



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

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

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

**MEETING
OF THE
FLORIDA BUILDING COMMISSION**

**PLENARY SESSION MINUTES
JUNE 8, 2010**

APPROVED AUGUST 10, 2010 AS AMENDED

The meeting of the Florida Building Commission was called to order by Chairman Raul Rodriguez at 8:37a.m., Tuesday, June 8, 2010 at the Rosen Centre Hotel, 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
Drew M. Smith
Christopher P. Schulte
Randall J. Vann
Scott Mollan
Anthony M. Grippa
Kenneth L. Gregory
Joseph "Ed" Carson
Nicholas W. Nicholson
Dale T. Greiner
John J. Scherer

COMMISSIONERS ABSENT:

Angel "Kiko" Franco
Hamid R. Bahadori
Mark C. Turner
Jonathon D. Hamrick
Raphael R. Palacios
John "Tim" Tolbert
Donald A. Dawkins

OTHERS PRESENT:

Rick Dixon, FBC Executive Director
Jim Richmond, Legal Counsel
Jeff Blair, FCRC Consensus Solutions
Mo Madani, Technical Svcs. Manager
Marlene Stern, Access Council Legal Counsel

WELCOME

Chairman Rodriguez welcomed the Commission, staff and the public to Tampa and the June 2010 plenary session. He then stated the primary focus of the June meeting was to decide on regular procedural issues including the product and entity approvals, applications for accreditor and course approvals, petitions for declaratory statements, accessibility waivers and consider recommendations from the Commission's various committees. He stated in addition the Commission would adopt the Commission and TAC's 2010 Code Amendment Review Processes.

Chairman Rodriguez stated if anyone wished to address the Commission on any of the issues presented they should sign-in on the appropriate sheet(s). He then stated, the Commission would provide an opportunity for public comment on each of the substantive discussion topics. He further stated if one wants to comment on a specific substantive agenda item, they should approach the speaker's table at the appropriate time so the Commissioners know 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. He amended the agenda stating there would be no Mechanical TAC report.

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

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

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

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

REVIEW AND APPROVE MARCH 8, MARCH 15, MARCH 29, APRIL 12, APRIL 19, AND APRIL 26, 2010 TELECONFERENCE SUMMARY REPORTS

Chairman Rodriguez called for approval of March 8, March 15, March 29, April 12, April 19, and April 26 Teleconference Meeting Summary Reports.

Commissioner Greiner moved approval of the summary reports from the March 8, March, 15, March 29, April 12, April 19 and April 26 teleconference meetings. Commissioner Schulte entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

CHAIR'S DISCUSSION ISSUES AND RECOMMENDATIONS

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

Accessibility TAC

Larry Schneider was appointed to the Accessibility TAC.

Education POC

Scott Mollan was appointed to the Education POC.

Roofing TAC

Mark Zenal was appointed to the Roofing TAC. He will be replacing Kenneth Everett.

Special Occupancy TAC

Wayne Young was appointed to the Special Occupancy TAC. He will be replacing Skip Gregory.

REVIEW AND UPDATE OF COMMISSION WORKPLAN

Mr. Dixon conducted a review of the updated Commission work plan. (See *Updated Commission Work plan June 8, 2010*).

Mr. Dixon stated the significant changes to the work plan include the directions of the 2010 Legislature through HB663. He then stated there were a number of building code changes directed by the Legislature as well as some

changes to the Product Approval System, which must be made by changes to the Product Approval Rule. Mr. Dixon referenced a list of code changes on the overhead screen. He stated those changes would be entered as comments during the current round of the 2010 Code Development and would be considered at the August Commission meeting. He then stated there was a schedule for the amendment of Rule 9B-72 for Product Approval including a workshop to be held at the August meeting, a hearing with proposed changes at the October meeting and the changes to the rule were targeted to be effective by the middle of November. He continued by stating the changes in the list included the expedited approval process for products being submitted for approval based on certification by a certification agency, the elimination of the now defunct organizations which had been approved by law now removed as product evaluation entities and authority for applicants to pay the administrator directly instead of monies being transmitted through the department.

Mr. Dixon stated there were a couple other changes to rules which would need to be made. He then stated the Legislature had granted the Commission's request for authority to charge a fee for Accessibility Code Waivers, declaratory statements and non-binding opinions. He further stated the Commission had to decide what to do with those i.e. whether to exercise those authorities and what the fee would be for each of those actions by the Commission.

Mr. Dixon stated there was one additional task which has been required by law since the Florida Building Code and the Commission were created. The triennial review of the state building code system and a report to the Legislature for any amendments or modifications which need to be made. He further stated the law requires the review to be done each time the Florida Building Code is updated. He stated the updated code was targeted to go into effect at the end of 2011, therefore, any recommendations decided on by the Commission, need to be submitted to the 2011 Legislature. He then stated an internet-based assessment of public opinion on the way things work with the building code system and what should be modified was scheduled for the summer. He further stated the committee appointed by the Chairman at the next Commission meeting would meet at the October Commission meeting and hopefully reach a final decision during that meeting for any recommendations to be made to the Legislature by January 1st. Mr. Richmond indicated the Legislature would be starting early next year therefore the Commission's report should be completed earlier than in the past years.

Commissioner Carson moved approval of the updated work plan. Commissioner Greiner entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

CONSIDER TAC'S CODE AMENDMENT REVIEW PROCESS

Mr. Blair conducted a review of the TAC's Amendment Review Process. (See *TAC Code Amendment Review Process, August 2010 Rule Development Workshop - 2010 Code Update Process (For FBC Adoption June 8, 2010)*).

Commissioner Greiner referenced page 2, under amendments, "*The person proposing the amendment is deemed to be the proponent of the amendment. All amendments must be written, unless determined by the Chair to be either editorial or minor in nature.*" He asked if that determination was appealable or was it concrete. He stated it was important because if the decision was appealable, i.e. if the chair determines it was minor or editorial in nature and someone thinks it was not so minor then there would be a long discussion area. He then stated in his opinion the Chairman's decision should not be appealable.

Mr. Blair responded stating that was correct and it was the decision.

Commissioner Greiner asked if that could be indicated somewhere.

Mr. Dixon stated what was being defined was the process the TACs and the Commission will use. He then stated any decision was ultimately always appealable under Chapter 120 procedures.

Commissioner Greiner stated everything was appealable, but a process was being put in which would be wide open. He further stated if the Chairman made a decision there could be numerous conversations regarding if it was minor or not.

Mr. Blair asked if adding the line "*The Chairman's decision is final.*"

Commissioner Greiner stated even if the decision was made that an appeal could not be made to the Chairman's decision, the proposal could still be appealed.

Mr. Dixon stated the reason the chairmen of the committees were commissioners was because the Commission was the ultimate deciding body and TACs could only make recommendations. He then stated if the Commission was to decide an issue was minor, the commissioner who was on the TAC, as the Commission's representative to the TAC, would have to make a judgment whether or not someone would likely appeal the decision in a Chapter 120 proceeding. He continued by stating the Commission would not want to put the total code change at risk, yet it should want to facilitate moving through the process. He further stated only workshops were being conducted by TACs and a final decision would not be made until the Commission review.

Mr. Blair asked Commissioner Greiner if his intent was to clarify the fact the Chairman's decision was final with no debate.

Commissioner Greiner stated he was correct.

Commissioner Stone asked if there could be a vote on the issue.

Mr. Blair responded by stating yes there could be a vote.

Commissioner Stone stated he believed the TAC made the decision whether it was editorial or not. He further stated he believed the TAC members made the decisions not just the Chairman of the TAC.

Commissioner Greiner stated the problem was it would not be a Chairman's decision as to whether it was editorial or minor in nature. He further stated normally the changes come before the TAC written or oral, if the Chairman decided on either one of those. He continued by stating it could be put to a vote at the TAC to determine if the members believed it was minor or editorial, but he believed the discussion should be led by the Chairman.

Commissioner Stone stated he believed most of the time the TAC members would defer to the Chairman, but when they do disagree, he believed the TAC members should be able to make their own decision regarding if an issue was editorial or minor.

