STATE OF INDIANA
BEFORE THE FIRE PREVENTION AND
BUILDING SAFETY COMMISSION

IN RE:	)	ADMINISTRATIVE CAUSE NO.
	)	
ERWIN RESIDENCE LP TANK.	)	DHS-1903-FPBSC-003
	)	

RECOMMENDED ORDER

This matter is before the ALJ on a motion for summary judgment, filed by Eric and Joyce Erwin (Petitioners). The undersigned, having been assigned to this matter to act as administrative law judge (ALJ) pursuant to Indiana Code § 4-21.5-3 *et seq.*, issues the following recommended order that Petitioners' motion for summary judgment be granted.

RULING ON REQUEST TO STRIKE

As a preliminary matter, it is necessary to resolve Respondent's request to strike Petitioner's Exhibits B, G, and H, three witness affidavits submitted in support of Petitioner's motion for summary judgment. Respondent argues that these affidavits should be stricken because they were submitted after the exhibit disclosure deadline imposed by the May 10, 2019 Prehearing Order (Prehearing Order).

As a general matter, evidentiary considerations under the Administrative Orders and Procedures Act (AOPA) are to be addressed "in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts." Ind. Code § 4-21.5-3-25. At the same time, Indiana Code § 4-21.5-3-23(b) instructs that motions for summary judgment under AOPA should be construed "as would a court that is considering a motion for summary judgment filed under Trial Rule 56 of the Indiana Rules of Trial Procedure." A trial court—and by way of analogy, an ALJ—retains broad discretion in ruling on the admissibility of

evidence in summary judgment, which extends to rulings on motions to strike affidavits. *Biedron v. Anonymous Physician 1*, 106 N.E.3d 1079, 1095 (Ind. Ct. App. 2018).

Respondent's request to strike is based on paragraph 3 of the Prehearing Order, which states:

> The parties shall exchange witness and exhibit lists by **June 24, 2019**. All exhibits in a party's exhibit list must be produced to the opposing party at that time. A party's witness list must include the witness's contact information and a brief description of his/her anticipated testimony. Failure to disclose a witness or exhibit by the June 24 deadline may preclude the party from relying on the witness or exhibit in support of a motion for summary judgment or at a hearing, unless good cause can be shown for why the disclosure could not have occurred sooner.

Respondent represents that Petitioners did not disclose Exhibits B, G, and H until summary judgment, after the deadline for exhibit disclosures. The Prehearing Order did indeed impose a deadline to produce all "exhibits" in a party's exhibit list, and semantically speaking the witness affidavits could be described as exhibits. But the form of evidence contained in an affidavit is not an "exhibit" in a documentary sense, but evidence of witness testimony presented in written form. The submission of witness affidavits must have been expected given the imposition of a summary judgment deadline, as affidavits are expressly permitted under Indiana Trial Rule 56. And by requiring witness disclosures approximately one month before summary judgment, the parties had adequate opportunity to investigate any opposing testimony. If that were not the case then extensions of time could have been requested, but none were.

Respondent does not contend that Petitioners failed to make timely witness disclosures, and absent such an objection the ALJ will assume that such disclosures were made. Thus, this is not a "trial by ambush" scenario that the disclosure deadlines were intended to prevent. In light of the above, Respondent's request to strike Exhibits B, G, and H is DENIED.

FINDINGS OF FACT

These findings are based on the parties' designated evidence, attached to their respective filings, and all documents from the underlying First and Second Variances, which were attached to the May Prehearing Order and acknowledged as part of the record of these proceedings. These findings should not be construed as establishing any factual matter as true, as the record is being viewed in a light most favorable to Respondent as the non-moving party.

The underlying dispute involves a variance request for a 1,000 gallon underground liquid petroleum tank (LP tank) that has been on Petitioners' residential property for approximately 14 years. About two years ago, Petitioners constructed a detached garage approximately 6-7 feet from the LP tank, a distance that varies based on the precise point of measurement.[1] The LP tank is also located approximately 13 feet from the adjoining property line of Benjamin Russell and Lisa-Ramsey-Russell (the Russells), the Petitioners' neighbors. The Russells are not parties to this appeal, but they participated to some degree in the underlying proceedings. (Petitioners' Exhibit B).

