

# Building Permits and the Workplace

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In Sweden, decisions concerning building permits are based both on national guidelines and on the discretion of local officials. Land use is planned by local planning departments, and building permits are issued by building commissions comprising locally-elected politicians. The requirements for building permit application are set by national law. The material upon which a building commission bases its decision is produced by the local city planning department: city and regional plans and their associated regulations that legally prescribe the use of each site. Permission to build requires that the proposed development conform to the established land use plan. However, minor discrepancies may be permitted at the discretion of the building commission. This article illustrates the role of land use plans in building permit decisions and their appeal.

## Theme: Workspace Design II

This is a study of attempts by private companies to acquire building permits through the administrative court system\*. It also examines the system by which land use plans and various authorities regulate the establishment of places of work as well as the design of buildings and the activities to be housed therein.

Businesses apply for building permits when the need arises for increased space or changes in operations. They describe the desired changes in drawings and words, and are usually granted a permit. When a permit is denied, the company often appeals the building commission's decision. In these cases, the space needs of the companies have become the subject of systematic argumentation and legal judgment. They involve issues of

employment opportunities, consideration for local factors, balancing various interest groups in society, equal treatment before the law, justice, power, legitimacy, and democracy.

## Case Selection Parameters

This study examines thirty-two cases between 1987 and 1993 in which companies appealed the denial of their building permit applications. The point of the study has been to develop an empirically-based understanding of the building permit process and the appeals process. To that end it examines the recent *Plan- och Bygglagen* (Planning and Building Act) and its influence on the evaluation of building permit applications and on the planning of workplaces.

The building permit cases selected meet two important criteria: in each case a building permit application became the subject of litigation in the administrative court system, and the

plaintiff in each was a company or an employer appealing a decision regarding a workplace.

The administrative court of appeals in Gothenburg kindly granted me access to its database for my research. A database search was conducted in which the following keywords were combined with "building permit": factory, industry, workshop, warehouse, office, service, property, sales, store, and shop. The search revealed that 103 cases were brought before the administrative court of appeals by businesses between 1987 and 1993. From this number I have chosen 32 typical and informative cases for analysis.

The article makes an in-depth study of eight of these cases which particularly illuminate the effects urban planning has on business activities. In each case, the dispute centers on the regulation of land use. In addition to discussing the experiences of conflict-filled building permit applications, the article examines the room for interpretation allowed by the regulations, and some of the problems associated with physical planning by the local government.

### Case Summaries

1. The subject of the first case is an industrial building with a workshop, sales area, warehouse, and office all in one work area. The site is zoned for industry, and both the local building commission and the county administrative board deny the building permit. The owner appeals the case to the administrative court of appeals, but before the court can reach a decision, the company reapplies with a new

proposal to which the building commission's response is positive.

2. The second case deals with the issue of adaptive re-use of an industrial and office building. The site is zoned for industry and the company wants to establish a building supply store on the premises. The building commission denies the permit in order to reserve the land for businesses which require access to the railway. The county board, however, concludes that running a building supply store on the site does not require a building permit.

3. The third case involves an industrial building with space for production, offices, and sleeping quarters – a kind of industrial hotel. The zoning of the site is changed to industrial in connection with the granting of a building permit. Following appeals from several neighbors, the county board grants a temporary injunction to stop construction on the site. The building commission is divided over the issue, but decides to reaffirm the building permit. The county board and the court of appeals determine that the proposal represents only a minor departure from the land use plan and can therefore be accepted.

4. The fourth case is about a small addition to a one-person business with space for a warehouse[, storage,] and a garage. The zoning plan prescribes residential development for the site, but the building commission finds the addition acceptable and grants the permit anyway. After appeals from neighbors, the permit is rescinded by the county administrative board. The administrative court of appeals concurs with the decision,

and the company is not allowed to carry out the proposed addition.

5. The fifth case deals with a proposal for remodeling an existing space in an apartment building into a pizzeria. The land use plan prescribes appropriate business activity for the site. The building commission turns down the proposal based on negative feedback from neighbors and the anticipation of parking problems. The county board and court of appeals, however, each find that the restaurant cannot be considered inappropriate and therefore overrule the commission's decision.

6. The subject of the sixth case is an application for permission to sell cars and automotive parts at an existing repair shop. The site is zoned for industry. The building commission and county board reject the application, referring to the plan and calling the site inappropriate for the proposed business. In an appeal to the administrative court of appeals, the owner testifies that the real estate agent who sold him the property failed to inform him of the zoning limitations. The court is swayed and grants the building permit.

7. The seventh case centers on an application to change the business activities conducted in two newly constructed industrial buildings. The site is zoned for industrial use, but the owner of the buildings wants to rent the space to businesses involved in retail sales. The building commission rejects the owner's application, and neither the county administrative board nor the administrative court of appeals find cause to contradict the commission's judgment.

8. The eighth case deals with a proposal to remodel an apartment building into offices. The property is bought by an architecture firm. The site is zoned residential and for activities judged appropriate by the building commission. The commission cites increases in traffic and problems with parking in denying the permit. The county board holds with the commission, but the court of appeals reverses that decision on the grounds that the transition to offices will not create difficulties for the surrounding area.

### **The Planning and Building Act**

This summary explanation of the Planning and Building Act (*PBL*) refers to the Act as it was at the time of the investigation. Chapter Two stated that land use planning and the siting of buildings should serve the interests of the community and should provide the necessary conditions for good residential, work, traffic, and leisure environments. Local building commissions and those applying for building permits were to consider issues of health, handicap, hygiene, the risk of accidents, air pollution, and noise pollution.

