

CAUSE NO. 09-35V

NAME: JACKSON SQUARE APARTMENTS

ADMINISTRATIVE LAW JUDGE: GARY W. BIPPUS

DATE: JANUARY 14, 2010

COMMISSION ACTION: AFFIRMED

FINDINGS OF FACT

1. Jackson Square is a planned apartment complex development located in Roanoke, Huntington County, Indiana. The Representative of Jackson square has indicated that construction is expected to begin in April 2010.

2. Jackson Square sought and obtained a foundation design release from the Division of Fire and Building Safety on or about May 29, 2008.

3. Petitioner LBO has asserted a concern that Jackson Square did not have sufficient meaningful legal or equitable ownership interests in the subject real property at the time of applying for a foundation release to support the grant of such release and only applied to come under the Indiana Building Code then in force and thereby avoid having to include sprinklers.

4. Prior to issuance of the foundation design release Jackson Square had secured a contractual interest in the subject real property.

5. Prior to issuance of the foundation design release Jackson Square had architect's plans prepared in 2007.

6. Prior to issuance of the foundation design release Jackson Square requested rezoning from the appropriate Town of Roanoke and/or Huntington County officials in 2007 and that was granted in early 2008.

7. Prior to issuance of the foundation design release Jackson Square requested designation of the subject land as an Economic Revitalization Area and that was granted in early 2008.

8. Prior to issuance of the foundation design release Jackson Square sought tax abatement and that was granted in early 2008.

9. Prior to issuance of the foundation design release Jackson Square submitted the project for an award of funding through the Indiana Housing and Community Development Authority.

10. In May of 2009 Jackson Square sought an extension of the one year period in which to start construction which came with the original foundation release. They sought that extension by applying for a variance.

11. The variance was granted on July 7, 2009 and that extended the time in which construction could be commenced to and including May 28, 2010.

CONCLUSIONS OF LAW

1. The Department of Homeland Security is an agency within the meaning of I.C. 4-21.5.

2. The Agency is the state entity charged with the responsibility of granting building design releases within the State of Indiana.

3. I.C. 4-21.5, I.C. 22-12, I.C. 22-13 and 675 IAC apply to this proceeding.

4. Pursuant to 675 IAC 12-6-20 there is an initial period of one(1) year from the date a design release is granted in which construction must commence before the design release expires.

5. Pursuant to 675 IAC 12-6-20 the initial period for the commencement of construction may be enlarged by the plan review division for a period of 180 days if certain conditions set out in that rule are met.

6. 675 Indiana Administrative Code is a set of rules enacted by the Indiana Fire Prevention and Building Safety Commission and not statutes enacted by the Indiana General Assembly.

7. Indiana Code 22-13-2-11 grants the Fire Prevention and Building Safety Commission the discretion to grant variances from rules it has adopted.

8. Petitioner, LBO, has asserted that granting the variance allowing the construction, in 2010, of this set of buildings, which are not compliant with the current IBC, is contrary to the conditions under which the division can grant an extension pursuant to 675 IAC 12-6-20. The subject variance is not, however, governed by that rule but rather is governed by the discretion of the Indiana Fire Prevention and Building Safety Commission.

9. The proposed structure(s) was compliant with the IBC, including then-current Indiana amendments, as that Code existed on May 29, 2008, the date of issuing the foundation design release.

10. The current Indiana amendments to the IBC became effective on June 16, 2008.

11. Jackson Square could have started construction as late as May 29, 2009, not included sprinklers, and been completely legal without requesting an extension or variance. That would have been nearly a full year after the effective date of the Indiana

amendments to the IBC which require sprinklers.

12. No evidence was offered concerning how granting the variance would adversely affect the public health, safety, or welfare more or differently than if the building(s) were built in May of 2009 without sprinklers.

DECISION

The grant of the variance allowing an extension of time in which to commence construction is affirmed.