



STATE OF INDIANA  
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

**FILED:** May 1, 2024

**Ronald Davidhizar,  
Petitioner,**

**v.**

**City of Goshen,  
Respondent**

**Administrative Cause No.: DHS-2311-002835**

Ultimate Authority: Indiana Fire Prevention and Building Safety Commission

**NON-FINAL ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF RESPONDENT**

The Administrative Law Judge (ALJ) Vanessa Voigt Gould, having reviewed the pleadings, evidence, and arguments presented on summary judgment in this matter, now issues this Non-Final Order on Petitioner’s request for administrative review of the revocation of remodel permit #20230030-REN and the issuance of a Stop Work Order by the City of Goshen. This decision is favorable to the Respondent. Any aggrieved party may appeal this decision. Appeal instructions are included on the last page of this document.

**Jurisdiction**

The ALJ assigned to this matter by the Director of the Office of Administrative Law Proceedings (OALP), *see* Ind. Code § 4-15-10.5-13, has jurisdiction over this case pursuant to Indiana Code § 4-15-10.5-12, which gives OALP jurisdiction over agency administrative actions subject to the Indiana Administrative Orders and Procedures Act at Indiana Code Art. 4-21.5 (AOPA) or “any other statute that requires or allows the office to take action.” The OALP has jurisdiction over this case because this case is governed by AOPA.

**Issue**

The issue in this case is whether the revocation of remodel permit #20230030-REN and issuance of a Stop Work Order by the Respondent related to a residential structure located at 214 E. Clinton Street, Goshen, Indiana was proper.

**Procedural History**

1. The Petitioner’s request for administrative review in this matter, naming the City of Goshen as Respondent, was received from the Indiana Fire Prevention and Building Safety Commission and filed with OALP on November 8, 2023.

2. The Parties filed Stipulated Facts on November 30, 2023, that incorporated by reference the following documents:

- a. Exhibit 2 to Respondent's Witness and Exhibit List, Order of the City of Goshen Building Commissioner dated November 16, 2022 (8 pages);
- b. Exhibit 4 to Respondent's Witness and Exhibit List, Order of the City of Goshen Board of Public Works and Safety issued on January 26, 2022 (4 pages);
- c. Exhibit 5 to Respondent's Witness and Exhibit List, Order of the Elkhart Circuit Court under Cause No. 20C01-2205-PL-93 dated March 3, 2023, denying Petitioner's Complaint for Judicial Review and affirming the November 16, 2022 Order of the City of Goshen Building Commissioner (11 pages);
- d. Exhibit 6 to Respondent's Witness and Exhibit List, Order of the Elkhart Circuit Court under Cause No. 20C01-2205-PL-93 dated November 9, 2023, denying Petitioner's Motion to Correct Error and affirming the Court's March 3, 2023 Order in its entirety (5 pages);
- e. Petition for Administrative Review filed in this matter and the documents included as Exhibits thereto (11 pages); and
- f. Exhibit to the Stipulated Facts, Order of the City of Goshen Board of Public Works and Safety regarding the property located at 214 E. Clinton Street issued on May 6, 2022 (2 pages).

3. On January 15, 2024, the Petitioner filed a Motion for Summary Judgment. That same day the Respondent filed a Memorandum in Support of the City of Goshen's Board of Building Appeals Affirmation of Respondent's Revocation of Petitioner's Remodel Permit.

4. The Parties filed responsive briefs on February 5, 2024.

5. Petitioner sought leave to amend its Brief in Support of the Motion for Summary Judgment on February 6, 2024. That request was granted by the ALJ the same day.

6. On March 18, 2024, the Parties submitted Proposed Findings of Fact and Conclusions of Law and the pleadings on this matter closed.

### **Findings of Fact**

1. Petitioner owns property located at 214 E. Clinton Street, Goshen, Indiana (Property) that contains a structure consisting of two apartments (Structure). Stipulation of Facts.

2. On May 15, 2021, a fire occurred on the Property that affected the Structure. Stipulation of Facts.

3. On November 16, 2021, the City of Goshen Building Commissioner issued an Order directing the Petitioner to demolish and remove the Structure on the Property because the fire had rendered the Structure unsafe (Building Commissioner's Order). Stipulation of Facts and Exhibit 2 to Respondent's Witness and Exhibit List.

