

CAUSE NO. 04-41F
NAME: TTS DEVELOPMENT
ADMINISTRATIVE LAW JUDGE: WILLIAM TEEGUARDEN
DATE: JANUARY 18, 2006
COMMISSION ACTION: AFFIRMED

FINDINGS OF FACT

1. The Department is authorized to conduct fire inspections in Warren Township, Marion County, Indiana, and issue orders for violations of the State Fire and Building Codes. See IC 36-8-17-9.
2. A recipient of such an order may administratively appeal a local order to the Commission who is the ultimate administrative authority within the meaning of IC 4-21.5 over appeals of local orders. See IC 36-8-17-13.
3. IC 4-21.5, IC 36-8 and the State Fire and Building Codes (“SFC” and SBC”) apply to this proceeding.
4. At all times relevant to this proceeding, the TTS property has been used as a wholesale warehouse for consumer fireworks.
5. In May of 2004, a duly authorized inspector of the Department wrote an Order to the owner of the building citing a violation of NFPA 1124, in that the NFPA (National Fire Protection Association) requires buildings over 12,000 square feet used to store fireworks to have a code compliant sprinkler system.
6. At the time of the inspection, the building in question consisted of 28,800 square feet and had no sprinkler system.
7. The NFPA puts out a number of model codes for fire safety.
8. The Commission has adopted a number of NFPA codes to supplement the SFC.
9. Unfortunately for the Department, NFPA 1124 is not one of those adopted.
10. NFPA 1124 is cross-referenced in Chapter 33 of the 2003 IFC (2000 International Fire Code), however the Indiana Amendments to the 2000 International Code delete Chapter 33 entirely and substitutes language from the 1997 Uniform Fire Code in place of Chapter 33 of the International Code.
11. Thus a violation of the language of NFPA 1124 is not a violation of the SFC.
12. Further, the storage of fireworks is seasonal; by the time the hearing was held, the building in question was no longer being used to store fireworks; it was used to store Halloween costumes.
13. The easy way out of this matter is to conclude there is no violation of the SFC and vacate the order. To do so, however, does not resolve a continuing problem for both parties which will occur every spring.
14. Both the building owner and the tenant testified at the hearing.
15. Neither had any long term association with the building. The tenant has occupied the building since 2001.
16. The Building was constructed most likely in 1967 with a small addition constructed much later, in the 1990’s, giving a 1973 effective date on the Township Assessor records.
17. The addition has no relevance to this case.

18. The Building, which is single story, is constructed out of cinder block with a metal roof and the Department agrees it is rated as 2 hour construction.
19. The original building has 4 units of 14,400 square feet each which because of the fire resistant construction, would be considered 4 separate units.
20. The tenant has leased two adjoining units and removed some of the fire-rated construction from the wall between them, thus making the space 28,800 square feet.
21. At the time of the hearing, the tenant was restoring the two hour wall.
22. The tenant has a 2005 Certificate of Compliance from the State Fire Marshal dated May 25, 2005, allowing him to store fireworks.
23. At the hearing (but not in the Order), the Department raised several other issues involving 1998 Building and Fire Codes.
24. Since the tenant moved in during 2001, these would be the codes in effect at that time.
25. TTS then points to a memo from the State Fire Marshal dated May, 2004, which informs interested parties that structures used for storing 500 pounds or more of fireworks is an H-3 (Hazardous) occupancy and requires sprinklers if the structure was not used for storage of fireworks prior to the 2003 Codes taking effect.
26. The memo further notes that any structure that was used for the storage/sale of fireworks prior to that date is grandfathered and the building is still classified as an M or possibly B-2 if the use dates back far enough.
27. Sprinklers are probably not required for those buildings.
28. Both arguments have some merit, but both are misleading in this case.
29. The key to whether a new code applies to a new business in an old building is whether it is a change of use to one not permitted under the SBC in effect at the time of construction.
30. For instance, if a building was designed and built in the 1980's to be an office supply store, it can probable be used for most other general business purposes at a later date without having to meet a newer SBC.

31. That building could not be used, however, as a restaurant/bar or an auto repair shop/gas station without bringing it up to the current code since those would be uses not intended or contemplated by the original design.
32. In the TTS case, the Building appears to have been constructed in 1967.
33. The applicable SBC is the Building Rules and Regulations (Minimum Requirements) of the Administrative Building Council of Indiana. Uniform Codes and National Codes were not used until the 1970's.
34. Fireworks are not specifically referenced in the 1959 code but are probably a group F occupancy. At worst, they would be a group E occupancy.
35. The various tenant spaces are separated into 14,400 square foot areas by "ordinary occupancy separation" and therefore a mixed occupancy of group E and group F uses is permitted. 1959 SBC Sec.502.
36. The basic allowable floor areas for a one story building are 7500 sq. ft. (Group E)

and 11,250 (Group F) assuming ordinary masonry construction (Type III). 1959 SBC Sec. 1702 and Table 5 C.

37. Because of the fire rated construction of each unit and the fact that the building is considerably more than 20 feet away from other structures or other impediments, it is entitled to double the allowable area. See 1959 SBC Sec. 506.
38. This makes the allowable area for the worst case occupancy of fireworks to be 15,000 square feet.
39. Since the units were built with 14,400 square feet and two hour block separations, fireworks storage appears to have been a permitted use of the building as originally built.¹
40. The Order, as written, should be vacated.

NONFINAL ORDER

The Order of the Warren Township Fire Department issued to TTS Development on May 20, 2004, is hereby vacated.

¹ If the tenant or owner does not restore the 2 hour separation wall, the effective area becomes 28,800 square feet as cited and this would make the Building over area even if fireworks is an F occupancy.