

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

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

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**SECOND STIPULATED ORDER BETWEEN PLAINTIFFS AND DEFENDANT  
ERIE**

Pursuant to Orders duly entered in this action, Erie is required to report each and every intersection of Erie streets, roads and highways where milling, paving or other alteration occurred between 1992 through 2012. See Second Consent Decree and Partial Settlement, ¶4, [Doc. 31]. Likewise, also see the April 19, 2007 Settlement Agreement and Order in the PennDOT/Erie Lawsuit, (06-cv-78) at ¶ 5 [Docs. 32 and 33] (Erie required to report where milling, paving or other alteration occurred at any intersection of Erie and PennDOT streets, roads and highways).

In 2010, Plaintiffs discovered that Erie's Bureau of Streets had been milling, paving or otherwise altering at intersections throughout Erie, but had not reported some of these intersections as required by the Settlement Agreements

and Orders. Defendant Erie alleges that this was unintentional. Through additional investigations and negotiations, the parties agreed that some of this Bureau of Streets work had triggered the obligation to install curb ramps at these various locations and that a process was necessary to identify the number and location of each such intersection, and to set a timetable for the installation of these curb ramps. All parties negotiated, and in September 2011, the Court entered the "Stipulated Order". See Documents 42 and 44. This Stipulated Order set forth a procedure for investigating and resolving issues surrounding this Bureau of Streets work during years 2007 through 2010 and any curb ramps that may or may not be triggered during this work. Pursuant to the earlier Court Orders and the Stipulated Order, from August 2011 to present, the parties have been working to frame the remaining issues, and have also partially resolved some of the issues.

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 Settlement Agreements and 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, Plaintiffs and the Defendant, City of Erie, having met, negotiated and consented, and this Court, having reviewed the terms of this Second Stipulated Order, and having found it just, **IT IS HEREBY ORDERED:**

**1. Prior Orders Remain in Effect.** All terms and conditions set forth in the all prior Consent Decrees and/or in the Stipulated Order entered in this lawsuit remain in full force and effect, and are unchanged by this Second Stipulated Order.

**2. Limitation on Jurisdiction Re. PennDOT Intersections.** The Settlement Agreements in *Voices for Independence, et. Al., v. PennDOT and Erie*, 06-cv-0078 (W.D.Pa.) control all intersections inside Erie involving one or more PennDOT streets, roads or highways. The Parties acknowledge that in that lawsuit, there are motions pending concerning when, where and how many curb ramps must be placed at certain of those intersections. The Court, and the parties, do not intend for this Second Stipulated Order to interfere in any way with the issues to be resolved by those motions.

**The Listing of Erie Streets Bureau Potential Milling, Paving or Other Alterations.**

**3. Years 2002-2004; 2006-2011.** Pursuant to the Stipulated Order (doc 42), on March 1, 2012, Erie provided Plaintiffs' Counsel with a listing of locations where Erie's Bureau of Streets had been scheduled to perform milling, paving or other alterations to the streets. Defendant Erie attaches this listing hereto as Exhibit 1. The listing is segregated by year, beginning with 2002 through 2004, and ending with years 2006 through 2011. Erie admits that the Bureau of Streets

milled, paved or otherwise altered many of these locations, but is currently lacking information to permit it to state with certainty which locations, if any, ADA-compliant curb ramps were required to be installed or where ramps actually were installed during that milling, paving or other alteration work.

**4. Year 2005.** Erie failed to provide any information whatsoever regarding Bureau of Streets milling, paving or other alteration in year 2005, although it admits that it is likely that the Bureau of Streets did mill, pave or otherwise alter some intersections during that year. Defendant Erie is alleging that it is unable to provide any information whatsoever regarding Bureau of Streets milling, paving or other alteration in year 2005 because of a long-term absence of the record-keeping employee. The parties have not reached agreement regarding any Bureau of Streets work that may or may not have occurred during year 2005. Nothing in this Stipulated Order impacts in any way upon any claims or defenses any party may assert for the year 2005. Any analysis of year 2005 shall be separate from any analysis of years 1992 through 2001.

**5. The Map of Years 2002-2004; 2006-2011 Potential Locations.** On March 1, 2012, Erie sent to Plaintiffs' Counsel a listing of potential Bureau of Streets alterations for the above listed years. See Exhibit 1. After discussions with Erie, it was agreed that Plaintiffs would map the potential locations. Plaintiffs mapped approximately 617 intersections, and provided a copy of the map to the City. Erie attaches a copy of this map hereto as Exhibit 2.

**6. Initial Joint Inspection.** The parties agreed to conduct a joint inspection of some of these mapped locations. That inspection took place on June 19, 2012. After a few hours, Erie directed Plaintiffs to continue with the inspections and report Plaintiffs' findings to the City. Over the three days of June 19 through 21, 2012, Plaintiffs inspected approximately 240 of the mapped intersections.

