To: Mr. John Shelton
Zoning Enforcement Officer
Jefferson County Courthouse
Room 204
Madison, Indiana 47250

From: Sherry J. Chapo and Jessie A. Chapo
10214 W. Deputy Pike Road
Deputy, Indiana 47230

NOTICE
CEASE and DESIST

Dear Mr. Shelton:

It is apparent that you have either been misinformed as to your scope of authority, or you have decided to step outside the bounds of your authority. Being a public official, you have a Fiduciary Duty to stay within the bounds put upon you.

5 CFR 2635.101 (a) Public service is a public trust.

> "The standard of duty is no different whether the trust to be enforced is actual or constructive. *** The implication of a trust is the implication of every duty proper to a trust. *** Whoever is a fiduciary or in conscience chargeable as a fiduciary is expected to live up to them."
> *Buffum vs. Peter Barceloux Co.*, 289 U.S. 227, 237.

In your letter of September 22, 2004, you stated that IC 36-7-8-3(d) does not pertain to us as it relates to the current situation. Instead, you have advised that IC 36-7-4-600 applies and that we are currently in violation of the same. Upon a clear search of case law, such reveals that "600 Series – Zoning Ordinance" deals with Commercial projects. *Bryant v. The County Council Of Lake County*, 720 N.E.2d 1 (Ind. Ct. App. 1999), clearly stated that "The statutory provisions regulating municipal zoning ordinances and the procedures prescribed for amending those ordinances (rezoning) are found at Ind. Code § 36-7-4-600 through 699, known as the "600 SERIES--ZONING ORDINANCE." Ind. Code § 36-7-4-600. "Rezoning is a legislative process." *Rush v. Elkhart County Plan Com'n*, 698 N.E.2d 1211, 18 (Ind. Ct. App. 1998). Clearly, § 36-7-4-600, zoning, lacks relevance in regards to a private owner building their private home.

Let me assure you that we comply with the laws that apply to us. Based on that letter, it is apparent that you do not understand the difference between Public and Private. I can only suggest that you contact your county solicitor as to the meaning of those terms.

ISSUE ONE
BUILDING PERMIT

Jefferson County, Indiana, Inc. is attempting to force Sherry and Jessie Chapo to procure a building permit. Jefferson County, in an attempt to disregard the State statutes and pursue this matter has therefore caused damage to Sherry and Jessie Chapo. Sherry and Jessie Chapo have now become the Aggrieved Parties.

Indiana Code 36-7-8-3-(d), Chapter 8, Titled County Building Department and Building Standards, and two Indiana Court of Appeals cases, *Robinson v. Monroe County*, 658 N.E.2d 647, 652 (Ind. Ct. App. 1995), and *Robinson v. Monroe*, 60A04-9506-CV-225, specifically exclude Counties from regulating Private Citizens in regards to private homes. (See Exhibits A, B, & C)

ISSUE TWO
SEPTIC PERMIT

Jefferson County, Indiana, Inc. is attempting to force Sherry and Jessie Chapo to procure a Septic permit. Jefferson County, in an attempt to disregard the State statutes and pursue this matter has therefore caused damage to Sherry and Jessie Chapo. Sherry and Jessie Chapo have now become the Aggrieved Parties.

Jefferson County has authority to regulate Health Department Rule 410 IAC 6-8.1. Such rules promulgate from Indiana Code 16-19-3-5. Jefferson County only has authority over Commercial endeavors relating to Public Health. (See Exhibit D)

NOTICE

Sherry Chapo and Jessie Chapo therefore notify Jefferson County that:

1. Aggrieved Parties are Private Citizens, and
2. Aggrieved Parties are not a resident of the Corporate State of Indiana, and
3. Aggrieved Parties do not make their home in a Federal District, or in a State District, or in a Territory, or on public land and
4. Aggrieved Parties are not Permittees, and
5. Aggrieved Parties are not Commercial Builders, and
6. Aggrieved Parties have not constructed a Residence or Dwelling, and
7. Aggrieved Parties do not live in a Residence or Dwelling, and
8. Aggrieved Parties live in a Private Home, and
9. Aggrieved Parties have never Knowingly polluted Public waters, and
10. Aggrieved Parties have never Knowingly been accused of polluting Public water.

MEMORANDUM

Indiana Code Chapter 8, referred to as, IC 36-7-8 Titled "**County Building Department and Building Standards"** (Exhibit A) states in IC 36-7-8-1 "This chapter ***applies to all counties.***", IC 36-7-8-3 (d) states "An ***ordinance*** adopted under this section ***does not apply to private homes*** that are ***built*** by individuals and used ***for their own occupancy***.", (emphasis added). Indiana Court of Appeals addressed this issue twice, once in *Robinson v. Monroe County*, 658 N.E.2d 647, 652 (Ind. Ct. App. 1995)(Exhibit B) and again in *Robinson v. Monroe*, 60A04-9506-CV-225 (Ind. Ct. App. 1996)(Exhibit C). The Indiana Appeals Court (Majority Opinion) denied both, Monroe County and Indiana Fire Prevention and Building Safety Commission (Amicus Curiae).

