

Proposal #5: Residential Permits

August 23, 2006

1. Issue

Building permits serve as a means of alerting the local building department of construction work occurring in the jurisdiction. Currently, a building owner or a contractor may secure a building permit. Owners may also choose to obtain a permit to act as their own general contractor. The duty to ensure compliance with the state building code – e.g., making required corrections – rests with the permit applicant.

During its presentation to the Task Force meeting on January 25, 2006, Mark Long, Administrator of the Building Codes Division, recommended to the Task Force that the contractor performing the work take out the permit.¹ In the May 24, 2006 meeting, the Task Force moved to have staff draft a proposal that would address two main points: (1) require the party responsible for constructing a building to obtain any necessary permits for the work, and (2) require the person that obtains any necessary permits for construction work to designate on the permit the party that is actually responsible for the work.²

2. Current Oregon Law

Oregon law regulating the issuance of building permits only requires that a person obtain a permit. The law does not specify that a contractor is the only eligible party available to obtain building permits. In terms of content, Oregon statute requires permits contain three items of information: first, that the permit list the name and address of the owner of the building or structure; second, the permit lists the name and address of the builder or contractor, “if known”; and finally, the permit lists the street address and tax lot number of the property.³

3. Who May Obtain a Permit in Other States

Generally speaking, the states surveyed that retained central authority over administration of the building code and also centrally licensed contractors placed conditions on who may obtain a permit. Permit regulations in other states, like in Oregon, generally relate to whether a person must possess a valid contractor license. The nuances that lie in the various exceptions across the surveyed states allow staff to compare regulatory models.

For example, Florida provides an exemption from contractor licensing laws for owners of property electing to act as their own general contractor.⁴ An owner claiming this exemption must provide “direct, onsite supervision themselves of all work not performed by licensed contractors” and may not “delegate the owner’s responsibility to directly supervise all work to any other person” unless the person is a licensed contractor.⁵ An owner must appear at the local building department’s office to request and sign the building permit; the building department is directed by state law to provide a disclosure statement describing the rights and responsibilities of the owner on the construction project.⁶

In Hawaii, county and city building departments must ensure that prior to issuing a permit, “each applicant and all specialty contractors are licensed...or, if the applicant is exempt from [contractor licensing laws], the basis for the claimed exemption.”⁷ In order to qualify for an exemption, the

¹ Minutes, Construction Claims Task Force 4 (January 25, 2006).

² Minutes, Construction Claims Task Force 10 (May 24, 2006).

³ ORS 455.050.

⁴ FLA. REV. STAT. § 489.103(7).

⁵ Id.

⁶ FLA. REV. STAT. § 489.103(7).

⁷ HAW. REV. STAT. § 444-9.1(a).

applicant must read and sign a disclosure statement that explains the owner's responsibility to supervise the construction work and hire licensed subcontractors.⁸ If the owner does not read and sign the disclosure, the building department may not issue a permit to the owner.⁹

Under New Jersey regulations, if a contractor obtains a building permit, then they must show their "current validated State builder registration card" and record their registration number on the permit.¹⁰ If the residence will be built by the owner "in whole or in part," then the permit must also contain an affidavit that states the work undertaken by the owner or a "subcontractor working under his supervision" is not covered by the New Home Warranty and Builders Registration Act.¹¹ The affidavit must also state that the owner will disclose the warranty coverage status to "any person purchasing the property within 10 years of the date of issuance of a certificate of occupancy."¹² Regardless of who undertakes construction, all permits must list the responsible person that will be in charge of construction and is responsible to the owner for ensuring compliance with regulations.¹³

North Carolina law prohibits the issuance of a building permit for any construction work unless "the applicant has furnished evidence that he is either exempt from the provisions of [the contractor licensing laws] or is duly licensed...to carry out or superintend the work for which permit has been applied."¹⁴ Like North Carolina, Virginia statute requires a person applying for a building permit to show "satisfactory proof" of licensure or to file a written statement demonstrating that the person is exempt from contractor licensing laws.¹⁵

4. Staff Analysis and Recommendations

A few common thread run through the states that did tie the issuance of permits to the applicant's license status. No state prohibited owners from undertaking construction work on their own residences, so long as they built the properties to occupy. When an owner elected to work as their own general contractor, other states generally required the local building department required them to read and acknowledge a statement that defined their rights and responsibilities in the construction process.

In order to ensure that contractors are ensuring compliance with the building code – especially in terms of correcting problems that arise on inspection or when the project is complete – an owner should not obtain a building permit without either acting as their own general contractor or performing their own construction work. If an owner is not arranging for the work to be done or doing the work themselves, the entity contracted to undertake construction should obtain the permit. An owner is still free to employ contractors to complete construction projects, but they may not obtain a permit on the contractor's behalf. Essentially, the business or individual that performs the work must obtain the permit.

Staff also recommends changes to current the Information Notice to Property Owners About Construction Responsibilities. After comparing the Oregon-required statement¹⁶ with statements required in Florida and Hawaii, staff recommends that the contents of the statement should at least include (1) the owner's duty to comply with building codes, (2) the responsibility of the owner to

⁸ HAW. REV. STAT. § 444-9.1(c).

⁹ Id.

¹⁰ N.J. ADMIN. CODE § 5:23-2.15(b)(1)(i).

¹¹ Id.

¹² Id.

¹³ N.J. ADMIN. CODE § 5:23-2.15(b)(3).

¹⁴ N.C. GEN. STAT. § 87-14.

¹⁵ VA. CODE ANN. § 54.1-1111.

¹⁶ See ORS 701.055(4) (form and content of the acknowledgment form).

supervise construction work, if the owner is acting as their own general supervisor, and (3) the owner's responsibility to make corrections after inspection.

Alternatively, Oregon could adopt New Jersey regulation concerning the content of the permit application – that is, require the permit to record the name of the person charged with oversight over construction work and responsibility to ensure construction meets applicable code. If this proposal is preferred, staff recommends that the responsible person should only be a homeowner undertaking their own construction work or a licensed contractor hired to undertake work. Second, the local building departments should cross-check the names of responsible parties with CCB records to ensure that the licensed contractor is eligible to work on the project – similar to Hawaii's permit process.¹⁷

4. Summary

Proposal # 5: Staff recommends the following changes to the CCB licensing exemptions to ensure contractors obtain permits:

1. *Require a contractor to obtain the permit whenever the contractor is retained to complete construction work.*
2. *Revise the Information Notice to Property Owners About Construction Responsibilities to include at a minimum (1) the owner's duty to comply with building codes, (2) the responsibility of the owner to supervise construction work, if the owner is acting as their own general supervisor, and (3) the owner's responsibility to make corrections after inspection.*
3. *[Alternatively] Codify the requirement that a permit must list the responsible person that will be in charge of construction and is responsible to the owner for ensuring compliance with regulations.*
4. *Responsible parties of record should only be a homeowner or a licensed contractor.*
5. *CCB should make records available to local building departments to cross-check license numbers with responsible persons of record.*

¹⁷ See HAW. REV. STAT. § 444-9.1(b) (“The county shall verify the license against a list of licensed contractors provided by the state contractors licensing board.”)