



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

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RICK SCOTT
Governor

BILLY BUZZETT
Secretary

MEETING OF THE FLORIDA BUILDING COMMISSION

PLENARY SESSION MINUTES FEBRUARY 1, 2011

APPROVED APRIL 5, 2011

The meeting of the Florida Building Commission was called to order by Chairman Raul Rodriguez at 8:33a.m., Tuesday, February 1, 2011, at the Embassy Suites, Tampa, Florida.

COMMISSIONERS PRESENT:

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

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

COMMISSIONERS ABSENT:

Angel "Kiko" Franco
Donald A. Dawkins

OTHERS PRESENT:

Rick Dixon, FBC Executive Director
Ila Jones, DCA Prog. Administrator
Jim Richmond, DCA Legal Advisor
Jeff Blair, FCRC Consensus Solutions
Mo Madani, Technical Svcs. Manager

WELCOME

Chairman Rodriguez welcomed the Commission, staff and the public to Tampa and to the February 2011 plenary session of the Florida Building Commission. He stated the meeting represented the first meeting of a new year and decade. He then stated the primary focus of February's meeting was to consider recommendations from the Commission's various committees, to decide on product approvals, declaratory statements and accessibility waivers, to conduct a rule adoption hearing on adopted modifications to the Florida Building Code for the 2010 Code Update process, and to adopt the criteria and process for submitting and considering Glitch amendments to the 2010 Code.

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

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

REVIEW AND APPROVE AGENDA

Mr. Blair conducted a review of the meeting agenda as presented in each commissioner's files.

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

REVIEW AND APPROVE DECEMBER 7 AND 8, 2010 COMMISSION MEETING MINUTES AND FACILITATOR'S REPORT

Chairman Rodriguez called for approval of the minutes and Facilitator's Report from the December 7 and 8, 2010 Commission meeting.

Commissioner Nicholson moved approval of the minutes and the Facilitator's Report from the December 7 and 8, 2010 Commission meeting. Commissioner Carson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

CHAIR'S DISCUSSION ISSUES AND RECOMMENDATIONS

Chairman Rodriguez stated Anthony Grippa had resigned from the Commission. He then stated as a result of Mr. Grippa's resignation he would no longer be on the Code Administration TAC.

Chairman Rodriguez next addressed the conference calls to be held during the upcoming Legislative session. He stated as in past years the Commission would be conducting regularly scheduled teleconference calls during the 2011 Legislative Session. He stated the calls would begin on the Monday of the second week of the Session and would likely be conducted every two weeks throughout the Session as follows: March 7, 21, April 18, 25 and May 2, 2011. He further stated as a contingency the Commission agreed to notice in the FAW a teleconference meeting for every Monday of the Session as follows: March 7, 14, 21, 28, April 11, 18, 25 and May 2, 2011. He stated Mr. Richmond would let the Commission know whether a specific teleconference meeting would be conducted or cancelled based on need. He then stated the teleconference calls would be an opportunity to receive updates from Mr. Richmond and provide him with any needed guidance and recommendations on issues of interest/concern to the Commission. He concluded by stating all calls would start at 10:00 a.m.

Commissioner Nicholson moved approval to notice teleconference Commission meetings for March 7, 14, 21, 28, April 11, 18, 25 and May 2, 2011. Commissioner Scherer entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Legislative Update

Mr. Richmond stated the two biggest items were the finalization of the glitch change together with the submittal of the building code for legislative ratification. He further stated both of those items would be discussed later during the plenary session. He then stated one item had come up recently, both in statements by Senator Gaetz to the press and in a statement by the Governor in a news release formalized in the Villages. He continued by stating he believed the Commission would be faced with the task of relocation. He stated the Department of Community Affairs had been undergoing sunset review for the past two years. He further stated at session three years ago bills were filed in the house to relocate programs within the department to other agencies. He then stated the Governor announced some of his budget recommendations which would include "realignment of some of DCA's programs with other agencies who perform similar functions." He stated he was not certain what the verbiage means in the long run, but it sounds as if the Commission was looking at some type of co-location with other related programs perhaps within other agencies or other programs perhaps would be relocated to its agency. He then stated the Governor's recommendations fall in line with previous recommendations from the house together with Senator Gaetz' statement indicating he would be filing a bill in the appropriations committee that covers the Commission's function in the Senate. He continued by stating the bill had not been felt at present.

Mr. Richmond stated some other bills had been filed which relate to local function of enforcement, but he did not have the numbers. He then stated the primary subject area was when inspecting other areas of a building which were not covered by a permit. He further stated there was some very nebulous language in the bills which was a concern. He stated if an addition were being done to a home he believed the language could be potentially read to limit the building official's authority with respect to only the addition. He further stated if the addition incorporates additions to systems that affect the rest of the building, for example, the panel box would have to be evaluated to make sure there was sufficient capacity for the additions. He continued by stating staff would be working through that process to an extent, but as well for an informational update. He concluded by stating the Governor's formal budget recommendations were due the following Monday and the Commission would have a better feel for where it is headed at that point.

Report to the 2011 Legislative Update

Chairman Rodriguez stated he had reviewed and approved the Report to the 2011 Legislature and it would be conveyed to the Governor along with the Commission's adopted Accessibility Law recommendations. He then stated the Final Report was posted on the Commission's website.

EFFECTIVENESS ASSESSMENT SURVEY RESULTS DISCUSSION

Chairman Rodriguez stated each year the Commission conducts an Effectiveness Assessment Survey to gauge the Commission's perspective on a variety of issues. He then stated over the years the survey input has been the basis for many enhancements to the Commission's procedures.

Mr. Blair reviewed the results of the Annual Effectiveness Assessment Survey. (See *Facilitator's Report*.)

WORKPLAN PRIORITIZATION EXERCISE RESULTS DISCUSSION

Mr. Blair reviewed the results for the 2011 Workplan Prioritization Exercise. (See *Workplan Prioritization Exercise*.)

Mr. Madani stated this was the first time staff was bringing the issues to the Commission for discussion. He explained the list contained items staff had identified to determine if services could be improved for consumers through the Building Code Information System and to determine what needed to be done relative to the 2010 Florida Building Code in terms of education and information particularly for those areas that have been introduced to the Code as a new subject. He reviewed the report of the Proposed BCIS Improvements. (See *Proposed BCIS Improvements*.)

Commissioner Stone added, relative to the Sunshine Law, how the Commission could monitor or keep track of what goes on, what agencies were involved, other than the staff report at the Commission meetings.

Mr. Dixon stated that for an issue the Department of Community Affairs provides administrative service and support to the Commission staff could be contacted directly. He then stated there would not be an issue with a commissioner communicating with staff the problem would be communication between commissioners.

Commissioner Stone stated he understood that. He asked if a commissioner was trying to keep track would he actually have to contact staff, i.e. was there no automatic way to keep track without having to call and ask staff if they had contacted an agency or if any reports had been forwarded to staff but not the commissioners.

Mr. Dixon stated that was correct except for the normal reports submitted by staff for the Commission meetings, commissioners wanting to monitor a particular issue would have to contact staff directly.

Commissioner Carson asked how would the task be funded and how would it be prioritized.

Mr. Madani answered by stating as funds were available staff would make a proposal of how to get things accomplished and meet with the POC for it's recommendation. He further stated the intent of staff was to work closely with the commissioners and the "wish-list" would be there to work through as funds were available.

Commissioner Carson stated he appreciated Mr. Madani's comments with regard to the POC. He then stated however approximately \$300,000.00 was being discussed. He continued by stating Mr. Madani had mentioned one issue, item 5, should be addressed right away and he was just wondering where the funding would come from.

Mr. Madani stated he knew the current fiscal year did not end until June and he was not sure how much would be left. He then stated if there were questions he would usually seek Ila Jones, as she oversees the budget.

Ms. Jones stated there were remaining funds in the Commission's budget which had not been allocated. She then stated she had authorized those funds to begin the BCIS improvements Mr. Madani had discussed. She continued by stating the next fiscal year would have to be reviewed in the same manner to determine if any funds were available to continue the improvements. She further stated Mr. Madani had indicated the wind maps needed to be addressed and would be very beneficial, therefore the improvement will be worked into the budget for the upcoming fiscal year.

Commissioner Carson asked how the improvements would be prioritized.

Mr. Madani stated any improvement affecting the 2010 code should be focused on because the code will go into effect by the end of 2011. He then stated other items, such as Product Approval, could be addressed as funds become available. He stated there would be an exercise with the POC to determine the order of the improvements based on need.

