1) Lamar "must receive a sign permit prior to sign installation," and (2) the "sign shall be permitted to be lit within the standards of the Unified Development Ordinance (UDO)." A true and accurate copy of the Notice of Approval is attached hereto as Exhibit D.

ANSWER: Defendant admits that the BZA issued a Notice of Approval on January 31, 2011 and that a true and accurate copy is attached as Exhibit D. To the extent that Plaintiff is alleging that the Notice of Approval only required Plaintiff's billboard to comply with two provisions of the City's zoning code, Defendant denies the allegations.

16. On July 13, 2011, the City of Bloomington issued a permit to Lamar to construct a two panel outdoor advertising sign at 1800 N. Kinser Pike in Bloomington, Indiana and, thereafter, Lamar constructed the two panel outdoor advertising sign.

ANSWER: Defendant admits the allegations.

17. Over the course of the next several years, technological advances in outdoor advertising made it both possible and feasible to equip the two panel outdoor

advertising sign with digital faces instead of advertisements printed on vinyl and stretched across a metal frame.

ANSWER: Defendant is without sufficient knowledge and information to form a belief as to the truth of the allegations.

18. On November 15, 2021, Lamar obtained an Electrical Permit from the City of Bloomington to convert the two panel outdoor advertising sign to a two panel digital outdoor advertising sign and, thereafter, Lamar converted the two panel outdoor advertising sign into a two panel digital sign (the "Digital Sign").

ANSWER: Defendant denies that Lamar obtained an Electrical Permit from the City of Bloomington to convert the two panel outdoor advertising sign to a two panel digital outdoor advertising sign. Defendant is without sufficient knowledge and information to form a belief as to the truth of the remaining allegations.

19. In converting the two panel outdoor advertising sign to a Digital Sign, Lamar utilized the same foundation, the same pole, and the same frame.

ANSWER: Defendant is without sufficient knowledge and information to form a belief as to the truth of the allegations.

20. In a letter dated April 25, 2022, the City of Bloomington issued a Notice of Violation (the "First Notice of Violation") to Lamar and alleged that the Digital Sign was a "lawful non-conforming sign" that needed to be removed or restored. The City of Bloomington also threatened Lamar with a variety of fines. A true and accurate copy of the letter dated April 25, 2022 is attached hereto as Exhibit E.

ANSWER: Defendant admits that it sent a notice of violation to Plaintiff on April 25, 2022, and that Exhibit E is a true and accurate copy of the April 25, 2022 notice of violation. Defendant denies any characterization of the notice of violation as containing “threats.” The remaining portions of the allegation contain a characterization of the notice to which no response is required. The notice speaks for itself.

21. In a letter dated May 2, 2022, counsel for Lamar responded to the City of Bloomington and explained that the First Notice of Violation was issued in error because, among other things, the BZA had approved the Digital Sign and the Notice of Approval specifically allowed for lighting within the standards of the Unified Development Ordinance. A true and accurate copy of the letter dated May 2, 2022 is attached hereto as Exhibit F.

ANSWER: Defendant admits that Plaintiff sent a letter to Defendant dated May 2, 2022 and that Exhibit F is a true and accurate copy of the letter. The remaining portions of the allegation contain a characterization of the letter to which no response is required. The letter speaks for itself.

22. In an email dated May 13, 2022, Mike Rouker, the City Attorney for the City of Bloomington, advised Lamar that the City of Bloomington was withdrawing its First Notice of Violation. Mr. Rouker also specifically stated that "the matter is considered closed." A true and accurate copy of the email dated May 13, 2022 is attached hereto as Exhibit G.

ANSWER: Defendant admits that it sent an email to Plaintiff on May 13, 2022 and that Exhibit G is a true and accurate copy of the email. The remaining portions of the allegation contain a characterization of the email to which no response is required. The email speaks for itself.

23. In a letter dated June 10, 2022, however, the City of Bloomington issued another Notice of Violation (the "Second Notice of Violation") to Lamar and, this time, alleged that the Digital Sign was an "electronic reader board" that violated the Unified Development Ordinance (the "UDO") and needed to be reworked or restored. The City of Bloomington also threatened Lamar with a variety of fines. A true and accurate copy of the letter dated June 10, 2022 is attached hereto as Exhibit H.

ANSWER: Defendant admits that it sent a notice of violation to Plaintiff on June 10, 2022, and that Exhibit H is a true and accurate copy of the June 10, 2022 notice of violation. Defendant denies any characterization of the notice of violation as containing "threats." The remaining portions of the allegation contain a characterization of the notice to which no response is required. The notice speaks for itself.

24. In a letter dated June 17, 2022, counsel for Lamar responded to the City of Bloomington, appealed the Second Notice of Violation, and explained that the Second Notice of Violation was issued in error because, among other things, the electronic reader board provision of the UDO was not applicable to the Digital Sign and the Notice of Approval specifically allowed for lighting. A true

and accurate copy of the letter dated June 17, 2022 is attached hereto as Exhibit I.