Indiana Code Chapter 1, referred to as, IC 16-19-1 Titled **"Establishment of State Department of Health"** states in IC 16-19-1-2 "The ***state department is the superior*** health department of the state, ***to which all other health boards are subordinate."*** Article 20. Referred to as IC 16-20 **"Local Health Departments"**, is Subordinate to the State Department of Health. Indiana Code Chapter 2, referred to as, IC 16-19-2 Titled **"Establishment of Executive Board"** states in IC 16-19-2-5 "In addition to any other statutory duty, the ***executive board shall serve as an advisory board to the state department".*** Indiana Code Chapter 3, referred to as, IC 16-19-3 Titled "**Powers and Duties of State Department of Health and Executive Board"** states in IC 16-19-3-5 "The ***executive board may adopt rules*** on behalf of the state department ***for the efficient enforcement*** of this title, ***except as otherwise provided".*** (Exhibit D) Title 410: "Indiana State Department of Health" establishes Articles (1) though (12.1). Article (6), "Sanitary Engineering" establishes Rule (1) through (13). The Executive Board conferred Enforcement Powers to Rule 5.1, "School Buildings and School Sites; Health and Safety Requirements" and Rule 7, "Camp Sanitation and Safety". The Executive Board has NOT conferred Enforcement Powers to Rule 8.1, "Residential Sewage Disposal Systems". (Exhibit E) Public Health Departments only have Authority over Commercial endeavors relating to Public Health. Definition: Bouvier, Volume 6, (1856) **PUBLIC,** "By the term the public, is meant the ***whole body politic***, or all the citizens of the state". **HEALTH**, "Offenses against the provisions of the health laws are generally punished by fine and imprisonment. These are offenses against ***public health,*** punishable by the common law by fine and imprisonment, such for example, as ***selling unwholesome provisions.*** 4 Bl. Com. 162; 2 East's P. C. 822; 6 East, R. 133 to 141; 3 M. & S. 10; 4 Campb. R. 10." Definition; Blacks Volume6, page 174, **BOARD OF HEALTH** "A municipal or state board of commission with certain powers and duties relative to the preservation and improvement of the ***public health.***" Blacks Volume 6, page 721, **PUBLIC HEALTH**, "The Wholesome sanitary condition of the ***community at large***". (emphasis added) Public Health therefore relates only to the Public Health as a whole body politic, separate from the health of a Private Citizen.

CONCLUSION

Sherry Chapo and Jessie Chapo under this NOTICE remind the Jefferson County, Inc. that their FIDUCIARY DUTY is to follow the State statutes, operate within their scope of authority and in good faith.

Sherry Chapo and Jessie Chapo have not caused any public, or private entity any damage. No public, or private entity has shown or claimed to have been damaged.

Sherry Chapo and Jessie Chapo, acting in good faith, reserve all rights afforded said Sherry Chapo and Jessie Chapo to take any actions to protect said rights and pursue all remedies.

Sincerely,

_____Dated:_____
Jessie Chapo

_____ Dated:_____
Sherry Chapo
10214 W. Deputy Pike
Deputy, IN 47230
(812) 866-4415 or (812) 866-5299

Enclosures

cc: Patrick S. Lyons, County Commissioner
Julie Berry, County Commissioner
Michael Frazier, County Commissioner
Dr. H.S. Riley, Health Department Officer
Ralph Armand, Health Department Administrator

Certificate of Service

I hereby certify that a true and exact copy of the foregoing Request has been hand delivered on this 3rd Day of November, 2004

_____
Sherry J. Chapo

EXHIBIT "A"

IC 36-7-8

Chapter 8. County Building Department and Building Standards

IC 36-7-8-1

Sec. 1. This chapter applies to all counties.

As added by Acts 1981, P.L.309, SEC.27.

IC 36-7-8-2

Sec. 2. The legislative body of a county may, by ordinance, establish a county department of buildings, with an office of building commissioner and inspectors.

As added by Acts 1981, P.L.309, SEC.27.

IC 36-7-8-3

Sec. 3. (a) The legislative body of a county having a county department of buildings or joint city-county building department may, by ordinance, adopt building, heating, ventilating, air conditioning, electrical, plumbing, and sanitation Standards for unincorporated areas of the county. These standards take effect only on the legislative body's receipt of written approval from the fire prevention and building safety commission.

(b) An ordinance adopted under this section must be based on occupancy, and it applies to:

(1) the construction, alteration, equipment, use, occupancy, location, and maintenance of buildings, structures, and appurtenances that are on land or over water and are:

(A) erected after the ordinance takes effect; and

(B) if expressly provided by the ordinance, existing when the ordinance takes effect;

(2) conversions of buildings and structures, or parts of them, from one occupancy classification to another; and

(3) the movement or demolition of buildings, structures, and equipment for the operation of buildings and structures.

(c) The rules of the fire prevention and building safety commission are the minimum standards upon which ordinances adopted under this section must be based.

(d) An ordinance adopted under this section does not apply to private homes that are built by individuals and used for their own occupancy.

As added by Acts 1981, P.L.309, SEC.27. Amended by P.L.8-1984, SEC.125.

