



The Commonwealth of Massachusetts
STATE BOARD OF BUILDING REGULATIONS AND STANDARDS

CODEWORD

WILLIAM F. WELD
Governor

THOMAS C. RAPONE
Secretary

June, 1993

Thomas L. Rogers
Administrator

WHO IS A BUILDING CODE ENFORCEMENT OFFICIAL?

The Massachusetts General Laws (MGL) are a body of rules prescribed by the legislature which govern the conduct of all citizens of the Commonwealth. These laws have binding and legal force on all the Commonwealth's citizenry and are superseded only by federal law (the law of the land, so to speak). Each portion of law is arranged in chapters and sections, dependant upon topic. The word chapter is abbreviated c, and the word section is referenced as §.

MGL c. 143 § 3 is the portion of law that dictates employment criteria, title designations and qualifications of all those who wish to serve as a building code enforcement official within the Commonwealth. A variant of this law dates back to 1872 when c. 243 first referenced building officials. Since then, there have been numerous amendments to the law to bring it to its present language.

In 1973, the first paragraph of c. 143 § 3 was revised to read, in part, "The chief administrative officer of each city or town shall [emphasis added] employ and designate an inspector of buildings or building commissioner as well as such other local inspectors as are reasonably necessary to assist the inspector of building or building commissioner . . ." in his duties.

This paragraph clearly illustrates the need for each municipality to employ a chief building official and identifies this individual as the inspector of buildings or building commissioner. Also, if he/she finds it necessary, he/she may also employ other inspectors to assist in the operation of the building department. These individuals shall be called local inspectors. As imposed by the established rules of the state, these are the only legally recognized titles for those who serve as building code enforcement officials within its boundaries.

Looking further, we find the qualifications for each official, which read: "Each inspector of buildings or building commissioner shall have had at least five years of experience in the supervision of building construction or design or in the alternative a four [emphasis added] year undergraduate degree in a field related to building construction or design. In addition, such person shall have had a general knowledge of the quality and strength of building materials; a general knowledge of the accepted requirements for building construction, fire prevention, light, ventilation, safe exits and the rules and regulations promulgated pursuant thereto pertaining to accessible design standards; and a general knowledge of other equipment and materials essential for safety, comfort, and convenience of the occupants of a building or structure."

The experience requirements for local inspectors are identical to that of inspector of buildings and building commissioner. However, a local inspector may substitute a two year associate degree in a field related to building construction or design, for the educational requirements.

The law is very specific as to the qualifications necessary for those who wish to serve in the capacity of a building official, and have been for some time. Today, if one references the 1993 Cumulative Annual Pocket Part for the General Laws as issued by the Westlaw Publishing Company (the portion of the book that identifies changes to

BUILDING CODE OFFICIAL - CONTINUED

existing sections of law) he/she finds an additional qualification which reads: "Every inspector of buildings, building commissioner or local inspector shall be certified by the board of building regulations and standards in accordance with regulations promulgated by said board".

As most of you are aware by now, this change (known as Chapter 168 of the Acts of 1992) came into effect on November 12, 1992. Since that time, the Board has been busy setting the groundwork for the certification program. The first point of business, of course, was to properly identify all those who were eligible for the "grandfather clause" (ie: those who were considered qualified and certified by virtue the position held on November 12, 1992). During this process, we learned that the term **building inspector** flourishes throughout the cities and towns of the Commonwealth. The term is clear; everyone understands who is referenced when using this term. However, as we have seen, the term does not have meaning in the eyes of the law.

Because of the difference in terms, there was some confusion in the issuance of certificates. Some individuals who should have been issued certificates as **Inspector of buildings/building commissioner** received a certificate as a **local inspector**. Thankfully, this confusion has subsided, and by the time this document is issued, all erroneously issued certificates should be corrected.

