

**STATE OF INDIANA  
BEFORE THE FIRE PREVENTION AND  
BUILDING SAFETY COMMISSION**

**IN THE MATTER OF:**

**GATTITOWN**

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**CAUSE NO.: DHS-1925-FPBSC-025**

**AFFIDAVIT OF JOHN M. ZEIDLER**

I, John M. Zeidler, swear to the truth of the following statements:

1. I am an adult over the age of the eighteen (18) years old, of sound mind, and otherwise competent to testify to the matters set forth in this Affidavit.

2. All statements asserted in this Affidavit are within my personal knowledge.

3. I am one of the owners of Gattitown LLC and have been since its inception.

4. I was only able to partially respond to the Respondent's Motion for Summary Judgment because I received a limited responsive to my document request. The Commission did not or would not send the records prior to 2011. We opened for business in August of 2008 and I need access to the complete records in order to be able to provide a full defense. I believe that their failure to provide the necessary documents is reason enough to deny their motion.

5. Regardless, the records actually provided show that the 2019 inspection is the first and only inspection which cited "missing ceiling tiles in the Laser Tag play area." (note 7/31/2013 inspection, violation #5, for missing ceiling tiles was, specifically related to a roof leak that cause tiles to collapse in other areas of the restaurant).

6. The laser tag room was installed in 2013 and we have had 6 yearly inspections thru several different inspectors and this item has never been raised. More importantly, as we were installing the wires and tiles at issue, we specifically showed our new Laser tag room to the inspector at the time and asked if removing ceiling tiles to achieve an "outer space" theme for our

room was acceptable. We were assured that it was. We relied on this inspector's assurance and built out the laser tag room in the manner he approved. We have safely operated the room ever since and never has it been raised as an issue.

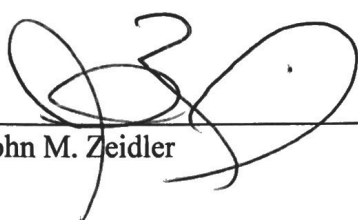
7. I am specifically raising estoppel as a reason to deny the motion for summary judgment. I have included some language and cases below that I believe support my request. I assert that I meet all elements required under the language below as I: (1) have a lack of knowledge of the 2008 Fire Code that our facility was approved under; the IDHS Fire Inspector has that knowledge and duty, and by his silence has implicitly approved our operation. (2) I have relied on the expertise and guidance of the inspectors thru the years to keep our facility in compliance and to offer a safe environment to our customers. Specifically, when we removed the ceiling tiles in 2013, after discussing with the inspector and showing him our new room, we disposed of the many ceiling tiles that we had previously had in the room. We relied on the inspector's assurances and took his approval as fact. Had the inspector at the time informed us of any noncompliance, we would have retained the tiles and reinstalled them. (3) This disposal would never have happened had the inspector raised an objection at the time, or in any of the several subsequent inspections. The cost of the ceiling tiles, the loss of the theme of the room that we had had for 7 years without issue, and the fine relating to this issue, create an undue burden on my business and I ask that this motion to dismiss be denied and the violation be vacated. I further ask that the State waives the penalty and finds us in compliance.

8. Attached are true and correct copies of the documents I reference in this affidavit.

9. I was not notified or aware that I needed to submit my testimony in my response in the form of an affidavit or in any manner other than what I had provided. As soon as I was notified by the ALJ in her proposed Order for the need to file an affidavit I have submitted this affidavit.

I affirm under the penalties of perjury that the foregoing representations of fact are true.

7/1/20  
Date

  
\_\_\_\_\_  
John M. Zeidler

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**IN THE MATTER OF:**

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**CAUSE NO.: DHS-1925-FPASC-025**

**OBJECTION AND MOTION TO RECONSIDER  
ORDER GRANTING SUMMARY JUDGMENT**

Petitioner hereby submits its Objection and Motion to Reconsider Recommended Order Granting Summary Judgment, and in support thereof states as follows:

On June 16, 2020, the Commission submitted its recommended order granting summary judgment against Gattitown's Petition. In the proposed order, ALJ Schuster stated "Petitioner alleged specific facts in his response pleading but failed to use supporting materials contemplated by Indiana Trial Rule 56. If the opposing party fails to meet this burden, then summary judgment may be granted. *Rickels*, 638 N.E.2d at 1282." Order at para. 18. The Order further stated that "Where the opposing party sets forth no specific facts by way of affidavit, alternative documents or filings that would put into issue the otherwise undisputed facts, then the grant of summary judgment is proper. *Id.* at 1283 (Ind. Ct. App. 1994)." Order at para. 19.

Accordingly, it does not appear that the ALJ considered any of the facts and arguments set forth in Petitioner's response to the motion for summary judgment. This is initially improper because Petitioner designated inspection records as evidence in his response. Review of these inspection records show that the inspector reviewed the store on numerous occasions without finding a violation. This evidence alone creates genuine issues of material fact but apparently was not considered.

Moreover, Petitioner was unaware of the requirements of Trial Rule 56 and that he needed to put his statements and testimony into an affidavit. Petitioner hereby remedies that issue by

attaching his affidavit as Exhibit A which is incorporated herein by this reference. Although it is true pro se litigants are held to the same legal standards as attorneys, there is also a history of leniency against pro se litigants against technical requirements. *See Parisie v. J.W. Greer*, 685 F.2d 1016 (7<sup>th</sup> Cir. 1982). This is especially true when there is no argument, objection or showing of prejudice by the other side. *Id.* at 1017.

If considered the facts and testimony submitted raise additional genuine issues of material fact precluding summary judgment. Namely the facts further support the argument that the equitable doctrine of estoppel applies. "Estoppel may be appropriate where the party asserting estoppel has detrimentally relied on the governmental entity's affirmative assertion or on its silence when there was a duty to speak." *Brown County, Indiana v. Boone, et al*, 789 N.E.2d 1, 7 (Ind. Ct. App. 2003), *citing U.S. Outdoor Adver. Co., Inc. v. Ind. Dep't of Transp.*, 714 N.E.2d 1244, 1259 (Ind. Ct. App. 1999). A party asserting the defense of estoppel must establish the following elements:

- (1) Lack of knowledge and of the means of knowledge as to the facts in question;
- (2) Reliance upon the conduct of the party estopped; and
- (3) Action based thereon of such a character as to change his position prejudicially.

*Story Bed & Breakfast, LLP v. Brown County Area Plan Commission*, 819 N.E.2d 55, 67 (Ind. 2004).

The testimony and evidence now fully before the Commission establishes each of these elements and should lead the Commission to deny Respondent's Motion for Summary Judgment.

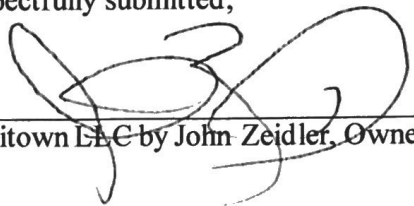
Wherefore, Petitioner respectfully submits that its evidence set forth in its Response of Motion for Summary Judgment and in this Objection to Motion to Reconsider be reviewed and

considered by the ALJ and Respondent's Motion Summary Judgment be denied in its entirety.

Petitioner further requests that the violation and all penalties vacated.

Dated: July 1, 2020

Respectfully submitted,



Gattitown LLC by John Zeidler, Owner