PBL Chapter Three contained general requirements for building and land development projects. For example, buildings should be given a good work environment, appropriate exterior form and color scheme, should be sited and designed with consideration for traffic safety, should prevent the risk for damage, maintain a satisfactory interior climate, and be accessible to people with a limited ability to

move through or orient themselves in buildings.

The requirements for permit applications were regulated in Chapter Eight. A building permit was required for the construction of a new building, for adding on to or remodeling an existing building, and for a significant change in the use of a building. According to Chapter Ten, the building commission was to intervene in the case of violations of these laws. The commission was empowered to issue prohibitions, restrictions, restraining orders, and fines.

The right to appeal was regulated in PBL Chapter Thirteen. A building commission's decision regarding a building permit could be appealed first to the county administrative board and thereafter to the administrative court of appeals. A third and final alternative was the supreme administrative court of appeals or the national legislature itself. PBL at that time granted the right of appeal in building permit cases to the applicants, property owners, neighbors, residents' associations, and occupational safety representatives (in cases where the proposed buildings contained workplaces for permanent employees). The right of appeal for union representatives was rescinded when PBL was revised in 1995.

### **Broad Characterization of the Cases**

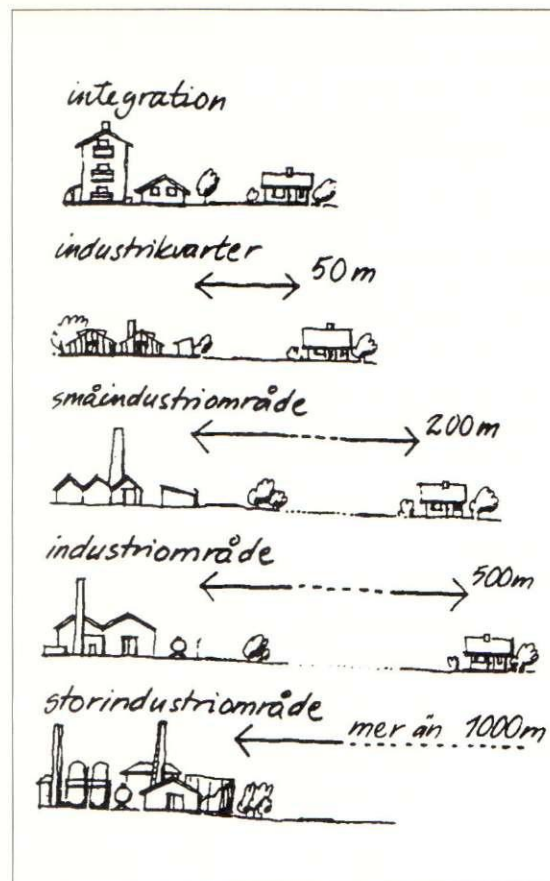
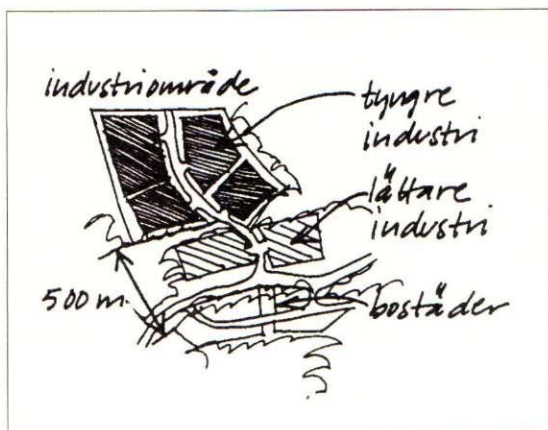
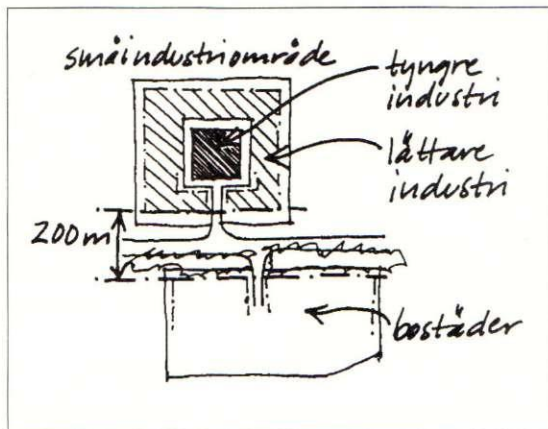
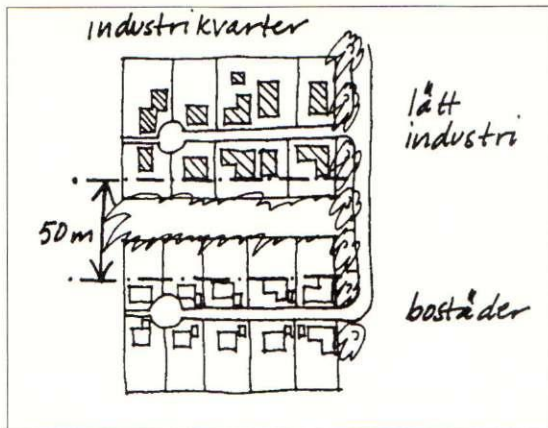
The appeals of building permit cases in this study were brought primarily by private companies. Public sector business representatives were the plaintiff in only two of 32 cases and then only in the role of tenant. This is

the logical result of the choice of search words, and can thus be considered an affirmation that the cases chosen correspond to the intentions of the study.

