



STATE OF FLORIDA

## DEPARTMENT OF COMMUNITY AFFAIRS

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

**JEB BUSH**  
Governor

**COLLEEN CASTILLE**  
Secretary

### **BOARD MEETING OF THE FLORIDA BUILDING COMMISSION**

**PLENARY SESSION  
May 14, 2003**

### **PENDING APPROVAL**

The meeting of the Florida Building Commission was called to order by Chairman Raul Rodriguez at 8:52 a.m. on Wednesday, May 14, 2003, at the Rosen Plaza Hotel, Orlando, Florida.

#### **COMMISSIONERS PRESENT:**

Raul Rodriguez, Chairman  
Dan Shaw  
Peggy Patterson  
Hamid Bahadori  
Michael McCombs  
Craig Parrino  
Herminio Gonzalez  
George Wiggins  
John Calpini  
Christ Sanidas  
Nick D'Andrea  
Stephen Corn  
Dale Greiner  
Paul Kidwell  
Do Y. Kim  
Ed Carson

Steven Bassett  
Dr. Diana Richardson

#### **COMMISSIONERS ABSENT:**

Leonard Lipka  
Karl Thorne  
Richard Browdy  
Suzanne Marshall  
Doug Murdock, Adjunct Member

#### **OTHERS PRESENT:**

Rick Dixon, Executive Director  
Ila Jones, DCA  
Jim Richmond, Legal Advisor  
Tim Dennis, Legal Advisor  
Jeff Blair, FCRC

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## **WELCOME**

Chairman Rodriguez welcomed members of the Commission and reviewed agenda items scheduled for discussion during the meeting. He stated the Commission would discuss Legislative issues of interest to the Commission during the Chair's issues portion of the agenda.

## **REVIEW AND APPROVAL OF AGENDA**

Mr. Blair conducted a brief review of the meeting agenda as presented in each Commissioner's Agenda Packet. He noted there were agenda items scheduled for discussion which may not have been included in the agenda packets. He stated a rule adoption hearing for Rule 9B-1, Manufactured Buildings, as well as a rule adoption hearing for Rule 9B-3.054, Non-binding Opinion.

Commissioner Wiggins moved approval of the agenda. Commissioner Corn seconded the motion.

Commissioner Greiner requested clarification regarding public comment then stated he would prefer to hear public comment prior to decision making issues.

Chairman Rodriguez called for a vote on the motion. Vote to approve the motion was unanimous. Motion carried.

## **REVIEW AND APPROVAL OF April 8, 2003 MEETING MINUTES**

Chairman Rodriguez opened for discussion and approval of the February 2003 meeting minutes.

Commissioner Wiggins moved approval of the April 8, 2003 minutes. Commissioner Greiner seconded the motion.

Commissioner Wiggins noted on page 7 Mr. Berman's name was incorrectly represented. He then noted on page 19 there was reference to a resolution which was not included in the minutes package. Commissioner Wiggins then requested clarification regarding Mr. Dixon's explanation for product approval on page 23.

Mr. Dixon confirmed the explanation reflected in the minutes was correct. He stated there will be certain restrictions placed on local governments regarding their requirements for further documentation and evaluation effective October 1, 2003.

Commissioner D'Andrea asked if there could be a transcript regarding the discussion concerning the resolution. It was agreed there would be a transcript of the discussion added to the approved minutes and provided to each Commissioner.

Chairman Rodriguez called for a vote on the motion. Vote to approve the motion

was unanimous. Motion carried.

### **CONSIDERATION OF ACCESSIBILITY WAIVER APPLICATIONS**

Mr. Mellick presented each request for waiver in the order they appeared in each Commissioner's packet.

#### **#1 Sysco Food Service, Inc., Jacksonville, Florida**

Mr. Mellick stated the request was previously recommended for denial but was deferred to provide the applicant opportunity to make a presentation. He then directed the Commission to Sysco representative Dave Topping.

#### **Dave Topping, Representing Sysco Food Service, Inc., Jacksonville, FL**

Mr. Topping explained Sysco Food Service is a company which provides food and food related products to the hospitality industry. He stated the company is in the process of expanding the facility which includes relocating an existing truck maintenance facility. Mr. Topping continued stating the facility consists of approximately 13,800 square feet which includes a 1,680 square foot mezzanine. He further stated the mezzanine contains two offices, a break room, bathrooms, and storage areas. He stated Sysco was requesting a waiver from vertical accessibility requirements explaining there were many other buildings on the property and the employees who are located in the truck maintenance facility must be able to perform certain physical tasks above and below the trucks including washing the trucks and trailers with a standard height of 48 inches. Mr. Topping stated the job description for the employees located in the facility is similar to the employees in the plant maintenance division which requires certain physical abilities. He continued stating the request for waiver was additionally based on financial hardship imposed by the addition of an elevator.

Commissioner Wiggins requested clarification regarding whether the facility would fall under current law for an industrial area less than five employees.

