



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

**MEETING
OF THE
FLORIDA BUILDING COMMISSION**

**PLENARY SESSION MINUTES
OCTOBER 13, 2010**

APPROVED DECEMBER 9, 2010

The meeting of the Florida Building Commission was called to order by Chairman Raul Rodriguez at 8:36 a.m., Wednesday, October 13, 2010 at the Hilton Hotel, Gainesville, Florida.

COMMISSIONERS PRESENT:

Raul L. Rodriguez, AIA, Chairman
Richard S. Browdy, Vice-Chairman
Jeffrey Gross
Angel "Kiko" Franco
Jeff Stone
James E. Goodloe
James R. Schock
Herminio F. Gonzalez
Robert G. Boyer
Hamid R. Bahadori
Drew M. Smith
Christopher P. Schulte
Mark C. Turner
Randall J. Vann
Jonathon D. Hamrick
Kenneth L. Gregory
Joseph "Ed" Carson
Raphael R. Palacios

Nicholas W. Nicholson
Dale T. Greiner
John J. Scherer
John "Tim" Tolbert

COMMISSIONERS ABSENT:

Scott Mollan
Anthony M. Grippa
Donald A. Dawkins

OTHERS PRESENT:

Rick Dixon, FBC Executive Director
Ila Jones, DCA Prog. Administrator
Jim Richmond, DCA Legal Advisor
Jeff Blair, FCRC Consensus Solutions
Mo Madani, Technical Svcs. Manager
Leslie Anderson-Adams, Access
Council Legal Counsel

WELCOME

Chairman Rodriguez welcomed the Commission, staff and the public to Gainesville and the October 2010 plenary session. He stated the primary focus of the October meeting was to decide on regular procedural issues including product and entity approvals, applications for accreditor and course approvals, petitions for declaratory statements, accessibility waivers, recommendations from the Commission's various committees, and conduct workshop on fees for the Commission's functions and programs including non-binding opinions, declaratory statements and accessibility waivers.

Chairman Rodriguez stated if anyone wished to address the Commission on any of the issues before the Commission they should sign-in on the appropriate sheet(s). He then stated, as always, the Commission would provide an opportunity for public comment on each of the Commission's substantive discussion topics. He further stated if one wants to comment on a specific substantive Commission agenda item, they should come to the speaker's table at the appropriate time so the Commission knows they wish to speak. He concluded by stating public input was welcome, and should be offered before there was a formal motion on the floor.

Chairman Rodriguez stated after great effort different organizations, such as AIA for example, would now be crediting individuals for attending the Commission meetings and serving on the Commission.

Mr. Blair stated architects attending the Commission meetings could receive CEU credits as well as building code administrators and electrical contractors. He then stated for individuals who have CILB licenses have to be a member of the Commission to receive credits. He further stated he knew general building contractors can receive credit if they are a member of a TAC. He stated there were sheets available at the meeting which can be signed to verify attendance

Chairman Rodriguez thanked Commissioner Gross for convincing his architect colleagues being part of the Commission was worthwhile.

Chairman Rodriguez then conducted a roll-call of the Commission members.

REVIEW AND APPROVE AGENDA

Mr. Blair conducted a review of the meeting agenda as presented in each Commissioner's files. He amended the agenda stating there would be no Mechanical TAC report.

Commissioner Carson moved approval of the meeting agenda as amended. Commissioner Nicholson entered a second to the motion. Vote to approve the motion as amended was unanimous. Motion carried.

REVIEW AND APPROVE AUGUST 10, 2010 COMMISSION MEETING MINUTES AND FACILITATOR'S REPORT

Chairman Rodriguez called for approval of the minutes and Facilitator's Report from the August 10, 2010 Commission meeting.

Commissioner Greiner moved approval of the minutes and the Facilitator's Report from the August 10, 2010 Commission meeting. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

CHAIR'S DISCUSSION ISSUES AND RECOMMENDATIONS

Chairman Rodriguez announced the following appointments to the TACs and workgroups:

Accessibility Code Workgroup

Ronald Machon was appointed to the Accessibility Code Workgroup. He will be replacing Skip Gregory who will be retiring.

Structural TAC

Steve Strawn was appointed to the Structural TAC. He will be replacing Dave Olmstead.

Chairman Rodriguez stated the federal agency responsible for updating the ADA Accessibility Guidelines completed the current edition in 2004 and since that time the Department of Justice has been in the process of adopting the 2004 ADAAG and modifying additional standards, which together constitute the ADA Standards for Accessible Design. He further stated the DOJ has just completed the final step in the rule update process, publishing of its updated rules in the September 15, 2010 Federal Register. He continued stating the new federal standards become mandatory March 15, 2012 and the Florida Accessibility Code must be updated to the new federal standards by that date in order to keep building owners from having to comply with two different standards. He then stated that if Florida was starting from ground zero, we would be under great pressure to conform the Florida Accessibility Code with the newly published ADA Standards in the required timelines. However, recognizing that the DOJ was in the process of finalizing its rules updating the Standards for Accessible Design, Commissioner Gross,

Accessibility TAC chair, asked the Chairman in 2008 to establish a workgroup to begin modifying the Florida Accessibility Code so the draft would be ready in advance of the deadline. He stated the Accessibility Code Workgroup starting meeting in February of 2009 and at the June 2010 Commission meeting completed work on a Draft integrating Florida specific requirements with the new ADA Standards. They are in the process now of conforming the Draft Integration document with the final published DOJ rule. He state the Commission has one legislative session to complete any statutory changes necessary to update the Accessibility Code and it

must get stakeholders to consensus on changes so the proposals we make to the Legislature will not be viewed as controversial. Chairman Rodriguez stated the Commission is well underway thanks to the foresight of Commissioner Gross and staff and is positioned to accomplish the goal thanks to the efforts of the members of the workgroup. He concluded stating the Commission must focus on the final stage of determining and recommending any necessary statutory changes to conform to the new requirements.

Commissioner Gross stated there were many people involved, including Commissioner Schock, and many others from the community in the process. He then thanked staff, Chairman Rodriguez, the Commission and everyone who had worked hard to get the approval.

REVIEW AND UPDATE OF COMMISSION WORKPLAN

Mr. Dixon conducted a review of the updated Commission work plan. (See *Updated Commission Work plan October 13, 2010*).

Mr. Dixon stated there were a couple of updates to the workplan. He first discussed the Building Code System Assessment Ad Hoc committee which met on October 12, 2010 and had a recommendation regarding what direction to take on the project. He stated a preliminary adjustment to the workplan would be to defer the major part of the project until next year conducting a more in depth study over a longer period of time. He further stated a recommendation would be made to the Legislature in 2012 instead of 2011.

Mr. Dixon then discussed the development of the 2012 Florida Accessibility Code for Building Construction. He stated the recent update to the ADA Standards for Accessible Design were adopted and published in the Federal Register on September 15, 2010. He then stated the code update project had been ongoing since 2009 and a draft was available. He further stated the workgroup was currently refining the draft, completed in June, to reflect the DOJ regulations as published. He continued by stating there were some changes to the regulations from what was published in as proposed standards in the Federal Register June 2008. He concluded by stating there would be additional consensus building meetings with

advocates and others regarding changes to the law, necessary or essential to implementing the 2012 version of the code.

Mr. Dixon next discussed the locations of Commission meetings. He stated in the Commissioners' packets there were locations and the dates for the 2011 meetings. He reviewed the meeting dates and locations stating the Melbourne meeting location would change after evaluating other accessible hotels in the area.

Commissioner Schulte stated it had been previously mentioned the December meeting may require four days. He asked if that was contingent on the number of comments brought forward on code modification proposals.

Mr. Dixon responded stating yes it would. He then stated the current level of comments was very manageable and four days would not be necessary. He further stated the comment period would end on October 18th. He continued by stating after the 18th an evaluation would be done to determine which TACs need to meet in person and which could meet by teleconference or webinar.