Mr. Blair stated he believed, if the wording was left as it was drafted without making any changes, it would work as Commissioner Stone stated.

Commissioner Gonzalez asked for the definition of a TAC member relative to alternates sometimes being present for members who could not attend a meeting. He then stated if a proponent were making changes at the meeting would it be acceptable for an alternate to have an official letter stating they were sitting in for the TAC member.

Mr. Richmond stated he believed the rule stated prior to those meetings staff would need to know if an alternate would be sitting in for a TAC member, i.e., a letter that day would not be insufficient.

Mr. Blair asked for clarification if there was to be an alternate at a meeting advance notice would be required.

Chairman Rodriguez stated that was correct. He then stated the other issue was if there was an issue before a meeting, the TAC member may have to recuse himself from voting whether an alternate or the TAC member.

Mr. Richmond stated he believed that was the best form but he was not sure if it was a hard statutory requirement but it prevents any appearance of impropriety.

Mr. Blair stated he believed the current process requires the alternate to provide advance notice to staff before the meeting.

Commissioner Schulte asked, as a TAC member, if there would be any problem with him voting for his own proposals. He stated during the last cycle Mr. Madani had indicated through legal counsel he could vote on those proposals.

Mr. Blair asked for clarification if Commissioner Schulte meant he could or could not vote on the proposals.

Commissioner Schulte asked if the proponent of the change, who is a TAC member, could vote on his proposals.

Mr. Madani stated in previous practice TAC members were able to vote on their own modifications.

Mr. Richmond stated he would recommend against it. He further stated he generally recommended against TAC members proposing modifications.

Mr. Madani stated he would recommend following legal counsel's advice.

Commissioner Gonzalez stated his understanding was a TAC member could recuse himself from voting but he could participate in the actual debate.

Chairman Rodriguez stated he believed that was correct because the TAC member would be an advocate for that modification.

Mr. Richmond concurred. He then stated as a matter of form the participation should come from the front table, i.e., the public, as opposed to sitting at the Commission table.

Commissioner Stone asked for clarification when the TAC makes a decision for or against an amendment does Florida require the reasons for approval or disapproval be declared. He stated he knew most of the time it was in writing per the proposal, but during the discussion there may be other reasons for the justification. He further stated he believed those reasons should be documented so anyone looking back could see why the code amendment occurred.

Mr. Blair referenced the Code Update Process and read "*TAC members should provide specific and clear reason(s) for not supporting/approving a Code*

amendment proposal. It is the responsibility of the moderator to make sure that staff has ample time to record such reasoning and the vote count."

Commissioner Stone stated there was public testimony and then the TAC discusses the issue. He asked what happened if there were a new issue came up, not discussed by the audience, would it be opened up again to the audience for proponents and opponents.

Mr. Blair responded stating it would be opened again to the audience.

Commissioner Stone added, the process states "*Each side (proponent/opponent) will be allowed one counterpoint opportunity Collectively,*" then posed, when going through the rebuttal process, if AISI, Oil and Cement Association, and the American Wood Council were present, they may all be in favor or opposed to the amendment but may have different reasons. He then stated each side had to collectively choose somebody. He further stated he agreed the amount of discussion should be limited but each side should have more flexibility to allow each party to state their reasons because there were different interests.

Mr. Dixon stated the intent was to eliminate a case such as ten people from one association all getting up and stating the same reasons. He then stated that could be rewritten to allow for Commissioner Stone's concern.

Commissioner Stone stated unless it was something new there was no need to address the Commission.

Commissioner Gregory asked if a TAC member was the proponent of a Code modification and he speaks during public comment when the public comment was closed could he continue to speak and talk with the discussion of the TAC or would he have to recuse himself.

Mr. Richmond responded stating he should recuse himself.

Commissioner Schulte asked if a Commissioner was the proponent of a modification, as it progressed up to the Commission level, would he have to additionally recuse himself at that level as well.

Mr. Richmond responded by stating yes.

Commissioner Schulte stated, in the Roofing TAC, FRSA had made multiple proposals. He asked if a TAC member was a member of the FRSA, on a Code committee, for example, what their standing would be regarding discussion and voting on the TAC.

Mr. Richmond stated it was a once removed situation and he did not see any conflict for the member. He then stated TAC members were appointed for specific knowledge and if everyone who had an interest in the field they were appointed for was disqualified why they would be on the TAC.

Jack Glenn, President, Homebuilder's Association of Florida

Mr. Glenn stated he was a proponent of approximately 225 Code changes, the bulk of which were done at the request of the Commission. He then stated under Mr. Richmond's latest decision he could not vote on any of those changes as a member of the TAC. He further stated the TAC he was a member of would be reviewing approximately 40 of those changes. He continued by stating if he had known he would've have been very reluctant in submitting any Code changes. He stated he would maintain 95% of the Code changes submitted during the current cycle were either by Commissioners or TAC members. He further stated he believed the Commission would be doing a disservice to the TAC members and the proponents by not allowing them to act in their official capacity as a TAC member. He continued by stating the Commission would not get code changes in the future, substantive or those of real concern to Floridians, if people who are involved in the Commission and/or the Commissioners were removed from the process by not being allowed to act as a TAC member.

Chairman Rodriguez stated those proponents could participate as a TAC member and be persuasive.

Mr. Glenn stated from what Mr. Richmond stated he would not be participating as a TAC member. He then stated from what he understood he could participate in the public comment but when it went back to the TAC he would have to recuse himself from any comment.

Chairman Rodriguez stated it was voting he would recuse himself from, not the discussion.

Mr. Richmond stated in an abundance of caution he thought it would be best for the proponent to recuse himself from the vote. He then stated the hard and fast requirements of the Ethics Code, which was what would be referred to under the circumstance, would require recusal if it impacted the direct financial interests of the Commissioner or TAC member. He continued by stating in many instances the Commissioners were acting in more of a representative capacity of trade groups and it would not impact their direct financial interests and in those instances it would be acceptable for them to participate. He further stated the advice was given in an abundance of caution because of the potential ramifications across the line. He stated he believed it would be inadvertent but it could still have a negative impact on both the Commission's ultimate result and the members individually.

Mr. Glenn stated historically the bulk of the Code changes submitted to the Commission which have created Florida specific amendments have been submitted by those individuals serving on the TACs or the Commission.

Chairman Rodriguez stated he believed in layman's language the Commission wants him to serve, just not profit from it.

Mr. Glenn stated he had no problem with that.

Commissioner Stone moved approval of the TAC Code Amendment Review Process. Commissioner Nicholson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

CONSIDER PROCESS FOR REVIEW OF TAC RECOMMENDATIONS

Mr. Blair conducted a review of the process for Review of the TAC Recommendations. (See: *Commission Foundation Code Modification Review Process, December Rule Adoption Hearing – 2010 Code Update Process (For FBC Adoption June 8, 2010)*).

Commissioner Nicholson moved approval of the process for Review of the TAC Recommendations. Commissioner Carson entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

REVIEW TAC MEETING SCHEDULE

Mr. Dixon conducted a review of the TAC meeting schedule as approved from the April Commission meeting. (See: *Approved TAC Review of Proposed Code Amendment Schedule 2010 Code Update Process (Approved unanimously April 26, 2010)*). He stated that after review of the number proposed amendments and comments on those amendments some TACs would need to meet on days separate from the August Commission meeting days. He presented a revised schedule for commissioners approval. (See *the Facilitator's Report for the revised schedule*)

Commissioner Schock stated at the Accessibility Code Workgroup meeting there was an agreement to not hold its meeting in August.

Mr. Dixon stated the Accessibility Code Workgroup would not be reviewing any Code change proposals. He then stated the Accessibility Code was done by a separate process not the Florida Building Code process. He stated the meeting would be removed from the TAC meeting schedule.

Commissioner Stone asked when a TAC meeting was being held in conjunction with the Commission are the commissioners encouraged to attend those TAC meetings.