IC 36-7-8-4

Sec. 4. (a) The legislative body of a county having a county department of buildings or a joint city-county building department may, by ordinance, adopt minimum housing standards for unincorporated areas of the county. These standards must be consistent with the rules of the fire prevention and building safety commission.

(b) An ordinance adopted under this section applies to:

(1) residential buildings;

(2) residential parts of mixed occupancy buildings; and

(3) conversions of buildings from nonresidential to residential or partly residential.

(c) A municipality may elect, by ordinance, to make itself subject to an ordinance adopted under this section.

(d) This section does not affect IC 16-41-26.

As added by Acts 1981, P.L.309, SEC.27. Amended by P.L.8-1984, SEC.126; P.L.1-1996, SEC.86.

IC 36-7-8-5

(Repealed by P.L.245-1987, SEC.22.)

IC 36-7-8-6

Sec. 6. The county executive may employ the inspectors, agents, and deputies it considers necessary to enforce ordinances adopted under this chapter and under applicable statutes and state rules. The county fiscal body shall make appropriations from the county general fund to pay these employees and to pay all other expenses incurred under this chapter.

As added by Acts 1981, P.L.309, SEC.27.

IC 36-7-8-7

Sec. 7. One (1) or more municipalities and a county may designate, by ordinance or resolution of their legislative bodies, a single agency of a municipality or the county to administer and enforce:

(1) the ordinances adopted under section 3 of this chapter; and

(2) the standards imposed by section 5 of this chapter;

throughout the county on behalf of the municipalities and the county.

As added by Acts 1981, P.L.309, SEC.27.

IC 36-7-8-8

Sec. 8. A county that has adopted an ordinance under section 4 of this chapter may contract with any city located in the county to have the city administer and enforce that ordinance. The contract must be for a stated and limited period, and may be renewed. All actions, notices, or other writings under such a contract must be performed as the county building commissioner would perform them, and may not be performed in the name of the city.

As added by Acts 1981, P.L.309, SEC.27.

IC 36-7-8-9

Sec. 9. A person aggrieved by a decision of the county department of buildings or other regulating agency under this chapter may appeal as in other civil actions. The appellant must, by registered mail, give the county executive a fifteen (15) day written notice of his intention to appeal. The notice must concisely state the appellant's grievance.

As added by Acts 1981, P.L.309, SEC.27.

IC 36-7-8-10

Sec. 10. An ordinance adopted under section 3 or 4 of this chapter may provide a reasonable penalty for violations. An ordinance adopted under section 3 of this chapter may also include a reasonable fee for permits, registration, renewal, examination, and reexamination.

As added by Acts 1981, P.L.309, SEC.27.

IC 36-7-8-11

(Repealed by P.L.74-1987, SEC.28.)

[Majority Opinion]

IN THE
INDIANA COURT OF APPEALS
Jesse Cloud Robinson and
Sue Ann Mitchell
-V-
Monroe County, Indiana

FRIEDLANDER, Judge

Jessie Cloud Robinson and Sue Ann Mitchell (the Appellants) appeal from a summary judgment ruling in favor of Monroe County, Indiana (the County). The Appellants present the following restated issue for review:
Does Ind. Code 36-7-8-3 (d), which provides that building codes do not apply to private homes that are built by individuals and used for their own occupancy, apply to an individual who hires independent building contractors to construct portions of his house?
We reverse.

The facts in favor of the Appellants, the non-moving parties, are that the Monroe County Commissioners established the Monroe County Building Department in 1988. The Building Department was granted the powers and duties set out in I.C. 36-7-8, et seq. Soon thereafter, the Monroe County Commissioners created the Monroe County Building Code, which was applicable to the construction, alteration, repair, use, occupancy, maintenance, and additions to all buildings and structures in the unincorporated areas of Monroe County. The Monroe County Building Code was approved by the Indiana Fire Prevention and Building Safety Commission on April 5, 1988.

In 1991, Appellants purchased two acres of real property in an unincorporated area of Monroe County, Indiana. In March or April of 1992, the Appellants began construction of a single family dwelling on their property. The Appellants did some of the construction work themselves and hired contractors to do the rest. Among the work performed by contractors was: 1) excavating and preparing foundation trenches; 2) building the foundation walls and finishing the concrete garage floors; 3) building and finishing the house's concrete slab floor; 4) hanging and finishing the drywall in the house; and 4) installing the heating and ventilating system. The Monroe County Building Code required that various permits be obtained in conjunction with the construction of a house, including a building permit and an occupancy permit. The Appellants failed to obtain such permits.

On February 9, 1993, the County filed a Verified Complaint for Permanent Injunction and Civil Penalty on Ordinance Violations alleging that the Appellants were required to obtain the relevant building and occupancy permits, were asked to do so, and refused to comply. The County sought an injunction "which enjoin[ed] [the Appellants] from further erecting, constructing, enlarging, altering, repairing, improving, removing, converting, equipping, using, occupying or maintaining the [Appellants's house] until all permits required by the Code [had] been obtained." Record at 56. The County further sought an order requiring the Appellants to pay costs incurred by the County in determining whether the house was constructed in accordance with the Code and requiring that the Appellants pay the costs of any necessary repairs. The County also sought an order requiring the Appellants to pay a civil penalty of $250.00 per day for each day the Appellants were found to be in violation of the Code.

