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CHARLES BORSTEL
COMMISSIONER, DIVISION OF
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Board of Building Regulations and Standards (BBRS)
May 8, 2018 Public Hearing & Regular Meeting
Division of Professional Licensure (DPL)
1000 Washington Street Boston

Chairman, John Couture, opened the regular meeting at approximately 1:13 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	<input type="checkbox"/> present √ absent	Steve Frederickson	√ present <input type="checkbox"/> absent
Robert Anderson	√ 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 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

*The following is meant to provide a synopsis of proposals reviewed and related discussions.
It is not meant to be a verbatim account.*

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1. **Proposal Number 5-1-2018** – Consider adopting 2018 International Energy Conservation Code (IECC) & Discuss Stretch Energy Code Provisions.

Link to code: <https://codes.iccsafe.org/public/document/iecc2018>

Massachusetts General Law (MGL) c. 143, §94(o) establishes that the BBRS shall “. . . adopt and fully integrate the latest International Energy Conservation Code as part of the state building code, together with any more stringent energy-efficiency provisions that the board, in consultation with the department of energy resources, concludes are warranted. The energy provisions of the state building code shall be updated within 1 year of any revision to the International Energy Conservation Code”.

International Code Council, Vice President for Government Relations, Dottie Harris, provided a document titled *2018 International Energy Conservation Code (IECC) Transition from the 2012 IECC*. Dottie explained that the document (**EXHIBIT B**) details changes made to the IECC during the 2012, 2015 and 2018 cycles.

Energy Code Specialist, Rakesh Koti, reviewed a *PowerPoint Presentation (EXHIBIT C)* titled *Changes to the IECC 2018*. Among other things, the 34 slide presentation detailed changes to:

- **Residential Energy Efficiency**
- Envelop & Systems Requirements
- Electrical Power and Lighting
- Energy Rating Index Compliance Alternative
- **Commercial Energy Efficiency**
- Building Envelop & Building Mechanical Systems
- Service Water Heating
- Electrical Power and Lighting
- Additional Efficiency Packages
- Commissioning

BBRS member, Kerry Dietz, questioned requirements for screw-in vs. integrated light fixtures concerning cost. DOER Deputy Director, Energy Efficiency Division and audience member, Ian Finlayson, explained that either are included in the fixture count for compliance.

BBRS member, Michael McDowell, questioned how many communities had adopted the stretch code and what is the intent for the future?

Ian Finlayson explained that approximately two-thirds of the 351 Massachusetts municipalities have adopted the stretch code. Ian explained that the legislation does not allow a weakening of energy requirements and the BBRS is to work in consultation with DOER in the development and promulgation of energy code requirements. Accordingly, it is anticipated that some form of the stretch code will remain.

Government Affairs Associate Director of the Commercial Real Estate Development Association, Susan Trainor, expressed objection to the stretch energy code indicating that it should be eliminated and energy requirements, like other code provisions, should be uniform throughout the commonwealth.

On questions from BBRS member, Michael McDowell, and American Institute of Architects (AIA) Executive Director and audience member, John Nunnari, Ian Finlayson indicated that the current ninth edition and stretch energy code are pretty similar. Residential pathways are a bit more stringent. Michael expressed concern about continued stretching of energy requirements. Ian indicated that Massachusetts is no longer considered number one in energy efficiency; California has surpassed Massachusetts according to latest statistics.

2. **Proposal Number 5-2-2018** – Consider adopting Appendix Q of the 2018 International Residential Code pertaining to Tiny Houses.

Link to appendix: <https://codes.iccsafe.org/public/document/IRC2018/appendix-q-tiny-houses>

BBRS member, Richard Crowley, introduced the topic indicating that there is great interest in tiny houses, but, in the current ninth edition, a tiny house could not be built by right. Rather, it would have to undergo review through variance hearings. IRC Appendix Q establishes requirements to build tiny houses without the need for variances.

Audience member, Frances Jeffers, indicated that tiny homes have been used elsewhere in the country to help with homelessness issues. Tiny homes are economical and a good alternative for young folks who find themselves priced-out of the current market.

Audience member, Mellissa Gersen, indicated that she was evicted from her home and now lives in a tiny house and is a great proponent.