4. The Structure was unsafe because following the fire it was vacant, in an impaired structural condition that was dangerous to a person or property, and had become a public health hazard. Stipulation of Facts and Exhibit 2 to Respondent's Witness and Exhibit List.

5. The Building Commissioner's Order was reviewed by the Goshen Board of Public Works and Safety (GBPWS) during hearings that took place on December 6, 2021 and January 24, 2022. Stipulation of Facts.

6. Following those hearings, on January 26, 2022, the GBPWS issued findings affirming the Building Commissioner's Order and directed that demolition of the Structure was to occur by March 31, 2022, unless Petitioner contested the GBPWS findings. Stipulation of Facts and Exhibit 4 to Respondent's Witness and Exhibit List.

7. Petitioner contested the GBPWS findings and further hearings took place on April 18, 2022 and May 2, 2022, which resulted in the GBPWS again affirming the Building Commissioner's Order and directing that the Structure be demolished by February 7, 2022. Stipulation of Facts and Exhibit thereto.

8. Petitioner then sought judicial review of the Building Commissioner's Order in the Elkhart Circuit Court. Stipulation of Facts.

9. On January 9, 2023, while the judicial review was pending, Petitioner applied for a remodel permit to the Goshen Building Department. The Goshen Building Department approved the application and issued remodel permit #20230030-REN (Permit) that same day. Stipulation of Facts and Exhibits to Petition for Review.

10. The Elkhart Circuit Court affirmed the Building Commissioner's Order via written decision on March 3, 2023. In response, Petitioner filed a Motion to Correct Error asking the Court to reconsider its decision. That Motion to Correct Error was ultimately denied and the Court's decision was affirmed in its entirety. Stipulation of Facts and Exhibits 5 and 6 to Respondent's Witness and Exhibit List.

11. On April 12, 2023, the City of Goshen Building Commissioner notified Petitioner that the Permit had been revoked as it was issued in error due to the pending Demolition Order and

that a Stop Work Order had been placed on the Property. Stipulation of Facts and Exhibits to Petition for Review.

12. On July 31, 2023, Petitioner filed an Application for Appeal regarding the revocation of the Permit and issuance of the Stop Work Order before the City of Goshen Board of Building Appeals (GBBA). Stipulation of Facts and Exhibits to Petition for Review.

13. Following a hearing before the GBBA, on October 4, 2023, the GBBA issued Findings and an Order affirming the revocation of the Permit and the issuance of the Stop Work Order. Stipulation of Facts and Exhibits to Petition for Review.

14. On October 30, 2023, Petitioner sought administrative review of the revocation of the Permit and the issuance of the Stop Work Order through the Indiana Fire Prevention and Building Safety Commission. Stipulation of Facts that was then forwarded to OALP.

### **Conclusions of Law**

1. Pursuant to Ind. Code § 22-13-2-1, “state agencies and political subdivisions may exercise their statutory powers to regulate buildings, structures, and other property.” Ind. Code § 22-13-2-1.

2. The Indiana Fire Prevention and Building Safety Commission is responsible for reviewing orders that “are issued by a political subdivision; and concern a Class 2 structure; if a person aggrieved by the order petitions for review under IC 4-21.5-3-7 within thirty (30) days after the political subdivision has issued the order.” Ind. Code § 22-13-2-7

3. A "Class 2 structure" means “a townhouse or a building or structure that is intended to contain or contains only one (1) dwelling unit or two (2) dwelling units unless any part of the building or structure is regularly used as a Class 1 structure.” Ind. Code § 22-12-1-5 (a).

4. Here, the Petitioner filed a timely petition for administrative review of the revocation of remodel permit #20230030-REN and Stop Work Order issued by the City of Goshen - a political subdivision – concerning the residential structure located on the Property which is composed of two apartments or dwelling units – a class 2 structure.

