MINUTES OF THE
MARICOPA ASSOCIATION OF GOVERNMENTS
BUILDING CODES COMMITTEE

March 21, 2012

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

COMMITTEE MEMBERS

Michael Williams, Tempe, Chair
Randal Westacott, Avondale
*Phil Marcotte, Buckeye
*Mike Tibbett, Carefree
Mike Baxley, Cave Creek
*Martin Perez, Chandler
Mary Dickson, El Mirage
*Jason Field, Fountain Hills
A-Tim Simanton for 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
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
Sharon Bonesteel, SRP
Ken Kirschmann, Southwest Gas

*Those members neither present nor represented by proxy.
A-Those members participating via audioconference
V-Those members participating via videoconference

1. Call to Order

Michael Williams, Chair, called to order the March 21, 2012 meeting of the MAG Building Codes Committee (BCC) at 2:00 p.m.

2. Introductions

Voting members Tim Simanton and Dean Wise attended via telephone conference call. All members and guests introduced themselves.

3. February 15, 2012 Meeting Minutes

Ed Kulik made a motion to approve the minutes. Randal Westacott seconded the motion, and the minutes were approved unanimously.

4. Call to the Audience

There were no comments from the audience.

5. Comments From the Committee

Bob Lee discussed the Arizona Building Officials (AZBO) education institute that is scheduled for the end of April. Michael Williams said that the institute is in Phoenix. Randal Westacott said that it will be held at the Sheraton Crescent. Bob Lee said that the AZBO Annual Business Meeting will take place July 17-19, in Payson at the Best Western. He said there will be a golf tournament the first day, with chapter meeting that evening. He said that the business meeting will be held the morning of the second day. He said that there will be professional development in the afternoon of the second day. He said the third day will include a roundtable discussion on the changing face of building inspections. Dean Wise added that the AZBO education institute will be April 23-27. Mary Dickson added that some of the classes are filling up quickly.

6. SB1598 – Building Inspections

Steven Hether asked the committee members if their jurisdictions had formulated their own positions or opinions on SB1598. Tom Ewers said that Maricopa County agrees with Mesa that building inspections by request are not covered by SB1598. Steven Hether asked about inspections for work that was done without a permit, which is considered a criminal act in Mesa. Tom Ewers said that the code enforcement officers for Maricopa County are told not to go onto the property, and are, therefore, not subject to SB1598. Dean Wise said that he agrees with Steven Hether's statement that an inspection on work done without a permit is different than a regular building inspection. Bob Lee said that the attorney for Paradise Valley said that building inspections do not have to comply with SB1598, but that code compliance inspections are a different issue. He said that he is waiting for the town attorney to provide further guidance. He said that for inspections for work done without a permit, the town asks to be invited on to the property for inspection, and if the request is declined, they turn the violation into a criminal offense and inspect with a police officer.

Tom Paradise asked if, in an instance of code compliance, does the code officer have to be asked onto the property by the property owner, or can they be asked onto the property by a

complaining neighbor. Tom Ewers said that if the officer is not asked onto the property by the property owner, then all the requirements of SB1598 apply. Steven Hether said that if the violation can be seen from the public right-of-way, then the action can be taken, but if the officer is required to enter a house or go onto someone's property, then they either need to be asked to enter or obtain an administrative search warrant. Tom Paradise asked, if the compliance officer could be invited onto a neighboring property from which the violation can be seen, if the requirements of SB1598 apply. Steven Hether said that he has heard a lot of opinions on that question, and that it would be best to consult with your city attorney. Michael Williams read a line from SB1598 that stated that the law does not apply to municipal inspections that are requested by the regulated person. Dean Wise said that they will be examining the federal Plain View doctrine that addresses what can and can't be done from adjoining properties. Michael Williams said that at the next BCC meeting, Steven Hether is planning to bring a report about the SB1598 meeting that was occurring at the same time as the March BCC meeting.

7. Arizona Superior Court Consent Decree Related to R-4 Occupancies

Randal Westacott gave a report on the consent decree that was recently given to the City of Avondale. He said City received a consent decree from the State Attorney General's Office (AGO) regarding a group home. He said that there are changes associated with what the city can and can't do for group homes that have some unintended consequences. He said that the decree affects R4, assisted care homes, and I1 and I2 type occupancies.

