

Cause #: 00-67F
Name: Structure at 7 Public Square
Administrative Law Judge: William K. Teeguarden
Date: June 8, 2001
Commission Action: Affirmed

FINDINGS OF FACT

1. The SFM is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5, 675 IAC 13, IC 22-13 and the SBC apply to this proceeding.
3. The FPBSC is the ultimate authority within the meaning of IC 4.21.5 with respect to orders of the SFM.
4. At all times relevant to this proceeding, the Building was located in Shelby County, Indiana, and was used for a variety of purposes including assembly.
5. On July 24, 2000, the SFM issued the Order following an inspection of the Structure citing eight violations including violation 7, SBC 1004.2.3.2 (inadequate number of complying exits from the basement) and violation 8, 675 IAC 12-6-3 (major rework of plumbing and electrical systems without filing plans with the SBC and obtaining a release).
6. The Building petitioned for review of violations 7 and 8 of the Order.
7. The testimony of the local building official (“LBO”) clearly established the fact that the Building is over 100 years old and at some prior time underwent a rehabilitation which included the installation of sprinklers.
8. The LBO also established that prior owners of the building used the basement area for assembly purposes and that use dates back at least 7 years and probably more than 10.
9. The LBO felt the exiting system met code as there are two exits from the basement; one going upstairs to a hallway which exits the front of the building and the other to a hallway exiting the rear of the building.
10. The LBO also conducted inspections of the plumbing and electrical work during installation and stated the magnitude of the work was so slight as to be exempt from the requirements for a new release.
11. During the presentation of evidence by the SFM, the SFM agreed that the electrical work did not need a release from the SBC.

12. The uncontradicted testimony of the LBO indicates he is probably correct about the plumbing work also, however it does not make any difference.
13. The plumbing work in question involved relocating kitchen and bathroom water lines. There is no evidence that the work involved standpipes, sprinkling systems, or any other plumbing work that would bring it under the definition of “Fire Safety Law” as found in IC 22-12-1-13.¹
14. IC 22-14-2-1(6) charges the SFM with the enforcement of fire safety laws.
15. The SFM is not the appropriate enforcement office to enforce building or plumbing code provisions not involving fire safety.
16. Accordingly, violation number 8 of the Order of the SFM citing the failure to obtain a plan release for the plumbing project should be vacated for lack of jurisdiction over the subject matter by the enforcement authority.
17. The other portion of the order at issue deals with exiting from the basement which certainly is a fire safety issue.
18. Section I004.2.3.2 of the current SBC states as follows: “. . . Every occupant in basements . . . shall have access to not less than two exits.”
19. For purposes of Chapter 10 of the SBC, “exits” is defined by Section I005.1 as “. . . that portion of the means of egress system between the exit access and the exit discharge or the public way. Components that may be selectively included in the exit include . . ., exit enclosures, exit passageways . . .”
20. Petitioner’s exhibit I shows two stairways leading out of the basement; one at the middle of the east wall and one near the north end of the west wall.
21. The width of the basement is approximately 48 feet.
22. Both stairs lead out of the basement to first floor hallways.
23. Thus any one in the basement does have access to two means of exiting.
24. In the SFM’s post-hearing brief, the SFM raised for the first time issues involving Section I006.2.1 and 2 dealing with exits to grade level and I004.3.3.2 dealing with width of hallways.

¹ IC 22-12-1-13 “Fire Safety Law” . “Fire safety law” means any building law, equipment law, or other law safeguarding life or property from the hazards of fire or explosion.

25. The SFM may have a very valid point, however, those were not issues raised by the order, the petition for review and the evidence presented and argued in the hearing.
26. Due process requires that the administrative law judge base his decision on the issues as framed by the parties prior to the hearing. See In Re: Intech One Office Building, Cause Number 00-52 (February 16, 2001) affirmed by the FPBSC on April 3, 2001.
27. For this reason, violation 7 of the order which required another exit should be vacated.

NONFINAL ORDER

Violations 7 and 8 of the Order of the State Fire Marshal issued July 24, 2000, are hereby vacated.

