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STATE OF NEW YORK - DEPARTMENT OF STATE

DIVISION OF BUILDING STANDARDS AND CODES

DRAFT MINUTES - STATE FIRE PREVENTION AND BUILDING CODE COUNCIL

Minutes of the Wednesday, December 11, 2013 meeting of the New York State Fire Prevention and Building Code Council via videoconferencing 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 10:10 a.m. The following Council members, designees and staff were in attendance:

COUNCIL MEMBERS PRESENT:

Ronald Piester, Presiding
Nicholas Altieri
Michael Cambridge
John Flanigan
Maria Guizzotti
Gary Higbee
John Lee
Willie J. Lightfoot
Paul Martin
John Torpey
William K. Tucker
Michael Vatter

ALSO PRESENT:

Michael G. Auerbach
Joseph Ball, Esquire
Mark Blanke
Miriam McGiver

Agenda Item 1 Welcome

Ronald Piester called the meeting to order at 10:10 a.m. welcomed everyone and explained the delay. Mark Blanke took a roll call attendance and noted that a quorum was present. Ron took note of returning Council member Nicholas Altieri Designee for Helen Hudson from the City of Syracuse and introduced Anthony Giardina, Executive Deputy Secretary of State.

Tony Giardina on behalf of Secretary of State Cesar A. Perales and Governor Cuomo welcomed those attending and thanked them for their participation, leadership and expertise in working to make sure that the health and safety of the public was protected.

Mark Blanke as per Ron Piester's request provided an overview of the proceedings as per the agenda. Mark also noted that there had been some inquiries regarding today's meeting, that appear to reflect an assumption that today's agenda includes a discussion by the Code Council on provisions relating to automatic sprinkler systems or fire suppression systems as part of the next update for the Uniform Code. Mark emphasized that there was no such discussion on today's agenda and that before any such discussion would take place, the report of the Residential Code Subcommittee must be presented to the Code Council. That report would be presented to the Code Council at a future meeting.

Agenda Item 2 Minutes of the October 8, 2013, Meeting

Motion by John Torpey to approve the minutes of the October 8, 2013, meeting seconded by John Flanigan seeing no comments the motion was approved unanimously with one abstention by Michael Cambridge.

Agenda Item 3 Public Comment Period

Mark Blanke noted that there were four (4) speakers in attendance to present public comments. The speakers addressed provisions of codes as noted herein and other agenda items concerning more restrictive local standards (MRLS) when those items occurred during the meeting.

The first speaker was John McBride representing the International Association of Electrical Inspectors. He spoke about the requirements for updating the edition of referenced standard, the National Electrical Code (NEC), National Fire Protection Association (NFPA) 70 Code. He noted that he had written letters to Secretary Perales regarding this topic and had received a positive response from Ronald Piester indicating the status of the proposed rulemaking and that it was anticipated that the Reference Standard as per standard practice would be updated to the most recent edition during a code revision cycle.

The next speaker was Dominick Kasmauskas representing the National Fire Sprinkler Association. He spoke about residential fire suppression sprinkler systems. He wanted to clarify some of the aspects regarding fire characteristics and smoke detection that were recently presented by the broadcast media following a demonstration in Latham, New York.

The next speaker was Larry Levine, representing the Natural Resources Defense Council, speaking about the Plumbing Code specifically with regard to high efficiency toilets and advocating for the inclusion of an updated standard for water conservation purposes.

The next speaker was Ed Helderman, representing Superior Walls of America, speaking about the Residential Code specifically about foundations and advocating for specific aspects which he indicated had been consented to by the Technical Subcommittee for those issues.

The last speaker was Sal Ferrara, representing the electrical industry and who is a member of the International Association of Electrical Inspectors (IAEI). Sal noted that there were new technologies such as electrical vehicles, solar photovoltaic, wind turbines, etc. that are not presently addressed appropriately within the codes and that they should be to protect the public.

