STATE OF MINNESOTA
IN COURT OF APPEALS
A15-0116

Builders Association of the Twin Cities, a non-profit trade association,

Petitioner,

v.

Minnesota Department of Labor and Industry, a state agency,

Respondent.

REPLY BRIEF OF PETITIONER

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I. THE SPRINKLER RULE IS INVALID AS A MATTER OF LAW BECAUSE IT DOES NOT CONFORM WITH CODES GENERALLY ACCEPTED AND IN USE THROUGHOUT THE UNITED STATES.

Respondent Minnesota Department of Labor and Industry ("DLI") exceeded its statutory rulemaking authority when it adopted the Sprinkler Rule. *See* Minn. Stat. § 326B.106, subd. 1. Minnesota law requires DLI to conform the building code "insofar as practicable to model building codes generally accepted and in use throughout the United States." Minn. Stat. § 326B.106, subd. 1. "Appellate courts 'apply the de novo standard of review to the question of whether the [agency] has exceeded its statutory authority' and 'resolve any doubt about the existence of any agency's authority against the exercise of such authority." *GH Holdings, Inc. v. Minn. Dep't of Commerce*, 840 N.W.2d 838, 841-42 (Minn. Ct. App. 2013) (quoting *In re Minn. Power*, 838 N.W.2d 747, 753 (Minn. 2013)).

The 2009 International Residential Code ("IRC") was amended in September 2008 to require automatic sprinklers in all new single-family homes. *See* Ex. A-5(L)(9). Since that time, an overwhelming majority of the United States have rejected the IRC's model sprinkler provision. *See* Ex. A-5(L)(13). DLI chose to "skip" adoption of the 2009 IRC, but then later took up consideration of the 2012 IRC, which included the same residential sprinkler requirement for new single-family homes. *See* Ex. A-5(C); *see also* 2012 IRC, § 313.2. By the time DLI took up consideration of the residential sprinkler provision, 41 states (including all of Minnesota's neighboring states) had affirmatively rejected the model code requirement for automatic sprinklers in single-family homes. *See* Ex. A-

5(L)(13). DLI, in direct conflict with Minnesota law, ignored and disregarded the statutory limitation imposed on its rulemaking authority and advanced the Sprinkler Rule—a rule that does not conform to model codes "generally accepted *and* in use throughout the United States." Minn. Stat. §326B.106, subd. 1 (emphasis added).

DLI does not dispute or deny that the model residential sprinkler provision has been widely rejected throughout the United States (with only two states adopting such a provision), and instead argues that "the law 'does not require [DLI] to *wait* until the majority of states have approved a particular construction practice before including it in the Minnesota Building Code.'" *See* DLI Br. at 29 (quoting ALJ Lipman) (emphasis added). It is not a matter of *waiting* for a construction practice to gain approval by a majority of states. The model sprinkler provision, upon which DLI patterned the Sprinkler Rule, had already been affirmatively *rejected* by a vast majority of the states when it was taken up for consideration by DLI. The residential sprinkler provision first appeared in the 2009 IRC and had been steadfastly rejected throughout the United States before DLI commenced its rulemaking process.

DLI, by broadly asserting that the IRC is the *only* model residential code that is generally accepted, does not relieve itself of the statutory obligation to assure that the proposed rule change (here the "Sprinkler Rule") is based on a model provision that is generally accepted *and* in use throughout the United States. The Sprinkler Rule itself is different from and does not conform to the "model" sprinkler rule in the IRC. DLI cannot rely generally on the broader IRC to establish the Sprinkler Rule is based on a

model provision that is accepted and in use throughout the United States. It clearly is not, and therefore has no place in the Minnesota Residential Code.

DLI not only ignored and disregarded the statutorily-imposed limitations on its rulemaking authority, it also disregarded the recommendations of its "Chapter 1309 Advisory Committee," which voted in favor of a proposal that would remove, prior to adoption, the fire sprinkler mandate for single-family homes from the 2012 IRC. *See* Ex. A-5(L)(31). DLI also ignored and disregarded the repeated direct messages sent to it from the Minnesota Legislature regarding the residential sprinkler provision. *See* Ex. A-5(L)(2). The Minnesota Legislature twice passed legislation that would prohibit requiring fire sprinklers in single-family homes. *See* Ex. A-5 (L)(2), (3). DLI argues that "[t]hese bills, both of which were vetoed by the Governor, are not relevant to the narrow issues before the Court in this pre-enforcement declaratory judgment action." *See* DLI Br. at 31, fn. 11. When the Minnesota Legislature, the body from which DLI receives its enabling authority and jurisdiction, has troubled not once, but twice to send a direct message to DLI in the form of legislation that would prohibit requiring fire sprinklers in single-family homes, it leaves no doubt that the Minnesota Legislature, consistent with the majority of the United States, rejects a residential sprinkler mandate for single-family homes. DLI has clearly exceeded its authority, which makes the Sprinkler Rule invalid as a matter of law.

