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Can you rely on your Building Permit?

by Debra Norris

Builders and developers often rely on approved site plans and building permits to begin construction. To ensure compliance with local ordinances, builders and developers submit their site plans and building permits to the city for approval. Problems arise when a building official mistakenly approves a permit in violation of an existing ordinance or the ordinances change after the start of construction.

Recent Texas Supreme Court opinions have put owners and developers on notice that approved building permits and site plans can be revoked, even after construction is well underway. These cases reverse a trend that recognized an owner's right to rely on a permit that was wrongly issued.

A builder who relies on a wrongly issued permit does so at his peril. The courts are not persuaded by the fact that the builder may have spent thousands of

dollars in reliance on the permit. Texas has returned to the general rule, dating back to 1937, that a municipality can enforce its ordinances and is not bound by its own building official's mistake.

An erosion of that rule seemed to appear in the 2001 Corpus Christi Court of Appeals case, *Town of S. Padre Island v. Cantu*. In that case, the town's building department approved the Cantu's plans as submitted and issued a building permit, allowing the Cantu to start con-

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struction. When the project was eighty percent complete, the town's building inspector informed the Cantus that a two-foot overhang violated a city ordinance. This overhang was clearly apparent on the plans submitted and approved by the city. The court stopped the town from revoking the Cantus' permit because the town failed to object to the defective plans.

In 2006, the Texas Supreme Court decided a similar case, *City of Dallas v. Vanesko*. The city conducted a more extensive plan review, at the request of the Vaneskos, to "ensure that the plans were in compliance with all city building codes and ordinances." Nevertheless, after the steel truss roof was framed in, the building inspector found that the roof was in violation of the height limit. In fact, the

original plans approved by the city were more than eight feet above the limit. The court found that "the mere issuance of a building permit" did not render the city's ordinances unenforceable. The cost to the Vaneskos to re-pitch the roof and the fact that the house was already built were irrelevant to the court's analysis.

Be aware that many municipal codes in the state, like the one in Dallas, clearly state that an approved permit shall not be valid if it violates a city ordinance. Courts charge citizens with the knowledge of those ordinances if they do business with the city. You cannot rely on a wrongly issued permit. If you do, then like the Vaneskos, it is to your detriment.