

Petition for Declaratory Statement before the Florida Building Commission

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	2/22/2012
File #	

Petitioner:

Andrew B. Finlayson
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352-391-5155

DS 2012-017

As a person with a hearing loss disability, I filed a formal letter of complaint against The Villages' Savannah Recreation Center for violations of the Florida Accessibility Code for Building Construction on September 19, 2011. The Savannah Recreation Center does not provide hearing aid compatible assistive listening devices.

In 1993 the Florida Legislature enacted the "Florida Americans with Disability Accessibility Implementation Act " The purpose and intent of this Act (Sections 553.501-553.513, Florida Statutes) is to incorporate into the laws of Florida the accessibility requirements of the Americans with Disabilities Act of 1990, Public Law No. 101-336, 42 U.S.C. Section 12101 et. seq. ADA, while at the same time to maintain those provisions of Florida law that are more stringent than the ADA accessibility guidelines, that is, those provisions which are more favorable to the needs of the disabled.

In 1997 the legislature amended the Act to complete the move to establish consistency of the Florida Accessibility Building Code to the Federal ADA Accessibility Guidelines as adopted by the Department of Justice at 28 CFR part 36, Appendix A

As a substantially affected person, this request for a Declaratory Statement by the Florida Building Commission is prompted by the responses of the Sumter County Building Official, Mr. Robert Kegan, to the code violation complaint and his interpretation of the Florida Building Code with regard to assistive listening devices for the hearing impaired. Attached is a copy of Mr. Kegan's opinion in memorandum form to Sumter County Administrator, Mr. Bradley Arnold. Also attached is a copy of my code violation complaint.

Mr. Kegan and Mr. Arnold are incorrect in asserting that the Florida Building Code applies to new construction only. The Florida Statutes clearly indicate otherwise; Florida Statutes Title XXXIII - Chapter 553 Building Construction Standards PART II ACCESSIBILITY BY HANDICAPPED PERSONS

553.507 Applicability.—This part applies to: (4) Buildings and facilities where the original construction or any former alteration or renovation was carried out in violation of applicable permitting law.

The ADA Accessibility Guidelines specifically indicate that a portion of the assistive listening devices required shall be hearing aid compatible. Mr. Kegan has not considered that in 1997 the legislature amended the Act to complete the move to establish consistency of the Florida Accessibility Building Code to the Federal ADA Accessibility Guidelines as adopted by the Department of Justice at 28 CFR part 36, Appendix A. The Sumter County Building Official should enforce all provisions of the Florida Accessibility Code;

Florida Statutes Title XXXIII - Chapter 553 Building Construction Standards PART II ACCESSIBILITY BY HANDICAPPED PERSONS

553.513 Enforcement.—It shall be the responsibility of each local government and each code enforcement agency established pursuant to s. 553.80 to enforce the provisions of this part. This act expressly preempts the establishment of handicapped accessibility standards to the state and supersedes any county or municipal ordinance on the subject. However, nothing in this section shall prohibit municipalities and counties from enforcing the provisions of this act.

In summary, this petition is intended to clarify the Florida Accessibility Code for Building Construction with regard to its applicability to existing buildings and to define the responsibility for enforcement of the code.

Sincerely,


Andrew B. Finlayson

**Andrew Finlayson
2044 Dove Hollow Run
The Villages FL 32162**

Mr. Robert Kegan
Building Official - Sumter County
Division of Planning & Development
Suite 115
7375 Powell Road
Wildwood FL 34785

September 19, 2011

Dear Mr. Kegan,

This letter is my formal complaint against The Villages' Savannah Recreation Center for violations of the Florida Accessibility Code for Building Construction. As I have discussed previously in your office, the Florida Accessibility Code adopted and incorporated the Americans with Disability Act Accessibility Guidelines (ADAAG). For your convenience, I have copied excerpts here from the Florida Building Code and the Florida Statutes confirming this law:

