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CHARLES BORSTEL
COMMISSIONER, DIVISION OF
PROFESSIONAL LICENSURE

THOMAS HOPKINS
EXECUTIVE DIRECTOR

Public Hearing
Proposed Changes to 521 CMR
UMass Amherst, Lincoln Campus Center
1 Campus Center Way, Room 163C
Amherst, MA
March 29, 2018 8:30 a.m.– 12:30 p.m.

Present Board Members:

- Walter White, Chairperson (WW)
- David D'Arcangelo, Massachusetts Office on Disability (DA)
- Andrew Bedar (AB)
- Patricia Mendez, (PM)
- Harold Rhodes (HR)

Also in Attendance:

- Evan Bjorklund, Massachusetts Office on Disability (Designee) (EB)
- Thomas Hopkins, Executive Director (TH)
- Karen Brann, Program Coordinator/Clerk for the Board (KB)

Board Members not in Attendance:

- Dawn Guarriello (DG)
- Jane Hardin (JH)
- Ray Glazier (RG)
- David Johnson (DJ)

Members of the public who signed in:

- Anja Duffy, GZA, Inc. Landscape Architect, Holyoke, MA
- Peter H. Wells, Berkshire Design, Northampton
- Jim Morrissey, UMass Amherst
- David Waskiewicz, Town of Amherst
- Lewis Schiller, Amherst College
- Jonathan Dobosz, Montague Parks and Recreation
- Michael McGuffie, Northern Playground Surfacing
- Jim Marin
- Joe Tringale, STAVROS, 210 Old Farm Road, Amherst
- Rob Morra, Town of Amherst

- Meeting began approximately 9:00 a.m.

Director Hopkins gave opening remarks regarding the process of updating 521 CMR and how the work was done by a voluntary committee. The voluntary committee did this on their own time and expense. Tried to make it in align with the ADA. In some cases 521 CMR is more stringent than ADA but we can't be less stringent than ADA
48" handrails is a better standard. Will keep in mind 36" which is the minimum under ADA. People will ask for less than 36". Some people have told us they are trying to get ADA to go to 48".
Intent of 521 CMR is to serve people with disabilities.

There is a bill in the house that addresses no jurisdiction of employee areas. This is in violation of federal law and is a Systemic problem. We want to adopt ADA employee language. ADA has exemptions.

Chapter 22 Section 13a

Jobs build self-confidence. There is no agency checking for this compliance. ADA is enforced by complaints. We believe you should write to your senators and say they need to get this passed. We are in the 19th year of trying to get this changed.

Parking difference.

When Debbie Ryan was Executive Director, she wrote to the Justice Department. By the fall the hope is that legislature passes the bill. By January we are hoping to promulgate the code book and then ship it off to justice department.

Anja Duffy, GZA, Inc., Landscape Architect - Playground surfacing has changed to a specific poured in place surface. I would like to hear more about this. ASTM standards. There will be obstacles, it will bind up, it will be vandalized. An outside consultants will have to be hired to keep up the maintenance on it. It is not convent and it is not a good alternative.

TH - It is for the accessible routes only. 19.7 requires the route to be an accessible route.

Anja Duffy – Use zone.

TH - The material may be compliant and compacted at first but after kids use it it gets worn out. If a town has a wood chipper they replenish the playgrounds. It is only the route to the play equipment. We never said the entire playground.

WW – We will also be accepting written comments.

TH – We are accepting comments until June 1.

Peter Wells, Berkshire Design Group, Northampton. Playground surface. It states surface use zone, it is also the fall area. The entire playground has to be poured in place. There are rarely any outside of the fall zone.

Ground and floor surface 7.4.3 – bricks when rectangular herring bone pattern.....

Shows two patterns herring and running bond.

It limits us to two patterns only. They are boring patterns. Why can't we use other patterns?

Jim Morrissey – Passed on comments for now.

David Waskiewicz, Building Inspector, Town of Amherst. – I appreciate the board getting to this point. It is good to get updates.

Louis Schiller, Amherst College – Architect, capital project manager for Amherst College. Hoping we would have had more of a description of the changes.