On August 28, 2018, the Floyd County Department of Building and Development Services (the County), through its Building Commissioner, Kelly Lang (County Building Commissioner), issued a notice to the Petitioners that the LP tank violated Section G2412.2 of the 2005 Indiana Residential Code, Section 6104.3 of the 2014 Indiana Fire Code, and Section 6.3.1 of the NFPA 58-11. (Petitioners' Exhibit A). As indicated in the County's notice, the regulatory code requires

[1] The County Building Commissioner measured the distance from the building to the filling cap to be approximately 88 inches. (Petitioners' Exhibit B-1). Presumably, the distance from the building to the edge of the LP tank (located underground) would be some distance shorter.

10-feet of separation between a 1,000 gallon LP tank and any building or property line. (Petitioners' Exhibit A).

Thereafter, Petitioners applied for a variance with the Commission, assigned Variance Number 18-10-27 (First Variance). (Petitioners' Exhibit C). As part of the First Variance application, Petitioners submitted a letter from the County Building Commissioner indicating that the County did not oppose the variance. (Petitioners' Exhibit B-2). The Commission approved the First Variance at its meeting on October 2, 2018. (Petitioners' Exhibit C).

On or around December 12, 2018, the Commission received a "Verified Petition for Sanctions to be Imposed on a Previously Issued Variance" (Petition for Sanctions), filed by the Russells. (Respondent's Exhibit 4). The Petition for Sanctions noted, among other things, that the incorrect local fire official was notified in the First Variance application. (Respondent's Exhibit 4). The Petition for Sanctions also included several exhibits, all of which were already part of the record from the First Application, with exception for a property tax assessment of the Petitioners' home. The tax assessment was submitted to purportedly show the relative wealth of Petitioners' home in comparison to the cost of moving the LP tank. The Russells also claimed that an unidentified "local propane distributor" told them it would cost about $1,300-1,500 to move Petitioners' LP tank.[2]

The Commission heard the Petition for Sanctions at its January 3, 2019 meeting. (Respondent's Exhibit 5). The meeting minutes indicate that the Russells appeared and continued to oppose the variance, on grounds largely consistent with their Petition for Sanctions. The

[2] The Russells also complained about not receiving notice of the First Variance. To this point, Indiana Code § 22-12-7-3 provides that variance orders are issued under Indiana Code § 4-21.5-3-4, which in turn only requires notice to: (1) each person to whom the order is specifically directed, and (2) each person to whom a law requires notice to be given. The First Variance order was not directed to the Russells, nor was a law identified that entitled the Russells to notice. Additionally, it should be noted that the Russells have been provided courtesy copies of the filings in this appeal, and were expressly notified in the Prehearing Order of the legal option of filing a motion to intervene.

Petitioners' representative also appeared and admitted that the wrong fire official was notified in the First Variance application. The Commission ultimately voted to revoke the First Variance on these latter grounds, stating that "[i]t was determined that proper notification of the variance request was not provided to the required local fire official (New Chapel Fire Company). Therefore, the Commission revoked [the First Variance] pursuant to 675 IAC 12-5-9(c)(2)." (Petitioners' Exhibit D). Thus, as stated by the Commission the only basis for the revocation was the procedural technicality of notifying the wrong fire official, not any changed circumstance impacting a finding of an undue burden or adverse public harm.

Petitioners applied for another variance, assigned Variance Number 19-02-16 (Second Variance), this time notifying the correct fire official. The Commission heard the Second Variance application at its February 5, 2019 meeting. (Respondent's Exhibit 8). Among other things, the minutes indicate "[t]his variance is identical to [the First Variance] except a different fire department/local fire official has been notified."

The Second Variance included new evidence related to cost and safety that were not submitted in the First Variance application (at least based on the record presented to the ALJ). Specifically, the Petitioners submitted evidence that it would cost approximately $5,986.95 to move the LP tank. Petitioners also submitted a statement from Ferrellgas, the entity that fills their LP tank, stating that the tank had been inspected twice and found to have no signs of leak or other adverse condition.[3]

[3] The minutes also indicate that the Russells questioned why Frerrellgas would continue to fill the tank in violation of federal law, a legal conclusion that the ALJ is not obligated to accept as true. There is nothing in the minutes showing *what* federal law the Russells claim was violated, nothing in the record showing that the Commission's decision to deny the variance was based on federal law, and Respondent has offered no argument in summary judgment that the variance was dependent on any federal law issues. Thus, any arguments regarding a purported federal law violation are deemed waived.

