

**FLORIDA BUILDING COMMISSION  
Tradewinds Island Resort  
5500 Gulf Boulevard  
St. Petersburg Beach, Florida 34746  
Plenary Session  
December 13, 2013  
8:30 AM**

**COMMISSIONERS PRESENT:**

Dick Browdy, Chairman  
Hamid Bahadori  
Steve Bassett  
James Batts  
Donald Brown  
Oscar Calleja  
Jay Carlson  
David Compton  
Nan Dean  
Kevin Flanagan  
Herminio Gonzalez

Jeffrey Gross  
Robert Hamberger  
Brian Langille  
Beth Meyer  
Darrell Phillips  
Bradley W. Schiffer  
James Schock  
Frederick Schilling  
Jeff Stone  
Brian Swope  
Tim Tolbert

**COMMISSIONERS NOT PRESENT:**

Bob Boyer  
Drew Smith

Charles Frank

**OTHERS PRESENT:**

Jim Richmond  
Mo Madani  
Joe Bigelow

Chris Burgwald  
April Hammonds  
Chip Sellers

**MEETING FACILITATION:**

The meeting was facilitated by Jeff Blair from the FCRC Consensus Center at Florida State University. Information at: <http://consensus.fsu.edu/>

**Welcome:**

**Time: 8:30 am**

Chairman Browdy welcomed Commissioners, staff, and members of the public to St Petersburg Beach and the December 13, 2013 plenary session of the Florida Building Commission. In addition to considering regular procedural issues including product and entity approvals, applications for accreditor and course approvals, petitions for declaratory statements, accessibility waivers, and recommendations from our various committees, the primary focus of the December meeting is to discuss the binding and non-binding interpretation processes and to take the next steps in rule development for the current rules under development, the Product Approval and Education rules.

Members of the public are requested to sign the attendance sheet on the speaker's table in the center of the room. In addition, we have a sign-up sheet for general public comment. As always, we will provide an opportunity for public comment on each of the Commission's substantive discussion topics (actions that are not procedural or ministerial in content). If you want to comment on a specific substantive Commission agenda item, please come to the speaker's table when the issue is up for consideration so we know you want to speak. Public input is welcome, but should be offered before there is a formal motion on the floor. **Please remember to keep all electronic devices turned off or in a silent mode.** Thank you for your cooperation.

The Chairman noted that there were buff colored "*Public Comment Forms*" on the speakers' table that can be used to provide written comments and all written comments will be included in the Facilitator's Summary Report. Please give your completed "*Public Comment Forms*" to Jeff Blair.

Chairman Browdy noted that there are some of the licensing boards located within the Department of Business and Professional Regulation have adopted rules regarding continuing education credits for attending Florida Building Commission meetings and/or Technical Advisory Committee meetings. If your board participates you may sign-in on the kiosk laptop provided in the meeting room.

**Commission Appointments:**

Chairman Browdy noted that an additional appointment was made to the Commission in August and inadvertently left off of the list of new Commission appointments announced during the October 2013 meeting. David Compton was appointed to represent Structural Engineers, and fills a vacant seat. David is from Lutz and is the vice president and senior structural engineer at Bracken Engineering. His term runs from August 27, 2013 to January 13, 2017. Welcome to David and apologies for the late announcement.

**Roll Call:**

Chairman Browdy performed roll call, a quorum was met with twenty two members present.

Chairman Browdy requested that Jeff Blair cover the agenda items for the meeting today.

**Jeff Blair welcomed participants to the December Plenary Session and introduced the agenda as follows:**

- To Consider Regular Procedural Issues: Agenda Approval and Approval of the October 18, 2013 Facilitator's Summary Report and Meeting Minutes.
- To Consider/Decide on Chair's Discussion Issues/Recommendations.
- To Consider/Decide on Accessibility Waiver Applications.
- To Consider/Decide on Approvals and Revocations of Products and Product Approval Entities.
- To Consider Applications for Accreditor and Course Approval.
- To Consider/Decide on Legal Issues: Petitions for Declaratory Statements.
- To Consider the Process for Binding and Non-Binding Interpretations of the Florida Building Code.
- To Conduct a Rule Development Workshop in relation to Rule 61G20-3.015, FAC, Pertaining to Product Approval, and Review Associated Regulatory Cost.
- To Conduct a Rule Development Workshop in relation to Rules 61G20-3.007, FAC, Pertaining to Product Approval, and Review Associated Regulatory Cost.
- To Conduct a Rule Development Workshop in relation to Rule 61G20-6.002, FAC, Pertaining to Building Code Education.
- To Consider/Decide on Technical Advisory Committees (TACs): Accessibility; Code Administration, Energy, Roofing, and Structural TAC Report/Recommendations.
- To Consider/Decide on Program Oversight Committees (POCs): Education and Product Approval POC Reports/Recommendations.
- To Receive Public Comment.
- To Discuss Commissioner Comments and Issues.
- To Review Committee Assignments and Issues for the Next Meeting—February 20 - 21,

Chairman Browdy requested a Motion to approve the December 13, 2013 agenda as presented. A motion was entered by Commissioner Gonzalez and seconded by Commissioner Tolbert, the motion passed unanimously.

**Approval of the October 18, 2013 Facilitator's Summary Report and Meeting Minutes:**

Chairman Browdy requested a Motion to approve the October 18, 2013 Facilitator's Summary Report and Meeting Minutes as presented/posted. Commissioner Batts entered a Motion to approve the October 18, 2013 Facilitator's Summary Report and Meeting Minutes as presented. Commissioner Schilling seconded the Motion. The Motion passed unanimously.

**Chairman's Discussion Issues and Recommendations:**

Chairman Browdy stated with regret he was informing the Commission that newly appointed Commissioner Thomas Franz passed away suddenly on October 29, 2103 at his home in Melbourne. Tom was fifty five years old. He further stated that our condolences and sympathies go out to Tom's family and friends. Tom was recently appointed to represent residential contractors.

**Accessibility Waiver Applications:**

Chairman Browdy stated the Commission will now consider this month's requests for accessibility waivers. April Hammonds will serve as legal counsel and present the Accessibility Advisory Council's recommendations. April please present the Councils' recommendations regarding waiver requests in turn.

April Hammonds, Accessibility Advisory Council legal advisor, presented the Accessibility Advisory Council's provided the recommendations of the Council to the Commission.

**[The Alamo Hotel – 4121 Indian Creek, Miami Beach](#)** – Council recommended granting based on Historical Nature and disproportionate cost. This was deferred from the August Meeting.

Commissioner Schiffer entered a motion to approve the waiver; Commissioner Schock seconded the motion, the motion passed unanimously.

**[South Beach 18 LLC, 125 18 Street, Miami Beach](#)** - Council recommended granting based on technical infeasibility with the condition that the signage is placed telling the disabled person where the accessible room is and that the intercom be audio and visual.

Commissioner Schock entered motion to grant conditional approval; Commissioner Schilling seconded the motion, the motion passed unanimously.

**[AXIS, 1437-1439 Washington Avenue, Miami Beach](#)** - Council recommended granting based on disproportionate cost.

Commissioner Flanagan entered a motion to grant the waiver; Commissioner Schiffer seconded the motion, the motion passed unanimously.

**[One Story Retail Building, 7350 Biscayne Boulevard, Miami](#)** - Council recommended granting based on technical infeasibility conditionally with the signage displaying caution of single drive ahead.

Commissioner Schiffer entered motion to grant conditional approval; Commissioner Schilling seconded the motion, the motion passed unanimously.

**Accessibility Waiver Applications (cont):**

[2501 Riverside Avenue Renovation, 2501 Riverside Avenue, Jacksonville](#) - Council recommended granting based on disproportionate cost.

Commissioner Tolbert entered a motion to grant the waiver; Commissioner Schock seconded the motion, the motion passed unanimously.

[Emotions AP LLC – Hotel/Rooming House, 927 Jefferson Avenue, Miami Beach](#) – Council recommended granting based on disproportionate cost on the condition that all guests are treated alike.

Commissioner Schilling entered a motion to grant approval with condition that all guests are treated equally. Commission Schiffer seconded, the motion passed unanimously.

[Space D, 1471 Capital Circle, Tallahassee](#) - Council recommended granting based on disproportionate cost.

Commissioner Tolbert entered motion to grant approval; Commissioner Schilling seconded the motion, the motion passed unanimously.

[Dewey’s Indoor Golf and Sports Grill, 7720 Turkey Lake Road, Orlando](#) - Council recommended granting based on disproportionate cost on the condition that the lift is installed.

Commissioner Carlson entered a motion to grant approval with condition that the lift is installed. Commission Meyer seconded, the motion passed unanimously.

**Applications for Product Entity Approval:**

[Applications for Product and Entity Approval](#)

Chairman Browdy requested Commissioner Stone report on the POC’s recommendations for entity approvals and the consent agenda for products recommended for approval. He stated the presentation will start with the consent agenda followed by entity approval applications, and conclude with discussion items. Chairman Browdy stated Commissioner Stone will now present the applications on the consent agenda and entity approval applications.

Commissioner Stone advised the Product Approval Oversight Committee met on Wednesday, December 4, 2103 via conference call. By consent the POC recommends approval of one hundred five products unless someone wants to remove a product for discussion, he would like to enter a motion to approve the one hundred five products on consent agenda. The motion was seconded by Commissioner Schock, the motion passed unanimously.

**Applications for Product Entity Approval (cont):**

**[Applications for Product and Entity Approval](#)**

Commissioner Stone stated the POC also recommended approval of 12 entities on consent and would like to enter motion to approve. The motion was seconded by Commissioner Schock, the motion passed unanimously.

Commissioner Stone presented two additional products that were approved by the POC after minor discussion of missing hard copies of checklist missing at the time of the agenda, but were received prior to the meeting. Commissioner Stone entered motion to approve the additional two products. The motion was seconded by Commissioner Schock, the motion passed unanimously.

**Applications for Accreditor and Course Approval:**

Chairman Browdy requested that Commissioner Dean present the Education POC's recommendations regarding applications for accreditor and course approval.

Commissioner Dean provided the following 9 Courses from the POC for Commission action:

**614.0** – Commissioner Dean entered motion to accept POC recommendation for approval. The motion was seconded by Commissioner Stone, the motion passed unanimously.

**615.0** - Commissioner Dean entered motion to accept POC recommendation for approval. The motion was seconded by Commissioner Stone, the motion passed unanimously.

**624.0** - Commissioner Dean entered motion to accept POC recommendation for approval. The motion was seconded by Commissioner Stone, the motion passed unanimously.

**629.0** - Commissioner Dean entered motion to accept POC recommendation for approval. The motion was seconded by Commissioner Stone, the motion passed unanimously.

**627.0** - Commissioner Dean entered motion to accept POC recommendation for approval. The motion was seconded by Commissioner Stone, the motion passed unanimously.