Chairman Rodriguez stated basically the answer would be the items that do not affect the 2010 Building Code would be brought before the POC for prioritization and those that do affect the Code would be addressed with funding available.

Ms. Jones stated there were funds for the current fiscal year, which would be finished out by July 1, 2010.

Commissioner Smith asked if any of the improvements required outside consulting services would it be put out for RFPE to bid.

Mr. Madani stated that would depend on which entity would be used. He then stated when using state universities there was no need to bid, but it was based on how the Commission wanted to approach the issue.

Chairman Rodriguez asked, for the improvements which needed to be addressed for the 2010 Building Code, if the vendors had been selected or would it be through universities. i.e. how long does it take to put someone under contract.

Mr. Madani stated some of the items could be accomplished through a very quick bid, which did not require an RFPE. He then stated all that was required were three bidders and the lower bid would be accepted.

Chairman Rodriguez asked how the three bidders were selected.

Mr. Madani stated usually staff provides the information regarding what service was needed and three bidders were selected based on staff's knowledge of the bidders' experience.

REVIEW AND UPDATE OF COMMISSION WORKPLAN

Mr. Dixon conducted a review of the updated Commission workplan. (See *Updated Commission Workplan February 1, 2011*).

Mr. Dixon stated there were no substantive changes to the workplan. He then stated the handouts in the commissioners packets were in the new format for this year. He continued by stating the completed items were removed and the items remaining on the workplan for this year were left on. He stated he wanted the commissioners to be aware of one item. He then stated the first session of the Building Code Assessment Workshop would be held at the conclusion of next Commission plenary session.

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

CONSIDER ACCESSIBILITY WAIVER APPLICATIONS

Chairman Rodriguez directed the Commission to Mary Katherine Smith for consideration of the Accessibility Waiver Applications.

Recommendation for Approval with No Conditions:

Ipic Entertainment

Ms. Smith explained the petitioner's request for waiver as it was described in each Commissioner's files. She stated the Council unanimously recommended approval due to technical infeasibility.

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

Coco Cola North America

Ms. Smith explained the petitioner's request for waiver as it was described in each Commissioner's files. She stated the Council unanimously recommended approval due to technical infeasibility. She then stated any changes required were to be directed to the local building official for review.

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

Recommendation for Approval with Conditions:

Wildsides BQ and Grill

Ms. Smith explained the petitioner's request for waiver as it was described in each Commissioner's files. She stated the Council unanimously recommended approval with the condition the applicant submit cost data including construction value for the preceding three years plus the current project costs would exceed the 20% disproportionate cost

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

Recommended for Deferral

Miami Art Museum

Ms. Smith explained the petitioner's request for waiver as it was described in each Commissioner's files. She stated the Council unanimously recommended deferral requesting the applicant provide additional information pertaining to the purpose of the space; an explanation of why accessible seating locations are designated "alternate"; to determine if there is a stage or speaker's platform; is the area open to the public for other purposes; confirmation of lines of sight; and, whether there is a movie screen in the auditorium.

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

Nail Bar

Ms. Smith explained the petitioner's request for waiver as it was described in each Commissioner's files. She stated there had been a glitch in the system relative to noticing requirements. She then stated the Council unanimously recommended deferral to allow the applicant adequate time to comply with those requirements.

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

CONSIDER APPLICATIONS FOR PRODUCT AND ENTITY APPROVAL

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

Commissioner Carson stated the following 7 entities were recommended for approval by the POC:

CER 1508 Window and Door Manufacturers Association

CER 8236 IAPMO R&T

TST 5913 Spec Testing, Inc., dba Specialized Testing

TST 6679 Air-Ins Inc.

QUA 2515 Window and Door Manufacturers Association-QA

QUA 5912 Spec Testing, Inc. dba Specialized Testing

QUA 7733 Farabaugh Engineering and Testing, Inc.

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

Conditional Approval:

ACC 9004 Perry Johnson Laboratory Accreditation Inc. (PIJA)

Commissioner Carson explained the POC recommended conditional approval with the condition the applicant must upload the ILAC and APLAC recognition arrangements.

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

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

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

Mr. Blair presented the following products for consideration individually:

12550-R1 Advance Hurricane Technology Inc.

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant change category to shutters and indicate "Not for use" within HVHZ.

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

3557-R2 Quick Tie Products, Inc.

Mr. Blair stated the product was recommended for deferral with the conditions the applicant 1) Revise evaluation report to indicate products tested and products evaluated by rational analysis; 2) Remove product HA8; 3) Correct equation for simultaneous loads; 4) Indicate epoxy material as tested and provide performance/testing of epoxy; 5) Revise language of Sect. 10.3 of evaluation report to say "Design loads on the Quick Tie™ System and Quick Connectors shall be determined in accordance with this evaluation report." ;and 6) Revise installation instructions on nails required for HA4.

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

10124-R4 GAF Materials Corporation

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant change trade name from "Timberline Ultra" to "Timberline Ultra HD".

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

13958 Complex Industries

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant adds on General Notes: All steel in contact with aluminum to be painted, plated or caulked as specified in the 2007 FBC Section 2003.8.4.

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

14305 Enduro Composites

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant change QA Agency and provide proof of QA Contract.

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

14309 Enduro Composites

Mr. Blair stated the product was recommended for conditional approval with

the condition applicant change QA Agency and provide proof of QA Contract.

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

5753-R2 Amweld International

Mr. Blair stated the POC recommendation was the application be revised and a new certificate be provided indicating all testing standards required for HVHZ. Otherwise, indicate "No" for HVHZ. Failure to comply shall initiate application revocation proceedings.

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

CONSIDER APPLICATIONS FOR ACCREDITOR AND COURSE APPROVAL

Accreditor Approvals

Commissioner Browdy stated there were no accreditor approvals or course approvals.

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

Binding Interpretations:

Mr. Richmond stated a Binding Interpretation involving the City of Miami Beach is currently under appeal to the Court of Appeal Third District. He explained the appeal was from the last binding interpretation entered. He stated the petition was at final order by telephone conference call in November and the City of Miami Beach has appealed the decision, which related to the requirements for swimming pools within the building code and the Department of Health.

Declaratory Statements:

Second Hearings:

DCA10-DEC-209 by Michael Murray of Stormwatch, Inc.
DCA10-DEC-216 by Geoff McLeod of MESA Modular Systems, Inc.
DCA10-DEC-217 by Dwight Wilkes – Consultant fo AAMA
DCA10-DEC-219 by David Karins, P.E. of Karins Engineering Group, Inc.
DCA10-DEC-220 by John H. Kampmann Jr., P.E. of MEA Engineers, Inc.

DCA10-DEC-221 by John H. Kampmann Jr., P.E. of MEA Engineers, Inc.
DCA10-DEC-222 by John H. Kampmann Jr., P.E. of MEA Engineers, Inc.
DCA10-DEC-224 by John H. Kampmann Jr., P.E. of MEA Engineers, Inc.
DCA10-DEC-225 by John H. Kampmann Jr., P.E. of MEA Engineers, Inc.

Mr. Richmond first offered an apology to the Commission to the second reading declaratory statements on the agenda for a disconnect in communication. He explained the draft orders had not been circulated or attached to the agenda. He stated because the orders were not available for review prior to the meeting the Commission had two options: 1) approve them in concept a second time as it was done the first time based on legal report or 2) defer final action on the second readings until the next Commission meeting when the commissioners would have an opportunity to review the orders. He then stated he did the draft orders from home and he believed the spam filter caught them before they got to Mr. Madani a couple of weeks prior to the Commission meeting. He further stated he had been absolutely unavailable and that was why this was not discovered before now.

Chairman Rodriguez asked Mr. Richmond his recommendation and if any were time sensitive.

Mr. Madani stated there were a number of declaratory statements relative to the issue of L/30. He asked Mr. Richmond if those should be acted on.

Mr. Richmond stated for clarification Mr. Madani had referenced the L/30 with defraction for fabric storm panels. He then stated he did not believe it becomes a time sensitive issue because essentially it becomes, in his reading, "the code means what it says". He continued by stating since it had been the Commission's process to review the declaratory statements a second time and actually see the draft order he believed it was the most conservative legal thinking to defer them although he knew it would slow the process down.

Chairman Rodriguez asked Mr. Richmond if deferring was his recommendation.

Mr. Richmond responded stating yes.