II. DLI FAILED TO CONSIDER ALTERNATIVES TO THE SPRINKLER RULE IN VIOLATION OF THE LAW AND ADOPTED A RULE THAT NEITHER REPRESENTS THE LEAST-COSTLY METHOD NOR TENDS TO LOWER COSTS OF CONSTRUCTION.

A. DLI Did Not Consider Any Alternatives to the Sprinkler Rule.

DLI was required by statute to make a "determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule." Minn. Stat. § 14.141(3). DLI was further required to provide a "description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule." Minn. Stat. § 14.141(4). DLI admittedly did neither. *See* Ex. A-5(B) at 4 (indicating that "there are no less costly" methods and that "no alternative model code was considered"). The failure to comply with rulemaking requirements imposed by statute will render the rule invalid. *White Bear Lake Care Center, Inc. v. Minnesota Dep't of Public Welfare*, 319 N.W.2d 7, 9 (Minn. 1982).

Rather than make a determination as to whether less costly alternatives to the Sprinkler Rule exist and provide an explanation as to why those alternatives were not adopted, DLI took the unsupported position that "[t]here are no less costly or intrusive methods for achieving the purpose of the purposed rule" because its "purpose" was to broadly amend the existing code with the 2012 IRC and no alternatives exist to the IRC. *See* Ex. A-5(B) at 4; *see also* DLI Br. at 14, 42. In other words, DLI, by focusing broadly on "Rule 1309" rather than more specifically on the highly-controversial "Fire Sprinkler Standard" (as DLI refers to it), sought to avoid addressing the less costly and effective

alternatives that exist. *See Id.* DLI was required by law, but failed to consider and analyze alternatives to the Sprinkler Rule.

B. The Sprinkler Rule Does Not Represent the Least-Costly Alternative and It Does Not Tend to Lower Construction Costs.

DLI, directed by statute to permit construction at the "least possible cost consistent with recognized standards of health and safety" (Minn. Stat. § 236B.101), was aware of less-costly alternatives to the Sprinkler Rule that establish its purported objectives. As the record reflects, interconnected smoke alarms provide effective fire-safety at a fraction of the cost of fire sprinklers. Ex. A-5(L)(22); Ex. A-6 at 694. Gypsum wallboard, as underfloor protection, addresses the purported concerns related to floor collapse and also serves as an effective fire protection measure—again, at a fraction of the cost of fire sprinklers. Ex. A-4 at 116:6-10. Despite being fully aware of these less-costly and effective alternatives, DLI failed to properly consider them.[1]

Minn. Stat. § 326B.101 further requires that the "methods, devices, materials and techniques" incorporated into the building code must, in part, tend to lower construction costs. The statute makes clear that the Commissioner "shall" adopt such techniques. *Id.* Evidence submitted in the rulemaking proceedings establishes that 30% of homeowners may be affected by the Sprinkler Rule, and that price increases for the 4,500 square foot homeowner may range from $9,900 to $21,825. Ex. A-5(L)(46), (47). DLI does not

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[1] In this regard, DLI also violated the statutory mandate to adopt a code based upon desired results rather than based upon incorporation of specific methods. *See* Minn. Stat. § 326B.106. DLI has, from the outset of the rulemaking proceedings, improperly focused narrowly on a specific method—residential fire sprinklers—and not desired results.

dispute that requiring sprinklers will not dramatically increase construction costs. *See* DLI Br. at 33-34. DLI instead interprets this statute to be a mere "legislative prediction," which inappropriately nullifies the mandatory directive contained within the statute. The Court can easily find the Sprinkler Rule does not satisfy the statutory directive without defining the precise parameters of the rulemaking obligation. Moreover, contrary to the assertion of DLI, BATC is not arguing that a *de minimis* increase in costs such as that incurred in installing sprinklers violates the statutory directive. There is a material difference between the insignificant costs to install smoke alarms and the thousands of dollars that it will cost to install sprinklers.