Commissioner Schulte asked if a fourth day was required would it be the 5th or the 9th.

Mr. Dixon responded stating if needed Sunday the 5th would be added to the already schedule 6th, 7th and 8th dates.

Commissioner Carson moved approval of the updated workplan. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

CONSIDER ACCESSIBILITY WAIVER APPLICATIONS

Chairman Rodriguez directed the Commission to Mr. Richmond for consideration of the Accessibility Waiver Applications.

Mr. Richmond presented the waiver applications for consideration. Recommended approvals were presented in consent agenda format with conditional approvals, deferrals and denials being considered individually.

Recommendation for Approval with No Conditions:

#2 Polly Brooks Building, Edward Waters College

#4 Florida International University, HLSII Bldg. Lecture Hall

Commissioner Carson moved approval of the council's recommendation for approval for items 2 and 4. Commissioner Goodloe entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Recommendation for Approval with Conditions:

#1 Barry University School of Law

Mr. Richmond explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the Council unanimously recommended for approval with the condition the design be modified to add an additional 4 inches behind wheelchair seating locations to permit greater maneuverability.

Commissioner Carson moved approval of the Council's recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

#3 Blanche Ely High School Bleachers

Mr. Richmond explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the Council unanimously recommended approval with the condition the design be modified to allow for each accessible seat to have a companion seat and none of the accessible seats would be on the aisle.

Commissioner Nicholson moved approval of the Council's recommendation. Commissioner Greiner entered a second to the motion.

Commissioner Nicholson stated he sat in on the meeting. He then stated the accessible seating was located in the front and the condition to have a companion seat for each accessible seat would eliminate 50% of the front seating available for accessibility. He stated he would vote to approve the waiver but he did not agree because he believed it was causing more harm to those individuals requiring accessible seating. He then stated many of those individuals would not have anyone sitting with them and don't need to.

Mr. Richmond stated this was a secondary area of law for him but he believed the companion seats provided with accessible seats was mandated. He then stated he believed in a typical design, especially in a bleacher system, the companion seats were normally removable providing greater flexibility if the seats were not needed.

Vote to approve the motion was unanimous. Motion carried.

#6 University of South Florida College of Medicine

Mr. Richmond explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the Council unanimously recommended for approval with the condition the design of the auditorium be modified to add additional space behind the wheelchair seating locations to provide greater maneuverability. He then stated there was no condition on the two lecture halls.

Commissioner Carson moved approval of the Council's recommendation. Commissioner Greiner entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

#5 Bahay Kubo (Phillipine Cultural Home)

Mr. Richmond stated the recommendation of the Council is to dismiss for lack of jurisdiction

Commissioner Nicholson moved approval of the Council's recommendation. Commissioner Carson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

CONSIDER APPLICATIONS FOR PRODUCT AND ENTITY APPROVAL

Chairman Rodriguez directed the Commission to Commissioner Carson for presentation of entity approvals.

Commissioner Carson stated the following 4 entities were recommended for approval by the POC:

TST 1585 Intertek Testing Services NA Inc.

TST 4310 Intertek Testing Inc.- Washington

TST 8039 Quast Consulting and Testing Inc.

QUA 3214 CEL Consulting

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Blair stated there was a consent agenda for all those issues that were posted with the same result from all four compliance methods either for approval, conditional approval or deferral. These were the ones without comment or there was no change to the recommendation as proposed presented. He stated if no commissioner wished to pull any if the products for individual consideration he asked for a motion to approve the consent agenda for all four compliance methods for approval, conditional approval and deferral.

Commissioner Carson entered a motion to approve the consent agenda as amended for all four compliance methods for approvals, conditional approvals and deferrals. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Blair presented the following products for consideration individually:

3835-R2 The Dow Chemical Company

Withdrawn by applicant. No action necessary.

10654-R1 Custom Hurricane Products, Inc.

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant must indicate "No" for use within HVHZ and remove HVHZ references from installation drawings.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion.

Robert Duvall, Owner, Custom Hurricane Products, Inc.

Mr. Duvall stated product 10654 was instituted approximately three years prior and was approved by the committee. He then stated a complaint was placed on the product. He continued by stating the issues in the complaint were met by product 10654-R1. He stated there was a question on 1613.1.9. He then stated the law was very ambiguous. He read from Section 1613.9 *"Allowable Deflection: The deflection of any structural member or component when subjected to wind superimposed roles set forth herein shall not exceed the following: .9 Storm shutters or fold down awnings which in the closed position shall provide a minimum separation from the glass of 1 inch, but not to exceed 2 inches. when the shutter or awning is at its maximum point of permissible deflection, L/30."* He then stated according to a plethora of interpretations of the section a shutter must maintain a separation of 1 inch to a maximum separation of 2 inches during the maximum

allowed, L/30, deflection. He continued by reading from an interpretation by Jamie Gascon, Miami-Dade County, *"The shutter may not be installed closer than 1 inch plus the deflection design pressure from the glass of the object it is protecting. The allowable distance of the glass to the shutter, when subjected to pressure, is one inch. Therefore the maximum deflection of the shutter in the direction of the glass when subject to static pressure is 2 inches for L/30. L/30 opposite other glass provided shutters does not fail."* He then stated there was a major discrepancy between the two interpretations. He continued by stating when he looked for a binding interpretation he did not find one. He further stated the intent of 1613.1.9 is two-fold: 1) to maintain a separation of 1 inch of the shutter and the glazing of criteria FL10654 explicitly meets. 2. to stop the shutter from being physically deformed under stress. He stated flexible structures are not subject to formation by deflection. He then stated the engineering basis for the L/30 equation is rigid structure. He stated the engineering is not applicable to flexible structures. He continued by stating since FL10654 is a flexible structure and not physically deform by deflection it meets the criteria.

Ted Berman

Mr. Berman stated the issue has been an item of discussion at the June, August and October POC meetings. He then stated the POC had given direction to contact all of the applicants who have "non-compliance" with the code. He continued by stating all of the manufacturers have been contacted to revise their applications to comply with Section 1613.1.9. He stated Mr. Duvall was correct relative to the 1 inch deflection between, but at the end it states "L/30" and that section of the code states for each element in the code how much it can deflect to be in compliance whether it is L/360, L/180 and for shutters L/30. He then stated that was the issue in discussion and the one being corrected in the products that have been approved. He stated manufacturers were told they could ask for declaratory statements and it has been going on for four months and none have been received.

Commissioner Carson stated the issue had been in discussion for some time. He continued by stating there was a request from the POC for someone to bring forward a declaratory statement. He then stated there was clearly some conflict within the code on this issue. He further stated unfortunately over the past several years the issue got past the POC and there were products out which do not need the condition currently. He stated, as Mr. Berman stated, the manufacturers were being contacted to either get them to comply with the provision or the product would not be acceptable for use in the HVHZ.

Chairman Rodriguez asked if the manufacturers still had the ability to submit a declaratory statement.

Commissioner Carson responded stating yes.

Mr. Duvall stated if L/30 is an arbitrary number and there is no engineering basis on it, then it becomes a constitutional problem because some corporations were being given the ability to more than others. He then stated L/30 is supposed to be based on engineering and the basis is a rigid structure to stop the physical deformation of the shutter.

Chairman Rodriguez stated he believed it had been stated there was a recognized conflict and there was also a road map to get to an answer on the issue. He then stated a declaratory statement would be the most expeditious way unless he intended on compliance with the provision.

Mr. Duvall stated actually the waiver rule was currently written that 95% of all HVHZ products would not meet the specification.

Chairman Rodriguez asked for clarification if any declaratory statements had been received.

Commissioner Carson responded stating no declaratory statements had been received. He then stated if the L/30 was in the code then it was in the code.

Mr. Madani stated the situation was the manufacturers were being asked to comply by the next meeting but at the same time they are being asked to seek clarification from the Structural TAC by declaratory statements by the next meeting. He then stated maybe the manufacturers should be allowed them to get the declaratory statement by the next Commission meeting and then based on those results decide how the declaratory statement needed to be handled.