Ron Piester thanked the speaker and noted that if they had written information that supported the comments, that they should be sent to the Codes Division for distribution to the Code Council.

Agenda Item 4 Petroleum Bulk Storage Regulations (6 NYCRR Parts 613) - Draft Revisions

As per Ron Piester's request Mark Blanke provided some history about these New York Department of Environmental Conservation (DEC) regulations and gave an overview. Mark noted that the draft proposed regulatory changes were prepared by DEC and addressed petroleum bulk storage facilities. He indicated that the Environmental Conservation Law requires DEC, when revising their petroleum bulk storage regulations, to consult with the Code Council to ensure that such rules and regulations are consistent with the Uniform Fire Prevention and Building Code. DEC requested this review which would also serve to identify inconsistencies with the Uniform Code. These draft DEC regulations have been reviewed by staff and there were a couple of comments found, that in our opinion could pose a potential inconsistency with the Fire Code of New York State.

The first was with regard to the design and construction of petroleum storage tanks. The draft DEC regulations provided a list of standards that any one of which would satisfy their requirements, where tanks would have to meet those requirements. These reference standards are not the same as those that are referenced in the Fire Code. The Fire Code makes reference to the National Fire Protection Association's standard, NFPA 30 and within NFPA 30 there is a requirement that the design and construction of such tanks shall be in accordance with recognized engineering standards. It then lists standards that it finds acceptable and deemed to meet recognized engineering criteria. But the listed standards are different than what is in the draft DEC regulations. Mark indicated that this raises the potential of an inconsistency, the possibility of the authority having jurisdiction not accepting the DEC standards and only going by what is in NFPA 30. Mark continued that this situation similarly occurs with piping standards for petroleum products. The standards in the draft DEC regulations are not the same as those prescribed by the Fire Code. Another issue is the transfer procedures. In the draft DEC regulations NFPA 385 is referenced as well as the American Petroleum Institute Standard 1007. Neither of those standards are listed in the Fire Code. The Fire Code specifies its own transfer procedures. The Fire Code does not reference another reference standard for that procedure.

Further underground tank repair standards are not the same. DEC lists eight standards by which you can repair underground storage tanks, and the Fire Code only references one standard, NFPA 30. Further, the last potential inconsistency is for out-of-service underground storage tanks. The draft DEC regulations provide a mechanism for out-of-service storage tanks that have been out of service for more than 12 months to be able to remain open. Whereas the Fire Code of New York State specifically says that if they're out of service for more than 12 months, they have to be abandoned in place or removed entirely from the ground.

There was discussion about potential actions and status based upon staff's analysis by John Lee, Mark Blanke, John Torpey, Nick Alteri, John Flanigan and Joseph Ball. Ron Piester noted that staff's comments were shared with DEC and that DEC was aware that these are 'draft' comments subject to endorsement from the Council.

John Lee made a motion that the Codes Council request additional time from DEC for staff to do a comprehensive review of the changes before recommending to DEC whether or not to proceed with this, seconded by Michael Vatter. The motion passed unanimously.

Agenda Item No. 5 More Restrictive Local Standards (MRLS)
Village of Hastings-on-Hudson– Local Law #6 of 2013

As per Ron Piester's request Mark Blanke introduced the item and provided some background about these proposed green building code provisions. Mark noted that it was the village's intent, as described within the law, "...to minimize negative impact on the environment, reduce greenhouse gas emissions, and require the use of renewable energy sources and sustainable building products." Mark indicated that the law contains many features that are known to be green code features such as stormwater control, irrigation, bicycle racks, recycled materials, limitations on volatile organic compounds (VOCs), content of construction materials, etc. Mark continued it is staff's opinion that these typical green code provisions are not aspects that are really construction standards. They are not in conflict with the Uniform Code or the Energy Code. However, the local

