Minutes of the NYS Fire Prevention and Building Code Council meeting on Wednesday, September 27, 2017, commencing at 10:05 a.m. and held by videoconference at:

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

Council members and designees present:

Matthew Tebo, Presiding (Albany)
Timothy DeRuyscher (Albany)
Patrick Dolan (NYC)
Shawn Hamlin (Albany)
Thomas Lucchesi (Albany)
Dominic Marinelli (NYC)
Paul Martin (Albany)
Vincent Rapacciuolo (Albany)
Barbara Rice (Albany)
Michael Sabatino, Jr. (NYC)
William Tucker (Buffalo)
William Tuyn (Buffalo)
Michael Weber (Buffalo)
Keith Wen (NYC)

Staff present: Joe Ball, Gerard Hathaway, Andy Hvisdak (Buffalo), John Addario, and Nick McAndrew.

Agenda Item 1. Welcome.

Matthew Tebo called the meeting to order, and welcomed all. Mr. Tebo announced that John Flanigan who served on the Council for better than 20 years had passed away. Mr. Tebo stated that John Flanigan was the dean of the Council and served the people of the State and the Town of Bethlehem for more than 50 years. Mr. Tebo offered his condolences to John’s friends and family before offering a moment of silence to remember John Flanigan.

Mr. Tebo then announced that Miriam McGiver, who worked in the Code Development Unit for a number of years went to the Office of General Services.

Mr. Tebo announced that Agenda Item 5A, the Town of Brookhaven Local Law No. 5 of 2014 and Local Law No. 11 of 2016, is being pulled from the agenda. He then announced that the Fallen Firefighters Memorial is going to be October 10th at 11 a.m. on the plaza and believed that they're honoring 118 fallen firefighters who died on 9/11.

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


Mr. Tebo noted that the minutes of the July 13, 2017 meeting were provided to the Code Council prior to this meeting, and asked if anyone had any comments or changes. Hearing none, Mr. Tebo called for a voice vote on adoption of the minutes. The motion to adopt the minutes was approved by a vote of 10 in favor, 0 opposed, with Ms. Rice and Mr. DeRuyscher abstaining.
Agenda Item 3. Conceptual approval to review and assess changes to the 2018 Editions of the ICC Model Codes

Mr. Hathaway summarized the content of the memo that was presented to the Code Council for this agenda item and requested, on behalf of the Division of Building Standards and Codes, that the Council grant conceptual approval to allow the Division to conduct a full assessment of the 2018 ICC model codes and report on such findings to the Council. Mr. Hathaway concluded that the intent of the assessment is to provide the Council with enough information so they can decide whether to pursue adoption of the 2018 ICC codes, or only certain provisions contained therein, or defer adoption to a future ICC code cycle.

Mr. Tebo noted the arrival of Shawn Hamlin, bringing the number of members and designees in attendance to 13 at that time.

Mr. Tebo asked if anyone would like to make a motion to grant the conceptual approval as requested by Mr. Hathaway.

Mr. Lucchesi made a motion to grant the conceptual approval as requested by Mr. Hathaway. The motion was seconded by Mr. DeRuyscher.

Mr. Tebo asked for discussion on the motion and, hearing none, called for a voice vote on the motion.

The motion was approved by a vote of 13 in favor, 0 opposed.


Mr. Hathaway stated that the Division received two filings from the City of New York Department of Buildings pertaining to New York City’s Energy Conservation Construction Code, which was amended by their Local Law 91 of 2016 and further amended by Local Law 125 of 2016. Mr. Hathaway stated that the amendment was necessary to address construction unique to New York City and to ensure that the 2016 New York City Energy Conservation Code is more restrictive than the State Energy Conservation Construction Code. Mr. Hathaway then stated that the Division reviewed the major changes to the 2016 New York City Energy Conservation Code and found them to be more restrictive than the State Energy Conservation Construction Code. Mr. Hathaway finished by saying that New York City is requesting that the Council determine that Local Law 91 of 2016 and Local Law 125 of 2016 are more restrictive than the State Energy Conservation Construction Code and that the Division is recommending such a determination.

Mr. Tebo asked for discussion and hearing none asked Mr. DeRuyscher to read a potential motion.

Mr. DeRuyscher moved that the Code Council determine, pursuant to subdivision (2) of Section 11-109 of the Energy Law, that the New York City Energy Conservation Code, as amended by Local Law 91 of 2016 and further amended by Local Law 125 of 2016, is more restrictive than the State Energy Code.

