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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 Thursday, February 27, 2014 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 and 1135; 123 Williams Street, New York City, New York, Conference Room 231 and 65 Court Street, Buffalo New York, Conference Room 208 commencing at 10:20 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
Judith L. Kennedy
Willie J. Lightfoot
Paul Martin
Joseph Sauerwein
William Tucker

ALSO PRESENT:

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

Agenda Item 1 – Welcome

Ronald Piester called the meeting to order and welcomed everyone. Mark Blanke took a roll call attendance and it was noted that a quorum was present. Ron noted that John Lee R.A. the designee for New York City Mayor Michael Bloomberg was no longer on the Council since there was a newly elected official. Ron noted that it was hoped that this vacancy would be filled at some point in the near future.

At Ron's request Mark Blanke provided information to the Council about this meeting. Mark noted that since the end of last week hundreds of electronic messages from various sources had been received and most of which had been forwarded to the members of the Code Council but that there were nearly a hundred more that the Code Council had not had the opportunity to see. Mark noted in response to a question from Judith Kennedy that they were mostly form letters.

Ron Piester noted that while most were similar that there were also some substantive documents attached to some of those e-mails, and that staff did not have the time to organize, review, analyze or present that information to the Code Council yet.

Agenda Item 2 - Minutes of the December 11, 2013 Meeting

Motion by John Flanigan to approve the minutes of the December 11, 2013 meeting, seconded by Judith Kennedy, approved unanimously.

Agenda Item 3 – Public Comment Period

Mark Blanke noted that there were 14 speakers registered to address the Council. In response to a question from Judith Kennedy, Ron Piester noted that there would not be a time limit for speakers. The sixth speaker was Lewis Dubuque, Executive Vice President of the New York State Builders Association. Lewis spoke in opposition to the provisions regarding fire protection sprinklers in residential occupancies.

Jennifer Monthie, Director of Protection and Advocacy for Individuals with Disability Rights New York was the first speaker. Jennifer spoke in favor of the public code change proposal to the New York State Fire Code requiring electronic monitoring of portable fire extinguishers.

The second speaker was Frank McGarry, former New York State Fire Administrator who spoke in favor of the public code change proposal to the New York State Fire Code requiring electronic monitoring of portable fire extinguishers that he submitted with Jim Burns.

Ron Piester thanked the speakers and noted that later during agenda item 10, Other Business, he anticipated and that he would ask the Council for some discussion and direction on this particular issue.

The third speaker was Larry Levine, Senior Attorney with Natural Resources Defense Council. Larry addressed issues of water saving provisions of the codes.

The fourth speaker was Dominick Kasmauskas, representing the National Fire Sprinkler Association regarding residential fire sprinklers. Dominick spoke in support of the provisions regarding fire protection sprinklers.

The fifth speaker was John Caufield, the Mid-Atlantic Director for the National Fire Protection Association (NFPA) and retired fire chief from the Rochester, New York, fire department. John spoke in support of the provisions regarding fire protection sprinklers.

Mark Blanke noted that Willie Lightfoot was now present in Buffalo.

The seventh speaker was Don Corkery, Acting president of the State Association of Fire Chiefs. Don spoke in support of the provisions regarding fire protection sprinklers.

The eighth speaker was James Morganson, representing the New York State Building Officials Conference. Jim spoke in support of the provisions regarding fire protection sprinklers and to endorse the process of keeping codes up to date and within the cycle of others.

The ninth speaker was Robert Bulman from Park Strategies. Robert spoke in support of the continuation of fire suppression systems at gas stations.

The tenth speaker was Julius Ballanco, representing IRC Fire Sprinkler Coalition. Julius spoke in support of the provisions regarding fire protection sprinklers.

The eleventh speaker was Jeff Wilkinson, President of the New York State Fire Marshals and Inspectors Association on behalf of the members of the New York State Code Coalition to Protect and Preserve Our Communities. Jeff spoke in support of the provisions regarding fire protection sprinklers.

The twelfth speaker was Mark Barbato, New York State Builders Association. Mark spoke in opposition to the provisions regarding fire protection sprinklers in residential occupancies.

The thirteenth speaker was Todd Vaarwerk, Director of Advocacy and Public Policy for Western New York Independent Living. Todd spoke in favor of the proposed amendment to the New York State Fire Code requiring electronic monitoring of portable fire extinguishers.

Mark Blanke noted that that concluded the list of speakers. Mark noted that some did not show up and asked if there was anybody else that was not on the list that would like to speak? The fourteenth speaker was Carl Hasselback a petroleum wholesaler. Carl spoke in opposition to the continuation of fire suppression systems at gas stations.

