



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

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CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

**MEETING
OF THE
FLORIDA BUILDING COMMISSION**

**PLENARY SESSION MINUTES
August 11, 2009**

PENDING APPROVAL

The meeting of the Florida Building Commission was called to order by Chairman Raul Rodriguez at 8:35a.m., Tuesday, August 11, 2009 at the Crowne Plaza Oceanfront Hotel, Melbourne, Florida.

COMMISSIONERS PRESENT:

Raul L. Rodriguez, AIA, Chairman
Jeffrey Gross
Jeff Stone
James E. Goodloe
James R. Schock
Herminio F. Gonzalez
Hamid R. Bahadori
Robert G. Boyer
Drew M. Smith
Christopher P. Schulte
Mark C. Turner
Randall J. Vann
Scott Mollan
Jonathon D. Hamrick
Anthony M. Grippa
Donald A. Dawkins

Kenneth L. Gregory
Joseph "Ed" Carson
Raphael R. Palacios
Nicholas W. Nicholson
John "Tim" Tolbert
Dale T. Greiner
John J. Scherer

COMMISSIONERS ABSENT:

Richard S. Browdy, Vice-Chairman
Angel "Kiko" Franco
Doug Murdock, Adjunct Member
Craig Parrino, Adjunct Member

OTHERS PRESENT:

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

WELCOME

Chairman Rodriguez welcomed the Commission, staff and the public to Melbourne for the August 2009 plenary session which would be conducted in a single day meeting. He stated the primary focus of the meeting would be the Rule 9B-72, Product Approval, rule initiatives on fees and criteria for approving product approval evaluation entities. He further stated members of the public who wished to speak should sign in on the attendance sheet at the speakers' table. He stated there was also a sign-in sheet for public comment.

REVIEW AND APPROVE AGENDA

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

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

REVIEW AND APPROVE JUNE 9, 2009 MEETING MINUTES AND FACILITATOR'S REPORT

Chairman Rodriguez called for approval of the minutes from the June meeting minutes and Facilitator's Report.

Commissioner Carson moved approval of the minutes and Facilitator's Report from the June Commission meeting. Commissioner Greiner entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

CHAIR'S DISCUSSION ISSUES AND RECOMMENDATIONS

Chairman Rodriguez first announced the following reappointments to the Florida Building Commission:

Commissioner Bahadori – Fire Protection Technologist
Commissioner Goodloe – State Insurance Representative
Commissioner Gonzalez – Code Official
Commissioner Schulte – Roofing, Sheet metal and AC Contractor
Commissioner Greiner – Code Official

Chairman Rodriguez then announced the following new appointments to the Florida Building Commission. He asked each of the new Commissioners present to address the Commission and introduce themselves.

Donald Dawkins – Representative of Persons with Disabilities,
replacing William Norkunas

Nicholas Nicholson - Structural Engineer, replacing Paul Kidwell

Commissioner Nicholson stated he came to Florida in 1986 working in site development in subdivisions and commercial development. He then stated he had a graduate degree from Cleveland State University in Structural Engineering, a Master's degree from the University of Kentucky in Environmental Engineering, and a Master's degree from the University of South Carolina in Business Administration. He continued by stating in 1994 he started doing residential and commercial structural design, which he currently still does. He further stated at the height of the building boom his company was designing more than 500 homes a year and 30 commercial projects a year, which also included building design for some. He then stated the company considered expansion at that time but decided against it. He stated he believed that was a good decision considering with the turn of the economy his company has had to lay off a number of people.

John Scherer- General Contractor, replacing Matt Carlton

Commissioner Scherer stated he was born and raised in Fort Lauderdale, Florida. He then stated he had been in the construction industry for ten years. He received his degree from the University of Florida in Building Construction and returned to Fort Lauderdale to work. He continued by stating one of the first buildings he built was designed by Rodriguez Quiroga Architects. He stated he also received a law degree. He stated he was the president and owner of Gulf Building Corporation, located in Fort Lauderdale. He continued by stating the company primarily does construction for the commercial hospitality and gaming industries as well as home industries. He further stated he was a partner in the law firm Conrad and Scherer. He stated he gives expert testimony as it relates to cost and scheduling for projects.

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

Code Administration TAC

Commissioner Scherer was appointed to replace Matt Carlton on the Code Administration TAC.

Structural TAC

Commissioner Schock was appointed to replace Paul Kidwell as chairman of the Structural TAC.

Commissioner Nicholson was to replace Paul Kidwell on the Structural TAC.

Window/Wall Workgroup

John Jervis was appointed to the Window/Wall Workgroup.

Accessibility Advisory Council

Chris Masal was appointed by DCA Secretary Pellham to replace Michael Elliot on the Accessibility Advisory Council.

Accessibility TAC

Commissioner Dawkins was appointed to replace William Norkunas on the AccessibilityTAC.

Accessibility Code Workgroup

John O'Conner was appointed to the Accessibility Code Workgroup to replace Neil Mellick.

Julie Shaw was appointed to the Accessibility Code Workgroup.

Chris Masal was appointed to the Accessibility Code Workgroup

Soy Williams, Bob Vincent, and Bill Norkunas rotated off the Accessibility Code Workgroup.

Chairman Rodriguez next addressed the issue of Chinese Drywall which involves contaminated gypsum board as discussed at the June Commission meeting. He reported the US Consumer Product Safety Commission (CPSC) and the US Environmental Protection Agency (EPA) are now engaged in evaluating the issues involved with this product. He further stated to date, there had not been conclusive determination of a health risk, but the concerns regarding building systems degradation and potential resultant problems are still being evaluated. He concluded by stating DCA is participating in the State's multi-agency task group and will keep the Commission updated on the issue as events develop.

Chairman Rodriguez then addressed the Energy and Climate Commission letter. He stated the Commission received a letter from Jim Murley, chair of the Florida Energy and Climate Commission (FECC) indicating that the FECC is charged with providing comments to the Florida Public Service Commission concerning the updating of energy efficiency goals pursuant to the Florida Energy Efficiency and Conservation Act. He then stated the FECC is requesting the Commission's assistance in providing input to the PSC regarding "assessment of building codes and appliance efficiency standards on the need for utility sponsored programs". He further stated the Commission had a report prepared providing the basic information for the 2007 Florida Building Code and the Report is being updated for the 2010 Code development process, and the revised Report and other existing documents will be used to provide the FECC with the information they need relative to their request.

REVIEW AND UPDATE OF COMMISSION WORKPLAN

Mr. Dixon conducted a review of the updated Commission workplan. (See *Updated Commission Workplan August 2009*).

Mr. Dixon stated DCA staff had completed the bidding on meeting sites and locations. He reviewed those briefly explaining most meetings were in a central Florida location, but two would be held in Melbourne, a bit further south.

Mr. Dixon stated the law requires triennial update of the Florida Building Code. He continued by stating the Commission must wait six months after the new International codes edition were available for purchase before it could start the process of developing the next edition of the Florida Code. He continued by stating a development plan would be ready for the Commission to review by the next meeting. He stated the I-codes were available by April so the selection process, referred to by law, would take place at the October Commission meeting. He then stated scheduling would be based on when the documents identifying Florida specifics could be developed and ready for the public. Mr. Dixon further stated he felt it necessary to point out to individuals who want to propose changes to the I-codes that the six months waiting period will have passed and the six months was provided by law to give parties time to understand the foundation codes and what Florida specific changes they want to propose. But the intent was to try to keep the Florida Building Code up-to-date with the I Codes. He asked those individuals to work on their proposed amendments and not to wait until the last minute and he stated staff intended to ask the Commission to not allow grace periods after the planned cut-off dates. He encouraged any individuals who wished to make further changes to go through the I Codes processes and leave the Florida Building Code as consistent with the National Code as possible.

Commissioner Goodloe moved approval of the updated workplan. Commissioner Carson 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 Humburg for consideration of the Accessibility Waiver Applications.

Mr. Humburg presented the waiver applications for consideration. He stated recommended approvals would be presented in consent agenda format with conditional approvals, deferrals and denials being considered individually.

Recommendation for Approval with No Conditions:

#1 Muvico Theaters Cocowalk

Mr. Humburg explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the Council unanimously recommended approval based on the applicant's demonstration that it create an unnecessary, extreme and unreasonable hardship because of technical infeasibility and disproportionate cost.

#3 The Urbana Retail Tenant Building

Mr. Humburg explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the Council unanimously recommended approval based on the parking area falling within the exemption provided for unoccupiable spaces and the definition of unoccupiable space contained in Chapters 2 and 11 of the Florida Building Code.

#6 Miami Marlins Park

Mr. Humburg explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the Council unanimously recommended approval based on the applicant's demonstration that providing vertical accessibility would create an unnecessary and extreme hardship because of technical infeasibility and that equivalent facilitation would be achieved by providing a variety of accessible seating options throughout the stadium.

#8 IPic Entertainment

Mr. Humburg explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the Council unanimously recommended

approval based on the applicant's demonstration that providing vertical accessibility would create an unnecessary, unreasonable and extreme hardship because of technical infeasibility and disproportionate cost.

#10 Henry Hotel

Mr. Humburg explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the Council unanimously recommended approval based on the applicant's demonstrating that providing vertical accessibility would create an unnecessary, unreasonable and extreme hardship based on technical infeasibility and disproportionate cost.

#13 Sunrise Cinemas Deerfield Mall

Mr. Humburg explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the Council unanimously recommended approval based on the applicant's demonstrating that it would create an unnecessary, unreasonable and extreme hardship because of technical infeasibility and disproportionate cost.

Commissioner Carson moved approval of the Council's recommendation for approval of the consent agenda for items 1, 3, 6, 8, 10 and 13. Commissioner Boyer entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Recommendation for Approval with Conditions:

7 Ridge Cinema

Mr. Humburg 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 is to provide documentation of the sight lines from the accessible seating.

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

#12 Dr. Kiran Patel Center for Global Solutions

Mr. Humburg 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 is to relocate one of the wheelchair seating

locations from the rear of the theater to the end of the back row to remove the wheelchair from the flow of foot traffic.

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

Deferrals

#4 Winter Haven Fire Safety Complex

#5 Dick Brown Park

#9 Italia Villa Hotel

#11 FAU/UF Joint Use Facility

Mr. Humburg stated the Council ran out of time because the room was needed for another meeting. He stated there were four applications which had no representatives present, therefore the Council recommended deferral to obtain additional information.

Kathy Roshay, Schenkel Shultz Architecture

Ms. Roshay stated she was speaking on #11 FAU/UF Joint Use Facility. She stated it seemed the applicant missed the Advisory Council meeting and there were questions.