Randal Westacott said that the state's Civil Rights Division took up the cause on behalf of an applicant, Christopher Hurst. He said that the decree includes a disclaimer that, in part, says that the City of Avondale does not admit to any guilt, and that the City was not charged with any wrongdoings. He said that the Arizona Fair Housing Act (AFHA) states that individuals cannot be discriminated against based on a number of different factors, including disability. He said that the AFHA protects people who are impaired by a broad list of different types of impairments, and that the AFHA includes some exclusions, such as criminals, criminal drug users, criminal juveniles, and sex offenders. He said that the AFHA prohibits municipalities from treating housing for people with disabilities differently than other single-family houses.

Randal Westacott said that the consent decree says that any zoning district that allows single-family housing must also allow housing for persons with disabilities. He gave examples of case law that was examined as part of this consent decree, all of which found discriminatory practices on the part of the governing bodies. He said that the plaintiff in this case asked that zoning and building requirements not be applied to his group home, and that it was found that those requirements are not in line with the AFHA.

Randal Westacott said that the case, Hurst v. Avondale, came about because a concerned resident noticed a group home had gone into a neighborhood, and questioned if they had gone through the proper permitting process for a group home. He said that the City began looking into the question, and found that this group home, as well as two others in the city, had not gone through the require procedures, including separation requirements required by the zoning ordinance. He said that one of the three would not be allowed to operate any longer because it did not comply with the separation requirements, and the other two were classified as R4 occupancy and would have to register and go through the Building Division process. He said that the plaintiff requested that the requirements on the latter two be waived, while the third would be moved. The City denied the waiver request. He said that at the time the City was using the 2006 building codes, with most of the amendments suggested by AZBO. He said these

amendments include requiring sprinklers in R4. He said that the fire code required additional improvements to the building due to the R4 classification, such as fire alarm and certain ingress/egress improvements. He provided the definitions of various types of group homes that were in effect at the time, and said that these definitions largely came from the adopted amendments. He said that these definitions and requirements had been worked on in conjunction with the Arizona State Department of Licensing, which does not have these types of safety requirements in their regulations.

Randal Westacott said that, as a result of the consent decree, the Zoning Ordinance and building code amendments were updated for the definition of "family." He said that, when the City recently adopted the 2009 building codes, the City Attorney had them remove the group home/assisted living portions of the amendments that would have carried over from the 2006 codes. He said that the City now has only the portions of the 2009 building codes that address group homes. He said that the 2009 code considers these as R4 occupancies, but the City Attorney has advised that the City no longer considers these uses as R4 occupancy. He said that the City now has a new definition for "dwelling unit" as well. He said that the Zoning Ordinance definition for "group home for persons with disabilities" was replaced with a new definition for "group home." He said that the Zoning Ordinance separation requirements were removed, and now group homes are simply permitted in residential zoning districts.

Randal Westacott said that the City now allows group homes to locate anywhere in the City that single-family residences are allowed. He said that this puts the burden of enforcing the separation requirements of the Arizona Department of Health Services (DHS) back on DHS themselves, and that the City has informed DHS that they are no longer conducting building or fire inspections of group homes. He said that DHS needs to see sign-off from the municipality that the group homes meet certain safety requirements, but the City is no longer able to provide that sign-off.

Tom Ewers asked how many occupants were in the property in question. Randal Westacott said there were six residents and the caregiver. Tom Paradise asked, as the consent decree says that the city is not to use the 2009 building code amendments with regard to group homes while the consent decree is in effect, what the city is supposed to use. Randal Westacott said that the city attorney has said that the city will do nothing with group homes during this period. He said that the state allows up to 16 occupants in a group home, so the city would not be able to do any regulation until a facility had 17 occupants, which, at that point, would classify the facility as an I-1 occupancy. Tom Ewers pointed out that the consent decree is for one single property, and that, while it creates possible legal precedent for others to litigate, it doesn't force anyone to change their codes, but the city attorney is having the city cover its bases by applying the consent decree across the board. Bob Lee asked if the city's agreeing to the consent decree was a business decision by the city. Randal Westacott said that he does not know. Tom Ewers said that it appears the conclusion of the consent decree was based on the zoning regulations, and the building restrictions were thrown in on top of that. Randal Westacott said that he sees some unintended consequences coming from the consent decree.