III. THE SPRINKLER RULE LACKS A RATIONAL BASIS BECAUSE THE 4,500 SQUARE FOOT THRESHOLD IS ARBITRARY AND UNSUPPORTED.

DLI selected a 4,500 square foot threshold without making a reasoned determination as to the rationality of the threshold. *See Manufactured Housing Institute v. Pettersen*, 347 N.W.2d 238, 246 (Minn. 1984). The 4,500 square-foot threshold was not proposed by any stakeholder and was not formulated by reference to any scientific sources. Courts apply the arbitrary and capricious standard in the context of a constitutional substantive due process challenge to an administrative rule. *Id.* at 244. The court must make a "'searching and careful' inquiry of the record to ensure that the agency action has a rational basis." *Id.* (citations omitted). DLI must explain the evidence upon which it relied and how the evidence connects rationally with its choice of action. *Id.*; *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency*, 469 N.W.2d 100, 103 (Minn. Ct. App. 1991). DLI has failed to do so.

DLI seeks to rely on the Sprinkler Rule SONAR to support the 4,500 square foot threshold. *See* DLI Br. at 37. But, as addressed in BATC's initial brief (pp. 14, 30-33), this reliance is misplaced. DLI cites to the SONAR and argues that "fire safety groups indicated that homes between 4,000 and 5,000 square feet and larger provide the greatest life-safety risk to the public and that the Minnesota Department of Public Safety indicated that most fire departments are not equipped to handle fires involving large buildings." *See* DLI Br. at 37-38 (referencing Ex. A-5.B at 32-33). Members of the fire service did not, however, advocate for a 4,500 square foot threshold. To the contrary, members of the fire service criticized the 4,500 square foot threshold as being unwarranted and in conflict with the goals sought to be advanced by mandating sprinklers. *See, e.g.,* Comments of President-Elect, Minnesota Chapter, National Fire Sprinkler Association, Ex. A-6 at 41; *see also* Testimony of Angie Wiese, St. Paul Fire Protection Engineer and Representative of Fire Marshals Association, Exhibit A-4, 134:18-20. The Minnesota State Fire Chief and the Fire Marshal's Association likewise did not support a 4,500 square foot threshold. Ex. A-5(L)(29)(last page).[2] DLI's reliance on the SONAR and fire service members for support of the 4,500 threshold square footage is misplaced.

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[2] The State Fire Chiefs Association and the Fire Marshal's Association recommended either:

(a) adopt a threshold minimum of **2,000** square feet; or
(b) require any dwelling constructed with lightweight trusses to be sprinklered; or
(c) adopt the IRC as drafted (i.e., sprinklers for all new single-family homes); or
(d) adopt a 5-year phased-in implementation schedule starting at 5,000 square feet.

Ex. A-5(L)(29)(last page).

The same can be said for DLI's reliance on the SONAR for the claim it attributes to the Minnesota Department of Public Safety that "most fire departments are not equipped to handle fires involving large homes." *See* DLI Br. at 38. DLI cites to the SONAR in support of claim, but the SONAR itself fails to identify a source. *See* DLI Br. at 37-38; *see also* Ex. A-5.B at 33. The Court should disregard this unsupported conclusory statement. *See Pettersen*, 347 N.W.2d at 245 (recognizing that a court should not simply accept an agency's stated conclusion).

DLI suggests that the 4,500 square foot threshold is not arbitrary because it represents an attempt to reach the middle ground between various positions on sprinklers. *See* DLI Br. at 37. This argument is dubious from the outset: as noted above, the fire service was *not* advocating a fixed threshold between 4,000 or 5,000 square feet. Moreover, in *Pettersen*, the Court rejected an agency's attempt to select a particular standard because it was the middle point between standards advocated by others. In that case, the commissioner of the Minnesota Department of Health initially proposed a maximum formaldehyde standard of 0.4 ppm. *Id.* at 243. The hearing examiner rejected the commissioner's standard as unreasonable and substituted a standard of 0.8 ppm. *Id.* The chief hearing examiner agreed the commissioner's standard was unreasonable, but instead—without providing any reasons as to why a standard of 0.8 ppm was not adopted—concluded a standard of 0.5 ppm or higher should be adopted. *Id.* The commissioner adopted the chief hearing examiner's standard, evidently based solely on the fact the chief hearing examiner had adopted it. *Id.* The state supreme court concluded the commissioner's action was arbitrary and capricious. DLI's suggestion that

the 4,500 square foot threshold survives arbitrary and capricious review simply because it was selected by the agency is directly in conflict with the holding in *Pettersen*.