One of the requirements is a prohibition against controls 18” from inside corner. I propose that restriction might have exemptions. Case of a doorway where there might be 18” of space on pull side, someone coming through would have no more difficult reaching. Limit light switch and pull stations..... reach limits. An electrical outlet 18” off the floor in a corner. Limitations. Everyone would be looking for the controls. In an emergency a fire pull would be near door. Now located different and less intuitive.

TH – We have had multiple variances.

Louise Schiller - It is too broad. I am requesting that it be reconsidered.

Jonathan Dobosz – I like to support playground thoughts. Municipality 59.4.1 playground space to material. If this conversion instituted in park system would cost \$600,000 in Montague. We have 15% population below or at poverty level. Kids are qualified for free breakfast and lunch. Great difficult to make conversion from a financial perspective.

***Entered Letter from Jon Dobosz, Director of Parks and Recreation, town of Montague.

TH – the code book is based on when you do work you will have to apply at that time.

We also have another park at the needs assessment portion. It is a larger area. It will be significant. Wood fiber is \$2.00 sq ft....poured in place is \$25.00 sq. ft.

Michael McGuffie, Northern Playground Surfacing – Division manager since 1986. Sits on ASTM committee. This has been my life 40 landscape, playground 32 years. I take it very seriously. We are probably biggest supplier in New England and we also cover part of New York. We have mass state contract for playground servicing. Everyone came to me, the biggest worry is there are towns that have money, section 59.4.1 the towns that have money if we make playground smaller we can probably do it. Towns are worried about financing. Over 10 times cost to put in poured in place. Not bullet proof. I have to take exception to what someone said earlier... we are proud of our material, tests better in 12 years because it becomes spongy. Safety factors of 3 to 1. Poured in place has safety of 1 to 1 because it is so expensive. There are lawsuits where poured in place has come apart. ASTM community – we have taken on and worked with the Justice Department very big piece of our business. It has been a long time originally came up and set up testing the program test was to evaluate products that have and do not have accessibility. ASTM playground safety board – working on ADA program. I flew out to CA to test the accessibility of wood fiber under PS 83 standard in early 90’s. AAB says 1 in 12 ramp, it is acceptable. ASTM 1951 is program that has been set up that everyone has to test for accessibility. I don’t know where it says that material needs to meet ASTM 1951, we test to it, costs \$5,000 - \$6,000 each time. We need to come up with a material.....we take it very seriously to build the best surfacing. We want you to know we take it seriously. The 1 in 12 ramp is what we have test against. When it is tested it goes and meets 1 in 12 criteria. There is maintenance on everything. 59.4 talks to products to use....for instance lumps engineered fiber into stone.....it is not what it is about, we have a plant in palmer where we process the material. Yes it requires maintenance. My point is 59.4.1 should be a performance spec. Should us materials in use zones, access zones, and accessible routes. I have a lot of place that take bonded

rubber to half of the equipment, people say we are not going to put a playground in again...cannot use wood fiber in much of the playground. To callout products instead of performance ASTM 1951 test....

We want playground safe and accessible.

TH - Niantic playground – proposed complete use of wood fiber, in response to boards requirement, the research group were working on emulsification and we went to site and I was rolling on the sample material that mixed with wood fiber to stabilize it.

In the end board voted and willing to work with wood fiber industry...but town needs to give maintenance reports. The town said they don't want to do it. We don't say you can't use it, it is the routes that have to be done, 19.7.....section 20 firm stable and slip resistant.

Michael McGuffie – We have shown it is accessible but.....I would tell them to put in bonded rubber.

TH – Bonded routes to play equipment complies.

Michael McGuffie - Everyone out there believes.....I get calls Mass Facilities Association...people say I am out of business completely...people are scared. Performance specification is one thing...but it is a product spec. There are a lot of towns saying we are not going to put in playgrounds.

Jim Mazik, Pioneer Planning Commission – 30 years also ADA consulting work, work with Mike Kennedy. Programs, I have been involved with ADA Barrier removal projects, working with CLW in eastern MA. Problem in looking on Suffolk valves iswhat is being proposed, there are many variations and to bring us not in align, inconsistency. So many variations. 2010 ADA current standards.....