Commissioner Browdy moved approval for the deferral of the second reading declaratory statements to allow draft orders to be posted on the website for review. Commissioner Stone entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

First Hearings:

DCA10-DEC-213 by Gary Pailthorp, PE. Of Bracken Engineering

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

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

DCA10-DEC-214 by Bemmie Eustace, Director Interplan LLC

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

Bemmie Eustace, Director Interplan LLC

Ms. Eustace stated the declaratory statement really requested an interpretation of Chapter 11, Section 2.2, Equivalent Facilitation. She then stated the staff's position was to leave the decision to the local building official and the Commission could not provide an interpretation after the building official has made a decision on the petition. She further stated in this case the building official actually did not allow equivalent facilitation and suggested the issue be brought before the Commission to get a determination. She continued by stating it was her understanding a declaratory statement was intended to provide guidance and direction. She stated declaratory statements were used regularly in all other chapters of the Building Code as guidance. She then stated Florida Administrative Code 28-105.001, Purpose and Use of Declaratory Statements, states "*a declaratory statement was a means of resolving a controversy or answering questions or doubts concerning the applicability of statutes, provisions, rules or orders over which the agency has authority.*" She further stated Statute 553.775(5) states "*The Commission may render declaratory statements for the Florida Accessibility Code for building construction, Chapter 11, and specifically excludes binding and non-binding interpretations*". She stated she respectfully disagreed the staff's opinion to direct it back to the local building official. She further stated at the end of the day the building officials and designers were incredibly frustrated that no guidance can be obtained on Chapter 11. She then stated she thought the declaratory statements were the avenue to do so. She asked the Commission to render a decision on the issue if it chooses to do so.

Commissioner Gross stated there was a 3-2 vote at the TAC, not unanimous. He then stated there was also some confusion at the time of the TAC meeting because the main agenda showed the start time to be at the end of the morning Advisory Committee meeting and on another agenda it was shown as meeting at 1:00pm. He further stated a member came to the time later in the day and was upset the meeting had already been conducted. He continued by stating everyone was looking for direction on the Accessibility Code. He stated the new 2010 Accessibility Code would be effective March 15, 2011 with compliance in total by March 15, 2012. He then stated the

problem was legal counsel felt that local officials should do it but then the local officials send it to the Commission. He continued by stating it was interesting in the Coca-Cola waiver application the building official actually came to the meeting and stated he was in favor of the waiver, although he did not make the waiver at his local level. He further stated he believed a lot of building officials were afraid to look at these items because they do not know they are allowed nor have the permission to do so. He concluded by stating he believed the Commission should determine if it has the right or at least give some direction on these Chapter 11 items.

Mr. Richmond stated 553.775 is the statute that addresses interpretations of the Code. He then stated the system setup recognizes the primary jurisdiction for interpretation of the code was by application to the local building official. He further stated paragraph 3c of the section defines a binding interpretation process which in practice is a review mechanism whereby affected parties can have those decisions reviewed in an extremely expeditious manner. He continued by stating at the conclusion of that section of law it states "*This paragraph provides the exclusive remedy for addressing requests to review local interpretations of the code.*" He stated nothing could be clearer. He then stated Ms. Eustace had described the case and told the Commission her local building official refused to allow the 2010 ADA through equivalent facilitation. He further stated that was a decision, a decision which was subject to the review process identified in paragraph 3c and by this language that was the exclusive and only means to address the question the petitioner has raised. He further stated it was not even an opinion, more of an advisement of the status of the law.

Commissioner Tolbert asked Ms. Eustace if she appealed the building official's decision through the local board.

Ms. Eustace responded stating she had not. She stated she was told by the building official if she wanted to continue with the design she would need to seek guidance at the Building Commission level.

Commissioner Greiner stated regardless what the building official stated there he created a situation where appeal was the only process that could be used. He then stated perhaps he did that unknowingly but he did it. He then stated the way he understood it had she come to the Commission first for a declaratory statement prior to going to the building official she would have received the declaratory statement.

Chairman Rodriguez asked Mr. Richmond if there was anything the Commission could send to the building official so he understands he misdirected the potential applicant. He asked if the official should be made aware he first has to take a position and then the position could be appealed.

Commissioner Greiner stated the building official took the position that the 2010 ADA could not be used. He then stated if that was the case he had ruled on her request therefore she has to appeal the rule. He further stated the official had directed her to the Commission which was incorrect.

Mr. Richmond stated it was and it was not. He then stated the formal binding interpretation process was the Commission as well. He further stated it was just a matter of processes. He continued by stating if the building official had specifically referred to a declaratory statement he would be somewhat concerned. He stated the process operated by BOAF under contract with the Commission.

Commissioner Greiner stated he agreed with that but felt there may be 2 ways: she could ask for a binding interpretation or if she appealed his process and went to the local board, but the board agreed with him and she disagreed with that she could take the decision to the Commission.

Mr. Richmond stated that was correct. He then stated the local step was always the first step in the process of obtaining a binding interpretation.

Chairman Rodriguez asked Ms. Eustace if she understood.

Ms. Eustace stated she understood but she disagreed. She then stated the Florida Statute specifically states a binding interpretation could not be obtained on Chapter 11. She further stated the declaratory statement was the only avenue available.

Larry Schneider, AIA

Mr. Schneider stated during the presentation at the TAC they were told a binding interpretation was the avenue to pursue. He then stated the last paragraph in Section 553.775 states "*The Commission may render declaratory statements in accordance with 125.65 relating to provisions of the Florida Accessibility Code, notwithstanding the other provisions of this section the Florida Accessibility Code for building construction in Chapter 11 of the Florida Building Code may not be interpreted by and are not subject to review under any other procedure specified in this section,*" He stated he would like to refer to one of the commissioners who was involved and was a lead person in the whole process indicating the only available option was a declaratory statement. He then stated BOAF was directed by staff that they were not allowed to provide binding interpretations on Accessibility; therefore that avenue was not available.

Chairman Rodriguez stated an appeal then was the only option.

Commissioner Schock stated he was not sure if he knew the answer for the issue, but one suggestion might be for the Chairman to write a letter of explanation to building departments and distribute it giving the building officials some direction on how to proceed. He then stated, although he does not do so in his jurisdiction, he understands the building officials' reluctance to do some of this as it was such a strong litigation area. He further stated they were concerned about the implications for their community and jurisdictions and of the possibility of being sued for the decision they

make. He continued by stating he understood it and it was an unfortunate situation. He concluded by stating he believed training in the area was what was necessary.

Commissioner Browdy stated historically speaking this area was one of great concern. He then stated the concern was no one was in the position to change, alter, or interpret Accessibility part of the Florida Building Code. He further stated when binding interpretations were made available to the Commission through BOAF on a contract basis it exclusively carved out that part of the code so BOAF could not give that interpretation. He further stated Mr. Schneider was correct and it was done purposefully and unfortunately it creates a problem for the public but it was a result of the anointing of Chapter 11 by the Justice Department and the Commission's inability to make changes that will not influence certification purposes.

Chairman Rodriguez asked Commissioner Browdy for his recommendation.

Commissioner Browdy stated he believed BOAF should have responded or some communication from BOAF to the building official which creates a situation in which the building official can create a venue for the applicant to speak. He then stated he did not know of any other way to give Ms. Eustace a venue on readdress on something because she was basically caught in a glitch.

Commissioner Greiner stated the only avenue he saw was an appeal to the local board. He then stated he believed she was not going to like the answer at the local board and would be right back before the Commission.

Mr. Richmond stated with where the applicant is at the local board would be the circuit court. He then stated by referring declaratory statements pursuant to 125.65 that eliminates the option from rendering a decision as to whether a third party's decision was correct or incorrect, which was what this particular declaratory statement was seeking to do. He further stated under 120, which was specifically referred to in this section, it was not an appropriate declaratory statement.

Chairman Rodriguez asked for clarification if Mr. Richmond's recommendation was for dismissal.

Mr. Richmond responded stating his recommendation was for dismissal. He then stated it was a local appeal, if one existed, if not go to the circuit court to determine the applicant had complied with the essential requirements of the law.

Ms. Eustace stated given that legal counsel's determination had been heard and she reiterated the ongoing frustration in many people. She then stated during the TAC staff explained the civil rights portion of the Accessibility Code in the Justice Department, because it was a federal code, once adopted into state law becomes a state law, enforced at a state level. She further stated that makes it no different than the building code and the interpretations of all sections, not just those that were Florida specific. She encouraged the Commission to remember, when discussing the

Accessibility Code changes; this was a topic that comes up. She further stated an avenue needed to be found, legislatively, that would allow some sort of expeditious process and getting some interpretation and guidance.