Chairman Rodriguez stated there had been an opportunity given to submit requests for declaratory statements.

Mr. Duvall stated it would help to have a derivation of L/30 to actually find out the actual basis. He then stated manufacturers could not comply unless they know what is attempted to be accomplished.

Chairman Rodriguez stated the manufacturer was not being asked to comply if it was found impossible or unreasonable as Mr. Duvall had stated, although it was in the code. He then stated a way must be found to resolve the issue and the best way to do so would be with a declaratory statement.

Mr. Richmond stated a declaratory statement was requested because it was the only way to actually address the issue. He then stated to the extent someone was trying to avoid a requirement of the code, which was his understanding, the deflection needed to meet L/30 in order to be utilized within the HVHZ, the

declaratory statement was not going to provide relief from that because it was a requirement in the code. He further stated it could be reviewed for the intent or the motivation but it would not matter because a requirement of the code was a requirement of the code. He stated if someone wanted to amend the code there was a process to do so. He continued by stating the process to amend the code had been in place for years, as had been the requirement in discussion.

Mr. Duvall stated the requirement had never been enforced until four months ago.

Commissioner Nicholson stated he agreed with Commissioner Carson and Mr. Berman. He then stated he had recently been appointed to the POC. He further stated the issue was an oversight which was being corrected. He then stated he believed correcting the issue was the right thing to do until the code was changed it was the direction to go.

Vote to approve the motion was unanimous. Motion carried.

12385-R1 Windsor Windows and Doors

Mr. Blair stated the product was recommended for approval.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

13423 Polarhyde Distribution DBA/ Final Flat Roof

Mr. Blair stated the product was recommended for denial.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

13626 Hardy Frame, Inc.

Mr. Blair stated the product was recommended denial.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

13893 Superior Window Corp.

Mr. Blair stated the product was recommended for denial.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

13894 Superior Window Corp.

Mr. Blair stated the product was recommended for denial.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

14027 Superior Window Corp.

Mr. Blair stated the product was recommended for deferral with condition the applicant must: Provide test reports for the assemblies on application. Evaluation should refer only to the assemblies on application for the proper category and subcategory.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

13946 Fleetwood Windows and Doors

Mr. Blair stated the product was recommended for conditional approval with condition the applicant must: Indicate "No" for use for small missile applications within HVHZ. Revise Installation Instructions to indicate the glazing configuration as tested.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

14020 Traco Windows and Doors, Inc.

Mr. Blair stated the product was recommended for conditional approval with condition of: Include on face of application testing standards compliant with HVHZ.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

14109 Logix Insulated Concrete Forms

Mr. Blair stated the product was recommended for approval.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

9104-R2 Roller Star USA

Mr. Blair stated the product was recommended for deferral with condition the applicant must: Include on application letter of compliance to the 2007 FBC from the evaluator.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

10753-R3 Town and Country Industries,

Mr. Blair stated the product was recommended for conditional approval with condition the applicant must : On Evaluation Report and Installation Instructions refer Schedules 2 and 4 to proper location.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

11235 TrusSteel Division of ITW Building Components Group Inc

Mr. Blair stated the product was recommended for conditional approval with condition the applicant must provide evaluation or testing of "self drilling tapping screws" to indicate compliance with Sect. 2222.3.2 or indicate on those connectors on the application "Not for Use Within HVHZ".

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

13380-R1 BP - Glass Garage Doors & Entry Systems

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant must remove from Installation Instruction details showing jamb track in direct contact with drywall.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

14046 Wausau Window and Wall Systems

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant must add a note under the limits of use for application 14046.4. Insulated glass is limited to large missile impact only. Not for use above 30 feet.'

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

14079 ITW Building Components Group Inc.

Mr. Blair stated the product was recommended for conditional approval with the condition that for the AGUS product adjust tables in accordance with joist height.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

14084 Alumiglass, Inc.

Mr. Blair stated the product was recommended for conditional approval with the condition the insulated glazing detail provide exterior lite of glass to be 1/4" tempered.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

14091 Wausau Window and Wall Systems

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant must add a note under the limits of use for application 14091.4 'Insulated glass is limited to large missile impact only. Not for use above 30 feet.'

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

13909-R1 Wasco Products, Inc.

Mr. Blair stated the product was recommended for conditional approval with condition the applicant must provide for Product 13909.4 document from testing lab indicating that testing did not comply with Miami-Dade BCCO Q&A; and for product 13909.14 marked lab drawings.

Commissioner Carson moved approval of the POC recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

CONSIDER APPLICATIONS FOR ACCREDITOR AND COURSE APPROVAL

Accreditor Approvals

Commissioner Browdy stated there were no accreditor approvals.

Course Approvals

Commissioner Browdy stated there was one course being submitted for consideration by the Florida Building Commission that has been reviewed by the Education POC:

Advanced Wind Requirements for Residential Construction – Online, BCIS Course# 444.0

Commissioner Browdy moved approval of the POC recommendation. Commissioner Palacios entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Browdy stated the following course was administratively approved:

Advanced Code: Building Structural (Internet), BCIS Course# 194.1

Commissioner Browdy moved approval of the administratively approved courses. Commissioner Carson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

**CONSIDER LEGAL ISSUES AND PETITIONS FOR DECLARATORY
STATEMENT: BINDING INTERPRETATIONS: REPORTS ONLY
DECLARATORY STATEMENTS:**

Legal Issues:

None

Binding Interpretations:

Appeal of Binding Interpretation #65

Mr. Richmond stated the appeal arose around the time of the August Commission meeting and was not finalized due to a glitch in the system following that meeting. He then stated in the interim there were no disputed issues. He continued by stating the facts in the case were following what was known as an informal administrative process. He stated the Chairman signed an order to appoint a hearing officer from the Department who would basically work through the submittals of documentation in consideration of any legal issues raised and make a recommendation to the Commission. He then stated as a procedural item, as both parties would like to appear before the Commission, we would intend to avoid putting the issue on the December agenda as it was already very crowded therefore an interim meeting by telephone would be scheduled preferably and possibly webinar if the parties wish to have the ability to make PowerPoint presentations. He concluded by stating he had wanted to inform the Commission of the existence of the case and the possibility for some type of interim communications media technology meeting prior to the December plenary session.

Revocations:

Mr. Richmond stated several products were approved for revocation and packages were put together. He then stated he unfortunately did not get them out before the meeting. He continued by stating the packets should be mailed the next week by certified mail to the affected parties. He stated one problematic approval revocation proceedings approval involves a company called Mod-Tec which was currently in bankruptcy proceedings in California. He further stated research is being done because that is an area in which his office does not have any level of expertise relative to what restrictions the bankruptcy proceedings would place on the ability to take action against their approvals. He stated the issue may be a report item in the future. He concluded by stating he anticipated to send their attorney a letter with an opportunity to withdraw or propose a withdrawal of their approvals to avoid any potential administrative litigation in Florida which would be a resolution.

He added the remainder of the approvals should move forward without any undue delay.

Declaratory Statements:

Second Hearings:

DCA10-DEC-146 by Gary Harrison, Building Official of Collier County

Mr. Richmond explained the issues presented in the petition for declaratory statement and the committee's recommendations as they appeared in each Commissioner's files.

Commissioner Greiner moved approval of the committee recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

First Hearings:

DCA10-DEC-175 by James Paula, Plans Examiner of St. Johns Building Department

Mr. Richmond stated the committee recommended dismissal. He explained the petition involved a matter which had already been permitted and essentially was a request to review past action. He stated the subject was not appropriate for a declaratory statement.

Commissioner Carson moved approval of the committee recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

DCA10-DEC-182 by Jeffrey C. Friant, P.E., and Jeff Bedard of Sunesta Products, LLC

Mr. Richmond explained the issues presented in the petition for declaratory statement and the committee's recommendations as they appeared in each Commissioner's files.

