



# Municipal Law News

December 2012

## DAMAGES UPHELD AGAINST CITY WHERE PROPERTY OWNER RELIED ON IMPROPER BUILDING PERMIT

- Nichole Jongsma Derks

If municipal officials are trying to determine how to address an improperly issued building permit, they should take notice of a recent case of the Michigan Court of Appeals, *Kalkman v City of the Village of Douglas and Kowal*. In *Kalkman*, the Court found in favor of a property owner who relied on a building permit issued by the City of the Village of Douglas, even though the building permit was improperly issued.

Before construction began, the property owner obtained zoning approval from the zoning administrator. Based on that approval, the property owner began to build his residential home and spent \$65,000 before the City issued a stop work order. The City issued the stop work order because the construction allegedly violated the City's Zoning Ordinance, namely the regulations governing front yard setbacks. Despite the fact the property owner never requested a variance, the City Zoning Board held a hearing and denied the setback variance.

The property owner sued the City, arguing that he had a vested right to build under the permit issued before the stop work order and the City's stop work order deprived him the use of his property.

The trial court agreed with the property owner. The court concluded that the property owner had a vested right in the building permit and the stop work order amounted to a temporary taking. The trial court also awarded the property owner \$178,903 in damages.

On appeal, the City argued the property owner's claim should be barred because he did not exhaust his administrative

remedies. Normally, a property owner would be required to exhaust administrative remedies before suing the City in circuit court. There is an exception when it is clear further administrative proceedings would be futile. In this case, the property owner was not required to seek a variance to finalize his claim. The Court took a detailed look at the zoning ordinances at issue and the City's usual practices and enforcement. Ultimately, the Court determined that an attempt by the property owner to receive a variance would have been futile; therefore, the citizen could take his claim directly to the circuit court without exhausting his administrative remedies.

Also, the Court of Appeals affirmed the trial court's determination that the City was equitably hindered from interfering with the property owner's construction. Equitable hindering arises when: ►

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continue on back | **Damages Upheld**

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## Municipal Law News

December 2012

### Damages Upheld | continued from front

1. a party, by representation, admission, or silence, intentionally or negligently induces another party to believe alleged facts,
2. the other party justifiably relies and acts on this belief, and
3. the other party will be prejudiced if the first party is permitted to deny the existence of those alleged facts

The Court determined that the City issued the building permit and the property owner changed his position by spending approximately \$65,000 in reliance on that purpose.

The Court of Appeals also agreed that the stop work order constituted a temporary taking and awarded damages. However, the Court of Appeals disagreed with trial court on the terms of the taking. Thus, the Court remanded the case to the trial court to determine damages. ■■■



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