

**STATE OF NEW YORK - DEPARTMENT OF STATE
DIVISION OF CODE ENFORCEMENT AND ADMINISTRATION
DRAFT MINUTES - STATE FIRE PREVENTION AND BUILDING CODE COUNCIL**

Minutes of the Tuesday, July 16, 2013 meeting of the New York State Fire Prevention and Building Code Council held at: One Commerce Plaza, 99 Washington Avenue, Albany, New York, Conference Room 505; 123 Williams Street, New York City, New York, Conference Room 231 and 65 Court Street, Buffalo New York, Conference Room 208 commencing at 10:00 a.m. The following Council members, designees and staff were in attendance:

COUNCIL MEMBERS PRESENT:

Ronald Piester, Presiding
Michael Cambridge
John Flanigan
Maria Guizzotti
Robert Hankin
Gary Higbee
Judith L. Kennedy
John Lee
Willie J. Lightfoot
Paul Martin
John Torpey
William K. Tucker
Joseph Sauerwein

ALSO PRESENT:

Michael G. Auerbach
Joseph Ball, Esquire
Mark Blanke
Michael J. Vatter

Agenda Item 1 – Welcome

Ronald Piester called the meeting to order at 10:10 a.m. welcomed everyone and announced the appointments of new Council members: Helen Hudson, Councilwomen, the City of Syracuse and William Tucker, the Mayor of the Village of Canisteo. Ron also noted that recently appointed member Judith L. Kennedy, the mayor of Newburgh was in attendance and it was her first meeting. Mark Blanke took a roll call attendance and noted that a quorum was present.

Agenda Item 2 - Minutes of the February 13, 2013 Meeting

Motion by John Flanigan to approve the minutes of the December 5, 2012 meeting, seconded by John Torpey, approved unanimously with one abstention by Robert Hankin who was not at the meeting.

Agenda Item 3 – Public Comment Period

Mark Blanke noted that there were speakers in attendance to present public comments. The speakers addressed provisions of the: Fire Code of New York State regarding the removal of fire suppression systems on flammable fuel dispensing devices; Property Maintenance Code of New York State (PMCNYS) regarding wood fired boilers and the proposed More Restrictive Local Standards on the agenda.

Public speakers on the Fire Code included: Hal Austeim representing Fire Guard; James Russell representing Pem All Fire Extinguisher Corporation; Filippo Conte representing Elite Action Fire and Gas Suppression Group; Timothy Reilly representing Rem Fire Systems and James Carr representing Hinman Straus. All spoke about the proposal to eliminate requirements for fire suppression systems at gas stations.

Gary Mastroeni spoke about the requirements for wood fired boilers as partially addressed within section 302 of the PMCNYS and the proposed revisions to that section as well as other regulatory requirements in New York State, some of which are under the auspice of other entities. Gary indicated that there was inadequate clarity to address the detrimental effects of the products of combustion on adjacent properties.

Ronald Piester noted that the public speakers on the MRLS's would address the Code Council when those items were being considered later in the meeting.

Agenda Item 4 – More Restrictive Local Standards

•Town of Ulster – Local Law # 7 of 2012

Mark Blanke gave an overview of the proposed MRLS regarding fire detection and alarm provisions. Mark noted that town had previously submitted a petition at the June 2012 meeting which was denied since it had not establish sufficient special conditions, nor did it conform to accepted engineering and fire protection practices and that the current petition contained more details and information.

There was discussion about the special conditions provided (anticipated multifamily construction) being incomplete and similar to other areas of the state and about conformance with recognized NFPA (National Fire Protection Association) standards and the disconnection of systems. It was also noted that the Code Council should take action unless they wanted to allow the law to continue to be enforced as per the provisions of the Executive Law.

Robert Hankin made motion:

That the Code Council decline to approve the construction standards contained within Local Law No. 7 of 2012 as submitted. Based upon the facts and finding that the town has failed to demonstrate that there are special conditions that make it reasonably necessary for the construction standards contained within this local law to be adopted by the Code Council. The town has failed to establish and the Code Council finds that they have not established that these construction standards comply with nor conform to accepted engineering and fire prevention practices.

