

MINUTES OF THE
MARICOPA ASSOCIATION OF GOVERNMENTS
BUILDING CODES COMMITTEE

February 15, 2012

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

COMMITTEE MEMBERS

Mary Dickson, El Mirage, Vice Chair

*Michael Williams, Tempe, Chair

Randal Westacott, Avondale

Phil Marcotte, Buckeye

*Mike Tibbett, Carefree

Mike Baxley, Cave Creek

V-Mike DeWys for Martin Perez, Chandler

*Jason Field, 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

A-Dennis Marks, Peoria

*Julie Belyeu, Phoenix

A-Dean Wise, Queen Creek

Dustin Schroff for Michael Clack,
Scottsdale

Dale Crandell, Tolleson

Rick DeStefano, Wickenburg

Jim Fox, Youngtown

Jackson Moll, Home Builders Association

OTHERS IN ATTENDANCE

Scott Wilken, MAG

Steve Gross, MAG

Shannon Acevedo, MAG

Rene Guillen, League of AZ Cities & Towns

Mark Ptashkin, Glendale

Ken Kirschmann, Southwest Gas

A-Larry Taylor, Gilbert

A-Dennis Chase, Peoria

*Those members neither present nor
represented by proxy.

A-Those members participating via
audioconference

V-Those members participating via
videoconference

1. Call to Order

Mary Dickson, Vice Chair, called to order the February 15, 2012 meeting of the MAG Building Codes Committee (BCC) at 2:03 p.m.

2. Introductions

Voting members Dennis Marks and Ray Patten attended via telephone conference call. Voting member Mike DeWys attended via video conference. Dennis Chase and Larry Taylor also attended via telephone conference call. All members and guests introduced themselves.

3. January 18, 2012 Meeting Minutes

Dennis Chase said that he had a correction to the minutes. He said that in the 3rd paragraph on page 6 of the minutes, Dennis Marks is listed as asking a question, but it should be Dennis Chase asking that question. Ed Kulik made a motion to approve the minutes as corrected. Randal Westacott seconded the motion, and the corrected minutes were approved unanimously.

4. Call to the Audience

There were no comments from the audience.

5. Comments From the Committee

Scott Wilken asked the members asked if any committee members had any problems with receiving and accepting the Outlook invitation to the meeting. Members said that it worked well. Scott Wilken also reminded the members that in the March meeting the committee will be discussing the code amendments and standards book project, and asked members to return the comment spreadsheet with their feedback on the documents.

Tom Paradise thanked Ken Kirschmann for his assistance with a Southwest Gas clearance issue.

Randal Westacott asked about a document regarding Arizonans with Disabilities Act (ADA) requirements that Michael Williams had mentioned in the January meeting. Scott Wilken said that a link to that document was in an email that also included the link to the standards and codes review document. He said that he will resend the ADA requirements link.

6. MAG Committee Officer Terms

Scott Wilken said that MAG Regional Council had recently updated the policy for terms of officers on technical committees, like the Building Codes Committee. He said that, previously, chairs and vice chairs would serve for one year with an option to be reappointed for a second year. He said that the new policy is that chairs and vice chairs will now serve for two full years.

8. City Clearances for Energizing Electric Services

Mary Dickson said that, because the presenter for Item 7 was running late, the next two agenda items would be taken out of order.

Mark Ptashkin discussed an issue the City of Glendale has had with electrical clearances. He said that the city has seen instances of the local utility companies installing electric meters without obtaining a clearance from the city. He said that this is occurring in buildings that have had fire damage, buildings that have been posted as unsafe to occupy, and houses that have had work done on them without building permits. He asked if any other municipalities are seeing the same problem. Dale Crandell said that Tolleson has seen a few instances where electric meters were hooked up in brand new homes without city clearances, but they have not seen the issue happen with abandoned homes. Mark Ptashkin said that Glendale is seeing this happen about 2-3 times a month, including a house that had had two different fires, and was completely remodeled without permits. He said that the utility companies have said that they won't remove the electric meters once they have been installed, regardless of receiving prior city clearance. Steven Hether asked which company was doing this, and Mark Ptashkin said that it is both SRP and APS. He said that in cases of fire, the fire fighters are having the electric meter pulled during the fire, and the utility is reinstalling the meter months or years later without clearance.

Steven Hether said that in Mesa their building inspection supervisors have automatic notification from the fire department on their Blackberries. He said that they put in a notice of "Do Not Energize" to SRP, and they have not had this problem. Mark Ptashkin said that they recently had a house that was posted as unsafe and that power should not be turned on, and the utility turned on the power anyway. He said that in this instance, the utility said that the city phoned in a clearance for that address, but the city had no record of clearance, or a phone call, or green tag issuance. Steven Hether said that, for their clearances, Mesa provides the utility with the address and a clearance number, and the utility has to be able to match the two. Tom Paradise said that Glendale has the permit number attached to the address and clearance when it gets faxed to the utility. Mary Dickson said that El Mirage does all their clearances via email so that there is a written document. Mike Baxley said that Cave Creek does all email, as well. Dennis Marks said that Peoria also does all email clearances.