5. Administrative reviews conducted pursuant to Ind. Code § 22-13-2-7 are governed by AOPA. See Ind. Code § 4-21.5-3-7.

6. The ALJ must apply a de novo standard of review to this proceeding when determining the facts at issue. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100 (Ind. 1993); see also Ind. Code § 4-21.-5-3-14.

7. Findings of fact made by the ALJ “must be based exclusively upon the evidence of record in the proceeding and on matters officially noticed in that proceeding” and be “based upon the kind of evidence that is substantial and reliable.” Ind. Code § 4-21.5-3-27; see also *Huffman v. Office of Env'tl. Adjud.*, 811 N.E.2d 806, 809 (Ind. 2004)

8. At any time after the ALJ is assigned to the case, a party may move for summary judgment in that party's favor. Ind. Code § 4-21.5-23. The ALJ shall consider the summary judgment as a court would consider summary judgment under Trial Rule 56 of the Indiana Rules of Trial Procedure. Id.

9. “When any party has moved for summary judgment, the court may grant summary judgment for any other party upon the issues raised by the motion although no motion for summary judgment is filed by such party.” Ind. R. Civ. P. 56.

10. A motion for summary judgment may be granted if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Ind. Trial Rule 56. “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.” *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (internal citations omitted). “Summary judgment is not an appropriate vehicle for the resolution of questions of credibility or weight of the evidence, or conflicting inferences which may be drawn from undisputed facts.” *Bell v. Northside Fin. Corp.*, 452 N.E.2d 951, 953 (Ind. 1983).

11. The moving party has the initial burden of making a prima facie showing that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. *Choung v. Iemma*, 708 N.E.2d 7, 11 (Ind. Ct. App. 1999). If the moving party meets its initial burden, the burden shifts to the responding party to identify facts that create a genuine issue of material fact. Id.

12. Here, the Parties concur on the material facts, as set forth above, but differ on the legal import or effect of those facts upon the ultimate issue in this matter – whether the revocation of remodel permit #20230030-REN and issuance of the Stop Work Order was proper.

13. Goshen City Code 6.1.1.22 states that the “Building Commissioner may, in writing, suspend or revoke a permit issued under the provisions of this code article whenever the permit is issued in error on the basis of incorrect information supplied or if it is issued in violation of any ordinance, regulation, or any provision of this code article.”

14. Under Goshen City Code § 6.3.1.12(a), the Building Commissioner may issue an order requiring demolition and removal of an unsafe building if “the general condition of the building

warrants removal; or the building continues to require reinspection and additional abatement action after an initial abatement action was taken pursuant to notice and an order.”

15. Additionally, Goshen City Code § 6.3.1.12(b) provides that an order of the Building Commissioner “supercedes [sic] any permit relating to the building or land use, whether that permit is obtained before or after the order is issued.”

16. The Building Commissioner’s Order for demolition of the Structure was issued because the Structure is unsafe. The Permit, in allowing the renovation or remodeling of a vacant and unsafe structure that is a danger to person or property, is structurally unsound, and a public health hazard, was contrary to the Building Commissioner’s Order.

17. Further, pursuant to Goshen City Code § 6.3.1.12(b) the Building Commissioner’s Order supersedes<sup>1</sup> the Permit.

18. In interpreting an ordinance, the primary goal is to “ascertain and give effect to the intent of the ... drafters.” *Brant v. City of Indianapolis*, 975 N.E.2d 376, 379 (Ind. Ct. App. 2012), quoting *City of Indianapolis v. Campbell*, 792 N.E.2d 620, 624 (Ind. Ct. App. 2003).

19. Each word in an ordinance should “be given [its] plain, ordinary, and usual meaning, unless a contrary purpose is shown by the ... ordinance itself.” *Brant*, 975 N.E.2d at 379-80, quoting *Ragucci v. Metro. Dev. Comm’n of Marion Cnty.*, 702 N.E.2d 677, 681 (Ind. 1998).

20. Merriam-Webster’s Dictionary defines “supersede” as “1) to cause to be set aside or to force out of use as inferior, 2) to take the place or position of, or 3) to displace in favor of another.” Black’s Law Dictionary defines “supersede” similarly as “[t]o annul, make void, or repeal by taking the place of.”

