

Building and Facilities Committee

Minutes of 10-8-20; Whipple Hall

Members Present: Bowers, Beasley, Cardillo, Cannon, Sherman, Bianchi

Absent: Cross, Hoglund

The meeting was called to order at 6:30 p.m.

*1. Approval of Minutes*

The minutes of the previous meeting of October 1, 2020 were approved.

*2. Discussion of Building Inspector*

The Chair noted that he had forwarded to the Committee a summary of building code enforcement requirements and a draft statement of the pros and cons, and alternatives, of having a Town building inspector (attached to and made a part of these Minutes). These are intended to be a synopsis of materials provided to the Committee and discussed by the Committee in earlier meetings.

The Committee then discussed the pros and cons of having a Town building inspector. The committee is not aware of any significant complaints or construction failures in New London, resulting in a pressing demand for a building inspector. A discussion ensued as to the general duties of a building inspector, and reviews that are, or could be, performed by other authorities.

The RSA permits the town to establish a fee structure, which is intended to cover the costs. For reference, Manchester building permit fees for new construction are indicated on their web site, in part, as follows:

- **dwelling**s - estimated cost of the work multiplied by .006.
- **commercial** - estimated cost of the work multiplied by .01.

Fees are based on construction costs, which is normal for building permit fees, not square feet, as is the case for the zoning fees. New London had zoning compliance permits for 21 homes and for 15 commercial projects in 2019 (a year above the norm for such permits); however construction costs are not known. In all likelihood, it would be difficult to cover the full cost of a full-time inspector with permit fees, on an ongoing basis. Higher costs of construction, higher fees; lower costs, lower fees. It is difficult to scale the inspector's hours to the workload. In a high volume year there would likely be issues of meeting the

workload with one inspector on a timely basis, which could result in unacceptable delays in projects, as well as an unacceptable burden on the inspector's time and efforts. Likewise, in a low volume year, hours would be spent inefficiently.

One member noted that a web document from the -State Building Code Review Board indicates that the average town population for towns with a building code enforcement department is approximately 10,000. A town the size of New London (approx. 4300) would likely utilize a part-time inspector. That would present issues related to availability for projects; extra costs for overtime work; as well as the expected training and continuing education costs.

If the service were contracted out, as allowed by the RSA, it possible that the cost of services could be passed through, however it is unlikely that the fees, even in high fee years, would cover all of the costs incurred by the town.

The Town would also be required to establish an appeals board and process, which would require the dedication of time and effort needed to establish that process and to carry it out to deal with concerns as they are raised.

If the Selectmen were to proceed solely on a public policy basis, that would be a decision for the Selectmen to make, realizing that the contractor is already responsible for code compliance, and some related code requirements are already, or could be, reviewed by other authorities per the attached. The cost of hiring a building inspector, or contracting those services out, would appear to be difficult to cover completely with fees on an ongoing basis, given the significant historic variability in workload in New London.

After full and further discussion and analysis, it was moved and seconded, and unanimously

VOTED: To recommend to the Selectmen that they not retain a building inspector for the Town at the present time.

The Committee also felt that the Town should review and revise its current zoning compliance process, especially the permit that is currently titled "building permit," to ensure a clear understanding by applicants of the distinction between zoning compliance and compliance with the building code, and to ensure that all

interested parties are made aware of the State Building Code and the responsibility under it of the contractor to adhere to its terms.

3. *Other items to come before the Committee* None.

4. *Action Items.* None.

The next meeting is on Thursday, October 22, 2020, at 6:30 p.m., in Whipple Hall. The Committee will meet with the Selectmen on Wednesday, October 14, 2020, at 6:00 p.m., in Whipple Hall. There will be no meeting on October 15.

The meeting adjourned by unanimous consent at 8 :05 p.m.

Respectfully submitted,

Robert Bowers, Chair

## Attachments

### Current Building Code Enforcement in the Town of New London

- Applicable codes:
  - The State of New Hampshire adopts a state building code, based on the 2015 edition of the International Residential Code, for one and two family dwellings and some townhouses, and the International Building, Energy Conservation, Existing Building, Mechanical, Plumbing, swimming Pool and Spa Codes, as well as the 2017 National Electrical Code, for other buildings and structures. RSA 155-A:2
  
- Enforcement mechanisms
  - New London has not adopted any amendments to the state building code. RSA 674:51 I
  - While the state codes apply to all construction in the Town of New London, the state does not require the town to enforce the state building code. New London has not adopted a building code enforcement mechanism. RSA 674:51 I
  - New London has therefore also not contracted with a third party to provide these services in lieu of establishing the position of building inspector. RSA 155-A:2 VI
  
- Zoning Ordinance:
  - The New London Zoning Ordinance regulates zoning issues, but it is not a building code. RSA Title 64, NLZO Preamble
  - The Zoning Ordinance is enforced by the Board of Selectmen. NLZO Article XXIX A.1.
  - Although the Zoning Ordinance includes some requirements for what is titled a “building permit,” the permit is essentially a zoning permit, with some additional administrative tracking such as PUC Energy Code approval.
  - There is no enforcement of the building code through the town zoning process.
  
