

Building Code Board of Appeals

Agenda

**May 18, 2023
City Hall, Spruce Room
749 Main Street
6:30 PM**

Members of the public are welcome to attend and give comments remotely; however, the in-person meeting may continue even if technology issues prevent remote participation.

- *Zoom Login:*
<https://us02web.zoom.us/j/8059317110?pwd=bjdaUWhaQVRWZXdhQIA5ZzVjSXhmUT09>
Webinar ID # 805 931 7110
Passcode # 275259
- *You can log in via your computer. Please visit the City's website here to link to the meeting: www.louisvilleco.gov/bcboa*

The Board will accommodate public comments during the meeting. Anyone may also email comments to the Board prior to the meeting at Building@LouisvilleCO.gov.

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Approval of Minutes from 10.20.22 Meeting
5. Approval of Minutes from 11.10.22 Meeting
6. Public Comments on Items Not on the Agenda
7. Discussion of Board feedback to City manager based on request by City Clerk

Persons planning to attend the meeting who need sign language interpretation, translation services, assisted listening systems, Braille, taped material, or special transportation, should contact the City Clerk's Office at 303.335-4536 or MeredythM@LouisvilleCO.gov. A forty-eight-hour notice is requested.

Si requiere una copia en español de esta publicación o necesita un intérprete durante la reunión, por favor llame a la Ciudad al 303.335.4536 o 303.335.4574.

8. Discussion Items for Next Meeting
9. Adjourn

Building Code Board of Appeals

Meeting Minutes

**October 20, 2022
City Hall, Spruce Room
749 Main Street
6:30pm**

Call to Order – Chairperson Matt Berry called the meeting to order at 6:40pm.

Roll Call was taken and the following members were present:

Board Members Present:

Matt Berry
Christian Dino
Mason Gatto

Board Members Absent:

Peter Geise
Steve Knapp

Staff Members Present:

Chad Root, Chief Building Official
Jenny Lane, Permit Technician

Third Party Members Present:

Nick Cotton-Baez, Partner, Kelly PC

Approval of Agenda – The agenda was approved by all members.

Approval of Meeting Minutes – The minutes from the July 21, 2022 meeting were approved as written

Public Comments - None

Discussion Items

Presentation from Nick Cotton-Baez for required biennial open government and quasi-judicial training.

After Mr. Cotton-Baez's training presentation, he asked if anyone had questions.

Dino explained that with the increase in construction activity because of the Marshall Fire construction work, the boards' members paths will cross with contractors they might know. **Dino** asked at what point would a board member need to recuse themselves from a hearing.

Cotton-Baez addressed the issue if a board member can make an unbiased decision. If answer is no then you should not participate. If you think the answer is yes and you continue and contractor brings it up, have a sidebar with the attorney.

Cotton-Baez then addressed the issue of bias. Disclose facts. If you know before the hearing that you would revoke the license, then do not participate in the hearing. Over-disclosure is better than under-disclosure and you should disclose any prior relationship. Disclosure is required in conflict of interest, usually regarding financial gain. Making public statements about a contractor, or any conflict of interest, discuss with attorney.

Cotton-Baez then addressed potential stipulations before a hearing begins and that it is not likely to happen. Perhaps city and contractor could come to an agreement. It is possible for the contractor and city to agree to a stipulation and the board can review it. The board can discuss the stipulation to decide if they want to accept it or not.

Cotton-Baez continued to explain that if the City of Louisville became more aggressive with license revocations or violations, stipulations may become more common.

Gatto questioned when preparing for a hearing and what can be admitted as evidence. If information was not put in packet it usually cannot be considered as evidence. Can't consider past issues or past claims regarding present matter. If the written order had those pieces of evidence from the previous hearing and was part of the decision it could be used as evidence.

Cotton-Baez completed the presentation.

Dino and **Root** discussed that there may be more cases in the near future because of the volume of houses being built for the Marshall Fire. **Root** added that with the potential adoption of new Commercial IECC energy code, there may be more cases as well.

Berry began the discussion about the 2023 City Council Work Plan. **Root** said this is more of a brainstorm into what requests they would like to bring to City Council.

Dino and **Root** began the discussion surrounding the IECC commercial code adoption forthcoming from City Council. **Dino** asked what the City Council was proposing regarding the 2021 IECC Commercial portion of the energy code. **Root** explained that the next provision of code might go to first reading before presenting to the BCBOA. **Root** also explained that City Council as discussed doing all electrification for all commercial buildings: restaurants, hospitals, labs, and that they would not be allowed to use gas.