21. Application of the plain, ordinary, and usual meaning of “supersede” as used in Goshen City Code § 6.3.1.12(b) in this instance is dispositive. The Building Commissioner’s Order in this instance voids, sets aside, and/or displaces remodel permit #20230030-REN. Therefore, the Permit was issued in error in violation of Goshen City Code § 6.3.1.12(a) and (b). Accordingly, the revocation of remodel permit #20230030-REN was proper under Goshen City Code § 6.1.1.22.

22. As to the Stop Work Order, Goshen City Code 6.1.1.15 states that “[w]henver any work is being done contrary to the provisions of this Code article the Building Commissioner may order the work stopped by notice in writing served on any persons engaged in doing or causing

---

<sup>1</sup> It is of note that the ordinance uses the spelling “supercede” rather than “supersede”. However, as explained in Merriam-Webster’s Dictionary “*Supercede* has occurred as a spelling variant of *supersede* since the 17th century, and it is common in current published writing.” [Merriam-Webster.com](https://www.merriam-webster.com/dictionary/supercede) Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/supercede>. Accessed 25 Apr. 2024.

such work to be done. Such persons shall, without delay, stop such work until authorized by the Building Commissioner to proceed.”

23. Goshen City Code 6.1.1.7 requires that a “permit shall be obtained before a person begins to construct, alter, remodel, rehabilitate, or add to any building or structure...”


24. Therefore, any work done on the structure following the revocation of the permit would be contrary to the provisions of Goshen City Code 6.1 and the issuance of the Stop Work Order following the revocation of the Permit was proper pursuant to Goshen City Code 6.1.1.15.

25. For all of the foregoing reasons, there are no material facts in dispute and the Respondent is entitled to judgment as a matter of law.

### **Decision and Order**

Summary Judgment is hereby entered in favor of the Respondent. As such, the revocation of remodel permit #20230030-REN and issuance of a Stop Work Order related to the residential structure located at 214 E. Clinton Street, Goshen, Indiana by the Respondent was proper and is hereby AFFIRMED.

So Ordered: May 1, 2024



---

Hon. Vanessa Voigt Gould  
Administrative Law Judge  
Indiana Office of Administrative Law Proceedings  
100 North Senate Ave., Room N802  
Indianapolis, IN 46204

## APPEAL RIGHTS

This order is not final. This matter is now before the ultimate authority, the Fire Prevention and Building Safety Commission, who has the final authority over this matter and shall review this non-final order then issue a final order to all parties. If you wish to raise an objection to this order, you must file an objection, in writing, within fifteen (15) days after service of this order. If served only by mail, however, three (3) days will be added to this period to object. See Ind. Code § 4-21.5-3-2 for how to compute the period to object. Your objection must identify the basis of the objection with reasonable particularity and be filed with the ultimate authority by one of the following methods:

Email at: [buildingcommission@dhs.in.gov](mailto:buildingcommission@dhs.in.gov)

Personal service or mail to:

Fire Prevention and Building Safety Commission

Indiana Department of Homeland Security

302 W. Washington Street, Room E-208

Indianapolis, IN 46204.

This order will become final if you do not file an objection in accordance with these requirements and you waive your right to judicial review. See Ind. Code § 4-21.5-5-4(b). If a timely and appropriate objection is filed, the ultimate authority will review the matter and issue a final order or remand this matter back to the Office of Administrative Law Proceedings for additional proceedings.

### Distribution List:

Petitioner: Ronald Davidhizar served by email to counsel John William Davis at [jwdavis@davisroose.com](mailto:jwdavis@davisroose.com)

Respondent: City of Goshen served by email to counsel Donald Shuler at [drs@goshenlaw.net](mailto:drs@goshenlaw.net)

Interested Party: Department of Homeland Security served by email at [legal@dhs.in.gov](mailto:legal@dhs.in.gov) and [tyburgaurer@dhs.in.gov](mailto:tyburgaurer@dhs.in.gov).

Ultimate Authority: Indiana Fire Prevention and Building Safety Commission served by email at [buildingcommission@dhs.in.gov](mailto:buildingcommission@dhs.in.gov)