



Michael S. Dukakis
Governor

Kentaro Tsutsumi
Chairman

The Commonwealth of Massachusetts

STATE BOARD OF BUILDING REGULATIONS AND STANDARDS

CODEWORD

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Charles J. Dinezio
Administrator

HELP STAMP OUT "RUBBER STAMPING"

We would like to take this opportunity to discuss with you the problem of "rubber stamping", a practice perilous to the public safety. For the purpose of this article, we will define "rubber stamping" as the illegal representation by professional registration seal and signature that plans have been prepared by a qualified professional architect or engineer or under his/her direct supervision when one or both of these conditions have not been met.

The general laws and associated regulation(s) (231 CMR, Board of Registration of Architects, and 250 CMR, Board of Registration of Professional Engineers and Land Surveyors) provide definitions of the practice of architecture and the practice of engineering, as they are distinct disciplines. While some "incidental" overlap exists, the qualifications for and responsibilities of each profession are clearly separate. The registration regulations as well as Section 127.2.1 (Construction Control, Design) require that, "All plans...shall be prepared by or under the direct supervision of a registered professional...". When plans prepared by others, not supervised by the professional, are subsequently "rubber stamped", or when a professional unqualified to stamp a set of plans does so, a violation of the Code and the registration regulations has been committed.

Requiring the clear identification of architect or engineer responsibility, either under Section 113.5 (Plans and Specifications) or under Section 127.2.1 (with accompanying affidavits) is the necessary first step in identifying and preventing the practice of "rubber stamping". Suspected violations are best pursued through complaints to the respective boards of registration.

For example, we know of one instance where plans bearing the stamp of a professional engineer were filed as part of a building permit application. The subject building was a "so-called" pre-engineered" steel building enclosing more than an acre of floor area. The plans which the engineer had stamped depicted a complete floor layout for the structure and contained numerous building code violations. Clearly the engineer had engaged in the unlicensed practice of architecture, rather than performing minor architectural tasks incidental to the practice of engineering. Subsequently a complaint was filed with both Boards of Registration (Architects and Professional Engineers).

Although the practice of "rubber stamping" may not be widespread, it is potentially so dangerous to the public safety that as enforcement officials we must be constantly alert to its presence. We are confident that the great majority of architects and engineers will gladly assist you in your actions to end this illegal practice.

GOODBYE, 'NELLO

The Board joins with the Department in offering our sincerest best wishes upon his retirement to State Building Inspector Novello V. Govoni. 'Nello's distinguished career as a building official has spanned thirty-eight years; sixteen with the City of Springfield and twenty-two in the Department of Public Safety.

In 1984, Governor Dukakis recognized Inspector Govoni's professional excellence when he awarded him the "Pride in Performance" certificate. More important, perhaps, than this and other formal recognitions of 'Nello's professionalism, is the respect and friendship he has earned from his co-workers and the countless persons he has aided with his firm and fair enforcement of building codes. We hope 'Nello's retirement plans include some continued involvement with the construction industry so that the cause of public safety may continue to benefit from his talents.

CONGRATULATIONS

The Board wishes to congratulate Mr. Robert T. Farley, Manager, Elevator Section, Division of Inspection, for two recent accomplishments. Mr. Farley has been certified by the National Association of Elevator Safety Authorities (NAESA) under their national OEI Program (qualified elevator inspector) as an "Elevator Safety Inspector". Bob earned this certification by passing examinations on the National Elevator Code. Additionally, NAESA at their August meeting elected Mr. Farley to a three year term on their Board of Directors.

The Board wishes to congratulate their Technical Director, Mr. David C. Macartney, on his re-appointment as a member of the BOCA (Building Officials and Code Administrators International, Inc.) Code Interpretations Committee. Dave's letter of appointment reads, "All appointments are made with the expectation that the best possible persons have been selected and that you will make a significant contribution to the code process." Our experience working with Dave assures us that these expectations are being met.

The Board wishes to congratulate State Building Inspector Paul C. Piepiora on his certification by BOCA as a Building Plan Examiner in the National Certification Program for Construction Code Inspectors. Paul is to be further commended for his pursuit of additional certifications under this national program. Best of all, Paul's pursuit of certification has been contagious - he is currently running a study group in his district for several local building officials who have decided to seek national certification.

CODEWORD

This issue's "CODEWORD" is a term which holds a different meaning within the context of the State Building Code than it does to the general population in its everyday usage. Understanding the proper meaning of this term in its Code context is essential if the Code is to be a practical and useful regulation, since it is a term that is applicable to every building within every jurisdiction across Massachusetts. Our "CODEWORD" for this issue is "owner".