Mr. Blair responded by stating yes.

Commissioner Nicholson moved approval of the TAC meeting schedule as amended. Commissioner Scherer 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 Jack Humberg for consideration of the Accessibility Waiver Applications.

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

Recommendation for Approval with No Conditions:

#2 Superstein Building.

#3 University of South Florida Basketball Training Facility

#4 Hollywood Golf

#5 Hernando Elementary Elementary K

#6 Orange County Orlando Magic Recreation Center

#8 Winter Park Community Center

#9 Alpha Delta Pi Sorority House Corporation

#11 Kids Inc. Daycare Facility

#14 Greenview Hotel.

Commissioner Nicholson moved approval of the council's recommendation for approval for items 2, 3, 4, 5, 6, 8, 9, 11, and 14. Commissioner Schulte entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Recommendation for Approval with Conditions:

10 KIPP School

Mr. Humberg explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the council unanimously recommended approval with the condition the applicant move three of the eight accessible seats located on the end of the rows in and the companion seats be on the ends.

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

Commissioner Schock stated KIPP School was in his jurisdiction and the petitioner had come into his office seeking direction on how to proceed. He then stated he advised the petitioner he needed to go to the Accessibility Waiver Council.

Chairman Rodriguez stated it was just a procedural issue and presented no problem.

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.

#12 Florida State University – Johnston Building

Mr. Humberg explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the council unanimously recommended approval with the condition the petitioner move the accessible seats located on the ends of the rows be moved in and the companion seating be placed on the ends of the rows.

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

#13 Soho Beach House

Mr. Humberg explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the council unanimously recommended approval of the modification to an existing waiver.

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.

Withdrawn

Pine Creek

Mr. Humberg stated the application was withdrawn from review at the applicant's request.

No action necessary.

Dismissed

#7 Whispering Pines Center

Mr. Humberg explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the council unanimously recommended dismissal for lack of jurisdiction as the requirements were federal. He further stated the council recommended the order include language to the building official indicating they had jurisdiction to allow this based on technical infeasibility.

Commissioner Nicholson moved approval of the POC 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 eleven entities were recommended for approval by the POC:

CER 1773 National Accreditation & Management Institute

TST 1558 Architectural Testing, Inc.

TST 1589 National Certified Testing Laboratories, Inc.

TST 1657 Fenestration Testing Lab

TST 1795 Architectural Testing Inc. – Minnesota

TST 4120 Architectural Testing Inc. – Wisconsin

TST 4311 Architectural Testing Inc. – Florida

TST 4317 Testing Evaluation Laboratories, Inc.

TST 4744 National Certified Testing Laboratories, Inc – York

TST 7110 Architectural Testing Inc. - Springdale, PA

QUA 7628 Quality Aditing-Institute Ltd.

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

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

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

Mr. Blair presented the following products for consideration individually:

13522 Superior Window Corp.

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant limit the application to tested assemblies.

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.

812-R4 Armor Screen Corp.

Mr. Blair stated the product was withdrawn.

13682 Roll-a-way by QMI

Mr. Blair stated the product was recommended for conditional approval with the condition the product was not to be used in 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.

995-R3 Kinro, Inc

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant provide glass configuration as tested.

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

3951-R3 Quality Engineered Products

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant provides on application the corrected NOA.

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.

10937-R1 JELD-WEN

Mr. Blair stated the product was recommended for conditional approval with condition the applicant remove note on glazing indicating configurations other than tested and indicate the testing certification of PVC in accordance with Chapter 26.

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.

13177 CHAMPION METAL INC

Mr. Blair stated the product was recommended for approval.

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

13711 JELD-WEN

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant remove note on glazing indicating configurations other than tested.

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

12140 Chem-Pruf Door Co., Ltd.

Mr. Blair stated the product was recommended for approval.

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

13252 YKK AP America

Mr. Blair stated the product was recommended for approval.

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

13380 BP - Glass Garage Doors & Entry Systems

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant provide glazing detail as tested and include gasket in compliance with Sect. 2411.3.4.

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.

FL13534 and FL13535

Commissioner Carson stated at the last Commission meeting the

Commission voted to give conditional approval for the products pending some paperwork being submitted which was translated from Spanish to English. He then stated it was his understanding the translation had been completed. He continued by stating since then it was discovered there had been quite extensive litigation between the two products relative to the ownership of the intellectual properties. He further stated after previous debates and listening to both sides of the issue the POC decided it was best to defer any further action on the two products until the outcome of some more pending litigation was concluded.

Scott Baker, Zimmerman Kiser Sutcliffe, P.A., Orlando

Mr. Baker stated he was the local counsel for the applicant. He then stated the applicant was based in Miami. He explained the applicant's main attorney, Allison Freedman, was the one who provided a lot of the material requested from the last meeting. He continued by stating he was present to ask the Commission to approve the products because the applicant had met all of the requirements in law and rule for the Commission to consider. He further stated, as mentioned previously, the Commission gave approval with conditions. He stated one of the conditions was to demonstrate ownership and the applicant complied. He continued by stating organizational documents for the corporation were provided. He then stated the organization was a foreign corporation based in Honduras, certified translations had been provided. He stated it was his understanding, after speaking with staff, the applicant had complied with all requests. He then stated there was dispute over the ownership of the intellectual property. He further stated he would ask the Commission to disregard it because the alternative would be for the Commission to get in the middle of something it was not charged with doing. He continued by stating there were a number of courts and attorneys out there to resolve those types of disputes. He stated he would believe there were some policy concerns for anyone who was in competition with another manufacturer to drag that person into court and then come into the Commission and state he was in litigation over ownership of the product, and not to approve the other product, which was what was being asked of the Commission. He then stated the Commission was being asked to defer, indefinitely, in his opinion, because litigation could take a number of years. He further stated there were no standards by which the Commission should change its recommendation if it decided to defer. He stated the Commission's counsel recommended the TAC not become involved and later adopted another alternative which was the deferral. He restated the applicant requested the Commission not defer but approve the products and if there was any intellectual property issue it would be worked out through the courts.

Mr. Richmond presented a brief procedural history to explain how the issue came before the Commission. He stated at the Commission's last meeting a recommendation was made for conditional approval based on demonstration of ownership. He then stated although he thought it was permissive for administrative

staff to inquire about ownership, it would support the claim the product was going to be produced in compliance with that. He continued by stating he believed it was problematic to conclusively relate a product approval with a nebulous concept of intellectual property. He further stated his recommendation to the POC was to bypass that consideration and focus strictly on the documentation's demonstration of compliance the technical requirements of the Florida Building Code and the requirements of Rule 9B-72. He stated the committee was reluctant to do that in light of the information that had been presented most persuasively during the recent round of litigation filed in Miami-Dade County by the applicant to clarify the big issue of ownership between two corporations close in name although different legal entities. He then stated the alternative was proposed as a means to address what the POC viewed as the issues. He continued by stating he believed the POC's recommendation was very defensible and it would give the Commission the opportunity to obtain direction on the issue from Division of Administrative Hearings because part of the motion was it be reduced to a written order which would relate to the Commission. He continued by stating the committee found the intellectual property issue was relevant to the Commission's activities especially in light of the documentation and circumstances presented. He further stated it would offer all parties an opportunity to contest the recommendation. He stated approval of the product would probably offer a similar circumstance where both parties would have the opportunity to challenge the decision. He concluded by stating from that perspective the decisions were equivalent but the recommendation was to defer the product pending the outcome of the litigation and to offer the parties an opportunity to challenge the determination.

Mr. Baker stated he respected the counsel's alternative position but it put the applicant somehow in the position of having the whole burden of proof on meeting requirements flipped on its head. He then stated the applicant had filed a lawsuit to protect its own rights and property and may now be penalized for that. He further stated he did not know why they should be penalized for protecting their own intellectual property rights if the Commission voted that way. He restated the applicant had met its burden of proof as requested by the Commission.

Commissioner Gregory asked if the issue involved two different competing products or one product of which two entities were claiming ownership.

