

Cause #: 98-42L
Name: Ron's Party Supply
Administrative Law Judge: William K. Teeguarden
Date: April 22, 1999
Commission Action: Affirmed

FINDINGS OF FACT

1. Jurisdiction over this matter by the FPBSC is provided by IC 22-13-2-7 which allows an administrative appeal of an order issued by a local official which cites a violation of the IBC.
2. Administrative review of a local order is held pursuant to IC 4-21.5 just as if the order were that of a state agency.
3. IC 4-21.5, IC 22-13, 675 IAC 13 (Indiana Building Code ("IBC")), and the Uniform Building Code ("UBC") apply to this proceeding.
4. The FPBSC is the ultimate authority within the meaning of IC 4-21.5 with respect to orders alleging violations of the IBC issued by local units of government.
5. On June 22, 1998, a duly authorized representative of the City issued an order to the owner citing a violation of the IBC.
6. The code section allegedly violated is section 901 (a) of the 1991 UBC which was adopted by the FPBSC as the 1993 IBC.¹
7. At all times, relevant to this proceeding, the owner operated a commercial establishment which included the sale and storage of consumer (Class C) fireworks in Marion County, Indiana.
8. Since this matter involves an enforcement action, the burden of persuasion rests with the City. See Peabody Coal Company v. Ralston (1st district 1991), 578 N.E.2d 751.
9. The basis for the order by the City is the assertion that to store a certain quantity of fireworks, a building must be constructed to H-1 occupancy

¹ The parties do not indicate when the building was constructed but all 3 discuss this matter in terms of the 1993 IBC. Therefore, the trier of fact will assume that it is the relevant building code.

standard. See 1991 UBC section 901 (a).

10. Under the 1991 UBC, if a building was used to store “. . . a quantity of material . . . in excess of these listed in table No. 9-A which present a high explosion hazard including but not limited to:
 1. Explosives, blasting agents, fireworks, and black powder. . .”it is classified H-1.
11. The issue of whether or not Class C fireworks are explosives, blasting agents, etc. within the meaning of the 1991 UBC has been litigated several times during the 1990's.
12. In 1997, an administrative law judge for the FPBSC issued a decision in the case of IN RE: SUSAN BOLEK et al v. CITY OF HAMMOND, Cause Number 95-15. In October of 1997, the FPBSC affirmed the decision.
13. In the above case, Bolek and others operated a fireworks retail sales store during 1993 and 1994 in Hammond in leased property.
14. The City of Hammond contented that an H-1 occupancy was required.
15. The decision in Bolek based on expert testimony found that consumer fireworks are not a high explosive hazard and therefore are not required to be stored in a building classified as H-1 occupancy.
16. In an unrelated court case, again after expert testimony, the Wayne Superior Court #2 came to the same conclusion. See State Building Commissioner v. Shelton (1997), cause number 82D02-9706-CP-055.
17. In Shelton, the SBC attempted to classify (or reclassify) a fireworks warehouse containing Class C fireworks as an H-3 occupancy instead of a B-2 occupancy.
18. Again after hearing expert testimony, the court concluded that Class C fireworks are not flammable solids, are not hazardous materials, and do not pose a unique safety concern.
19. Since these two cases, the filing of the OSFM shows that the Agency has considered consumer fireworks to require a B-2 occupancy classification

under the 1991 UBC.

20. The 1998 IBC, which took effect April 30, 1998, adopts the 1997 UBC and the 1997 UBC resolves any ambiguity about the future classification of Class C fireworks.
21. Section 307.1.1 Division 3 of the 1997 UBC specifically requires an H-3 occupancy classification for the storage of Class C fireworks, a lesser standard than H-1.
22. The result of applying any potentially relevant IBC to the property in question is the same; the owner is not required to operate his business in a building with an occupancy classification of H-1.
23. The Order should be vacated.

NONFINAL ORDER

The Notice of Violation dated June 22, 1998, issued by the City of Indianapolis to Ron's Party Supplies is hereby vacated.