

STATE OF INDIANA) IN THE MONROE CIRCUIT COURT
) ss:
COUNTY OF MONROE) CAUSE NO. 53C06-1905-PL-001125

MONROE COUNTY, INDIANA and)
MONROE COUNTY PLAN)
COMMISSION,)

Plaintiffs,)

vs.)

WILLIAM J. HUFF, II, as Trustee of the)
William J. Huff, II Revocable Trust)
Declaration, Dated June 28, 2011, and)
NICOLE E. HUFF, as Trustee of the Nicole)
E. Huff Revocable Trust Declaration,)
Dated June 28, 2011,)

Defendants.)

AMENDED VERIFIED COMPLAINT FOR CIVIL PENALTY
AND PERMANENT INJUNCTION ON ORDINANCE VIOLATIONS

Plaintiffs, Monroe County, Indiana, and Monroe County Plan Commission (collectively, “Monroe County”), by counsel, pursuant to Ind. Trial Rule 15(A), amend their *Verified Complaint for Civil Penalty and Permanent Injunction on Ordinance Violations* (“Complaint”) against the defendants, William J. Huff, II, as Trustee of the William J. Huff, II Revocable Trust Declaration, Dated June 28, 2011, and Nicole E. Huff, as Trustee of the Nicole E. Huff Revocable Trust Declaration, Dated June 28, 2011 (collectively, “the Huffs”), and allege as follows:

Jurisdiction

1. The Monroe Circuit Court is a court of general jurisdiction.
2. The Monroe Circuit Court has original and concurrent jurisdiction in all civil

cases.

3. The Monroe Circuit Court is vested with subject matter jurisdiction over this case by Ind. Code § 36-7-4-1014(e) and Monroe County Building Code § 430-20.

4. The Monroe Circuit Court has personal jurisdiction over the Huffs by virtue of the fact that they own real property in Monroe County which is the subject of this litigation.

5. Monroe County is the proper venue for this cause of action.

Factual Allegations

6. The Huffs are the record owners of real property located in Sections 7, 12, 13, and 30 of Township 7, Range 1 East, in Monroe County, Indiana (hereinafter, “the Huff Property”).

7. The Huff Property, which is generally located between Shady Side Drive and the shore of Monroe Reservoir, is more specifically described in the “Special Warranty Deed” and Exhibit A thereto as Tracts I through VII. A copy of the “Special Warranty Deed” is attached hereto and marked for identification as **Exhibit A** (excluding Grantor’s Articles of Conversion).

8. Tracts I through V of the Huff Property are accessible through two easements for private driveways through Lot 1, Lot 2, and the Common Nature Preserve of The Shores Subdivision.

9. Easements for private driveways through Lot 1, Lot 2, and the Common Nature Preserve of The Shores Subdivision that provide access to Tracts I through V of the Huff Property were created by a “Grant of Easement,” dated March 12, 1990, and recorded on February 15, 2017, in Deed Record Book 371, pages 33-40, in the office of the Monroe County Recorder.

10. Use of the easements for private driveways through Lot 1, Lot 2, and the

Common Nature Preserve of The Shores Subdivision that provide access to Tracts I through V of the Huff Property is limited to the construction and development of not more than four (4) of the six (6) single family residences.

11. Access to the public portion of South Shady Lane is provided to Tract VI of the Huff Property through a mutual easement with adjacent landowners, dated December 20, 1965, and recorded on January 3, 1966, in Deed Record 057, pages 417-419, in the office of the Monroe County Recorder.

12. Two parcels (2.45 and 41.50 acres) of real property conveyed by “Limited Liability Company Warranty Deed” from Chumley, LLC to the Huffs, both dated April 20, 2017, and recorded on April 25, 2017 (hereinafter, “Chumley Tracts”), in the office of the Monroe County Recorder, do not benefit from a Grant of Easement, dated and recorded on March 12, 1990, in Deed Record Book 371, pages 33-40, in the office of the Monroe County Recorder. A copy of each “Limited Liability Company Warranty Deed” for the Chumley Tracts has been made a part of **Exhibit A**, which is attached hereto.

13. On May 4, 2017, Iamur Wright, who is a co-owner of Ohio River Veneer, LLC, filed an application with the Monroe County Planning Director (“Planning Director”) for a logging permit for the Huff Property and Chumley Tracts.