Commissioner Carson moved approval of the committee recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

CONSIDER OTHER LEGAL ISSUES

Miami Art Museum

Mr. Richmond stated there was a request for release from the Energy Code. He then stated the particular requirement of the code compliance method contained in Chapter 13. He continued by stating the issue was considered by the Energy TAC and has been assigned case number DCA10-DEC-167. He stated the recommendation of the TAC was the Miami Art Museum be granted special use status under the Energy Code based upon the need to protect the artwork through increased air circulation in accordance with the relevant criteria of ASHRAE HVAC Applications Handbook and concludes the project be able to demonstrate compliance with Chapter 13 of the Building Code by using a proposed hybrid methodology subject to clarification that the baseline budget to which the building was compared to Chapter 11 of ASHRAE 90.1- 2004 with appointments prior to the enhancements the Commission has approved.

Commissioner Carson moved approval of the committee recommendation. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

CONSIDER PUBLISHING FORMATS, PACKAGING AND COSTS FOR THE 2010 FLORIDA BUILDING CODE

Chairman Rodriguez stated at the August 2010 meeting the Commission discussed how the different code volumes would be printed and packaged including publishing the Energy and Accessibility Codes as separate sub code volumes. He then stated the Commission would be reviewing costs and make a decision regarding the 2010 Code publication formats. He then stated the action needed was a motion to publish the Energy Code and the Accessibility Code as separate sub code volumes. He further stated if any commissioner had questions Mark Johnson of ICC was available.

Commissioner Boyer stated one of the discussions was the concern the Energy Code be packaged with residential code. He asked if the intent was to have those two separate documents but published together as a group or would they be separate purchases.

Mr. Dixon stated Mark Johnson from the ICC was available for questions. He then stated the Residential Code and the Building Code were already at the maximum binder size ICC can get. He stated discussions with ICC concluded the same packaging which has been done over the last several code editions would be continued. He then stated if someone purchases the Designer package, they would get everything except the HVHZ specific standards, including the Accessibility and Energy codes as separate smaller documents. He stated the purchase of the Plumbing Code historically included the Accessibility Code. He continued by stating

if the Mechanical Code was purchased it would include the Energy Code. He further stated if someone purchased only the Building Code it would also include the Energy and Accessibility Codes. He stated the purchase of the Residential Code would include the Energy Code. He then stated the prices shown were rough prices and the final number of additional pages was not known or what publication issues would arise. He further stated until those numbers can be finalized the final pricing was not possible.

Mark Johnson, ICC

Mr. Johnson stated one of the things that hit the nail on the head was the size of the Residential Code. He then stated the 2009 edition of the base code document increased in page count by approximately 150 pages which was significant. He continued by stating the question was if it could all be fitted into one Florida Residential Code. He stated bundle opportunities were being considered including bundling the Residential Code with a separate and distinct Energy Code which could be purchased together. He stated the estimate given was currently very rough and concrete numbers were not going to be available until closer to the publishing date. He then stated he believed the estimates were more conservative and may be a little on the high end and may come down a bit. He further stated it does not assume there would still be an administrative surcharge for DCA which was assisting in the code development process. He stated it also assumed significant size increases in some of the publications, notably the IRC. He then stated it does address the fact the demand for the purchasing of the codes has been down approximately 40% when compared to the pre-recession levels. He stated some of decrease was the state of the economy. He continued by stating the costs have remained the same with concern to editing and typesetting as those were fixed costs with no varying whether distributing 50,000 or 10,000 copies. He stated another impact was the use of smaller print run therefore a little higher print cost. He then stated there was also some increase in the manufacturers cost. He continued by stating the fact the codes were online with free access, a great service by the state of Florida, many people use the site due to economic hardship in purchasing the book. He then stated relative to the bundle issues, how to bundle the Accessibility and Energy codes with other parts of the code to basically not impact the user.

Commissioner Bahadori stated it looked like there was a 30% cost increase for the purchase of the entire set. He stated he believed the increase was pretty hefty from one edition of the Building Code to the next of any code.

Mr. Johnson responded stating the numbers were very conservative numbers trying to err on the high end. He stated the numbers could be scaled back a little, relative to the collection, which he could see potentially happening. He then stated the 30% might be a little high and could be scaled back to 25-20% as it gets closer to publishing time. He continued by stating a lot would depend on the size of the

documents. He stated he did not believe the size would be a significant with the exception of the IRC. He further stated a lot would be driven by the extent of the amendments.

Commissioner Carson stated he had the same concern as Commissioner Bahadori relative the amount of the increase especially en light of some of the comments reviewed at the POC meeting. He stated there was some resistance to the 3 year code changes. He then asked the difference between the Complete Collection versus the Designer Collection.

Mr. Johnson stated he believed the Complete Collection included everything and the Designer Collection was limited to the Plumbing, Fuel/Gas, Mechanical, Residential, Building and possibly the HVHZ.

Mr. Dixon stated his understanding was the Designer Collection was everything except the HVHZ , specific TAS and RAS standards volume.

Mr. Madani stated the descriptions of the codes included in the pricing were indicated in the Commissioner's packets. He referred to the handout displayed on the overhead.

Mr. Johnson stated other ways to control costs were being reviewed. He then stated some states have considered soft covers in order to get printing and shipping costs down as well as the spoilage. He continued by stating one matter that had been attempted to control was the spoilage. He stated the books have to be in stock and cannot run out. He then stated the last edition was impacted by the change in the Energy Code and had to discard about 6,000 copies of the existing Building Code as the document changed. He continued if the process was managed better it would in turn help lower costs in working closely with DCA. He then stated the costs were conservative and high end and could probably be scaled back. He stated he had wanted to put soft cover editions on the table as something to be considered possibly. He further stated if there were no changes in the code where a lot of units have to be discarded it would help considerably.

Mr. Dixon stated there was an administrative surcharge the state had as part of the fee for the collections and individual books which ranged from \$5.00 for an individual, \$10.00 for a collection and \$2.00 for the separate Energy and Accessibility Codes. He then stated fees were flexible and could be backed down. He continued by stating the revenues from that surcharge over the last 3 years was approximately \$40,000.00. He stated it was not a lot of money for the Commission and could be removed from the cost if the Commission chose to remove it.

Commissioner Tolbert asked if there was any price on the commentary.

Mr. Johnson responded stating not at present.

Commissioner Carson asked, relative to the option of soft covers, how much savings would there be and would it be too late to do that in the current cycle.

Mr. Johnson responded stating he did not believe it was too late at all. He then stated it should not change the format at all. He continued by stating another issue to consider were how supplements would be added. He stated as far as he knew the cost per unit there would be approximately \$3-6.00 potentially in savings.

Commissioner Schock stated CD ROMs have been the way to go for building departments who require several copies. He then stated he noticed the price for the CD ROM was the same as the printed code. He continued by stating he thought the cost of producing the CD ROMs would be less cost than the cost for printed editions. He asked if there was any reason why the cost was the same.

Mr. Johnson responded stating not very many CD ROMs were sold which was attributed to the fact there was a pretty high end free site which has search capabilities which crowds out the desire of someone wanting to buy a CD ROM. He reiterated the fact very few CD ROMs were sold due to the fact the code was available online free for the state of Florida. He then stated if some of the features were to be pulled back on the free site and place a pdf limited read only version it might drive up the sales of CD ROMs which would decrease the cost of producing them. He further stated CD ROMs made were provided more of a service currently than anything else in case someone wanted to have the physical CD and load it into their system.

Mr. Turner stated any time he would bid anything for the state or county he would see three proposals or bids. He asked if the Commission was required to go with the one number.

Mr. Dixon responded stating there was a synergism between the ICC and the State. He then stated the State adopted the ICC's codes and the ICC put a great deal of money into the development of those codes. He continued by stating there was an agreement that the State continue to provide that people purchase the main document, the majority of which was the I codes with only a small part of it Florida specific, through the ICC in order to maintain the code development process. He stated there was no way any individual state government would be able to fund the process that ICC runs that benefits the State of Florida. He concluded by stating the State of Florida had chosen to continue that purchases go through the ICC so it receives some level of profit to maintain those processes which serve the Commission. Otherwise the Commission would have to go the Legislature and say several million dollars were needed to run the processes itself.

