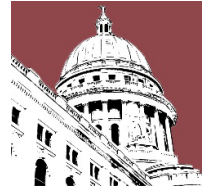

Wisconsin Legislative Council

MINUTES



STUDY COMMITTEE ON THE COMMERCIAL BUILDING PERMITTING PROCESS

Room 411 South, State Capitol
Madison, WI
August 24, 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: Anna Henning, Principal Attorney; and Ethan Lauer, Senior Staff Attorney.

APPEARANCES: John T. Crook, Director, Building Inspection Services, City of Fitchburg; John Zarate, Chief Building Official, Inspection Services Division, City of Oshkosh; Henry Kosarzycki, Code Architect, Flad Architects; Peter Tomasi, Of Counsel, Foley & Lardner, LLP.

APPROVAL OF THE MINUTES OF THE JULY 19, 2022 MEETING

Ms. Destree moved to approve the minutes of the study committee's July 19, 2022 meeting. The motion was seconded by Representative Summerfield and passed by unanimous consent.

PRESENTATION BY JOHN T. CROOK, DIRECTOR, BUILDING INSPECTION SERVICES, CITY OF FITCHBURG; AND JOHN ZARATE, CHIEF BUILDING OFFICIAL, INSPECTION SERVICES DIVISION, CITY OF OSHKOSH

Mr. Crook and Mr. Zarate presented to the committee regarding their experiences as building officials in municipalities that have delegated authority to conduct plan review for commercial buildings. Among other observations and information, they described their relatively short turnaround times for plan review and their experiences with utilizing third party contractors for both plan review and inspection services. They noted that plan reviewers at the Department of Safety and Professional Services (DSPS) serve as an important resource for local officials and historically attended regional meetings to provide information and training, but the number of plan reviewers at DSPS has decreased significantly.

Mr. Crook and Mr. Zarate also responded to several suggestions that were raised at the study committee's first meeting. For example, they noted that, rather than increase the threshold for the exemption from plan review, the study committee could consider raising the threshold for the types of plan review that may be conducted at the municipal level. Relating to a suggestion regarding exemptions for minor variations from Commercial Building Code requirements, they noted that the code already provides minimum and maximum ranges, and so commercial builders should typically be able to plan for some flexibility within the existing requirements. In addition, they said the fees that municipalities must forward to DSPS may deter some municipalities from choosing to exercise delegated authority, particularly if DSPS does not have sufficient staff to provide resources and support to local officials with the revenue from those fees.

In response to committee members' questions, they shared information regarding municipalities' ability to contract with third parties to conduct plan review and inspection, and the capacity of such third parties to conduct that work in Wisconsin. They emphasized that larger communities are able to handle plan review and inspections, but smaller and more rural communities may be less equipped to conduct plan review and inspections, or may be reticent to do so.

PRESENTATION BY HENRY KOSARZYCKI, CODE ARCHITECT, FLAD ARCHITECTS

Mr. Kosarzycki described his prior experience as an official at the Department of Health Services (DHS) and the former Department of Commerce. He noted that the study committee is addressing important topics that have been discussed for many years.

Mr. Kosarzycki summarized DSPS's statutory authority to oversee the safety of commercial buildings. He noted that, in contrast to one- and two-dwelling residential buildings, for which inspections are required, the decision whether to inspect commercial buildings after plans have been reviewed is made at the local level.

In addition, Mr. Kosarzycki emphasized the importance of early engagement with relevant local officials. He described an example of a complex health care facility that was constructed quickly because relevant zoning, fire, plan review, and other local officials were involved in project plans at an early stage.

Following his presentation, Mr. Kosarzycki answered committee members' questions. Among other topics, he expanded on the importance of early engagement, emphasized the importance of training, and described a regional approach to state plan review created at DHS during Governor Thompson's administration.

PRESENTATION BY PETER A. TOMASI, OF COUNSEL, FOLEY & LARDNER, LLP

Mr. Tomasi provided an overview of zoning and environmental approvals that may be needed for a commercial building project. Among other information, he noted that Wisconsin Pollutant Discharge Elimination System (WPDES) permits do not typically cause a time delay for commercial construction projects, whereas wetlands permitting can cause delays, partly because it entails study during the warm seasons of the year to evaluate a project's impacts under a multi-factor test.

