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CHARLES BORSTEL
COMMISSIONER, DIVISION OF
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Board of Building Regulations and Standards (BBRS)
January 9, 2018 Meeting
Division of Professional Licensure (DPL)
50 Maple Street in Milford 01757-3698

1. Chairman, Richard Crowley, opened the regular meeting at approximately 1:15 p.m.

Chairman Crowley took roll call as follows:

Richard Crowley, Chair	√ present <input type="checkbox"/> absent	Peter Ostroskey*	√ present <input type="checkbox"/> absent
John Couture, Vice Chair	√ present <input type="checkbox"/> absent	Michael McDowell	√ present <input type="checkbox"/> absent
Rob Anderson	√ 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
Kerry Dietz	√ present <input type="checkbox"/> absent		

* Jen Hoyt (JH) participated as the designee for State Fire Marshal, Peter Ostroskey.

General notes on format of these minutes:

- Votes are noted as **MOTION** by, seconded by, and whether it was a unanimous or split vote.
 - Agenda topics appear herein as numbered but may have been taken out of 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.
2. On a **MOTION** by Mike McDowell seconded by John Couture it was unanimously voted to approve the minutes (**EXHIBIT B**) for the December 12, 2017 Board of Building Regulations and Standards (BBRS) meeting as submitted.
 3. On a **MOTION** by Mike McDowell seconded by John Couture it was unanimously voted to approve the minutes (**EXHIBIT C**) for the December 6, 2017 Building Official Certification Committee (BOCC) meeting as submitted. However, John Couture indicated that he is concerned that Board members continue to approve BOCC meeting minutes when Office of Public Safety & Inspections (OPSI) Inspector, William Horrocks, who sits as the Board's representative, raises objections about who is permitted to sign New Employee Report Forms (NERFs) announcing the appointment of new inspector (see sample below).

Inspector Horrocks was present at the meeting and explained that he is opposed to accepting forms signed by anyone other than the Mayor or chair of the Board of Selectpersons because it runs contrary to Chapter 802 of the Acts of 1972 which established the Board, qualifications for municipal inspectors and other things.

Chief Gallagher agreed that Board members should not continue to approve minutes over such objections.

Following a brief discussion, Chairman Crowley asked Board Counsel, Charles Kilb, along with staff, to research the matter more fully and report back to Board members with conclusions.

5. New Employee Report Form Packets

- a. On a **MOTION** by Matthew Hakala and seconded by Jeff Richards it was VOTED to acknowledge the *New Employee Report Form* of **James Banda, Jr.** newly appointed to the position of **Local Inspector** for the Town of Abington. Appointed, October 2, 2017, not yet certified as a local inspector. Twelve month grace period expires October 31, 2018. *NERF signed by Town Manager.* Bill Horrocks opposed.

4. Jen Hoyt recused herself and left the room during the following discussion.

Rob Anderson introduced the agenda topic relating to manufacture buildings regulations indicating that there had been a few issues relating to installation of product over the last several months that may warrant regulatory and/or programmatic change. Rob indicated that William and Catherine Christina were present at the meeting to relay information about their experience with a manufactured building set in the Town of Danvers, and how the process may be improved.

Chairman Crowley emphasized that the conversation should adhere to improving the system in general and not drift into specifics of the Christina's experience.

With that, Ms. Christina explained that, by her experience, the role of the manufacturer, third party inspection agent as well as municipal inspection authorities need to be better defined. She indicated that the eighth edition regulations are okay, but portions are vague and open to interpretation and, by her opinion, municipal inspectors believe that manufactured building inspections, in general, are not within their purview.

Mr. Christina added that, in his opinion with the absence of a director, there is no oversight of the program and the director's position needs to be re-established funded and filled so that the program can be suitably monitored.

Ms. Christina expressed that their difficulties date back over 17 months, around the time the former manufactured building director left his position. According to the schedule, units should have been set and the project completed within 3 months of the start date, yet more than 17 months later, it remains unfinished. Ms. Christina asked if she could submit pictures of her home to illustrate its condition?

Chairman Crowley indicated that he would prefer to stay away from specifics and discuss how to make the program better as a whole. Ultimately, Chairman Crowley allowed the submission of 45 photographs depicting various portions and condition of their manufactured home (**EXHIBIT D**).

