

Cause #: 99-22Q

Name: Triplex Plating Company, Inc.

Administrative Law Judge: William K. Teeguarden

Date: July 6, 1999

Commission Action: Affirmed

FINDINGS OF FACT

1. The FPBSC and the SBC are agencies within the meaning of IC 4-21.5.
2. The FPBSC and the SBC are the state agencies responsible for regulating building construction in the State of Indiana.
3. IC 4-21.5, IC 22-13 and 15, and 675 IAC 13 apply to this proceeding.
4. In June of 1998, the SBC approved foundation release 0255721 which allowed Triplex to commence construction of a building in Michigan City, Indiana.
5. The SBC would not issue a complete release until further information was provided.
6. On October 21, 1998, the SBC issued a second request to Triplex for information.
7. No such information was received and on February 3, 1999, the SBC denied the Release.
8. Handwritten records of the SBC indicate that an undated petition for review of the denial was postmarked February 26, 1999.
9. The petition for administrative review was denied by the FPBSC in April because it was not filed within the time limits prescribed by IC 4-21.5.
10. The SBC issued an Order on February 26, 1999, requiring Triplex to cease construction or use of the building until a release was issued.
11. Triplex responded with a letter to the SBC dated March 12, 1999, which does not mention administrative review.
12. IC 22-15-3-7 provides that a person commits a Class C infraction for constructing a building without a design release from the SBC.

13. IC 4-21.5-3-7(a)(3) requires a petition for administrative review to be filed within 15 days after notice.
14. IC 4-21.5-3-1(f) provides that documents are filed as of the postmark date when deposited in the U.S. Mail.
15. IC 4-21.5-3-2 allows service by U.S. mail and adds 3 days to the 15 day time limit.
16. The denial of the Release, dated February 3, 1999, entered the U.S. mail system no later than February 4, 1999.
17. Eighteen days would thus expire on February 22, 1999.
18. The petition for review was not deposited in the U.S. mail until February 26, 1999.
19. Therefore, the petition for administrative review was not filed within the statutory time limits.
20. IC 4-21.5-3-7 provides that to qualify for review, a petitioner must file his written petition within the time limits prescribed by law.
21. A petitioner who fails to do so does not qualify for administrative review.
22. Triplex fails to qualify for administrative review.
23. Triplex raises a issue involving local building authorities and the issuance of a Certificate of Occupancy.
24. First, with a few exceptions none of which are applicable here, plan releases are required for construction and can only be issued by the SBC. No local action can change this provision of the law.
25. Second, the Certificate of Occupancy issued by the City on December 29, 1998, on its face does not make any representation that state building codes are satisfied. It merely states "This building meets all zoning and building requirements of Ordinance . . . of the City Code of Michigan City."
26. As to the Order of February 26, 1999, the petition for review acted upon by the FPBSC in its April, 1999, meeting only deals with the denial of the Release and the Order is not at issue here.

27. Thus Triplex's contention that the letter of March 12, 1999, was mailed within 18 days of February 26, 1999, is not relevant or material to the action taken by the FPBSC.

NONFINAL ORDER

The decision of April 8, 1999, of the Fire Prevention and Building Safety Commission to deny administrative review of the denial of the plan release for project 255721 is affirmed.