

09-1909

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MICHAEL DAHLEN; JANET DAHLEN; and MICHAEL A. MCNEIL,
Appellants

v.

SHELTER HOUSE; IOWA CITY BOARD OF ADJUSTMENT; IOWA
CITY PLANNING & ZONING COMMISSION;
and CITY OF IOWA CITY,
Appellees

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

BRIEF OF APPELLEES
IOWA CITY BOARD OF ADJUSTMENT, IOWA CITY PLANNING
& ZONING COMMISSION, AND CITY OF IOWA CITY

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SUMMARY OF THE CASE

This case is a garden variety boundary dispute between two Iowa citizens and cannot be characterized as a federal matter under Article III, §2 of the U.S. Constitution. The Dahlens allege a “taking” based on City approval of a site plan for Shelter House which contains a fifteen foot (15’) strip of land to which they lay claim under Iowa state adverse possession law. Without stating the basis for federal jurisdiction or the federally protected right violated, Plaintiffs’ First Amended Complaint seeks damages and an injunction to prevent an alleged “taking” under 42 U.S.C. §1983. In dismissing the complaint, the District Court first determined that the alleged “taking” was for the valid public purpose of providing shelter to homeless citizens, and therefore did not offend the U.S. Constitution. The District Court correctly determined that Plaintiffs’ failure to seek post-deprivation redress through state inverse condemnation procedures deprived the federal court of jurisdiction in this matter. As a basis for reversal, for the first time on appeal, Plaintiffs now attempt to assert that Iowa state law prevents the alleged taking, and therefore the federal court should enjoin same. Ultimately, as there is no legal basis for federal jurisdiction in this matter, this appeal should be summarily dismissed by the Eighth Circuit without opinion or oral argument.

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFFS' FIRST AMENDED COMPLAINT FOR LACK OF FEDERAL SUBJECT MATTER JURISDICTION.

- A. Plaintiffs' First Amended Complaint failed to plead the basis for federal jurisdiction, a violation of the Iowa state constitution or a violation of Iowa state law of eminent domain (Iowa Code Chapter 6A) and this issue is being raised for the first time on appeal.

Rule 8(a)(1), Federal Rules of Civil Procedure

Dep't of Rec. & Sports of Puerto Rico v. World Boxing Ass'n, 942 F.2d 84 (1st Cir. 1991)

Seniority Research Group v. Chrysler Motor Corp., 976 F.2d 1185 (8th Cir. 1992)

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Stafford v. Ford Motor Co., 790 F.2d 706 (8th Cir. 1986)

Chapter 6A, Code of Iowa

- B. Plaintiffs' alleged violation of Iowa state law of eminent domain (Iowa Code Chapter 6A) by and against Iowa citizens does not create a federal question upon which to premise federal jurisdiction; however, if federal jurisdiction exists, the alleged taking does not offend the Iowa or federal constitution.

28 U.S.C. §1343(a)(3)

Chapter 6A, Code of Iowa

Article III, §2, United States Constitution

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Titus v. Sullivan, 4 F.3d 590 (8th Cir. 1993)

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§6A.22(2)(a)(3), Code of Iowa

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- C. Plaintiffs failed to exhaust their administrative remedies by seeking compensation for the alleged taking under Iowa state inverse condemnation procedures as is necessary to confer federal jurisdiction.

Article III, §2, United States Constitution

Christopher Lake Development Co. v. St. Louis County, 35
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§6A.22, Code of Iowa

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Clajon Production Corp. v. Petera, 70 F.3d 1566 (10th Cir. 1995)

- D. Assuming a basis for federal jurisdiction, the federal court should abstain from exercising jurisdiction in this matter as it is a matter of first impression and is properly before the Iowa state court.

Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746 (1971)

Cormack v. Settle-Beshears, 474 F.3d 528 (8th Cir. 2007)

§6A.22, Code of Iowa

Clay Reg'l Water v. City of Spirit Lake, Iowa, 193 F. Supp.2d 1129 (N.D. Iowa 2002)

Capitol Indem. Corp. v. Haverfield, 218 F.3d 872 (8th Cir. 2000)

- E. The Rooker-Feldman doctrine applies to bar the Dahlens' takings claim based on prior state court proceedings upholding the special exception for the disputed property.

Bontrager Auto Service, Inc., et al. v. Iowa City Board of Adjustment, 748 N.W.2d 483 (Iowa 2008)

SUMMARY OF ARGUMENT

In their First Amended Complaint, the Dahlens asserted a claim under 42 U.S.C. §1983 for an alleged taking of a fifteen foot (15') strip of property to which they lay claim under Iowa state adverse possession law. The Dahlens assert that the approval of a site plan for the development of property owned by Shelter House affected this taking by including the disputed boundary area within the development site. However, the Dahlens' complaint fails to state the basis for federal jurisdiction in this matter and fails to allege a violation of the federal constitution. Further, the Dahlens raise the contention that this is an illegal taking under Iowa's law of eminent domain (Iowa Code Chapter 6A) for the first time in this appeal. Finally, the Dahlens' assertion of a violation of Iowa state condemnation law by and against Iowa citizens does not create federal question jurisdiction.

Assuming federal jurisdiction, the district court found the alleged taking did not offend the U.S. Constitution. Moreover, it is well-settled that the federal court lacks subject matter jurisdiction over this case, as Plaintiffs have failed to exhaust their administrative remedies and seek compensation for the alleged taking under Iowa state inverse condemnation procedures prior to seeking redress in the federal courts. Finally, assuming this alleged violation of state law can create federal question jurisdiction, the federal

court should abstain from exercising jurisdiction as the question of whether a non-profit private entity performing public services can obtain property under Iowa's law of eminent domain is a matter of first impression which is properly before the Iowa state court in parallel litigation (See City's Addendum, pp. 1-15).

STATEMENT OF THE FACTS

In November 2008, the City and the Planning and Zoning Commission approved a site plan which authorized Shelter House to install improvements in connection with the construction of a homeless shelter to be owned and operated by Shelter House, a private non-profit organization that provides services to Iowa City's homeless citizens. Defendant Board had previously granted a special exception for the construction of the shelter on the same property, which the Iowa Supreme Court recently upheld in Bontrager Auto Service, Inc., et al v. Iowa City Board of Adjustment, 748 N.W.2d 483 (Iowa 2008).

