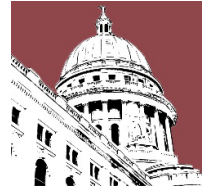

Wisconsin Legislative Council

MINUTES



STUDY COMMITTEE ON THE COMMERCIAL BUILDING PERMITTING PROCESS

Room 411 South, State Capitol
Madison, WI
July 19, 2022
10:30 a.m. – 3:45 p.m.

CALL TO ORDER AND ROLL CALL

Chair Stroebel called the meeting to order and determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Duey Stroebel, Chair; Rep. Rob Summerfield, Vice Chair; Reps. Samba Baldeh and Sue Conley; and Public Members Robert Brandherm, Melissa Destree, Frank Gorham, Doug Hoerth, Steve Klessig, Mark Piotrowicz, Robert Procter, Cory Scheidler, and Peter Tomasi.

COUNCIL STAFF PRESENT: Anne Sappenfield, Director; Anna Henning and Ethan Lauer, Senior Staff Attorneys.

APPEARANCES: Michael Tierney, Legislative Liaison, and Branden Piper, Administrator, Division of Industry Services, Department of Safety and Professional Services; John Mielke, President, Associated Builders and Contractors of Wisconsin, Inc.; Steve Klessig, Vice President of Architecture and Engineering, Keller, Inc.; Andy Wagner, Commercial Plumbing and HVAC Director, Dave Jones, Inc.; and Pete Schneider, AIA, LEED AP, Registered Architect and Partner, GROTH Designs Group, Inc.

OPENING REMARKS FROM ANNE SAPPENFIELD, DIRECTOR, LEGISLATIVE COUNCIL STAFF

Chair Stroebel welcomed committee members and introduced Anne Sappenfield, Director, Legislative Council staff. Ms. Sappenfield shared a video presentation featuring selected legislators discussing the importance of study committees and encouraging members to come to the discussion with open minds. Ms. Sappenfield thanked members for their service and offered the Legislative Council staff as a resource throughout the committee's deliberations.

INTRODUCTIONS AND STUDY COMMITTEE OVERVIEW

At Chair Stroebel's invitation, committee members introduced themselves and summarized their backgrounds.

**PRESENTATION BY LEGISLATIVE COUNCIL STAFF: ANNA HENNING AND
ETHAN LAUER, SENIOR STAFF ATTORNEYS**

Anna Henning and Ethan Lauer, Senior Staff Attorneys, Legislative Council staff, summarized the material in Staff Brief 2022-02, *Study Committee on the Commercial Building Permitting Process*.

**PRESENTATION BY REPRESENTATIVES OF THE DEPARTMENT OF SAFETY AND
PROFESSIONAL SERVICES**

**Michael Tierney, Legislative Liaison, and Branden Piper, Administrator, Division of
Industry Services**

Mr. Tierney and Mr. Piper provided an overview of the commercial building permitting process in Wisconsin, with particular focus on the process by which the Department of Safety and Professional Services (DPS) examines plans for proposed commercial building projects (commonly called “plan review”). They described various reforms instituted by DPS in recent years to expedite plan review. First, they described a new internet-based system, known as eSLA, which an applicant must use to submit plans in electronic form. Second, they described the new practice of conducting plan reviews in the order in which finalized plans are submitted, instead of the prior reservation system where a potential applicant could schedule a future plan review date prior to finalizing and submitting a plan. Finally, they stated that plans are now reviewed by the next available reviewer, instead of the prior reservation system where an applicant could select a particular plan reviewer.