Berry discussed having a board member at City Council work sessions or second reading for the 2021 Commercial Code to explain their point of view and suggestions from a building standpoint. **Root** agreed. **Berry** used the example of how the adoption of the 2021 IECC Appendix RC took place without any input from the BCBOA.

Berry gave an example of how the supply of 99% heat pumps are hard to find and that now that the 2021 IECC Residential code adoption is now in practice, we are seeing the effects of the code adoption. **Berry** explained that there will be larger repercussions if the Commercial version of the code is adopted without industry input and consultation.

Berry and **Dino** gave examples of projects where they have been delayed by months for both residential and commercial projects because of supply of specific equipment required to meet the current IECC code.

Root explained that the current code calls for commercial energy code that is 10% greater than the Federal standard. **Berry** commented that this was what the BCBOA recommended last year and City Council went above that.

Root and **Berry** agreed that more education for City Council regarding building code and implementation is necessary. The perception is that if a piece of equipment exists that it can be implemented, whereas in practice this does not always work.

Root brought up an issue that Peter Geise made him aware that the electric meters large enough to meet the current code are not available and will not be available again for several months.

Root explained that he would like to see City Council ask staff for recommendations before deciding on building code adoption. **Gatto** and **Berry** agreed that part of the job of the BCBOA is to review code and that City Council should solicit their advice. **Root** expects that City Council might be soliciting advice from the BCBOA in the near future because they are getting feedback from citizens regarding the lack of supply for equipment needed to meet the energy code. **Berry** commented that City Council has chosen to either ignore their advice or not even solicit their advice at all.

Root mentioned that if there was a State adoption of energy code that it would be universal but that local municipalities could not go below that code.

Berry felt that if the 2021 IECC commercial energy code is adopted that it would hinder development because it is not viable to implement, whereas a less stringent prescriptive path could be better than what currently exists.

Berry gave an example that if a lab was to have commercial space and could not use gas as part of their space they would find ways to circumvent the code by using portable propane tanks, which would be unregulated and dangerous.

Dino and **Berry** discussed having at least one board member at the second reading of any City Council decision regarding energy code so the board could voice their opinion and suggestions if City Council does not solicit their advice before the meeting.

Lane was asked to explain what the 2023 Work Plan should include and she gave an explanation as to what the BCBOA could recommend that would be considered by City Council.

The members of the board discussed what they would like to propose for the 2023 Work Plan. Members of the board discussed they would like to be included in these decisions since they have the experience and knowledge of the building industry. Also as members of the community they feel that it is their responsibility as a part of this board to provide their opinions.

The board developed the following to be discussed at the next meeting to create a final version:

“As an advisory board of building professionals, the BCBOA requests to be invited to consult and participate in study sessions and meetings as a part of Community Design regarding building code changes and energy code.”

Gatto asked about if someone requests a hearing and how that would work regarding the current energy code. **Root** responded that the person would need

to pay a fee of \$800 to bring a case before the board and that the current energy code adopted by the city is black and white. The board further discussed what the minimum standard is and the differences between a prescriptive energy code and a stricter energy code.

Berry asked Root about the different options of the commercial energy code and what City Council has been discussing and/or proposing up to this point. Root responded that other city employees, specifically Rob Zuccaro and Kayla Betzhold, have been more involved in the proposals and details. He did comment that so far Kayla had been looking at what the City of Boulder uses with a combination of EUI goals that is specific to their commercial needs, rather than adopting the energy code written by the IECC.

Berry made a motion to have the next meeting on November 10th and it was seconded.

Berry asked if there were any staff comments. Root replied there are none.

Discussion Items for Next Meeting

Discussion of Proposed Adoption of 2021 IECC Commercial Code Options
Discussion of Final Text to be submitted to 2023 Work Plan

Adjourn – The meeting was adjourned at 8:50pm.

Building Code Board of Appeals

Meeting Minutes

**November 10, 2022
City Hall, Spruce Room
749 Main Street
6:30pm**

Call to Order – Chairperson Matt Berry called the meeting to order at 6:50pm.

Roll Call was taken and the following members were present:

Board Members Present:

Matt Berry
Christian Dino
Mason Gatto
Peter Geise

Board Members Absent:

Steve Knapp

Staff Members Present:

Chad Root, Chief Building Official
Jenny Lane, Permit Technician

Approval of Agenda – The agenda was approved by all members.

Approval of Meeting Minutes – Motion to defer approval of minutes to next meeting. Members did not receive the minutes in time to review.