Commissioner Carson responded stating it was one product and two entities, perhaps former business partners, who both claim the product was theirs.

Commissioner Gregory asked if the product had met the criteria as required by the state of Florida to be approved to be used in the Building Code.

Commissioner Carson responded by stating he believed the conditions the Commission set forth at the last Commission meeting had been met.

Commissioner Gregory stated from an engineer, in layman's terms, if the Commission was there to approve a product and make sure it met the criteria of the Code, who owns it was immaterial. He further stated the ownership issue could be decided in the courts. He then stated if the product met the criteria and could be used it should be used.

Mr. Richmond stated he believed the point of the POC's recommendation was that there is still a dispute about ownership, which to an extent, was the condition. He then stated the POC found the ownership was still disputed to the extent the technical requirements of the Code, structural integrity and things of that nature were met. He further stated there was general agreement the documentation met those technical requirements.

Commissioner Grippa asked what rule of statutory reference would allow the Commission to get involved in the consideration of ownership as part of the approval process.

Mr. Richmond responded by stating he was not familiar with any.

Commissioner Grippa asked if it was not something the Commission should be considering whatsoever.

Mr. Richmond responded by stating the Commission's focus should clearly be the technical requirements of the Code and the structural integrity of the building in which the products were used as opposed to legal concepts that have been identified.

Commissioner Schulte stated anybody could take someone else's engineering and apply for a product approval. He then stated basically engineering or intellectual information could be taken and then lawsuits would have to work themselves out and in the meantime the person who took it could get a product approval, which was the POC's concern.

Commissioner Nicholson stated he agreed with Commissioner Schulte's comments. He then stated as an engineer he has to put all of his plans through the owner of the product or the site plan or the building of the specific site he was building, He further stated as an engineer his license could be taken if he put down someone else's site when doing the plans. He asked was the Commission going to let someone submit someone else's product if they do not own it. He then asked if part of the process was filling out the application and saying they own it, but if they do not own it what was being approved. He continued by stating it would be a false product approval and he did not agree with that.

Mr. Richmond offered clarification of his initial recommendation stating it was demonstrated by Commissioner Nicholson's comments. He stated participants in the system were subject to licensing sanctions or lawsuits for copyright infringement or a common-law copyright, if they were stealing someone else's plans. He then stated there were various and sundry mechanisms to obtain relief from the concern of stealing someone else's plans. He continued by stating it would be made public knowledge and anyone who felt their plans had been stolen could obtain all of the information from the Building Commission's website for use it as evidence. He then stated his recommendation was based on the focus of the Commission as being the entity to ensure that construction in the state of Florida was safe.

Commissioner Gregory stated as a contractor he had submitted products to Product Approval which he did not own but simply wanted to use the product and the products had been approved.

Commissioner Gregory moved approval of the Commission approving the product approval of the product and let the courts decide the ownership. Commissioner Nicholson entered a second to the motion.

Commissioner Browdy asked if there had ever been a situation where there was assign ability of a product and there had been a change of ownership of a company and the NOA or the Product Approval went from one owner or the other through the acquisition of the ownership of the entity through assign ability.

Mr. Richmond stated he knew it had come up especially recently with the state of companies changing hands or ceasing operations. He then stated it had been dealt with primarily administratively. He further stated it was easy when one corporation acquires another because perhaps the corporation that holds the approval maintains an ongoing existence. He continued by stating he believed it did come before the POC for further discussion and some submit different circumstances. He stated he did not know if an approval itself was assignable. He further stated if the applicant was to be changed it would have to go through Commission under revision at the very least. He reiterated if the corporation was changing hands it was a legal entity unto itself and the same holder would be maintained in that case therefore there would be no need for Commission review or action.

Commissioner Browdy stated in the future the Commission needed to concern itself with and know who the owner is, notwithstanding the product should stand on its own. He then stated there was significant consideration given to the approval in terms of value as it relates from one owner to another. He concluded by stating he believed the Commission should indicate whether its approval was or was not assign ability when the product approval was given. He stated he did not believe

the Commission could be silent any longer on the matter. He concluded by stating he supported Commissioner Gregory's motion.

Commissioner Gonzalez stated it was his understanding the company that owned the NOA filed bankruptcy and someone else bought the NOA. He further stated the person who bought the NOA applied to the state to get a state approved product approval. He continued by stating when the NOA was submitted to the state what they asked was who owned the test reports that went with the NOA. He stated the company that went bankrupt, who was represented by Mr. Baker, believe they own the test reports and the new company who bought the NOA believes they own the NOA. He reiterated the question was who owns the test reports submitted to the state for approval.

Mr. Richmond stated the circumstances known was one company, a purchaser, sued a supplier of windows, which was one corporation. He then stated the purchaser successfully obtained a judgment against the corporation. He continued by stating in pursuance of collection of the judgment, the company got an order from the court and executed on the notices of acceptance. He stated one of the disputes was whether the corporation which actually obtained the NOA was the same corporation against which the judgment was obtained. He further stated the judgments were sold at a sheriff's sale to a third party therefore there was no bankruptcy or anything along those lines. He stated the circumstances were even more complicated by the fact the underlying engineering to those NOAs, not the NOAs themselves, had been submitted in support of an application for product approval. He further stated the ownership of the NOAs was almost secondary. He stated the ownership of the support of the acceptance was the issue. He further stated it was fairly complex in that regard, but the ultimate result was the applicant present had filed a declaratory judgment in Miami-Dade Circuit Court seeking to have the sheriff's sale nullified because the ultimate holder of the NOA was not the same party that was subject to the judgment in the civil action.

Mr. Madani stated when the administrators reviewed the application staff made sure all of the documentation submitted was in the name of the manufacturer who was applying so the evaluation report was in the name of that manufacturer. He then stated sometimes staff finds a test report has been used who had a different manufacturer name. He further stated when that occurs the applicant was requested to provide authorization from the owner of the test report indicating it could be used in the application. He continued by stating when dealing with documents such as an evaluation report, which was based on a number of documents, on which it asked for ownership to be verified, which was a difficult task. He concluded by stating only the documents that have been submitted could be relied on.

Commissioner Gregory asked Mr. Baker if the applicant had provided

documents which concluded they had ownership.

Mr. Baker responded by stating yes.

Commissioner Greiner asked if the motion on the floor could be repeated and also the POC recommendation.

Commissioner Carson stated the POC's decision was to defer. He then stated there were a lot of questions and although the other party was not present they had as compelling a story for their side as the party present. He further stated he was confused because it even got a little more confusing because an issue was brought forward that there were two different corporations, Savannah Corp and Savannah Inc. He continued by stating it was very unclear and the POC was not comfortable with the premise or the other party saying the party present was using information which was not theirs to obtain a product approval. He then stated the bottom line was the POC decided to opt out and let the courts decide.

Commissioner Gregory restated his motion was for approval of the product based on the fact it had met the criteria of the Code and ownership could be sorted out in the courts.

Commissioner Schulte stated he was in agreement with Commissioner Carson. He then stated the POC had asked in the conditional approval for information regarding the ownership. He continued by stating what came back was very unclear. He further stated pictures were provided from the opponent, the other owner. He stated he also felt it should be known the applicant present was the supplier of the inferior product that was the basis of the lawsuit. He further stated based on the POCs request for clarification on ownership and the other information coming to light was why the POC made the decision it did.

Commissioner Grippa stated technically with everything stated, if everyone was correct, the question was if the Commission had the jurisdiction to take into consideration ownership as part of the approval process. He then stated he believed counsel indicated at present the Commission did not have jurisdiction, although it might be something to consider in the future legislatively. He further stated there were other places for an aggrieved party to go whether it is the courts, copyright infringement or sanctioning boards. He asked if it was statutory if anything in the rule would allow the Commission to deny something based on the ownership question. He concluded by stating he believed from what he had heard the answer was no, which he thought was a shame, but believed it was something the Commission should look into in the future.