The building permit applications reflect a wide variety of spatial requirements spanning from investments in new construction to minimal measures such as adapting existing buildings for new purposes. The 32 cases can be divided into five groups:

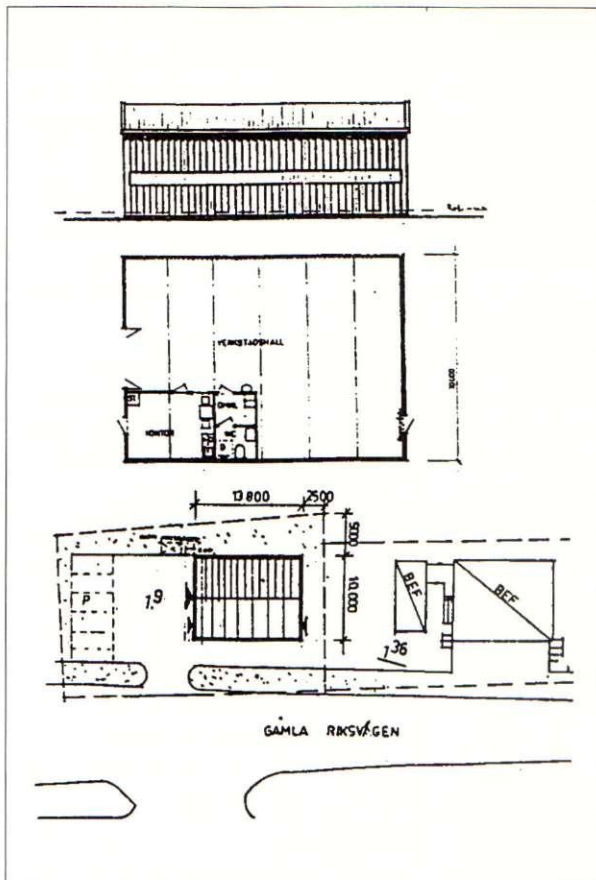
1. *New construction.* Five cases center on applications for building permits for new construction of workplaces. Rejection by the building commissions often resulted in applications for permits for remodeling, new use, or exemption.
2. *Remodeling and additions.* 19 of the 32 cases deal with proposals for remodeling or additions, often in conjunction with new use of the property.
3. *Adaptive re-use.* 18 cases involved building permit applications for new use of properties.
4. *Restrictions and prohibitions.* Nine of 32 cases try the validity of prohibitions and restraining orders against the realization of previously approved proposals.
5. *Exemption.* Eight cases deal with applications for exemption from relevant regulations, usually in connection with the remodeling or new use of properties.

The cases arise from decisions made by twenty different building committees. They involve several different environmental aspects, from the influence of proposed business activities on their surroundings to issues of construction details. The plaintiffs in these cases generally took a broad view of the environmental impact of a plan,



### Illustrations

The illustrations are taken from the 1995 book *Better Work Space*. They demonstrate how the central planning authorities in Sweden see zoning as the basis for regulating land use. Work and home are kept at a safe distance from each other. In this paradigm, integrated environments are seen as problem areas. The idea of functionally dividing the city is a remnant of Functionalism. It is a tradition which still dominates the thinking of central planning authorities and local city planning offices alike. I believe this strategy is debilitating to the environment in the long run, and that it increases society's need for transportation. Opponents of functional separation often advocate a multifaceted city comprising blocks of mixed use buildings that combine workplaces and residences. The ideal of integration is difficult to achieve when land use planning is regulated by recommended safety distances between different functions.



## Plans

The plans illustrate Case 6. On the site stood a garage for automotive repairs and parking places for storing vehicles. The garage was a simple structure containing a workshop and office. There are many industrial buildings in the surrounding area, and the land use plan prescribed industry for this site as well. After a long appeals process, the administrative court of appeals decided in 1990 to allow the company to sell cars and spare parts on the premises. When I visited the site in the summer of 1996, the garage had been torn down. It had been replaced by a two story industrial building clad in gray horizontal corrugated sheet metal with intermittent vertical red stripes, which gave the building an exciting character.

focusing on disturbances such as traffic, noise, and parking problems.

While the cases involve several environmental aspects, the design of the work environment is of secondary importance in the appeals studied. The county administrative board makes no reference in its findings to the requirements for a good working environment. One reason is that the plaintiffs in these cases are companies and neighbors rather than employee representatives. Another reason is that the courts as a rule do not request statements from labor inspection authorities and union representatives when companies and employers appeal decisions in building permit cases.

## Case Descriptions

The eight in-depth case descriptions presented here are based on archival research. They are based on the companies' building permit applications, city planning department investigations, testimony on the applications given by supervisory authorities and neighbors, building commission decisions, the cases for the plaintiffs in appealing those decisions, defense cases, and administrative court rulings.

### 1. Industrial building in Helsingborg

Axlinggruppen AB applies in 1987 for a permit to build a new industrial building with space for a workshop, retail sales area, exhibition area, warehouse, and administration. The building is to be the company's headquarters and its main warehouse as well as a retail outlet for radio, TV, refrigerator, and freezer products.

The zoning plan for the area prescribes industrial use for the site, but permits commercial activity where acceptable to the building commission. The commission rejects the proposal on the grounds that only wholesale commerce is consistent with the area plan. However, the commission is divided in its findings.