- New London Fire Department
  - New London has not adopted fire safety regulations that are more restrictive than the state fire code. RSA 153:5 IV
  - While the state fire code itself has numerous requirements for permits and inspections, the fire chief has the authority, but not the responsibility in most cases, to enforce this code. RSA 154:2
    - i. The fire chief is required to inspect schools. RSA 154:14 II (b)
    - ii. RSA 153:5 V might be interpreted to require the fire chief to enforce the state fire code, but this is a legal question.

- The state fire code has numerous areas of overlap with the state building code, including, but not limited to:
    - i. Egress, including residential escape windows.
    - ii. Fire rated construction
    - iii. Fire alarm and sprinkler systems
    - iv. Electrical code
    - v. Propane code
  - The state fire code itself requires compliance with the building code, therefore the fire chief has the right, but again not the responsibility, to enforce the building code. SAF-C 6000 NFPA 1 1.3.6.3
  - The extent to which the New London fire chief is enforcing the state fire code has not been reviewed at this time.
- State Fire Marshal
    - The state fire marshal is responsible for enforcing the state fire code, and for assisting the town in the enforcement of the state fire code. RSA 153:4-a I
    - In towns without a building code enforcement agency or contract, the state fire marshal may enforce the state building code upon written request of the town. RSA 155-A:7 I. Whether this is intended to apply on a project by project basis, or for overall enforcement of the code is a legal question.
    - In municipalities that have not adopted a building code enforcement mechanism, the contractor shall notify the state fire marshal prior to construction, except for one- and two-family dwellings. While this normally triggers a fire code review, it does not trigger a building code review unless requested by the town per above. RSA 155-A:2 VI
- Third party
    - New Hampshire has two means by which building code inspection may be performed by a contracted third party:
      - i. The town may contract with a qualified third party to perform all functions of a local building inspector, but only if an enforcement mechanism is adopted by the town. RSA 155-A:2 VI; 674:51 I
      - ii. The state fire marshal may require third party services when requested to enforce the state building code by the town. RSA 155-A:7 I
- Architects/engineers
    - A licensed architect is required to prepare construction documents for other than one- and two-family dwellings and certain small buildings. RSA 310-A:52
    - Licensed professional engineers are regulated by RSA 310.
    - Where a registered design professional is involved, they have the responsibility to provide documents in compliance with the state building code. Arch 501.03(j)
    - There is no requirement in New Hampshire that the architect be involved in reviewing the actual construction.

- Contractor
  - The contractor is held responsible for meeting the requirements of the state building code. RSA 155-A:2 VII
  - There is no general requirement that contractors be licensed, or have training or other qualifications in code compliance.
  
- Summary
  - Commercial construction
    - i. For other than certain small buildings, architectural services are required for design and the contractor is responsible for construction.
    - ii. For small buildings, the contractor is responsible for construction.
    - iii. The fire chief has the authority to enforce the state fire code.
    - iv. The state fire marshal has the authority to enforce the state building code upon written request from the town.
  - One- and two-family dwellings
    - i. The contractor is responsible for compliance with the state building code.
    - ii. The fire chief has the authority to enforce the state fire code.

*Considerations for Building Code Enforcement Process:*

Pros

- Increase in the level of code compliance and resulting level of safety resulting from construction in New London.
- Bring the permitting and compliance process into conformance with the RSA, if it is to extend beyond zoning compliance.
- Building inspector would review design documents and construction for compliance with the state building code, and possibly other codes. Over time, quality of construction will improve due to increased knowledge on the part of contractors.
- Possible property insurance benefits over time.
- Societal benefits, particularly with energy code compliance.
- RSA permits performing building code enforcement mechanism with third party contract.

Cons

- The RSA already holds the contractor responsible for meeting the state building code.

- The Town reports no complaints, losses, or damages for improper construction
- Potential liability in areas not exempted under the statute
- For seven years prior to 2019 average of commercial “permits” was three (2019: 15); new home “permits” 13 (2019: 21)
- Significant number of current “building permits” relate to minor construction not warranting the expense and potential delays that could arise
- Current enforcement of zoning, conservation, and health requirements is on an after-the-fact complaint basis; the Town should first consider taking such actions and incurring such expenses as may be required to be proactive in these areas where it currently has enforcement responsibilities, before taking on another area of enforcement
- Use of town employed building inspector
  - Inability to float hours with construction demands.
  - Cost: perhaps \$90k-\$100k, plus benefits full-time. Other than full-time inspector raises issues of availability and proper attention to issues due to time constraints; initial training and qualifications; and ongoing training and recertification
  - Extensive and detailed codes for several areas require extensive knowledge and training, and the related initial and ongoing expense
- Use of contracted agency
  - Town still incurs administrative costs.
  - Enforcement mechanism not well established in NH. Only the government has the authority to interpret etc.

#### Alternative approaches

- Town may request that State Fire Marshal enforce the Code, usually on a project by project basis. Not clear whether SFM would assist with one- and two-family dwellings.
- Use fire department to enforce state fire code, covering some areas of overlap with the building code. Provide required staff to do so.
- Educate contractors on their responsibility to comply with the code, and the fact that noncompliance may result in a misdemeanor for a natural person or a felony for any other person per RSA 676.17.

- Educate property owners on contractor responsibilities
- With or without the implementation of a building code enforcement mechanism, clarify to applicants that the zoning permit is a zoning permit only (and not a building permit under the Code); and, if a building permit is to be provided, ensure that the building permit process in accordance with the Code and state regulations.