

CAUSE NO. 08-37 (Denial of Permit)

NAME: Big Boom Fireworks

ADMINISTRATIVE LAW JUDGE: William K. Teegarden

DATE: May 6, 2009

COMMISSION ACTION: Affirmed

FINDINGS OF FACT

1. The Indiana Department of Homeland Security is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5 and IC 22-11 apply to this proceeding.
3. The Agency is the state entity responsible for regulating the storage, use, and sale of fireworks in Indiana.
4. The Commission is the ultimate authority within the meaning of IC 4-21.5 over permitting decisions of the Agency.
5. At all times relevant to this proceeding, Big Boom was a business entity which sold consumer fireworks.
6. In 2006, the State Legislature materially changed the laws dealing with fireworks regulation.
7. A business who wishes to sell fireworks must apply to the Agency for each retail location. IC 22-11-14-4.5(e)
8. "Consumer fireworks" is a defined term in IC 22-11-14-4.1 and generally cross-references 16CFR 1507 and is limited to items with a very small amount of explosive material.
9. IC 22-11-14.4.5 contains a grandfathering provision for buildings which have been used continually for fireworks sale or storage since before July 4, 2003. Any such building is entitled to receive an annual permit to continue as long as the structure complied with B-2 or M occupancy requirements.
10. Otherwise, the building in question must meet category H (for hazardous) requirements of the building code which are much more stringent than M and B (General Mercantile and Business) building codes.
11. The limit on fireworks which can be contained in a nonsprinklered building which does not meet a grandfather condition is 500 lbs. which is the 2003 Indiana Building Code cutoff for H occupancies.
12. The Application sought to permit the storage of an unlimited amount of consumer Fireworks at the location in Scottsburg because of prior usage.
13. The Application contained an affidavit that no intervening non-fireworks use has been made of the building.
14. As required by the application, both the local fire official ("LFO") and local building official ("LBO") submitted information with respect to the grandfathered use.

15. Both confirmed prior usage of the building for the sale of fireworks.
16. However, the LFO stated the sales took place as part of a “flea market” in the building.
17. The Agency contends that because of the non-exclusion use of the building in question for fireworks, the building is not grandfathered.
18. That is, IC 22-11-14-4.5(b)(1)(B) requires not only continued use since 2003, but “. . . no subsequent intervening non-fireworks sales on storage use has occurred.”
19. The sole issue thus is whether the sale of fireworks in rented space in a flea market is sufficient to trigger the grandfather provisions of IC 22-11-14-4.5(b)(1).
20. A flea market by its nature has a number of different items for sale by a number of different persons.
21. Absent evidence that Big Boom has continuously used the same booth and at no time since July 4, 2003 was that booth been used for something other than the sale of fireworks or items related to fireworks, this Big Boom location does not meet the grandfathering provision of IC 22-11-14-4.5.
22. The Agency correctly denied the permit.

NONFINAL ORDER

The decision of the Indiana Department of Homeland Security to deny the sale of fireworks application by Big Boom Fireworks at 1621 W. McClain Avenue, Scottsburg, Indiana is hereby affirmed.