

**FACTORY BUILT STRUCTURES ADVISORY BOARD
TELECONFERENCE/VIDEOCONFERENCE MEETING**

Tuesday – September 28, 2021 – 9:30 a.m. (MDT)

**Division of Occupational and Professional Licenses
1090 East Watertower Street, Suite 150, Meridian
1250 Ironwood Drive, Suite 220, Coeur d'Alene
155 North Maple Street, Blackfoot**

MINUTES OF THE SEPTEMBER 28, 2021 MEETING

NOTE: The following report is not intended to be a verbatim transcript of the discussions at the meeting, rather to record the significant features of those discussions.

In the absence of Chairman Markus Alley, and with Vice-Chairman Jeff Chrisman on teleconference, Board Member Mike Jensen was asked to oversee the meeting from the Meridian office. The meeting was called to order at 9:36 a.m. (MDT)

Board Members Present:

Jeff Chrisman, Vice-Chairman
Mike Jensen
Kenna Draper
Spencer McLean
Ken Roche
Brian Mattson

DBS Staff Members Present:

Ron Whitney, Administration
Tim Frost, Operations & Regulatory Bureau Chief
Spencer Holm, Deputy Attorney General
Michael Hyde, HVAC Program Manager
Gary Sonnen, Region 1 Supervisor
Lisa Stover, Building Program Supervisor
Renee Bryant, Administrative Assistant 2

◆ **Open Forum**

There were no new concerns to address under open forum.

◆ **Approval of September 28, 2021 Agenda and Meeting Minutes from May 11, 2021, and June 15, 2021 (Special)**

MOTION: Kenna Draper made a motion to approve the agenda and minutes as presented. Spencer McLean seconded. All in favor, motion carried.

◆ **Election of Officers**

In accordance with statute, each year the Board elects a chairman, vice-chairman, and secretary. Elections were held; however, there was confusion with regard to terms and eligibility.

Chairman

NOMINATION: Mike Jensen nominated Jeff Chrisman as chairman. Spencer McLean seconded. All in favor, motion carried.

Vice-Chairman

NOMINATION: Jeff Chrisman nominated Mike Jensen as vice-chairman. Spencer McLean seconded. All in favor, motion carried.

Secretary

NOMINATION: Mike Jensen nominated Spencer McLean as secretary. Kenna Draper seconded. All in favor, motion carried.

◆ **Schedule 2022 Meeting Dates**

The proposed meeting dates for 2022 are: February 8th, May 10th, and July 12th.

MOTION: Spencer McLean made a motion to accept the proposed dates for the 2022 meetings of the Board. Kenna Draper seconded. All in favor, motion carried.

◆ **Consolidation of Rule Chapters**

HVAC Program Manager Michael Hyde presented a proposal, included in the board packet, to consolidate the current and existing rule chapters governed by the Factory Built Structures Advisory Board into a single rule chapter with subchapters. The chapter would be titled *Rules for Factory Built Structures* with the current chapters as the subchapters: 24.39.31 *Rules for Modular Buildings* (Subchapter A-*Modular Buildings*), 24.39.33 *Rules Governing Manufactured & Mobile Home Industry Licensing*, (Subchapter B-*Manufactured/Mobile Home Industry Licensing*), 24.39.32 *Rules Governing Manufactured Homes-Consumer Complaints-Dispute Resolutions* (Subchapter C-*Manufactured Homes Consumer Complaints - Dispute Resolutions*), and 24.39.34 *Rules Governing Manufactured or Mobile Home Installations* (Subchapter D-*Manufactured or Mobile Home Installations*). In addition to the consolidation, the Division took this opportunity to review the rules once more for areas where it could apply red tape reductions for language that was duplicative of statute or unnecessary and could be addressed through agency policy.

Teri Ottens, Idaho Manufactured Housing Association (IMHA), questioned the changes made and how the Board is to approve the new chapter as the version in the packet is unmarked. It was explained the proposal did not include specific markups because by doing so it created the inability of distinguishing or displaying what was new rule language to the chapter versus what had been modified and/or removed from the existing rule chapters. Nonetheless, the following revisions were made:

- Revised the “Scope” of the rule chapter so it applies to all subchapters.
- Removed duplicative rule definitions as they are all sufficiently defined within statute: Board, Bond, Commercial Coach, Installer, Manufacturer, and Insignia.
- Removed re-inspection fees, duplicative plan review fee language, and investigation fees.
- Removed payment refund language.
- Removed or modified sections pertaining to:
 - *Manufacturer’s Plan Retention Schedule*. Distribution of approved copies; manufacturers retain plans.
 - *Proprietary Information*. The Division is unable to create its own exemption to the public records act.
 - *Revisions to Approved Modular Building Plans*. This can be deferred to the inspection process when it can be demonstrated the change is minor or simple in nature. If not, then full design is already required to be submitted.