The company's board of directors appeals the decision, and asks the county administrative board to return the case to the building commission for a second trial. They claim that the site is suitable for a

large warehouse and the sale of capital goods and affords easy access for delivery vehicles and customer pick-up, which their business requires. In addition, they assert that the local government, in the interests of competing with other communities, should not hinder the establishment of businesses or the development of new commercial formats. The directors request a swift decision by the board since their lease on the property is about to expire.

In its statement to the county board, the building commission cites its previous decision. The commission is still divided over the case: some of its members now want to approve the permit. The board confirms the commission's authority according to the land use plan to determine the appropriateness of business activities involving sales. The commission's finding thus does not conflict with relevant legislation. The county board takes no further action in the case.

The company directors presses the issue, appealing the county board's decision to the administrative court of appeals. They assert that the building commission's determination of appropriateness should be based on the principle of similarity of judicial process: the same localization regulations should be applied across the entire industry. The building permit would merely allow the company to move a business activity from one site to another location. Furthermore, they claim, the vehicular access necessary for transportation of the company's goods should be considered an essential factor in the case.

Simultaneously with the trial in the court of appeals, the company

submits an alternative proposal to the building commission and requests a preliminary response. This time the commission's politicians are positive to the proposal. The city planning department still opposes the original application, but when they are informed that the commission has given a positive response to an alternative scheme, the department votes to refrain from testifying against the company in court. The building commission later grants the company a permit for the new proposal. The company directors retract their appeal and the court of appeals closes the case. In the end, the company succeeds in using the appeals process to achieve their goal of obtaining a building permit.

## **2. Adaptive re-use of an industrial property in Vinslöv**

Förvaltnings AB Vanneberga, a property management company, applies for a building permit in 1988 to remodel a property containing industrial and office space. The application is approved by the building commission on the condition that the company apply for a new permit prior to establishing the business on the premises.

Through the press, the city planning department later discovers the company's intention to use the property as a building supply store with retail sales. They advise the owner to apply for a building permit and reassert the land use plan's requirement of industrial use.

Sydindustrier Fastighets AB submits further information about the planned business together with a preliminary application for change of use. The latter company is part of the same

concern as the property management company and plans to run a wholesale business. They assert the importance for the business of the site's proximity to the railway, as they plan to use the property as a central warehouse. The concern's plans for the future include acquiring a sawmill, and thus the property in question could form the basis of an expanded export business.

The city planning department condemns the sale of building supplies on the property, citing the land use plan's prescription for industrial use. After voting, the planning commission decides to reject the application for a preliminary permit. But a few members oppose the decision on the grounds that the commission had been acting to preserve the supply of industrial property with railway access.

Another member of the concern, Ny Form i Vinslöv AB, appeals the decision to the county administrative board. They demand that a building permit be granted for the planned business, which they report as a building supply store and export industry. In addition, the company declares that it has reached an agreement with SJ, the Swedish railroad company, regarding the use of the industrial track for transportation to and from the site, thus satisfying the demand that the property be relegated to a rail-dependent business.

Having rejected a preliminary application, the building commission is once again divided over the issue in its evaluation of the final building permit application. Nevertheless, citing the land use plan's requirements for the site, a majority of the members hold with the planning department and deny the permit.

## Plans

The plans illustrate Case 7. Two industrial buildings have been constructed around a courtyard. The buildings are clad in red and white corrugated sheet metal. The land use plan in effect at the time of construction prescribed small-scale industry for the site. In 1991 the property owner applied for a permit to rent out the space for commercial purposes. He was turned down. When I visited the area in the summer of 1996, the industrial buildings were still empty, in part due to the zoning regulations at the time of the original building permit, and in part due to the economic recession. The building commission's decision in 1995 to change the land use plan for the entire area has made little difference. The new plan permits all forms of commerce; the site may be used for offices, for commercial enterprise, or for small-scale industrial purposes. The planning department explained that the change was motivated by confusion and problems at the time the original building permit was issued.

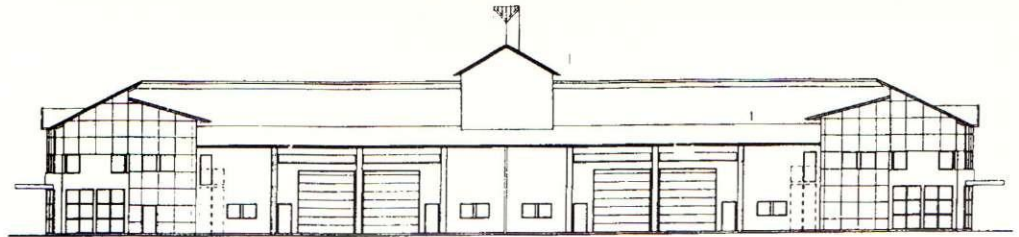


FIGURE 10.1

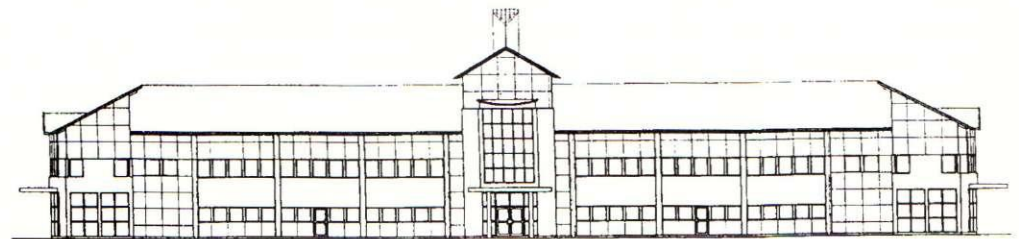
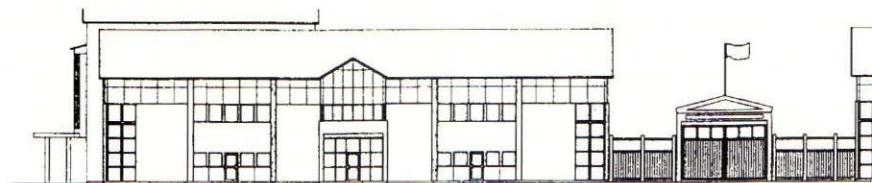


