

THE BENZIE COUNTY BOARD OF COMMISSIONERS
December 19, 2016

The Benzie County Board of Commissioners met in a joint special meeting on Monday, December 19, 2016, at The Maples, 210 Maple Street, Frankfort, Michigan.

The meeting was called to order by Chairman Roger Griner at 10:00 a.m.

This was a joint meeting with the Board of Commissioners, Building Authority and DHHS Board.

County commissioner roll call:

Present were: Commissioners Bates, Carland, Griner, Sauer, Tucker (arrived at 10:05), Walterhouse and Warsecke

Building Authority roll call:

Present: Marcia Stobie

Excused: Tom Longanbach

Chairman of the DHHS Board, Tom Hart, stated that this is not a meeting for them and therefore did not have roll call taken, however all members were present at the table.

The invocation was given by Commissioner Griner followed by the pledge of allegiance.

Agenda:

Motion by Walterhouse, seconded by Sauer, to approve the agenda as presented. Ayes: Bates, Carland, Griner, Sauer, Walterhouse and Warsecke Nays: None Abs: Tucker Motion carried.

10:04 a.m. Public Input – the following individuals spoke regarding the Maples:

JoAnn Holwerda, Frankfort, concerns to consider: cost to replace the roof; cost of a waiver if one is needed; cost to move patients; liability if having to move the patients.

Deb Lindgren, Benzonia, asked if there would be two times for public input.

Kathy Gordon, Beulah, her concerns relate to employees.

Roger Papineau, Beulah, stated that CMS requires that the building be built to the life safety code; you have a certificate of occupancy now, a waiver shouldn't be needed.

Carolyn Lalas, Frankfort, have great hope as she attends this meeting today; hopes the state will provide us with a good report and hope for no waiver.

10:25 a.m. Public Input Closed

Informational Discussions with James Scott

Mr. Scott is the manager for the Health Facilities Engineering section and stated that he is here to answer questions and provide information on the procedure.

Mr. Scott stated what code the building was built under – 2003 CMS adopted the 2000 life safety code. From that time forward the buildings were to be maintained under 2000 LSC. Michigan did adopt a 2006 LSC in 2009 for construction in the SOM; and in 2014 they adopted the 2014 LSC. With the timing when the building was built would have been inspected under 2009 LSC but for purposes of LSC would have to comply with 2003. As of 7/5/2016 CMS has adopted the 2012 LSC for certification of new and existing facilities. Because this facility is building, it would fall under existing for future certifications.

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Marcia Stobie asked that he explain what the process is that your department does and what triggers a deficiency. There are two separate processes – 1) to build a health care facility; and 2) also required to get a permit for construction Licensing and Regulatory Affairs. Those are Michigan regulations required to build a facility in Michigan. The separate piece is to comply with CMS and that is a separate set of regulations.

There has been concern about a K12 deficiency – that since we have a final inspection on this building and we were not cited for that, does that ever come into play? The building was approved for occupancy by the SOM and they say the building meets the state requirements as license and to operate a nursing home in the SOM. That is what the approval is for. The new facility will need to be certified when you come up for recertification next year. When you come up for recertification in 9 – 15 months, it will come up under the LSC, if there is anything that does not comply, it will be cited. Under the 2012 LSC there will be a different K tag K161 – a different citation. That would deal with the construction. The code still has a requirement for a roof deck that would only allow pressure treated roof material, but work approved by the SOM is approved. Since the roof deck was not pressure treated, you will be cited for that and as a plan of correction the steps that were taken and then CMS would grant the waiver.

Jean Bowers, DHHS Board, stated to Mr. Scott that you talk nursing homes – we are skilled care, are they the same? Yes – there is one set of regulations that cover nursing homes. There is no difference.

Vance Bates, County Commissioner, asked Mr. Scott that if your inspector cited K12 deficiency and that is reported to CMS, do they send someone out to inspect. Does CMS rely on your office to say if it is safe or not. The State of Michigan is the designated review area for CMS.

Your history with the SOM, if there were any facilities that had citations, have you ever seen CMS come back and say this is not going to fly, and deny it? No, once waivers are granted they continue to be granted year after year.