The fifteenth speaker was Brad Williams, Executive Director of the New York State Independent Living Council. Brad spoke in favor of the proposed amendment to the New York State Fire Code requiring electronic monitoring of portable fire extinguishers.

Mark Blanke noted that there were additional public speakers from the Village of Freeport which was agenda item eight and that they would speak when that agenda item is reached.

The sixteenth speaker was AnneMarie Mitchell a builder in upstate New York. AnneMarie spoke in opposition to the provisions regarding fire protection sprinklers in residential occupancies.

Agenda Item 4 – Report of the Residential Code Technical Subcommittee.

Miriam McGiver presented the report to the Council. Miriam went over the material that had been provided to the Council and the history of the Technical Sub-Committee. She noted that the members had been asked to bring up any issues of specific concern. There were also recommendations made by members regarding specific items. All of these were available for review on the Department of State Internet site via the chart. The items included: the definition of live/work units and the impact on other code provisions; whole-house ventilation; wind design speed; windborne debris reading; fire suppression

sprinkler provisions in lieu of other provisions; braced walls sections; National Electric Code (most recent version); revisions to Appendix D; concrete reinforcement; habitable attics and requirements for sheathing at basement ceilings.

Ron Piester noted that the Council was not going to be taking action on this report at this time. That it would become part of the general update for the code in its entirety.

There was a recess and the meeting resumed at 12:20 p.m.

Agenda Item 5 – Uniform Code Building Resilience Initiatives

Ron Piester noted that New York State had been afflicted by some extreme weather events that have really changed not only the face of New York but the thinking of people in Albany and around the state about just how these events have impacted us, how future events could impact us, and what we need to do as a state to be better prepared for the next event which was inevitable. Ron noted that information had been received from the Federal Emergency Management Agency (FEMA) at the national level and that there was also colleagues in the City of New York addressing building resilience and changes that they have proposed to the New York City Building Code. Further Governor Andrew Cuomo established three commissions following Hurricane Sandy to study the impact of that event on our state and to help us to understand better how we might be able to prepare. And so from those three bodies of information we have developed some potential recommendations for the Council to consider at some point regarding how our state code could be amended or improved to address building resilience in a more comprehensive way.

Mark Blanke introduced Miriam McGiver to expand on some of the building resilience initiatives that had been investigated. Miriam spoke about the relatively recent extreme weather events and how these resulted in different entities making proposals on how to change the building codes to improve the resiliency of both the built environment and the communities that are using the buildings. She noted that proposals and actions from the Federal Emergency Management Agency (FEMA), New York City and other units within the Department of State had been reviewed to respond to the emergencies and to enhance resiliency. From that information seven changes were being considered. Those included issues:

1. Coastal high-hazard areas, which are the V zones as per the National Flood Insurance Map descriptions. FEMA proposed to revise language and add a reference standard for flood-resistant design and construction as a design option, to the Residential Code. That standard is American Society for Civil Engineers ASCE - 24 and to maintain the current prescriptive language in the Residential Code.
2. FEMA proposed amending reference from ASCE - 24 from the 2005 edition to the 2013 edition. (It was noted that the 2013 edition was not available at the point it was being reviewed)
3. Amend the structural provision of the Building Code, Chapter 16 regarding flood construction and flood areas by requiring that the elevation requirements will be two feet above the one hundred-year flood elevation.
4. Require that in a flood-prone areas that health care facilities take to actions to ensure that they can continue to provide essential services.

5. Require certain residential buildings to provide potable water in a common area in the event that a critical water pump went out of service.
6. Require flood-resistant materials in buildings below the design flood elevation, plus that two-foot freeboard that was part of the first recommendation. This would be accomplished by adding reference to FEMA documents which describe the requirements for flood-resistant materials and where to use them.
7. Require some restrictions for construction of hazardous (H) occupancies in flood-prone area.

Miriam noted that there were other proposals from FEMA that were not recommended, because the belief was that the existing language is more appropriate, enforceable and in keeping with what we do in New York State.

Ron Piester thanked Miriam and asked if there were any questions. Gary Higbee asked whether FEMA documents were developed under a consensus process and whether that presented a problem in referencing them.

Miriam McGiver noted many of the standards are developed through the consensus process as required by ANSI and that there are also references to federal documents which are not developed through a consensus process.

Judy Kennedy asked about retroactive requirements for example in hospitals. Ron Piester suggested that the provisions that the Code Council might consider implementing through the Uniform Code would be prospective. That they would apply to new construction or buildings that were substantially damaged and had to be improved as per certain requirements in the existing Building Code and they would not retroactively applying to existing facilities. Nicholas Altieri questioned some of the specifics and how they could be considered retroactive.