Mr. Tierney and Mr. Piper responded to a variety of questions from committee members. In response to questions, they noted the following: the reforms described in their presentation have been in place for about a year and a half; the reforms have reduced plan review wait times from about an average of 12 weeks down to an average of about six weeks; DPS staffing levels are capped statutorily and DPS would require more staff if the goal is to reduce plan review wait times below six weeks; DPS has moved certain personnel from inspection units into plan review and is utilizing contractors to backfill some staffing shortages; all projects are placed in the same queue and there is no different treatment for smaller or less complex projects; actual time needed to complete a plan review varies between a few hours and a few days, and thus most of the delay is due to the volume of plans in the queue; after an applicant submits a set of plans to eSLA, DPS conducts a “triage” in which administrative staff identify any omissions or errors with the submission so that an applicant may rectify those in advance of professional staff conducting the plan review; about 30 to 35 percent of plans have identifiable errors or omissions, but over 95 percent of plans are ultimately conditionally approved; and several hundred local governments perform plan review as delegated agents of DPS.

Committee members expressed a desire to have more information from DPS regarding the following: whether most errors or omissions are caught at the triage stage or rather at the plan review stage; whether there is a list of most common errors or omissions that could be provided to applicants; whether the plans that have errors or omissions are included in the average plan review time of six weeks; how much additional staffing would DPS need to achieve plan review times of about four weeks; and historical data regarding the number of DPS staff and number of plan submissions.

PRESENTATION BY REPRESENTATIVES OF ASSOCIATED BUILDERS AND CONTRACTORS OF WISCONSIN

John Mielke, President, Associated Builders and Contractors of Wisconsin, Inc.; Steve Klessig, Vice President of Architecture and Engineering, Keller, Inc.; and Andy Wagner, Commercial Plumbing and HVAC Director, Dave Jones, Inc.

Mr. Mielke, Mr. Klessig, and Mr. Wagner presented information on four critical aspects of the commercial building permitting process: code development; commercial plan review; wetlands permits; and enforcement.

Regarding code development, Mr. Mielke expressed support for the continued existence of a uniform statewide commercial building code and would like to see stricter preemption of local codes that do not conform with the state code. He also appreciated the role of the Commercial Building Code Council in vetting updates to international codes and in recommending Wisconsin deviations where appropriate to local conditions. Mr. Klessig suggested that a practice under a prior administration of requiring a cost-benefit analysis for code updates was valuable and could be resumed.

Regarding commercial plan review, Mr. Klessig favored the ability of a plan applicant to establish a professional relationship with a plan reviewer and to know which reviewer would be handling the plan. He also favored the prior reservation system. Mr. Wagner addressed the difficulties encountered by subcontractors when delays hinder plan review. He felt that the prior reservation system for plan review gave a subcontractor more certainty regarding the date on which construction might be allowed to commence. He recommended a reduction in the kinds of plans that require review, such as plumbing plans with less than a certain number of fixtures. He and Mr. Klessig encouraged the development of local expertise and capacity so that more local governments could assume plan review responsibility from DSPS.

Regarding wetland permits, Mr. Mielke stated that jurisdictional overlaps between federal and state regulators can be source of delay. Mr. Klessig stated that the requirement for an analysis of vegetation when delineating a wetland creates delay in Wisconsin because it cannot be conducted during the winter months.

Regarding enforcement, Mr. Wagner sought a reasonable application of the building code, with the ability for minor deviations to be tolerated as long as they can be applied fairly and statewide.

Mr. Mielke, Mr. Klessig, and Mr. Wagner responded to a variety of questions from committee members. In response to questions, they noted the following: the current rate of between 30 and 35 percent of plans containing errors or omissions is unacceptably high, and improvements within the professions might be needed, but the presenters were also open to some form of penalty being imposed on an applicant in some situations; some developers prefer to seek plan review from a local delegated government because of increased speed of review, preexisting professional relationships with a local reviewer, and increased efficiency if the local reviewer is also the local inspector; the state might incentivize more local governments to become delegated agents by reducing the amount of plan review fee that must be passed along to DSPS; and misuses that occurred under the prior reservation system could be mitigated if an applicant forfeited some or all of the fee in the event of missing a deadline.

PRESENTATION BY PETE SCHNEIDER, AIA, LEED AP, REGISTERED ARCHITECT AND PARTNER, GROTH DESIGN GROUP, INC.

Mr. Schneider presented information on past improvements implemented by DSPS in commercial building permitting and on current challenges in the following four areas: timeline uncertainty; eSLA issues; plan review conducted by the Department of Health Services (DHS); and independent plan review.