Randal Westacott noted that Steven Hether said Mesa sends notice of "Do Not Energize" to the utility company for unsafe buildings, and asked if Glendale does that. Mark Ptashkin said that they don't. Randal Westacott said that sending a notice like that could help.

Dean Wise said that in the building code administrative section says that the utility company is one of the parties that have to be notified when a building doesn't have clearance for electricity. Mike Baxley said it seems like everyone has different ways to notify the utilities. He suggested that the committee could have representatives from the utility companies come in and they could work out a uniform method of notification. Mary Dickson said that they went to email notification because they had instances of electricity not getting turned on after clearances were phoned in. She said that when a house has to have electricity cut off, she attaches a letter of condemnation or an explanation to the email, and the utility company has been very supportive of their efforts.

Steven Hether said that he wasn't sure if a uniform notification system was feasible, and that in Mesa, the next generation of their permit software would be automating the notification emails. Dean Wise said that Queen Creek also has an automatic notification system. Phil Marcotte said that APS came to him and asked for a notification system so that they wouldn't have this problem. Mark Ptashkin said that they don't have a huge problem, but when they do have a problem it's because there are people in an unsafe home, and the city has to remove them from the house until it is made safe. Mary Dickson said that she has had great service ever since she had a face-to-face meeting with APS. Tom Paradise asked the people who have used an

automatic email notification system if any of them use the Hansen system. No one said they use Hansen. Steven Hether asked if this might be more of a regional problem, since they don't seem to have the same problem in Mesa. Mark Ptashkin said that the problem is occurring all over Glendale with both SRP and APS.

7. SB 1598 – Regulatory Bill of Rights, Licensing and Inspections

Rene Guillen from the League of Arizona Cities and Towns discussed Senate Bill 1598 (SB1598), the Regulatory Bill of Rights. He said SB1598 was brought forward by the Arizona Rock Products Association (ARPA). He said that in the 1980s, the legislature had enacted a regulatory bill of rights, which was supposed to create a scheme by which state governmental agencies regulate, and that SB1598 was an attempt to apply those rules to local governments. He said that the bill defines "licenses" very broadly, and the intent was to regulate practically everything a municipality does from a regulatory standpoint. He said that he has been trying to put together a working group to help municipalities implement the bill.

He said that he would like to encourage some kind of uniformity for inspections procedures among cities. He said that the portion of the bill that affects inspections takes effect July 1, 2012. He said that the bill requires a number of different disclosures for applicants and regulated persons when inspections occur, and the League is considering creating a generic inspection disclosure form that municipalities can use.

Mary Dickson said that she has been attending the Arizona Fire Marshals Association meetings, and they have been working on a uniform inspection form, as well. She said that there are different interpretations of what the bill says. Rene Guillen said that there is a lot of confusion about what the bill says versus what was intended, and gave an example of language that was clear during discussion but unclear in the final bill. He said that he thinks interpretation will become a big issue, and the best bet of the municipalities is to be on the same page.

Scott Wilken asked about the City of Mesa's draft implementation plan that was released a few days prior to the meeting. He said that the bill includes an exemption for inspections that are requested, and that inspections related to building permits fall into that exemption. Rene Guillen said that he might be inclined to agree with that interpretation. Steven Hether said that Mesa is adopting the philosophy of interpretation that would cause the least amount of disruption to the customers. Jackson Moll said that his reading of the inspection section would exempt building permit inspections, because the applicant calls the city to request the inspection. He said that there are other types of inspections related to building permits that would not fall under the exemption, such as inspections that occur following a fire but were not necessarily requested by the homeowner.

Scott Wilken asked for a discussion of the review portion of SB1598. Rene Guillen said that the original intent was that, during review, cities would have one opportunity to ask for revised and resubmitted plans. He said that the League feels that this portion of the bill forces cities and counties to take a more adversarial role when working with applicants, rather than fostering a cooperative relationship. He said that the final version of the bill had some language softening this section slightly, allowing cities to ask for additional information when needed. He said that another portion of the bill that provides some relief to municipal reviewers is that, if there are multiple departments reviewing an application, each department has the opportunity to ask for additional information.