Commissioner Turner asked for clarification if the prices presented were going to be discussed or accepted.

Mr. Blair responded stating the packaging, the formatting, the range of costs which could occur within what was being provided by ICC were also discussed. He then stated the cost could fluctuate based on the decisions the Commission makes. He continued stating the cost relative to the decisions such as using the normal binder format or the soft cover, how the codes would be bundled and packaged, whether the DCA decides to take a small cut or not. He stated it was a process the Commission had been a part for a long time.

Chairman Rodriguez stated an important part of the equation was the online availability which was why the ICC does not sell many CDs.

Mr., Johnson stated there had been a very big impact on overall sales although part of it was recession based. He then stated he believed it to be a positive thing too for having public access. He continued by stating he believed it was too premature to set a price at the current juncture because the total cost ahead in terms of the size of the documents, the printing costs, etc. He concluded by stating the purpose for being at the meeting was to inform the Commission of a very conservative, very rough estimate which can fluctuate on the downside.

Mr. Blair stated the Commission was not being asked for any decision. He stated once the true cost was clearer, the Commission would be asked to make a decision relative to the publishing of the 2010 Code. He then stated this was the second report describing where things stand relative to publishing the 2010 Code.

Chairman Rodriguez stated the ICC was a non-profit organization and were not out to make money. He then stated they were a membership organization and it does the great service of publishing the I Codes. He continued by stating the Commission benefits from the service.

Commissioner Goodloe stated the soft cover works fine on the smaller documents but when getting into the thicker books such as the Building Code volume itself with a soft cover after about one year there would be more tape on it. He then stated he was not sure of a savings of \$6.00 was worth it.

Commissioner Palacios asked how the code was accessible online.

Mr. Dixon responded by stating if he went to the Florida Building Commission website to view the code there is a link that would bump him to the ICC website.

Commissioner Palacios asked if the Code could be available on a USB instead of the CD ROM. He asked if that meant anything in terms of cost.

Mr. Johnson responded stating the option could be explored. He then stated currently they were researching having the Code available via the iPad. He then stated there was always research to determine different ways to bring the codes to market and make it more user friendly.

**WORKSHOP ON FEES FOR NON-BINDING INTERPRETATIONS,
DECLARATORY STATEMENTS AND ACCESSIBILITY CODE WAIVERS**

Chairman Rodriguez stated the 2010 Legislature authorized the Florida Building Commission to charge fees for the non-binding interpretations, declaratory statements and accessibility code waivers. He then stated the purpose of the workshop was to solicit public feedback regarding the fee structure for the respective Commission functions. He then stated non-binding and declaratory statements were under sections 553.7.7.5 and 4. He further stated the Commission could adopt by rule and impose a fee to recuperate the loss of the proceeding which may not exceed \$125.00 for each request for non-binding interpretations and declaratory statements. He continued by stating staff had estimated the cost for non-binding opinions to be \$118.12. He further stated staff had estimated the cost for declaratory statements to be \$1,405.68. He stated accessibility code waivers from Section 553.512(1) provides the Commission shall establish by rule a fee to be paid upon submitting a request for an accessibility code waiver. He then stated staff has estimated the cost per waiver application to be \$672.56.

Commissioner Greiner asked if the numbers indicated by the Chairman were the costs to process those already processed and not necessarily the charge for future ones.

Mr. Blair stated the fees reviewed by the Chairman were the actual cost to DCA to process and projections of the cost for processing future applications. He then stated the actual fee to be charged for providing the services was to be determined.

Mr. Blair stated the Accessibility Code Workgroup met October 12, 2010. He then stated one of the issues discussed was the fee for the waiver applications. He continued by stating, as the Chairman had mentioned, the cost of the application for accessibility waivers had been running around \$672.56. He stated if teleconferences or webinars were possible the cost would be reduced to \$558.93, i.e. approximately \$120.00 less per application. He then stated the cost was the cost to process an application but there was no suggestion the charge should be the same. He further stated the workgroup had a unanimous recommendation for the Commission's consideration that the Commission initiate rulemaking to establish fees for accessibility applications as follows: The fee for the application should be revenue neutral or less, the cost of the fees would be reviewed at a regular

frequency, such as an annual analysis, the fees could be indexed to the scope of the project with clear cut criteria established for the indexing, and a provision should be provided which would allow staff to do an evaluation of the necessity of the waiver application and there be some sort of minimum fee for those applicants who did not really need a waiver, so those applicants would not be charged the full amount, but just a small fee for staff to make the determination the waiver was not required in the situation and would not be stuck with the full waiver fee when they were not going to have one.

Commissioner Carson asked for clarification, he stated the actual fee charged would be very subjective to be decided by whom and when.

Mr. Blair stated the committee did not want to make a recommendation on the exact fee. He then stated the fee would be revenue neutral or less to be discussed during public comments taken during the workshop process. He further stated the criteria would need to be determined but the committee wanted to lay out a broader scope of what they would like the Commission to consider and do in the process.

Commissioner Carson stated he was fine with the recommendations. He then stated the only concern he would have would be the indexing as it might be difficult and possibly leave the Commission in a place for arguments and that sort of thing.

Mr. Blair stated that in the rulemaking process those items would be discussed or left out if it was determined it was not a good idea.

Chairman Rodriguez stated the motion was only to initiate the rule workshop.

Mr. Dixon stated that on the agenda there was a link to a spreadsheet which identified how projected costs were determined (Please see *FY10-11 Cash Appropriation*.) He then stated the projections were based on expenditures and estimated number of waiver applications and were projected to be \$672.00 per application, assuming every application has the same fee. He explained the fee is determined by staff costs, court costs, cost of travel for the Accessibility Council and the cost of the portion of the Commission meetings when the waivers were considered. He stated the number was based on what the Commission has spent in the past, how much would be spent in the coming year and how many waivers were expected for the coming year. He then stated the number was a conservative number in that it assumes all meetings would be held at the Commission meetings. He further stated there was a move for all of the Commission's committees to conduct their meetings by webinar, which would have an impact and the cost would be reduced to an extent. He continued by stating the process recommended by the workgroup/TAC was trying to index based on some level of fairness, staff would

review, Commission to determine which direction to go after hearing public comment at the rule workshop.

Public Comment

There was no public comment.

Commissioner Carson moved approval to initiate the rule workshop. Commissioner Greiner entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Blair asked if a motion was needed to initiate rulemaking for non-binding and declaratory statements as well.

Mr. Dixon stated some information required discussion.

Mr. Richmond stated relative to the Accessibility Waiver issue the Legislature was directed the Commission without discretion to establish a fee for the waiver process and there was a "shall" there. He then stated that for the other processes there was a "may", subject to certain restrictions or at least considerations. He further stated the Commission does have discretion in this decision whereas on the waivers the Commission has to move forward with some type of fee structure.

Mr. Blair stated the Commission did request authority to start the process and received clearance from the Legislature. He then stated in last year's Commission report to the Legislature authority to charge a fee for non-binding interpretations, declaratory statements and waivers was requested and granted, as Mr. Richmond indicated it was a "may" for the binding and non-binding interpretations and declaratory statements" and a "shall" for the accessibility waivers. He further stated for the non-binding interpretations and the declaratory statement a cap not to exceed \$125.00 was established.

Commissioner Browdy asked, if governmental agencies ask for non-binding opinions are they subject to the fees, i.e. would local jurisdictions asking for non-binding opinions be subject to the same fees.

Mr. Blair stated the only item discussed by the TAC was the waivers. He then stated neither declaratory statements nor non-binding interpretations were discussed.

Commissioner Browdy asked if in the Legislative intent was there ever any thought given or evidence there was some waiver for other governmental agencies seeking non-binding opinions.

