

# Sandra Vitzthum, Architect, L.L.C.

14 Loomis Street Montpelier, Vermont 05602 (802) 223-1806

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Members of the Legislative Committee on Administrative Rules  
State House, 115 State Street  
Montpelier, Vermont

Dear Members of LCAR:

I grew up in Vermont, studied hippie architecture at U-32 and started designing sustainable homes at age 15. I have taught and practiced architecture in Vermont for over 30 years, and I have participated in groups such as Builders for Social Responsibility and US Green Building Council since they were founded. I am certified both LEED-Residential and LEED-Commercial.

Other architects and I warmly welcomed the first Vermont Residential Building Energy Standards, but from the beginning we testified that RBES needs to be administered like any other building code. Any regulation for construction should have a variance process, an appeals process, project review, inspection, enforcement, and statewide data collection. It is particularly important that energy-related details coordinate with other building systems, and that there is some authority to help owners and builders resolve conflicts between regulations as well as unique situations in existing buildings. This is not just a matter of paperwork: failure to resolve conflicts or failure to double check performance can lead to defects that are significant, expensive, and not discovered for a long period of time. This represents a personal and economic risk to homeowners and tenants.

Others will demonstrate how compliance with energy standards in Vermont is decreasing as our unadministered standards increase in complexity. This real risk of catastrophic of physical and financial damage to occupants and owners is increasing, too. I would like to give just one example: clients of mine built in 2012 without my participation. The mechanical ventilation system was installed properly, but not entirely turned on. The wife's health decreased dramatically over two years until she had to use a walker. Finally the ventilation defect was discovered, but it cost her tens of thousands of dollars to recover. The possibility of innocent construction errors multiplies exponentially as air infiltration and ventilation requirements increase.

I realize that state statute requires the Public Service Department to update RBES every three years. I believe the situation is serious enough that instead of adopting this update, they should instead be directed to prepare a version that un-deletes sections from the model International Energy Conservation Code (IECC) that govern administration and fine-tunes them for Vermont. I have appended the suggestions I made to PSD in July 2022 and to LCAR in December 2022. These suggestions were disregarded because they are currently outside PSD's legal authority.

Hopefully this delay will not be long. The Vermont Legislature has passed S.100 which establishes a study committee to resolve the issue. A broad group of stakeholders led by Energy Futures Group has applied for \$5million in Department of Energy funds to work with the study committee and to establish an RBES regulatory and educational infrastructure in Vermont. That group of stakeholders seems determined to see the process through even without the DOE grant. An administrative process could be in place as early as July 2024.

I hope LCAR will recognize the wisdom of holding off amendments to RBES and add its voice to the growing number of organizations and individuals asking for proper administration of Vermont's energy codes.

Sincerely yours,

Sandra R.F. Vitzthum, AIA

(I submitted these edits to Public Service in July 2022 and also to LCAR in December 2022.)

## CHAPTER 1: SCOPE AND ADMINISTRATION

### 101.6 Authority having jurisdiction

For any residential building under the jurisdiction of the Division of Fire Safety, the provisions of this code will be administered and enforced by their designated code official or authority having jurisdiction.

[Discussion: it needs to be explicitly clear that DFS has authority to resolve conflicts between other construction codes and RBES, as well as enforce completion of certificates. This includes single family homes offered as B&Bs and multifamily homes.]

For residential buildings not under the jurisdiction of the Division of Fire Safety, municipalities may designate a code official or authority to the extent allowed by Vermont statute.

[Discussion: This enables – finally – a path towards energy code oversight. The intent is to encourage local assistance and education. It is acknowledged that no municipality has authority to enforce without statutory language.]

In any instance where there is no state or local code official or authority having jurisdiction, the Vermont Public Service Department is not considered to be the “authority having jurisdiction, where one exists,” and those sections of this code requiring involvement by that entity do not apply. All other code requirements still apply.