Bob Lee said that the consent decree says that the Civil Rights Division saw the application of additional health and safety regulations without any individualized assessment of their need. He said that building codes are not individualized, and that the idea of building codes is to apply to the regulations to everyone equally. Randal Westacott said that the Civil Rights Division looked at the AFHA as saying that someone with a certain disability shouldn't have fewer rights than someone without that disability. Tom Ewers commented that the consent decree does not apply

to homes for people who have been adjudicated. Michael Williams asked what kind of disabilities the occupants had. Randal Westacott said that they had mental disabilities. Michael Williams asked if they qualified under the developmentally disabled category. Randal Westacott said that it was possible that they could have qualified. Michael Williams said that it is his understanding that in the last 10 years or so, cities are prohibited from enforcing building codes on homes for developmentally disabled people. Randal Westacott said that is correct, and that the city's requirements were based on the level of care that was described by the applicant. Scott Wilken said that the portions of the zoning ordinance that were required to change are not dissimilar to the requirements in the ordinances of other municipalities. Michael Williams said that homes that are licensed by the state as for developmentally disabled, cities are not allowed to enforce any additional requirements. He said he thought that the issue may have been the violation of that preemption, but the consent decree doesn't say that. Randal Westacott said, because this is a consent decree and not a judgment, they didn't want to state that there was any wrong-doing.

8. Arizona Hoarding Task Force

Mary Dickson gave a presentation on the Arizona Hoarding Task Force (AzHTF). She said that the Collyer brothers case from 1947 demonstrates why building officials are involved in hoarding cases, as extreme hoarding can affect the integrity of structures. She said that there are three definitions for hoarding. The first definition is, "The failure to discard a large number of possessions that have limited value." The second definition is, "An accumulation of stuff that impacts the use of the space for which it was intended." The third definition is, "When the amount of items creates a potential hazard or puts people at risk." She said that some hoarders specialize in specific types of items, such as plastic containers or newspapers and magazines. She said that animal hoarders usually do not hoard other things. She said that hoarding should not be confused with collecting, as collections are made up of items that have a recognized, significant value, such as comic books or coins. She said that if an individual has enough space for their collection and it does not create a problem to function safely in the home, that individual may be considered eccentric, and not a hoarder.

Mary Dickson outlined some factors that can contribute to hoarding: isolation, aging, dementia, and stressful life events. She said that hoarding can pose risks to mobility and existing medical conditions. She said that the tendency to hoard starts in childhood, and there is evidence that it may be hereditary. She said that animal hoarders generally believe that they are the only people who can take care of their animals, even when the animals are clearly not well or are living in substandard conditions. She talked about potential consequences of hoarding, including eviction of renters, fines from municipal code enforcement, fire hazards, exacerbation of medical and emotional issues, poor sanitation, biohazard concerns, and pests such as rodents, cockroaches, lice, and fleas.

Mary Dickson said that hoarding is a mental illness, and that simply cleaning a property will not make the problem go away. She said that because of mental illness, after cleaning the hoarding will begin again. She said that this was the reason the AzHTF was started. She said that El Mirage, being a smaller city, doesn't have the resources to deal with the mental illness side of the problem, and started looking for other opportunities. She showed pictures of the case that started the task force, showing hoarded items surrounding a modular home. She said that after the property was cleaned up the hoarding started again the same way a year later. She said that the property has been cleaned three more times since 2009, but because hoarding is a mental illness the problem doesn't go away. She said that the city started looking for help with the

behavioral health aspect, and held a meeting in March 2010. She said that 12 people interested in starting a task force attended the first meeting. She said that when the second meeting of the task force was held, 70 people attended, including people from police, fire, code enforcement, mental health, and building. She said that now between 50 and 70 people typically come to their meetings. She said that the AzHTF has a website with useful resources and phone numbers: www.azhoarding.com. She said that the AzHTF meets every other month, and the next meeting is April 12, 2012 from 2PM to 4PM at the Scottsdale Senior Center at 1700 N. Granite Reef Road. She said that there will be a seminar-style class in handling hoarding cases at the AZBO Educational Institute.

