

**STATE OF INDIANA
BEFORE THE FIRE PREVENTION AND BUILDING
SAFETY COMMISSION**

IN RE:)	ADMINISTRATIVE CAUSE NO. 04-23
)	
EASTERN HIGH SCHOOL AND)	
EAST WASHINGTON MIDDLE)	
SCHOOL)	(Order of SFM)

**REPORT, FINDINGS OF FACT, AND NONFINAL ORDER
OF THE ADMINISTRATIVE LAW JUDGE**

I. APPEARANCES

For the Petitioner

**EASTERN HIGH SCHOOL
AND EAST WASHINGTON
MIDDLE SCHOOL**

**Hal Kovert, AIA
Kovert-Hawkins
630 Walnut Street
Jeffesonville, IN 47130**

For the Agencies

**STATE FIRE MARSHAL
AND STATE BUILDING
COMMISSIONER**

**Mara Snyder
Legal Counsel
State Fire Marshal
Room E241
Indiana Government Center South
302 West Washington Street
Indianapolis, IN 46204**

II. REPORT

Sometime prior to the fall of 2003, Eastern High School and East Washington Middle School of Perkin, Indiana (“School”) designed and built a major addition to the existing buildings. On February 23, 2004, the State Building Commissioner (“SBC”) issued a 23 violation order (“Order”) based on inspections by the SBC and the State Fire Marshal (“SFM”). The School filed a timely petition for administrative review on February 29, 2004. In April, the Fire Prevention and Building Safety Commission (“FPBSC”) granted administrative review. A telephone prehearing conference was set for April 28, 2004, and reset at the request of the parties for July 22, 2004. A conflict in the administrative law judge’s schedule required moving the telephone conference to August 5, 2004. At that time, the 23 points of contention had been reduced to 11 items. The matter was set for hearing on September 22, 2004 at the school corporation office next to the schools at issue. The hearing was held as scheduled.

III. FINDINGS OF FACT

1. The SFM and SBC are agencies within the meaning of IC 4-21.5.
2. IC 4-21.5 and the 1998 Indiana Building Code (“IBC”) 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 SBC.
4. At all time relevant to this proceeding, the School operated as a junior and senior high school in a scenic rural area of Washington County, Indiana.
5. As with many school corporations, an expanding student base required the construction of additional space.
6. The area of the state in which the School is located does not have local inspectors hence the SBC is responsible for the inspection of Class I structures.
7. The inspections by the SBC and SFM eventually culminated in a 23 part order signed by the SBC in February of 2004. See attachment A.
8. Approximately ½ of the noted violations were resolved by the time of a telephone conference in August of 2004.
9. A hearing was held on the remainder in late September of 2004. For convenience, the trier of fact will refer to the violations remaining by the number used in a notebook provided to all parties and the administrative law judge by the architect for the School.
10. Violations 1, 2, and 3 all involve accessibility of the primary entrance to the School.
11. These three violations illustrate perfectly the problem of inserting accessibility standards in a general building code.
12. At issue is a gently sloped elliptical shaped exterior sidewalk which runs from the sidewalk next to the parking and traffic area to the main entrance.
13. A person desiring to enter the School through this large main entrance has a choice of taking steps directly up to the school entrance from the sidewalk or

- walking up this elliptical walkway which starts at the sidewalk near the stairs and ends at the concrete area in front of the doors to the School.
14. This walkway is clearly intended to be an accessible entrance to and exit from the School.
 15. Chapter 10 of the IBC involves means of egress and may well consider the walkway a “ramp” for purposes of exit discharge.
 16. The Order, however, does not cite Chapter 10 as the violation.
 17. The Order cites Chapter 11, Sections 4.8.2, .5, and .7 as the three sections violated.
 18. Chapter 11 deals with accessibility and provides its own definition of “ramp”.
 19. Chapter 11, section 4.8.1 defines a ramp for accessibility as “any part of an accessible route with a slope greater than 1:20” which means that if the slope is 5% or less, it is not a ramp.
 20. Violation one correctly points out the maximum rise for any run in a ramp cannot exceed 30” and this walkway certainly does.
 21. However, the only testimony as to the actual slope was from the architect who testified that “this was intentionally designed not to be a ramp.”
 22. The School did not want to call attention to anyone using the walkway as handicapped and therefore the walkway was designed to have a slope of less than 1 to 20.
 23. Likewise the other two violations involve hand rails required on ramps and edge protection for ramps.
 24. Since the available evidence leads to the conclusion that the walkway is not a ramp within the meaning of Chapter 11 of the IBC, the walkway does not violate Chapter 11 of the IBC.
 25. Violations 1, 2, and 3, as written, should be vacated.
 26. The next non-resolved violation was number 6 dealing with occupant load and exiting from the gymnasium
 27. The violation was written for failure to comply with Section 1004.2.3.4 which requires access to no less than 4 exits or exit access doorways if the occupant load exceeds 1,000 persons.
 28. According to Carl Deel’s testimony, the gymnasium (not a part of the most recent expansion) as originally built had 4 code compliant exits.
 29. Deel, an inspector for the SFM, further testified that the current construction project eliminated a code compliant exit near the weight room.
 30. The parties disagreed on the calculation of the occupant load, but even the evidence most favorable to the School puts the load at over 1900 persons.
 31. Because of this, 4 code compliant exits are required by Section 1004.2.3.4 of the IBC.
 32. Violation 6 should be affirmed.
 33. The School had obtained Variance 02-12-9(a) which it felt covered violation #7 in the Order. See attachment B.
 34. Violation #7 cited a failure to protect HVAC penetrations through a 4 hour wall.
 35. The Variance was obtained from IBC Section 501.1 which allows area increases