ANSWER: Defendant admits that Plaintiff sent a letter to Defendant on June 17, 2022, and that Exhibit I is a true and accurate copy of the June 17, 2022 letter. The remaining portions of the allegation contain a characterization of the letter to which no response is required. The letter speaks for itself.

25. The City of Bloomington did not respond to the letter dated June 17, 2022 and, instead, docketed Lamar's appeal for a hearing before the BZA.

ANSWER: Defendant admits that, in response to the June 17 letter, it docketed Lamar's appeal. Defendant denies that it did not respond to the June 17 letter.

26. On September 22, 2022, Lamar's appeal was heard before the BZA (the "September 22 Hearing").

ANSWER: Defendant admits the allegations.

27. Alan Townsend and Jason Graham participated in the September 22 Hearing and presented evidence on behalf of Lamar.

ANSWER: Defendant admits the allegations.

28. At the September 22 Hearing, Lamar demonstrated, among other things, that the City of Bloomington, by and through its legal counsel, resolved any disputes concerning the Digital Sign by advising Lamar, in an email dated May 13, 2022, that "the matter is considered closed."

ANSWER: Defendant denies the allegations.

29. At the September 22 Hearing, Lamar demonstrated, among other things, that the Notice of Approval issued by the BZA on January 31, 2011 imposed only two conditions:

The Board of Zoning Appeals heard case V-42-10 on December 16, 2010, in the Council Chambers of Showers Center City Hall - Bloomington, Indiana. The petition for a variance to allow an off-premise sign (billboard relocation) was approved with the following conditions:

1. The petitioner must receive a sign permit prior to sign installation.
2. This sign shall be permitted to be lit within the standards of the Unified Development Ordinance (UDO).

ANSWER: Defendant denies the allegations.

30. At the September 22 Hearing, Lamar provided the BZA with a Light Study demonstrating that the Digital Sign complied with the lighting requirements of the UDO. A true and accurate copy of the Light Study is attached hereto as Exhibit I.

ANSWER: Defendant admits that Plaintiff provided the BZA with a Light Study and that Exhibit J is a true and accurate copy of said Light Study. Defendant denies the remaining allegations.

31. At the September 22 Hearing, Lamar demonstrated, among other things, that the City of Bloomington, for more than a decade, had never taken the position

the UDO applied to the two panel outdoor advertising sign in any manner except for lighting.

ANSWER: Defendant denies the allegations.

32. At the conclusion of the September 22 Hearing, the BZA denied Lamar's appeal by a vote of 3-2 (the "Determination").

ANSWER: Defendant admits the allegations.

33. Lamar has standing to appeal the BZA's Determination because, among other things, (i) the Determination was specifically directed at Lamar, (ii) Lamar has an interest in the Digital Sign, and (iii) Lamar was aggrieved or adversely affected by the Determination.

ANSWER: Defendant admits the allegations.

34. For one or more of the following reasons, the BZA's Determination was (i) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, (ii) in excess of the BZA's statutory authority, or (iii) unsupported by substantial evidence:

a. The City of Bloomington, by and through its legal counsel, resolved any disputes concerning the Digital Sign by advising Lamar, in an email dated May 13, 2022, that "the matter is considered closed" but then reversed course even though there was no change in circumstances;

b. The Digital Sign complies with all of the requirements of the Notice of Approval;

- c. The Digital Sign complies with all of the applicable requirements of the UDO;
- d. The City of Bloomington and the BZA, over the course of a decade, never claimed or asserted that the UDO was applicable to the two panel outdoor advertising sign and cannot do so now; and
- e. With the City of Bloomington's encouragement, the BZA approved Lamar's Application for a two panel outdoor advertising sign and, in doing so, confirmed that the UDO was not applicable to the two panel outdoor advertising sign.

ANSWER: Defendant denies the allegations.

35. Under the circumstances and pursuant to Ind. Code § 36-7-4-1003, Lamar respectfully requests that this Court reverse the BZA's Determination.

ANSWER: The allegation is a prayer for relief to which no response is required.

AFFIRMATIVE DEFENSES

Bloomington asserts the following affirmative defenses:

1. Plaintiff has failed to state a claim upon which relief can be granted;
2. Defendant reserves the right to assert additional affirmative defenses that may become apparent during the course of this case and therefore also reserves the right to amend its Answer to assert additional affirmative defenses.

WHEREFORE, Bloomington prays for judgment in its favor, that the Plaintiff take nothing by way of its cause of action, and for any and all other appropriate relief.

Respectfully Submitted,

/s/ Michael Rouker
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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2022, the foregoing document was electronically served upon the following persons via the Indiana E-Filing System (IEFS):

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/s/ Michael Rouker
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