Mr. Richmond offered clarification stating it was his opinion, but it was just an

an opinion. He then stated he felt it was an open question he would like to see some further guidance on, ultimately from another body. He further stated the type of interaction between property and Code had come up in several different contexts such as associational approvals, and even more general Code context identification of property lines with regard to construction lines. He then stated guidance from another body on any of those would be welcome.

Chairman Rodriguez asked Mr. Richmond's recommendation on whether the Commission should approve the product although the question of ownership was there and would be litigated somewhere else, thereby only addressing the technical information presented or should the Commission defer.

Mr. Richmond responded by stating he would recommend, as counsel, the approval of the product.

Commissioner Schulte stated the Commission, as a group, has a responsibility to protect the public. He then stated there was obviously a defective or deficient product being manufactured and supplied under the applicants' previous product approval. He further stated he would exercise his right and vote against the motion.

Chairman Rodriguez stated there was no one around the table who was not concerned over the ownership issue, including Commissioner Grippa, but the question was should the Commission limit its approval to the technical part of it if the product was somehow taken from somebody or if the ownership was misrepresented. He then stated the Commission did not have the means to solve the problem. He further stated the only thing the Commission could actually address was the technical merits of the product. He continued by stating he understood, in the hands of wrongdoers, a perfectly legitimate product could somehow be produced and damage the interest of the public. He concluded by stating the question was does the Commission have the ability to defer based on the question of ownership.

Mr. Richmond stated one thing he did want to address was the applicant, the opponent and supporter of the POC's recommendation, did circulate some pictures about the products which were at issue in the first lawsuit. He then stated his response to that, respectfully, to Commissioner Schulte, as well, was those were products produced under the NOA granted by Miami-Dade County in the past. He further stated the documentation received in support of the current application in question was an entirely different issue and quality assurance was an element of the application if, in fact, any products were produced related to the Commission's approval to come out similarly deficient. He stated there would be grounds for action at that point based on the product approval and to the extent the products were efficient under the NOA there were current grounds for Miami Dade to take action on their NOA, but he did not think it was appropriate to consider those pictures in

conjunction with the current application except to the extent the Commission was willing to consider them as evidence of failure of quality assurance or something along those lines that was not raised earlier and further investigation would probably be required.

Commissioner Nicholson stated the other side was present at the POC meeting but were not present at the Commission meeting. He then stated it was obvious to him they had purchased the rights to the testing reports and all of the engineering. He asked if someone did not have the rights to the testing reports or the engineering how they could submit it for product approval. He further stated as a member of the Commission he would like Mr. Richmond or whoever to do some research through another body before the Commission votes on the product. He then stated after the research they could come back to the Commission with an explanation of what procedure the Commission should go forward with. He stated he was very concerned with what the Commission was doing under the circumstances.

Chairman Rodriguez asked Commissioner Nicholson if he had heard the opponent owned the rights.

Mr. Richmond stated the only thing that could be concluded about ownership at present was nothing was clear. He further stated the threshold issue was whether clarity on the issue was relevant to the Commission's decision.

Mr. Madani offered clarification by stating the NOAs were not the basis of approval. He then stated the approval was based on an evaluation report by an engineer who had used the testing reports as basis for his evaluation, therefore the evaluation report was submitted correctly.

Commissioner Carson stated, as a reminder, the Commission gave Conditional approval with the condition being the proof of ownership was to be established. He then stated in his mind ownership had never been established, which was why he would not vote in favor of the motion.

Commissioner Grippa asked if there was a technical reason within the product not to approve the products then it would sound like the Commission had jurisdiction. He then stated he would like to hear from those who reviewed the products or the engineering reports because there was something deficient that should cause concern. He further stated he took what Commissioner Schulte had stated very seriously. He continued by stating the issue which had been opined on by the counsel, although it may not be liked, was it was very clear the Commission could not reject the product based on the ownership issue because it was not within its jurisdiction. He stated unfortunately that was the legal advice and he believed it

was right. He then stated maybe there was a technical issue with the product the Commission should be looking at in regard to approval.

Commissioner Gonzalez stated he was speaking against the motion. He further stated he agreed with the POC stating there was a lot of information presented at the POC meeting which was not available at the Commission meeting. He then stated it was his understanding the deferral was to the next meeting and not indefinite because the other side committed to having some sort of agreement by the next meeting. He continued by stating one of the recommendations from counsel was the Commission had the authority to defer which was one of the reasons why it recommended deferral until the next meeting.

Mr. Richmond stated the motion which was approved was for deferral pending the outcome of litigation in Miami-Dade County not until the next meeting. He then stated he did make an alternative recommendation based on the information given at the POC meeting and he would stand by the recommendation, because he believed it was a defensible result as well. He further stated if he were asked for his number one recommendation he would stand by what he first recommended to the POC because he believed that was the most defensible and the most legally appropriate decision.

Chairman Rodriguez stated Mr. Richmond had also stated he would support an indefinite deferral. He asked Mr. Richmond if he would support a deferral to the next meeting.

Mr. Richmond responded by stating it would not be an indefinite deferral, but a deferral pending the outcome of litigation, which does not have a deadline to it, unfortunately, which could result in a very extended deferral, as noted by the applicant.

Chairman Rodriguez asked Mr. Richmond if he would support a deferral for one meeting.

Mr. Richmond responded by stating that would be an entirely different recommendation and he did not know what the basis of the recommendation could be. He further stated either the Commission should get direction from the court system as to what the ownership was or whether it was relevant to the Commission's consideration. He then stated he believed that was the reason why a deferral pending the outcome of that litigation was defensible.

Chairman Rodriguez stated he thought he heard Commissioner Gonzalez state the one meeting would allow the other side time to obtain some information.

Commissioner Gonzalez stated it was his understanding that was what the

other side stated at the POC meeting.

Chairman Rodriguez asked what the other side had said.

Commissioner Gonzalez stated the other side stated by the next meeting they should be able to have some sort of agreement on whether they owned the rights or not.

Chairman Rodriguez asked if it were relative only to ownership and not the technical merits of the product.

Commissioner Gonzalez responded stating it was to ownership.

Mr. Blair stated, for the record, the actual motion made by the POC was to defer until the litigation was resolved.

Commissioner Gregory stated in his opinion he did not believe anyone on the board or at the meeting was qualified to make a judicial decision based on the validity of ownership of that property. He then stated he believed the Commission should concern itself with was whether the product met the Florida Building Code and if it does the Commission needed to approve it.

Commissioner Gregory called the question.

Chairman Rodriguez stated the thing he did not want to do was misrepresent what the Commission agrees and disagrees on. He then stated the Commission agreed it was not its purview to decide who owns the product, but there was some dissention with approving a product when the owner was not known.

Mr. Fine stated he was speaking as a member of the public and he did not represent the product nor did he know what the product was. He then stated he had litigated the issues in Miami-Dade County over the dispute of ownership on product approval and testing reports. He continued by stating it was a mess and he did not believe it was anything the Commission would want to get into. He further stated he thought it would be highly unlikely that in two months, one meeting, there would be anything definitive unless it was a judgment from a court which would be pending an appeal as to the ownership. He then suggested 1) if the product meets technical requirements grant the product approval with the condition it would not take effect for 30 days and immediately notify both parties and the court which has jurisdiction in the litigation so if someone wanted to ask a judge for an injunction the judge decides if the NOA does not take effect.

Mr. Richmond stated Mr. Fine preceded one of the discussions at the

POC meeting that he would ask to be appended to this result would be a notice to the parties, with perhaps a delayed effective date, and their opportunity to be heard. However his recommendation would be a notice of administrative rights to allow the case to be referred to the Division of Administrative Hearings to interpret the law specifically applicable to the Building Code and the Building Code Rule 9B-72 in relation to the Commission's authority. He stated it would keep it out of the courts in Miami-Dade County which would make it easier and also prevents the parties having to be removed to Leon County under the Home Rule privilege that executive agencies enjoy in most circumstances and allows rapid resolution. He further stated DOAH was equipped to resolve cases very quickly, very efficiently and very inexpensively for the parties. He concluded by stating he would suggest this recommendation to any motion in this matter to resolve the matter before the Commission.

