



## WHAT IS A BUILDING OWNER TO DO?

### Appeals of Building Permits Under Current Idaho Law

While zoning regulations are often intertwined with building code matters, the process for appealing adverse conditions or requirements of building permits and codes is far less clear. This article describes the challenges property owners have in appealing building code decisions in Idaho.

Idaho was a relatively early adopter of the International Building Code ("IBC"). In 2002, the Idaho Legislature adopted the 2000 IBC and required jurisdictions that issue building permits and perform building code enforcement activities to adopt it. Since 2009, the Division of Building Safety has had the power to update and adopt subsequent versions of the 2006 IBC through a negotiated rulemaking process.

Many Idaho jurisdictions have organized their building and land use

functions within the same department. Given this overlap, it is not surprising that Idaho courts have failed to distinguish building codes from land use actions and have applied principles from land use law when reviewing challenged building code decisions.

The right and ability to challenge land use decisions has shifted in Idaho. Over the course of the last decade, the Idaho Supreme Court adopted an approach that focuses strictly on the language of Idaho's Local Land Use Planning Act (LLUPA) and whether there is specific statutory authorization for judicial review (i.e., appeal) of a permit. This same analysis led the Idaho Supreme Court recently to conclude that explicit statutory authorization for judicial review of adverse building permit decisions is currently lacking.

That said, given that these matters are intertwined with zoning decisions, there is case law where building code decisions have been reviewed. Although explicit statutory authorization for judicial review is currently lacking, we can glean certain principles from this case law. For example, in *Ben Lomond*, the City of Idaho Falls refused to issue a building permit. The Court noted that "a public official must issue a building permit when the applicant has complied with all existing requirements." Thus, issuance of building permits is a ministerial function, meaning discretion is extremely limited and may be challenged. Fundamental elements of due process must also be respected, including notice and hearing.

While these case law examples exist, the ability to challenge adverse building code decisions by means of judicial review is currently in doubt in Idaho. Idaho jurisdictions have an obligation to adopt and apply the IBC, which includes authority on the part of the building official to make modifications for individual cases. Thus, while building owners wait for clear statutory authorization for judicial review, building owners should, in the meantime, work with building officials to arrive at results appropriate for their situation while still maintaining public safety.



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