The approved site plan authorized Shelter House to construct a fence, establish a set back and place other improvements on their property. (App. pp. 45-48). While preparing this site plan, Shelter House conducted a survey of their property line and determined that the several of the mobile homes in the Dahlens' mobile home park encroached onto the property owned by

Shelter House (See, Appellants' Addendum, pp. 11-15).¹ In short, after years of litigation between the parties, a dispute over the boundary between the respective parties' property arose. While Shelter House has initiated a quiet title action in the Iowa district court to determine ownership of the disputed property, the Dahlens have initiated actions in both the federal district court and Iowa district court asserting takings claims based on City approval of the site plan.² (See, Appellants' Addendum pp. 1-15). With the exception of their pending Petition for Writ of Certiorari challenging the Board of Adjustment decision upholding the approval of the site plan, each of the Dahlens' actions has been dismissed. (Id.)

In this appeal, the Dahlens contend that the district court erroneously dismissed as unripe for review their claims seeking compensatory damages,

¹ While Mr. McNeil is still a named party to this case, there is no allegation of how he has been deprived of his property by the Defendants as his property is adjacent to the site plan that is the subject of this suit. City therefore contends that the First Amended Complaint fails to sufficiently allege the violation of any constitutional rights to form the basis of a §1983 claim by McNeil.

² The Dahlens also filed a suit against the Iowa City Planning and Zoning Commission and Shelter House in the Iowa District Court after the Commission's approval of the site plan. Pages 1-7 of the City's Addendum contain the Iowa District Court ruling dismissing for lack of subject matter jurisdiction due to failure to exhaust administrative remedies. The Dahlens have appealed this decision to the Iowa Supreme Court (City's Addendum p. 8).

declaratory relief, injunctive relief and attorney's fees for the alleged taking under 42 U.S.C. §1983. The Dahlens contend that they are not required to pursue state law remedies for inverse condemnation prior to invoking federal jurisdiction as the limitations on eminent domain in Iowa state statute serve to prevent the taking they have suffered in the first instance. For the reasons that follow, the Board, City and Commission urge that the dismissal by the district court be upheld (hereinafter "City" for brevity).

I. THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFFS' FIRST AMENDED COMPLAINT FOR LACK OF FEDERAL SUBJECT MATTER JURISDICTION.

A. Plaintiffs' First Amended Complaint failed to plead a basis for federal jurisdiction, a violation of the Iowa state constitution or a violation of Iowa state law of eminent domain (Iowa Code Chapter 6A) and this issue is being raised for the first time on appeal.

First, while a seemingly minor point, it is important to note that Plaintiffs' First Amended Complaint does not state the basis for their assertion of federal subject matter jurisdiction. See, Fed. R. Civ. P. 8(a)(1). (complaint, App. pp. 42-44; Ruling, fn. 2, App. p. 90). Failure to plead federal jurisdiction is fatal. See, e.g. Dep't of Rec. & Sports of Puerto Rico v. World Boxing Ass'n, 942 F.2d 84, 90 (1st Cir. 1991) (instructing district court to dismiss complaint for want of jurisdiction for failure to plead subject matter jurisdiction in the complaint). More importantly, Plaintiffs'

Complaint fails to allege or to plead a violation of Iowa's constitution or law of eminent domain (Iowa Code Chapter 6A), which now forms the very crux of their argument on appeal.

The general rule is that “[n]ormally, a party may not raise an issue for the first time on appeal as a basis for reversal.” Seniority Research Group v. Chrysler Motor Corp., 976 F.2d 1185, 1187 (8th Cir. 1992); see also, Singleton v. Wulff, 428 U.S. 106, 120 (1976) (“It is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below.”); Moad v. Arkansas State Police Department, 111 F.3d 585, 587 (8th Cir. 1997) (“We have examined the record carefully and we find no evidence that this issue was ever raised in the district court.... We therefore decline to consider the issue....”).

As this Court has stated:

The rationale for the rule is twofold. First, the record on appeal generally would not contain the findings necessary to an evaluation of the validity of an appellant's arguments. Second, there is an inherent injustice in allowing an appellant to raise an issue for the first time on appeal. A litigant should not be surprised on appeal by a final decision there of issues upon which they had no opportunity to introduce evidence. A contrary rule could encourage a party to “sandbag” at the district court level, only then to play his “ace in the hole” before the appellate court.

Stafford v. Ford Motor Co., 790 F.2d 706 (8th Cir. 1986).

While there are exceptions to this general principle, and the appellate

court may exercise its discretion to decide newly introduced arguments on appeal, in this instance, Plaintiffs have so changed their arguments that neither the district court nor City could have anticipated them. There are no findings by the district court on the issue of Iowa Code Chapter 6A and raising this matter for the first time on appeal is inherently unjust. Thus, the appellate court should not consider Plaintiffs' argument regarding Iowa Code Chapter 6A for the first time on appeal and the dismissal of Plaintiffs' claims should be upheld.

B. Plaintiffs' alleged violation of Iowa state law of eminent domain (Iowa Code Chapter 6A) by and against Iowa citizens does not create a federal question upon which to premise federal jurisdiction; however, if federal jurisdiction exists, the alleged taking does not offend the Iowa or federal constitutions.

Assuming the Dahlens invoke 28 U.S.C. §1343(a)(3) as the basis for federal subject matter jurisdiction over their claims, and assuming the appellate court accepts their argument based on Iowa Code Chapter 6A for the first time on appeal, the district court's dismissal of their claims must still be upheld. 28 U.S.C. §1343(a)(3) provides federal jurisdiction:

To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States. 28 U.S.C. §1343(a)(3).

The Dahlens' claims are rooted in the contention that they enjoy ownership over a portion of the property covered by the Shelter House special exception and site plan through the Iowa state law principles of adverse possession, acquiescence and practical boundaries. Such a garden variety boundary dispute is properly determined by a quiet title action in Iowa state court, which action has been brought by Shelter House (City Addendum pp. 11-15). As such a dispute between Iowa citizens does not involve a question "arising under the Constitution, laws or treaties of the United States" this court lacks subject matter jurisdiction under Article III, §2 of the United States Constitution.

However, as noted by the district court, on a Rule 12(b)(1) facial challenge to a complaint, all of the factual allegations concerning jurisdiction are presumed to be true and the motion is successful if the plaintiff fails to allege an element necessary for subject matter jurisdiction. Titus v. Sullivan, 4 F.3d 590, 593 (8th Cir, 1993). Assuming then, that Plaintiffs have a viable 42 U.S.C. §1983 claim for a government "taking", the district court analyzed whether under federal law, said taking was for a public purpose or whether a "private taking" had occurred. (App., Ruling, pp. 94-97). This is significant, as a "private taking" would not require pursuit of state compensation procedures prior to vesting federal jurisdiction

over the claim. (Appellants' Addendum, vi, Ruling p. 6). However, finding that private takings are rare, the district court correctly determined that taking private property and giving it to a private non-profit organization for the purpose of constructing a homeless shelter satisfies the public use requirements of both the Iowa and federal constitutions. (Ruling, App. 97). See, Iowa Code §6A.4(6) (stating that the right to take private property for public use is conferred upon all cities for public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon cities).