FLORIDA ACCESSIBILITY CODE FOR BUILDING CONSTRUCTION

CHAPTER 11 - PART A

Introduction

In 1993 the Florida Legislature enacted the "Florida Americans with Disability Accessibility Implementation Act." The purpose and intent of this Act (Sections 553.501-553.513, Florida Statutes) is to incorporate into the laws of Florida the accessibility requirements of the Americans with Disabilities Act of 1990, Public Law No. 101-336, 42 U.S.C. Section 12101 et. seq. ADA, while at the same time to maintain those provisions of Florida law that are more stringent than the ADA accessibility guidelines, that is, those provisions which are more favorable to the needs of the disabled.

In 1997 the legislature amended the Act to complete the move to establish consistency of the Florida Accessibility Building Code to the Federal ADA Accessibility Guidelines as adopted by the Department of Justice at 28 CFR part 36, Appendix A.

* * * * *

**The Florida Statutes - Title XXXIII Regulation of Trade, Commerce, Investments,
and Solicitations - Chapter 553 Building Construction Standards - Part V
Accessibility by Handicapped Persons (ss. 553.501-553.513)**

553.503 Adoption of guidelines.-Subject to the exceptions in s. 553.504, the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG), as adopted by reference in 28 C.F.R., part 36, subparts A and D, and Title II of Pub. L. No. 101-336, are hereby adopted and incorporated by reference as the law of this state. The guidelines shall establish the minimum standards for the accessibility of buildings and facilities built or altered within this state. The 1997 Florida Accessibility Code for Building Construction must be adopted by the Board of Building Codes and Standards in accordance with chapter 120.

553.513 Enforcement. - It shall be the responsibility of each local government and each code enforcement agency established pursuant to s. 553.80 to enforce the provisions of this part. This act expressly preempts the establishment of handicapped accessibility standards to the state and supersedes any county or municipal ordinance on the subject. However, nothing in this section shall prohibit municipalities and counties from enforcing the provisions of this act.

* * * *

Furthermore, I have copied here for your convenience appropriate sections from 28 C.F.R. Part 36 and the ADA Accessibility Guidelines regarding assistive listening devices for the hearing impaired:

**28 C.F.R. PART 36: NONDISCRIMINATION ON THE BASIS OF DISABILITY BY
PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES**

36.303 - Auxiliary aids and services.

(a) General. A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

The ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) Appendix A to Part 36 -- Standards for Accessible Design specify the quantity and type of assistive listening devices required. (<http://www.access-board.gov/adaag/html/adaag.htm#A4.33.7>)

A4.30.7 Symbols of Accessibility for Different Types of Listening Systems.

Paragraph 4 of this section requires signage indicating the availability of an assistive listening system. An appropriate message should be displayed with the international symbol of access for hearing loss since this symbol conveys general accessibility for people with hearing loss.

A4.33.7 Types of Listening Systems.

An assistive listening system appropriate for an assembly area for a group of persons or where the specific individuals are not known in advance, such as a playhouse, lecture hall or movie theater, may be different from the system appropriate for a particular individual provided as an auxiliary aid or as part of a reasonable accommodation. The appropriate device for an individual is the type that individual can use, whereas the appropriate system for an assembly area will necessarily be geared toward the "average" or aggregate needs of various individuals. A listening system that can be used from any seat in a seating area is the most flexible way to meet this specification. Earphone jacks with variable volume controls can benefit only people who have slight hearing loss and do not help people who use hearing aids. At the present time, magnetic induction loops are the most feasible type of listening system for people who use hearing aids equipped with "T- coils," but people without hearing aids or those with hearing aids not equipped with inductive pick-ups cannot use them without special receivers. Radio frequency systems can be extremely effective and inexpensive. People without hearing aids can use them, but people with hearing aids need a special receiver to use them as they are presently designed. If hearing aids had a jack to allow a by-pass of microphones, then radio frequency systems would be suitable for people with and without hearing aids. The Department of Justice's regulations implementing titles II and III of the ADA require public accommodations to provide appropriate auxiliary aids and services to ensure effective communication. See 28 C.F.R. 35.160, 28 C.F.R. 35.164, and 28 C.F.R. 36.303. Where assistive listening systems are used to provide effective communication, the Department of Justice considers it essential that a portion of receivers be compatible with hearing aids.

