

MINUTES OF THE
MARICOPA ASSOCIATION OF GOVERNMENTS
BUILDING CODES COMMITTEE

May 18, 2011

Maricopa Association of Governments Office
Cholla Room
Phoenix, Arizona

COMMITTEE MEMBERS

Steven Hether, Mesa, Chair	Ed Kulik, Goodyear
Ken Sowers, Avondale	*Chuck Ransom, Litchfield Park
Phil Marcotte, Buckeye	Tom Ewers, Maricopa County
*Mike Tibbett, Carefree	*Bob Lee, Paradise Valley
*Mike Baxley, Cave Creek	*Dennis Marks, Peoria
V-Martin Perez, Chandler	Tom Wandrie for Julie Belyeu, Phoenix
*Mary Dickson, El Mirage	A-Dean Wise, Queen Creek
*Peter Johnson, Fountain Hills	Michael Clack, Scottsdale
*John Smith, Gila Bend	A-Michael Williams, Tempe
*Jo Rene DeVeau, Gila River Indian Community	Dale Crandell for Mario Rochin, Tolleson
A-Ray Patten, Gilbert	Rick DeStefano, Wickenburg
Tom Paradise, Glendale	Jackson Moll, Home Builders Association

OTHERS IN ATTENDANCE

Jami Garrison, MAG	V-Dave Nakagawara, Chandler
Steve Gross, MAG	V-Mike DeWys, Chandler
Cindy Stotler, Phoenix	V- Kim Clark Chandler
Dustin Schroff, Scottsdale	Bill King, Goodyear
Josh Robertson, Salt River Project	Mike Smith, Terracon Consultants
A – Ben Cox, Gilbert	

*Those members neither present nor represented by proxy.

A-Those members participating via audioconference

V-Those members participating via videoconference

1. Call to Order

Steven Hether, Chairman, called to order the May 18, 2011 meeting of the MAG Building Codes Committee (BCC) at 2:02 p.m.

2. Introductions

Voting members Michael Williams, Ray Patten, and Dean Wise attended via telephone conference call. Martin Perez attended via videoconference. All members introduced themselves.

3. January 19, 2011 Meeting Minutes

It was moved by Michael Clack, seconded by Tom Ewers and unanimously recommended to approve the January 19, 2011 meeting minutes.

4. Call to the Audience

There were no comments from the audience.

5. Comments From the Committee

There were no comments from the Committee members.

6. AZBO Amendments

The Chair announced that the Committee's recommendation regarding the Arizona Building Officials (AZBO) amendments was approved by the MAG Regional Council. The recommendation was to encourage all member agencies to review the AZBO amendments and determine if they were a fit for the communities as they move forward with adoption of new editions of the Code.

7. City of Phoenix Self-Certification Program

Cindy Stotler, City of Phoenix, discussed the City's pilot self-certification program that has been in effect since June, 2010.. She announced that the City had concluded that the pilot program was so successful that an expanded version of the program would be going into effect in June, 2011. The program eliminates the regular plan review process, but it does not eliminate the entire plan review process, contrary to what had been reported in some news sources.

Ms. Stotler continued by outlining the requirements for eligibility. Registered architects and structural engineers who have been registered in the State of Arizona for three years may enroll in a two-day self-certification class conducted by the City. Upon completion of the class they are eligible to conduct their own code reviews. Typically one person from an architectural firm will become registered in this program, and they will then conduct the code reviews of the designs within their firms. Permits are issued immediately and construction may start, but the City has 30 days to complete an audit and report back to the design firm.

In the pilot program, structures were limited to a maximum size of 25,000 square feet. Approximately 40 projects were submitted to the pilot program. The pilot projects were audited, and only one audited design failed to meet the standards applied by the audit. The City still has “eyes on” the actual construction throughout.

The program expansion will now permit projects of greater than 25,000 square feet however it cannot be used on buildings or sites classified as Mid-Rise, High-Rise, Historic Preservation, Hillside, or FEMA Special Floodplain Hazard Area. It also cannot be used on properties with or designed to provide a basement. All plans over 25,000 square feet will be audited, and the results will be provided to the design firm within 30 days. All projects regardless of size must provide a “hold harmless” letter for the City, proof of liability insurance, and certifications with seals from the reviewer and all design professionals involved that they have reviewed the designs. The project owner must also certify that they are aware of the self-certification program and of the project’s submission to the program.

