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CHARLES BORSTEL
COMMISSIONER, DIVISION OF
PROFESSIONAL LICENSURE

Board of Building Regulations and Standards (BBRS)

December 11, 2018 Public Hearing & Regular Meeting
Division of Professional Licensure Office
50 Maple Street - Milford, MA 01757

Chairman, John Couture, opened the public hearing portion of the meeting at approximately 1:12 p.m.

Chairman Couture took roll call as follows:

John Couture, Chair	✓ present <input type="checkbox"/> absent	Peter Ostroskey*	✓ present <input type="checkbox"/> absent
Kerry Dietz, Vice Chair	✓ present <input type="checkbox"/> absent	Michael McDowell	✓ present <input type="checkbox"/> absent
Richard Crowley, Second V. Chair	✓ present <input type="checkbox"/> absent	Susan Gleason	✓ present <input type="checkbox"/> absent
Kevin Gallagher	✓ present <input type="checkbox"/> absent	Lisa Davey	✓ present <input type="checkbox"/> absent
Cheryl Lavalley	✓ present <input type="checkbox"/> absent	Steve Frederickson	✓ present <input type="checkbox"/> absent
Robert Anderson	✓ present <input type="checkbox"/> absent		

* *Jake Nunnemacher (JN) participated as the designee for State Fire Marshal, Peter Ostroskey.*

General notes on format of these minutes

- *These minutes represent general points provided as testimony during the public hearing portion and/or member and audience discussion during the public hearing and regular meeting session. The minutes are not intended to be a verbatim account of discussions.*
- *Votes are noted as **MOTION** by, seconded by, and whether it was a unanimous or split vote.*
- *Agenda topics as numbered may be in the same order as they appear on the meeting agenda.*
- *The meeting agenda is listed as **EXHIBIT A**; others are listed sequentially as addresses during the meeting.*

Public Hearing Portion

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1. **Proposal Number 12-1-2018** – Consider revising Sections N1103.3.3 (R403.3.3) (**EXHIBIT B**).
Proponent: Catherine Flaherty, *Air Conditioning Association of New England (ACCA), Inc.*

Licensed sheet metal worker and audience member, Donald Chaisson, testified that a similar proposal was submitted to Board members earlier in the year suggesting that sheet metal workers be allowed to test post-construction duct installations. Mr. Chaisson and others met with the original proponents requesting that the words “*professionally competent licensed sheet metal workers*, be added to the proposal.

Audience member, Manuel Chavez, also supported the language, making it clear that he did not want to challenge the law, but wanted to be sure that licensed sheet metal workers could perform testing.

Both Steve Fredrickson and Lisa Davey suggested that the words *professionally competent* should be stricken from the proposal.

Board member, Rich Crowley, expressed support of the proposal.

2. **Proposal Number 12-2-2018** – Consider revising Sections N1103.6.2 (**EXHIBIT C**).
Proponent: Catherine Flaherty, *Air Conditioning Association of New England (ACCA), Inc.*

Audience members, Donald Chaisson and Manuel Chavez, testified that the issues are the same relative to this proposal, but regarding mechanical ventilation testing instead of duct installation. They indicated that the words *professionally competent* derive from the sheet metal regulations, but neither is opposed to removing the words from this proposal or Number 12-1-2018.

3. **Proposal Number 12-3-2018** – Consider revising Sections R806.5 (**EXHIBIT D**).
Proponent: David Weitz, *CLEAResult for Mass Save*.

Audience member, Rick Giles from *CLEAResult*, testified on behalf of the proponent, David Weitz, indicating that David was not able to attend the hearing. Mr. Giles indicated that the proposal suggests an exception to insulation requirements for existing, unvented, enclosed rafter assemblies where it is impracticable to retrofit insulation and ventilation and urged Board members to approve the measure to allow for better overall results.

4. **Proposal Number 12-4-2018** – Consider adoption of the 2018 IECC as required by c143, §94(o) (**EXHIBIT E**). **Proponent:** Department of Energy Resources (DOER) and others.

