

## SUPREME COURT BUILDING PERMIT RULING A REMINDER FOR PERMIT ADMINISTRATORS TO FOLLOW THE RULES

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In an opinion issued September 4, 2009, the Nebraska Supreme Court held that because a county building inspector did not enforce building and zoning regulations as written, sufficient grounds existed for a landowner to challenge the issuance and extension of a building permit to a neighboring landowner.

In *Conley v. Brazer*, Defendant landowners applied for, and were conditionally granted, a building permit by Douglas County to build a dog kennel and fence. Plaintiff landowners, neighbors of the Defendants, opposed the kennel and challenged the validity of the building permit in Douglas County District Court, alleging that the building permit was not validly issued, and was not validly extended, because zoning regulations in effect were not properly followed.

The Supreme Court held that grounds existed for challenging the building permit, and thus the Plaintiffs could proceed to trial. First, the building inspector had testified that it was customary that building permits were issued by his office when applied for, and that if all of the documentation required by the zoning regulations to be filed with the permit application were not complete, he would conduct a "plan review" and require such documents to be filed before construction began. But the Court looked to the Douglas County zoning regulations, and noted the regulations require permit applications be *accompanied* by plans drawn to scale showing existing and proposed water and sewer facilities. It also noted the permit application requires *inclusion* of a drawing of a proposed building, and well and septic permits. None of these items had been properly submitted as the regulations and permit application required, yet the building permit was "conditionally" issued. The Court held that "[d]espite [the building inspector's] testimony that it was customary for his office to issue a building permit before all preliminary requirements were met with the understanding that no construction would begin until that time, Douglas County zoning regulations do not specifically provide for such a system." Thus, the Court held that grounds existed for Plaintiffs to challenge the building permit.

Similarly, because regulations were not followed regarding extensions of permits, Plaintiffs were allowed to challenge the building permit. Again, the Court turned to the Douglas County zoning regulations, which require extensions of permits be obtained *in writing*, that permits expire after 90 days of work not being started, and within one year if work is not completed. The county's building code also required that extensions be requested *in writing*. The Court noted that work had not progressed on the project as required by the regulations, and only *oral* requests for extensions of the permit had been received. Again, the

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Court held such deviations by the building inspector from the county's written regulations provided grounds for the building permit to be challenged.

The lesson of *Conley* is that municipal and county zoning and building administrators need to be careful to faithfully follow all existing statutes and locally-enacted ordinances and regulations in order to have their decisions, which are ultimately the decisions of their respective counties or municipalities, stand up to a court challenge. It is important to remember that each step of an administrative process, such as the issuance of a permit, is creating a record that could be used in favor of, or against, a municipality or county. In *Conley*, an amended complaint named the City of Omaha and Douglas County as defendants, in addition to the private party defendants. *Conley* is a good reminder that office customs or traditional shortcuts that do not follow current regulations may cause a decision to be susceptible to challenge, and ultimately reversed, causing unnecessary litigation time and costs for public entities.

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