Mr. Long responded stating the exemption had been considered however the presentation included a break room in the mezzanine which could be used by other employees, thus the exemption would not apply.

Commissioner Shaw asked if the break room were eliminated from the mezzanine if the exemption would then apply.

Mr. Long stated the facility is a new building which falls under the requirements for full accessibility. He continued stating the Council could not find a financial hardship. He added the Council does not attempt to instruct an applicant on how to design their facility. Mr. Long stated the applicant presented a design and the presentation is then considered.

Mr. Topping added the only employees who use the facility are employees from the

shop which would be mechanics or the supervisor who is also a mechanic, and employees falling under the identical job description for which the facility is accommodating.

Commissioner Greiner requested the Council's recommendation be repeated.

Mr. Mellick stated the Council recommended last month to deny the request for waiver based on lack of hardship and lack of technical infeasibility.

Commissioner Patterson asked if there are other break rooms in the facility in addition to the one located in the mezzanine.

Mr. Topping responded stating there are additional break rooms. He explained the entire facility is approximately 300,000 square feet of which 50 to 60,000 square feet are offices, a kitchen, a cafeteria, and a large break room. He added the employees in the maintenance facility would be located only one hundred or one hundred-twenty feet from the other buildings in the facility. Mr. Topping then stated there was a locker room on the first floor of the maintenance facility where breaks could be enjoyed.

Commissioner Corn stated when determining hardship there are many considerations including whether it is the opinion of the Commission a hardship was being placed on the petitioner. He continued stating a hardship could include requiring accessibility in facilities that would never be used. Commissioner Corn offered comment stating it appeared all employees in the facility under discussion were required to perform certain physical tasks and would not need an elevator to the second floor. He then respectfully disagreed with Council in finding no hardship stating in his opinion a hardship exists.

Commissioner Bassett stated the issue is reminiscent of another discussion involving a different petitioner. He stated new construction is reflective for purposes which suit the current time and situation but if the facility were sold or a change in occupancy were implemented the situation may then require accessibility. Commissioner Bassett then moved approval of the Council's recommendation. Commissioner Richardson seconded the motion. Vote to approve the motion resulted in 1 opposed (Corn). Motion carried.

#### #2 Regal Cinemas at Kendall Village Center

Mr. Mellick stated the applicant was requesting variance from vertical accessibility to all levels of a stadium seating theatre. He continued stating the Council recommended approval due to economical and technical infeasibility. Mr. Mellick noted a very unique design was applied which includes a dual ramping system providing disbursement of accessible seating in the theatre.

Commissioner Corn moved approval of Council's recommendation. Commissioner D'Andrea seconded the motion.

Commissioner Richardson concurred with the motion to approve with the condition that adequate space would be added on the upper level to allow a T-Turn for wheelchair users.

Lawrence Corely, Architect for Regal Cinemas

Mr. Corely stated he would provide the maneuvering area through a seat exchange.

Chairman Rodriguez called for a vote on the motion.

#3 Hollywood 18 Regal Cinemas

Mr. Mellick stated the petitioner was requesting a waiver from vertical accessibility to all rows of stadium seating. He noted the same designer as Regal Cinemas at Kendall Village applied the same concepts. He stated the Council recommended approval of the request for waiver based on economic hardship and technical infeasibility.

Commissioner Corn moved approval of Council's recommendation. Commissioner D'Andrea seconded the motion.

Commissioner Richardson noted the same observation as with the upper level of the previous request with regard to the upper level T-Turn.

Mr. Corely offered the same solution as in the previous design.

Chairman Rodriguez called for a vote on the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Mellick recognized Commissioner Richardson expressing appreciation for noting the T-Turn omission.

Commissioner Richardson expressed enthusiasm in the design and praised the architect for the innovative approach in finding a solution for accessibility.

#4 Laterra at the King and Bear Discovery Center

Mr. Mellick stated the petitioner was requesting a waiver from vertical accessibility to the second level. He continued stating the Council recommended approval of the waiver with conditions. He explained the first condition would be to leave the accessible seating area on the first row as permanent accessible seating and the second condition would be to permanently designate the companion seating by signage.

Commissioner D'Andrea moved approval of the Council's recommendation to approve the waiver with conditions. Commissioner Carson seconded the motion. Vote to approve the motion was unanimous. Motion carried.

#5 Holmes, Newman & Associates Interior Design

Mr. Mellick stated the applicant requested deferring the waiver request until the next Commission meeting.

Commissioner Corn moved approval to defer the waiver until July. Commissioner Carson seconded the motion. Vote to approve the motion was unanimous. Motion carried.

#6 Miami-Dade Fire Rescue Department

Mr. Mellick stated the case was a Title II entity which is an existing residential structure being converted to a non-residential fire/rescue house. He stated the Council recommended granting the waiver in accordance with the requirements of Title II, with the condition a fully accessible restroom be provided on the accessible level.

