

MINUTES OF THE
MARICOPA ASSOCIATION OF GOVERNMENTS
BUILDING CODES COMMITTEE

September 21, 2011

Maricopa Association of Governments Office
302 N. 1st Ave
Chaparral Room
Phoenix, AZ

COMMITTEE MEMBERS

Ken Sowers, Avondale, Chair

Phil Marcotte, Buckeye

*Mike Tibbett, Carefree

Mike Baxley, Cave Creek

*Martin Perez, Chandler

Mary Dickson, El Mirage

*Peter Johnson, Fountain Hills

A-Ray Patten, Gilbert

Tom Paradise, Glendale

*Ed Kulik, Goodyear

*Chuck Ransom, Litchfield Park

Tom Ewers, Maricopa County

Steven Hether, Mesa

Bob Lee, Paradise Valley

*Dennis Marks, Peoria

Julie Belyeu, Phoenix

A-Dean Wise, Queen Creek

Michael Clack, Scottsdale

Michael Williams, Tempe

Dale Crandell, Tolleson

*Rick DeStefano, Wickenburg

*Jim Fox, Youngtown

Jackson Moll, Home Builders Association

OTHERS IN ATTENDANCE

Scott Wilken, MAG

Steve Gross, MAG

Nathan Morey, SRP

Jim Heger, Sun City West Fire

Jim Tiffany, ADHS

Ellie Strang, ADHS

Randall Westacott, Avondale

Dustin Schroff, Scottsdale

*Those members neither present nor
represented by proxy.

A-Those members participating via
audioconference

1. Call to Order

Ken Sowers, Chair, called to order the September 21, 2011 meeting of the MAG Building Codes Committee (BCC) at 2:03 p.m.

2. Introductions

Voting members Dean Wise and Ray Patten attended via telephone conference call. All members and guests introduced themselves.

3. August 17, 2011 Meeting Minutes

It was moved by Bob Lee, seconded by Tom Ewers and unanimously recommended to approve the August 17, 2011 meeting minutes.

4. Call to the Audience

There were no comments from the audience.

5. Comments From the Committee

Bob Lee commented that the Arizona Building Officials (AZBO) Fall Educational Institute will take place October 3-7 at the Prescott Resort. He said that the cost for classes is \$100 per day through Friday.

Bob Lee also commented that the International Code Committee (ICC) annual business meeting will be in Phoenix October 30 through November 6. He said that there will be a lot of activities, including the code hearing. He encouraged everyone to attend at least some of the events at the meeting. He continued by saying that the Rocky Mountain Region, of which Arizona is a part, is having its region meeting on October 31 at 4:00 pm in room N126A.

Bob Lee also said that he received a call from a citizen asking about recycling pool barrier fences. He asked if anyone had heard of an organization that takes old pool barriers and recycles or reuses them.

Tom Paradise said that classes on International Mechanical Code (IMC) outside air calculations will be taught in the AZBO spring session.

6. Legislative Update

Nathan Pryor gave an update on recent legislative issues affecting building officials, focusing on Senate Bill 1598, which was signed into law during the past legislative session. He said that the bill passed with relatively little opposition, and that the City of Phoenix and the League of Arizona Cities and Towns were officially neutral, while the City of Tempe was opposed. He said that much of the bill discusses aggregates mining. He said that other parts of the bill refer to municipal licensing, and that those sections apply to municipalities and counties the regulatory reform requirements that have applied to the state.

Michael Williams said that Tempe's original concern was with the time limits that were originally written into the bill, but were removed before final passage. He said that the bill refers to licensing, but gives it a very broad definition to apply to basically everything that municipal and county building safety or code enforcement departments regularly do, including plan review and inspections. He said that the final version of the bill exempted inspections that are requested by the property owner. He said that now, for example, a code enforcement officer who is inspecting a property based on a complaint has to present the property owner their credentials, a list of exactly what is being inspected and full write-up of what was found, and how the property owner could appeal any decisions made based on the inspection. Tom Ewers said that Maricopa County had an interpretation that if the code enforcement personnel doesn't go on the property, the requirements of the bill do not apply.