Chairman Rodriguez stated that was correct. He then stated the Advisory Council makes recommendations to the Commission. He further stated this application would be heard at the next Council meeting.

Ms. Roshay asked when and where the next meeting would be what would be the process.

Mr. Dixon responded stating the next Council meeting would be October 12, 2009 at the Embassy Suites in Tampa and the Commission will meet the next day, October 13, 2009.

Ms. Roshay asked if a letter or an email would be sent to the applicant stating the application was deferred.

Mr. Dixon responded yes.

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

Denial

#2 Fire Rescue Station 64

Mr. Humburg explained the petitioner's request for waiver as it was described in each Commissioner's files. He stated the Council recommended by a 4-1 vote for denial based on the conviction that vertical accessibility should be provided in new construction. He further stated the case was contingent in that the Council had traditionally, and on a number of occasions, approved these waivers when the fire fighters and fire stations were using the Uniform Accessibility Standards as opposed to the ADA Accessibility Guidelines for use in a fire station. He stated there were new members on the Advisory Council who felt strongly that the Title Two entity in this case was a public entity building, a two-story facility which should be accessible. He continued by stating there were also two letters that recently came to their attention from the Department of Justice, which were actually over a decade old, and expressed their belief in unclear terms that even with the use of UFAS a fire station should be accessible therefore the Council recommended denial. He concluded by requesting the Commission seek a current opinion from the Department of Justice as it relates to UFAS and fire stations and whether the second floor dormitory should be accessible even under UFAS.

Angel Lamela, Manager for facilities and construction for Miami- Dade Fire Rescue

Mr. Lamela stated he had researched and had copies of ten previous similar projects which had been approved for fire stations from different municipalities including four cases from Miami-Dade. He then stated most of the cases were based on UFAS which was the main issue. He continued by stating under Title Two, UFAS and the Department of Justice gives the state or local jurisdiction the option of using ADA or UFAS. He stated the applicant chose to use UFAS specific occupancy classifications in Section 4.14, which specifically quotes fire stations. He further stated it also clarified it applied only to areas of use by the public or if a physically handicapped person were employed. He stated in the past UFAs had been used and approved, as recent as the last Commission meeting. He then stated he hoped the Commission would seek an opinion for the Department of Justice as they were the ones who years ago recommended him using UFAS in cases such as this. He further stated the letters submitted were not completely clear because they were making references to the fact there was some concern with the intent of not employing individuals with disabilities as firefighters. He stated there are regulations which state firefighters have to be a physically abled body which conflicts with that

concern of limitation. He further stated documentation regarding the physical testing required by fire fighters was included with the application. Mr. Lamela continued by stating the letter also made reference to situations regarding cleaning personnel, cooks, etc. but the individuals who were stationed at fire stations were the ones who went out on calls. He stated those individuals have to be able to run to the trucks, because using an elevator in critical times would not be a fast enough response time. He further stated the cleaning and cooking was usually done by the firefighters who live at the station. He then stated in the fire station seeking the waiver, most of the facilities are on the ground floor, including offices, cooking facilities, the day room, a handicap bathroom, and the second floor is the dorm area, with a pole for faster response. He stated the ground floor does comply with UFAS and ADA making sure complete access was available including handicap parking, doors, and fully equipped handicap bathroom for members of the public who visit the fire station. He then stated the addition of the elevator and a handicap bathroom upstairs would be a difficult additional cost. He stated the applicant was trying to move forward with the project without having to modify the drawings or have the additional cost. He concluded by stating their purpose was to provide the best services possible for the residents of Miami Dade County. He further stated at the moment the fire fighters were stationed in a trailer and the fire truck is under a canopy because they have no station. He respectfully requested the Commission approve the waiver.

Chairman Rodriguez stated Mr. Humburg had recommended the Commission seek an opinion from the Department of Justice. He asked legal counsel for a recommendation on a course of action to follow.

Ms. Anderson stated if the Commission wished to seek an opinion from the Department of Justice, DCA staff could assist in writing a letter, however she understood the process could take a very long time to get a response. She further stated she would recommend not waiting regarding this applicant.

Commissioner Greiner asked if this was the fire station from the last meeting the Commission sent back to the Council.

Mr. Humburg responded yes.

Commissioner Greiner stated the Commission sent it back asking the Council to review the application and determine which way it should be going; with UFAS, ADA or Florida Accessibility and the answer was a 4-1 denial. He then stated he was concerned because these had been done both ways in most jurisdictions. He stated he was not speaking for others but he knows in his jurisdiction fire stations have been built with elevators and without elevators depending on which code was used. He further stated he believed it would behoove the Commission to get the right answer at some point. He stated the Commission was in a bad position going

back and forth; pushing people economically when there was a lot of good logic relative to the fire fighters, as he was certain Commissioner Goodloe would tell them. He then stated he believed the Commission needed to get a handle on the issue and if it took time then the time should be taken.

Robert S. Fine, member of the public

Mr. Fine stated he had no representation with the applicant. He then stated he had been dealing with accessibility issues for many years and had seen many of these cases. He further stated there had been charettes for hotel rooms, movie theaters and cases such as this where no one really knew what to do. He stated it seemed a number of the fire stations were coming up and having lived in Dade County, knowing what the budget was, he could only imagine what a small county faced. He suggested maybe the Accessibility TAC should conduct a charette with representatives from both fire marshall's office and the fire departments to provide the TAC with information to help them better determine the best options in future cases.

Chairman Rodriguez asked Mr. Fine his guess on the time period it could take to get a response from the Department of Justice.

Mr. Fine responded when things were good with the Department of Justice and a good congressman maybe a year or two. He stated the bottom line was a waiver was specific for Florida Law.

Mr. Richmond stated it was his understanding, from Ms. Anderson, that it was a time issue because new rules were coming into effect from the federal level and would do away with UFAS. He then stated he had not independently verified that but if it were the case he believed the Department of Justice would be even more reluctant to issue anything in writing. He further stated opinions have been sought from the Department of Justice in the past and have gotten no response.

Chairman Rodriguez asked if Mr. Richmond believed the future of this controversy would end in the near future, towards the conservative side of having to provide elevators.

Mr. Richmond responded that had been mentioned in passing.

Mr. Blair stated a decision needed to be made on this particular case.

Ms. Anderson stated the Commission was not being asked to determine what UFAS required.

Chairman Rodriguez asked if she wanted to expand on that for the Commission.

Ms. Anderson stated the Commission was only being asked to grant a waiver from Florida specific requirements to clear the way for the applicant.

Commissioner Vann stated he did not believe it was time to reinvent the wheel from an economic standpoint. He further stated there was enough precedent to follow and get an opinion. He stated instead of changing the procedure at this point, let the project continue without the opinion from the Department of Justice.

Commissioner Hamrick stated relative to the economic issue, being a Title II entity does not have any bearing on the applicant. He then stated Title Two has to comply with the Accessibility requirements no matter what the cost is. He further stated he had to provide it in all the schools no matter the cost. He stated he was in support of the Advisory Council's recommendation of denial. He expressed his concern of fire stations having open houses when schools are invited to fire stations and small school children tour the fire station or fire stations participating in "bring your child to work" day and if they do access must be provided. He then stated if a child had a traumatic experience and needed to know if mom or dad were safe while they were at work and wanted to see them at work they need to be able to get to where they sleep. He stated he believed the public would get up there and an elevator needs to be provided.

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

Commissioner Hamrick moved approval of the Council's recommendation of denial. Commissioner Scherer entered a second to the motion.

Commissioner Carson stated the amount of money required to add the elevator would be less than 1 ½ percent of the total cost. He then stated anyone would recognize the current economic times but for the amount of money on a project this size he could not see not doing it.

Commissioner Gregory stated one of the key issues brought forward by Commissioner Norkunas which struck him was the facility would not always be a fire station. He asked the applicant if he would entertain a provision stating if the use of the building changes in any way, an elevator would have to be retrofitted to the building. He then stated he agreed with Commissioner Carson considering the amount of money stated on application it would be more cost effective to do it now.

Commissioner Goodloe stated he would be voting against the motion, not from the standpoint of economics, because that would not sway him either way. He

continued by stating he believed a fire station could be designed with the areas above being non-accessible to the public. He further stated he did not believe taking children to work day, which typically does not occur in fire stations, nor did open houses warrant having an elevator. He stated the private living quarters of the fire stations are typically the private living quarters and people are in various stages of dress. He then stated in most cases members of the public, including children, were not allowed in those areas at any time.

Commissioner Tolbert asked if anyone had mentioned a compromise with a chair lift or something similar.

Mr. Humburg answered stating it had not been suggested.

Commissioner Vann stated he was puzzled, if it met UFAS and UFAS approved, he did not understand the issue. He then mentioned there were hundreds and hundreds of factories where dads work with platforms and chains and million ton machines running back and forth over the ground floors without elevators. He continued by stating he understood this was only one building, but the problem was the precedent set prior to all those applicants were granted a gift. He stated if this was sent to the Department of Justice for evaluation two years from now the opinion could come stating it was right. He reiterated he did not understand why it was so important to change the way things had been done for so long today.

Chairman Rodriguez stated the Commission had both denied and granted waivers similar to this one. He then stated it was because of the built-in dilemma a change was necessary.

Commissioner Vann asked if someone on the Commission could tell him how it has leaned the majority of the time.

Commissioner Greiner stated he believed the majority of the time the Commission has allowed it without the elevator.

Mr. Humburg stated the one question raised relative to UFAS was in part the reason the Advisory Council made the recommendation it did. He then stated the two opinion letters from the Department of Justice, although over a decade old, seemed to indicate in fairly clear language it believed, even with the use of UFAS, the second floor of a fire station should be accessible.

Commissioner Schock stated he would be voting for the proposal of the having the elevator because he believed the Commission has an Advisory Council who advises the Commission, which it has done. He further stated he seemed to support the advice therefore the Commission should follow it.

Mr. Lamela stated in terms of the building use changing usually outdated fire stations were demolished and a new one would be built. He stated therefore he did not see in ten years, for example, changing the design of the building. He further stated because the locations were more specific and based on the needs of the communities in terms of response time, the specific problem with this fire station was that the land acquired in the specific area forced the two-story design. He explained whenever possible one-story designs were used because it was better for everyone. He then stated any time there was an occupancy change, there had to be code compliance, even forty years from now, the building would have to be designed according to the existing laws which by that time could be completely different. He continued by stating he did not believe open houses or tours would be conducted at this particular fire station as there were other fire stations built with the public in mind relative to education and those stations were completely accessible.