Department of Energy Resources (DOER), Deputy Director of Energy Efficiency Division and audience member, Ian Finlayson, presented a revised version of amendments proposed to be made to the 2018 International Energy Conservation Code (IECC) (**EXHIBIT F**). As required by Massachusetts General Law (MGL) c.413, §94(o), DOER personnel worked with Office of Public Safety & Inspections (OPSI) staff to draft changes to the new energy code for consideration by Board members. DOER first presented suggested changes to the Board earlier in the year. In the interim, DOER and others reviewed the proposals at greater length and, resultantly, request Board members consider some changes to the original submittals.

Ian went through a redlined version of the proposal, explaining that the latest request reduces the proposed, Massachusetts amendment package by about 6-8 pages, thereby making it more manageable. Ian explained that some changes merely reflect house-keeping items, while others are more substantive. For instance, solar ready requirements are now contained in the 2018 IECC and therefore, do not need to be addressed by a Massachusetts amendment. Ian continued through the redline to give Board members a clear picture of suggested changes in the latest version.

Home Builders and Remodelers Association (HBRA) representative and audience member, Guy Webb, testified that he and his constituency continue to have concerns with regard to the proposed, new energy code; mainly in regards to Electric Vehicle (EV) readiness requirements. He indicated that concerns relate to costs associated with the measure, the actual need for such a requirement and whether or not authority exists to require such a measure. Mr. Webb suggested that all electric vehicles come with a power cord that may be used with conventional electric systems, without need for an enhanced, dedicated circuit for charging. Additionally, Mr. Webb cited that Board members are required to consider cost to the industry and the consumer when making code changes.

An audience member from Somerville (*name unclear*) testified that the typical charging cords provided with an electric vehicle for use with a standard 110-volt receptacle will likely only get about 4 miles per hour charged; whereas a dedicated, 240 volt system will provide about 24 miles per hour charged.

Passive House Massachusetts representative and audience member, Luke McKneally, expressed support of the proposed 2018 IECC and amendment package testifying that he believed it will help provide a more healthy and durable environment.

Charge Point representative and audience member, Kevin Miller, indicated broad support of the proposed new energy package, but indicated that he will forward some suggested refinements.

Mass Climate Action Network representative and audience member, Rebecca Winterrich-Knox, testified that she is in favor of a new net-zero energy stretch code for Massachusetts.

Greenlots representative and audience member, Emily Weir, indicated that statistics show that there are almost 18,000 electric vehicles on the roads of our state today and an electric truck is on the horizon as well. Estimates indicate that costs to retrofit a structure with EV charging capabilities range from \$4,000 - \$10,000 but only about \$800 to provide as the structure is newly built.

Metropolitan Area Planning Council representative and audience member, Nicole Sanchez, commended Board members for their proactive approach to energy efficiency in building construction requirements and offered support from her office as the code progresses.

Municipal Building Commissioner and audience member, Robert Berger, testified that EV ready requirements, if approved at all, belong in the electrical code, not the energy portion of the building code. Electric vehicle charging stations, he continued, require a large breaker capacity in order to function effectively. Upon questioning by Chairman Couture, Mr. Berger identified that he is a licensed electrician as well as a building code enforcement official.

National Grid representative and audience member, Kevin Rose, offered his support of the proposed new code along with DOER amendments.

American Institute of Architects (AIA) representative and audience member, John Nunnari, offered support for the proposed new energy code, but cautioned that the energy code should not be enforced ahead of the overall transition to the 2018 I-Codes as anticipated by the adoption of a tenth edition state code.

5. Following testimony, on a **MOTION** by Jake Nunnemacher seconded by Kerry Dietz it was unanimously voted to close the public hearing portion of the meeting at approximately 2:04 p.m.

Regular Meeting Portion

1. Chairman Couture agreed to take item number 7 as listed on the Board's agenda, pertaining to the Manufactured Buildings Group, out of order in order to accommodate Representative Ted Spiliotis.