A7.2(3) Assistive Listening Devices. At all sales and service counters, teller windows, box offices, and information kiosks where a physical barrier separates service personnel and customers, it is recommended that at least one permanently installed assistive listening device complying with A4.33 be provided at each location or series. Where assistive listening devices are installed, signage should be provided identifying those stations which are so equipped.

Further technical information regarding the provision of assistive listening systems is found at <http://www.access-board.gov/ada-aba/adaag.cfm#a219>. This document contains scoping and technical requirements for accessibility to sites, facilities, buildings, and elements by individuals with disabilities. The requirements are to be applied during the design, construction, additions to, and alteration of sites, facilities,

buildings, and elements to the extent required by regulations issued by Federal agencies under the Americans with Disabilities Act of 1990 (ADA).

219 Assistive Listening Systems

219.1 General. Assistive listening systems shall be provided in accordance with 219 and shall comply with 706.

219.2 Required Systems. In each assembly area where audible communication is integral to the use of the space, an assistive listening system shall be provided.

219.3 Receivers. Receivers complying with 706.2 shall be provided for assistive listening systems in each assembly area in accordance with Table 219.3. Twenty-five percent minimum of receivers provided, but no fewer than two, shall be hearing-aid compatible in accordance with 706.3.

219.3 Receivers for Assistive Listening Systems (text version)

Capacity of Seating in Assembly Area	Minimum Number of Required Receivers	Minimum Number of Required Receivers Required to be Hearing-aid Compatible
50 or less	2	2
51 to 200	2, plus 1 per 25 seats over 50 seats ¹	2
201 to 500	2, plus 1 per 25 seats over 50 seats ¹	1 per 4 receivers ¹
501 to 1000	20, plus 1 per 33 seats over 500 seats ¹	1 per 4 receivers ¹
1001 to 2000	35, plus 1 per 50 seats over 1000 seats ¹	1 per 4 receivers ²
2001 and over	55 plus 1 per 100 seats over 2000 seats ¹	1 per 4 receivers ¹

¹. Or fraction thereof.

703.7.2.4 Assistive Listening Systems. Assistive listening systems shall be identified by the International Symbol of Access for Hearing Loss complying with Figure 703.7.2.4.

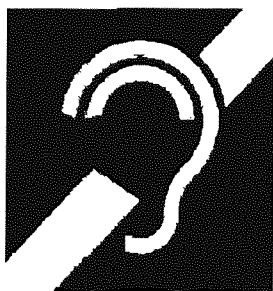


Figure 703.7.2.4 International Symbol of Access for Hearing Loss Pictogram with the shape of an ear and a bar diagonally across the shape.

706 Assistive Listening Systems

706.1 General. Assistive listening systems required in assembly areas shall comply with 706.

Advisory 706.1 General. Assistive listening systems are generally categorized by their mode of transmission. There are hard-wired systems and three types of wireless systems: induction loop, infrared, and FM radio transmission. Each has different advantages and disadvantages that can help determine which system is best for a given application. For example, an FM system may be better than an infrared system in some open-air assemblies since infrared signals are less effective in sunlight. On the other hand, an infrared system is typically a better choice than an FM system where confidential transmission is important because it will be contained within a given space.

