

DRAFT Minutes of the Thursday, June 2, 2016 meeting of the NYS Fire Prevention and Building Code Council commencing at 10 a.m., held by teleconference at:

- ❖ 99 Washington Avenue, Room 505, Albany, NY;
- ❖ 123 Williams Street, NYC, NY, Conference Room 231; and
- ❖ 65 Court Street, Buffalo, NY, Conference Room 208.

The following Council members, designees and staff were in attendance:

**Council Members and Designees Attending:**

Matthew Tebo, Presiding	Barbara Rice (arrived 10:25 AM)
Timothy DeRuyscher	Michael Sabatino
John Flanigan	Joseph Sauerwein
Shawn Hamlin	William Tuyn
Tom Lucchesi (non-voting)	Michael Weber
Paul Martin	Keith Wen
Vincent Rapacciuolo	

**Staff Attending:**

Joe Ball	Nick McAndrew
Andy Hvidsak (in Buffalo)	Miriam McGiver
Gerard Hathaway	Janet Miller

**Agenda Item 1. Welcome.**

Matthew Tebo called the meeting to order at 10:10 AM, welcomed all, and introduced himself and Gerard Hathaway to the Code Council. He announced a revision to the agenda, removing Agenda Item 8 for consideration at a future meeting.

Mr. Hathaway took a roll call attendance, and noted that a quorum was present.

**Agenda Item 2. Minutes of the March 9, 2016 Meeting.**

Mr. Tebo introduced the minutes. There was no discussion. John Flanigan made a motion to approve the minutes, seconded by Paul Martin. The motion was approved unanimously.

**Item 3. Uniform Code Change Update.**

Mr. Hathaway introduced this agenda item, and introduced Nick McAndrew to present some upcoming modifications that may be voted on in upcoming meetings. Mr. McAndrew described several minor errata that have been identified by Code division staff and by others who have notified us, and expressed the need to correct these as soon as possible. The minor corrections include typos and other non-substantial changes to the NYS 2016 Uniform Code Supplement that could be amended prior to the effective date, in accordance with SAPA 203.2. These may be presented as a rule change at the next code council meeting. Nick said that more substantial corrections to the 2016 NYS Uniform

Code Supplement, identified by code staff and code users, would be the subject of a future rule making, and will not be brought forward at the Code Council meeting scheduled for August.

Mr. Tebo asked for conceptual approval to move forward with the rulemaking to correct minor errata. Joe Ball clarified that the conceptual approval is to develop an amended rule that would be filed as an Amended Notice of Adoption, and present that to the Governor's office and the regulatory review unit for approval. Mr. Tebo asked Code Development staff and counsel to move forward with the process.

John Flanigan so moved, seconded by Timothy DeRuyscher. The motion was unanimously approved.

Keith Wen went on record to support consideration of the possibility of a change to the code that makes the WaterSense fixture flow limits a part of the Uniform Code requirements. He asked that the Division staff look closely at the proposal to do so submitted to the Code Division by the Natural Resource Defense Council. Mr. Tebo said he would ask staff to look over the material.

#### **Item 4. Energy Code Update.**

Mr. Hathaway introduced this agenda item, and introduced Miriam McGiver to present some upcoming modifications that may be voted on in upcoming meetings. She described three minor errata that have been identified, typos and other non-substantial changes to the NYS 2016 Energy Code Supplement that could be amended prior to the effective date in accordance with SAPA 203.2. These may be presented as a rule change at the next code council meeting.

Ms. McGiver then described two more substantial corrections to the NYS 2016 Energy Code Supplement that code staff and code users have identified as of concern. First, the adopted 2016 Energy code allows design of exterior wall that could have problems with wetness and mold, and we could correct with through a prescriptive path adopted by Vermont. Second, Ron Piester suggested at the last meeting that the Code Council consider a prescriptive design path for log homes; we would consider that which was done in Vermont, as is has been shown to have a lower energy use (lower overall exterior U-value) than many log homes designed to pass the USDOE REScheck method. The code staff proposed that these would be the subject of a future rule change, and will not be brought forward at the Code Council meeting scheduled for August.

Mr. Tebo asked for conceptual approval to move forward with an amended rule and an amended notice of adoption. John Flanigan so move, seconded by Shawn Hamlin. The motion was approved unanimously. Mr. Tebo asked Code Development staff and counsel to move forward with the process.