Without citing any authority for their contention, the Dahlens assert that such a taking does meet the "public purpose" requirements of Iowa Code §6A.22(2)(a)(1)-(5). Again, however, this claim is for a violation of Iowa state law, which, under these facts, fails to implicate federal law or jurisdiction. Indeed, that is likely why the Dahlens have been unable to successfully plead the basis for federal jurisdiction. Moreover, as this statute was passed by the Iowa legislature in 2006, there is no case law interpreting same. Rather, interpretation of these statutory provisions would be a matter of first impression appropriate for the Iowa courts rather than a matter for interpretation under federal law.

Shelter House is a non-profit Iowa corporation organization that uses tax dollars, private funds and grants to provide shelter to homeless citizens in the community. (City's Addendum, p. 12). The dominant purpose of this work is clearly public, as recognized by exemptions granted by both Iowa and federal taxation laws. (See, Iowa Code §427.1(8) and Internal Revenue Code §501(c)(3)). By virtue of their community works and non-profit status, there will be a "public trust" impressed upon the Shelter House property, as the corporation is performing charitable works and no profit may inure to any of the corporate officers. Moreover, it is the very type of use contemplated by Iowa Code §6A.22(2)(a)(3), which defines "public use, public purpose or public improvement" as a "private use that is incidental to the public use of the property. . . ." The fact that the private non-profit organization is the owner of the property is incidental to the clearly recognized vital public purpose of sheltering homeless citizens. As noted by the district court, Iowa courts have broadly interpreted the state constitution's "public purpose" requirement, and it is not essential that the entire community or even any considerable portion of it directly enjoy or participate in the improvement in order to make its use a public one. Simpson v. Low-rent Housing of Mt. Ayr, 224 N.W.2d 624, 629-30 (Iowa 1974). Assuming the alleged taking, the district court held that the taking

did not offend either the U.S. or Iowa constitutions. (Ruling, App. pp. 94-97).

C. Plaintiffs failed to exhaust their administrative remedies by seeking compensation for the alleged taking under Iowa state inverse condemnation procedures as is necessary to confer federal jurisdiction.

Claims must be ripe for the court to have subject matter jurisdiction under Article III, §2 of the United States Constitution. See, Christopher Lake Development Co. v. St. Louis County, 35 F.3d 1269, 1272 (8th Cir. 1994). The Dahlens' claim that the City's site plan approval constitutes a "taking" based on inverse condemnation is not ripe for review by this court. It is a well-settled principle of law that if a state provides an adequate procedure for seeking just compensation for "takings", the federal court is without authority or jurisdiction to hear the case. See, Koscielski v. City of Minneapolis, 435 F.3d 898, 903 (8th Cir. 2006) (quoting Williamson County Reg'l Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 194-97 (1985) stating "if a state provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation.").

The state of Iowa provides an adequate procedure for seeking just compensation. Kingsway Cathedral v. Iowa Dept. of Transp., 711 N.W.2d 6

(Iowa 2006) (stating inverse condemnation is a generic description applicable to all actions in which a property owner, in the absence of a formal condemnation proceeding, seeks to recover from a governmental entity for the appropriation of his property interest.). See also, Harms v. City of Sibley, 702 N.W.2d 91 (Iowa 2005) (inverse condemnation case). For a case against a government entity to be ripe, a plaintiff must obtain a final decision from the government entity. See, Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172, 192 (1985); Iowa Coal Mining Co. v. Monroe County, 555 N.W.2d 418, 434 (Iowa 1996). Next, a party bringing a takings claim must exhaust all available procedures for seeking compensation from the governmental entity. Williamson, 473 U.S 195, n.13 (1985).

The City concedes that the Dahlens have now obtained a final decision on their challenge to the site plan approval from the Iowa City Board of Adjustment, which is on appeal in the Iowa District Court (City's Addendum, pp. 9-10).³ However, the City contends that the Dahlens must avail themselves of available state law remedies prior to seeking federal

³ Importantly, in their challenge to the Board decision, the Dahlens have asserted a number of illegalities, including that the approved site plan included property allegedly owned by the Dahlens and the site plan was approved without their consent.

judicial intervention, even when they are seeking injunctive relief to prevent the taking. See, von Kerssenbrock-Prachmsma v. Saunders, 121 F.3d 373 (8th Cir. 1997) (finding only federal constitutional ground supporting plaintiff's claim for injunction is a Fifth Amendment takings claim, which was not ripe under Williamson until state claims were pursued). As noted by the district court, there is a narrow exception to the requirement that a federal court is barred from considering the merits of a takings claim until a private litigant exhausts state remedies. If a state's remedies are inadequate or unavailable, exhaustion is not required. Williamson, 473 U.S. at 196-197, 105 S. Ct. 3108. However, the claimant bears the "heavy burden" of showing that the state remedy is inadequate and that the state courts provide less constitutional protection than the federal courts. See, Cormack v. Settle-Beshears, 474 F.3d 528, 531 (8th Cir. 2007).

The Dahlens argue that the state law statutory right of a property owner to be free from condemnation in cases that violate Iowa Code §6A.22 is a property right giving rise to a cause of action under 42 U.S.C. §1983. However, while appealing, this contention does not avoid the legal requirement that a federal claimant exhaust their state remedies against entities *possessing eminent domain authority* prior to seeking federal judicial intervention. Id. The Dahlens assert that a claimed violation of Iowa Code

§6A.22 automatically vests jurisdiction with the federal court. See, Clajon Production Corp. v. Petera, 70 F.3d 1566, 1575 (10th Cir. 1995) (finding claim ripe for review by federal court where it was undisputed that entity against who takings claim is filed has no power of eminent domain). However, this reliance is misplaced as it is undisputed that the City has the power of eminent domain, subject only to those limitations placed on it by the Iowa legislature. The assertion that these state law limitations have been violated does not automatically create a federal question or federal jurisdiction. If, after pursuing the remedies available to them in the state courts, the Dahlens believe they have suffered a federal constitutional violation, they may then seek redress in the federal courts. Moreover, if, as the Dahlens contend, Iowa state law provides greater protection against takings than the federal constitution, the sovereign entity establishing those protections is better positioned and vested with jurisdiction to make that interpretation. Therefore, Plaintiffs' appeal should be denied and the dismissal of their claims upheld.

D. Assuming a basis for federal jurisdiction, the federal court should abstain from exercising jurisdiction in this matter as it is a matter of first impression and is properly before the Iowa state court.

