



Ministry of Public Works & Transport

Pine East-West Boulevard, Pine, St. Michael
Barbados, W.I.



2006-08-11

Mr. Roger A. Blackman
President
Barbados Association of Professional Engineers
'Christie's Building'
Garrison Hill
ST. MICHAEL

14 AUG 2006

Dear Sir

Re: The Draft Building Act

Please find enclosed our responses to the list of queries you raised in your letter to us of 29th June 2006 in relation to the captioned matter.

In many instances your references were uncertain and in this regard we have placed headings beside the references to which you referred. Please note that our responses are in the identical sequence as your queries.

We hope that our responses are sufficiently explanatory and you may contact us again concerning any further queries you may have.

Yours faithfully

Emil Trotman
Director (ag.), BBSA

Enc.

- c.c. The Minister, M.P.W.T.
- Permanent Secretary, M.P.W.T
- Chief Technical Officer
- President, BCCI
- Mr. Tony Gibbs, Chairman, Building Advisory Committee

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To	Eng. Roger Blackman	From	Christine Payne		
Co./Dept.	B.A.P. Co. Ltd.	Co.	B.A.P.E		
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Table 1 – BAPE's Comments on the Draft Building Act

Codes

GC – General Comment

IR – Incorrect Reference

SE – Spelling or Grammatical Error

CLAUSE	CODE	COMMENT
2	GC	Part J of the Act addresses this.
2	GC	Your 2(f) is incorrect, which refers to issuing permits etc. I assume you are still referring to 2 (a). The requirements will be spelt out in the code and the design engineer will indicate compliance with the code through the submission of a design certificate confirming that he has used the relevant codes etc. We concur with your last sentence.
2	GC	The requirements of the Building Code will be cost-effective over the long-term since their net effect will be to make buildings stronger, safer and more amenable to their occupants. Being cost effective does not necessarily mean cheaper: for example, it is cost-effective to rust-proof a new car; though initially more expensive it is cost-effective over the useful life of the car.
3	IR	Noted
3	GC	This is the definition in the code. Kindly expand on what else is required. With regards to a definition for "emergency lighting", the definition given refers to existing legislation. Kindly indicate an alternative definition for "owner". Kindly indicate alternative wording to describe "persons with a disability". The definition is general and all embracing.
4	GC	The Official Gazette is how government is legally mandated to inform the public of its business. However, information will be published on web-sites.
6	SE	Correction noted
6	GC	The matters raised are subsumed under the term "having knowledge and experience in the building industry". However, the Minister will be made aware of your concerns regarding the appointments to the Authority. For example, a representative of BAPE maybe a on the Board of Directors of the Authority. The Minister can always dismiss or discipline members of the Authority for not properly performing their duties and responsibilities.
7	GC	The responsibilities are listed as functions under section 7 of the Act. Issues of penalties for non-performance by staff are not generally addressed in Acts but are contained within