#### **Agenda Item 5. Temporary Alternative Use of Certain Buildings.**

Mr. Hathaway introduced the agenda item as a proposal to provide a permit process that would impose safety measures, without imposing unnecessary hardships, on small businesses that wish to temporarily host activities that are currently unregulated in their place of business, and introduced Nick McAndrew to present the proposed rule-making. The proposed rulemaking would provide a permit path to allow a building to be used on a temporary basis for a use that is not consistent with the building's existing occupancy classification. The temporary alternative use permit would only be issued for a limited period of time, up to 60 days in a one-year period, for specific occupancies only if certain safety requirements were met. The proposed appendix is based on the provisions currently in the Uniform Code for permitting temporary structures such as tents for up to 180 days in a one year period. The proposed rule-making has provisions that set occupant load restrictions, require periodic inspections, require a fire safety plan when the occupant load exceeds 49 people, establish provisions to guard against fire and hazardous conditions, set egress requirements, and establish requirements for plumbing facilities and fixtures.

Mr. Rapacciuolo asked what occupancies are involved, and Mr. McAndrew responded that the existing occupancies where the alternative use could be conducted include Assembly Group A;

Business Group B; Factory Industrial Group F-2, Low-hazard; Low-hazard Storage Group S-2; and Utility and Miscellaneous Group U; while the alternative uses that will be allowed would include Assembly Group A, Business Group B, and Mercantile Group M. The code enforcement official would determine if the existing building is suitable to address potential hazards of the proposed use. Several code council members asked that stakeholders and interested parties be included in the rule development. Paul Martin specifically requested the involvement of fire officials, and Vince Rapacciuolo discussed DOL regulations that may overlap, and asked that DOL be involved in the rule development. Gerard Hathaway responded that interested parties will be invited to participate in rule development. He asked that Code Council members notify him over the next couple months of their concerns and comments. Mr. McAndrew said that F2 uses are allowed, as these include maple syrup production, cheese making and wineries. Joseph Sauerwein expressed concern about assembly uses of barns, as barns are agricultural and not built to a specific building code standard, and Tim DeRuyscher asked that structural analysis and integrity be considered. Mr. McAndrew said that the draft rule language provides that the local CEO may ask for third party analysis as needed. Keith Wen expressed a concern about the public visiting factories, limiting the occupant load, and providing for safety around factory specific equipment. .

John Flanigan moved for conceptual approval of the development of rule-making documents, in coordination with interested parties. Seconded by Barbara Rice. Joseph Sauerwein abstained from the vote. All other votes were ayes. Mr. Tebo asked Code Development staff and counsel to move forward with the rule-making documents, working closely with members of the Code Council.

#### **Agenda Item 6. Background on MRLS Process.**

Nick McAndrew provided a review of the MRLS process under the Uniform Code, including policies and procedures for receiving, reviewing and adopting More Restrictive Local Standards enacted by local authorities having jurisdiction. He provided an overview of the enabling statute in the Uniform Code, language in NYCRR section governing the Uniform Code, and the procedures within the code division. William Tuyn and Joseph Sauerwein both expressed that it would be preferable to not allow enforcement of MRLS provisions until approved by the Code Council. It was noted that this language in in statute, and can only be changed by statute.

Mr. Weber asked, as the Code Council adopts the MRLS, does the local government have the authority to subsequently repeal the change if they so wish, or does it take a second action by the Code Council. Mr. McAndrew and Mr. Ball both responded that the local government has that authority.

#### **Agenda Item 7. More Restrictive Local Standards - Town of Southold – Local Law #2014-260.**

Mr. Hathaway introduced this agenda item, and introduced Nick McAndrew to present. Mr. McAndrew described the application. He noted that the application did not comply with administrative requirements; that the special conditions may not be sufficiently unusual; and the more restrictive provisions address operation considerations rather than construction provisions.

Shawn Hamlin moved to deny, seconded by Paul Martin. Approved unanimously. Mr. Tebo said the code development staff will officially notify the Town of Southold.

#### **Agenda Item 8. More Restrictive Local Standards – Nassau County Ordinance #40 – 2014.**

Tabled until a future meeting.

#### **Agenda Item 9. Public Comment Period.**

There were three speakers during the public comment period.

The first was Brandon Doto of Toyota-New York, accompanied by Brian Kaiser of the same, who proposed code changes to allow use of hydrogen fuel cell cars in New York State. Toyota would like to begin selling a hydrogen car in New York and other eastern states. The car, Mirai, complies with the U.S. Department of Transportation federal motor vehicle safety standards and has been sold in

California. Code changes have been made in the western US, and are needed in East Coast states to allow common use of such vehicles. However, the Uniform code needs a few amendments to allow general use of the vehicles, amendments to Fire Code provisions related to hazardous materials, compressed gasses and flammable gasses, similar to the amendments done several years ago to allow use of CNG vehicles. He identified three specific sentences in three areas of the code that would need to be amended.

Mr. Doto described federal and state actions to verify the safety of hydrogen cell vehicles, and to promote use of low emission vehicles. New York State promotes zero emission vehicles, and specifically hydrogen fuel-cell vehicles, thru funding and tax breaks. New York State has established a Climate Smart Community program that promotes and provides funding for government purchase of clean vehicles and for related eligible infrastructure. The U.S. Department of Energy, the DOE, has an extensive database of information on hydrogen safety codes and standards on their web site. DOE has conducted hydrogen safety training to thousands of fire and code officials and first responders across the country, and recently in New York City and in the Town of Hempstead.

