

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

JOSEPH BRADLEY DAVIS,)
 Petitioner,)
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CITY OF BLOOMINGTON)
BOARD OF PUBLIC WORKS,)
 Respondent.)

**RESPONDENT’S VERIFIED RESPONSE TO
PETITIONER’S NOTICE OF APPEAL**

COMES NOW Respondent, City of Bloomington Board of Public Works (“City”), by counsel, and files its response to the Petitioner’s “Notice of Appeal.” To the extent that Petitioner’s motion can be interpreted as a motion to stay pending appeal, the City respectfully asks the Court to deny Petitioner’s request, and in support states the following:

1. On October 16, 2024, this Court issued its Order on Verified Petition for Judicial Review, which upheld the Board of Zoning Appeals Notice of Violation and abatement order against Petitioner’s property.
2. As part of its order, this Court lifted the Temporary Emergency Injunction that was placed on this cased on December 7, 2023.
3. Petitioner filed his Notice of Appeal on October 17, 2024.
4. Petitioner’s motion fails to meet any of the requirements for a stay pending appeal and should be denied. **Further, as no stay has been granted, the City has planned to and intends to abate Petitioner’s property as early as Tuesday, October 22, 2024.**
5. While Petitioner titles his submission to the court as a notice of appeal, he merely states a theoretic intent to file an appeal. No actual notice of appeal has been properly filed.

Indiana Rule of Appellate Procedure 9 requires that a party wanting to initiate an appeal filed such a notice with the Clerk of the Indiana Supreme Court, Court Appeals and Tax Court. Ind. App. Rule 9(a); 2(D). Additionally, appellants are required to present particular information with a notice of appeal, including a copy of the order appealed. Ind. App. Rule 9(F). While Petitioner states his intent to file a proper notice of appeal—there is no appeal pending in this case.

6. Even without an appeal, Petitioner could have sought a stay of execution under Indiana Rule of Trial Procedure 62, which permits stays for post judgment reviews including, in relevant part, a motion to correct error under Rule 59, a motion for relief from a judgment under Rule 60, or an appeal. Petitioner's filing satisfies none of these requirements. Motions to correct error under Trial Rule 59 must be accompanied by a specific recitation of errors and a statement of facts and ground upon which the error is based. Petitioner's filing has no such statements. A relief from judgment under Trial Rule 60 requires specific allegations as to the clerical error, excusable neglect, mistake, error, fraud, newly discovered evidence, or other valid grounds for relief. Again, Petitioner's motion fails to allege any grounds for relief. While Trial Rule 60 grants the court discretion to consider these grounds, there are simply no errors on the record that warrant relief, nor has Petitioner pointed to any such grounds of relief.
7. Even if Petitioner's Notice of Appeal filed to the trial court is interpreted as a motion to stay pending appeal, Petitioner must show that he would be able to obtain an appeal bond or a letter of credit while the appeal is pending. While an appeal may be sought without a bond, the stay pending appeal is discretionary and can be stayed "upon the giving of a bond, an irrevocable letter of credit, or other form of security approved by a trial court..."

Ind. App. Rule 18; Ind. Trial Rule 62. *See Dzur v. Northern Indiana Public Service Co.*, 278 N.E.2d 563, 564-65 (Ind. 1972) (No appeal bond is necessary in Indiana to perfect an appeal, but “in order to stay an execution of judgment a supersedeas bond must be given and approved by the appropriate court”). Petitioner has given no indication of his ability or willingness to obtain the necessary appeal bond.

8. Regardless, Petitioner’s suggestion that he should be granted a stay pending appeal should be denied because Petitioner has shown a track record of groundless delay and of not prosecuting his appeals. As this court noted in its factual recitation in this Court’s Order on Verified Petition for Judicial Review, Petitioner spent significant amounts of time before the Board of Public Works requesting continuances and delays to having his case heard and decided. Order ¶¶ 34-35. Further, Petitioner failed to prosecute his appeal in a separate appeal against the City of Bloomington, which resulted finally in a dismissal with prejudice by the Indiana Court of Appeals. March 14, 2024, Order Dismissing Appeal with Prejudice, *Davis v. City of Bloomington*, No. 23A-CT-2099 (Ind. Ct. App. 2024). All signs point to more of the same here with the Petitioner making every attempt to delay implementation of the Court’s order.
9. **Since no stay has been granted, the City has made plans and intends to enforce the Board of Public Works’ abatement order on Tuesday, October 22, 2024.** *See Jones v. American Family Mutujal Ins. Co.*, 489 N.E.2d 160, 166 (Ind. Ct. App. 1986) (“[A]n appeal from the judgment of the trial court does not have the effect of vacating the judgment of the trial court. [...] Such judgment is in full force and effect until it is reversed, and is binding on the parties as to every question decided.”). While this case has been pending over the past year, Petitioner has allowed rubbish and trash to remain on his

property, causing potential harm and risk to himself, his neighbors, and the community. As part of the cleanup, the City will document each item that is removed from the property and deemed garbage, rubbish, trash, or refuse. Bloomington Municipal Code §§ 6.06.010, 6.06.020.

10. Absent an immediate order from the Court, the City will move with haste to remedy the situation as soon as possible. Although this would result in the clean-up of the rubbish, this action would not necessarily moot Petitioner's appeal. *See, e.g., Columbus Bd. of Zoning Appeals v. Wetherald*, 605 N.E.2d 208, 210 (Ind. Ct. App. 1992) (holding that although action proceeded while appeal was pending where the opposing party had not sought a stay pending appeal, such action did not moot the appeal). Petitioner would still have an opportunity to be heard on his appeal regarding the Board's findings and outstanding notice of violation. So Petitioner would not be prejudiced in this case, but it would save the City from the prejudice and harm to the community welfare of not being able to abate this property.

WHEREFORE, the City respectfully requests that the Petitioner's request for a stay pending appeal be denied.

Respectfully submitted,

/s/ Larry D. Allen
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Attorney for Respondent

VERIFICATION

I affirm, under the penalties of perjury, that the foregoing representations are true.

Respectfully submitted,

/s/ Larry D. Allen
Attorney No. 30505-53

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2024, the foregoing document was electronically served through the Indiana E-Filing System upon the following:

Petitioner Joseph Bradley Davis
balebuilder@gmail.com

/s/ Larry D. Allen
Attorney No. 30505-53
City Attorney

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