



# Building Better

A First Nations National Building Officers Association publication

Volume 6 | Number 1 | Spring 2009

## Having Jurisdiction and Building Homes: Who is Responsible?

At a recent FNNBOA seminar on building permits, a gentleman in the audience asked a very important question. “Are CMHC and INAC responsible for building homes to national or provincial codes and standards?”

Bud Jobin, President of FNNBOA responded by saying, “No. The band council is the authority having jurisdiction (AHJ) and therefore is responsible for building homes to code.”

The reactions of those in the audience ranged from total shock to confusion, as many did not understand what had just been said. AHJ is a term used to discuss issues of jurisdiction and control in aboriginal governance. It is also at the core of the debate about how band councils can change community housing conditions. But misunderstandings, misconceptions and an attitude of “please don’t tell us as we don’t want to know” remain.

AHJ refers to a governing body responsible for the enforcement of any part of the building code or the official or agency designated by that body to exercise such a function. In building homes, the AHJ is typically the municipality, which typically has by-laws that govern how drawings for buildings must be reviewed and accepted by both a building department and the fire department's plan reviewers, following application of a building permit.

The AHJ during the construction of a building is the municipal building inspector, who enforces the local building code. Once construction is complete and a final inspection has been passed, the inspector may issue an occupancy permit. Any changes made to a building including its use, expansion, and structural integrity, must also be approved by the AHJ.

In First Nations’ communities, the band councils are the AHJ with respect to building homes in their communities. The band council exercises the AHJ by passing band by-laws to control certain activities within the community, including implementation of building-permit processes, and the authority to apply and enforce building codes, standards and construction practices. However, in many communities, band councils have not properly exercised their AHJ. They have not passed band by-laws to ensure homes are constructed according to a building code.

Without such by-laws, there is no process to approve building plans or the site where the home is to be built. Homes may not be inspected to make sure they are constructed to a building code. Inspections are not based on code compliance, but rather on a housing policy. Inspectors may not be qualified nor have

*(Continued on page 8)*



## FNNBOA President's Message

"While there are serious problems affecting the homes, the issues are sometimes muddled by the visuals that accompany them: neglect, mess and uncleanliness. Visits by Times Colonist journalists to Island reserves revealed many homes that were poorly constructed and filled with toxic mould, but a number of the same homes were strewn with garbage or in various stages of disrepair. That reality leaves many non-natives asking: 'Why should taxpayers fund more houses for reserves, if their occupants can't, or won't, take care of the existing ones?'"

*Housing issue muddled by neglect, by Judith Lavoie, Victoria Times Colonist February 9, 2009*

The comments in this article seem to provide a platform to reinforce the negative view of "Indians," and fodder for racists and the uninformed. The quote at the end clearly exposes the attitude out there that "Indians" are irresponsible, dependant on welfare and get everything for free.

The vast majority of our peoples maintain their houses, keeping a healthy and safe environment for their children. I don't dispute that many of these houses are shoddily constructed and overcrowded, nor that funding levels are inadequate to meet the need. Comments like "First Nations prefer a natural look to manicured lawns" however deflect the issue at the core of poor housing by trying to explain or apologize, as if it were a matter of culture differences.

In an accompanying article, INAC responded by stating that all houses must be built to the minimum building code standard, and must be inspected before

the release of further subsidies. (How the system works.)

The devil is in the details though. Compliance off reserve is verified through a building-permit process in which it is first checked at the design stage, and revisions made to the submitted plans until this provision is met. A certified inspector visits the job site at strategic stages to ensure construction is compliant, revisions made on site are documented and comply with the building code adopted by the authority having jurisdiction. Once minimum standards of health, safety and structural soundness are verified, an occupancy certificate is issued.

In recognition that Chief and Council are the authority having jurisdiction, both INAC and CMHC require a statutory declaration from the band council stating that the project was built to the National Building Code (it used to be the housing manager signing off the project stating that funds received went to that specific project).

Inspection reports covering the project as stated by INAC and the MTQ must be done by a qualified inspector. What is a qualified inspector? This is not even close to the system that ensures compliance (band by-laws) or that work will be done by competent builders, inspected by certified inspectors and built to meet the needs of the occupant and community. In fact, inspections (with the exception of a few forward-thinking bands) are done for the purpose of advancing funds, with both agencies stating that compliance issues rest with Chief and Council and that they are not compliance agencies. The band council is responsible to

*(Continued on page 3)*

## About This Issue ...

The FNNBOA Newsletter is published by the First Nations National Building Officers Association.