The second speaker was Mark Halverson from the APA – Engineered Wood Council, with Jim Carr of AF&PA. Mr. Halverson encouraged the code council to modify the code to provide a prescriptive design option that allows cavity only insulation in all climate zones. Mr. Halverson, speaking on behalf of the Coalition of Fair Energy Codes (CFEC), which is the wood industry's initiative to promote cost-effective Energy Code provisions that consider the moisture in the exterior envelop and structural integrity. He said that several states with jurisdictions in Climate Zone 6 have adopted the 2015 Energy Code, and each has modified their adoption to include cavity-insulation-only options. Vermont adopted provisions similar to the proposal that CFEC has brought to this Council, a simple change to Table R402.1.2, which is the prescriptive table in the Energy Code. It allows for an R25 cavity in concert with more energy efficient windows, with a maximum U-value of 0.28 rather than a maximum of 0.32 as proscribed for R20 cavity plus R5 continuous. By gaining efficiency in windows to offset reducing a little bit of the efficiency in the exterior wall, it is an energy-neutral position. Mr. Carr reiterated Mr. Halverson's position, and stressed that nine other states with climate zone 6 have amended the code to accommodate such a proposal.

The third speaker was Jens Ponikau, who requested that the code council amend the Residential Code for swimming pool barriers. He stated that children die or are injured every year from swimming pool accidents, in spite of fences and other protective measure in the current code and proposed update. Dr. Ponikau believes that pool covers would prevent some deaths and injuries, and that language allowing and acknowledging powered safety covers in lieu of barrier fences should be added to the Residential Code, as it is in the Building Code. NYS provisions regarding pool barriers are revised from ICC language in order to address NYS statutory requirements, and this language, for pools regulated by the NYS 2016 Uniform Code for private pools regulated under the residential code or public pools regulated under the building code, does not include acknowledging powered safety covers in lieu of fence and gate barriers as is done in the 2015 IRC.

The fourth speaker was Larry Levine, who stressed the importance and fiscal prudence of water saving fixtures, and requested a separate rulemaking to target this issue. Supporters of this include six State legislators, the Rockland County Department of Health, the Plumbing Foundation of New York City, New York City Mayor's office, a number of other environmental NGOs, as well as one private water comment Suez, formerly known as United Water, which operates in Rockland County drinking water utility. He proposed an interim code update to enhance water efficiency standards for bathroom fixtures, something the Council considered during the comprehensive code update process and at that time decided to set aside in favor of a more streamlined process in order to get the 2015 ICC updates into state law as quickly as possible. Based on the information NRDC has submitted, here is ample basis for enhancing water fixture efficiency. He discussed the concern some Code staff has mentioned regarding drainage from low flow toilets in the nonresidential context. Proposals relating to shower heads, faucets and urinals are not of concern. NRDC in response to the toilet concern being raised,

narrowed the proposal to set aside the nonresidential context for the toilets, and urges the Council to move forward with the conceptual approval of a rulemaking to adopt the other standards.

With respect to the nonresidential toilets, studies have been done by the plumbing industry and code officials from IAPMO and the ICC, as well as other toilet manufacturers and the plumbers themselves. One of these was the 2012 Kirk study of the Plumbing Efficiency Research Council that looked at the question of whether 1.28-gallon-per-flush toilets, the WaterSense standard, would cause problems with clogging drain lines, and the study concluded that it would not. They clearly and explicitly endorsed the 1.28-gallon-per-flush as not presenting any mechanical or engineering impediments or concerns. He encouraged the Council to move forward with this rulemaking. This would provide an array of benefits to the state in terms of water resources management, to homeowners, to building owners and renters, in terms of reducing their water bills at no increase to the cost of construction, because these fixtures are all available readily on the market with no cost above fixtures complying with current language.

**Agenda Item 10. Future Meetings.**

Mr. Hathaway announced the dates of the next code council meetings scheduled in 2016, on August 25th and November 17th. The next scheduled meeting of the Code Council is August 25, 2016, at the same locations, at 10 AM.

**Agenda Item 11. Other Business.**

Mr. Hathaway asked that those would like to receive continuing education credit should make sure to sign in on the appropriate sheets, and told them that they will receive copies of then new codes shortly. He said that code officials have already started to receive their copies. Mr. Tebo thanked the code council members. Mr. Ball expressed appreciation for the work done by Ron Piester and Mark Blanke over the past years.

The meeting adjourned at approximately 12:00 PM by motion of John Flanigan, seconded by Tim DeRuyscher.