

**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 PARSONIK;	)	
and CAROLYN CREHAN, on behalf of	)	
themselves and all others similarly	)	
situated,	)	Magistrate Judge Baxter
	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
CITY OF ERIE, PENNSYLVANIA,	)	
	)	
Defendant.	)	
	)	
	)	

**THIRD STIPULATED ORDER AMONG PLAINTIFFS AND  
DEFENDANT CITY OF ERIE**

Pursuant to Orders duly entered in this action, each year Defendant, City of Erie ("Erie"), is required to file reports that identify each and every intersection of Erie streets, roads and highways where milling, paving or other alteration occurred in the prior year. See *e.g.* 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). The purpose of such reporting is to allow confirmation that Erie has installed curb ramps required by such alteration work.

In 2010, Plaintiffs discovered that Erie's Bureau of Streets had been milling, paving or otherwise altering intersections throughout Erie, but had not reported some of these intersections as required by the Settlement Agreements and Orders. 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 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 first "Stipulated Order". See *Documents 42 and 44*. Among other things, this first Stipulated Order set forth a procedure for Erie to report to Plaintiffs the extent and the locations of milling, paving or alteration of street segments inside Erie performed by Erie's Bureau of Streets during years 2011 going forward. The Stipulated Order also obligated Erie to prepare listings of the locations of the work performed by the Bureau of Streets for the years 2007-2010.

In August, 2012, the parties negotiated a Second Stipulated Order which included listings prepared by Erie of milling and paving performed by the Bureau of Streets during the years 2002-2004 and 2006-2011. See *Document 50*. It also included Erie's promise to prepare sketches of each affected intersection so as to illustrate the extent of the milling and paving, and to indicate whether each intersection had compliant curb ramps in place.

Now, the parties have reviewed their experience with the reporting system set forth in the first Stipulated Order respecting ongoing work of the Bureau of Streets, and have agreed to modify Erie's obligations as described herein.

Therefore, Plaintiffs and Erie, having met, negotiated and consented, and this Court, having reviewed the terms of this Third 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 First and Second Stipulated Orders entered in this lawsuit remain in full force and effect, and are unchanged by this Third Stipulated Order, except as expressly set forth herein.

**2. Limitation on Jurisdiction Re. PennDOT Intersections.** The Settlement Agreements and Orders in *Voices for Independence, et. Al., v. PennDOT and Erie*, 06-cv-0078 (W.D.Pa.) control the reporting and the work to be performed at all intersections inside Erie involving one or more PennDOT streets, roads or highways. The Court, and the parties, do not intend for this Third Stipulated Order to interfere with or in any way alter the rights and obligations of those other Agreements and Orders.

**3. Prompt Installation of Triggered Curb Ramps.** The parties expressly state that the goal of these procedures is to ensure the installation of any curb ramps triggered by the Bureau of Streets work as soon as reasonably practicable. Erie agrees that, to the extent possible, curb ramps triggered by such work shall be installed during the construction season when the work is

performed. Plaintiffs recognize that some alteration work often is performed so late in the construction season, that some ramps will have to be deferred until the next season. However, Erie agrees that:

(A) If milling or other alteration are performed by the Bureau of Streets on or before August 15, all curb ramps triggered by such work shall be installed in the same construction season

(B) Erie asserts that—when its Bureau of Streets mills or otherwise alters street segments after August 15—that it is difficult to meet bidding requirements in time to ensure that triggered curb ramps are installed during the remaining construction season. Erie wishes to reserve the right to defer installation of these triggered curb ramps until as late as June 30 of the following year. Plaintiffs wish to avoid Erie altering intersections in August, September or October, but leaving them inaccessible to Plaintiffs for nearly one year later. As a compromise, the parties agree to the following experiment during years 2013 and 2014:

(i) Given the procedures set forth in paragraphs 5 and 6 of this Stipulated Order, Erie believes that it will be able to identify all locations where curb ramps may be triggered during the remainder of the calendar year by paving work by the Bureau of Streets by the time the August report and meeting have taken place as provided in paragraph 6. At that time the City shall promptly advertise for bids for a contract for ramp construction of the ramps known or anticipated to be triggered during the remainder of the calendar year by Bureau of Streets

activity; and will commit its best efforts to complete 70% of such ramps so triggered by the end of the calendar year. The remaining triggered ramps not constructed by the end of the construction season will be constructed in the following spring construction season.

