

CAUSE NOS. 08-74, 08-75, 08-76, 08-77, 08-78 (F)

NAMES: Crazy Horse Bar, Alley Bar, Jakes, The Blue Bird, Upstairs Pub

ADMINISTRATIVE LAW JUDGE: William K. Teeguarden

DATE: July 16, 2009

COMMISSION ACTION: Affirmed

FINDINGS OF FACT

1. The Agency is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5, IC 22-12, and date specific Indiana Building Codes found in various versions of 675 IAC apply to these proceedings.
3. The Fire Prevention and Building Safety Commission (“Commission”) is the ultimate authority within the meaning of IC 4-21.5 with respect to administrative reviews of violations of Indiana building and fire codes when appropriate petitions for administrative review are filed.
4. Properly filed petitions for administrative review of local building and fire orders are included in the Commission’s responsibilities as the ultimate authority.
5. The City maintains a full time professional fire department and the department includes an inspection component.
6. At all times relevant to these proceedings, the Bars operated retail food and beverage businesses in downtown Bloomington, Indiana.
7. Any retail establishment has a maximum occupant load which cannot be exceeded.
8. Calculating occupant load for a building is not a simple task.
9. Factors which affect the occupancy load include the type of business, exit width, the date of construction, square footage, and whether there is any fixed seating.
10. In the late fall of 2008, the City entered the Bars, removed the signs posting the occupant loads, and replaced the signs with significantly lower loads, apparently relying on today’s codes.¹
11. The Bars filed an appropriate petition for administrative review of the new occupancy loads with the Commission on December 11, 2008 and requested a stay.
12. A stay hearing was set for December 30, 2008.
13. The morning of the stay hearing the parties negotiated an agreement to be entered as a temporary stay order until a final hearing could be held.
14. The stay agreement provided for the following interim occupancy limits:
 - (a) the Crazy Horse, 225
 - (b) the Alley Bar, 28

¹ The parties now agree that completely relying on the current building and fire codes to calculate loads for businesses which had operated as bar-restaurants for a lengthy period of time was improper.

- (c) the Upstairs Pub, 120
- (d) Jake's, 443, and
- (e) the Blue Bird, 443.

15. The parties agreed to hold off further action until the Agency could perform its own inspections and calculations.
16. The Agency filed its report on Mach 12, 2009.
17. After a status conference on April 16, 2009, the parties agreed to a final hearing date of May 28, 2009, at Bloomington City Hall.
18. The parties agreed that all the Bars had sufficient exiting width for any range of occupant loads under consideration which simplified matters somewhat.
19. Complicating matters was the fact that at least one of the Bars has been operated continuously since times prior to the widespread enactment of building and fire codes.
20. Fortunately, by the time for the hearing, the City agreed to not contest any of the Agency's calculations.
21. The Bars independently recalculated the occupant loads and did not differ greatly from the Agency's.
22. The following table shows the differences but not the methodology:

	Agency	Bars
Alley Bar	51	49
Blue Bird	695	681
Jake's	676	718
Upstairs Pub	378	217
Crazy Horse	226	237

23. At the close of the hearing, the code consultant for the Bars stipulated to the adoption of the Agency's numbers as being based on calculations using the best available information on dates of construction, current configuration, and dates of major additions or renovations.
24. Based on this agreement, the maximum occupancy loads for the Bars should be posted at the number testified to by the Agency listed in paragraph 22.

NONFINAL ORDER

The recalculated maximum occupant loads posted by the Bloomington City Fire Department on November 20, 2008, in five city businesses should be modified as follows:

- (a) Alley Bar raised to 51 persons,
- (b) Blue Bird raised to 681 persons,
- (c) Jake's raised to 676 persons
- (d) Upstairs Pub raised to 378 persons, and
- (e) Crazy Horse lowered to 226 persons.