

STATE OF INDIANA
BEFORE THE FIRE PREVENTION AND
BUILDING SAFETY COMMISSION

IN RE:)
)
BUILD IT BROTHERS)
CONSTRUCTION, LLC)
)

**RESPONSE TO PETITION FOR ADMINISTRATIVE REVIEW
AND PETITION FOR STAY**

COMES NOW the Respondent, the Miami County Building and Zoning Department, by counsel, and for its Response to the Petition for Administrative Review and Petition for Stay (“Petition”) filed by the Petitioner, Build It Brothers Construction, LLC, alleges and states as follows:

1. The Respondent, Miami County Building and Zoning Department (“Building Department”), is a duly authorized building department established pursuant to I.C. § 36-7-8-2 and Miami County Ordinance 1-2012 (“Building Department Ordinance”).

2. Pursuant to I.C. § 22-13-2-3 and 675 IAC 12-10-4, a political subdivision may incorporate by reference building rules of the Indiana Fire Prevention and Building Safety Commission in local building codes established by ordinance which shall be construed to include all amendments as of the date that the reference is written and any later amendments to that provision.

3. On February 14, 2005, the Board of Commissioners of Miami County, Indiana, passed and adopted Miami County Ordinance 2-14-05, the Miami County Building Code (“Building Code Ordinance”), pursuant to I.C. § 36-7-8-3, which adopted the rules of the Indiana Fire Prevention and Building Safety Commission set out in various Articles of Title 675 of the Indiana Administrative Code, and any later amendments thereto, including but not limited to Article 13 – Building Codes. A copy of the Building Code Ordinance is attached hereto as Exhibit A and incorporated by reference.

4. The Building Code Ordinance was approved by the Indiana Fire Prevention and Building Safety Commission on March 1, 2005.

5. Pursuant to I.C. § 36-7-2-9, Miami County, Indiana, must require compliance with the code of building laws adopted in the rules of the Indiana Fire Prevention and Building Safety Commission.

6. Pursuant to I.C. § 36-7-2-9.5, and Section 6 of the Building Code Ordinance, the Building Commissioner has authority to initiate any legal proceedings necessary to enforce the Building Code Ordinance or to restrain individuals or entities from violating the Building Code Ordinance.

7. The Petitioner, Build It Brothers Construction, LLC (“Contractor”), is an Indiana limited liability company with a principal place of business located at 11886 S 700 W, Amboy, IN, 46911, of which Bradey Evans (“Evans”) is a Member.

8. On April 1, 2026, Evans, on behalf of Contractor, applied for a Residential Building Permit to construct an addition of a new bedroom (“Addition”) on the residence located at 4837 S 450 E, Peru, Indiana 46970 (“Property”), which is owned by Theodore W Ames (“Ames”) and Kelsie L. Morgan (“Morgan”) (collectively, “Property Owner”). A copy of the Residential/Accessory Building Permit Application is attached hereto as Exhibit B and incorporated by reference

9. The Addition is considered a Class 2 structure pursuant to I.C. § 22-12-1-5.

10. On April 30, 2026, the footer and meter base for the Addition was inspected and approved by the Building Department’s inspector, Kenny Burton (“Burton”).

11. On June 2, 2026, the foundation for the Addition was inspected and approved by Burton.

12. On July 28, 2026, Burton inspected the Addition and additional work that had been performed and noted that certain deficiencies existed. A copy of Burton’s notes from the July 28, 2026, inspection are attached hereto as Exhibit C and incorporated by reference.

13. On July 29, 2026, the Property Owner had an independent inspection on the Addition conducted by TC Homecheck (“Homecheck Inspection”), which also found numerous concerns with the Addition. A copy of the Homecheck Inspection is attached hereto as Exhibit D and incorporated by reference.

14. On August 2, 2026, a copy of the Homecheck Inspection was emailed to the Building Department by the Property Owner.

15. On August 5, 2026, the Building Department's Building Commissioner, Corey Roser ("Roser"), inspected the Addition, and found various violations of the Building Code Ordinance, the 2020 Indiana Residential Code (675 IAC 14-4.4), the Indiana Electrical Code (675 IAC 17).

16. On August 5, 2026, Roser had a verbal conversation with Evans, and emailed Evans notice that a stop work order was being issued.