14. The Huffs joined, by written consent, the application for logging permit filed by Mr. Wright, on May 4, 2017, for the Huff Property and Chumley Tracts.

15. On June 2, 2017, Planning Director Larry J. Wilson notified Mr. Wright and Mr. Huff in writing that the application for a logging permit for the Huff Property and Chumley Tracts could not be approved until the issue of whether the proposed logging activities were

allowed under the easement was resolved by agreement of the parties or court order.

16. On August 21, 2017, the Huffs withdrew from the logging application filed by Mr. Wright for the Huff Property (193.30 acres, more or less) and Chumley Tracts (44 acres, more or less).

17. On September 25, 2017, the Monroe County Planning Department (“Planning Department”) was informed by neighbors that construction equipment had been moved onto a tract of land (11.35 acres) owned by Scott and Maria Wilhelmus (“Wilhelmus Property”), located at the end of Shady Side Drive, adjacent to the easements for the Huff Property.

18. On September 25, 2017, Planning Department staff visited the Wilhelmus Property to investigate the reported placement of construction equipment on the property and found that the area was being staged for earth-moving and vegetative removal activity.

19. No permits for logging or site development activities had been issued for the Wilhelmus Property or Huff Property, so Planning Department staff posted “stop-work” orders on the Wilhelmus Property and entry points to the Huff Property on September 25, 2017. Copies of photographs of the posted “stop work” orders are attached hereto and marked for identification as **Exhibit B**.

20. On September 26, 2017, the Planning Director received the following e-mail from attorney Thomas R. Malapit, Jr.:

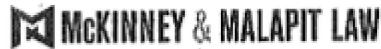
From: Tom Malapit [mailto:tom@mandmlegal.com]
Sent: Tuesday, September 26, 2017 8:02 AM
To: Larry Wilson <lwilson@co.monroe.in.us>
Cc: Barry Andrew Hall <drew@mandmlegal.com>
Subject: Stop Work Order

Mr. Wilson,

Please be advised that I have been retained by Mr. Joe Huff to represent him in the matters involving his real estate in Monroe County. It has come to my attention that you posted a Stop Work Order on his property yesterday. I ask that you please provide to me the purpose and legal authority you have to issue such a Stop Work Order. Thank you in advance for your anticipated cooperation in this regard.

Thomas R. Malapit, Jr.

Partner



A copy of this email and related emails are attached hereto and marked for identification as **Exhibit C.**

21. The Planning Director responded to counsel's inquiry with the following e-mail:

From: Larry Wilson
Sent: Tuesday, September 26, 2017 10:52 AM
To: Tom Malapit
Cc: Barry Andrew Hall; David Schilling; Jason Eakin; Tammy Behrman
Subject: RE: Stop Work Order
Attachments: 825.pdf

Dear Mr. Malapit:

Yesterday we were informed by neighbors that construction equipment had been moved onto a 11.35 acre tract owned by Scott and Maria Wilhelmus located at the end of Shady Side Drive. Our inspectors visited the site yesterday and reported that it appears the area is being staged to begin earth-moving and vegetative removal activity. No permits for either logging or site development activities have been issued for either the Wilhelmus tract or the adjacent real estate owned by the Huff Trust. As is our practice where it appears land disturbing or construction activity is beginning without a permit, we posted a "stop work" order. This provides the opportunity for the contractor and land owner to apply for the appropriate State and local permits. As long as the "stop work" order is followed, we typically do not issue fines.

By letters dated August 21, 2017, the Huffs withdrew their applications to log their tracts. It is my understanding that no agreement has been reached with the landowners along Shady Side to expand the easements previously granted to Terre Haute Realty to allow timber removal. In the absence of approved logging permits, we would treat any land disturbance or vegetative removal activity as **Land Disturbing Activity** which is defined by our ordinance as follows:

Land Disturbing Activity. Any man-made change of the land surface including clearing, cutting, excavating, filling, or grading of land or any other activity that alters land topography or vegetative cover, but not including agricultural land uses such as planting, growing, cultivating and harvesting crop, growing and tending gardens and minor landscaping modifications.