John Flanigan seconded the motion.

There was discussion on the motion including comments by Joseph Ball regarding provisions of the local law that were not construction standards and that those were not under the purview of the Codes Council to act upon. Paul Martin questioned how that would apply to the operation and maintenance components especially when in conflict with provisions of NFPA 72. Judy Kennedy noted that she felt that it should be the town's responsibility to go over the provisions point by point. Gary Higbee opined that more guidance should be provided to the town and in that manner action could more readily be taken by the Code Council on the appropriate more restrictive provisions.

The motion passed unanimously and the petition was denied.

Joseph Ball added that Department of State regulates alarm installers, and parts of this local law may touch on areas that are regulated under the General Business Law. Joe suggested and encouraged that if a local law touches on licensing or qualifications that the local government contact Whitney Clark at Whitney.Clark@dos.ny.gov or call her at 518-474-6740 to discuss provisions.

•Town of New Windsor – Local Law #6 of 2012

Mark Blanke gave an overview of the proposed MRLS regarding the Town's fire prevention code that was previously approved by the Code Council in 1992. This petition modifies and enhances that code. They are adding a requirement that existing range hoods of commercial kitchens be equipped with a fire extinguishing system on all buildings that have commercial kitchens. Mark noted that there were also signage requirements for commercial and industrial buildings that utilize truss-type construction. This is similar to provisions that are in place for new construction, but it would be required for existing buildings as well. The current fire code provisions regarding fire sprinkler systems in multiple dwellings is being deleted presumably because it is in the Uniform Code and it was not back then. Mark noted their current fire prevention code has provisions that require all commercial occupancies over 5,000 square feet in area to have a fire sprinkler system. They are proposing raising that threshold from 5,000 square feet to 9,000 square feet. Mark continued and noted that the submission does not meet the 30-day requirement. Mark also noted that the town indicated that they would not be addressing the Code Council today. There was discussion about the petition. John Lee questioned whether the petition warranted discussion since they had missed the deadline and therefore this was something that could automatically be handled by staff.

At the request of Ron Piester, Joe Ball provided clarification regarding the submission requirements. Joe noted that the statute requires a local government to notify the Code Council within 30 days after they've adopted the local law. Joe noted that there was a small amount of case law that dealt with the technical requirements of submissions and cited one case. Joe noted that the municipality might wish to readopt the local law and submit it on a timelier basis, on the theory that even if the Code Council were to approve their local law in the long run it might be struck down. Joe further noted that he could not predict what a court would do. Ron Piester added that based upon Joe Ball's information that it would be within the authority of the Council to deny this petition based upon the fact that it did not meet the statutory submission requirements. Robert Hankin added that historically that had been the Council's approach.

Paul Martin noted concerns about portions of the petition that could be less restrictive.

Joseph Sauerwein indicated that there were too many inappropriate or improperly worded sections and that some rationale would have been appropriate. He noted that with respect to markings that there was great intent but there were better ways to address. Joe also noted that it was improper to allow the use of a building without the appropriate protection which could occur as currently proposed after the discharge of an automatic extinguishing system.

Robert Hankin made a motion that the council reject the application based upon the fact that it was received more than 30 days after passage as required by law. Judith Kennedy seconded the motion.

There was discussion on the motion, including comments by Gary Higbee and others regarding special conditions. Based upon that discussion Gary Higbee made a motion to amend the main motion to include a finding that the petition was denied based upon the procedural issue of timeliness and the technical aspects. Paul Martin seconded the motion to amend. There was discussion on the motion to amend including Gary's rationale for making the motion, which was to assist the community and to expedite the

process. Robert Hankin also inquired as to whether the community received a copy of the presented staff memo and if not the reasons why. Joseph Ball noted that while it was a part of the record, it was also an internal communication of opinion. So whether or not it could be “FOIled” (the request for documents under the Freedom of Information Law) was questionable. Robert Hankin noted that in all probability as part of the public record a stenographic copy could be obtained and further that the meetings are recorded and available for review in real time as well as archived material and that therefore he was against the amendment. Gary Higbee then withdrew his amendment and the original motion was passed unanimously and the petition was denied.