**631.0** - Commissioner Dean entered motion to accept POC recommendation for approval. The motion was seconded by Commissioner Stone with correction of the full name of the course, the motion passed unanimously.

**633.0** - Commissioner Dean entered motion to accept POC recommendation for approval. The motion was seconded by Commissioner Stone, the motion passed unanimously.

**628.0** - Commissioner Dean entered motion to accept POC recommendation for approval. The motion was seconded by Commissioner Stone, the motion passed unanimously.

**Applications for Accreditor and Course Approval (cont.):**

**625.0** - Commissioner Dean entered motion to accept POC recommendation for approval. The motion was seconded by Commissioner Stone, the motion passed unanimously.

**Petitions for Declaratory Statement:**

Chairman Browdy asked April Hammonds, Legal Counsel for the Commission if there were any other legal issues or legislative issues in addition to the declaratory statement requests.

Ms. Hammonds stated there was one legal issue but would be better suited to discuss during the Product Approval POC report.

Chairman Browdy agreed and requested that Ms. Hammonds present the declaratory statements.

[Legal Report](#)

**[DS 2013-046](#) by Sal Delfino of Petersen Aluminum Corp. (Deferred from the October meeting)**

Ms. Hammonds advised that the petition was withdrawn by the applicant.

Chairman Browdy requested a motion to accept withdrawal. Commissioner Compton entered a motion to accept the withdrawal from the applicant, Commissioner Swope seconded, the motion passed unanimously.

**[DS 2013-089](#) by Timothy Krebs of T.A. Krebs, LLC**

Ms. Hammonds read the petition from Mr. Timothy Krebs with response.

Commissioner Schiffer requested clarification of his concern from Mr. Madani on residential construction in the Code for Fire Protection. He requested clarification on existing building code for alterations.

Mr. Madani stated this is an alteration not a new construction. This does not apply; they would use existing building code information. This would not apply and has not been an issue. You would use residential code and not the building volume which requires sprinklers.

Commissioner Schiffer stated that the local code inspections could require the installation of sprinklers.

Commissioner Tolbert entered a motion to accept response, Commissioner Gonzalez seconded the motion. Motion passed with Commissioner Schiffer in opposition. The vote was twenty one in favor and one opposition.

[Legal Report](#)

**Petitions for Declaratory Statement (cont.):**

**[DS 2013-092](#) by Scott Greenberg**

Ms. Hammonds read the petition from Mr. Scott Greenberg with response.

Chairman Browdy requested discussion if any from the Commission.

Commissioner Calleja expressed he had concerns with the response to the first question. He stated he has issues with the language in the current Statute expressly where it states “notwithstanding the above existing equipment need not comply with minimum efficiencies including heat load and sizing analysis.

He stated the wording is bad and does not make sense and really needs to be changed. Commissioner Calleja stated the language should be made clear for the Building Inspectors.

Commissioner Calleja recommended adding language to the declaratory statement answer to question one, such as requirement for heat load calculation is no longer required but the code still requires a quality installation standard. He stated the way the statute reads is “quality installation standards including but not limited to sizing calculation and duct sealing”. Commissioner Calleja further requested that the statement include the code still requires quality installation standards; this will give the building official something they can use during inspections.

Ms. Hammonds responded that this item was not discussed at the TAC as she was prepared for this discussion. She stated the synonyms for “notwithstanding” are “regardless of this section”, “in spite of this section”, “despite this section”, in statement it means regardless of the above you do not have to do this. Ms. Hammonds wanted to be sure this statement was clarified and further stated that question one and question three were unanimous, question two was not unanimous, so she feels the answer is correct as stated.

Chairman Browdy asked if she is stating the answer is correct based on the term notwithstanding.

Ms. Hammonds responded yes through legal interpretation.

Chairman Browdy asked if Mr. Madani had any comment.

Mr. Madani stated he agreed with Ms. Hammonds, he said when this legislation came about the intention was not require sizing and duct inspection when you are doing a total replacement on the mechanical system which is consistent with staff understanding.

Commissioner Calleja stated there still needs to be some language clarification.

Chairman Browdy asked if he would like to propose some language to be added to the answer.

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**Petitions for Declaratory Statement (cont.):**

**[DS 2013-092](#) by Scott Greenberg (cont):**

Commissioner Calleja proposed the following language to be added.

“Yes, HB 269 preempts system sizing for replacement of existing equipment, but still requires a quality installation standard.”

Chairman Browdy stated that he understood his point; our processes are just to answer the question. He further stated he understood his concern that we need to answer with clarity even though we have to answer it narrowly.

Commissioner Calleja stated this is a general comment regarding declaratory statements and how we respond to them. He stated this is one of the biggest complaints from the building officials that we are very narrow in our response and do not clarify it. Commissioner Calleja stated maybe this should not be done in a declaratory statement but some other form where we can give the inspectors and contractors more clarification on the code.

Chairman Browdy stated that the Commission would be discussing declaratory statements and binding opinions very shortly and maybe this would be a good time to discuss this. He asked if there were any further comments on this declaratory statement.

Commissioner Calleja stated he had a comment on question number three, he said that he feels there is a mistake in the answer. He stated the question asked was the duct sealing certification form that is a document that has to be pasted to the air handler, for the inspector to see so that he can see if this has been inspected, is it still required. The answer is yes, if you did away with the requirement for sealing the ducts why would you be required to put a paper on the air handler, he felt the answer would be no and the answer would follow through, HB 269 overturns the requirement for duct sealing, so if the answer is going to be that narrow, it should be no and there should be no requirement for the document stating the duct was sealed.

Mr. Madani responded if you say no, that would be fine, that will take care of it. He stated that we are trying to say, yes, with regard to the duct system if not replaced, if you say no, the question is the duct sealing certification required for existing residential (form).

Chairman Browdy, you would not consider necessarily?

Commissioner Calleja stated the question is the duct sealing form required, the first part is stating yes, but the second part the form is required, the form is not required if you do not have to seal it.

Mr. Madani stated that would be fine.

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**Petitions for Declaratory Statement (cont.):**

**[DS 2013-092](#) by Scott Greenberg (cont):**

Chairman Browdy asked if there was any further discussion.

Commissioner Schiffer asked Commission Calleja if the duct sealing form has to be in place where you can note that there was no inspection.

Commissioner Calleja stated that there is no standardized form, there are a couple of versions that we and that Contractors Association came up with one. He stated there is a place for exceptions where you can check off one of the exceptions. However, he stated there is not a place for this and it would be senseless to have the form.

Chairman Browdy asked if there was any further discussion. There being none, he asked Mr. Madani if the suggestion could be implemented for question number three.

Mr. Madani stated yes and in addition to that there is a typo, it should have said 101.4.7.1.1 the section number should be .7 instead of .6 and this should be included.

Chairman Browdy asked for discussion on the amended declaratory statement. Is there any public comment?

Arlene Stewart, ASC Consulting, asked if we are still completing two hearings for declaratory statements.

Ms. Hammonds replied no just one as required by statute.

Chairman Browdy asked for a motion for the declaratory statement as amended.

Commissioner Schiffer entered motion to approve statement as amended. Commissioner Schock seconded the motion, the motion passed unanimously.

**[DS2013-103](#) by James Scott of J. Scott Drafting, Inc.**

Ms. Hammonds read the petition from Mr. James Scott with response.

Chairman Browdy requested discussion if any from the Commission.

Commissioner Schiffer entered a motion to accept response, Commissioner Gonzalez seconded the motion. Motion passed unanimously.

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**Petitions for Declaratory Statement (cont.):**

**[DS 2013-104](#) by Mark Fairchild, P.E. of Milton Engineering Consultants, P.A.**

Ms. Hammonds read the petition as follows from Mr. Mark Fairchild and provided the responses following the questions.

**Question 1.** Does the 2010 FBC-B specify that the calculation of wind loads under Section 1609.1.1 Exception 7 applies solely to luminaires located within a public right-of-way?

**Answer: Yes,** according to the technical scope of the AASHTO LTS-4 standard as referenced in the Florida Building Code, Building, the wind loads calculation of the said standard are limited in scope to luminaires that are located within highways that are open to the public.

**Question 2.** Is it the intent of the 2010 FBC-B to limit the calculation of wind loads under Section 1609.1.1 Exception 7 solely to luminaires located within a public right-of-way?

**Answer: Yes,** calculation of wind loads under Section 1609.1.1 Exception 7 is limited in scope to luminaires that are located within highways that are open to the public.

**Question 3.** If the answers to Questions 1 and 2 are both "No," are there any site-specific locations or conditions where the calculation of wind loads for luminaires would be disallowed under the provisions of the 2010 FBC-B Section 1609.1.1 Exception 7?

**Answer:** No answer is needed since the answers to questions 1 and 2 are in the affirmative.

(Note: Wind loads calculation for luminaires that fall outside the technical scope of AASHTO LTS-4 (i.e. outside the public right-of-way/highway) are subject to the design criteria of ASCE 7 as applicable.

Chairman Browdy stated the Commission had heard the recommendation of the Structural TAC, however before we come to the Commission for comments, are there any members of the public that would like to speak. He recognized Mr. Fairchild from the audience and asked if he was the petitioner, he stated yes. Chairman Browdy asked that he identify himself for the record.

Mr. Mark Fairchild introduced himself as a Professional Engineer in the State of Florida with Milton Engineering Consultants in Stuart, Florida.

Chairman Browdy then asked if he was in agreement with the responses to the declaratory statement, Mr. Fairchild responded no, and obviously the reason he was addressing the Commission. He stated he was hoping to give the Commission some background on why he would not agree.

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**Petitions for Declaratory Statement (cont.):**

**[DS 2013-104](#) by Mark Fairchild, P.E. of Milton Engineering Consultants, P.A. (cont.)**

Chairman Browdy stated he is welcome to give his comments as long as he stays with the five minute rule that is imposed.

Mr. Fairchild stated the firm he works for which is a Civil Engineer firm that has recently gotten involved in the designing of foundations for light poles. The manufacturers design the poles but do not design the foundations as they need to be site specific to the conditions that they are located in. The sizes of the foundations we design are primarily dictated by wind loads on the structures obviously and the current Florida Building Code requires that the wind loads be determined based on ASCE 7-10. He stated this Blue Book is the current version in the Building Code, however there is an exception in the Building Code in fact several exceptions. Mr. Fairchild stated one of the exceptions is to allow wind loads to be calculated based on AASHTO which is the American Association of Highway and Transportation Officials. He further stated the publication that AASHTO has issued this document which is in this binder is just for design of highway signs, luminaires and traffic signals and this is the exception the Building Code allows. Mr. Fairchild advised that they are designing light poles, foundations for light poles, this is exception to the building code and they had used this for the foundation of the light poles. He said that unfortunately when they submitted these calculations to various municipalities, they received some push back from some of the municipalities saying that they really cannot use that publication to design the foundations for the light poles that are not along a highway or a roadway because this is a publication put out by a highway organization. Mr. Fairchild said that he tried to make the argument with the municipalities that it does not matter if the light pole is on the road or in a parking lot or next to a building, this documents design provisions in this document are basically applied for light poles in general. He further stated that did not seem to go over well, they stated you either go by the municipalities' interpretation or submit a formal petition for declaratory statement and have the Building Commission review it and issue a decision that would be interpreted uniformly throughout the State. Mr. Fairchild said that is what he did and stated that he had not been through this process before and he apologized, but he did not realize that there are several steps that it goes through before it gets to this point, so I guess Mo and staff prepare the responses and then it goes to a structural TAC Committee and then it goes to where we are today, the TAC has already made their recommendations.