Commissioner Richardson moved approval of the Council's recommendation to approve with conditions. Commissioner D'Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

#7 EconoLodge Inn and Suites

Mr. Mellick stated the applicant was not present during the Council's review and questions remained unanswered. He stated the Council recommended deferring the request with the strong recommendation that the applicant appear for the next review.

Commissioner Corn moved approval of the Council's recommendation to defer. Commissioner D'Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

**CHAIR'S DISCUSSION ISSUES AND RECOMMENDATIONS**

Chairman Rodriguez first offered a brief review of the discussion issues which will be presented. He then announced there had been eight appointments from the Appointments Office of the Governor. He offered congratulations first to the reappointments to the Commission: Leonard Lipka; Michael McCombs; Dick Browdy; Christ Sanidas; Nick D'Andrea. Chairman Rodriguez then recognized Jeff Gross who was appointed to the Commission in former Commissioner Bob Leonard's seat. He continued stating Randall J. Vann had been appointed to Commissioner Shaw's seat. Chairman Rodriguez then announced Christopher Schulte, a roof and sheet metal manufacturer, had been appointed to Commissioner Patterson's seat.

Chairman Rodriguez extended great praise for the Commissioners who are rotating off the Commission. He stated the Florida Building Commission is designed with a variety of special interests represented to provide the utmost professionalism.

Chairman Rodriguez raised the issue of the Florida Conflict Resolution Consortium

which is the facilitating body for the Commission through Florida State University. He stated it has been announced that FSU can no longer fund FCRC due to budget constraints. Chairman Rodriguez expressed his desire for the Commission to pass a resolution in support for FRFC from whatever venue in which they have received funding. He then presented to the Commission a resolution which has been prepared for review and action by the Commission. (See *Resolution Attachment*.)

Commissioner Richardson moved approval of the resolution and through the resolution the continuance of the Florida Conflict Resolution Consortium to provide services to the Commission. Commissioner D'Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Chairman Rodriguez opened for discussion the matter regarding table microphones. He stated there had been some complaint regarding the type of table microphone currently being used during the meetings. He then sought direction from the Commission in terms of making a change to the On/Off microphones for use during the meetings.

Commissioner Bassett moved approval for changing the type of microphone to On/Off to reduce feedback. Commissioner Richardson seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Chairman Rodriguez then addressed the Commission's TAC policy in terms of the review of proposed code amendments. He explained the role of the TACs are to function as technical advisors, with the role of the Commission being policy makers. He continued stating in order for the process to work effectively, reliance on the TAC's technical recommendations is strongly recommended with the Commission's focus remaining primarily on policy issues. Chairman Rodriguez then clarified that technical recommendations should still be reviewed following the recommendations. He noted an example stating valuable Commission time has occasionally been spent debating technical recommendations resulting in reversing TAC recommendations leading then to reversing the Commission action. He encouraged the Commission to make every attempt to save the Commission's time for policy issues.

Chairman Rodriguez stressed the importance of the role the TACs play in the Code review process. He stated with the TACs providing technical recommendations, the Commission's focus can remain on fiscal impact analysis as well as the four findings required by law to make a determination on prior to adopting new proposed state amendments. He listed the four findings as: 1) addressing the health, safety, and welfare of the public; 2) ensure the change strengthens or improves the Code; 3) ensure the change does not discriminate against materials, products, methods, or system; and 4) the change does not degrade the effectiveness of the Code.

Commissioner Greiner requested clarification regarding the four items in terms of TAC recommendations.

Chairman Rodriguez explained the TAC recommendations should explicitly

address the four questions as well as address the fiscal impact for any amendments being recommended. He stated the proposed amendment should be evaluated in terms of how it applies to the four findings and how it weighs concerning fiscal impact. Chairman Rodriguez then reminded the TAC chairs that if any proposed Code amendment is modified at the TAC level, a rationale must be supplied along with fiscal impact analysis for the modification of the original proposed amendment. He reminded the Commission there is not sufficient staff to provide the analysis required for each proposed amendment and the TACs and their volunteer members are relied on for their technical expertise to perform these analyses.

Chairman Rodriguez then stated the Commission had determined previously that commentaries for the Code would be developed by recording the rationale for each amendment to the Code which has been provided by the TAC through a reference to the rationale provided by the proponent; or through a TAC rationale. He recommended the Commission consider as a specific requirement for all rationales reported to the Commission that local governments can only adopt amendments that are justified by local conditions which are not adequately addressed by the Florida Building Code. He urged the Commissioners to consider directing the TACs to consistently include the Florida-specific need in the reported rationale for each amendment to the Code recommended for approval. He stated this procedure will not constrain the decisions of the Commission but will assist the Commission in its role as the policy setting body while considering the TAC recommendations. Chairman Rodriguez then opened discussion regarding whether the Commission should direct the TACs to address the Florida-specific need question or any other comments or questions.

