

Act 47 Building Energy Code Study Committee
Meeting #4

Department of Public Service, GIGA Conference Room, 112 State Street, Montpelier
and Virtual via Teams
September 5, 2023
9:30 am – 12:00 pm

Committee Members:

Jim Bradley
Ted Brady
Christopher Bray
Chris Burns
Chris Company
Scott Campbell
Michael Desrochers
Bob Duncan
Kelly Launder
Matt Musgrave
Craig Peltier
Timothy Perrin
Matt Sharpe
Sandra Vitzthum
Jason Webster

Non-Committee Participants:

Walter Adams
Liz Bourguet
Andrew Brewer
Benjamin Civiletti
Caroline Daniels
Christopher D'Elia
Richard Faesy
Michelle Farnham
Collin Frisbie
Linda Gray
Keith Levenson
William Nash
Sarah Phillips
Kevin Rushing
Stu Slote
Liz Smith
Steve Spatz

Peter Tucker
Brian Woods

Discussion:

1. Welcome and Roll Call - Chair (5 minutes)

Roll Call: All committee members present

2. Approval of Meeting #3 Minutes – Chair and Group Discussion (5 minutes)

- Meeting minutes from August 22, 2023, approved

3. Other agenda items

- Sandra sent via email a document to help sort through the pitches we heard last meeting
- Senator Bray- regarding open meeting law, if you email 10 or less people, you are good. If it's more than 10, please send the email to the chair, Richard, and Kelly, and then they can take care of distribution that is in coordination with open meeting law
 - Anything that has gone out to the group in violation of the open meeting law has been posted to the PSD webpage

4. Information Updates – Chair and Presenters (50 minutes)

Real Estate and Energy Codes

Liz Smith on behalf of CATIC

- Liz sent a memo to email list reflecting high level concepts on how title insurance would play a role in this discussion and why title not a good fit for the resolution the committee is discussing
- The broad concept is that energy code doesn't fit into marketable title
- Regulatory issues can come up for marketable title (when house is being sold), but it's not part of a title search
- A title examiner can search land records but is limited to what is included in the land record
 - They won't do title searches and find code violations. A title examiner is not on notice to make determination if there is a code violation
 - The title examiner is limited to records. It would be a burden to try to discover a RBES violation
- Legislature has already had discussions like these and the enabling energy code legislation specifically states that noncompliance with RBES should not be a title defect
- The burden will fall on innocent buyers and sellers who may not have been a part of the new construction. Non-compliance can affect multiple layers of transactions
- In regard to title insurance, it is not hazard insurance and is not designed to protect against these kinds of issues. The idea of being a title defect would be almost impossible

- Again, this would be very burdensome on the wrong parties
- Kelly – would it be a title defect if certificate isn't posted or if the house didn't comply? Is there a difference if the piece of paper wasn't there?
 - Liz – the absence of certificate would not create a title defect
 - Kelly - what if we changed this?
 - Liz –the absence of certificate would signify an absence of compliance. The statute wouldn't change. Legislation has already taken this up and has looked at this in other issues
 - Kelly – could you have a title defect just because the certificate wasn't there? Because sellers call PSD saying they don't have the certificate 10 years after the fact.
 - Liz – if there is notice of violation (NOV), then we would need to see a resolution of the violation
- What is eligible for getting flagged in a title search?
 - Title search is limited to public records. An example is if an owner who granted an option to purchase to a neighbor then sold the property to a different person. Now the neighbor asserts their right, which is first in time (whose right gets recorded first)
- Would it be inappropriate to record the RBES so it was searchable in the public record? Is this undesirable?
 - Liz – The statute already requires that the RBES certificate is recorded in the land record. So, title won't be affected if certificate isn't issued or isn't provided to PSD
- An important thing to keep in mind is that the certificate filed does not mean that the house met RBES. We should ensure that this certificate does indicate that building met energy code
- Chris Campany– this is a permitting issue, meaning that there should be inspections
- Are there ways to stop a transaction without the title defect?
- Kelly – if you have to file a certificate, there is potential for fraud
- If someone is filing a certificate, they are representing the fact that they know what RBES is. The onus is on the builder filing the certificate
- Liz – if you don't have compliance, what is the retroactive nature of the solution?
 - Senator Bray– will we be addressing it going forward

Education and Training on Energy Codes

Sarah Phillips, director of Vermont Office of Economic Opportunity (OEO), and Steve Spatz, Efficiency Vermont (EVT)

- OEO provides weatherization to income-eligible Vermonters. They administer weatherization through agencies
- The Vermont Weatherization Training Center is a DOE-funded effort through OEO
- The purpose of the training center in Vermont is to grow and diversify, recruit and retain the weatherization workforce that we need
- The steering committee for the effort kicked off last spring

- EVT is driving planning process
- They will issue RFP to contract to launch a training center
- Everyone is welcome to join webinar tomorrow for more information
 - Richard forwarded invite to group
- Are they coordinating with tech centers? Yes. Both high school and adult sides
 - Providing building science training at tech centers