Doug Harvey, Executive Director, BOAF

Mr. Harvey stated BOAF spends a lot of time trying to get people to talk, try to get them together to discuss the issues that could possibly short circuit or circumvent the process. He then stated one of the issues with the Accessibility Code was there was a certain amount of pause given by the building official when certain things occur. He continued by stating people submit for a formal interpretation and if it was relative to Accessibility a response was sent stating "*Due to the statutory requirements we are not permitted to provide an interpretation of the Accessibility Code,*" which closes that avenue. He further stated if a formal interpretation request was received related to the Accessibility Code a very similar response was provided to the applicant stating "*Due to the statutory requirements we are not permitted to interpret the building code.*" He continued by stating when the building official reads the statutory requirements or perhaps even before the whole process starts, the building official reads in the statute, and some of the local attorneys' opinions to the building official, that no you are not permitted to interpret that, you must use exactly as written. If the applicant cannot figure out what needs to be written they will need to petition for a declaratory statement to do something different. He stated those situations were real life situations that happen because of the wording contained in the statutory language. He further stated BOAF was open to work with the Commission in any way it can to help solve the issue.

Commissioner Browdy asked how building officials deal with Fair Housing issues. He stated Fair Housing was incorporated into the Florida Building Code by reference and if it was incorporated into the Florida Building Code building officials are supposed to deal with Fair Housing issues on an enforcement basis, although they may not be dealing with it on active basis there was still the obligation to do so in his understanding. He asked how appeals were dealt with from Fair Housing. He asked if that was not analogous to the issue found with Chapter 11.

Mr. Harvey stated he believed it was still part of Chapter 11, actually parts A and B of Chapter 11.

Commissioner Browdy stated Chapter 11 was in fact a sacrosanct area that cannot be interpreted, cannot be compromised at the local jurisdiction level and through the Commission contract with BOAF through binding interpretation.

Mr. Harvey stated that was correct.

Chairman Rodriguez called for motion to dismiss per the recommendation of legal counsel.

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

DCA10-DEC-243 by Timothy Graboski of Tim Graboski Roofing Inc.

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

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

DCA10-DEC-247 by Timothy Graboski of Tim Graboski Roofing Inc.

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

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

DCA10-DEC-248 by Kraig Marckett of Living Space Sunrooms, LLC

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

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

DCA10-DEC-270 by Michael Heissenberg, President, of Expert Shutter Services, Inc.

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

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

DCA10-DEC-285 by Larry Schneider, AIA

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

Mr. Schneider stated he was representing Jackson Hospital on the issue. He then stated this was a lawsuit filed against the hospital which was an extension of an existing lawsuit. He further stated it was going to be a four year plan to renovate and do things to be in compliance with the applicable accessibility requirements. He continued by stating in the settlement agreement, which had already been written, the owner can use either the 1991 Accessibility Standards or the 2010 and courts had accepted this. He stated as this case was discussed at the TAC and from hearing discussions relative to the other case during the commission meeting the local building official had not been asked the question. He then stated he was here based on his understanding of the declaratory statement. He further stated if the Commission was going to go where he thought it was going he asked if someone on the Commission could please tell him what an Accessibility declaratory statement was and the qualifications needed to meet one because it would appear there were no places left to go. He stated it did not make a lot of sense the Commission can deal with any other section of the code and get a binding interpretation or a declaratory statement. He then stated this was the only thing no one could talk about in public and it was very frustrating. He continued by stating the question was asked relative to where people go as it relates to accessibility. He stated people go to the access board or the Department of Justice webpage. He then stated they were aware staff had used that language to take care of this. He further stated the federal government has stated it could be used. He continued by stating they would like to be able to use this for this project because they would be moving forward into Florida with the new ADA standards. He stated they felt like they had met the qualifications of a declaratory statement, a local building official was not asked, have looked into a core facilitation which states by the use of other design the technologies were permitted where the alternate designs and technology used would provide substantially equivalent or greater access to and usability of the facility. He then stated the 2010 standards were over 20 years of work from the disabled community and the industry throughout the country to create the new document which clarifies and cleans up a lot of the issues. He asked if the Commission does not grant the declaratory statement could it please tell him where to go next.

Mr. Richmond stated this case was different than the previous request for declaratory statement. He further stated the recommendation was not for dismissal. He continued by stating the tenor of the request was for the Commission to determine the 2010 Federal Standards for Accessible Design were substantially equivalent to the building code and therefore can be used. He stated the answer was not what makes them equivalent, what makes them equivalent was the language read by Mr. Schneider into the record. He then stated whether it be design or differences, essentially the deviations from what was current Florida Law Chapter 11 provide for substantial equivalent accessibility. He further stated the fact the Federal government had adopted the alternative did not mean that it provides for substantially different equivalent

accessibility in and of itself. He continued by stating this was a different topic. He stated it was not denying a declaratory statement in any way, shape, or form. He then stated it was saying local governments had to look at the deviations from Chapter 11 and make the decision whether it provides substantial equivalent accessibility.

Commissioner Browdy stated Mr. Schneider had said because Chapter 11 was sacrosanct there would be no opportunity for any declaratory statements, his understanding was Florida Specific in Chapter 11 the Commission would be authorized to give a specific declaratory statement. He asked if that were correct.

Mr. Schneider responded stating it was not correct. He then stated the one declaratory statement that did come through had nothing to do with a Florida specific item. He further stated it was the law stated under the Federal Law. He explained it was whether a tenant improvement mandated the accessibility compliance within the common air elements of a building. He stated the Accessibility TAC looked at what the Federal Law stated and the distinction was made that it did not have to be.

Commissioner Gross stated the vote at the TAC was 3-2, not unanimous. He then stated he had voted favorably in the TAC to move things along but he stated he was against the recommendation. He continued by stating he could see Mr. Schneider's frustration. He stated he was also frustrated, receiving hundreds of phone calls on the issue and he goes through those calls and all of those who contact him want to know where he goes for answers. He then stated part of the problem was the answer given was not really an answer to the question. He explained the answer only indicates the building official was acceptable, but did not indicate the building official could go ahead and make the determination.

Chairman Rodriguez asked Commissioner Gross if he would like to make a motion with his answer.

Commissioner Gross moved approval the answer should be the Commission recommends the local building official make the decision on the equivalency and has the authority to do so.

Mr. Richmond stated he believed the motion was consistent with the staff recommendation.

Mr. Schneider stated the motion sounded like the same language. He then stated he wanted the commissioners to understand the request was not asking for anything Florida specific to be done. He continued by stating the Florida specific was still there and would be followed as work was completed. He stated, for example, under the current law a toilet needed to be 18 inches off the wall while the new law and the current IBC edition of 2006 allow the toilet could be between 16-18 inches off the wall. He then stated he knew the example had no relevance but it could save the hospital district a lot of money that does not have to move a toilet that was 17 inches if it can use the new ADA standards. He continued by stating there were other requirements that

allow signage heights to be within a range. He further stated everything has been moving to a range versus being locked into fixed dimensions. He stated all the petitioner was asking, because the feds have allowed this to be done, was to be allowed to do the same. He then stated they had been dealing with both the building department and AACA and wanted to send the message forward it was out there as long as it was not the Florida specific, which there was never an intention of modification. He further stated they wanted it to be clear the request was not for a blanket and the Florida specific would be followed, but the things that did change they could have the opportunity to use those changes.

Commissioner Gross asked if motion could be modified to state the Florida Building Commission has no objection to the 2010 standard being used.

Commissioner Browdy entered a second.

Commissioner Gross stated currently 95% of the code was based on the federal code. He then stated the first line in the statute under Accessibility states "*We adopt the federal 1991 ADA.*" He continued by stating even as the new ADA was being developed, 95% of it again would be used on the federal ADA, having only 17 items in Florida that were different. He stated the federal code was used and it was going to be mandated to be used next year.

Mr. Richmond stated he had reviewed the request for declaratory statement in this case. He then stated there was no reservation relative to any particular item and there was no discussion to any particular item therefore what was basically being stated was the petitioner wanted a blanket approval to use the 2010 Accessibility design standards under the theory it was equivalent facilitation. He continued by stating the very reason the Commission was not looking at the blueprints to decide each height provides equivalent facilitation was because that is what building officials do. He further stated the language for equivalent facilitation does not allow blanket decision making because the deviations have to be considered. He continued by stating there should be no confusion, the law in Florida is the Accessibility Code and any deviation from the Accessibility Code must be explained by either equivalent facilitation or perhaps a waiver from the Florida Accessibility Code. He stated there was a recommendation which would be discussed later which could provide some clarification and would put some explicit authorization to utilize the standards consistent with the mechanism the federal law was traveling under at present. He then stated the permissive nature of the standard by federal law does not in any way, shape or form condones the use of the standard blanket in Florida. He further stated he would hesitate to endorse a particular package. He continued by stating the decision was for the local building officials and if there were issues that arise which a declaratory statement would help it would be different but a range does not comply with a particular number. He stated there was a law in Florida which has statutory genesis and the statute cannot be waived nor can a declaratory statement be used to do away with statutory requirements. He then stated there were some authorities who could waive Florida specific requirements of the Accessibility Code to the extent the permissive use at the federal level of the 2010

standard moves the federal requirement away from Florida's code were authorized to waive those requirements. He explained a waiver was different than a declaratory statement because waivers actually decide the particular issues and if the Commission decides to be involved it should be through a waiver.

