

Professional Inspection Consultants, Inc.

International Code Council - member

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PI-09-06

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Report #2 - Draft critique of Plaintiff's reports for attorney / client preparation

Kibby & Card v. LaBelle
921 Pine Street
Frankfort, Michigan, 49635
claim # 03-2648-07
date of fire 6-21-07

Questions and issues herein are prepared for attorney and are therefore protected as attorney work preparation product.

Dear Mr. Putney,

You asked me to review relevant building codes and other documentation for the above referenced structure in order to determine if the structure was built to conform to the standards in effect at the time of construction, and to determine if the structure should have been updated to any subsequent building codes in the time intervening between original construction and the fire. My opinion may change after inspections are performed or additional materials or documentation are obtained. "B123" gives the relevant code section from the 1970 BOCA Basic Building Code, as that is the code we have been best able to determine was in effect at the time of construction. The applicable construction code would have to have been adopted properly by the AHJ, the Authority Having Jurisdiction.

New construction would be required to meet the current code, MBC2006. At the time of construction, 1970 as we can best determine, may be assumed as interviews and the scant records indicate was the BOCA 1970 edition. This code was used throughout most of the state at that time.

Under the 1970 BOCA, the business on the first floor would have been classified a “C” mercantile occupancy. The apartments on the second floor would have been an “L2” residential occupancy.

Under the 1970 BOCA Basic Building Code, I can find no requirement for bedroom egress windows for the dwelling portions of the building.

Under the 1970 BOCA Basic Building Code, I can find no requirement for smoke alarms being placed within the bedroom itself.

The code in effect, assuming it was properly adopted by the AHJ, has always been applied based upon the edition in effect at the time of construction. Should the code have not been properly adopted, with properly appointed inspectors who were properly sworn to enforce ordinances, no code standards would have been legally enforceable. A structure does not need to update over the years, despite the code changes every three to five years, unless one of the following occurs.

First, if there had been a major renovation of the structure, in which case the code in effect at the time of that renovation must be complied with. If only a portion of the structure is renovated, then only that portion needs to meet code, without involving the entire structure. For example, if a stairway is replaced, only that stairway needs to meet the code in effect at that time. There are no records nor apparent evidence from interviews as I was informed, indicating that ever a major renovation was ever conducted on this structure, since 1970.

Second, if had been a change in occupancy, such as a change from a school to condos, or from manufacturing to storage, then the structure or the portion involved in that change must comply with the codes in effect for that new use. That has not apparently occurred in this structure.

Third, if there was a determination by the Building Official or the Fire Official that there existed an immanent risk of explosion, fire or collapse. Again, we have found no records nor learned in any interviews that this was ever the case.

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Therefore, despite the fact that all parties agree was a tragedy, under the codes in effect at the time there was no requirement for egress windows, nor any requirement that smoke detection be located within the bedroom, nor any requirement that the smoke detection be hard-wired and cross connected to structure's electrical system. Furthermore, under the subsequent building codes within the enforcement mechanism left to the AHJ, the structure could continue even as the code changes since 1970 required bedroom egress and smoke detection in the bedroom with hard wiring, in new construction and extensively renovated units. It was up to the AHJ if he had either a rental registration or rental licensing program, or a request for a building permit, or a safety complaint, to have ordered updates. The only record or interview result we have found, is an order to add a layer of drywall to the 1st floor ceiling, which I understand was done. Apparently the AHJ did not inquire or further order other corrections.

The building as it was could continue as a legal residence and business mixed use, without being updated to the subsequent or current code standards.

Should you need any additional information, or should you obtain additional information please advise.

Respectfully,

Jeff Bartrem, C.B.I., President

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