

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

WILLIAM COUSER and SUMMIT  
CARBON SOLUTIONS, LLC,

Plaintiffs,

v.

SHELBY COUNTY, IOWA; SHELBY  
COUNTY BOARD OF SUPERVISORS;  
STEVE KENKEL, in his official capacity as a  
Shelby County Supervisor; CHARLES  
PARKHURST, in his official capacity as  
Shelby County Supervisor; DARIN HAAKE,  
in his official capacity as Shelby County  
Supervisor,

Defendants.

**Related case: 4:22-CV-383**

CASE NO. 1:22-cv-20

**DEFENDANT SHELBY COUNTY,  
IOWA’S COUNTERCLAIM AGAINST  
PLAINTIFF SUMMIT CARBON  
SOLUTIONS, LLC**

Defendant/Counterclaim Plaintiff Shelby County, Iowa, for its Counterclaim against Plaintiff Summit Carbon Solutions, LLC, states as follows:

1. Defendant/Counterclaim Plaintiff Shelby County, Iowa (“the County”) is a county and political subdivision of the state of Iowa.
2. Plaintiff/Counterclaim Defendant Summit Carbon Solutions, LLC (“Summit”) is a Delaware limited liability company with its principal place of business in Ames, Iowa.
3. This Court has supplemental jurisdiction over the County’s counterclaim pursuant to 28 U.S.C. § 1367 because the claim is part of the same case or controversy as Plaintiffs’ federal claim.
4. On or about November 1, 2022, the County adopted Ordinance No. 2022-4 (“the Ordinance”), an amendment to the County’s zoning ordinance, which regulates the use of land for hazardous liquid pipelines.

5. The Ordinance became effective upon publication on November 11, 2022.

6. Section 8.22 of the Ordinance established a class of use for Hazardous Liquid Pipelines and provides that “no land or property interest in this County, regardless of the zone or area, shall be used for purposes of a Hazardous Liquid Pipeline except in conformity with this Article.”

7. Section 8.31 of the Ordinance states:

A Pipeline Company that has filed a verified petition with the IUB asking for a permit to construct, maintain, and operate a new pipeline along, over, or across land in this County shall submit an Application to the County Zoning Administrator for a Conditional Use Permit. The Pipeline Company shall submit the application for a Conditional Use Permit within seven (7) days of the filing the petition with the IUB, unless the petition was filed with the IUB prior to the effective of this Article in which case the Pipeline Company shall submit an application for a Conditional Use Permit under this Article within seven (7) days of the effective date of this Article. The Zoning Administrator may extend the time for filing the Application for good cause shown. However, any extension of more than 30 days must be approved by the Board of Adjustment.

8. Section 8.32 of the Ordinance states:

A Property Owner that intends to negotiate or sell an easement to a Pipeline Company by means of an Independent Agreement shall submit an application to the County Zoning Administrator for a Conditional use Permit before executing the independent Agreement with the Pipeline Company. If a Property Owner executes an Independent Agreement with a Pipeline Company on or after the effective date of this Article without obtaining a Conditional Use Permit, the County may exercise all lawful remedies as provided in section 22.11 of this Zoning Regulation.

9. Prior to adoption of the Ordinance, hazardous liquid pipelines were not a permitted use under the County’s zoning regulations.

10. Summit intends to construct a carbon dioxide pipeline through the County and filed a petition for a state permit with the Iowa Utilities Board on or about January 28, 2022.

11. Under section 8.31 of the Ordinance, Summit was required to submit an application to the County for a conditional use permit by November 18, 2022. Summit has not done so, contrary to the requirements of the Ordinance.

12. On or about January 11 and 13, 2023, Summit recorded easement agreements with landowners who had not first obtained a condition use permit, contrary to the requirements of the Ordinance.

13. Summit has informed landowners in the County that they are not required to comply with the permitting requirements of the Ordinance.

14. Summit has made public statements that it does not intend to comply with the Ordinance.

15. Even if the County had not adopted the Ordinance, the signing of easement agreements for the construction of a hazardous liquid pipeline in Shelby County would violate the County's zoning regulations because hazardous liquid pipelines were not a permitted use prior to the adoption of the Ordinance.