The Appellants denied that they were required to obtain any permits from the County, contending that they were exempted from such requirements by IC 36-7-8-3 (d). The County submitted a motion for summary judgment, contending that IC 36-7-8-3 did not apply because some of the construction work on the Appellants' house was performed by professional contractors. The Appellants appeal from the granting of the County's summary judgment motion.

The facts material to the issue before us are not in dispute. The Appellants admit that they constructed a house without obtaining permits pursuant to the Monroe County Building Code. The Appellants also admit that some of the construction work on their house was performed by contractors. The controversy in the instant case centers upon the applicability of IC 36-7-8-3 (d) to the undisputed facts. The question presented by the Appellants, therefore, is essentially one of statutory construction.

The interpretation of a statute is a question of law which is reserved for the courts. Robinson v. Zeedyk (1993), Ind.App., 625 N.E.2d 1249, trans. denied. Our objective when construing the meaning of a statute is to determine and implement the legislature's intent. Post-Tribune v. Police Dept. of City of Gary (1994), Ind., 643 N.E.2d 307. In interpreting a statute, we are guided by the language employed in the statute and the legislative intent which we ascertain from that language. Estate of Chiesi v. First Citizens Bank, N.A. (1992), Ind.App., 604 N.E.2d 3, opinion adopted, (1993), Ind., 613 N.E.2d 14.

IC 36-7-8-3 (d) states:
" (a)The legislative body of a county having a county department of buildings or joint city-county building department may, by ordinance, adopt building, heating, ventilating, air conditioning, electrical, plumbing, and sanitation standards for unincorporated areas of the county. These standards take effect only on the legislative body's receipt of written approval from the fire prevention and building safety commission.
(b)An ordinance adopted under this section must be based on occupancy, and it applies to:
(1)the construction, alteration, equipment, use, occupancy, location, and maintenance of buildings, structures, and appurtenances that are on land or over water and are:
(a)erected after the ordinance takes effect; and
(b)if expressly provided by the ordinance, existing when the ordinance takes effect;
(2)conversions of buildings and structures, or parts of them, from one occupancy classification to another; and
(3)the movement or demolition of buildings, structures, and equipment for the operation of buildings and structures.
(c)The rules of the fire prevention and building safety commission are the minimum standards upon which ordinances adopted under this section must be based.
(d)An ordinance adopted under this section does not apply to private homes that are built by individuals and used for their own occupancy." [Emphasis supplied.]

The dispute in the instant case arises from the interpretation of the phrase "homes that are built by individuals". The County contends that in order to come within the statute, and thus claim exemption from the requirement of obtaining permits, a party must personally perform all of the construction work on his or her house. According to the County, the exception does not apply in the instant case and the entire construction project was subject to the requirements of the building code because the Appellants hired subcontractors to perform certain construction tasks on their house. The Appellants argue that Subsection (d) applies because they performed much of the construction work on their house. Moreover, the Appellants appear to argue that the exemption applies even if the owner performs no physical labor themselves, but rather causes the house to be built by others.

The legislative history of IC 36-7-8-3 (d) is sparse and provides little enlightenment as to its meaning. The house and senate journals reflect the passage of the bill through the House of Representatives and the senate but do not contain discussion about the substance of the act. As originally enacted, Section 3 contained the following statement of purpose:

"The purpose of the ordinance is to provide for the safety, health and public welfare through structural strength and stability, means of egress, adequate sanitation, plumbing, light and ventilation, and protection of life and property from fire and hazard incident to design, construction, alteration, and for the removal or demolition of buildings and structures in the unincorporated areas of counties having a population between 300,000 and 600,000 according to the last preceding United States census." 1965 Acts, Chapter 348, Section 2.

The purpose set out above is applicable to Section 3 as a whole. The purpose underlying the entire section, however, is clearly not applicable to Subsection (d). In fact, Subsection (d) represents an exception to the safety-oriented requirements set forth elsewhere in the statute and thus is contrary to the purpose of the statute. That is, exempting an individual from the requirements of obtaining authorization for proposed construction and subjecting the completed work to inspection and approval prior to permitting occupancy of the building runs contrary to the goal of ensuring safe buildings. Yet, Subsection (d) undeniably creates such an exception from the requirements set out in Section 3.

We can conceive of only one purpose which could justify allowing a builder to circumvent certain applicable building safety ordinances when he builds a house which he will occupy. In its early stages, this country's frontier was moved westward by pioneers who moved onto land and built houses made from the materials at hand. Since then, home owning has become an essential facet of the "American dream". It may be argued that ordinances such as those contemplated by IC 36-7-8-3, which establishes construction specifications and require permits and inspections for residential construction projects, interfere with the ability of some individuals to build their own home and thus to pursue the American dream.