The Russells appeared again and continued to oppose a variance. Among other things, the minutes indicate that the Russells "allege that this tank is a threat to their lives and property." The Russells also claimed that the LP tank made their home unsellable, requesting Petitioners move the LP tank to the southern portion of their yard. Thereafter, the Commission voted 7-2 to deny the Second Variance. (Respondent's Exhibit 7). The Commission's denial letter included no findings, and no explanation for what changed circumstances prompted a different result between the First and Second Variance. As noted above, the issue regarding notification to the wrong fire official—the Commission's stated basis for why the First Variance was revoked—had been cured in the Second Variance.

Thereafter, Petitioners submitted a timely request for administrative review, leading to these ALJ proceedings and the present motion for summary judgment. The parties' designated evidence largely consists of the record of documents from the First and Second Variance. In addition to this evidence from the underlying record, Petitioners also submitted three witness affidavits in support of their motion for summary judgment. *See* Petitioners' Exhibits B, G, and H. Exhibit B is an affidavit from the County Building Commissioner, echoing her prior statement that she does not consider the LP tank a hazard. Exhibit G is an affidavit of Petitioner Eric Erwin, who authenticated an email from Ferrellgas stating that the tank "is NOT a danger" and was inspected and free of leaks, and authenticated a written estimate from Pearce Bottled Gas that it would cost $4,078.92 to move the LP tank, and an additional $1,908.03 if the excavation encountered rock and if additional soil was needed. Exhibit H is an affidavit from Paul Pearce, president of Pearce Bottled Gas, stating that he never said he would not fill the tank for its non-compliance with NFPA 58, and never said that the LP tank was a threat to the Russells' property.

CONCLUSIONS OF LAW

To the extent any of the above findings could be construed as a conclusion of law, it is hereby adopted as a conclusion of law. To the extent any of the following conclusions of law could be construed as a finding of fact, it is hereby adopted as a finding of fact.

These proceedings are governed by AOPA, Indiana Code § 4-21.5-3 *et seq.* Under AOPA, Petitioners' appeal is to be decided as a de novo proceeding. Ind. Code § 4-21.5-3-14(d).

Indiana Code § 4-21.5-3-23 provides that "a party may, at any time after a matter is assigned to an administrative law judge, move for a summary judgment in the party's favor as to all or any part of the issues in a proceeding" and that the ALJ shall consider the motion for summary judgment "as would a court that is considering a motion for summary judgment filed under Trial Rule 56 of the Indiana Rules of Trial Procedure." "A party seeking summary judgment bears the burden to make a prima facie showing that there are no genuine issues of material fact and that the party is entitled to judgment as a matter of law." *Broadbent v. Fifth Third Bank*, 59 N.E.3d 305, 310 (Ind. Ct. App. 2016). "Once the moving party satisfies this burden through evidence designated to the trial court, the non-moving party may not rest on its pleadings, but must designate specific facts demonstrating the existence of a genuine issue for trial." *Id.* at 311.

"Summary judgment shall not be granted as of course because the opposing party fails to offer opposing affidavits or evidence, but the court shall make its determination from the evidentiary matter designated to the court." Ind. Trial Rule 56(C). A trial court must construe the pleadings, affidavits, and designated evidence in the light most favorable to the non-moving party, and the moving party has the burden of demonstrating the absence of a genuine issue of material fact. *Beatty v. LaFountaine*, 896 N.E.2d 16, 20 (Ind. Ct. App. 2008). A fact is "material" if its resolution would affect the outcome of the case, and an issue is "genuine" if a trier of fact is

required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).

To qualify for a variance, an applicant must, among other things, file a variance application that contains facts demonstrating that:

> (1) compliance with the rule will impose an undue hardship upon the applicant . . . and
> (2) either:
> (A) noncompliance with the rule; or
> (B) compliance with an alternative requirement approved by the body considering the variance application;
> will not be adverse to the public health, safety, or welfare.