17. On August 10, 2026, Roser issued a Notice of Stop Work Order to Contractor ("Stop Work Order"). A copy of the Stop Work Order is attached hereto as Exhibit E and incorporated by reference. The Stop Work Order referenced that due to the extent of the violations, a separate notice would be issued to identify observed deficiencies, applicable building code provisions, required corrective actions, required documentation, and conditions necessary before the Stop Work Order may be released.

18. I.C. § 36-7-2.5-36 allows the Building Department to issue a stop work order for any portion of a building project if it is determined that a condition on the building site constitutes an immediate threat to public safety and welfare.

19. On August 21, 2026, Roser issued a Notice of Code Violation and Order to Comply to Contractor ("Notice of Code Violation"), which included an itemized schedule of code violations found at the Addition and the required corrective actions to be taken. A copy of the Notice of Code Violation is attached hereto as Exhibit F and incorporated by reference

20. On September 18, 2026, Contractor, through its attorney, filed an administrative appeal of the Stop Work Order with the Miami County Board of Zoning Appeals ("BZA"). A copy of the Administrative Appeal Application is attached hereto as Exhibit G and incorporated by reference. This appeal to the BZA is still pending and is set for a hearing on October 16, 2026.

A. STOP WORK ORDER WAS SUPPORTED BY FACTS

21. Contractor argues that there was not a substantial basis for issuing the Stop Work Order.

22. When Roser inspected the Addition on August 5, 2026, he photographically documented the deficiencies identified with the Addition.

23. One Hundred and Four (104) photographs were taken during the August 5, 2026, inspection of the Addition. Copies of the photographs taken by Roser on August 5, 2026 are attached hereto as Exhibit H and incorporated by reference. These photographs provide the factual basis for issuing the Stop Work Order to Contractor.

24. In addition, Roser has also prepared an explanation of the inspection results and photographs, which is attached hereto as Exhibit I and incorporated by reference. The explanation lists the general violations observed and then to the right of the violations the numbers listed correspond to the numbered photographs provided in Exhibit F based on the red number on the corner of each label on each photograph.

25. Prior to the August 5, 2026, inspection, the Property owner took photographs of the foundation, floor joists, and sagging floors and provided the photographs to Roser on July 31, 2026. A copy of the photographs taken by the Property Owner are attached hereto as Exhibit J and incorporated by reference.

26. Contractor, through Evans, did submit photographs of the in progress foundation of the Addition to Roser on August 7, 2026. A copy of the photographs submitted by Evans are attached hereto as Exhibit K and incorporated by reference.

27. Roser also took additional pictures at the Addition on August 6, 2026. Copies of the photographs taken by Roser on August 6, 2026 are attached hereto as Exhibit L and incorporated by reference.

28. Based on the inspection of the Addition and photographs provided, there is a substantial factual basis for issuing the Stop Work Order based on the violations observed and cited.

29. Contractor also argues that certain violations cited are the responsibility of a separate subcontractor of the Property Owner, MC Contracting. All electrical work would be covered by the residential building permit, RBP #584-26. No separate electric permit would be needed. However, to the Building Department's knowledge, MC Contracting has not been able to complete any of its work on the Addition due to the status of the structure and subsequent stop-work-order.

B. ESTOPPEL DOES NOT APPLY

30. Contractor also argues that the Building Department is estopped from issuing the Stop Work Order based on past inspection approvals.

31. As a general rule, governmental entities are not subject to equitable estoppel. However, estoppel may be appropriate where the party asserting estoppel has detrimentally relied on the governmental entity's affirmative assertion. A governmental entity will not be estopped in the absence of clear evidence that its agents made representations upon which the party asserting estoppel relied.

32. The Building Department disputes that it, or any of its agents, made any affirmative assertion that Contractor could have relied upon.

33. Burton refutes that he approved the use of the existing sunroom foundation for the Addition. When Burton was on site during excavation for the footer on April 30, 2026, he understood the existing foundation/slab was going to be removed. Despite the footer excavation work not being completely finished, Burton stated the footer excavation appeared adequate at the time and everything looked appropriate based on what he could observe, so he approved the footer inspection.

34. By the time Burton returned for the foundation inspection on June 2, 2026, the concrete work had already been completed and much of the addition was framed. Burton walked the exterior perimeter of the new foundation but did not go into the crawlspace and believes he would have discovered the foundation issue had he done so.