Mr. Schneider asked in an attempt to resolve the issue if it would help the Commission if the petitioner amended the application to include the specific items which were relevant to the request for a declaratory statement and bring it back to the Commission with the additional information.

Mr. Richmond responded stating yes because it would give the Commission something to work with because it could not do an across the board approval.

Chairman Rodriguez asked if the motion could be amended to have the item deferred to allow the petitioner the opportunity to come back with revised text.

Commissioner Gross accepted the amendment.

Commissioner Browdy accepted the amendment.

Commissioner Browdy stated he did not believe it would change anything on a principal basis.

Mr. Schneider stated he was trying to work on both sides because on one side he could see and appreciate the direction being taken but he could also hear legal counsel's concern. He further stated to bring it to a conclusion the petitioner would spend the time listing the specifics so the Commission could make a decision.

Vote to approve the motion to defer was unanimous. Motion carried.

Commissioner Greiner asked for clarification if the additional information was being brought back was it going in front of the advisory board requesting a waiver.

Mr. Schneider stated the request would not be for a waiver, it would still be for a declaratory statement.

DCA10-DEC-286 by Larry Schneider

Mr. Richmond stated the decision in DCA10-DEC-285 also applied to DCA10-DEC-286.

Commissioner Gross moved approval for deferral for additional information. Commissioner Browdy entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

CONSIDER OTHER LEGAL ISSUES

None

CONSIDER COMMITTEE REPORTS AND RECOMMENDATIONS:

Accessibility Code Workgroup

Mr. Blair presented the report of the Accessibility Code Workgroup.
(See *Accessibility Code Workgroup Meeting Minutes December 6, 2010.*)

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

Accessibility TAC

Commissioner Gross presented the report of the Code Administration TAC. (See *Accessibility TAC Meeting Minutes January 31, 2011.*)

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

Education POC

Commissioner Browdy presented the report of the Education POC. (See *Education POC Teleconference? Meeting Minutes January 24, 2011.*)

1st Action

Two courses were administratively approved courses recommended to the Commission for approval:

Course # 430.1 - Advanced ASCE 7 – With Significant Changes to the 2010 Edition

Course #256.1 - Building/Structural Summary

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

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

Product Approval POC

Commissioner Carson presented the report of the Product Approval POC. (See *Product Approval/Manufactured Buildings POC Meeting Minutes January 24, 2011.*)

1st Action

Commissioner Carson moved approval to initiate the revocation process for shutters used within HVHZ that have deflection larger than allowed by S.1613.1.9. he stated the products that do not comply and will be subject to revocation include: FL #'s: 7873-R6, 12766-R1, 13663, 13299-R1, and 10654. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

2nd Action

Commissioner Carson moved approval to begin revocation process, due to the expiration of Quality Assurance programs, for the following products: FL #'s: 9386, 7080, 7673, 10332, 12150, 8710, 13115, 12911, 12767, 10541, 10543, 10571, 10676, 13189, 13238, 9455, 12702, 12700, 1934, 5300, 5358, 5842, 7392, 7879, 8229, 8299, 12434, 12697, 11808, 12745, 12666, 7685, and 12000. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

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

Roofing TAC

Commissioner Schulte presented the report of the Roofing TAC. (See *Roofing TAC Teleconference Meeting Minutes January 24, 2011.*)

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

Structural TAC

Commissioner Schock presented the report of the Structural TAC. (See *Structural TAC Meeting Minutes January 24, 2011.*)

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

RULE ADOPTION HEARING ON 2010 FLORIDA BUILDING CODE (If authorized by Governor Scott's Office of Fiscal Responsibility and Regulatory Reform, Review Pending)

Chairman Rodriguez stated the Commission conducted a rule development workshop at the December 2010 meeting for the purpose of deciding on TAC recommendations regarding proposed modifications to the Florida Building Code. He then stated the Commission's adopted modifications serve as the draft 2010 Edition of the Florida Building Code. He continued by stating in addition to the February 2011 hearing an additional rule adoption hearing concurrent with the June 2011 rule adoption hearing to consider glitch amendments to the 2010 Code. He further stated the February rule adoption hearing on Rule 9N-01, Florida Building Code, was for the purpose of considering public comment on the draft 2010 Florida Building Code. He stated if any commissioners were interested in making any changes they should wait until the final rule adoption hearing in June, although at the February meeting a sense of the commissioners' acceptability for receptivity for the proposals heard.

Mr. Richmond opened the hearing.

Mr. Richmond stated by way of introduction for the proceeding he wanted to explain to the Commission how it got to the point of being authorized to have the hearing. He then stated publication of any notices regarding rule making now require approval of the Governor's Office of Government Accountability and Regulatory Reform, an office created by executive order on January 4, 2011. He further stated the current notice was published and submitted the previous Wednesday and appeared the following Friday. He continued by stating that office reviewed the notice and authorized the Commission to move forward. He stated he would caution that office, in addition to the Legislature pursuant to the override in 1565 still have to review the rule in total and give the Commission authorization to proceed in addition to proceeding with February's rule adoption hearing. He then stated there were some substantial hurdles left and by no means a given the Commission will be able to conclude the process, mostly because most of the processes were brand new. He continued by stating this issue would be essentially one of the first going through the new processes in addition to the unique aspects of the Florida Building Code as a rule to be with.

Mr. Madani explained to the Commission where support documentation could be found relative to the changes and recommendations made by staff and available to the public relative to the 2009 supplement to the building code and comments relative to that information. He asked Mr. Richmond if it was necessary to list each of those comments.

Mr. Richmond stated the commenter for the one requiring specific action was present.

Mr. Madani stated Comment 1 and Comment 2 were editorial in nature. He then stated Comment 3 was submitted by Joe Ivy relative to code change number EN4322.

He further stated the change had to do with the computer program which will be addressed through the glitch process.

Mr. Blair clarified by stating comments were received and would be heard. He then stated the Commission would decide if there were changes to be made at the June 2011 rule adoption hearing when those comments could be heard at the same time based on the status with the law. He further stated if any commissioner had a comment which they would like to reconsider they should provide, by straw poll, an indication for the June meeting.

Chairman Rodriguez stated if any member of the public agreed with a comment already made they should state so rather than reiterate an argument which had already been made to avoid repetitiveness.

Jorge Cruz-Bustillo, Somay Products and FCPA

Mr. Cruz-Bustillo stated he had submitted comments on January 19, 2011 which was a substitute draft language for 3 rules which all have the identical language. He stated he would rely on the submitted comments rather than reciting them verbally at hearing. He then stated he had reviewed the comments from the August 2010 Commission meeting. He continued by stating the two main themes: 1) the concern there needed only elastomerics made with a certain quality and performance be used on asphalt shingles and 2) how some form of written approval would be obtained from shingle manufacturers. He stated at the last meeting he stated he wanted to ensure due process, check and balances, and an appeal process. He then stated one hour earlier there was a very thoughtful discussion relative to remedies when the decision they want was not obtained. He continued by stating his main concern at the last meeting was if the shingle manufacturers denied a product there was nowhere to go. He further stated if the language he put forward was reviewed using what was currently in the code, at least with respect to the HVHZ, any elastomerics which meet the materials standards set forth in the code and those that received a product approval from Miami-Dade County shall be entitled to be applied to new and existing asphalt for other composition shingles. He stated all areas outside the HVHZ, the other 66 counties ?? the Department of Community Affairs. He continued by stating he had taken all of the concerns of the major stakeholders about quality and performance and merited it up with the existing due process and checks and balances. He stated Miami-Dade County chooses the independent laboratory to go to; the laboratory tested for quality performance and standards on ASCM-D6083. He then stated he was asking the Commission to take the concerns of the stakeholders and those who have spoken in favor of the Pelham? Rule and consider the language proposed. He further stated he believed the language takes in everyone's concerns and he asked the Commission to adopt it.