1. Applicable code requirement[4]

As an initial matter, determining whether a variance from the code should be granted requires first identifying *which* code provision applies. What would seemingly be a fairly simple determination turns out to be rather complicated, as identifying the applicable code provision involves a complex legal rabbit hole with numerous rule adoptions and incorporations of various industry standards. In fact, even the parties could not agree on the applicable code provision, as Petitioners cite Section 6.4.2.3 of the NFPA 58 (2017), while Respondent cites Section 3.2.2.2 of the NFPA 58 (2001) and Section 6104.3 of the 2014 Indiana Fire Code (which itself incorporates the 2012 International Fire Code, 675 IAC 22-2.5-1(a)). To make matters more confusing, the County, in its notice of code violation that kick-started these proceedings, cited yet another NFPA code provision, Section 6.3.1 of the NFPA 58-11.[5] (Petitioners' Exhibit A). The Commission, in

[4] Given the common verbiage of "code" used throughout the industry, this Recommended Order uses the term "code" to refer to the administrative rules adopted by the Commission. This is consistent with the fact that many of the incorporated rules at issue are adoptions of various industry "codes."

[5] The County also cited Section G2412.2 of the 2005 Indiana Residential Code, and Section 6104.3 of the 2014 Indiana Fire Code. Section G2412.2 of the 2005 Residential Code is merely a broad citation showing that the Commission incorporated the International Fire Code and NFPA as part of its rules.

its letter denying the Second Variance, does not cite the NFPA 58 or International Fire Code at all, as it merely cites G2412.2 of the 2005 Indiana Residential Code.

The ALJ agrees with Respondent that Section 3.2.2.2 of the NFPA 58 (2001) and Section 6104.3 Indiana Fire Code are the applicable code requirements at issue.[6] These provisions, while separately codified, are substantively identical with respect to requiring 10-feet of separation between an LP tank of 501-2,000 gallons and any building or lot line.[7] It is also important to note that the Petitioners' brief, while relying on an incorrect code citation, rightly assumed that the applicable requirement involved a 10-foot separation.

2. Undue hardship

To qualify for a variance, Petitioners are required to show that compliance with the 10-foot requirement will impose an "undue hardship." Ind. Code § 22-13-2-11(b)(1). The term undue hardship is not defined in the variance statutes, but is defined in various Commission rules to mean:

> Unusual difficulty in meeting the requirements of the rules of the commission because of any of the following:
> (1) Physical limitations of a construction site or its utility services
> (2) Major operational problems in the use of a building or structure
> (3) Excessive costs of additional or altered construction elements.
> *See* Emergency Rule LSA 19-333(E); 675 IAC 12-5-2.

Petitioners are attempting to demonstrate an undue hardship under the third prong, arguing that compliance with the code would impose an excessive cost. In support, they point to a written estimate from Pearce Bottle Gas, Inc., showing a cost of approximately $4,000 to excavate and relocate the LP tank, and an additional $1,900 if the excavation encountered rock and if additional top soil was needed.

---

[6] Respondent's response brief, pages 3-4, provides a useful roadmap outlining the various incorporations and adoptions at issue.

[7] The NFPA is not published in the Indiana Register, but is available for viewing at NFPA.org. It should be noted that viewing the NFPA requires creating an account, which is free.

Respondent disputes these costs by asserting that it would only cost $1,500 to come into compliance with the code, an estimate provided to the Russells by an unidentified "propane distributor." *See* Respondent's Exhibit 4, ¶ 15. In addition to disputing the costs, Respondent argues that compliance with the code merely requires the excavation of the LP tank, not excavation *and* relocation. Respondent also argues that it is the contractor's responsibility to move the LP tank, and therefore these costs cannot constitute an undue burden on the Petitioners.

The ALJ has doubts regarding the Russells' estimate, which is more than half the price quoted to the Petitioners. Unlike the Petitioners' written quote from Pearce Bottled Gas, the Russells' statement from the unidentified propane distributor is wholly devoid of any who/where/when foundational details, and if presented at an evidentiary hearing would carry little-to-no weight (if it was admitted at all). But as unreliable as it may seem, the estimate at least casts *some* doubt on Petitioner's $4,000 quote, and at this stage of the proceeding (especially true given the absence of an objection or request to strike by Petitioners) the ALJ will accept the Russells' estimate as true. Thus, for purposes of summary judgment the ALJ will assume it would cost approximately $1,500 to comply with the code.

That still leaves the question of whether $1,500 amounts to an undue hardship. In making such a determination, it is difficult to lose sight of the fact that the Commission granted the First Variance without having been presented with *any* evidence of how much it cost to move the LP tank (at least in the record presented to the ALJ), as estimates of cost do not appear in the record until the Second Variance. Thus, the Commission necessarily determined that the mere act of moving the LP tank, without regard for how much it cost, amounted to an undue hardship. And while the ALJ is mindful that this appeal is being heard as a de novo proceeding, the Commission's

initial determination is at least relevant insofar as it provides a precedential benchmark for what sort of circumstances the Commission has previously found to be an undue hardship.

