

Building Energy Code Study Committee Meeting #1

July 25, 2023

Meeting Minutes

- **Call to order.**
 - This meeting is being recorded and posted on the PSD website: [BECSC July 25, 2023 Meeting #1](#)
- **Attendees** – Committee members
 - Scott Campbell - VT House of Representatives
 - Christopher Bray – VT Senate
 - Sandra Vitzthum - Sandra Vitzthum Architect LLC – at large appointee
 - Craig Peltier - VT Housing and Conservation Board
 - Richard Faesy - Energy Futures Group
 - Kelly Launder – VT Department of Public Service
 - Michael Desrochers – VT Department of Public Safety - Division of Fire Safety
 - Jay Pilliod – Efficiency Vermont (attending in place of Matt Sharpe)
 - Jim Bradley – VT Builders and Remodelers Association (attending in place of Jason Webster)
 - Chris Burns – City of Burlington Electric Department
 - Timothy Perrin – Vermont Gas Systems and South Burlington Energy Committee
 - Bob Duncan – A.I.A. and Duncan Wisniewski Architecture
 - Matt Musgrave - Association of General Contractors of Vermont
 - Gavin Sicard – Vermont League of Cities and Towns (attending in place of Ted Brady)
 - Chris Campany - Windham Regional Planning Commission
 - Also in attendance:
 - Keith Levenson - VT Department of Public Service
 - Barry Murphy - VT Department of Public Service
 - Ben Civiletti – staff attorney, VT Department of Public Service
 - William Nash – International Code Council
 - Liz Bourguet – Energy Futures Group
- **Committee Chair Selection**
 - Kelly Launder (PSD) called for nominations
 - Senator Bray was nominated at the preceding meeting.
 - Matt Musgrave moved to elect Sen. Bray
 - Sandy Vitzthum seconded the motion
 - Sen. Bray elected Chair by unanimous voice vote
- **Approval of Introductory Meeting Minutes – (Senator Bray)**
 - Sen. Bray called for any edits or comments to the Introductory Meeting minutes.
 - Sen. Bray called for a motion to approve the minutes.
 - Rep. Campbell moved to approve
 - Minutes approved by a unanimous voice vote.
- **Review of Public Meeting Law and Current Statute** (Ben Civiletti – PSD)

- Ben Civiletti: organizations named in statute can designate a voting substitute for these meetings
- For those who are appointed by the legislature, we would probably need the relevant body to designate a stand in
- Open meeting law kicks in whenever a quorum (a majority of members of the Committee) holds a meeting.
- That includes discussing Committee business with the majority of members via email.
- A meeting does not include:
 - Communications between members for scheduling purposes,
 - discussing agendas,
 - distributing materials.
- When a meeting occurs, the requirements are:
 - Advance notice that the meeting is going to happen.
 - Minutes need to be taken and
 - Members of the public have the right to attend and participate, but the Chair can certainly set reasonable guardrails to maintain order and keep things moving
- Rep. Campbell – What about subcommittees?
- Ben Civiletti: a subcommittee would be a smaller group, and you'd have a quorum based on the size of that group. Anytime a quorum is discussing business, you'd have the same requirements under the open meeting law.
 - Be careful with email correspondence.
- Ben Civiletti: Context on building energy codes in statute
 - The key statutes for RBES and CBES are 30 VSA section 51 and 53
 - they outline the process for creating and updating the energy codes
 - they provide guidance for what the content of the codes should be
 - They provide a process for certification of compliance
 - they include other compliance mechanisms and remedies for failure to comply
 - Both codes are mandatory.
 - for RBES, the Commissioner shall ensure that:
 - appropriate revisions are made promptly after the issuance of standards for residential construction under the IECC (International Energy Conservation Code)
 - consistent with energy policy, housing policy, evaluated for technical applicability and reliability
 - cost effective and affordable from the consumer's perspective
 - for CBES, much the same except
 - It says specifically that the code should be updated at least every three years.
 - No mention of cost effectiveness and affordability
 - PSD has authority to adopt rules interpreting and implementing the CBES and the ability to grant variances.
- Sen. Bray – Statute does not give authority to grant variances for RBES
- Kelly Launder – a variance for historic buildings can be obtained through the state Historic Preservation Office. That language is in the RBES code language.