Ken Sowers raised a situation that might occur if a permit was issued and construction began before an audit uncovered something that needed correction. He questioned what would happen if the disallowed phase had already been put in place or otherwise committed. Ms. Stotler replied that the City would be working with the designers to remove the phase or revise or change the plan, but the corrections would have to be made regardless. She also stated that during the course designers learned that this situation could occur. Mr. Sowers asked if the scenario he described had actually occurred during the pilot program and Ms. Stotler replied it had not. Tom Wandrie pointed out that most of the jobs that have come in have been tenant improvements and most of those have been done as “permit by inspector”, which is an almost identical process. Those were the ones that were done by inspection anyway. Mr. Wandrie remarked that the real test will come with the next phase of the program when larger structures are self-certified. The problems may not come only because something is “in the ground”; materials may be on order, for instance. So it could prove very expensive, but that should mean that the plans that do come in will have been more thoroughly reviewed before they are submitted for audit, which should only work to everyone’s benefit.

Tom Paradise questioned the difference between an audit and a plan review. Ms. Stotler replied that it was, but there is also an audit report and the audit report is scored. If a firm fails three audits within a year they are out of the program. Mr. Wandrie added that there are also field inspections that are scored. If there are deficiencies that total five points that automatically triggers an audit. That triggers a plan review. The corrections are sent to the applicant, and also to the field inspectors.

Dean Wise asked if the program had built in any cost of conducting the audits. Ms. Stotler responded that the cost to attend the class during the pilot program was \$1,500, and that about 43 architects and engineers had taken the class in the first year and about another 20 signed up for the May class. They pay a regular permit fee and a ten percent surcharge to cover the costs associated with the audit. In the new program, for the automatic audit on designs over 25,000 square feet, they will be charged only the regular plan review fee.

The Chair asked Ms. Stotler why the thirty-day time constraint had been chosen for the audits. Ms. Stotler said that in conducting interviews with the architects, engineers, and developers, the consensus was that if automatic audits were to be conducted they would need to be completed quickly. Mr. Wandrie added that the time limits could always be adjusted if necessary. The Chair asked if the contractors were aware that they were operating under a new program. Ms.

Stotler replied that she wasn't certain if the designers and engineers were communicating that information to the contractors. Mr. Wandrie pointed out that the contractors don't really have any liability under this program.

Mr. Wise then asked if the City was proceeding under the assumption that the City of Phoenix had no liability, and that the liability rests solely with the owner. Ms. Stotler replied that was the case. She stated the Law Department had reviewed the documents, and many of the rules and regulations were adopted from a similar program that has been in use at the City of Chicago for over ten years. Chicago has over 300 architects and design professionals on their self-certification list. Mr. Wise asked if the architects and engineers have said anything about what they are having to deal with in terms of the liability insurance and the like. Ms. Stotler replied that there have been some concerns expressed, but that she had attended a couple of meetings of the Arizona Institute of Architects, where the audience was addressed by representatives of insurance companies. Ms. Stotler said the insurance company representatives pointed out that their liability began when they got their seal, and that didn't change whether the City was doing the review or they were self-certifying. Further, most of the big companies are reporting that it is not making any difference to their insurance.

Ed Kulik asked what the typical turnaround time for the review has been. Ms. Stotler responded that a major plan first review is currently taking 35 to 40 days. Mr. Wandrie added that the website still says 60 days, but that they are adjusting that value based on the workload.

Ken Sowers asked if this process included fire plan review and Ms. Stotler answered fire plan review is separate. Mr. Wandrie added that the forms and letters used are available on the website.

Michael Clack asked if the fire plan review uncovered something that needed to be changed whether that would be covered under the self-certification agreement. Ms. Stotler answered that in Phoenix, there is a separate fire access site approval review, and that has to have been completed before the self-certification can begin. Mr. Clack then asked if there still needed to be reviews for zoning, storm water, etc., then what advantage was there to this program. Ms. Stotler pointed out that if there were going to be, for example, zoning changes required, then the project could still go through the conventional approval process. Mr. Clack suggested that the self-certification program might be better suited to projects like tenant improvements and build-outs. Ms. Stotler agreed, but mentioned that there are a couple of people with brand new buildings who are right at preliminary site approval, and they want to do the building.

Dean Wise mentioned that historically, third-party reviews or even inspections have been allowed, and he wondered if the architects and engineers were getting third-party reviews for themselves. Ms. Stotler replied that Phoenix has a third-party review program in place, but it has never really caught on, because the third-party reviewers haven't done a good enough job of getting the architects and engineers out of second or third corrections. Mr. Wandrie added that the third-party reviewers also went through multiple review cycles internally, and so there was little time saved as a result.