- to allow an area increase based on a 4 hr. rated exterior wall into a courtyard with openings protected with sprinklers instead of rated assemblies.
36. The Variance involved the use of quick response sprinklers at openings facing the courtyard and references NFPA 80A.
 37. The exposed building is sprinklered throughout.
 38. It appears as though ductwork through a rated wall is another opening and is covered by the Variance.
 39. As long as the opening is washed as proposed in the Variance, there is not a violation and violation 7 should be vacated.
 40. Violation 12 cites Section 706.1 of the IBC.
 41. Section 706.1 of IBC deals with Fire resistive joint systems and requires fire resistant systems when rated walls and assemblies are required.
 42. This is another problem that occurs when a new addition is placed next to an older building.
 43. The older building had an existing concrete block wall which was not required to be rated under a prior code and therefore did not provide fire resistant joints.
 44. During construction, this existing wall was moved in part to create a vestibule to allow for the installation of restroom doors.
 45. The 1998 IBC would require this wall to be rated and therefore the joint system to be fire resistant.
 46. The School contends this is a minor non-structural alternation to an existing building which did not degrade any fire rating required by the prior code.
 47. The wall in question does not go all the way to the roof.
 48. The SBC contends that this is part of a new construction project and, as such, must comply with the 1998 IBC.
 49. While the School is correct in that requiring the block to go all the way to the ceiling to form a fire resistive joint in the area of construction when the wall was moved while not requiring the untouched portion of the same wall to do so does not enhance fire safety in any manner, moving the wall to form the alcove or vestibule is technically new construction and is required to meet the current code.
 50. The above situation is different than just adding a door or window; it rearranges the space and the use of the space.
 51. The School's remedy is to request a variance.
 52. Violation 12 should be affirmed.
 53. Violation 17 cited Section 1003.3.1.3 of the IBC.
 54. Section 1003.3.1.3 deals with width and height of doorways.
 55. This section requires a nominal width of an exit door to be a minimum of 36 inches width and a clear width of 32 inches with an installed door.
 56. The SBC introduced testimony of measurements that shows a width of approximately 28 inches from the panic bar to the protruding catch when the door is open.
 57. The School introduced commentary to the International Building Code that indicates panic hardware may intrude into 4 inches of the opening.