Ms. Rice seconded the motion.

Mr. Tebo asked for discussion on the motion and, hearing none, called for a roll call vote on the motion.

The motion was approved by a vote of 13 in favor, 0 opposed.

Agenda Item 5A, More Restrictive Local Standard (Uniform Code), Town of Brookhaven Local Law 5 of 2014 and Local Law 11 of 2016

Mr. Tebo noted that Agenda Item 5A was pulled from the Agenda earlier in the meeting.
Mr. Tebo introduced Agenda Item 5B, the Village of LeRoy Local Law 5 of 2015, “Grass and Weeds.”

Mr. McAndrew provided a summary of the local law and staff analysis. Mr. McAndrew concluded that lots containing buildings must mow in accordance with the Uniform Code, which shall be not exceed 10 inches, whereas lots in the Village must mow in accordance with the local law regardless of whether the lot has a building, which shall not exceed 6 inches.

Mr. Ball stated that the Uniform Code regulates the immediate exterior property area of a building; and noted that the “immediate exterior property” area is not defined by the code. The Uniform Code provides that this area shall be mowed to 10 inches. The local law requires mowing in this area, and outside of what may be considered this area, to 6 inches. Mowing within this area to 6 inches is more restrictive than the Uniform Code. Mr. Ball added that mowing outside the immediate exterior property area is not covered by the Uniform Code. Mr. Ball concluded by stating that the local law is a kind of hybrid, being partially more restrictive than the Uniform Code and addressing items not covered by the Uniform Code.

Mr. Tebo asked for questions or discussion and, hearing none, asked if any member would like to make a motion.

Mr. DeRuyscher made a motion that the Code Council:

1. determine that with respect to the “immediate exterior property” referred to in the Uniform Code, the standards imposed by Village Code Sections 120-1, 120-2, and 120-3 are more stringent and more restrictive than the standards imposed by the Uniform Code;
2. find that the Village did not notify the Code Council of the enactment of the local law and did not submit the petition to the Code Council within thirty days of enactment, and therefore did not comply with the submission requirements of Executive Law Section 379;
3. find that there are no special conditions that make the Village Code Sections 120-1, 120-2, and 120-3 reasonably necessary;
4. deny the Village's request that the Code Council adopt the more restrictive standards imposed by Village Code Sections 120-1, 120-2, and 120-3; and
5. find and determine that to the extent the standards imposed by Village Code Sections 120-1, 120-2, and 120-3 apply to any area outside the "immediate exterior property" referred to in section 302.4 of the 2015 International Property Maintenance Code, as amended by the 2017 Uniform Code Supplement, the standards imposed by Village Code Sections 120-1, 120-2, and 120-3 address matters as to which the Uniform Code does not provide, and may continue to be enforced by the Village to the extent permitted by other applicable law.

Ms. Rice seconded the motion.

Mr. Tebo asked for discussion on the motion and, hearing none, called for a roll call vote on the motion.

The motion was approved by a vote of 13 in favor, 0 opposed.

Mr. Tebo introduced Agenda Item 5C, Town of Somers Local Law No. 4 of 2016, fire separation between residential dwelling structures and garages.

Mr. McAndrew provided a summary of the local law and staff analysis. Mr. McAndrew stated that staff requested additional information from the Town; the Town requested that the petition be postponed until the next
Code Council meeting so they can gather the supporting documentation and present their findings to the Council. Mr. McAndrew then stated that Section 74-11(E)(5) of the town code contains less restrictive provisions than the Uniform Code and that the Division requests that the Code Council deny them today.

Mr. DeRuyscher asked if that section was relative to the flood provisions modified by the Supplement; Mr. McAndrew confirmed.

Mr. Tebo asked if there were other questions or discussion. Hearing none, Mr. Tebo asked if Mr. DeRuyscher wished to make a motion.

Mr. DeRuyscher made a motion that the Code Council:

1. determine that the standards imposed by Sections 74-11(E)(1), 74-11(E)(2.1), and 74-11(E)(2.2) of the Town Code are more restrictive than the Uniform Code;
2. postpone decision on the Town’s request to adopt the more restrictive provisions to allow the Town to submit additional documentation to support the petition;
3. determine that the standards imposed by Section 74-11(E)(5) of the Town Code is less restrictive than the Uniform Code; and
4. deny the Town’s request that the Code Council adopt or approve the standards imposed by Section 74-11(E)(5) of the Town Code.