Representative Spiliotis thanked Chairman Couture and Board members for allowing him to address the matter out of order and for addressing the matter of manufactured buildings in general. Mr. Spiliotis identified that he has represented the Town of Danvers and surrounding areas in the Massachusetts legislature for numerous years and was around during the unfortunate Thanksgiving eve 2006 chemical explosion where many homes in the area were badly damaged or destroyed. He identified that many people came together to help rebuild damaged properties during this time and, due to the urgency of the matter, many chose to employ modular building construction methods to help expedite the return to normalcy and the method was successful. However, over the last few years there have been two (2) problematic manufactured building projects in the Town of Danvers.

Representative Spiliotis made it clear that he thinks that manufactured building projects are a viable alternative to conventionally built projects and many consumers prefer modular methods for expediency and other reasons. However, the representative expressed that there is some trepidation when we cannot inspect what we cannot see (i.e. units constructed out of sight of a municipal building inspector). Therefore, he suggested that the process may be improved by requiring a series of photos to be taken during the course of assembly in the factory so that deficiencies may be tracked should something go awry later in the process. Representative Spiliotis indicated that there is a hole in the process that should be fixed and offered the service of his office to either draft legislative and/or regulatory requirements to help mend the issue. Mr. Spiliotis also emphasized that any and all solutions must include participation by municipal inspection authorities in order to achieve success.

2. Following Representative Spiliotis' testimony, Chairman Couture returned to item 1 on the regular agenda. However, before discussing the item, Chairman Couture called for a moment of silence for Worcester Firefighter, Christopher Roy, who succumbed to injuries incurred while battling a fire over the weekend. Following the moment of silence, Fire Chief Representative, Kevin Gallagher, thanked Chairman Couture and Board members for the recognition.
3. **BBRS Minutes.** On a **MOTION** by Kerry Dietz seconded by Rick Crowley it was unanimously voted to approve the minutes for the November 14, 2018 Board of Building and Regulations and Standards (BBRS) meeting as submitted (**EXHIBIT G**).
4. **BOCC Minutes.** On a **MOTION** by Kevin Gallagher seconded by Kerry Dietz it was unanimously voted to approve the minutes for the October 15, 2018 Building Official Certification Committee (BOCC) meeting as submitted (**EXHIBIT H**).
5. **Letter from the Massachusetts Federation of Building Officials (MFBO) President.** (**EXHIBIT I**) MFBO President, Robert Borden, introduced the topic indicating that the federation was made aware that the

Town of Douglas intends to dismiss its duly appointed building commissioner and replace him with an inspection service. As federation president, he and its membership are extremely concerned that this action runs contrary to requirements of Massachusetts General Law (MGL), Chapter 143, §3 that speaks to the appointment of an individual. Nowhere in the law, Mr. Borden continued, does it anticipate the appointment of a corporation to perform building code enforcement duties.

Chairman Couture expressed grave concern with this issue, indicating that appointing a service or corporation to perform building inspection and general compliance could pose significant issues and may split allegiances of the person who has been appointed by the city\town to protect the interest of the community and its citizens.

Kerry Dietz asked if anyone from the town was present to address the concerns.

Rob Anderson indicated that he had called the town administrator several times over the last week or so, but did not get through. Just prior to the meeting, Rob received a return call from the town indicating that someone would attend the meeting. To make sure they had it, the federation letter was forwarded to the town administrator by staff.

Chairman Couture called for the town representative to come forward.

In response, William Cundiff came to the podium and identified that he is the town engineer and would answer questions regarding the matter. Mr. Cundiff began by stating that the town has made a policy decision to remove the present building commissioner and employ a code enforcement service. Mr. Cundiff clarified that the matter is only under consideration at this point and has not yet been enacted. However, the town has employed the method on a project specific basis in the past. At this point, they had not yet posted a Request for Quote (RFQ), but the matter has been reviewed by town counsel who indicated that he does not see a problem with the arrangement.

On questions from Board members, Mr. Cundiff indicated that he did not know the typical permit number or value for the building department.

South Eastern Massachusetts Building Officials Association President and audience member, Kathleen Nugent, indicated that she town collected had acquired the figures from the town's posted annual report which indicates the town \$185,892.75 from 600 permits while paying the building inspector \$28,000 per year. Mr. Cundiff indicated that the referenced figure was likely for all construction permits issued, not just building permits.