Plaintiffs' have filed a suit for certiorari and declaratory relief against the Iowa City Planning and Zoning Commission and the Iowa City Board of

Adjustment in the Iowa District Court asserting a takings claim, illegality and requesting equitable relief under Iowa state law and local ordinances. (City's Addendum, pp. 8-10). The Younger abstention doctrine states that a federal court should abstain to avoid duplicative litigation in federal court of a matter more properly decided in parallel litigation in state court, such as is the case with local land use disputes. Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746 (1971) Younger abstention is appropriate when (1) the federal action would disrupt on ongoing state judicial proceeding; (2) which implicates important state interests and (3) which provides an adequate opportunity to raise constitutional challenges. See, Cormack v. Settle-Beshears, 474 F.3d 528, 532 (8th Cir. 2007) (outlining principles of Younger abstention doctrine).

The exceptional circumstances contemplated in Younger exist in this case. There are two cases with identical claims pending against the Commission and the Board, respectively, in the Iowa courts. The claims involve a case of first impression as to the limitations of eminent domain authority under Iowa Code §6A.22. The Dalhens have raised constitutional issues in each case. To maintain identical yet separate actions in the federal and state courts is highly inefficient for the courts, the parties, the witnesses and the juries, and could result in unnecessary piecemeal litigation as well as

inconsistent results. No action of substantive import or discovery has taken place in the federal case, apart from the district court's dismissal. State law controls the disposition of all issues in this matter, and the state court has jurisdiction over the real property which is the subject of dispute among the parties. The state forum is more than adequate to protect the Dahlens' interests, and, by filing the pending state suits, the Dahlens apparently do not object to the state court's exercise of jurisdiction over the dispute. Thus, this court should abstain from exercising jurisdiction in this matter.

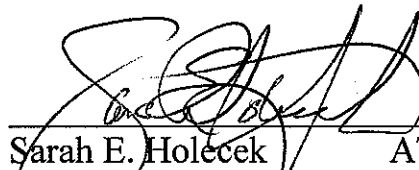
“So long as a possibility of return to federal court remains, a stay rather than a dismissal is the preferred mode of abstention” Clay Reg'l Water v. City of Spirit Lake, Iowa, 193 F. Supp.2d 1129, 1155 (N.D. Iowa 2002). However, where the Court “see[s] no reason for the case to return to federal court ... dismissal rather than a stay is appropriate.” Capitol Indem. Corp. v. Haverfield, 218 F.3d 872, 875 n.2 (8th Cir. 2000). Assuming resolution of the state court actions, the City does not see how this case could return to the federal courts as a justiciable case. Thus, Plaintiffs' claims should be dismissed.

E. The Rooker-Feldman doctrine applies to bar the Dahlens' takings claim based on prior state court proceedings upholding the special exception for the disputed property.

Plaintiffs' pleadings admit that the same property described in the site plan was the subject of the special exception granted by Defendant Iowa City Board of Adjustment in 2004 and addressed by the Iowa Supreme Court in Bontrager Auto Service, Inc., et al v. Iowa City Board of Adjustment, 748 N.W.2d 483 (Iowa 2008) (App. pp. 43, 7). Any claims that undermine the decision reached in that proceeding are subject to the principles of res judicata and the Rooker-Feldman doctrine. Based on the allegation in the First Amended Complaint that the 2004 special exception encompassed the same property as the 2008 site plan, it is apparent that the Dahlens could have, but failed to, challenge the legality of the special exception based on the issue of ownership during the state court proceeding. The Dahlens' failure to timely raise the issue does not now preserve the issue for federal review. District of Columbia Court of Appeals v. Feldman, 460 U.S. 483, n. 16 (1983) (citations omitted).

CONCLUSION

The City respectfully requests that the court uphold the district court order dismissing the Dahlens' First Amended Complaint and deny their appeal for the reasons cited herein, with costs assessed to the Plaintiffs.



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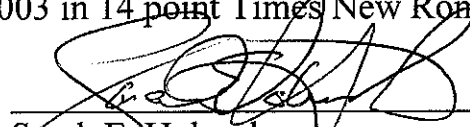
ATTORNEY FOR APPELLEES IOWA
CITY BOARD OF ADJUSTMENT, IOWA
CITY PLANNING & ZONING
COMMISSION, AND CITY OF IOWA
CITY

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief uses a proportionally spaced typeface and contains 3,548 words (351 lines of text), excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this corrected brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2003 in 14 point Times New Roman.

Dated: 6-22-09

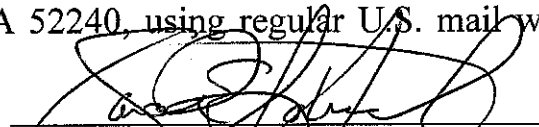


Sarah E. Holecek
ATTORNEY FOR APPELLEES IOWA
CITY BOARD OF ADJUSTMENT, IOWA
CITY PLANNING & ZONING
COMMISSION, AND CITY OF IOWA
CITY

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2009, I filed ten (10) copies of Appellees' Brief with the Clerk of Court for the Eighth Circuit Court of Appeals, Room 24.329, U.S. Courthouse, St. Louis, Missouri 63102, using regular U.S. mail with correct postage affixed.

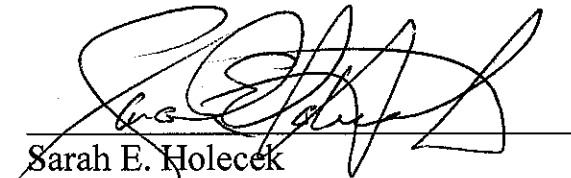
I also certify that on June 22, 2009, I served two (2) copies of Appellees' Brief on Gregg Geerdes, Attorney for Appellants, 105 Iowa Avenue, Iowa City, IA 52240, and Timothy Krumm, Attorney for Appellee Shelter House, 122 South Linn Street, Iowa City, IA 52240, using regular U.S. mail with correct postage affixed.



Sarah E. Holecek
ATTORNEY FOR APPELLEES
IOWA CITY BOARD OF
ADJUSTMENT, IOWA CITY
PLANNING & ZONING
COMMISSION, AND CITY OF
IOWA CITY

DIGITAL VERSION CERTIFICATION

I hereby certify that on June 22, 2009, a CD-ROM containing Appellees' Brief in PDF format has been provided to the Court and to counsel for Appellee Shelter House and Appellants. The file copied to the CD-ROM has been scanned for viruses using McAfee VirusScan Enterprise version 8.5i and is virus-free.



