MEMORANDUM DECISION

ON REHEARING

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IN THE
COURT OF APPEALS OF INDIANA

Indiana Department of Transportation,
Appellant-Respondent,

v.

FMG Indianapolis, LLC, Stephen Roudebush, and Jeffory Roudebush,
Appellees-Petitioners.

June 24, 2021

Court of Appeals Case No. 20A-PL-215

Appeal from the Hamilton Superior Court

The Honorable Michael A. Casati, Judge

Trial Court Cause No. 29D01-1905-PL-4715

Shepard, Senior Judge.

[1] Stephen Roudebush, Jeffory Roudebush, and FMG ("Owners") petition for rehearing of our decision in *Indiana Department of Transportation v. FMG Indianapolis, LLC*, 167 N.E.3d 321 (Ind. Ct. App. 2021). We grant rehearing solely to speak to Owners' rehearing arguments, but we reaffirm our original decision in all respects.

[2] To summarize, this case concerns INDOT's order revoking Owners' sign permit following its determination that one of Owners' two billboards located along State Road 32 is illegal and must be removed. Owners sought administrative review of INDOT's decision, and the parties cross moved for summary judgment. *See* Appellant's App. Vol. 2, p. 64 (Owners' motion for summary judgment asserting there are no genuine issues of material fact). The ALJ granted summary judgment for Owners. Upon INDOT's request for review, the Commissioner reversed the ALJ and entered summary judgment for

INDOT. Finally, Owners sought judicial review, and the trial court vacated the Commissioner's order and entered judgment for Owners. On appeal, we reversed the trial court.

[3] All the disputes between these parties have concerned legal principles, including INDOT's regulatory authority, statute of limitations, and estoppel. As far back as the proceedings before the administrative law judge, Owners (and INDOT) have both taken the position that the facts are settled and that they are "entitled to judgment as a matter of law." *Id.* (Owners' motion for summary judgment).

[4] There is no serious dispute that the signs do not conform to the requirements of the Billboard Act and that they were unlawful when erected but were allowed to remain due to a state inspector's blunder. Additionally, although on the face of it there appears to be an argument for the need for compensation, even the rules on nonconforming signs allow for only five years' worth of use. *See* Ind. Code § 8-23-20-9(a) (1990).[1]

[5] Now, after five years of litigation on the basis that there exist no genuine issues of material fact, Owners ask this Court to "remand for further proceedings in lieu of ending this case on summary judgment" so that Owners have an "opportunity to develop this record – because material issues of fact exist." Appellees' Pet'n Reh'g, p. 4.

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[1] Moreover, Owners did not raise the issue of compensation for removal of one of their signs in their original brief.

[6] A petition for rehearing is a vehicle that affords the reviewing court the opportunity to correct its own omission or errors. *Sheehan Constr. Co., Inc. v. Cont'l Cas. Co.*, 938 N.E.2d 685, 687 n.1 (Ind. 2010). Owners do not request a correction of alleged error but instead ask for another bite at the proverbial apple in order to present different arguments. We addressed the appeal as presented, and Owners' selection of issues for appeal is not grounds for relief on rehearing. It is well established that a party may not raise an argument for the first time on rehearing. *Clark Cnty. Drainage Bd. v. Isgrigg*, 966 N.E.2d 678, 679 (Ind. Ct. App. 2012) (citing *Carey v. Haddock*, 881 N.E.2d 1050, 1051 (Ind. Ct. App. 2008), *trans. denied*).

[7] We therefore grant rehearing for the limited purpose of addressing Owners' new arguments, and we reaffirm our original decision.

Riley, J., and Kirsch, J., concur.