

Minutes of the NYS Fire Prevention and Building Code Council meeting on Friday, March 06, 2020, commencing at 10:03 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)
Benjamin Keller (Albany)
Joseph Palozzola (NYC)
Vincent Rapacciuolo (Albany)
Keith Wen (NYC)
David Seeley (Buffalo)
Claudia Braymer (Albany)

Joseph Toomey (Albany)
Shawn Hamlin (Albany) (Joined at 10:08 am)
Timothy DeRuyscher (Albany)
Robert Hughes (Albany)
William Tuyn (Buffalo) (Joined at 10:10 am)
Dominic Marinelli (Buffalo)

Staff present: John Addario, Panagiota Hyde, Kevin Duerr-Clark, Emma Gonzalez-Laders, China Clarke, Gregory Benton, and Daniel Carroll.

Agenda Item 1. Welcome.

Mr. Tebo welcomed everyone.

Mr. Duerr-Clark called the roll. Mr. Tebo noted that a quorum was present.

Mr. Tebo called the meeting to order, welcomed Code Council member Benjamin Keller, and introduced new Code Development staff China Clarke and Gregory Benton.

Agenda Item 2. Minutes of the meeting of December 6th, 2019. Consideration of motion to approve.

Mr. Tebo asked if anyone had any changes to the minutes of the December 6th, 2019 meeting. Hearing none, Mr. Tebo called for a voice vote on adoption of the minutes, seconded by Mr. Toomey. The motion to adopt the minutes was approved unanimously.

Agenda Item 3. Notice of Emergency Adoption – Abandonment or Removal of Heating Oil Storage Tanks Provisions in Current Uniform Code (add new Subpart 1229-3 to 19 NYCRR)

Ms. Gonzalez-Laders presented a summary of updates to the currently adopted Residential Code and the Fire Code of 2015, to be adopted in an emergency basis, as a result of new regulations signed by the Governor on December 20, 2019 and becoming effective on March 19, 2020, pertaining to home heating oil storage tanks. The new regulation requires homeowners to notify their heating oil providers when a conversion to an alternate fuel has taken place, prior to the commencement of the new heating service.

Mr. Hughes asked about the format of the letter homeowners would be required to provide to their oil supplier. Ms. Gonzalez-Laders responded that the regulations do not specify the format and notification could be made by email, fax, or letter, but that regardless of format, proof must be submitted to the Code Official.

Mr. Tebo noted that Council Member Shawn Hamlin had joined the meeting.

Mr. Tebo made a first motion, read by Ms. Hyde, summarized as follows: for the Code Council authorizing declarations to the effect that this rule amending the Uniform Code will not have a significant environmental impact or 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.

The motion was seconded by Mr. DeRuysler. No discussion. Mr. Tebo noted that Council Member William Tuyn had joined the meeting. Motion approved unanimously.

Mr. Tebo made a second motion, read by Ms. Hyde, summarized as follows:

- a) The Uniform Code does not current have a provision that requires a property owner to provide written notice to his or her home heating oil supplier or suppliers to inform them of such conversion to an alternative fuel following the abandonment or removal of a heating oil storage tank;
- b) This rule would amend the Uniform Code to include provisions addressing Executive Law §378(13), as amended and effective March 19, 2020;
- c) Chapter 725 of the Laws of 2019 provided that effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for implementation of the amendments to Executive Law 378(13) on its effective date are authorized to be made and completed on or before such effective date;
- d) Developing, proposing, adopting, and implementing such a rule in compliance with the requirements of the State Administrative Procedure Act would delay the effective date of the rule;
- e) Developing, proposing, adopting, and implementing such a rule to become effective at least 90 days after the date on which notice of such change has been published in the State Register would delay the effective date of the rule;
- f) Adopting such rule as an emergency rule, to be effective immediately upon filing of the Notice of Emergency Adoption is necessary to protect public health, safety, and security; and
- g) The effective date of this rule shall be the date on which the rule is filed for publication with the State Register.

The motion was seconded by Mr. Keller. No discussion. The motion was approved unanimously.

Agenda Item 4. Amended Notice of Adoption (Uniform Code) – Abandonment or Removal of Heating Oil Storage Tanks Provisions in 2020 Uniform Code and minor non substantial corrections to the 2020 Uniform Code (19 NYCRR Parts 1219 to 1227).

Ms. Gonzalez-Laders presented a summary of updates to the newly adopted codes of 2020 consistent with the updates made to the 2015 codes, minor non-substantial corrections, and updating referenced standard TIA-222.