		<p>organisation's disciplinary procedures.</p> <p>1. (a) Yes, the Minister does not necessarily have in-depth knowledge vis-à-vis administration of the Act, that is the responsibility of the Authority and its Director. The Minister is concerned with policy implementation. Any monthly reports to the Minister will encompass all matters.</p> <p>(b) Yes, section 7 (f) allows for this.</p> <p>(c) Applicants for building permits produce the documents, eg. "building plans and specifications" (see definitions).</p> <p>(d) Indicate what is vague about the term "promote research" and how it can be improved.</p> <p>(d) The Authority will:</p> <p>(i) have staff to do research and the Authority will finance this research;</p> <p>(ii) subscribe to building surveying magazines other building codes and technical journals so as to keep abreast of current trends and developments internationally;</p> <p>(iii) have staff formally trained in building surveying; and maintain linkages with other building control offices in the U.K., Canada and the U.S.A.</p> <p>(e) The Minister and the public of Barbados will be advised concerning the matters and developments listed.</p> <p>2. It is not intended that the Fire Service will be isolated in relation to fire related matters and the Authority can consult any competent institution or person. However, the BFS is the primary agency in Barbados, which is principally responsible for fire safety, fire-fighting and fire-engineering practices.</p> <p>Your concerns will be addressed in a technical report to every owner/applicant on every application submitted to the BSA. The BSA set itself a time limit of 21 working days to prepare these reports (see section 46 (4) under "Compliance with Act").</p> <p>"Review Consultant" has been defined in Part IV in terms of his/her functions and qualifications.</p>
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8	GC	<p><i>Administration</i></p> <p>The Board of Directors.</p> <p>The engineers and architects associations will have representation on that Board.</p> <p>The Minister of the Civil Service will determine the terms and conditions of appointment of the Director.</p> <p>The Minister can remove the Director given due cause.</p>
9	GC	<p><i>Administration</i></p> <p>The functions of the Director are essentially described under 8 and 10. Issues concerning finances, HR etc. are described under 10 (a), which relate to the Director being responsible for "executing, managing and administering the affairs of the Authority".</p> <p>The information will be on the Internet.</p>
10	GC	<p>Not mentioned. The number of members of the Appeals Board and their qualifications are to be determined by the Minister. The Appeals Board is not a registration board.</p>
11	GC	<p><i>Establishment of Practitioners Board</i></p> <p>It is intended that the period for first registration will be 3 to 5 years with due assistance from the BWU, employers, and building standards officers when making site visits. Additionally, registration of building practitioners will be done by a separate government department, not the BSA.</p>
14	GC	<p><i>Establishment of the Appeals Board</i></p> <p>Agreed, the Director should not be a member of the Appeals Board. Agreed, members of the Appeals Board should ask to be excused from any project in which they have an interest. The number of members on the Board to be determined by the Minister as well as their qualifications.</p>
18	GC	<p><i>Application Fees</i></p> <p>Agreed. 18 (1) should be appropriately placed. The bracket should close after "Acts".</p>
19	GC	<p>Your reference is unclear.</p>
20	GC	<p>Reference not found.</p>

21	GC	<p><i>Discipline</i></p> <p>The complainant will gather and/or provide the evidence. The Practitioners Board on the basis of the evidence and the expertise of its members will establish if fraud or negligence in as much as any duly constituted Court would.</p> <p>Withdrawing a licence will depend on the severity of the offence. Kindly describe the double penalty.</p> <p>The term "false in material particular" means that part or all of the statement or certificate was false and was intended to mislead or seduce. It is a legal term.</p>
22	GC	<p>Complainants trigger the enquiry and they provide evidence to substantiate their complaints.</p> <p>Yes, lawyers will be allowed to provide evidence.</p>
23 (1)	GC	<p>Indicate the level of specificity you require.</p>
23(2)	GC	<p>The time duration between complaint and enquiry depends on the workload of the Board. However, it maybe stated in Board's administrative and policy guidelines.</p>
23 (2)	GC	<p><i>Procedure</i></p> <p>The term "with as little formality and technicality, and with as much expedition" is consistent with the operations of a board as opposed to the court system, which tends to be costly and time consuming due to the legal formalities, procedures and technicalities that must be adhered to. The words "formal" and "technical" refer to the legal sense of these terms. Maybe the word "legal" should be inserted but you will be advised further on this.</p>
24	GC	<p><i>Inquiry to be open</i></p> <p>Each technical report by the BSA in relation to each application will describe the reasons for our decisions based on the requirements of the Building Code.</p>
31	GC	<p><i>Certificate to be displayed</i></p> <p>The practitioner will have 7 days to present his card.</p>
31/32 (1)	SE	<p><i>Employ Review Consultant</i></p> <p>32 (1) should read "... To which the public have access or for hazardous buildings or for buildings ..."</p> <p>32 (3) correction noted.</p>