law does contain features that are directly related to Energy Code requirements that are also addressed in the State Energy Code, such as provision for lighting controls, high-efficiency heating and cooling equipment, Energy Star compliance for fixtures and appliances. Mark noted that any municipality is allowed to adopt an energy code provided that they file a copy of the local law with the Code Council. The Code Council can decide that the regulations or the standards are more stringent than the State Energy Code, in which case the municipality is permitted to continue to enforce those provisions. If the Code Council determines that they are less stringent than the State Energy Code, then the municipality would not be able to continue to enforce those provisions. It is staff's opinion that the Energy Code provisions in the Village of Hastings-on-Hudson's local law are at least as stringent as the State Energy Code. Mark added that there was one aspect, that appears in two sections in the local law, that are believed to be construction standards, because they interact with what we already have in the Plumbing Code. So it's not an Energy Code issue, but it does potentially conflict with the Plumbing Code. And that is the provision that deals with maximum flow rates of plumbing fixtures. In most cases the flow rates are prescribed are more restrictive than the Plumbing Code, but there is one instance, specifically for urinals, where staff believe it is less restrictive than the Plumbing Code. With regard to the flow of the plumbing fixtures staff was unable to find anything in the petition that would identify what the special local conditions were that would justify having this provision. Mark noted that Deven Sharma a representative from the Village was at the meeting to respond to concerns.

After a short recess Ron Piester introduced Deven Sharma, the code enforcement official for the Village of Hastings-on-Hudson.

Deven Sharma a registered architect and the Building Code Official, representing the Village made a brief presentation about the proposed Local Law and provided some history. He noted that the impetus started over two years ago and that it was in part based upon the International Code Councils (ICC), International Green Construction Code which was being considered. Deven noted that the people of the Village of Hastings-on-Hudson felt the need and that the time was right to consider for small municipalities like Hastings. The process engaged over 20 people from the community with wide interests and from all walks of life. A smaller technical committee made up essentially of architects was also established. The result of their work was this proposed local law.

There was a question by Gary Higbee regarding the concern of how this code dovetails with the Construction Code and whether the requirements pertain to issues covered in the Building Code or the Residential Code. There were questions regarding certified wood the various types of certification and the reuse of materials. Mark Blanke responded that it was his opinion that the municipality would have to comply with all certification requirements whether they were reused or not. Deven Sharma added that the law included mandatory requirements and optional choices based upon a ‘point’ system.

John Lee questioned an aspect of the completeness of the submitted petition and Michael Auerbach responded in his opinion that as submitted the application did not contain the standard forms nor materials.

Ron Piester noted that when reviewing a petition for a more restrictive local standard that includes energy provisions and provisions related to the Uniform Code, that you are looking at two different processes, as Mark Blanke mentioned. One is the process under Article 11 of the Energy Law for reviewing a local energy code, the Code Council needs to determine if the local code is more restrictive, at least as restrictive as or more restrictive than the State Energy Code. If it finds that the provisions are more restrictive, then the Code Council shall adopt those. The Code Council has an obligation to adopt a more restrictive Energy Code. With respect to provisions related to the Uniform Code, the Code Council has to look at, first of all, are the provisions more restrictive than provisions of the Uniform Code. If so, then do the provisions meet accepted engineering standards and has the community identified special conditions that warrant the adoption of the more restrictive local standard. Ron continued that you have to look, in this particular case, since it appears that there are Energy Code provisions and provisions that relate to the Uniform Code, you have to look at those separately.

John Lee confirmed that there were no special condition provisions required when a local law addressed provisions of Article 11 regarding the Energy Code. He further questioned whether the existence of an Energy Code would create a special condition. Ron Piester asked Joseph Ball for his perspective and to respond.

Joe Ball noted that this was a difficult hypothetical to respond to. He noted that the proposed green code was a hybrid that has both some energy-related provisions as well as a few construction related provisions in it, and it has quite a few provisions that are neither energy related nor construction related. Joe also added a slight modification of what Ron said regarding Article 11. Joe noted that Article 11 authorizes a local government to adopt a local energy conservation construction code, those provision should be distinguished from Article 18 of the Executive Law that authorizes local governments to adopt individual construction standards. Article 11 of the Energy Law, contemplates that local governments be permitted to adopt a complete energy construction code, almost to replace the State Energy Code within the local government. Hastings proposed code in Joe Ball's opinion did not purport to be a complete energy code.