Chief Gallagher asked if the town had explored establishing a cooperative arrangement with other towns in the area as anticipated by the law. Mr. Cundiff indicated that the town, as far as he knew, did not explore this option.

Chief Gallagher asked to speak to Office of Public Safety & Inspections (OPSI) Building Inspector, William Horrocks, who also serves as the Board's representative on the Building Official Certification Committee (BOCC). Chief Gallagher questioned whether or not Inspector Horrocks thought the arrangement, as described, is in compliance with building official certification regulations. Inspector

Horrocks indicated that he does not think the arrangement would conform to regulatory requirements. First, city\town authorities are required to submit a New Employee Report Form (NERF) for all duly appoint inspectors so that BOCC members may affirm qualifications of the appointed person. Both the form and the law require the name of an individual's name and credentials to be submitted, not the name of a corporate entity.

Mr. Cundiff indicated that the town expects to honor the requirement and submit the name of an individual employed by the service, not the company name.

On a question from Kerry Dietz, Mr. Cundiff indicated that the RFQ for the previously mentioned project where the town solicited a code service was in the amount of \$198,000. Ms. Dietz asked how this arrangement makes fiscal sense when the town currently only expends \$28,000 for the building commissioner's service. Chairman Couture agreed that the proposed system does not make any fiscal sense.

On a question from Richard Crowley, Mr. Cundiff indicated that two (2) different attorneys looked at the proposed arrangement and did not think it posed difficulties.

On a question from Office of Public Safety & Inspections (OPSI) Counsel, Charles Kilb, Mr. Cundiff stated the 2 attorneys who reviewed the matter were Rich Bowen and Brian Maser. Counsel Kilb indicated that the law explicitly anticipates that an individual is to be appointed to the position and, in fact, requires the employment of an individual. If an action is taken to remove the current building official without a valid replacement, the OPSI may have to send in an OPSI inspector to take over department functions.

In response to a question by Board members, it was identified that current building commissioner, Larry Lench, is scheduled to part service with the town on January 1, 2019.

Accordingly, Counsel Kilb made it clear that the OPSI must be informed of Mr. Lench's replacement. Additionally, in response to a question from Chairman Couture, Counsel Kilb indicated that in light of Mr. Cundiff's presentation, Board members should consider writing to town authorities to:

- Clearly inform them of the necessity to appoint an individual to the commissioner's position in accordance with the law;
- Ask them for the appointed individual's name and credentials; and
- Inform them that, if they are not able to provide the name of a qualified person who has been appointed to the position, the OPSI may need to send in a state building inspector.

In response to questions from Chief Gallagher, OPSI Inspector, William Horrocks, noted that BOCC members review New Employee Report Forms each month announcing the appointment of varied inspectors, yet forms are often signed by the incorrect person. In years past, it was clear that the appointing authority for a building code enforcement official was to be the mayor or chair of the select board. The BOCC receives forms signed by town managers and others who many believe do not have appropriate appointing authority.

Counsel Kilb noted that he has drafted a memorandum with regard to this issue, but it is a bit far afield of the current discussion.

Chairman Couture summarized that the building code clearly allows a building official to accept inspection reports from qualified individuals, but both the code and law anticipates that a duly qualified and certified person is appointed to the position to accept such reports, not an inspection service. During the conversation, Chairman Couture asked Board members to take a vote expressing that they do not agree with the action the town is poised to make.

Following discussion, on a **MOTION** by Kerry Dietz seconded by Richard Crowley it was unanimously voted to authorize staff to draft a letter to the Town of Douglas advising that, in accordance with Massachusetts General Law (MGL) Chapter 143, §3 they are required to:

- hire a qualified individual to serve as the building commissioner, or retain the current individual;
- provide the OPSI with a New Employee Report Form (NERF) if a new inspector is appointed.

If the town does not provide the NERF or inform the OPSI that the current commissioner remains in the position, Board members will request, through the OPSI commissioner, that a state building inspector be appointed to take control of the building department.

6. **Review Proposed BOCC Exam Approval Form & Continuing Education Policy Revision.**

OPSI Inspector and BBRS representative on the BOCC, William Horrocks, identified that the change to the exam approval form (**EXHIBIT J**) helps to clarify supervisory experience required for inspectors and the education policy revision (**EXHIBIT K**) helps identify what is considered suitable continuing education for conditional appointees and others.

