

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JAMES KNIGHT AND JASON MAYES,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 3:20-cv-00922
)	Judge Trauger
THE METROPOLITAN GOVERNMENT)	
OF NASHVILLE AND DAVIDSON)	
COUNTY,)	
)	
Defendant.)	

DEFENDANT’S ANSWER TO PLAINTIFFS’ COMPLAINT

The Metropolitan Government of Nashville and Davidson County hereby responds to the allegations in Plaintiff’s Complaint (Doc. No. 1) as follows:

I. INTRODUCTION

This section of the Complaint contains a summary of Plaintiffs’ claims as well as photos and links to media articles. It does not comply with Federal Rule of Civil Procedure 10(b) and is therefore denied entirely.

II. JURISDICTION AND VENUE

1. Admitted.
2. This Court’s federal jurisdiction is admitted. It is further admitted that the Court may, but is not required to, assert supplemental jurisdiction over Plaintiffs’ state law claim.
3. Proper venue in this Court is admitted.
4. Admitted.

III. PARTIES

5. It is admitted upon information and belief that Plaintiffs own property in Davidson County, Tennessee and sought residential building permits from the Metropolitan Government.

6. It is admitted upon information and belief that Plaintiff James Knight is the recorded owner of the property at 411 Acklen Park Drive in Nashville. It is admitted that a building permit from the Metropolitan Government is necessary to build a single-family home at that location. Defendant lacks sufficient information to admit or deny the remaining allegations in Paragraph 6; thus, the allegations are denied, and strict proof is demanded thereof.

7. It is admitted upon information and belief that Plaintiff Jason Mayes is a recorded owner of the property at 167 McCall Street in Nashville. It is admitted that Mr. Mayes sought a residential building permit from the Metropolitan Government and paid an in-lieu fee pursuant to the sidewalk ordinance. Defendant lacks sufficient information to admit or deny the remaining allegations in Paragraph 7; thus, the allegations are denied, and strict proof is demanded thereof.

8. Defendant lacks sufficient information to admit or deny the allegations in Paragraph 8; thus, the allegations are denied, and strict proof is demanded thereof.

9. Admitted.

IV. STATEMENT OF FACTS

Metro's Sidewalk Law

10. Admitted.

11. Admitted.

12. BL2019-1659 speaks for itself. Insofar as a response is required, the allegations are denied.

13. BL2019-1659 speaks for itself. Insofar as a response is required, the allegations are denied.

14. Admitted.

15. Admitted.

16. BL2019-1659 speaks for itself. Insofar as a response is required, the allegations are denied.

17. BL2019-1659 speaks for itself. Insofar as a response is required, the allegation correctly characterizes the ordinance's requirement for calculating the in-lieu fee.

18. Admitted.

19. BL2019-1659 speaks for itself. Insofar as a response is required, the allegation correctly characterizes how the ordinance directs in-lieu payments to be assigned and designated.

20. BL2019-1659 speaks for itself. Insofar as a response is required, the allegation correctly characterizes how the ordinance directs in-lieu payments to be allocated.

21. BL2019-1659 speaks for itself. Insofar as a response is required, the allegation correctly characterizes how the ordinance directs payments to be refunded.

22. BL2019-1659 speaks for itself. Insofar as a response is required, the allegation correctly characterizes the ordinance's cap on in-lieu fees.

23. BL2019-1659 speaks for itself. Insofar as a response is required, the allegation correctly characterizes the options for waiver that the ordinance grants to the Zoning Administrator.

24. BL2019-1659 speaks for itself. Insofar as a response is required, the allegation correctly describes a property owner's avenues for appeal from the ordinance's requirements.

25. Admitted.

Jim Knight

26. It is admitted that Plaintiff James Knight is the recorded owner of the property at 411 Acklen Park Drive in Nashville, TN. Defendant lacks sufficient information to admit or deny the remaining allegations in Paragraph 26; thus, those allegations are denied, and strict proof is demanded thereof.

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

31. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 31; thus, the allegation is denied, and strict proof is demanded thereof.

32. Admitted.

33. The database speaks for itself. Insofar as a response is required, the allegation is denied.

34. Admitted.

35. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 35 and the related photographs, as it is unclear what property the photos depict; thus, the allegation is denied, and strict proof is demanded thereof.

36. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 36 and the related photographs, as it is unclear what property the photos depict; thus, the allegation is denied, and strict proof is demanded thereof.

37. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 37 and the related photographs, as it is unclear what property the photos depict; thus, the allegation is denied, and strict proof is demanded thereof.

38. Admitted.

39. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 39; thus, the allegation is denied, and strict proof is demanded thereof.

40. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 40; thus, the allegation is denied, and strict proof is demanded thereof.

41. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 41; thus, the allegation is denied, and strict proof is demanded thereof.

42. It is admitted that Mr. Knight was required to comply with Metro Code § 17.20.120 in order to obtain a building permit. Defendant lacks sufficient information to admit or deny the remaining allegation in Paragraph 42; thus, the allegation is denied, and strict proof is demanded thereof.

43. Admitted.

44. Admitted.

45. Admitted.

46. Admitted.

47. Admitted.

48. It is admitted that in Mr. Knight's waiver statement of hardship filed with the BZA, he referred to "pooling and standing flood water concerns." The remaining allegations in this paragraph are denied, and strict proof is demanded thereof.

49. It is admitted that in Mr. Knight's waiver statement of hardship filed with the BZA, he referred to the option of contributing to the Pedestrian Benefit Zone Fund as an "unconstitutional requirement." The remaining allegations in this paragraph are denied, and strict proof is demanded thereof.

50. It is admitted that Grover Collins appeared at the May 21, 2020 BZA meeting.

51. Admitted.

52. It is admitted that on May 21, 2020, Mr. Collins told the BZA that “in conversations that the builder had with Public Works, that would create pooling or water and/or an area that would create flooding to the neighboring property owners.” The remaining allegations in this paragraph are denied, and strict proof is demanded thereof.

53. It is admitted that on May 21, 2020, Mr. Collins told the BZA that “in line with the Fifth Amendment argument, this would be an unconstitutional taking of my client’s property if he’s required to pay and or build, especially given the circumstances that we have before us.” The remaining allegations in this paragraph are denied, and strict proof is demanded thereof.

54. Admitted.

55. Admitted.

56. Admitted.

57. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 57, as it is unclear whether Mr. Knight is alleged to have sought (1) to discover the amount of the in-lieu fee, or (2) restitution of the in-lieu fee; thus, the allegation is denied, and strict proof is demanded thereof.

58. Admitted.

59. Admitted.

60. Admitted.

61. Admitted.

62. Admitted.

63. Admitted.

64. Admitted.

65. It is admitted that Mr. Knight may obtain a building permit by either paying an estimated in-lieu fee of roughly \$7,600 or building an alternatively-designed sidewalk.

66. It is admitted that there are no sidewalks on Mr. Knight's property.

67. Denied.

68. Denied.

69. It is admitted that Mr. Knight's property is zoned medium-density residential and that Mr. Knight has applied for a permit to build one single-family home.

70. Defendant lacks sufficient information to admit or deny the allegations in Paragraph 70; thus, the allegations are denied, and strict proof is demanded thereof.

71. Denied.

72. BL2019-1659 speaks for itself. Insofar as a response is required, Plaintiffs' characterization is denied.

73. It is admitted that Mr. Knight is required to comply with Metro Code § 17.20.120 in order to obtain a building permit and that the Metropolitan Government has communicated this expectation to him. Defendant lacks sufficient information to admit or deny the remaining allegation in Paragraph 73; thus, the allegation is denied, and strict proof is demanded thereof.

74. Denied.

Jason Mayes

75. It is admitted that Mr. Mayes is a recorded owner of the property at 167 McCall Street in Nashville.

76. It is admitted that Mr. Mayes acquired the lot in 2018. Defendant lacks sufficient information to admit or deny the remaining allegations in Paragraph 76; thus, they are denied, and strict proof is demanded thereof.

77. Admitted.

78. Admitted.

79. Admitted.

80. Admitted.

81. The database speaks for itself. Insofar as a response is required, the allegations are denied.

82. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 82 and the related photograph, as it is unclear what property the photo depicts; thus, the allegation is denied, and strict proof is demanded thereof.

83. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 83 and the related photograph, as it is unclear what property the photo depicts; thus, the allegation is denied, and strict proof is demanded thereof.

84. Admitted that Gotham Contracting LLC submitted the referenced application, though the permit application is dated November 6, 2019.

85. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 85; thus, the allegation is denied, and strict proof is demanded thereof.

86. Admitted.

87. It is admitted that Mr. Mayes cited a lack of existing sidewalks along the block face as grounds for his waiver request. The remaining allegations in this paragraph are denied.

88. Admitted.

89. Admitted.

90. Admitted.

91. Denied.

92. Denied.

93. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 93; thus, the allegation is denied, and strict proof is demanded thereof.

94. Admitted.

95. Admitted.

96. Admitted.

97. Admitted.

98. Admitted.

99. Admitted.

100. Admitted.

101. Admitted.

102. Admitted.

103. Admitted.

104. Admitted.

105. Admitted.

106. Denied.

107. It is admitted that the BZA denied Mr. Mayes's appeal. It is denied that he asked for a "return" of the in-lieu fee.

108. Admitted.

109. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 109; thus, the allegation is denied, and strict proof is demanded thereof.

110. Denied. Mr. Mayes also had the option to construct a sidewalk pursuant to Metro Code § 17.20.120.

111. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 111; thus, the allegation is denied, and strict proof is demanded thereof.

112. Denied.

113. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 113; thus, the allegation is denied, and strict proof is demanded thereof.

114. It is admitted that Mr. Mayes's property is zoned low-medium density residential and that Mr. Mayes obtained a permit to build a single-family home. Defendant lacks sufficient information to admit or deny the remaining allegation in Paragraph 114; thus, the allegation is denied, and strict proof is demanded thereof.

115. Denied.

116. Due to the vague nature of the allegation in Paragraph 116, Defendant lacks sufficient information to admit or deny it; thus, the allegation is denied, and strict proof is demanded thereof.

Injury to Plaintiffs

117. Denied.

118. It is admitted that Mr. Knight is required to comply with Metro Code § 17.20.120 in order to obtain a building permit and that the Metropolitan Government has communicated this expectation to him. Defendant lacks sufficient information to admit or deny the remaining allegation in Paragraph 118; thus, the allegation is denied, and strict proof is demanded thereof.

119. It is admitted that Mr. Knight is required to comply with Metro Code § 17.20.120 in order to obtain a building permit and that the Metropolitan Government has communicated this expectation to him. Defendant lacks sufficient information to admit or deny the remaining allegation in Paragraph 119; thus, the allegation is denied, and strict proof is demanded thereof.

120. It is denied that Mr. Knight is required to spend any money on "improvements to city property."

121. This paragraph calls for speculation, which Defendant is not required to provide. Insofar as a response is required, the allegations are denied.

122. It is admitted that Defendant has not to date given Mr. Knight a building permit because he has not constructed a sidewalk or paid the in-lieu fee required by Metro Code § 17.20.120.

123. It is denied that Defendant has caused any economic harm to Mr. Knight. It is further denied that Mr. Knight is entitled to any of the relief he seeks.

124. It is admitted that Mr. Mayes could not lawfully construct his home without a building permit from the Metropolitan Government.

125. It is admitted that until Mr. Mayes paid the in-lieu fee, Defendant had not given him a building permit. The remaining allegation calls for speculation, which Defendant is not required to provide. Insofar as a response is required, the allegation is denied.

126. Denied.

127. It is denied that Mr. Mayes requested the return of any actual or future easement.

128. It is denied that Mr. Mayes requested “restitution” of the in-lieu fee, and it is denied that Mr. Mayes is entitled to such relief.

129. Denied.

130. Denied.

131. Denied.

132. Denied.

133. Denied.

V. CLAIMS

Claim 1 – Unconstitutional Fifth Amendment Exaction

134. Defendant's responses to the foregoing paragraphs are adopted and incorporated as if fully set forth herein.

135. BL2019-1659 speaks for itself. Insofar as a response is required, the allegations are denied.

136. This paragraph calls for a legal conclusion, and the referenced case law speaks for itself. Plaintiff's characterization of the law as purportedly applying to this case is denied.