Mr. Richmond responded stating no.

Chairman Rodriguez reiterated the numbers were for consideration but were not being approved at the October plenary session.

Mr. Dixon responded yes. He stated if the Commission decided to take the projected numbers which were based on projected amount of staff time, commissioners' time, etc the estimated cost was \$672.56 for a waiver based on 88 waivers. He then stated for declaratory statements, based on how much of the Commission's time went into the process, the estimated cost for each application was \$1400 based on 34 declaratory statements.

Commissioner Schulte asked if the number included declaratory statements that had been withdrawn.

Mr. Blair stated he believed the number was included because the time staff spent would have been figured when the cost was determined.

Commissioner Schulte he stated the number was being divided by 34. He then stated he wanted to make sure there were not actually 100 with 600 withdrawn.

Mr. Dixon stated his understanding was everything was counted and went into the numbers presented. He then stated Ila Jones and Jennifer Drake put the numbers together but his understanding from their discussions was all of the applications were considered. He further stated when the code changes there would probably be a flood of requests for declaratory statements at least for a period of time therefore the projected numbers would be projected high and would probably go down.

Mr. Richmond stated as he was reviewing the number and the number of orders actually drafted he believed it only included the number of orders actually issued, not the applications submitted and for whatever reason were recommended for dismissal or were withdrawn. He then stated the denominator may prove to be higher after the review. He continued by stating 34 would indicate approximately 3 ½ per meeting which would be the second readings. He stated there was usually a significant number either recommended for dismissal or are withdrawn and application fees were typically charged in advance before it was either submitted or placed on the agenda.

Mr. Dixon stated it was more like 6 per meeting.

Mr. Blair stated at many meetings there were a good 10 new readings.

Mr. Dixon stated staff would review those numbers.

Mr. Dixon then continued by stating the current charge for non-binding interpretations was charged to the state. He then stated there was a contract with BOAF via some other funding that pays for the non-binding opinions on a per request basis. He asked Mr. Richmond if the law set a maximum of \$125.00

Mr. Richmond responded stating yes.

Mr. Dixon stated the estimated cost based on past experience was \$118.00 for each non-binding opinion.

Mr. Richmond stated there was one additional consideration. He continued by stating the Commission's primary source of funding, the building permit surcharge, was amended this year to provide a new basis, essentially making it almost like a sales tax on building permits. He explained it was now a percentage of the permitting fee as opposed to a fee based on square footage. He stated there was the belief although the Commission could accurately claim it as revenue neutral before the Legislature, therefore not a new fee or tax which could be distasteful, it was revenue neutral as to those entities appropriately collecting the surcharge already. He then stated by increasing the accuracy of the collection there could be some additional revenue charges flowing from the surcharge. He further stated there was a wide variety of methods by which the surcharge was collected. He continued by stating he saw one jurisdiction almost inevitably surrendered about 1% of its permit fees and it did not seem to have any correlation with the square footage of the permit whatsoever. He further stated other areas reported having a surcharge based on the footprint of the building so that a 20 story high-rise was the same as a single story dwelling, if the footprint was the same, which did not seem to be the intent. He stated the belief was there may be some additional revenues flowing from the surcharge. He stated he believed there was a strong preference by regulated industries as well as the Commission's contractor to try to maintain the service as free to the public. He further stated it was really the first line of defense to getting ready answers on interpretations on buildings

Mr. Dixon stated what Mr. Richmond was referring to was a potential since there has been no history yet. He further stated there would be some offsetting of fees throughout the state, but as Mr. Richmond indicated, it would be a net increase so the Commission may be okay. He stated his understanding was this year's non-binding opinion activity was paid for via monies that came from the Legislature, not directly from the Commission's budget. He then stated if next year was similar to the current year with no increase in fee there would be an argument for charging people for an opinion. He further stated the bottom sentence stated if the fee for opinions comes through DCA the administrative costs would take most of the fee and there would be very little for the people who actually do the work.

Mr. Richmond stated with regard to declaratory statements as referred to, other agencies have to do the same process since it was a general statewide administrative practice. He stated the one concern he had was if the Commission started to charge fees it would disappear next year. He then stated he was actually surprised the Commission never received comments or concerns from the administrative law section of the Florida BAR because it was a means to obtain an interpretation of a state rule or statute and it was a service to the citizens of the executive branch not generally just the Commission or the DCA. He further stated he did not know if he would put a lot of eggs in the basket and depend on relying on a source of income from declaratory statements. He stated if it was put in as a fee and had to be accounted for it in the Commission's budgeting documents and then it loses the authority to charge the fee it could end up with a budget problem which does not have the cash needed to fulfill all of its authority. He then stated the concern pertains specifically to declaratory statements. He further stated the binding and non-binding interpretations are processes specific to the Commission and he did not believe it would apply to those.

Mr. Dixon stated, in summary, there was a desire by the regulated industries that non-binding opinions be continued as something paid for by the state and a free service to the public. He then stated the caveat was if the Commission did not experience an increase in building permit surcharge revenues next year it would not be able to fund the service. He continued by stating with regard to declaratory statements he felt confident in recommending the Commission defer on that authority established by the Legislature for the time being and continue to provide that as a service covered by the basic building permit surcharge.

Chairman Rodriguez stated the question was whether the Commission votes to initiate a workshop for declaratory statements and non-binding interpretations.

Commissioner Schock stated he would move to defer both declaratory statements and non-binding interpretations to a later date and determine if it was really necessary. He then stated he believed Commissioner Browdy had mentioned a very important point which was the local jurisdictions ability to work with the entities to get interpretations and he would like to see it that way. He further stated he would also like ask the BOAF representatives what their feelings were relative to the non-binding interpretations.

Commissioner Greiner entered a second to the motion.

Doug Harvey, BOAF, Executive Director

Mr. Harvey asked Commissioner Schock what his specific question was.

Commissioner Schock stated his motion was to defer both the items until later and see how things roll. He then stated his concern was the local jurisdictions rely heavily on BOAF interpretations and so forth. He further stated he would like to see that remain a free ability to do that. He stated he wondered what BOAF's position would be on the issue.

Mr. Harvey stated he concurred with everything Commissioner Schock just stated. He then stated he personally spends several hours each week on the phone discussing with people the interpretations and the process for the interpretations. He continued by stating he hears from individuals involved in the industry on an almost daily basis regarding how much those interpretations were valued. He stated BOAF was currently modifying the database which holds the interpretations to make them more easily searchable and providing for additional fields to be searchable, which was something he had heard from the people who use the database. He then stated he would encourage the Commission to follow the recommendation made by Commissioner Schock to defer the issue based on in part the surcharge. He stated there was no history on the issue yet and no one knows where it will go and he believed it was funded from a different area in the budget

Mr. Dixon asked if the Commission would consider putting a time frame certain on reducing this.

Chairman Rodriguez stated the Commission wanted to do this as a service as proven by the record over the years. He asked staff when does the Commission find out if there were any available funds and how long would it take the Commission to initiate the rule. He then stated if the rule workshop was initiated the issue could be discussed while the numbers were coming in.

Mr. Dixon stated the surcharge fee change begins in the current quarter which ends December therefore one full quarter of collections would be at the end of December. He then stated ideally March would be the correct timeframe due to budgeting and getting the numbers back. He further stated he would recommend the Commission begin consideration at the February meeting rather than the April meeting because the process gets too tight.

Commissioner Schock accepted the amendment to the motion.
Commissioner Greiner accepted the amendment to the motion.

Mr. Blair restated the motion was to defer action on the non-binding opinions and the petitions for declaratory statements and to review the two at the February 2010 Commission meeting.

Vote to approve the motion was unanimous. Motion carried.