FIGURE 10.2



Ny Form's board of directors now requests an immediate hearing by the county board. The delay has now cost the concern two million crowns in lost income. They maintain that there are no legal grounds for demanding that the site be reserved for businesses dependent upon railway access. The board determines that the sale of building supplies may be considered industrial activity, and thus that the planned business cannot be considered contrary to the zoning plan.

The property has previously been used for the sale of automobiles and tractors. Therefore, according to the county board, the establishment of a building supply store does not necessarily constitute a significant change of business activity. It notes that the proposed business does not under normal circumstances even require a building permit. Thus the demand for a building permit introduced in the building commission's initial decision is meaningless. The building permit requirement is determined by national legislation – not by local government decisions. The board therefore finds for the plaintiff on all points.

The building commission appeals the matter to the administrative court of appeals, represented by the chairman and members of the city planning department. According to the planning department, the purpose of zoning is to create a distinct area for heavy industry and warehousing. The politicians of the building commission, however, are again divided over their appeal. This time the opposed win: following a vote, the commission decides to withdraw the appeal, and the court of appeals closes the case.

### **3. Industrial building in Fiskebäckskil**

In 1990, a company called BFR Fiskebäckskils Industrier applies for a permit to construct a new industrial building. The building commission has previously returned a positive preliminary response. According to the application, the building is to be organized as an industrial hotel with space for production, offices, demonstration, and meetings with clients. The ground floor houses a workshop, laboratories, and space for experimental enterprises. The second floor holds offices and employee facilities. The attic floor is given to apartments, storage, and mechanical installations. The planning department agrees to change the land use plan to zone the site for industry.

There is a consolidated opposition to the proposal among residents in the area. The building commission in Lysekil is divided over the issue, but the majority votes to grant the company a permit to build the proposed facility.

Several neighbors appeal the decision to the county administrative board and ask the board to issue an injunction to stop construction. The plaintiffs claim that the proposal defies the land use plan, containing residences where the plan permits only industry. In addition, they anticipate that the development would produce disturbing noise. Instead of the industrial facility, the neighbors propose a change in the zoning to transform the land into a port for transferring goods between land and sea.

The neighbors' plea for an injunction results in the county board repeal-

ing the building permit and granting all parties an opportunity to augment their statements. The owner appeals the injunction, and reminds the board that the building commission has already given a positive preliminary response to the proposal for an industrial building and granted a building permit for the new use of the property. In addition, the owner testifies that the sleeping quarters are part of the project's business concept: the idea is to provide an attractive atmosphere for expanding companies in demand of space for production, research, and administration.

The neighbors testify that they have not been apprised of the decision to permit a variance from the land use plan. According to the county board, this is grounds to dispute the building permit, since space for offices, employee facilities, and sleeping quarters amounts to over half of the building area. However, the board considers the discrepancy minor, and finds the proposal to be on the whole consistent with the zoning plan's intentions. At the same time, neighbors affected by a proposal must be given an opportunity to express their opinions when that proposal departs from the established plan for the area. Therefore, the board finds that the building commission has granted a preliminary permit without gathering the necessary background material. The permit application is returned to the commission for a second hearing.

The neighbors continue to oppose the proposed development in the new hearing, pointing out in a letter to the building commission that the legislated guidelines for physical planning call



for consideration for local conditions. A majority of the commission, however, decides to grant the company a permit to construct the industrial building with the prescription that the area nearest the water be accessible to the public. This second permit is again appealed to the county administrative board by the coalition of neighbors, this time without success. They then appeal the case to the administrative court of appeals, which supports the county board's findings and rejects the appeal. Thus the owner is finally allowed to build the industrial hotel, and can drop his appeal of the injunction against construction.

#### **4. Warehouse addition in Falkenberg**

The owner of Ekonomi-El applies for a permit in 1987 to build a 40 m<sup>2</sup> addition to his home containing a warehouse, storage room, and garage. The applicant is a one-person company in the construction field. His business involves the installation of electrical service boxes, electrical system repairs, and the warehousing of electrical supplies.

In its review of the application, the building commission notes that the site is zoned for residential use only, and that the proposal conflicts with the plan for the area. The city planning department, however, recommends that the businessman be granted the permit as requested. The building commission determines that the addition will not pose significant problems for its surroundings. They find the deviation from the plan an acceptable minor variation consistent with the plan's intentions, and the owner gets his building permit.

Two neighbors appeal the permit to the county administrative board and request an injunction to prevent construction. They assert that the proposal defies the zoning plan and that the planned addition would lie too close to the property line. The board finds that the proposed business cannot be considered a minor deviation from the land use plan: the building is to be a place of work. The board then issues a temporary injunction until the matter can be more thoroughly examined.