Building codes and ordinances may conceivably discourage or impede such individuals from building their own houses. A private individual building his own house may not possess the skills necessary to construct a building which complies with the technical specifications set out in the ordinances. In addition, an individual may not be able to afford to hire professionals or others to build a house. Therefore, exempting a person who wishes to build his own house from the requirements imposed pursuant to IC 36-7-8-3 of complying with construction specifications and obtaining permits allows that person to build a house even though he may not possess the skills or equipment to comply with technical specifications, and allows him to do so even if he is not able to afford to pay others to do the work. With this purpose in mind, we consider the meaning of "built by individuals" as used in IC 36-7-8-3 (d).

The Appellants contend that "built" in this statute means "that an individual was responsible for construction, not that he did all of the work himself." Appellants' Brief at 13. Such an interpretation, however, would render the exception coterminous with the rule itself. The Appellants' interpretation would allow an individual to place himself in the position of a general building contractor by hiring all of the subcontractors to construct the various components of a house, thereby exempting himself from the requirement of complying with the applicable building code regulations set out in Section 3. This result would not be in harmony with the purpose of the exception created by Subsection (d). Subsection (d) was meant to enable persons to build their own home even if they do not personally possess the skills or equipment to comply with the building code, and if they cannot afford to pay professionals or others to do the work. A professional subcontractor, however, whether hired by a general contractor or the person for whom the house is being built, does, or should, possess the skills and equipment to comply with code requirements. Moreover, the hiring of a subcontractor indicates that a homeowner has the financial resources to pay professionals or others to construct a house which complies with the applicable building codes.

Although exempting work performed by subcontractors is not consistent with the purpose of Subsection (d), we are not persuaded by the County's argument that IC 36-7-8-3 (d) is an "all-or-nothing" provision. Some components of new home construction would seem to be beyond the ability of even the most industrious of those who would build their own house. Were we to hold that Subsection (d) is applicable only when every component of the construction of a new house is completed privately by the homeowner, we would narrow the exception to such an extent as to render it meaningless. The better interpretation, and one consistent with the purpose of Subsection (d), is that the exception applies when the homeowner himself completes a substantial portion of the construction of his home. In the instant case, the record indicates that the Appellants did all of the framing and roofing, the finish and cabinet work, the electrical work, and the plumbing. Such comprises a substantial portion of the construction work necessary for a new house; therefore, the exception contained in Subsection (d) applies to the Appellants.

Finally, we must consider whether Subsection (d) applies to work performed by professional subcontractors or others on houses of which a substantial portion of the construction was done by the owner. The reasons for creating the exception contained in Subsection (d) for private individuals do not similarly support exempting the work performed by professional subcontractors or others, no matter who hires them. Their hiring indicates that the homebuilder can afford to pay others to do a portion of the construction work, and contractors obviously possess the expertise and equipment to comply with applicable building codes. We conclude, therefore, that when IC 36-7-8-3 (d) operates to exempt an individual from having to comply with the requirements set out in Section 3, any construction work performed by professional subcontractors or others paid by the owner is not subject to the exemption and said work must be performed in compliance with all applicable building code requirements.

In summary, we hold that IC 36-7-8-3 (d) applies to private individuals who themselves, or with the assistance of unpaid non-professionals, perform a substantial amount of the construction work on a house. However, any work performed on such construction projects by professional subcontractors or others who are paid for their work is not subject to the exemption and must be completed in compliance with applicable building code regulations. We note also that IC 36-7-8-3 (d) only creates an exemption from the requirements set out in Section 3 and does not provide a similar exemption from the requirements set out in Section 4 concerning minimum housing standards and related ordinances. Accordingly, none of the discussion contained herein is applicable to any requirement set out in IC 36-7-8-4.

Judgment reversed.

SULLIVAN, J. CONCURS.
KIRSCH, J. CONCURS.

IN THE

INDIANA COURT OF APPEALS

Jesse Cloud Robinson and Sue Ann Mitchell

-V-

Monroe County, Indiana

FRIEDLANDER, Judge

In a December 11, 1995 published opinion, this court determined that Ind. Code Ann. § 36-7-8-3 (d) (West Supp. 1995), operates to exempt private individuals from having to comply with requirements associated with the construction of buildings, set out in IC § *36-7-8-3* (a)-(c), if the "individuals" themselves, or with the assistance of unpaid non-professionals, perform a substantial amount of the construction work on a house" in which the individual will live. Robinson v. Monroe County, 658 N.E.2d 647, 652 (Ind. Ct. App. 1995). On January 24. 1996, Monroe County petitioned this court to reconsider its ruling. On January 30, we granted the motion of Indiana Fire Prevention and Building Safety Commission For Leave to File Brief Amicus Curiae In Support of Rehearing. We deny the petition for rehearing but write separately for the sole purpose to clarifying a matter raised in the Fire and Safety Commission's brief.

We note, first that we were, and are, well aware of the implications of our holding in the Robinsons' case. We recognize that the construction of safe houses is a matter of paramount importance and we also recognize that the statutory provision at issue in the instant case was inconsistent with the objective of insuring safe houses. As we acknowledged in our original opinion,

exempting at individual from the requirements of obtaining authorization for proposed construction and subjecting the completed work to inspection of the building runs contrary to the goal of insuring safe buildings.

