

CAUSE NO. 07-31
NAME: OUTLOOK COVE and
LAPORTE COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE LAW JUDGE: WILLIAM K. TEEGURDEN
DATE: JANUARY 14, 2008
COMMISSION ACTION: AFFIRMED

NONFINAL ORDER OF DISMISSAL

On May 2, 2007, the Fire Prevention and Building Safety Commission (“Commission”) granted Variance 07-05-15 (“Variance”) which allowed Outlook Cove to use a 700 gallon spa as a public spa in place of a 1000 gallon spa as required by the Indiana Swimming Pool Code, 675 IAC 26-3-2. Outlook Cove agreed in the Variance application to use a pumping and chemical release system consistent with a 1000 gallon spa. On September 18, 2007, the Indiana Department of Homeland Security (“Agency”) by its Plan Review Section, issued a Construction Design Release (“CDR”) for the Pool referencing the Variance.

On September 18, 2007, the LaPorte County Health Department filed a petition for administrative review, attached hereto, which sought review of the Variance.

At the November meeting of the Commission, the Commission granted administrative review and appointed an administrative law judge. On December 3, 2007, Outlook Cove, by counsel, filed a motion to dismiss for, among other reasons, failure to appeal the Variance in the time frame required by law. The administrative law judge issued an Order to Show Cause why this matter should not be dismissed as untimely filed. The LaPorte County Health Department by counsel, promptly filed a response to the Order to Show Cause indicating that the LaPorte County Health Department was unaware of the Variance until the CDR was issued thus they did petition for review within the statutory time frame from the time they were aware the Variance was granted.

Applicable law on this issue is relatively simple and straight forward. The Indiana Department of Homeland Security is an agency as defined by IC 4-21.5-1-3 and the granting of a Variance or the issuance of a CDR is an Order as defined by IC 4-21.5.1-9. The Commission is the ultimate authority with respect to orders and other actions of the Agency as defined by IC 4-21.5-1-15. The Commission also adopts the codes, including the Swimming Pool Code, which the Agency enforces.

IC 4-21.5-3-7 sets out the qualifications a petitioner must satisfy to qualify for administrative review. The relevant portion of this statute is IC 4-21.5-3-7(a)(3) which requires the petition for review to be filed within 15 days after issuance of required notices.¹

Indiana Law requires notice to be given to local officials of any Variance under consideration by the Commission. The Indiana Code is silent on the details of the required notice. The Commission has determined, by rule, that the most efficient way to notify local officials of a pending variance application is to require either or both of the local building official (“LBO”) and the local fire official (“LFO”) to be notified. See 675 IAC 12-5-5(10). Outlook Cove not only notified the LBO and LFO but obtained written statements from each which are attached. Further, the Commission, by law, includes a representative of the Indiana Department of Health. The minutes of the May 2, 2007, meeting indicate he was present and no Commission member voiced any opposition to the Variance.

The conclusion that must be drawn is that local officials were notified as required by code and the petition for review of the Variance was filed approximately four months late. Therefore, the LaPorte County Health Department does not qualify for administrative review.

¹ IC 4-21.5-3-2 provides for an additional 3 days if mail is used.

NONFINAL ORDER

Since the petition for administrative review of the grant of Variance 07-05-15 to Outlook Cove was not timely filed, the petition filed on behalf of the LaPorte County Health Department is hereby dismissed.