As the hearing by the county board continues, the owner protests the injunction, testifying that his business is carried out on building sites and in industrial areas far from his home headquarters. He has no plans to do work in the addition that might disturb the neighbors. Nonetheless, the board finds the proposed addition in defiance of the land use plan sees no reason to make an exception to the prescribed minimum distance to the property line. The board holds for the neighbors and rescinds the permit. The administrative court of appeals agrees with the county board's judgment and refuses to overturn the decision. The businessman never receives a permit for the addition.

#### **5. Restaurant in Halmstad**

In 1988, the owner of an apartment building in Halmstad applies for a permit to remodel the building and to change the use of the space. He intends to start a small pizzeria in the ground floor of the building. According to the land use plan, the space may be used for commercial purposes where deemed acceptable by the building commission.

The space has previously been rented to a ceramics workshop, a grocery store, and a cleaning firm.

The neighbors oppose the application under the assumption that a restaurant will generate traffic, goods delivery, and parking in their courtyard. The city's department of streets declares that it is willing to create a space for parking at the owner's cost. The city planning department considers both the remodeling and the new use consistent with its zoning plan.

After reviewing the proposal, the building commission is critical and turns down the application. They find the restaurant business inappropriate for the space due to the need for parking and to the negative response from neighbors. In addition, they find the proposal in conflict with the zoning plan, and do not wish to grant an exemption for the restaurant.

The property owner appeals the commission's decision to the county administrative board. The board concludes that a pizzeria cannot be considered inappropriate to the site under the condition that the issues of parking and goods delivery can be resolved satisfactorily. They overrule the permit denial and direct the building commission to grant the owner a building permit for the pizzeria.

The building commission now chooses to appeal the county board's finding in the administrative court of appeals. They base their case for denying the permit on the unresolved need for parking, the presumed increase in traffic, and the assertion that the site is inappropriate for a pizzeria. But the court of appeals is of essentially the same opinion as the county board and

refuses to reverse the decision. Though the building commission is divided over the matter, they appeal the case to the supreme administrative court of appeals. The court declines to hear the case on the grounds that it would not set a significant precedent. Though the county board's ruling still stands, the building commission decides in the end to grant the owner a permit for the remodeling and the establishment of the pizzeria on the condition that he fulfill the need for parking and delivery access.

## **6. Car sales at a repair garage in Mölndal**

In 1984, the building commission in Mölndal grants a permit for the construction of an automotive electrical workshop. Three years later the property is acquired by a businessman who buys and repairs used cars on his own. When he begins to sell cars and tires on the premises, the city planning department encourages the owner to contact the building commission to discuss the legality of the enterprise.

As a result, in 1988 the owner applies for a building permit for adaptive re-use of the property. The permit would allow him to expand his business to include sales. The current land use plan prescribes that the site be used for industrial purposes.

The building commission rules that the business lacks authorization to conduct commercial activity. According to the commission, the sale of cars and tires on the site requires a building permit. Since the business is engaged in sales unlawfully, the matter is turned over to the courts. In his defense, the businessman asserts that the shop's previous

owner conducted sales and that the commission ought to delay the litigation until his application for a building permit can be evaluated.

That evaluation results in the building commission rejecting the application for new use on the grounds that the site is considered too small for car and tire sales, and that the traffic situation in the area is inappropriate for commercial activity. In addition, they fine the owner for having engaged in commerce without a permit.

The owner appeals the commission's decision to the county administrative board, citing the fact that the previous owner ran an automotive electrical workshop which included the purchase and sales of used cars and parts. The board determines that the sale of cars and tires represents a change substantial enough to require a building permit. Establishing the site's suitability for the business is a prerequisite condition for such permit, and the building commission's reservations regarding suitability are deemed sufficient to block the permit. The board denies the owner's appeal.

The owner then appeals county board's decision in the administrative court of appeals. He bases his case on the contention that his use of the property is not fundamentally different from the previous use. Customer parking and the storage of cars is an important part of the business of any garage, past and present owners included. He claims, in addition, that the real estate agent who sold him the property failed to inform him of the limitations of the original permit for the building.

The court of appeals also finds that the transition to sales is significant

enough to warrant a building permit. The court notes, however, that the building commission never questioned the applicant's assertion that the property had previously been used for the sale of cars, spare parts, and tires. That condition is sufficient to motivate the granting of a permit. The court therefore overturns the county board's decision and the building commission's rejection of the application. The owner is allowed in the end to run the business as proposed, including the sale of automobiles and automotive parts.

## **7. Industrial building in Mölndal**

In 1990, AB Bygg-Triangeln applies for permission to construct two new industrial buildings in Mölndal. The site in question is zoned for industrial use. The building permit application proposes small-scale industrial activity and associated space for offices and employee facilities. The buildings are to function as an industrial hotel. At the time the application is submitted there are as yet no tenants under contract.

The building commission grants the company a permit for the proposed construction. Then, in 1991, the company submits an application for new use of the property. The company's directors want to rent the buildings to four companies involved in production, exhibition, sales, and inventory. The city planning department disapproves of wholesale trade in the buildings and opposes the application in this respect. The building commission later decides not to grant the new use permit.

Shortly thereafter, the directors once again apply for a building permit, this

time proposing both changes to the buildings and to their use. The planning department supports the building alterations but continues to oppose the use of the property for wholesale trade in conflict with their zoning plan, and thus recommends that the application again be denied. The building commission agrees with the planning department and grants permission only for the remodeling of the buildings.

