

**FLORIDA BUILDING COMMISSION
HYATT REGENCY SARASOTA
100 BOULEBARD OF THE ARTS - SARASOTA, FLORIDA 34236**

**Plenary Session
June 18, 2019
8:30 AM**

MINUTES

COMMISSIONERS PRESENT:

James Schock, Vice Chairman/Acting Chairman	Jeff Gross
James Batts	Robert Hamberger
Bob Boyer	David John
Donald Brown	Brian Langille
Oscar Calleja	Brad Schiffer
David Compton	Fred Schilling
Nan Dean	Drew Smith
Kevin Flanagan	Jeff Stone
John Gatlin	Don Whitehead
Shane Gerwig	John Wiseman
David Gilson	Diana Worrall
Richard Goff	

COMMISSIONERS NOT PRESENT:

Hamid Bahadori	Kelley Smith Burk
Brian Swope	

STAFF PRESENT:

Thomas Campbell	Justin Vogel
Mo Madani	Jim Hammers
Chris Howell	

Time: 8:30 am

Vice Chairman Schock welcomed Commissioners, staff, and members of the public to Sarasota and the June 18, 2019 plenary session of the Florida Building Commission and advised that Mr. Blair would not be in attendance today due to a medical procedure. He stated in addition to considering regular procedural issues including product and entity approvals, applications for accreditor and course approvals, petitions for declaratory statements, accessibility waivers, and recommendations from our various committees and workgroups the specific actions include accepting UF's final report on Hurricane Michael damage, and approving the Final FY 2018/2019 Annual Report.

Vice Chairman Schock stated that members of the public are requested to sign the attendance sheet on the speaker's table in the center of the room. In addition, we have a sign-up sheet for general public comment. He advised as always, we will provide an opportunity for public comment on each of the Commission's substantive discussion topics or actions that are not procedural or ministerial in content. Vice Chairman Schock stated that if they want to comment on a specific substantive Commission agenda item, please come to the speaker's table when the issue is up for consideration so we know you want to speak. He said that public input is welcome, but should be offered before there is a formal motion on the floor. Vice Chairman Schock asked that all please remember to keep all electronic devices turned off or in a silent mode and thanked them for their cooperation.

Vice Chairman Schock advised all in attendance if they are licensed by the Building Code Administrators and Inspectors Board attending the Commission meeting and interested in CE credits must complete the CE sign-in sheet in the binder located on the speaker's table in the center of the room.

Roll Call:

Vice Chairman Schock asked that Ms. Howell perform roll call, a quorum was met with 23 members present at roll call.

Agenda Review and Approval:

Vice Chairman Schock covered the agenda items for the meeting today.

Commissioner Schilling entered a motion to approve the agenda as posted. The motion was seconded by Commissioner Smith. The motion passed unanimously with a vote of 23 to 0 in favor.

Approval of Previous Meeting Minutes and Facilitator Report for April 16, 2019:

Vice Chairman Schock requested a motion for approval of the April 16, 2019 Facilitator's Summary Report.

Commissioner Schilling entered a motion to approve April 16, 2019 Facilitator's Summary Report and Meeting Minutes as posted. The motion was seconded by Commissioner Boyer. The motion passed unanimously with a vote of 23 to 0 in favor.

Chairman's Discussion Issues and Recommendations:

Vice Chairman Schock reminded the participants the Updated Commission Milestones document is linked to the agenda for today's meeting and also on the BCIS.

Executive Director Announcements and Discussions:

Final Legislative Update:

Mr. Campbell provided the final update on HB 477 and stated the 2019 Florida Legislature passed HB 447 changing the Florida Building Code's triennial update process. He further advised that the change becomes effective July 1, 2020. Mr. Campbell stated in response to the legislation, the Commission will begin the rulemaking process in August of 2019 to update Florida Administrative Code Rule 61G20-2.002, to reflect the statutory change.

HB 827 and HB 427 Draft Language:

Mr. Campbell advised that the staff has proposed language for implementing HB 827 regarding Section 110.8.1 Threshold Building, and HB 447 regarding Section 105.4 Conditions of the Permit.