Frank Walterhouse, County Commissioner, on our license, did you pass this on to CMS? I have not personally passed it on to CMS, they would have copied that information on to CMS, expires July 2017. The license is an annual license but the CMS requires every facility be inspected.

Vance Bates – how many facilities do you inspect? 450 in the State of Michigan
Inspect all? Yes CMS component in them? 17 are state license only the rest are certified for Medicare and Medicaid

Tom Hart, Chair, DHHS Board, stated that the inspectors have failed us from the beginning; the concern is, if these inspections are susceptible to possible denial in the future, sometimes waivers are given to existing buildings, this is a new building and there is concern that the inspector comes along and says it is not good enough; will we fight every year? Mr. Scott stated that he can't speak for CMS. But yearly? Yes

Lisa Tucker, County Commissioner, additional costs with that each year? No, part of the inspection process.

Gaylord Jowett, DHHS Board, modification to the building, when we have to make them, are these buildings classified as one? The original building was built in 1965; addition in 2003 or 2004.

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Because of the time frames of those, under the 2000 LSC, one building was considered existing and one new. All three buildings will be considered one – however modification, each will be looked at separately.

Roger Griner, Chair, Board of Commissioners, 20-30 years from now, will we be required to have the proper sheeting on. That would be the logical thing to do. Would we be required, you said it is logical. Second, the new building had a discrepancy due to sprinklers, that waiver was revoked – we were told to put in a new sprinkler system? Why would a waiver not mean something different. Everyone in the nation had to sprinkle their buildings.

Gary Sauer, County Commissioner, stated the FSES report that was equivalency on the roof, we will have to put forward to get a waiver. If this was your building, would you move in? Representing myself and not the State of Michigan – Yes I would move into the building.

Jean Bowers said if you stopped to think about it, everyone dropped the ball here; Kathy knew – the Building Authority had to know; we need to bite the bullet and do what's right.

Evan Warsecke, County Commissioner, stated if a waiver is granted, say 5 years we are good; then they say you have to replace the roof, how long would we have or does everything stop? The State of Michigan has the ability to grant a temporary waiver which would extend your time to comply from 60 days to something less than 1 year.

Tom Hart stated that there is a citizens group and the base of that lawsuit was accountability and a number of people that are demanding a new roof; if we have people in this building, is there any way to replace a roof that can keep the people from being displaced? Yes, it happens all the time.

Roger Griner asks if he is aware that we have metal truss system? Yes, today would be cheaper than 20 years down the road.

Art Jeannot stated that when you responded to Roger Griner about the roof being replaced in 20 years, were you talking shingles or entire roof? At the time of removing shingles and exposing decking, that would be the time to replace the decking. If just reroofing of existing shingles, then you would continue requesting waiver.

Tom Hart – you started to speak about replacing roof with patients there, it is done all the time? Yes, replace a small area at a time so that area can be done all in one day.

Gaylord Jowett – reference to Art's question, is reroof or shingle considered a modification to the building? No, it is maintenance – not a modification.

Vance Bates – if correct roof installed & time came to reshingle or reroof, it would be the same situation if we did it now – move people out or keep people in.

Roger Griner asked regarding the new code – does every new facility that is built will have sprinkled and sprayed? Certain things do not need to be sprinkled.
Does response time to the Fire Department come in? No bearing on this.

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Marcia Stobie – asked if there are other facilities dealing with this or are we unique? Unique
Does this affect the ability to get Insurance on the building? Can's speak to this.
Why wasn't this found when you did plan review? No idea

Coury Carland, County Commissioner – how many waivers did CMS approve on your recommendation? Don't recall any being denied. Did CMS advocate that we get a waiver? They could or could not grant a waiver.

Mitch Deisch, County Administrator – SOM met or exceed state requirements? The state, thru BFS, found that with the roof decking installed it didn't meet the requirements.
Are there any other strategical things we could do absent replacement of the roof, that could take the deficiency off or other steps we could take? Not aware other than replacing roof decking.

Coury Carland we had the BA architect explain to us that even if we are sited for a the deficient, we will ultimately not need a waiver; Mr. Scott knows one done under 2003 LSC with the promulgation of 2012 LSC there is a different version of the FSCS regulations in place..