Both Mr. and Ms. Christina expressed concern that program regulations allow the manufacturer to select and pay Third Party Inspection Agents (TPIAs) to inspect product under production in the plant, which, by their opinions, establish a partnership among the two parties. Mr. and Ms. Christina indicated that manufacturers should be required to review and subject to writing that there no conflict of interest laws have been impeded by their arrangement with a TPIA. Also, program regulations allow TPIAs to view product only on occasion as it is manufactured. The Christina's indicated that records show their home

was completed in the factory in August, but the last inspection occurred in June; too long of a period between inspections by their estimation.

Chairman Crowley thanked Mr. and Ms. Christina for their candor and asked how Board members can assist to make the process better?

The Christina's indicated that the Board\state needs to take swift and decisive action when notified of egregious manufactured building violations. Manufacturers are required to comply with all relevant codes and should be held accountable for defective or non-code compliant product.

John Couture asked if there was a licensed construction supervisor involved in setting their home and Mike McDowell asked who secured the permit for the work.

The Christina's confirmed that a licensed supervisor did secure the permit and was in control of the project.

John Couture questioned why the licensed supervisor would have accepted the building if it were in poor condition. He should have taken action to stop the set.

Ms. Christina indicated that the manufacturer should be solely responsible for the quality of their product.

Board Counsel, Charles Kilb, cautioned that the discussion should be about process, not complaints about the licensed supervisor, manufacturer or others. If there are complaints against these parties, they should be addressed via other venues.

After viewing photographs submitted as **EHXBIT D**, Chief Gallagher expressed concern for the condition of the home indicating that the photographs were horrific. If the home were stick-built, there would have been many points of inspection. Chief Gallagher was concerned with the condition of the home and overall manufactured buildings procedures in general.

Following a bit more discussion, Chairman Crowley called for a short recess @ 1:58 p.m.

Chairman Crowley reconvened the meeting at approximately 2:10 p.m. indicating that discussions must be brought to a close so that members have time to address other agenda items. Chairman Crowley asked the Christina's to please make some final proposals as to how the manufactured buildings systems may be approved.

Ms. Christina indicated that:

- Product needs to be inspected more frequently during the manufacturing process;
- Units need to be better inspected upon site installation;
- Relationships between TPIAs and manufacturers need to be reviewed by the Board;
- Municipal inspection authority needs to be clarified;
- Compliance assurance manuals need to be better understood and followed;
- Manufacturers should be required to be responsible for the project until the very end;
- There should be specific guidance as to who may order and implement corrective action when deficiencies are identified; and
- License and qualification requirements for factory personnel should be reviewed and adjusted.

Following discussion, Chief Gallagher made a **MOTION** to establish a task force with specific guidance as to how to correct and better the process. Kerry Dietz seconded the **MOTION**. Upon discussion, Counsel Kilb cautioned that Board members may want to only establish the task force and leave specifics as to what need to be done and how to task force members as they study the matter further. Resultantly, Chief Gallagher revised the **MOTION** only to establish the task force and asked any member who is interested in serving to contact the chair prior to the next meeting so that membership can be determined in February. Kerry Dietz seconded the revised **MOTION** and the measure was unanimously approved by those present (Jen Hoyt did not participate and therefore, did not vote.)

Mr. Christina offered to assist task force members with their review and Ms. Christina invited task force members to tour their home once membership is established.

5. Rob Anderson indicated that Wagdy Anis resigned as chair of the Energy Advisory Committee (EAC). Kerry Dietz suggested that a letter of appreciation be sent to Wagdy for his service.
6. Rob Anderson asked Board members to open their handbooks (**EXHIBIT E**). Rob began with a general explanation of handbook content indicating that, as referenced in the Table of Contents, the handbooks addressed; among other things:

- Board Structure and Authority;
- Applicable Statutes and Regulations;
- Regulation Process;
- Meeting Procedure, Open Meeting Law, & Public Records Adjudicatory Proceedings Rules;
- Ethics & Department Policy;
- Materials on N.C. State Board of Dental Examiners v. Federal Trade Commission;
- Office of Public Safety Civil Fines Program Reimbursement Form; and
- Frequently Asked Questions (FAQ's).