Regarding wetlands permitting, Mr. Tomasi identified several areas for possible consideration, including the need to make more credits for wetland mitigation available through wetland banks and the state's in-lieu fee program and a need to give permit applicants greater clarity about the wetlands permitting process. He also noted that a wetlands study council authorized by 2017 Wisconsin Act 183

is currently exploring modifications to the requirements and procedures for mitigating impacts to wetlands under state law.

DESCRIPTION OF DISTRIBUTED MATERIALS BY LEGISLATIVE COUNCIL STAFF

Ms. Henning and Mr. Lauer summarized Memo No. 1, “Topics for Committee Discussion.” They also noted that a memorandum prepared by DSPS, which responds to a question raised during the previous meeting, had been distributed to members.

DISCUSSION OF COMMITTEE ASSIGNMENT

Following the description of distributed materials by Legislative Council staff, Chair Stroebel noted two themes he had identified during today’s presentations: (1) the importance of relationships and preliminary meetings with plan reviewers; and (2) that a regional approach to state plan review can be effective. Chair Stroebel encouraged members to share their thoughts regarding the topics discussed and possible ideas for legislation.

Committee members expressed broad agreement regarding several topics. First, committee members agreed that state policy should encourage more municipalities to exercise delegated authority for plan review. Mr. Hoerth and Ms. Destree supported that goal but cautioned that some small municipalities may lack the interest or capacity to conduct plan review and inspections, or to supervise a third party contractor conducting such tasks. Mr. Gorham suggested that possibilities to explore include: (1) decreasing the percentage of fees that municipalities must forward to DSPS; and (2) increasing outreach to municipalities regarding the possibility of exercising delegated authority. Mr. Piotrowicz added that the building size thresholds for local delegation could be increased. Chair Stroebel suggested that a regional approach to state plan review could work during the period of transition to an increase in the exercise of delegated authority. Representative Summerfield suggested that county economic development offices could be involved to remove some burden from smaller towns. Mr. Brandherm suggested that more “one stop shopping” could be facilitated at the local level, for example by combining the process for approving building plans and underground plumbing.

Second, committee members generally agreed that “permission to start” letters could be expanded to allow projects to proceed with additional project work than is currently allowed while plan review is pending. For example, Mr. Gorham suggested that permission could be expanded to allow builders to start constructing both plumbing and building shell. Mr. Scheidler noted that architects could be made responsible, together with owners, for problems arising from construction conducted pursuant to “permission to start” authorization.

Third, members suggested revisions to DSPS’s plan review procedures for commercial building plans that are not reviewed at the local level. Mr. Gorham suggested: (1) posting a list of common building plan errors on DSPS’s webpage; (2) allowing applicants to make appointments for plan review, but with the payment of an upfront plan review fee; and (3) giving applicants the option to request preliminary meetings with DSPS plan reviewers for an additional fee. Ms. Destree similarly suggested allowing applicants to make appointments for plan review, but with a fee for cancelling an appointment. She also recommended that DSPS put project tracking numbers in email communications and not charge a separate credit card fee for plan review submissions.

Fourth, several committee members suggested that alternative, more streamlined approval processes could be offered for certain types of commercial building plans. Specifically, Ms. Destree suggested a separate process for interior build outs, and Mr. Piotrowicz suggested a streamlined approval for

building plans that are nearly identical to plans that have already been approved, provided that building codes have not changed in the meantime and no special circumstances exist.

Finally, Chair Stroebel suggested that inspection requirements could be evaluated to determine whether current inspection requirements are necessary.

Committee members generally expressed reticence regarding adding any larger or more general exemptions from plan review or Commercial Building Code requirements. Representative Baldeh noted that he would be interested in hearing about potential insurance ramifications if the study committee were to consider any such change.

ADJOURNMENT

Chair Stroebel adjourned the meeting at approximately 3:45 p.m.

AH:EL:jal