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BIAW Offers Amicus Brief in Church of the Divine Earth

Agencies are liable for damages when actions are unlawful

Olympia, WA The Building Industry Association of Washington (BIAW) filed an amicus brief today in *Church of the Divine Earth v. City of Tacoma*, currently pending before the Washington State Supreme Court.

“BIAW filed an amicus brief in this case because the Court of Appeals decision effectively gutted the statute that provides damages when a builder is wronged by a permitting body. Specifically, the Court of Appeals said Tacoma was not responsible for damages as the City did not know it was violating constitutional law. This is wrong because ignorance is no excuse for violating someone’s constitutional rights” stated Jackson Maynard, General Counsel for BIAW. “Under Washington State law, litigants are entitled to having their expenses paid as damages when they are forced to litigate their constitutional rights and prevail.”

This case started when the Church of the Divine Earth bought a parcel in Tacoma zoned for single-family, residential use for a parsonage for its pastor. When the Church applied for a permit to build the parsonage, the City refused to issue the permit unless the Church gave the city a strip of land along the road. This prerequisite was unconstitutional, essentially holding the building permit hostage to extort land from the Church. A trial court agreed and under RCW 64.40.020, the Church should have been able to get its litigation expenses and damages back from the City for being forced to litigate its constitutional rights.

In the building industry, permitting agencies exercise make-or-break power over builders, but are difficult to hold accountable when they abuse that power. RCW 64.40 allows a builder to sue for damages and have their attorney’s fees paid when the permitting agency acts unlawfully. However, despite the plain language of the statute, the Court of Appeals said that the City is not responsible for the cost because it did not know it was violating constitutional law.

“We find this decision to be a comedy of errors. If allowed to stand it eviscerates the only mechanism in law to hold permitting agencies accountable if they act unlawfully or abuse their power.” concluded Maynard. “Government should know and follow the law. Power without accountability is a recipe for disaster for our members and the citizens of Washington.”

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The Building Industry Association of Washington is the voice of the housing industry as the state's largest trade association with nearly 8,000 member companies employing approximately 265,000 people. The association is dedicated to ensuring and enhancing the vitality of the building industry for the benefit of its members and the housing needs of the citizens. Learn more at: www.biaw.com

For more information, please contact:

Jennifer Spall, Communications & Public Relations Director
Building Industry Association of Washington

111 21st Avenue SW

Olympia, WA 98501

Phone: (360) 352-7800

jennifers@biaw.com