Chairman Browdy asked Mr. Fairchild if he participated in the TAC discussion.

[Legal Report](#)

**Petitions for Declaratory Statement (cont.):**

**[DS 2013-104](#) by Mark Fairchild, P.E. of Milton Engineering Consultants, P.A. (cont.)**

Mr. Fairchild responded that he absolutely did participate and that it got a little heated in the debate and little bit involved, but he said he thinks that Mo's responses that he prepared basically that this only applies to light poles along highways. He stated he tried to explain that the Building Code has nothing to do with highways, the Building Code is buildings and building related structures. So he questioned why the Building Code references this document as an exception using wind load calculations if you can't even use it if it only applies for things on highways, then you would not even be able to reference this document, this does not make any sense.

Mr. Fairchild went on to state that the AASHTO document is actually the wind load provisions in this document and are based on ASCE 7, just an earlier version of ASCE 7. He said AASHTO took building provisions and building wind load provisions put them into their document for highway structures and now he is trying to design foundations and now he is being told you cannot use this, it does not apply to buildings it only applies to highways, however it was started based on building provisions. Mr. Fairchild said it really does not make any sense to dis-allow this to be used if it is based on building criteria.

Mr. Fairchild stated the second thing is, again this came up at the conference call, this publication is based on a ninety-five version of the ASCE-7 Code. He further stated the ASCE-7 Code back in ninety-five the wind speed charts in that publication were actually much more strict than they are today. Mr. Fairchild stated the wind speed charts in the ASCE-7 ninety-five were changed in ninety-eight where they dropped the wind speeds throughout most of Florida. ASCE-7 is now in version 7-10 the winds speeds have again reduced in ASCE-7-10, so this is actually based on a much more conservative wind chart and wind speed map than current Building Code yet it is being disallowed. He advised the design you get using this Code is much more conservative than the current Building Code and yet it is being disallowed.

Mr. Fairchild said that he hated to say it, but part of the problem is that there may be a perception, there may be some bias introduced, the only reason he says that is because during the TAC call, Mr. Lavrich, one of the TAC members just happened to mention that he is on the wind load sub-committee for ASCE 7. He stated he looked that up and he is in fact on the wind load sub-committee. He continued by saying he was surprised to find that Mo is also on the ASCE 7 sub-committee for wind loads and none of the other TAC Members are on this committee. Mr. Fairchild stated, so the person preparing the response to his declaratory statement saying you cannot use AASHTO and states it does not apply and the person that during the TAC meeting on two occasions made a motion to approve TAC comments as written and stated let's move on to other items as it was put, is on the same wind load committee as Mo and he feels there may be in his opinion, these meetings such be beyond any perception of bias and in his opinion that may entered into the equations because the people making the responses and motioning the responses to be accepted are both members of the ASCE 7 wind load committee.

[Legal Report](#)

**Petitions for Declaratory Statement (cont.):**

**[DS 2013-104](#) by Mark Fairchild, P.E. of Milton Engineering Consultants, P.A. (cont.)**

Chairman Browdy advised Mr. Fairchild his time was up, however would allow members of the Commission to certainly respond to his comments. He then asked the Commission if there were any comments.

Ms. Hammonds, Legal Counsel, stated she would like to offer a point of clarity.

Chairman Browdy acknowledged Ms. Hammonds and advised she could make her comments first and then he will address the Commission for comments.

Ms. Hammonds, stated based on the statements made by Mr. Fairchild, she feels there needs to be clarification given. She stated that this is something that needs to be clear to the public and all members of our Committees and all members of the Commission. Staff puts together an analysis whereby they pull out all information from the code and provide a temporary answer, if you will. Every member of the committee is considered an expert in their field and that is why they are on those committees to discuss it. Every committee is free to reject any answer that is given by staff including my recommendations that it should be dismissed in given situations and then once it gets here to the Commission, the Commission is also free to reject the Committees recommendation and create their own answer. She said that is simply done as a method of providing all of the information in one locale, this is not done to give an answer coming from staff, that is why it is considered an analysis not a proposed answer. Ms. Hammonds stated she wanted to make this very clear to anyone listening anyone watching and to every member of the Committee and this Commission, if you do not agree with anything that is put forward in an analysis, please feel free to address that and I believe so as you just stated this was a highly discussed issue, so she said she took exception that you are accusing this Commission or any Staff member of bias.

Chairman Browdy acknowledged Jim Richmond, stated for the record, he asked Mo Madani based on his service with ASCE Committee, how much are you compensated for that service?

Mr. Madani stated he is not paid anything, it is free.

Mr. Richmond asked Mr. Madani if he was a volunteer on the Committee as well as all other members.

Mr. Madani stated yes.

Chairman Browdy asked if the Commission had any comments.

[Legal Report](#)

**Petitions for Declaratory Statement (cont.):**

**[DS 2013-104](#) by Mark Fairchild, P.E. of Milton Engineering Consultants, P.A. (cont.)**

Commissioner Compton stated that Mr. Fairchild during the Structural TAC meeting and again today stated the AASHTO design gave a more conservative foundation design as opposed to the Florida Building Code. He stated he did not understand the issue based on his design analysis, he should have no problems with certifying the design that it meets the Florida Building Code based on his experience and the analysis he has already done. Commissioner Compton stated he did not understand what the problem is.

Chairman Browdy advised that he will take note of that; he would like to get the comments from all Commissioners and then go back to Mr. Fairchild for response prior to the Commission vote.

Commissioner Bassett stated as long as the subject of bias comes up, he did not know if he needed to say this but he would, he serves on the Florida Engineering Society, Board of Directors with Mr. Fairchild's wife was past President of the Engineering Society, but he will vote, the way he feels he ought to vote.

Chairman Browdy thanked Commissioner Bassett saying that this is probably more information than was needed.

Ms. Hammonds advised that all members have the right to abstain from voting if they choose to.

Commissioner Stone stated at least thirty years ago there was a similar option in the Building Code, which was the Standard Building Code that would have been in the early seventies or eighties, and he knew they referenced a similar document for light standards in the shopping centers. His question to the staff would be if ASCE 7 which replaced the old standards we had is robust enough or easy enough to use to design these structures.

Mr. Madani stated the answer to his question was yes. He stated that he had heard statements made that the Florida Building Code only applies to buildings and that is not true, it does apply to structure, it does apply to luminaires on the highways, so really the Florida Building Code is not limited to buildings. He stated again the answer is yes, ASCE 7 does cover these kinds of structures.

Commissioner Schiffer asked legal counsel if there is a difference between the term highway and public right away?

Ms. Hammonds stated that this question in a technical sense and that is outside of her scope. She stated public right away in the general world yes, there is a difference, but in the technical world I would not know if there is a difference that would be outside of her authority and knowledge.

[Legal Report](#)

**Petitions for Declaratory Statement (cont.):**

**[DS 2013-104](#) by Mark Fairchild, P.E. of Milton Engineering Consultants, P.A. (cont.)**

Mr. Madani stated that during the staff analysis we tried to figure that out, they went to a dictionary where it says highway, it does bring in right away, and it is all related.

Mr. Richmond stated for clarification, right away is necessary for highways, but right a ways can be used for, it is an all-encompassing term essentially for an interest in property that government acquires for several different purposes one of which being highways.

Commissioner Schiffer stated that was kind of his concern as Mr. Fairchild was asking a question about within the public right away and you are explaining highways in some cases open to the public. He stated the point is the public right away is all roads right away, is a highway a subset of that.

Mr. Richmond stated he believed the analysis addresses that. He stated basically public right a-way is what the petitioners asking for this to be applied to, I believe, whereas we are saying it applies to highways for that particular type, it should be more narrowly confined. Mr. Richmond advised that the "petitioner responds this wouldn't apply to anything and this is nonsense to include in the building code" but Mo addressed that structures are certainly contained within highway right a-away. He said a trip down the turnpike will tell you this every time.

Commissioner Gross stated in accord with Dr. Stone he goes back thirty years and I go back forty years starting my practice in 1972 and there used to be a five foot rule and he thinks this is a big jurisdiction issue and way beyond just this, it is a lot of stuff on this site. He said back in the old days, he even heard it discussed at some of these meetings in the past the five foot rule, he did not believe it was ever in the code. He further said but a building code covered a building and then it covered everything five feet beyond the building and beyond that the utilities or the City or the City Engineering department would pick up. Commissioner Gross said then we started adding light poles with wind loads and started fencing and he had to say he was sorry, but the accessibility code was the worst offender where it took over almost all of the sight, where there were sidewalks leading to parking spaces, other buildings, city sidewalks and others under the jurisdiction of the building code. He stated the building code is a lot more than just the building and the five foot rule is out the door, but there is still the question as to when do the building code restrictions apply and when do these other jurisdictions take over. Commissioner Gross said if you have ever designed any electrical work you know that you have to put these huge wires and conduits from your meter up to an overhead drop off and then the power company comes and puts these thin little aluminum wires to it, he has always asked how these guys put these little aluminum wires to it, they would respond that they have different requirements. He said the bigger question is when does the Building Code stop and the jurisdictions, the other requirements of utilities and city engineering departments and this came up also during our code interpretation the formal code interpretation were too when do the other

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**Petitions for Declaratory Statement (cont.):**

**[DS 2013-104](#) by Mark Fairchild, P.E. of Milton Engineering Consultants, P.A. (cont.)**

restrictions cut in and he thinks within the site now we have taken building on our site of private property and also one chickee hut, the chickee hut does not have to comply unless there are utilities installed. He said once utilities are involved it seems to trigger having to have wind load and he would think within the site, the building code should comply to things that have utilities and those types of connections. He feels it is bigger question of jurisdiction and the code should have jurisdiction if our building or building connections, if it transferred somewhere else the code would not be used it would be that jurisdiction.

Commissioner Brown, stated please forgive him he suffering from OBD, overcome by detail. He stated if he understood correctly that Mr. Fairchild has asserted that there is an exception in the building code allowing for the use of that big white book (AASHTO), he would be interested in hearing from staff, is that assertion correct or not correct.

