

**CAUSE NO. 08-71 L**

**NAME: Goldman Union Camp Institute**

**ADMINISTRATIVE LAW JUDGE: William K. Teegarden**

**DATE: May 8, 2009**

**COMMISSION ACTION: Affirmed**

**FINDINGS OF FACT**

1. The Commission is the ultimate authority within the meaning of IC 4-21.5 over local building and fire orders involving state fire and building codes in which petitions for review are properly taken.
2. IC 4-21.5 and the 2003 Indiana Building Code (“IBC”) apply to this proceeding.
3. The City is permitted to perform its own plan review in addition to the State review.
4. On November 11, 2008, as part of the City’s review/inspection activities, a duly authorized city employee wrote the order to the Camp.
5. The Camp filed a timely petition for administrative review of part 4 of the Order.
6. At all times relevant to this proceeding, the Camp was a camp for Grades 3-12 on a large piece of acreage in Northwestern Marion County in Indiana.
7. At issue is a building to be constructed which is basically a performing arts center with no fixed seating for campers.
8. The parties generally agree that the total allowable occupancy of the stage and basement area is approximately 150 persons.
9. The issue is the occupancy calculation of the area in front of the stage where campers gather to view the stage.
10. The city contends the correct factor to use is 5 square feet per person since that is the factor used for standing areas. See table 1003.2.2.2.
11. This factor results in an occupancy load of approximately 950 persons for a building total of approximately 1100.
12. This results in a total building occupancy of over the magic number of 1000.
13. The Camp contends that 7 square feet per person is a more appropriate number for persons being instructed to sit on the floor.
14. This results in an occupancy number of just under 700 persons for a building total of around 850, clearly under the magic number.
15. The design professional for the Camp designed this project for seated students.
16. The exiting system in either case is not an issue.
17. The issue involves the installation of a higher grade of alarm system.
18. The applicable building code, Section 907.2.1.1 requires an A occupancy (Assembly areas) with an occupant load of 1000 or more to have a signal using an emergency voice/alarm communications system in accordance with NFPA 72.
19. The City cites IN RE: EAST WAYNE STREET, cause number 05-27, nonfinal order issued December 12, 2005, result modified by the Commission on March 7, 2006, as determinative of this matter.<sup>1</sup>

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<sup>1</sup> IC 4-21.5-3-32 allows the use of final agency decisions as precedent if they are indexed and available to the public. The Commission passed a resolution in 1997 authorizing the indexing of decisions and they may be found on the

20. The tryer of fact agrees the East Wayne decision is controlling in this matter. A copy is attached to this decision.
21. Unfortunately for the City, while the nonfinal order which vacated an order of the state fire marshal was affirmed, it was affirmed on completely different grounds.
22. The tryer of fact now takes official notice pursuant to IC 4-2.5-3-26 of the Commission minutes of the March 7, 2006, when it ruled on the administrative law judge's decision.
23. In East Wayne, the controversy centered about the occupancy load factor in a headstart room not dissimilar to the one here; a generally vacant room (much smaller than the Camp) used primarily for children's play in bad weather.
24. The issue involved the exiting system. If the load was less than 50 persons, the exiting was adequate.
25. If 50 or more, the room needed another exit.
26. The design professional testified he designed the project for use at 15 square feet per person which gave a total load of the room less than 50.
27. The Agency contended the assembly room was required to be calculated at 7 square feet per person which put the occupant load over 50.
28. It should be noted that no one contended this empty space should use a factor of 5 square feet per person.
29. Also of note was the testimony of the long time local fire inspector who routinely inspected this building over the 11 years of existence who stated that he saw no problem with using 15 square feet per person, thus showing the City's position is hardly the norm among local inspectors.
30. The administrative law judge ruled that 7 square feet per person was the more appropriate figure, but vacated the order because of the generic 10 year statute of limitations on initiation of actions.
31. As can be seen from the Commission minutes attached to this decision, the Commission agreed with vacating the Order but disagreed with the reasoning.
32. The Commission voted to dissolve that portion of the Order based on the statute of limitations.
33. Commissioner Hawkins then moved to find the assembly room was not in violation and the motion carried.
34. Thus East Wayne actually stands for the position taken by the Camp.
35. That portion of the Order (item #4) dealing with the voice/alarm communications system should be vacated.

#### **IV. NONFINAL ORDER**

Item 4 of the Notice of Violation issued by the City of Indianapolis to the Goldman Union Camp dealing with voice/alarm communications systems is hereby vacated.

Date: May 8, 2009

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