

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

IN RE:) **ADMINISTRATIVE CAUSE NO.**
)
 STEWART FURNITURE) **14-16**
 BUILDING)
)

NOTICE OF SECOND NON-FINAL ORDER

On February 19, 2015, the parties submitted an Agreed Order to the ALJ. The ALJ found that the Agreed Order was consistent with Indiana law and fully addressed the merits of the issues underlying this administrative appeal and therefore, on February 20, 2015, entered the Agreed Order as the Non-Final Order for this matter. The Agreed Order was set for consideration by the Fire Prevention and Building Safety Commission as the ultimate authority.

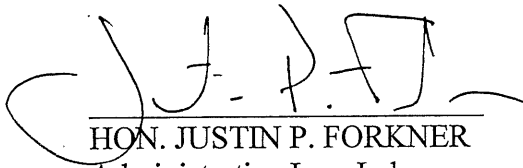
Then on August 14, 2015, the Respondent filed a Motion to Submit Amended Order and attached an Amended Agreed Order. Just as with the Agreed Order, the ALJ finds that the Amended Agreed Order is consistent with Indiana law and fully addresses the merits of the issues underlying this administrative appeal.

Accordingly, the Administrative Law Judge now enters this Amended Agreed Order as the Non-Final Order for this matter. Its affirmation as a final order will bind both parties to its terms. The ultimate authority in this matter is the Indiana 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 Indiana Code § 4-21.5-3-29(c). **This order will be considered by the Commission on September 1, 2015, at 9:00 a.m. (EST), in Conference Center Room B, Indiana Government Center South, 302 West Washington Street, Indianapolis, IN 46204.**

Date: August 14, 2015

A handwritten signature in black ink, appearing to read "J. P. Forkner", written over a horizontal line.

HON. JUSTIN P. FORKNER
Administrative Law Judge
Indiana Department of Homeland Security
302 W. Washington Street
Indiana Government Center South, Rm W246
Indianapolis, Indiana 46204
Telephone: (317) 234-8917
Fax: (317) 232-0146
E-mail: jforkner@dhs.in.gov

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

Hon. Daniel Watson; Mayor, City of Dunkirk
131 S. Main Street
Dunkirk, IN 47336

and personally served on the following attorney of record:

Pamela M. Walters, Esq.; Staff Attorney
Indiana Department of Homeland Security
302 W. Washington Street
Indiana Government Center South, Room W246
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AMENDED AGREED ORDER

Respondent, by counsel, and Petitioner, file the following Findings of Fact and Agreed Order. The parties agree to the following:

I. FINDINGS OF STIPULATED FACTS

1. The Petitioner is the City of Dunkirk.
2. The Respondent is the Indiana Department of Homeland Security ("IDHS"), a department of the State of Indiana established under Indiana Code ("IC") 10-19-2-1.
3. Petitioner owns and has control over a property located at 304 S. Main Street, Dunkirk, Indiana ("Stewart Furniture Building").
4. Petitioner performed structural work to the Stewart Furniture Building during the 2014 calendar year.
5. 675 IAC 12-6-3(a) states that no construction shall be done on a Class 1 structure until a design release has been issued by the division unless the construction is of a type specifically exempted from the design release requirements by 675 IAC 12-6-4.


6. Work performed on the Stewart Furniture Building consisted of work that would qualify for a design release under 675 IAC 12-63(a).
7. Petitioner has not filed any plans with IDHS.
8. On August 27, 2014, IDHS inspector, Kevin Whitesel visited the Stewart Furniture Building.
9. As a result of his inspection, Mr. Whitesel issued an order dated August 27, 2014 which stated that Petitioner had violated 675 IAC 12-6-3(a) by not filing plans prior to performing construction.
10. In response to the order issued by Mr. Whitesel, Daniel Watson, Mayor of Dunkirk filed a Petition for Review on behalf of the City of Dunkirk.
11. Ind. Code § 22-12-1-4 defines a "Class 1 structure" as a building or structure that is intended or otherwise used in any part by the public, three (3) or more tenants, one (1) or more persons who act as the employees of another.
12. The Stewart Furniture Building is currently closed to public access, is not occupied by tenants, and is not used by any employees of the Petitioner.
13. Petitioner has secured the Stewart Furniture Building to prevent unauthorized individuals from entering the building until such time as he has filed plans and received a construction design release.

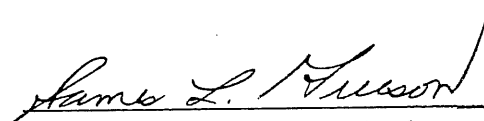
II. AGREED ORDER

1. This Agreed Order shall be effective upon affirmation of the non-final order by the Fire Prevention and Building Safety Commission.

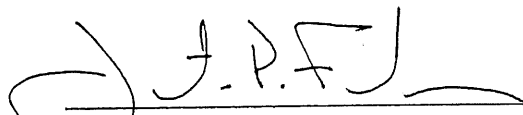
2. Petitioner agrees to secure the Stewart Furniture Building to prevent the public, Petitioner's employees, tenants and unauthorized individuals from using the Stewart Furniture Building.
3. If the Petitioner intends to allow or allows members of the public, tenants, unauthorized individuals or the Petitioner's employees to use any part of the Stewart Furniture Building, Petitioner agrees to make application for a design release on any completed construction and all future construction with IDHS's Division of Fire and Building Safety.
4. Respondent will revoke the August 27, 2014 order.
5. In the event that any of the terms and conditions contained herein are violated by the Petitioner, the Respondent may take any action it deems appropriate up to and including issuing an emergency order to close the building.
6. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.
7. This Agreed Order does not release the Petitioner from the obligation to file a construction design release for the Stewart Furniture Building should the building be classified as a Class 1 structure.
8. This Agreed Order does not relieve Petitioner of its obligation to comply with the requirements of any applicable Federal or State law or regulation.
9. Nothing in this Agreed Order shall prevent or limit the IDHS's right to obtain penalties or injunctive relief under any applicable Federal or State law or regulation.

10. This Agreed Order will remain in effect until the Petitioner files for a construction design release for the construction which has already been completed or the Petitioner violates the terms of this Agreed Order.


Mayor Daniel Watson


Indiana Department of Homeland Security

Date: 8-14-15


Justin P. Forkner
Administrative Law Judge
Indiana Department of Homeland Security

Distribution:

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