Mr. Madani stated to clarify that, in the Florida Building Code, Section 1609.1.1, really says that when you design a building or a structure for wind load, use ASCE 7, however, it give exceptions, there are about eight, one of those exceptions number 7, "Designs using AASHTO LTS-4 Structural Specifications for Highway Signs, Luminaries and Traffic Signals." Mr. Madani said this is acceptable, however, when you read AASHTO standard, the scope is limited to highways and those luminaries relate to highway. He stated they applied to standards only within its scope. He further stated we cannot just know expand this standard and use it to design luminaries that are in parking lots or next to a building, that is really the issue, the code is very clear that the scope of this standard and is limited that are located on highways.

Commissioner Brown stated this is true and maybe you stated this, but can you site specifically in the code that is exception here. He requested the specific part of the scope and that code that says that it can only be used for highways.

Mr. Madani, stated that the association that put this together only deals with highways and it does not deal with buildings, or luminaries in parking lots.. He stated it is really the whole standard or scope of it reads highway signs, luminaries and traffic signals, the key is only the is as it is configured, only luminaries on highways not those related to buildings. He stated the issue is the scope of the standard is what is limited the application and not really the code.

Commissioner Brown stated his final question is if that is case why is the exception in the code to begin with.

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**Petitions for Declaratory Statement (cont.):**

**[DS 2013-104](#) by Mark Fairchild, P.E. of Milton Engineering Consultants, P.A. (cont.)**

Mr. Madani stated the history of this exception was Florida's specific changes, and not really from the International Code, it was put in by the Department of Transportation (DOT), staff from DOT asked for this to be put in, because DOT used the standards for designing luminaries on highways, it was put in for that purpose, to deal with lights on highways. He further stated that is why the exception is there only for highways.

Commissioner Tolbert stated in his view, this could be submitted as an alternate method of design. He further stated especially if it is based on a higher wind pressure.

Chairman Browdy stated that is what they are discussing, that the building officials do have that discretion in that particular case. He advised Mr. Fairchild that he would like all Commissioners to have a chance to comment and questions prior to him responding.

Commissioner Carlson stated he shared the same concern that Commissioner Brown does, he said that section 1601.1.1 (7) does not indicate that when used in highway luminaries design you can use this code, it says it is an exception and can use this as part of the exception to the code. He further stated it does not disqualify or exempt only when used on highway design.

Commissioner Schilling stated he had a simple question, he stated that is outside his specialty, but looking at it from our common sense point. He asked if there would be any connection to the TAC that we are trying to determine what is controlled with DOT code and the Florida Building Code, he said it seemed to him, if the light poles are connected to the electrical system of a building, like a light fixture in a shopping center, it would seem that the Building Code would oversee the requirements for those foundations and that would then be separate from the highway code. He further stated based on where the electrical supply for the light poles comes from that would be the determining factor of which code would apply for the foundations.

Commissioner Schock stated in light of the discussion the staff has had, he feels you could only use the standard to the scope of what the standard covers and also to Mr. Compton's issue about it being a more stringent or less stringent design and being able to certify, and he thinks Tim Tolbert is talking the same kind of line. He stated he is in favor of staff recommendations on this issue.

Chairman Browdy, stated that he feels that he has gained most of the comments and questions from the Commission. He asked Mr. Fairchild if he would like to respond to the questions and comments of the Commission.

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**Petitions for Declaratory Statement (cont.):**

**[DS 2013-104](#) by Mark Fairchild, P.E. of Milton Engineering Consultants, P.A. (cont.)**

Mr. Fairchild stated first his response would be he would agree and he believed the TAC agreed that AASHTO publication will give you a more conservative design. He stated there was a lot of discussion on the TAC call and why he was not writing something on the cover of your calculations stating the AASHTO gives a more conservative design than the Florida Building Code. He asserted he is giving a more conservative design. He further stated that sounds simple to do, but when you are submitting to all different building officials and municipalities and the ones we have been submitting to is a small portion compared to what they will be submitting to, they are just getting into this design aspect, but it has caused a lot of confusion among the building officials to reference an AASHTO publication that has the word highway even with the exception in the code. The building officials are stopping at the word highway and it should not be used for parking lot lights or building lights because it is a highway publication and he tried to explain on an individual basis that AASHTO should be considered an allowable exception because it is giving a more conservative design, it is actually based on the ASCE code just an earlier version, He stated because it was causing so much confusion, it prompted me to submit the petition for declaratory statement, so that he could get something in writing from the governing body, which would allow me to point to the statement and state that he is a statement from the Florida Building Commission saying it is okay to use this alternate standard design of the light poles whether they are on the left side of the right-a-way or right side of the right-a-way. He further stated he understand and thinks even during the TAC call, he stated Mr. Tim said that he did not understand why I was going through the declaratory statement when you could just as easily submitted two sets of calculations for every projects, ones for the left side of the right-a-way and one for the right side of the right-a-way. Mr. Fairchild advised that he stated that seemed a little absurd to go through that exercise when it is really not necessary when one exception could be used to cover both scenarios. He stated he did not see the need to double up on structural calculations. He further stated again, he thinks they are getting hung up on the word highway in the publication. He said he tried to think of an analogy, it is something like if someone came to you and asked the area of a blue rectangle, and you went to a book that says we love green association and it gave you length time width and you said you could not use this equation as it is a green rectangle, the point is the equation does not care it is a blue rectangle or green rectangle, the equation is the equation and that is what we are getting hung up on is the word highway, the calculations imbedded within this will give you just a good or better than what is in the Florida Building Code. He stated again highway, just because the word highway is in there, doesn't mean that it is limited to highways. He stated he could hand out the scope of this book, this book does not say it is limited to highways, it says the closing part is one sentence saying specifications are intended to serve as the standard for the design, fabrication direction of these types of structures, meaning luminaires, signs and traffic signals, it does not say for highways only.

Chairman Browdy, advised Mr. Faircloth that they have done what they can do within the Plenary to discuss this matter.

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**Petitions for Declaratory Statement (cont.):**

**[DS 2013-104](#) by Mark Fairchild, P.E. of Milton Engineering Consultants, P.A. (cont.)**

Ms. Hammonds requested to speak, she stated she needed to make a legal clarification; again it has come up twice. She stated declaratory statements are very narrow and specific in nature to the petitioner's particular set of circumstances, in facts as laid forth in this petition, you laid forth that you were in the process of undertaking three types of projects, one where you specified luminaires for street lighting that are situated along a roadway, located within a public right-a-way, that involves one question. She further stated type two, the project was luminaires for sight lighting situated in parking lots and/or around buildings and are located outside of the public right away. She stated type three which was the combination of type one and type two, everybody please understand declaratory statements are supposed to be narrowly drawn to deal with the facts that are given by a particular petitioner and can only if someone else materially meets those same facts would this declaratory statement apply. Ms. Hammonds advised that everyone needs to be very clear on that as this is statute that is rule that is case law.

Chairman Browdy recognized Commissioner Compton.

Commissioner Compton stated he wanted to clarify something, the Structural TAC did not make the statement that the AASHTO code gave a more conservative design. Mr. Fairchild gave this statement based on his analysis that it gave a more conservative design.

Chairman Browdy recognized Commissioner Calleja.

Commissioner Calleja stated he thinks they should read what the staffs recommended answer to each of the three questions. He stated he thinks they need to be clear as to how the answers are worded.

Chairman Browdy stated they could be done again, or they can divide their responses by the answers to the individual questions. He stated for clarity purposes and the amount of discussion, take one of the answers, each response at a time and then at the end, they can come up with a declaratory statement. Chairman Browdy asked for the responses to be read again.

Ms. Hammonds read the response to question one:

**Question 1.** Does the 2010 FBC-B specify that the calculation of wind loads under Section 1609.1.1 Exception 7 applies solely to luminaires located within a public right-of-way?

**Answer: Yes,** according to the technical scope of the AASHTO LTS-4 standard as referenced in the Florida Building Code, Building, the wind loads calculation of the said standard are limited in scope to luminaires that are located within highways that are open to the public

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**Petitions for Declaratory Statement (cont.):**

**[DS 2013-104](#) by Mark Fairchild, P.E. of Milton Engineering Consultants, P.A. (cont.)**

Chairman Browdy asked for a motion regarding response to question one.

Commissioner Schock, approve the technical response. Commissioner Bahadori seconded the motion. The motion passed with seventeen approvals and five opposing.

Ms. Hammonds read the response to question two:

**Question 2.** Is it the intent of the 2010 FBC-B to limit the calculation of wind loads under Section 1609.1.1 Exception 7 solely to luminaires located within a public right-of-way?

**Answer: Yes,** calculation of wind loads under Section 1609.1.1 Exception 7 is limited in scope to luminaires that are located within highways that are open to the public.

Chairman Browdy asked for a motion regarding response to question two.

Commissioner Schock, approve the technical response. Commissioner Bahadori seconded the motion. The motion passed with seventeen approvals and five opposing.

Ms. Hammonds read the response to question three:

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**Question 3.** If the answers to Questions 1 and 2 are both "No," are there any site-specific locations or conditions where the calculation of wind loads for luminaires would be disallowed under the provisions of the 2010 FBC-B Section 1609.1.1 Exception 7?

**Answer:** No answer is needed since the answers to questions 1 and 2 are in the affirmative.

Chairman Browdy asked for a motion regarding response to question two.

Commissioner Schock, approve the technical response. Commissioner Bahadori seconded the motion. The motion passed with eighteen approvals and four opposing.

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**Petitions for Declaratory Statement (cont.):**

**[DS 2013-104](#) by Mark Fairchild, P.E. of Milton Engineering Consultants, P.A. (cont.)**

Chairman Browdy advised Mr. Fairchild that he had the opportunity to ask a different question and get a different answer.

Mr. Fairchild stated he did not think he would get a different answer, but advised Chairman Browdy that he appreciated the offer.