Mr. Tebo made a first motion, read by Ms. Hyde, summarized as follows, for the Code Council authorizing declarations to the effect that this rule amending the Uniform Code will not have a significant environmental impact or 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.

The motion was seconded by Mr. Hughes. No discussion. The motion was approved unanimously.

Mr. Tebo made a second motion, read by Ms. Hyde, summarized as follows, that the Code Council adopt the amended rule now being approved to supersede the original rule approved at the December 6th, 2019 meeting, and that such amended rule and the amendments to the Uniform Code made by the amended rule to become effective on May 12, 2020.

The motion was seconded by Mr. Toomey. No discussion. The motion was approved unanimously.

Agenda Item 5. More Restrictive Local Standards, Uniform Code (Executive Law §379) Town of Forestburgh Local Law #3 of 2019.

Mr. Carroll presented a summary of the petition and staff findings.

Mr. Tuyn agreed that there were no special local conditions and asked if the provisions could be addressed by local ordinance instead of as a building provision. Mr. Duerr-Clark responded that even if masked as a local ordinance, it constitutes a construction provision governed by the Uniform Code. Mr. Tebo agreed.

Mr. DeRuysler stated his understating that the primary reason given by the applicant was to facilitate emergency response, that the 3-inch provision does not comply with the code requirement of 4-inches, and indicated his preference for approval of a request for enabling emergency responders to better find properties. Mr. Carroll indicated that Section 505.1 of the Fire Code gives the Fire Code official discretion to require additional signage which would provide the same level of protection as the proposed local law.

Mr. DeRuysler asked if the law could be adopted as a guideline or practice instead of a local law. Mr. Carroll responded that parts of the law could, but not the less restrictive provisions. Mr. Duerr-Clark added that the a more restrictive provisions, including specific colors and styles, of the local law could not be enforced.

Mr. Hughes agreed that the provisions afford additional safety and asked if the applicant had given a reason for only requiring 3-inches in some instances. Mr. Tebo indicated that the applicant had been invited to comment and declined. Mr. Carroll agreed.

Ms. Braymer asked if the provision for color could be enforced without petitioning the Council. Mr. Duerr-Clark responded that because the Code allows for any contrasting color, this provision is more restrictive. Ms. Braymer further indicated that similar conditions occurring elsewhere in the State shouldn't necessarily be the basis for denial. Mr. Tebo indicated his position that if so, then the issue should be addressed globally for all similar areas, maintaining the Code's uniformity.

Mr. Keller agreed that the leeway given to the Code Official would address the needs of the fire service, who's hopefully working with local emergency services to determine the need for additional signage and agreed that the minimum must be 4-inches.

Mr. DeRuyscher asked if the provisions, maintaining a minimum of 4-inches, could be enforced without a More Restrictive Standard. Mr. Duerr-Clark responded that they could use the leeway provided by the Code, but not enforce the 6-inch character or the color provisions.

Mr. Tebo indicated the need to look at the provisions in the next Code or sooner to better serve jurisdictions throughout the State.

It was discussed and noted that some provisions of the local law, if adopted, are more restrictive and would apply retroactively.

Mr. Tuyn noted that with the limited number of buildings in the Town, the challenge to the fire department in finding them should be minimal, that accessibility is an important issue, that the applicant did not demonstrate they have unique conditions, and agreed that if the issue is addressed, it should be done uniformly. He further noted, that the Town could potentially enforce some of the provisions as a condition of site plan approval. Mr. Tebo stated that multiple fire departments could potentially be involved finding different signage from one town to another.

Mr. Tebo made a motion, read by Ms. Hyde, to deny the more restrictive standards for construction based on no special conditions making the requirements reasonably necessary and to deny the less restrictive standards for construction. The motion was seconded by Mr. Hamlin and Mr. Tuyn.

Ms. Braymer proposed to amend the motion to approve the local standard in regard to the use of reflective white letters in a blue background. The motion was seconded by Mr. DeRuyscher. No discussion. The amended motion failed with a vote of 10 to 3.

The original motion was passed unanimously.

Mr. DeRuyscher proposed that the Division educates the applicant on the application of the word "approved." Mr. Duerr-Clark indicated the local Code Enforcement Officer had been advised.

