



Amy Beasley Cronin
Secretary, Standards Council

1 September 2011

To: Interested Parties

Subject:

Standards Council Decision (Final):	D#11-17
Standards Council Agenda Item:	SC#11-8-16-b
Date of Decision*:	10 August 2011
NFPA 5000 [®] , <i>Building Construction and Safety Code</i> [®] , 2012 edition	

Dear Interested Parties:

At its meeting of August 9-10, 2011, the Standards Council considered an appeal on the above referenced matter. On August 19, 2011, NFPA issued the Council's decision on the appeal in the form of a "Short" decision which briefly stated the outcome of the appeal and which indicated that a full Final decision on the appeal would be issued in due course and sent to all interested parties as soon as it became available.

The Council's Final decision is now available and is attached herewith.

Sincerely,

A handwritten signature in black ink that reads "Amy Beasley Cronin".

Amy Beasley Cronin
Secretary, NFPA Standards Council

- c: D. Berry, M. Brodoff, L. Fuller, R. Solomon, A. Fraser, G. Harrington, D. Matthews, A. Woodberry
Members, Technical Committee on Technical Committee on Residential Occupancies (BLD-RES)
Members, Technical Committee on Building Systems (BLD-BSY)
Members, Technical Correlating Committee on Building Code (BLD-AAC)
Members, NFPA Standards Council (AAD-AAA)
Individuals Providing Appeal Commentary



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SUMMARY OF ACTION (for convenience only; not part of official decision): *The Standards Council voted to deny the appeal to accept Certified Amending Motion 5000-4, which sought to accept Comment 5000-137.*

DECISION:

At its meeting of August 9-10, 2011, the Standards Council considered an appeal from Jake Pauls of Jake Pauls Consulting Services. The appeal requests that the 2012 edition of NFPA 5000[®], *Building Construction and Safety Code*[®], be issued with the acceptance of Certified Amending Motion (CAM) 5000-4. This motion sought the acceptance of Comment 5000-137, which proposed to accept Proposal 5000-164. The effect of this motion would be to modify 22.1.7 and 22.1.7.1 to include new provisions on accessibility as follows:

22.1.7 Accessibility (~~No requirements.~~)

22.1.7.1 All new buildings or portions thereof used as a one- or two-family dwelling shall comply with ICC/ANSI A117.1, section 1006 Type C Units (Visitability) unless:

(1) they comply with the requirements in ICC/ANSI A117.1 for Type A or Type B units,

(2) they are a dwelling unit located above another dwelling unit or

(3) they meet the site impracticability test set out in Section 12.33.3.2.4 or the base flood elevation conditions set out in Section 12.33.3.2.5

The background on these proposed new provisions (the accessibility provisions), is as follows. As indicated above the accessibility provisions were proposed initially through Proposal 5000-164. The Technical Committee on Residential Occupancies (BLD-RES) rejected Proposal 5000-164 based in part on the fact that that ICC/ANSI A117.1-2009, *Accessible and Usable Buildings and Facilities Standard*, which was referenced in the provisions, was not yet available. Concurrently, the Technical Committee on Building Systems (BLD-BSY) considered the same material in Proposal 5000-165 and Accepted in Principle, noting this action was subject to the new edition of ICC/ANSI A117.1 being available for review and confirmation at the Comment phase of the revision process. The Technical Correlating Committee on the Building Code (TCC), in its action on these two proposals, requested that both TCs review the recommendations made in the proposals during the Comment phase once ICC/ANSI A117.1-2009 was available, and the TCC

also requested that input be sought from the NFPA's Disability Access Review and Advisory Committee (DARAC).

The new edition of ICC/ANSI A117.1-2009 did not, in the end, become available during the Comment phase. For this and other reasons, when the accessibility provisions were again proposed through Comment 5000-137, BLD-RES rejected the comment along with a related Comment 5000-139. Concurrently, the accessibility provisions were considered by BLD-BSY in Comment 5000-140a. Although the initial action by BLD-BSY was to accept in principle, the action conflicted with that of BLD-RES and the TCC, in accordance with its correlation authority, revised that action to reject stressing that acceptance of the Comment was not appropriate since the 2009 edition of the ICC/ANSI A117.1 standard was not yet available. A Certified Amending Motion seeking to Accept Comment 5000-137 was made at the 2011 Association Technical Meeting (Tech Session). The motion failed. The accessibility provisions, therefore, did not achieve acceptance through the codes and standards process.

On appeal, the Council accords great respect and deference to the NFPA codes and standards development process. In conducting its review, the Council will overturn the result recommended through that process only where a clear and substantial basis for doing so is demonstrated. The Council has reviewed the entire record concerning this matter and has considered all the arguments put forth in this appeal. In the view of the Council, this appeal does not present any clear and substantial basis on which to overturn the results yielded by the NFPA codes and standards development process. Accordingly, the Council has voted to deny the appeal. The effect of this action is that NFPA 5000 will not contain the accessibility provisions proposed for Sections 22.1.7 and 22.1.7.1.

The appellant also requested Council to clarify which NFPA 5000 TC has jurisdiction over scoping of the ICC/ANSI A117.1 standard within NFPA 5000. Going forward, the Council directs that the following actions be completed prior to the start of the next revision cycle, and the findings reported back to Council.

The TCC is to review the scope of BLD-BSY to determine if that committee has sufficiently broad scope authority over all aspects of accessibility within NFPA 5000 and to determine the extent, if any, that the respective technical committees within the project have the ability or authority to modify recommendations of BLD-BSY for the subject of accessibility in their respective chapters. The TCC should recommend any changes to the scope of BLD-BSY as well as other TCs within the project if it is determined that such changes are in order. As part of this review process, the TCC should consider the input of BLD-BSY, BLD-RES and other TCs within the project, as appropriate. Additionally, the perspective of the NFPA DARAC should also be considered.

Committee Member Shane Clary recused himself during the deliberation and vote on this issue.