7. **Discuss Progress Towards Tenth Edition 780 CMR.** Rob Anderson indicated that all technical committees, including the Geotechnical Advisory Committee (GAC), reviewing the 2018 I-Codes and related Massachusetts amendments.

8. **Discuss Advisory Committee make-up.** Chairman Couture approved the following.

Cannabis Study Group Make-up (EXHIBIT L):

- Building Official Representatives, OPSI Inspectors Adelle Reynolds; and Harold Leaming;
- Fire Service Representative, Jen Hoyt; and
- Cannabis Growing & Production Representative, Duncan Cameron, Chief Production Officer, Good Chemistry.

Addition to the Fire Prevention\Fire Protection (FPFP) Advisory Committee (EXHIBIT M)

- Carl W. Nelson.

Addition to Geotechnical Advisory Committee (GAC):

- Jake McManus.

9. **Discuss Progress of the Manufactured Buildings Study Group.** OPSI Manufactured Buildings Director, Dan Walsh, gave an overview of the group's latest efforts indicating that they have not completed all necessary steps, but have drafted some proposed changes to 780 CMR, Chapter 110.R3 (EXHIBIT N) as well as a flow chart to clearly identify how complaints will be tracked and resolved in the future.

Dan further explained that he has talked to manufacturers about how they educate their installers and to other state representatives to determine how\if they utilize third party inspection agents (TPIA) for manufactured building production. From his discussions, Dan learned that there does not appear to consistency in how manufacturers educate installers. Therefore, as part of proposed regulatory changes, the group is proposing regulatory changes that clearly specify requirements for installer training. Also, during his discussions, Dan learned that the role of the TPIA is not clearly defined in other parts of the country or here in Massachusetts. Therefore, the group is suggesting that the role of the TPIA be better defined and that third parties are held to a more consistent standard.

Dan mentioned that there has been a lot of public participation during study group meetings and that suggested procedural and regulatory changes reflect suggestions made by attendees of the public meetings. Also, it was brought to the group's attention that there are significant differences between the eighth vs. ninth edition manufactured building regulations. For instance, data plate requirements were deleted from the ninth edition regulation. It seems clear that Board members may want to be re-inserted in the regulation as we segue to the tenth edition code. At the suggestion of public attendees, Dan indicated that he will review differences between the eighth and ninth editions to see if there are other portions that may want to be included in a revised regulation as we advance towards the tenth edition code.

Kerry Dietz suggested that there needs to be a disconnect between the manufacturer and TPIA and perhaps there needs to be a requirement for professional liability insurance.

Audience member, Catherine Christina, verified that 6 pages have been cut from the ninth edition regulations; portions that she believes should be reinserted.

Chief Gallagher indicated that the group has met on 4 different occasions and has made some nice progress and has many good suggestions to improve the process as well as the regulations, but needs a bit more time to complete its work. Chief Gallagher emphasized the importance of reviewing the eighth and ninth edition versions of the regulations to ensure that we did not omit important sections. He therefore asked staff for a side-by-side comparison of the two documents. Chief Gallagher also mentioned that the group is considering code change language to reflect the large interstitial space created by adjoining manufactured building units.

In response to questions from audience members, Chairman Couture made it clear that the study group was formed to proactively review the manufactured buildings process and associated regulations to make sure that the program functions well and that any deficiencies are addressed.

10. **Discuss approval of 120 new CSLs issued in the month of November, 2018.**

Board members acknowledged approval of the new CSLs issued in the month of November, 2018.

11. **Discuss CSL Average Passing Score\Medical\Military\ Age or Continuing Education Requirements.**

None this month.

12. **Discuss Draft FAQ for Residential Code pertaining to Sections R105.3.1.1, R322, and AJ101.3.**

Eric Carlson introduced the topic, indicating that he provides training on flood plain hazards and often gets questions with regard to substantial improvements. Eric explained that the FAQ (**EXHIBIT O**) attempts to better define its meaning.

