

STATE OF INDIANA
BEFORE THE FIRE PREVENTION AND
BUILDING SAFETY COMMISSION

IN RE:)	CAUSE NO.
)	
STRAND THEATER)	DHS-1716-FPBSC-009
)	
)	
)	

NON-FINAL ORDER OF DISMISSAL

On August 10, 2017, the Respondent submitted the attached request for dismissal. The request included an inspection order issued on August 10, 2017, which states that the Petitioner's facility is in compliance. As the Respondent has found Petitioner's facility to be in compliance, the issues in this appeal are now resolved.

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 September 7, 2017 at 9:00 a.m. (EDT), in Conference Center Room B, Indiana Government Center South, 302 West Washington Street, Indianapolis, IN 46204.**

Date: August 11, 2017



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:

J. Lee McNeely
McNEELY STEPHENSON
2150 Intelliplex Drive, Ste 100
Shelbyville, IN 46176

and personally served on the following attorney of record:

Justin Guedel
Indiana Department of Homeland Security
302 W. Washington Street
Indiana Government Center South, Room E208
Indianapolis, IN 46204

Smith, Chelsea

From: Guedel, Justin K
Sent: Thursday, August 10, 2017 12:34 PM
To: J.L.McNeely; Smith, Chelsea
Subject: RE: Strand Theatre
Attachments: idhs_fire_code_insp_report.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Judge Smith and Mr. McNeely:

Attached is a copy of the complied order issued today. As this appeal is now moot, the Department would request that these proceedings be dismissed.

Respectfully,
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

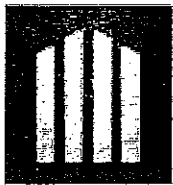
From: J.L.McNeely [mailto:J.L.McNeely@msth.com]
Sent: Wednesday, August 09, 2017 8:45 AM
To: Guedel, Justin K <JGuedel@dhs.IN.gov>
Cc: Smith, Chelsea <CheSmith2@dhs.IN.gov>
Subject: RE: Strand Theatre

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

Justin,

Attached is an additional Affidavit from John F. Werbe, Jr.

Thank you.
Lee



McNeely
Stephenson

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J. LEE McNEELY
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Shelbyville, IN 46176

From: J.L.McNeely
Sent: Tuesday, August 08, 2017 5:04 PM
To: 'Guedel, Justin K' <JGuedel@dhs.IN.gov>
Cc: 'chesmith2@dhs.in.gov' <chesmith2@dhs.in.gov>
Subject: RE: Strand Theatre

Justin:

Thanks for your response. It seems like you are moving the goal post on me, but I will give it another try.

Here is a supplemental Affidavit from the electrician, Steve Dennis, along with a supplemental Affidavit from David Finkel describing the installation of the HVAC system.

Assuming these affidavits are sufficient, it would be my hope that you would be agreeable to dismissing this matter tomorrow during our status conference with the Judge.

I have a matter in Terre Haute tomorrow which begins at 3:00 p.m. Is there any chance that you would agree to advancing this status conference telephone call to 2:30 p.m.? If so, would you please contact the judge and see if this is agreement with her.

Thanks.
Lee

From: J.L.McNeely
Sent: Friday, August 04, 2017 3:09 PM
To: 'Guedel, Justin K' <JGuedel@dhs.IN.gov>
Cc: 'chesmith2@dhs.in.gov' <chesmith2@dhs.in.gov>
Subject: RE: Strand Theatre

Justin:

Thank you for your email. I was in the process of preparing a submission to the Court when I received it, and perhaps the simplest way to handle this matter is to forward the documents to you as attachments. In anticipation of the status conference on Wednesday, I have copied the Administrative Law Judge on this email exchange.

I attach an Affidavit from the current Mayor of Shelbyville who was the Director of Planning and Building for the City of Shelbyville at the time the renovations were made.