33	GC	<p><i>Functions of Review Consultant</i></p> <p>Incorrect reference; we find no reference to "prepare" designs</p> <p>No, the Director can refuse to issue a permit if the application does not comply with the building standards – see part VI.</p>
34	GC	<p><i>Projects for employment of Review Consultant (R.C.)</i></p> <p>Yes. It is possible that a R.C. can be required for any project if the situation so merits. However, the Director will make a judgement as to which projects will require a R.C. Additionally, the BSA will initially issue threshold guidelines to architects, draughts-men, engineers and developers concerning the type of projects that shall or may require a R.C.</p> <p>Your comments in bold type have been noted.</p>
34	SE	Your comments noted.
35	GC	Your comments noted.
36	IR	Your comments noted.
36	SE	Your comments noted.
37	GC	<p><i>Building Standards</i></p> <p>BNSI will be responsible for establishing standards. However, situations will and can arise when standards and codes not yet established by BNSI will have to be used immediately in relation to a particular matter.</p>
38	GC	<p><i>Relaxation of building standards</i></p> <p>Your comments noted.</p>
42	GC	<p><i>Compliance with Act and Regulations</i></p> <p>This clause refers to the fact that the appropriate aspects of the building must comply with the requirements of the Act which by implication includes the Building Code. The regulations refer to prescribed rules made by the Minister after or before the Act is passed. The Authority does not have to apply to itself for a building permit to carry-out works.</p>
43	GC	<p><i>Historic Buildings</i></p> <p>A register of all historic buildings will allow the BSA to know which buildings are listed so that applicants cannot make false declarations or make claims as they go along. It is also useful to state such on the application.</p>

45	SE	<i>Notification during building work</i> The word "of" should be inserted between the words "work" and "the".
45	GC	<i>Works to be insured</i> After the term "building permit" add "or completion certificate as appropriate". Also before commencement the owner should provide to the BSA evidence of an approved policy of insurance against hazards and natural disasters to cover against such events during construction of the building.
46	GC	<i>Inspections</i> The BSA will normally require a 48 hour notification (two (2) working days) for conducting inspections. Should the BSA fail to respond during that time then the owner will be allowed to proceed with (cover up) the works following a further two (2) working days after the date when the works is complete for inspection. It is anticipated that an inspection will be requested when the works is about 80% complete. This information will be contained in an advisory. The BSA will endeavour to minimize delays.
50	SE	<i>Application made by owner</i> Noted.
51	GC	<i>Temporary occupation</i> This situation applies to buildings in which the owner must continue to occupy his/her building while the building work proceeds. A building permit would have been issued to execute the work.
52	GC	<i>Declaration by owner</i> The actual wording of the declaration will be incorporated into the application form. The legislation only states the necessity for the declaration.
54	GC	<i>Regularisation of building or building works prior to commencement of the Act</i> Comments noted. This section refers to buildings or building works that are existing or have commenced before the Act and for which the owners may <u>voluntarily</u> decide to have them assessed by the BSA. There is no compulsion whatsoever to have this work done; it left entirely to the owner's discretion.
56	SE	Your comments are noted.
58	IR	Your comments are noted.
60	GC	Your comments are noted.

62	GC	<p><i>Regularisation of unauthorized work</i></p> <p>We disagree with this assertion. If the owner proceeds to do work without a building permit or violates the terms and conditions of a building permit then he has the responsibility to demonstrate compliance. This is consistent with good engineering supervision practice.</p>
63		<p><i>Emergency orders</i></p> <p>The notice may specify that the building is unfit for use and needs repair work.</p>
64	GC	<p><i>Representation by owner</i></p> <p>Not necessarily so. However, the time period for making representation will be 28 days and will be stated in the notice.</p>
67	GC	<p><i>Fire Hazards</i></p> <p>We disagree with your assertion. The Act gives "life" to the code. This clause merely buttresses the code by defining what general conditions constitute a fire hazard.</p> <p>Your comments in bold type are noted.</p> <p>Not necessarily. It also applies to new buildings for which completion certificates were issued but with continuing requirements. Eg. The need to maintain fire-alarm systems in a hotel or a night-club owner who deliberately locks the fire exits.</p>
69	IR	Your comments are noted.
70	GC	Reference unclear.
73	IR	Your comments are noted.
80	GC	In the overwhelming majority of situations the owner of the property is also the owner of the land although in the case of some chattel houses this may not be the case. This section may have to be modified to cater to the latter situation.
80	GC	<p><i>Modification of application of building regulations</i></p> <p>It goes without saying that the Director and staff of the BSA. will act in the public interest. Therefore, if the Appeals Board rules against the Director it must be mindful of that concern.</p>
81	GC	<p><i>Sitting of the Appeals Board</i></p> <p>Kindly explain why this is superfluous.</p>
82	GC	<p><i>Constitution of Appeals Board in a matter</i></p> <p>Comment noted.</p>