Steve Spatz, EVT

- Provides updates on VT weatherization training center
- EVT is doing research and planning on the project
- Help grow and diversify the workforce and provide job placement support for new and incumbent workers to the field
- Right now, they are presenting to VT construction community, workforce community. To broaden who we're bringing into the network, they are conducting interviews and surveys
- They did a national study of weatherization training centers across the country and did an overview of characteristics of existing weatherization training centers. There are a variety of structures and of students being training
- The next step is to develop a training center business model and then launch the training center
- The role of RBES in this training center: RBES does apply to alterations to existing structures. The core curriculum will be building science; this aligns with what RBES seeks to achieve
 - Sarah – the weatherization training center will meet the needs of WAP, but is also an opportunity for education and training for a range of workers. Do people have skills to do the work? People use training centers only when they are required to do so. Question for this committee, who else will be required to take the training through the training center?
- There is funding to cover the time and expenses to go to the training center
- What are you seeing for youth pipeline in training centers?
 - Sarah – they had a 20% vacancy rate for their crew. They worked on recruitment and wages and now about a 10% vacancy rate
- Sarah- they do readiness work for weatherization. When looking at heating systems, they can do health and safety work. They don't have the authority or funds to go beyond that (for example, they are not doing railings or flooring)
- Sandy – most builders are self-employed. What could work is if we regionalize the state and use the tech centers from where the workforce has graduated
- Sub-contractor model in Vermont is an issue to consider
- EVT is asked to provide RBES and CBES support, including the ECAC (energy code assistance center). They talk to builders, owners, and architects, and send out handbooks
 - Provide trainings on RBES and CBES, which are recorded to post on their website
- They also run a new construction program, which provides higher assistance to achieve efficiency higher than code. This is personalized support to owner or builder on building science
 - They've seen correlation with compliance

- They're expecting low single digits participation in the program because of the increase in performance requirement (it has to stay above code), not as many people participate
- They also participate in the code update process. They review draft code and provide assistance in updating the handbook
 - Their role and engagement could change but that's not in the plan
- Not funded to help meet code
 - Have to be cost effective to achieve energy savings
- Do they do on-site trainings?
 - Varies depending on project
 - Is there a difference in the quality of work being done? They can't answer because they're not there on site
- Steve – also they provide support for efficiency excellence network (EEN) contractors
 - But this is a limited number of builders. Everyone is welcome to join
- Collin Frisbie – Sterling Homes – EVT's ability to provide training and support services has gone away. He is no longer able to take advantage as the code gets more stringent. Higher standards means you need more trainings but trainings go away for builders trying to meet code
- Richard – as the code goes up, less savings available. What if savings are measured against average compliance rate rather than code? This is the issue of setting the baseline
- Kelly – just because a home doesn't fully comply, it might be because of just one measure. So the baseline change might not make a big difference
- Matt Musgrave- is it that it is not possible for a residential contractor to get trainings? Or is it just that there isn't funding for these trainings?
 - RBES is based on international code but is unique to Vermont

Vermont Bankers Association's Comments on Title

Christopher D'Elia, Vermont Bankers Association (VBA)

- He thinks the impact of code on title is inappropriate
- The concept of defect on title is a non-starter for banking industry. Especially because you don't have any pieces in place leading up to it (there is a range of awareness and training on codes, which should be solved first)
- Impact of code could halt a real estate transaction
- If the goal is just to require that the RBES certificate is filed in land records, but you haven't achieved your efficiency goals, why are we wasting time?
- The banking industry has presented this before. They aim for minimization of risk for parties involved. They want to know a clear title to a property. They want to know that there is marketable title and if they need to foreclose, they want to know that they can sell the property. Creating a title defect negatively affects the ability to do this
- Financial institutions will sell mortgages in the secondary marketplace. A title defect would halt this process
- Would ask the committee not to consider this in recommendations to the legislature

- Kelly – do you have alternative suggestions for ensuring a certificate for initial buyer of a home?
 - Christopher- start with awareness and education campaign. The energy code should be dealt with early on in the process
- Matt – is the banking industry concerned that there is no way of knowing the energy status of the house?
 - Christopher– there is no way to check to know if a house met the energy code. So yes, it is concerning that there is no compliance mechanism
- Walter – if a house is built in 1970, there is no certificate in land record. Also, what happens if you build to code tomorrow to 2020, what if someone wants you to rebuild house to most recent code in 10 years when you try to sell house?
- Sandy – a builder could fill out digital application of what they’re doing on project. Then when a project is complete, the builder could reopen and certify that they finished the project according to their agreement. If this went along with home builder certification, this would become part of their record with OPR
- Collin Frisbie (via chat) - I, Collin Frisbie, Sterling Homes, HBRA, has worked extensively with Eff VT in the past. I could speak to why we no longer are able to work with EFF Vt. I think Eff VT is a training opportunity for builders if they can be allowed to support training to code.
- Stu Slote (via chat) - Other states have robust energy code support programs that utilities provide, often under the banner of market transformation, which provide creditable savings. Vermont should consider a similar approach with our efficiency utilities.
- Jason Webster (via chat)- The problem lies with no licensure for builders for Vermont. In MA all builders are required continuing ed credits to keep their license. This includes Energy.

5. AHJ Options and Tasks – Chair, Richard Faesy, and Committee Discussion

The following list was compiled from common themes from pitches:

- Roles and responsibilities
 - For energy code administration
 - For energy code update process
- Plan reviews
- Variance process
- Appeals process
- Conflict resolution with other codes
- Inspection
- Certification
- Enforcement
- Permits
- Database
- Paying for it

- Richard- the first deliverable for the DOE codes grant is to come up with a plan for what comes out of this committee
- Matt- if we focus on working what we have, not creating a new framework, we will be successful
- Chris Campany– in other states, in his experience, DFS and energy code are always separate. He thinks it might not be a good fit
- Mike Desrochers– they are not building officials; they have their hands in everything. They rely on third party people like engineers and architects to compile drawings for plan review. They have zero bandwidth right now.
- Sandy – we need framework, but let’s not do something now that will make things harder in the future
- Kelly – other states with code official networks are also struggling with compliance. Code officials focus on the highest priority, which is health and safety. So, this problem is not automatically solved with code officials
- Richard – report on the cost effectiveness meeting. It is a work in progress, had one hour meeting and had a discussion about cost effectiveness. There will be another meeting this Friday with the goal of coming back to the committee next week with some recommendations
- Next meeting is in a week, September 12 from 9:30-12
- No public comment