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State Supreme Court: Permitting Agencies are Liable for Damages

Builders retain right to hold government accountable for unlawful actions

Olympia, WA Government agencies that break the law are liable for the damages caused by those actions, according to a Washington State Supreme Court ruling announced today in the *Church of the Divine Earth v. City of Tacoma*. In the ruling, the Court adopted reasoning argued in an amicus brief filed in the case by the Building Industry Association of Washington (BIAW).

"In our brief, we argued that ignorance is no excuse for violating someone's constitutional rights," said BIAW General Counsel Jackson Maynard. "The Court agreed, stating 'the statute requires an objective standard, asking whether the city's final decision 'should reasonably have been known to have been unlawful.' Governments should be responsible for knowing the law."

In the building industry, permitting agencies hold make-or-break power over property owners, but are difficult to hold accountable when they abuse that power. State law allows a property owner to sue for damages and have their attorney's fees paid when the permitting agency acts unlawfully. In this case, the Church of the Divine Earth was represented by former justice and BIAW member Richard Sanders, who sought damages for costs incurred fighting an illegal planning decision.

"The Court's decision overturns a lower court ruling that the city was not responsible for the cost because it did not know it was violating constitutional law," concluded Maynard. "We are pleased that we were able to assist the Court in reaching a decision. A contrary ruling would have hurt the ability of property owners to recover damages they are entitled to by law."

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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

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