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MEETING SUMMARY NEW YORK STATE HOME INSPECTION COUNCIL Friday, October 20, 2006

The first meeting was held at the Department of State, 123 William Street, 19th Floor Conference Room, Manhattan, NY.

I CALL TO ORDER

Deputy Secretary of State Al Jurczynski called the meeting to order at 10:45 a.m. He informed members about newly-appointed member Robert Piwko, who could not make it to this meeting. He thanked staff for work done on this discipline so far.

II INTRODUCTIONS AND OFFICIAL ATTENDANCE

A. Jurczynski introduced Council members and Department staff, and announced that a quorum was present. Official attendance was as follows:

COUNCIL MEMBERS

Paul Gressin
 James Salmon
 Joseph Pasaturo
Excused:
 Robert Piwko
 Joseph Whittington

DEPARTMENT OF STATE STAFF

Al Jurczynski, Deputy Secretary of State
 Whitney Clark, Counsel
 Keith Simon, Supervisor, Exam Unit
 Jodi DeLollo, Supervisor, Education Bureau
 Mark Mastrobuono, Education Bureau
 Carol Fansler, Meeting Coordinator

VISITORS

David Mielke, Long Island ASHI
 Gregg Harwood, NYS ASHI
 George Schambach, NYS ASHI
 Michael Murphy, Greenberg Training

III POLICY AND PROCEDURAL MATTERS

A. Jurczynski asked for a motion for position of chair of the home inspection council.

P. Gressin made a motion to elect J. Pasaturo as chair of the home inspection council. The motion was seconded by J. Salmon and passed unanimously.

A. Jurczynski asked for a motion for position of vice-chair of the home inspection council.

J. Salmon made a motion to elect J. Whittington as vice-chair of the home inspection council.

Although he was not present, he was aware of the motion and agreed to accept. The motion was seconded by P. Gressin and passed unanimously.

A. Jurczynski turned the meeting over to new chair J. Pasaturo. J. Pasaturo asked for comments and/or a motion on the draft summary of the August 10, 2006 council meeting.

P. Gressin made a motion to approve the August 10, 2006 meeting summary. The motion was seconded by J. Salmon and passed unanimously.

IV DEPARTMENT/COUNCIL BUSINESS

J. Pasaturo spoke about a subcommittee meeting recently held where they discussed, among other things, continuing education (ce) regulations, and developing a code of ethics and standards of practice.

Continuing Education (ce) regulations:

J. Pasaturo believes an important issue right now is setting the required number of ce hours. The subcommittee discussed not overburdening licensees with too many required ce credits, but still requiring a reasonable amount of hours to keep them on a professional level.

J. Pasaturo made a motion to require 24 hours of ce credit every 2 years. The motion was seconded by J. Salmon and passed unanimously.

Discussion continued on how to regulate ce during the first renewal period, which began on January 1, 2006. Subcommittee members recommended that the Department waive the ce period for all renewals up to December 31, 2007, and require all renewals after that date to completely fulfill the ce requirement. W. Clark offered to review the statute and advise council members if they could waive the ce requirement for one year, or possibly prorate the required number of ce credits.

J. Pasaturo made a motion that the Department waive the ce requirement for the first registration period for all licensed renewals up to and including December 31, 2007, pending approval from legal counsel. The motion was seconded by J. Salmon and passed unanimously.

Subcommittee members also discussed allowing 2 hours of ce credit for every 1 hour of classroom an instructor gives.

J. Pasaturo made a motion that the Department allow 2 hours of ce credit for every 1 hour of classroom an instructor gives, which would apply only once to each course in a 12-month cycle. The motion was seconded by P. Gressin and passed unanimously.

Subcommittee members also recommended that the minimum amount of time for a ce course be 1 hour, which would benefit smaller local organizations.

Subcommittee members next discussed whether they could mandate that all home inspection courses be taught in English. W. Clark stated that currently the real estate law requires only qualifying courses for salespeople be taught in English. If members want to pursue this, they would need to compile reasons for the request. P. Gressin asked if they could require that all reports be written in English. W. Clark will look into this issue.

J. Pasaturo next talked about what types of courses will and will not be approved for ce credit. Acceptable courses include any technical course relating to home inspections, report writing; unacceptable courses include basic computer skills, industry-specific software, finance and marketing of a business. If a teacher brings in a guest speaker during class, that person must have approval from the Department as a technical instructor. P. Gressin feels that if someone is brought in by the teacher, the teacher should be responsible for his participation and questioned why the guest speaker would require approval by the Department. J. Pasaturo and J. Salmon agreed with J. DeLollo that each guest speaker should be approved as a technical instructor. J. DeLollo will discuss this issue with Department staff/counsel.

Code of Ethics and Standards of Practice

The next discussion was about the need to develop a code of ethics and standards of practice.