#### R101.6.1 Deputies (new subsection)

With concurrence of the appointing authority, the *code official or authority having jurisdiction* shall have the authority to appoint a deputy, inspectors, plan examiners, and consultants. Such deputies will have powers as delegated by the *code official or authority having jurisdiction*.

[Discussion: Some Vermont towns would like to have a consultant, volunteer, or staff review projects and assist homeowners. This needs to be enabled. Also the authority for a “duly authorized representative” described below needs to be explained.]

### R107 Means of Appeals (Model code = R110)

#### R110.1 General.

In order to hear and decide appeals of orders, decisions, or determinations made by the *code official* relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the applicable governing authority and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the code official.

#### R110.2 Limitations on authority.

An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equivalent or better form of construction is proposed. The board shall not have authority to waive requirements of this code **except for historic buildings in accordance with NFPA Chapter 43.**

#### R110.3 Qualifications.

The board of appeals shall consist of members who are qualified by experience and training and are not employees of the jurisdiction.

#### R110.4 Administration.

The code official shall take immediate action in accordance with the decision of the board.

[Discussion: this entire normal section of building codes is missing. It needs to be included for situations where there is a code official. This section goes with the other important administrative rules in this chapter. In cases where a project has no code official, this chapter is already exempted.]

## CHAPTER 2 DEFINITIONS

### R202 General Definitions

**AUTHORITY HAVING JURISDICTION.** The officer or other designated authority charged with the administration and enforcement of this code, or a duly authorized representative, **where authorized by the Division for Fire Safety or a municipality.** For purposes of this code, the Department of Public Service is not the code official or authority having jurisdiction.

[Discussion: Current wording misses where the authority comes from. We need to stop avoiding this issue.]

CODE OFFICIAL OR AUTHORITY HAVING JURISDICTION. The officer or other designated authority charged with the administration and enforcement of this code, or a duly authorized representative, **where authorized by the Division for Fire Safety or a municipality.** For purposes of this code, the Department of Public Service is not the code official or authority having jurisdiction and shall not be required to conduct inspections of construction or construction documents. [Discussion: same issue as above.]

### **R401.3 Certificate of Compliance (Mandatory).**

[Discussion: This section is confusing as written. I suggest breaking it down with subsections and reorganizing.]

#### **R401.3.1 Scope.**

Upon completion and before occupancy of any project subject to the Residential Building Energy Standards, a certificate of compliance must **[not may!]** be completed and signed by a builder, a licensed professional engineer, a licensed architect or an accredited home energy rating organization, **and these professionals may be hired either by the homeowner or by the builder.** [moving up language from below] If certification is not issued by a licensed professional engineer, a licensed architect or an accredited home energy rating organization, it shall be issued by the builder. **This certificate with the qualified signature** shall certify that residential construction meets the RBES.

#### **R401.3.2 Certificate form.**

The required certificate is available from the Department of Public Service, in paper or online:

[https://publicservice.vermont.gov/sites/dps/files/documents/RBES%20Cert%202020\\_FINAL\\_20200916\\_v4\\_fillable.pdf](https://publicservice.vermont.gov/sites/dps/files/documents/RBES%20Cert%202020_FINAL_20200916_v4_fillable.pdf)

A copy is also included as an appendix to this code and handbook.

[Discussion: It is confusing to allow “substantially similar certificates.”]

#### **R401.3.3 Posting and filing.**

**After signing the certificate, the certifier must affix it to the electrical service panel without covering or obstructing the visibility of the circuit directory label, service disconnect label or other required labels. ~~The certificate shall certify that the residential building has been constructed in compliance with the requirements of the RBES.~~ The certifier shall also** provide a copy of the certificate to the Department of Public Service and shall assure that a certificate is recorded and indexed in the town land records. ~~A builder may contract with a licensed professional engineer, a licensed architect or an accredited home energy rating organization to issue certification and to indemnify the builder.~~

[Discussion: clarify language and delete repetition.]