

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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| <i>BARRIER BUSTERS; SHONA EAKIN;</i> |) | <i>Civil Action No.: 02-203E</i> |
| <i>MICHAEL EAKIN; MARY ANN PARSNIK;</i> |) | |
| <i>and CAROLYN CREHAN, on behalf of</i> |) | <i>Judge McLaughlin</i> |
| <i>themselves and all others similarly</i> |) | |
| <i>situated,</i> |) | <i>Magistrate Judge Baxter</i> |
| |) | |
| <i>Plaintiffs,</i> |) | |
| <i>v.</i> |) | |
| |) | |
| <i>CITY OF ERIE, PENNSYLVANIA,</i> |) | |
| |) | |
| <i>Defendant.</i> |) | |
| |) | |
| |) | |

STIPULATED ORDER REGARDING INTERPRETATION AMONG PLAINTIFFS
AND DEFENDANT CITY OF ERIE**

The subject matter of this Stipulated Order originated when an affiliated Plaintiff, Barrier Busters, filed an action against the City of Erie, Pennsylvania in this Honorable Court on June 27, 2002 at number 02-203 Erie, the "Erie Case." The Court entered the Fourth Consent Decree on January 31, 2005.

During year 2010 Plaintiffs observed that there have been incidences of street resurfacings by the City of Erie where ADA-compliant curb ramps were triggered by the street resurfacing but not concurrently constructed on Erie streets. During negotiations, Erie acknowledged virtually all of such undone ramps as having been triggered, and deferred such construction to the next available season when contractors trained in precise specifications and methods of compliant curb

ramps are hired annually to install such ramps. Plaintiffs assert that the current Consent Decrees require the immediate construction of the ramps.

The parties desire to resolve these issues in an expeditious and economical manner that addresses the interests of the Plaintiffs and the concerns of all other parties by stipulating to several interpretative provisions with respect to the portions of the Consent Decrees, in order to minimize the likelihood of further disagreements or miscommunications. The parties believe they are clarifying obligations set forth in the earlier Consent Decrees. Therefore, all Plaintiffs and the Defendant, City of Erie, having through Counsel, met, negotiated and consented, and this Court, having reviewed the terms of this Stipulated Order, and having found it just, **IT IS HEREBY ORDERED:**

All terms and conditions set forth in the prior Consent Decrees and Settlement Agreements remain in full force and effect, unchanged by this Stipulated Order.

1 Future Resurfacing and Alteration of Erie Streets

Plaintiffs recently learned that, during years 2007, 2008, 2009 and 2010, the City of Erie has used full-time City employees to mill and pave numerous street segments and intersections throughout Erie. The parties have met and have agreed that this practice has triggered a number of curb ramps which were not constructed or re-constructed at the time of this resurfacing. When made aware of such year 2010 triggered or arguably triggered ramps, the City Engineer

added 98 curb ramps to the next annual year 2011 cycle of ramp construction contracting, which begins in the spring and ends in autumn 2011, and is subject to Pennsylvania law regarding contract bidding and response timetables, and also included them in the City's draft corrected year 2010 annual report he prepared and submitted to Plaintiffs' Counsel as triggered ramps not yet installed. Plaintiffs allege that there are additional curb ramps triggered during year 2010 that the City has not added to the corrected year 2010 annual report. The parties agree to the following language to assist in the interpretation of the obligations and rights of the parties in this action

For the year 2011 and throughout the life of the existing Consent Decrees and Agreements, at the earliest point in each calendar year such information is available, the Erie City Engineer shall obtain from its Bureau of Streets a list of all street segments which are anticipated to be repaired beyond mere pothole patching. The Engineer will report in written email to Plaintiffs' two attorneys and to the Plaintiffs sufficiently in advance of the construction of planned work such that Plaintiffs counsel are aware of the work to be done. The parties and, if necessary because the parties cannot agree, Counsel for the parties will work together in good faith to evaluate and to attempt to mutually agree if any ramps are triggered by such work. If the parties, through Counsel, cannot agree, any party may file an appropriate motion or otherwise request judicial intervention in, or the resolution of, all unresolved disputes. Changes

from the planned list required by changes of conditions, changes in schedule, available funding or emergencies will be reported via email to Plaintiffs' Counsel in advance if at all possible. In the rare event that this prior written notice is impossible, Erie will notify Plaintiffs' counsel via email as soon as possible, but no later than one week following the beginning of the work. The written notice will state all reasons the City claims that prior notice was impossible. The parties through Counsel shall confer in good faith to permit Counsel to determine and agree if a "curb ramp" triggering event occurred.