58. The School thus contends that the door is code compliant.
59. The SBC correctly argues that the commentary to the code is at most advisory and is not binding unless adopted by the FPBSC.
60. As the IBC is written, the door in question does not comply to Section 1003.3.1.3 of the IBC unless the FPBSC specifically interprets the IBC in a manner consistent with the commentary.
61. Violation 17 should be affirmed.
62. Violation 18 involved travel through intervening rooms in violation of Section 1004.2.2.
63. IBC Section 1004.2.2 requires occupants of a room to access the exiting system on an exit without traveling through an intervening room with certain enumerated exceptions.
64. The room involved in this violation is a room directly behind the stage.
65. Part of the problem with this violation was the fact that during construction, the contractor used the room for storage and thus at the time of the inspection, the SBC representatives called this a storage area and thus persons exiting on the stage would be exiting through a storage room.
66. Exiting through storerooms is absolutely prohibited by the IBC.
67. The purpose of the room in question, however, is not storage.
68. The room was designed to be a construction room for scenery.
69. Once constructed, the scenery is then moved to the stage area; it is not kept in the room.
70. If there is construction going on, the stage is not in use.
71. If there is activity on the stage, the room will not be in use.
72. There are other exits from the stage, one of which goes into a hallway.
73. Exception 4 to Section 1004.2.2 allows one exit to pass through an intervening room if there are multiple exits.
74. The design of having an area behind the stage (which has an exit directly to the outside) is not in and of itself a violation of the IBC.
75. The problem is the age old problem of persons seeing an empty space and having a burning desire to fill it.
76. As long as the room is used as a “prop room” and not a storeroom, there is no violation.
77. Clearly, at the time of the inspection, the contractor was using the space as a storeroom which sets up a code violation any time the stage is in use.
78. Violation 18 should be affirmed in that a violation existed at the time of the inspection. The violation requires only that the room not be used as a storeroom or other prohibited use to be abated.
79. Violation number 20 cites Chapter 11, Section 4.1.3(9) as the violation.
80. Chapter 11 of the IBC deals with accessibility and Section 4.1.3(9) requires a minimum number of accessible exits from portion of the buildings and cross references Chapter 10.
81. The area in question is the auditorium and IBC 1007.2.2 requires auditoriums to have at least one exit on each side plus possible others depending on the size of

- the auditorium.
82. There is no question that the total number of exits is code compliant.
 83. However, this is another example of how a new construction project can foul up an existing building.
 84. The auditorium was previously constructed and had two side exits on both the north and south sides of the East facing auditorium.
 85. Each side had a Chapter 11 compliant exit.
 86. The north side still has 2 exits, one of which meets the accessibility standards.
 87. The new construction, however, eliminated one of the south exits and unfortunately, it was the only south side accessible exit. The remaining exit has some stairs and thus the auditorium does not have an accessible exit on both sides.
 88. Violation number 20 should be affirmed.
 89. Violation number 21 also cites Chapter 11 as it applies to door latches.
 90. Chapter 11, Section 4.27.4 states that “Controls and operating mechanisms shall be operable with one (1) hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than five (5) lbf. . . .”
 91. At issue are the doors on the boys and girls locker rooms.
 92. The door locking mechanism requires a person opening the door to pinch and turn thus requiring hand, finger, and thumb strength to open the door.
 93. The School introduced into evidence manufacturer’s data sheet that indicates the thumb turn meets ADA requirements.
 94. Nowhere, however, does it give the force needed to turn the thumb turn.
 95. Chapter 11 sets up an objective standard of 5 lbf.
 96. Until the manufacturer provides a document stating that the device as installed does not require a turning force of more than that number, this has to be considered a violation of the IBC.
 97. Violation number 23 deals with an unprotected wall opening.
 98. During the hearing, the parties agreed that the way to resolve this matter was to provide testing information from an approved independent laboratory and the School agreed to provide it.
 99. Until the paperwork trail is complete, the violation should be affirmed.
 100. At the prehearing conference in this matter, the parties indicated that violation 11 was no longer an issue.
 101. During the hearing, violation 11 surfaced as an issue.
 102. Violation 11 cited Section 709.6 of the IBC and involves penetration of fire rated assemblies.
 103. At issue is the method of determining whether the system is still code compliant.
 104. One of the three hour rated doors has several ¼” to ½” holes drilled in it.
 105. The School received a letter from the manufacturer saying the small holes did not compromise the integrity of the door.
 106. The SBC contends correctly that such a statement needs to be received from one

- of the certified testing laboratories as to whether it still meets to 3 hour standard.
107. Violation 11 should be affirmed until such time as an approved laboratory report abates it.
 108. The remaining violations cited by the Order have been resolved.

IV. NONFINAL ORDER

Violations 1, 2,3 and 7 of the Order of the State Building Commissioner dated February 23, 2004, are hereby vacated.

Violations 6, 11,12, 17,18, 20 21, and 23 are hereby affirmed as written.

Date: February 7, 2005

WILLIAM K. TEEGUARDEN
Administrative Law Judge
State Emergency Management Agency
302 W. Washington Street, Rm E208
Indiana Government Center South
Indianapolis, IN 46204
Telephone: 317/232-3835

A copy of the foregoing has been sent to the following:

Hal E. Kovert
Kovert Hawkins
630 Walnut Street
Jeffersonville, IN 47130

Mara Snyder
Legal Counsel
Department of Homeland Security
Agency Support Services
402 W. Washington Street
Room W246
Indiana Government Center South
Indianapolis, Indiana 46204