16. On or about January 26, 2023, January 27, 2023, and January 30, 2023, the County mailed written notice informing Summit that it was in violation of the Ordinance and requesting Summit comply with the Ordinance.

17. Summit has not attempted to cure its violations. Instead, Summit filed a motion for preliminary injunction requesting that the Court enjoin the County from enforcing the Ordinance.

18. Section 22.11 of the Shelby County Zoning Regulation states:

Remedies – In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of the provisions of the regulations, the appropriate legal office, in addition to other remedies under state statutes is hereby authorized to institute an action to enjoin, or any other appropriate action or proceeding to prevent such erection, construction, reconstruction, alteration, repair, conversion, maintenance or use.

19. Section 22.10 of the Shelby County Zoning Regulation states:

Penalties – Any person, firm or corporation who violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of the regulations may be fined. Each day that a violation continues shall constitute a separate offense. Fines can

be up to \$750.00 for each infraction or up to \$1000.00 if the infraction is a repeat offense.

20. Summit is violating the County's Ordinance and is guilty of a county infraction under Iowa law. *See* Iowa Code § 331.307. A copy of the civil citation is appended hereto.

WHEREFORE, the County prays for judgment against Summit as follows:

- a. Declaratory relief that the Ordinance is valid and enforceable and Summit is in violation of the same;
- b. Injunctive relief requiring Summit to comply with the Ordinance or prohibiting Summit from constructing the pipeline in the County absent compliance with the Ordinance;
- c. County infraction penalties against Summit as allowed by the Ordinance and Iowa law; and
- d. Such other and further relief as the Court deems just and equitable.

*/s/ Jason M. Craig*

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Electronically filed.

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE				
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on: <u>March 21, 2023</u>				
By:	<input type="checkbox"/>	U.S. Mail	<input type="checkbox"/>	Fax
	<input type="checkbox"/>	Hand delivery	<input type="checkbox"/>	Private Carrier
	<input checked="" type="checkbox"/>	Electronically (via CM-ECF)	<input type="checkbox"/>	E-mail
Signature:	<i>1st Jason M. Craig</i>			

CIVIL CITATION  
COUNTY INFRACTION

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA

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SHELBY COUNTY, IOWA,

Counterclaim Plaintiff,

CASE NO. 1:22-cv-20

-vs.-

SUMMIT CARBON SOLUTIONS, LLC,  
2321 N. Loop Drive  
Ames, IA 50010

CIVIL CITATION

Counterclaim Defendant.

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I, THE UNDERSIGNED, STATE THAT SUMMIT CARBON SOLUTIONS, LLC DID VIOLATE ARTICLE 8, SECTIONS 8.31 AND 8.32 OF THE SHELBY COUNTY ZONING REGULATIONS AS FOLLOWS:

1. On or about January 28, 2022, Summit Carbon Solutions, LLC (“Summit”) filed a verified Petition for Hazardous Liquid Pipeline with the Iowa Utilities Board seeking to construct a carbon dioxide pipeline through Shelby County.

2. On or about November 1, 2022, the Shelby County Board of Supervisors adopted Ordinance No. 2022-4, an amendment to the Shelby County Zoning Regulation, which regulates the use of land for hazardous liquid pipelines (“the Ordinance”).

3. The Ordinance became effective upon publication on November 11, 2022.

4. Section 8.22 of the Ordinance established a class of use for Hazardous Liquid Pipelines and provides that “no land or property interest in this County, regardless of the zone or area, shall be used for purposes of a Hazardous Liquid Pipeline except in conformity with this Article.”

