

MAY 16 2012

COMPLAINT INVESTIGATION REPORT

Complainant: Monroe A. Miller Jr.
19 Big Spruce Lane
Waynesville, NC 28786

Respondent: Jason Rogers
Town of Waynesville Code Enforcement Office

North Carolina Code Officials Qualification Board
322 Chapanoke Road, Suite 200
Raleigh, North Carolina 27603

May 8, 2012

**Complaint Investigation Report
Monroe Miller Jr. vs. Jason R. Rogers**

Introduction

Pursuant to N.C.G.S. §143-151.17(b) the North Carolina Code Officials Qualification Board (hereafter, "the Board") may investigate the actions of any qualified Code-enforcement official or applicant upon the verified complaint in writing of any person alleging a violation of N.C.G.S. §143-151.17 (a)."

The Board received a verified written complaint on November 16, 2011 from Monroe Miller Jr. concerning inspections conducted at the Gateway Club in Waynesville, NC. Mr. Miller is a resident of Waynesville, NC. In the complaint, Mr. Miller alleges that Mr. Rogers violated NC General Statute 143-151.17(a) (6) in that he has:

"(6) been guilty of willful misconduct, gross negligence, or gross incompetence."

Engineering Division Investigation and Report

The Engineering Division of the NC Department of Insurance provides technical and administrative staff to the Board. This report is the result of the investigation of Mr. Miller's complaint by the Boards staff. The purpose of the Engineering Division investigation is to verify whether the allegations listed in the complaint are actual violations of the General Statutes or of the NC State Building Code and that the allegations are attributed to the Code Enforcement Official named in the complaint and whether the type and number of violations are sufficient to justify a hearing to determine if the Code Enforcement Official is guilty of one or more of the actions set out in N.C.G.S. §143-151.17 (a).

This report was prepared by Suzanne R. Taylor. Taylor is a graduate of UNC-Charlotte with a BS in Civil Engineering. Taylor has a Level III Standard Building Inspection Certificate issued by the NC Code Officials Qualification Board, and is a Certified Building Code Instructor.

Inspectors

Johnny Bruce Rogers has been a Code Enforcement Official since January 1999. At the time of the inspections on the Gateway Club, Rogers held Inspection Certificates for Level III Building, Mechanical, Plumbing, Fire and Level I Electrical.

Effective Code

Buildings are constructed according to the requirements of the Codes in effect at the time the building permit was issued. The building permit for the renovations of the Gateway Club was issued on June 16, 2008. The Codes in effect at the time of the issuance of the permit were the 2006 Edition of the North Carolina Building, Mechanical, Plumbing, Fire Prevention Codes, the 2005 National Electrical Code. Code items cited in this report are from these Codes.

Description of Building

The building is a three story structure of Type III-B construction (non-combustible exterior walls) with an area of 16,335 square feet. It is a partially sprinklered, A-2 assembly occupancy. The building was originally built in 1927 and was used as a Masonic Hall.

Inspection Department Records

Records in the Waynesville Inspection Department files indicate the building permit was issued on June 16, 2008. The following inspections were made:

<u>Date</u>	<u>Inspection</u>	<u>Inspector</u>	<u>Result</u>
07/16/08	RI-Mechanical	Rogers	Approved
07/23/08	RI-Electrical	Rogers	Approved
07/28/08	RI-Plumbing	Rogers	Approved
08/06/08	RI-Framing	Rogers	Approved
09/02/08	Final-Electrical	Rogers	Approved
11/11/08	Final-Mechanical	Rogers	Approved
11/11/08	Final-Plumbing	Rogers	Approved
11/11/08	Final-Building	Rogers	Approved
11/11/08	Final-Insulation	Rogers	Approved

Complaint Items

The complaint items are taken from Miller's letter of complaint dated February 22, 2011 and observations.

Item 1 – No Certificate of Compliance/Occupancy

I Charge the Town of Waynesville-Inspections Department with gross negligence for not being able to provide either a Certificate of Compliance/Occupancy or other documents certifying complete inspections have taken place for the Gateway Club. (Miller's complaint letter)

Rogers' Response in part:

"On October 12th, 2011 I was contacted by Mr. Shane Phelps with NCDOI by electronic mail about an anonymous complaint concerning a building known as Gateway Club..... I then called Mr. Phelps and explained that the building was renovated beginning in May of 2008 and in November of 2008 the first floor was complete and we allowed the use of this floor for occupancy. The second floor was 95% complete with very little renovation to this floor. The third floor had a complete sprinkler system, alarm system and egress. The third floor had plumbing and mechanical items remaining to be completed."