The State Building Code defines a building owner as every person who alone or jointly or severally with others:

- Has legal title to the building or structure; or
- Has care, charge or control of the building or structure in any capacity, including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or
- Is the lessee of the building or structure under a written letting agreement; or
- Is the mortgagee in possession of the building or structure; or
- Is the agent or trustee or other person appointed by the courts to exercise control over the building or structure.

In each of the above parts of the definition, the word "building" should be read to include the words "or portion thereof". The regulation goes on to state that each and every person so defined as an "owner" is required to comply with the provisions of the Code.

You will note that the owner has been very broadly defined by the Code. This is intentional and necessary to obtain proper code enforcement. The broad definition prevents unscrupulous parties from using straw transactions and/or unrecorded transfers of title as a means of avoiding prosecution for code violations. It also allows a code official to cite the actual person responsible for a violation, although he may be a contractor, tenant, agent for or guardian to the owner of title. Without the power to take action against the code violator directly, the job of the building official would be even more difficult.

However, we caution building officials that the broad definition of owner will undoubtedly lead to situations where two or more parties, both "owners" by definition, are in dispute over a matter regarding a building permit. One building official reports an actual situation where a lessee of a retail store obtained a permit to renovate the premises. Following issuance of the permit, the holder of legal title to the building demanded that the permit be revoked, citing a violation of the lease by the tenant's failure to obtain the titleholder's permission for the alterations. That case, as are most disputes between owners, was correctly deemed by the building official to be a civil matter between the parties, and the inspector directed the titleholder to seek redress through the courts for violations of lease agreements. So long as building officials remember that their charge is simply to enforce the building code, and not to attempt to resolve private disputes, the Code's definition of "owner" can be a useful enforcement tool, and need not become a device to draw public officials into private arguments.

RECENT LEGISLATION

M.G.L. Chapter 40, Section 54 was recently amended by the addition of the following paragraph: -

Every city or town shall require, as a condition of issuing a building permit or license for the demolition, renovation, rehabilitation or other alteration of a building or structure, that the debris resulting from such demolition, renovation, rehabilitation or alteration be disposed of in a properly licensed solid waste disposal facility, as defined by section one hundred and fifty A of chapter one hundred and eleven. Any such permit or license shall indicate the location of the facility at which the debris is to be disposed. If for any reason, the debris will be disposed of as indicated, the permittee or licensee shall notify the issuing authority as to the location where the debris will be disposed. The issuing authority shall amend the permit or license to so indicate.

The Board of Building Regulations and Standards (BBRS) is currently developing forms which can be used to assist local building officials in complying with this new law. When completed, the forms will be mailed to all building officials.

ATTORNEY GENERAL'S OPINION

M.G.L. Chapter 148 Section 26A 1/2 expressly exempts from the high rise sprinkler law, buildings which have been submitted to the provisions of the General Laws governing condominiums, *i.e.* M.G.L. c 183A. Attorney General Shannon ruled on June 16, 1988 only buildings converted to, or constructed as, condominiums prior to January 1, 1975, are exempt from the automatic sprinkler requirement of M.G.L. c 148 S-26A 1/2.

CRIMINAL PROSECUTION OF CODE VIOLATIONS 30 DAY NOTICE REQUIRED

COMMONWEALTH vs. ARMANDO PORRAZZO, No. 86-456 (25 Mass. App. CT. 169)

The Appeals Court in its review of a District Court dismissal of criminal complaints brought for violations of the building Code affirmed that dismissal. The Appeals Court confirmed the statutory authority for criminal proceedings, and the jurisdiction of the District Court. However, in answer to the question, "Is notice under G.L. c 143, s. 51, a condition precedent to the beginning of a criminal prosecution in this case?" The court answered:

We hold that G.L. c 143, s. 51, requires that, before a criminal prosecution may be begun against an alleged violation of any provisions of the State building code and related codes, the prosecutor must give written notice to the alleged violator, complying in time, content and service with that statute, and then proceed only if the alleged violation fails to correct the unlawful conditions within thirty days after the notice is given.

The court noted, "The Legislature provided no exceptions to the requirement...".

CORRECTION TO TABLE 2011.4 MINIMUM COP FOR HEAT PUMPS, HEATING MODE

Please change the minimum coefficients of performance (COP) specified on replacement page 513 (contained in Supplement #18) from 2.8 to 2.7. and from 1.9 to 1.8 respectively.