Audience member, Erin Ryan, indicated that she currently lives in a 4-bedroom home which she no longer needs. She wishes to build and live in a tiny house on her property and allow her children to use the larger home to raise a family.

Several other audience members also provided testimony in support of adopting Appendix Q.

BBRS member, Steve Frederickson, wished to remind everyone that the placement of a tiny house on a lot needs to comply with municipal zoning requirements.

3. **Proposal Number 5-3-2018** – Consider adopting an amendment particular to Micro Units submitted by Mike DiMascio (**EXHIBIT D**).

Audience member and code change proponent, Mike DiMascio, indicated that the proposal is intended to ease certain code requirement for micro units which to allow for alternative minimum floor areas with features that compensate for reduced unit areas. Mike indicated that the proposal is based on a successful model that is used in Seattle and indicated, like tiny houses, there is great interest in and around Boston for smaller, more affordable building units. The proposal does not add cost to construction, but provides more affordable units to consumers.

BBRS member, Kerry Dietz, expressed concern about unit sizes in contrast to sanitary code requirements and minimums defined for Department of Housing and Community Development (DHCD) projects. Kerry indicated that the proposal would create an inherent conflict with sanitary code requirements and DHCD unit size requirements. Kerry also raised concerns regarding wheel chair accessibility in and around the smaller units.

BBRS member, Michael McDowell, expressed concern about easing code requirements for a particular type of unit or house without extending the benefit to all use types. Room size requirements are often an issue in smaller homes, both new and renovated. Requirements should be flexible and available for everyone's benefit.

BBRS member Steve Frederickson, indicated that the proposal should be submitted to the International Code Council and should not be a change peculiar to Massachusetts.

Audience member and Stantec Architecture and Engineering P.C. representative, Tamara Roy, submitted a 4-page, double-sided document detailing micro unit innovation projects (**EXHIBIT E**) indicating that there is a great need and interest in micro units, particularly in\around urban areas. Tamara indicated that the commonwealth is losing talented young people because they cannot afford conventional units. She indicated that the commonwealth should lead, not follow on this subject.

Audience member, William Solfisburg, indicated that he was assigned to review manufactured building code requirements but was not afforded the ability. He indicated that he is a big proponent of affordable housing.

4. **Proposal Number 5-4-2018** – Consider adopting 2015 International Solar Energy Provisions.

Link to document:<https://codes.iccsafe.org/public/document/ISEP2015>

BBRS member, Richard Crowley, identified that he proposed adopting the referenced code for purposes of uniformity and cohesiveness.

Dottie Harris indicated that the document excerpts all solar energy provisions from the varied I-Codes and publishes as one document for ease of use.

BBRS members, Jen Hoyt, indicated that a solar study group had previously convened to review building and fire safety concerns. Jen indicated that the group should reconvene to review this proposal and determine its merits.

5. **Proposal Number 5-5-2018** – Consider updating NFPA 241 to the 2013 Edition to coincide with 527 CMR (The Massachusetts Comprehensive Fire Safety Code) and broaden the scope beyond standpipes.

BBRS member, Rob Anderson, explained that there is conflict between 780 CMR, which cites the 2009 version of NFPA 241, and 527 CMR, which cites a more up-to-date 2013 edition. Rob also indicated that 780 CMR only references 241 (*Standard for Safeguarding Construction, Alteration and Demolition Operations*), in regards to stand pipe requirements.

BBRS member, Jen Hoyt, indicated that we should take an opportunity to align all the NFPA standards, 50, 30, etc., and suggested that she and Rob Anderson work together to coordinate. She also cautioned that referencing 241 beyond standard pipes may cause a conflict with 527 CMR.

BBRS member, Kerry Dietz, indicated that it should be made clear that compliance with 241 is not the responsibility of the Registered Design Professional (RDP).

6. **Proposal Number 5-6-2018** – Consider broadening the scope of NFPA 130 beyond Chapters 2, 3, 4, and 5.

BBRS member, Rob Anderson, indicated that NFPA 130 (*Standard for Fixed Guideway Transit and Passenger Rail Systems*) is also limited in scope in the ninth edition which causes some difficulty for MBTA projects.