Joe Sauerwein made a suggestion about specific wording regarding which should be "fire protection systems" to cover some specific cases. Gary Higbee noted that for all of these requirements the trigger was the coastal floodplain, and he understood that the flood maps are still in a state of flux and whether there was any idea of when that would be finalized. Miriam McGiver replied that in response to the recent events that the maps were in a continual state of revision and that they weren't static. Gary Higbee asked whether the maps were more stringent based upon recent events. Miriam McGiver noted that in the communities that she was aware of, which were those impacted by Irene and Lee, the maps have been revised to show a larger floodplain.

Agenda Item 6 – Proposed Rule Makings:

- **Propose new text based upon ICC 2012 Codes for the Uniform Fire Prevention and Building Code and technical subcommittee recommendations**
- **Propose new text based upon ICC 2012 residential provisions for the State Energy Conservation Construction Code and technical subcommittee recommendations**

Ron Piester introduced and provided an overview of the proposed rule makings for the Uniform Code and the Energy Code. Ron noted that the body was faced with a dilemma, that there had been significant

number of e-mails and information related to two issues within the Uniform Code update. In hundreds of e-mails there were several significant documents providing data and new information that the Code Council was receiving for just the first time. Additionally the day before this meeting there were over a hundred other correspondences that had been received that were not distributed. Ron continued to explain that the Council could not have the benefit of what might be contained in those e-mails. Ron further noted that there was also additional information presented this morning during the public comment period and that those and all comments were appreciated. That those that came to the meetings and presented information were also appreciated. Ron noted that he had marked down a number of documents, including fire studies and reports that were referenced in some of the comments. There was a cost-estimating spreadsheet that was referenced in one of the comments. There were two documents that were handed out to the Council during the meeting that contained a number of statistics and data and another report regarding fire fatalities. Ron noted that all of these could not have adequately been reviewed or considered by either members or staff that is responsible for presenting to you a complete body of work so that the Council can make informed decisions.

Ron expressed that he felt that these factors all left a significant number of unanswered questions, and because of that, we are not prepared to present to you any recommendation regarding agenda item number six. There is not a complete body of work at this point, unfortunately. He indicated that staff was in a situation where they did not believe they could provide the Council with the additional information and tools needed to make the right decision at this point. Ron suggested that the Council might not be prepared to discuss and decide on this important issue without a complete body of information and recommended postponing discussion on the Uniform Code update until the newly received information could be presented in complete and coordinated fashion. Ron asked for a motion to postpone agenda item number six and any decisions that would be contained in it to a future meeting.

John Flanigan agreed that there was a lot of material that had to be reviewed simply based on the number of electronic messages and therefore made the motion to "Postpone action on agenda item 6 and any decisions to a future meeting." Nicholas Altieri seconded the motion.

Joseph Sauerwein supported the motion and noted that he believed the actual figures and facts needed to be presented in order to be able to make the best decision.

Judith Kennedy agreed and noted that she would like to have additional information to understand the number of houses that were effected. And how many of those were of older vintage, because a lot of our older houses caused a lot of the problems, versus new construction. Judy also commented about maintenance and to better understand what maintenance would be on a fire sprinkler system, since most homeowner have a hard time maintaining a smoke alarm with a battery in it. And further what impact these requirements would have on homes that are on pumps and wells, what kind of a solution would be there? She felt that more information about maintenance problems over time was appropriate.

Nicholas Altieri requested that the cost of a typical system including the cost for connections to the municipal water main to be provided. He noted that this needed to be included within cost estimates for providing fire protection sprinklers in houses. He wanted to see some average examples in the different types of municipalities.

Michael Vatter questioned that with respect to the recent predicament where over the space of five days there were a significant amount of material submitted and there was information buried in those submittals. He also suggested that there should be rules of operations under which no additional material would be accepted. Judy Kennedy noted that the amount of material submitted was overwhelming and ineffective.

Ron Piester responded that the issue would be studied and that within the context of the rules and the procedures we have to follow, we will address this situation so that when we get to the point of discussing this, everyone has a clean slate.

A voice vote on the motion was taken and it passed unanimously therefore agenda item number six was postponed to a future meeting.