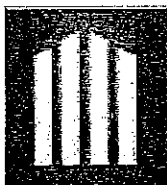
I also attach an Affidavit from David Finkel, the founder of the Strand Theater for the Performing Arts.

In addition, I have attached Affidavits from the electrician, the installer of the HVAC system, the owner of the company that installed the HVAC system, and the HVAC technician who advises the Strand Theater on these matters.

After you have had an opportunity to review these documents, please do not hesitate to call me if you have any further questions or concerns. It is my hope that this documentation will persuade your department to withdrawal its requests for CVRs on the two renovations, so that this matter can be resolved.

Thank you for your attention to this matter.

Lee



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Shelbyville, IN 46176

From: Guedel, Justin K [<mailto:JGuedel@dhs.IN.gov>]

Sent: Friday, August 04, 2017 2:15 PM

To: J.L.McNeely <J.L.McNeely@msth.com>

Subject: Strand Theatre

Mr. McNeely:

I wanted to follow up with you, prior to our hearing Wednesday, to see if you were able to obtain the documentation showing that your client fell within the exception to the design release requirements? Look forward to hearing back from you.

Thanks,
Justin K. Guedel
Staff Attorney
Indiana Department of Homeland Security

302 W. Washington Street, Rm. E208
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(317) 234-9515
JGuedel@dhs.IN.gov

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**FIRE AND BUILDING
CODE ENFORCEMENT
INSPECTION REPORT
ORDER**

DIVISION OF FIRE AND BUILDING SAFETY
INDIANA DEPARTMENT OF HOMELAND SECURITY
302 WEST WASHINGTON STREET, RM E241
INDIANAPOLIS, IN 46204
TELEPHONE: 317-232-2222
WEB ADDRESS: WWW.IN.GOV/DHS

Identification Number BU27401	Name of the facility THE STRAND THEATER	County SHELBY
Address of Property 251 S HARRISON ST SHELBYVILLE 47176	Name of the Contact DAVID FINKEL	Telephone Number (317) 402-2521
Email dfinkel251@gmail.com		Inspection Date 08/10/2017
Inspection Category BUSINESS/MANUFACTURING	Inspection Type REINSPECTION	Inspection Status: COMPLIED
Name of the inspector WALTER KNAEPPLE		Phone: 3176953665
Email: wknaepple@dhs.in.gov		

Facility Id BU27401	Received By Name	Signature and Date
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APPEAL RIGHTS

Please be advised that if you desire administrative review of this Order and **this Order was delivered by hand**, you must file a written petition for review with the Fire Prevention and Building Safety Commission at 302 West Washington Street, Rm. W246, Indianapolis, IN 46204, identifying the violations for which you seek review no later than 15 calendar days from the hand delivery date of this Order unless such date is a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours, in which case the deadline would be the first calendar day thereafter that is not a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours. If you do so, your petition for review will be granted and an administrative proceeding will be conducted by an administrative law judge appointed by the Fire Prevention and Building Safety Commission. If you do not file a petition for review, this Order will be **FINAL** and you **MUST** comply with its requirements.

Please be advised that if you desire administrative review of **this Order and this Order was delivered by first class U.S. mail**, you must file a written petition for review with the Fire Prevention and Building Safety Commission at 302 West Washington Street, Rm. W246, Indianapolis, IN 46204, identifying the violations for which you seek review no later than 18 calendar days from the mailing date of this Order unless such date is a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours, in which case the deadline would be the first calendar day thereafter that is not a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours. If you do so, your petition for review will be granted and an administrative proceeding will be conducted by an administrative law judge appointed by the Fire Prevention and Building Safety Commission. If you do not file a petition for review, this Order will be **FINAL** and you **MUST** comply with its requirements.

Please be further advised that you may request an opportunity to informally discuss this Order prior to filing a petition for review. Such informal discussion, or a request therefor, does not extend the deadline for filing a petition for review and, therefore, any request for an informal discussion should be made promptly, preferably by telephone, upon receipt of this Order.