Although the minimum COP of some currently available heat pumps can be greater than the originally printed values, we can only require the minimum COP cited herein of 2.7 and 1.8 respectively.

SUSPENSION NOTICES

Construction Supervisor's License No. 015648 (unrestricted) held by Benjamin LaTorre, 142 Jackson Street, Methuen, Massachusetts was suspended indefinitely by the Board of Examiners effective September 28, 1988. This suspension will remain in force until such time as the Board of Survey re-hears the complaint against him and submits its recommendation to the Board of Examiners who at that time will render a final decision. The Board of Examiners also suspended Construction Supervisor's License No. 029844, held by Nicholas O. Teti, 14 Hanson Street, Dedham, Massachusetts, for a ninety day period commencing October 25, 1988.

NOVEMBER PUBLIC HEARING

The State Board of Building Regulations and Standards will hold its regular November public hearing on November 29, 1988 in Gardner Auditorium, State House, Boston, MA 02133, beginning at 1:00 pm. The Board will hear testimony on petitions to amend the State Building Code which have been filed on the following subjects: thermal resistance of doors; engineering details in permit applications; horizontal sliding doors; energy conservation requirements for lighting systems; corridor wall fire-resistance ratings; foundation piers; building envelope requirements for one and two-family dwellings; small diameter grouted piles; frost protection for footings; fire-resistance ratings of timber columns and beams; reference standard agencies for wood construction; accepted engineering practice standards for wood and wood products; and material standards for wood and wood products. The Board will also take testimony from the public on any provisions of the State Building Code, although the law only permits the Board to enact changes which were filed and available for public examination at least sixty (60) days in advance of the public hearing. Copies of the filed petitions may be examined at the Board's offices in Room 1301, One Ashburton Place, Boston, MA 02108 between 8:45 am and 5:00 pm. Persons wishing to file written statements or arguments concerning any of the petitions must do so at the Board's offices no later than the hearing date. We encourage building officials and all other interested parties to attend the November Public Hearing.

RECENT STATE BUILDING CODE APPEALS BOARD DECISIONS

Section 126.7.11 (Contents of Decision) of the Code states, "Any decision shall not be considered by any person or agency as precedent for future decisions."

Appeal Docket #87-76

The building official upon inspection of a Type 2 structure cited the permit holder under Section 216 and Section 903 (generally) for the use of structural wood blocking of untreated wood used to complete window framing. The inspector required that walls be constructed entirely of non-combustible materials or fire retardant treated wood to allow the Type 2 classification.

The Appellant argued that the plans submitted for the permit indicated the presence of this untreated wood blocking. The blocking is used to accomplish the fastening of gypsum board finish. Upon learning of the inspector's citation, the window blocking was changed to fire retardant treated blocking material. Approximately twenty percent (20%) of the windows contain this combustible blocking.

The Board cited Section 115.1 in that the permit shall be a license to proceed with the work and shall not be construed as authority to violate any provisions of the Code. The Board considered the blocking as structural to the window framing, but not integral to the structure overall, and to be sufficiently protected by the gypsum board. Due to the amount of blocking installed, and as the Appellant had changed to fire retardant blocking, the Board confirmed the decision of the building official and granted a variance to allow the installed blocking to remain.

Appeal Docket #87-83

Upon reviewing plans for the conversion of a manufacturing building into apartments, the building official refused to issue the building permit citing Section 609.4, Emergency Escape as his reason. At the basement level the lowest level of "duplex" units were proposed to contain bedrooms and bathrooms. In sixteen units, window sill heights of these bedrooms varied from 4'- 6" to 6' - 6" above the floor level, and all opened inward as the exterior of the windows were covered by inoperable (permanently affixed) metal grates.

The Appellant acknowledged the conditions cited by the building official, and requested a variance as the structure had been listed on The National Register of Historic Places. The Appellant argued that this designation prevented him from altering the window openings or removing the metal grates.

The Board found that the existing conditions presented a serious threat to the safety of the occupants. While wishing to cooperate with the Appellant in his concern for the historic nature of the structure, the Board determined that the existing grates (or new duplicate grates) could be made operable without perceptible change to the appearance of the structure. Additionally, the Board required that the window be made easily operable and that stairs and platforms of various heights be installed in the units such that the distance from the platforms to the window sills was no more than 44 inches.