Michael Williams said that Tempe will likely come up with some form of waiver that an applicant could sign when they submit a permit application for plan review to waive their rights under SB1598 to limit the city to just one additional request for information. He said that the way the bill is written, if a county or municipality requires more than two reviews the review process is ended. He said that in Tempe's view, at that point the applicant would have to submit a new application and plan review fee for simply a third review. He said that he doesn't think that's what the development community wants, and that it is certainly not what the city wants.

Tom Ewers said that the bill requires administrative review and the substantive review to have codified review times. He said that the county has many agencies that review plans, and the bill appears to limit the jurisdictions to only one set of review comments and requests for additional information. He said that their process now allows each department to send comments to the applicant as the comments are completed, but this provision will require the county to slow down the process until all reviewers have written their comments so the comments can all be sent together.

Bob Lee said that the way they have looked at the bill is that Paradise Valley will do a substantial review of documents at the counter before the plans are submitted, to identify discrepancies that point. He said that this will allow applicants to submit a more approvable plan into the system for first review and hopefully save time in the long run. Michael Williams said that they have done something similar to this at Tempe, and that they have created a matrix showing timelines for every review the Community Services Department does. He said that their city attorney told him that the timeline matrix does not have to be incorporated into city code, but could be kept by the department.

Tom Ewers pointed out that counties and municipalities have to have every ordinance and policies available online, and that, because they are a county, everything in their ordinance has to be backed up by state law.

Nathan Pryor suggested that if any members are having issues with this bill to discuss it with their intergovernmental affairs liaison. He said that he hasn't heard of an initiative by the League of Arizona Cities and Towns to address issues related to this bill in the next session. Bob Lee said that League has started a listserv that anyone can sign up to stay abreast of the latest information and interpretations of SB1598. Michael Clack said that he was told by the Scottsdale city attorney that there will be some fixes to this bill in the upcoming legislature, but it is unknown what those fixes might be. He said that issues they have discussed at Scottsdale involve certain time-sensitive on-site inspections that are related to life/safety issues, as well as the lack of flexibility in plan review turnaround times provided by the bill.

Nathan Pryor said that he will bring these issues and concerns to the MAG Intergov meetings.

7. State Licensing of Assisted Living and Adult Day Health Care Facilities

Jim Tiffany from the Arizona Department of Health Services (ADHS) gave a presentation on licensing of assisted living and adult day health care facilities. He said that ADHS wants to work with municipalities to make the licensing process clearer so that facilities only get licensed if they should get licensed. He said that ADHS divides these facilities into three categories: assisted living homes, which provide care for ten or fewer people; assisted living centers, which provide care to eleven or more people; and adult day health care, which only provide services during the day. He said that there are a total of 1,964 facilities statewide, with a total of 28,861 beds. He said that ADHS also classifies facilities according to the level of care they provide: supervisory care, the lowest level, which means facility personnel cannot provide any hands-on care, and patients may need some assistance with their medication but probably not a lot; personal care, mid-level, means the patients need physical assistance with their daily living, which could include people who are paralyzed and need a great deal of assistance, but these patients are still able to make their own decisions and recognize danger; and directed care, the highest level of care, which includes patients who have cognitive deficits are not able to recognize danger, summon assistance or make their own basic care needs decisions. Steven Hether asked to clarify that the personal care level patients included a class of people who are not able to self-evacuate, to which Jim Tiffany responded that that is correct, and is also true of directed care.