Public Comments – None

Discussion Items

Discussion of 2021 IECC commercial code, first reading.

Berry explained the reason requested this meeting is we wanted to have a statement, kind of a party line from the board that we can read at a council meeting that we can all agree on. Individuals can give their own opinions at the council meeting, if they wish, but the Board wanted to create a unified statement regarding the adoption of the 2021 IECC Commercial code.

Berry referenced the printed copy of the proposal for the 2021 IECC Commercial Energy Code adoption that will be presented to City Council.

Root confirmed that this should be the final copy that will be presented, possible minor changes, but nothing major. He also confirmed that this copy was not complete until 2:00pm the day before today's BCBOA meeting.

Berry commented that the Council has not asked the building code to be part of any of their work sessions in discussing any of this. Nor have they involved the building department in any of these discussions. So we feel like it's important to if they're not going to seek our council, we should prepare a statement to give council advice on this matter. I'm not a city code expert, but we've already adopted the 2021 IECC correct with With appendix RC and RV for residential

Root confirmed what has already been adopted regarding residential energy code, with some portions as drafted by the BCBOA. He further explained that the City of Louisville has the prescriptive IECC code with the ability to use HERS for residential and then the basic prescriptive for commercial that's still in place at this time. **Root** explained that City Council would like to adopt a more stringent commercial portation of the IECC energy code.

Berry asked for clarification that what is being proposed is to adopt Appendix CC of the 2021 IECC code and that it is similar to the residential "Appendix RC", just with relevance to only Commercial properties.

Root explained that City Council originally wanted to adopt Appendix CC at the same time, but the compromise was to have a provision that everything is all electric, but if gas appliances were to be used, they would have to be high-efficiency because of Federal pre-emption laws.

CC is the direction they wanted to go but we developed three options for Council in relation to what the cohort with other cities such as Erie and Broomfield were trying to adopt. Root explained that this version is more inline with what the City of Boulder is doing.

Berry asked if this version is different than what they viewed at the previous meeting.

Root confirmed that this version has changed from the previous version that the BCBOA has seen. He further explained that this version is similar to the City of Boulder's version, and that the City and County of Denver has 15 classifications, whereas the City of Boulder has only seven and that the current version is most similar to Boulder. **Root** explained that they came up with three options: Appendix CC which is all-electric and the most stringent; Boulder's example; Denver's example

Root also explained that the Department of Planning and Building Safety pushed back on Appendix CC because it is not feasible at this time and the Colorado Chpater also said it is not feasible.

Berry wanted to state the question on the record that we should not expect Appendix CC to be added at the last minute at the second reading of this ordinance.

Dino, Geise, and Gatto all countered that it should be expected that the City Council could decide at the second reading to adopt Appendix CC, citing the history and how the Residential Appendix RC was adopted at the last minute.

Dino suggested that the statement should also state that the board does not think Appendix CC should be adopted.

Geise commented that there are a lot of moving parts for something that would be a last minute decision and that the board spends time reviewing and researching the code and to decide to adopt something at the last minute without review and would like the record to reflect that.

Berry stated that all we have to review is what has been made available to us and that he was prepared to come in to develop a concise statement of why appendix CC will actually have a worse environmental effect than actually adopting it. However, at this point the goal is to zero in on this ordinance and then come up with a statement on it.

Berry went on further So this ordinance, in the brief amount of time that I looked at it, it seems like it is limited to the conditioning of the space for occupants and that the water is for the domestic use of water for the building types listed in table PT103.

The board collectively decided to go through the proposed ordinance.

Geise asked where are they getting their target performance numbers from.

Berry responded that it is the EUI, or Energy Use Intensity, And that's the energy use per square foot.

Root interjected that the chart in the proposed ordinance came directly from the Boulder ordinance. **Root** also pointed out that restaurants, hospitals, and manufacturing are not included in the proposal.

Berry pointed out that manufacturing projects have specifications that are temperature sensitive that might require generators and wanted to confirm that this is not part of the scope.

Root confirmed that it includes multifamily office, small office, medium office, large schools, primary, secondary, etc.

Berry further explained that restaurants, factories and facilities with gas processing equipment would be subject to the 2021 IECC prescriptive compliance option, but not the new code that is being proposed.

Dino requested they clarify what is included in the proposed Commercial Code.

Berry read from the proposal that it says tenant finishes included in the scope of appendix PT. I was reading that was C 401.2.3. The square footage and the usage would determine if it would fall under the existing 2021 IECC prescriptive path, or the new Commercial Code path being proposed.