Commissioner Corn offered comment concurring with Chairman Rodriguez's recommendations relating to Florida-specific need. He stated there would be a rare occasion for amendment to the Code and justification and rationale from the TACs would be essential to the Commission taking action on such items.

Mr. Dixon added 553.73(6), Updating the Code, refers to approval of all local and state amendments according to 553.73(7) which is intended to address the Florida-specific need that is not adequately addressed in the model code. He stated there is instruction from the Legislature that as policy the Commission is required to consider the Florida-specific need for any state amendment.

Chairman Rodriguez requested a motion to require TACs to determine whether there is a Florida-specific need when reviewing proposed Code amendments and to include the analysis in their Code amendment recommendations to the Commission.

Commissioner D'Andrea moved approval of the Chairman's recommendation. Commissioner Corn seconded the motion.

Commissioner Bassett requested clarification whether the procedure for review of proposed amendments is for specific amendments and not the model code update.

Mr. Dixon confirmed it is for specific amendments.

Chairman Rodriguez called a vote on the motion. Vote to approve the motion was unanimous. Motion carried.

Chairman Rodriguez conducted a brief review of the TAC meeting schedules for June. He stated the Structural, Mechanical, and Plumbing TACs will meet on Monday, June 16 and Tuesday, June 17. He continued stating the Code Administration, Energy, and Electrical TACs will meet on Wednesday, June 18 with the Fire TAC meeting on Thursday, June 19. Chairman Rodriguez stated staff would be working with the TAC chairs to ensure appropriate seating for voting members of the TAC to assist in the counting and recording of votes. He then added it is intended that facilitators who will work with TAC chairs will be provided for each TAC meeting to serve as timekeepers, limit repetition of the same opinions, and to ensure adherence to the criteria approval checklist; i.e., the four findings must be answered, the rationale provided, and the fiscal impact evaluated and reported.

Mr. Dixon then reviewed the code amendment review process which will be in place for the June TAC meetings. He stated the update process is outlined in 553.73(6) states the Commission shall consider changes to the model codes adopted as a base for the Florida Building Code and any successor code, and that it shall further consider any approved local and state amendments. Mr. Dixon continued stating the approval process for amendments is described in 553.73(7) requires any proposed amendment be posted on the Commission's website for a minimum of 45 days prior to TAC action. He stated the TAC's recommendation to the Commission on disposition of a proposed amendment must be posted on the website for 45 days before the Commission can review them.

Mr. Dixon added 553.73(7) also provides guidance concerning Florida-specific need; the means by which reference standards are adopted or modified by the Code; and, that any reference standard in the model code is automatically a part of the Florida Building Code. He stated the process is well-defined and that an extensive process of consensus building had been involved in achieving agreement between industry and local government regarding how the Florida Building Code would adopted [553.73(3)], updated [553.73(6)], and amended or further modified [553.73(7)].

Commissioner Bassett noted there were vacant seats on several TACs and asked if appointments would be made to fill the vacancies prior to the June TAC meetings.

Chairman Rodriguez stated he would make appointments prior to the June TAC meetings.

Mr. Dixon added the administrative rules of procedure which have been adopted authorize the Commission Chairman to make appointments to the TACs without ratification by the Commission.

### **Review and Discussion of Legislative Issues Impacting the Commission**

Chairman Rodriguez stated the discussion of Legislative issues impacting the Commission would involve an introduction, an overview of technical issues by Mr. Dixon, an overview of legal issues by Mr. Richmond, and a discussion facilitated by Mr. Blair, and finally public comment. Chairman Rodriguez reminded the Commission the Legislature has been called into special session which provides for the Commission an opportunity to review the seven recommendations to the Legislature.

Mr. Dixon reminded the Commission that during the last Commission meeting authority was granted to the Commission Chair to negotiate on behalf of the Commission the Legislative issues impacting the Commission. He stated there were two items in the bills which were presented to the Legislature that may not have received the support of the Commission. He listed the two items as 1) the elimination of the Commission's authority to update the Florida Building Code to all new editions of model codes or any successor model code, as proposed in SB 515 at the request of a special interest; and 2) the product approval criteria changes which were in HB 1375 as proposed by a consortium of industry groups. He stated the criteria changes would have eliminated state optional approval and altered the way local product approval would be conducted.

Mr. Dixon stated the Chairman had been granted negotiating authority and had spoken with Senator Constantine regarding how to negotiate and what should be achieved. He stated staff had been directed to pursue negotiations with industry groups under the terms provided by the Chair. He then referenced and reviewed the document which provides an overview of each issue and the Commission and Legislative action on it. (See *Department of Community Affairs Memorandum Dated May 6, 2003 Status of the Commission's Recommendations to the 2003 Florida Legislature and Subsequent Legislation Attachment.*)

Mr. Blair then conducted a straw poll addressing each issue. The poll results and facilitated discussion were as follows:

### **Hospice Facilities**

Mr. Blair stated the Commission had unanimously approved adding Hospice facility licensing standards to the FBC.

