

STATE OF INDIANA)
) SS:
COUNTY OF MONROE) CAUSE NO. 53C06-1906-PL-001293

CITY OF BLOOMINGTON, INDIANA)
)
 Plaintiff,)
)
 v.)
)
222 HATS LLC, and)
GERMAN AMERICAN BANCORP, INC.,)
)
 Defendants.)

MOTION TO AMEND THE COMPLAINT FOR CONDEMNATION

The Plaintiff, the City of Bloomington, Indiana (the “City”), by counsel, pursuant to Rule 15 of the Indiana Rules of Trial Procedure and Ind. Code § 32-24-1-8(d), respectfully requests permission to amend the Complaint for Condemnation and, in support thereof, states as follows:

1. The City initiated this lawsuit on June 7, 2019 by filing a Complaint for Condemnation (“Complaint”), Appearance, and Summons. In response, this Court issued a Notice to Appear and Show Cause.
2. The Complaint, Appearance, Summons, and Notice to Appear and Show Cause were served on the Defendants.
3. Pursuant to the Complaint, the City seeks to acquire certain real estate owned by 222 Hats, LLC for the purpose of constructing a new Fourth Street Parking Garage (the “Project”).
4. By agreement of counsel, the Court conducted a show cause hearing on October 7, 2019.
5. In an Order Following Hearing on Objections and Sustaining Objection to Complaint for Appropriation dated December 20, 2019 (the “Order”), this Court sustained an

objection to the Project asserted by 222 Hats because the Project included nonresidential retail space on the first floor of the parking garage.

6. In light of and out of respect for this Court's Order, the City is redesigning the Project to exclude any nonresidential retail space (other than the government office space necessary to manage the parking garage) from the Project. The Project shall be exclusively used as a parking garage, as that use is defined by Bloomington Municipal Code 20.11.020:

“[A] structure or portion thereof composed of one or more levels or floors used exclusively for the parking or storage of motor vehicles . . .”

In order to move forward with the redesigned Project, the City's petition for site plan approval from the Bloomington Plan Commission shall include a request for a waiver from the first floor nonresidential requirement.

7. Pursuant to Ind. Code § 32-24-1-8(d), if a defendant's objection to an eminent domain lawsuit is sustained, the plaintiff may amend the complaint.

8. Under the circumstances, the City respectfully requests permission to file an Amended Complaint for Condemnation (the “Amended Complaint”). A true and accurate copy of the Amended Complaint is attached hereto as Exhibit 1.

9. 222 Hats, LLC will not be prejudiced if the Court grants the City permission to file the Amended Complaint. Specifically, the City already tendered a written offer to 222 Hats, LLC to purchase the real estate and improvements necessary to build the Project. As such, 222 Hats, LLC is still entitled to fair and just compensation. Further, the Amended Complaint clarifies that the City no longer intends to include nonresidential retail space as part of the Project.

WHEREFORE, the Plaintiff, the City of Bloomington, respectfully requests that the Court enter an Order (a) granting the City of Bloomington permission to file the Amended Complaint for Condemnation, and (b) providing for all other appropriate relief.

Respectfully submitted,

/s/ Alan S. Townsend

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Attorneys for the Plaintiff, the City of Bloomington

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing “Motion to Amend the Complaint for Condemnation” has been served upon the following counsel of record by electronic service through the Court’s system and/or by first class, United States mail, postage prepaid, this 30th day of December, 2019:

David L. Ferguson
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One Indiana Square, Suite 1400
Indianapolis, IN 46204

/s/ Alan S. Townsend

Alan S. Townsend

EXHIBIT A

Board of Public Works in its Resolution 2019-43, approved at a public meeting held on April 30, 2019.

4. 222 Hats owns title to certain real estate located in Monroe County, Indiana, which is commonly known as 222 South Walnut Street, Bloomington, Indiana 47401 and described as follows:

The South Half of In-Lot Number Thirty-three (33) in the City of Bloomington, Indiana, as set out on the original Plat of the City of Bloomington, Indiana, as shown in Plat Book No. 1 at page 4 (now Plat Cabinet B, Envelope 1), in the office of the Recorder of Monroe County, Indiana.
Tax Parcel No.: 53-05-33-310-173.000-005; Auditor's Parcel No.: 013-05940-00.

The property sought herein is more fully described and depicted in Exhibit A and incorporated by reference herein (the "Real Estate").

5. Defendant German American Bancorp, Inc., ("German American") holds a mortgage dated March 30, 2018, for the Real Estate in the original amount of Five Hundred Thousand Dollars (\$500,000.00) and recorded as Instrument Number 2018003813 in the records of the Office of the Recorder of Monroe County, Indiana. German American entered into the mortgage agreement with the individual Juan Carlos Carrasquel, whose address is listed as 34 E. Saddlebrook Ct., Bloomington, Indiana 47401.