CONSIDER COMMITTEE REPORTS AND RECOMMENDATIONS:

Accessibility Code and Law Workshop

Mr. Blair presented the report of the Accessibility Code and Law Workshop. (See *Accessibility Code and Law Workshop Meeting Minutes October 11, 2011.*)

Commissioner Carson moved approval to accept the report. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Accessibility Code Workgroup

Mr. Blair presented the report of the Accessibility Code Workgroup. (See *Accessibility Code Workgroup Meeting Minutes October 11, 2010.*)

Commissioner Carson moved approval to accept the report. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Building Code System Assessment Ad Hoc Committee

Chairman Rodriguez presented the report of the Building Code System Assessment Ad Hoc Committee. (See the *Building Code System Assessment Ad Hoc Committee Meeting Minutes October 12, 2010.*)

Chairman Rodriguez stated a motion was needed to initiate a comprehensive process to review and develop recommendations in consultation with the stakeholders regarding the enhancement to the Florida Building Code system. He then stated the process would begin in early 2011 and the final recommendation would be delivered to the Commission for inclusion in the Commission's report to the 2012 Legislature. He continued by stating staff and Mr. Blair would provide a proposed project workplan with tasks, milestones and dates, for Commission consideration at the December 2010 meeting.

Commissioner Nicholson moved approval of the motion as stated. Commissioner Palacios entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Nicholson moved approval to accept the report. Commissioner Carson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Gross stated he attended the meeting and one of the big important steps in the future will be to get more people involved in the survey. He then stated all of the stakeholders should go back to their group and commit to selling the survey to the stakeholders. He continued by stating there was a perception at the meeting there was not enough respondents and there was enough of a mix of different groups. He stated the architects were the big respondents, being 30% of all the respondents.

Mr. Blair stated one of the things agreed upon was to put the survey back out and it would be important not only for all of the commissioners to complete the survey but their constituents as well. He reiterated the importance of the commissioners' role in representing and reaching out to their constituents to help ensure the survey gets the kind of response it needs to make the survey really work. He then stated the survey was not going to be the basis of for any sort of final action but it will provide really good information for the Commission Ad Hoc's to evaluate as well as for the workshops which will be proposed and planned as part of the process. He concluded by stating he would get the survey posted and send each of the commissioners a link and ask them to send it to their constituents.

Commissioner Schock asked if the responses from the original survey would be carried forward if they responded to the survey previously.

Mr. Blair stated that was a good question and he had not thought of it before.

Chairman Rodriguez stated he believed the responses could be carried forward.

Mr. Blair stated he could just add on to the responses he had already received and call it an expanded survey.

Commissioner Tolbert asked if there would be a notice when the survey goes back online.

Mr. Blair responded stating he would send each of the commissioners an email with a link to the survey in it

Commissioner Greiner asked if it could be posted on the Building Code website as a lot of individuals use that page.

Mr. Blair asked Mr. Madani if a link to the BCIS website could be posted on the Building Code website.

Mr. Madani responded stating yes.

Education POC

Commissioner Browdy presented the report of the Education POC. (See *Education POC Teleconference Meeting Minutes October 5, 2010*).

Commissioner Browdy moved approval to repeal the language related to the Building Code core education requirement contained in Rule 9B-70.001, the Florida Administrative Code. Commissioner Scherer entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Nicholson moved approval to accept the report. Commissioner Scherer entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Energy TAC

Commissioner Greiner presented the report of the Energy TAC. (See *Energy TAC Webinar Meeting Minutes October 7, 2010*).

Commissioner Greiner stated he wanted to say the whole webinar and conference call combination process was handled extremely well by staff. He then stated it enabled the committee to see things and watch a presentation which was very beneficial. He reiterated he thought staff did a great job.

Commissioner Nicholson moved approval to accept the report. Commissioner Carson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Product Approval/Prototype Buildings/Manufactured Buildings POC

Commissioner Carson presented the report of the Product Approval/Prototype Buildings/Manufactured Buildings POC. (See *Product Approval/Prototype Buildings/Manufactured Buildings POC Webinar Meeting Minutes October 7, 2010*.)

Commissioner Carson moved approval to accept the report. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Structural TAC

Commissioner Schock presented the report of the Structural TAC. (See *Structural TAC Meeting Minutes August 23-24, 2010*.)

Commissioner Schock moved approval to accept the report. Commissioner Goodloe entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Schock presented the report of the Structural TAC. (See *Structural TAC Webinar Meeting Minutes October 7, 2010.*)

Commissioner Schock Commissioner Goodloe entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Hamrick moved approval to accept the report. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

COMMISSION MEMBER COMMENTS AND ISSUES

Commissioner Palacios stated he did not see a list for CEUs for engineers.

Mr. Dixon stated he would check into it. He continued by stating he believed the engineering board CE approval required participation on standards development committees, but he would have to clarify with the board whether or not Commission participation or TAC participation qualifies for that. He stated one point that needed to be emphasized for the Construction Industry Licensing Board on TACs was required for CE credits.

Commissioner Schock stated the chairman of the engineer board, John Burke, resides in Jacksonville. He then stated he knew Mr. Burke pretty well and if the Commission would like he could call and get that information from him. He further stated he was a provider for the Board of Engineers but he did not know if he could extend that to the Commission or not.

Mr. Dixon stated there was a provision for participation in certain types of activities it just depended on how broad the board will determine that scope can be. He then stated the Commission does develop standards for building codes but it looks like two years ago what was being recognized was standards organizations like ASTM or ASHRAE.

Commissioner Schock restated if the Commission would like he would contact Mr. Burke regarding the issue.

Chairman Rodriguez asked if a commissioner or someone who participates in a TAC could be covered.

Mr. Dixon responded stating it was possible depending how it was determined.

Commissioner Palacios stated his other issue was relative to travel reimbursement. He then stated he had several emails with staff regarding the issue and he was absent from the June meeting therefore there was no discussion on the issue. He continued by stating after the August meeting there was a meeting of the construction licensing board in Orlando which he attended. He stated those individuals were receiving the same reimbursement as before. He then stated he did not know why the Commission was singled out against another board. He asked if some kind of protest letter should be sent in.

Mr. Dixon stated, as a general point the DCA was applying the same rules to the Commission as it does to staff.

Commissioner Goodloe stated he works for the Department of Financial Services, and has three advisory committees that are treated the same so DCA was not being singled out.

Commissioner Hamrick stated the same thing was happening with the Department of Education

Commissioner Browdy stated as Commission deliberates opportunities for revenue enhancements he thought it important to bear in mind during the difficult times those who are out there trying to earn a living building homes of buildings were having a very difficult time making and enhancing the opportunity for new construction in the state of Florida and to continue to make a livelihood. He continued by stating his company recently permitted one of the smaller homes permitted in St. Johns County, which was a 3900 square foot house. He stated the building permit fees were \$15,000.00, close to almost \$4.00 per square foot in this environment to build a single family home. He further stated as the Commission deliberates ways to make money and ways individual governments or entities can continue to raise money in doing so it should be conscious of the fact at the same time it was trying to stay alive it could be discouraging opportunities for people to build homes and buildings and to ultimately recover from the economy everyone so desperately felt at present. He concluded by stating keeping housing and construction affordable in the state of Florida is also important to the Commission therefore as ways are considered to raise fees it should also bear in mind the potential hardships, and do so in a very cautionary manner.

Chairman Rodriguez stated he supported Commissioner Browdy's comments. He then stated it was a very strange situation because those individuals trying to survive were the same individuals carrying the burden for the inactivity. He continued by stating, if active those individuals were paying the price for inactivity,

which can be seen everywhere. He stated somehow it was seen as fee induced and was currently very prevalent. He further stated it was not just DCA or the state of Florida; the cities were hiding cameras to catch people who run red lights, in Miami-Dade County they tried to charge fees for the use of the parks. He stated there were an incredible amount of schemes going around to raise money in a bad environment and some may be counter-productive for what is gained.

Commissioner Greiner stated everyone uses the term permit fee and the permit fee was \$15,000.00 and he did not believe that was correct. He then stated he believed the impact fees and some other fees were carried in under that umbrella and it was misleading. He then stated the permit fee itself was almost always less than 1% of the cost of the building.