Chairman Rodriguez

Vote to approve the Council's recommendation resulted in 15 in favor, 8 opposed (Vann, Turner, Bahadori, Gonzalez, Goodloe, Tolbert, Greiner and Palacios). 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 nineteen entities were recommended for approval by the POC:

CER-1739 Underwriters Laboratories Inc.

CER-8236 IAPMO ES

TST-1585 Intertek Testing Services NA Inc.

TST-1589 National Certified Testing Laboratories, Inc.

TST-1657 Fennestration Testing Lab

TST-1667 PSI/Pittsburgh Testing Laboratory.

TST-1740 Underwriters Laboratories Inc.

TST-1795 Architectural Testing Inc. - Minnesota

TST-2513 APA - The Engineered Wood Association

TST-3478 NTA, Inc.

TST-4205 Progressive Engineering, Inc.

TST-4310 Architectural Testing Inc. – Washington

TST-6485 ENCON Technology Inc.

TST-7110 Architectural Testing, Inc - Springdale, PA

TST-7195 Hurricane Test Laboratory, LLC – TEXAS

TST-8039 Quast Consulting and Testing Inc.

QUA-1680 PFS Corporation

QUA-3504 NTA, Inc.

QUA-8223 CertiWood Technical Centre - QUA

Commissioner Stone moved approval of the POC recommendation.
Commissioner Goodloe 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 of 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 Boyer entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Blair presented the following products for consideration individually:

10558-R1 M W Manufacturers Inc

Mr. Blair stated the product was recommended for approval.

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

10559-R1 M W Manufacturers Inc

Mr. Blair stated these products were recommended for approval.

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

11450-R1 Stanek Vinyl Windows

Mr. Blair stated the product was recommended for deferral and the application should be considered incomplete and should not be on Agenda.

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

12830 Tapco, Inc

Mr. Blair stated the product was recommended for approval.

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

12740 Traco Windows and Doors, Inc.

Mr. Blair stated the product was recommended for conditional approval with the condition the "On limits of use indicate 'Within HVHZ not to be used for small missile requirements'".

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

12697 Traco Windows and Doors, Inc.

Mr. Blair stated the product was recommended for conditional approval with the condition the on 'limits of use' indicate 'Within HVHZ not to be used for small missile requirements'.

9461-R2 Traco Windows and Doors, Inc.

Mr. Blair stated the product was recommended for conditional approval with the condition the frame conditions provide analysis of anchors or indicate "No" for HVHZ.

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

12645 Sun-Tek Mfg

Mr. Blair stated the product was recommended for conditional approval with the condition the Certification Agency is to verify installation instructions.

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

12821 Entreprises Doco

Mr. Blair stated the product was recommended for conditional approval with the condition the on 'limits of use' indicate 'Within HVHZ not to be used for small missile requirements'.

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

5822-R1 Smart Vent, Inc.

Mr. Blair stated the applicant requested to be set to re-apply to revise application. No action required.

6223-R1 United Steel Products Company

Mr. Blair stated the product was recommended for conditional approval with the condition the attachment of Product 6223.2 to be redesigned in accordance with latest published values.

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

8749-R1 Paradigm Window Solutions

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant provides a glazing sealant as tested and on 'limits of use' indicate "Within HVHZ not to be used for small missile requirements".

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

9940-R1 Paradigm Window Solutions

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant provide glazing sealant as tested and on 'limits of use' indicate "Within HVHZ not to be used for small missile requirements".

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

12359 Sun Metals Systems, Inc.

Mr. Blair stated the product was recommended for conditional approval with the condition the applicant revise the evaluation report for products 12359.3, 12359.6 and 12359.9 to indicate testing as per FBC Section 1714.6.

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

12555 United States Aluminum Corp..

Mr. Blair stated the product was recommended for conditional approval with condition the applicant revises installation instructions and evaluation report to correct DLO'S and the revised DLO's shall not be larger than 1/2", as indicated on original application.

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

12801 Kustom Kreations, Inc.

Mr. Blair stated the product was recommended for approval.

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

1044-R1 Simpson Strong-Tie Co.

Mr. Blair stated the product was recommended for approval.

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

12708 Simpson Strong-Tie Co.

Mr. Blair stated the product was recommended for conditional approval with the condition the evaluation report to indicate evidence submitted of testing and analysis.

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

CONSIDER APPLICATIONS FOR ACCREDITOR AND COURSE APPROVAL

Accreditor Approvals

Commissioner Hamrick stated there were no applications for Accreditor to be approved.

Course Approvals

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

Advanced Changes to the 2007 Florida Building Code, Plumbing, BCIS Course #364.0

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

Advanced Code CE 2009 Supplement to the 2007 FBC, BCIS Course #363

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

Advanced Wind Mitigation Methodologies Part 1 – Internet Course For Florida Contractors, BCIS Course #365

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

Commissioner Hamrick then stated the following courses were administratively approved:

Advanced FBC Occupancy, Egress, Construction Type, BCIS Course #199.1

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

Advanced Building Code; Residential Swimming Pools, BCIS Course #240.1

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

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

Legal Issues:

Mr. Richmond stated there were no appeals. He then stated there were revocations to be initiated, and those would be taken up during the POC report.

Binding Interpretations:

Mr. Richmond stated there was one binding interpretation, #50, included in the Commissioners' packets. He then stated if any Commissioner would like a more technical summary for it or had any questions he would defer to Mr. Madani.

Mr. Richmond stated the Joint Administrative Procedures Committee in Tallahassee, who reviews all of the Commission rules for compliance for certain procedural requirements has on the last couple of occasions commented the Commission should really have its own chapter and not be within the Department of Community Affairs chapter. He then stated the Commission would begin seeing notices, as they are published would be transferring the Commission rules from 9B to 9L. He further stated this would be completed in a step fashion. He explained people were used to referring to Product Approval in 9B-72 but they will start moving and it should not be any shock. He stated it doesn't mean the text would be changed in most circumstances, but there will be a new chapter where they will be consolidated and the Commission would be identified as the agent responsible rather than the Department of Community Affairs.

Declaratory Statements:

Second Hearings:

DCA09-DEC-121 by Robert Dunn, Collier County Building Department

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

DCA09-DEC-130 by James Schock, P.E., Building Inspection Division, City of Jacksonville

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 Schock stated he would be abstaining from the vote.

Commissioner Carson moved approval of the committee recommendation. Commissioner Palacios entered a second to the motion.

Larry Schnieder, AIA of Florida

Mr. Schneider stated he wanted to confirm this interpretation was for new construction issues for the interpretation. He then stated the issue comes into play as it relates specifically to accessibility in existing restaurants. He continued by stating in existing restaurants there was often no ability to modify both bathrooms under an ADA lawsuit and what happens is two bathrooms are turned into unisex bathrooms, one being accessible and the other is left alone. He further stated as long as the interpretation was for new construction there were no objections. He then stated there would be a concern if this went back to preexisting buildings.

Commissioner Schock stated this was for a new facility.

Vote to approve the motion was unanimous. Motion carried.

DCA09-DEC-138 by Nick D' Andrea, City of Tampa

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

Commissioner Carson moved approval of the committee recommendation. Commissioner Palacios entered a second to the motion. Vote to approve the motion resulted in 21 in favor, 1 opposed (??). Motion carried.

DCA09-DEC-139 by David G. Karins, Kalwall Corp.

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

Commissioner Carson moved approval of the committee recommendation. Commissioner Hamrick entered a second to the motion.

Commissioner Grippa stated on the surface there was an expiration date on a testing report. He asked if the Commission was waiving that date and stating it was still good for product approval.

Mr. Richmond stated the expiration date was never anything the Commission recognized or imposed. He further stated it was more of a contractual private matter between the product manufacturer and its test lab. He then stated as long as the test report demonstrates compliance and all other things being equal i.e. manufacturer processes were the same, etc. the Commission recognizes that report.

Commissioner Grippa asked if the Commission had done one of these in the past.

Mr. Richmond responded yes.

Vote to approve the motion was unanimous. Motion carried.

First Hearings:

**DCA09-DEC-129 by Rodger England, Bermuda Roof Co., Inc.
DCA09-DEC-253 by C.S. Breslauer, Bermuda Roof Co., Inc.**

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

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

DCA09-DEC-214 by Thomas E. Smith, General Home Development Corporation, Pinellas County

Mr. Richmond stated the petition was dismissed. No Commission action necessary.

DCA09-DEC-254 by Mike Harris, Sea Shutters, 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 Greiner moved approval of the committee recommendation. Commissioner Vann entered a second to the motion. Vote to approve the motion was unanimous. Motion carried.

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

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.

Robert S. Fine, representing Malibu Lodging Investments, LLC

Mr. Fine stated the petitioner respectfully requested the petition be deferred and referred back to the TAC for consideration. He then stated he had spoken with staff and the TAC chair and neither opposed the request. He continued by stating the petition was filed in time to be included on this Commission agenda. He continued by stating on July 13th Mr. Madani sent him an email requesting additional information for staff consideration. He stated on July 14th staff sent an email indicating there would possibly some teleconferences for some TACs, but there was no agenda showing which TAC the declaratory statements would be assigned to. He further stated July 14th was his last day in the office before a long awaited 2 week vacation with his family. He stated when the agendas were posted he was not available to find out which TAC it would be assigned to or when the meeting would be. He further stated although he realized the scheduling of the TAC meetings was changing and there were now teleconference meetings, he thought he would be presenting the arguments in his petition for a declaratory statement the day before the plenary session. *He continued by stating while he was away Mr. Madani called his office to...*

(brief audio break)

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

(audio continues)

DCA09-DEC-260 by Joseph Scofield, Advanced Manufacturing & Power System, 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 Schock stated the reason he requested discussion was during the conference call he was called away on an emergency and could not ask questions. He then proposed an amendment to the answer "unless the housing was part of a UL listing, in which case it must comply with the loading criteria in Chapter 16 of the Florida Building Code". He further stated he requested the amendment because he understood the problem with DCA was this particular building was not a UL listed building or a UL part of the equipment. He then stated he had worked on projects where he had seen the housings and enclosures as a part of the UL listing. He continued by stating there were a number of design professionals and construction individuals who rely on declaratory statements as guidance. He

concluded by stating he believed it was better to make the addition to the declaratory statement.

Mr. Blair asked Commissioner Schock to clarify his proposed amendment.

Commissioner Schock clarified his amendment suggesting the addition of the following language, "...unless housing is part of a UL listing, in which case it must comply with the loading criteria in Chapter 16 of the Florida Building Code".

Commissioner Gonzalez stated he had no problem with the proposed amendment.