5. Section 8.31 of the Ordinance states:

A Pipeline Company that has filed a verified petition with the IUB asking for a permit to construct, maintain, and operate a new pipeline along, over, or across land in this County shall submit an Application to the County Zoning Administrator for a Conditional Use Permit. The Pipeline Company shall submit the application for a Conditional Use Permit within seven (7) days of the filing the petition with the IUB, unless the petition was filed

with the IUB prior to the effective of this Article in which case the Pipeline Company shall submit an application for a Conditional Use Permit under this Article within seven (7) days of the effective date of this Article. The Zoning Administrator may extend the time for filing the Application for good cause shown. However, any extension of more than 30 days must be approved by the Board of Adjustment.

6. Section 8.32 of the Ordinance states:

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7. Summit has made public statements that it does not intend to comply with the Ordinance and has informed landowners in the County that they are not required to comply with the permitting requirements of the Ordinance.

8. The undersigned states that on or about November 19, 2022, and continuing to the present, Summit did violate Section 8.31 of the Ordinance as follows:

A. Failing to apply for a Conditional Use Permit for its carbon dioxide pipeline project within seven (7) days of the effective date of Ordinance No. 2022-4.

9. The undersigned further states that on or about January 11, 2023, and January 13, 2023, Summit recorded easement agreements that violated Section 8.32 of the Ordinance as follows:

A. Easement agreement(s) with Schimerowski Sisters Enterprises LLC recorded on January 11, 2023, with no conditional use permit.

B. Easement agreement(s) with Jerome Mumm, et al recorded on January 13, 2023 with no conditional use permit.

C. Easement agreement(s) with Leslie Blum and Janet Blum recorded on January 13, 2023, with no conditional use permit.

10. Section 22.11 of the Shelby County Zoning Regulation states:

Remedies – In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of the provisions of the regulations, the appropriate legal office, in addition to other remedies under state statutes is hereby authorized to institute an action to enjoin, or any other appropriate action or proceeding to prevent such erection, construction, reconstruction, alteration, repair, conversion, maintenance or use.

11. Section 22.10 of the Shelby County Zoning Regulation states:

Penalties – Any person, firm or corporation who violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of the regulations may be fined. Each day that a violation continues shall constitute a separate offense. Fines can be up to \$750.00 for each infraction or up to \$1000.00 if the infraction is a repeat offense.

12. On or about January 26, 2023, January 27, 2023, and January 30, 2023, the County provided Summit written notice of these violations, however, Summit failed to abate the violations as required by law.

WHEREFORE, Shelby County, Iowa seeks the following:

A. That Summit be assessed civil penalties pursuant to Section 22.10 of the Shelby County Zoning Regulation of \$750 for the first offense and \$1,000 for each repeat offense.

B. That Summit be ordered to abate the violations.

C. That Summit be enjoined and restrained from future violations of the Shelby County Zoning Regulation or be subject to appropriate contempt proceedings.

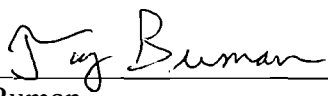
TO ANSWER THE CHARGES OF THIS CITATION, SUMMIT MUST ELECTRONICALLY FILE AN ANSWER WITHIN TWENTY (20) DAYS OF THE SERVICE OF THIS CIVIL CITATION UPON YOU.

FAILURE TO ANSWER OR APPEAR WITHOUT GOOD CAUSE COULD RESULT IN A JUDGMENT BEING ENTERED AGAINST SUMMIT FOR THE CIVIL PENALTY PLUS COURT COSTS AND AN ORDER TO REMEDY THE VIOLATION AND ENJOIN SUMMIT FROM VIOLATING THE ORDINANCE IN THE FUTURE.

SUMMIT MAY BE CITED FOR CIVIL CONTEMPT FOR FAILURE TO OBEY THE COURT’S ORDERS, WHICH IS PUNISHABLE BY A FINE OR JAIL TERM. SUMMIT MAY ALSO BE CITED FOR SUBSEQUENT VIOLATIONS IF VIOLATION IS NOT CORRECTED.

The undersigned attests that the matters herein set forth are true and correct below.

Dated: 3-16-23

  
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Tony Buman  
Shelby County Planning & Zoning Administrator



Subscribed and sworn to before me on March 16,  
2023.

Melissa Arkfeld  
Notary Public