Rob indicated that it has been a recurring practice to start each calendar year with a review of Massachusetts General Law (MGL) c. 143 §§ 93 through 100 which define the makeup of the Board as well as its powers and duties. Rob reviewed each item under §94 and provided examples of how Board members had recently addressed the item. For example, §94(a) which reads in part *"To formulate, propose, adopt and amend rules and regulations relating to (i) the construction, reconstruction, alteration, repair, demolition, removal, inspection, issuance and revocation of permits or licenses, installation of equipment . . . "*. Rob indicated that Board members had achieved this goal by way of the ninth edition of the code. Rob asked Board members to think about these specific duties as the year progresses to ensure a productive meeting schedule.

7. Board Counsel, Charles Kilb, introduced the agenda items concerning open meeting law requirements and ethics obligations. Counsel Kilb reviewed each matter via a *PowerPoint Presentation* titled *The Massachusetts Open Meeting Law* (**EXHIBIT F**). Among other things, counsel reminded Board members that *"These four questions will help determine whether a communication constitutes a meeting subject to the law:*
 - *is the communication between or among members of a public body;*
 - *if so, does the communication constitute a **deliberation**;*
 - *does the communication involve a matter within the body's jurisdiction; and*
 - *if so, does the communication fall within an exception listed in the law?"*

Counsel Kilb continued indicating that:

- subcommittees, such as the Fire Prevention\Fire Protection Board (FPFP) and others are subject to the same requirements as the full board; and
- board members must vote to allow remote participation (which was done a while back) and remote participants cannot form a quorum (there has to be a quorum at the actual location).

Jen Hoyt explained that, at times, an appeals board may need to convene hearings with only 2 members (typically there are 3) due to a conflict with one of the members. If necessary, members disclose the conflict and allow participants the option of continuing with 2 members or postponing the hearing. If parties choose to continue, Board members consider a split vote to be a failing measure – would that be considered correct?

Counsel Kilb indicated that, yes upon disclosure, it is okay to convene a hearing with 2 members and the vote would need to be unanimous to pass.

Kerry Dietz asked if an appellant can ask for a continuance at an appeal hearing to which the response was yes. Kerry also asked if Board members can receive some training relating to appeals hearings and perhaps training on how to locate information of the OPSI website? She indicated that she first participated in appeals hearing without any formal instruction and it is difficult to navigate the OPSI website.

Chairman Crowley indicated that the best way to become acquainted and comfortable with appeals hearings is to attend and witness a few hearing dates. He encouraged all members to attend a few hearing that are held in the Milford office.

Cesar Lastra indicated that the OPSI website is currently under revision. Once it is better established, we can provide use training at an upcoming Board meeting.

8. Rob Anderson introduced the agenda item concerning Guidelines for Pin Foundations. Cesar Lastra indicated that he had done research on how other states, such as Michigan and Minnesota, address and allow use of pin foundations. Cesar indicated that, like Massachusetts, most rely on evaluation service reports or other methods to allow product not specifically identified in the code. Cesar indicated that the guidelines are meant to provide a roadmap for building inspectors to approve pier footings or other products.

Jen Hoyt indicated that the guidelines should not be considered a product approval and we should revise the language by adding the words, *and similar systems*, following the word *Foundation* in the second line. All agreed and on a **MOTION** by Jen Hoyt seconded by John Couture it was unanimously voted to approve the Guidelines (**EXHIBIT G**) for issuance with the referenced revisions.

9. Rob Anderson indicated that Fire Prevention\Fire Protection (FPFP) members are still reviewing transient lodging and large single- and two-family dwelling sprinkler requirements as identified on in items 8 and 9 of the agenda.
10. Rob Anderson introduced the topic of recent construction related fires and implementation of the National Fire Prevention Association (NFPA) Standard 241 explaining that OPSI staff along with Department of Fire Services (DFS), municipal fire and building code enforcement authorities, building contractors groups and others have teamed-up to form the Construction Fire Safety Partnership. The group has met on several occasions to discuss specifics related to the Waltham, Weymouth and Boston fires and how best to prevent

further occurrences and will meet again on January 23rd at the Associated General Contractors office in Wellesley.