Tom Hart – when it was determined to add sprinkler and fire retardant coating, is that a subjective opinion to be equivalent? Approved to be done by the staff at BFS. No reason to believe their determination would be overturned.

Marcia Stobie – at the last Building Authority meeting, Mr. Hart mentioned guarantees, assurances, something in writing, are you the closest to that? You will only get a paper that says approved.

Kathy Dube, Administrator at the Maples, stated that one of her fear is that we will get a waiver and then they will say fix your issue; and that she will lose staff and patients; there is also a liability issue – why would the county want to subject themselves to that – it is a fire issue.
Mr. Scott stated that it can be done a piece at a time.

Vance Bates asked in the standard of what you are required to enforce, are there things such as if they take off shingles, and put a layer of the existing layer or put on steel? Are there alternatives? Is taking the roof off the only option? The other option is what you have done.

Dave Burley, Maintenance at the Maples, says we all live day to day with rules and regulations and we all know things change daily; he reiterates what Kathy said.

11:24 a.m. Public Input

Doc Henry, did a very good job explaining meet and exceeds.

Steve Stephens, question relation to waiver – how often have you seen waivers on new buildings, what effect on patients? Waiver has not been issued on new facilities.

Kurt Luedtke stated that Comstock and Edmond London have some liability here; hold them responsible; they need to step up with a plan; state inspectors had to be here many times; why didn't Ed Hale speak up – he waited until the very end.

JoAnn Holwerda said thank you for the dialect; thank you to the director of the Maples; she is spot on; and thank you to Jean Bowers.

pim Dodge said you need to make up your mind and let's get it fixed.

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Thelma Rider Novak stated when the comment was made regarding layers of shingles on the roof – you can't keep stacking them up on there – do it now.

Deb Lindgren stated if there were a waiver, we will always get it; we don't have one now.

Ann Loveless asked when the decking comes off, will it damage the trusses.

Lisa Vogler, appreciate Mr. Scott coming up here – Questions: as long as combustible material is on the building it will be K tagged; License meets the state requirements only -- didn't hear you say that this license is for 1) this structure and 2) certified by CMS. Also Buildings are separate – does CMS view buildings the same way? FSES came up two points short in the fire area? Does this building have two hour separation in 2012 code.

- This structure as long as there is combustible material will be K tagged? Yes
- Equivalency or hardship waiver? Equivalency waiver
- Is CMS final word on any waiver? Yes
- Does license from the State refer to this building? Yes
- Does is reference a certification from CSM? No
- In your 34 years, have you ever seen waiver granted for structure like this? No
- Ever seen a waiver where they have 22 months to fix the problem?
- What are the criteria to qualify for a hardship waiver?

Katie Condon, Frankfort, stated you need to make a decision – its time.

Bill Olson says you need to look at the numbers – what is recoverable; it is time for us to find out how much that is; where will we get the money.

Dylan Sauer says thank you for coming out – you cleared up a lot for him; thank you to Mr. Scott for making the trip up here.

Roger Papineau asked the code is not retroactive until the adoption it specifically states retroactive. Over the years there have been times when new codes came out, alternative systems; if we are dealing with the 2000 LSC, this is not a valid citation, we don't need a waiver, we have equivalent compliance.

Lisa Vogler asked what communication by document or form number goes from your office to CMS? 2587 he believes. 2786R?

Mary Hoyt stated that it is evident if we are going to satisfy the community, we do have 1500 signatures, awe are receptive to a resolution; would be nice to have this type of a forum; people are entitled to have answers. This should have been dealt with before.

Public Input Closed

Roger Griner, Chairman of the Board of Commissioners, stated that there will be no decision made today; we meet tomorrow for our regular meeting; until we place the roof, there will be no peace in the valley.

Gary Sauer, stated it has been said that we don't appreciate you – we do, thank you for coming.

Motion by Sauer, seconded by Walterhouse, to adjourn until December 20, 2016 regular meeting, or the all of the chair. Ayes: Bates, Carland, Griner, Sauer, Tucker, Walterhouse and Warsecke Nays: None Motion carried.