

The Supreme Court in Thailand just ordered a completed, high-end, high-rise, 100 M USD +, residential project demolished, why?

A high-end mixed use residential **Complex** consisting of a twenty-four storey hotel and an eighteen storey apartment in the heart of Bangkok, which was only recently completed with a construction cost price tag of approximately three billion Thai Baht (almost one hundred million USD) — has just been ordered demolished by the Supreme Administrative Court in Thailand; there is no further appeal available, the order is final.

Media reports on this can be read here:

<http://www.bangkokpost.com/news/general/446805/court-orders-demolition-of-aetas-hotel>

<http://www.nationmultimedia.com/national/BMA-ready-to-order-Aetas-hotel-demolition-30249099.html>

At issue here was the width of the public road next to the Complex. In order for the Complex to be built the law required that the public road be at least ten meters wide. The Complex's owner argued that it complied with all legal requirements for the construction. And, with regard to the road width, the owner cited a document issued by the Public Works Department, which among other details, opined that the width of the road adjacent to the complex would allow for the construction of Complex's high-rise buildings. However, after residents living nearby the Complex filed an administrative court case claiming that the Complex construction was unlawful, the Public Works Department re-measured the road and found it to be less than the required ten meters in width.

Given the facts of this case that we do know and for purposes of what follows, we will

assume that the Complex's developer was allowed to build based on the initial measurement of the Public Works Department which satisfied the legal requirements of adjacent public road width for the construction of high-rise buildings.

Why would the Supreme Administrative Court order an existing building to be demolished even though the developer believed it had, and indeed may have, obtained a building permit for the construction of the project? Such questions are particularly relevant for villa and other structure owners in Phuket where, for example, construction in violation of the eighty-meter elevation and proximity to the sea restrictions are rampant. To answer we must first understand the legal status of a building permit in Thailand.

From a legal perspective, the issuance of a building permit is an "administrative order". An administrative order is defined in Section 5(1) of the Administrative Procedures Act (1996) ("APA") as follows:

An exercising of powers under the law by the competent officers with an effect of creating legal relations between persons in such a way to create, change, transfer, reserve, suspend, or which renders an effect to the status of rights or duties of a person, whether it be permanent or temporary, such as, ordering, permission, approval, decision of appeal, certification, and acceptance of registration, but excluding an issuance of rules.

The relevant law that provides for the issuance of a building permit administrative order is the Building Control Act (1979) ("BCA"). And if you want to construct, modify or move a structure in Thailand you need this administrative order under the BCA, a building permit. The administrative procedure to obtain it is as follows. The applicant submits an application and relevant accompanying documents to the relevant local administrative office. That office then verifies the application documents (e.g. construction drawings and specifications, etc.) and finding all such in order, then schedules a construction site visit. This process includes review of relevant law to determine if the contemplated building is legally permissible. In certain areas of Thailand, like Phuket, the land use is primarily regulated by three laws: (1) the BCA; (2) the City Planning Act (1975); and (3) the National Environmental Control and Maintenance Act (1992).

If all the application documents are in order and the building is legally permissible at the applied for location, the local administrative office must issue a building permit.

Thus, the legal effect of this administrative order is the legal permission to a person to build a certain structure on a defined plot of land. Once a party has received a building permit then cannot be stopped from exercising their rights under the permit. As long as the building permit is in effect, the applicant has the right to construct the building as permitted. Section 42 of the APA makes this clear: *“an administrative order shall be valid so long as it is not revoked or terminated by time condition (...)”*.

It should be noted that building permission is not open-ended — it does expire. The temporal validity of a building permit depends on the size of the building to be constructed. Permits of one year are issued for buildings of less than 10,000 square meters, two years for buildings exceeding 10,000 square meters, but not exceeding 100,000 square meters, and three year permits are issued for buildings exceeding 100,000 square meters. These permits are renewable up to four times. The first renewal will be for same period of time as the initial term for which it was granted. However, the second, third, and fourth renewal term will be for a period of one year each. A little known fact in relation to building permits is that the permit holder has the duty to report the progress of construction and invite inspection of the same to the government every ninety days.

But can a building permit be revoked after its issuance and prior to its expiration? Yes, it can. Again, legally speaking, a building permit is merely an administrative order and administrative orders can be revoked by government administrative measures or court action. A relevant and interested “party”, in other words, any third party affected by such an administrative order (for example, an adjacent neighbour of a development that received a building permit) can initiate a revocation. If the relevant government office or court agrees that there is a factual or legal problem with that permit, the permit may be revoked or amended.

Building permit applicants and holders should take careful note that the relevant government office does not need to wait for the court to have any say. Section 49 of the APA states:

The competent officer or the supervisor of the competent officer may revoke an administrative order according to the bases in Section 51, Section 52 and Section 53, whether or not it has passed the steps of appeal or protest under this law or other laws.

The conditions for revoking an administrative order (without appeal) are strict and if revoked the consequences of such revocation depend on whether or not the original order was lawful or unlawful. The revocation of a lawful administrative order/permit is subject to compensation by the government for damages arising out of the revocation. Whereas the revocation of an unlawful administrative order is only subject to compensation if the recipient of the administrative order/permit was not aware of the unlawfulness of the order. Section 51 of the APA makes the latter clear:

(1) The said person has produced false statements or has concealed facts which should have been reported, or has made a threat or a persuasion by offering property or providing any other benefits illegitimately; or

(2) The said person has produced statements which are incorrect or incomplete in the material part thereof; or

(3) The said person has known of the unlawfulness of the administrative order at the time of receiving administrative order, or his/her not knowing of such is due to his/her serious negligence

then such person will not be entitled to any compensation. Thus, an illegal building permit obtained through means of corruption, for example, is revocable without any compensation.

Therefore, once a building permit is received, that alone is no guarantee that the applicant will be able to complete the project to which the permit applies. A building permit can “expire”, be revoked after a court appeal, or be revoked by the relevant administrative government itself. To avoid the harsh consequences of a building permit revocation, it is strongly advised to perform a competent and comprehensive due diligence into the legality of the project prior to applying for the permit and to be certain that the project complies with law, regardless of the permit; no doubt the Complex owners now wish they had.

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