DLI also cannot justify or rationalize the 4,500 square foot threshold based on the abstract notion that a homeowner building a larger home can afford to bear the cost of installing sprinklers. The idea that only homes of a certain threshold size would warrant fire sprinkler protection wholly undermines the purported life safety justifications that DLI has advanced for requiring sprinklers in the first place. The 4,500 square foot threshold was arbitrarily selected by DLI, and accordingly, the Sprinkler Rule lacks rationality and must be struck down.

IV. THERE IS NO EVIDENCE THE SPRINKLER RULE WILL HAVE A RECOGNIZABLE BENEFIT IN PROTECTING PERSONS OR PROPERTY FROM FIRES.

DLI has provided much speculation, but little evidence, that the Sprinkler Rule will have an appreciable benefit in protecting persons and property from fire. Instead, the rulemaking record evidences that hardwired, battery backup interconnected smoke alarms have been remarkably effective in protecting homeowners and firefighters and that no further fire-safety protection is reasonably required. Therefore, DLI has failed to carry its burden to show that the Sprinkler Rule is both needed and reasonable. *See* Minn. Stat. §§ 14.131; 14.14, subd. 2; 14.15, subd. 4; Minn. R. 1400.2070, subpart 1; Minn. R. 1400.2100(B); Minn. R. 1400.2220, subp. 3. The Sprinkler Rule's lack of an appreciable benefit makes it arbitrary, contrary to Minnesota statutes and rules, and contrary to constitutional guarantees.

DLI spends a substantial portion of its brief restating testimony offered at the administrative hearing on a fire event that it refers to as a "flashover." *See* DLI Br. at 16-19. DLI has made no effort to establish the actual likelihood of a flashover event at a new single-family home causing death to an owner or a firefighter. Fatality statistics would indicate the risk is remarkably small, if not nonexistent. The uncontradicted evidence is that, for those single-family homes constructed in or after 1990—the homes that should be the most susceptible to flashovers according to DLI—there *has not been a single civilian fatality since 2003 in Minnesota*. Furthermore, between 1988 and 2011, no firefighter perished while fighting a fire in a single-family home of any size. There is no evidence that flashovers present a genuine threat meriting the imposition of sprinklers.

Despite the suggestion that fire sprinklers and smoke alarms are both necessary to provide adequate protection in the event of a fire (*see* DLI Br. at 17 referencing testimony of Jeffrey Hudson), evidence introduced in the rulemaking proceedings indicates that there is a 99.45% rate of survival in a home with *one* working smoke alarm. Ex. A-6 at 699. Smoke alarms plainly satisfy the statutory directive that the "construction of buildings should be permitted at the least possible cost consistent with *recognized standards of health and safety*." *See* Minn. Stat. § 326B.101 (emphasis added). DLI itself has recognized that newly constructed single-family homes are safer than they have been in the past: "To be sure, single-family homes today are safer than they were in the past." (Ex. A-6, p. 101, Statement of DLI Commissioner). Yet DLI has stated the intention behind the Sprinkler Rule is to make single-family homes "even safer." *Id.* DLI was not, however, directed by the Minnesota Legislature to adopt the safest building

code possible. The Sprinkler Rule goes well beyond recognized standards of health and safety into the realm of inherently speculative benefits to health and safety.