Chairman Rodriguez asked Commissioner Gregory if he accepted the amendment to his motion.

Commissioner Gregory responded by stating he would accept the amendment to his motion.

Mr. Blair stated the motion was to approve and notify the parties of their administrative rights.

Mr. Richmond stated he would clarify a 30 day delay from the day of the order to allow time to exercise that right.

Commissioner Nicholson stated, as the second to the motion, he would accept the amendment.

Mr. Fine stated the issue, with the economy, as complicated as intellectual copyrights are, he would recommend to the Commission to perhaps create a subcommittee to evaluate the issues and come back to the Commission, perhaps by rule, to refer to in the future because it would not be the last time the issue occurs.

Commissioner Schulte asked what would happen if the other party filed an injunction within the 30 days.

Mr. Richmond responded by stating a challenge to the approval would state the approval would be under challenge at that point until resolution. He then stated if someone requested an injunction he would attempt to defend against the injunction by stating there was an available administrative remedy, i.e. referral to DOAH. He further stated that would be his venue on hearing the matter involving the Commission

Commissioner Schulte asked if he was saying the approval stayed it would not be effective.

Mr. Richmond stated that was correct pending the outcome of the approval.

Vote to approve the motion resulted in 16 in favor, 2 opposed (Gonzalez, Nicholson). Motion carried.

CONSIDER APPLICATIONS FOR ACCREDITOR AND COURSE APPROVAL

Accreditor Approvals

Commissioner Browdy stated there were no accreditor approvals.

Course Approvals

Commissioner Browdy stated there were three courses being submitted for consideration by the Florida Building Commission that have been reviewed by the Education POC:

Advanced Florida Building Code (Automatic Sprinkler Protection), BCIS Course Number #412.0

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

Advanced FBC Plumbing/Fuel Gas Update, BCIS Course #425

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

Advanced Course Understanding Florida Building Code 2007 Requirements for Fire Emergency and CO Systems, BCIS Course #427.0

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

Commissioner Browdy stated the following courses were administratively approved:

Internet 2007 Building Code Residential With 2009 Supplements Advanced Course, BCIS Course #415.1
Advanced Administrative Course, BCIS Course #77.3
Advanced Code – Mechanical Energy, BCIS Course #224.1

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

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

Legal Issues:

None

Binding Interpretations:

None

Declaratory Statements:

Second Hearings:

DCA09-DEC-259 by Robert S. Fine, Counsel for Malibu Lodging Investments, LLC

Mr. Richmond stated he was contacted by alternative counsel who requested a deferral. He then stated the building at issue was currently subject to an agreement for sale. He further stated his recommendation to the counsel was dismissal because the petition had been around for some time. He continued by stating he believed the petition would be dismissed for one reason or another before the August meeting. He stated his recommendation would be a deferral until the August meeting.

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

DCA09-DEC-411 by Manny Sanchez of Fenestration Testing Laboratory, 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 Scherer entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

DCA10-DEC-002 by Derrek Runion of Greenbuilt, 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 Scherer entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

DCA10-DEC-034 by C.W. (Ben) Bentley

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. He stated there was a slight refinement of the rationale. He then stated although the result was the same, after discussion with staff and the Solar Energy Center was consulted, staff wanted to restrict any unintended adverse comments or consequences coming from it. He then stated the order concluded that the Florida Solar Energy Center had expressed an explicit authority to adopt performance standards for solar devices pursuant to Section 377.705(4) of Florida Statutes which had been recognized within the Code and N1112.ABC.3.4, FBC – Residential. He further stated the code provision in question reportedly required pressure and temperature relief and constitutes a performance issue given the installation conforms to the listing by Florida Solar Energy Center and the manufacturer's installation instructions. He concluded the committee recommended the petitioner's system may be installed with a pressure relief valve in the solar loop may be utilized consistent with the requirements of the FBC-Residential provided that the installation is in accordance with the system's listing/certification and the manufacturer's installation instruction.

Mr. Blair asked if the motion was as amended.

Mr. Richmond stated that was correct.

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

First Hearings:

DCA10-DEC-038 by Ray Habic of Gillette Generators

Mr. Richmond stated the committee recommended dismissal due to the petitioner not providing sufficient supporting information regarding the petition.

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

DCA10-DEC-059 by Paul T. Myers, Building Official of Putnam County

Mr. Richmond stated the committee recommended deferral until the August meeting to allow feedback from the Florida Department of Agriculture Consumer Services. He then stated the petition related to the exemption of farm buildings from the Florida Building Code therefore the Commission was seeking the input of its sister agency, although not an executive agency.

Commissioner Gregory 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-079 by Richard Mihalich, Chief Building Official of City of South Daytona

Mr. Richmond stated the petition requested a deferral to provide additional information.

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

DCA10-DEC-085 by Paul E. Radauskas, C.B.O. of Sarasota County

Mr. Richmond stated the petition had been withdrawn by the petitioner.

DCA10-DEC-091 by George Merlin of George Merlin Associates, Inc.

Mr. Richmond stated the committee had recommended dismissal per the petitioner's request due to procedural irregularities regarding the petition. He then stated through the presentation and discussion before the committee the petition was identified as related to a disputed interpretation of the Code with the local building official and was being sought as a statement of general applicability throughout the state.

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

DCA10-DEC-107 by Paul T. Myers, Building Official of Putnam County

Mr. Richmond stated the committee recommended dismissal at the petitioner's request due to the fact the declaratory statement was outside the Commission's statutory authority.

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

CONSIDER OTHER LEGAL ISSUES

HB663

Mr. Richmond stated HB663 was signed into law late on June 1st. He then stated the bulk of the bill took effect on July 1st and there would be a lot of activity coming out of that. He continued by stating there were some additional charges which were minor in nature for the Commission stemming from other bills. He further stated he believed it was a very good session with the Commission's recommendations being passed in regard to the 75% voting, protecting that from future challenges, it authorizes the more senior members of the TAC to continue participation without any adverse claims against their participation with the Commission on other items. He stated the carbon monoxide issue was clarified and other issues the Commission had discussed through the course of the session via conference calls have been signed into law. He then stated he had drafted letters of appreciation to the sponsors of the bills for the year, Senator Bennett from the Senate and Representative Aubuchon from the House of Representatives. He further stated it was an extremely challenging session for legislators due to the budget crisis and general complications. He continued by stating Senator Bennett carried the Senate side of the bill through four substantive committees and was withdrawn from two others to successfully get it to the floor, which speaks volumes for his capabilities in the Senate. He then stated Representative Aubuchon kept the

bill extremely clean in the house despite of a lot of other issues which attempted to tag along which would've made the bill even bigger than it was. He further stated the Building Commission element was essentially a quarter of the bill as it came out but could've been far larger and subject to more adverse consideration by the governor. He concluded by stating he believed both the sponsors were very worthy of the Commission's appreciation and he would request a motion to authorize the Chairman to forward letters of appreciation to the sponsors.

Commissioner Nicholson moved approval to authorize the Chairman to forward letters of appreciation to Senator Bennett and Representative Aubuchon in appreciation of their sponsorship of the bills for the year. Commissioner Scherer entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Chairman Rodriguez stated he would like to extend appreciation to Mr. Richmond for not only being there full time for the Commission, but also for taking the time to report back to the Commission on a weekly basis. He then thanked all of the Commission members who participated in the teleconference calls with Mr. Richmond to hear his reports and offer their opinions and advice. He further stated he believed the participation went far beyond what the commissioners signed up for from meetings every other month to calls every week for several weeks.

Septic System Sizing Workgroup Project Update

Mr. Blair presented an update on the Septic System Sizing Workgroup Project (See *Septic System Sizing Workgroup Project Update, Report to the Florida Building Commission, June 8, 2010*).

Commissioner Browdy stated it would appear the last definition that would be heard in approximately one month eliminates the minimum square footage which was part of the Workgroup's original recommendation of 70 square feet, which was reduced to 60 square feet and then on July 15th it was removed entirely leaving no minimum square footage. He then stated if it were to stand alone it would mean most walk-in closets with a window would be considered a bedroom.