**Binding and Nonbinding Interpretations of the Florida Building Code:**

**Supporting documentation:** [Section 553.775, Florida Statutes](#); [Rule 61G20-2.006, Non-Binding Interpretations of the Florida Building Code](#); [Rule 61G20-2.007, Binding Interpretations of the Florida Building Code](#)

Chairman Browdy stated that moving on the next agenda item was one of the focal points for the meeting, binding and nonbinding interpretations of the Florida Building Code. He stated BOAF has executed the processes for binding and non-binding interpretations for several years for the Florida Building Commission and recently under a sub-contract with Building A Safer Florida, (BASF) and that subcontract with BASF both binding and nonbinding interpretations both processes were contained in a single agreement. Chairman Browdy stated the administration of those processes applied were reviewed as a result of the recent litigation and the Department of Business and Professional Regulation (DBPR) and found some areas that required modification to ensure that the process complied with Florida law. BOAF does not believe that the modifications the Department requires for compliance were intended by the stakeholders that drafted the legislation creating these two processes. BOAF believes and that implementation of those modifications will be detrimental to the BOAF and its participating members and as such BOAF has refused to enter into the contract for binding interpretations but would like to continue to perform the non-binding interpretations. This again is within the subcontract with that we have with BASF. He stated as a result of BOAF's refusal to accept the requisite modifications of binding interpretation process, the Building Commission must now make a decision with regard to the present and future of these two Commission provided processes and services that we now render the public. As a background the Commission's authority to issue interpretations is pursuant to sections 553.775 of the Florida Statutes established in 2005, over 1000 non-binding interpretations have been conducted since that time. While there has been an average of only 2 binding interpretations per year for a total of approximately 15 that have completed the process. He further stated it should be noted that while non-binding interpretations were free to the public, there was a \$250.00 fee for binding interpretations.

**Binding and Nonbinding Interpretations of the Florida Building Code (cont):**

Chairman Browdy presented a power point presentation of the process that a member of the public would have to go through to get a binding interpretation. He took the Commissioners and the public audience through the nine step power point presentation.

Chairman Browdy stated it is clear that the non-binding interpretation process is the preferred route for interpretations and it does provide a more collaborative process for resolving code interpretation issues between the building official and the individual requesting the interpretation. In addition, declaratory statements are sometimes used to clarify a code interpretation in a more neutral manner and without creating a potentially adversarial situation. It is important to maintain the non-binding interpretation process that has proven so valuable, while the binding interpretation process has been little used.

Chairman Browdy advised that based on BOAF's unwillingness to comply with the statutory requirements and our history with that process, as the chairman he suggested that the Commission consider seeking support for Legislative authority to eliminate binding interpretation entirely as the Commission interpretative alternative. Further he stated to make what legislative changes are necessary to eliminate any reference to a particular organization with any statute or rule affecting the Florida Building Commission's authority. He stated in the meantime, however, should there happen to be a petition for a binding interpretation; the Commission could designate a panel of members in compliance with statutory requirements and inform BOAF of the designated panel members. Chairman Browdy said that because the statute already requires that any process be conducted through the BCIS, the staff can ensure the administration of that process. He concluded the presentation and where the Commission stands today. He then opened the floor to public comment and then back to the Commission for discussion and action.

Chairman Browdy asked that anyone from the public that wished to speak on this matter should sign up at the speaker table.

Arlene Stewart, Florida Home Builders Association, AZS Consulting, Inc. stated she had a question on the presentation regarding the binding interpretation process. She asked what happens if the building official responds during step four, she only heard what happens if they don't respond.

April Hammonds stated is included with the petition on the BCIS where people can make comments on the petition and the building official's response.

Ms. Stewart stated the process is the same it is just that the building official's response is included if they respond.

Ms. Hammonds stated that is correct.

**Binding and Nonbinding Interpretations of the Florida Building Code (cont):**

Doug Buck, Florida Home Builders Association, stated he felt the Commission will gain support from the construction industry to do something with this process. He stated we would all be better off if the code was not a rule, as it makes it so difficult to fix our problems. He further stated there is a difference between the declaratory statement and the binding interpretation, the declaratory statement is often ignored by the same building official that got it because it was a different situation, and maybe the house was in a different direction. Mr. Buck stated this does not make building designers and contractors happy, thus they went back and added this binding interpretation process to get us there. Obviously it is not working; obviously you have an organization that does not want to be focus and the manager of the process. He addressed Chairman Browdy stating that BOAF being in the statute is a comfort to other groups as they would have this process. Mr. Buck stated they need to find a third party that would be non-bias. He stated they will work with the Commission to reach a solution.

Gary Brevoort, Acting Executive Director of the Builders Association of Florida (BOAF). Mr. Brevoort stated the problem is not that BOAF does not want to continue doing these binding interpretations, the problem is that it has been brought to their attention to continue, they must do this action in the Sunshine which they had not done in the past.

April Hammonds stated this was not true.

Mr. Brevoort asked if he had been misled.

Ms. Hammonds clarified by stating it was in the law suit, the information was provided there was no issue with the Sunshine, and the information was given as to who the panel members were.

Mr. Brevoort, stated he asked Mr. Doug Harvey, past Executive Director, who has been through multitude of these to speak with him.

Mr. Doug Harvey, Past Executive Director, BOAF, stated he would like to clarify items that have been stated up to this time. He stated to the point necessary these interpretations have always been in the Sunshine, the results have always come back to the Commission in a public meeting, the actual discussion of some of the items as formal interpretations have occurred and have not necessarily been done in a noticed meeting in FAR. Mr. Harvey stated the biggest reason is timing; there is a limited period of time to provide this information. He further stated when a petitioner applies on the BCIS, typically there is a place where the petitioner puts in the building official's e-mail address. He further stated that he and Mr. Madani have had many conversations over the years on this subject. Mr. Harvey stated often times the e-mail address is either incorrect or the e-mail address is the plans examiner or one case was the permit technician. He stated many building departments have strict spam filters where the e-mail address was correct, but was not received in a timely manner.

**Binding and Nonbinding Interpretations of the Florida Building Code (cont):**

He further stated that the time starts when the petition is filed and the building official has 5 days to respond, and then there is a 7 day public comment period, now you have gone through 12 days of the 21 day period. He stated in order to ensure there is a panel of properly qualified and licensed individuals to handle a formal interpretation BOAF was always aware of the fact that these formal interpretations were state wide, the impact that a formal interpretation has, essentially mandating all building officials within the state to do something in a particular way or give permission for particular information to be presented and used. He stated that is very far reaching, they have always strived to ensure that first the question was very clear and was stated by Counsel earlier today, there was a limitation of the application. He stated there was a very narrow question as well as the fact that the information would be very specific so that it could not be misconstrued much like the discussion held earlier on the House Bill and the Energy Code and the discussion on how you really interpret this. Mr. Harvey stated this can go anyway you want to; the bottom line is to go ask the building official what they want. He stated this is not what they want with a formal interpretation, which has never been the desire for a formal interpretation. Mr. Harvey stated that consequently the people that react and act upon formal interpretations are familiar with that particular area of the industry that section of the code. He further stated that statute requires a minimum of 5 licensed individuals that are familiar with code enforcement and the way they have always interpreted it, should be familiar with that section of the code to ensure they are getting a proper interpretation, not somebody that jumps on the bandwagon and says me too just because the guy next door to you voted that way. Mr. Harvey stated they did not want that type of a reputation. He further stated that the comment has gone out with the formal interpretation and to the building officials that if they are not familiar with the information or do not feel qualified or competent to answer that question, they should not. Mr. Harvey said typically there would be 7 to 9 people at a minimum that would be provided with the question. He advised that there were two cases that he recalled they actually had to expand the pool, because they one of the people felt another individual was more qualified to answer that question or they did not feel they were qualified to answer the question. Mr. Harvey stated there is a time limit on this, by the time you put all of this together and try to get the question out and in some cases you have to go back to the petitioner, because honestly their question did not make sense, so to clarify the question to be sure the question is being asked properly allowing the building official to have correct information, in some cases having to call them and ask if they received the petition because of response. Mr. Harvey sited an example. He stated that there is a lot more to this, BOAF does not want to seem difficult or create problems, there is a far reaching ramification for a formal interpretation and the process is beyond reproach and hopes the Commission will not change.

Chairman Browdy advised that he would like to focus what the issue is and ask Ms. Hammonds to comment in terms of the issue at hand, which is the inability to continue the process as it is today without the disclosure that is required under Florida Law.

**Binding and Nonbinding Interpretations of the Florida Building Code (cont):**

Ms. Hammonds responded that it was her understanding after numerous conversations with Mr. Brevoort that he has brought information from his Board of Directors that if they cannot remain anonymous, they will not participate in this process. She further stated she will not get into the whole fact that the process was not conducted pursuant to statute that would be a whole other matter. Ms. Hammonds stated the Commission cannot under Florida Sunshine Law keep anyone anonymous, because what is happening here reading the statute “The Commission, your authority is being delegated to a private entity” and you are being put on the hook for whatever that entity comes out with. She advised at this time that entity is refusing to coordinate with you to do the panel, so the only option in the meantime unless something is legislatively done with this statute, you will be unable to comply due to BOAF;s unwillingness to do so, is to we have all 468 building officials this Commission can designate the 5 member panel and then the Commission can tell BOAF and that will satisfy the definition of coordination until this can be removed, however, this is not a great stop gap measure. The point is this Commission can no longer comply with the statute as it exists due to this situation you are in.

Chairman Browdy asked for comments or questions from the Commissioners.

Commissioner Brown asked to address the speakers concern Mr. Harvey regarding the time line and if that time line were different would that change the reaction at all, if so what type of time line would make it work for BOAF.

Mr. Harvey stated the time line is very important, it is important to the person asking the question. Often times a project is being held up until this interpretation can be issued. He stated the project could be held up for 30, 60, possibility 90 days until prior to the petition being filed. He further stated this is not a situation where the time line should be cut, it was his understanding not having been in on the conversations between Ms. Hammonds and Mr. Brevoort, that the discussions, any discussion on a petition had to be done at a public meeting and he believed that would have to be published in the FAR. He stated the next part were the people deliberating on the petitions would be put identified at the beginning. There was a concern on contact with the panel, giving interpretations to building officials without being asked, essentially going outside of the process. He stated at the conclusion of the interpretation, he did not believe there would be any building official participating on the formal interpretation would take issue with their name being included as a member of the panel making the decision. He stated having to notice the meetings is the issue with the time line.

Commissioner Brown stated if he understood the issue, the publication of the participants serving on the panel not being identified until the end of interpretation. He stated the process not being in the Sunshine, is not being in compliance with the Florida Sunshine Law.

**Binding and Nonbinding Interpretations of the Florida Building Code (cont):**

Ms. Hammonds advised yes, these meetings must comply with the Sunshine Law. She further stated that Mr. Harvey is raising issues that he, Mr. Richmond and I discussed regarding notice. She said that issue has never been raised in any conversation with Mr. Brevoort, this included meetings with Ms. Jones, Mr. Richmond, herself etc. Ms. Hammonds stated the only issue raised was the anonymity due to concerns regarding the interpretations that were given. She further stated raising the issue that people would contact people outside of the process is something we face every day. Ms. Hammonds said that this Commission makes decisions on all kinds of matters and it is up to the ethics that you are all held to, to do so. She advised this authority extends to BOAF if they are in this process, in other words they are held to the same accountability regarding ethics and regarding Sunshine Law. Ms. Hammonds stated the statute is not clear, it says "proceedings as necessary", it does not say as to what the proceedings are, it that it has to be done in within 21 days, unless all parties waive. She advised also building officials, these petitions are supposed to be stamped by the local enforcement agency, stating they have received and it is being submitted on the BCIS. Ms. Hammonds said if you read the statute, the only place BOAF is mentioned is in coordinating to designate the panel, everything else is attributed to this Commission. She said that time has never been raised as an issue, the concern was "we do not want our names out there as there could be repercussions for decisions we make.