~

### Contributors

*Bud Jobin, John Kiedrowski, and Len Bosch*

### Editor

*Moirra Farr*

### Production

*taybridge.communications*

### Printing

*Anishinabe Printing*

### Inquiries

*Helen Ward-Wakelin,  
Vice-President*

*Keith Maracle, Secretary*

~

FNNBOA, 5717 Old Hwy #2,  
Shannonville, Ontario  
K0K 3A0

[info@fnnboa.ca](mailto:info@fnnboa.ca)

<http://www.fnnboa.ca>

~

Not to be reproduced in any form without the written permission of FNNBOA.

~

Special thanks to Canada Mortgage and Housing Corporation and Indian and Northern Affairs Canada for their financial support.

~

*The views in this newsletter are those of the contributors and may not necessarily represent FNNBOA or the funding partners.*



(Continued from page 2)

ensure homes constructed or renovated are built to building codes and other related standards. Why, you ask? The band council is the authority having jurisdiction, and is therefore responsible for the construction of homes and other buildings within its jurisdiction.

Until recognition by the authority having jurisdiction that responsibility for the quality of housing rests with them, deplorable conditions will continue. A system implemented at the community level is required to ensure homes built meet the needs of the community and the occupants. Why do most bands continue to build cookie-cutter houses: You know, the three-bedroom bungalow destined under the point system for the family with the most members? Why are builders not going through a verification system of their skills, job qualifications and references? Why are we not doing compliance inspections?

The process for compliance is simply not in place.

"It doesn't necessarily look like it yet, but some of the best housing people in this country are aboriginal people working on aboriginal files," said Sylvia Olsen of the First Nations National Housing Managers Association (FNNHMA). Succeeding articles have not only pointed out the best housing staffs but also the best policies adopted by bands that have a regulatory system in place.

The construction of band homes is a major budgetary expense for the community. It is also a major investment for individuals to own their own home; it takes many years to pay for their investment. Unfortunately, band-built homes last only about seven years, before major or minor renovations are required, or the home is taken down. These homes do not last long because they were not built to code in the first place. Maybe the foundation was not structurally sound nor protected from moisture (done in minus -40 degree weather with no heaters to cure the cement), the wood was wet or warped, with poorly installed insulation/vapour barriers, unqualified/unscrupulous builders not following codes and standards, and so on. My fellow inspectors and housing managers can agree, poorly constructed homes in First Na-

tions are diverting scarce housing dollars away from new construction to prematurely deteriorating housing stock.

Many homeowners are also susceptible to shoddy construction practices. Some hire contractors whom you would expect to build a home to code. Others hire friends or family members who, because they have put nails into a plank of wood consider themselves contractors (would you hire a dentist to build your house?). While some may know what they are doing, others don't. The consequence is a home that is not built properly (leaky roofs, poorly installed windows and doors, poor ventilation). The community ends up providing money to fix the problem. If lucky, they will not need to spend double the amount of funds again. This has happened. How do we fix this problem of shoddy construction and homes not being built to code? Here are some very simple solutions.

- The band council passes by-laws to ensure homes are built to code and other housing standards.
- Introduce a building-permit process where building plans are reviewed by trained individuals.
- CMHC and INAC ensure that the home is inspected by a certified inspector.
- Band by-laws ensure a series of inspections is done during the building process to ensure mistakes aren't covered up.
- Band by-laws include a process to issue stop-work orders where homes are not being built to code.
- Provide training and education to contractors working in the community.
- Register builders and contractors within the community.

We use the excuse that we need more money to build more homes and to address our challenges of overcrowding, poverty, alcohol abuse and so on. While there is no disagreement that serious problems face our communities, we need to find ways to ensure that well built homes (built to codes and other housing standards) won't divert funds from well-intentioned programs that address other issues.

The First Nations National Building Officer's Association (FNNBOA) represents First Nations Building Officers

(Continued on page 8)



## 2008 Housing Demonstration / Research Project

The Federation of Saskatchewan Indian Nations (FSIN) is committed to improving the quality of life for all First Nations, while respecting First Nations traditional values and beliefs. As part of this comprehensive mandate, FSIN Housing is leading a multi-phase Housing Demonstration Project in partnership with a number of key stakeholders to develop a template for positive change in First Nations housing construction.

It is widely recognized that houses in First Nations Communities are not lasting as long as they could. A number of issues unique to First Nations contribute to this reality, and this project will not address them all, but will focus on practical solutions and training designed to reduce replacement costs associated with mould and wear and tear. It will also use proven technology and innovation to increase energy efficiency and extend the useful life of houses in Saskatchewan First Nations Communities.

