

# Insights

## Court's Finding that Property Violated Indiana's Unsafe Building Law Provides Best Practices to Local Units of Government

December 12, 2018

By: Robert S. Schein and Christopher W. Bloomer

Just a few weeks ago, in *Andrade v. City of Hammond*, the Indiana Court of Appeals affirmed the City of Hammond's determination that a property owner's building was unsafe pursuant to Indiana's Unsafe Building Law ("UBL"). Specifically, the Court upheld the City's determination that the property – a five unit apartment building that once served as a single-family residence – constituted an unsafe structure, due to its impaired structural conditions, fire hazards, and ordinance violations. While local units of government (and the subject property's neighbors) likely applaud the Court's decision, several nuances of the Court's opinion bear mentioning, and serve as a non-exhaustive list of key takeaways for local units seeking to leverage the UBL going forward.

### Best Practices:

#### 1. Proper Notice:

Though not at-issue on appeal, the Court indicated that notice of the first hearing, as required by Ind. Code § 36-7-9-5(b), was not completed. Care should be taken at each step of the UBL process to ensure parties entitled to notice receive the same, from receipt of the initial enforcement authority order,<sup>[1]</sup> an action to enforce an order,<sup>[2]</sup> an action to complete or competitively bid completion of an order,<sup>[3]</sup> and beyond.

#### 2. The hearing authority<sup>[4]</sup> should ensure its decision and findings of fact are supported by the evidence:

An aggrieved property owner can petition the courts for review of a hearing authority's findings.<sup>[5]</sup> The court will review the hearing authority's decision de novo (i.e. "anew"), with little deference provided to the hearing authority.<sup>[6]</sup> Generally, so long as the hearing authority's findings were not arbitrary, not an abuse of discretion, not unsupported by the evidence, or in excess of the hearing authority's authority, the findings will be upheld.<sup>[7]</sup> As such, and as the hearing authority did in the instant case, it is best for the hearing authority to address the findings as presented by the enforcement authority in turn, and outline in his or her findings which facts and circumstances constitute proof of a violation of the UBL.

#### 3. A local unit's power to declare a property as unsafe includes previously-permitted uses

Local units concerned that property now considered unsafe, that was once properly permitted, need not worry. That's because past permits are not "grandfathered" in, or otherwise given special protection under the UBL. To the contrary, the UBL "supersedes any permit relating to building or land use, whether that permit is obtained before or after the [enforcement authority's] order is issued."<sup>[8]</sup> Thus, even though a use was once permitted, if that use now constitutes an unsafe premises, it may be abated.

*Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.*

[1] Ind. Code § 36-7-9-5.

[2] Ind. Code § 36-7-9-10.

[3] Ind. Code § 36-7-9-11.

[4] The hearing authority is a person or persons designated to oversee hearings as required by the UBL. Ind. Code §§ 36-7-9-2; 36-7-9-7.

[5] Ind. Code § 36-7-9-8.

[6] *Andrade v. City of Hammond*, 2018 WL 5993129, at \*4 (Ind. Ct. App. Nov. 15, 2018).

[7] *Id.*

[8] *Id.* at \*6 (citing Ind. Code § 36-7-9-5).