Sarah E. Holecek
ATTORNEY FOR APPELLEES
IOWA CITY BOARD OF
ADJUSTMENT, IOWA CITY
PLANNING & ZONING
COMMISSION, AND CITY OF
IOWA CITY

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MICHAEL DAHLEN, et al.,)	
)	No. 09-1909
Appellants,)	
)	
v.)	ADDENDUM TO BRIEF
)	OF APPELLEES IOWA CITY
SHELTER HOUSE; IOWA CITY)	BOARD OF ADJUSTMENT,
BOARD OF ADJUSTMENT, et al.,)	IOWA CITY PLANNING & ZONING
)	COMMISSION, AND CITY OF
Appellees.)	IOWA CITY

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MAR 18 2009

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

CITY ATTORNEY'S OFFICE

Michael Dahlen, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 Iowa City Planning and Zoning)
 Commission and Shelter House,)
)
 Defendants.)

No. EQCV070079

RULING

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 CLERK OF DISTRICT COURT
 JOHNSON COUNTY, IOWA

Hearing was held on March 6, 2009 on Defendants' Pre-Answer Motion to Dismiss. Appearances were made by Attorney Gregg Geerdes on behalf of Plaintiffs; by Attorney Sara Hektoen on behalf of Defendant Iowa City Planning and Zoning Commission; and Attorney Anne Daniels on behalf of Defendant Shelter House. Having considered the file, relevant case law, and written and oral arguments of counsel, the Court hereby enters the following ruling:

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed a Petition for Certiorari and Declaratory Relief on December 2, 2008. Plaintiffs state that on November 6, 2008, Defendant Iowa City Planning and Zoning Commission (hereinafter ICPZ) approved a site plan for the construction of a homeless shelter on certain property located in Johnson County. Plaintiffs contend the actions of ICPZ were illegal and should be invalidated for the following reasons:

- a. The property in question does not have a valid special exception, which is a requirement of city ordinance.
- b. A substantial portion of the property is owned by Plaintiffs Dahlen, who have not consented to or joined in the application.
- c. The approval of the site plan was unconstitutional for the reason that (1) it constitutes a taking and invasion of Plaintiffs Dahlen's property, and (2) violates due process rights by so doing and by approving a site plan materially different from the plan submitted with the application for approval and without Plaintiffs having opportunity for review.
- d. An incorrect and illegal standard of review was used in approving the site plan.
- e. The site plan which was approved is materially different from the site plan for which approval was sought.
- f. The project contemplated by the site plan lacks a shelter management plan and otherwise does not comply with laws and ordinances of Iowa City.

Plaintiffs assert the site plan should be declared null and void and invalidated, and any building permit or development premised or based on the site should be held to be illegal, enjoined, and ordered removed.

For Count II of the Petition, Plaintiffs seek a declaratory judgment. Plaintiffs claim that in order to legally operate the use contemplated by the site plan, a valid special exception needed to be obtained from Iowa City's Board of Adjustment. Plaintiffs also claim that although a special exception was obtained, it expired and was no longer effective as of the date of the approval of the site plan. Plaintiffs argue that before any use or development of the property as a shelter can occur, Defendant Shelter House should be required to obtain a valid special exception. Plaintiffs contend that the Court should determine whether Shelter House holds a valid special exception, and the Court should declare that since no valid special exception exists, the site plan in question and the use proposed by Shelter House are illegal, and any use of construction commenced without a special exception should be enjoined and ordered removed.

On January 13, 2009, ICPZ filed the pending Pre-Answer Motion to Dismiss. Defendant Shelter House has joined in the Motion. ICPZ contends Plaintiffs' claims are not ripe for adjudication because Plaintiffs have not exhausted their administrative remedies and obtained a final decision by the governmental body. ICPZ states that under Iowa City Ordinance 18-2-3, after review and approval of a major site plan by the building official or ICPZ, a building permit may be issued. ICPZ further states that Plaintiffs have only recently appealed the issuance of the building permit under the approved site plan to the Iowa City Board of Adjustment. ICPZ contends that under Iowa Code Chapter 414, a Board of Adjustment has the power to hear appeals regarding the enforcement of Chapter 414 and an order of an administrative body or building official enforcing the zoning chapter and its ordinances pursuant to Iowa Code §§ 414.10, 414.12 and 414.13. ICPZ also contends that a plaintiff must exhaust the administrative remedies by appealing a decision of the administrative official, in this case the ICPZ, to the Board of Adjustment prior to seeking judicial intervention. ICPZ argues that under Iowa Code §§ 414.10, 414.12 and 414.13, in exercising its authority on appeal, the Board of Adjustment "may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken." Iowa Code § 414.13. ICPZ asserts there is an adequate, expedient, and less costly remedy than judicial intervention, and Plaintiffs must exhaust that remedy prior to seeking judicial review. ICPZ claims the Court is without subject matter jurisdiction to hear this matter, and Plaintiffs' Petition must be dismissed.

Plaintiffs resist, arguing that under Iowa City Ordinance 18-2-3, the Board of Adjustment has no authority to review decisions of ICPZ, which is an independent and separate governing body of Iowa City. Plaintiffs contend the proper recourse is by certiorari. Plaintiffs acknowledge that they have appealed the decision to issue a building permit to the Board of Adjustment, but Plaintiffs assert this is because under Iowa Code § 414.12(1), the Board reviews decisions of a building official to issue a building permit. However, argue Plaintiffs, the site plan in question was approved by ICPZ, not an administrative official. Therefore, Plaintiffs contend it is proper to challenge a decision of ICPZ by certiorari and to separately appeal the decision to issue a building permit by appeal to the Board of Adjustment.

ICPZ responds that Shelter House submitted an application to the City of Iowa City's Housing and Inspection Services Department for a major site plan review on August 27, 2008, and Housing and Inspection Services Department, the Planning and Community Development Department, and the Public Works Department review and approve or deny major site plans

pursuant to Iowa City Ordinance 18-2-3(A) and (B). ICPZ claims it may perform a major site plan review in lieu of the City officials' review where owners of 20% or more of the property located within 200 feet of the exterior boundaries of the proposed development site so request, pursuant to Iowa City Ordinance 18-2-3(C), which states: "The commission's scope of review shall be the same as that of the building official and the department of housing and inspection services." ICPZ argues the Commission was not exercising a judicial function in reviewing and approving the site plan; rather, it was performing an administrative function by standing in the shoes of the administrative officials. ICPZ contends the failure to appeal the issuance of the building permit under the approved site plan to the Board of Adjustment prior to filing this action demonstrates Plaintiffs' failure to exhaust their administrative remedies, and the Court lacks jurisdiction to hear this matter.

Plaintiffs filed a Further Response to ICPZ's Response. Plaintiffs argue that under Iowa City Ordinances 14-7A-2(C) and 14-8C-3, the Board of Adjustment has the power and authority to decide appeals which arise from the decisions of "the city manager or designee." Plaintiffs assert the decision at issue is not by the city manager or designee, but is by an independent board, whose members are appointed by the mayor and approved by the city council pursuant to Iowa City Ordinance 14-7A-1. Plaintiffs contend the Board of Adjustment has no authority to review the actions of ICPZ, and Plaintiffs were not required to seek review from the Board before commencing this action.