35. Even though certain inspections were approved, not all deficiencies with the work being performed were apparent, and only were discovered later. As such, estoppel would not completely bar the issuance of the Stop Work Order.

36. The issue of whether estoppel applies is more appropriate for an Administrative Law Judge or Court to consider, and should not serve as a basis for modification or reversal of the Stop Work Order by the Indiana Fire Prevention and Building Safety Commission when violations of the building codes are present.

C. CODIFICATION OF ORDINANCES

37. Contactor also tries to avoid the Stop Work Order by raising an issue regarding Miami County's lack of codification of ordinances since 2014 pursuant to I.C. § 36-1-5-3, which states "[t]he legislative body of a unit shall codify, revise, rearrange, or compile the ordinances of the unit into a complete, simplified code excluding formal parts of the ordinances."

38. Contractor however fails to address that the Building Code Ordinance was passed and adopted in 2005 prior to the cessation of codification of ordinances by Miami County, and the Building Code Ordinance is actually contained and incorporated in the most recent codification of ordinance by Miami County.

39. Regardless, the Building Code Ordinance would still be enforceable even if it were not codified. While I.C. § 36-1-5-3 use the word "shall" for the codification requirement, such use should be considered directory. "Shall" may be found to be directory "where: (1) the statute fails to specify adverse consequences; (2) the provision does not go to the essence of the statutory purpose; and (3) a mandatory construction would thwart the legislature purpose." *Wilson v. Wilkening*, 175 N.E.3d 1169, 1174 (Ind. Ct. App. 2021); *See, e.g. Bergman v. Big Cicero Creek Joint Drainage Bd.*, 137 N.E.3d 955, 963-64 (Ind. Ct. App. 2019) (determining the issuance of bonds to finance reconstruction was not mandatory despite the use of the word shall when the drainage board did not first make the discretionary determination).

40. Here, all three (3) factors for finding "shall" to be directory have been satisfied. I.C. § 36-1-5-3 does not specify an adverse consequence if a unit fails to codify its ordinances. The purpose of the codification requirement is to make a unit's ordinance simply and easily available, not to add an additional requirement for enforcement of an ordinance. *See* I.C. § 36-2-4 *et. seq.* (specifying the legislative procedures a county must take to adopt an ordinance); *see also Bellwether Props., LLC v. Duke Energy Ind., Inc.*, 87 N.E.3d 462, 467 (Ind. 2017) ("A longstanding legal principle presumes that citizens know the law and must obey it . . ."). And a mandatory construction of I.C. § 36-1-5-3 would prevent any ordinance from being enforced until a new code of ordinance could be printed, which a printed code is only presumptive evidence that all requirements to adopt an ordinance were met. *See* I.C. § 36-1-5-5.

41. The lack of codification of ordinances also would not override the Building Department's independent statutory obligations pursuant to I.C. § 36-7-2-9 to require compliance with the code of building laws adopted in the rules of the Indiana Fire Prevention and Building Safety Commission.

42. The Building Code Ordinance, the 2020 Indiana Residential Code (675 IAC 14-4.4), and the Indiana Electrical Code (675 IAC 17) are enforceable and the Building Department is entitled to cite the Contractor for violations of such codes.

D. CONCLUSION

The Stop Work Order should not be modified or reversed by the Indiana Fire Prevention and Building Safety Commission. The law was properly applied when the Stop Work Order was issued, there are substantial facts supporting the issuance of the Stop Work Order, and the Stop Work Order was not inappropriate for any other reason.

WHEREFORE, the Respondent, the Miami County Building and Zoning Department, respectfully prays that the Indiana Fire Prevention and Building Safety Commission deny the Petitioner's Petition for Administrative Review, and for all other further, proper, and complete relief in the premises.

Respectfully submitted,

DOWNS TANDY & PETRUNIW, P.C.

/s/ Mark A. Frantz

Mark A. Frantz, #30623-64

99 West Canal Street

Wabash, IN 46992

Telephone: (260) 563-7474

Facsimile: (260) 563-7576

Attorney for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing to be served upon the following, by email and/or U.S. Mail, postage prepaid and properly addressed, this 2nd day of October, 2026:

Build It Brothers Construction
c/o Bryce Runkle
16 E. 5th St., Ste 3
Peru, IN 46970

/s/ Mark A. Frantz
Mark A. Frantz, #30623-64