No additional action taken.

### **Staff Review of Proposed Amendments**

Mr. Blair stated the Commission felt there should be additional provisions than what was in the proposed Legislation and negotiations resulted in the same opinion.

Mr. Richmond offered clarification stating the Commission requested additional input from the TAC chair. He stated the Commission has the authority to seek opinion from TAC chairs prior to completion and requires no addition to the statutory language.

Commissioner Parrino asked if the Commission has the authority to implement

what the proposed Legislation would have initiated.

Mr. Richmond responded stating under the language that was initially proposed, staff could have provided the TAC chairs a roster of their recommendations but under the current statutory language all amendments must go through the process in place now.

Commissioner Parrino expressed concern regarding whether staff's opinion will differ with a Commissioner or TAC chair.

Mr. Blair offered further clarification stating during the previous discussion on this issue, the Commission negotiated and had added language providing the Commission thirty days to complete the proposal or appeal to the Chair, leaving the proponent thirty days to complete any insufficiency in the application.

Mr. Dixon added discussions were held with the proponents of this statutory change based on the Commission's discussion regarding staff working with the TAC chairs to make the decision and also regarding the proponent of a proposed code amendment being given ample time to respond upon notification their proposal was insufficient. He stated all parties agreed to these conditions and added that under the language proposed, the Commission would have the flexibility and authority to decide on screening procedures.

Commissioner Wiggins expressed discomfort with the language stating the proposed language gives a legal challenge ability leaving the final determination to a non-appointed staff member.

Mr. Richmond expressed concern with appeals being submitted individually through the Chair. He stated an incomplete proposal does not establish a challengeable issue.

Commissioner Wiggins queried whether any of the section under discussion is really needed in the law.

Mr. Richmond responded stating the purpose was to streamline the process for accepting proposals for amendments. He stated currently each and every proposal input into the system is brought before the TACs and the Commission with neither staff nor TAC chairs having the authority to eliminate any of them from review.

Mr. Dixon suggested the Commission be given the direction to adopt rules for screening of amendments for adequacy and completion prior to being submitted to the TACs for total review.

Commissioner Sanidas expressed concern regarding the Commission's responsibility to review the proposals stating the Commission is the regulating body to

perform that review.

Mr. Richmond responded stating the Commission does not have the time to provide thirty days for insufficiency because of the forty-five days in advance of the TAC consideration. He stated the form provided for completion is simple by design and applicants should be able to provide the information requested. He added only the forms which are designated incomplete would be rejected.

Commissioner Corn requested clarification regarding the completion of the form and if the applicant would be notified and provided time to make a correction for moving the proposal forward.

Mr. Richmond replied stating the application would be eliminated.

Chairman Rodriguez added he has had proposals and applications eliminated from review by the state for omitting a page number then stated it is not uncommon practice to require an accurate, complete form.

Mr. Dixon offered clarification stating the proposed language was sufficient for more than staff review and rejection. He stated there would be a means for the TAC chair or the Commission Chair to participate in the decision. He continued stating the proponent had no objections to the Commission having the authority to do so.

Commissioner Corn asked for a more direct reply concerning whether or not an applicant could be notified of an insufficient form and if the form could then be corrected.

Mr. Richmond replied yes, if the established deadline is approximately one hundred days in advance of TAC review. He added under the current time periods in place, no.

Mr. Madani offered clarification regarding the Code changes that have been submitted for the June TAC meetings stating prior to the start of the forty-five day deadline, all applicants have been contacted by phone and/or email to advise them their amendment is not complete and providing them opportunity to make the correction immediately.

Commissioner Bahadori asked if the website could facilitate rejecting a form if all the required fields are not completed.

Mr. Dixon responded that establishing a block on the website would be possible but would be a budgetary and resources matter.

Commissioner Wiggins stated that confusion is created by trying to include in a state law micromanagement of the process. He suggested the law should simply state

that the completed request should be submitted to the Commission.

#### PUBLIC COMMENT

##### Ralph Hughes

Mr. Hughes asked Mr. Richmond if the Commission currently has the authority to direct staff to review proposed Code changes for sufficiency and completing the form, including fiscal impact, and to forward those proposed changes to the Commission.

Mr. Richmond replied staff does not have such authority. He explained the proposed amendments are submitted, considered by the TAC who makes the recommendation to the Commission.

##### Doug Buck, Florida Home Builder's Association

Mr. Buck offered comment as the proponent of the issue stating the intent is to have applications complete at the time they reach the TAC meeting for review to allow full discussion. He stated a process was included in the law instructing the Commission in addressing certain issues and continued it is unfair for the proposed changes forms to be incomplete at the TAC level.

##### Carrie Hebrank,

Ms. Hebrank stated the Commission may be setting itself up for a legal challenge by reviewing incomplete amendments. She continued stating it is beneficial to the Commission to reject incomplete submissions.