MASSACHUSETTS ELECTRIC CODE UPDATE

We have been notified by Mr. Edward Jensen, Chairman of the Board of Fire Prevention Regulations, of seven changes effective June 10, 1988 made to the 1987 Massachusetts Electrical Code by that Board. Unfortunately, due to budgetary limitations, that Board was unable to give individual notice to all electrical inspectors of these changes. In the interest of coordinated code enforcement, we are publishing the electrical code changes for your information AND ASK THAT YOU PROVIDE A COPY OF THESE AMENDMENTS TO ALL ELECTRICAL INSPECTORS IN YOUR JURISDICTION.

1987 MASSACHUSETTS ELECTRICAL CODE AMENDMENTS - EFFECTIVE JUNE 10, 1988

Article

- 210-8 (a) (5) -Delete and substitute:
(5) All 125-volt, single phase, 15- or 20-ampere receptacles installed within 6 feet (1.83 m) of a kitchen sink to serve counter top services shall have ground-fault circuit-interrupter protection for personnel.
- 225-26 - Designate the existing Exception as Exception No. 1, and add the following as Exception No. 2:
Exception No. 2: Outdoor lighting fixtures and associated equipment installed on trees where supplied by an underground wiring system with the branch-circuit conductors extended up the trees by an approved wiring method.
- 230-40 - Amend Exception No. 1 to read:
Exception No. 1: By special permission, where there is no available space for service equipment accessible to all the occupants, buildings with more than one occupancy shall be permitted to have one set of service entrance conductors run to each occupancy or to a group of occupancies.
- 300-22 (c) - Second paragraph - Amend to read:
Other type cables and conductors shall be installed in electrical metallic tubing, flexible metallic tubing, intermediate metal conduit, rigid metal conduit, flexible metal conduit, or where accessible, surface metal raceway or wireway with metal covers or solid bottom cable tray with solid metal covers.
- 310 - Delete and hold for study Tables 310-25, 310-26, 310-27, all applicable notes to these Tables, and Details 1, 2, 3 and 4 to Figure 310-1.
During the interim period, Table 310-16 shall be used.
- 331-1 - Add the following fine print note (FPN):
(FPN): It is intended that the material used has ignitability, flammability, smoke generation, and toxicity characteristics which do not exceed those of rigid (nonplasticized) polyvinyl chloride.
- 700-10(b) - (In Massachusetts Amendments section) - Amend to read:
(b) All portions of emergency system feeders located outside rooms, closets, or shafts required by Section 700-10 (a) shall be enclosed within 2-hour fire resistive rated enclosures or be part of an assembly which has a 2-hour fire resistive rating.

(FPN): Details of such electrical circuit protective assemblies may be found in directories of building materials published by qualified testing laboratories.

LOCAL BUILDING INSPECTOR'S CHECKLIST - MODULAR BUILDINGS

In order to make your job as the local building official easier when modular homes are installed in your jurisdiction, we have developed the following checklist for your use:

1. Prior to Building Permit Issuance, obtain:

- A. Permit Application/Construction Supervisor's License number and signature of installer
- B. Plot/Foundation Plan
- C. Manufacturer's Plans with Cover Sheet bearing Massachusetts stamp of approval/review
Third Party Inspection Agency's Approval Stamp
Seal of Registration of Massachusetts Registered Architect
- D. Manufacturer's Installation Manual
- E. Plans in conformance with Section 113 for any proposed site built structure, additions, modifications

Note: Some items are often overlooked and merit special attention. Compare proposed site work to manufacturers' recommended installation procedures - they should not conflict. In particular, areas such as method of foundation anchorage, spacing and securing of lally columns, and dimensions of basement stairs should be examined. Also, if the basement is unheated, be sure that the plans show compliance with thermal envelope requirements, including insulation of floors; basement stairway walls, ceiling and doors; pipes and ducts; or foundation walls as applicable. Firestopping of pipe chases, chimneys or other vertical shafts may also be required as site work.

2. Inspections

- A. Foundation (including footings)
- B. Installation of Modular Units
 - Presence of Massachusetts Labels
 - Compliance with Installation Manual
 - Damage to units
- C. All site built elements
- D. Records of Plumbing and Wiring Inspection/Tests

Please note that concealed wiring and plumbing elements have been factory inspected, and that destructive disassembly is not permitted.

If you discover a violation or suspected violation in the manufactured portion of a modular building, please notify the Board of Building Regulations and Standards (BBRS) in writing. Be sure to note the manufacturer's name, module serial numbers and Massachusetts label number, and give specific citations of violations suspected, including code section numbers. Although the BBRS through the Division of Inspection will pursue violations in the manufactured portions or modules, the local building official and specialized code inspectors (wiring, plumbing, gas) enforce state codes for any site work.