The technical standards for assistive listening systems describe minimum performance levels for volume, interference, and distortion. Sound pressure levels (SPL), expressed in decibels, measure output sound volume. Signal-to-noise ratio (SNR or S/N), also expressed in decibels, represents the relationship between the loudness of a desired sound (the signal) and the background noise in a space or piece of equipment. The higher the SNR, the more intelligible the signal. The peak clipping level limits the distortion in signal output produced when high-volume sound waves are manipulated to serve assistive listening devices.

Selecting or specifying an effective assistive listening system for a large or complex venue requires assistance from a professional sound engineer. The Access Board has published technical assistance on assistive listening devices and systems.

706.2 Receiver Jacks. Receivers required for use with an assistive listening system shall include a 1/8 inch (3.2 mm) standard mono jack.

706.3 Receiver Hearing-Aid Compatibility. Receivers required to be hearing-aid compatible shall interface with T-coils in hearing aids through the provision of neckloops.

Advisory 706.3 Receiver Hearing-Aid Compatibility. Neckloops and headsets that can be worn as neckloops are compatible with hearing aids. Receivers that are not compatible include earbuds, which may require removal of hearing aids, earphones, and headsets that must be worn over the ear, which can create disruptive interference in the transmission and can be uncomfortable for people wearing hearing aids.

706.4 Sound Pressure Level. Assistive listening systems shall be capable of providing a sound pressure level of 110 dB minimum and 118 dB maximum with a dynamic range on the volume control of 50 dB.

706.5 Signal-to-Noise Ratio. The signal-to-noise ratio for internally generated noise in assistive listening systems shall be 18 dB minimum.

706.6 Peak Clipping Level. Peak clipping shall not exceed 18 dB of clipping relative to the peaks of speech.

The Savannah Recreation Center at 1545 Buena Vista Boulevard in The Villages is currently operating with numerous violations of the Florida Building Accessibility Code in each of the five public accommodation venues. Individuals with hearing loss are being excluded from audio portions of the concerts, plays and other forms of entertainment offered at the theater. Hearing loss individuals are denied enjoyment of the services or otherwise treated differently than other individuals because of the absence of auxiliary aids and services in each room at the Center. Hearing loss individuals are excluded from the enjoyment of District sponsored events as well as Volunteer Lifestyle events because of the absence of auxiliary aids at the Savannah Recreation Center. Specifically;

- The Rhett Butler Room seats 120 people, provides sound reinforcement for the general audience, but assistive listening is not provided for the hearing impaired. The ADAAG specifies a minimum of 5 assistive listening devices, one of which must be hearing aid compatible.
- The Atlanta Room seats 120 people, provides sound reinforcement for the general audience, but assistive listening is not provided for the hearing impaired. The ADAAG specifies a minimum of 5 assistive listening devices, one of which must be hearing aid compatible.
- The Charleston room seats 120 people, provides sound reinforcement for the general audience, but assistive listening is not provided for the hearing impaired. The ADAAG specifies a minimum of 5 assistive listening devices, one of which must be hearing aid compatible.
- The Ashley Wilkes Room seats 120 people, provides sound reinforcement for the general audience and a permanently installed induction loop system for hearing aid users, but assistive listening for other hearing impaired individuals is not provided. Additionally, signage indicating the availability of the assistive listening system is missing.
- The Scarlet O'Hara Theater seats 824 people, provides sound reinforcement for the general audience, but the assistive listening devices provided are not hearing aid compatible and do not provide effective communication for hearing aid users. The ADAAG specifies a minimum of 33 assistive listening devices, eight of which must be hearing aid compatible. Additionally, signage at the theater, indicating the availability of the assistive listening devices does not conform with ADA regulations.

While it is understood that none of the rooms at the Savannah Center have fixed seating and permanently installed assistive listening systems are not mandatory, assistive listening devices still must be provided under the ADAAG.

There are three Box Office window locations for Savannah Center events:

- Lake Sumter Landing Box Office window is located in the parking lot behind the Thai Ruby restaurant facing the back of Barnes and Noble.
- Spanish Springs Box Office window is located on Del Mar Drive at the opposite end of the building from TooJay's across from the LaRaina Building
- Saddlebrook Box Office window is located on the side of Saddlebrook Recreation Center next to the pool and billiards room.