With this behind us, the next important step in the certification process is the issuance of the regulations governing the program. They are titled the *Rules and Regulations for the Certification of Inspectors of Buildings, Building Commissioners and Local Inspectors* (generically referred to as **building code enforcement officials**), and are given the Commonwealth of Massachusetts Regulation (CMR) number 780 CMR-7. A copy of the regulation is enclosed with this issue for each building official. Additional copies will be forwarded to every city and town clerk. Anyone else who is interested in the process may obtain a copy through the State House Book Store, Room 116 of the State House, telephone number (617) 727-2834. With the regulation, one should learn all there is to know about the certification process. It is important that each building code enforcement official, city and town clerk and administrator read and understand these regulations as well as the enabling legislation (c 143 § 3, and its amendment, c 168 of the Acts of 1992). The Board hopes that the regulation is clear and concise, and thereby sets the stage for a new generation of building code enforcement officials.

As we related in the last issue of **CODEWORD**, the Board of Building Regulations and Standards has long advocated the certification of building officials. Nearly all professional organizations require certification or licensure of its ranks to lend credence to their crafts. Doctors, lawyers, architects and engineers all demand rigid credentials for those who wish to enter these professions. For each, an individual must be qualified in line with certain criteria, and must pass selected examinations to ensure a particular level of knowledge. Members of these professions perform duties on which the public relies. Therefore, the public must have some level of confidence in their behavior.

A building official is also charged with a great duty, that of public safety. With the enactment of Chapter 168 of the Acts of 1992, a building official also must demonstrate his abilities. However, the most important aspect of building official certification is not the requirement for examination (for those who were not "grandfathered"), and it is not the testimonial that is issued in evidence of certification. Rather, the most important part of this certification process is that it must be maintained through continuing education, even for those "grandfathered" individuals. Without continued study, the certificate merely becomes a piece of paper to hang on the wall. With continued study, the building official is kept abreast of developments in building code technology, is assisted in deciphering confusing code language, and, most importantly, is afforded the opportunity to interact with his peers to ensure the building code is enforced consistently throughout the Commonwealth.

Charles Stanhope Damrell was the first legally recognized building official in the Commonwealth, appointed to the City of Boston's building department sometime in 1872, following the great Boston fire of that same year. We have made great progress since that time, but there is more road to travel. The answer to the question, who is a building code enforcement official, is answered with the rules and regulations governing certification.

THE STANDING CERTIFICATION COMMITTEE

In the pages of 780 CMR-7, one finds reference to the *Standing Certification Committee*. This committee was assembled in order to oversee the operation of the certification process. For the past few months, the committee has been busy writing the regulations referenced above, reviewing applications, answering queries and conducting interviews pertaining to the certification process. The committee's work has been unwavering. For this, the Board would like to introduce each member and offer its thanks for the hard work and dedication demonstrated by each.

The committee is comprised of nine members, six of whom are building officials; they are:

- **Matthias Mulvey**, Building Commissioner from the City of Quincy and chairman of the committee - representing the Massachusetts Building Commissioner's Association - appointed to a two (2) year term,
- **Daniel O'Sullivan**, Local Inspector from the City of Springfield and vice-chairman of the committee - representing the Building Officials of Western Massachusetts - appointed to a four (4) year term,
- **David Thyng**, Building Commissioner from the Town of Brewster - representing the Southeastern Building Officials Association - appointed to a three (3) year term,
- **Donald York**, Local inspector from the City of Holyoke - member "at large" - appointed to a two (2) year term,
- **Robert Bett**, Inspector of Buildings, from the Town of Dalton - member "at large" - appointed to a three (3) year term,
- **Paul Nonni**, Local Inspector, from the City of Somerville - member "at large" - appointed to a four (4) year term,
- **Paul Sharon**, Town Manager for the Town of Ashland - representing the Massachusetts Municipal Association - appointed to a three (3) year term,
- **Robert Anderson**, staff to the Board of Building Regulations and Standards - designee for the Board - appointed to a four (4) year term,
- The member from academia is currently vacant.

The Board wishes to congratulate each these individuals on his effort towards the future.

WORK CONTINUES

Although the committee has already dedicated much time to the beginnings of the certification process, much remains to be done. The next step is to develop a list of acceptable credit pertaining to continued education. As indicated in the regulations, one needs to maintain a minimum of forty-five (45) hours of continuing education credit per each three (3) year period in order to retain his certification. There are some courses currently available through national code organizations, private colleges and other associations that offer education on building code matters and general construction practices. However, one may be unsure as to the credit value assigned to these courses. Therefore, this list will attempt to identify all courses that are considered acceptable as educational credit towards continued certification.

