

**ACCESSIBILITY TECHNICAL ADVISORY COMMITTEE
CONCURRENT WITH THE PLUMBING TECHNICAL ADVISORY COMMITTEE
TELECONFERENCE MEETING FROM TALLAHASSEE, FLORIDA**

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AUDIO: DIAL-IN NUMBER 1 866 899 4679

CONFERENCE CODE: 959-866-069

Tuesday October 4, 2016

1:00 p.m. until completion

Minutes

ACCESSIBILITY TAC PRESENT:

Jeff Gross, Chairman
Sharon Mignardi
Brad Schiffer
Larry Schneider

Jack Humburg
Barbara Page
Frederick Schilling

ACCESSIBILITY TAC NOT PRESENT:

Bemmie Eustace

James Woolyhand

STAFF PRESENT:

Mo Madani
Thomas Campbell
Chip Sellers
Jim Hammers

April Hammonds
Nick DuVal
Marlita Peters
Chris Howell

Welcome:

Time: 1:02 p.m.

Ms. Peters welcomed everyone to the teleconference call of the Accessibility TAC. She provided information for the callers on how to mute systems to avoid background noise.

Roll Call:

Ms. Peters performed roll call for the Accessibility TAC. A quorum was determined with 7 members present,

Agenda Approval:

Mr. Schiffer entered a motion to approve the agenda for today's meeting as posted. Ms. Page seconded the motion. The motion passed unanimously with a vote of 7 to 0.

Approval of the Minutes from July 14, 2016

Mr. Schiffer entered a motion to approve the minutes from the July 14, 2016 meeting as posted. Mr. Schilling seconded the motion. The motion passed unanimously with a vote of 7 to 0.

To consider and discuss the following Declaratory Statement: DS 2016 – 056 by Kathleen Ann Wilks.

Ms. Peters asked if the petitioner was on the call.

Ms. Kathleen Wilks advised she was on the line and stated she would like to get a declaratory statement,

Mr. Madani advised that the declaratory statement had been reviewed and the staff prepared a short analysis. He further stated the issue is that the City of Pensacola has provided and rendered a position on this request.

Mr. Madani said that there was no specific question asked, but that they prepared a response based on the fact that the City of Pensacola has already addressed this request, thus answering the request would be legally improper.

Mr. Madani further explained the Code and how the barriers would be addressed.

TAC Comments:

Mr. Schneider stated he would like to clarify that the ADA cannot interchange with the Florida Accessibility Code as equivalent or equal they are totally separate. He said that since the inception in 1992 and creation of the Florida Accessibility Code to track the ADA standards were written and corrected by the Department of Justice for publishing in the 1997 Florida Accessibility Code. Mr. Schneider further stated that barrier removal is strictly an ADA issue for existing properties and the impact of the Florida Accessibility Code and its requirements only become effective upon the time of an application for permit and that is when Florida 553.501 through 513 become activated during the plan review and permitting process.

Ms. Hammonds thanked Mr. Schneider for the extensive information and she said she could not agree more. She said in our statutes for a very long time no declaratory statements were even permitted regarding the Accessibility Code because so much of it tied into the Federal Law and the only way that we could even answer them was if they were specific to the State Code. Ms. Hammonds again thanked Mr. Schneider for the clarification and the history.

Ms. Page asked if an existing facility that is not ADA compliant and it undergoes structural changes or changes hands such as a private house opens a private business and the city says unless there is a request for permit they have no enforcement obligations or opportunities what happens if they know these people are not pulling permits and operating a business they just refer to the DOJ would they not have any action.

Ms. Hammonds stated this petition does not host this situation of the facts that were submitted, it references buildings that are already in existence. She further stated the main issue here from a legal perspective in addition to the fact that this would be somewhat of an ADA question under well settled law declaratory statements are improper if they are seeking approval or disapproval of conduct which has already occurred and properly denied that is Novek vs the Department of Health that is from the 5th District Appellant Court here in Florida 2002 so they can't be used to override what someone else has already done and in this instance the Building Department of the City of Pensacola. Ms. Hammonds advised that the discussion is fine however; she said she would ask the TAC to remember this is a legally unanswerable petition because it is calling for them and then ultimately the Commission to make a statement regarding the past conduct of another.

Mr. Madani said with regard to change of occupancy and not going through permit process would be a Code Enforcement issue.

Mr., Schneider stated that the request for the declaratory statement is invalid as stated but could they not ask for an interpretation because they are asking if the interpretation of the code is incorrect.