Although there are many versions available through organizations in the home inspection industry, the department will develop its own. J. Pasaturo suggested a subcommittee review the available versions and compile a draft of the NYS Home Inspection Council Code of Ethics and Standards of Practice, for committee members to review. They will be separate documents, and tied into regulations that will need to be passed.

J. Pasaturo made a motion that P. Gressin chair a subcommittee to develop a draft code of ethics and standards of practice. The motion was seconded by J. Salmon and passed unanimously.

W. Clark described the process for getting regulations passed, which begins by making a recommendation to the Department enact a regulation. If the Department decides to proceed, forms will be drafted and presented to the Governor's Office of Regulatory Reform (GORR) for approval. Once approval is received it would be published, a public comment period would be allowed, public comments would be taken into consideration, and the regulation would be enacted. She informed committee members that once they decide on a regulation, counsel's office would draft the proposal and help with the approval process. J. Pasaturo asked if regulations should be submitted one at a time or as a group. W. Clark suggested submitting a group of regulations they consider important to the protection of the public. An emergency rule can be drafted to expedite the process, if it can be proven that a particular regulation is a true emergency.

J. Pasaturo asked if the code of ethics and standards of practice should be published before or after other regulations are passed. W. Clark stated that the regulations should be passed first for enforcement purposes, and then the code of ethics and standards of practice would be published as part of the regulations. J. Salmon asked how complaints are processed now, without these regulations. W. Clark said that the Department has guidance in the statute, which is specific on types of violations the Department can pursue.

J. Pasaturo asked W. Clark to describe the complaint process. She explained that an investigator is assigned to the complaint and once their report is finished the case is forwarded to counsel's office. Some complaints are closed before it reaches counsel's office (i.e. no violation is found, or not our jurisdiction). The complaint and investigator's evidence is reviewed to see if it fits into a violation that the statute allows. If it does, then proceedings will go forward. If necessary, a council member will be contacted for input. Council members would like information on complaints received so far. W. Clark will speak to investigators prior to the next meeting.

J. Pasaturo asked what authority the Department has to go after non-licensed activity in this industry. W. Clark stated that the Department has the ability to issue a cease-and-desist order or an order requiring restitution. Violations of these orders are a misdemeanor, and would be required to be pursued by the attorney general's office.

V PUBLIC COMMENT PERIOD

Gregg Harwood, president of NYS Association of Home Inspectors (ASHI), stated that he believes the Department needs to shut down the grandfathering period, now that everyone legitimately doing business has had time to get their license. He believes there has been abuse of this system.

George Schambach, member of NYS ASHI, first stated that he objects to the grandfathering and agrees that it needs to be shut down. He then expressed concern about the fact that an investigator sent an application to a defendant in a complaint case (the complaint alleged unlicensed activity); he feels they should have required him to reimburse all clients during the period he was not licensed (as stated in the statute), and should not be allowed to get a license.

Michael Murphy, Greenberg Training on behalf of AmeriSpec, said that he looks forward to working with the department and council particularly in regard to protection of consumers.

VI NEW BUSINESS

P. Gressin said that many associations have asked about the grandfathering and whether it would end. He asked if the department could look into the issue of ceasing the grandfathering clause.

J. Pasaturo stated that he believes there is confusion about when a professional engineer requires a home inspection license. He said that the law currently states that a professional engineer, when acting within the scope of his practice, is not subject to licensure. The State Board of Engineering has determined that a home inspection is considered within the scope of practice of a professional

engineer. J. Pasaturo stated that he advises people that "acting within the scope of his practice" means that you are either a sole proprietor engineer or professional corporation, and are authorized by the State Education Department to provide engineering services. If one of the services provided under the engineering umbrella is home inspections, you do not need to be licensed as a home inspector. A general business corporation would need to be licensed to do home inspections. J. Pasaturo suggested that department counsel speak to counsel at State Education Department and issue a joint statement clarifying when an engineer is required to hold a home inspection license. J. Pasaturo asked if the department could provide statistics regarding the number of licensees who applied as a professional engineer or architect. J. DeLollo will provide that at the next meeting.

J. Salmon asked about statistics for the home inspection exam. K. Simon said that not everyone is passing the exam, and that there are still changes being worked on. J. Pasaturo asked what kind of technical expertise was used in developing the exam. K. Simon stated that staff did extensive research to develop the exam, and a subject-matter expert meeting was held to review the questions.

VIII FUTURE MEETING DATE

The next subcommittee meeting is scheduled for Wednesday, December 6, 2006 and the next council meeting is scheduled for Wednesday, February 7, 2007, both in Albany.

IX ADJOURNMENT

J. Pasaturo declared the meeting adjourned at 12:35 p.m.

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