

**STATE OF NEW YORK - DEPARTMENT OF STATE**

**DIVISION OF CODE ENFORCEMENT AND ADMINISTRATION**

**PROPOSED MINUTES - STATE FIRE PREVENTION AND BUILDING CODE COUNCIL**

Minutes of Wednesday, March 21, 2012 meeting of the New York State Fire Prevention and Building Code Council held via videoconferencing at One Commerce Plaza, 99 Washington Avenue, Albany, New York; Conference Room 505, 123 Williams Street, New York City, New York, Conference Room 19<sup>th</sup> floor and 65 Court Street, Buffalo, New York, Room 405 commencing at 10:25 a.m.

**PRESENT:**

Ronald Piester, Presiding  
Nicholas Altieri  
Stephen Brescia  
Michael Cambridge  
Carmen Dubaldi  
John Flanigan  
Maria Guizzotti  
Nancy Hernandez  
Gary Higbee  
John Lee  
Willie J. Lightfoot  
Paul Martin  
Joseph Sauerwein

**ALSO PRESENT:**

Raymond J. Andrews  
Michael G. Auerbach  
Joseph Ball, Esquire  
Catherine Karp  
Miriam McGiver

**Agenda Item 1 – Welcome**

Ronald Piester welcomed everyone and called the meeting to order. Ray Andrews took a roll call and a quorum was present.

**Agenda Item 2 - Minutes of the December 7, 2011 Meeting**

Motion by Stephen Brescia to approve the minutes of the December 7, 2011 meeting, seconded by John Flanigan, approved unanimously.

### **Agenda Item 3 – Public Comment Period**

Ron noted that there were a large number of scheduled speakers. Ray suggested that the Council have the speakers address them as their agenda item was presented. There were two separate groups, the first being representatives from the New York State Codes Coalition and the other addressing Agenda Item 5 - Proposed Appendix A - Temporary Use of Buildings.

Ray introduced the speakers for the Codes Coalition: Gene Jacques, James E. Morganson, Jody Nolan, Joseph A. Finnegan, Thomas L. LaBelle and Bill Young who each spoke. Ron thanked the speakers and noted that the Codes Coalition had historically been supportive and partnered with the Council.

### **Agenda Item 4 - Code Clarifications**

Ray provided an overview and noted that issues regarding typographical errors, etc. were identified and two of these problems within the Fire Code of New York State were found. These clarifications will be added to the Codes Division web site.

### **Agenda Item 5 - Code Change Adoption**

Ray explained that there were four code changes to be discussed. The first three were presented at the September 8, 2011 meeting, at which time the Council voted to proceed with rule makings. The fourth was the Temporary Use of Buildings.

Ray explained the first code change; consensus changes to the Uniform Code. These were editorial items that were missed during editing. He noted that there was a public hearing, and no comments were received.

John Flanigan made a motion:

That the Code Council find and determine that the adoption of the rule that amends Subdivision (C) of Section 1220.1 of Title 19 NYCRR, as set forth in the Notice of Proposed Rule Making published in the State Register on November 23rd, 2011, (A) Will not have a significant environmental impact; and (B) Will not have a significant adverse effect on any significant fish or wildlife habitat, scenic resource of statewide significance, important agricultural land, or area included in an approved local waterfront revitalization program; and 2. That the Code Council authorize Raymond J. Andrews, or any other employee in the Department of State's Division of Code Enforcement and Administration, to sign and deliver the State Environmental Quality Review Short Environmental Assessment Forms, the State Environmental Quality Review Negative Declarations, the New York State Department of State Coastal Management Program Coastal Assessment Forms, and the certifications of no significant coastal impact with regard to this rule; and 3. That the rule

amending Subdivision (C) of Section 1220.1 of Title 19 NYCRR, as set forth in the Notice of Proposed Rule Making published in the State Register on November 23rd, 2011, be approved.

Seconded by Nicholas Altieri. Motion passed unanimously.

On summer camp cabins, Ray noted that the proposed requirements were consistent with the Department of Health's regulations. There had been a public comment period and a public hearing and no comments were received.

John Flanigan made a motion:

That the Code Council find and determine that the adoption of the rule that repeals Section 1228.2 of Title 19 NYCRR and adds a new Section 1228.2 to Title 19 NYCRR, as set forth in the Notice of Proposed Rule Making published in the State Register on November 23rd, 2011, (A) Will not have a significant environmental impact; and (B) Will not have a significant adverse effect on any significant fish or wildlife habitat, scenic resource of statewide significance, important agricultural land, or area included in an approved local waterfront revitalization program; and 2. That the Code Council authorize Raymond J. Andrews, or any other employee in the Department of State's Division of Code Enforcement and Administration, to sign and deliver the State Environmental Quality Review Short Environmental Assessment Forms, the State Environmental Quality Review Negative Declarations, the New York State Department of State Coastal Management Program Coastal Assessment Forms, and the certifications of no significant coastal impact with regard to this rule; and 3. That the rule that repeals Section 1228.2 of Title 19 NYCRR and adds a new Section 1228.2 to Title 19 NYCRR, as set forth in the Notice of Proposed Rule Making published in the State Register on November 23rd, 2011, be approved.

Seconded by Nicholas Altieri and Willie Lightfoot. Motion passed unanimously.

The third item was a consensus change to the Energy Conservation Construction Code. Variable Refrigerant Flow air conditioning systems involve a new technology which is not specifically mentioned in the Energy Code and it was felt it would be beneficial to add an exception for this system in the code so it could be used.

There was a public comment period and public hearings, and two comments were received. Since one was a negative comment this code change could not go forward as a consensus rule. Based on the comment, the subject was reconsidered and it was determined that an appropriate explanation could be provided so the rule making was no longer necessary.