Minimally, land disturbance activities require the issuance of a grading permit. However, the Wilhelmus tract and most of the Huff Trust real estate is within the Environmental Constraints Overlay Area I which prohibits vegetative removal and soil disturbing activity on slopes greater than 12%. I have attached a copy of Monroe County Zoning Ordinance Chapter 825: ENVIRONMENTAL CONSTRAINTS OVERLAY ZONE. In these cases, site plans are reviewed to verify no land disturbing activity is occurring in slope restricted areas.

Please let me know if you have questions.

Larry

Larry J. Wilson, AICP,
Director, Monroe County Planning Department
Monroe County Government Center
501 N. Morton St., Suite 224
Bloomington, IN 47404

A copy of this email and its attachments are made a part of **Exhibit C**, which is attached hereto.

22. The Huffs did not apply for logging or site development activities permits, so the “Stop-Work” order issued by the Planning Director on September 25, 2017, remained in place.

23. During 2017 and 2018, the Huffs and/or their agents, contractors, or employees, conducted excavation activities (“Excavation Activities”) on the Huff Property, including tree and vegetation removal and the preparation of an area on which to place, construct, and/or erect buildings.

24. The Huffs and/or their agents, contractors, or employees, subsequently placed, constructed, and/or erected at least two (2) buildings or structures (“Building Activities”) on the excavated areas of the Huff Property. Copies of photographs showing the buildings or structures are attached hereto and marked for identification as **Exhibit D**.

25. The floor areas of structures which have been placed, constructed, and/or erected by the Huffs on the Huff Property are in excess of one hundred and twenty (120) square feet and are not built on permanent foundations.

26. On September 12, 2018, an email was sent to Mr. Malapit by the County Attorney David Schilling, advising the Huffs that the Excavation Activities and the Building Activities being conducted on the Huff Property required the issuance of permits for these activities and further that an inspection by the Monroe County Zoning Inspector would be required to determine whether there is sufficient buildable area for the placement of structures. A copy of the County Attorney's email and its attachments to Mr. Malapit is attached hereto and marked for identification as **Exhibit E**.

27. The Huffs have not voluntarily taken the steps necessary to achieve compliance with the Zoning Ordinance by obtaining the required approvals, but rather, through their attorney, have denied that the improvement location permit requirement imposed by Zoning Ordinance § 814-1(A) and refused to accommodate the request for a site inspection by the zoning inspector (**Exhibit E**).

28. The Huffs did not appeal the "Stop-Work" order on the Huff Property issued by the Planning Director on September 25, 2017, to the Monroe County Board of Zoning Appeals.

29. The Huffs failed to apply for a building permit or certificate of occupancy as required by the Monroe County Building Code.

30. On May 8, 2019, the Monroe County Building Commissioner ("Building Commissioner") Jim Gerstbauer directed that a "notice of requirement" be placed at the entrance of the Huff Property regarding the failure of the Huffs to comply with the requirements of the Monroe County Building Code and directing them to stop work. A copy of a letter from the Building Commissioner to the Huffs' attorney and a photograph of the posted notice are attached hereto and marked for identification as **Exhibit F**.

31. The Huffs did not appeal the “notice of requirement” issued by the Building Commissioner on May 8, 2019, to the Board of Commissioners.

32. Monroe County, Indiana is a political subdivision of the State of Indiana.

Count I

Violations of the Monroe County Zoning Ordinance

33. The allegations set forth in the preceding paragraphs of this Complaint are incorporated by reference in Count I.

34. The legislative body of Monroe County has the authority to determine the uses that will be permitted in various zones of the county.

35. The legislative body of Monroe County has adopted Title 8 of the Monroe County Code (Planning, Development, Land Use and Zoning Subdivision Control Ordinance and Zoning Ordinance).

36. Title 8 (chapters 800 through 849) of the Monroe County Code is known as the Monroe County Zoning Ordinance (“Zoning Ordinance”).

37. The Monroe County Plan Commission (“Plan Commission”) is a duly authorized advisory plan commission which acts pursuant to Ind. Code §§ 36-7 *et seq.* (Planning and Development), and Zoning Ordinance chapter 822 (Zoning Ordinance: Advisory Plan Commission), and the Monroe County Planning Department (“Planning Department”) is duly authorized by Zoning Ordinance chapter 824 to enforce the provisions and requirements of the Zoning Ordinance. A copy of Zoning Ordinance chapters 822 and 824 are attached hereto and marked for identification as **Exhibit G**.