Probably the most important question answered with this list is: will district and/or association meetings count towards continued education? The answer to this question is, **yes**, although the committee has not established a definitive value for these engagements. For now, it is wise to maintain a legible attendance sheet for each

WORK - CONTINUED

meeting. It is best to type out a list of all members that can be checked off as the meetings pass, rather than transmitting a sign-in sheet, which is often unreadable. The three (3) year 'clock' will not start ticking until this list has been processed and issued. So, please hold on to your records until these last details are straightened out. Within the coming weeks, each building official who is certified in accordance with this process will receive follow-up information as to the proper method for maintaining and one's certification.

A FINAL NOTE

All applications to the *Standing Certification Committee* for upgrade of certification status have been examined, and action has been taken. Not all applicants were successful in their attempts, but at least everyone was given the opportunity.

Because of the vast number of applications, it may be a while before each applicant is notified as to his status. So, please be patient, at least until the beginning of July. If after this time you have not received a response to your application, you may wish to call the office of the Board of Building Regulations and Standards for an update.

MEET THE BOARD

Sometimes, the most difficult thing to understand about a process or profession is its terminology. Nearly every profession maintains a jargon that is unique to its membership. The language is not often difficult, but often confusing if you are not attuned to the facts.

Many times one is confused as to the make-up of a certain board or committee, or as to their authority. Anachronisms such as BBRS are freely used in our office and repeated outside the office, often times receiving looks of puzzlement in return.

We often hear people refer to the Building Code Commission (as the promulgator of the building code, and this was once true. However, this is no longer the case. This committee has been defunct since the early 1980's. Now the promulgator of the code is the BBRS (Board of Building Regulations and Standards).

Therefore, in an effort to clarify any confusion that may exist and to bring the Board of Building Regulations and Standards (BBRS or the Board) to a 'human' scale, this and subsequent editions of CODEWORD will introduce the legal mechanism which established the Board, will explain its statutory membership, and will profile the backgrounds of each member.

(Bit of History)

Following the demise of the Building Code Commission, Chapter 348 of the Acts and Resolves of 1984 created MGL c 143 sections 93 to 100. This legislation established the Board of Building Regulations and Standards (BBRS) and outlined the rules under which the Board must operate. Under the law, the BBRS is charged with the adoption and administration of the State Building Code. The law requires that the Code is to be enforced uniformly throughout the State, thus avoiding the confusion which would arise if each of the 351 municipalities were to adopt its own building code. The BBRS is an agency within the Executive Office of Public Safety and reports directly to the Secretary of Public Safety, Thomas C. Rapone.

This chapter also sets the standards for the membership of the Board. In doing so, it ensures that the membership represents all facets of the design, construction and code enforcement communities by including engineers, architects, building officials, fire officials and contractors.

History - Continued

The Board is comprised of 11 members; two (2) who are *ex-officio* members, which means they serve by virtue of the offices they hold. One is the State Fire Marshall, Mr. F. James Kauffmann, the other is the Chief of Inspections for the Division of Inspections, Department of Public Safety, Mr. Thomas L. Rogers.

The other nine (9) members are appointed by the Governor. They represent the following professions; a Registered Architect; a Registered Mechanical Engineer; a Registered Structural Engineer; a Building Trades Representative; a General Contractor of Commercial Buildings; a General Contractor of One or Two Family Homes; a Head of a Local Fire Department; an Inspector of Buildings in a City and ; an Inspector of Buildings in a Town.

In this issue we will introduce the two *ex officio* members of the Board, and a staff member.

Mr. Thomas L. Rogers, by virtue of his position as Chief of Inspections is also the Administrator to the Board and an *ex officio* member. Mr. Rogers began his service with the Board in September of 1992. Tom possesses extensive knowledge of building construction and building regulation, attained through his years as Assistant Building Commissioner in the city of Boston and as manager at the Boston Water and Sewer Commission. Tom has also achieved great success in entrepreneurial ventures, ranging from general contracting and roofing, to energy conservation services for commercial and residential facilities. Tom is affiliated with both the Massachusetts Building Commissioners and Inspectors Association and the Building Officials and Code Administrators International. In addition to maintaining the currency of the building code, Tom believes that the continued education of building officials (and construction supervisors) are his primary goals in his duties with the Board. Consequently, Tom is eager to see the certification process in full swing.