If paving work is performed by the Bureau of Streets that triggers ramp construction on or before July 31 of each year, the ramps will be constructed in the same construction season. If paving work is performed by the Bureau of Streets after July 31st, all reasonable efforts will be made to complete the ramp construction in the same calendar year. Depending upon the timing of the paving construction, the timing of the bidding and approval processes and the arrival of the inclement weather, there is a possibility that some triggered ramp construction may need to be delayed until the following year. As an experimental method for calendar year 2011, Erie shall, on or before August 15, 2011, identify all streets and street segments which have been altered by resurfacing from January 1 through July 31, 2011 and provide email notice to Plaintiffs and counsel. On October 1, 2011, Erie shall identify by email notice to Plaintiffs and Counsel all such streets and street segments so altered after July 31, 2011, also including the number and location the ramps the City believes may need to be

delayed until early the following year. Provided, however, that defendant Erie shall complete a minimum of 70% of the ramps triggered by street alterations performed after July 31 within that same calendar year. Counsel for the parties shall meet after the end of the year 2011 construction to review and to discuss how the parties believe the year 2011 "experiment" worked. The parties mutually may choose to retain or to alter this practice in subsequent years.

2. Corrected Annual Reports. Erie immediately shall amend each of the Annual Reports for the calendar years 2007 through 2010 to include the exact locations and the limits of each and every one of these street sections and/or intersections altered by the City Bureau of Streets by its "mill and pave" program, and shall include a sworn certification that the City Engineer has personally reviewed all relevant records and that the report is complete and fully accurate. Within two weeks, the corrected reports shall be provided in a searchable format to Plaintiffs' Counsel via CD/DVD and via email, as well as filed with the Court as set forth in the next paragraph. By accepting service of these corrected annual reports, Plaintiffs in no way waive any rights to challenge the accuracy of any information supplied by the City in its Corrected Annual Reports.

Erie has not filed its existing, nor its corrected, Year 2007, 2008, 2009 and 2010 Annual Reports with the Court, because the document size limitations of the Court's online filing system, prevented uploading, although such reports have been timely prepared each year. The existing requirement

for Defendant City of Erie to file annual reports of the preceding calendar year from 2007 onward with the court shall be accomplished by immediately providing a CD-ROM or DVD copy of the fully corrected annual report in fully searchable PDF format, rather than uploading the reports to the online filing system of the court. Erie will accompany such action with a Notice of Filing Annual Report on the docket, as well as in each following year, and timely deliver the CD-ROM or DVD to the Court, as well as in each following year of the life of the Decree or Settlement Agreement, as well as to both of Plaintiffs' Counsel, both by mailing or hand-delivery of a CD or DVD and by email of the report to both of Plaintiff's Counsel.

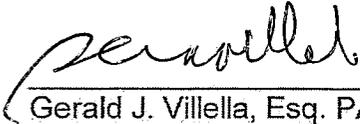
3. *Installing Accessible Curb Ramps Omitted by Erie* After Erie provides to the Court and to Plaintiffs' Counsel the corrected, certified Year 2007, 2008, 2009 and 2010 Annual Reports, Erie shall take all reasonable steps to cooperate with Plaintiffs and, if necessary, their Counsel, including, but not limited to, joint inspections, to identify curb ramps that Erie should have installed when it altered any and all "street sections and/or intersections" during those years, and to determine where the City shall install curb ramps, and on what timetable. If on any point, the parties are unable to mutually agree fully, any party may file an appropriate motion or otherwise request judicial intervention in, or the resolution of, all unresolved disputes.

4. Involvement of legal counsel. Notwithstanding anything stated herein to the contrary, all parties may freely and without limitation consult with or otherwise involve legal counsel with regard to any issue arising from this Stipulation or arising from any Consent Decree and nothing stated herein shall preclude Plaintiffs' counsel from seeking or receiving payment from Erie for all such legal work through either agreement or court order. Erie retains the right to refuse or otherwise object to any such fee request.

5. Attorneys Fees The parties, through Counsel, have met and have agreed upon a payment to liquidate all potential claims by Plaintiffs for fees and costs from the City of Erie for the time period of March 11, 2011 through August 26, 2011. The City shall pay \$23,770.32 to Heberle & Finnegan, PLLC, and \$3,229.68 to the Elderkin Firm within twenty days. By agreeing upon this payment, the City of Erie and Plaintiffs expressly do not waive any claims or defenses relating to any future fees and costs that may be claimed for any future work.

6. Retention of Jurisdiction. The parties expressly agree, and the Court Orders, that the Court shall retain jurisdiction to enforce the terms and conditions of all existing Consent Decrees and Settlement Agreements among Plaintiffs and the City of Erie, guided by the interpretive language set forth in this Stipulated Order.

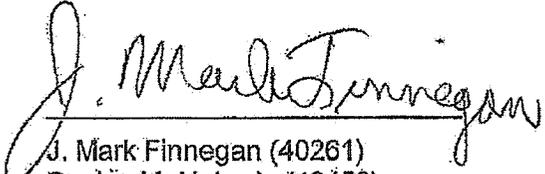
Read and Approved as to Form on this 27th day of September, 2011, by:



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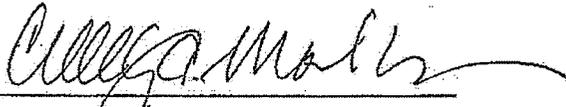
Attorneys for Defendant City of Erie

Read and Approved as to Form on this 22ND day of September, 2011, by:



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IT IS SO ORDERED, THIS DAY OF OCTOBER, 2011.

JUDGE MCLAUGHLIN
UNITED STATES DISTRICT COURT