Id. at 650-51. Indeed, concern about the negative impact of our decision in the area of public safety has not only caused Monroe County to petition for rehearing, but has also prompted interested professionals and public agencies in fields related to new home construction to contact this court to express their views on the topic. We are not unsympathetic to such concerns. We also reiterate that our decision and discussion in the instant case is confined to exempting individuals from the requirements set out in IC § 36-7-8-3"and does not provide a similar exemption from the requirements set out in Section 4 concerning minimum housing standards and related ordinances." Id at 652.

EXHIBIT "C"

Monroe County contends Upon petition for rehearing that IC. § 36-7-8-3 (d) "does not promote the interests of the public at large", Appellee's Petition for Rehearing at 10, because it allows individuals to erect homes that do not meet minimum safety standards adopted by the Indiana Fire Prevention and Building Safety Commission. We agree with this assertion. However the statute, unambiguously exempts a certain class of individuals from abiding by the safety requirements and we may not ignore the clear language of a statute, regardless of our view as to its wisdom. It is not a proper function of this court to, in effect, rewrite a statute in order to render it consistent with our view of sound public policy. See S.V. v. Estate of Bellamy, 579 N.E.2d 44 (Ind. Ct. App. 1991). The Fire and Safety Commission contends that we should narrow the scope of the exemption to include only "log cabin-type dwellings", Brief of Amicus at 3, and, in any event, to exclude homes in residential areas. We must reject the Fire and Safety Commission's invitation to recognize these exceptions because the statute clearly does not allow for them. The Fire and Safety Commission's arguments in this regard. along with those of Monroe County, should be directed to the Indiana legislature and not the courts. Id.

For the purpose of clarification, however, we briefly address a separate concern expressed by the Fire and Safety Commission, the Commission states:

The court does not define "substantial." The failure to define "substantial," which could be taken to mean 10%, 25%. 50% or any other value, creates an enforcement nightmare. Many local building departments already have been faced with irate citizens who claim they can avoid codes and permitting [sic], and other departments have had requests, based on the decision in this case, for refunds of building permit fees already collected. Although later litigation could further define "substantial," until that litigation occurs local building officials are left without guidance as to who is covered by their building codes

Brief of Amicus at 4-5. The Commission is correct in noting that the meaning of "substantial" in this context will he crystallized in future cases. However, we will clarify that we intended that the term be understood Consistent with its customary meaning, that being, "of ample or considerable amount, quantity, [or] size". The Random House Dictionary of the English Language 141 1418 (1967) Therefore, it would clearly he inconsistent with the ordinary meaning of the term to construe a "substantial portion" of something as referring to only one-half of the whole.

Subject to the preceding comments and clarification, Monroe County's Petition for Rehearing is denied.

SULLIVAN, J. AND KIRSCH, J. CONCUR.

EXHIBIT "D"

IC 16-19 ARTICLE 19. STATE DEPARTMENT OF HEALTH

IC 16-19-1 Chapter 1. Establishment of State Department of Health

IC 16-19-1-1
Sec. 1. The state department of health is established.
As added by P.L.2-1993, SEC.2.
IC 16-19-1-2
Sec. 2. The state department is the superior health department of the state, to which all other health boards are subordinate.
As added by P.L.2-1993, SEC.2.
IC 16-19-1-3
Sec. 3. The executive board of the state department may adopt an appropriate seal.
As added by P.L.2-1993, SEC.2.

IC 16-19-2 Chapter 2. Establishment of Executive Board

IC 16-19-2-1
Sec. 1. (a) The executive board of the state department of health is established.
(b) The executive board consists of eleven (11) members appointed by the governor as follows:
(1) Three (3) licensed physicians.
(2) One (1) sanitary engineer.
(3) One (1) pharmacist.
(4) One (1) dentist.
(5) One (1) veterinarian.
(6) One (1) registered nurse.
(7) One (1) hospital administrator.
(8) One (1) health facility administrator.
(9) One (1) other person.
As added by P.L.2-1993, SEC.2.
IC 16-19-2-2
Sec. 2. Members of the executive board shall be appointed for terms of four (4) years. Each member shall serve until a successor is appointed and qualified.
As added by P.L.2-1993, SEC.2.
IC 16-19-2-3
Sec. 3. Members of the executive board may be removed by the governor for cause. A vacancy on the executive board shall be filled by appointment by the governor for the unexpired term.
As added by P.L.2-1993, SEC.2.
IC 16-19-2-4
Sec. 4. The executive board, or an appeals panel if designated by statute, is the ultimate authority under IC 4-21.5 for any matter concerning the state department.
As added by P.L.2-1993, SEC.2.
IC 16-19-2-5
Sec. 5. In addition to any other statutory duty, the executive board shall serve as an advisory board to the state department.
As added by P.L.2-1993, SEC.2.
IC 16-19-2-6
Sec. 6. The executive board shall meet at least one (1) time every two (2) months and at other times as the executive board considers expedient.
As added by P.L.2-1993, SEC.2.
IC 16-19-2-7
Sec. 7. A majority of the executive board members constitutes a quorum for the transaction of official

business.
As added by P.L.2-1993, SEC.2.

