

March 6, 2013

Greg Guernsey, Director  
Planning and Development Review Department  
City of Austin

Mr. Guernsey,

We are writing to respond to your recent invitation to discuss and revise the current "self-certification" process for residential construction permitting in the City of Austin.

As you know from our prior discussions, the special project commissioned to address the current backlog in the City's processing of residential construction review and permitting has been less successful than originally intended. The main reason for this seems to be that the forms issued by the City's Law Department have led to serious concerns, both from architects who do this type of work, and from the insurance carriers who issue professional liability policies to many of them. The current form states, in relevant part:

*(A) I certify that **I am responsible for assuring** that any plans submitted by me or my agent and approved by the City of Austin for the subject property are **fully compliant** with all City of Austin codes, ordinances, regulations, and rules...*

*(B) I understand that the City may rely on my **certifications** of compliance in approving a building permit for the subject property. I further understand that **I will be responsible for any subsequently identified violations**, even if those violations are reflected in plans or permits approved by PDRD based on my certification of compliance.*

*(C) I understand that land development regulations are complicated and can sometimes be difficult to interpret. By requesting that staff accept my certification of compliance, I am assuming responsibility for understanding those regulations and am **voluntarily foregoing a level of staff review** that could identify potential deficiencies in the design of my project.*

The highly specific representations and assurances contained in the City's current certification forms require an applicant to make statements of 100% accuracy, compliance, and completeness--assurances that vastly exceed the legal "ordinary care" standard for design professionals, and which could therefore very well open the door to claims of negligent misrepresentation, breach of warranty, and other causes of action. Indeed, assurances of this nature could expand the categories of potential claimants against certifying architects to include contractors and others outside the usual architect-client contractual relationship.

Complicating matters further, the use of the City's existing forms could expose the certifying architect to liability that would not be covered by standard errors-and-omissions insurance. Indeed, multiple professional liability carriers have specifically informed members of our chapter that insurance coverage would be extinguished if an architect were to engage in self-certification through use of the City's current forms. At least one carrier has cautioned, "Any certification should be limited to the Architect's professional opinion to the best of its information, knowledge and belief and does not constitute a warranty or guarantee."

Architects, as you know, are subject to the Texas Occupations Code and the Rules of the Texas Board of Architectural Examiners, the agency monitors the activities of its registrants and may discipline them for misconduct. The use of the architect's seal categorically indicates that the sealed document "may be used for regulatory approval, permitting, or construction." See TBAE Rule 1.101. Any architect who seals a plan or document and "does not have the technical knowledge or skill to form a reasonable judgment" for the applicable project is subject to discipline, with or without the current City forms. Further, if a TBAE registrant "consciously disregards compliance with a code or ordinance," the agency may similarly impose punishment on the errant architect.

Given the existing strictures that apply to architects registered to practice in the State of Texas, we believe the City should adopt a policy allowing architect-sealed drawings to receive expedited treatment, ahead of all applications that do not involve an architect. While no person--design professional or otherwise--can ever predict 100% compliance or accuracy, the years of professional training, skill, and judgment amassed by any individual who has taken the necessary steps to become a registered architect should provide the City with enough assurances to place sealed documents at the front of the processing line. Architects will, in any case, remain responsible for their work, and in no way does this proposed policy seek to alleviate the professional responsibilities that they face simply by undertaking their role on any given project.

Mr. Guernsey, we believe the approach outlined above will get the stakeholders and participants moving in the right direction, and we look forward to a further dialogue with you that is aimed toward alleviating the current backlog, while avoiding a situation that unnecessarily puts architects in harm's way.

Thank you very much, and please be sure to let us know if you have any questions at all.

Very truly yours,



Jana McCann, FAIA  
President



Stuart Sampley, AIA  
Advocacy Liaison

CC:  
Sue Edwards, Assistant City Manager  
Brent Lloyd, Law Department