Jim Tiffany said that ADHS will not license a facility unless they get confirmation from the local jurisdiction that the facility is appropriate for the assisted living services. He said that ADHS gives the applicant the form to take to the local jurisdiction that gets signed by the local building, zoning, and fire safety officials. Tom Paradise asked if the ADHS form states what number of people the facility will be licensed to care for. Jim Tiffany said that the local jurisdiction decides that number. Tom Paradise said that it would be helpful if the ADHS form indicated the number of patients the facility will be allowed by ADHS to care for. Jim Tiffany said that there is a place on the form for the number of patients because ADHS doesn't want to violate the codes of local jurisdictions. He said that the applicant usually has to go to the local jurisdiction to get their approval for location and the number of beds at the facility before applying with ADHS. He also said that if the applicant comes to ADHS first, that ADHS will tell them that the application is incomplete until they get clearance from the local jurisdiction.

Tom Ewers said that typically applicants fax the form to the local jurisdiction, which then signs it and faxes it back. He asked if the new ADHS form would require the applicant to physically carry it from one department to another to get all the signatures. Jim Tiffany said that the new form has a place for all three required signatures, but that ADHS will also accept forms from the local jurisdiction if applicable. Tom Ewers asked if ADHS would accept three copies of the form, each with a different of the required signatures. Jim Tiffany said that they would accept that, if they were all signed, but that the preference is to get all three signatures on the same form so that they have everybody on the same page.

Tom Paradise asked if there are instances where the local jurisdiction gives their clearance to a facility operating at a specific location, and then ADHS denying the application. Jim Tiffany said that this scenario is possible, and that there is a rule that anyone who is at a personal care or directed care level cannot be housed on a floor that is not the ground floor, and that anyone who

cannot ambulate on their own cannot be above the ground floor regardless of level of care need. He also said that floors above the first floor are required to have two means of egress, and that most homes only have one stairway. Steven Hether asked if a second level egress from a window counts as the second means of egress. Jim Tiffany said that a window egress would not count, and that their rules specifically say that the second floor has to have a secondary means of egress that the residents are capable of using.

Jim Tiffany said that there have been some issues with smoking in the facilities. He said that this includes some patients burning themselves, small fires, and smoking near oxygen tanks. He said that they refer these patients to the Arizona Smokers Helpline (ASHLINE) for help in quitting smoking.

Jim Tiffany talked about common discrepancies found at assisted living centers: not giving patients proper vaccinations; lack of employee orientation; not current on CPR and first aid training; not locking up toxic materials; not testing residents and employees yearly for tuberculosis; not maintaining the facility hazard-free; not meeting the service plan requirements; not getting service plan signed; not meeting residents' needs for medications. He said that one of the biggest problems seen with assisted living homes is the owners not complying with local building and zoning regulations, including: garage conversions without proper permits; not getting required fire inspections; not getting fire sprinkler systems properly monitored; not getting fire alarms and systems checked and properly maintained. He said that assisted living homes also share common problems with assisted living centers, plus others, such as: not maintaining proper medication records; medication errors; not meeting the needs of bed-bound residents.

Jim Tiffany said that when deficiencies are found, the operators have to give ADHS a plan of correction. He said that if a facility is found in violation, it can be given a provisional license, which means the facility is not in compliance but has a certain amount of time to correct the issue. He said that if the issue is not corrected, the license can be revoked. Tom Paradise asked if the timeframe for the provisional license varies on a case by case basis. Jim Tiffany answered that it does vary, but most provisional licenses are for 6 months. He said that they try to work with the facility operator, but they cannot give more than a year. He said that after a year ADHS either has to give the operator a regular license or no license. Julie Belyeu asked how long a regular license is good for. Jim Tiffany said that regular licenses are good for one year, but will typically be renewed annually until ADHS takes some sort of action against the facility. Mike Baxley asked if ADHS notifies the local jurisdiction when a violation is found. Jim Tiffany said that they will notify the local jurisdiction if the issue looks like a building code violation.

Jim Tiffany said that the ADHS website contains information for licensees, including: a checklist to help make sure no violations are committed; links to approved caregiver and manager training programs; directory of facilities, as well as searchable and downloadable lists of facilities; information on the informal dispute process; an online system that takes complaints about facilities; and online renewal applications. He said that they have a main office in Phoenix, as well as offices in Tucson and Flagstaff.