Commissioner Hamrick stated he did have a problem with the amendment. He then stated many generators were installed into the schools in EHPA areas. He continued by stating there had been a recent project in which 80 special needs shelters had been fitted with generators which had to go through the structural load requirement and all of the generators had to be reinforced to comply. He stated the amendment would circumvent that requirement.

Commissioner Schock stated his proposal was directed at the issue of housing enclosures that must comply with the loading requirements of Chapter 16, which would be wind load, etc. He then stated the criteria would have to be met and it was often a part of the UL listed equipment.

Commissioner Hamrick stated he had misunderstood Commissioner Schock's proposal.

Mr. Richmond stated the Commission was restricted to the facts represented by the petition. He further stated there was no mention of anything relative to UL listing or it being a part of the UL listing. He then stated the pictures included showed the buildings were built around generators. He stated his concern was the Commission would be exceeding the scope of declaratory statements as presented, which should not be done as a matter of course.

Commissioner Schock withdrew his proposed amendment.

Vote to approve the motion was unanimous. Motion carried.

DCA09-DEC-257 by Mitch Thomas

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

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

DCA09-DEC-263 by Steven Clisset, Windstrips, LLC

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

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

SECTION 553.73(10)(d), F.S., Review of FBC/FFPC Local Interpretation Conflict Requested by Bill R. Moore of Waldrop Group Regarding Bonita Springs Project

Mr. Richmond stated there was a joint meeting between the Fire Marshall Advisory Council and the Commission's Fire TAC. He stated a recommendation was issued in response to a declaratory statement from Bill Moore, Waldrop Group, in which the group had recommended the authority having jurisdiction cannot waive requirements of the Florida Fire Prevention Code. He further stated a single stair with two exit doors as a means of egress did not comply with the provision of the Fire Code.

Bill Moore, Waldrop Group

Mr. Moore stated Section 553.73 is the section his comments referred to. He stated he thought because it was listed on the agenda it was scheduled for comments to be heard by the Commission. He then asked how he could schedule comments and review of the case for a conflict with the Building Code and the Florida Fire Prevention Code.

Mr. Richmond stated the Commission responded to Mr. Moore's comments at the Joint meeting of the Fire Marshall Advisory Council and the Commission's Fire TAC. He further stated the Commission takes an extremely narrow view on what constitutes a conflict between the Florida Building Code and the Florida Fire Prevention Code. He then stated this was not a circumstance where compliance with one makes compliance with the other impossible therefore it was not a circumstance of conflict. He explained that was the reason it was listed on the agenda as a report only. He then offered at the conclusion of the meeting there was time for general public comment if Mr. Moore would like to make his remarks during

that period of time. He concluded by stating there was no action for the Commission to take at this juncture.

Mr. Moore stated the local fire officials' petition for declaratory statement was reviewed in great detail at the TAC meeting. He then stated the statutes state "*in the absence of a local appeals board the issue could be taken up with the joint committee of the Fire Marshall Advisory Council and the Florida Building Commission*". He further stated the statutes also state he could not petition the state Fire Marshall unless he was adversely affected. Mr. Moore continued by stating Commissioner Goodloe had assured him that he would be allowed, as an adversely affected person, to present his petition. He stated his fear was if he went back and petitioned him there may be some provisions in the statute that state the petition could not be considered. He continued by stating rather than be dismissed without prejudice he would rather a formal authority say it would be looked at although the statutes state he was not an adversely affected individual. He asked if there was anything he could do formally to request the action by the committee.

Mr. Richmond responded he could make that request. He then stated the focus of the meeting and the continued focus of the issue was a matter exclusively within the jurisdiction of the state Fire Marshall and not within the jurisdiction of the Florida Building Commission. He further stated unless the issue materially changes before October or if the Fire Marshall would seek guidance from the Fire Building TAC he would not anticipate the issue coming back before the Commission because it is a Fire Code issue.

Commissioner Goodloe stated he had spoken with Mr. Moore following the TAC meeting. He then stated he had explained, as Mr. Richmond stated, if there was no local board there was another avenue, but if there was a local board he must go there first. He further stated he made it very clear that he could petition the state Fire Marshall and they would hear the petition. He continued by stating the petition presented at the TAC meeting was by the Fire Officials and it only cited the life safety code. He stated he had shared with Mr. Moore that the Commission had no action to take on that meeting simply because there was no building code issue cited.

RULE 9B-72, PRODUCT APPROVAL, RECOGNIZING IAPMO AS AN EVALUATION ENTITY

Chairman Rodriguez stated a rule development workshop was conducted July 20, 2009 on Rule 9B-72.100 and 9B-73.130, Product Approval, for the purpose of soliciting feedback regarding adopting criteria for the approval of product approval evaluation entities, and including IAPMO to the list of approved evaluation entities.

Mr. Richmond stated to date the workshop had been held and the recommended text of the rule was available for review. He then stated the next step was rule adoption. He further stated he would propose, with this rule specifically, moving forward with all the haste the state's system of rule adoption could muster. He continued by stating it would entail a publication of a notice of rule adoption which would require a hearing by conference call, only if requested, and the hearing would be set for the 3rd week in September. He then stated if no hearing were requested the Commission could move forward and adopt the rule.

Joe Holland, Hoover Treated Wood Products

Mr. Holland stated he did not really understand Mr. Richmond's comments on the issue. He asked if he could repeat them.

Mr. Richmond stated a workshop was held and the text of the rule was developed and circulated. He further stated the text establishes a set of criteria and a procedure for approval of evaluation entities. He then stated having received the information required by the rules from the IAPMO and adding them to the list as well as any future additional entities that may come forward which would also be added to the list, subject to review by the Commission. He continued by stating the Commission would need to approve publishing of rule adoption with a hearing the third week in September by conference call if requested. He then stated if no hearing was requested the next step would be to file the rule.

Mr. Holland asked if anyone had concerns regarding the rule they need to send something in or make a phone call.

Mr. Richmond stated he could request a hearing or comment at this point and ask the Commission to amend the language set for publication.

Mr. Holland asked if he could request the hearing during the public comment portion of the meeting.

Mr. Richmond responded stating the hearing would have to be requested after the publication of the notice the Commission would be approving during the hearing.

Mr. Blair reminded the Commission the hearing was to solicit comments on the proposed draft of the rule. He stated if there were comments to be heard they would be captured and considered.

Mr. Holland stated there were concerns regarding the rule and they had submitted a comment relative to the concern. *(Please see Comment #4).*

Keri Hebrank, Florida Building Materials

Ms. Hebrank stated she wanted to remind the Commissioners that the Commission recommended IAPMO be added to the Florida Statutes as an approved product evaluation entity. She stated there were strict criteria within ISO/IEC Guide 65 and it was used by other evaluation entities. She then stated if IAPMO was not going to be approved as a product evaluation entity the other agencies, including ICC, UL, etc, would have to be removed because they meet the same guideline. She further stated the reason they went to the Legislature two years ago and asked them to direct the Commission to review the issue was specifically because one of the product evaluation entities, ICC, at that time decided they no longer wanted to evaluate product approvals to the Florida Building Code. She continued by stating some of the other manufacturers were left in a bind and began using IAPMO to help them for evaluation on those products. She stated competition was a good thing and she submitted to the Commission part of the argument it would hear during the hearing would be particularly a competitor issue. She then suggested the Commission not get caught up in that situation but to use ISO/IEC Guide 65 criteria to determine if a company can become a product evaluation entity. She then stated, in reference to Mr. Holland's comments regarding outside consultants, if it was an issue related to product approval then an outside consultant should not be used to look at the state product approvals. She continued by stating the Commission used outside consultants to review and determine if all information was correct before bringing it back to the Commission for final approval. She then stated no one had to use IAPMO for product evaluation it was just another available option. She concluded by stating if an approval or an evaluation report was done erroneously they were subject to procedures, such as ANSI approval revocation.

Randy Shackelford, Simpson Strongtie

Mr. Shackelford stated Simpson Strongtie supported the Commission adopting rules for approving additional evaluation entities at this time. He then stated his company was in support of either Option 1 or Option 2 as presented by staff at the rule development hearing. He stated ISO/IEC Guide 65 was an appropriate standard to vet for approval of evaluation entities and the other national scope of evaluation services was certified to the same standard. He further stated his association supports IAPMA as an approved evaluation entity, as they were accredited to meet ISO/IEC Guide 65 and have been involved with the building code and standard development since 1926. He stated IAPMO had been evaluating building products for years and structural products for 5 years. He then stated IAPMO does use outside agencies, such as structural engineers, to evaluate structural products. He stated he believed it to be a good thing because it ensures the most competent people to evaluate a specific product would do so.

Mr. Shackelford continued by stating Rule 9B-72 already allows Florida licensed engineers and architects to provide evaluations to the Commission and he does not see any difference in the two. He stated IAPMO stands behind their evaluations and they are the ones who ensure that those conducting the evaluations are competent to do so. He then stated his company had used both ICC and IAPMO for evaluation reports and currently have 58 reports with ICC and 4 reports with IAPMO. He stated he did not believe anyone was more qualified to evaluate either of those agencies than his company and they were confident in the abilities of both agencies to provide accurate useful reports for the use of builders and building officials in Florida.

Gary Nichols, ICC Evaluation Service

Mr. Nichols stated he had submitted comments which appear under number as comment 7. *(Please see comment #7)*

Ted DeVit, DeVit Consulting, Atlanta, Georgia

Mr. DeVit distributed a letter for the commissioners which contained his comments. *(Please see Letter August 7, 2009, to Florida Building Commission by Ted DeVit)*

Craig Wagner, Director of Code Compliance, Architectural Testing, Inc.

Mr. Wagner first asked for clarification regarding what decision was being made. He stated he understood part of it was whether to add IAPMO evaluation service to the approved entities list. He then stated he had also seen several comments regarding criteria for approval of an evaluation entity. He asked if those criteria, ISO/IEC Guide 65, would be included in the Commission's decision.

Mr. Richmond responded yes.

Mr. Wagner asked if he could see the specific language.

Mr. Blair responded the language was in Option 1.

Mr. Wagner then discussed comments he previously submitted. *(Please see Comment #6.)*

John O'Connor, President, Building Officials Association of Florida

Mr. O'Connor stated it appeared to him the requirements were being lessened or rules were being changed to allow an entity to become certified for evaluations. He then stated when moving into the rulemaking stage the Commission

usually knows what is to be said. He expressed concern because he did not feel it was ready for rulemaking. He further stated he believed there needed to be more workshops and more public hearings in order to come to a real true consensus of what the standards should be. He continued by stating he had no problem with anyone trying to get into evaluation services and that competition was a great thing. He then stated he liked the services available currently, but if the standards were lessened at this point it would be disservice to the people of Florida who would be negatively impacted by a mistake in the evaluation.