Executive Director Announcements and Discussions (cont.):

HB 827 and HB 427 Draft Language (cont.):

Mr. Campbell further advised that staff will submit the language as comments at the February 2020 Rule Development Workshop for inclusion in the 7th Edition (2020) Florida Building Code.

Financial Disclosure Form Reminder

Mr. Campbell reminded the Commissioners, they are required annually by July 1 to complete and return a Statement of Financial Interests (Form 1) to the Commission on Ethics and the form is attached to today's agenda if they did not receive one via e-mail.

Future Meeting Location:

Mr. Campbell advised the Commissioners of the following scheduled meetings and locations.

As a reminder the July 2019 TAC Meetings schedule is posted to the BCIS and item #12 of today's Agenda, and is as follows:

- July 9, 2019 in-person at the Gainesville UF Hilton: Fire TAC, Energy TAC, and Swimming Pool TAC starting at 8:00 a.m.
- July 10, 2019 in-person at the Gainesville UF Hilton: Structural TAC, Roofing TAC and Code Administration TAC starting at 8:00 am.
- July 11, 2019 by teleconference: Mechanical TAC and Electrical TAC starting at 10:00 am.
- July 12, 2019 by teleconference: Accessibility TAC and Plumbing TAC starting at 9:00 a.m.
- July 12, 2019 in-person at DBPR in Tallahassee: Special Occupancy TAC starting at 1:00 p.m.
- The August 2019 Commission meeting is scheduled for August 13-14, 2019 in Hutchison Island. The Commission will be considering and deciding on the TAC's recommendations regarding proposed Code modifications for the 7th Edition (2020) Florida Building Code.
- October 2019 Commission meeting is scheduled for October 15 in Hilton Carillon Park, St. Petersburg.

2019-2020 Research Project Approval Process

Mr. Campbell advised that the Structural TAC will be hearing and evaluating proposals for hurricane related research projects during its June 20, 2019, teleconference call. He stated that in July, Commission staff will take in formal written proposals. Mr. Campbell further advised that

2019-2020 Research Project Approval Process (cont.):

the formal written proposals will then be evaluated by the Commission during its August 13, 2019 Plenary Session.

Executive Director Announcements and Discussions (cont.):

Possible Changes to F.A.C. Rule 61G20-2.001

Mr. Campbell stated that staff would like to discuss whether the Commission is supportive of initiating rulemaking to revert the powers of the Commission Chair to the Commission in the event there is not a currently appointed Chair. He said as an example, in the absence of a Chair the Commission could vote to make appointments to TACs/POCs/Workgroups, etc.

Commissioner Comments:

Commissioner Gerwig stated he would rather the Vice Chairman be tasked with this responsibility not the whole Commission.

Commissioner Flanagan said he would rather have the whole Commission and allow the Vice Chairman to lead the group in making choices and recommendations.

Commissioner Brown said he stated he agreed with Commissioner Gerwig, but to allow the Commission to delegate to complete this process.

Commissioner Schock stated there may be issues to be addressed in the interim and that it would be an advantage to have one person to handle this process.

Commissioner Schiffer stated he felt the 90 days should be lowered.

Commissioner Gilson stated there should be continuity in the rule and place Chair, Vice-Chair and an alternate.

Commissioner Calleja asked how the designation is set up now for the Vice Chairman.

Mr. Campbell stated that the rule does not describe specifics powers of the Vice Chairman other than to act in the absence of the Chair.

Commissioner Wiseman asked about the size of the problems, such as vacancies. He also stated it might be an option to appoint a nominating committee led by Commissioner Schock as Vice-Chairman.

Mr. Campbell responded that there are around 5 vacancies and possible new work groups to be formed.

Commissioner Comments (cont.):

Commissioner Schilling asked if this is changed, would there be votes on specific people that are recommended.

Mr. Campbell advised yes, at the Commission meeting.

Executive Director Announcements and Discussions (cont.):

Public Comments: None

Motion:

Commissioner Schiffer entered a motion to initiate rulemaking for Rule 61G20-2.001. Commissioner Compton seconded the motion. The motion passed unanimously with a vote of 23 to 0.