Dino commented: I believe there's something that says it's going to be prorated per year, it talks about CFM per square foot ventilation requirement results in conditions where building official determines that space heating requirements cannot be simply be met without combustion space heating system and that this gives some power for the building official to make discretionary decisions based on the needs of the tenant.

Dino would like to see that statement moved into section C401 as a general note to the overall code adoption.

Berry read from the proposal "Fossil fuel, warm air, furnaces and electric resistance, space heating equipment."

Berry and **Geise** agreed that they are referencing natural gas.

Berry questioned if space heating is the same as mechanical equipment. The concern is someone will rent a warehouse and not do any improvements and heat it with something that is unsafe.

Root commented that space heating equipment, fossil fuel, warm air forces and electric resistance spacing equipment shall not be permitted and this is

electrification piece where they want the heat pumps and they want to remove all fossil fuels from heating these spaces.

Root further commented that the city has had trouble with the current code because the equipment does not exist to meet the ten percent better than Federal standards.

Berry commented that as a whole the proposed adoption is ahead of the technology that's available

Gatto and **Geise** both suggested that the authority of the building official to override the requirements based on equipment availability should be at the beginning of section C401 so it would apply to all of the proposed code.

Root would need a building determination form; would be difficult since everyone would want an exception. Root feels that since the city does not get a lot of new commercial permits that the building dept could handle the requests.

Berry and **Root** agreed that engineers do not want to stamp something that will possibly break or will need expensive repairs as a result of aggressive adoption and that it is backfiring and resulting in abandoned equipment because of the shorter lifespan of the equipment.

Geise used an example of the current issue with a 320 amp panel and that it is required under current IECC code but the panel is hard to find and therefore the contractor cannot meet the code.

Dino suggested we provide three to four examples that are not within this packet that would create administrative problems to explain why an aggressive code adoption can have a negative effect. As an example, a piece of equipment that would meet the code might take thirty months to procure and creates an undue burden on the building official to provide exceptions.

Berry commented that usually technology is ahead of the code, but this time the code is ahead of the technology and that the building official needs to have the ability to override the requirements if there is a procurement or monetary restriction on equipment and availability.

Geise asked about the difference between primary and secondary schools and why the numbers are different. **Berry** explained that size is not the main difference, that the loads on the building could be different for the two school types. **Root** interjected that schools, for the purposes of this code, would be private schools because the City of Louisville does not have control over the building requirements of public schools. Public schools are under state code.

Dino questioned if the goal is to prevent warehouses in Louisville because they would want the cheapest square footage possible and with the financial requirements for this equipment, companies would not want to use commercial warehouse space in Louisville.

Root commented that there is no consistency for the types of buildings and the EUI. He further commented that City Council told staff that they want to go this route and want electrification.

Berry began reading the proposed EUI targets as follows:

Residential building for this code includes detached one and two family dwellings and townhouses. As well as group R-2 other than for multifamily R-3 and R-4 buildings three stories or less in height, above grade.

Root explained that this was created by the co-consultants and he did not understand the definition. They are referring to the entire code, not just Appendix PT

Chad read from the ICC book: "Definition of Residential Building: code includes detached one and two family dwelling units". They removed multi-family from residential building.

Berry asked what would be included in R-2 other than multi-family.

Root and **Berry** discussed how the City of Boulder monitors the EUI for each property and that there is a meter on each property. **Berry** searched for information online and showed that Boulder publishes the EUI for each property.

Root explained from the code book that R-2 would include apartment houses, congregate living facilities, Non-Transient with more than 16 occupants, boarding housing, non-transient converts, dormitories, fraternities, sororities, monasteries, hotels, non-transient live work units, motels, non-transient vacation-time properties.

After discussing the board came to the conclusion that multi-family does not meet the definition of residential building code as R-2 and would be included under commercial code.

Root read the definition of R-4 from the IRC code book: R-4 is Alcohol and drug centers, assistant living facilities, congregate care facilities, group homes, halfway houses, residential board and care facilities, rehab facilities. Basically where there are five to 16 residents that live in a supervised environment. R-2 is over sixteen residents.

Berry asked: Basically, apartments, condos that are being built under the IBC as opposed to the IRC are going to be considered a commercial building. that would mean that the multifamily R-2 would need to meet that performance target of 32. Otherwise the multifamily is a residential building.

Berry asked how they will measure performance. **Root** responded that he did not know how they will measure performance. **Berry** further read that it's using Energy Star Portfolio manager And adjusted for the percentage of floor area occupied while at least 75% occupied. The building shall operate at or below its energy use target for any recording period of twelve consecutive months that is completed in three years of the date of the C.O.