Ed Kulik asked if, given all the things that could go wrong, whether Phoenix expected this program to catch all the problems, or just the major ones, leaving the remaining issues to be identified during field inspections. Mr. Wandrie responded that the difference with self-certification was that because the permits are being issued almost "over the counter", the plans

need to be 100% complete before submission. With the conventional program, plans were submitted at varying levels of completeness, and worked out during the review process.

Ed Kulik asked if the City had considered turning over engineers and architects to the Board of Registry if lots of issues are uncovered during the audits, since they are certifying that the plans are 100% correct. Mr. Wandrie replied that such would be true in any plan submission. Ms. Stotler added that the issue had been discussed, but they haven't had to kick anyone out of the program yet.

Martin Perez asked if the City of Phoenix had participated in the program as an owner yet. Ms. Stotler replied that there were a number of tenant improvements in City Hall and in the Human Resources Building which had been done under the program. Mr. Perez then asked if Phoenix knew the number of eligible project versus the number that had actually participated. Ms. Stotler replied in the negative, but said that in Chicago the number was about 30% of eligible projects went into self-certification.

Mike Smith requested and received permission from the Chair to ask a question. He asked what, as a consulting engineer, he should be prepared for under this program that might be new or different. Ms. Stotler replied that once permitted, the self-certified projects would not be treated any differently from the traditional ones.

Dean Wise asked for confirmation that the self-certification program was only for plan review and not for inspections, and Ms. Stotler confirmed that was true.

Ken Sowers remarked that for the first thirty days, the project would be working with a set of plans that had not been approved. He then raised a case where a special inspection might be performed and something improper received approval because of what was in the plan, and asked if any liability would come back to the inspector as a result. Mr. Wandrie responded that it would go back to the design professionals in that case. Ms. Stotler added that ultimately the liability would lie with the owner, as they are told that they are being given an at-risk permit.

Martin Perez asked if Phoenix has any measurements of how the program has impacted inspectors in terms of frequency of visits, or visits per day. Ms. Stotler replied that they had seen no difference between self-certified projects and projects with traditional certification. She also reminded the Committee that the City has no experience with projects over 25,000 square feet, so they will have to see if there was any impact from the larger designs in the year to come.

Michael Clack asked what would happen if there was a set of plans that were just so egregious on the self-certification, and the permit had already been issued. Ms. Stotler said the City would be prepared to issue a stop work order and disqualify them from the program. Mr. Clack then asked for confirmation that the program was only open to registered architects and structural engineers, which Ms. Stotler confirmed.

Dean Wise asked if, before someone is accepted to perform self-certifications, there is any checking with the Board of Technical Registration to see if the individual or the firm has had any issues with the Board. Ms. Stotler said they did not do that, but the individuals do have to sign legal statement that they have not been convicted of any felonies and a long list of similar statements, and they must also provide a copy of their technical license.

The Chair asked if all the rules and regulations were available on the City website, and Ms. Stotler responded that they were. Mr. Sowers asked if there was a summary of what was covered in the two-day training session, and Ms. Stotler replied that the training was discipline-specific.

Ed Kulik asked if any research had been done on how much revenue or loss of revenue would accrue to the City. Ms. Stotler replied that since much of the interest is in the larger projects, the City did not expect to see a loss of revenue. Mr. Wandrie added that the audit surcharge would cover the additional expenses associated with the audit, and the permit fees are the same. Ms. Stotler pointed out that since the smaller projects were typically done through “permit by inspector”, there wouldn’t have been any plan review fees anyway.

Dean Wise remarked that the benefit to the customer was that they didn’t have to wait 30 to 100 days to get the permit, and they still pay the fees. Ms. Stotler agreed, saying that when the City talked to their customers, the time was much more important than the fees.

Tom Paradise then asked about the ten percent surcharge. Mr. Wandrie replied that the ten percent was an administrative fee for the audit. Mr. Paradise then questioned Mr. Wandrie’s earlier statement that there was no difference in fees. Ms. Stotler corrected Mr. Wandrie’s statement, restating that there is a ten percent surcharge on all self-certification permits. Ken Sowers reiterated that the only real benefit to the customer is the savings in time.

Michael Clack requested that Ms. Stotler and Mr. Wandrie present to the Committee again in the future to provide a progress report, and Ms. Stotler remarked that they would be happy to do so.

Mike Williams asked first how modification requests or alternative material requests would be handled. Mr. Wandrie replied that such requests would have to be handled up front. Mr. Williams then asked how the knowledge and interpretations of building officials are transferred to the people performing the self-certifications, or is there a program to assist people with those interpretations. Ms. Stotler replied that the City is currently assisting with the interpretations as they want the self-certification program to be successful, and that the City will probably continue the assistance for the first year. She also pointed out that if they are out in the field and there needs to be a code modification then the City will charge for the code modification.