Mr. Blair stated he could see Commissioner Browdy's point.

Commissioner Browdy stated the elimination of the minimum square footage was not a good thing. He then stated maybe the process should be started over.

Mr. Blair stated it looked like in the proposal with 60 square feet was considered but when it was finalized the 60 square feet was removed. He then stated the table was changed to 60 gallons from 100 gallons relative to the flow rate.

Chairman Rodriguez asked how the Commission could affect that recommendation. He asked if there were appointments to be made to the TRAP.

Mr. Blair stated there were none to be made. He then stated the TRAP was a part of the group of the DOH panel. He further stated the TRAP makes decisions and the DOH implemented the decisions through rulemaking process.

Chairman Rodriguez asked Commissioner Browdy if he would like to make a motion that the Commission should address the concern to the TRAP.

Commissioner Browdy stated he assumed, except for the commissioners who were no longer on the Commission, the individuals who were on the universal bedroom ad hoc met with the people who met with the TRAP. He then stated he would suggest the Commission write a letter to the TRAP and indicate in its opinion the minimum square footage is an integral part of the re-definition of what a room is. He further stated eliminating the square footage does not achieve the intended purpose.

Commissioner Vann entered a second to the motion. He then stated a lot of the commissioners may not understand what the issue was. He continued by stating this was about parts of the government that have gone rampant. He stated if a house was being built, they might call it a triplex because a door could be placed here and a window there or it could be called a duplex. He then stated that was not the Commission's intent. He continued by stating the Commission wants to ensure every residence has adequate plumbing and adequate sewer size i.e. accuracy so the builders can figure and size the septic systems and the architects can design the houses as they please. He further stated the issue was there was a little bit of government which sometimes goes off the deep end and the Commission was just trying to get a handle on it. He stated the issue was about keeping a handle on it and not letting the government say "this was a closet and we're going to call it a bedroom therefore you need another 250 gallon septic tank" or "here's another closet another 250 gallon septic tank has to be added". He concluded by stating he wanted to clarify for the new commissioners the issue was not really as stupid as it sounded.

Mr. Blair stated, for the record the name of the workgroup, was changed to Septic System Sizing Workgroup to be more accurate.

Commissioner Greiner stated to add to what Commissioners Browdy and Vann were saying, for the new Commissioners, the issue was a lot more important than people think it is. He then stated with the definition being currently proposed it would not eliminate the problem when Commissioner Browdy builds a theater room. He continued by stating the theater room had a closet to hang coats in and suddenly an additional 250 gallons to the septic tank system was necessary, which was

unreasonable. He further stated the charge of the Workgroup was to come up with reality and it needed to remain focused on the issue to do so because of its importance.

Mr. Dixon stated, to give a little context of the influence the Commission could have on these regulations, it was only through the working relationship with the Department of Health that it could have any influence at all. He further stated there was no statutory authority for the Commission to intervene in the rulemaking of DOH. He continued by stating part of the problem was that even DOH does not have a means of controlling the problem Commissioner Vann was describing. He stated that as an example, prior to the Florida Building Code local building officials had the authority to interpret the state minimum building code as they wished. He further stated there were many different interpretations that were almost case specific and not even general for the local jurisdiction. He continued by stating, in part there was a similar problem with the septic tank regulations, which the Commission and even DOH can do nothing about. Local jurisdictions are able to interpret septic tank regulations without oversight and at times they interpret to the extreme. He stated that trying to work with the DOH on its rule had ended up in an exercise that provided more flexibility to the local jurisdictions. He then stated he did not want the Commission to think there was no purpose to the exercise, but he would emphasize the only reason there was any impact was because of the cooperation of the DOH trying to get the TRAP and the local communities to be more reasonable.

Mr. Blair stated DOH staff did make an effort to go with the recommendation of the Commission's workgroup.

Jack Glenn, Florida Homebuilders Association

Mr. Glenn stated he had attended most of those meetings. He then stated the workgroup initially started out with the intention of trying to define a bedroom somewhat similar to what would be defined in the code. He continued by stating he sympathized with Commissioner Browdy in removing what was 70 square feet as the original minimum was a mistake on their part, but he would say having an emergency escape window in the room was getting closer to a true bedroom and the recess for clothes hanging, although a closet had been asked for in the original debate. He stated it was that bad, there were health department officials there who stated they looked for a family room and if it could accommodate a sofa bed it was counted as a bedroom. He then stated in some jurisdictions there were 7, 8 or 10 bedroom houses of only 2500 square feet by that interpretation. He concluded by stating until the issue of interpretation was resolved locally it did not matter what definition was made. He stated he would be very supportive of the Commission writing a letter to TRAP requesting them to consider the reinsertion of the 70 square foot minimum to be consistent with the Florida Building Code.

Vote to approve the motion was unanimous. Motion carried.

CONSIDER COMMITTEE REPORTS AND RECOMMENDATIONS:

Accessibility Code Work Group

Mr. Blair presented the report of the Accessibility Code Workgroup. (See *Florida Building Commission Accessibility Advisory Council Meeting Minutes April 6, 2010.*)

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

Code Administration TAC

Commissioner Gonzalez presented the report of the Code Administration TAC. (See *Code Administration TAC Teleconference Meeting Minutes, June 1, 2010.*)

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

Education POC

Commissioner Browdy presented the report of the Education POC. (See *Education POC Teleconference Meeting Minutes June 2, 2010.*)

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

SENATOR CONSTANTINE ADDRESS TO THE COMMISSION

Chairman Rodriguez introduced Senator Lee Constantine. He stated that in Senator Constantine the Commission has had , since the time he was a member of the House of Representatives, it's most dedicated Champion. He then stated Senator Constantine was also a Champion of the Building Code and the citizen's best interest. He continued by stating during his tenure Senator Constantine had sponsored HB4181, which implemented the recommendations of Governor Chiles' Building Code Study Commission that created the Florida Building Code and the Commission. He further stated Senator Constantine had carried on with his support of the Commission and its recommendations for improving the Code and building

code system. He concluded saying, without question Senator Constantine had been the strongest supporter, advocate and sponsor of the Commission's work and he had excelled at being the Commission's Champion. He then presented a gift of appreciation from the Commission to Senator Constantine.

Senator Constantine stated (no microphone...sketchy audio) all he could say....very much from the bottom of his heart....a very long journey taken together...He stated he wanted the Commission to know.....for some of those who may not know him personally or have not been on the Commission.....in 1998 when then speaker, Dan Webster, (audio returned....was handed a microphone) ...first Republican Speaker since 1874, was asked what he felt was the most successful, most lasting, most important issue he had undertaken, Representative Webster stated a litany of different issues he had done and then he stopped and stated, "*but I want you all to know the one piece of legislation, the one bill that had been done in his two years of service that would be the most lasting and most important to the citizens of Florida was the Unified Building Code, which was done by Representative Constantine*". He then stated it was not sexy so the press did not write about it and it was good government so it was not really in the headlines. He further stated both the blueprint created in 1997, creating the Building Commission, asking it to write the first Building Code and the long process in selecting the Chairman. He then stated through the long process of actually bringing the Code into existence he had brought in the insurance industry and the housing industry into the Speaker's office that year. He continued by stating it was interesting and people did not realize the bill was unanimously approved in both houses. He stated it was recognized as good government at its best, taking 500 codes and collapsing them into one, making Florida safer and now more energy efficient. He further stated he knew he had used the Commission a lot during his service. He stated when he introduced the energy efficiency bill two years ago he made sure the efficiency in buildings and the Commission were in there. He then stated with the water bill he made sure the Commission was in there because now being more energy efficient and more safe he believed the conservation and composting should be evaluated, which was also done with the recycling bill.