38. The Huff Property is located within the jurisdiction of the Plan Commission and

Planning Department.

39. The Huff Property is subject to the provisions and requirements of the Zoning Ordinance.

40. Zoning Ordinance §§ 817-1 through -4 govern violations, penalties, enforcement procedures, and remedies for violations of the Zoning Ordinance. A copy of Zoning Ordinance chapter 817 is attached hereto and marked for identification as **Exhibit H**.

41. The Plan Commission and Plan Commission Administrator (“Administrator”) are vested with authority by Ind. Code § 36-7-4-1014(a) and Zoning Ordinance § 817-3 to bring an action to enforce the provisions and requirements of the Zoning Ordinance.

42. The Plan Commission and Administrator are vested with authority by Ind. Code § 36-7-4-1014(d)-(f) and Zoning Ordinance § 817-4(A) to invoke the remedies for violation of the Zoning Ordinance set forth in paragraphs (1) through (3) of Section 817-4(A).

43. Improvement location permits, land use certificates, and site plan approvals required by Zoning Ordinance §§ 814-1, 814-2 and 815-2 are issued by, or on behalf of, the Administrator. A copy of Zoning Ordinance chapters 814 and 815 is attached hereto and marked for identification as **Exhibit I**.

44. The Excavation Activities and the Building Activities conducted on the Huff Property were, and are, subject to the improvement location permit, land use certificate, and site plan approval requirements imposed by the Zoning Ordinance.

45. The Huffs were required by Zoning Ordinance § 814-1(A) to obtain an improvement location permit before they constructed, reconstructed, moved, enlarged, demolished, structurally altered any building or other structure, or making any significant land

alterations (e.g., streets, drives, parking facilities) on the Huff Property.

46. To obtain an improvement location permit for the Huff Property, the Huffs were required by Zoning Ordinance § 814-1(C)(1) to submit a written application to the Administrator.

47. To obtain an improvement location permit for the Huff Property, the Huffs were required by Zoning Ordinance § 814-1(C)(2) to file for site plan review.

48. The Huffs have not submitted a written application to the Administrator for an improvement location permit for the Huff Property.

49. The Huffs have not filed for a site plan review for the Huff Property.

50. The Administrator has not issued an improvement location permit to the Huffs for the Huff Property.

51. Zoning Ordinance § 814-2(A) prohibits occupancy or use of land, buildings or structures erected, reconstructed or structurally altered until a land use certificate has been issued by the Administrator.

52. Zoning Ordinance § 814-2(B) prohibits the use of land, buildings or structures erected, reconstructed or structurally altered to be changed unless a land use certificate has been issued by the Administrator.

53. To obtain a land use permit for the Huff Property, the Huffs were required by Zoning Ordinance § 814-3(A) to submit a written application to the Administrator.

54. The Huffs have occupied and/or used the Huff Property.

55. The Huffs have not submitted a written application to the Administrator for a land use permit for the Huff Property.

56. The Administrator has not issued a land use permit to the Huffs for the Huff Property.

57. The Huffs have violated, and continue to violate, the Zoning Ordinance by conducting Excavation Activities and Building Activities on the Huff Property without the improvement location permits, land use certificates, and site plan approvals required by Zoning Ordinance §§ 814-1, 814-2 and 815-2.

58. The violations of the Zoning Ordinance by the Huffs inflicts harm upon Monroe County and the public-at-large, which is certain and irreparable and which will continue if not enjoined.

59. The Huffs' use and occupancy of the Huff Property without the required approvals is contrary to the provisions of the Zoning Ordinance, constitutes an unlawful violation of this ordinance, and, pursuant to Zoning Ordinance § 817-1, renders the Huff Property a common nuisance.

60. The Huffs' continuing violation of the Zoning Ordinance renders the Huff Property a nuisance *per se*.

61. There is no other adequate remedy at law or equity other than to enjoin the Huffs, and those working in concert with them from the continued maintenance, use, or occupancy of the buildings or structures on the Huff Property until all required permits and approvals are obtained from the Administrator.