IC 16-19-2-8
Sec. 8. Each member of the executive board who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.
As added by P.L.2-1993, SEC.2.
IC 16-19-2-9
Sec. 9. The members shall elect one (1) member as chairman of the executive board. The chairman shall serve for a term of two (2) years, unless the person's term of office as a member of the executive board expires sooner.
As added by P.L.2-1993, SEC.2.

IC 16-19-3 Chapter 3. Powers and Duties of State Department of Health and Executive Board

IC 16-19-3-1
Sec. 1. The state department shall supervise the health and life of the citizens of Indiana and shall possess all powers necessary to fulfill the duties prescribed in the statutes and to bring action in the courts for the enforcement of health laws and health rules.
As added by P.L.2-1993, SEC.2.
IC 16-19-3-2
Sec. 2. (a) The state department may establish, operate, and maintain branch offices. The number of branch offices shall be determined by the state department.
(b) The purpose of authorizing the creation of branch offices is to furnish a more comprehensive and effective health program to the people of Indiana and to provide additional assistance to all local health officials. The legislative intent of this section is to authorize the establishment of branch offices as a means of assisting, but not limiting, the powers possessed by local health agencies.
As added by P.L.2-1993, SEC.2.
IC 16-19-3-3
Sec. 3. For the purpose of providing facilities for branch offices, the state department may, with the approval of the governor, purchase or lease real property. Structures may be remodeled, repaired, constructed, and maintained. A building may not be constructed upon property not owned in fee simple by the state. All deeds and leases shall be made to the state for the use of the state department. These procedures and powers shall be exercised under IC 4-13-2 where applicable.
As added by P.L.2-1993, SEC.2.
IC 16-19-3-4
Sec. 4. (a) The executive board may, by an affirmative vote of a majority of its members, adopt reasonable rules on behalf of the state department to protect or to improve the public health in Indiana.
(b) The rules may concern but are not limited to the following:
(1) Nuisances dangerous to public health.
(2) The pollution of any water supply other than where jurisdiction is in the water pollution control board and department of environmental management.
(3) The disposition of excremental and sewage matter.
(4) The control of fly and mosquito breeding places.
(5) The detection, reporting, prevention, and control of diseases that affect public health.
(6) The care of maternity and infant cases and the conduct of maternity homes.
(7) The production, distribution, and sale of human food.
(8) The conduct of camps.

(9) Standards of cleanliness of eating facilities for the public.
(10) Standards of cleanliness of sanitary facilities offered for public use.
(11) The handling, disposal, disinterment, and reburial of dead human bodies.
(12) Vital statistics.
(13) Sanitary conditions and facilities in public buildings and grounds, including plumbing, drainage, sewage disposal, water supply, lighting, heating, and ventilation, other than where jurisdiction is vested by law in the fire prevention and building safety commission or other state agency.
(14) The design, construction, and operation of swimming and wading pools. However, the rules governing swimming and wading pools do not apply to a pool maintained by an individual for the sole use of the individual's household and houseguests.
As added by P.L.2-1993, SEC.2.

IC 16-19-3-4.1

Sec. 4.1. The executive board shall adopt reasonable rules to regulate the sanitary operation of tattoo parlors.
As added by P.L.181-1997, SEC.2.

IC 16-19-3-4.2

Sec. 4.2. The executive board shall adopt reasonable rules to regulate the sanitary operation of body piercing facilities.
As added by P.L.166-1999, SEC.1.

IC 16-19-3-5

Sec. 5. The executive board may adopt rules on behalf of the state department for the efficient enforcement of this title, except as otherwise provided. However, fees for inspections relating to weight and measures may not be established by the rules.
As added by P.L.2-1993, SEC.2. Amended by P.L.80-1999, SEC.1.

IC 16-19-3-6

Sec. 6. The rules of the state department may not be inconsistent with this title or any other Indiana statute.
As added by P.L.2-1993, SEC.2.

IC 16-19-3-7

YAMD.1993
Sec. 7. The state department may make sanitary inspections and surveys throughout Indiana and of all public buildings and institutions. After due notice is given, the state department may enter upon and inspect private property in regard to the presence of cases of infectious and contagious diseases and the possible cause and source of diseases.
As added by P.L.2-1993, SEC.2.

IC 16-19-3-8

Sec. 8. The state department may enforce all laws and rules concerning the character and location of plumbing, drainage, water
supply, disposal of sewage, lighting, heating, and ventilation and all sanitary features of all public buildings and institutions.
As added by P.L.2-1993, SEC.2.

IC 16-19-3-9

Sec. 9. The state department may establish quarantine and may do what is reasonable and necessary for the prevention and suppression of disease.
As added by P.L.2-1993, SEC.2.

IC 16-19-3-10

Sec. 10. The state department may order schools and churches closed and forbid public gatherings when considered necessary to prevent and stop epidemics.
As added by P.L.2-1993, SEC.2.

IC 16-19-3-11

Sec. 11. The state department may issue an order condemning or abating conditions causative of disease.
As added by P.L.2-1993, SEC.2.