Joe Eysie? Florida Natural Gas Association

Mr. Eysie stated he would like to accept Mr. Madani's suggestion to defer his comments to the point at which the procedure for adopting or creating a manual or identifying the specifics of allowing additional third party software products for code compliance would be the better place to address the comments he had posted.

Mr. Harvey stated BOAF had been working in conjunction with the Commission's direction and the supplement which had been discussed. He had copies of the proposed supplement to the commissioners for review to see how simple a process BOAF believed the system could come down to. He then stated what was taken from the TACs, what the Commission voted on and the direction BOAF believed it was given to provide the Fuel Gas as a supplement was the document distributed to the commissioners. (See *2010 Florida Supplement to the 2009 International 2009 Fuel Gas Code*.) He further discussed the two different types of bindings of the supplement, stating they wanted the Commission to see the options of the way the supplement could be done. (See *2010 Florida Supplement to the 2009 International 2009 Fuel Gas Code*.)

Mike Bivel?, Building Owners and Managers Association of Florida

Mr. Bivel stated he wanted to thank the Commission for its diligence, integrity and wisdom, which he had observed in its workshops and the plenary session, handling very difficult and very challenging situations. He then stated BOMA Florida was encouraging harmony between the federal accessibility code and the Florida code. He further stated they believed the harmonization would affect easier compliance that would coordinate the same situations in each state and would improve enforcement. He stated he heard the consideration of an issue during a TAC meeting and each regulation was approached with the consideration of facts along with science and data, which would achieve the best result.

Mr. Richmond closed the hearing.

Commissioner Carson stated at the Commission meeting some compromise language was brought forward by a proponent. He then stated he would assume the Roofing TAC had not had the opportunity to review the proposed language. He continued by stating he wondered what the procedure would be for the Roofing TAC to consider the language and would it slow down the process by impacting the schedule.

Chairman Rodriguez stated the Commission had until June 2011.

Mr. Richmond stated the Commission could vote to send the language to the TAC. He then stated because it was submitted under legal category as a lower cost regulatory alternative the Commission was required, in accepting or rejecting the language, specifically in rejecting it, to describe the reasons it was rejected, essentially give a rationale for the decision. He further stated there was any number of rationales that could support the decision and there was also the possibility it would be supported. He continued by stating if the Commission believed referring it to the Roofing TAC

before reaching a final decision would be reached to accept or reject it he believed it would be acceptable and within the Commission's time frames.

Commissioner Carson moved approval to refer the proposed language to the Roofing TAC for review and recommendations. Commissioner Nicholson entered a second to the motion.

Commissioner Schock stated he knew the timing of the code process was up in the air at present. He asked if the issue would be better served coming through the glitch cycle if it was going to slow anything down.

Mr. Richmond stated neither decision would slow the process down because essentially the two were being coupled together.

Vote to approve the motion was unanimous. Motion carried.

Chairman Rodriguez stated a motion was needed to conduct a supplemental rule adoption hearing.

Chairman Scherer moved approval to conduct a supplemental rule adoption hearing. Commissioner Nicholson entered a second to the motion.

Commissioner Schulte stated at the last Commission meeting he had raised a question relative to the new ASC10 and he wanted to make sure because there were charts and other things, RAS's, TAS's and the uniform roofing permit. He stated he wanted to make sure there was an opportunity to make adjustments to that during the glitch cycle to deal with those issues and correlate all of them.

Mr. Dixon responded if a code change the Commission adopted created a glitch there would be an opportunity to correct it during the glitch cycle. He then stated, as Mr. Richmond said, that part of the cycle would run concurrent with the ending of the code adoption, which means the Commission had until June to correct those issues.

Vote to approve the motion was unanimous. Motion carried.

NEXT STEPS IN CODE ADOPTION PROCEEDINGS

Chairman Rodriguez reported that the TACs developed recommendations on proposed modifications to the Florida Building Code during rule development workshops conducted in July and August of 2010. He stated at the December meeting the Commission conducted a rule development workshop to decide on proposed modifications to serve as the 2010 Edition of the Florida Building Code, and voted to proceed with rule adoption by conducting a rule adoption hearing at the February 1, 2011 Commission meeting, and conducting an additional rule adoption hearing concurrent with the June 2011 rule adoption hearing to consider glitch amendments to the 2010 Code. He then stated the Commission's decisions on proposed Code

modifications have been posted and serve as a draft of the rule. He further stated the Commission would conduct an additional rule adoption hearing concurrent with the June 2011 rule adoption hearing to consider glitch amendments to the 2010 Florida Building Code for the purpose of providing an additional opportunity for public comment, and the rule will be finalized with the concurrent adoption of glitch amendments at the June 2011 meeting.

Chairman Rodriguez recommended staff's proposal for the Glitch Process as follows: The Commission adopt the following criteria that the proponent must address for submitting proposed Glitch amendments to the 2010 Florida Building Code:

- (1) Whether the proposed code change falls within the scope of the glitch criteria.
- (2) Whether the proposed code change has a Florida specific need.
- (3) What the impact is on small businesses.

Commissioner Gregory moved approval to adopt the propose glitch criteria which proponents must address when submitting glitch amendments to the 2010 Building Code. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Chairman Rodriguez stated the Commission needed to decide on the process for evaluating submittals and whether those submittals meet the glitch criteria approved and developing recommendations. He then stated the proposal was the TAC chairs meet two weeks prior to the Commission meeting via webinar or onsite to provide recommendations on the changes to the Commission.

Commissioner Browdy asked for clarification the meeting would be to review potential glitch amendments.

Chairman Rodriguez stated there would be the criteria, the TAC's review and two weeks before the meeting recommendations would be delivered.

Commissioner Browdy moved approval for the TAC chairs to meet two weeks prior to the Commission meeting to review and make recommendations on the changes. Commissioner Carson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

CONSIDER RECOMMENDATIONS TO 2011 LEGISLATURE REGARDING ACCESSIBILITY CODE LAW AND OTHER ISSUES

Chairman Rodriguez stated at the December 2010 meeting the Commission adopted a package of recommendations for submittal to the Report to the 2011 Legislature. He then stated at the February meeting the Commission was asked to consider additional recommendations for submittal to the 2011 Legislature, including recommendations required to conform the Florida Accessibility Code for

Building Construction with Federal ADA requirements and to ensure that the FACBC would be certified by the Department of Justice. He continued by stating DCA staff provided the Commission with a package of recommendations based on comments received by the Accessibility Code Workgroup and from a series of three Accessibility Code and Law workshops. He further stated stakeholders were also asked to identify and evaluate additional recommendations for statutory changes (in addition to those required to conform the law to the new ADA Standards for Accessible Design) and staff's recommendations regarding those proposed statutory changes are based on acceptability rankings conducted with stakeholder interests attending the January 31, 2011 workshop.

Mr. Dixon conducted a review of the proposed revisions to Florida Law (See *Accessibility Law Recommendations*). He then stated the first set of items that have been in the new draft code development process do not change current policy or requirements of Florida Law and would conform Florida Law to language used in the new 2010 ADA Standards for Accessible Design. He stated the Americans with Disabilities Act Accessibility Guidelines had been changed to Standards for Accessible Design throughout the document. He further stated the section numbers that have changed from the 1991 version to the 2010 version were displayed on the overhead screen for review. He continued by stating he would not be discussing the revisions line by line, but would address a few of the highlights. He stated the document had been on the agenda for each of the workshops in its evolving forms. He then stated the changes in section numbers from the old ADAG to the new Standards were typical changes. He continued by stating other there are changes included in the document such as the elimination of Florida specific truncated dome requirements. He explained the federal requirements were different from Florida requirements which would not comply with the federal standards. He continued by stating those needed to be eliminated and then referred back to the federal standards until the Florida Accessibility Code could be certified again.

Mr. Dixon stated the second set of items were recommendations from members of the public which would change current policies. He then stated the Florida Accessibility Code has Florida specific requirements written into law. He further stated those are then amended into whichever edition of the federal standards are available at the time. He continued by stating for two years a process has been underway to transition to the 2010 ADA Standards of Accessible Design federal standards and the Florida elements are currently integrated into the draft. He stated some of the proposals before the Commission would remove Florida specific requirements from Florida's Code. He then stated he had categorized the items staff recommended based on a "sense" of the participants who participated in the workshop, which involved a number of persons representing advocacy groups and individuals with disabilities and industry representatives including designers, building officials, contractors, etc. He further stated none of the staff recommendations experienced any substantial objection by either side. He continued by stating that in the workshop some proposals enjoyed significant support from one side or the other but not significant support from both sides. He stated all staff recommendations were proposed items which did receive support

from both industry and advocacy groups. He stated the decision criteria for the proposals selection was rooted in the difficulty in getting the substantial number of changes being proposed through the Legislature. He further stated any substantial complaint, rejection or negative input from any party in the process could submarine the entire bill. He stated the fundamental goal was to align Florida's law and thereby its code with federal standards so the code could be certified by the U.S. Department of Justice. He continued by stating he had characterized the recommendations as falling into 3 categories: 1) deleting Florida specific requirements (the largest category), 2) modifying Florida language, but leaving the same policy in place, so it would be more clear in the law and the code what the Florida requirement was, and in some instances 3) changing the terminology used so it better matches the new federal standard language thereby making it easier to fit the code together better.

