

# MUNICIPALITY OF ANCHORAGE


DEVELOPMENT SERVICES DEPARTMENT



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DATE: December 7, 2016

TO: Building Board of Regulation Examiners and Appeals  
Appellant – Peach Investments/Mr. Terence Chang (owner's agent)

FROM: Kent Kohlhase, P. E.   
Building Official

SUBJECT: BCA-05-2016 Appeal of Permit for Demolition

## Background:

On August 18, 2016, the 4<sup>th</sup> Avenue Theater property was flagged in the Permit Management software program with the following notation: "Notify Kristine Bunnell if Demo Application is made X 7993." Kristine Bunnell is the Historic Property Officer for the Municipality.

On October 17, 2016, Mr. Terry McGovern, representing the owners, submitted an application for a permit to demolish the 4<sup>th</sup> Avenue Theater.

On October 17, 2016, the 4<sup>th</sup> Avenue Theater property was flagged in the Permit Management software program with the following notation: "Do not issue permit pending research outcome from Building Official." This flag was posted after the permit application was received.

When Mr. McGovern made application for a permit to demolish the building, the permit technician handling the application contacted Ms. Bunnell, per the instructions in the permitting system program. Ms. Bunnell came to the counter.

At the counter, there was a discussion between the parties, in part concerning the existence of an historic property easement recorded against the theater. It was mutually agreed that both parties would research the easement, and that the parties would then get back together to discuss the findings.

On October 18, 2016, Municipal Attorney Bill Falsey requested of the Building Official and the Planning Director that they notify the Municipal Attorney's office if contact was made regarding a demolition permit for the theater. Mr. Falsey advised that the Municipal Attorney's office was still looking into the conservation easement question, and that the matter was complicated.

On the evening of October 18, the Anchorage Assembly passed Emergency Ordinance 2016-2. This ordinance became effective immediately upon passage, and will cease to be effective 60 days from adoption. The ordinance establishes a temporary moratorium on the issuance of permits for demolition of properties on the National Register of Historic Places.

The Municipality did not hear back from Mr. McGovern or other representatives of the owners until they appealed the non-issuance of a permit. Mr. Terence Chang submitted the appeal on November 16, 2016.

**MOA Position:**

The Building Official did not deny a permit. The notation in the Permit Management system did not state that no permit could or should be issued; it simply stated that the Historic Property Officer should be consulted. During that consultation, the parties agreed to conduct additional research. To our knowledge, neither the owner nor their agents returned to Building Safety to further discuss their permit application until Mr. Chang submitted the appeal to the Building Board on November 16.

It was appropriate to pause the application procedure to allow for research of the possible existence of an historic property easement.

Appellant argues in their appeal that the Building Official was obligated by Anchorage Municipal Code to issue a permit "on the spot". They cite AMC 23.10.103.3.2 in support of this argument. This section states:

**23.10.103.3 - Powers and duties of the building official.**

**23.10.103.3.2 - Applications and permits.**

The building official shall receive applications, review construction documents and issue permits for the erection and alteration, demolition and moving of buildings and structures, inspect the premises for which such permits are issued and enforce compliance with the provisions of this code.

However, this is an incorrect application of this particular code citation. This introductory section sets out the broad powers and duties of the building official, which by the language of this section includes issuance of permits, including permits for demolition.

Subsequent, more specific code sections place the duty and responsibility upon the building official for due diligence prior to issuing permits. The applicable code sections are:

**23.10.104.7 - Permit application requirements.**

To obtain a permit, the applicant shall first file an application on a form furnished by the department. The application shall:

- G. Give such other data and information as may be required by the building official.

**23.10.104.14.1 - Document examination and approval.**

The application, plans, specifications, computations and other data filed for permit shall be reviewed by the building official. Such plans may be reviewed by other departments of the Municipality to verify compliance with any applicable laws under their jurisdiction. Once all documents are reviewed and approved by all departments of the Municipality, the building official shall stamp the approved plans "Reviewed for Code Compliance". [Section continues]

**23.10.104.14.6 - Permit issuance.**

If the building official finds the work described in an application for a permit and the plans, specifications and other data filed conform to the requirements of this code, the technical codes, and other pertinent laws and ordinances, and all permit fees have been paid, the building official shall issue a permit to the owner, contractor or authorized agent.

Clearly, the code envisions the Building Official being responsible for ensuring that any action authorized by the Building Official be fully in compliance with applicable laws and ordinances.

In closing, we offer the following arguments against this appeal, and request the Board find in favor of the Municipality.

1. There was not a denial of issuance of a permit. Instead, the parties mutually agreed to conduct research into the existence of an historic property easement.
2. The owner or their agent did not return to continue discussions regarding a permit.
3. The owner's interpretation of the absolute requirement of a Building Official to issue a permit for demolition upon application is flawed.
4. The code provides, and in fact requires, the Building Official to conduct due diligence to ensure compliance with applicable laws and ordinances. That is what occurred in this instance.

We respectfully request you find in favor of the Municipality on this matter.