



STATE OF WASHINGTON

## STATE BUILDING CODE COUNCIL

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May 24, 2013

TO: Council Members, Interested Parties

FROM: Tim Nogler, Managing Director

RE: SBCC PROCESS IMPROVEMENT

The State Building Code Council (Council) is engaged in taking input from stakeholders on how to improve the state building code development process. A summary of written comments from stakeholders, and notes from a workshop held on May 15, 2013 are attached below.

The next step in the process is a report to the full Council on June 14, 2013 at a regularly scheduled meeting at Shoreline City Hall to develop plan of action. To engage legislative members, the Council will prepare to present findings to legislature in the fall.

Council members present at the May 15 workshop listed these “take away” items among others:

- A) Deal with people respectfully.
- B) Distinguish between policy and technical issues.
- C) Describe how stakeholders voice their opinion on a code change if they are not part of the TAG. Same with addressing the Council.
- D) Consider meetings locations throughout the state.
- E) Develop guidelines for TAG and Code review process.
- F) Define duties and makeup of TAGs.

Consider dividing the energy code TAG into two specific groups: One for policy and the other specifically for technical issues.

Council’s relationship with TAGs needs a clearer definition.

- G) Establish criteria for enforcement.
- H) Training for the Council and meetings such as today should be mandatory for all Council members.
- I) Provide a simple guideline/format for public use in developing Cost- Effectiveness.
- J) Produce a written manual.
- K) Develop a matrix of procedures comparing ours to other agencies.

# Summary of Comments on SBCC Process for Adoption of the State Building Code

May 15, 2013

## 1. Improving Council Meeting Process

- a. Provide **CONSISTENCY** in the SBCC decision-making process, and the TAG process. If the SBCC selects a process – and applies it throughout their work, it would allow rules to be developed and industry representatives will be able to effectively participate and provide useful and necessary information reflecting the goal that all participants have access to a fair, open and transparent process.
- b. **NOTIFICATION.** The SBCC staff should reach out to other state agencies and find out how they conduct their public processes and public notification. Avoid information “hide and seek,” provide time for review and comment, for amendments, changes, supporting information.
- c. Review the ICC code amendment processes or similar processes used by other states or organizations.
- d. Meeting agendas need to be clearer, stating at what point public testimony will be allowed and when it will not.
- e. The technology used for the meetings (Web-ex, telephone, etc.) needs to be reviewed and thoroughly tested before it is utilized by the Council.
- f. Meetings across the State and just not focus on the west side

## 2. Structuring Public Comment Procedures

- a. Public comments should be limited by a per topic time limit and by the number of opportunities provided to a stakeholder group to speak on the amendment.
- b. Q&A of stakeholder public comment should be limited to the specific topic and stakeholders should not be put in a position of debating an amendment with the Council. If additional information is needed from a stakeholder, SBCC staff should make the request in writing and provide a reasonable timetable to respond.
- c. All public comments on amendments and stakeholder requests for information should be posted on-line prior to the meeting.
- d. Guidelines for the hearings need to be provided prior to the meeting.
- e. Order of testimony shall be random.

### **3. Improving the Technical Advisory Group Process**

The membership on the TAGs, as the Council has acknowledged, is extremely important to ensure the appropriate mix of diverse interests and stakeholders impacted by the decisions made by these groups.

- a. Full vetting of issues and concerns and implementation problems
- b. Recommend at least a third of a TAG's composition consist of those who regulate these codes to ensure codes are easy to implement and enforce; that everyone understands what is expected
- c. Appointed Primary members who may change employment and no longer represent the industry or group they were originally selected to represent on the TAG, we suggest they be terminated immediately and replaced quickly.
- d. A TAG's role in the update process is as an advisory board to the Council and not a governing body unto itself.
- e. Consider the value of voting, based on experience with member participation/absence: consider leaving the voting to the Council.
- f. Consider implementing the suggested submittal package of the TAG's work to the Council.
- g. TAG meeting agendas should be noticed with a minimum of 3, 5 or 7 days lead time including the date, location, and subjects to be discussed.
- h. TAG appointments – All TAGs should represent a diverse group of stakeholders.
- i. **Inability to reach quorum for Energy Code TAG meetings:** If the Energy TAG were to split into two or three sub-TAGs by subject area it may serve to alleviate this problem.
- j. **Biased make-up of TAGs.** TAG membership should be equally distributed and truly representative.

### **4. Code Amendments, Public Input, Economic Analysis**

- a. Proposal Requirements Must Be Enforced.
- b. Add staff or hire a consultant.
- c. Cost-Effectiveness Must Be Defined.
- d. Adopt a methodology for energy savings and cost-benefit analysis.
- e. Engage the Legislature in resolving some of the policy questions raised through passed legislation.
- f. Establish a deadline and format for offering amendments and amendment consideration.
- g. All amendments and/or changes to an amendment must be provided in writing prior to public comment.
- h. Provide timely notice of amendment deadlines

Are state amendment proposals:

- 1) technically feasible;

- 2) cost effective for amount of energy efficiency gained;
- 3) does it raise any construction technique issues given current methods; and
- 4) is the language clear and enforceable?
- 5) What is the impact of an amendment with respect to encouraging or discouraging upgrades to existing building stock due to added costs, especially for energy efficiency improvements?

