

Cause # 00-60B

Name: St. Bartholomew Roman Catholic Church

Administrative Law Judge: William Teegarden

Date: January 22, 2001

Commission action: Affirmed

FINDINGS OF FACT

1. The SBC is an agency within the meaning of IC 4.21.5.
2. IC 4-21.5, 675 IAC 12, and IC 22-15 apply to this proceeding.
3. The Fire Prevention and Building Safety Commission (“FPBSC”) is the ultimate authority within the meaning of IC 4-21.5 with respect to actions of the SBC.
4. At all time relevant to this proceeding, the Church was engaged in a construction project in Columbus, Indiana.
5. On March 24, 2000, the Church filed an application for a design release together with a check for \$1,310.40.
6. The parties agree that this was the correct fee for the tendered project.
7. The Church tendered plans for the foundation but not for the rest of the project, a common occurrence in March of 2000.
8. The foundation release was promptly issued, so construction could legally commence.
9. In the application, the Church stated the balance of the plans would be filed by June 5, 2000.
10. On April 11, 2000, the SBC issued a Correction Request sheet saying the balance of the plans needed to be filed within 30 days.
11. The Church had telephone conversations with the SBC about the due date and the SBC agreed to waive the 30 day requirement because the Church had indicated a June 5, 2000, filing date on the appropriate blank on the application.

12. As June 5, 2000, approached, the Church realized it would not be able to file a complete set of plans by June 5, 2000, as revisions were still occurring.
13. Conversation ensued between the parties about treating the original filing as an application for partial release since the foundation was released at that time.
14. Eventually, the Church was told by the SBC this could not be done and on June 22, 2000, the design release was denied.
15. A timely petition for administrative review was filed.
16. The Church refiled the project in July, 2000, and paid an additional \$1250.40, the appropriate fee for the project.¹
17. The only issue presented is whether or not the Church is entitled to a refund of the second payment.
18. IC 22-15-3-6 states “Pending the completion of the review of an application, the office [SBC] may . . . issue:
 - (1) a design release for part of the construction proposed . . . ; or
 - (2) a provisional release for any part of the construction”
19. 675 IAC 12-6-13 also states that the SBC may issue a partial design release.
20. The only evidence presented at the hearing was given by the Church and that evidence consisted of a discussion with the SBC about making the application an application for a partial release.
21. This discussion took place near the due date for the filing of plans.
22. The testimony of the Church’s design professional shows that part of the plans were capable of filing but that parts of the project were being revised.
23. The evidence also indicates the Church was told it could not file as a partial release.
24. Both the operative statute and rule allow the issuance of a partial release.

¹ The difference in the fees tendered is due to the fact that the first application included a request for an early foundation release which is \$60. Having received the foundation release, there was no need to include it in the second application.

25. The SBC, however, is not required to issue a partial release; it is a discretionary act.
26. There may be very valid reasons why the applicant should not be allowed to convert the application to a request for a partial release.
27. However, in the absence of any evidence or sworn testimony dealing with the reason(s) for such a decision, the trier of fact is compelled to find that the decision in this case is an abuse of discretion.
28. The Church should have, upon payment of the appropriate fee, been allowed to convert the application to an application for a partial release.
29. 675 IAC 12-3-2 sets forth the fee schedule and specifies that each additional submission for a partially filed project is \$100.
30. If the Church had been allowed to submit the plans for the portion of the project it was ready to have released in May or early June as a partial release and then allowed to submit the balance in July, the cost would amount to the initial filing fee paid plus \$100 for the additional submission.
31. This is materially different from the payment of the initial filing fee plus the payment of a new filing fee of \$1250.40.
32. 675 IAC (f) authorizes refunds of fees paid or collected in error.
33. The Church is entitled to a refund of \$1150.40.

NONFINAL ORDER

St. Bartholomew Roman Catholic Church is entitled to a refund of \$1150.40 from the State Building Commissioner.