6. Defendant German American Bancorp also holds an assignment of rents dated March 30, 2018, for the Real Estate recorded as Instrument Number 2018003815 in the records of the Office of the Recorder of Monroe County, Indiana. German American entered into the assignment of rents with Juan Carlos Carrasquel, whose address is listed as 34 E. Saddlebrook Ct., Bloomington, Indiana 47401.

7. The City has the statutory authority to undertake this Project and may exercise the power of eminent domain over the property outlined above under Indiana law including, but not limited to, Indiana Code Section 36-1-4-5 and Indiana Code 32-24-1, *et seq.*

8. In connection with and in carrying out the Project, the City has determined that it is necessary for the City to take, appropriate, acquire, remediate, and make use of the whole of the Real Estate for the Project.

9. The City has attempted to engage in negotiations with 222 Hats in a good faith effort to purchase the Real Estate, including obtaining two independent appraisals and tendering the required offer to purchase the Real Estate in accordance with Indiana Code Section 32-24-1-5. From the end of 2018, the City also has also discussed opportunities with 222 Hats LLC member Juan Carlos Carrasquel to have a space in the new structure that matches or exceeds his current real estate footprint and that would maintain the organization's visible presence on the corner of West Third Street and South Walnut Street.

10. The City has complied with Indiana Code Section 32-34-1-5, and the Uniform Property or Easement Acquisition Offer was personally delivered to 222 Hats LLC member Juan Carlos Carrasquel on May 6, 2019. A copy of the offer was also sent via separate certified mailings on May 6, 2019, to the owner, via the following names and addresses: 222 Hats LLC at 222 S. Walnut Street, Bloomington, Indiana 47404-6108; the registered agent for 222 Hats LLC, listed with the Indiana Secretary of State's Office as Mallor Grodner LLP, at 511 S. Woodcrest Drive, Bloomington, Indiana 47401; and Juan Carlos Carrasquel at 3497 E. Saddlebook Court, Bloomington, Indiana 47401-8554.

11. The parties have been unable to agree upon the purchase and sale of such interests in the Real Estate.

12. In an Order Following Hearing on Objections and Sustaining Objection to Complaint for Appropriation dated December 20, 2019 (the “Order”), this Court sustained an objection to the Project asserted by 222 Hats because the Project included nonresidential retail space on the first floor of the parking garage. In light of and out of respect for this Court’s Order, the City is redesigning the Project to exclude any nonresidential retail space (other than the government office space necessary to manage the parking garage) from the Project. The Project shall be exclusively used as a parking garage, as that use is defined by Bloomington Municipal Code 20.11.020:

“[A] structure or portion thereof composed of one or more levels or floors used exclusively for the parking or storage of motor vehicles . . .”

In order to move forward with the redesigned Project, the City’s petition for site plan approval from the Bloomington Plan Commission shall include a request for a waiver from the first floor nonresidential requirement.

13. Having been unable to acquire voluntarily the Real Estate, the City seeks to condemn and acquire the Real Estate in fee simple by this action.

WHEREFORE, the City of Bloomington prays that:

- (a) The Court issue an order requiring the Defendants to appear at a hearing to show cause, if any, why the Real Estate sought to be condemned should not be appropriated;
- (b) The Court appoint, pursuant to Indiana Code Section 32-24-1-7, one disinterested freeholder of the County and two disinterested appraisers licensed under Indiana Code 25-34.1 to assess the damages which any Defendant, as an owner or an interest holder of the Real Estate, may sustain

or be entitled to by reason of such appropriation and condemnation of the fee interest in the Real Estate;

- (c) Upon payment to the Clerk of this Court of the damages assessed, the Court order that the City of Bloomington may take possession of and hold all necessary interests in the Real Estate;
- (d) The Court take all other steps which may be necessary for the City of Bloomington to acquire, by the right of eminent domain, the Real Estate, as more particularly described and depicted in Exhibit A; and
- (e) The Court grant the City of Bloomington all other proper relief in the premises.

The City of Bloomington reserves the right to demand a trial by jury.

Respectfully Submitted,

/s/ Alan S. Townsend

Alan S. Townsend
Attorney No. 16887-49

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Attorneys for the Plaintiff, the City of Bloomington

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EXHIBIT A

REAL ESTATE – 222 S WALNUT STREET

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Legal Description:

The South Half of In-Lot Number Thirty-three (33) in the City of Bloomington, Indiana, as set out on the original Plat of the City of Bloomington, Indiana, as shown in Plat Book No. 1 at page 4 (now Plat Cabinet B, Envelope 1), in the office of the Recorder of Monroe County, Indiana.

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