CONCLUSIONS OF LAW

The relevant Iowa City Ordinances provide:

18-2-3—Approval/Denial Process

- A. The city shall review and approve, review and approve with conditions, or review and deny all site plans submitted under this title within twenty one (21) working days after application, without requiring submission of the plan to the planning and zoning commission.

...

- C. For major site plans, the department of housing and inspection services or those owners of twenty percent (20%) or more of the property located within two hundred feet (200') of the exterior boundaries of the proposed development site may request a review by the planning and zoning commission. The request must be in writing and must be filed with the building official within twenty (20) days of submission of the original application or within twenty (20) days of the posting requirements set forth in section 18-2-1 of this chapter, whichever is later. When such a request is received, the planning and zoning commission may review and approve, review and approve with conditions, or review and deny said plan within twenty (20) working days of receipt of the written request for planning and zoning commission review. The commission's scope of review shall be the same as that of the building official and the department of housing and inspection services.

14-7A-2—Board of Adjustment

C. Powers: The board shall have the following powers:

1. Appeals: To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the city manager or designee in the enforcement of this title or of any ordinance adopted pursuant thereto.
2. Special Exceptions: To hear and decide applications for special exceptions to the terms of this title in accordance with the general and specific approval criteria set forth in this title and specifically in chapter 4, article B, "Minor modifications, Variances, Special Exceptions, and Provisional Uses," of this title.
3. Variances: To authorize upon appeal in specific cases such variances from the terms of this title as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this title will result in unnecessary hardship and so the spirit of this title shall be observed and substantial justice done. No variance to the strict application of any provision of this title shall be granted by the board unless the applicant demonstrates that all of the approval criteria for variances set forth in chapter 4, article B, "Minor Modifications, Variances, Special Exceptions, and Provisional Uses," of this title have been met.

14-8C-3—Appeals

A. Initiation of Appeal:

1. Where it is alleged there is error in any order, requirement, decision, or determination made by the city manager or designee in the enforcement of this title or of any ordinance adopted pursuant thereto, any person aggrieved by such order, requirement, decision, or determination may appeal same to the board of adjustment.
2. The city manager or designee shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
3. At a public hearing, the board shall review all applicable evidence presented regarding the subject appeal.
4. In exercising the above mentioned powers, the board of adjustment may, in conformity with the provisions of this title or ordinances adopted pursuant thereto, affirm, or upon finding error, reverse or modify, wholly or partly, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end, shall have all the powers of the officer from whom the appeal is taken.

- C. Stay of Proceedings: An appeal stays all proceedings in furtherance of the action appealed from, including, without limitation, the right of the permittee to proceed with development or other activities authorized under a building permit, the issuance of which is a subject of the appeal, unless the city manager or designee certifies to the board after the notice of appeal has been filed that, by reasons of facts stated in the certificate, a stay would, in the city manager's or designee's opinion, cause imminent peril to life or property. In such case, proceedings or development shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record and on notice to the city manager or designee for due cause shown.

The following Iowa Code provisions also are relevant:

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

Iowa Code § 414.10 (2009).

The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.
2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.
3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

Iowa Code § 414.12 (2009).

In exercising the above-mentioned powers such board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

Iowa Code § 414.13 (2009).

ICPZ cites to the case of Bradshaw v. Bunn Properties, L.L.C., 2008 WL 2513795 (Iowa App. 2008) in support of its argument. In Bradshaw, the Court's sole issue on appeal was "whether the district court erred in determining Bradshaw had failed to exhaust her administrative remedies and granting summary judgment to the defendants." Id. at *2. "It was uncontested at hearing that Bradshaw had never sought recourse through the City or the Clive Board of Adjustment regarding her zoning violation allegations before she filed suit in district court. Although the parties continuously refer to this issue as one concerning subject matter jurisdiction, that is a misstatement." Id. "The district court always has subject matter jurisdiction over a case such as this, only certain things may prevent the court having authority at a particular time to hear a case." Id.

"The statute establishing Bradshaw's duty to seek administrative remedy in this zoning dispute is Iowa Code section 414.10 (2005), which states:

Appeals to the board of adjustment may be taken by any person aggrieved ... by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

Id.

"We agree with the district court that Bradshaw simply filed her petition seeking redress with the district court too early." Id. at *3. "She failed to undertake her duty to adequately exhaust administrative remedies for her zoning violation concerns with the appropriate City entities." Id. "In fact, it appears the City was possibly still in the process of conducting its approval of the Bunn Properties site plans and construction until October 2006 when the certificate of occupancy was finally issued." Id. "Therefore, the district court lacked authority to entertain this matter at the time it was presented with Bradshaw's petition, and the defendants are entitled to judgment as a matter of law." Id.

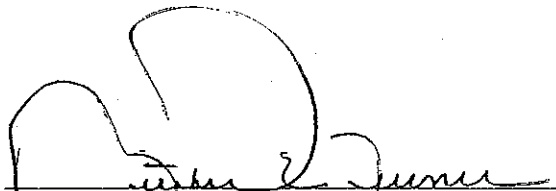
The Court concludes that, when Iowa City Ordinance 18-2-3 and Iowa Code Chapter 414 are read in conjunction with one another, Plaintiffs are required to exhaust the administrative remedy available to them through the Board of Adjustment. In approving the site plan for Shelter House, ICPZ was not exercising a judicial function, but was acting with a scope of review that was the same as that of "the building official and the department of housing and inspection services." See, Iowa City Ordinance 18-2-3(C). This action does not eliminate the requirement that Plaintiffs exhaust their administrative remedies by appealing to the Board of Adjustment. Because Plaintiffs have not allowed the appeal to the Board of Adjustment to run its course, this Court does not have jurisdiction to consider the merits of Plaintiffs' claim. Plaintiffs' Petition should be dismissed.

RULING

IT IS THEREFORE ORDERED that Plaintiffs' Petition is dismissed. Costs associated with the dismissal are assessed to Plaintiffs.

Clerk to notify.

Dated this 16th day of March, 2009.



 Judge, Sixth Judicial District of Iowa

3-17-08
~~S. Holcomb~~
 A Daniels
 T. Krumm
 M. Heerdes

JE

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 CLERK OF DISTRICT COURT
 JOHNSON COUNTY, IOWA

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

MICHAEL DAHLEN, JANET DAHLEN,
AND MICHAEL A. MCNIEL,
Plaintiffs,

v.

IOWA CITY PLANNING AND ZONING
COMMISSION AND SHELTER HOUSE
Defendants.