Key stakeholders include the Saskatchewan Native Inspectors Initiative (NISI), Corcan Industries – the inmate skills-training initiative of Corrections Canada – the Saskatchewan Research Council, Canada Mortgage and Housing Corporation (CMHC), and Indian and Northern Affairs Canada (INAC). It is important to note that all of Saskatchewan’s NISI Inspectors are members of FNNBOA. Students from the Saskatchewan Institute of Applied Science and Technology, architectural division, will provide drawings based on design criteria and specifications that will be developed through a design charrette. The concept and design details will easily apply to most house designs.

Overall, a four-bedroom, 1 ½-storey flex design was determined to be most aligned with the design values established by the group. This also helped overcome the hesitancy of some participants, who wondered about the acceptability of a 1 ½-storey building standard. The design’s flexibility successfully reflected our design principles.

Additional considerations include looking at the house from a cost (life-cycle) and value perspective. The following features are highlighted:

- Value-added engineering for construction
- Simple, innovative products that save on or recover energy and are “out of sight and out of mind” and virtually maintenance-free
- Designs that present the option of a 1 ½-storey house are cheaper to make
- In-slab heating is more economical and is easily modified to “plug into” future heat-recovery systems, geothermal, district heating
- Bigger footprints will be more expensive
- Basement space is not as desirable
- Energy efficiency can be far less costly when installed early in the process
- Look at proven and better installation practices
- Look at durable products, but also the life of the product:
  - Abuse-resistant paperless drywall has the added benefit of being mould resistant.
  - Durable subfloor and finish flooring
  - Metal roofing – 16" wide to allow for future photovoltaic. The metal roof has double the warranty as asphalt shingles but is also double the cost. However, consider that asphalt shingles will most likely be replaced one to three times over 20 years due to wear and tear, and are likely to go up considerably in price; they are a petroleum-based product. The metal roof may cost more up front, but its durability makes it more attractive in the long run

FSIN Housing and the stakeholders firmly believe that this initiative will benefit the member First Nations through enhanced training, design and better building practices. Guided by this vision, we have developed a multi-phase project:

### Phase One: Research, Planning and Design

- Development of an easy-to-use template constructed at little or no incremental cost to the project. This will be achieved through value-added engineering, innovative materials and monitoring
- A design charrette will be conducted with stakeholders to create a template (criteria) for housing design



(Continued from page 4)

### Phase Two: Construction and Follow Up

- Construction of a Demonstration House by CORCAN Industries Ltd., as part of their Trades and Apprenticeship Program. First Nations will be asked to reply to a Request For Proposal (RFP) to have this demo unit placed in their community
- Follow-up monitoring to ensure the success of this multi-phase pilot project (at six- and 12-month intervals); development of action plans and continuation of the capacity-building process for First Nations housing management.

### Phase Three: Further Construction and Research

- Construction of three to four demonstration units with the condition that the First Nations community

agrees to do follow-up research and life-cycle cost analysis

### Phase Four: Project Design Principles Realized in First Nations Communities

- Interested communities will have full access to the template design and specifications. Federal inmates will have marketable skills to offer, once released
- CMHC's suite of Housing Quality Initiatives (HQI) will be encouraged: home-maintenance training, policy development and Owner's Manuals will be incorporated into all phases

The stakeholders have provided a written report at [www.fnnboa.ca](http://www.fnnboa.ca), and welcome input and ideas that will help ensure the success of this project.

## Insurance in First Nations Communities

Insurance is a growing challenge for many First Nations communities. Some are unable to obtain it, while others pay a very high premium. Filing claims may lead to higher premiums and sometimes the inability to obtain coverage. The following are some documents that may be of interest. All are available through the order desk at [www.cmhc.ca](http://www.cmhc.ca).

### Feasibility of Risk Management as a Subject for Capacity Building in First Nations Communities

Overall, the aim of this study was to determine which components of risk management could be taught in the context of building First Nations capacity, and to design a model for risk-management training for First Nations communities.

**Property Insurance on Reserve: Present Arrangements, and Innovations to Reduce the Cost: Final Report**  
*Prepared by Tony Wellman. CMHC Project Manager: Vernon S. Barkwell. Ottawa: Canada Mortgage and Housing Corporation, 2000. 44 pages.*

The study is an examination of initiatives to reduce the cost of property insurance on reserve. It considers property insurance on band-owned stock, and on houses owned by individuals, whether through certificates of

possession or other home-ownership tenures, to explore the ways different First Nations across the country are approaching the matter of obtaining property insurance. A survey of 116 First Nations was completed. The paper documents how First Nations presently go about arranging insurance, and identifies some of the innovations underway at the community, regional and national level to help reduce the cost. Advice to First Nations to assist in getting better and lower-cost property insurance has been provided.