Gary Higbee had questions about potential inconsistencies in the law, especially with regard to definitions, efficient framing requirements and enforcement concerns. Mark Blanke responded that it was his opinion that the definitions were specific to the local law and would not be used as definitions to replace those in the Uniform Code or the Energy Code and therefore there was not a conflict. He also indicated that the Uniform Code does not contain efficient framing requirements and that this would also not be a conflict.

Additional procedural questions were raised by John Lee and Joe Ball responded to them.

There was discussion on the motion by Michael Vatter regarding the wording and the details of enforcement. Joe Ball suggested that the details would have to be worked out on a case-by-case as applications would be submitted to the village.

Ron Piester noted that the comments and concerns were valid and that these were issues that the Council would have to continue to address as communities adopt and present, for lack of a better term, "green codes" to the Council and that it was a complex issue.

Gary Higbee commended the village for enacting the law and that it was a worthy goal. Yet he was concerned about the Council's actions since the adoption of a "Green Code" was very likely to be a worthy goal and approach that would be presented going forward and that he was concerned about the precedent it would set. He felt it was incumbent upon the Codes Council to send it back to the village with the request to have them separate out the components that are not part of an Energy Code, are not as restrictive as the Construction Code, and resubmit.

John Flanigan commented that he read through the proposed law quite extensively and that he felt that the village would have some difficulty with enforcement since as proposed everything goes to the building inspector for approval.

John Lee utilizing language suggested in conjunction with Joe Ball and Ron Piester made motion:

> That the Council would allow the Village of Hastings-on-Hudson to continue to enforce the provisions of its energy code that are contained in the local law as a supplement to the State Energy Conservation Construction Code, which also applies. And that the Code Council would disapprove the provisions that relate to the Uniform Code because special conditions have not been established.

Seconded by John Torpey.

Gary Higbee raised concerns about the proposal and enforcement by the village if adopted. Ron Piester noted that if the Council adopts this motion, code development staff, with the assistance of our counsel, would communicate with the Village of Hastings-on-Hudson to identify exactly how that action applies with respect to the local law and provide essentially commentary that will hopefully allow the community to understand the extent to which the Council has endorsed the provisions of the local law, specifically those that are related to energy.

John Lee noted that as the maker of the motion he completely agreed with Gary Higbee's concerns and that while he believed that from a technical legal perspective that we are doing probably the best we can with this motion, at the end of the day the on-the-ground situation for Hastings-on-Hudson is going to be an administrative nightmare. He therefore wanted some assurance of a mechanism in place to communicate with Hastings-on-Hudson and to help them parse out the Energy Code provisions from the other provisions that affect the Uniform Code, so that at least from a code administrative perspective it makes it easier for the town as well as the practitioners in the municipality.

Ron Piester responded that as previously said in response to previous comments that was the intent. The motion passed unanimously.

Agenda Item 6 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 noted that as Mark had mentioned staff was continuing to review and work on the final Residential Code Technical Subcommittee report and that report would be presented as soon as completed.

Mark Blanke, as per Ron Piester's request provided information on developments to date. He noted that some code change proposals on sustainability of buildings to help withstand damage and recovery after an event similar to Hurricane Sandy had been received. They included: provisions that would increase the lowest-floor elevation of buildings within flood hazard areas to at least the base flood elevation plus 2 feet which is what is already in the Residential Code; the relocation of mechanical and electrical systems in flood hazard areas; to enhance emergency generator requirements for hospitals, senior centers, firehouses and police stations; and updating the reference standard for flood-resistant design construction, American Society of Civil Engineers (ASCE) 24 to the 2013 edition.