Dino: What we've seen is that between metering and the panels, these have become the most hard to get items in the construction industry. We're regularly seeing years, not months, for lead times. And the more special and stringent it is, the longer it stretches.

Geise asked if the board has a city council member that's the board's liaison.

Root answered that to his knowledge City Council was not having liaisons since there were so many boards.

Geise commented that the board spends so much time and dissecting all this stuff and looking at it and trying to do the right thing for our city and had numerous recommendations on what should be done and city council literally has looked the other way and did whatever they want to do. **Geise** commented further that if they don't take any recommendations that the board recommends, what is literally the point of this board?

Berry recommends that since the monitoring and metering isn't clear how it will be enforced is it responsible of City Council to make it a law.

Geise further recommends that the best practice is to let the current code cycle play out first, then look at adoption of that code.

Berry summed up what the board would like to achieve with this meeting. **Berry** would like to work on creating a statement regarding concerns about this ordinance to read during the next City Council meeting.

Geise commented that he would like to push this entire ordinance until after the new year.

Berry answered that that will not happen because the Mayor will be a County Commissioner by then and she wants to pass it as part of her legacy. That is why it is on the agenda before the end of 2022.

Berry would like to include an exemption for the building official as to the compliance of the IECC if the compliance cannot be reasonably met. Also, that until the monitoring and metering of the EUI is clear it should not be made a law.

Dino added that in terms of the availability of products is a huge problem in today's market and economy and we're making things so extremely complicated that they are very specialized systems which are going to be almost impossible to get.

Berry would like to add that the City Council should not pursue Appendix CC in the 2021 IECC.

Berry offered to type the talking points agreed by the board and send it out to the board members, then read it verbatim at the meeting as a representative of the board. The board members agreed that it would be accepted for Berry to represent the entire board.

Berry also asked if he should state that the board has not been invited to any work sessions to discuss the adoption of the commercial energy code. The board agreed.

Root suggested that a better approach for adoption of building code should be to ask the building official to look at adoption of code, then the board has a meeting to decipher it, and develop a plan it even goes to first reading, and that this board, and building official have not had that ability to do so.

Geise asked if the material they are reviewing should be posted five to seven days before the meeting and the building official just received it the day prior to this meeting.

Root answered that the agenda is being pushed by City Council.

Discussion and Approval for Final Text to be submitted to 2023 Work Plan

As an advisory board and building professionals at the City of Louisville that the BCBOA Board be invited to consult and participate in study sessions and meetings as a part of community design regarding building code changes and energy code.

All board members present approved the text.

Discussion Items for Next Meeting

None at this time. No meeting scheduled yet.

Adjourn – The meeting was adjourned at 8:40pm.

Discussion of Board feedback to City manager based on request by City Clerk

Board and Commission members,

As most of you know, the City Council is having discussions about potential changes in regards to all of our Boards and Commissions. This discussion is to address some frustrations that have been expressed by some members of City Council and members of Boards and Commissions. The goal is to ensure that the mission and role of each board is clear, and to maximize the effectiveness of all of these bodies that serve in advisory roles to City Council.

City Council has asked me for some analysis and recommendations. I've been working with all of our staff liaisons as an initial step to understand their perspectives. Now, I'd like to ask all of you for your input.

I suggest you have an item on an upcoming board agenda to discuss among your members, and perhaps address, the following questions:

- What do you consider to be the purpose and role of your body? Do you have suggestions on changing that role in the future?
- What have been your greatest successes? What about your greatest failures?
- How is your process to develop your annual work plan? How does it align with Council's work plan?
- If Council will be considering changes, what changes would you recommend?
- Do you feel that your body has been effective or ineffective? Why?
- City Council has an informal policy of managing meeting time and canceling or reducing meeting times when agendas are light. What are the practices of your body in regards to agenda development, meeting duration, and meeting tempo?

I remind you that any group discussion **MUST** be done at your public meeting in accordance with open meetings laws.

It is my hope to bring this item back to City Council at their June 6 meeting.

Any feedback you have individually, or submitted from your board as a whole, should be submitted to City Clerk Meredyth Muth (MeredythM@LouisvilleCO.gov), prior to May 26. If you need more time based on your meeting schedule, please let me or Meredyth know.

I appreciate your assistance in this evaluation, and if you would like to discuss this further please feel free to contact me at JDurbin@LouisvilleCO.gov or 720.762.7488.

Jeff Durbin, City Manager