Mr. Holland asked if he had an opportunity to respond to anything.

Chairman Rodriguez stated it was not the time for point-counterpoint, but more of an opportunity for positions to be stated and then open it to the Commission for discussion.

Mr. Holland asked if he could explain before the Commission begins its discussion. He then stated there was additional information brought up which was not a part of what he had discussed. He continued by stating it concerned a letter sent to the Commission regarding action or inaction of his company. He stated he wanted to explain why they did or did not do what was mentioned.

Chairman Rodriguez asked if he could explain it very briefly

Mr. Holland stated one of the testifiers mentioned there were no complaints registered with IAPMO and felt rather than coming before the Commission it should register a complaint with IAPMO. He then stated he strongly disagreed because he believed it should be brought to the regulatory bodies and other agencies with the power to recognize these organizations and that is what was done.

Commissioner Carson stated he was speaking for himself, not the POC. He then stated it was his understanding if ISO/IEC Guide 65 was met all other discussion was over. He further stated after hearing the testimony given in public comment he was uncomfortable supporting a forward move with rulemaking without an opportunity for further discussion.

Commissioner Gross stated under the comments it shows option 2 has a cost of 20 times more than the cost of option 1. He asked if someone could enlighten him with what was going on, considering the budget problems, on what would happen if option 2 were chosen. He also asked if the entities listed could be charged under option 2 to recover some of that \$50,000.00.

Mr. Madani responded stating in Option 1 the input of information into the system was done manually and would get an entity qualified to meet the rule with regard to being an evaluation entity, being incorporated and the cost of that option is

very minimal, \$2,395.00 which includes the rulemaking process along with the contractor and the time to input the information into the system. He then stated Option 2 was mainly for reconfiguring the Product Approval program to allow for an application to be designed into the system for an evaluation entity which would cost up to \$50,000.00. He concluded by stating staff had chosen to go with the approach of which cost the least.

Mr. Blair stated both options accomplish the same thing but Option2 requires a more extensive rewrite of the Building Code Information System and Option 1 only requires manual entry.

Commissioner Boyer stated he was in agreement with Commissioner Carson having heard testimony during public comment which raised red flags. He then stated he believed some of the issues need to be revisited to determine what was right for the citizens of Florida. He further stated he had a lot of confusion in his mind from the information he had heard. He stated last time everyone stated ISO/IEC Guide 65 was the best thing but as things start to come out then a reevaluation is necessary. He concluded by stating he could not give support in moving forward with rulemaking.

Commissioner Stone stated when a cost estimate is received he would rather see it pythagorated to allow the Commission to see what the actual cost would be and not just a lump sum. He then stated in standards writing organizations like ISO and ASTM there are technical reports, guides, standards, specifications, and there are practices. He further stated a guide would generally tell a person what to do but specific regulations were required in order to put the guide into practice. He continued by stating he did not believe that had been taken to date. He then stated he did not believe the steps had been taken to establish what those criteria would be to approve an evaluation entity or certification entity. He further stated he had said from the outset when the issue first came to the Commission he did not believe ISO/IEC Guide 65 by itself was adequate. Commissioner Stone continued by stating he had no problem with IAPMO doing mechanical or plumbing because he had heard from west coast building officials they do an excellent job. He stated he was not sure what their talent was with structural issues, but he had also heard they can do that too. He further stated it was not IAPMO that bothered him, but the process, because the Commission was setting a precedent on how an entity that comes along in the future would be evaluated.

Mr. Richmond stated to summarize there was a recommendation which was developed through the committee process which does work in conjunction with some legislation that had passed in the previous years' session. He further stated that legislation basically recognized IAPMO on a temporary basis through January 1, 2010. He then stated by the language in that bill if they were not approved by

October 1st the evaluation reports in the system essentially become void on January 1st.

Chairman Rodriguez asked Mr. Richmond to state the motion.

Mr. Richmond stated assuming the Commission wanted to move forward with the recommendations to date the motion would be to adopt the criteria of meeting the requirements of ISO/IEC Guide 65 substantiating accreditation and independence for approvals of evaluation entities and including IAPMO evaluation service to the list within the rule and to notice the adopted language to proceed with rule adoption without a hearing unless requested specifically finding there be no impact on small businesses envisioned by Chapter 120 and authorizing the secretary of DCA to sign off on any required rule certification.

Chairman Rodriguez asked if any Commissioners wanted to support the motion.

No commissioner moved approval of the motion as stated.

Mr. Richmond stated if there was no motion the Commission would not move forward with rule adoption.

Mr. Madani stated there is language in Florida Statutes with regard to IAPMO and evaluation reports that have already been issued as part of the product approval program. He then stated if IAPMO was not approved as an evaluation entity those reports have to be considered.

Chairman Rodriguez stated Mr. Richmond explained if the Commission did not act by October those products were void on January 1st.

Mr. Blair asked if it would be an option, if the Commission was comfortable with IAPMO, to add them to the list of approved entities and proceed with rule adoption with just that and then work on the criteria.

Mr. Richmond stated the Commission's authority in law was to adopt criteria for evaluation entities and it had been directed to do so since 1988-1989. He then stated the Commission had never actually done that, but essentially cut and paste the list from statutes. He further stated in terms of expanding the statutory list the Commission's option was to establish criteria. He continued by stating in an attempt to cut costs as well as create a process without expanding the BCIS it was basically put in stating if it complied with the rule the Commission would amend the rule to add the entity's name, but adding the entity's name without establishing criteria was not compliant with Chapter 553 or with the delegated rulemaking authority.

Commissioner Gregory asked if the existing entities which currently approve products were meeting the criteria IAPMO would require or is the Commission requiring IAPMO to meet a higher or lower standard.

Mr. Richmond stated he believed the functional matter of testimony had been that all of the entities meet that guide. He then stated in essence the entities currently recognized as evaluation entities only criteria was they were recognized in statute. He stated no technical review was performed although their reputation for their work was considered.

Commissioner Schulte stated it seemed as if another meeting was necessary. He asked if rule adoption, since it sounded date sensitive, could be moved to October to allow time for something in between and still make the date.

Mr. Richmond stated as a functional matter it was possible, although it creates some problems with the letter of the law because if not approved by October the evaluation reports could essentially become void on January 1st. He then stated, however, if rule adoption were done before January it forestalls that, but there would be some glitches and it would be a little more difficult but it could be done that way.

Mr. Dixon offered some history behind the evaluation entities. He stated when the study commission was determining how to create a product approval system for the state of Florida there were historical organizations that had provided the service a little bit different from certification agencies, testing laboratories and inspection bodies. He then stated those entities were FBCCI, ICBO, BOCA and the National Evaluation Services, which was a joint organization of all those three together. Mr. Dixon further stated, as heard in testimony, they evaluate products' compliance to Code where certification entities evaluate products compliant to specific standards adopted in the Code. He stated at the time the ISO standards were being developed the intent of the standards was to create an across the border acceptance of products, an approval system that would be recognized worldwide, and that the organizations that provided the evaluation services, model code organizations, basically, were doing something different. He continued by stating since the three model code organizations were combined into one model code organization they have submitted and gotten accredited through ISO/IEC Guide 65. He stated they were not at the time Florida created an entity called Evaluation Entity and wrote it into law, including those legacy organizations that were providing those evaluations at the time into law. He then stated the Legislature gave the Commission authority to establish criteria for identifying or accepting other evaluation entities. Mr. Dixon further stated the Commission had opted not to do that over time and stayed with the historical organizations that had provided those services. He continued by stating that was the status the Commission recommended to the Legislature last year, rather than creating rules IAPMO would be added to the list recognized outright in Florida law. He stated the Commission

was in the situation of making rules based on necessity and that the bill which would've recognized IAPMO failed to pass by 30 minutes because after passing in the House, the Senate adjourned 30 minutes earlier than expected. He state otherwise it was expected passage in the Senate. He explained the situation before the Commission was there was an organization not clearly recognized and the only option for providing that kind of recognition is prior to the expiration of the current manufacturers' evaluation report and the dates of the Florida Product Approval is to establish rules which can demonstrate compliance to be recognized as an evaluation entity.

Commissioner Gregory stated he had heard nothing at the meeting indicating IAPMO did not meet the same criteria as all of the other entities evaluating products. He then moved approval of rule adoption and to accept IAPMO as a recognized entity. He further stated if the Commission wanted to go forward the next time it meets it could be opened for discussion, but he believed it needed to go forward now.

Commissioner Nicholson entered a second to the motion.

Mr. Blair restated the motion to adopt criteria of ISO/IEC Guide 65, and substantiating accreditation and independence, for approval of evaluation entities including the addition of the International Association of Plumbing and Mechanical Officials Evaluation Service (IAPMO ES) to the list of approved evaluation entities, and to notice the adopted language and proceed with rule adoption without a hearing, unless requested in which case a hearing will be conducted at a September teleconference meeting, and authorize the Secretary of DCA to sign-off on any required rule certification(s).

Commissioner Carson asked if there was a possibility the Commission could talk about reopening the rule again to discuss the criteria issue in October.

Mr. Richmond stated he did not believe it could be reopened in October because the Commission would still be in the process of finishing the rule adoption. He then stated the earliest it could be reopened would be December.

Commissioner Carson stated he would recommend the Commission reopen it in December.

Mr. Blair stated once the rule was adopted it could be reopened to consider any additional revisions to the criteria for approval.

Commissioner Stone asked how specific the Commission needed to be when establishing criteria for when the next entity comes in to approve or disapprove them. He then stated subsection C states it would be upon the approval of the

Commission. He asked if the Commission could make its' own operating procedures to do so without being in the rule.

Mr. Richmond responded no and stated if an entity had met the established criteria by law it should be approved. He then stated if it was not approved, the entity could challenge the Commissions' withholding approval if there was no specific rule basis for denying their application. He further stated in all likelihood the Commission would lose that challenge.

Commissioner Stone stated for agencies accredited as meeting the requirements he would recommend at least inserting recognition of the American National Standard Institute. He then stated with that recognition the Commission would not be concerned with someone another nation being certified in ISO, but they would be certified within the United States, either ANSI certified or ANSI accredited.

Mr. Madani stated there were specific entities within the rule for accreditation by the Commission.

Commissioner Stone stated he believed the entities in the rule were ANSI accredited or certified.

Mr. Madani stated the Commission could go with what is in the rule.

Commissioner Stone stated it would at least address the issue of an entity from China or more drywall coming in and approving it.