## **5. Written Manual for Stakeholders**

The Council and stakeholders would be well served with a written manual of the SBCC process that all participants and decision makers have access to; that provides clarity for the process for both participation and amendment consideration. Clarity, evidence of fairness, and transparency should be a priority at each step of the process from the TAG to the full Council.

## **6. Other Issues**

- a. It seems that there is resistance to receiving proposals that have been reviewed previously. The Council needs to have an open mind and understand that conditions and culture changes on a regular basis.
- b. Council needs more involvement. We are perceived as a closed group of individuals.
- c. Provide training opportunities for the members.
- d. Better connection between the Legislature and the Council.
- e. Redo the economic analysis process.
- f. "Town Hall" meetings.
- g. Work on our image. We are not respected by several of the agencies or associations that should be rallying to our cause.
- h. Keep up with the technology, set measureable goals.
- i. Meet quarterly with stakeholders.
- j. Public forums: A few show and tell public meetings with the public that would also provide us an opportunity to share what the Council's mission is
- k. Establish a mailing list or email list and publish a monthly newsletter

## **May 15, 2013 Meeting Notes**

Process Improvement Workshop  
1500 Jefferson Building, Olympia, Washington

SBCC Members Present: Dave Peden, Dave Kokot, Steve Simpson, Tom Balbo, John Chelminiak, Ray Allshouse, Rod Bault.

Stakeholders Present: Hank Teran, WSFCA; Greg Rogers, WSAFM; Jan Himebaugh, BIAW; Jeanette McKague WRA; Lisa Rosenow, NEEC; David Cohen, NEEA; Kim Drury, NVEC; Kyle Woodring, Rental Housing Association; Representative Dean Takko; Ethan Moreno, LG Committee staff; Michaela Murdock, House of Representatives; Dana Quam, House Republican Caucus staff; Chuck Murray, Dept of Commerce; Kraig Stevenson, ICC; Terry Notestine, DOH; Theresa Phillips, DOH; Gary Alsup, WABO; Pete Crow, IAPMO; Nancy Atwood, PSE; Dylan Doty, WA Fire Marshals; Jim Kambeitz, WA Fire Marshals; Jim Edelson, NBI; Bob Eugene; Trace Justice; Marty Gillis (last three on phone)

Ray Allshouse convened the meeting to order at about 9:15 AM. He indicated the purpose of the meeting and read a summary of written comments on the first item:

### **Improving Council Meeting Process**

John Chelminiak opened comment with reflection on the difference between a legislative process and a regulatory process. The process used by the SBCC does not work for him, does not work for setting policy. He has never served on a board that has so much opportunity for public comment. Public doesn't seem to know what to comment on. From the beginning of the process when the codes are published to when the final adoption takes effect takes 18 months. The SBCC needs to define: what are the outcomes? John feels we don't have enough resources or expertise. The cost benefit analysis is not always logical and it is hard to understand our process.

David Cohan comments that the SBCC is understaffed even if the process was brilliant. Compare Washington to Oregon, where the same department has 80 staff. He says that NEEA provided the cost benefit analysis but they are an advocate group and the state should not be dependent on an advocate group.

Kim Drury stated that the NEEA study was a credible report. NEEA has \$500K committed to helping Washington State.

Gary Alsup said WABO wants to see the SBCC fully funded; however the code adoption process in 2012 has frustrated a lot of people.

Kraig Stevenson with ICC agreed that other states have more staff and ICC would like to see SBCC participate more than they are able to at this time.

Greg Rogers said there is a difference between policy and technical issues. What are the expectations of TAG and SBCC members as technical experts? These technical experts and the Council have little time to make these decisions

Greg questioned how notice for this meeting went out? Discussion followed of SBCC's listserv, how to be listed, requests to be removed from the list, and other state agency processes. The Fire Chiefs did not get a notice of this meeting. Others indicated some emails are not received. There needs to be a better way.

Lisa Rosenow with NEEC commented about the timing of having the documents available. Why can't they be available sooner?

Kraig Stevenson explained the ICC process and the time involved in producing the codes.

Jim Edelson with NBI said the codes will be available well in advance in future cycles. The 2015 code will be published at the end of 2013. Ray comments there are some revisions that appear in multiple codes and so they must be reviewed by multiple groups.

Dave Kokot talked about the use of technology, and how to get statewide participation. There is a real need to get more people in the east involved. He said the technology used by the Council often does not work. Dave Peden agreed with Dave Kokot. He feels the hardware is the problem.

Pete Crow, with IAPMO said the use of technology in Idaho works well. They use videoconferencing in several locations. They have good mics and the various locations allow for remote participation.