•Village of Mastic Beach – Local Laws #3, #4, and #5 of 2013

Mark Blanke gave an overview of the proposed MRLS regarding the Village’s petition that dealt with fire prevention, property maintenance and housing standards. Mark noted that this proposal had been denied by the Council at their September 12, 2012 meeting when the Council determined that the local law was not submitted within the 30-day time requirement. The current petition was received in a timely manner.

The highlights of this local law included: provisions requires automatic fire sprinkler systems in all new buildings over 10,000 square feet in area and in existing buildings over 10,000 square feet in area where more than 50 percent of the building is modified and/or existing buildings over 10,000 square feet in area to which there has been an addition. Provisions require every commercial building to have either a fire sprinkler system or a fire alarm system. Provisions require hazardous chemicals and liquefied petroleum gas required to comply with appropriate NFPA standards and the rules and regulations of the chief fire marshal, but the specific standards or the editions are not cited. Provisions require a minimum ceiling height of habitable space to be 7 feet and specifically delete an exception in the Property Maintenance Code that allows a lower ceiling height for preexisting conditions; provisions modify the Property Maintenance Code requirement for the height of grass from 10 inches, and it lower it to 8 inches.

Two people from the Village of Mastic Beach were present: Carlo Grover, Chief Fire Marshal and Timothy Brojer, Village Administrator. They elected not to speak unless they were questioned by the Code Council.

Mark said that the village had provided information about special conditions that they believe apply including a statement that says almost all the commercial buildings are on small lots in close proximity to each other, that nearly 65 percent of the commercial buildings are vacant and a statement about absentee landlords that fail to maintain their properties.

Maura Spery, a director with the Mastic Beach Property Owners Association (MBPOA) a not-for-profit organization spoke against the proposed MRLS. She noted that the MBPOA owned 6.5 miles of the waterfront, two marinas and a clubhouse that they had been taking care of for over 85 years.

Michael Vatter questioned the threshold standard for a special condition. Ron Piester noted that the litmus test for special conditions is that conditions within that particular community warrant the council's approving a standard that is more restrictive than the standard that is applied across the state. Joe Ball elaborated that the Uniform Code is intended to be uniform across the state, and the statute recognizes that within a local jurisdiction special conditions may warrant higher standard than applies across the state.

Gary Higbee asked whether there was a departure from the previously approved Town of Brookhaven MRLS, and if by denying this petition would the Council also be denying an earlier approved petition by the Town of Brookhaven. Michael Auerbach responded that there are provisions that are the same but some

that are different – the 8-inch-tall weeds, grass, et cetera. Michael felt that the representatives from the town might be better able to identify those that are different beyond that one. Ron asked the representatives from the Village of Mastic Beach to address this.

Tim Brojer responded that Brookhaven did have more restrictive codes that were incorporated into the proposed codes. Gary Higbee asked for specific details where they were different from the Town of Brookhaven. Carlo Grover responded that he had taken over for Andrew Brofman who had started this petition and that Mastic Beach does have a lot of wood-frame structures, that are all close and on small lots.

Joseph Ball questioned whether it would be possible to have a comparison of the local laws that are being presented to this Council to compare them to the existing and approved more restrictive local standards that were approved on behalf of the town by the Code Council in the past, so that we can see, in effect, what are you asking the Code Council to change. Carlo felt that these were listed already and that he could get something such as this.

Robert Hankin pointed out that the Village could enforce these provisions at this time and that therefore he was prepared to make a decision unless the Village would commit to not enforcing and returning to a subsequent Council meeting with responses and answers. Tim Brojer indicated that the Village would not and has not been enforcing these local laws.