Jack Glenn, Florida Homebuilders Association

Mr. Glenn stated in an effort to garnish support for Commissioner Gregory's motion he reiterated the remarks Mr. Dixon had made. He then stated the rule had been in a bill which had the construction industry's support throughout and then died due to timing. He further stated it would be in another bill next year. He continued by stating it would put a tremendous cost burden on those with IAPMO approval if their approval expires in January and the Legislature puts them back into place in July.

Commissioner Carson asked for clarification his amendment was part of the motion.

Mr. Blair stated it was included.

The motion as stated was to adopt criteria (meeting requirements of ISO/IEC Guide 65, and substantiating accreditation and independence) for approval of evaluation entities and including the International Association of Plumbing and

Mechanical Officials Evaluation Service (IAPMO ES) to the list of approved evaluation entities, and to notice the adopted language and proceed with rule adoption without a hearing, unless requested in which case a hearing will be conducted via teleconference during the third week of September 2009, and authorizing the Secretary of DCA to sign-off on any required rule certification(s). The Commission agreed that once the current rule adoption process was complete to re-open Rule 9B-72 for the purpose of evaluating the criteria for approval of evaluation entities.

Vote to approve the motion resulted in 21 in favor, 2 opposed (Nicholson, Boyer). Motion carried.

9B-72.090, Product Approval, Fees

Chairman Rodriguez stated at the October 2008 meeting, the Commission voted in favor of a policy requiring all programs to be self-supporting. He then stated in the past the Commission subsidized costs to develop, revise and maintain the Building Code Information System (BCIS) for product approval. He continued by stating the Commission agreed that the true costs of implementing program changes will have to be reflected in the fees charged for these programs. He further stated as a result of declining funds the Commission is in the process of revising the fee schedule for product approvals to make them self-supporting and to repay some of the development costs funded by the Commission for the product approval system. He also noted that a letter was received from the Florida Building and Material Association indicating concern with the Commission's decision on product approval fee increases in light of the current economic climate, and suggesting that the Commission seemed unwilling to "evaluate cost saving measures or to implement appropriate fees for other Commission services". He stated he had responded by letter, and quoted the following from the response letter:

He then stated regarding the point about the Commission adapting its operations to reduce overall operating costs, please know that the Commission had done exactly that. He then stated some of the more prominent actions are the reduction of the number of its meetings by twenty-five percent and the shortening of those meetings from three days to two days by migrating to technical advisory committee and program oversight committee meetings by teleconference. He further stated the workgroup meetings, which always deal with difficult developmental technical issues, would be held during Commission meetings or will be sponsored by Commission contractors. He continued by stating these changes alone combine for more than a fifty percent reduction in meeting activity and the associated costs. He further stated on the funding side the Commission and Department of Community Affairs have initiated fee adjustments for the manufactured buildings program and for the Commission's primary funding source, the building permit surcharge. He the stated the Commission also sought authority from the Legislature during the 2009

Session to charge a fee to support the non-binding interpretation process administered by the building officials association. He explained when the bill failed passage; the Commission moved that expense to a non-Commission funding source for at least this fiscal year. He then stated substantial changes to both expenditures and funding sources are underway while the Commission attempts to maintain service. He stated with each retreat the Commission comes closer to limiting its focus to just its core mission of maintaining the Florida Building Code. He stated the Commission conducted a rule development workshop at the June 2009 meeting and voted to proceed with rule adoption by conducting a hearing at the August meeting. He concluded by stating the August hearing provided an additional opportunity for public comment before the Commission voted to file the rule for adoption.

Ms. Hebrank stated she appeared before the Commission on behalf of the manufacturers, some of who will offer public comment in that portion of the meeting regarding the proposed increase for product approval application fees. She then stated their objections and concerns were based on several factors including: 1) the current recessionary economic and housing climate; 2) the lack of demonstrative data that would justify such a sharp fee increase; 3) the total disregard for the recommendation of the POC not to increase the fees; and 4) the unwillingness of the Commission to evaluate cost saving measures or to implement appropriate fees for other Commission services to assist with budget shortfalls.

Chairman Rodriguez asked Ms. Hebrank if she heard his introduction remarks.

Ms. Hebrank responded she did.

Chairman Rodriguez asked if she did not believe his remarks because she was stating a point which was totally contrary to the Commission's system.

Ms. Hebrank stated one of their manufacturers may offer some new ideas.

Chairman Rodriguez stated new ideas were what the Commission wanted to hear.

Ms. Hebrank stated the Commissioners should have received a copy of the letter addressed to the Chairman from Bill Tucker, Florida Building Materials Association. She then stated she had comments relative to the current economic climate. She continued by stating she heard a term she believed summed up the housing construction industry crisis from an economic standpoint and the term was economic tsunami. She stated the construction industry is experiencing a colossal slump in the new housing market with no significant relief in sight. She then stated Florida ranked second in the nation with foreclosures further saturating the stagnant housing inventory. She further stated it was not a time to raise costs. She

continued by stating product manufacturers are struggling to keep manufacturing facilities operational and both manufacturers and building material suppliers have been forced to lay off thousands of workers. She stated the economic tsunami was making it difficult for manufacturers to cover increases in raw material costs, shipping, and distribution charges.

Ms. Hebrank then stated all by-products have the economic downturn and any additional costs, such as the proposed product approval fee increase would only exacerbate the problem. She further stated manufacturers already spend thousands of dollars just to get their products to market in Florida with a state product approval number. She continued by stating it was not uncommon for a product manufacturer to spend \$12,000.00 – 15,000.00 per product line for product evaluation, testing, validation, engineering, quality assurance services and application fees. She stated if that dollar amount was multiplied by the number of product lines and suddenly the fees escalate into hundreds and thousands of dollars all in the hopes the products will ultimately sell. She then stated the state product approval system although intended to be voluntary has instead become de facto mandatory because local building officials insist either on an NOA from Miami Dade County or a state product approval number since the statewide approval process provides consistency and aids with enforcement. She concluded by stating any additional costs for products to attain state product approval cannot be easily absorbed nor can they be passed on to consumers or builders.

Steve Strong, JELD-WEN

Mr. Strong stated at the June 8th meeting the POC recommended with a 5-1 vote for Option 4 of staff's recommendation with some modifications. He then stated the Commission did not take very kindly to the recommendation. He further stated Chairman Rodriguez stated in his opening remarks at the June 9th meeting he wanted to be clear before any final decisions would be made, much less implemented, and stated there would be ample opportunity for stakeholders to provide their comments. He continued by stating he believed they would have ample opportunity to go over options with staff to come up with some recommendations. He further stated the recommendations provided by the stakeholders had not been considered.

Chairman Rodriguez stated it was an assumption the recommendations were not considered.

Mr. Strong continued by stating the stakeholders making applications for product approval agreed with the POC recommendation to have DCA staff consider all options before any fee increase was implemented. He stated Commissioner Stone, by his motion during the June POC meeting and comments during the rulemaking hearing, simply ask that all procedures be examined for ways to provide the necessary services without such dramatic fee increases. He then stated Mr.

Richmond had stated the Commission has the authority to review fees and to look at them as quickly as possible. He continued by stating at the October 2008 meeting there was a vote that all programs pay for themselves. He stated it was also well known the state has subsidized the product approval system and he wondered why it had not been discussed or discovered earlier. He stated the recommendations working with stakeholders were to recommend either changes in the program or in the event no change, no charge but it had not been seen. He then stated he believed the Commission acted a little too quickly in making the recommendation to simply review the fees without going back to staff and very thoroughly reviewing what the program cost. He continued by stating his company supports the staff and the program administrator because they do a great job. He stated he struggled with the fact the recommendation was to adjust the fees paid to the administrator when one thing the administrator was counted on for was a very thorough review of applications for product approval. He asked if the administrator's fees were stripped away would it diminish the work he performed. He stated he was not suggesting it would happen. He further stated his integrity was respected and suggest he be paid appropriately for his services rather than all fees going directly to the Commission or to DCA. He stated he believed one of the best tools available was BCIS and absolutely supported that it should be maintained. He concluded by stating as a manufacturer and stakeholder he would be available to work with staff on changes in the program, and had no problem with a justified fee increase.

Chairman Rodriguez stated the reason the Commission met as often as possible was to arrive at consensus. He further stated when a person states they want to hear more data it attracts his attention. He then stated when a person attempts to demonize the Commission it does not attract his attention because he knew why the 25 members meet and their only motivation was to serve the public. He continued by stating he did not believe any other comments related to the recession or weather were necessary because the public was already well aware of the current situation. He further stated the state had taken back some of the money the Commission had for a rainy day. He then stated the two viable solutions mentioned would be to tweak the services to make it more economical and pay for the program. He stated while he was sympathetic to the consultant there was not one consultant or contractor around the Commission table who had not tweaked their own fees recently. He stated it was the capitalist system of supply and demand. He further stated if anyone questioned if the fees were paying for any other part of the program those questions would be answered forthrightly. He concluded by reiterating the claims of recession because the situation was very clear. He stated there was no disregard for the POC recommendation either, but sometimes recommendations are heard but not implemented due to financial restraints. He further stated there was no unwillingness on the part of the Commission to hear any testimony if it was new information. He concluded by stating the situation was, there was a program all parties felt valuable and that people use and the program must be paid for. He stated the Commission does not

take an adversary role to the public and he would hope the Commission would be treated the same.

Greg Mann? , International Hurricane Protection Association

Mr. Mann stated the IHPA represents manufacturers for the hurricane protection industry and the hurricane protection industry as a whole. He then stated the industry did not have a problem with an increase in fees. He continued by stating the Commission needed to help the industry help the Commission by giving it justification to go back to its members with more information. He stated one of the things he had heard and was disturbed by was the applicants for Accessibility Waivers were not paying any fees. He further stated if that were true he would be upset because the members of his association were paying fees with their applications, which seem to be supporting what takes a tremendous amount of the Commission's time. He concluded by reiterating his association liked the product approval process and an even playing field. He asked the Commission to send justification of any fee increase.

James Caan, Martin Windows, FMA Board

Mr. Caan stated he would like to talk about the support network which included the local and national associations and other entities discussed earlier. He further stated because his territory covered all of the U.S. and Canada he was in contact with manufacturers and associations from the largest to the smallest and all were in survival mode. He further stated his industry felt like partners with the Commission and its continuing process and the products offered in the marketplace. He then stated the government does not always have to stay within the budget, but manufacturers do and those manufacturers were currently under mandatory budget cuts. Mr. Caan stated the industry was looking internally and externally for every place a penny could be saved. He then stated the association asked the Commission to look at every process and everything being done and everything on the table. He stated the industry would love to work with the Commission representing not only his company but the associations he represents, both large and small in order to work out a solution together.