- Ben Civiletti – RBES certification may be issued by a builder, licensed professional engineer, architect or home energy rating organization.
 - For CBES, there's a certification requirement for both design and construction.
 - For design, the certification is done by the primary designer, which the law requires them to be licensed professional
 - There's a requirement for an affidavit which states that you know the plans have been drawn up in compliance with the code.
 - As to construction, certification is done by the general contractor or other party with primary responsibility for the construction. and again, there's an affidavit associated with that.
 - there's no requirement to seek approval before construction
 - for RBES, provision of a certificate is a condition precedent to two things: issuance of an occupancy permit by the Commissioner of Public Safety or municipal official for public buildings, and 2nd issuance of a certificate of occupancy by municipality for residential construction.
 - public buildings are buildings owned or occupied by Public Utilities, hospitals, schools, etc., buildings where two or more people are employed or are entertained, private clubs and societies, condos, places where people rent, restaurants.
 - excluded from public buildings: an owner-occupied single-family residence.
 - Remedies: if there's noncompliance, if it's found that the certificate isn't accurate or the building's out of compliance, there's an opportunity to bring a suit in civil court for damages or injunctive relief under both statutes.
 - There's a 10-year statute of limitations on that lawsuit, and there's no time limit under RBES [this needs to be verified – multiple committee members thought it was 6 years]
 - For CBES, if a person knowingly makes a false certification or fails to certify, they will be subject to a civil penalty of no more than \$250 a day.
 - for both RBES and CBES there's a section that states the title validity is not affected by failure to issues certification or properly post it.
 - Division of fire safety Chapter 173 of Title 20
 - Sandy Vitzthum – DFS Enablement of authority language is clear and that is missing from BES / PSD language.
 - Kelly Launder – There is a compliance plan on PSD website with a list of recommendations
- **Draft Work Plan review** – (Rep. Scott Campbell)
 - Rep. Campbell - There are three powers and duties listed in the bill.
 - consider and recommend strategies to increase awareness of and compliance with the RBES and CBES
 - evaluate current cost-effectiveness analyses for RBES and CBES
 - assess how the building energy codes interact with the fire and building safety codes

- Rep. Campbell reviewed the Draft work plan for Meeting #2 through Meeting #6 plus a seventh meeting in November to review the final report and vote on recommendations.
- **Energy code compliance: Current Conditions**
 - Richard Faesy, EFG – For RBES, compliance initially increased then decreased for the last 3 update cycles while the stringency of the code has increased.
 - Latest data point is 54% compliance to 2015 RBES.
 - CBES compliance was measured at 93%, 90% and 87% for the last three studies.
- **Roles and responsibilities – Sen. Chris Bray**
 - Sen. Bray – thanks for the responses to the questions we sent out
 - We have 12 pages of comments and there's a lot of interesting remarks in it.
 - One common theme I see is the need for an easy path to training and a way for the building community keep up to date,
 - Sen. Bray asked people to please read through it for next time.
- **Strategies to increase compliance –**
 - Richard Faesy, EFG – We've done a couple code compliance reviews and plans
 - Run through of compliance strategies:
 - increasing builder education and outreach
 - Local ordinances (e.g., requiring HERS rating to receive a C.O.)
 - Incentives from EEU's
 - Builder registry: voluntary 3rd party certifications
 - Making lack of code compliance a title defect
 - The real estate and lending communities have said this would cause problems.
 - Jim Bradley – builders either don't know about or follow RBES, and sometimes they fill out the RBES certificate for a building that doesn't meet the requirements and file it. There's no monitoring of that. These homes are not getting where they need to be, yet we're increasing the standards.
 - We're just pushing this off to the homeowner to fill out the certificate themselves and file it.
 - Full builder licensure (credentials or competency testing)
 - We have licensure for electricians, plumbers, heating HVAC technicians, why not builders?
 - Home Energy Raters: inspect and certify projects
 - this is a national certification that's been in place for 20 years
 - Jim Bradley - projected rating first, then final inspection and blower door test.
 - Existing certifications (LEED, NGBS, EnergyStar Home, Passive House)
 - Certificate of Occupancy
 - Craig Peltier - one other tool we have is to maintain incentives and even increase incentives to buildings. The incentive structure right now is to build above code but we're getting to a point where that's not the case anymore.

