

CAUSE NO: 05-50B

**NAME; WRITTEN INTERPRETATION OF SECTIONS 403.1 AND
106 OF THE IRC (City of Indianapolis)**

ADMINISTRATIVE LAW JUDGE: WILLIAM TEEGUARDEN

DATE: FEBRUARY 1, 2006

COMMISSION ACTION: AFFIRMED

FINDINGS OF FACT

1. The SBC, being part of the Department of Homeland Security, is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5, IC 22-13-5, and the IRC apply to this proceeding.
3. The Commission is the ultimate authority within the meaning of IC 4-21.5 over actions taken by the SBC.
4. At all times relevant to this proceeding, Morgan was in the business of constructing single family homes in central Indiana including Marion County.
5. The City is the inspection authority with respect to single family homes in the Consolidated City of Indianapolis.
6. All building inspectors whether city, county, or state, must enforce and inspect to the state adopted codes.
7. In its preparation for constructing a single family home, Morgan files a number of documents with the City.
8. Included in these documents are the footing designs.
9. This matter is somewhat complicated by the fact that the IRC changed during the pendency of this cause.
10. In its simplest form, the dispute is as follows: Morgan files its site plan with footers which do not meet some IRC requirements but file it with a licensed Professional Engineer's Certificate that the footer as designed meets the operational requirement of the code i.e. the soil bearing capacity of 1500 lbs. per sq. ft. is not exceeded. See Exhibit A attached. The City will not accept this Certificate by a PE as being an alternate method or material without an accompanying soil test.
11. IC 22-13-5 allows anyone having a dispute with a local building official ("LBO") to request a written interpretation from the SBC.
12. In July of 2005, Morgan requested a written opinion on this issue. See Exhibit A attached.
13. The SBC's response interpreted the IRC in favor of Morgan. See Exhibit B attached.
14. During this time period, the 2001 IRC (2000 International Code) was the applicable code.
15. In September, 2005, the 2005 IRC (2003 International Code) replaced the 2001 code.

16. The brief of the City, filed in November of 2005, raises this issue of jurisdiction of the SBC, by noting that Sections 106.1, 106.2, and 106.3 of the Code make the LBO the sole person for deciding issues of alternate materials and methods.
17. The SBC raises the very logical argument that by appealing the interpretation of the SBC, the LBO has submitted to or acknowledged the authority of the SBC.
18. However, matters of subject matter jurisdiction may be raised at anytime during a legal proceeding.
19. Both IRC's contain an Indiana amendment designated Section R102 which states in part ". . . Upon written request of an interested person, the state building commissioner may issue a written interpretation of a building law . . ."
20. Further, IC 22-13-5-2 gives statutory authority to the SBC to interpret building laws in situations like this one.
21. Since both the IRC (either version) and the Indiana Statutes allow this type of review by the SBC when properly requested in writing, the SBC (and therefore the Commission) has jurisdiction over this matter.
22. The rest of the City's argument is based on Section R106 of the Indiana amendments (both versions) which give the LBO the authority to require further information if needed to show the proposed plan is equivalent to the code requirements.
23. The practical effect of the SBC's official interpretation is to rule as follows:

Whenever a home builder obtains and submits a signed and sealed statement from a licensed design professional whose Indiana license implies competency in the matter being reviewed, the LBO must accept that document as sufficient to show equivalency and may not require further testing at the builder's expense."

24. As stated previously, the SBC has the authority to issue this interpretation.
25. From a legal perspective, it is a valid interpretation.
26. As with most actions taken by or on behalf of the SBC which affect rights and duties of other parties, this interpretation is subject to administrative review pursuant to IC 4-21.5.
27. A timely filed petition for review serves to remove the dispute from the Agency and place it in front of the Commission.
28. Since the Commission is the ultimate authority over agency actions, the Commission is in no way bound to adopt the same interpretation as the SBC.
29. The Commission is free to adopt the interpretation sought by the City or to create its own interpretation.
30. The legal result so far, however, is that the SBC has issued a valid interpretation of the IRC that would apply to either the 2001 IRC or the 2005 IRC.

NONFINAL ORDER

Subject to modification by the Fire Prevention and Building Safety Commission, the written interpretation of the IRC dated July 25, 2005 by the State Building compliance Official to C.P. Morgan homes is affirmed.