Bob Lee said that AZBO's Code Review and Development Committee has been meeting with ADHS for years. He said that they have come up with a series of documents to be posted to the AZBO website that will include a list of definitions, classifications, and contact information. He said that the AZBO website will also include a signature form for the local building official, fire official, and zoning official to sign for clearance for new assisted living facilities.

Bob Lee went on to say that Paradise Valley has an annual inspection of adult care homes, and that they have found that other jurisdictions have longer time frames than that. He said that his understanding is that ADHS will abide by the inspection timeframe of the local jurisdiction. Jim Tiffany said that this is true, but the timeframe can be no longer than 3 years per inspection, and that sanitation inspections have to be done annually.

Tom Ewers asked what poisons and toxins are found at facilities that have to be locked up. Jim Tiffany said that they mostly find cleaning supplies, and sometimes weed killer, bug killer, gardening supplies.

Jim Heger asked if ADHS conducts annual inspections themselves. Jim Tiffany said that they do annual inspections, but if they find no violations ADHS will wait 24 months to do the next inspection unless they get a complaint on that facility. He also said that if the facility is accredited by a national agency, ADHS does not do inspections, but will accept the accreditation statement in lieu of the annual inspection.

Julie Belyeu asked about a change of ownership triggering a requirement that existing grandfathered facility install fire sprinklers. Jim Tiffany said that ADHS would not require that, but said that any time there is a change of ownership ADHS has to make sure the facility is in compliance with local codes. He said that ADHS does not require facilities that care for 10 or fewer residents to have fire sprinklers, but that they may be required by the local jurisdiction.

Julie Belyeu asked if there is a cap on the number of residents who can live at an assisted living center. Jim Tiffany said that there is not.

Phil Marcotte asked if ADHS notifies the local jurisdiction when a license has been issued. Jim Tiffany said that they have not been notifying, but have been in discussions with AZBO to find a way to do that. Tom Ewers asked if there is a list of approved facilities on their website. Jim Tiffany said that there is a list there. Mike Baxley asked if the facilities are listed by address. Jim Tiffany said that they are listed by zip code. Steve Hether asked if an operator had multiple buildings, is each building licensed separately. Jim Tiffany said that if the owner owns all the space between all the buildings, separate licenses are not needed. Steve Hether asked how the different buildings are licensed if each allows a different level of care. Jim Tiffany said that this would be noted on the license. He also said that different rooms or wings could be licensed for different levels of care on one license.

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

Scott Wilken said that Ken Sowers will be retiring from the City of Avondale effective December 1, 2011, and will be stepping down as Chair of the Building Codes Committee. At that time Michael Williams will be moving from Vice Chair to Chair. He said that MAG is soliciting interest in becoming the new Vice Chair. He said that anyone interested should submit a letter of interest to the MAG Executive Committee by the end of October, and that a new Vice Chair will be appointed at the November 14, 2011 Executive Committee meeting.

9. Updated MAG Building Codes Committee Membership

Ken Sowers said that, upon his retirement, Randall Westacott, currently Senior Plans Examiner, will be assuming his position with the City of Avondale and on the Building Codes Committee.

Scott Wilken stated that MAG received the official appointment of Dale Crandall to the Building Codes Committee from the City of Tolleson.

10. Update on Survey of Code Adoption Document

Bob Lee said that Paradise Valley will adopt the 2012 codes with an effective date of July 1, 2012.

11. Topics for Future Agendas

Ken Sowers asked if any members have ideas for future meeting topics. Julie Belyeu said that she would like to see a presentation on behavioral health licensing from ADHS. Jim Tiffany said that he could provide a contact for the behavioral health section.

Ken Sowers said that there will not be meetings of the Building Codes Committee in November or December this year.

12. Adjournment

Tom Ewers made a motion to adjourn and Dale Crandall seconded the motion. The meeting was adjourned at 3:45 PM.