Agenda Item 7 -- Next Commercial Energy Code Adoption Update

Ron Piester noted that this was a rule making that conceptual approval had already been approved and that the purpose of placing on agenda was to give an update on the progress of this particular rule making. Mark Blanke introduced Joseph Hill, Assistant Director for the Energy Unit to provide a report. Joe noted that the Commercial Energy Code update was completed. He noted that since the last meeting in December the issue of parity between the two codes, the International Energy Conservation Code (IECC) 2012, on which the New York State Commercial Energy Code is based, and ASHRAE 90.1, 2010 had been resolved. This was addressed in a prior memo that was distributed. Joe continued that cost payback was an issue that is required by Article 11, the Energy Law of New York State, and also required by the State Administrative Procedures Act (SAPA). SAPA documents require continuing cost compliance with the requirements of the Energy Code. Article 11 requires that the new code that the cost of materials and their installation of the amended energy standard would be equal to or less than the present value of energy savings that could be expected in these buildings within ten years. The United States Department of Energy (DOE) has provided all states with an energy cost analysis of energy performance of commercial buildings, and they do this in an effort to assist states in adopting the newer codes. They do an energy analysis and they also do a cost analysis. That report was utilized in the draft SAPA documents, and unfortunately it indicated that that there were some anomalies.

Joe continued that Ian Graham, a member of the Technical Subcommittee working with the DOE, amended this report. Ian put in a tremendous amount of time and effort to achieve this and Joe thanked him publicly. The findings were provided in a manner that could be included in the SAPA documents. The DOE agreed to amend the report, and in mid-December that amended report was received. The SAPA documents were revised and forwarded to the appropriate places for action on the entire Commercial Energy package. Ron Piester thanked Joe Hill for the update.

Agenda Item 8 -- More Restrictive Local Standards (MRLS)

- **Village of Freeport – Local Law #3 of 2013**

Mark Blanke provided background information. The proposal dealt with the protection of new or replacement electrical equipment and heating, ventilating, air conditioning and plumbing connections from flood damage in various areas. The more restrictive requirement would be to locate such equipment

four feet above base flood elevation or two feet above the New York State freeboard requirement, whichever is greater to prevent damage.

Robert McLaughlin, the Deputy Village Attorney in the Village of Freeport provided specific information about the village. He noted that they, different from most other incorporated villages, provided all services to the residents, including police department, building department, and its own electric authority. He noted they were trying to be proactive in dealing with storm crises that had been occurring. As a waterfront community they were majorly impacted, both in Hurricane Irene and Superstorm Sandy, and that was the rational for this proposal

Sergio Mauras, the Building Inspector explained the technical details. Sergio noted that the Village of Freeport was a low-lying coastal community that was very susceptible to flooding, not only because of the low-grade elevations of the streets but also because of the direct flow of water from the Atlantic Ocean through the Jones Beach Inlet. Freeport is a direct hit any time that a storm arises. He continued that the Building Department made a determination that there were 3,600 properties that were affected by the flooding in the flood zone. That basically meant that every house was affected. Additionally, 219 properties outside of the flood zone were also affected. The existing codes require that any substantial damage of properties, properties that have been determined to be more than 50 percent damaged, must comply with the new codes. The current codes require a two-foot freeboard. Sergio explained that 23 properties that were elevated to the two foot level and that those properties were slightly affected, because the storm surge surpassed that height. The total storm surge for the Village of Freeport equaled 10.12 feet. The purpose of the MRLS was to, first and foremost, protect the safety of the residents, their property and their possessions, but there was also a concern about the Biggert-Waters Flood Insurance Reform Act, which was initiated in July of 2012. This Act allows flood insurance premiums, which are greatly affecting the residents now, to increase. Residents who in the past were paying \$2,000 in flood insurance are now receiving quotes of \$12,000. If approved this MRLS would reduce that \$12,000 premium to \$400. Which would of course help with the resiliency of the community, insuring that people can afford to stay as residents of the Village of Freeport. Further, the Village of Freeport, through the National Flood Insurance Program, is a Community Rated System (CRS). Presently the village is rated at seven, which allows for the residents of the Village of Freeport to receive a 15 percent discount in their flood insurance premiums. Amending this ordinance to be more restrictive will push the village toward being rated a six, which will then provide a 20 percent discount. Sergio reinforced that the main concern was safety and to ensure that the Village remains resilient and remains a community.

Robert McLaughlin, added that village code was the subject of a public hearing prior to passing it on our level, and there was no opposition. People of the community came out and spoke in favor of it.

Judy Kennedy asked a question about compliance with the new FEMA requirements and Sergio Mauras responded with respect to base flood elevation standards and the desire to exceed those requirements for greater protection.

Paul Martin raised a concern about the wording, going forward when ultimately greater resiliency standards would be incorporated into the codes and that would relate to any action taken on the proposed MRLS? Would this still be more restrictive?