Mr. Blair then conducted a straw poll regarding whether staff would have the ability to review, only for sufficiency, submitted amendments prior to them going to the TAC for review. He then called for a straw poll vote on the issue. Vote resulted in 12 Commissioners comfortable; 2 minor reservations; 2 major reservations.

#### **Binding Interpretations**

Mr. Blair stated previously the Commission indicated there was no comfort with current Legislation regarding binding interpretations. He continued stating there had been negotiations with proponents agreeing that issues would be submitted to county boards prior to appearing before the Commission.

Mr. Dixon interjected clarification stating the discussion was regarding appeals of decisions by building officials. He stated the issue is composed of two parts, the appeal of the building official's decision and the binding interpretation without disagreement between building official and the contractor. Mr. Dixon reminded the Commission it had

been recommended that the Commission have authority for individuals to appear directly before the Commission to issue binding interpretations for statewide uniformity.

Commissioner Kim asked if the proponent can appeal the surrogate's interpretation to the Commission.

Mr. Dixon responded the Commission would have the final decision.

Commissioner Parrino requested clarification regarding whether the Commission recommended to the Legislature in the 2003 Report to the Legislature that the Commission be granted authority to develop binding interpretations by rule.

Mr. Dixon explained the Commission did request authority to develop binding interpretations. He offered clarification stating the authority is granted by law and the procedures would be established by rule. He continued stating the Legislature would not authorize the Commission to have binding interpretations because it is an exception to Chapter 120, Florida Statutes. He added a compromise determined acceptable to Florida Bar Association opponents of an exception to Chapter 120 was to provide authority to a surrogate to develop binding interpretations to which Chapter 120 would not apply.

Commissioner Parrino stated the binding interpretation process should be decided by the Commission and recommended to the Legislature.

Mr. Richmond interjected the authority to develop a process will not be made available by rule. He stated the administrative law section will not simply "trust" the Commission with that authority. Mr. Richmond continued stating in the Report to the Legislature, the Commission asked for the authority to issue binding interpretations. He stated the current language allows the Commission that authority in a manner which would be quicker than a declaratory statement.

Commissioner Greiner requested clarification regarding whether it is intended that the surrogate would be BOAF.

Mr. Richmond replied BOAF is identified in the statute by name.

Mr. Dixon stressed the importance to Legislators that power and authority of governing bodies such as the Commission are closely monitored through the checks and balances of Chapter 120. He stated the Commission must adhere to Chapter 120 and reminded the Commission that there are powerful organizations who will ensure regulatory guidelines are followed.

Commissioner Corn stated the binding interpretation is the most important item on the list of recommendations to the Legislature. He explained it removes the decision from all local politics and places the decisions under the venue of an independent board.

Commissioner Corn expressed support for the language stating it allows quick decisions, efficiency, low cost, and it is appealable to the Commission if there is a challenge or disagreement.

Commissioner Wiggins requested clarification regarding the local appeals process in terms of whether local appeals process is incorporated in the language.

Mr. Dixon responded there have been discussions with the proponents regarding the local appeals process and he suggested the Commission approve the binding interpretation as proposed with a caveat that the appeal of the local building official's decision go through the local appeals board.

Commissioner Shaw expressed concern that there is no time specified for the local appeals to hear a complaint. He stated some municipalities have a three-month wait to hear appeals. He suggested that included in the Legislation a time period for local appeals to be submitted.

Chairman Rodriguez asked Commissioner Gonzalez how often the Miami-Dade Board of Appeals meets.

Commissioner Gonzalez replied the board meets once monthly with occasional emergency meetings.

Ralph Hughes

Mr. Hughes offered support for binding interpretations and stated the bill states the establishment of panels in various areas of our state to issue binding interpretations. He suggested the Commission should make binding interpretations a priority for next year and structure the binding interpretation process seeking a comfort level for all involved.

Bob Andrews, Broward County Board of Rules and Appeals

Mr. Andrews asked if interpretations would go to the local boards before going before the Commission.

Mr. Dixon responded that under current agreements between parties to the legislative negotiations, clarifying language would be added stating the appeal of a local official's determination would appear before the local board first.

Mr. Andrews added language should be specific regarding who the panels would include. He expressed concern that unqualified individuals may be sitting on the boards and making decisions on appeals they are not qualified to make.

Doug Buck, Florida Home Builder's Association, Proponent

Mr. Buck stated the binding interpretation issue offers the opportunity to have a timely interpretation and is modeled after existing processes. He continued stating BOAF has a procedure placing appropriate members for each panel to make the interpretations.

Commissioner Greiner asked what was the intention with the panels throughout the state.

Mr. Buck responded stating the issue of panels is a BOAF concept reflecting how BOAF brings the right members to the table for decision on binding interpretations.

C.W. Matt, Palm Beach County Building Department

Mr. Matt offered support for binding interpretations then expressed concern with using the BOAF process for binding interpretations in Palm Beach County.