Nor have sprinklers been shown to have an appreciable net benefit to homeowners. To argue that sprinklers reduce property damage, DLI relies exclusively upon a report briefly discussed in a prior sprinkler code change proposal made by FMAM. *See* DLI's Br. at 10 (citing *Communities with Home Fire Sprinklers. The Experience in Bucks County, Pennsylvania* (Nov. 2011), Ex. A-5.B.7 at 9.[3] While DLI gives prominent attention to the conclusions of the report, DLI fails to note that the report, insofar as it attempts to quantify the impact of sprinklers on property damage, considers precisely *five* instances in Bucks County, Pennsylvania where fires occurred in homes with sprinklers. *See generally id.* DLI ignores broader and more reliable data in the record submitted from fire departments from each state across the United States collected over a three-year period demonstrating that, for fires involving one- or two-family dwellings, sprinklers reduce property damage on average *only* $4,000. Ex. A-5(L)(66) at 58. Even using DLI's estimation of sprinkler installation costs (over $7,000 for a 4,500 square foot home), a homeowner will not see a net positive benefit from

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[3] The conclusions in this report reflecting that property damage on average is reduced from $180,000 to $14,000 are contradicted by the Department of Commerce report referenced by DLI's *amicus* Pipe Trades Association which indicates that the average property damage reduction from having sprinklers installed is only slightly over $3,000, from $18,052 to 15,028 (U.S. Dep't of Commerce, Nat'l Inst. of Standards & Tech., *Benefit-Cost Analysis of Residential Fire Sprinkler Systems* (2007), and therefore, is insufficient to justify the expense of fire sprinklers.

having sprinklers installed in the event of a fire. The homeowner will instead experience a $3,000 net loss, based on a nationwide average.

As is demonstrated by the above, the Sprinkler Rule is arbitrary, unneeded, unreasonable, and unconstitutional.

V. THE PIPE TRADES ASSOCIATION RELIES ON REPORTS THAT WERE NOT PART OF THE RULEMAKING PROCESS AND ARE OTHERWISE UNRELIABLE AND UNSUPPORTIVE OF DLI'S POSITION.

DLI's *amicus* Pipe Trades Association makes numerous references to reports that appear to be outside of the administrative record that provide data about fire deaths and injuries, as well as property damage in sprinklered vs. non-sprinklered homes. The Pipe Trades Association has failed to point to that part of the administrative record discussing or incorporating these reports, and therefore, that information cannot serve to support DLI's rulemaking decision at issue in this matter.[4] Moreover, to the extent the reports are reviewed or considered, the information does not serve to advance DLI's position.[5]

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[4] *See Gutierrez v. Eckert Farm Supply, Inc.*, No. C5-02-1900, 2003 Minn. App. LEXIS 802, at *17 (Minn. Ct. App. July 1, 2003) ("whenever a brief references a part of the record, the party must cite with specificity where to find such information.") (referencing Minn. R. Civ. App. P. 128.03).

[5] DLI takes issue with certain documents referenced in the briefs submitted by *amicus* filed in support of BATC. *See* DLI Br. at 27. However, the *amicus* only reference documents and facts that likely would have escaped the Court's attention. The Court may review information and documents submitted by *amicus* where doing so furthers the purposes behind allowing *amicus* briefs. The purpose of an *amicus* brief is to "inform the court as to facts or situations which may have escaped consideration or to remind the court of legal matters which may have escaped its notice." *Blue Earth County Pork Producers v. County of Blue Earth*, 558 N.W.2d 25 (Minn. Ct. App. 1997) (citation omitted). An amicus brief may discuss information that is in the public domain. *See State v. Kuhlman*, 722 N.W.2d 1, 3 (Minn. Ct. App. 2006). This Court has relied upon this exception to

- The Pipe Trades Association references the 2014 Minnesota Department of Public Safety ("DPS") Report titled "Fire in Minnesota," the report discusses so-called "sprinkler saves" in Minnesota.[6] The report makes sweeping conclusions about the likely effects of sprinklers without providing any data which can be used to substantiate the conclusions. The report lists 3 sprinkler activations in "1 and 2 family dwellings," but does not discuss how much property loss occurred in those situations, or whether the *occupants were even home*. Without even this basic information, a mere sprinkler activation can hardly be called a "save."