- *Right of Entry.* Is applicable through statute and inspection requests. On-site “right of entry” applies to the local enforcement authority having jurisdiction as per Title 39 Chapter 43, Idaho Code, and does not apply to the scope of this rule chapter.
 - Removed 02.b *Inspections.* Field inspections for same reason. Local enforcement authority in Idaho Code § 39.43.
- *Removal of Orders & Notices.* Removed due to applicable code language that prevents such removal of orders/notices.
- *Reciprocal Agreements.* Addressed through statute. Details may be determined through policy.

Board Member Mike Jensen requested, and HVAC Program Manager Michael Hyde agreed to provide, a summary of the additions, deletions, and modifications to the new chapter titled *24.39.31 – RULES FOR FACTORY BUILT STRUCTURES*. Newly elected Chairman Jeff Chrisman stated it would be a good opportunity to clean up language that might exist from years past and asked IMHA to review to determine if there is any old language that needs updated.

Tim Frost, Operations and Regulatory Bureau Chief, explained the omnibus reauthorization of rules; clarifying the Board’s current rules are temporary and have been in effective since July 1, 2021. The Board was asked to review the proposed changes and provide input to the Division as it moves toward a proposed status of the consolidation. A notice of the proposed rules will be published in the October 21, 2021 Administrative Bulletin, at which time, there will be a 21 day comment period for interested parties to submit information. At the end of November to mid-December, the Board will hold a special meeting where the rules will go from proposed to pending status. The pending rules will then be presented for review and possible approval at the 2022 legislative session.

Board Member Jensen looked for a resolution in which the Division will provide a summary of the additions, deletions, and modifications to the draft proposal, provided in the board packet, and there be a 21 day requirement to provide feedback to the Division once the notice has been published in the October 21, 2021 Administrative Bulletin, with a follow-up board meeting to be held in late November/early December.

MOTION: Jeff Chrisman made a motion to approve the resolution. Kenna Draper seconded. All in favor, motion carried.

◆ **Out-of-State Retailers without a Physical Address in Idaho**

Jack Lyman, IMHA, broached the subject of out-of-state manufactured home retailers selling homes into Idaho without having a principal place of business in Idaho, as required in Idaho Code § 44-2106(2)(d). It was noted due to the pandemic, there has been significant online presence of manufactured home retailers. IMHA would like to pursue legislation to remove the requirement for a principal place of business in the state; however, still require licensure of those out-of-state retailers. Mr. Lyman suggested Deputy Attorney General Spencer Holm provide feedback on whether the state of Idaho can require a manufacturer in another state to be licensed in Idaho in order to do business OR whether that’s an inappropriate restraint on interstate trade. Also

recommended was researching whether a financial or surety bond requirement could be put on the out-of-state retailers. Mr. Lyman stated the primary reason to require a license for out-of-state retailers is to provide the leverage needed to protect the consumers. Although the Board's approval is not necessary, IMHA would like its input. Mr. Lyman offered to bring draft legislation to the Board's next meeting; stating IMHA would assume all responsibility of taking a proposal through the legislative process.

One concern was the difference between sales conducted in Idaho vs. out-of-state transactions in terms of sales tax on the product. If another state sells a product without having to charge sales tax, that is an unfair advantage to Idaho based businesses. It was mentioned to check with the State Tax Commission on its procedure of pursuing and receiving sales tax from other states.

◆ **Engineered Permanent Foundation Issue**

Teri Ottens, Idaho Manufactured Housing Association (IMHA) revisited the issue of registered professional engineers or registered architects designing and certifying permanent foundations for manufactured homes, as well as reiterated statistics from the Association's survey of local jurisdictions. In addition, Ms. Ottens questioned whether it would be a possibility for HUD to allow some type of exemption or partial exemption and asked for the Board's support in encouraging DOPL to work with IMHA in creating a working group to address the Installation Manual, and foundation requirements, with the goal of getting a consensus and workable solution for all.

Building Program Supervisor Lisa Stover clarified the requirements are in Subpart D 3285-301. The Division pointed out site built foundations are not engineered and is awaiting a response from HUD since it is a federal standard requiring it and local state adopted codes are not.

Although no action item was on the agenda to create a committee, Operations & Regulatory Bureau Chief Tim Frost offered to work with Ms. Otten's outside of the board meeting to figure out a potential solution.

◆ **Administration Report**

Activities – Construction continues to grow in Idaho. Recently, 447 permits were issued in one day, and inspections have been as high as 800 a day.

Relocation – The scheduled move to the Chinden Campus should be either June or July 2022, with tenant improvements completed by the end of February 2022.

Financial Report – As of the end of the fiscal year, June 30, 2021, the financial statement is current, and the Board's available year end cash is strong relative to the overall budget.

Moving Costs – When asked, the Division's financial portion to move is in the budget and being pro-rated amongst all DOPL programs.

◆ **Adjournment**

With no other business to discuss, Board Member Jensen entertained a motion to adjourn.

MOTION: Spencer McLean made a motion to adjourn the meeting. Kenna Draper seconded. All in favor, motion carried.

The meeting adjourned at 10:47 a.m. (MDT)

JEFF CHRISMAN, CHAIRMAN
FACTORY BUILT STRUCTURES
ADVISORY BOARD

MICHAEL HYDE, OPERATIONS MANAGER
DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSES

DATE

DATE

02/11/2022rb