Mr. Lucchesi seconded the motion.

Mr. Tuyn requested that the motion be separated into two motions, one dealing with the more restrictive fire-related provisions and one dealing with the less restrictive flood-related provisions. He then voiced concern about the Town’s special conditions, stating that he couldn’t believe how conditions in the Town could be different than in every other community in the nation.

Mr. Ball stated that the motion would immediately deny the petition with respect to the less restrictive provisions, and postpone determination of the petition with respect to the more restrictive provisions. Mr. Ball stated that the community is gathering additional information regarding the average response time of the all-volunteer fire department and the frequency of fires in the Town that start in garages, and that the Town requested that the Code Council postpone its determination on the Town’s more restrictive local fire-related standards to give the Town an opportunity to present this information to the Code Council.

Mr. Tuyn questioned why the Town didn’t put together a more complete petition application and why the Council couldn’t deny the petition and let the Town resubmit. Mr. Ball stated that the Town would need to readopt the local law, which was adopted a year ago, and submit a new petition. Mr. Tuyn questioned if the Town had been enforcing the local law for a year., Mr. Ball replied that he would not be surprised if the Town had been doing so.

Mr. Tebo noted that Mr. Dolan had arrived.

Mr. Tuyn voiced concerns regarding how late the Council is acting on the petition which was enacted a year ago, and expressed concern that there was no stated limitation on how long the Council’s determination on the more restrictive fire code standards might be postponed.

Following some discussion among the Council members, Mr. DeRuyscher amended the motion by adding the phrase “until the next meeting of the Code Council” in the second part of his motion, so that the second part of the motion was amended to read as follows: “I move that the Code Council postpone until the next meeting of the Code Council the determination of the Town’s request to approve or adopt the more restrictive standards imposed by sections 74-11(E)(1), 74-11(E)(2.1), and 74-11(E)(2.2) of the Town Code, as added by the Local Law, in order to afford the Town more time in which to submit additional documentation in support of the Town’s Petition.”
Mr. Lucchesi seconded the motion, as amended.

Mr. Tebo asked for discussion on the motion, as amended, and, hearing none, called for a roll call vote on the motion, as amended.

The motion, as amended, was approved by a vote of 14 in favor, 0 opposed.

Mr. Tebo asked the Division to notify the Town that this petition will be taken up again at the December 5th meeting and they should provide whatever material they wish to provide by then.

**Agenda Item 5D and 5E, More Restrictive Local Standard (Uniform Code), Letter to the Town of Malta regarding the repeal of L.L. No. 1 of 2015 and Letter to Nassau County regarding Ordinance No. 40-2014, repealed and replaced by Ordinance No. 28-2016**

Mr. Tebo stated that Agenda Items 5D and 5E require no action by the Council. The Town of Malta is no longer seeking action on Local Law No. 1 of 2015 and Nassau County is no longer seeking action on Ordinance No. 40-2014. Mr. Tebo clarified that Nassau County’s petition relating to Ordinance No. 28-2016 is still pending, and possible a repeal and replacement is pending. Mr. McAndrew stated that he was told that Nassau County would be adopting a new ordinance sometime in October, which would repeal or amend Ordinance No. 28-2016. Mr. Tebo stated that no action is needed; the Town of Malta and Nassau County are no longer enforcing these laws and have withdrawn their petitions. Mr. Ball stated that we are advising the Council the letters that were provided to the Code Council had been sent to the jurisdictions. Mr. Tebo noted for the record that the Town and County have been advised that we note that they are not enforcing these laws and their petitions have been withdrawn.

**Agenda Item 6. Notice of Rule in Development – Condition Assessments of Parking Structures (19 NYCRR §1203.3)**

Mr. Tebo introduced the Agenda Item. Mr. McAndrew stated that last January, the Division presented the Council with a draft 1203 regulation that would require AHJs to require inspections of parking garages. The Division modified those requirements and posted a Notice of Rule in Development on the Division website. The E-bulletins that went out to municipalities as well as the rule text were submitted to the Council. Mr. McAndrew concluded that no action was required by the Council.

**Agenda Item 7. Public Comment Period**

There were no public speakers.

**Agenda Item 8. Future Meetings.**

Mr. Hathaway reminded the Council that the next meeting is Tuesday, December 5th, 2017. Mr. Tebo stated that the schedule for 2018 will be set forth at that meeting.

**Agenda Item 9. Other Business.**

None noted.

The meeting adjourned at approximately 10:58 AM.