Joel Hetzel, Thomas and Associates, Door and Access Systems Manufacturers Association

Mr. Hetzel stated he represented probably 95% of the industry nationwide. He then stated he wanted to speak to the following example: He stated his association represented 34 different garage door manufacturers. He then stated he believed one issue that should be examined going forward was the economy and that eventually it will recover. He continued by stating there were manufacturers who have not yet investigated Florida as a market among those who are

represented. He further stated there were manufacturers who have product approvals who would like to offer more products for approval. Mr. Hetzel stated he believed there should be closer examination for any barriers or limitations which are in the way of allowing more products to come into Florida. He then stated DASMA was in the process of getting a certification program ANSI accredited which was understood to be necessary for DASMA to be recognized as an approved certification entity. He continued by stating when that ANSI accreditation takes place with approval in Florida the process will be streamlined for its manufacturers in Florida. He further stated he hoped a by-product of the process would be an increase in the number of product approval submittals so the public and consumers as a whole have more choices available. He stated if fee increases were justified okay, but he believed a better way to look at would be if the pie could be grown and his association was trying to do its part in helping by trying to streamline the process for its members.

Randy Shackelford, Simpson Strong Tie

Mr. Shackelford stated his company was very pleased with the current service provided by the Commission staff and the administrator and is willing to pay for it. He further stated the company would be willing to accept a minor increase to maintain the service; however a 66% increase seemed a little too much at this time. He stated the main concern of the company was it appeared product approval fees were being used to subsidize other Commission activities. He further stated they believed product approval fees should be set at a level only to be used for product approval to help pay for the product approval system just as the permit fees can only support building departments. He continued by stating they had not seen a very detailed analysis on the exact cost, only a rough estimate from staff indicating 2 staff members who work on this and 14% of the budget was used for product approval. He then stated when looking at the budget presented at the last meeting it shows product approval fees would be 23% of the Commission's budget and 28% of the Commission's income for the upcoming year. He stated they believed the amount to be off balance. He then stated there had been a proposal from the POC to be considered as a way to raise more money and that was to charge additional fees for re-reviews. He stated companies who do not submit a complete application initially take an inordinate amount of time the administrator. He further stated the administrator had offered to forward all of that money to the state. He stated all activities would be able to pay for themselves. He then stated he was glad to hear the Chairman mention exploring getting fees for services such as accessibility waivers, accreditor approvals, declaratory statements, binding interpretations, etc. He thanked the Commission for listening and explained they did not want to be unfairly burdened with a large amount of the Commission budget.

Chairman Rodriguez stated he heard the new idea for an additional charge for re-reviews, an idea that can help. He then stated however it was unfair to state

there was a 66% increase. He stated it was better to state previously there was a 66% subsidy. He further stated if Mr. Shackelford could point out what he was paying for that was not product approval he would like to hear it, but if there was going to be moaning about a fee increase to what it actually costs to operate it would not be good. He then stated he would prefer to hear creative ways which are fair ways to collect extra. He continued by stating to all communities who come before the Commission, including the disabled of which he was once a part of, suffering was not a monopoly. He stated everyone is suffering in the present situation and everyone is in it together. He concluded by stating he was glad to hear his company was pleased with the service provided to them and that it wanted it to continue and he understood what he wanted the most was to be sure they were only paying for their own services and not anything else.

Chuck Anderson, AAMA

Mr. Anderson stated when trying to reduce cost of a program it is no different than trying to reduce cost in a manufacturing environment or any business environment. He then stated efficiency should be reviewed. He continued by stating one of the best efficiencies was to reduce redundancies. He stated if something is being done twice that should only be done once it indicates a substantial savings opportunity. He further stated AAMA had put forth considerable effort into making sure the products listed in BCIS have a rating of credible, it accredits laboratories to do testing to AAMA's standards, and it inspects manufacturing facilities twice each year unannounced. He continued by stating the reason they do so was to have the label on those products mean something, to feel legitimate. He then stated he thought someone had already made his suggestion, but if not he wanted to suggest dissecting the product approval fee process and consider allowing items under the certification method to flow into the BCIS under the responsibility of the certification agency. He stated AAMA was the one making sure they perform, reviewing the test reports, issuing the authorization to put the label on and certify the product, making sure they have installation instructions, and making sure if different than tested in the field by a P.E. He asked if all of those steps were being taken why repeat the process again. He then stated he had heard the system was liked and the idea of clearing house was favorable. He added he did not believe it would be a problem for the Commission to figure out the \$300.00 fee, which could possibly be used to support the system.

Mr. Richmond closed the hearing.

Commissioner Carson stated he wanted to remind everyone where fees originally came from. He continued by stating the fees were established before a single product approval had ever been done, making it fairly arbitrary. He then stated with the building permit surcharge fees being received by the Commission, if the Product Approval program was upside down it did not matter. He stated in

retrospect the Commission should have reviewed the fees sooner once it was obvious they were not sufficient, but there was no review and the Commission finds itself in the current situation. He concluded by stating he wanted everyone to realize how arbitrary the fees initially were. He explained they sat around trying to decide how many hours it would take for a product to be approved and staff was doing the approvals at that time.

Chairman Rodriguez thanked Commissioner Carson. He then stated if an individual was there or if they believed an individual who was there during the initial process the task at hand was to come to a consensus on a statewide product approval system. He further stated there was no way of truly knowing what it would cost and the \$300.00 was set as a completely arbitrary number. He stated he agreed with Commissioner Carson and the fees should have been reviewed once system was underway, but it didn't, because the fact was, it was being subsidized. He then stated another fact was if the rainy day money had not been taken away by the state it would probably still be subsidized because the Commission's view is this is one of the most important services rendered to protect life safety. He continued by stating the money was taken away and the Commission now has a better idea of what product approval costs. He stated if anyone had any questions bring them forward so the Commission can make sure it was understood why the fees went up, but part of the reason was because it was arbitrarily set and it was subsidized for years because the Commission had the money to do it.

Commissioner Schock stated he believed the manufacturing industry received a big bang for their buck. He further stated he did not believe \$500.00 was unreasonable for an approval process. He then stated he agreed with the chairman on hearing an idea which merits some consideration which would be the cost of resubmission. He then stated he was not certain if DCA or anyone had a percentage of resubmissions required for approvals or not but he believed it would behoove the Commission to look into the issue.

Mr. Blair stated it had been discussed at the POC meeting as an option and he recalled there were some issues or complexities in trying to figure it out for example it was too arbitrary. He asked Commissioner Carson or Mr. Madani if they would like to elaborate on the issue.

Commissioner Carson stated he believed at the time trying to set a fee and trying to be objective relative to what should be charged per violation, but at the time they were not prepared to figure it out. He stated speaking for himself he would not be opposed to revisiting the issue.

Commissioner Gregory stated he had a question for the code officials. He stated it was his impression the product approval was voluntary meaning a manufacturer could take its product directly to the building official and have it locally

approved. He then stated streamlining it would make it easier for them to get the products approved but he thought a fee could be avoided altogether if they went to the local entity.

Commissioner Greiner stated Commissioner Gregory's comments were true with the caveat the local authority has the ability to also charge a fee although not all do. He further stated he would hasten to say the process was not as good because the ability to do that locally was not always available.

Mr. Madani stated it was his understanding some local jurisdictions do have a system. He stated Commissioner Boyer may be able to tell the Commission more about that.

Commissioner Boyer stated as someone who does local product approval a charge of \$500.00 has been set for some time. He then stated he had often wondered, even prior to being on the Commission, how it could do business losing money. He further stated he realized the increase to \$500.00 was a bitter pill but in these times he did not see an alternative. He stated he would not mind going back and looking at it in six months to determine if there was a way to reduce the fees but that was not what was being considered at this session.

Commissioner Schulte stated Commissioner Carson had stated originally the fees were an arbitrary issue because the Commission had no history or experience with it. He then stated he opened the rule and looked down the list of fees being changed and found a lot of numbers changing. He further stated it seemed as though the manufacturers needed justification to their members for the increased fees. He stated he did not hear anyone state if a fee increase was legitimate it was accepted because they liked the service. He then stated at the same time, based on historical data since there were quite a few years of products going through the system regularly and the amount of usage, had anyone run the calculations based on the new fee structure. He further stated they could determine the cost structure before it could be determined if the fee structure works. He continued by stating Ms. Jones had presented some numbers to the Commission but he was not sure how many years it would take to recoup the cost of the BCIS system but there were a lot of fees changing such as applications, editorial revisions, and affirmations based on the Commission's usage. He then asked what the fee changes did for the Commission. He stated he was looking at a lot of numbers and the Commission had said it tried it once and it wasn't successful. He concluded by stating based on historical data he wanted to make sure it gets the Commission to where it needed to be.

Mr. Richmond stated he did not believe the Commission was attempting to recoup any of the money that had been sunk into it. He then stated he believed

what was being done was trying to arrive at a level of funding necessary for the program to move forward.

Ms. Jones stated the Commission was trying to get to a point to find the \$850,000.00 the Commission needs, not the administrator, to fund its activities for the fiscal year 2009-2010.

Commissioner Stone stated he believed the Commission was still being somewhat arbitrary. He then stated he believed the support of the industry was available to help and a professional ad hoc committee could be formed to determine a definitive cost study to determine what the procedures cost by doing a flow chart and seeing what each item costs and making sure there was no duplication of effort and what was the cost of each individual step within the process. He further stated he was not necessarily against a cost increase he was just not certain if there were adequate justification. He stated if there were a ????? cost estimate he believed everyone would be satisfied.

Commissioner Grippa stated he agreed with Commissioner Stone. He asked if the \$800,000.00 shortfall was with the Product Approval program or if it were the entire Commission.

Ms. Jones responded stating the shortfall was for the overall Building Commission.

Commissioner Grippa stated he believed some excellent points had been brought up regarding waivers and resubmittals and some of the other items. He further stated he believed there had to be a direct parallel between these fees and what the actual cost was of the product approval process. He then stated he also agreed the fee needed to be increased, which may be unfortunate at this time, but he believed the Commission should take some time and put some data behind it.

Mr. Dixon offered clarification stating the \$800,000.00 was what remained after two other fee increases which DCA implemented on behalf of the Commission: 1) an increase in fees to the Manufactured Building program and 2) a recalculation of the building permit surcharge. He stated both of those are expected to raise additional funds but the \$800,000.00 was the balance of what the Legislature appropriated as spending authority which needed cash to back it up.

Commissioner Tolbert asked if these fees were being held up what it would do to the Commission regarding future meetings and the product approval process.