Steven Hether said that when they deal with hoarding cases in Mesa, the weak link is the behavior health services that are available, but that that is the biggest part of the problem. Mary Dickson said that there is research to suggest that going through the process one time for one case can cost a jurisdiction $60,000 to 80,000. She said that they have had some success working with Adult Protective Services, but that they have recently decided to no longer deal with hoarding cases because of the cost. She said that in 2013, hoarding could become a diagnosable illness, which could open up a lot of funding sources. She said that there are other resources available, however. Bob Lee said that, despite the perception that Paradise Valley might not have hoarding problems, the problem does exist in the town. Mary Dickson added that the jurisdiction that has brought the most cases to discuss is Scottsdale.

9. MAG Building Code Amendments and Standards Book

Scott Wilken discussed the ongoing Building Code Amendments and Standards book project. He said that staff had compiled 39 different code amendments that the committee had reviewed over the years, and sent those to the committee members for review. He said that, due to the length of the compiled set of documents, only a few committee members had been able to provide comments. He said that the best way to go through the documents would be for the group to look at them one by one over the course of several meetings. He said that the review checklist was included in the agenda packet and that members could refer to that list and start the discussion at item number one.

Tom Ewers said that Item #1 refers to the 1991 Universal Plumbing Code (UPC), and that no one is still using that code. Scott Wilken suggested that this item could be included in the Historic section of the book. Bob Lee said that Item #2, which is about the One Coat Stucco Compliance Program, seems to be no longer relevant. He said that whatever problems existed in 1993 that prompted this seem to have been resolved, and so this could be added to the Historic section, as well.

Bob Lee made a motion that Items 1, 2, and 3 be added to the Historic section. Tom Ewers seconded the motion. The motioned carried unanimously.

Bob Lee said that Item #4, a Special Inspections Standards Manual, may need to be updated. He said that it could still have some value today. He said that the document, as written in 1994, spelled out who did what in the process. Michael Williams asked if the document has been updated or is still in use by the City of Phoenix. Julie Belyeu said that the City now follows the International Building Code (IBC), and she doesn’t know if those documents are updated. Tom Ewers said that this is still necessary, and that it goes beyond the IBC. Scott Wilken said that he will mark Item #4 as Needs Update, and the committee will decide how to update it at a later date.

Scott Wilken said that Item #5 refers to uniform reporting of information to the County Assessor. Bob Lee said that this is an on-going item, which each jurisdiction still does today. Michael Williams asked if there is a uniform method today. Bob Lee said that Paradise Valley still uses the DOS system that the County put in place years ago. Randal Westacott said that Avondale still reports the information to the County, but does not use the DOS system of the past. He asked if this document is still needed, as everyone is reporting the information today. Scott Wilken asked if it would make sense to include the reporting methodology that the County requires in place of this document. Randal Westacott said that Avondale's Information Technology Department did work with the County to find out what was needed, so that could be added to the book. Bob Lee made a motion that Item #5 be added to the Historic section. Ed Kulik seconded the motion. The motion carried unanimously.

Tom Paradise said that Item #6, regarding sound attenuation near Luke Air Force Base, is still used today, as currently written. Bob Lee made a motion that Item #6 be added to the Current section of the book as written. Tom Ewers seconded the motion. The motion carried unanimously.

Scott Wilken said that at the next meeting, the committee will start with Item #7, and asked members to review the next 5 to 10 items beforehand.

10. Updated MAG Building Codes Committee Membership

There were no updates.

11. Update Survey of Code Adoption

Bob Lee said that he hasn't taken anything to Paradise Valley Town Council, so the anticipated adoption date of February/March 2012 can be removed. He said that he still anticipates meeting the July 1, 2012 effective date. Randal Westacott said that Avondale is going to move to the 2012 codes in mid to late 2013. Julie Belyeu said that Phoenix has moved their effective date to July 2013, rather than January 2013.

12. Topics for Future Agendas

There were no suggestions for future agenda items.

13. Adjournment

Ed Kulik made a motion to adjourn and Mike Baxley seconded the motion. The meeting was adjourned at 3:37 PM.