Mr. F. James Kauffman is the State Fire Marshal and, as such, also holds an *ex officio* seat on the Board. Mr. Kauffman has had a distinguished career at the National Fire Protection Association (NFPA). During his twenty-one years at NFPA, Jim helped develop behavioral techniques for avoiding human error in fighting fires, in public safety matters and in emergency medical situations. Jim also became the organization's expert in panic behavior and crisis management. Jim is considered a leader in loss prevention and risk management and has worked closely with both national codes and standards organizations, and public service figures.

Of course, a Board cannot operate without an efficient staff, and the Board is fortunate to have Ms. Anne Marie Rose as its office manager. Anne-Marie came to the Board Staff in May of 1992 after employment with the Department of Correction. Prior to that she spent four and one-half years at the Bureau of State Office Buildings. Anne's talents extend far beyond that of office functions. In fact, her artistic talents were employed in the design of the certificates issued to all newly certified building officials, and her diligence to the process helped make certification a reality.

FUTURE PLANS

In line with Mr. Roger's belief that one cannot attain too much knowledge, Tom is the process of creating an open network at the office of the BBRS that may be accessed by all those who possess a personal computer and modem. Information contained on this network will range from construction supervisor and home improvement contractor registrant data, postings of important meetings and seminars and even access to the latest edition of the code. Such plans take time, money and effort, and will not likely happen overnight, but, knowing Mr. Roger's determination, it will happen.

NEW EMPLOYEES

Since we are on the subject, both the Board of Building Regulations and Standards and the Department of Public Safety are pleased to announced that each has hired some new staff who are involved with issues of the building code.

NEW EMPLOYEES - CONTINUED

Mr. Ken Lucas is the newest staff member to the Board. Among his many duties, Ken will oversee the operation of the Home Improvement Contractor Registration process and complaints pertaining to licensed construction supervisors (the License Review Committee process). Ken's cool demeanor will play an important role in handling these tasks.

Mr. John Wojciechowicz (pronounced just as it is spelled), Gene Noyak and Joe McEvoy are the new District State Building Inspectors employed by the Department of Public Safety.

John is stationed in the Boston office at Ashburton Place and is in charge of the Boston district. Gene is settling into his office and is assigned the Springfield District. Finally, Joe is shaking things up in the Pittsfield District.

We wish to welcome each of these gentlemen to the office of Public Safety, and we wish each much success in his new position.

CODEWORD

This issue's CODEWORD is **liquefaction**. The Fourth Edition of the Building Code defines liquefaction as "a group of phenomena occurring in saturated cohesionless sandy and silty soils consisting of a large decrease in effective stress (total stress minus pore pressure) accompanied by large deformations under either static or cyclic loading". The word is not defined within the Fifth Edition of the code, perhaps since this definition may be more confusing than helpful.

In simple terms, liquefaction is the process of liquefying, or the state of being liquified. But, even this additional language does not seem to clearly define the term. To understand its definition, it is helpful to understand something about soil conditions.

Table 1201 contained in Article 12 of the Fifth Edition of the code identifies allowable bearing pressures for foundation materials. In this table, the reader is provided guidance as to the amount of weight (or load) a particular soil will likely sustain. The materials are classified numerically from one (1) to eleven (11) in accordance with their bearing capacity; one being the most capable material.

Logically, hard, dense materials such as massive bedrock or granite are capable of supporting large loads. The bearing pressure for these soils, according to the table, is one hundred (100) tons per square foot. Conversely, soft, loose materials are able to provide relatively small levels of bearing capacities. Loose, fine and silty sands which are identified as class nine (9) materials in the table, for instance, can provide a bearing capacity measuring only one (1) ton per square foot. As one may expect, along with its modest strength, these materials are subject to other factors that may further reduce their capabilities. One such factor is liquefaction.