There being no further questions, the Chair thanked Ms. Stotler and Mr. Wandrie.

8. Appointments of Chair and Vice Chair of the MAG Building Codes Committee

Jami Garrison described the Chair and Vice Chair appointment process. She pointed out that Steven Hether’s current term as Chair expires on June 30, 2011, and that he is “term-limited”, as this is the conclusion of his second year in office. In accordance with MAG policy, Vice Chair Ken Sowers will assume the chair on July 1, 2011, which will create a vacancy for the Vice Chair position. Ms. Garrison invited those members interested in serving as Vice Chair to submit a letter of interest to Mayor Thomas Schoaf, Chair of the MAG Regional Council. The letter of interest should be submitted to the MAG offices following the information outlined in Attachment One of the agenda. The Vice Chair will be appointed at the June 13, 2011 meeting of the MAG Regional Council Executive Committee. Letters of interest should be submitted by May 27, 2011. Committee members may submit letters of interest on their own behalf, or they

may be submitted by the jurisdiction manager. Mr. Hether encouraged anyone interested to apply.

Dean Wise voiced his thanks and appreciation to Mr. Hether for his efforts as Chair, and stated he was confident that he was speaking for the Committee in this respect.

9. Updated MAG Building Codes Committee Membership

Jami Garrison announced that Mario Rochin was no longer with the City of Tolleson. With that exception, the membership roster is correct and current. Members were encouraged to send any changes to Ms. Garrison.

10. Update on Survey of Code Adoption Document

Steven Hether announced that the Mesa City Council has directed staff to move forward with the 2009 edition of the Energy Code instead of the 2006 edition.

Tom Paradise stated that the City of Glendale has adopted the 2009 International Fire Code. The survey shows Glendale is using the 2003 code. He said he believes the adoption of the 2009 code took place in late December 2010 or January 2011.

Ken Sowers asked if the City of Mesa was adopting anything other than the 2009 Energy Code. Mr. Hether replied not at this time.

Tom Wandrie stated that the City of Phoenix has adopted Version 1 of the International Green Construction Code with amendments and also the National LEED Building Standards. Mr. Wandrie remarked that this is a voluntary code.

Steven Hether was asked if he knew what the effective date would be for the City of Mesa's adoption of the 2009 Energy Code. Mr. Hether replied that the adoption probably won't occur until after the City Council's August break, and he believed there would then be a six-month delay in the actual implementation after the adoption date.

Michael Clack stated that the City of Scottsdale recently adopted what the City refers to as the Second Amendment to the 2006 Building Code. The City is still under the 2006 code, but there is a new edition of the code coming out in 2012. Mr. Clack believes that the City will adopt that code in 2012 or 2013.

Mr. Clack mentioned that there is a significant change in Scottsdale's Second Amendment to the 2006 Code. Previously, construction activities were not permitted to commence until thirty minutes before sunrise. Staff recommended that the start time be changed to 5:00 AM between April 1 and October 31. Effectively, this would not be significantly different from before. The City Council amended the staff recommendation to prohibit construction starting before 6:00 AM between April and October. Variances may be granted for activities such as concrete pours. The City Council further instructed staff to develop a noise mitigation plan. Mr. Clack expects to be working on that plan this summer and interviewing contractors. He stated that he would also like to contact other members of the Committee for their ideas and input. He also mentioned that the directive arose from citizen complaints about the noise from the backup warning signals on construction vehicles.

Mr. Clack also mentioned that in the past, the City of Scottsdale would collect a refundable deposit that was equivalent to the cost of the building code permit fee for temporary Certificates of Occupancy. The City is now retaining two hundred dollars of that deposit to cover administrative expenses, because the City has had many temporary Certificates of Occupancy that have “gone on and on”.

11. Topics for Future Agendas

The Chair announced that topics for future agendas could be sent to either Ken Sowers or Jami Garrison.

Ms. Garrison announced that the MAG meeting rooms will be under renovation and construction for the months of June, July and August. As a result meetings of the Building Codes Committee during that period, as well as all other MAG committees, will be held in other locations. MAG staff has secured meeting rooms in the offices of the Flood Control District of Maricopa County at the Durango Complex, 28th Avenue and Durango Street. A map and additional information will be provided prior to the next meeting.

12. Adjournment

Ken. Sowers made a motion to adjourn and Ed Kulik seconded the motion. The meeting was adjourned at 2:52 PM.