62. Zoning Ordinance § 817-2 provides that each day a violation of the Zoning Ordinance is committed or permitted to continue constitutes a separate ordinance violation.

63. Each day that the Huffs, or those working in concert with them, have built,

located, maintained, used, or occupied the buildings or structures, and/or excavated on the Huff Property in violation of the Zoning Ordinance constitutes a separate and continuing ordinance violation.

64. Pursuant to Zoning Ordinance § 817-2 and Monroe County Code § 115-3, the Huffs' violations of the Zoning Ordinance constitute Class B and Class A ordinance violations for which civil penalties of up to one thousand dollars (\$1,000.00) for the first day of violation, two thousand five hundred dollars (\$2,500.00) for the second day of violation, and seven thousand five hundred dollars (\$7,500.00) for the third and each succeeding day of violation, may be entered by the Court. A copy of Monroe County Code § 115-3 is attached hereto and marked for identification as **Exhibit J**.

WHEREFORE, Monroe County respectfully prays that the Court:

A. Enter a Judgment which declares the respective rights and legal obligations of Monroe County and the Huffs, and anyone acting in concert with them, to the effect that each day of excavation and each day of occupancy, use, and maintenance of each of the buildings or structures on the Huff Property prior to the issuance of an improvement location permit, a land use certificate, and a site plan approval for each building or structure by the Administrator constitutes three distinct violations of the Zoning Ordinance;

B. Issue an injunction that permanently and immediately enjoins the Huffs, and anyone acting in concert with them, from maintaining, using, or occupying the buildings or structures on the Huff Property, and/or from allowing or suffering the same to be done by others, until all required approvals have been obtained from the Administrator;

C. Order the Huffs to remove the buildings or structures from the Huff Property if all

required permits and approvals are not immediately obtained from the Administrator;

D. For each provision of the Zoning Ordinance violated by the Huffs, order the Huffs to pay a civil penalty of up to one thousand dollars (\$1,000.00) for their first day of violation of the Zoning Ordinance, a civil penalty of up to two thousand five hundred dollars (\$2,500.00) for the second day of violation of the Zoning Ordinance, and a civil penalty of up to seven thousand five hundred dollars (\$7,500.00) for the third and each subsequent day of violation of the Zoning Ordinance; and

E. Order the Huffs to pay the costs of this action and all other relief deemed appropriate in the premises.

Count II

ECO Zone Slope Violations

65. The allegations set forth in the preceding paragraphs of this Complaint are incorporated by reference in Count II.

66. The Huff Property is located within Area 1 of the Environmental Constraints Overlay Zone (“ECO Zone”), as established and regulated by the Zoning Ordinance chapter 825. Copies of the Monroe County Zoning Map for the Huff Property and Zoning Ordinance chapter 825 are attached hereto and marked for identification as **Exhibits K** and **L**, respectively.

67. The Excavation Activities and the Building Activities conducted on the Huff Property were, and are, subject to the ECO Zone erosion and drainage plan provisions of Zoning Ordinance chapter 825.

68. The Excavation Activities and Building Activities conducted on the Huff Property constitute a “development” as that term is defined by Zoning Ordinance § 801-2 (Zoning

Ordinance: Definitions). A copy of Zoning Ordinance § 801-2 (pages 1 and 12) are attached hereto and marked for identification as **Exhibit M**.

69. The decision of the Huffs to conduct, or to cause or allow to be conducted, the Excavation Activities and the Building Activities on the Huff Property constitute a development proposal relating to land within the ECO Zone.

70. With respect to properties located within the ECO Zone, Zoning Ordinance § 825-2(A)(4) requires all development proposals and permit applications have an erosion and drainage control plan, which must include measures to minimize erosion during and after construction or development activities.

71. The Administrator has not received an erosion and drainage plan for the development of the Huff Property.

72. Zoning Ordinance § 825-4(A) prescribes maximum land slope, disturbance of natural vegetation, maximum residential density, minimum total lake frontage, and contiguous land requirements which apply to the Huff Property.

73. The Excavation Activities conducted on the Huff Property involved significant land disturbance and removal of natural vegetation on portions of the property that exceeded the twelve percent (12%) slope limitation of Zoning Ordinance § 825-4(A)(2).