Agenda Item 6. More Restrictive Local Standards, Uniform Code (Executive Law §379)

- **Village of Boonville Local Law #1 of 2019**

Mr. Carroll presented a summary of the petition and staff findings. He further summarized recent communication received from the Village's Code Enforcement Officer indicating that the recently issued Technical Bulletin TB-1029 "satisfies the concerns of the Boards for the Village and Town," and that the Village is no longer seeking to petition the Council for a More Restrictive Local Standard.

Mr. Tebo asked if roof collapses had been mentioned in the application. Mr. Carroll responded that three examples were mentioned, but without construction data such as the date of construction or the condition of the buildings prior to the collapse. Mr. Tebo asked if there was a major issue statewide and Mr. Carroll responded that the Division was unaware of such concern.

Mr. Seeley asked whether the applicant had abandoned or repealed the local law. Mr. Duerr-Clark answered that, to his knowledge, the local law had not been repealed, but that the local Code Enforcement Official indicated the Village was no longer wishing to petition.

Ms. Braymer asked if the applicant's misunderstanding of the provisions had been clarified and whether the map could be more precise. Mr. Carroll and Mr. Duerr-Clark answered in the affirmative and that the new Technical Bulletin provides general guidance for all municipalities in a similar situation.

Mr. Hughes indicated that the map the applicant used was based on outdated data. Mr. Carroll agreed.

Mr. Tebo indicated the need for updated maps. Mr. Keller reinforced the need for updated data for rural areas with limited fire resources for building collapses.

Mr. Tebo made a motion, read by Ms. Hyde, to deny the more restrictive standards for construction based on no special conditions found prevailing within the Village to make the petition reasonably necessary and that the provisions do not conform to accepted engineering practice, and to deny the less restrictive standards for construction. Mr. Toomey seconded. Mr. Tebo asked for amendments to the motion. None were made. The motion was approved unanimously.

Agenda Item 7. Workgroup Update.

Mr. Addario reminded everyone that the Workgroup was created by Mr. Tebo and the Council at the June 2019 meeting, based on looking at a list of items submitted by Mr. DeRuysler at the March 2019 meeting. The non-substantial items were included in the current update, and the Workgroup will focus on the remaining items. At the June 2019 meeting Mr. Tebo asked that the Workgroup look into other additional items.

Mr. Addario indicated that Workgroup members include Council Members DeRuysler, Hamlin, Hughes, Keller, Toomey, and Tuyn, staff is Mr. Duerr-Clark and himself. Also, that the Workgroup held the first meeting on February 21, 2020 to discuss the scope and goals and to review some of the items. There will not be any voting and there is no chair. Staff will take the lead on meetings and the Workgroup will provide data and information to the Council. The Workgroup will hold monthly meetings approximately an hour long and will look at whether the items have been updated in the 2021 Codes and any resulting impact. Staff will take the lead in developing an executive summary with a projected deadline of April 2021, pending the anticipated release of the 2021 Codes in August.

Agenda Item 8. Public Comment Period.

Mr. Bradley Byron, a NYS licensed P.E., working for Crown Castle, a company with 40,000 telecommunication towers around the country, stated support for the adoption of the updated TIA-222 standard. He thanked Mr. Duerr-Clark and Ms. Gonzalez-Laders for their work.

Agenda Item 9. Future Meetings.

Mr. Duerr-Clark indicated that the next meeting dates are June 19, September 25, and December 4, 2020.

Agenda Item 10. Other Business.

Dottie Harris was invited to give an update in behalf of the International Code Council and indicated that:

- The 2021 Mechanical and Plumbing codes have been published.
- The remaining 2021 codes are scheduled for August/September release.
- Hearings for the 2024 Group A will include the Building (including the egress, fire safety, general and some appendices), Plumbing, Mechanical, Fuel Gas, Fire, Property Maintenance, Private Sewer Disposal, Swimming Pool and Spa, and the plumbing, mechanical, and fuel gas provisions of the Residential Code.

- The Group B hearing will include all the administrative provisions in Chapter 1. The structural provisions of the Building Code, which include Chapters 15 to 25 and related appendices, the Existing Building Code, Energy Code, Chapters 1 to 10 of the Residential Code, and the Green Construction Code.
- Code Change proposals are due in January 2021.

Hearing no other business, Mr. Tebo made a motion to adjourn, seconded by Mr. Toomey. The motion was approved unanimously by voice vote.

Mr. Tebo thanked everyone and exhorted all to stay safe and healthy.

The meeting adjourned at approximately 11:13 a.m.