137. This paragraph calls for a legal conclusion, and the referenced law speaks for itself. Plaintiff's characterization of the law as purportedly applying to this case is denied.

138. This paragraph calls for a legal conclusion, and the referenced law speaks for itself. Plaintiff's characterization of the law as purportedly applying to this case is denied.

139. Denied.

140. Denied.

141. Denied.

142. Denied.

143. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 143; thus, the allegation is denied, and strict proof is demanded thereof.

144. Denied.

145. Defendant lacks sufficient information to admit or deny the allegation in Paragraph 145; thus, the allegation is denied, and strict proof is demanded thereof.

146. This paragraph calls for speculation, which Defendant is not required to provide. Insofar as a response is required, it is admitted that Defendant has not to date given Mr. Knight a building permit because he has not constructed a sidewalk or paid the in-lieu fee required by Metro Code § 17.20.120.

147. Denied.

148. It is admitted that until Mr. Mayes paid the in-lieu fee, Defendant had not given him a building permit. The remaining allegation calls for speculation, which Defendant is not required to provide. Insofar as a response is required, the remaining allegation is denied.

149. Denied.

Claim 2 – Unjust Enrichment

150. Defendant's responses to the foregoing paragraphs are adopted and incorporated as if fully set forth herein.

151. This paragraph calls for a legal conclusion, and Plaintiff's characterization constitutes a broad overstatement of the law. Insofar as Plaintiff contends this broad statement of law applies in this case, that allegation is denied.

152. Denied.

153. This paragraph calls for a legal conclusion, and Plaintiff's characterization of the statement as applying to this case is denied.

154. This paragraph calls for a legal conclusion, and Plaintiff's characterization of the statement as applying to this case is denied.

155. This paragraph calls for a legal conclusion, and Plaintiff's characterization of the statement as applying to this case is denied.

156. Denied.

157. Denied.

158. Denied.

159. Denied.

VI. GENERAL DENIAL

Any allegation not specifically admitted in this Answer is hereby denied, and strict proof is demanded thereof.

VIII. GENERAL AND AFFIRMATIVE DEFENSES

1. Defendant denies that Plaintiffs are entitled to any relief and asserts that this matter should be dismissed for failure to state a claim upon which relief can be granted.

2. Defendant did not violate any constitutional right or other federal right to which Plaintiffs were entitled.

3. Plaintiff Mayes's claims are waived because he voluntarily submitted to the requirements of Metro Code § 17.20.120.

4. Plaintiff Knight's claims are speculative and unripe because he has neither paid an in-lieu fee or constructed a sidewalk; thus, he has suffered no injury.

5. Plaintiffs' claims are not properly joined under Federal Rule of Civil Procedure 20(a)(1).

6. Defendant did not commit any act or omission that caused or contributed to Plaintiffs' alleged damages.

7. Plaintiff's claims are barred by estoppel, res judicata, laches, and/or the applicable statute of limitations.

8. Restitution is not an appropriate remedy for Plaintiffs' exaction claims.

9. Plaintiffs are not entitled to nominal, compensatory, or punitive damages; fees; or costs.

IX. PRAYER FOR RELIEF

WHEREFORE, having answered Plaintiffs' Complaint (Doc. No. 1), the Metropolitan Government prays:

1. That this be accepted as its Answer herein;

2. That this cause be dismissed and held for naught;

3. That all costs and other reasonable fees be charged to and borne by Plaintiffs;

4. That a jury hear all claims so triable; and
5. For such other relief as the Court deems appropriate.

Respectfully submitted,

DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
ROBERT E. COOPER, JR. (#10934)
DIRECTOR OF LAW

/s/ John W. Ayers
ALLISON BUSSELL (#23538)
JOHN W. AYERS (#37494)
ASSISTANT METROPOLITAN ATTORNEYS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] v

Counsel for the Metropolitan Government

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been delivered via the Court's CM/ECF system to the following on the 29th day of December, 2020:

Braden H. Boucek
Meggan S. Dewitt
Beacon Center
[REDACTED]
[REDACTED]

Kimberly S. Hermann
Southeastern Legal Foundation
[REDACTED]
[REDACTED]

/s/ John W. Ayers
John W. Ayers