74. The Huffs have stated their intent to further develop the Huff Property, which includes significant areas of slope that exceeds twelve percent (12%), with buildings, structures, and other improvements.

75. The Huffs have violated the slope and vegetation removal limitations of Zoning Ordinance § 825-4(A) and are likely to continue to do so.

76. The Huffs have violated, and continue to violate, the ECO Zone erosion and drainage plan provisions of Zoning Ordinance chapter 825 by conducting Excavation Activities and Building Activities on the Huff Property without the improvement location permits, land use certificates, and site plan approvals required by Zoning Ordinance §§ 814-1, 814-2 and 815-2.

77. The violations of the Zoning Ordinance by the Huffs inflicts harm upon Monroe County and the public-at-large, which is certain and irreparable and which will continue if not enjoined.

78. The Huffs' use and occupancy of the Huff Property without the required approvals is contrary to the provisions of the Zoning Ordinance, constitutes an unlawful violation of this ordinance, and, pursuant to Zoning Ordinance § 817-1, renders the Huff Property a common nuisance.

79. The Huffs' continuing violation of the Zoning Ordinance renders the Huff Property a nuisance *per se*.

80. There is no other adequate remedy at law or equity other than to enjoin the Huffs, and those working in concert with them from the continued maintenance, use, or occupancy of the buildings or structures on the Huff Property until all required permits and approvals are obtained from the Administrator.

81. Zoning Ordinance § 817-2 provides that each day a violation of the Zoning Ordinance is committed or permitted to continue constitutes a separate ordinance violation.

82. Each day that the Huffs, or those working in concert with them, have built, located, maintained, used, or occupied the buildings or structures, and/or excavated on the Huff Property in violation of the Zoning Ordinance constitutes a separate and continuing ordinance

violation.

83. Pursuant to Zoning Ordinance § 817-2 and Monroe County Code § 115-3, the Huffs' violations of the Zoning Ordinance constitute Class B and Class A ordinance violations for which civil penalties of up to one thousand dollars (\$1,000.00) for the first day of violation, two thousand five hundred dollars (\$2,500.00) for the second day of violation, and seven thousand five hundred dollars (\$7,500.00) for the third and each succeeding day of violation, may be entered by the Court.

WHEREFORE, Monroe County respectfully prays that the Court:

A. Enter a Judgment which declares the respective rights and legal obligations of Monroe County and the Huffs, and anyone acting in concert with them, to the effect that each day of excavation and each day of occupancy, use, and maintenance of each of the buildings or structures on the Huff Property prior to the issuance of an improvement location permit, a land use certificate, and a site plan approval for each building or structure by the Administrator constitutes three distinct violations of the Zoning Ordinance;

B. Issue an injunction that permanently and immediately enjoins the Huffs, and anyone acting in concert with them, from maintaining, using, or occupying the buildings or structures on the Huff Property, and/or from allowing or suffering the same to be done by others, until all required approvals have been obtained from the Administrator;

C. Order the Huffs to remove the buildings or structures from the Huff Property if all required permits and approvals are not immediately obtained from the Administrator;

D. For each provision of the Zoning Ordinance violated by the Huffs, order the Huffs to pay a civil penalty of up to one thousand dollars (\$1,000.00) for their first day of violation of

the Zoning Ordinance, a civil penalty of up to two thousand five hundred dollars (\$2,500.00) for the second day of violation of the Zoning Ordinance, and a civil penalty of up to seven thousand five hundred dollars (\$7,500.00) for the third and each subsequent day of violation of the Zoning Ordinance; and

E. Order the Huffs to pay the costs of this action and all other relief deemed appropriate in the premises.

Count III

Building Code Violations

84. The allegations set forth in the preceding paragraphs of this Complaint are incorporated by reference in Count III.

85. On February 26, 1988, Monroe County established the Monroe County Building Department by adoption of Ordinance 88-2.

86. On March 11, 1988, Monroe County established the Monroe County Building Code (“Building Code”) by adoption of Ordinance 88-3.

87. Monroe County received approval of the Building Code from the Indiana Fire Prevention and Building Safety Commission on April 5, 1988.

88. The Building Code is codified at Chapter 430 of the Monroe County Code. A copy of Building Code chapter 430 is attached hereto and marked for identification as **Exhibit N**.