7. **Proposal Number 5-7-2018** – Consider developing a swimming pool installers license\certification based on the Association of Pool & Spa Professionals (APSP) standards.

Link to standards: <http://apsp.org/pool-and-hot-tub-certification>

BBRS member, Rob Anderson, explained that legislation has been filed to establish licensing and\or certification of swimming pool installers. It is anticipated that BBRS will be charged with developing and implementing requirements. This proposal provides an existing model that is used in other states, such as Connecticut, for achieving this goal without developing unique criterion for Massachusetts. Requisite exams via this process are keyed to the International Swimming Pool and Spa Code (ISPSC) which was adopted as part of the ninth edition.

Audience member and ICC rep., Dottie Harris, indicated support for the process.

8. **Proposal Number 5-8-2018** – Consider adding the following paragraph as Section 105.3.1.1 for both the base and comparable residential code section.

BBRS Chairman, John Couture, explained that the proposal is intended to compel building contractors to complete projects before other work may be permitted. Chairman Couture indicated that he, and other inspectors, often have great difficulty in getting contractors to close-out projects appropriately. He indicated that the language requiring a permit applicant to complete all permitted work by correcting outstanding code violations prior to being granted further permits within a municipality, is borrowed from the plumbing and fuel gas code where it has been used successfully.

BBRS member, Michael McDowell, indicated that he does not have particular difficulty with the concept, but suggested that it should be a stand-alone section in the code.

Audience member and AIA rep., John Nunnari, indicated that he understands the difficulty and intent to correct it, but was concerned that the measure would not be used judiciously and often, the reason for delay in closing-out projects is due to contractual disputes concerning payment. To hold up a permit for another project due to monetary disputes does not seem fair.

BBRS member, Steve Frederickson, suggested that these matters should be resolved via license hearings.

9. **Proposal Number 5-9-2018** – Consider deleting item number 2 under Section 2603.5.5 to coordinate with final amendments made to Sections 1403.5 and 1407.10.4 of the ninth edition code.

BBRS member, Rob Anderson, indicated that there is an error in the ninth edition amendments with regards to this section requiring correction.

BBRS member, Jen Hoyt, indicated that the issue was clearly defined in the minutes of August, 2017, yet the amendments were published incorrectly. Jen urged Board members to correct immediately. Accordingly, Jen wished to offer a motion to correct the code language.

BBRS member, Rob Anderson, indicated that typically Board members only hear testimony with regard to code change proposals and do not vote them approved or otherwise until a subsequent meeting. In fact, the hearing notice does not indicate that the Board would be voting on proposal, only hearing testimony with regard to their merit.

OPSI Council, Charles Kilb, concurred that the notice did not indicate that proposals would be voted on during the hearing.

BBRS member, Jen Hoyt, indicated that she would address the issue further later in the meeting.

10. **Proposal Number 5-10-2018** – Consider amending Section R303.1, exception number 1. Submitted by Building Code Enforcement Official, Frank Ramsbottom.

BBRS member, Rob Anderson, indicated that the proposal provides further requirements for mechanical ventilation systems.

BBRS Chairman, John Couture, explained the concept of whole-house mechanical systems and thinks that the proposal may help with some lingering difficulties.

11. **Proposal Number 5-11-2018** – Consider adding item number 9 stating that, if applicable, in accordance with MGL 149 Section 6 and 454 CMR 22.00, include the *Lead-Safe Renovation Contracting Licensees'* name and license number to Section R105.3 concerning information requested on a building permit application.

BBRS member, Rob Anderson, indicated that the proposal was submitted by Michael Flanagan, Chief Department of Labor Standards Safety and Health Programs, to assist with lead safe removal and disposal efforts.

BBRS members, Michael McDowell and Chairman John Couture, indicated that the language does not belong in the building code and is likely at odds with Executive Order (EO) 562.

12. **Proposal Number 5-12-2018** – Consider amending Section N1103.6.2 and R403 to add reference to licensed sheet metal workers submitted by Cathy Flaherty.

13. **Proposal Number 5-13-2018** – Consider amending Section N1103.3.3 and R403.3.3 to add reference to licensed sheet metal workers submitted by Cathy Flaherty.