Accessibility Waivers:

Vice Chairman Schock advised that the Commission will now consider this month's requests for accessibility waivers. He stated Justin Vogel will serve as legal counsel and present the Accessibility Advisory Council's recommendations. Vice Chairman Schock asked that Mr. Vogel present the Council's recommendations regarding waiver requests.

Jason St-Fleur, Esq. – Waiver 368 - 152 NE 167 Street, Suite 300, North Miami Beach 33162 - Issue: Vertical accessibility to the second floor:

Mr. Vogel presented the waiver. He advised that the Council recommended granting based on economic hardship.

Commissioner Schiffer entered a motion to grant based on economic hardship. Commissioner Schilling seconded the motion. The motion passed unanimously with a vote of 23 to 0.

Arcade Monsters – Waiver 377 - 15 Alafaya Woods Blvd Suite 111, Oviedo 32765- Issue: Vertical accessibility to the mezzanine:

Mr. Vogel presented the waiver. He advised that the Council recommended granting based on economic hardship.

Commissioner Worrall entered a motion grant based on economic hardship. Commission Schilling seconded the motion. The motion passed unanimously with a vote of 23 to 0.

Accessibility Waivers (cont.):

PJD's Amelia LLC – Waiver 369 - 12 South 2nd Street, Fernandina Beach 32034 - Issue:
Vertical accessibility to the second story deck.

Mr. Vogel presented the waiver. He advised that the Council recommended granting based on economic hardship.

Commissioner Worrall entered a motion grant based on economic hardship. Commission Flanagan seconded the motion. The motion passed unanimously with a vote of 23 to 0.

Product Approval:

Vice Chairman Schock advised that Commissioner Stone would present the POC's recommendations for entity approvals and the consent agenda for products recommended for approval, and Jeff Blair would present the POC's recommendations for product approvals with discussion and/or comments.

Entities:

Commissioner Stone entered a motion to approve the 19 product approval entities as posted. Commissioner Compton seconded the motion. The motion passed unanimously with a vote of 23 to 0.

Product Approval Applications without Comments Consent Agenda:

Commissioner Stone entered a motion to approve the 172 products on the consent agenda list. Commissioner Compton seconded the motion. The motion passed unanimously with a vote of 23 to 0.

Product Approval Applications with Comments:

Mr. Madani presented the POC's recommendations for product approvals with discussion and/or submitted public comments.

29457 – Commissioner Stone entered a motion for conditional approval of 29457. Commissioner Compton seconded the motion. The motion passed with a vote of 23 to 0.

DBPR APPLICATIONS:

Chairman Stone advised that there were 122 products on the DBPR roster and those with comments have been addressed. He stated there is no action needed from the Commission.

Accreditor and Course Approval:

Vice Chairman Schock advised Commissioner Dean would present the Education Program Administrators recommendations regarding applications for accreditor and course approval.

Commissioner Dean entered a motion to approve advanced accredited courses 933.0 and 932.0. Commissioner Flanagan seconded the motion. The motion passed unanimously with a vote of 23 to 0 in favor.

Legal Report:

Vice Chairman Schock advised that Justin Vogel will report on relevant legal matters of interest to the Commission.

Mr. Vogel advised there are no legal issues to report at this time and again reminded the Commissioners to complete their financial disclosures.

Petitions for Declaratory Statements:

Vice Chairman Schock stated if anyone wished to speak on a declaratory statement please come to the public comment table once the specific declaratory statement is introduced. He advised that Justin Vogel will serve as the Commission's counsel. Vice Chairman Schock stated that after legal counsel reviews the petition, he will ask for public comment on the petition.

DS 2019-014 by Allen Finfrock of Finfrock DMC:

The Petitioner was not present.

Mr. Vogel presented the declaratory statement and advised that the Fire TAC considered the petition on June 7, 2019 and the TAC recommended staff analysis as follows:

Question:

Does the code classify an access panel as a "smoke and draft control door" which would require it to be rated per UL 1784?

Option #2/Staff:

The answer to question is "Yes." As per section 716.5.3.1, Smoke and draft control, the access panel in question must meet the requirements for a smoke and draft control door assembly tested in accordance with UL 1784.