89. The development of the Huff Property is subject to the Building Code.

90. Building Code § 430-8(A) requires issuance of a permit before “construction, alteration or repair of any building or structure which involves or affects any electrical, plumbing, ventilating, heating or air conditioning systems or structural elements” may begin.

91. An application for a building permit must be submitted on forms prescribed by Building Code § 430-7 and provided by the Monroe County Building Commissioner.

92. Building Code § 430-9 requires that all work done under a building permit be in “full compliance” with, among other legal requirements, the Zoning Ordinance and all required fees paid.

93. Building Code § 430-16 provides that no certificate of occupancy for any building or structure will be issued unless the building or structure is determined, after a final inspection, to have been erected, altered or repaired in compliance with Building Code chapter 430, and a valid land use certificate has been issued for the proposed use and occupancy of the building or structure by the Monroe County Plan Administrator.

94. Building Code § 430-18 prohibits a property owner, among others, from erecting, constructing, enlarging, altering, repairing, improving, removing, converting, demolishing, equipping, using, occupying or maintaining any building or structure in violation of the provisions of Building Code chapter 430.

95. The Huffs’ Building Activities on the Huff Property included the construction of buildings and structures that involved or affected electrical, plumbing, ventilating, heating or air conditioning systems or structural elements.

96. The Huffs’ Building Activities were, and are, subject to the building permit and certificate of occupancy requirements of the Building Code.

97. Neither the Huffs nor anyone acting on behalf of the Huffs have obtained a building permit relative to the Building Activities.

98. Neither the Huffs nor anyone acting on behalf of the Huffs have obtained a

certificate of occupancy relative to their use and occupancy of the buildings and structures placed, constructed, erected, and maintained on the Huff Property.

99. By virtue of the foregoing, the Huffs have violated, and continue to violate, at least Building Code §§ 430-8 and 430-16.

100. Monroe County has authority to bring a civil action if a person violates the Building Code, pursuant to Ind. Code § 36-1-6-4(a) and Building Code § 430-18, and invoke the remedies set forth in I.C. § 36-1-6-4(b) and Building Code § 430-20.

101. Pursuant to Building Code § 430-20, the Building Commissioner shall, in the name of Monroe County, bring in an action in the Monroe Circuit Court, for mandatory and injunctive relief to enforce and secure compliance with any order of the Building Commissioner.

102. The violations of the Building Code by the Huffs inflicts harm upon Monroe County and the public-at-large, which is certain and irreparable and which will continue if not enjoined.

103. There is no other adequate remedy at law or equity other than to enjoin the Huffs, and those working in concert with them from the continued maintenance, use, or occupancy of the buildings or structures on the Huff Property until all provisions of the Building Code have been complied with.

104. A person who violates the provisions of Building Code chapter 430 or violates a lawful order given by the Building Commissioner in connection with the provisions of Building Code chapter 430 commits a Class C Ordinance Violation, with each day such a violation is committed a Class C Ordinance Violation is committed.

105. Pursuant to Monroe County Code § 115-3(A)(3), a judgment of not more than

“Five Hundred Dollars (\$500.00) may be entered for the person’s first violation constituting a Class C Ordinance Violation and One Thousand Five Hundred Dollars (\$1,500.00) for a second or subsequent violation of the same provision of the Code or ordinance[.]”

WHEREFORE, Monroe County respectfully prays that the Court:

A. Enter a Judgment which declares the respective rights and legal obligations of Monroe County and the Huffs to the effect that:

1. The placement, construction, or erections of each of the buildings and structures on the Huff Property that are subject to the Building Code constitutes a distinct violation of the building permit requirement of Section 430-8 of the Building Code; and
2. Each day of occupancy of each of the buildings and structures on the Huff Property prior to the issuance of a Certificate of Occupancy for the buildings and structures constitutes a distinct violation of Section 430-16 of the Building Code.