Mr. Dixon stated currently the state was releasing spending authority one quarter at a time. He then stated the state would be monitoring exactly how much money was in the trust fund and was only allowing as much authority to be used as

there is cash available. He further stated it would be difficult to tell the Commission what would happen each and every quarter however staff anticipated that by the end of the year the Commission may be cutting out some of the meetings. He continued by stating the Commission had operated with the same contingency for the past two years when there had been 10% budget reductions. He concluded by stating there could be more cuts if the fees were not raised.

Chairman Rodriguez stated he would like to approve the increase but continue to review it for two reasons, 1) efficiency so it can be reduced, and 2) to make sure the Commission was paying for what it was getting and not be an additional burden on anybody.

Commissioner Palacios stated he had looked up a product online for the submittal of a project and while he looked through the online catalog he noticed the number of products which stated approved in Florida for hurricane resistance or Dade County NOA. He then stated he wondered how much good will the manufacturers were getting selling their products up and down the coast of the United States which were affected by hurricanes due to the testing the Commission had been subsidizing all of these years.

Chairman Rodriguez stated he appreciated Commissioner Palacios comments. He then stated it was a tough time to increase and the sad reality was the Commission did not realize it until there was no other option. He further stated if the Commission was in private practice it would've been reviewed earlier.

Mr. Dixon offered clarification on the Commission's action at the last meeting, which was choosing option one which included an automatic review with a negotiation of the administrators fee. He further stated the Commission was coming to the end of a three year contract. The contract bidding would be starting around January of the coming year and a contract should be in place by June with an opportunity there to identify the savings which could be take the actual cost and a fair pay rate for the consultant are all automatic in the motion.

Commissioner Carson moved approval to proceed with Rule Adoption for Rule 9B-72.090 by filing the Rule for adoption as drafted and authorizing the DCA Secretary to sign any required rule certification and to request staff to prepare a detailed cost breakdown for the Product Approval System to present at the October Commission meeting. Commissioner Hamrick entered a second to the motion.

Vote to approve the motion resulted in 18 in favor, 5 opposed (Stone, Schulte, Turner, Smith, and Grippa). Motion carried.

CONSIDER COMMITTEE REPORTS AND RECOMMENDATIONS:

Accessibility Code Work Group

Mr. Blair presented the report of the Accessibility Code Workgroup from August 10, 2009. (Please see *Florida Accessibility Code Workgroup Meeting Minutes August 10, 2009*.)

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

Code AdministrationTAC

Commissioner Gonzalez presented the report of the Code Administration TAC. (See *Code Administration TAC Conference Call Minutes July 27, 2009*.)

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

Education POC

Commissioner Hamrick presented the report of the Education POC. (See *Education POC Conference Call Meeting Minutes August 4, 2009*.)

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.

Electrical TAC

Commissioner Carson presented the report of the Electrical TAC. (See *Electrical TAC Conference Call Meeting Minutes July 29, 2009*.)

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

Fire TAC

Commissioner Goodloe presented the report of the Fire TAC. (See *Fire TAC Meeting Minutes August 10, 2009*.)

Commissioner Goodloe moved approval to accept the report. Commissioner Carson 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 August 10, 2009.*)

Actions:

Commissioner Carson stated the POC recommended as the court order in question the POC recommended the login and password for FL5343 be released to Glenwood Capital, L.L.C. in order for a revision to be made on the original approval designating Silverwood Technologies L.L.C., d.b.a. Green Products Technologies as the manufacturer.

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

Commissioner Carson stated the POC recommended the login and password for products FL3619, FL2253 and FL1350 be released to ARXX Corporation.

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

Commissioner Carson stated the POC recommended the lines in an application be limited to 150, meaning the application would be limited to 150 product sequence numbers. He then stated it would be applicable to new and revised applications and not editorial changes or affirmations. He further stated rule making would be necessary to proceed with the implementation of this request and the POC recommended opening the rule, Section 9B-72.130(2) at the October meeting for this change.

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

Commissioner Carson stated the POC recommended halting the revocation process for FL1712-R2 and FL1714-R1 to allow staff to work with the manufacturer to revise the application.

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

Commissioner Carson stated the POC recommended FL7173 be archived.

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

Commissioner Carson stated the POC recommended legal staff begin revocation process for FL5030, FL8993, FL8994, FL 9635, FL9639, FL9910, FL15567, and FL10798.

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

Commissioner Goodloe moved approval to accept the report. Commissioner Greiner 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 Conference Call Meeting Minutes July 28, 2009*.)

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

FLOOD PLAIN MANAGEMENT STANDARDS INTEGRATION INTO THE 2010 FBC

Chairman Rodriguez informed the Commission that at the request of the Florida Division of Emergency Management (DEM) the Florida Building Commission convened a Flood Resistant Standards Workgroup charged with developing recommendations for integrating the International Code Series (I-Codes: IBC, IRC, etc.) flood damage-resistant provisions (for buildings and structures) in the Florida Building Code. He continued by stating FEMA worked with ICC for the past 10 years on flood standards for buildings that are consistent with the requirements of the National Flood Insurance Program (NFIP), and the current I-Codes reflected these standards. He then stated when the 2001 Florida Building Code (First Edition) was

developed a policy decision was made, primarily for administrative reasons to eliminate flood standards from the foundation model code and continue the practice of relying on Floodplain Management Ordinances adopted by communities participating in the National Flood Insurance Program. He stated the DEM has requested that the policy be reviewed, that identified administrative issues be resolved, and that the I-Code flood standards be retained in the 2010 FBC. He then stated the Commission conducted this facilitated stakeholder process from March to May of 2009.

Chairman Rodriguez stated the Workgroup met on March 25, 2009, April 29, 2009 and May 29, 2009 and developed a package of consensus recommendations for submittal to the Florida Building Commission. He then stated the Commission received a report on the recommendations at the June 2009 meeting and the Structural TAC has reviewed the Workgroup's recommendations and has recommendations for the Commission regarding integrating flood resistant standards into the 2010 FBC. He continued by stating at this time the Commission will only adopt the policy recommendations and the specific code language will be considered during the 2010 Code Update process. He further stated the specific code amendment adopted recommendations will be submitted as code amendments for the 2010 Florida Building Code Update process. He concluded by stating the Structural TAC reviewed the Flood Resistant Standards Workgroup's recommendations at their July 28, 2009 Teleconference meeting, and voted in support of the Workgroup's recommendations.

Mr. Blair reviewed the Flood Resistant Standards Workgroup. (Please see *Flood Resistant Standards Workgroup, Report to the Florida Building Commission, May 29, 2009, Options Achieving Consensus Level of Support.*)

Commissioner Carson moved approval to adopt The Florida Resistance Standards Integration recommendations. Commissioner Vann entered a second to the motion.

Robert Fine

Mr. Fine stated under FEMA regulations and local ordinances that are currently in place throughout the country and certainly in Florida regarding Flood Plain Management requirements provide for a variance procedure. He then stated one of the big rules under the Florida Building Code is there are no variances. He further stated **???? standards** are very strict but those are there as a controller and when it is appropriate to have a variance of these issues which are always going to provide important federal law for these local ordinances that it be considered. He stated he did not know if there was a way to deal with that, apart from delegate it when those issues come up in local municipalities and have usually gone before the Flood Plain Management Boards in all of these different cities and have their

variance Flood Plains Management Ordinances. He then stated he thought some of these items could be very difficult requirements and there are issues of hardship. He asked the Commission, as it moves recommendations and move these requirements from local ordinances levels in the Building Code, to consider what is being taken away is the ability of Flood Plain Management variances in a team of areas who if they went straight to the Building Code would potentially disappear if some provision wasn't made for that.

Mr. Dixon asked Mr. Fine what the prevailing type of variance given is. He asked if it was the elevation requirement.

Mr. Fine stated his concern in incorporating the floodplain management requirements into the building code was that the building code does not provide for the ability to get variances for (appropriate) hardship while the FEMA regulations and many local floodplain management ordinances do. Since public policy and the law recognize that there can be significant hardship imposed by floodplain management regulations, there should be some means for preserving the ability to seek and attain such variances if floodplain management requirements are incorporated in the building code. Fine stated that these variances typically had to do with the lowest finished floor elevation relative to base flood elevation and also the requirement to provide a slab that would resist hydrostatic pressure when the lowest finished floor elevation was below base flood elevation. The most frequent of such variances that are granted in his experience involve historic preservation but not all of them. The requirements for such variances are found in 44 CFR 60.6 and are very stringent taking into account such factors as public policy involving historic preservation, the impact of granting a floodplain management variance for a building on the neighboring properties, etc. Fine further added that these variance requests are typically heard by local floodplain management boards which in many cases, are comprised of the members of the particular municipality's board of adjustment sitting as the Floodplain Management Board. Fine then reiterated that the standards for these variances are very stringent and that he would try to provide some sample ordinances to staff.

Mr. Dixon stated perhaps he and Mr. Fine could meet and discuss the issue further.

Mr. Fine stated he was in agreement and would bring some model ordinances to review how they have looked.

Vote to approve the motion was unanimous. Motion carried.

COMMISSION MEMBER COMMENTS AND ISSUES

Chairman Rodriguez introduced Commissioner Dawkins who had not been present earlier when the other new commissioners were introduced to the Commission. He then asked him to say a few words about himself.

Commissioner Dawkins first apologized for being late. He stated he had been an Accessibility activist for 30 years. He further stated he was a person with spinal cord injuries. He then stated he worked in a rehabilitation model for many years and is a certified rehab counselor. He continued by stating he had been involved with the ADA since 1991 which led to his interest in building. He stated he is married and their youngest child had just graduated from college.

Chairman Rodriguez announced the hotel had offered a reasonably priced buffet at the cost of \$8.00 following the meeting.

Commissioner Boyer asked staff when the replacement pages and electronic updates would be available

Mr. Madani stated he had reviewed materials two weeks ago and ICC was currently working on finalizing the product. He stated they were hoping it would be available by October.

Commissioner Boyer stated he had forwarded Mr. Dixon a couple of different manufacturers' letters. He continued by stating he hoped there could be some type of TAC looking at a possible investigation within a roofing supplier who is doing a great marketing tool. He further stated he was changing how it interlocks and in his letter he was stating he was not recommending it, but leaving it up to the local building departments to enforce. He then stated in the existing Building Code there was not as much guidance as there should be trying to get a handle on where it's at so there would be uniform enforcement. He asked if Mr. Dixon could meet with him after the Commission plenary session to discuss the issue.

Mr. Dixon stated they would work toward integrating it into some type of process the Commission has ongoing to minimize the cost impact.

GENERAL PUBLIC COMMENT

No public comment.

ADJOURN

12:18 p.m. adjourned.