Several Board members had questions about the FAQ and, since the meeting was running long, Chairman Couture suggested that the matter be tabled until next month so that Board members are better able to address the questions.

13. **Discuss CSL Average Passing Score\Medical\Military\Age or Continuing Education Requirements.**

On a **MOTION** by Jake Nunnemacher seconded by Kerry Dietz it was unanimously voted to approve reinstatement of the following licenses for the referenced reason:

- Mark Monroe CS-098909 (*Age consideration*)
- Robert Glover CS-060228 (*Age consideration*)
- Jorge Lage CS-056274 (*Medical*)

14. **Discuss CSL Continuing Education Waiver Request for State Department Employee. (EXHIBIT P)**

On a **MOTION** by Richard Crowley seconded by Steve Frederickson it was unanimously voted to approve a waiver of continuing education requirements for Mr. Ralph Delarue, license number CS-083954, as he serves overseas in the state department since he is not able to comply with the requirement for in-class education.

15. **Discuss 2019 BBRS Meeting Schedule. (EXHIBIT Q)** Board members agreed to the following meeting schedule for 2019. All meetings will begin @ 10 a.m.

- **January 8th** – Boston Society of Architects - 290 Congress Street, Suite 200, Boston, 02210
- **February 5th** – Division of Professional Licensure – 1000 Washington Street, Boston, 02118
- **March 12th** – Springfield Technical Community College (STCC) - 1 Armory Square, Springfield, 01105
- **April 2nd** - Division of Professional Licensure – 1000 Washington Street, Boston, 02118
- **May 7th** - Division of Professional Licensure – 1000 Washington Street, Boston, 02118
- **June 11** – Tewksbury Hospital – 365 East Street, Tewksbury 01876
- **July Meeting Cancelled**
- **August 6th** - Division of Professional Licensure – 1000 Washington Street, Boston, 02118
- **September 10th** – Springfield Fire Academy - 100 Gochmal Avenue, Springfield, 01151
- **October 15th** – Division of Professional Licensure - 50 Maple Street, Milford, 01757
- **November 5th** - Division of Professional Licensure – 1000 Washington Street, Boston, 02118
- **December 3rd** – Worcester – Location to be determined.

16. **Discuss** full Board Training.

Board members agreed that additional full Board training is not necessary since we will be discussing legal duties and responsibilities during the January, 2019 meeting and because much of the Building Code Appeal Board training session held just prior to this meeting addressed many full Board issues that they agreed to meet @ 10 a.m. on December 11th in Milford for the referenced training.

17. **Discuss other matters not reasonably anticipated 2 business days in advance of meeting.**

None this month.

18. **Adjourn.** On a **MOTION** by Kerry Dietz seconded by Jake Nunnemacher it was unanimously voted to adjourn the meeting at approximately 4:03 p.m.

EXHIBITS:

- A. Meeting Agenda.
- B. Proposal Number 12-1-2018 – Consider revising Sections N1103.3.3 (R403.3.3).
- C. Proposal Number 12-2-2018 – Consider revising Sections N1103.6.2.
- D. Proposal Number 12-3-2018 – Consider revising Sections R806.5.
- E. Proposal Number 12-4-2018 – Consider adoption of the 2018 IECC as required by c143, §94(o).
- F. A revised version of amendments proposed to be made to the 2018 International Energy Conservation Code (IECC).
- G. Minutes for the November 14, 2018 Board of Building and Regulations and Standards (BBRS) meeting.
- H. Minutes for the October 15, 2018 Building Official Certification Committee (BOCC) meeting.
- I. Letter from the Massachusetts Federation of Building Officials (MFBO) President.
- J. Proposed BOCC Exam Approval Form.
- K. Continuing Education Policy Revision.
- L. Cannabis Study Group Make-up.
- M. Addition to the Fire Prevention\Fire Protection (FPFP) Advisory Committee.
- N. Draft changes to 780 CMR, Chapter 110.R3.
- O. Draft FAQ for Residential Code pertaining to Sections R105.3.1.1, R322, and AJ101.3.
- P. CSL Continuing Education Waiver Request for State Department Employee.
- Q. Discuss 2019 BBRS Meeting Schedule.