Rogers also stated when interviewed that he made it clear to the owners of the Gateway Club that he was allowing only the first floor to be used until the other two floors were finished. Rogers was not aware the upper two floors were being used.

Staff Finding:

The NC Administrative Code Section 307.3 states:

"A temporary/partial Certificate of Compliance may be issued permitting occupancy for a stated period for specific portions of a building or service system that the inspector finds may safely be occupied prior to final completion of the entire building or system (General Statutes 153A-363 and 160A-423)."

NC General Statute §153A-363 states:

"At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection. If he finds that the completed work complies with all applicable State and local laws and local ordinances and regulations and with the terms of the permit, he shall issue a certificate of compliance. No new building or part thereof may be occupied, no addition or enlargement of an existing building may be occupied, and no existing building that has been altered or removed may be occupied until the inspection department has issued

a certificate of compliance. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building that the inspector finds may safely be occupied before completion of the entire building. Violation of this section constitutes a Class 1 misdemeanor.”

Records in the Waynesville Inspection Department files do not include a temporary Certificate of Occupancy or Compliance as required.

A violation of NC Administrative Code Section 307.3 and NC General Statute 153A-363 is verified.

Item 2 – Conducting Inspections above Certification

Records in the Waynesville Inspection Department files indicate Rogers performed electrical inspections at the Gateway Club while he was not qualified to do so. (Observation)

Staff Investigation:

The NC Administrative Code Certification Requirements, Title 11, Chapter 8, Section .0700 of the NC Administrative Code contains requirements for the certification of electrical inspectors certified by the NC Code Officials Qualification Board. Section .0700 also contains restrictions on the occupancy classifications which Level I, II, and III certificate holders may inspect. 11 NCAC 08 .0706 Required Qualifications: Types and Levels, states in part:

"(a) Qualification Levels

- (1) With respect to all types of code enforcement officials, those with Level I, Level II, or Level III certificates shall be qualified to inspect and approve only those types and sizes of buildings in the following tables.
- (2) Limitation on maximum number of stories and square feet (sf) of floor area of buildings for Building, Electrical, Mechanical and Plumbing inspectors, Levels I, II or III:

Occupancy Classification	Level I	Level II	Level III
Assembly	1 story/7,500 sf	1 story/20,000 sf	Unlimited

Staff Finding:

Jason Rogers is a Standard Level I Electrical inspector and is not certified to conduct electrical inspections for assembly occupancies in excess of 1 story/7,500 sf, and by doing so was in violation of 11 NCAC 08.0706(a)(1)(2).

Violation of NC Administrative Code Certification Requirements, Title 11, Chapter 8, Section .0700 is confirmed.

Conclusions

The Miller complaint charges Jason R. Rogers of the Town of Waynesville Code Enforcement Office violated GS 143-151.17(a)(6) in that he has "been guilty of willful misconduct, gross negligence, or gross incompetence".

The following violations were confirmed against Mr. Rogers:

- Item 1 – No Temporary Certificate of Compliance/Occupancy
- Item 2 – Conducting Inspections above Certification

The number and type of violations found by the investigation are sufficient to justify a hearing to determine if Rogers is guilty of willful misconduct, gross negligence, or gross incompetence.

MAY 16 2012

North Carolina Code Officials Qualification Board

Staffed by the NC Department of Insurance



Wayne Goodwin, Commissioner
Tim Bradley, Senior Deputy Commissioner/Board Secretary
Samantha Ewens, PE, Director

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(Registered Architect)

Vacant
(Lic. Mech/Plumbing Cont.)

May 8, 2012

Monroe A. Miller, Jr.
19 Big Spruce Lane
Waynesville, NC 27786

Re: Complaint Investigation


Dear Mr. Miller:

Enclosed is a copy of the Complaint Investigation Report of the above complaint filed against the Waynesville inspection Department. The conclusions of the report are that the evidence does justify the charges to require a disciplinary hearing.

If the Board can be of assistance, please do not hesitate to contact the staff.

Give me a call at 919-661-5880 ext. 504 if you have any questions.

Sincerely,


Suzanne R. Taylor
Code Consultant/Investigator

Encl:
Complaint file