

STATE OF INDIANA  
COUNTY OF MARSHALL

IN THE MARSHALL CIRCUIT COURT  
CALENDAR TERM 2021

OFF PROPERTY  
DEVELOPMENT, LLC  
*Plaintiff*

CAUSE NO:  
  
50C01-2108-PL-25

**FILED**  
October 29, 2021  
IN OPEN COURT  
MARSHALL CIRCUIT COURT  
RE

v.

ARGOS TOWN COUNCIL  
AND ARGOS PLAN  
COMMISSION  
*Defendant*

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**ORDER GRANTING PERMANENT  
INJUNCTION AND DECLARATORY  
JUDGMENT**

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This matter came before the Court on October 27, 2021, for a hearing on the Plaintiff's request for a preliminary injunction, permanent injunction and declaratory judgment. The following parties participated: Plaintiff, Off Property Development, LLC, by representative David Mark Owens, and by counsel, Brianna Schroeder; Defendants, Argos Town Council and Plan Commission by Town Council President, George Null, and by counsel, Derek Jones. The parties agreed to combine the request for a preliminary injunction with a trial on the merits.

Evidence was heard and the Court found as follows:

**FINDINGS:**

1. The Plaintiff seeks to erect poultry barns within the two-mile buffer zone around the Town of Argos. The land is zoned for agricultural use.
2. On or around February of 2021, the president of the Town Council, who was

also a neighbor of the Plaintiff, heard a rumor of the planned poultry barns and realized the Town's current zoning ordinance would not prohibit the construction of such poultry barns.

3. The president of the Town Council, Mr. Null, also held a position on the Argos Plan Commission.
4. On February 2, 2021, Mr. Null caused the issue to be added to the agenda of the Argos Plan Commission meeting for that date.
5. The Argos Plan Commission discussed the issue that evening at their meeting and voted to recommend to the Town Council an amendment of the zoning ordinance to place a moratorium on certain agricultural operations. This moratorium would prevent the Plaintiff from pursuing his planned poultry operation. The actual language of the moratorium voted on by the Plan Commission was not reduced to writing until the following day.
6. However, to properly amend a zoning ordinance, a plan commission must hold an advertised public hearing. The notice must include the time and date of the hearing, the geographical area to which the proposal applies, a summary of the subject matter of the proposed change, the place where a copy of the proposal is on file for examination prior to the public hearing and how and when oral and written objections or comments can be made. IC 36-7-5-600 *et seq.*
7. None of the above statutory requirements for a valid Plan Commission meeting were met. No advance notice of this zoning issue being on the agenda had been sent to anyone, no members of the public were present

for the plan commission meeting, and the minutes do not reflect any public hearing being held.

8. The following day, February 3, 2021, Mr. Null added this new zoning amendment recommendation to the agenda for the Town Council to consider at their meeting that evening.
9. A written agenda for the February 3, 2021, Town Council meeting was posted that day at the town offices and at the post office. A copy of the agenda was sent to the local newspaper with no expectation that it would be published.
10. No other advance notice of a meeting to discuss the potential change to the zoning ordinance was published or sent to the public or any other interested parties.
11. At the meeting, the Town Council's agenda offered an opportunity for citizen input prior to consideration of "Old Business" and "New Business". The minutes reflect there was no public input.
12. Although the Plaintiff was present in the audience for the Town Council meeting, he had no advance knowledge this proposal would be considered, had never had an opportunity to read the proposal, and was not prepared to make any formal objection and did not speak during the public input portion of the meeting.
13. Under "New Business", the zoning moratorium, now in written form as Ordinance #2021-04, was discussed by the Council, a motion was made to suspend the rules to enact the ordinance as written, and the motion was

unanimously passed.

