

From: "Jim Varco" <Jim@VarcoConsulting.com>
To: "Construction Claims Task Force" <cctf@state.or.us>
Date: 9/21/05 9:03PM
Subject: Jim & Adele Varco

To the Construction Claims Task Force,

I again apologize for not being able to give you all of the copies of the documents that you asked for today; I had trouble with my printer and was not even able to make a single copy of some relevant documents. All of the documents I intended to give you are attached.

I did not intend or desire to make a personal attack on Mr. Long, I happen to like him. I was just communicating what took place as I tried to find a way to deal with our problems without litigation, an effort that in the end proved to be futile and even further harmed us. I do challenge Mr. Long to either deny or confirm the accuracy of what I quoted him as saying. While I may not have had the quote exact, the gist of what I quoted is accurate. This statement was made in the presence of Representative Gordon Anderson, my engineer Owen Grover, and me.

Representative Anderson has assured me that Mr. Long committed to him that he would be implementing rule changes within the BCD as soon as this last legislative session ended, I am asking for Mr. Long to report on the status of these rule changes to me now, and to the public at the next Task Force meeting.

I am suggesting that there was a deliberate effort by the BCD to cover up and minimize our problems to help the Lane County Building Department escape from dealing with their negligent inspections of our home. Peggy Collins of the BCD conducted an "investigation" of the Lane County Building Department, an investigation that was somehow done without talking with me or any of my experts, and came to the conclusions I mentioned today.

Later, at the request of Representative Anderson, the BCD inspected our home. This organization that is charged with enforcing and administering the building code in Oregon determined that while significant structural aspects of our home were well below the minimum requirements of the code, they still found them to be acceptable.

As a result of the harm caused us by the actions of the BCD, I did what Oregon law requires me to do and filed a Tort Claims Act notice. After all of the discussion about trying to reduce litigation, what do you think the response from the State of Oregon was? They said the only resolution to our concerns they would consider is litigation.

I commented on the foundation J-bolts briefly, what I did not take the time to say is that our plans required bolts to be used that were several inches longer than the code minimum. The Plans Examiner made specific handwritten alterations to the plans to decrease the spacing requirements of the bolts, requiring them to be at 32 inch centers rather than at the code requirement of 6 feet. This is a requirement that is over double what the code requires, which they are forbidden by law to do. The code is not only a minimum; it is also a maximum that a building department can require. Apparently the plans examiner had serious concerns about seismic concerns with our home to have placed such a requirement on it. Despite this, the BCD determined that bolts that are several inches short of the minimum allowed by code, with spacing as much as 8 feet or more, is acceptable to them.

One area of Code interpretation that I believe needs to be clearly defined is what the minimum standard to be used is. Is the minimum what the Code requires without regard for the approved Plans, or what the approved Plans require, should they exceed the code? It is my understanding from talking with many engineers and contractors that the minimums of the code only apply if the Plans do not have a requirement specified that meets or exceeds the code requirement. The general conclusion is once the Plans are approved, they become the Code for that particular structure.

You may all want to ask yourselves why commercial buildings do not have the problems that seem to plague residences.

I did not get a chance to comment on the CCB, I will do so at the next meeting. Suffice it to say that they were not able to help us at all.

Purpose of the Building Code, quoted from the report from On The Level Inspection Concepts

"Purpose: The purpose of this code is to provide minimum standards for the protection life, limb, health, property, environment, and for the safety and welfare of the consumer, general public, and the owners and occupants of residential buildings regulated by this code."

The report from "On The Level Inspection Concepts", the most highly credentialed Oregon State Building Official in the state, states:

"It is the conclusion of OTL that neither Lane County nor the State of Oregon Building Codes Division pursued your concerns with this code requirement in mind."

The "On The Level Inspection Concepts" report concludes by stating:

"In conclusion OTL believes that the Lane County Building Dept. was negligent in their field inspection procedures. The 2-Final inspections given on this SFD do not meet the minimum code requirements outlined in the

permit and building code in effect at the time of construction. Roger McGuckin's Sept.26, 2000 letter does not lay any blame on his field inspectors. OTL believes that this is exactly who failed to meet their obligations as certified inspectors to ensure that the Varco SFD met minimum code. Sanctions and de-certification should be placed on the field inspectors, additionally Lane County should be held liable for failure to meet the minimum code requirements and purpose as specified in OTFDSC Sec. 102."

"Did Lane County act with malice and not in good faith? This is a paramount issue that the court must decide. OTL cannot find specifics unless negligence complies in this regard."

"BCD's letter of June 3, 2004 is presumptuous at best. OTL has shown 29 specific items not addressed in the Lane County or the BCD report which are Major issues, not minor in nature, and will require substantial time and money to repair and upgrade."

"BCD states that all the concerns can easily be addressed, however, they should never been a concern if the field inspector had followed the approved plans and the Code. Why should the owner need to repair anything? BCD's conclusions are capricious at best."

"The contractor also should have been held. to the minimum code standards enforceable by Lane County. I can only surmise that the builder and Lane County had some kind of agreement with the field inspectors."

I believe that if you looked seriously into what happened to us you would be appalled. I could not even begin to convey to you in the short time allocated the seriousness of what took place or the trouble it caused us and is still causing us. My wife and I will never be able to recover from this financially or emotionally. I offer to meet with any or all of you and discuss what happened in detail.

If any of you have any questions, please feel free to call or write me.

Regards,

Jim Varco

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