11. On a **MOTION** by Mike McDowell seconded by John Couture it was unanimously voted to approve 130 new construction supervisor licenses (CSLs) issued in the month of December.
12. Rob Anderson introduced Mr. Scott Saltzman who asked to address Board members regarding his experiences in taking the construction supervisor license (CSL) exam. Mr. Saltzman indicated that, although Prometric (the private exam administrator) was accommodating in providing assistance under the Americans with Disabilities Act (ADA) and, in general, pleasant to deal with, he had a difficult time with exam materials. Mr. Saltzman explained that he had spent time and money for exam preparatory classes and felt confident going to his first examination date in April, 2017. However, he received a score of 69%. Mr. Saltzman explained that plan reference materials that were distributed to be used during the exam were missing numbers and other information. Presumably, the information was cut-off during copying\printing the materials. Mr. Saltzman filed a complaint with Prometric regarding the materials, was issued an apology, and offered another administration of the exam.

Mr. Saltzman indicated that attended another preparatory class, now paying about \$1800 for the 2 classes, then scheduled and again took the examination on August 9, 2017, receiving a score of 68%. However, Mr. Saltzman again indicated that the plan materials had not been corrected. Resultantly, he filed another complaint with Prometric and also with the Office of Public Safety and Inspections (OPSI).

Mr. Saltzman indicated that he was fully confident that he would have passed the examination had the materials been correct. He asked that Board members consider granting him a license based on what he had been through and accomplished.

In response to a question by Chief Gallagher, Mr. Saltzman indicated that he has been involved with construction for nearly 30 years and is confident of his abilities.

Following discussion, on a **MOTION** by Kevin Gallagher seconded by Mike McDowell, it was voted in the majority to approve issuance of a Construction Supervisor License (CSL) to Mr. Saltzman in recognition of his efforts, experiences and difficulties with the exam materials.

During discussion of the **MOTION**, Counsel Kilb pointed out that every day hundreds of exams take place and any given candidate may have a concern regarding the administration of the exam and\or materials. Typically, a candidate is made whole by offering a free administration of the exam or some other method, not by granting a license.

Mike McDowell indicated that the circumstances surrounding this matter are unique and, in making this decision, Mike and other Board members made it clear that not only the difficulties Mr. Saltzman experienced with the exam materials, but also the fact that the exam has now transitioned from the eighth to the ninth edition of the code made it prudent for Board members to approve issuance of a license.

Following discussion, the MOTION was approved by a majority of members.

Jen Hoyt was opposed and Rob Anderson abstained from the vote.

13. Massachusetts General Law (MGL) c. 143 §93 establishes that, except for filling portions of an unexpired term, “. . . that that no member shall serve as chairman or vice chairman for more than two consecutive years”. Chairman Crowley has completed his second full year, therefore, the following individuals were nominated:

- John Couture was nominated and accepted the position of chair; and
- Richard Crowley and Kerry Dietz were both nominated for vice-chair.

Board members debated whether or not it is wise to lose the continuity and institutional knowledge of Rich as vice chair and Rich expressed his eagerness to remain involved in the process. Counsel Kilb offered that Board members may consider appointment of a first (primary) and secondary chair.

Following discussion, on a **MOTION** by John Couture seconded by Jen Hoyt it was unanimously voted to approve Kerry Dietz to serve as primary and Richard Crowley as secondary vice-chair. Each accepted the position willingly.

14. Under matters not reasonably anticipated:

- Jen Hoyt indicated that there have been some reports of Flak Jacket sickening cases in Massachusetts, but they appear to be under control; and
- Chief Gallagher indicated that the origin of some recent Somerville fires is attributable to *Low E* glazing. More information should be available soon.

15. On a **MOTION** by Mike McDowell seconded by Jen Hoyt it was unanimously voted to adjourn the regular meeting at approximately 4:29 p.m.

EXHIBITS:

- A. Meeting Agenda.
- B. BBRS December 12, 2017 Meeting Minutes.
- C. BOCC December 6, 2017 Meeting Minutes.
- D. Photographs depicting various portions and condition of the Christina’s manufactured home
- E. BBRS Member Handbooks.
- F. **PowerPoint Presentation** on Massachusetts Open Meeting Law.
- G. Guidelines on Pin Foundations and Similar Systems.