Commissioner Calleja said his understanding is the decision made currently on binding interpretations, the Florida Building Commission does not have a say in the matter, it is whatever BOAF decides as the final outcome, becomes a binding interpretation and we have no say in it.

Chairman Browdy stated after the binding interpretation there is a process to determine what the interpretation is.

Ms. Hammonds states that is only on an appeal.

Chairman Browdy said yes it does have to be appealed. However, what is interesting on the significance of the binding interpretation is that the binding interpretation is really subject to any prior declaratory statement. He said you can have an interpretation according to his understanding would go against a previous lower declaratory statement.

Commissioner Calleja, said the reason he is asking is can the decision made by BOAF and their panel be treated like the TAC meetings, like a recommendation for the Commission to approve and then they could have their own anonymous meetings recommend to us and we could be on the line for making the decision.

Chairman Browdy said the answer is no, no, no.

**Binding and Nonbinding Interpretations of the Florida Building Code (cont):**

Ms. Hammonds stated the statute is very strict and vague all at the same time, and she hates to put it off on the Legislature, but it gives a very specific process according to the time line, but no specifics on how it is to be carried out and in compliance with the law. She said the only way the Commission has any say so is if it is appealed otherwise it is attributed to this Commission, so yes, a private entity is creating your interpretations.

Commissioner Schock asked if BOAF as part of this formal interpretations and particularly if names are withheld have any liability for possibly being sued for an interpretation.

Ms. Hammonds stated that is exactly what happened here, there are a lot of new Commissioners. There was an binding interpretation issued by BOAF the parties appealed it to this Commission, but without letting this Commission hear the appeal, they filed both a law suit against the Commission and BOAF and that is where all of this came to light.

Commissioner Carlson stated he felt he was missing the point or what the Commission is supposed to be deciding. He stated evidently there are some underlying issues from the past, and he has some memory of statute changes. He requested that there be some clarification of what is actually being asked of the Commission.

Chairman Browdy explained we have some alternatives but the Commission does have to do something, clearly BOAF do not want to participate in the binding interpretations under the current circumstances and have made it clear to the Commission. He stated as a result of that in the meantime, as of now the Commission is going to have to make alternative arrangements without using the BOAF panel the way it has been done in the past if someone requests a binding interpretation. He wanted the Commissioner to re-consider the binding interpretation process in its entirety, remembering it began in 2005 when perhaps there was more of a need for this level of fierce interpretation or binding interpretation. The records show this for the last 12 to 13 years given the history. Chairman Browdy stated he wanted the Commission to re-consider whether or not the binding interpretation process which has really been used minimally over that time is really necessary and maybe seek legislative authority to either eliminate this process or make the process less cumbersome and less specific to any one organization than is currently written into the law. He stated he thinks when you look at the law and listen to practioners, how cumbersome and less specific to any one organization with regulatory conditions, it is not working. He said first he wants to deal with the immediate issues and then secondly he wants to look at the long term issue of keeping binding interpretations are they really necessary. He stated if the Commission still feels they are necessary as an interpretive alternative for the public, and then let's do something about the process as it is not working. Chairman Browdy stated this is the request he is seeking from them today. Also, he wanted them to know what would need to be done should a request be received now that BOAF does not want to participate in binding interpretations.

**Binding and Nonbinding Interpretations of the Florida Building Code (cont):**

Commissioner Tolbert stated he felt this needed to be kept, and many of the declaratory statements could be handled as formal interpretation and would apply to everyone.

Ms. Hammonds wanted to clarify the issue that the first step is an appeal of a building official's decision that has already been made. She stated if there is a local board of appeals, they must to complete that appeal first.

Commissioner Tolbert stated we want a correct interpretation and those five building officials may not be experts in that field, they would need to seek the advice of experts in the field. He also stated he understands the position that BOAF has on the Sunshine part.

Commissioner Bassett stated listening to everyone today, he got the impression that people feel that the binding interpretation is worthwhile and that the process is bad. He suggested that a work group be formed to offer recommendations to make the process work better.

Gary Brevoort stated he favors legislative change to the process and allow BOAF continue to complete that process.

Chairman Browdy stated that they can offer recommendations but we cannot make them contrary to Florida Law. He stated there are some limitations and at some point a decision will have to be made.

Mr. Harvey stated during this period of time BOAF will be glad to assist with the process while the transition is taking place.

Gary Brevoort stated BOAF will assist in any way they can during the transitions period.

Doug Buck stated a couple of observation from someone who has been in the legislature, he would ask of staff, he stated they brought in the binding interpretation and put it in the legislature after we did the non-binding, he said everyone was trying to find a way to deal with code interpretations. He further said the objective was to have a single uniform code applied equally around the state and the interpretation process was one way of having that go asque. Mr. Buck said the process other than coming back to the Commission and changing the rule which was already governed by a yearlong processes, that was the non-binding and it was very successful except for an occasional it is non-binding I want to ignore it. He further stated the observation is does the mandatory help the non-binding by putting another step there, he feels most people feel they get the same interpretation from the binding as the non-binding. This is my observation.

Chairman Browdy stated he would like to now hear from the Commissioners. He stated he would like to first deal with the immediacy, he asked Ms. Hammonds if a motion was needed to do anything, it is largely to inform the Commission of the change in the process and BOAFs non participation in the binding process and their continual participation in non-binding interpretations process. Chairman Browdy stated he would like to evaluate the process and needs assessment for the binding process. He then asked for a motion or/and direction.

**Binding and Nonbinding Interpretations of the Florida Building Code (cont):**

Commissioner Calleja stated he feels that a task force needs to be established to include members from the Commission from the different interest, expertise; trade could be a panel a temporary gap. In addition, he stated there needs to be a plan to develop language for legislative changes.

Jeff Blair asked if Commissioner Calleja is recommending a work group to make recommendations to the Commission on how to proceed forward.

Commissioner Calleja stated yes this is what he is recommending.

Commissioner Schock stated a work group maybe appropriate, but he wondered stating the non-binding process works well, if it would be feasible to possibly re-write the requirements for declaratory statements and have declaratory pick up for binding interpretations.

Ms. Hammonds stated no that is a part of the Administrative Procedures Act that you heard Mr. Buck speak about. She further stated this is state wide for everyone, this is a legal remedy, and there will be no change to the declaratory statement process.

Commissioner Brown stated for informal proposal he felt that the binding procedure will be retained; a work group will be a good idea understanding the Committee Process has already begun for this year. He further stated the staffs have laid out for their members the expectations in priorities. He said the timeline would be very short in getting the changes in to have it properly considered. Commissioner Brown said the Committee meetings have already begun and will ramp up in January and session starts in March. He said if they want a group to be together to make recommends and changes for this session, you are already under the eight ball.

Chairman Browdy asked if there were any other comments from Commissioners, there being none he asked if there was any further comment.

Jim Richmond, said along the lines of Commissioner Brown's observations, he thinks that rather convening a work group which may or may not be beneficial, is to perhaps to allow them to go back to Tallahassee allow the stakeholder groups who ultimately benefit or lose from this process, discuss among themselves and determine if this is worth preserving or something whose time has passed. He stated if the latter is the case then there would be no reason for a workgroup and the beneficiaries do not feel it is worth preserving then there would be no need.

Chairman Browdy stated that we certainly have a relationship with BASF. He further stated that BASF represents a construction coalition in fact has the subcontract with BOAF to perform this, so he feels the message back to that industry group is that the system is not working right now, so please discuss this among your members and do what you think is necessary given the reality on the ground right now with this process, and to do this as expeditiously considering the time frame Commissioner Brown spoke about.

**Binding and Nonbinding Interpretations of the Florida Building Code (cont):**

Mr. Brevoort stated he did not know if the Commission realizes it or not that BOAF continues to run the non-binding interpretation website, they have not stopped but continued. He also stated this has been done without contract, and thru this meeting are they going to be able to separate binding and non-binding so that they can get a contract or is this not the venue for that.

Jim Richmond stated given the discussion today, the Commission will amend the agreement with BASF to reflect the outcome and move forward with non-binding, however, as we run into this in the past it cannot be retroactive. He stated that there is nothing that can be done with that.

Mr. Brevoort responded stated the way contract are run, we normally give the Commission two months without being paid anyway, by the time contract gets around it takes two months, so that will be fine to move forward.

Chairman Browdy asked if there was any need for a motion or is this discussion was informational only and move in the direction that was discussed. There is no need for a motion, so we will move forward.

**Rule Development Workshop, Product Approval, Rules 61G20-3.007 [61G20-3.007](#) :**

Chairman Browdy stated that the Commission will now move to agenda on Rules workshops and then cover the Committee reports and progress towards 2014. At the October 18, 2013 meeting the Commission conducted a rule development workshop regarding Product Approval Rules 61G20-3.001 (Scope), 3.002 (Definitions), and 3.007 (Product Approval by the Commission), to move forward with required changes to the Product Approval System necessary to implement 2013 statutory changes to Section 553.842, F.S., Product Evaluation and Approval, requiring the Commission to initiate rulemaking to create a new category of products for Statewide Product Approval titled: "impact protective systems" (.001 Scope, and .002 Definitions). In addition, products submitted for approval by a product evaluation entity (Method 3) will be approved by DBPR using the 10-business day expedited approval process (.007, Product Approval by the Commission). The Commission voted to proceed with rule adoption for Product Rules 61G20-3.001 (Scope) and Rule 3.002 (Definitions), to approve the Statement of Estimated Regulatory Costs (SERC), and to conduct a rule adoption hearing only if requested. In addition, the Commission voted to conduct a rule development workshop on Rule 61G20-3.007 to revise the payment screen as needed to correlate with approved changes in the administration of the Product Approval System. Today's workshop provides an opportunity for public comment on Rule 61G20-3.007 pertaining to proposed revisions to the payment screen, prior to the Commission proceeding with rulemaking on the Product Approval Rule. Once the rule development workshop is opened and we hear the Product Approval POC's recommendations and public comments, we will close the public comment portion of the workshop, and the Commission will vote to proceed with rule adoption.

**Rule Development Workshop, Product Approval, Rules 61G20-3.007 (cont.):**

Commissioner Stone stated that on Wednesday, December 4<sup>th</sup> the POC held a conference call where this was discussed. He stated his notes state that the POC was in favor and he was not sure that they took a formal vote and there was no public comment.

Chairman Browdy requested that Commissioner Stone explain why this decision was completed the way it was.