Ms. Hammonds stated that would have to be something they would have to take up with the Board of Appeals in Pensacola and she was not sure if that was done. She said she is not sure of the exact question being asked but it is more a factual situation and in order to get an appeal there would need to be particular set of facts and circumstances they were coming up to trigger the City. Ms. Hammonds stated if she is understanding correctly Ms. Wilks is positing that existing buildings regardless if there is being work done have to become ADA compliant with regard to barriers and she does not know if that would trigger a specific set of facts for them to rule on as there would be no permit or tracking items.

Mr. Schneider stated he agrees and he thinks that the applicant is looking for the municipality to go out and enforce the ADA under existing buildings and that is not the position of the building department to enforce the ADA. He said the path she is looking for cannot even be done by local enforcement but through the Department of Justice.

Ms. Hammonds stated he is correct and the petition says that in the last paragraph on the first page that the Pensacola Building Inspections have guided her to the Department of Justice if there is a problem. She said she has spoken with Ms. Wilks and said the same thing and that this is outside of our purview.

Ms. Sharon Meyers with the Center for Independent Living.

Ms. Hammonds stated she was happy to speak with her again.

Ms. Meyers spoke to 553.80 for exceptions. She then read the exceptions and asked why this exception cannot be used as it is not in the ADA.

Ms. Hammonds inquired of Ms. Meyers if she was representing the petitioner or if she is speaking as a member of the public.

Ms. Meyers stated she is speaking as a public member. She continued by saying this is a Code Enforcement issue and they should be complying under this exception.

Ms. Hammonds stated this is the same set of circumstances that were filed in the petition by her that she withdrew based on the fact that a determination has been done.

She said she does not remember removing it for that reason. But she has heard this over the past 12 years that this has been an issue.

Ms. Meyers said that they have policies that they do and don't have to do that are given to them from the Florida Building Commission. She said it is not Federal Law because this is Florida specific.

Ms. Peters asked for any other guest on the line.

Ms. Kathleen Wilks advised she was on the line. She said she was apparently not clear on her request, she wanted the request to be on 553.503(6) she then read this section. She said the Code goes straight to the ADA and why this is not addressed in the Code and what happened to this exception.

Mr. Madani stated the way the Code is addressed is an advisory in the back of the Code and there is a specification on existing buildings.

Ms. Wilks asked does this not violate this exception.

Mr. Schneider stated that section of the statute are scattered in the code and they are in the Florida Accessibility Code and when that entity obtains a permit on the existing property then it is used. He said it is in the Code in three or four places.

Ms. Wilks stated this is only after you obtain a permit to make a change.

Mr. Schneider stated a local jurisdiction does not get involved until a permit is pulled. He then provided examples. He said then they would have to meet certain requirements of the ADA but if there is no permit to change the inside the Code will not have any jurisdiction. He said the DOJ or lawsuit would be the avenue.

Ms. Hammonds thanked them for the comments and asked that it be brought back to the TAC.

Mr. Schiffer asked if a waiver could or would be used for these businesses. He said if there is a change to the occupancy and do not comply they would be in violation of the Accessibility Code.

Ms. Hammonds stated that this petition is legally not the proper vehicle for past conduct of another.

Mr. Schneider entered a motion to dismiss this petition for lack of jurisdiction due to fact that it is an ADA requirement for barrier removal.

Ms. Hammonds stated she could add this to the response.

Mr. Schneider said he would enter a motion to accept staff response adding for lack of jurisdiction due to fact that it is an ADA requirement for barrier removal. Ms. Mignardi seconded the motion.

Mr. Schiffer stated he is still unsure of the exception and why we are not looking at it.

Mr. Schneider stated they need to go to the Board of Appeals for this request of the local jurisdiction. He said they need an appeal of the local jurisdiction.

Ms. Hammonds stated that any TAC members can vote against this motion or amend this motion. She further stated again it is legally improper to answer.

Chairman Gross asked to call the question.

Ms. Peters held a roll call vote as follows:

Mr. Humburg – Yes
Ms. Mignardi – Yes
Ms. Page – No
Mr. Schiffer – No
Mr. Schilling – No
Mr. Schneider – Yes
Mr. Gross – Yes

The motion passed with a vote of 4 in favor and 3 voting against.

Public Comment:

Ms. Wilks asked for the full motion.

Ms. Peters responded reading the motion.

Ms. Wilks asked for the written minutes posting.

Ms. Hammonds advised of the process that the TAC is making this recommendation and will be taken to the full Commission and they are welcome to attend October 13 and then the order will be issued.

Ms. Peters advised this is not a teleconference.

Ms. Meyers asked if there is a time frame for appeal.

Ms. Hammonds stated that since she is not representing Ms. Wilks she could not speak with her on this request. She also stated that Ms. Wilks advised her she would appeal if this did not get her the answer she wanted.

TAC Member Comment: There were no comments.

Adjournment: Meeting adjourned at 1:44 p.m.