**7. Initial Report to Erie.** On July 6, 2012, Plaintiffs sent Defendant a letter. That letter summarized the approximate number (approximately 240) of intersections inspected thus far by Plaintiffs. That letter has several pages attached as examples showing sketches of Erie Bureau Work at several intersections, and Plaintiffs' estimate of curb ramps triggered by that work. The parties agree that these are only estimates and that no parties waive any claims about curb ramps triggered at these intersections.

**8. Results of Plaintiffs' Inspections.** Thus far, pursuant to the Stipulated Order and negotiations with Erie, Plaintiffs have inspected approximately 240 of the 617 intersections on the map. In consideration of this Second Stipulated Order, Plaintiffs have provided the listing of these 240 intersections to Erie. At this time, Erie will not re-inspect these intersections, but it reserves the right to verify the Plaintiffs' results.

**9. Erie to Conduct the Remaining 377 Inspections.** After discussions, the Parties have agreed that Erie shall inspect the 377 remaining intersections, and provide sketches in the form attached hereto as Exhibit 3. In each such sketch, Erie shall show the location of all ADAAG-compliant curb ramp(s), all non-compliant curb ramp(s), and all solid curb(s).

**10. Timetable for Inspections and Transmitting Results.** Erie shall complete these inspections no later than the end of December 2012, completing approximately 95 intersection inspections during each month of September, October, November and December. At the end of each month, Erie will send to Plaintiffs' Counsel via email and hard copy, true and accurate copies of each of the inspection sketches completed during that month.

**11. Parties to Meet and Confer on Inspection Results.** After December 2012, the parties through Counsel shall meet to discuss the results of the parties' inspections, and shall attempt to agree on the number of curb ramps triggered, if any, and a timetable for installing all such ramps. Any party may file a motion with the Court to resolve any unresolved issues.

**12. Years 1992 through 2001.** The parties have not reached agreement regarding any Bureau of Streets work that may or may not have occurred during years previous to year 2002, which Erie alleges was raised by Plaintiffs after the informal conference with Magistrate Judge Baxter. Nothing in this Stipulated Order impacts in any way upon any claims or defenses any party may assert for the years prior to year 2002.

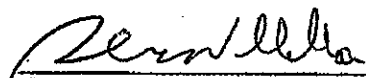
**13. Consideration for Second Stipulated Order.** In consideration for Erie's successful completion of each of the terms herein, Plaintiffs agree to:

- (a) Forbear from filing at this time a Motion for Contempt alleging Erie's failure to report any and all Bureau of Streets alterations in Erie from 2002 through 2004, and year 2006 through 2011, and alleging Erie's failure to install hundreds of mandated curb ramps triggered by those alterations. As long as Erie cures all such violations and is meeting its obligations pursuant to this Consent Decree, the earlier Consent Decrees and the Stipulated Order, Plaintiffs agree not to file for contempt, and will not do so unless and until all reasonable efforts to resolve the matters without additional litigation are exhausted, with previous written notice to Erie;
- (b) Provide to Erie the listing of all intersections inspected by Plaintiffs during June 19, 20 and 21, 2012;
- (c) Permit Erie to conduct the initial inspections of the remaining 377 intersections remaining on Plaintiffs map of the Bureau of Streets locations during years 2002-2004, and 2006 through 2011. All parties reserve the right to conduct follow up inspections to verify or to dispute the information provided by other parties;
- (d) Negotiate the locations of curb ramps triggered by Bureau of Street alterations during years 2002-2004, and 2006 through 2011, and negotiate a timetable for the installation of such curb ramps, and to file a motion to enforce or motion for contempt only if such negotiations fail to fully resolve each issue; and,
- (e) Agree to consider in good faith a system for installing priority curb ramps at significant locations, in lieu of a rigid installation of curb ramps only at locations triggered by alterations, if the parties are able to agree to such a system and to show the Court that such a system would not violate the ADA or the Rehabilitation Act.

**14. 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 August 30, 2011 through August 8, 2012. The City shall pay these amount to Heberle & Finnegan, PLLC, and to the Elderkin Firm within fifteen 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.

**15. Retention of Jurisdiction.** The parties expressly agree, and the Court Orders, that the Court shall retain jurisdiction to enforce the terms and conditions of this Second Stipulated Order, as well as all existing Consent Decrees and Settlement Agreements between Plaintiffs and the City of Erie.

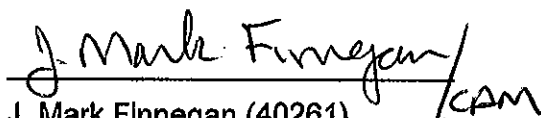
Read and Approved as to Form on this 31 day of August, 2012, by:

  
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Attorneys for Defendant City of Erie



Read and Approved as to Form on this 31<sup>st</sup> day of August, 2012, by:

/CAM

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Read and Approved as to Form on this 31<sup>st</sup> day of August, 2012, by:



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Attorneys for All Plaintiffs

**IT IS SO ORDERED, THIS \_\_\_\_\_ DAY OF AUGUST, 2012.**

**MAGISTRATE JUDGE PARADISE BAXTER  
UNITED STATES DISTRICT COURT**