The company directors appeal the commission's decision to preclude wholesale trade to the county administrative board. The directors testify that despite several requests, they have never received an explanation of what is allowed under the term "small-scale industry." As a property owner, the company needs to be able to give a clear answer to interested tenants as to whether or not their businesses are permitted by the zoning plan.

The county board notes that the plan prescribes small-scale industry and rules that commercial activity may be permitted after a determination of acceptability by the building commission. The commission has deemed such activity unacceptable in this case, and the board finds no cause to overrule their decision.

The company directors appeal the county board's ruling in the administrative court of appeals. The higher court holds that the traffic situation in the area should not be an obstacle to the proposed business. It determines that wholesale trade, supermarkets, and other similar businesses cannot be considered industrial enterprises. Exemption for other use of the site may be permitted where acceptable to the building commission. However,

the court of appeals supports the county board's ruling that the commission is fully authorized in denying the permit, and rejects the company's appeal. An attempted appeal to the supreme administrative court of appeals is returned as the case is not considered precedent-setting. The case closes with wholesale trade on the site forbidden.

### **8. Offices in Gothenburg**

Göthberg Förvaltnings AB applies for permission in 1988 to remodel an apartment building into office space in the city of Gothenburg. The offices are to be sold to an architecture firm of four people with commissions in environmental and interior design. The combined area of the offices is to be 200 m<sup>2</sup>. The ground floor of the building contains a garage for two cars. The proposal assumes that further parking be resolved off-site as before.

The site is zoned residential, though the plan allows the building to be used for commercial activity where acceptable to the building commission. After talking to the city planning department, the design firm takes the final steps in purchasing the property. The building commission, however, denies the firm a permit to remodel the building, citing the increase in traffic and parking problems. The architects, having already moved into the building, request a second hearing of their proposal. The commission declines to alter its decision, and fines the firm for moving into the building without a permit.

The design firm appeals that decision to the county administrative board, which agrees with the building commission's opposition to the transfor-

mation of the property into an office building. The board finds no cause to overrule the commission's findings. The firm then appeals the ruling to the administrative court of appeals. They cite their conversation with the city planning department at the time they purchased the property and claim that the business will not negatively affect the traffic situation in the area, since their contact with clients consists of visits to the clients. In addition, they point to the fact that other properties in the area have been granted permission to remodel for offices.

In its testimony in the court of appeals, the building commission expresses its desire to preserve the area in question for residential use. They do not intend to allow further transformation of apartments to office space. The court notes that according to the current land use plan, a building permit may be granted for businesses which do not cause disturbances to the area. The court finds that the firm's proposal meets the criteria for a building permit, overturns the county board's finding, and returns the matter to the building commission for a second hearing.

The building commission appeals the court of appeals' decision to the supreme administrative court of appeals, citing the traffic and parking difficulties in the area. They maintain that the future environment of the residential neighborhood may be assumed to be negatively affected by further transformation to offices. Once again, the supreme court declines to hear the case for lack of precedence potential. The firm is granted a permit to remodel and moves their offices into the building.

## Conclusions

What experience can we gain from these cases? In the thirty-two cases covered by this study, companies attempt to execute building projects involving new construction or re-use of existing buildings. In some cases, the building commission is too liberal, granting a building permit without justification. In others, the courts deem the commission too restrictive, overruling their denial of permit applications.

Inexperienced clients require a great deal of outside expertise in planning, design, and building. The appeals process, however, does not appear to be restricted to those with expertise in these areas: the plaintiffs in the cases varied from experienced professional developers to first-time builders and even tenants. On the other hand, among the plaintiffs there are clear differences in viewpoint between property owners or managers and their tenants. Property management companies tend to focus their interest on factors which govern their ability to lease the space. For businesses which own the building they work in, the central aspect of the building permit application process is usually the activity permitted in the building, as when a company appeals the denial of its application for new use of a property.

One of the basic purposes of PBL is to allow conflicting actors in any given situation to arrive at a solution that serves the interests of the individuals involved as well as those of society. The results depend on the system's regulations, institutions, and financial resources. But the use of attorneys in building permit cases subjectifies the

balancing of conflicting interests, emphasizing the room for interpretation inherent in the system. As a result, legitimacy, justice, power, and equal treatment under the law are problematic in such cases.

The appeals process, by which responsibility for the resolution of conflicts is assigned to the court system, is generally regarded as reliable. Allowing authorities to settle disputes, however, can result in unpredictable and contradictory outcomes. The process of appeals breeds conflict by its very nature: success is contingent upon one's ability to prove impropriety, either in a building proposal's drawings and description or in the evaluation of the permit application. An appeal usually magnifies the conflict between opposing parties.

The frequency with which the courts of appeal reverse previous decisions is striking – 18 of 32, or over half of the cases studied. Obviously the appeals process offers a good opportunity to alter decisions regarding building permits for workplaces and industrial buildings. The regulations allow generous room for interpretation. The plaintiff success rate in appeals cases can be explained only in part by companies' use of attorneys to represent them: self-represented neighbors have also been successful in altering building permits. The high frequency of reversal means that it is difficult to predict whether permits, once appealed, will in the end be granted, changed, or denied by the courts.