Commissioner Stone stated that this was to bid out proposals for Administrative Services, there being none, the POC voted in favor of having the staff of DBPR taking over the functions without additional staff, to determine if this was cheaper and efficient. He further stated that Mr. Berman has done a great job and was acknowledged on the POC call. Commissioner Stone stated his notes were somewhat sketchy and he did not show a vote. Commissioner Stone stated his notes were somewhat sketchy and he did not show a vote.

Jeff Blair, stated that the POC did have a formal vote, they voted unanimously to incorporate the proposed revised payment screen as presented at the meeting. The POC entered motion to approve the payment screen as proposed, and it passed unanimously.

Chairman Browdy stated the essence of this rule change is Mr. Berman is not going to do the work anymore, we will no longer pay him. In order to complete the change it is necessary to change the screen and thus change the rule. The rule has to change to be able to change the payment screen.

Mr. Madani stated that the screen that is already linked into the agenda will show mainly the payment section will show one payment instead of two and will directly go to DBPR. He wanted to be sure that all understood the screen and how it will be changed by the rule.

Chairman Browdy closed this section of the Rule for further public discussion. He stated staff will review the statement of estimated regulatory costs and answer member's questions. If there is no further discussion, a motion is needed to approve the POC's recommendation on Rule 61G20-3.007 and the SERC and proceed with rule adoption on Rule 61G20-3.007, the product approval rule, noting this action has no bearing on the statement of estimated regulatory costs approved in October and to conduct Rule adoption hearing only if requested.

Commissioner Stone entered a motion to proceed with rule adoption on Rule 61G20-3.007 and the SERC noting this action has no bearing on estimated regulatory costs in October and to conduct Rule adoption hearing only if requested. Commissioner Dean seconded the motion.

Jamie Gascon, Miami-Dade County asked that the screen be shown as there is a convenience fee shown of \$510.00 should this not be \$10.33.

Mr. Madani stated to disregard, this was an example, this fee is listed in error.

**Rule Development Workshop, Product Approval, Rules 61G20-3.007 (cont.):**

Chairman Browdy requested a Commission vote for the motion on floor, the motion carried unanimously.

Chairman Browdy stated on behalf of the Commission, people of the State of Florida, builder, and manufacturers to thank Ted Berman for his service. He stated Mr. Berman had been a guiding force in this process.

**Rule Development Workshop, Product Approval, Rules 61G20-3.015 [61G20-3.015](#) :**

Chairman Browdy advised the Commission will now move forward with Rule 61G20-3.015. He stated at the October 2013 meeting the Commission voted unanimously to open Rule 61G20.3015, Equivalence of Standards, to consider any standards determined to be equivalent to product approval compliance standards referenced in the Code.

He further stated that today's workshop provides an opportunity for the public to comment on any standards determined to be equivalent to product approval compliance standards referenced in the Code, specifically consideration of FRSA/TRI Florida High Wind Concrete and Clay Tile Installation Manual, Fifth Edition to be an equivalent standard to the FRSA/TRI 07320-5 Concrete and Clay Roof Tile Installation Manual, Fourth Edition, and ANSI/DASMA 108-2012 to be an equivalent standard to ANSI/DASMA 108-2005, prior to the Commission proceeding with rulemaking. Once the rule development workshop is opened and we hear the Product Approval POC's recommendations and public comments, we will close the public comment portion of the workshop, and the Commission will vote to proceed with rule adoption.

Chairman Browdy advised that before we hear from the public Commissioner Stone will provide the Product Approval POC's recommendations regarding Rule 61G20-3.015 Equivalence of Standards.

Commissioner Stone stated that in accordance with the recommendation from the Roofing TAC, the Product Oversight Committee found that the FRSA/TRI Fifth Edition to be equivalent to the FRSA/TRI 0732010-05 and recommend adoption of that.

Chairman Browdy stated if there was no further discussion, Commissioners, there needs to be a motion; the Commission does have a motion from the POC.

Jeff Blair stated the POC also approved the ANSI. Commissioner Stone advised he will address that separately.

Chairman Browdy called for a motion for Product Approval recommendation for the revisions of the Product Approval Rule and SERC and to proceed with Rule Adoption of Rule 61G20-3.015 Equivalence of Standards Product Approval. He stated it should be noted that the action pertaining

**Rule Development Workshop, Product Approval, Rules 61G20-3.015 (cont.):**

to the SERC for this section of the Rule has no bearing on the on estimated regulatory costs approved in October for the relevant sections of the Product Approval rule. He stated there is a motion to approve the POC's recommendations for revisions and requested a second to the motion.

Commissioner Swope seconded the motion.

Commissioner Gross asked would the old manual be in effect or would the new manual take over.

Commissioner Stone stated he would have to refer to staff, he stated both could be utilized. It should be noted that the new manual is in accordance with the 07320-5 and the old one is not.

Mr. Madani stated this was correct. He stated the old manual will continue to be in the code and will continue to be used and that the new manual will be used as an alternative if desired.

Commissioner Gross then asked if there would be any problems with conflict have two standards. He stated usually in Glitch we go with the newer standard. With two standards would there be conflict.

Mr. Madani referred to Mark.

Mark Zehnal, FRSA staff, stated that the new manual actually is the 5<sup>th</sup> Edition is with ASCE 7-10 which the Florida Building Code 2010 version is. And the new manual was already accepted into the 2013 Code, so they wanted to get this in sooner as there is conflict in the old manual 4<sup>th</sup> Edition is ASCE 7-02 there is not an exposure category D which there is in the new manual. He further stated there is actually some conflict now as there is nothing in the 4<sup>th</sup> Edition to achieve those goals for the exposure category D. This was brought because of the late Edition of ASCE 7-10 to the 2010 Code; they did not have the outward opportunity to make the changes. He stated the changes that were made with the TRI manual. He stated they would urge this to allow this to go forward, there are new tables that address the wind speeds and use this manual from the Georgia line to Key West and it has been approved, they have the letter from the Florida Registered Engineer who made the tables and TRI listening to the POC and TAC and asked that this be moved forwarded for the manufactures.

Chairman Browdy asked for any further discussion, there being none he asked for the vote on the motion, the motion passed unanimously.

Commission Stone stated for the Structural TAC, recommended that ANSI/DASMA 108-2012 to be an equivalent standard to ANSI/DASMA 108-2005 and moved for adoption per POC recommendation.

Chairman Browdy requested a second to the motion. Second by Commissioner Schock, the motion passed unanimously.

**Rule Development Workshop, Education/Accreditation, Rules 61G20-6.002 [61G20-6.002](#) :**

Chairman Browdy advised at the August 23, 2013 meeting the Commission approved the Education POC's proposed language changes to paragraphs (e), (g), (h), and (i), contained in Rule 61G20-6.002, F.A.C. At the October 18, 2013 meeting the Commission conducted a rule development workshop to receive public comment and to consider the Commission's Education Program Oversight Committee (POC) recommendations for proceeding with the Rule. The POC recommended that the Commission conduct a supplemental rule development workshop providing time for the POC to work with stakeholders on proposed rule language to address issues pertaining to approving courses that are based on Commission approved changes to the Code that are not yet formally adopted by rule. Today will conduct a rule development workshop to implement the rule revisions recommended by the Commission's Education Program Oversight Committee (POC). Today's workshop provides an opportunity for public comment on proposed revisions to the Education Rule prior to the Commission proceeding with rulemaking. Once the rule development workshop is opened and we hear the Education POC's recommendations and public comments, we will close the public comment portion of the workshop, and the Commission will vote to proceed with rule adoption.

Chairman Browdy stated that before we hear from the public Commissioner Dean will provide the Education POC's recommendations regarding Rule 61G20-6.002.

Commissioner Dean stated at the last meetings these proposed changes were discussed and further clarified when courses could be submitted, when they could be approved, and revised in accordance with a new code and also set time limits. She stated it further clarified what has been going on in the past with the education program. She stated the POC approved the language unanimously.

Chairman Browdy asked for any public comment, there being none. He stated the rule hearing is open. Chairman Browdy said that this was significant concern by education providers because of the issues as they related to promulgation of the new code and making sure courses that were being approved were timely to the code so that our training was based on the new code not the old code. He stated this rule change will address that problem and allow accreditors to accredit courses that are consistent with the code that is about to be enforced, so there is pre-training prior to the code implementation time. Chairman Browdy asked if there was any public input, there being none, he opened for comments from the Commission, there being none, he asked for a motion to approve the Education POC's recommendation for revision to the education rule noting that this action has no bearing on the statement of estimated regulatory costs in October and proceed with the rule adoption of Rule 61G20-6.002 Commission approval and accreditation of the advanced building code training courses.

Commissioner Schock entered motion to approve; a second was entered by Commissioner Dean, the motion passed unanimously.

### **Committee Reports and Recommendations:**

Chairman Browdy asked Committee Chairmen, to confine their TAC/POC reports to a brief summary of key issues and recommendations, emphasizing any issues requiring an action from the Commission. Please frame any needed Commission action in the form of a motion. There is no need to read the TAC/POC minutes since the complete minutes will be linked to the committees' subsequent meeting agendas for approval by the respective committees.

#### **Code Administration Technical Advisory Committee**

Commissioner Gonzalez provided a brief summary of the TAC meeting of December 4, 2013 via teleconference.

Commissioner Gonzalez entered a motion to approve the TAC report, Commissioner Brown seconded the motion, the motion passed unanimously.

#### **Education Program Oversight Committee**

Commissioner Dean provide brief summary of the POC meeting of December 5' 2013.

Commissioner Dean entered a motion to approve the POC report, Commissioner Stone seconded the motion, the motion passed unanimously.

#### **Energy Technical Advisory Committee**

Commissioner Calleja provided the summary for Commissioner Smith who was not present at the meeting. He stated the TAC met December 3, 2013 and discussed the declaratory statement discussed at the Commission Meeting; in addition they covered the research projects that are recommended for approval by the Commission.

Commissioner Calleja entered motion to approve TAC report, Commissioner Schiffer seconded the motion, the motion passed unanimously.

### **Research Projects:**

- A.) Home airtightness and ventilation approaches: TAC recommended approval. Commissioner Calleja entered motion to approve TAC recommendation, Commissioner Gonzalez seconded, the motion passed unanimously.
- B.) Assessment of Energy Efficient Methods of Indoor Humidity Control Approaches: TAC recommended approval. Commissioner Calleja entered motion to approve TAC recommendation, Commissioner Gonzalez seconded the motion, the motion passed unanimously.

**Research Projects (cont.):**

- C.) Development of Compliance Software Tool Assistance Manual for the 2014 Florida Building Energy Code: Commissioner Calleja stated it was approved but amended due to comment regarding a potential conflict of interest regarding FSEC being the one writing the manual and being the writing the rules for all of the competitors. He stated the Commission may need to discuss. He stated the project was recommended for approval with discussion of this issue brought up. The full motion by Commissioner Calleja was to approve subject to the discussion of potential conflicts, second entered by Commissioner Gonzalez.