Senator Constantine stated he wanted the Commission to know they had done a tremendous service for the citizens of Florida. He continued by stating many times people do not know what the Commission does and sometimes only the bad things get the big headlines. He then stated the Commission should take the self-satisfaction, as he does, knowing what it has done over the course of time and continued to do means a great deal. He further stated there were very few groups who encompass so much of what needs to be done in Florida into one body whether it be building efficiency, safety, economic development and now water resources and conservation. He continued by stating the Commission had touched the lives of so many citizens and has made Florida a better place to live. He thanked the Commission for its service. He then stated for the last 32 years he had been in one

form of elected office or another. When he looked at the accomplishments he had been fortunate to be a part of, working with the Commission sits right up there. He then stated the president of the Senate was wonderful to all of the Senators being termed out this year. He put the cover of a bill that was an important piece of legislation with the seal of the State of Florida into a beautiful frame and gave it to each member who was retiring as something they would be remembered by. He continued by stating when it came to him he had three bills including the Wekiva Parkway Protection, Pay Day Loans and the Florida Building Code. The very first one that put together the framework for not only for the Commission but for the Code itself. He further stated he was very, very proud that bill was part of what he would be remembered by. He stated he would always cherish the opportunity to work with the Commission and he wished the Commission luck as the years go on.

Chairman Rodriguez thanked Senator Constantine stating there were not too many politicians retiring these days who can say they brought people together and Senator Constantine was very much a part of bringing all of the different entities together that agreed to the Florida Building Code. He further stated it would not have happened without Senator Constantine's leadership. He asked Senator Constantine to open his gift there to see what the Commission thought of him stating it departed from its normal DCA issued plaque and chose to give him a star.

Senator Constantine thanked the Commission again.

Energy Code Workgroup

Mr. Blair presented the report of the Energy Code Workgroup. (See *Florida Energy Code Workgroup Report, April 7, 2010*).

Mr. Blair first thanked the Energy Code Workgroup as they had concluded their effort. He stated it was a herculean task and the members, representing very diverse interests, did an excellent job of getting together in a collaborative manner over the course of eleven meetings to do a lot of really good work.

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

Green Roofs Subcommittee to the Energy Code Workgroup

Mr. Blair presented the report of the Green and Energy Efficient Roofs Subcommittee to the Energy Code Workgroup. (See *Green and Energy Efficient Roofs Subcommittee to the Energy Code Workgroup Report, April 7, 2010*.)

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

Hurricane Research Advisory Committee

Mr. Blair presented the report of the Hurricane Research Advisory Committee. (See *Hurricane Research Advisory Committee Report, June 7, 2010.*)

Chairman Rodriguez asked Commissioner Schulte if he supported the proposal of the committee.

Commissioner Schulte responded by stating yes.

Chairman Rodriguez asked Commissioner Schulte if he would like to make a motion.

Mr. Blair stated the motion would be for the current year's resource funding would be directed to supporting studies that characterize the wind-field of the roofs and leverage funding for roof systems from related resources provided by federal organizations such as FEMA, DOH, NOAA or the Department of Emergency Management.

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

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

Product Approval/Prototype Buildings/Manufactured Buildings POC

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

Commissioner Carson stated there were two action items for the Commission:

- 1) Audit of Ted Berman and Associates

Commissioner Carson stated the audit was required each year and the committee recommended the certified public account firm of Morrison, Brown, Argiz & Farra, LLP as the accounting firm for the audit.

Commissioner Nicholson moved approval of the committee's recommendation. Commissioner Scherer entered a second to the motion.

Chairman Rodriguez asked Commissioner Carson how the firm was selected.

Commissioner Carson stated the firm who had done the audit in the past did not want to do the audit this year.

Commissioner Grippa asked if the Commission was under any obligation to bid or notice the job.

Mr. Richmond stated if he could hear some background information from Mr. Berman it would be helpful. He further stated it was the first he had heard of the selection. He then asked if Ila Jones had been involved in the process.

Commissioner Carson responded by stating yes.

Mr. Richmond stated if Ms. Jones had been involved in the process he had full confidence all requirements of state procurement had been met. He further stated she was a consummate process administrator.

Mr. Berman stated the auditor was a contractor requirement of his contract with DCA. He continued by stating it had to be an auditor with qualifications of a certified public accountant, selected by the contractor and approved by the Building Commission. He then stated the one previously selected did the first audit, was paid in full and there was no response for the current audit therefore a different one was selected at a higher cost.

Chairman Rodriguez asked if several firms were considered.

Mr. Berman responded stating no and added it was not required.

Commissioner Grippa asked what the extra cost was.

Mr. Berman stated the extra cost was not to the Commission because his firm has to pay for the audit.

Commissioner Grippa asked if there was no cost to the Commission why it had to approve the selection.

Mr. Berman responded by stating because it was in the contract.

Mr. Richmond stated it was a condition of the contract with Mr. Berman as administrator of the product approval for him to submit an audited set of financial documents each year so the Commission can base its decisions on fees and the like on fully verified information. He further stated it was a standard assurance. He continued by stating as a part of the contract the Commission has approval over the auditing firm in case Mr. Berman or anyone else would try to select their grandniece for the contract. He then stated he believed it likely came up, as well, because the Commission has a new contract with Mr. Berman's firm and would've probably come up at some point under the new contract, as well.

Commissioner Gregory moved approval of the POC's recommendation of the auditing firm for the audit of Ted Berman and Associates. Commissioner Greiner entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

2) Update Rule 9B-72

Commissioner Carson stated in response to HB663 an update of Rule 9B-72 as discussed previously. He then stated the committee recommended authorizing in proceeding with rulemaking to revise Rule 9B-72 in response to HB663 and to hold a workshop at the August Commission meeting.

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

Commissioner Goodloe asked if staff had any idea when the language would be available prior to the meeting.

Mr. Richmond stated Mr. Madani had an initial working draft which will be going into the workshop. He then stated he was not sure if there would be any adjustments to that after the POC meeting.

Mr. Madani stated there were not many comments on the issue at the POC meeting therefore it was fairly complete. He then stated it could be made available

Vote to approve the motion was unanimous. Motion carried.

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

Special Occupancy TAC

Mr. Blair presented the report of the Special Occupancy TAC. (See *Special Occupancy TAC Teleconference Meeting Minutes June 1, 2010.*)

Commissioner Greiner moved approval to accept the report. Commissioner Scherer 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 Teleconference Meeting Minutes June 1, 2010.*)

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

COMMISSION MEMBER COMMENTS AND ISSUES

Commissioner Carson stated one of the benefits of being on the Commission in the past was receiving some CEU's for serving on the Commission. He further stated those CEU's become due in August. He asked what the status of CEU's for the year was.

Mr. Dixon stated he believed it was still in place. He further stated he believed it was in the rule for the CILBs. He then stated he would cross check and let those few who are contractors know.

Commissioner Nicholson asked it affected engineers.

Chairman Rodriguez stated it was only the contractors.

GENERAL PUBLIC COMMENT

Mr. Dixon stated he had sent the Commissioners a copy of the contact information on the website for an update. He asked the Commissioners who had not yet responded to check the website to make sure the information listed was correct and if not to contact him with any changes necessary.

Commissioner Browdy stated in his report on the Education POC, he alluded to the fact the Governor vetoed a piece of legislation. He continued by stating what

he had not stated specifically was the legislation he vetoed funded the entire construction education mitigation program which had been the program used to fund BOAF relationship, provisions of course relationship, and numerous other educational products. He further stated the item was a \$925,000.00 line-item. He stated the Education POC was now was trying to prioritize whatever services it can have and whatever money it has left over to try to continue the provision of those services. He asked if any Commissioners had any input as to those particular tasks, which will be presented at the next meeting, and hopefully the money necessary to continue would be found. He then stated his understanding, from his political associates, was that it would be impossible to resuscitate the \$925,000.00 allocation and the Commission should be advised of the fact the allocation both passed the House, the Senate and the governor vetoed it.

Chairman Rodriguez stated the next meeting was August 9, 10, and 11th at the Crowne Plaza Hotel in Melbourne.

ADJOURN

11:36 a.m. adjourned.