These conflicts over building permits raise questions about how to weigh the interests of individuals against those of society. The guidelines for achieving

that balance prescribed by PBL are general and have the distinct character of rules for negotiations. Thus the process of mediating in legal disputes is described in terms of "due consideration," "reasonableness," "appropriateness," and "entitled interests." The courts must not only weigh individual against collective interests, but often (in 14 of 32 cases) the interests of two individuals against each other. These are generally cases in which a company is opposed by one or more neighbors, the neighbors appealing the building commission's decision to grant the company a building permit for a proposal they suspect will cause a disturbance in the area. The remaining 18 cases pit companies against the local government to determine the appropriateness of a proposed project. Typical examples include the company that is denied exemption from zoning regulations, refused a building permit due to their proposal's conflict with the current land use plan, or refused a permit as a result of the building commission's evaluation of acceptability. The key question for the court of appeals is usually how great a deviation from the regulatory plan can be accepted under the specific circumstances of a given case.

Appeals cases involving businesses are particularly complex. A majority of the building permit appeals studied (25 of 32 cases) involve several different points of dispute. Proposals for new buildings can involve injunctions to stop construction. Applications for remodeling permits often require a judgment of the appropriateness of the new use of the property or the prudence of granting an exemption

from the zoning plan. The complexity presumably stems from the fact that companies are so often represented by lawyers in their appeals (18 of 32 cases). Companies whose building permits have been rescinded after the start of construction find themselves in dire straits, a potential financial disaster on their hands, and the decision to seek competent legal assistance is an easy one. When the company loses the legal struggle in cases like these, the building commission may choose to change the zoning instead of forcing the company to tear down their building.

Normally the politicians on the building commission follow the recommendation of the city planning department in their ruling on building permit applications. In five of the 32 cases, however, the applications caused profound disagreement, both among the commission's politicians and between the commission and the planning department. These cases illuminate some distinct differences in perspective. For example, the city planners seem to base their decisions to a greater degree on zoning plan regulations and legislated guidelines than do the politicians. The common sense flexibility, the ability to see beyond the norms, demonstrated by the commission in these cases is reassuring. The politicians often try to accommodate businesses as far as possible, as in two cases in which a majority of the commission voted to grant companies building permits in spite of the planners' recommendation to deny. In these cases, the politicians' concern for preserving employment opportunities outweighed their respect for the established regulations.

Another aspect of the building commission's decision-making process is its lack of consideration for the work environment. In several cases, the commission has ruled on building permits for workplaces before receiving statements from labor inspection authorities. The county administrative board and the administrative court of appeals both failed to solicit testimony from work environment inspectors and union representatives, though such testimony was at the time required by PBL Ch. 8, Par. 30 (repealed in 1995). This suggests a systematic flaw in the information upon which court decisions are based. In fact, in two cases, union representatives testified for companies in support of exemption from handicap regulations. The courts seem to operate from a local perspective from which national guidelines are seen as externally imposed obstacles and bureaucracy red tape.

Land use is zoned into categories like residential, commercial, grocery, industrial, small-scale production, and office. This thorough structuring plays an important role in the establishment of workplaces, the remodeling of existing properties, and the leasing of buildings for new businesses. A building permit must be consistent with the intentions of the land use plan. The appeals courts are authorized to allow only minor departures from these plans. As we have seen, several companies have had their permits repealed due to lack of compliance with the prescribed use of the site.

The use of zoning plans to regulate land use is a controversial and difficult issue with many dimensions. Many interests must be weighed the one against the other. The process by which

building commissions evaluate proposals should be effective, it should be predictable and yet flexible, and it should encourage business development. Concurrent with these goals, and in part contradictory to them, is the desire to maintain the public's ability to control and influence the political process. The politicians' freedom to use common sense and to act swiftly in evaluating a specific case must be weighed against the importance of following the democratically determined rules of the game. The process can only be simplified so far before it threatens the involved parties' rights to fair jurisprudence.

Should land use plans establish the prerequisites for development or should they merely adapt to developers' proposals? The business sector favors a system by which the local commission evaluates physical plans and building permits based on available information specific to the case without the constraints of general guidelines. The regional plan in this scenario is only a background against which conflicting interests can be balanced. Professional developers and entrepreneurs oppose the introduction of legal systems that create uncertainty in the building industry – the kind of uncertainty we have witnessed in the appeals process. Local governments, however, cannot relinquish control over the planning of our common environment to the private interests of developers. How can these conflicting desires be reconciled, and how can land use planning continually adjust to the fluctuations of a dynamic business sector?

This examination of appeals cases reveals how problematic the current

system of land use planning is. The weighing of interests in building permit cases depends on to what degree land use is regulated and the method by which it is regulated. The study suggests the need for both greater flexibility and yet greater predictability in the evaluation process—goals which are basically contradictory in the current system. The government's recent decision to rescind worker safety representatives' right of appeal doesn't solve

any problems for companies. Issues that do warrant reevaluation in the legislature are the functional zoning of physical plans and the strict specification of land use. Rather than basing decisions on the reality of existing conditions, urban planning still relies on the thorough division of the city into clearly defined and separated functions. Sadly, the geographic separation of work and home continues to grow.

\* *Translator's note.* Sweden has two parallel court systems: one for criminal and civil cases, and one for cases involving the administration of the country. Disputes involving governmental authorities, such as building permit cases, are settled in the administrative court system, which has three tiers: a county administrative board (*länsstyrelsen*), an administrative court of appeals (*kammarrätten*), and the supreme administrative court of appeals (*regeringsrätten*).

Translation: *John Krause*

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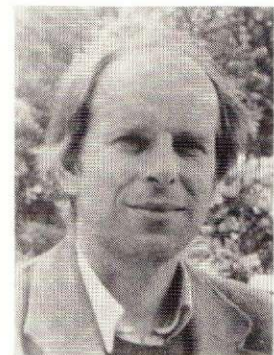
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