Chairman Browdy stated there would not be discussion on the recommended approval of the Compliance Software Tool Assistance Manual for the 2014 Florida Building Energy Code. He asked for any public comment.

Jonathan Jadunandan, President of JM Jadu Corp. he stated he created the original TAM and is willing and able to update the manual with no conflict of interest within the same timeline and same budget as proposed by FSEC.

Chairman Browdy as for questions from the Commission, there being none, he asked for any additional comments from the public.

Rob Vieira, Florida Solar Energy Center, (FSEC) stated they did participate in this the last time; this is a voluntary effort to make sure all was consistent. He provided detail on proposal. He then asked that the Commission and Staff consider who can seriously complete this project. Mr. Vieira provided further detail of the interaction with the project. He stated he felt that there is a conflict when they provide services at no charge and another company comes and takes over using their software

Jim Richmond, stated he felt the TAC's concern was that FSEC was writing the rules for other competitors to follow. He said that miscomprehends the nature of the beast in this case, he said they stayed away from this manual as being a rule or being even a minimum, what it is really drafted for is to help and if software developers choose to use this, they have a good basis to come to the Commission to seek approval of their software package. Jim stated that does not limit the options, any software developer can bring to the Commission anything they want based on anything they want. He said in this case, he does not think it is a circumstance where we face a conflict of interest. He said he will defer to Legal if there is anything seen legally.

Arlene Stewart, AES, stated point of reference when it comes to other venues besides energy, when the industry has wanted to create it owns voluntary standards; they have carried the burden of the costs. Ms. Stewart provided examples using windows and concrete. She stated it is appropriate that if the vendors want a manual, to develop within their own industry, but if it is going to be funded by the Commission, it should be done with an independent party.

**Research Projects (cont.):**

Chairman Browdy asked for any further questions from the public, there being none, he stated there has been a recommendation by the Energy TAC to proceed with the research project for the development of Development of Compliance Software Tool Assistance Manual for the 2014 Florida Building Energy Code and the motion was to approve the funding for that subject to the discussion we just held. He stated there was a second needed to discuss.

Commissioner Schilling seconded the motion. Chairman Browdy asked if there was any further discussion from the Commission, he stated they have heard from Mr. Richmond and members of the public, if there is no further discussion we can vote.

The motion passed unanimously for the Development of Compliance Software Tool Assistance Manual for the 2014 Florida Building Energy Code and funding.

D.) Duct sealing and equipment replacement. Commissioner Calleja stated this pertains duct sealing and equipment replacement which was submitted, the declaratory statement addresses that so, the TAC decided to approve and motion forward the exception for the building code and Energy Code for duct sealing and equipment replacement.

Chairman Browdy stated Commissioner Calleja entered a motion that the Energy TAC approved the funding the Duct sealing and equipment replacement processes. The motion was seconded by Commissioner Gonzalez, the motion passed unanimously.

Chairman Browdy asked for a motion for all four research projects: Home airtightness and ventilation approaches, Assessment of Energy Efficient Methods of Indoor Humidity Control Approaches, Development of Compliance Software Tool Assistance Manual for the 2014 Florida Building Energy Code, Duct sealing and equipment replacement.

Motion entered by Commissioner Calleja to approve the research projects in a consolidated motion. A seconded was entered Commissioner Gonzalez, the motion passed unanimously.

Commissioner Calleja entered motion to adopt the TAC report and seconded by Commissioner Gonzalez, the motion passed unanimously.

**Committee Reports and Recommendations (cont.):**

**[Product Approval Program Oversight Committee Complaint Update](#)**

Commissioner Stone stated the POC met on December 4, 2012 via conference call, with the call lasting two and one half hours. He stated the meeting lasted due to the case he is going to address. Commissioner Stone advised in August the POC received a complaint regarding alleged substandard made by Zion Tile Corp. He read the complaint to the Commission and Public audience on product 16057. Commissioner Stone provided detail information from Zion Tile, and the competitor Mr.

**Committee Reports and Recommendations (cont.):**

**Product Approval Program Oversight Committee Complaint Update** (cont):

Arguelles including the information provided by both. He stated the POC was concerned about the properties not listed by Keystone to be inspected and replaced if necessary. Commissioner Stone stated that the POC did not want to get involved in personal dispute, however, there is non-conformity of products. He stated his opinion is this is a fact finding inquiry and the first motion was to dismiss in the POC and was rejected as there was not a two-thirds majority met. The second motion was to investigate and send to the Commission for the December meeting. Commissioner Stone feels this should be investigated.

April Hammonds stated clarifications of the summary of the actions up to this point are correct. She stated she wanted to make a few points of reference that are legally significant and also significant to the integrity of this system which is still being upheld at this time. She stated first, Keystone Quality Assurance is still involved and is still monitoring this situation. She further stated the deficiencies found were from an earlier shipment and they are working on testing and gaining approval for thinner tiles. Ms. Hammonds stated the POC voted three to two to defer this matter until the conclusion of the civil litigation. She stated while Keystone would continue to monitor. She stated why that is important is because of the rules set forth by the Commission speaking to violations. Ms. Hammonds explained how the company is working to comply with the rules through inspections and ensuring products meet the guideline. She stated in order for the Commission to initiate a formal investigation, which leads to the next step of administrative action, you must have three elements two of which are met. Ms. Hammonds provided the elements. She advised the Commission that none of the elements have been met at this point and therefore a formal investigation is not warranted.

Ms. Hammonds stated as legal counsel would advise the Commission to continue to allow Keystone to continue doing what they are doing. Secondly, she would advise defer any formal action (administrative) which would include a formal investigation until the civil litigation has concluded.

There was public comment from Mr. Arguelles provided his thoughts, and request for investigation.

Jamie Gascon with Miami-Dade, spoke in favor of investigation.

Mark Zehnal questioned the time line of compliance, and spoke in favor of investigation.

Ms. Hammonds stated the issues discussed by Mr. Gascon and Mr. Zehnal were brought up in the POC Meeting. She said 553.842 (9) requires building officials who is supposed to look at the Florida Product Approval Number and if it does not match, they are required by law to notify the Commission, there has been no notification from the officials. She stated that if there was nothing caught at any of the five locations, this is the responsibility of the official. Again, she provided statutory requirements and regulation.

There was in depth discussion among numerous Commissioners. Questions were posed to Mr. Gascon in which he responded.

**Committee Reports and Recommendations (cont.):**

**[Product Approval Program Oversight Committee Complaint Update](#) (cont):**

A motion was entered by Commissioner Stone to close the matter and consider no action on this matter pending resolution of the civil litigation between the parties. Ms. Hammonds added that the language to keep Keystone monitoring the product would be in order. Commissioner Stone added this information.

Chairman Browdy asked if there was an answer for Commissioner Calleja to add a time frame.

Commissioner Stone added this language to add a time frame for compliance.

Jeff Blair read the full motion “That the Commission close the matter and not consider action pertaining to this matter pending resolution of the civil litigation between the parties. Further amend that Keystone will stay involved in the QA process moving forward.

Commissioner Brown asked if this motion would preclude the Commission taking action if it received a complaint from a substantially affected party. Or if we received a complaint that met one of the seven items in the rule we could act.

April Hammonds stated yes, and correction that motion was to defer not to close.

Commissioner Bassett asked that there be an amendment to the motion to allow only three months correct the jobs that deemed to be deficient as a result of the QA inspection.

Commissioner Stone asked that there be a second and vote on the motion on the floor.

Jeff Blair advised that a Commissioner can make an amendment to the motion on the floor, if passing it would be added to the original motion. The amendment would be to allow the manufacture to correct deficiency within three month time frame.

Second for the amendment motion was entered by Commissioner Shilling.

Correction by Ms. Hammonds stated that it would be three months to correct the job that has been deemed to deficient from the QA inspection.

Commissioner Brown, asked who would determine that the job is technically deficient and when does the clock start ticking for the thirty days.

Commissioner Stone stated ninety days from the notice.

**Committee Reports and Recommendations (cont.):**

**[Product Approval Program Oversight Committee Complaint Update](#)** (cont):

Commissioner Schiffer stated he would vote against since there have been no owner complaints, and what if they get the new thinner tile approved.

Commissioner Bahadori asked what authority the Commission has to impose the ninety day timeline.

April Hammonds stated none.

Amendment vote was two in favor and nineteen opposed, the amendment motion failed.

Chairman Browdy asked for vote on the original motion from Commissioner Stone.

Jeff Blair read the motion once again:

That the Commission defer the matter and not consider action pertaining to this matter pending resolution of the civil litigation between the parties. Further amend that Keystone will stay involved in the QA process moving forward.

The motion failed with fifteen in favor and six opposed.

Commissioner Tolbert asked if there was a legitimate complaint received, could we take action.

Chairman Browdy stated when a threshold event occurs, and then we can do that.

Commissioner Tolbert asked for reconsideration, second entered by Commissioner Compton. The reconsideration passed sixteen in favor and five opposed.

Chairman Browdy asked for a new motion the same or different.

Commissioner Tolbert entered a motion that the Commission defer the matter and not consider action pertaining to this matter pending resolution of the civil litigation between the parties. Further amend that Keystone will stay involved in the QA process moving forward. Commissioner Compton seconded the motion. The motion passes seventeen in favor and four opposed.

Commissioner Stone entered motion to approve the POC report, Commissioner Stone seconded the motion, the motion passed unanimously.

**Committee Reports and Recommendations (cont.):**

**Roofing Technical Advisory Committee**

Commissioner Swope provided a brief summary of the TAC meeting of December 3, 2013 via teleconference.

Commissioner Swope entered a motion to approve the TAC report, Commissioner Flanagan seconded the motion, the motion passed unanimously.

**Structural Technical Advisory Committee**

Commissioner Schock provided a brief summary of the TAC meeting of December 3, 2013 via teleconference.

Commissioner Schock entered a motion to approve the TAC report, Commissioner Bassett seconded the motion, the motion passed unanimously.

**General Public Comments:**

Arlene Stewart, ACS Consulting, thanked the Commission for their hard work.

**Commission Member Comments and Issues:**

Commissioner Bassett requested that staff add a TAC selection direct on BCIS, it needed to be more visible.

Jim Richmond stated there is a button called program committees.

**Adjournment:**

Closing comments were given by Chairman Browdy. He want to take the time to thank the staff, a staff of 16 run the Florida Building Commission. He stated the staff does an extraordinary job.

Chairman Browdy stated he wanted to give thanks to Jeff Blair for his steady and consistent effort to guide the process for many years.

The meeting was adjourned at 12:29 pm.