Commissioner Browdy stated the purpose of his comment was to illustrate to the Commission was the total regulatory threshold for those people before construction could begin on their home was \$15,000.00. He then stated the fee did not translate into a stick of lumber, any concrete, etc. He further stated it did not even approach the additional feels on mortgage stamps, doc stamps, title insurance and all of the other associated costs which were part of the formula for building a house. He stated government continues to raise fees and in doing so it inevitably discourages, whether those fees are impact fees they do not translate into the value in sticks and bricks of building their home or building. He then stated he did not misspeak, it was not just a permit fee, but an impact fee, an energy fee and land review fee, etc. He concluded the point was it was before a shovel could even be put in the ground the owner had to pay \$15,000.00.

Commissioner Greiner stated he agreed with Commissioner Browdy. He then stated he did not disrespect what Commissioner's Browdy's comments. He continued by stating he was correct that fees were exorbitant , especially impact fees, if talking about a particular fee. He stated he wanted to bring the point all to often the umbrella of the permit fee was used all the time for all of these fees and it was not the case.

GENERAL PUBLIC COMMENT

Jack Glenn, President, Florida Homebuilders Association

Mr. Glenn stated if he had built the same house Commissioner Browdy mentioned in Naples the impact fee, to start with, would have been \$44,000.00.

Chairman Rodriguez asked if he said \$44,000.00.

Mr. Glenn responded \$44,000.00, the highest impact fees for residential construction in the state. He then stated he wanted to address an earlier discussion

relative to the cost of the production of the code and the ICC had mentioned the fact there were so many Florida specific amendments. He continued by stating if the Commission approved the action of the TAC and their recommendations from the last meeting it would be approving an additional 437 changes to the Code. He stated embedded in those 437 changes to the code there were 90 changes that remove Florida specific codes, although there was an opportunity to remove 163, but only 90 were approved. He continued by stating there were currently several hundred Florida specific amendments carried forward each year and every code cycle. He further stated an ongoing effort continues to reduce that number because it does impact the cost of production of the code.

John O'Connor, Reedy Creek Improvement District, BOAF, AIA, Florida Homebuilders Association

Mr. O'Connor stated he had a written statement he would like entered into the record. He then stated the point in the code cycle was approaching where the Commission had the opportunity to determine what the next code looks like. He further stated although it would go down as a record of the Commission, but it was an individual responsibility of each commissioner. He stated each commissioner has the opportunity to affect what goes into or comes out of the next edition of the code. He then stated they would like to see each commissioner take the responsibility seriously and do some homework between the October meeting and the December meeting and have a real hard look at all of the changes the Commission was being asked to vote on. He continued by stating he was sure there would be some consent lists where some items that were not controversial were bundled together and there would be those needing individual consideration, but each one was important and would determine what the next code looks like.

He requested each commissioner ask, when considering each proposed change, "*does this code change serve a Florida specific need?*" He then stated that was one of the criteria for a code change to be brought forward. He continued by stating there would be code changes, as Mr. Glenn had stated, that would place new requirements in the code. He asked the commissioners if those proposals were not Florida specific that they be rejected. He then asked if there were proposals removing things from the code that were carrying forward from previous editions of the code, maybe previous actions of the Commission members, he would ask the commissioners to remove items which were not Florida specific. He stated this edition would be the 4th edition of the Florida Building Code. He then stated as design professionals, contractors and compliance officials love the code. He further stated they believed it to be a great way to protect the citizens of Florida. He stated the code had become a difficult to publish and had become burdensome on every aspect of the construction of buildings and structures.

Mr. O'Connor emphasized the request of the commissioners to focus on Florida specific requirements, make sure junk was not being placed in the code which did not need to be there. He stated there were a lot of good ideas which would

change the base code the ICC codes, which quite frankly need to go through the ICC process. He then stated if someone had a great idea to change a technical paragraph in the code that process belongs with the ICC process. He continued by stating if the Commission was more diligent in making sure those items did not get into the code, and push those other issues to the ICC. He then stated as the Commission removes unnecessary Florida specific requirements from the code the number of items that need to be integrated into the code would be reduced. He further stated they were of the opinion the Commission should get to a point a supplement could be published and not publish codes with Florida covers and publish a Florida supplement which were provisions and alternatives to the I codes. He stated in the long run it would be easier to manage, easier to edit, more cost effective, and from the users standpoint, i.e. from designers, contractors and code officials it was easier to use a supplement rather than to have this integrated book where it becomes very difficult to use. He then stated if the reference chapter were reviewed there would be hundreds if not thousands of documents that were referenced which have to be used just to design and judge compliance with. He stated formatting was an issue and the lag time between the publication of the base I code and the adoption of the Florida Building Code has gotten way out of hand. He further stated with the release of this edition of the code it will be 3 years behind ICC. He stated the lag time needs to be reduced back down to 1 year and help from the Legislature would be required to get there, but it can be done if what was going into the code was streamlined.

Chairman Rodriguez stated there was one additional advantage to getting into the ICC code; perhaps Florida had something to contribute to the ICC which can be a benefit to the rest of the population.

Mr. O'Connor stated absolutely. He then stated part of moving the technical process to the ICC was having some of BOAF's time freed up to go there. He further stated the process could be streamlined if the Commission sticks to and focuses on the Florida specific, due research on the Florida specific and improve the Florida specifics. He stated they had no problem with the Florida part of the code but there was a better way to deal with the technical issues which were not part of the Florida specific at the I codes and there would be more time for BOAF to do that there.

Mr. Harvey stated Mr. O'Connor had stated very well the concerns of BOAF. He then thanked the Commission for all of the hard work it does. He then stated he realized the task Mr. O'Connor had just put on the Commission was sort of thankless and it will take a tremendous amount of time to evaluate every one of those proposals to determine if they were Florida specific. He stated they wanted to reiterate that because it was an integral part of the process. He further stated the Commission had heard earlier from ICC regarding the increased cost to utilize a supplement that was suggested because it maintains, makes it much easier and

would help reduce the size of the code. He concluded by stating they had worked with AIA, Florida Homebuilders Association and the Engineering Society and had gotten the majority of everyone involved in the process to agree that it would be a much simpler way to apply Florida specific amendments to get better code compliance which was the goal. He asked all of the members of BOAF in the audience to stand and be recognized as being here to give the Commission an idea of the membership of BOAF that was at the meeting and involved in the process. He stated their intent was to remain involved in the process.

Chairman Rodriguez thanked Mr. Harvey for BOAF's participation in the process.

Chairman Rodriguez then stated the December meeting length would be determined by the number of comments received. He further stated staff would keep the Commission informed in a timely basis not only for reservation purposes but also for the meeting schedule.

Mr. Dixon stated no additional TAC meetings would be scheduled unless it was absolutely necessary. He then stated the plenary session would probably be on Tuesday-Wednesday with one additional day for other business. He further stated there were a number of other projects the Commission needed to move forward on besides the building code if possible. He concluded by stating based on what staff had seen at this point Tuesday-Wednesday would be the dates for the plenary session meeting with other committee meetings prior to that meeting. He stated anyone who had not received a travel expense reimbursement form should see him before leaving the meeting. He then stated although it was a paltry amount being reimbursed, staff would like to get it to the commissioners reimbursed quickly.

Commissioner Goodloe stated the form the commissioners have has Melbourne as the location.

Chairman Rodriguez stated the December meeting was scheduled to be in Melbourne.

Commissioner Schulte stated he wanted to let Mr. Dixon know that when he went to check out the rate came up at the higher rate as they had discussed. He then stated he did not know if Mary Kathryn had gotten the rate change through their management.

Mr. Dixon stated any commissioners who had already checked out needed to see him before they left.

Commissioner Carson stated he did not stay at the hotel due to the rate given. He asked if there would be any discussion relative to the report to the Legislature at the next meeting.

Mr. Dixon responded yes, it was on the workplan.

ADJOURN

10:54 a.m. adjourned.