Uniform, fine sand, in particular, is subject to liquefaction. The condition exists due to a strong presence of water or liquid in the soil. This liquid can create a number of problems with respect to the soil's bearing strength. The most frightening condition can occur as a result of soil movement due to an earthquake. The extreme shaking of the earth can cause a loose sandy soil to lose most, if not all, of its bearing capacity, in effect turning the soil into a form of quicksand. This effect, of course, is termed liquefaction.

Because these soils are susceptible to liquefaction does not mean that they cannot be utilized effectively as a bearing stratum. Section 1113.8 and Figure 1113.2 of the code provide means to identify soils that may be susceptible to liquefaction based on the depth to the water table and the blow counts. Recognizing that something may be a problem is often the best way to avert any future difficulty. Such is the case with liquefaction.

BEYOND THE CALL OF DUTY

Mr. Anthony "Tony" Patillo, building code enforcement official from the Town of Northampton thought that it was a day like any other, how wrong he was. He started out early one morning in February of this year to conduct a rough inspection at 211 Elm Street where a bedroom was being added to an existing second floor apartment. While he was outside the building, a woman dashed from the first floor apartment clutching her throat and motioning desperately. Tony hesitated for a moment, unsure of her predicament, then ran towards the woman (Lida Moser) to discover she was choking on her breakfast food. Tony immediately performed the Heimlich maneuver and dislodged the fragment that was causing the choking. Tony also helped to calm the frightened woman. Ms. Moser exclaimed how lucky she was to have such a caring individual nearby when the incident took place.

Tony's actions were certainly beyond the call of duty, and we wish to commend him for his actions.

APPOINTED DUTY

Also, it is our pleasure to announce that Mr. Brian Gore, P.E., and Technical Director to the Board of Building Regulations and Standards, has been appointed to the Building Officials and Code Administrators (BOCA) Code Interpretations Committee.

In a letter from Mr. Gerard M. Garafalow, President of BOCA, identifying Brian's appointment, he writes: "BOCA committees are the foundation upon which the system of the BOCA National Codes and related services are built and their importance cannot be overemphasized".

The Board agrees with this analysis, and wishes to congratulate Brian on this important appointment and wishes him much success in his duties with the committee.

OFFICIAL INTERPRETATIONS

Enclosed with this issue of CODEWORD are two (2) Official Interpretations of the State Building Code. An Official Interpretation is a decision rendered by the full Board of Building Regulations and Standards as to the correct reading of a particular section of code. An Official Interpretation is sparked by a written inquiry from a building official, attorney, or anyone else who may be unclear as to the language of the code. As the promulgating agency for the code, the Board is empowered by law to interpret its regulations.

An Official Interpretation is different from a staff interpretation. A staff interpretation is the opinion of a particular staff member as to the correct reading of a section of code based on his/her research. Although a staff interpretation certainly should be highly regarded, it does not have the full effect of code. In essence, it is one man's or women's opinion.

An Official Interpretation is also based upon extensive research on which the opinion is developed. However, an Official Interpretation is debated before the full Board at one of its regular meetings to ensure that the language of the interpretation truly reflects the intent of the code. Once debate is complete, and the interpretation is voted and issued, it is considered part of the code. In other words, it has full effect and force of the code.

UPDATE

The last set of amendments to the building code were issued and became effective on June 19, 1992. The Board will soon compile a list of the changes that were presented and ultimately approved through its public hearing process since that date, and will issue a further set of amendments sometime this summer. Please ensure that your building codes are up-to-date by inserting this information in the proper position upon receipt. Of course, it is always a wise idea to retain the old pages of the code so that changes may be traced, if necessary.

APPEALS COURT DECISION

Recently, a decision of the Board of Building Regulations and Standards, Building Code Board of Appeals, was challenged in court. The issue was a dispute as to who has rightful authority to determine building code requirements for automatic fire warning systems with respect to Massachusetts General Law c 148, § 26B (*Automatic fire warning and smoke detection systems in buildings or structures not exceeding seventy feet in height*).