CLW put together a 35 page sheet, reach ranges.....variations....new proposed will bring this together. The new proposed will make it easier.

I hear some of the comments and on the play areas, new playground you still have to go by 2010 standards and do the higher standards of the both. I looked at two play areas...there were woodchips and a woman could not push her stroller....due to maintained there are only 3 people on this towns park department dealing with 30 fields, 5 schools and 8 or 9 parks. They don't have time, it is spent on other priorities. I support the changes, they are good. It is a good thing to move this forward.

Mr. Morrissey still not ready to speak.

Michael McGuffie – If you are changing the railings, give us some ideas too. We are supposed to conform to equipment. It is a work in progress. We meet every year twice a year to work on just those things. We encourage our people not make the entire playground just firm and stable, when you do the install you make the entire playground compacted. Why stop there. People go out with wheelchairs and kids are all over the place. Maintenance budget issues are always an issue.

Poured in place is critical of base material. If someone is using tiles where tiles meet, that area has to be tested for impact. We find it out by injury data from 7 major hospitals. We need to know changes to present it.

Anja Duffy – I want to echo what Michael McGuffie said about the entire area being accessible. The clarification of the use zone. Also note on maintenance if properly maintained wood fiber is

firm and stable.

Jon Dobosz - Mass association of recreation is preparing some comments.

Short recess 9:57 a.m.

Reconvened 10:30 a.m.

Joseph Tringali – STAVROS Center for Independent Living

Working since 2008 to make 521 CMR equivalent to ADA.

Testifying in favor to the new version of Senator Moran's AAB bill is a great help. Will get us employee space. If we are trying to improve our economics we need to get to the work place. I would like to tie it into the AAB bill that would increase availability of housing so many buildings in western ma would have to comply for accessibility. Over the past two years federal government mandated to add a core service called transitioning. Transition people in to the community. Can't transition without a place for them to go to. Employee space is important. Working hard to get the bill passed and hop it will work. I would like to be on the record as opposing Senator Walsh's version of the AAB bill because the sliding scale when talking about trying to figure out at what point a building is accessible is complicated to enforce. If up to local building inspector it will get lost. The formula. If the mom and pop stores are getting hurt it is a red hearing, about 93% of variance requests have been approved. Being on Amherst committee of disability we receive the requests for variances. If it is a small place there is not going to be a lot of red tape and financial responsibilities to make accessible. I pray the Moran version is approved.

Rob Maura, Building Commissioner, Town of Amherst – section 3 comments

Specialized codes. Inspection process in 521 CMR here are regulations applicable for buildings that do not require permit. Why shouldn't we have a submission process.

We can collect a fee for the town in collecting the permit. We have a lot of work that doesn't require a permit. There are typical things, [parking signage. But now there are other things..public art..green area. It would be nice to turn to this document and say it is reinforced here. If I am not doing a licensed activity do I need a building permit?

I have run into new construction not subject to building permits...food stand on sports field.

Maybe a section devoted to the building dept.

Change in use language. 3.5 3.5.1 abandoned, change in use requirements look like what they have been in past. Suggest if the period more than 2 years shall be considered abandoned in respect to public use. Restaurants open and sit vacant for a few years. If we are waiting two years we are looking as if it is not open to the public.

TH – Our effort was to try and ...people have a space and find permit for use 25 years ago. They argue it was open to the public 25 years ago. There is no change in use. We want to close that loophole. The requirement is low, provide an accessible route to entrance to space changing use. If it is on 1 level there isn't a bathroom requirement, just route requirement. Vertical conveyance is a big deal.

We were trying to close a loop hole.

Rob Maura – It starts to close a loop hole and aligns with a zoning law. That restaurant that was operating for 20 years closes for a few years and is advertised as a fully functioning turnkey operation. I think this is saying it is no longer public...I think it could be clarified.... Will make as a written comment.

Recess 10:44 a.m.

Meeting adjourned at 12:30 p.m.