

CAUSE NOS: 04-74, 05-20F

NAME: CALVARY LOTS OF TOTS

ADMINISTRATIVE LAW JUDGE: WILLIAM TEEGUARDEN

DATE: MARCH 13, 2006

COMMISSION ACTION: AFFIRMED

FINDINGS OF FACT

1. The Office of the State Fire Marshal is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5 and the State Building and Fire Codes and the State Mechanical Code ("IBC", "IFC" and "IMC") apply to this proceeding. The Applicable IBC is the 1993 code and the applicable IMC is the 1992 code.
3. The FPBSC is the ultimate authority within the meaning of IC 4-21.5 over orders issued by the Agency.
4. At all times relevant to this proceeding, the Daycare operated a child care ministry for infants and small children in New Castle, Indiana.
5. After some earlier orders, in January of 2005, a duly authorized agency representative issued a 10 part order to the Daycare citing violations of the IFC, IBC, and IMC which superseded previous actions.
6. By the time of the hearing, four of the alleged violations had been resolved.
7. Violations 1,3,4,5,6, and 10 are still at issue. None of these remaining issues involves the IFC.
8. The Building in question is an aesthetically pleasing church located on the south side of New Castle.¹
9. The Daycare plans were filed with the Agency in March of 1995.
10. Since the area in question is used as a daycare, its occupancy classification is A-3 rather than an E occupancy.
11. Violation 1 of the Order cites Section 3305(h) of the IBC as the section violated.
12. Section 3305(h) requires interior corridor doors to be self closing and latching and be fire-rated by certified laboratory tests to a 20 minute fire protection rating.
13. Violation 3 of the Order cites Section 4306(j) of the IBC as the section violated.
14. Section 4306(j) requires the installation of fire and smoke dampers in rated corridors.
15. Violation 4 of the Order cites Section 1002(a) of the IMC as the section violated.
16. Section 1002(a) prohibits rated exit paths from being used as an air return plenum for ventilation system.
17. Violation 5 of the Order cites Section 3305(a) of the IBC as the code section violated.
18. Section 3305(a) prohibits exit corridors from passing through intervening rooms.
19. Violation 6 of the Order cites Section 3318(j) of the IBC as the code section violated.

¹ The hearing was held in the fellowship hall of the building so that observations such as the above could be made.

20. Section 3318(j) requires that panic hardware be installed on exit doors from rooms with an occupant load more than 50.
21. Violation 10 of the Order cites Section 3306 of the IBC as the code section violated.
22. Section 3306 requires hand rails on both sides of the stairways.
23. The lower level of the building resembles the first level so any violation written applies to both levels. Diagrams of both levels, exhibits 2(A) and 2(B) are attached.
24. That portion of the building dealing with the daycare was completed and became operational as a daycare ministry in late 1996 or early 1997.
25. The average child population is in the low 50's and includes children from 6 weeks old to after school care for grade school students.
26. The general structural characteristics of the daycare area has not changed since the daycare commenced operation.
27. Once operational, the daycare ministry became subject to annual fire inspections by the Agency which commenced in early 1997.
28. Several such inspection reports were submitted by the Daycare and those reports did not indicted code problems with the exiting system or the ventilation system.
29. The length of time that has passed without any reference to noncompliance with codes involving design or construction is an issue that was raised by the Daycare and must be resolved prior to continuing further.
30. The design was first released to the Agency in April of 1995.
31. The Daycare was first inspected by the Agency in March of 1997.
32. If the violations are alleged are based on a design defect, the Agency could (or should) have been aware of the defects approximately 9 ¾ years prior to issuing the order.
33. If the violations as alleged are based on construction defects (failure to build according to plans), the Agency could have reasonably known this in March of 1997, which is slightly less than 8 years after possible discovery.
34. In either case, FPBSC precedent requires ruling against the Daycare.
35. In the matter of Fisher v. American Legion Post, August 15, 2005, the FPBSC affirmed findings by the administrative law judge involving a 9 year delay from installation of wall carpeting to the issuance of an order.
36. While noting the obvious prejudice to a business when enforcement actions are not taken for 9 years, the decision found that the Legion had not cited a statute of limitations which would prohibit enforcement nor was the administrative law judge able to find any such statute.
37. Further, on March 7, 2006, the Commission held that the statute of limitations does not apply to an administrative hearing. See IN RE EAST WAYNE CENTER.
38. Accordingly, the action against the Daycare may proceed.
39. The construction design release issued in April of 1995 lists the construction type as "V-1 hour (the IBC uses Roman Numerals for construction type so "V" is 5).
40. Table 17-A of the IBC required one hour construction.

41. With respect to the corridor systems, Section 3305A requires a corridor serving an area with a population of 30 or more to be at least one hour rated.
42. To maintain a one hour rating in a corridor, openings must be protected for the length of the corridor which in the case of doors requires 20 minute rated self closing doors for the classrooms and restrooms.
43. The inspector's testimony clearly establishes that some of the doors were self latching and had the proper gaskets attached to retard fire spread but several did not.
44. The corridor also passes through another room on its way to the main (North) exit.
45. As a person enters the church/daycare through the north entrance, the daycare area is straight ahead. To the left is a small area which could be considered a foyer and, if properly fire protected, would not be a violation.
46. To the right, however, is the fellowship hall. This is a large room which was filled with tables and chairs (the hearing was held in this room) and at the east end, there is a kitchen.
47. The rated corridor system, then, runs the length of the daycare area however stops well short of the North exit because of the fellowship area which is not separated in anyway from the corridor.
48. Thus the inspector correctly concluded the rated exiting system passes through another room in violation of Section 3305(a) of the IBC.
49. The inspector also visually inspected the doors leading outside and did not find panic hardware.
50. Since the occupant load is in excess of 50, this is a violation of Section 3318(j) of the IBC.
51. The testimony of the inspector as to the ductwork and ventilation system also established by a preponderance of the evidence that fire dampers were not present and the corridor was being used as a return air plenum.
52. Likewise, the stairway in question only has a railing on one side instead of both as required by the IBC.
53. None of the factual observations of the inspector were rebutted either during the Daycare's case in chief or on cross-examination of the inspector.
54. The Daycare's case in chief relied upon Exhibit A through D which are reports of prior inspections showing compliance.
55. In short, violations 1,3,4,5,6 and 10 of the Order have a sufficient factual and legal basis to be affirmed.
56. Prior rulings of the Commission contained above have held that failure to discover or cite violations during prior inspections is not defense to an order no matter how many prior inspectors are involved or how much time has passed since construction.

NONFINAL ORDER

Violations 1, 3, 4, 5, 6, and 10 of the Order of the State Fire Marshal issued January 31, 2005, to Calvary Lots of Tots Daycare is hereby affirmed.