- RF: other jurisdictions in Massachusetts and Rhode Island and California, the utilities earn savings credit by supporting code compliance
 - Sandy Vitzthum suggested two other ideas:
 - waiver on property taxes for a period of time If weatherization upgrades are made
 - require a clause in builder contracts between the owner and the builder for the building to meet energy code
 - Bob Duncan - we need to make sure that everyone understands that it's not voluntary. We have municipal officials who think that RBES is voluntary.
 - Need to add this requirement, those conditions to permits.
 - Sen. Bray – How about builders who follow RBES, but find that they don't have a level playing field to compete with builders who don't?
 - Jim Bradley - their pricing is a bit higher, but in our current housing environment, units are selling.
 - Kelly Launder - the department doesn't know who all the builders are. We didn't have any way to do outreach directly. With the new contractor registry, we will be able to pull names from that and have outreach on the energy codes and the new requirements.
 - Also, there is a requirement that municipalities notify anyone who applies for a permit about the building energy standards
 - Matt Musgrave - there's no statute of repose in the state of Vermont, so if I build a \$10 million building today and you discover that I didn't follow the building energy standards 10 years from now, you can sue me and you're talking really big money at that point.
 - Sandy Vitzthum - there are only 6 HERS raters in Vermont. Expensive.
 - Jim B - the market rate right now is between \$1,500 and \$1,800 for a HERS rating.
 - Sandy V – many or most towns don't issue COs. Many that do have permits don't check for code certificates.
 - Chris Campany – zoning administrators often don't have professional training.
 - We can save a lot of money and energy if we have building codes. Prevents having to replace poor construction after 5, 10 years. This is a public health, safety and welfare issue
- **Energy codes and fire/building codes – Michael Desrochers, DFS**
 - Fire safety does not regulate single family owner occupied homes
 - all we've done is attempt to confirm there's an energy certificate in the building when we do occupancy inspections.
 - The governor's office has expressed some concern over the application that was submitted to the DOE and the effect on the cost of housing.
 - Also, the Governor is not in favor of code enforcement or the issuance of penalties
 - We adopt the IBC, the International Building Code and the NFPA 101.
 - Colchester, and maybe Burlington they inspect single family homes but that's about the extent of the oversight on single family homes.

- DFS is 99% special funded, all from permit fee revenues off our licensing of electricians, plumbers, gas technicians, oil technicians, emergency generator installers, elevator mechanics, suppression system installers.
 - approximately \$4 million in permit fees. We see about 2,700 to 3,000 permits a year.
 - We have 35 fire marshals running around the state all the time and we still have a major challenge with our enforcement.
 - Our big successes have been when we train and educate the people doing the work and a change in the culture
 - We rely on 3rd party industry certifications
 - For variances, we used to have a state variance board, but because we were delaying projects, we changed to a regional variance process. The manager of that district shares the variance request with the other three managers to maintain consistency.
 - The Historic Preservation Board has never met once because we have resolved all our variances at the Regional District office level.
- **What's Missing? The Linchpin to Energy Code Compliance – Rep. Campbell**
 - there's at least a few of us have the opinion that identifying an authority having jurisdiction is Really important. And then describing what that AHJ would do.
 - Matt Musgrave - If there is a registration requirement, we want to make sure that we're also protecting the contractors that are doing the work and complying.
 - Need to be sure someone wasn't going to come back and sue me for something that happened when I was complying with the code. Builders don't currently have that protection.
 - Jim Bradley – need consumer protection and contractor protection. One contractor went out of business because of the cost of litigation for an RBES dispute.
 - Customer protection from bad construction – unventilated roof system cost \$100,000 to repair. So the expense is not all up front. And education of the builders is really important.
 - Sandy V. – never met a good builder who didn't want their building inspected.
 - **Stakeholder/Public comments**
 - None
 - **Follow-ups - Sen. Bray**
 - send out a chart of the key provisions and the building energy standards statutes
 - send out the code compliance plan and the overview of the updates and of what's been done to date
 - We had a question in the chat on how many RBES certificates have been filed in 2022. Look that up and provide that information as well.
 - Kelly Launder - cost effectiveness analysis is part of the agenda for a later meeting, and we discussed maybe having a subcommittee that might work on that issue and come back to the group with more information.
 - Ben had suggested that we actually vote on the proposed meeting dates.
 - Sen. Bray – Let's stick with Aug. 8th and then we can review the balance of dates at that meeting