Each of these Box Office windows has a physical barrier between the ticket seller and the patron. The ADAAG recommends that at least one permanently installed assistive listening device complying with be provided at each location or series.

It is my understanding that under the Complaint Process Timeline, a courtesy notice of violation is sent within two days of the complaint filing and an initial inspection is undertaken within 5 days of the complaint filing. The entire process to resolution should take no more than 60 days.

I am confident that your office will agree that the Savannah Center is not in compliance for accessibility and has not been since the initial construction. I looking forward to hearing from you soon.

Please do not hesitate to contact me with any questions or if you need any additional information

Sincerely,

Andrew Finlayson

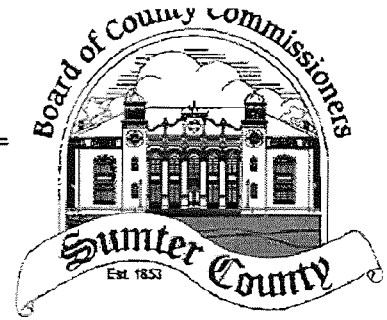
Board of County Commissioners

Division of Planning & Development

Building Services Department

7375 Powell Road, Suite 115 • Wildwood, FL 34785 • Phone (352) 689-4460 • FAX: (352) 689-4461

Website: <http://sumtercountyfl.gov/BuildingServices>



Memo

To: Bradley Arnold, County Manager
From: Robert Kegan, Building Official
Date: 11/22/2011
RE: Assisted Hearing Devices – Sumter County

All new buildings constructed in Sumter County are required to meet the minimum requirements of the Florida Building Code 2007 Edition. - 2009 Supplements
The Florida Accessibility Code Chapter (11) of the Florida Building Code regulates all accessibility requirements in the State of Florida.

Section 11-1 Purpose All new and altered buildings and facilities subject to this code which may be frequented in, lived in, or worked in by the public shall comply with this code.

Section 11-4.1.3 Accessible buildings: **New Construction**

19) Assembly areas:

(b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movie theaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with Section 11-4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of Section 11-4.30 shall be installed to notify patrons of the availability of a listening system.

Bradley T. Cornelius, AICP
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Primarily because of the complexities of balancing the rights of the physically disabled and the technically specific requirements of the built environment, no single agency has been charged with enforcement of all issues pertaining to accessibility. A thorough attempt was made by the Department of Community Affairs at the time of publication of this document to ensure that this manual is a reflection of the laws of Florida and the administrative rules of each agency as these requirements relate to construction. **Because individual-agency rules may change, it is the responsibility of the design professional and the property owner to ensure compliance with subsequent revisions.**

It is my opinion as the Building Official of Sumter County that all New Building Construction in Sumter County since (my appointment as Building Official-September of 2007) is being constructed according to the minimum standards of the Florida State Statutes and Florida Building Code.

The code speaks for itself in regard to Assisted Hearing Devices:

For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided.

Other assembly areas defined as:

1. an area of more or less than 50 people
2. an area that does not have fixed seating

**Andrew Finlayson
2044 Dove Hollow Run
The Villages FL 32162**

Mr. Mo Madani, CBO
Program Manager
Florida Department of Business and Professional Regulation
Building Codes and Standards Office
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399

February 16, 2011

Mr. Madani,

Enclosed please find my petition for a Declaratory Statement from the Florida Building Commission with regard to an opinion issued by Mr. Robert Kegan, Building Official, Sumter County. I have also included other documentation that may help the reader to better understanding my complaint and concerns for providing accessibility to the hearing impaired.

As I often have difficulty using the telephone, please use email for any questions or concerns that you may have abf@abfinlayson.com.

Sincerely,


Andrew Finlayson