Motion:

Commissioner Schiffer entered a motion to accept option 2 staff analysis. Commissioner Gerwig seconded the motion. The motion passed unanimously with a vote of 23 to 0.

Petitions for Declaratory Statements (cont.):

DS 2019-021 by Jason Malouf of Window and Door Design Center:

Mr. Vogel presented the declaratory statement and advised that the Product Approval POC considered the petition on June 6, 2019 and the POC recommended staff analysis to decline as follows:

Petitioner alleges that they “have recently become aware of practices by certain individuals which do not seem to conform to Rule 61G20-3.009(4) in over 1000+ instances,” and in the petition list certain entities and approved products that they find potentially problematic. Rule 28-105.001, Florida Administrative Code, specifies that “[a] declaratory statement is not the appropriate means for determining the conduct of another person.” Furthermore, “a petition for a declaratory statement which seeks approval or disapproval of conduct which has already occurred is properly denied.” *See Novick v. Dep’t of Health*, 816 So. 2d 1237, 1240 (Fla 5th DCA 2002) (citing *Chiles v. Dep’t of State, Div. of Elections*, 711 So 2d 151 (Fla. 1st DCA 1998)). Since the Petitioner’s questions pertain to the past conduct of other individuals, their petition should be declined, since a declaratory statement is not the appropriate mechanism through which to address their concerns.

Commissioner Stone entered a motion to accept staff recommendation to decline the petition. Commissioner Compton seconded the motion. The motion passed unanimously with a vote of 23 to 0.

DS 2019-022 by Robert Messing of Excel Electrical Group, LLC:

Mr. Vogel presented the declaratory statement and advised that the Electrical TAC considered the petition on June 5, 2019 and the TAC recommended staff analysis to decline as follows:

Section 553.775(3)(a) specifies that the commission “shall issue declaratory statements pursuant to s. 120.565 relating to the enforcement by local governments of the Florida Building Code or the Florida Accessibility Code for Building Construction.” Local governments are permitted to adopt technical amendments that provide for more stringent requirements than those specified by the Florida Building Code, and which apply solely within their jurisdiction. § 553.73(4) (a), Florida Statutes. Petitioner’s question pertains to a local amendment, rather than a provision of the statewide Florida Building Code. The Building Commission is thus without authority to issue a declaratory statement on the issue, and the petition should be declined.

Commissioner Flanagan entered a motion to accept staff recommendation to decline the petition. Commissioner Gerwig seconded the motion.

Commission Comments:

Commissioner Gilson expressed concerns over local jurisdictions overriding the code.

Commission Comments (cont.):

Mr. Vogel explained the legal process of the local amendments and the responsibility of the Commission on same.

Commissioner Flanagan advised the Commission that there was an extensive discussion at the TAC level before making this decision.

Commissioner Schilling expressed his concerns also on local amendments.

Doug Buck, FHBA spoke on the local amendments with a unique need and processes of the same. He said there is something missing in authority within the Commission on these amendments.

Mr. Madani stated there are currently few local amendments recorded on the BCIS. Staff review of the submitted amendments is limited to formatting and that technical local amendments do go before the respective TACs during code review.

Commissioner Calleja spoke on rules, appeals and ordinances.

Vote:

Vice Chairman Schock called for the vote.

The motion passed with 22 members voting in favor and 1 member in opposition.

To Review and Accept Final Report for research project titled “Survey and Investigation of Buildings Damaged by Hurricane Michael”:

Dr. Prevatt provided a detailed power point presentation report on the project as the final report.

Discussion followed among the Commissioners.

Commissioner Brown entered a motion to accept the final report for the research project titled “Survey and Investigation of Buildings Damaged by Hurricane Michael”. Commissioner Schilling seconded the motion. The motion passed unanimously with a vote of 23 to 0.

7th Edition, Florida Building Code (2020) Workplan Status Update:

Vice Chairman Schock asked Mr. Madani to provide an update on the workplan.

Mr. Madani provided a detailed report on the workplan.

Commissioner Schiffer entered a motion to approve the updated workplan/schedule for the 2020 Code Update Process – 7th Edition, Florida Building Code (2020). Commissioner Boyer seconded the motion. The motion passed unanimously with a vote of 23 to 0.

