

# Meeting Minutes: Plumbing Board

Date: January 15, 2019  
Time: 9:30 a.m.  
Minutes by: Lyndy Logan  
Location: Minnesota Room, Department of Labor and Industry  
443 Lafayette Road No., St. Paul, MN 55117-4344

## **Members**

Jeff Brown – via teleconference  
Michael Dryke  
Kent Erickson  
John Flagg (Vice Chair)  
Mike Herman – via teleconference  
Rick Jacobs (Chair)  
Phillip Sterner (Secretary)  
Cathy Tran (DLI Commissioner’s Designee)  
David Wagner  
David Weum (DOH Commissioner’s Designee)

## **Members Absent**

Tom Andresen  
Richard Becker  
Justin Parizek

## **DLI Staff & Visitors**

Suzanne Todnem (Gen. Counsel, DLI)  
Lyndy Logan (DLI)  
Jim Peterson (DLI)  
Brad Jensen (DLI)  
Trevor Ogilvie (City of Mpls)  
Sean Pratt (Best Buy Co.)  
Matt Marciniak (IAPMO)  
Tim Power (MNLA)  
David Radziej (Metro PHCC)  
Adam Hanson (ABC)  
Mike Johnson (J-Berd)  
Gary Thaden (MMCA)  
Scott Thompson (My Plumbing Training)

## **1. Call to Order**

The meeting was called to order by Chair Jacobs at 9:37 a.m. Roll call was taken by Secretary Sterner and a quorum was declared with 9 of 12 voting members present in person or via teleconference and one non-voting member.

## **2. Approval of meeting agenda**

A motion was made by Flagg, seconded by Herman, to approve the agenda with the addition of *Item E – Ad-Hoc Code Review and Rulemaking Committee* under 5. Committee Reports. The roll call vote was unanimous with 9 votes in favor; the motion carried.

## **3. Approval of previous meeting minutes**

A motion was made by Herman, seconded by Sterner, to approve the October 16, 2018, regular meeting minutes as presented. The roll call vote was 9 votes in favor; the motion carried.

## **4. Regular Business**

Approval of expense reports – Jacobs approved the expenses as presented.

## 5. Committee Reports

### A. Department Updates

The Governor's office has appointed a new DLI Commissioner – Nancy Leppink. Nancy will start on March 4, 2019, and Kristin Batson will serve as the interim Commissioner until that time.

### B. Executive Committee

The Committee met this morning and advised the Chair on the Board's agenda.

### C. Construction Codes Advisory Council

Has not met – nothing to report

### D. Inspection Uniformity Committee

**Members: Tran, Parizek, Jacobs, Sterner and Andresen.**

Andresen notified Board Chair Jacobs prior to this meeting that he was no longer interested in serving as the Committee Chair but would remain on the Committee. Jacobs asked for a volunteer to be Chair and respectfully asked that it be someone that has not served previously. There were no volunteers.

### E. Ad-Hoc Code Review and Rulemaking Committee

The Committee met several times and have reviewed Chapters 3, 4, and 5. All submitted RFAs can be viewed on the department's website at:

<http://www.dli.mn.gov/about-department/boards-and-councils/plumbing-board-requests-action>

The Chair added that if anyone wants to submit proposed changes, they should do so by completing an RFA – found on the department's website (link above). Committee will begin with review of Chapter 6 at the next meeting on Feb. 22, 2019.

## 6. Special Business

### A. Minnesota Rules, Chapter 4716 – Plumber Licensing rulemaking update

Todnem said that Chapter 4716 rulemaking went to hearing on Friday, Jan. 11, 2019. There were 8 members of the public that spoke and the hearing was conducted by ALJ Lipman. The rulemaking is in the 20-day comment period during which members of the public and the Board can submit any additional comments for the ALJ to consider. The 20-day comment period ends January 31, 2019. After this period ends, there will be 5 working days to submit a rebuttal – the 5-day rebuttal period is limited to responding only to content already submitted – no new issues – and the close date will be Feb. 7, 2019. The Board will likely submit a comment during this 20-day comment period, and then depending on what is submitted, would submit a rebuttal. The Issues raised at the hearing were primarily regarding the 2 hours of CE for registered unlicensed individuals. Todnem asked members if they were aware of any other issues raised at the hearing that she did not mention and there were none. The procedure going forward: The ALJ will review all exhibits and submissions. The Board submitted exhibits A through K-18 (586 pages) – found on the department's website at:

<http://www.dli.mn.gov/sites/default/files/pdf/4716-exhibits.pdf>

Todnem said there are 3 determinations/factors the ALJ will rule on:

- 1) whether the Board has the statutory authority to do the rulemaking;
- 2) whether the rule is necessary; and,
- 3) whether the rule is reasonable.

If the ALJ determines that the Board has not met one of the above requirements, then the rulemaking would go to the Chief Judge and she would then make a recommendation to the Board.

**B. Court of Appeals matter A18-1810, Relator ITW Food Equipment Group, LLC, a/k/a Hobart, update and discussion**

Todnem said that the Final Interpretation issued by the Plumbing Board on October 8, 2018, that addressed the question – Are valves allowed downstream from an atmospheric vacuum breaker (AVB) under Minnesota Plumbing Code Table 603.2 – has been appealed by an aggrieved party, ITW Food Equipment Group, LLC, a/k/a Hobart.

The Attorney General’s office is representing the Board. An itemized list of the record will be submitted by Jan. 22, 2019. The Board has final interpretative authority over the Plumbing Code per MN Statute § [326B.127, subd. 5](#) – Todnem read aloud: *The Plumbing Board has final interpretative authority applicable to the State Plumbing Code and shall review requests for final interpretation made to the board that relate to the State Plumbing Code. The Plumbing Board shall review a request and issue a final interpretation within 30 days of the request. Any person aggrieved by a final interpretation may appeal the interpretation within 30 days of its issuance by the commissioner or the board in accordance with chapter 14.*

Todnem said that a Court of Appeals decision takes approximately 9 months or longer. The Court of Appeals is typically a three-judge panel. If they do not rule in favor of the Board, they would send the issue back to the Board. The Court of Appeals doesn’t make interpretations – they only rule on whether or not the Board met the determinations/factors noted above. Jacobs noted that the 2018 UPC also states “no valves downstream.” Peterson said the 2018 UPC references the same standard as what is currently in the Minnesota Plumbing Code. Todnem noted that members and interested parties would be notified via email for oral arguments and while members are not required to attend, they are welcome to attend as all hearings are open to the public.

**7. Complaints**

Nothing to report.

**8. Open Forum**

Scott Thompson, My Plumbing Training, asked who he should contact if he does not agree with the interpretation of a plumbing plan review decision. What is the next step to over-rule plan review? Tran said to discuss with the plan reviewer, and if not resolved, consult with her. If the issue still remains unresolved, and it is a plumbing code interpretation, request a formal interpretation of the Plumbing Board. The Board has the authority to issue a final interpretation of a plumbing code section or provision.

**9. Correspondence**

None

**10. Board Discussion**

Sterner referred to the Court of Appeals matter A18-1810 and asked if the 2018 code could be amended. Jacobs said the Ad-Hoc Code Review and Rulemaking Committee will bring code change recommendations to the Board for review. Todnem added that the Court of Appeals matter is only about the **current** existing code language and the Board’s interpretation of that language.

**11. Announcements**

Next regularly scheduled meetings in 2019 – all meetings will be held at 9:30 a.m. in the Minnesota Room. The Executive Committee meetings occur at 8:30 a.m. prior to each regular meeting in the Minnesota Room.

- A. April 16, 2019
- B. July 16, 2019
- C. October 15, 2019

**12. Adjournment**

A motion was made by Sterner, seconded by Flagg, to adjourn the meeting at 10:17 a.m. The roll call vote was unanimous with 9 votes in favor of the motion; the motion passed.

Respectfully submitted,

*Phil Sterner*

Phil Sterner, Board Secretary