(Proposals 12 and 13 address essentially the same issue. Testimony was taken for both at the same time.)

Audience members Manny Chavez and Donald Chaisson (*names not clearly identified – not certain if names are spelled correctly*) indicated that in 2008, Governor Patrick introduced sheet metal licensing requirements in the commonwealth requiring certain products to be installed only by duly licensed individuals.

Mr. Chaisson identified that testing, adjusting and balancing of sheet metal systems is part of the installer's duty. However, the referenced sections of 780 CMR do not allow a sheet metal worker to verify and/or test sheet metal systems. Instead, the code requires HERS raters or BPI Certified professionals. Both proposals 5-12-2018 and 5-13-2018 offers to revise the code so that sheet metal workers too can test systems once installed.

BBRS member, Michael McDowell, questioned why sheet metal workers cannot simply get certified by BPI and/or as a HERS rater to perform such functions. DOER rep and audience member, Ian Finlayson, indicated that many sheet metal workers possess BPI certification and there are many trainings available for others. The biggest concern having to do with installations appear to be with air leakage and trainings can help identify how to resolve these issues.

14. **Proposal Number 5-14-2018** – Consider amending Section 101.5 of the base code and comparable section of the residential code by deleting the last sentence as well as the name and make-up of each committee.

BBRS member, Rob Anderson, indicated that the proposal intends to remove committee make-up and membership from the body of the code so that public hearings are not necessary to make a change.

15. Kevin Gallagher offer a **MOTION** to revise Section 2603.5.5 via emergency to reflect the August 8, 2017 vote of the Board, thereby correcting the error.

Following testimony on proposals submitted prior to the meeting, BBRS member, Jen Hoyt, indicated that a vote should be taken on **Proposal Number 5-9-2018** concerning Section 2603.5.5. BBRS member, Kevin Gallagher, agreed that an emergency vote should be taken to correct the erroneous code section and made the above motion.

OPSI Counsel, Charles Kilb, cautioned that correcting a regulatory error does not meet the standard required to warrant an emergency vote. An emergency vote has to be clearly justified; it has to be demonstrated that there is a clear danger to the public. Counsel Kilb suggested that the vote be taken at the following meeting so that it can be clearly identified and the agenda and, hopefully, justified as an emergency.

BBRS member, Rich Crowley, indicated that the final change to this section that was supposed to take place was based on information gleaned from the recent London fire and there was concern that Section 2603.5.5 allows the use of exterior materials similar to those used on the London building. Rich indicated that the London building was not sprinklered and only had one means of egress and therefore could not be built in Massachusetts. Rich indicated that he did not think this requires an emergency action at this time.

Both members Jen Hoyt and Kevin Gallagher disagreed from a fire science perspective.

Following debate, the motion was withdrawn.

16. Home Builders & Remodelers Association (HBRA) representative, Guy Webb, introduced a proposal to delete Section AU103.7 (RB103.7) in the International Residential Code (IRC), Appendix U, concerning electrical service reserved space on the main electrical panel for future solar use.
17. On a **MOTION** by Kerry Dietz seconded by Rich Crowley it was unanimously voted to adjourn the public hearing portion of the meeting @ 4:08 p.m.

Regular Meeting Portion

After a short break, the regular meeting began @ approximately 4:18 p.m.

18. **BBS Minutes.** On a **MOTION** by Kerry Dietz seconded by Susan Gleason it was unanimously voted to approve the minutes (**EXHIBIT F**) for the April 10, 2018 Board of Building Regulations and Standards (BBS) meeting as submitted.
19. Due to time limitations, On a **MOTION** by Kerry Dietz seconded by Rich Crowley it was unanimously voted to table action on agenda items numbered 2 and 3 until the next meeting.
20. **Concrete Testing Laboratories (CTL).** On a **MOTION** by Rich Crowley seconded by Lisa Davey it was unanimously voted the following laboratories:
- Thompson & Lichtner (CTL18-0001); and
 - John Turner Consulting (CTL187-087).
21. **Concrete Testing Laboratories (CTL).** On a **MOTION** by Rich Crowley seconded by Kerry Dietz it was unanimously voted forward the request to approve NETTCP Lab Certification Program for consideration as a concrete testing laboratory accreditation authority to the Structural Advisory Committee (SAC) for review.
22. **New Construction Supervisor Licenses (CSL).** On a **MOTION** by Kerry Dietz seconded by Lisa Davey it was voted in the majority to approve 172 new construction supervisor licenses issued in the month of April, 2018. Rich Crowley abstained from the vote.