To Review/Approve Final FY 2018-2019 Annual Report:

Vice Chairman Schock advised that the Commission was briefed on and approved a Summary of Issues and Recommendations for Inclusion in the Annual Report at the April meeting. Today the Commission will review and approve the Commission’s Fiscal Year 2018 - 2019 Annual Report, and our plan as always, with your support and approval, is for the Acting Chair to review and approve the final draft of the Annual Report, ensure completeness and accuracy, and approve the Report for submittal to the Legislature and Governor.

Commissioner Brown entered a motion to adopt the Commission’s Fiscal Year 2018 – 2019 Annual Report, including any Commission actions taken today, and to charge the Chair with reviewing and approving the Final Report prior to submittal to the Legislature and Governor. Commissioner Schiffer seconded the motion. The motion passed unanimously with a vote of 23 to 0.

Committee Reports:

Education Program Oversight Committee:

Commissioner Dean provided a brief summary of the Education POC’s June 6, 2019 teleconference meeting.

Commissioner Dean entered a motion to accept the report from the June 6, 2019, teleconference meeting. Commissioner Flanagan seconded the motion. The motion passed unanimously with a vote of 23 to 0.

Electrical Technical Advisory Committee:

Commissioner Flanagan provided a brief summary of the Electrical TAC’s onsite meeting held June 5, 2019.

Commissioner Flanagan entered a motion to accept the report from the June 5, 2019, teleconference meeting. Commissioner Boyer seconded the motion. The motion passed unanimously with a vote of 23 to 0.

Committee Reports (cont.):

Energy Technical Advisory Committee:

Commissioner Smith provided a brief summary of the Energy TAC's June 12, 2019 teleconference meeting.

Commissioner Smith entered a motion to accept the report from the June 12, 2019 teleconference meeting. Commissioner Calleja seconded the motion. The motion passed unanimously with a vote of 23 to 0.

Fire Technical Advisory Committee:

Mr. Madani provided a brief summary of the Fire TAC's June 7, 2019 teleconference meeting.

Commissioner Schiffer entered a motion to accept the report from the June 12, 2019 teleconference meeting. Commissioner Flanagan seconded the motion. The motion passed unanimously with a vote of 23 to 0.

Mechanical Technical Advisory Committee:

Commissioner Calleja provided a brief summary of the Mechanical TAC's June 12, 2019 teleconference meeting.

Commissioner Calleja entered a motion to accept the report from the June 12, 2019 teleconference meeting. Commissioner Smith seconded the motion. The motion passed unanimously with a vote of 23 to 0.

Product Approval Program Oversight Committee

Commissioner Stone provided a brief summary of the Product Approval POC's June 6, 2019 teleconference meeting.

Commissioner Stone entered a motion to approve the report of the Product Approval POC's June 6, 2019 teleconference meeting. Commissioner Compton seconded the motion. The motion passed unanimously with a 23 to 0.

Residential Construction Cost Impact Workgroup:

Mr. Campbell provided a brief summary of the Residential Construction Cost Impact Workgroup's onsite meeting held on May 6, 2019 in Gainesville.

Commissioner Goff entered a motion to approve the report of the Residential Construction Cost Impact Workgroup meeting held on May 6, 2019 in Gainesville. Commissioner Smith seconded the motion. The motion passed unanimously with a 23 to 0.

Commissioner Comments:

Commissioner Stone asked that the local amendment issue be placed on the agenda for further discussion at a future meeting.

Public Comment: None

Frank O'Neal addressed the Commission with concerns and issues brought at the local levels concerning inspectors and building officials. He stated there is a real issue with staffing. Mr. O'Neal stated there areas where there is no hiring or bad hiring practices. He stated he just wanted to detail some of the issues going on at local levels.

Next Meeting Focus:

Vice Chairman Schock advised that the next Commission meeting will be August 13-14, 2019 in Hutchison Island and will focus on the Commission's regular procedural and substantive issues and approval of Code modifications for the 7th Edition (2020) Florida Building Code.

Adjournment:

There being no further business before the Commission Vice Chairman Schock adjourned the meeting at 11:13 a.m.