Mr. Dixon stated 553.504 was essentially the section of the law that adds Florida specific requirements for everything other than parking and 553.5041 was the section which establishes most of the Florida specific parking requirements. He further stated both sections had a number of changes. He then stated there was a recommendation to change to the wording in 553.505 to eliminate redundant language. He then mentioned a couple of the highlights including deletion of a 72 inch landing requirement at the bottom of a system of ramps and landings where the proposal would move it back to the federal requirement, 60 inches. He continued by stating there was a similar thing with an 18 inch hand rail extension at the top and bottom of sloped sections of the ramps, which would also go back to the federal requirement, 12 inches. He stated there was a significant change that would reduce the extra seating requirements Florida has had in place in assembly areas at restaurants and bars, i.e. less accessible seating which was agreed to by the advocates present. He then stated detectable warnings, public telephones, check out aisle widths and the turnstile prohibition currently in Florida law would be eliminated to defer to federal standards.

Mr. Dixon stated the final category of proposals staff recommended support of were those that had substantial support from both sides and which modify current requirements or added some new requirement both of which would be substantial change to current policies/requirements in law. He then stated that in 553.504(9) there was currently a requirement for number of additional sleeping rooms in hotels and motels, that must have features that go beyond what the ADA standards would require. He further stated Florida law currently addresses water closet heights in these rooms but it provides for a height of 19 inches that can be achieved by providing a 15 inch water closet and a booster seat, which had to be provided for persons with disabilities to use. He continued by stating the proposal would change the requirement to an accessible 17-19 inch high water closet. He stated two other proposals would add paint color requirements to the accessible parking spot. He then stated the access aisles were required to be striped and that a contrasting color would have to be used that would not be the same color as the required blue outline color for the parking space. He stated the same would apply to the actual space where a contrasting color would be added. He continued stating there was agreement on a couple of items which would expand the exemptions from Florida Vertical Accessibility. He then stated the new

federal standards have a good paradigm for addressing how accessible seats must be dispersed in large public seating areas such as theaters, stadiums, etc. and stated there was agreement to defer to those requirements in the federal standards. He further stated a similar set of requirements had been worked out for the federal standards relative to play areas, i.e. how many elevated play areas would have to be made accessible to persons with disabilities. He continued stating there was agreement to defer to the federal requirements for exemptions for certain play areas. He further stated deferral to the federal standards would also apply for employee work areas. He then stated the last item makes clear that buildings, spaces, sites, etc which were exempted from the ADA Standards, were exempted from the Florida Accessibility Code.

Ms. Eustace encouraged the Commission to add a provision to 553.775 that will allow an expeditious interpretation option. She stated her current declaratory statement originated in October 2010 and she would now be going back to the building official and then back to the Commission for another two readings and expect maybe to get something by June. She then stated October to June was a little too long.

Mr. Dixon stated the issue Ms. Eustace addressed should be deferred as a separate issue because it was not raised at the workshop and would be discussed by Mr. Richmond later in the meeting.

Mr. Schneider stated AIA of Florida wanted to thank everyone for all the hard work that had gone into the workshop. He then stated he wanted to clarify one item on which Mr. Dixon may have misspoken, as he did not want it thought any accessibility issues were being removed. He continued by stating Mr. Dixon stated there would be less accessible seating in restaurants and that was not correct. He further stated the new ADA no longer requires accessible seating only at fixed seats. He stated any table that has a seat at it would need to provide accessible seating and it was based on the seating count not table count. He then stated in actuality there would be more accessible seating in restaurants than what was currently found. He concluded by stating he did not want it to seem steps were being taken backward as the new law actually takes moves it a lot farther forward in terms of providing accessible seating.

Mr. Dixon stated Mr. Schneider's comments were exactly correct as it is only non-restaurant "assembly areas" that would have reduced seating.

Mr. Harvey stated BOAF would like to recommend specific statutory language to the Florida Legislature to accomplish the following objectives: 1) adopting the 2010 ADA Standards for Accessible Design as the basis for the code for building construction, authorize the Florida Building Commission to update Accessibility Code on a triennial schedule in conjunction with the updates of the Florida Building Code, correct references to the standard removing as many section references as possible, remove obsolete requirements and consolidate all of the Florida specific additional requirements into one section; 2) adopt the 2010 ADA standards for Accessible Design, which include the 2004 ADA guidelines and separate requirements for public and private facilities as the basis for the 2010 Accessibility Code for Building Construction; 3) format the Florida

Statutes as a supplement to the standard, (of which he could provide an example to the chairman and to DCA staff); 4) schedule an abbreviated code modification cycle which would allow interested parties an opportunity to propose specific code language that could be added to the supplement prior to publication and implementation. He stated the Commission, not the TAC, could easily hear two rounds of code change proposals at currently scheduled Commission meeting which would allow publication deadlines to be met.

Commissioner Carson stated he had a comment relative to the last section on the slide, the paint color issues on striping. He continued by stating he did not understand why blue stripes, symbols and crosshatching had to be done on a handicap space. He then stated when dealing with a 5-acre asphalt pasture in front of Wal-Mart it was fine. He further stated he was occasionally involved with historic renovations and restorations and to go through a long process to try to get all of the colors to be historically correct and then to go and take the blue paint and paint it right in front of the entrance to the building makes absolutely no sense to him. He was hoping someone could explain it to him the reason that was needed.

Mr. Dixon stated he would defer to Mr. Schneider or Commissioner Gross for that answer.

Commissioner Gross stated the reason was to differentiate it from all other parking areas. He then stated in Italy blue represents public parking so he was not aware who picked the blue because it has also been said the blue was not clearly visible at night against the gray asphalt.

Chairman Rodriguez stated even the fire trucks were now painted the fluorescent green color instead of the old fashioned red. He then stated he believed it was like the signage on the highways, the more outrageous the more they attract peoples' attention. He further stated there was a built-in conflict between the subtlety that there was sensitivity to on an historic property and then designating something that was clearly visible to all.

Mr. Schneider stated the rationale was the disabled community wanted to identify their spot as blue. He then further stated Florida was very distinct with the blue striping as the rest of the country did not require it, only the sign on the post and a logo on the ground. He then stated the issue came about when the disabled community was looking at how to distinguish and identify their spot and they came up with the blue.

Commissioner Carson asked if the Florida specific piece to the issue was because it had always been done that way.

Mr. Schneider responded by stating yes.

Mr. Blair stated the commissioners might want to look at the changes as a package of agreements.

Chairman Rodriguez stated color was usually one of the few issues in which there was no right or wrong. He then stated preservation issues were one of the issues the most leniency because it can easily be changed as to changing an opening. He further stated there were color rules relative to what was more visible which was why a lot of yellow and black was used. He stated it was interesting to know it was the luck of the draw, the color could have been yellow.

Commissioner Gross moved approval of staff's recommendations regarding statutory changes to the Accessibility Code Law. Commissioner Greiner entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Dixon stated he would like to address the issue raised by Ms. Eustace which was deferred earlier since it was not a part of the staff recommendations. He then stated that in discussions Mr. Richmond had stated he thought the Commission should seek authorization from the Legislature to provide the necessary legal framework for authorization to use the 2010 ADA Standards as equivalent facilitation under the current code.

Mr. Richmond stated the bulk of the discussion was held before during declaratory statements. He then stated having a legislative authorization would be the cleanest result and it would give the local building officials the greatest amount of flexibility and cover that was available. He continued by stating he believed it relied on the fact that the federal standard had been 10 years in the making and seemed to be widely supported given the relatively few carve-outs that have been discussed thus far and would basically mimic the authorization the federal authorities have seen fit to make available to the design public as well as the construction industry in general.

Chairman Rodriguez asked Mr. Richmond if he was requesting a motion.

Mr. Richmond responded yes if that was the will of the Commission.