Commissioner Sanidas, as a member of BOAF, stated it would be helpful to know how BOAF makes their selections for panel members.

Mr. Dixon stated BOAF had assured him that when there is a question from a certain area of the state, they get input from people from the regulatory community who have experience in the subject of the appeal.

Chairman Rodriguez suggested getting the procedures for appointing panel members in writing from BOAF.

Mr. Richmond added the proposed Legislation requires the Commission coordinating with BOAF, providing the Commission the opportunity to get the necessary details in writing in the form of a contract as opposed to putting them into law.

Mr. Blair then called for a straw poll vote on the binding interpretation issue. Vote resulted in 11 comfortable; 0 minor reservations; 5 major reservations.

**Truss Placement; Alternate Plans Review Insurance Requirements;  
Accounting of Building Permit Fee Use**

Mr. Blair stated it was agreed previously these issues were not Commission issues.

No additional action taken.

**Expedited Adoption of Rehab Code**

Mr. Blair stated there was unanimous comfort with current language for the expedited adoption of the Rehab Code. He opened for further discussion.

Ralph Hughes

Mr. Hughes offered comment stating the Commission has the authority right now to adopt the Rehab Code without additional Legislation.

Jack Glenn

Mr. Glenn offered clarification regarding the expedited adoption of the Rehab Code. He stated the issue is not for adoption of the Rehab Code, the Commission has the authority to adopt the Rehab Code. He added the Commission cannot adopt the Rehab Code prior to July 2004. He continued stating the current language would waive the requirement on the hearings and would expedite the review so it could be in place as early as July 2003. Mr. Glenn stated Chapter 34's provision regarding remodeling of existing homes is costing thousands of unnecessary dollars being spent. He furthered by stating the Rehab Code resolves that issue by providing means to go back to reasonable costs for rehabilitation of structures which should be implemented as soon as possible without waiting until July of 2004.

Mr. Dixon reminded the Commission the authority to expedite the adoption of the Rehab Code has already been requested from the Legislature.

Lorraine Ross, InTech Consulting

Ms. Ross stated there has been reference to what has actually been requested in the Commission's 2003 Report to the Legislature and for clarification purposes provided copies of the Executive Summary of the report to each Commissioner. (See *The Florida Building Commission Report to the 2003 Legislature Attachment*.)

Mr. Blair then called for the Commission to confirm in the form of a straw poll vote, their comfort level as previously demonstrated. Vote resulted in 15 comfortable (unanimous).

**Repeal of Local Amendments**

Mr. Blair stated the Commission was previously with the reiteration of existing law. He opened discussion to public comment.

Commissioner Greiner requested clarification regarding why the repeal of local amendments needed to be reiterated.

Doug Buck, Florida Home Builder's Association

Mr. Buck offered clarification stating there are still local governments operating under local amendments which existed prior to the Code. He stated this Legislation will simply add the language to the statutes.

Mr. Blair called for a straw poll vote for the Commission's position. Vote resulted in 14 comfortable; 1 major reservation.

**Elimination of Authority to Adopt Successor Model Codes and All of New Editions of Model Codes**

Mr. Blair stated the Commission previously expressed comfort with the negotiations on the Legislation.

Commissioner Greiner requested the specific language in the bill be read before the Commission.

Commissioner Wiggins asked what the Commission would be voting on concerning this issue.

Mr. Blair responded the Commission would be voting on what was approved last month when there was lengthy discussion and it has been included in the workplan.

*Doug Buck, Florida Home Builder's Association*

Mr. Buck stated the issue was not a priority to the industry during this session. He expressed support for the International Code to be used as a base with Florida-specific needs included in the form of amendments.

Mr. Dixon directed the Commission to page 4 of *Negotiated Language on Product Approval and Proposed Compromise Language for FHBA and Ralph Hughes on FBC Updates*. (See *Comparison of Current Law to Industry Proposed Language, Compromise Language Staff Worked Out With Industry and Final Bill Language Attachment*.)

Commissioner Greiner offered comment stated the language was the same as the language that was proposed previously stating the Commission would take language from any model code and include it in the Florida Building Code.

Commissioner Corn requested clarification regarding the language on which the Commission would be voting.

Mr. Blair explained the vote is for language to place the Commission's authority back where it was prior to this Legislation.

Commissioner Parrino expressed concern with the proposed language stating it

conflicts with the current Code update cycle. He stated the language requires the Commission to use the International Code to update the Florida Building Code.

Mr. Dixon responded stating the current language of the law remains which states that when updating the Florida Building Code the Commission shall consider changes to model codes made by the adopting entity.

Commissioner Bassett offered comment however comments were not audible for recording.

Chairman Rodriguez offered clarification stating the reason for discussions regarding Legislative issues is to offer the Commission the benefit of getting the seven recommendations into a bill which was originally not the Commission's bill. He added the language does not force the Commission to or prevent the Commission from the adoption of the International Code.