- The DPS report states that in 2013 there were nine fatalities in residential homes with working smoke alarms.[7] However, no detail is provided concerning (a) when these homes were constructed; (b) how large the homes are; or (c) whether the smoke alarms in the homes were interconnected. What is known, is that of the nine, one instance it was unknown why the occupant did not exit the building and in four instances the reason attributable as to why the occupants did not exit was intoxication. It should be noted that it does not appear there were any firefighter fatalities in 2013 from actively fighting a fire, nor is there an indication that firefighters have sustained injuries from falling through floors.[8]

- The DPS report indicates that, between the 1970s and the 2000s, fire casualties have decreased by approximately 20% *each decade*, notwithstanding significant population growth during this period.[9] The data is contrary to the implicit assertion made by Bruce West, the State Fire Marshal, that overall the number of fire deaths did not continue declining during the 2000s.[10] Moreover, the DPS report places the number

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consider documents not introduced at the district court level. In *Blue Earth County Pork Producers*, a case involving a challenge to a county ordinance regulating livestock manure management, an amicus submitted (a) materials in their brief "regarding the description of feedlots," and (b) documents regarding the administrative history of MPCA feedlot rules. 558 N.W.2d at 30. The court denied a motion to strike these materials, concluding that they satisfied the purposes of an amicus brief and therefore could be considered. *Id.* The same rule should be applied to the *amicus* briefs filed in support of BATC here.

6 *See* Pipe Fitters Br. at 5; Minn. Dep't of Pub. Safety, *Fire in Minnesota*, at 9-10 (2014).

7 *See id.* at 30.

8 *Id.* at 37-38.

9 *Id.* at 36.

10 *See* Ex. A-6 at 57-61.

of total fire deaths in the state for 2013 at 44, which is contrary to Mr. West's conclusion that fire deaths appeared to be on an upward trend since 2009.[11]

- The U.S. Department of Commerce report titled "Benefit-Cost Analysis of Residential Fire Sprinkler Systems" referenced on page 4 of the Pipe Trades Brief relies upon sprinkler cost estimations that are *well* below even DLI's cost estimates in conducting a cost-benefit analysis.[12] This has significantly skewed the analysis. For example, to compute the sprinkler installation cost for a 3,338 square foot, 2-story home, the Department of Commerce used an installation cost of $0.62 cents per square foot, which is about $1.00 per square foot *less* than DLI's own lowest estimated sprinkler cost per square foot.[13] If DLI's square foot installation cost estimate is used instead to compute the installation cost for this 3,338 square foot home (i.e., $1.61 per square foot), it would cost $5,374 to install sprinklers. The cost to install sprinklers in the example home would thus exceed the Department of Commerce's estimated present value of net benefits accruing to the home by close to $2,500.[14]

- The Department of Commerce report contains data bearing upon the average direct property loss sustained by a home in a fire.[15] The report indicates that homes with sprinklers sustain on average $15,028 in property damage, as compared with $18,052 on average for those homes without sprinklers but with smoke alarms. Thus, the report suggests that the average property damage avoided by having sprinklers installed is only $3,024. This is significantly more than DLI's (underestimated) approximate cost to install sprinklers in a 4,500 square foot home ($7,000).

It also must be noted that the Pipe Trades Association understated in their *amicus* brief the additional protection that may be obtained through installation of gypsum wall board. The Association stated that gypsum wallboard would only provide an additional 7 minutes before collapse, implying that this is the additional protection that would be offered over and above of modern lightweight floor construction. However, the

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11 *See id.*; *see also* Minn. Dep't of Pub. Safety, *Fire in Minnesota*, at 36.

12 U.S. Dep't of Commerce, Nat'l Inst. of Standards & Tech., *Benefit-Cost Analysis of Residential Fire Sprinkler Systems* (2007).

13 *See id.* at ES-2.

14 *See id.*

15 *See id.* at 11-12.

Underwriters Laboratories report titled *Structural Stability of Engineered Lumber in Fire Conditions* reveals that gypsum wallboard with 12 inch deep I joints and 24 inch centers for supports can withstand 26 minutes of fire before floor collapse, which is 8 minutes of floor protection *over older legacy construction* (which has been shown to collapse after approximately 18 minutes) and approximately 18 more minutes of fire protection over modern lightweight floor protection (which will collapse after approximately 6 minutes). *See* Ex. A-5(B.2) at 4; *see also* Ex. A-5(L)(14). This is highly significant because DLI has repeatedly argued that it is the materials used in modern construction that makes them more susceptible to fire and thus merits imposing the Sprinkler Rule only on new homes. This rationale is not credible when gypsum wallboard can make modern flooring withstand fire for ever longer periods than legacy construction.

CONCLUSION

Based on the foregoing, BATC respectfully requests this Court invalidate the Sprinkler Rule. Based on the arguments previously advanced by BATC, BATC further requests the Court invalidate the Energy Code.

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