14. This resulted in a formal change to the Argos Zoning Ordinance without any prior notice or availability of public hearing, or any of the other due process protections contained within the Indiana Open Door Law and/or IC 36-7-5-600 *et seq.*
15. The Plaintiff applied for a building permit and it was denied solely as a result of the Argos moratorium contained within Ordinance #2021-04.
16. Argos Ordinance #2021-04, as it was enacted on February 3, 2021, should be found to be void as it was placed into law with no attempt to inform the public it was under consideration, no opportunity for meaningful public comment and the Town's procedure was in violation of the Open Door Law.
17. Mr. Null, President of the Town Council and member of the Planning Commission, has been elected and re-elected to the Argos Town Council for the past fifteen years.
18. Mr. Null makes no claim that he was unaware of or confused regarding the Indiana statutory requirements for holding valid public meetings. The Court can only conclude that Mr. Null knowingly misused the levers of local government to illegally create and pass a zoning amendment (all in less than twenty-six hours) which would benefit his property and be a detriment to his neighbor's property.
19. Mr. Null's professed belief that the zoning change would be in the public's best interests does not diminish the violations of the public's right to due process and fair governance.

20. The Plaintiff has requested his attorney fees be assessed against the Defendant Town of Argos as their defense of this matter has been frivolous.
21. The Town has admitted the procedural framework as set forth in IC 36-7-5-600 *et seq* was not followed, but has based their defense upon “substantial compliance” and waiver on the part of the Plaintiff for not voicing his objections to the procedure during the Town Council meeting of February 3, 2021.
22. The Court’s earlier findings as to the lack of formality during the Plan Commission and Town Council meetings show no compliance with IC 36-7-5-600 *et seq*, much less “substantial compliance.”
23. The Town’s argument that the Plaintiff somehow waived his (and the public’s) right to object to the ordinance by failing to stand and voice his objection during a Town Council meeting where no legal notice had ever been given that the issue would be addressed also has no support in Indiana law.
24. The Court finds the Town’s defense in this action to be wholly without support in Indiana statutory and case law and frivolous as a matter of law.
25. Plaintiff’s counsel sent a letter to the Town’s counsel on July 1, 2021, detailing the deficiencies in the Plan Commission and the Town Council procedures with regard to the passage of this ordinance with supporting Indiana statutory and case law requesting the Town lift the moratorium and allow the Plaintiff to pursue his building permit.
26. The Town declined to take any action and the Plaintiff’s Complaint was filed

on August 23, 2021.

27. Plaintiff incurred attorney fees in this action beginning June 14, 2021. The Court finds all attorney fees and costs incurred by the Plaintiff beyond August 5, 2021, to be the result of the Town of Argos refusing to recall the moratorium after they had been clearly advised of their procedural deficiencies, the harm to the Plaintiff, and had the opportunity to take remedial action prior to the filing of the Complaint. Those attorney fees and costs are in the sum of \$10,175.10.

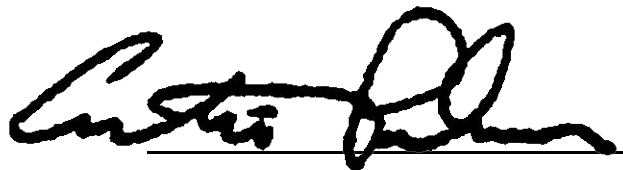
**IT IS THEREFORE ORDERED:**

28. The Plaintiff's Complaint for a Declaratory Judgment is **GRANTED** and Argos Ordinance #2021-04, as it was enacted on February 3, 2021, is void *ab initio* and of no force and effect.

29. The Plaintiff's request for a Permanent Injunction is **GRANTED** prohibiting any application or enforcement of Argos Ordinance #2021-04.

30. The Plaintiff's request for attorney fees is **GRANTED** in part and the Defendant Town of Argos shall pay the sum of \$10,175.10 to the Plaintiff along with the filing fee required for the initiation of this suit.

**SO ORDERED**, as of the date  
file-stamped on page 1.

A handwritten signature in black ink, appearing to read "Curtis Palmer", written over a horizontal line.

Curtis Palmer, Judge  
Marshall Circuit Court