Robert Hankin made a motion to postpone this item to the next Council meeting and that in the interim, the village had, committed to get the Council additional information. There was also the hope that Counsel would be able to get some additional clarification. Gary Higbee seconded the motion.

Joe Ball, with Judith Kennedy, suggested that the village work with the Code Division staff to have a list comparing the approved more restrictive local standards in the town, and compare them to the more restrictive local standards that the village is presenting with provisions lined up side by side. Paul Martin questioned the applicability of more restrictive local standards based on previous editions of the codes, as certain previously approved standards are no longer needed and may conflict with code. John Flanigan and Judith Kennedy objected to provisions that say at the discretion of the fire marshal rather than what the code says.

The motion to postpone passed unanimously.

Joseph Sauerwein asked that the next submission include reasons for changes between what Brookhaven had and what Mastic Beach was proposing.

Agenda Item 5. Next Uniform Code and Energy Code Adoption Update

Ronald Piester provided a brief update on the status of the ongoing updates to the Uniform Code and the Energy Code. Ron indicated rulemaking documents have been developed to update the commercial provisions of the Energy Code based upon the 2010 edition of ASHRAE 90.1. Those documents are essentially ready to go to the Governor's office for prepublication review. Staff are waiting for a report from the Pacific Northwest National Laboratory (PNNL) that is essential to the documents and will provide justification for this particular update to the Energy Code. Once that report is received, the rulemaking

documents will be forwarded to the Governor's office for review. Hopefully there will be further information for the Council at the September meeting, maybe even some action for the Council to take at that time.

With regard to the Uniform Code update, Ron indicated that staff was continuing to review some of the information that has come in on a couple of key issues that have been discussed by the Council before. Ron noted that it was understood that the Council was still waiting for the report of the Residential Code Technical Subcommittee which is planned for the September meeting. Ron noted that there was a lot of information that had been received and that it is continuously being reviewed, including information on gas station fire suppression systems presented in the testimony today.

John Lee questioned if the Council was going to be able to see the PNNL report and whether there was any potential that the finding would disrupt the process or nullify what has been proposed. Ron responded that it would essentially become part of the rulemaking documents and therefore would certainly be shared with the Code Council and that we would not know the findings until the report was received but that staff was hopeful that whatever is included would not disrupt the process.

Judith Kennedy had an additional question regarding the elimination of fueling fire suppression systems and whether testimony had been provided that would support their removal so that New York might have less mandates and less business restrictions? Ron Piester provided additional information about the history and process with regard to referenced standards, updates based upon the 2012 International Code Council documents and the technical subcommittees appointed by the Council. Ron noted that the technical subcommittee that reviewed the 2012 International Fire Code had recommended the elimination based upon the fact that this provision had not existed in the international codes. Ron noted that there was discussion at many levels including this Council about the topic and that this could be provided to any Council member that requested same.

Agenda Item 6 –Future meetings

Mark Blanke noted that he had included a new notice of the 2013 meetings of the Code Council in the distributed materials. He noted the next meeting scheduled for September 11, 2013 and the last scheduled meeting would be on December 11, 2013.

Agenda Item 7 – Other Business

Robert Hankin mentioned that he believed one of the concerns should be considered as mentioned was being business friendly and that the cost of housing should be considered therein. He noted that in the context of licensing and observed requirements of the Division of Licensing with regard to fire alarm and burglar alarm installers. Robert had concerns about those requirements, appropriateness and fees. There was additional discussion regarding these requirements by other Code Council members. Ron Piester acknowledged the concern and indicated it would be discussed further and reported on at the September meeting.

Ron Piester noted that he had neglected to mention at the beginning of the meeting that Mark Blanke was the successor to Ray Andrews who had retired and welcomed him to the table.

John Flanigan made motion to adjourn and John Torpey seconded. It was approved unanimously and the meeting concluded at 12:10 p.m.