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Date: 9/23/05 3:52PM
Subject: FW: Construction Defects

From: Jim Varco [mailto:Jim@VarcoConsulting.com]
Sent: Thursday, September 22, 2005 3:07 PM
To: Construction Claims Task Force (cctf@state.or.us)
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Subject: Construction Defects

Gentlemen,

I am concerned about having been cut-off yesterday when I quoted a statement Mr. Long had made to Rep Anderson, my engineer Owen Grover, and me. I was just telling you what had happened and asked him to correct me if I got it wrong. Is it going to be the practice of this Task Force to turn a deaf ear to any input from the public that might suggest that there are problems at the State level, and especially if it involves the BCD which is working so closely with the Task Force? Mr. Long was clearly embarrassed by his statement having been made public, and for that I am sorry, however we have been through so much pain, grief and anguish that some embarrassment on his part is a minor concern in comparison to the impact his statements have on the public good.

Often disputes arise over interpretation of the code, which in many areas is vague. One of these areas is if fixtures such as an exhaust fan or toilet that exists in a home, does it need to be fully functional? While the BCD was inspecting our home last year I pointed out to them and Tony West, Lane County Building Official, that the exhaust hood for our range was not vented. Mr. West assured me that there is no code requirement that it be vented. Please note that the report from the BCD ignored this question, as it did many others. Also please note that the report from On The Level Inspection Concepts says there is such a requirement. Discussion with staff at the BCD in the past reveals that their position is if a fixture is in place, it must be functional. Code requires that you have a functioning toilet, should you have a second one can it be for appearance sake only and not be plumbed? According to the Lane County Building Official, that is exactly the case. These types of questions would be easy to clarify and eliminate confusion, thereby reducing problems and conflicts.

I am suggesting to the Task Force that an in-depth study of the situations the Haynes and my wife and I have suffered through would be excellent case

studies for the Task Force, and between them would give you a very good idea of where some of the serious problems are.

I am asking that Task Force require Rebai Tamerhoulet of the BCD to confirm that the Report Mr. Tamerhoulet issued on our home was signed by him and was not altered by any other person after he drafted it. He should further confirm to the Task Force that he as an Oregon State Building Official and Structural Engineer completely agrees with everything his report concludes and recommends. In short, I have reason to believe his report was altered after he drafted it and was not signed by Rebai Tamerhoulet.

I would like an explanation given to the Task Force as to why the BCD, being fully aware that the Lane County Building Department had failed miserably to administer the Building Code in regards to our home, has done nothing about it. I have been told that they can't do anything about it; please ask them to explain to the Task Force why the following ORS would not apply:

455.110 Other duties of director. Except as otherwise provided by ORS chapters 446, 447, 460, 476, ORS 479.010 to 479.220, 479.510 to 479.945, 479.990 and 479.995 and ORS chapter 480:

(1) The Director of the Department of Consumer and Business Services shall coordinate, interpret and generally supervise the adoption, administration and enforcement of the state building code.

455.150 Selective municipal building inspection programs; building officials; rules; program duration, plan, failure and abandonment; limitation on program resumption.

(12) The department may assume administration of a building inspection program:

(c) If a municipality fails to substantially comply with any provision of this section or of ORS 455.465, 455.467 and 455.469.

455.463 Specialty code inspection and plan review; department enforcement authority; investigation. (1) In addition to any other authority and power granted to the Director of the Department of Consumer and Business Services under this chapter and ORS chapters 447 and 479, with respect to specialty code inspectors, plan reviewers and businesses that employ specialty code inspectors and plan reviewers licensed under ORS 455.457, if the director has reason to believe that there is a failure to enforce or there is a violation of any provision of this chapter or ORS chapters 447 and 479 or any rule adopted thereunder, the director may:

(a) Examine building code activities of specialty code inspectors, plan reviewers and businesses that employ specialty code inspectors and plan reviewers;

(b) Take sworn testimony; and

(c) With the authorization of the office of the Attorney General, subpoena persons and records to obtain testimony on official actions that were taken or omitted or to obtain documents otherwise subject to public inspection under ORS 192.410 to 192.505.

(2) The investigative authority authorized by subsection (1) of this section covers violations or omissions by specialty code inspectors, plan reviewers and businesses that employ specialty code inspectors and plan reviewers licensed under ORS 455.457 related to enforcement of codes or administrative rules, licensing of inspectors or financial transactions.
[1999 c.1045 §8]

My wife and I have been financially destroyed by what was done to us; we will never be able to recover from it. The Lane County Building Department is being allowed to continue to operate without so much as a reprimand. I am also suggesting that the sheer number and severity of the negligent inspections that were done on our home are highly unlikely to be isolated to us alone. Many other homes have likely had the same good-old-boy inspections that the homeowners are unaware of it as they trust the building inspector to do their job.

There are probably more applicable ORS, these caught my attention. In short, the Director of the Consumer and Business Services is required by law to make sure the Building Code is enforced, a requirement of the law they have failed to fulfill.

Regards,

Jim Varco

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