All that said, the ALJ concludes that Petitioners' compliance with the 10-foot separation requirement constitutes an undue burden. Initially, even if we assume it would only cost $1,500 to move the LP tank, this is still not a *de minimis* sum of money for a home construction job. The term "undue burden" is inherently discretionary, and absent additional guidance from the legislature or Commission narrowing the criteria for making such determinations, it is difficult to subjectively declare that $1,500 is not an "undue burden" or "excessive" cost on a homeowner. Particular cost aside, the removal and relocation of a 1,000 gallon LP tank is no minor undertaking, as it likely requires the use of heavy machinery and expertise that goes beyond the typical home repair. Thus, it is not surprising that the Commission initially determined that moving the LP tank amounted to an undue burden.

As to Respondent's argument that the financial burden is on the contractor and not the Petitioners, this assumes that the contractor will gratuitously return to the job site (after nearly three years) and move the LP tank for free. This hinges too much on the speculative merits of a collateral claim that isn't at issue in this appeal, nor can this issue be resolved based on the evidence in the record. And even if this collateral claim were considered in the undue burden analysis, it would only weigh in Petitioners' favor. Exercising one's legal rights, by itself, is sufficient to constitute an undue burden.

Consistent with the foregoing, the ALJ concludes that Petitioners' compliance with the 10-foot separation requirement constitutes an undue burden.

3. Public health, safety, and welfare

In addition to demonstrating an undue burden, Petitioners must also show that non-compliance with the rule will not be adverse to the public health, safety, or welfare. Ind. Code § 22-13-2-11(b)(2). To support such a showing, Petitioners again point to the Commission's granting of the First Variance, which they argue is evidence that the variance does not pose an adverse public harm. Additionally, Petitioners point to an affidavit of the County Building Commissioner, who opined that "[a]s it sits now, I do not consider the tank to be a hazard or safety concern." Petitioners also rely on an the statement of a representative of Ferrellgas, who opined that the LP tank "is NOT a danger" and that it was free of leaks and secure.

In response, Respondent cites the *2000 International Fire Code Commentary*, which provides two safety rationales for the separation requirement: (1) it allows escaping gas to disperse or dilute before it can enter a building or contact an ignition source, and (2) the tank is protected if the building becomes involved in a fire.[8] From there, Respondent argues that the lack of a 10-foot separation presents multiple safety issues, including insufficient space to disperse leaked gas, and insufficient separation in the event the garage were to catch on fire. Respondent also points out that there is a window on the garage wall facing the LP tank, which Respondent argues could house a possible ignition source (i.e. a window AC unit), or act as a conduit for leaked gas to enter the garage.

The ALJ concludes that non-compliance with the 10-foot separation requirement is not adverse to the public health, safety, or welfare, a conclusion based on several factors from the record. Initially, while the LP tank may be within 10-feet of the garage, the record is devoid of evidence of an ignition source anywhere in the vicinity of the LP tank. In fact, according to the Russells' Petition for Sanctions, the closest identified ignition source (the Russells' electrical box)

[8] No copies of the *2000 International Fire Commentary* were provided, and it does not appear that a copy if publicly available online.

is approximately 39-feet from the LP tank, nearly 4x the required distance. While ignition sources may not be the sole concern of the 10-foot separation requirement, the lack of a nearby ignition source nonetheless weighs in Petitioners' favor.

Additionally, the ALJ is not persuaded of the hypothetical concern of a window AC unit. First, unlike the home window depicted in the NFPA 58 Appendix (relied upon by Respondent in arguing why the window is a safety hazard), the window in question is in a detached garage, a structure that in all likelihood would not be cooled with AC. There is also nothing in the record showing that the window in question is within 10-feet of the LP tank. The record only contains a down-the-line photo showing two garage windows, one of which appears well over 10 feet from the LP tank, and another that may or may not be within 10 feet (we do not know because there is nothing in the record showing that anyone ever measured this window distance). Nor is clear from the record that the window even opens. If it doesn't, then obviously there is no concern of a window AC unit. And even if a perfect storm happened to bring all these hypothetical concerns to fruition—the window does in fact open; the window is measured to be within 10-feet of the LP tank; and Petitioners decide to cool their detached garage and place an AC unit in this exact window—then the variance can be reviewed based on changed circumstances. But based on the evidence in this record, the window does not present an adverse threat to public safety.