Ray provided an overview of Proposed Appendix A - Temporary Use of Buildings of Buildings. He noted the item addressed the use of buildings for other than their legal occupancies for temporary periods of time. Ray noted that this was previously discussed at the December 7, 2011 meeting and that a number of Council members indicated that it should be looked at further and include other than agricultural occupancies, because use of a building for other than its legal occupancy for a short period of time occurred

in many other buildings. There was much work done on this by staff and interested groups, including Agriculture and Markets, the Farm Bureau and Code Enforcement Officials.

Eric Randall and Tony VanGlad, representing the New York Maple Producers Association addressed the Council and responded to questions from Joseph Sauerwein, Paul Martin and Willie Lightfoot.

Phil Giltner, Special Assistant, Department of Agriculture and Markets spoke and noted that one of Governor Cuomo's main interests was to make sure that New York was a business-friendly place. Phil noted that present problems would be addressed with the proposed Appendix, as would similar issues common to other buildings intended for temporary use in the quickly growing 'agritourism' sector. Council members Nicholas Altieri and Gary Higbee asked questions regarding public health and safety.

Ray noted that there were two staff members, Whitney Russell from the Codes Division and Pablo Davis from Fire Prevention and Control who would explain the proposed Appendix.

Whitney provided a broad overview and history about the topic and then requested direction from the Council about size and area limitations. He also noted the participation of accessibility advocacy groups who had requested that when there were public bathrooms they be handicapped-accessible. He requested direction from the Council regarding this and the thresholds involved.

Pablo Davis spoke and emphasized that temporary use of buildings is happening now and there is no control, regulation or oversight. Joseph Sauerwein asked several questions regarding portions of the building being used, time limitations and occupancy which were acknowledged as requiring further review. Paul Martin agreed with Joe and voiced concerns that the proposal at this point was too relaxed regarding life safety.

Ray added that the Department of Labor has been issuing variances to agricultural and other buildings for temporary uses. Maria Guizzotti provided some details. Joseph Sauerwein had a comment and question about private affairs vs. the use of the same facilities for profit. He also asked if John Lee could share some of the experiences that New York City had with temporary use of buildings, which John did.

Willie Lightfoot raised concerns about the number of people in limited space and crowding and Nicholas Altieri expressed a similar concern. Nick raised questions about A102.1.1 and suggested that there should be requirements for layout and the posting of certificates and legal applications and process. Ron Piester added that Part 1203 requires municipalities to issue certain types of operating permits. This is an administrative issue for each jurisdiction to determine.

Nicholas Altieri added that he was against the exemption for spaces with fewer than 50 people because he felt that all temporary buildings should require an on-site inspection. Ray Andrews noted that the exemption for small buildings was an issue he wanted to get guidance on from the Council.

Gary Higbee asked about the issue of providing accessible toilet facilities and questioned where these accessibility requirements were? Cathy Karp responded that research on the American with Disabilities Act

(ADA) had determined that small businesses did not have stringent requirements to provide accessible facilities in existing buildings.

Ray observed that all of the concerns the members of the Council could be addressed, except not allowing temporary use for assembly occupancies. Joseph Sauerwein responded that currently the proposal allowed too many people and an inspection must be required.

Paul Martin brought up the issue of the code exemption for agricultural buildings and what happens to such a building when there is public use. Joe Ball responded that when the public comes in, it ceases to be an agricultural building, causing many complications.

John Flanigan made a motion:

That the Code Council consider in concept an amendment of the Uniform Code that would permit the temporary use of a building for purposes outside its normal occupancy classification, subject to the conditions that the building owner apply for and obtain a temporary use permit on terms substantially similar to the Proposed Appendix A presented at this meeting, and that the Code Council authorize the Codes Division to refine the Proposed Appendix A, to prepare a draft rule that would add such refined Appendix A to the 2010 Fire Code of New York State and to submit the refined Appendix A and proposed rulemaking to the Council for further review at the next meeting.

Seconded by Joseph Sauerwein. Motion passed unanimously.

#### **Agenda Item No. 6 - Next Uniform Code and Energy Code Adoption Update.**

Ray provided an update on the technical subcommittees which have all been formed. There were two cases where additional members may be added. Also, the International Code Council had provided web links to the 2010 New York Codes, the 2009 and the 2012 ICC Codes in read- only format to give the technical subcommittees the documents they required. The ICC had also provided a Word document of ICC documents so they can be edited.

#### **Agenda Item 7 - Other Business**

Ron asked Ray if he had specific questions for the Council regarding Temporary Use. Ray asked if staff should continue to work on the proposal allowing assembly use. Maria Guizzotti felt that temporary use of ten days a year was too limiting, especially for agriculture.

Joseph Sauerwein suggested cutting the number of occupants down significantly and limiting use to 60 days in any calendar year. Ray said the group could work with those conditions.

Whitney asked the Council if they would consider limiting Temporary Use to agricultural buildings. Gary Higbee responded that he didn't see the logic in establishing provisions for this occupancy that are not regulated by the code and not have those same provisions for buildings that are regulated by the code. Maria Guizzotti noted that the fact that the other buildings are regulated assures that they do have exit

signs, exits, alarm systems, etc. and already comply with some standards. In her opinion it was more important to establish provisions for agricultural occupancies which have no standards.

**Agenda Item No. 8 - Future Meetings.**

Ray provided the dates for future meetings: June 20th, September 12th, and December 5<sup>th</sup>.

Ron entertained a motion to adjourn. Motion by John Lee seconded by John Flanigan and passed unanimously.

PROPOSED