The decision of the Appeals Court of the Commonwealth reads, in part:

"Where it must be determined what satisfies the requirements of the State Building Code for automatic fire warning systems, the final authority for such a decision rests under state law with a municipality's building inspector, not with its fire chief [emphasis added]."

In reaching this conclusion, we [the Appeals Court] affirm rulings of the Building Code Appeals Board and Superior Court.

On the Basis of language appearing in G.L. [Massachusetts General Law] c 148, § 26B, the [plaintiff] fire chief of Cambridge claims exclusive authority to determine what satisfies the requirements of the State Building Code for automatic fire warning systems. We conclude, conformably with a decision of the State Building Code Appeals Board and the decision of a Superior Court judge on review under G.L. c 30A, § 14, that the final authority to determine what constitutes compliance with the Code resides with the building inspector of the municipality, who in Cambridge is the commissioner of buildings and housing (the building commissioner). Accordingly, we affirm the judgement of the Superior Court.

The object of the controversy is a dormitory construction project undertaken by the Massachusetts Institute of Technology (M.I.T.). Although the arcana [mystery] of the Code dispute are interesting, we doubt that it will advance the jurisprudence of the Commonwealth to elaborate upon them. Distilled, the question is whether, as the fire chief insists, the Code requires sprinkler flow devices connected to an annunciator panel which would show the zone in which an alarm had been activated, or as the building official ruled, it satisfies the Code to install water flow devices which trigger audible fire alarms throughout the entire building and would identify, on the master annunciator panel, in which particular wing a sprinkler had gone off. The system the fire chief prefers would identify more precisely where a fire appeared to be burning.

What the fire chief fixes upon is a one-sentence paragraph in G.L. c 148, § 26B, as appearing in St. 1975, c 676, § 2, which provides: "The head of the fire department as defined in section one shall enforce the provisions of this section." Section 26B prescribes that a building occupied for residential purposes which is less than seventy feet high shall be protected with an approved automatic fire warning system in accordance with the Code. Such a system § 26B goes on to say, shall include the features of automatic smoke detection in conjunction with the approved fire detection devices."

The court's decision concludes by stating: "On the view we have taken of the case, it is not necessary to review the correctness of the interpretation of the fire warning system provisions of the Code made by the commissioner and the Board. The Code interpretation problem, a matter of nuance, is a classic example of when the expert technical knowledge of an administrative agency comes to bear and should not be disturbed in the absence of powerful evidence to the contrary. We found no such evidence in the record of this case."

Although the court's decision is strong and decisive, we understand that it will be challenged still further to the State Supreme Court.

UNUSUAL CODE

Section 711.0 of the code is a somewhat unusual piece of code language. It is one of the very places within the code where dimensional requirements are set forth with regard to land surrounding a building, as opposed to dimensions within a building. At first glance, the title of the section; *Rear Yards*, reads as if it were zoning language. However, the intent of the building code is to control the manner in which buildings and structures are erected within the Commonwealth to ensure a consistent level of public safety, not (necessarily) to control the use of the land.

The intent of Section 711.0 is to set a minimum dimension for rear yards for certain building uses (R-2, R3 and I-3) in order to achieve a minimum, acceptable level of light and ventilation. But, the provision is only valid if the building is truly relying on this open space (or yard) to accomplish these minimum levels. This is the limited scope of the requirement. If one reads further in the code, he/she finds under Sections 705.0 and 709.0 that light and ventilation may be achieved artificially. (Sometimes simple language is the most confusing.)

RECENT STATE BUILDING CODE APPEALS BOARD DECISIONS

Section 126.7.11, *Contents of decisions, of the code* states: "Any decision shall not be considered by any person or agency as a precedent for future decisions"

Appeal Docket #92-043

The local building official refused to issue a permit for the renovation of a totally preserved historic building due to a violation of Section 635.4.4 of the Fifth Edition of the State Building Code. The building is designed to serve an occupant load of about fifty (50) people. Section 635.4.4 limits the occupant load on the second floor of a totally preserved building to forty (40) individuals. The Appellant wished to increase the allowed load on this meeting room floor to a total of seventy-five (75) individuals. Although the Appellant acknowledged that such a request is contrary to building code provisions, she felt that the increase in number was warranted due to many added safety features incorporated into the renovation, including; suppression of the attic and basement spaces, installation of a fire alarm system (hardwired to the fire department), addition of a stand pipe system servicing all floors of the building, elimination of all gas lines to the building, updating of the electrical system and the upgrading of the structural capacity of the building, all of which adds to the level of safety of those who would occupy the space.