Ron Piester noted that one of the benefits of taking more time to update the code is the ability to move to the latest edition of the National Electrical Code, which is something that staff hears from industry on an almost constant basis. Ron continued that with respect to the Energy Code staff developed essentially rulemaking documents to update the commercial provisions of the Energy Code reflecting the adoption of the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) 90.1 2010 as a commercial Energy Code, and to establish consistent provisions for commercial energy through the 2012 International Energy Conservation Code (IECC). Ron noted that staff was still waiting for a report from the Pacific Northwest Laboratory, which is essentially a branch of the Department of Energy. That report should establish parity between the 2012 IECC and the 2010 edition of ASHRAE which was necessary as part of our justification to present rulemaking documents under the State Administrative Procedure Act. The preliminary report has been received and an analysis is being developed. Simultaneously through communications with DOE and PNNL it has been disclosed that they are refining that report and staff expects to receive the revised report shortly. After the report is received it will give staff the ability to move forward with the commercial Energy Code rulemaking.

The goal at this time is to be able to update the Uniform Code and the Energy Code in 2014. Ron noted that a lot of things have to happen between now and then and that staff appreciates your patience as we work through some of these challenging issues.

John Lee questioned whether the residential sections of the Energy Code need to have the same type of comparison as the commercial portion, if there was a comparison required? Joe Ball noted that the Department of Energy (DOE) has already determined that the residential provisions of the 2012 IECC are more energy-efficient than the 2009 edition of the IECC and that another comparison report was not necessary.

Agenda Item 7 Future Meetings

Mark Blanke provided information about scheduled future meeting during 2014. He noted that tentative dates were February 19th, May 7th, August 20th and November 18th. John Flanigan questioned the February date since that week is also the Association of Towns conference and it is a vacation week for most of the school districts. Ron Piester acknowledged those facts and noted that it would be reviewed.

Gary Higbee commented that there were some very complicated issues addressed today and that he thought staff, despite being short of manpower, did an outstanding job in laying out the issues and articulating the matters.

Ron Piester thanked Gary for the comments and noted that one of the things that will help tremendously was the ability to hire some new staff and to allow some staff changes. Ron specifically welcomed back Miriam McGiver to Code Development Unit.

Agenda Item 8 Other Business

Ron Piester recognized the validity of the concerns and comments made by Gary Higbee and John Lee about the Hastings on Hudson agenda item. Ron noted that there were complicated situations and that it may not be readily apparent to all, even to those attending the meeting what actions were taken. Ron noted it would be the job of our code development staff to make sure that the community understands fully and clearly what action the Code Council has taken and to provide the assistance necessary so that the community can enforce the provisions that the Code Council has endorsed and also provide instruction to the community on those provisions that the Code Council has not endorsed. Ron noted that a follow up would be provided at the next Code Council meeting.

Gary Higbee asked whether there had been any other requests or feelers from other communities also interested in enacting a green building code and approximately how many?

Ron Piester noted that Tarrytown had submitted a request and that there had been some communications with others in Westchester as well as a consortium of municipalities in Westchester County that are discussing issues of green construction and sustainability. Ron also noted that there were communities on Long Island that are having similar discussions.

Mark Blanke reminded participants about Continuing Education Units (CEUs).

Ron Piester thanked everyone for their commitment and dedication. Ron noted that the work does get very complicated, that it requires a lot of homework and preparation and that it was a large commitment of time. Ron emphasized that it was appreciated and that it does create a safer, more efficient and more sustainable building stock for the State of New York. Ron wished everyone and their families a very happy, safe and healthy holiday this year. Ron inquired whether there was any other business that the Council would like to bring forward today. Seeing none he entertained a motion to adjourn.

John Torpey made motion to adjourn and John Flanigan seconded. It was approved unanimously and the meeting concluded at 12:05 p.m.

Record of the meeting prepared by: Michael G. Auerbach, R.A., Senior Building Construction Engineer, Division of Code Enforcement and Administration, Code Development Unit