Regarding timeline uncertainty, Mr. Schneider emphasized that plan review is one small piece of the overall design process. He preferred the prior reservation system because it allowed design to continue to happen while waiting for the scheduled plan review date to arrive. Under the present system, he felt that the time after completion of design and before plan review is essentially wasted.

Regarding eSLA, Mr. Schneider noted some growing pains associated with the switch from paper submissions to electronic submissions. He thought DSPS might be able to address some common user errors through education. Finally, he expressed a desire for alternative payment options, such as an invoice, especially in the event that the individual submitting the application does not also have authority to issue a payment.

Regarding DHS plan review, Mr. Schneider noted that some confusion exists in the industry as to which agency has jurisdiction over plan review for certain health care facilities. When DHS has jurisdiction, he expressed a desire for exemptions or otherwise more expeditious review of plans for smaller projects.

Regarding independent plan review, Mr. Schneider stated that the use of a contractor to conduct plan review on behalf of a delegated local government can be problematic. Some contracts incentivize, in the form of additional fee revenue, a plan reviewer to reject a plan or demand additional information rather than issue a conditional approval.

Mr. Schneider offered the following suggestions for the committee's consideration: eliminate DHS plan review for smaller projects; offer in-person appointments for projects of 10,000 square feet or smaller; deem plan approval after the expiration of an allotted review time; continued improvements to, and education about, eSLA; and ensure independent plan reviews do not have incentives to generate unnecessary plan review fees.

Mr. Schneider responded to a variety of questions from committee members. In response to questions, he noted the following: the current system creates uncertainty with regard to the timing of receiving a plan review date and a decision; under the prior reservation system, an applicant could wait until two full business days before the appointment date to submit a plan; and exemptions based on square footage might be preferable to cubic footage.

DISCUSSION OF COMMITTEE ASSIGNMENT

After the final presentation, Chair Stroebel invited committee members to discuss the information that they had received and to make suggestions for future agendas or research.

Ms. Destree sought clarity on the types of errors and omissions included in the 30 to 35 percent of plans, as indicated by DSPS, and whether professional membership organizations might be able to address some of these through educational efforts with their members. She expressed concern that DSPS is not fully auditing independent plan reviewers. She was critical of the plumbing plan review process, particularly the extraordinary delay caused by needing to await conclusion of building plan review. She felt that requiring credit card payment passed an additional credit card fee along to the

building owner. Finally, she desired a return to a plan review system that would allow an applicant to schedule an appointment prior to finalizing a plan, so long as the completed plan was submitted in advance of that appointment.

Representative Conley speculated that a systems consultant might help improve the operation of eSLA.

Mr. Brandherm asked whether DSPS completion timelines are appropriate in current construction conditions. He also felt that DSPS should spend more time educating potential applicants on submission requirements and also on auditing independent plan reviewers.

Mr. Scheidler asked for more information on the inspection process and whether DSPS has sufficient inspection staff to timely visit construction sites. He also asked for historical data on DSPS plan review staffing levels and information on the local plan review process.

Mr. Procter felt that the current plan review process does not match the design process. He expressed safety concerns with DSPS diverting inspection staff to plan review. Finally, he noted that there are problems with fee abuses by independent plan reviewers. Mr. Brandherm and Chair Stroebel agreed that there was a need for fee standardization, particularly with regard to inspections.

Representative Baldeh asked for a demonstration on eSLA and its capabilities and limitations. He also asked for a contrast between the processes used by a large city and small town.

Mr. Hoerth stated that more local governments should become delegated agents for purposes of plumbing plan review. He expressed opposition to increased use of independent plan reviewers, a sentiment echoed by Mr. Piotrowicz.

Mr. Piotrowicz stressed the advantages in efficiency gained through plan review by local delegated agents, but that some municipalities will face budget challenges in hiring the necessary personnel.

ADJOURNMENT

The committee adjourned at 3:45 p.m.

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