The Appellant continued to detail technical data to support the appeal. First, the limited size of the building results in short travel distances that must be traversed by the occupants in the event of an emergency. The maximum travel distance is one-hundred and twenty (126) feet. The code allows up to two-hundred feet of travel in a non-sprinklered building. The consultant reiterated that the building is partially suppressed and that the basement and first floor are constructed of fire-resistant materials (the remaining of the building is Type 4A, Heavy Timber). Also, the Appellant cited the results of safety tests performed in accordance with the Government Services Administration's Evaluation of Egress Requirements, and the National Fire Protection Association's Alternate Approaches to Life Safety. Each of these procedures analyzes egress facilities to determine adequacy in an emergency. With respect to each evaluation, the time to egress the building from its most remote point proved to be about three (3) minutes, below the standard set by most building codes. These figures, along with the additional safe-guards built into the structure, he continued, make it a safe environment to house the additional people.

No testimony was offered by the local building department. However, the Appellant stated that he was given authorization to express the support of both the local building department as well as the local fire department.

The Board found that the building official had correctly cited a violation of Section 635.4.4 of the State Building Code. The Board was impressed with the additional safety precautions that were afforded the occupants in lieu

DECISION - CONTINUED

of the required second egress. But the Board expressed its concern as to the likelihood of having large numbers of elderly individuals or very young children within the structure. The Appellant responded that this scenario is a possibility. However, the test procedures cited earlier takes into consideration such a condition. The results of a test run with elderly or young occupants increases the time of exit, but even with the increase, the time still compares well with that required by the building code.

With this, the Board unanimously voted to vary the requirements of the building code in order to allow for the additional occupant load (from 40 to 75 persons).

TERMS OF THE TRADE

This issue's Term of the Trade is a series of terms: **malfeasance**, **misfeasance**, and **nonfeasance**. According to the Legal Aspects of Code Administration, 1984 edition, printed by the Building Officials and Code Administrators International (BOCA), the International Conference of Building Officials (ICBO), and the Southern Building Code Congress International (SBCCI), **malfeasance** is the act of "doing something which should not be done at all" (the act is wholly illegal); **misfeasance** is "the improper doing of an act which may lawfully be done"; and **nonfeasance** is "the failure to do something which should have been done".

The terms may be simply explained with everyday examples, and then may be applied to the specific work of a building official. Murder, rape or robbery are obvious examples of **malfeasance**. Each is a clearly illegal act that should never have been committed. Of course one who is accused of these crimes is not charged with **malfeasance**, but is charged with the crime itself.

A hunting accident may be considered an act of **misfeasance**. A hunter is allowed to discharge a rifle or other weapon in designated areas during certain periods of the year, and most are very skilled and knowledgeable of proper safety procedures. However, there are many cases of a properly trained and licensed hunter accidentally killing an innocent party. The hunter was engaged in a legal act, but discharged his duty improperly.

Nonpayment of taxes; an extreme and truly frightening example of **nonfeasance**. We are all painfully aware that income taxes must be paid each year. However, some of us may be tempted to avoid such responsibilities at one time or another, which is not a very good idea.

The key to understanding these terms is knowing there is a duty or responsibility owed to someone or something. If this duty is breached, a problem arises.

Since a building official is a public servant, there is a duty owed to the public; mainly to uphold public safety. To this end, the building official is charged with enforcing the provisions of the State Building Code. In order to ensure compliance, he must inspect a project's construction at certain intervals. If he were to avoid this duty all together, he may be accused of **nonfeasance**. If he conducted faulty inspections, he may be guilty of **misfeasance**, and, of course, if he were to improperly profit from the performance of his duties, he may be accused of **malfeasance**.

EDITOR IN CHIEF
SUPERVISING EDITOR
OTHER CONTRIBUTING STAFF

Rob Anderson
Brian Gore
Ken Lucas