B. Issue an injunction that permanently and immediately enjoins and restrains the Huffs from using and occupying the buildings and structures on the Huff Property, and/or from allowing or suffering the same to be done by others, until all required permits and certificates have been obtained from the Building Commissioner;

C. Order the Huffs to pay a civil penalty for each day of occupancy of the buildings and structures on the Huff Property for each violation of the Building Code in the maximum penalty amounts authorized by Monroe County Code § 115-3; and

D. Order the Huffs to pay the costs of this action and all other relief deemed appropriate in the premises.

Respectfully submitted,

/s/ David B. Schilling
David B. Schilling 2255-12

/s/ Lee. Baker
Lee F. Baker 19257-53

Counsel for Plaintiffs,
Monroe County, Indiana and
Monroe County Plan Commission

Monroe County Legal Department
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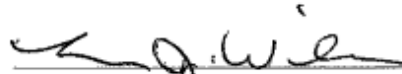
VERIFICATION AND CERTIFICATION OF DOCUMENTS

I, Larry J. Wilson, as the Administrator for the Monroe County Plan Commission and, thus, as an official custodian of the records of the Monroe County Plan Commission and the Monroe County Planning Department, affirm this 10th day of October, 2019, under the penalties of perjury, that I have read the allegations of Counts I and II the foregoing Verified Complaint for Civil Penalty and for Permanent Injunction on Ordinance Violations; and that the matters alleged therein are true and accurate to the best of my knowledge and belief. I further certify that I have compared the attached copies of:

- Exhibit A: "Special Warranty Deed" (excluding Grantor's Articles of Conversion)
- Exhibit A: "Limited Liability Company Warranty Deed"
- Exhibit B: Photographs of the posted "stop work" orders
- Exhibit C: Emails exchange with Huffs' Attorney regarding the Huff Property
- Exhibit D: Photographs showing buildings and structures on the Huff Property
- Exhibit G: Zoning Ordinance chapter 822
- Exhibit G: Zoning Ordinance chapter 824
- Exhibit H: Zoning Ordinance chapter 817
- Exhibit I: Zoning Ordinance chapter 814
- Exhibit I: Zoning Ordinance chapter 815
- Exhibit J: Monroe County Code § 115-3
- Exhibit K: Monroe County Zoning Map of the Huff Property
- Exhibit L: Zoning Ordinance chapter 825
- Exhibit M: Zoning Ordinance § 825-2 (pages 1 and 12)

with their originals, which are on file and remaining of record in my office, and that the attached copies are true and complete copies of the originals.

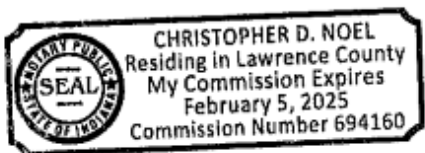
In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Monroe County Plan Commission, this 10th day of October, 2019.

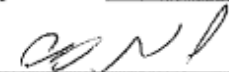


Larry J. Wilson, Administrator
Monroe County Plan Commission

STATE OF INDIANA)
) ss:
COUNTY OF MONROE)

Subscribed and sworn to before me, a Notary Public, in and for said County and State, this 10th day of October, 2019. My Commission expires on 2/5/2025.





Christopher D. Noel, Notary Public
Residing in Monroe County, Indiana
Lawrence
CDN

VERIFICATION AND CERTIFICATION OF DOCUMENT


I, Kurk Sylvester, affirm this 10th day of October, 2019, under the penalties of perjury, that I am the Deputy Monroe County Building Commissioner; that I have read the allegations of Count III of the foregoing Verified Complaint for Civil Penalty and for Permanent Injunctions on Ordinance Violations; and that the matters alleged therein are true and accurate to the best of my knowledge and belief, and that Exhibit N is a true and complete copy of a record of the Monroe County Building Department that is in my care and custody as the Deputy Monroe County Building Commissioner.


Kurk Sylvester, Deputy Commissioner
Monroe County Building Department

STATE OF INDIANA)
) ss:
COUNTY OF MONROE)

Subscribed and sworn to before me, a Notary Public, in and for said County and State, this 10th day of October, 2019. My Commission expires on 2/5/2025.





Christopher D. Noel, Notary Public
Residing in ~~Monroe~~ Lawrence County, Indiana
Lawrence
CDN

CERTIFICATE OF SERVICE

I certify that on October 10, 2019, I served the foregoing document by the Indiana E-Filing System upon all counsel of record.

/s/ Lee F. Baker
Lee F. Baker

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