

CASE NO.: 08-06

NAME: Louis Brown and the Town of Elizabethtown

ADMINISTRATIVE LAW JUDGE: William K. Teegarden

DATE: July 22, 2008

COMMISSION ACTION: Affirmed

FINDINGS OF FACT

1. IC 4-21.5, 675 IAC 14, and IC 22-12, and IC 36-7 apply to this proceeding.
2. IC 22-13-2-7(c) authorized the Commission to review orders issued by political subdivisions that deal with one and two family residences pursuant to IC 4-21.5.
3. The Commission is the ultimate authority with respect to timely appealed orders of a political subdivision within the meaning of IC 4-21.5
4. At all times relevant to this proceeding, the Town was a political subdivision in the State of Indiana and Brown was a property owner in the Town.
5. Brown desires to place a modular home on a lot in the Town.
6. The Town has Ordinance 18 (“Ordinance”) which among other provisions, requires the foundation and piers to be mortared cement block.
7. Brown used concrete blocks but did not use mortar.
8. At issue in this matter is the Order issued in April of 2008 to which a timely petition for review was filed.¹
9. An authorized keeper of the records of the Commission filed a letter stating that the Town has no ordinances which have been approved by the Commission.
10. The Town does not assert it has an approved ordinance.
11. At first thought, the resolution of this matter is simple; IC 22-13-2-5(b) clearly requires that a local ordinance cannot take effect if it involves fire safety or a building law until it is approved by the Commission.
12. However, counsel for the Town has raised two interesting arguments why IC 22-13-2-5(b) does not apply.
13. The Town’s first argument is that “Home Rule” enacted in 1980 in IC 36 abrogated all (or at least most) of the prohibitions against local units of government managing their own affairs.
14. Specifically, the Town cites IC 36-8-2-4 which states “A unit may regulate conduct, or use or possession of property that might endanger the public health, safety, or welfare.”
15. This would be a strong argument except for 2 items.
16. IC 36 was passed in 1980.
17. IC 22-13-2 -2 and 5 providing for statewide fire safety and building laws and the review of local ordinances covering same was first passed in 1987.

¹ There have been other orders and even pending court litigation between the parties, but none of the other actions have any relevance to this proceeding.

18. A basic rule of statutory construction is that the more recent statute governs.
19. Further, IC 36-7-2-9, also first added in 1987 and subsequently amended several times mandates local units of government to conform to building laws and fire safety laws adopted by the Commission.
20. Clearly, the Legislature wanted statewide codes in the fields regulated by the Commission and wanted to prohibit the adoption or enforcement of local building codes.
21. The Town cannot prevail on the Home Rule argument.
22. The Town also contends the Ordinance in question is not a “building law” since it only applies to Mobile Homes and Mobile Home Parks.
23. The Town submitted the Ordinance as Exhibit 1 to its brief.
24. The Town is correct in its premise that if the Ordinance is a land use planning or zoning ordinance, it does not require approval by the Commission.
25. Had the Town just denied the application to put a modular or mobile home on the lot, the Commission would have no jurisdiction.
26. Those portions of the Ordinance not setting forth construction standards are enforceable without Commission approval.
27. Most of the 9 provisions of the Ordinance are in the nature of land use planning.
28. Unfortunately for the Town, Section IV states “. . . All mobile homes issued permits on private lots must be placed on permanent foundations . . .”
29. That portion of Section IV is clearly a building law and as such, must be approved by the Commission before it can be enforced.
30. The Town also briefly contends that the foundation violates 675 IAC 14, the Indiana One and Two Family Building Code.
31. To the extent this argument has been made, it is irrelevant to this proceeding as the parties have previously agreed that the Order was issued on the basis of the Ordinance.² Further, the Town has never been approved as an enforcement authority with respect to one and two family dwellings.
32. Nothing in this decision prevents a duly authorized inspector from conducting periodic inspections of the single family dwelling pursuant to the Indiana One and Two Family Building Code and citing violations of that code.
33. The Order issued by the Town is an attempt to enforce a building law by use of an ordinance which has not been approved by the Commission and thus should be declared null and void.

NONFINAL ORDER

The Stop Work Order issued by the Town of Elizabethtown to Louis Brown on or about April 8, 2008 is null and void.

² No one raised the issue but the administrative law judge notes in passing that the Order does not cite any code or ordinance on its face, does not give appeal rights, and is not signed by anyone as a duly authorized representative of the Town.