NO. EQCV070079

NOTICE OF APPEAL

RECEIVED BY
APR 14 2009
CITY ATTORNEY'S OFFICE

TO: Defendants Iowa City Planning and Zoning Commission and Shelter House, and
Clerk of Iowa Supreme Court.

Plaintiffs Michael Dahlen, Janet Dahlen, and Michael McNiell hereby appeal to
the Supreme Court of Iowa from the ruling entered in this case on the 17th day of March,
2009, and from all adverse interlocutory rulings and orders inhering therein and/or
entered prior thereto.

Dated this 13th day of April, 2009.

Respectfully Submitted,

BY: *Gregg Geerdes*

GREGG GEERDES (470-70-0831)
Dey Building
105 Iowa Avenue, Suite 234
Iowa City, Iowa 52240
(319) 341-3304 Telephone
(319) 341-3306 Fax

5-23

ATTORNEY FOR PLAINTIFFS

CC: Tim Krumm
Anne Daniels
Meardon, Sueppel &
Downer P.L.C.
122 South Linn Street
Iowa City, IA 52240-1802

Sarah Holecek
First Assistant City Attorney
410 East Washington
Iowa City, IA 52240

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the
foregoing instrument was served upon each of the
attorneys of record of all parties to the above-entitled
cause by enclosing the same in an envelope addressed to
each such attorney at his respective address as disclosed
by the pleadings of record herein, with postage fully paid,
and by depositing said envelope in a United States Post
Office depository in Iowa City, Iowa, on the 13th day of
April, 2009.

Gregg Geerdes

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

MICHAEL DAHLEN, JANET DAHLEN, Plaintiffs, v. IOWA CITY BOARD OF ADJUSTMENT Defendants.	LAW NO. <u>CVCVO 70345</u> PETITION FOR CERTIORARI
--	---

COMES NOW Plaintiffs and for their Petition, state as follows:

1. Plaintiffs are residents and taxpayers of Johnson County, Iowa and own property and pay property taxes in Iowa City, Iowa.
2. The real estate which is the subject of this action is described as follows:
 Lot 1, Block 7, Braverman Center, according to the plat thereof, as recorded in Plat Book 8, Page 69, of the Johnson County Recorder's Office, Johnson County, Iowa; except therefrom Auditor's Parcel 2003116. The remainder of said Lot 1 contains 0.67 acres and is subject to easements and restrictions of record.
3. On or about the 26th day of November, 2008, the City of Iowa City issued a building permit for Shelter House to construct a homeless shelter on the property described above.
4. On or about the 5th day of December, 2008, Plaintiffs timely filed a notice of appeal of the issuance of the building permit with Defendant.
5. On or about January 20, 2008 the Defendant Iowa City Board of Adjustment issued its final decision which denied the appeal of Plaintiffs and which upheld the issuance of the building permit now at issue.
6. The actions of Defendant in approving the issuance of the building permit and in denying the appeal filed by Plaintiffs were illegal for the following reasons:
 - a. Section 14-B-4d-5d in the zoning code requires a shelter management plan. Shelter House has not submitted such a plan.
 - b. The site plan fails to comply with the parking requirements of code section 14-5A-4.
 - c. The site plan that was approved was not submitted to or approved by the Appellants, the owners of a substantial portion of land included with this site plan.

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 JOHNSON COUNTY, IOWA

d. The site plan that was approved was not the site plan that was submitted by the Shelter House ("Applicant") and was not made available to Appellants for their review.

e. The special exception granted to Shelter House in July of 2004 was expired, and therefore a new special exception is necessary.

7. Because of the illegalities set forth above, the action of the Board of Adjustment should be reversed and the building permit issued Defendant Shelter House should be declared void and illegal.

WHEREFORE, Plaintiffs request this court strike down and declare invalid the building permit issued for the construction of the Shelter House project described above. Plaintiffs also request the costs of this action.

Respectfully Submitted,

BY: _____



GREGG GEERDES (470-70-0831)

Dey Building

105 Iowa Avenue, Suite 234

Iowa City, Iowa 52240

(319) 341-3304 (319) 341-3306 fax

ATTORNEY FOR PLAINTIFFS

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

SHELTER HOUSE COMMUNITY)
SHELTER AND TRANSITION SERVICES,)

Plaintiff,)

vs.)

MICHAEL DAHLEN; JANET DAHLEN;)
CITY OF IOWA CITY, IOWA and ANY)
UNKNOWN CLAIMANTS of the following)
described real estate in Johnson County,)
Iowa, to-wit:)

Lot 1, Block 7, Braverman Center,)
according to the plat thereof, as recorded)
in Plat Book 8, Page 69, Plat Records of)
Johnson County, Iowa, except Auditor's)
Parcel 2003116 as shown on Plat of)
Survey recorded in Book 46, Page 206,)
Plat Records of Johnson County, Iowa,)
and described thereon as follows:)
Beginning at the Northeast corner of Lot)
1, Block 7, Braverman Center to Iowa)
City, Iowa, according to the plat thereof)
recorded in Book 8, Page 69, Plat Records)
of Johnson County, Iowa; thence)
S00°26'20"W, along the East line of said)
Lot 1, a distance of 159.05 feet to the)
Southeast corner of said Lot 1; thence)
S89°45'50"W, along the southerly line of)
said Lot 1, a distance of 25.00 feet; thence)
N00°26'20"E, 159.35 feet to a point on)
the Northerly lien of said Lot 1; thence)
S89°33'40"E, along said northerly line)
25.00 feet to the point of beginning,)
containing 0.09 acre (3980 square feet))
and is subject to easements and)
restrictions of record,)

Defendants.)

EQUITY NO.

EQCV070605

PETITION TO QUIET TITLE

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CLERK OF DISTRICT COURT
JOHNSON COUNTY, IOWA

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Plaintiff states:

1. Plaintiff Shelter House Community Shelter and Transition Services ("Shelter House") is an Iowa nonprofit corporation.
2. Defendants Michael Dahlen and Janet Dahlen are residents of Iowa City, Johnson County, Iowa.
3. Defendant City of Iowa City, Iowa ("Iowa City") is a municipality organized under the laws of the state of Iowa.
4. Plaintiff is not aware of any unknown claimants, however, such claimants may exist and it is Plaintiff's intention that this quiet title action extinguishes their rights, if any.
5. Shelter House is the record title holder and absolute owner in fee simple of the following described real estate located in Iowa City, Johnson County, Iowa, to wit:

Lot 1, Block 7, Braverman Center, according to the plat thereof, as recorded in Plat Book 8, Page 69, Plat Records of Johnson County, Iowa, except Auditor's Parcel 2003116 as shown on Plat of Survey recorded in Book 46, Page 206, Plat Records of Johnson County, Iowa; and described thereon as follows: Beginning at the Northeast corner of Lot 1, Block 7, Braverman Center to Iowa City, Iowa, according to the plat thereof recorded in Book 8, Page 69, Plat Records of Johnson County, Iowa; thence S00°26'20"W, along the East line of said Lot 1, a distance of 159.05 feet to the Southeast corner of said Lot 1; thence S89°45'50"W, along the southerly line of said Lot 1, a distance of 25.00 feet; thence N00°26'20"E, 159.35 feet to a point on the Northerly line of said Lot 1; thence S89°33'40"E, along said northerly line 25.00 feet to the point of beginning, containing 0.09 acre (3980 square feet) and is subject to easements and restrictions of record

(the "Premises"). See Warranty Deed Attached hereto as Exhibit A.