Rich abstained due to a conversation he had with the ethics commission where he was advised that he should not vote on licenses for individuals who he has instructed. Without a list of licensees, he did not know if any of his former students were issued licenses in April, therefore he chose to abstain.

23. **CSL Requests for Reinstatement.** On a **MOTION** by Kerry Dietz seconded by Jen Hoyt it was voted in the majority to approve the following requests for license reinstatement:
- Stephen Cohen (*medical*) CS-028120
 - James Wilson (*medical*) CS-070144
 - Anthony Lavina (*military*) CS-034418

Rich Crowley abstained from the vote.

24. **Code Change Proposal Number 5-9-2018.** BBS members Jen Hoyt and Kevin Gallagher again wished to address the referenced proposal concerning ninth edition Section 2603.5.5.

OPSI Counsel, Charles Kilb, presented Board members with a copy of the voted recorded in the August 8, 2017 meeting minutes (**EXHIBIT G**). Three code sections pertaining to NFPA 285 testing requirements were supposed to be revised as part of the final amendments to the ninth edition prior to promulgation. Changes to Sections 1403.5 and 1407.10.4 were done correctly, Section 2603.5.5 was done incorrectly. Counsel Kilb indicated that exceptions 3 and 4 should have been deleted, but the final amendments were published with exceptions 1 and 4 deleted instead.

Again, members Hoyt and Gallagher requested an emergency change to the section to correct the error. Accordingly, a **MOTION** was made by Jen Hoyt seconded by Kevin Gallagher to file an emergency amendment to revert to un-amended IBC language.

On discussion, Chairman Couture asked counsel if an emergency vote could be taken even though not reflected on the agenda? Counsel Kilb advised that, in his opinion, there is not a solid legal argument to vote the change via emergency in that we have not received specific examples of buildings that have suffered fire loss due to this provision. Additionally, the proposed motion to revise the section to un-amended IBC text does not reflect the August vote, adding a layer of complexity.

Kevin Gallagher was concerned that the section does not reflect the vote of the board, was issued in error and people may be designing to erroneous code requirements.

Kerry Dietz indicated that, if the section is eventually changed, anyone who designed to the current standard could file an appeal for relief.

Mike McDowell indicated that counsel has advised Board members that it is not wise to change the section via emergency, at least at this meeting, so we should heed the advice.

Following discussion, on a vote of 2 in favor (Hoyt and Gallagher) and 8 opposed, the motion failed.

A new **MOTION** was offered by Kevin Gallagher seconded by Jen Hoyt to file an emergency amendment to revert to language approved via the August 8, 2017 Board vote.

Following a brief discussion, on a vote of 2 in favor (Hoyt and Gallagher) and 8 opposed, the motion failed.

25. **Code Proposal Written Comment Period.** On a **MOTION** by Rich Crowley seconded by Jen Hoyt it was unanimously voted allow a period up to the close of business on the Friday before the next meeting for interested parties to submit written comments on any proposed reviewed during the public hearing.

26. **Adjourn.** On a **MOTION** by Rich Crowley seconded by Jen Hoyt it was unanimously voted to adjourn the meeting @ 5:03 p.m.

EXHIBITS:

- A. Meeting Agenda.
- B. *2018 International Energy Conservation Code (IECC) Transition from the 2012 IECC.*
- C. *PowerPoint Presentation* titled *Changes to the IECC 2018.CTL PowerPoint Presentation.*
- D. *Micro Unit* Code Change Proposal submitted by Mike DiMascio.
- E. Stantec Architecture and Engineering P.C. representative,
Tamara Roy, 4-page, double-sided document detailing micro unit innovation projects
- F. BBRs April 10, 2018 Meeting Minutes.
- G. Portion of August 8, 2017 BBRs meeting minutes pertaining to Section 2603.5.5 vote.