### Risk Management and Insurance in Aboriginal Communities: Two Case Studies.

*Submitted to Canada Mortgage and Housing Corporation, National Office by Paul F. Wilkinson and Alain Paielement, Ottawa: The Corporation, 1999. iii, 16 pages.*

The cost of insurance is often three times higher in Aboriginal communities than in comparable non-Aboriginal communities. Previous research has shown that less than half of this extra cost can be justified by extra risk. This report describes two examples of Aboriginal communities that reduced the costs of their insurance through applying a risk-management approach and competitive tendering.

(Continued on page 8)



## Eagle Eye on Housing: Errors & Omission Insurance—Challenges Facing FNs



Insurance requirements for building inspectors, whether employed by municipalities, cities, tribal councils or individual Indian bands, have been discussed endlessly for many years. Meetings, panel discussions, legal opinions, and in some cases actual legal decisions, lead to one conclusion: Any entity employing individuals to conduct inspections on buildings and certify that they comply with national, provincial or municipal building codes or bylaws, could be held liable if such individuals cause property damage or bodily injury to third parties in the course of their duties. They are also liable if an inspector makes an error in inspection and building owners seek legal recourse for damages caused by the error.

Review and examination of case law reveals that courts often find no liability in cases alleging fault of a building inspection. But there have been cases in which the court ruled that the building inspection was either partially or entirely liable. These cases have been heard by the Supreme Court of Canada (see: *Ingles v. Tutkaluk Construction Ltd.*, 2000 SCC 12, [2000] 1 S.C.R. 298 ). The legal costs to defend against such actions, whether founded or not, are onerous, to say the least. These potential situations put the entity and the individual building inspector at considerable risk. The entity that employed the building inspector and the building inspector can assume the risk, or they can transfer the risk by purchasing insurance.

To properly transfer the risk, one needs to purchase Comprehensive General Liability insurance, which provides protection from claims alleging bodily injury or property damage to third parties. For example, a building inspector is making an inspection and an extension cord he uses is faulty, short-circuits and causes a fire. The

building has extensive property damage and the owner, who was on site, was injured in the fire. Legal proceedings are brought against the entity that employed the inspector and the inspector personally. The Comprehensive General Liability policy would respond to the legal defence, as well as settlement costs up to the policy limit.

Professional, semi-professional and service work, such as building inspectors inspecting, rendering their opinion and certifying that the work of others is properly performed and conforms to regulations, is commonly excluded from Comprehensive General Liability policies. For example, an inspector approves a dwelling that is not properly framed and a roof collapses, or a foundation without proper drainage around the footings and water damage results. It is a general rule that if a specific area of a building requires inspection, and such inspection is in error, resulting in damages, the entity or the inspector could be held liable.

The transfer of this risk is accomplished by putting in place Professional or Errors and Omissions insurance. Like the Comprehensive General Liability policy, it will respond to the legal defence as well as settlement costs up to the policy limit.

To properly transfer your risks, we recommend that both policies be put in place. This is a complex topic, and you should discuss it with your existing insurance broker. For more information, contact Len Bosch at (250) 372-3517, or by email at [len.bosch@hubinternational.com](mailto:len.bosch@hubinternational.com).

**By Len Bosch—Chartered Insurance Professional  
Hub International Barton—Insurance Brokers**



## Authority Having Jurisdiction: Exercise Your Powers Via By-laws

In First Nations' communities, band councils are the Authority Having Jurisdiction (AHJ) with respect to building homes in their communities. Each band council exercises the AHJ by passing band by-laws. Below are the types of band by-laws and processes a Band Council should adopt.

Section 81 of the *Indian Act* mandates the council to make by-laws for the following activities:

**Zoning - Section 81(g):** the dividing of the reserve or a portion thereof into zones, and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any zone.

**Buildings - Section 81(h):** the regulation of the construction, repair and use of buildings, whether owned by the band or by individual band members.

**Land Survey - Section 81(i):** the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments, and the setting apart of reserve lands for common use, if authority therefore has been granted under section 60.