As Respondent also argued, the lack of a 10-foot separation could pose a safety issue insofar as it does not permit adequate dispersion of leaked gases, or provide adequate separation from the garage in the event of a fire. Here, the record demonstrates that the LP tank is somewhere in the vicinity of 6-7 feet from the garage, leaving the question of whether non-compliance by 3-4 feet is significant from a public safety standpoint. This is largely a technical rather than legal question, and to that end it is significant to note that three independent entities with technical

expertise—the Commission (when it granted the First Variance), the County Building Commission, and Ferrellgas—all unanimously agreed that the LP tank is safe as-is. Apart from hypothetical argument, there is no evidence that rebuts the unanimous safety opinions of these entities.

The ALJ recognizes that none of these entities were designated as an expert. Nonetheless, their opinions provide helpful and relevant insight in resolving the technical safety question at issue, and the foundations for their expertise are established by the very nature of their respective fields, all of which have some connection to code enforcement or LP gas. Additionally, administrative proceedings under AOPA are not governed by the rules of evidence applicable to civil actions, providing further support that the opinions of these entities can be relied upon as providing expert-like guidance. Ind. Code § 4-21.5-3-25(b).

The ALJ is also mindful of the concerns of the Russells, who stated that the LP tank threatens their lives and property value. Certainly, a variance should not be granted if doing so poses a threat to life. Ind. Code § 22-13-2-11(b)(2). But there is nothing in the record establishing that the Russells are qualified to opine on the technical safety standards governing underground LP tanks, and absent such a foundation their lay opinion cannot be relied upon to rebut the unanimous opinions of the Commission, County Building Commissioner, and Ferrellgas. Ind. Trial Rule 56(E) (noting that opposing affidavits in summary judgment must establish, among other things, that the affiant is competent to testify to the matters stated).

The record establishes that Petitioners met their burden of demonstrating that the variance will not be adverse to public health, safety, or welfare, and that prima facie showing has not been rebutted with competent, admissible evidence sufficient to create a disputed issue of material fact.

ORDER

Based on the foregoing it is recommended that the Petitioners' motion for summary judgment be GRANTED, and that the Petitioners be granted a variance from the regulatory requirement that the LP tank be separated 10-feet from any building or adjacent property line.

Date: Oct 25, 2019

Brian L. Park
Administrative Law Judge
Office of the Indiana Attorney General
302 W. Washington St., IGCS 5th Floor
Indianapolis, IN 46204-3795
Phone: (317) 232-6307
Fax: (317) 232-7979
Email: Brian.Park@atg.in.gov

NOTICE OF RIGHT TO OBJECT TO THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED, NON-FINAL ORDER

The ALJ that issued this recommended order is not the ultimate authority of the Commission, and this is not a final order of the Commission. Pursuant to Indiana Code § 4-21.5-3-29, the Commission or its designee shall issue a final order affirming, modifying, or dissolving the ALJ's recommended order. The Commission or its designee may also remand the matter, with or without instructions, to the ALJ for further proceedings.

You have the right to object to this non-final order. To preserve an objection to the ALJ's recommended order, you must not be in default under Indiana Code § 4-21.5-3, and must object to the ALJ's recommended order in writing by: (1) identifying the basis of the objection with particularity; and (2) file the objection with the Commission within 18 days after the order is served on you. If the 18th day falls on a Saturday, Sunday, legal holiday, or a day the Commission's officers are closed, then the deadline for your objection would be the first day thereafter that is not a Saturday, Sunday, legal holiday, or day that the Commission's office is closed.

In the absence of an objection, the Commission will affirm the ALJ's recommended order as its final order, or will serve notice of its intent to review any issue related to the ALJ's recommended order.

Distribution:

A copy of the foregoing was served to the following persons on the _____ day of October, 2019, via email and USPS:

Jason A. Lopp
McNeely Stephenson
318 Pearl Street, Suite 220
New Albany, IN 47150
Jason.a.lopp.@msth.com

Justin K. Guedel
Indiana Department of Homeland Security
302 W. Washington Street
Indiana Government Center South, Room E208
Indianapolis, IN 46204
(317) 234-9515
jguedel@dhs.in.gov

Benjamin Russell
1001 Fox Hunters Point
New Albany, IN 47150