

Cause #: 98-55B

Name: Commercial Structures Corporation

Administrative Law Judge: William K. Teegarden

Date: September 15, 1999

Commission Action: Affirmed

FINDINGS OF FACT

1. The Office of the SBC is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5, 675 IAC 12, and IC 22-15 apply to this proceeding.
3. The SBC is the state agency charged with the responsibility of regulating construction in the State of Indiana.
4. In 1994, the Owner acquired the property in question (“Building”) from a prior owner.
5. Both IC 22-15-3-7 and 675 IAC 12-6-3 require plans for Class I structures to be released by the SBC before construction begins.
6. The term “construction” includes alternations and additions. See 675 IAC 12-6-2(b).
7. The original Building was built in compliance with the building code sometime prior to 1985.
8. During 1986 or 1987, a previous owner of the Building (“Prior Owner”) constructed an addition which was 2860 square feet larger than the released set of plans allowed.
9. On November 23, 1987, a duly authorized representative of the SBC caused a notice of violation to be issued to the Prior Owner. See Exhibit B.
10. No petition for administrative review was filed, so the order became a final order in December of 1987.
11. In August of 1989, the SBC warned the Prior Owner that it would seek court action if the Prior Owner did not bring the Building into compliance with the building code. See Exhibit D.
12. In January of 1991, the SBC referred the matter to the Elkhart County

Prosecutor (Exhibit E) who apparently took no enforcement action.

13. In 1994, the Owner purchased the Building.
14. In August of 1998, the SBC realized the building was still in use and the addition still was not released by the SBC.
15. Since there was a new owner who was not aware of the prior order, the SBC issued another notice of violation on August 18, 1998, directed to the Owner.
16. The Owner petitioned for administrative review.
17. At the hearing, the evidence showed that no design release was ever obtained for the 2860 square feet of the addition. See Exhibit A.
18. The Owner's primary defense involved his lack of knowledge and notice as the problem at the time of the sale. It was not disclosed by the seller and would not appear in an abstract of title, however, that is not a defense.
19. The building as it exists today is still a violation of the IBC because the addition was not constructed in accordance with the released plans.
20. Because of the fact that the Owner is an innocent purchaser, enforcement of any final order should be suspended for thirty days to allow for the submission of an "as built" set of plans.

NONFINAL ORDER

The Notice of Violation dated August 18, 1998, issued by the State Building Commissioner to Commercial Structures Corporation is hereby affirmed. The Petitioner is given until thirty (30) days after the issuance of a final order by the Fire Prevention and Building Safety Commission to file "as built" plans before any further enforcement action will be taken.