(ii) In exchange, Plaintiffs agree to allow Erie to defer until June 30 of the next season installation of some of the curb ramps triggered by Bureau of Streets post August 15 milling or other alterations.

Counsel for the parties shall meet after the end of the year 2013 and 2014 construction to review and to discuss how the parties believe the "Post August 15 experiment" worked. The parties mutually may choose to retain or to alter this practice in subsequent years.

(C) Any "deferred" curb ramp shall be identified in the Annual Report covering the year in which the ramp was triggered, as described in paragraph 4 below.

**4. Annual Report of Segments Milled or Otherwise Altered.**

In each of its Annual Reports, going forward, Erie shall include, in a separate section:

(A). Documents in the form of Year 2012's Annual Report Appendix A-2 which describes the locations of the milling, paving and/or alteration work performed by the Bureau of Streets each year covered by that report.

(B) "Hatched sketches", illustrating each street segment where milling or alterations beyond mere pothole patching occurred. Each sketch shall also show where a compliant curb ramp has been added or otherwise exists, and where any non-compliant curb ramp or other barrier remains. Each sketch will also show where Erie intends to install a compliant curb ramp prior to June 30 of that year. Erie and Counsel reserve all rights and defenses relating to this work and the reports.

**5. June 1 Interim Report, Meeting and Inspection.** No later than June 1, 2013, and each year thereafter, Erie shall transmit via email to Plaintiffs Counsel, Craig Markham and J. Mark Finnegan, the following regarding work that has been done or is to planned to be done that year:

(A). A listing of the location(s) of all milling, paving and/or alterations performed year-to-date by the Bureau of Streets. For each intersection, a hatched sketch shall be provided, in the form and containing the data described in Section 4(B) above. This listing shall include Erie's statement of the date by which each of the curb ramps triggered by such work will be installed if they have not yet been installed.

(B) A listing of the locations of all milling, paving and/or alterations that are underway and those that are planned or reasonably anticipated to be performed by the Bureau of Streets in the current year.

(C) A listing of Erie's "Best Guess" intersections, and the location of each curb ramp to be installed during that season at these intersections.

(D) A listing of the location of each curb ramp triggered by Bureau of Streets work during the previous year, which had not been installed but had been deferred to be installed in the current year. This list shall identify which of these ramps have been installed, and which remain to be installed prior to June 30.

After Erie transmits the June Interim Report, the parties through Counsel shall meet. At a minimum, they shall attempt to resolve any issues arising the June Interim Report.

**6. August Interim Report, Meeting and Inspection.** No later than August 10, 2013, and each year thereafter, Erie shall transmit via email to Plaintiffs Counsel, Craig Markham and J. Mark Finnegan, updates of all listings and information described in paragraph 5 above.

After Erie transmits the August Interim Report, Erie and Plaintiffs' Counsel shall meet. At a minimum, they shall attempt to resolve any issues arising from the Interim Report.

**7. Procedure to Reach Agreement and to Resolve Disputes.** The parties through Counsel shall work together in good faith to evaluate and to attempt to mutually agree if any ramps are triggered by Bureau of Streets milling or other alterations, and that each ramp be promptly installed. 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 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.

**8. Consideration for Third Stipulated Order.** In consideration for Erie's successful completion of each of the terms herein, Plaintiffs agree to forbear from filing at this time a Motion for Contempt alleging Erie's failure to install timely all required curb ramps triggered by its Bureau of Streets' milling and other alteration of street segments during year 2012. As long as Erie cures all such violations and is meeting its obligations pursuant to this Third Stipulated Order, the earlier Consent Decrees and the earlier Stipulated Orders, 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;

**9. 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 9, 2012 through March 29, 2013. 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.

**10. 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 on this 15<sup>th</sup> day of April, 2013, by:



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**Read and Approved on this 17<sup>th</sup> day of April, 2013 by:**

/s/ J. Mark Finnegan

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**Read and Approved on this 17<sup>th</sup> day of April, 2013, by:**

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