### Zoning by-laws

Under zoning, the band council can control:

- Land use
- Location and boundaries of commercial, residential, industrial,

institutional and conservation zones

- Cottage sites
- Protection of forests and other natural resources
- Campsites, including setting fees
- Requirement of building permits for building in specific zones
- Community Plan

Zoning by-laws are important as they control the use of land and establish standards according to which the land can be developed. All lands within a First Nations community can be placed in a specific zone that is presented on a zoning map.

Zoning is particularly important before homes are constructed. The band council must first divide the communities into zones before construction of any buildings or the carrying on of any type of business. Zoning is important as band councils can require building permits.

### Building By-laws

Under building by-laws, the band council can control:

- Property maintenance standards and the obligation to keep houses in good repair
- Occupancy standards
- Pest prevention (e.g., cockroaches, ants, termites)
- Fire safety and protection, including fire-resistance ratings: must comply with the National Building Code and the National Fire Code
- Thermal insulation: must comply with the National Building Code and National Energy Code

- Building standards must comply with the National Building Code and National Fire Code
- Building standards for cottages
- Requirements for smoke and CO detectors

By-laws can state that homes be built to the National Building Code or in accordance with provincial building codes. They can require stricter standards or construction practices if necessary. A building by-law must be established in conjunction with an existing zoning by-law so that the permit can state where the home can be built (e.g., specific location, lot, etc.)

### Land Survey By-laws

Under land survey by-laws, the band council can control:

- Allotment of lands for a community centre, churches, schools, stores (subsection 18(2) of the Act)
- Allotment of lands to band members
- Land registry for Certificates of Possession and Certificates of Occupation

Once these band by-laws are passed, a band council can then implement a building permit system. This also gives the band council an opportunity to revise its housing policies at the same time. Passing band by-laws is like putting money into your bank account. You save money by building better-quality homes that require fewer repairs. All communities want to save money!



(Continued from page 1)

the powers to stop construction where the home is not being built to code, or to force the contractor to fix the problem. Without band by-laws, the home may be unsafely occupied without a final inspection or the issuance of an occupancy permit or a letter to state it is safe to move in. The band council will ultimately have to pay for repairs to homes, and may also be legally responsible for fixing private homes not built in accordance with their band by-laws.

Stories already abound in which families move back into their communities and build a new home. A few years later, serious problems

arise with the roof or the foundation. When these home owners contact their insurance company to file a claim, they are asked to provide supporting documentation such as building permits and inspection reports, or copies of the band by-laws. Unfortunately, such information does not exist. The home owner then hires a lawyer to sue the band council, as they are the AHJ to ensure all homes are built properly.

In some cases, band-built homes are not safe (poorly installed or no hand railings for example) and the occupants have been injured. The band councils, realizing their responsibilities to the community, eventually agree to provide compensation

by taking funds from their capital or other program areas to pay for repairs.

The AHJ is a very important element for band governance. Band councils need to pass band by-laws to ensure homes are built to code, establish a building-permit system and have homes inspected by a qualified inspector. This is especially critical as First Nations' communities move towards improving their housing stock, and home ownership. Band councils must exercise their AHJ, pass band by-laws and update their housing policies to ensure a stable and successful housing future for their communities.

(Continued from page 3)

(FNBOs) who provide residential, commercial and institutional construction and renovation technical services. These services include plan reviews, inspections, repair recommendations, technical advocacy and advice for buildings located in First Nations/Aboriginal communities. FNNBOA focuses on the following:

- Ensures occupational standards are mandatory for all inspectors
- Promotes national certification and accreditation processes
- Promotes capacity development of its members
- Advocates housing policies related to the adoption and enforcement of building codes and better

- building and renovation practices
- Ensures Chief and Council can make informed decisions.

FNNBOA's overall philosophy is to provide objective technical advice without political undertones. FNNBOA develops programs and policies for the development of its members, advocates housing policies related to adoption and enforcement of building codes and better building and renovation practices. It works in partnership with government, non-government agencies and stakeholders to ensure training and information transfer to First Nations builders, renovators and other technical service providers.

**Bud Jobin— President FNNBOA**

(Continued from page 5)

Risk management is a continuous and systematic series of activities with three distinct goals: to minimize the likelihood of accidents, to limit their severity, and to ensure that the pre-accident situation can be restored.

Through risk management, the 14 Inuit communities of the Kativik Regional Government in Nunavik achieved a decrease of 50 percent in insurance cost, followed by a further reduction of 20 percent two years later. The scope of the coverage was improved with the same broker and

insurance company as before. The Naskapi Band of Quebec took the same approach. It saved some 70 percent on the cost of insurance, while improving the quality of its coverage. Here, the broker and insurance company changed.