Jackson Moll pointed to a section in the bill that refers to “deficiencies” and asked if cities are interpreting that to mean deficiencies in the documents that have been provided or the content contained in those documents. As an example of a deficiency with the content of a document, he cited an instance when a provision in building code could be interpreted two different ways, and the applicant submitted using the interpretation that is the opposite of the city’s. Steven Hether said that, in an instance like this, the document would be considered deficient because the city’s building official is in charge of making final interpretations of building code, and if the document does not comply with that interpretation it would be deficient. Rene Guillen clarified the difference between the administrative review timeframe and substantive review timeframe, saying that missing documents would be part of the administrative review, but inaccurate interpretations of the building codes would be found during the substantive review. He said that the idea is that one has one period in which to complete the application and one period in which to review the application.

Jim Fox asked how redline comments fit into the substantive review process. He asked if the intent was that after a city redlines plans, the plans then must be denied instead of allowing the city to ask for revisions and resubmission. Rene Guillen said that the proponents of the bill wanted one set of redlines and comments and one set of resubmitted plans back to the city. Jim Fox asked what happens if those resubmitted plans do not meet code and are not approvable. Rene Guillen said that the original intent, as he understood it, was that the plans would be denied if the second submittal did not meet code. He pointed to language in the final bill that allows the city to ask for additional information, and suggested that maybe the city and applicant could agree to allow an additional submittal rather than simply denying the plans and starting the process over.

Tom Paradise asked to clarify the previous discussion, saying, if there are 10 redline comments and the plans are resubmitted with only 5 redline comments addressed, can the city ask for those deficiencies to be fixed or do the plans have to be denied. Rene Guillen said that at that point, the city and the applicant could mutually agree to allow the city to ask for an additional resubmittal, but if the applicant doesn’t agree, the city has to deny the plans. He said that the city has the right to one comprehensive request for more information, but after that, all additional requests for information must be agreed upon by the city and applicant. Jackson Moll said he would agree to that interpretation. Ed Kulik asked if the city is still restricted to the substantive review time period in this example. Rene Guillen said that the timeframe is paused while the city waits for the applicant to resubmit. Randal Westacott said that the building code says that, if the applicant doesn’t respond to comments within 180 days, the plans can be denied. Scott Wilken said that it would be in the applicant’s interest for the timeframe to be paused, because if the substantive review period expires the plans are deemed approved, and it would be in the city’s interest to deny unapproved plans before the end of the review period.

Rene Guillen talked about legislation that is currently being discussed in the legislature. He talked about House Bill 2350 (HB2350), which contains striker language for a portion of SB1598 related to notifying utility companies within their jurisdiction 12 months in advance of any public works project. He said the new language would say that cities must put their 10 year capital improvements program (CIP) online instead of requiring 12 months notice, and to require cities to notify utility companies when new projects come up that are not in the CIP.

He talked about House Bill 2468 (HB2468), sometimes referred to as an economic bill of rights. He said that it would have limited what governmental agencies are allowed to regulate, and

would have required legislative bodies to repeal ordinances. He said that HB2468 has been pulled back by the sponsor, and is off the radar for the time being.

He talked about House Bill 2815 (HB2815), which, among other things, includes a regulatory tax credit. He said that this bill would allow anyone subject to “excessive regulation” to file for a tax credit on their tax return to be reimbursed for the cost of complying with the regulation. Jackson Moll said that “excessive regulation” is defined in statute as any regulation that doesn’t directly deal with life/safety. Steven Hether said that the plumbing code includes things like fixture counts for the number of toilets that have to be provided, and that this likely doesn’t count as a life/safety regulation. He said that there are building codes that ensure comfort and energy savings rather than life/safety, and wondered if those would be considered “excessive.” Rene Guillen said that the bill is broadly defined, and that, as written, the Department of Revenue (DOR) would decide what is “excessive.” He said that the League’s position is that DOR isn’t in a position to know what is life/safety and what is not. He said that a result could be that a city loses state-shared revenue for not repealing “excessive regulations.”

He talked about House Bill 2827 (HB2827), which would apply the Administrative Procedures Act (APA), the state rulemaking procedures, to counties and flood control districts.

He talked about Senate Bill 1470 (SB1470), which would apply the federal data quality act to the state, cities, towns, and counties. He said that this would require the use of science to back up science-based decisions.

He finally talked about Senate Bill 1505 (SB1505), which would apply the APA to cities and towns. He said that the problems the League sees with this bill is that cities and towns do not have separate executive and legislative branches, which makes the existing model unworkable with cities and towns.

Scott Wilken said that the handout that Rene Guillen passed out with the names and descriptions of the legislation of interest will be posted in the MAG website, as would the Mesa draft SB1598 implementation plan. Rene Guillen mentioned that the League has a SB1598 listserv that members can sign up for.

9. Updated MAG Building Codes Committee Membership

There were no updates.

10. Update Survey of Code Adoption

There were no updates.

11. Topics for Future Agendas

There were no suggestions for future agenda items.

12. Adjournment

Steven Hether made a motion to adjourn and Rick DeStefano seconded the motion. The meeting was adjourned at 3:31 PM.