Kim Drury, with NWEAC said there are errors in the energy code which was published in November. Now do we fix them with emergency rulemaking? This is costly and time consuming. Lisa Rosenow agrees there are many errors in the energy code which raises the question of credibility.

Ray Allshouse moves on to next summary section:

### **Structuring Public Comment Procedures**

Steve Simpson said he strongly agrees with item 2b, that public hearings should not be a debate with Council members.

Dave Cohan said the SBCC needs to set a policy for this situation. The Council needs to police themselves.

Jan Himebaugh commented that it is the duty of the Council chair and the staff to step in to control the process. Everyone needs to be treated the same.

Nancy Atwood with PSE, did not understand the process for code amendments, when the utility group approached the SBCC for relief on a specific issue. They did not know if they needed to testify at the TAG or at the committee or at the Council. Other state agencies follow the APA and it is clear what is documentation is expected.

Jeanette McKague with WA Realtors (WRA) explained opposition to the fee increase; they did not know the direction the SBCC was taking. This process review had to happen first. The WRA has submitted a proposed process for the TAGs. Look at what role the Legislature has given this group; the SBCC is the implementer.

Ray Allshouse moves on to next summary section:

### **Improving the Technical Advisory Group Process**

Lisa Rosenow, enforceability needs to be addressed.

Chuck Murray explains that the policy objective set by the Legislature is turned over to the rule making agency. The agency needs evaluation criteria, to assess if objective is being met, and to give direction to the TAG. We rely heavily on ICC to develop main body of code and ICC policies may not meet state objectives.

Dave Kokot said guidelines for code development and when the public should comment needs to be clear.

Dave Cohan asks about the relationship between Council and staff.

Kraig recommends reading Exec. Order 13563 along with the guidance memorandum which outlines the statutes SBCC is to follow.

Kyle Woodring said there is confusion about how to lobby the SBCC. The SBCC needs to inform the Legislature about what can and cannot be accomplished, and determine how to engage with the Legislature and set the agenda for the year.

Pete Crow said he is satisfied with his participation in process overall. He would recommend that SBCC have a guideline and an orientation for the public. For example, all meetings are public meetings, yet many people come to the process late and they don't know what is going on.

Marty Gillis said the SBCC needs a purpose and scoping statement for TAG activities. She cites the example of the Green TAG which was formed over a year prior to their first meeting. Kim Drury agrees the TAGs need specific assignments.

Hank Teran, with State Fire Marshals, commented about the balance of representation, using the PV TAG process as an example of a vote occurring when not all the representatives for fire service were present and the industry group was in the majority. He said the SBCC should follow the ANSI process "Essential Requirements for Due Process"

Gary Alsup cites the WABO letter. Empower staff to assure meetings follow rules of order. The Implementers, or building officials, need a larger voice. At the Energy TAG, WABO members were not heard over the more powerful voices. He also mentioned many proposals received were incomplete. They didn't have an economic analysis, yet they went forward. Staff should have returned them to the proponent.

Discussion of TAGs make-up and how long members are on TAGs is held. Kyle Woodring asks who is on a TAG? What is the role of the TAG? Ray indicates these answers are given in SBCC bylaws, but may need to be revisited.

Nancy Atwood asks how do TAGs set agendas? How does each part work? How does one participate?

Marty Gillis comments on the TAG process, that there are too many members. Debate should be limited.

Representative Takko: What is the role of the TAG? Usually a technical group evaluates a proposal, if A is required then B happens; a technical group is not a policy advisory group, it should not be advocates debating.

John Chelminiak said some issues are more policy oriented, and may need an “oversight” committee. He gives examples of items that cause controversy.

Greg Rogers feels the make-up of the TAGs is biased.

Kim Drury feels an annual orientation is needed for TAG members as well as Council members. Steve Simpson points out the matter of funding and resources to do these things.

Rod Bault reminds the group of Washington’s unique traveling challenges. The state has 8 of the 9 life zones. When these things are considered the staff does very well.

Dave Peden comments there are 11 TAGs, and not all of them are a problem. The Council should challenge the TAGs to have fewer amendments. Some amendments seem to not be needed. At what point is new information allowed (or not allowed)?

Jeanette McKague feels the energy TAG minutes have allowed for a detailed search of TAG activities. The Council needs a TAG document

Dave Kokot said we need understanding from the Legislature, of the intent of the bills that affect us.

Kyle Woodring asked what is the role of the ex-officio legislative members?

John Chelminiak said SBCC needs to be more active with legislators, including a presentation at Committee week.

Jan Heimbaugh BIAW would feel better if fee increase was explained, itemized. Use the DOE method to determine costs and benefits. There needs to be a method to audit the SBCC account.

Kim Drury says the SBCC has not had a fee increase in 29 years, and without the increase the program will be insolvent by the end of the 13-15 biennium.

Greg Rogers said legislators and stakeholders may be confused about who the SBCC is, and how the SBCC is organized.

Kim Drury commented that the review of the APA was confusing.

Rod Bault feels we need to consider people with disabilities.