

Recommended change to Wisconsin SPS 361.41(1)(c):

361.41(1)(c) On-site inspections shall be conducted by an authorized representative of the department to determine whether or not the construction or installations conform to the conditionally approved plans, and the conditional approval letter, ~~and chs. SPS 361 to 366.~~

Background, context, and supporting information

DSPS Approval Letters for Commercial Building Plans are currently issued with language like this:

CONDITIONAL APPROVAL

PLAN APPROVAL EXPIRES: 03/21/2022

(Please forward a copy of this letter to the fire department conducting inspections of this project.)

...

The following conditions shall be met during construction or installation and prior to occupancy or use:

KEY ITEMS:

- **SPS 361.31** - These plans were conditionally approved electronically. The designer is responsible to download the plans, print out complete sets and permanently bind each set of the conditionally approved electronic plans, along with a complete bound set of specifications, as submitted to the Department, for reference in the field. Plans for field reference shall be the same size and scale as originally submitted to the Department per SPS 361.31(2)(a), and per SPS 361.31(2)(d) shall be clear and legible. A complete bound conditionally approved set

The Conditional Approval letter uses the word “Conditional” to indicate that the DSPS plan reviewer may identify specific issues about the project that should become part of the project’s compliance determination during inspection and project completion by the design’s supervising professional. This intent is confirmed by the words “following conditions” appearing on the DSPS approval letter just before the section that would contain bullet items of plan reviewer feedback in sections labeled “KEY ITEMS:”, “ALSO ADDRESS:”, and “REMINDERS:”.

DSPS has a tradition of interpreting the word “Conditional” in the CONDITIONAL APPROVAL letter to allow for a much broader interpretation of DSPS power, allowing DSPS staff (plan reviewers or commercial building inspectors) to change the compliance conditions for the project after building plan review is complete and after construction is complete, even when the builder, designer, and building owner have not changed their intentions documented before plan review, but the DSPS staff simply changes their mind about a code interpretation or determines that they “missed” something during plan review.

DSPS Staff has defended this interpretation by referring to **SPS 361.41(1)(c) Inspections:**

(c) On-site inspections shall be conducted by an authorized representative of the department to determine whether or not the construction or installations conform to the conditionally approved plans, the conditional approval letter, and chs. SPS 361 to 366.

The inclusion of chapters SPS 361 to 366 basically allows the inspector or plan reviewer to take a fresh look at the building's compliance in the eyes of the entire Wisconsin Building Code when determining whether or not the completed building complies with the code. This can result in the building undergoing a second (or third, or fourth) "plan review" during or after construction. If the building inspector disagrees with something the plan reviewer decided, or finds something the plan reviewer missed, this will add delays to building occupancy and require costly changes to the construction project which could almost always be reasonably mitigated before construction begins, or it may result in the project being modified or cancelled before construction costs are incurred.

The administrative section (Chapter 1) of IBC 2015 addresses this issue in the inspection requirements by using different language. In adopting IBC 2015 in the current building code, Wisconsin has not adopted any provisions of the administrative section (Chapter 1), relying on the provisions of SPS 361 instead. Still, the contrast and reasons for the IBC section on approval and Construction Documents is educational and enlightening:

[A] 107.3.1 Approval of construction documents. When the *building official* issues a *permit*, the *construction documents* shall be *approved*, in writing or by stamp, as "Reviewed for Code Compliance." One set of *construction documents* so reviewed shall be retained by the *building official*. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the *building official* or a duly authorized representative.

The commentary to this section provides additional insight:

- ❖ The building official must stamp or otherwise endorse as "Reviewed for Code Compliance" the construction documents on which the permit is based. One set of approved construction documents must be kept on the construction site to serve as the basis for all subsequent inspections. To avoid confusion, the construction documents on the site must be the documents that were approved and stamped. This is because inspections are to be performed with regard to the approved documents, not the code itself. Additionally, the contractor cannot determine compliance with the approved construction documents unless they are readily available. If the approved construction documents are not available, the inspection should be postponed and work on the project halted.