Sergio Mauras noted that it would still be more restrictive and that was the purpose of the wording. The proposed change would be that the Village of Freeport would be four feet above the federal standard, or actually two feet above the state-mandated standard, whichever is greater. That way if the state ever decides to increase their code or the federal decides to change the flood maps, the Village of Freeport will still be and remain proactive.

Judy Kennedy made motion, with suggested wording from Joe Ball, to accept the More Restrictive Local Standard is reasonably necessary, based upon the presented findings and that the standards conform to accepted engineering and fire prevention practices; and that the standards are in furtherance of the general principles of Article 18 of the Executive Law. John Flanigan seconded the motion. The motion carried unanimously.

Agenda Item 9 -- Future Meetings

Mark Blanke noted that the Code Council meetings were currently scheduled for May 7th, August 20th, and November 18th.

Agenda Item 10 -- Other Business

Ron Piester asked the Council to discuss and provide some direction to staff on the issue that was discussed during the public comment period earlier in the meeting regarding portable fire extinguisher monitoring systems. Ron noted that over the last year the Council had received information and heard public comments and that the Building Standards and Codes Division was prepared to begin work on this subject to the direction provided by the Council.

Paul Martin made some comments regarding technical aspects dealing with B and S occupancies, his concern dealt with college buildings which are a B occupancy.

Judy Kennedy, Nicholas Altieri, John Flanigan and Joseph Sauerwein raised concerns about the proposal and asked for additional information regarding the specifics, technology, implementation and new technology. Ron Piester thanked the members for their input and noted that the proponents of the proposal would be consulted and a report would be presented at a future meeting.

Gary Higbee raised the issue, brought up earlier during public comments about high-efficiency toilets. He wondered if that provision could be incorporated into the code that's now before us or at least added to the next cycle of updates to the Residential Code? Ron Piester noted that the issue would be researched and would be addressed when the discussion on the update was discussed at a future meeting.

Gary Higbee requested additional information about updates to the current code, including high efficiency toilet, fire extinguisher monitoring and other issues. Ron Piester noted that these issues would be evaluated, as well as other issues, and recommendations would be presented in the future. Ron noted that there was uncertainty about whether this would be in this or the next cycle. But that would be evaluated and if it makes sense to include as part of the proposal to update the code then that would be done.

Judy Kennedy requested that during the evaluation that the issues of new versus existing buildings, e.g. length of sewer lines with respect to efficiency toilets, be considered.

Joseph Sauerwein mentioned subsequent to the recent tragic death due to a CO-related problem on Long Island and since many municipalities, according to the news reports, are considering requiring carbon monoxide detection in "commercial," buildings, that this issue be considered by the Building Standards and Codes Division. Ron Piester noted that there was currently no discussion taking place internally with staff and that nothing had been presented to the Code Council. Ron noted that staff would certainly monitor the investigation into this tragedy, and when the facts of what actually happened are known and there is information and data that would be instructive to the Code Council for a discussion, we will certainly present that to the Council. He further noted that at this point our understanding is that there's investigation taking place, and we'll be waiting on the conclusion of that investigation.

Paul Martin noted that in the last 24 hours he had become aware of at least two bills in the legislature that may ultimately provide some direction to the Council, should they make it through the legislative process.

John Flanigan noted that appropriate language could come under the fire protection system for fire and smoke and that would be a good way of addressing.

Michael Vatter noted that he was aware of several other commercial occupancy-type carbon monoxide incidents and felt it was time that it got addressed. Ron responded that staff would continue to monitor this and information would be presented once we have the results of the studies that are ongoing.

Mark Blanke noted that continuing education credits were available. Mark also provided an update regarding the Department of Environmental Conservation's draft, petroleum bulk storage regulations. Mark noted that the concern regarding conflicts was addressed and that a second independent comparison between the regulations and the Uniform Code was completed by Miriam McGiver. Miriam did not have any additional items to report and that was reported to the DEC.

Mark continued that the last item was in regard to the More Restrictive Local Standard from the Village of Hastings-on-Hudson that was discussed acted upon at the February meeting for the Energy Code. The local law included many Green Code provisions, and at that time we were aware of at least one Uniform Code issue that was not approved by the Code Council. And it became quite complicated, and the Code Council asked that the Codes Division provide the village some guidance as to what that decision might mean, to help them decipher that. They've been advised of that as well, of that decision. And we have offered our help in making some of those determinations of what else is in that local law, because it was quite lengthy. The village has responded that they had reviewed their local law again and that they have no additional points beyond the one about the water consumption. Staff has not responded to that yet and when that is done staff will look at their local law again to help determine whether there might be any additional items.

John Flanigan made motion to adjourn. Nicholas Altieri seconded. The motion passed unanimously and the meeting adjourned at 1:40 p.m.