		<p>This applies only in relation to a determination of matters made before the new member was constituted. For example a new member would not have been present when evidence was given at an earlier proceeding in relation to a particular matter, therefore, the new member would not be in a position to give a judgement on matters that preceded him.</p>
86 (2)	GC	<p><i>Decisions of Appeals Board</i></p> <p>This allows for circumstances whereby the Appeals Board would have previously made a decision on a particular matter (say dispensing with sprinklers in a building) but in circumstances peculiar to another similar matter the Appeals Board may alter that decision and it would not be bound by its previous decision.</p>
89 (2)	GC	<p><i>Decisions</i></p> <p>The decisions of the Appeals Board will most likely be on the Internet. However, there will be an administrative cost involved in putting and maintaining the information on the Internet. That explains the reasons for fees to view the decisions.</p>
98 (2)	GC	<p><i>Proceedings for offences</i></p> <p>Kindly explain your reason(s) for asserting that this section is superfluous.</p>
99	GC	<p><i>Offences by Corporations</i></p> <p>It is usually accepted that the directors of a corporation carry collective responsibility in matters pertaining to major decisions taken by that corporation. Therefore, one can reasonably deduce that if there is an offence against this Act then each director would have or should have been aware of the offence or the intended offence.</p>
100	GC	<p><i>Additional orders that may be made by a Court</i></p> <p>This clause allows the Director to seek a court injunction so as to enforce an order or notice or to restrain a breach of this Act by a violator. For example should the Director issue an order not to use a dangerous building for public assembly and a person continues to do so then the Director can get a court injunction to prevent the building being used.</p>
101	GC	<p><i>Liability</i></p> <p>It is assumed, correctly, that the BSA intends to do no harm to the public who it serves but only to help. Eg. There is no motive for the commission of an offence unlike the situation at 99. However, should it be proved that any member of the</p>

		Authority is guilty of wrong doing, then he/she can be prosecuted.
102	GC	Noted.
102	GC	<p><i>Application of limitation of liability provisions</i></p> <p>Kindly advise us of the existing law of which you speak. The Authority sets out minimum requirements to safeguard persons using buildings in accordance with currently good international practices.</p> <p>Our responsibilities arise only in relation to the BSA's requirements and practices not being in accordance with current international requirements and practices. If a building is constructed in accordance with our requirements and something was to go wrong we will not be responsible anymore that an engineer whose building, even though designed to current code requirements, suffers significant damage during a hurricane.</p>
113	GC	The reference you cited cannot be identified.
115	GC	<p><i>Regulations</i></p> <p>These are intended for future use to facilitate the preparation of new standards and regulations and the power to do so.</p>
116	GC	<p><i>Act to bind the Crown</i></p> <p>The Crown may in a national emergency find it necessary to circumvent BSA requirements. For example, the prison riot of one year ago and the construction of buildings at Harrison's Point, St. Lucy. This was a national emergency and government could not have waited for Town Planning or BSA approval.</p>
Sched. 5	SE	Noted
Sched. 8	IR	Noted
	GC	It is suggested that private sector organizations - comprising BAPE, BIA, contractors, property owners, artisan guilds, Chambers of Commerce, etc. who will frequently interact with these bodies and the BSA form an organization that perform assessments of these bodies as is done in other jurisdictions.
	GC	Matters of appointment have been subsequently included. Disciplinary, remuneration, dismissal matters etc. will fall under the rules of the civil service.
	GC	We disagree with your assertion. GEED is concerned solely with electrical matters and will continue to do so. The only overlapping of responsibility is the requirement that an application complies with the GEED requirements.