

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

IN RE:)	CAUSE NO.
)	
POSEY COUNTY JAIL)	DHS-1742-FPBSC-025
)	
)	

NON-FINAL ORDER OF DISMISSAL

On December 8, 2017, the Petitioner in this matter submitted the attached request for dismissal, which stated that it had obtained a variance resolving all of the issues in the appeal. The Respondent submitted the attached objection and stated that the all of the issues in the appeal were not yet resolved but may be fully resolved following the Commission meeting on January 3, 2018. Accordingly, the ALJ set this matter for a status conference on January 4, 2018. Following the Commission meeting, the Respondent submitted the attached request, which withdrew its objections to Petitioner's request for dismissal.

Accordingly, the Administrative Law Judge now enters this Non-Final Order of Dismissal. The ultimate authority in this matter is the Fire Prevention and Building Safety Commission. Indiana Code § 4-21.5-3-29(d) requires any party seeking to preserve an objection to this order for judicial review to file a written objection that:

1. identifies the basis of the objection with reasonable particularity; and
2. is filed with the Commission within fifteen days (or any longer period set by statute) after this order is served.

In the absence of an objection from a party or notice from the Commission of its intent to review any issue related to this order, the Commission shall affirm this order in accordance with Ind. Code § 4-21.5-3-29(c). **This order will be considered by the Commission on February 8, 2018 at 9:00 a.m. (EST), in Conference Center Room B, Indiana Government Center South, 302 West Washington Street, Indianapolis, IN 46204.**

Date: January 4, 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 U.S. Postal Service upon the following parties and attorneys of record:

Carrie Ballinger
Representative for the Petitioner
RTM Consultants, Inc.
6640 Parkdale Place, Suite J
Indianapolis, IN 46254
ballinger@rtmconsultants.com

and personally served on the following attorney of record:

Justin K. Guedel
Attorney for the Respondent
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

Smith, Chelsea

From: Carrie Ballinger <ballinger@rtmconsultants.com>
Sent: Friday, December 08, 2017 10:00 AM
To: Smith, Chelsea
Cc: Guedel, Justin K
Subject: Posey County Jail Appeal (DHS-1742-FPBSC-025)

Importance: High

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

We have conference scheduled today at 11am. We would like to request dismissal of this appeal. A variance for the issue was ruled No Variance Required by the Commission.

I am not in the office today as I had planned as I've been in the hospital. If you need to reach me, please call my cell phone at 317-643-1292.

Thank you,

Carrie Ballinger
RTM Consultants, Inc.
6640 Parkdale Place, Suite J
Indianapolis, IN 46254

Tel. (317) 329-7700 x110
Fax. (317) 329-8411

A Koffel Company

Smith, Chelsea

From: Guedel, Justin K
Sent: Friday, December 08, 2017 10:27 AM
To: Carrie Ballinger; Smith, Chelsea
Subject: RE: Posey County Jail Appeal (DHS-1742-FPBSC-025)

At this time the Department would object to a dismissal of this appeal. No variance was granted and the violation still stands. However, the Department would request that this hearing be continued for a month as the Commission is in the process of addressing this issue by way of a non-rule policy that may resolve this case. If the non-rule policy addresses the Department's concerns that "day rooms" are not common areas or addresses the issue that occupant notifications do not have to be **installed** as opposed to not having to be **activated** where private mode signaling is installed in accordance with NFPA 72 as approved by the fire code official, then the Department would believe dismissal is appropriate. But at this time the intent of the Commission was not clear to the Department and for this reason the Department would request a continuance until the Commission clarifies its intent by way of a non-rule policy.

Justin K. Guedel
Staff Attorney
Indiana Department of Homeland Security
302 W. Washington Street, Rm. E208
Indianapolis, IN 46204
(317) 234-9515
JGuedel@dhs.IN.gov

From: Carrie Ballinger [mailto:ballinger@rtmconsultants.com]
Sent: Friday, December 08, 2017 10:00 AM
To: Smith, Chelsea <CheSmith2@dhs.IN.gov>
Cc: Guedel, Justin K <JGuedel@dhs.IN.gov>
Subject: Posey County Jail Appeal (DHS-1742-FPBSC-025)
Importance: High

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Thank you,

Carrie Ballinger
RTM Consultants, Inc.
6640 Parkdale Place, Suite J
Indianapolis, IN 46254

Tel. (317) 329-7700 x110

Smith, Chelsea

From: Guedel, Justin K
Sent: Thursday, January 04, 2018 9:08 AM
To: Smith, Chelsea; Carrie Ballinger
Subject: RE: In re Posey County Jail (Cause No. DHS-1742-FPASC-025)

Follow Up Flag: Follow up
Flag Status: Flagged

Judge Smith:

The Department no longer objects to dismissal of this case as the Commission will be adopting a non-rule policy addressing the Department's concerns and clarifying their reasoning behind last month's ruling that no variance was required for the violation in question. For these reasons, the Department believes this appeal is moot and should be dismissed.

Justin K. Guedel
Staff Attorney
Indiana Department of Homeland Security
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(317) 234-9515
JGuedel@dhs.IN.gov

From: Smith, Chelsea
Sent: Thursday, December 28, 2017 1:02 PM
To: Carrie Ballinger <ballinger@rtmconsultants.com>; Guedel, Justin K <JGuedel@dhs.IN.gov>
Subject: In re Posey County Jail (Cause No. DHS-1742-FPASC-025)
Importance: High

Good afternoon,

While reviewing this case file, I noticed that when I issued the order resetting the December 8th status conference, I forgot to actually change the date. An amended version is attached for your records and hard copies are in the mail. The next status conference will be on **January 4, 2018 at 11:00 a.m. (EST)**.

Best regards,

Chelsea E. Smith | Administrative Law Judge
Indiana Department of Homeland Security
302 West Washington Street, Room E-208
Indianapolis, IN 46204
Tel: (317) 234-8917
Email: Chesmith2@dhs.in.gov
Web: www.in.gov/dhs