Commissioner Goodloe moved approval of adoption of staff's recommendations and to authorize legal staff to provide language for a framework regarding a proposed process for considering interpretations of the Accessibility Code by the Commission. Commissioner Greiner entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Chairman Rodriguez stated he still believed the local building officials would be concerned over anything that has to do with that subject matter for the controversy and litigation that could result.

COMMISSION MEMBER COMMENTS AND ISSUES

Commissioner Gregory stated it was brought to his attention that two members of the swimming pool subcommittee were no longer available. He asked for permission from the Commission to seek from industry candidates to replace those positions.

Chairman Rodriguez stated that would be very helpful and thanked Commissioner Gregory.

Commissioner Stone stated the terms of some of the commissioners were quickly approaching. He asked if there was any obligation on the Commission's part, i.e. was there something a commissioner should do or does the Governor just state whether they were reappointed or if their term ended.

Chairman Rodriguez stated usually if a commissioner wished to continue to serve it would be appropriate to address a letter to the Governor's appointment office or if there was someone who a commissioner wished to recommend. He then stated, as Mr. Richmond indicated, there would be some possible changes for the Commission relative to whom or where the Commission would end up. He further stated there had been a precedent where Governors had been too busy to reappoint immediately upon expiration of the commissioners' term therefore the commissioner would serve until reappointed or someone else was appointed in their stead.

Mr. Blair stated the commissioners do continue to serve until replaced.

Mr. Dixon stated if a commissioner wished to apply for a second term they would have to turn in an application.

Mr. Stone stated an issue came up during the Education POC which he talked to staff about. He then stated he wondered why, in the Education POC meeting, staff or the public did not have direct access to the course material that was being decided upon. He continued by stating he was told about 4 years ago the Commission decided it did not want to broadcast that because someone may steal or borrow the educational materials, which he could understand. He further stated he wondered if it happened with the Education POC did the other POCs also hide things from the public. He stated his point was he was going to ask for the issue to be on the Education POC agenda for its next meeting for review, discussion of the reason for and if it was a policy which would be continued.

Mr. Dixon stated the only other area he knew the issue came up in was when putting together the Product Approval system program. He continued by stating manufacturers were concerned some of the information they had to present would have proprietary trade secrets on how a product was formulated. He then stated during that process it was decided instead of submitting a test report, which would have a full description of the product, a manufacturer would submit an evaluation report that was developed by an evaluator who reviewed the test report and created the evaluation report.

Chairman Rodriguez stated it was not the Commission trying to hide anything.

Commissioner Stone stated `when he was a city manager he assumed all of his emails, and any correspondence of his or the staff was open for public scrutiny. He continued by stating he understood course material. He further stated he used to submit courses to different departments and he assumed anything he had submitted to the Department of Professional Regulation or the Engineering or Architecture Board would be open for the public to see. He stated occasionally he would review some of them and they would give him an idea on how he could improve them. He then stated he would never borrow or steal from one of the other programs. He continued by stating if he thought he had a need for it he would ask for permission to use it and give them proper citation. He further stated being from an academic community it had to be done or the hammer comes down.

Chairman Rodriguez stated architects had to do the same and there were copyrights over their plans.

Commissioner Stone asked Commissioner Browdy to put the issue on the agenda for its next meeting to allow for discussion and public comment.

GENERAL PUBLIC COMMENT

Jack Glenn, President, Florida Homebuilders Association

Mr. Glenn stated he was a victim of course theft. He explained 4 years ago when the actual PowerPoint presentations were available on the website he spent the better part of 3 months developing a course of submitted code changes to the Florida Building Code, received approval to teach it and about 6 months later at a conference he stuck his head in the door and found his course being taught. He then stated as a provider he was very appreciative of the fact course material was not made available. He reiterated the course he saw being taught was not taken from his course, it was his course. He further stated he had received copyright authorization to use copyright drawings as part of his presentation. He continued by stating the proponent who used the class did not have those permissions. He stated he had obtained permission from a number of copyright holders to use their material in context in his presentation, made the safeguards, spent the time, and the investment and there six months later found that class being presented by someone else. He reiterated he was very much in favor of the PowerPoint presentations not being available. He stated if someone wanted to take the handouts and recreate them it was fine, but not the actual work product.

Mr. Glenn stated the primary reason he wanted to speak to the Commission was relative to the \$80,000.00 being allocated to the development of a software manual so software could be approved by the Commission. He continued by stating he was the proponent of the two code changes that provided other software besides the Energy Gauge, USAG software could be used. He then stated his original proposal only added to Energy Gauge or other software approved by the Commission and the TAC went

further and took Energy Gauge out of the proposal and made it software approved by the building Commission. He further stated during the comment period on the code change he submitted a comment that would have provided criteria from the IECC on how to approve software. He stated the language of the criteria for software approval was in the IECC. He then stated during the review process of integrating the Florida Building Code and the IECC 2009 those sections were eliminated, the TAC approved it and ultimately the Commission approved it therefore they do not appear in the Florida Code. He continued by stating as a result, having been the proponent of the proposal to open the market up, as it were, recognizing the criteria was no longer there he submitted a comment to the Commission on the code adoption. He stated the comment received an 8-3 vote in the TAC, therefore NAR. He then stated he came back to the Commission and asked for reconsideration of the comment, but it was not. He further stated what was left was a code that allowed for use of other software besides Energy Gauge USA but with no criteria. He stated the staff had come forward with a proposal to develop criteria to the tune of \$80,000.00. He continued by stating he had two concerns in that regard: 1) the criteria already exist in the IECC and it could be used if the Commission would adopt it and 2) who would be doing the software manual. He stated the present provider of software, Florida Solar Energy Center, was a subset of the University of Central Florida, and they would logically be a party that could develop the manual. He further stated he believed it was incumbent the Commission use whatever safeguard is necessary to make sure the manual does indeed open the marketplace to the available software providers in the country. He stated if FSEC was going to be given the contract to write the manual he had a real concern the manual would favor Energy Gauge USA and not the other software that was available. He stated there was a very simple way to establish criteria and that was to pick up the criteria from IECC as to what could be used for guidance for software approval and not have to spend the \$80,000.00.

Arlene Stewart, AZS Consulting

Ms. Stewart stated she had the same concern as Mr. Glenn relative to who would be doing the manual. She then stated she believed there were multiple entities that were not currently in Florida that could be sent an RFP. She stated those entities do not have a "dog in the fight" and could provide excellent technical information. She stated she agreed with Mr. Glenn there was a far simpler and far less expensive way of handling the issue.

Mr. Harvey stated he was in agreement if the standards already exist why not use it.

Rob Vierra, Florida Solar Energy Center

Mr. Vierra stated he agreed with many of the points stated. He then stated there were two things brought back to the Energy TAC and from his memory the one Mr. Glenn brought forward did not receive 8 votes. He continued by stating one Ann Stanton had brought forward did get a simple majority but did not get the vote. He

stated the truth was there was a code that does not have any test for software. He further stated he supposed he could make a piece of software that asks “was there a building being built” and the response was “yes” and he could say “pass”. He continued by stating there was an obvious issue and everyone seemed to agree on that. He stated he was also in agreement with the suggestion staff attempt to get someone like Ann R??? who had done this type of book for other folks. He then stated it was not a simple process with the Florida specific changes so something that works somewhere else cannot just be used. He further stated it did not just pass in the residential code, but for the commercial building code as well. He continued by stating the commercial building code process was not a performance based code. He stated his staff looked at the issue and he was of the opinion it would be a low cost to do but the number of things that have to be done have to be developed and the things the software has to run through was unfortunately not so simple particularly on the commercial end. He further stated he believed Ann Stanton had a good proposal on how to approach the task and another relative to an hourly thing that could have been removed. He stated he believed there were lots of ways an agreement could be reached on the issue and he hope it did not get reached through the glitch cycle or other ways. He then stated there needed to be something otherwise people could come requesting approval for their software with no criteria in place.

Mr. Madani stated the reason for the \$80,000.00 was when approving a product some kind of program was needed by which the product could be approved. He then stated when getting into approving software a list of things was being dealt with. He continued by stating there was some mathematical simulation which needed to be considered when dealing with performance compliance methods especially. He further stated staff had looked at the issue to determine how best to resolve it. He stated they had looked at California as California had been in the business of approving software tools for some time and they have a program in place. He then stated when he looked at the program it was very extensive and it does require all of the ins and outs be addressed in terms of how a tool can be approved. He stated the intention of staff was anything used would go through the bud process but at the same time a working group needed to be established from the stakeholders to ensure an opportunity for input. He concluded by stating what was being described was putting some criteria in the code and approve a software, but it was not that simple.

ADJOURN

11:21 a.m. adjourned.