IC 16-19-3-12

Sec. 12. (a) When, in the opinion of the state department:

(1) a local health authority fails or refuses to enforce the laws and rules necessary to prevent and control the spread of communicable or infectious disease declared to be dangerous to the public health; or
(2) a public health emergency exists;
the state department may enforce the orders and rules of the state department within the territorial jurisdiction of the local health authorities. In that situation, the state department may exercise all the powers given by law to local health authorities. All expenses incurred are charges against the respective counties or cities.
(b) In such cases, the failure or refusal of any local health officer or local health board to carry out and enforce the lawful orders and rules of the state department is sufficient cause for the removal of the local health officer or the members of the local health board from office.
(c) Upon removal of a local health officer or a member of the local health board, the proper county or city authorities shall immediately appoint a successor, other than the person removed, as provided by law for original appointments.
As added by P.L.2-1993, SEC.2.

IC 16-19-3-13

Sec. 13. The state department may remove a local health officer in the state for any of the following reasons:
(1) Intemperance.
(2) Failure to collect vital statistics.
(3) Failure to obey rules.
(4) Failure to keep records.
(5) Failure to make reports.
(6) Failure to answer letters of inquiry of the state department concerning the health of the people.
(7) Neglect of official duty.
As added by P.L.2-1993, SEC.2.

IC 16-19-3-14

Sec. 14. A local health officer may not be removed by the state department except under the procedure provided by law for the removal of an officer or employee for cause by a state officer or agency.
As added by P.L.2-1993, SEC.2.

IC 16-19-3-15

Sec. 15. A health officer removed as provided in this chapter is ineligible to hold the position of health officer for four (4) years. The vacancy shall be filled for the unexpired term in the same manner as the original appointment or employment.
As added by P.L.2-1993, SEC.2.

IC 16-19-3-16

Sec. 16. The state department may conduct hearings, issue orders, and take action on behalf of the state for the enforcement of orders as necessary to regulate the use of existing or proposed sanitary systems that do not meet or would not meet health standards established by the state department under law or rule as means, by the use of the state department's police power, to abate or prevent the pollution of streams, rivers, lakes, and other bodies of water.
As added by P.L.2-1993, SEC.2.

IC 16-19-3-17

Sec. 17. Whenever a hearing is provided for or authorized to be held by the state department, the state department may designate a person as the state department's agent or representative to conduct the hearings. The agent or representative shall conduct the hearings in the manner provided by law.
As added by P.L.2-1993, SEC.2.

IC 16-19-3-18

Sec. 18. (a) The state department may bring a proceeding against any person against whom a final order or determination has been made to compel compliance. The court in such an action has jurisdiction to enforce the order or determination by injunction.
(b) Except as otherwise provided, the state department may bring an action to enforce this title, except as otherwise stated. Such an action shall be brought in the name of the state. The court in such an action has jurisdiction to compel or enforce the provisions of this title by injunction.
As added by P.L.2-1993, SEC.2.

EXHIBIT "D"

IC 16-19-3-19

Sec. 19. The state department shall study the vital statistics and endeavor to make intelligent and profitable use of the collected records of death and sickness among the people.

As added by P.L.2-1993, SEC.2.

IC 16-19-3-20

Sec. 20. The state department shall provide facilities and personnel for investigation, research, and dissemination of knowledge to the public concerning dental public health.

As added by P.L.2-1993, SEC.2. Amended by P.L.142-1995, SEC.5.

IC 16-19-3-21

Sec. 21. The state department may:

(1) operate; and

(2) designate local boards that qualify to operate;

programs in the public interest, to provide for the care of certain individuals in each individual's place of residence. Eligibility for participation includes individuals who come within the purview of the federal Social Security Act (42 U.S.C. 301 et seq.). The state department and the designated local boards shall periodically establish a schedule of reasonable fees for this service and shall collect the fees as prescribed by IC 16-20-1-27.

As added by P.L.2-1993, SEC.2.

IC 16-19-3-22

Sec. 22. (a) The state department shall maintain a toll-free telephone answering service to provide information on safety precautions and emergency procedures with regard to poisons.

(b) The telephone number shall be widely disseminated throughout Indiana and shall be manned on a twenty-four (24) hour per day basis.

(c) The telephone companies in Indiana, the state department, all hospitals, and all other boards or commissions registering or licensing health care professions or emergency medical services shall cooperate in making the toll-free telephone number available to the public.

As added by P.L.2-1993, SEC.2.

IC 16-19-3-23

Sec. 23. (a) The state department shall maintain a toll-free telephone line to provide information, referral, follow-up, and personal assistance concerning federal, state, local, and private programs that provide services to children less than twenty-one (21) years of age with long term health care needs. The state department shall provide the telephone service to the following:

(1) Families with children having long term health care needs.

(2) Health care providers.

(3) Employees of state and local governmental entities.

(4) Educators.

(5) Other entities that provide services to children with long term health care needs.

(b) The state department may adopt rules under IC 4-22-2 to implement this section.

As added by P.L.2-1993, SEC.2.

IC 16-19-3-24

Sec. 24. The state department shall administer the Indiana acquired immune deficiency drug assistance program.

As added by P.L.2-1993, SEC.2.