6. Defendant Iowa City has an interest in the Premises by virtue of a drainage easement on the south 30 feet thereof.
7. Plaintiff is credibly informed and believes that the Defendants Michael Dahlen and Janet Dahlen make some claim to the Premises adverse to the title of Shelter House.
8. That said claims are wholly without right, but constitute clouds on the title of Shelter House which Plaintiff desires to remove.

9. Plaintiff further states that more than twenty (20) days prior to the date of this action, Shelter House requested that Defendants Michael Dahlen and Janet Dahlen execute a quit claim deed to said premises to the Plaintiff and tendered to them \$1.25 therefor.


10. Said Defendants failed to execute such deed.


11. Plaintiff is now entitled to attorney fees.

WHEREFORE, Plaintiff asks the Court to establish the title and estate to the real estate described herein to Shelter House, that said title be quieted and confirmed with Shelter House as the absolute title holder in fee simple, that the Defendants Michael Dahlen and Janet Dahlen and any unknown claimants be forever barred and estopped from having or claiming any right, title or interest thereto, and for such other relief as may be just and equitable in the premises.

Plaintiff further asks for reasonable attorney fees and the costs of this action.

MEARDON, SUEPPEL & DOWNER P.L.C.

By: 
Timothy J. Krumm AT00008972
E-mail: Timk@meardonlaw.com

By: 
Anne E. Daniels AT00001960
122 South Linn Street
Iowa City, IA 52240-1802
Telephone: 319/338-9222
Facsimile: 319/338-7250
Email: anned@meardonlaw.com

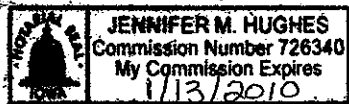
ATTORNEYS FOR PLAINTIFF

STATE OF IOWA)
)
COUNTY OF JOHNSON) ss:

I, Christina M. Canganeli, being first duly sworn, state that I am the Director of Shelter House, that I have read the foregoing Petition to Quiet Title and the statements contained therein are true and correct as I verily believe.

Christina M. Canganeli
Christina M. Canganeli

On this 1st day of ~~March~~ ^{April}, 2009, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Christina M. Canganeli, to me personally known, who being by me duly sworn, did say that she is the director of Shelter House, an Iowa nonprofit corporation, and that the instrument was signed on behalf of the Shelter House by authority of the Board of Directors; and the Director acknowledged the execution of the instrument to be the voluntary act and deed of the nonprofit corporation by it and by the Director voluntarily executed.



Jennifer M. Hughes
Notary Public in and for the State of Iowa

THE IOWA STATE BAR ASSOCIATION
Official Form No. 104

Timothy J. Krumm ISBA # 08972

1019

FOR THE LEGAL EFFECT OF THE USE OF
THIS FORM, CONSULT YOUR LAWYER

1020



Doc ID: 019366810001 Type: GEN
Recorded: 12/07/2004 at 12:43:50 PM
Fee Amt: \$312.00 Page 1 of 1
Revenue Tax: \$300.00
Johnson County Iowa
Kim Painter, County Recorder

BK 3822 Pg 866

Preparer Information Timothy J. Krumm, 122 South Linn Street, Iowa City, IA, (319) 338-9222

Individual's Name Street Address City Phone



Address Tax Statement : Shelter House
429 Southgate Avenue
Iowa City, IA 52240

SPACE ABOVE THIS LINE
FOR RECORDER

WARRANTY DEED
(CORPORATE GRANTOR)

For the consideration of One (1)
Dollar(s) and other valuable consideration,
Selzer-Werderitsch Associates, Inc.
a corporation organized and existing under the laws of _____
does hereby Convey to
Shelter House Community Shelter and Transition Services

the following described real estate in Johnson County, Iowa:

Lot 1, Block 7, Braverman Center, Iowa City, Iowa, according to the plat thereof recorded in Book 8, Page 69, Plat Records of Johnson County, Iowa, except Auditor's Parcel 2003116 as shown on Plat of Survey recorded in Book 46, Page 206, Plat Records of Johnson County, Iowa, and described thereon as follows: Beginning at the Northeast corner of Lot 1, Block 7, Braverman Center to Iowa City, Iowa, according to the plat thereof recorded in Book 8, Page 69, Plat Records of Johnson County, Iowa; thence S00°26'20"W, along the East line of said Lot 1, a distance of 159.05 feet to the Southeast corner of said Lot 1; thence S89°45'50"W, along the southerly line of said Lot 1, a distance of 25.00 feet; thence N00°26'20"E, 159.35 feet to a point on the Northerly line of said Lot 1; thence S89°33'40"E, along said northerly line 25.00 feet to the point of beginning, containing 0.09 acre (3980 square feet) and is subject to easements and restrictions of record.

The Corporation hereby covenants with grantees, and successors in interest, that it holds the real estate by title in fee simple; that it has good and lawful authority to sell and convey the real estate; that the real estate is free and clear of all liens and encumbrances, except as may be above stated; and it covenants to Warrant and Defend the real estate against the lawful claims of all persons, except as may be above stated.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, according to the context.

Selzer-Werderitsch Associates, Inc.

Dated: 11/30/04

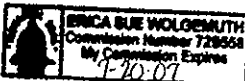
By Thomas F. Werderitsch
Thomas F. Werderitsch, President Title

By Berth Ann Werderitsch
Berth Ann Werderitsch, Secretary Title

STATE OF IOWA, JOHNSON COUNTY, ss:
On this 30th day of November, 2004 before me, the undersigned, a Notary

Public in and for said State, personally appeared Thomas F. Werderitsch
and Berth Ann Werderitsch
duly sworn, did say that they are the President
and Secretary

respectively, of said corporation;
that (no seal has been procured by the said) (the seal affixed thereto is the seal of said) corporation that
said instrument was signed (and sealed) on behalf of said corporation by authority of its Board of
Directors; and that the said Thomas F. Werderitsch and
Berth Ann Werderitsch
as such officers, acknowledged the execution
of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily
executed.



Erica Sue Wolgemuth
Notary Public