

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

IN RE:)	CAUSE NO.
)	
RYAN FIRE PROTECTION,)	DHS-1811-FPBSC-010
INC.)	
)	

**INITIAL PREHEARING ORDER AND
ORDER SETTING BRIEFING SCHEDULE**

A telephonic Initial Prehearing Conference was held in this matter on August 22, 2018 at 10:00 a.m. (EDT). Present for the prehearing conference were Mark Riffey, Keith Colgan, Justin Fetters, Steve Schipp, and Jake McKanna on behalf of the Petitioner, and Darrell Cross and Daniel Sheposh on behalf of the Respondent. **In accordance with Indiana Code § 4-21.5-3-19(c), the Administrative Law Judge (ALJ) issues this Initial Prehearing Order incorporating such matters as were determined during the prehearing conference.**

During the prehearing conference, the parties indicated that they do not believe informal resolution is likely at this point and the Petitioner requested that the evidence and arguments in this case be submitted through written briefs and documentary evidence. The ALJ approved this form of proceeding. Therefore, the Administrative Law Judge (ALJ) issues this Order Setting Briefing Schedule incorporating such matters as were determined during the prehearing conference.

I. Issue on Appeal

The Petitioner in this matter is appealing an Order issued by the Respondent citing Petitioner for violating the 2014 Indiana Fire Code (IFC), Section 903.3.1.2.1. Therefore, the issue in this appeal is whether the Petitioner violated the 2014 IFC as stated in the Respondent's July 5, 2018 Order. Additionally, if the Petitioner did commit the alleged violation, whether the sanction Respondent seeks to impose (i.e. installation of sprinkler protection above the 3rd floor balconies) is appropriate under the circumstances.

II. Burden and Standard of Proof

As the Respondent is seeking to impose a sanction upon Petitioner for an alleged violation of the 2014 IFC, the Respondent bears the burden of proof, per Ind. Code § 4-21.5-3-14(c); *Peabody Coal Co. v. Ralston*, 578 N.E.2d 751, 754 (Ind. Ct. App. 1991). The Respondent must therefore put forth substantial and reliable evidence showing that the Petitioner committed the violation cited in its Order and the sanction it seeks to impose is appropriate. Ind. Code § 4-21.5-3-27(d).

III. Discovery

The parties may engage in discovery throughout the briefing process. No separate discovery period has been set aside; however, if either party has difficulty obtaining certain information it has requested from the opposing party in a timely manner, the party may request an order from the ALJ compelling the opposing party to comply with the discovery request. The ALJ has statutory authority to issue subpoenas, discovery orders, and protective orders in accordance with the

Indiana Rules of Trial Procedure. Ind. Code § 4-21.5-3-22. Enforcement of those orders is governed by Ind. Code § 4-21.5-6.

IV. Evidence

Per Ind. Code § 4-21.5-3-26(a), the ALJ may exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds. Hearsay evidence may be admitted. However, if it is properly objected to and does not fall within a recognized exception to the hearsay rule, that evidence may not form the sole basis for the ALJ's Non-Final Order.

The ALJ will take official notice of the record of prior decisions by the Fire Prevention and Building Safety Commission (Commission) and all proceedings before the Commission, such as variance applications and meeting minutes.

Any testimonial evidence from an individual witness must be submitted either through a sworn affidavit. Any motions to strike or restrict evidence should be made as separate filings from the parties' briefs.

V. Motions

The parties may file dispositive motions in the form of motions to dismiss and/or motions for summary judgment, with respect to all or some of the issues in this matter, in accordance with Indiana Code § 4-21.5-3-23 and Indiana Trial Rules 12 and 56.

Irrespective of any deadlines set forth in Trial Rules 12 or 56 that might otherwise apply in a court of law during civil proceedings, the parties here shall have **five (5) days** from service to respond to a dispositive motion. Additional briefing will be allowed only by leave of the ALJ.

VI. Briefs

The Respondent has until **September 21, 2018** to file its brief and any supporting evidence. The Petitioner will have **thirty (30) days** from the service of Respondent's brief to file its response and any additional evidence in support of its arguments. If Respondent wishes to file a reply brief in response to any new issues raised in Petitioner's brief, it will have **fifteen (15) days** from the service of Petitioner's response to file its reply. If Respondent raises any new issues in its reply, Petitioner may file a sur reply and will also have **fifteen (15) days** from the service of Respondent's reply to file its sur reply.

Date: August 22, 2018


HON. CHELSEA E. SMITH
Administrative Law Judge
Indiana Department of Homeland Security
302 W. Washington Street
Indiana Government Center South, Rm E208
Indianapolis, IN 46204
Telephone: (317) 234-8917
E-mail: chesmith2@dhs.in.gov

A copy of the foregoing was served by email and U.S. Postal Service upon the following parties and attorneys of record:

Mark Riffey
Ryan Fire Protection, Inc.
9740 E 148th Street
Noblesville, IN 46060
mriffey@ryanfp.com

Darrell Cross
Noblesville Fire Department
Code Enforcement
135 S. 9th Street
Noblesville, IN 46060
dcross@noblesville.in.us

and personally served on the following attorney of record:

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