Ralph Hughes

Mr. Hughes stated Mr. Dixon had said the language read the Florida Code would be relevant to the national building codes.

Mr. Dixon responded stating the language reads "the Florida Building Code shall be maintained to be up to date with relevant national model codes and consensus standards".

Mr. Hughes continued stating it was his understanding from Senator Constantine that language was deleted from the bill. He addressed Chairman Rodriguez stating Senator Constantine indicated he had spoken with the Chairman about deleting the language and it was agreed. Mr. Hughes further stated the Senator realized relevancy could be interpreted and even changed to be equivalent to national model codes, which is the International Model Code.

Mr. Dixon offered clarification stating there is more than one national model code; NFPA and ICC have competing codes. He stated it is the intent of the Legislature that the Florida Building Code be maintained and be up to date with the national consensus standards (SB 518, dated 4/21/03).

Commissioner Greiner recommended removing the word "relevant" from the language.

Carrie Hebrank

Ms. Hebrank stated the industry had agreed to remove the entire section from the bill provided the other change remains the same under existing law.

Lorraine Ross

Ms. Ross offered support for Ms. Hebrank's comments and added the language states "shall consider". She stated it does not state "shall adopt" the International Building Code.

Mr. Blair called for a straw poll vote on the issue. Vote resulted in 14 comfortable with the law as it is.

**Creation of Public/Private Corporation to Support the Commission**

Mr. Blair stated previously the Commission was comfortable and had directed the Chair to draft a letter to sent to the governor. He continued stating the proposal in the final bill provided for a corporation established by statute with options for staff to maintain their benefits with implementation to law beginning July 2004.

Mr. Richmond added the Commission was specifically requested to submit any recommendations for alterations in its 2004 Report to the Legislature.

Ralph Hughes

Mr. Hughes offered comment stating the creation of the Florida Construction Council is for the purpose of privatizing Commission staff support and funding would be a combination of state appropriations and the private sector, which is in direct conflict with the Commission's position on the privatization of staff as enunciated at the public hearing at the Tradewinds in St. Petersburg. He continued stating the Council would be totally privately funded and there should be objection to the creation of the Florida Construction Council for the purpose of privatizing Commission staff support.

Doug Buck, Florida Home Builder's Association

Mr. Buck stated the Commission is reacting to a governor's budget which was released in January stating the Commission support staff will be outsourced. He continued stating the outsourcing reduced the Commission's funding by \$300-\$400,000. Mr. Buck added the industry needs the Florida Building Commission well-staffed and well-funded and furthered the Council would be modeled after the Engineering Management Corporation with an additional feature of offering staff the opportunity to remain in the state retirement system. He then addressed the issue of public or private funding stating the Commission is almost entirely funded by building permit surcharge monies. He stated the industry is committed to the Commission receiving those monies for full operation to remain well-funded and well-staffed.

Commissioner Parrino expressed concern regarding the Florida Construction Council Corporation stating the Board of Professional Engineers fell under the Department of Business and Professional Regulation. He continued stating there are

major differences in operating under FDBPR and the Commission operating under DCA. Commissioner Parrino asked if there was a study to evaluate the cost savings or increase of privatizing.

Chairman Rodriguez responded stating as a Commission there has not been ample time for financial analysis discussion. He stated the Commission's position was established at the Tradewinds in response to the governor's budget report. He queried whether the Commission has the time to discuss how to privatize the staff.

Mr. Richmond responded stating the governor's proposal provided for the eventuality of adding positions ensuring adequate staffing for the Commission. He continued stating under the most current provision there would be time for analytical discussion through July 2004.

Mr. Blair then called for a straw poll vote resulting in 8 comfortable; 2 minor reservations; 6 major reservations.

### **Revisions to Product Approval System**

Mr. Blair directed the Commission to Mr. Dixon for a summary of results of negotiation.

Mr. Dixon explained the consensus language which was achieved by all parties for 421.03 would add the International Code Council evaluation services to the list of evaluation entities approved by law. He continued stating Section 16 states "The administrative rule for the Florida Building Commission for the type of products for local or statewide use, as authorized by Section 553.842 F.S., shall take effect no earlier than January 1, 2004. The Commission shall conduct a review of all costs of operation of this rule and determine the benefits to the health, safety, and welfare of such state approvals. It should report results in its cost benefit analysis together with any recommendations to the 2004 Legislature. Funds may not be expended for optional state approval without determination of a positive cost and benefit for such regulation to the public."

Mr. Dixon then summarized the language adds ICC, IES as an authorized evaluation entity; it delays the implementation of the product approval rule to no earlier than January 1, 2004; requires a cost benefit analysis; and reporting of that analysis together with any recommendations to the 2004 Legislature.

Commissioner Greiner asked if the 01-01-04 date is contingent upon the cost analysis being included.

Mr. Dixon replied the only restriction is stated as "funds may not be expended for optional state approval without determination of a positive cost benefit", meaning local approval would go into effect regardless of whether it is a cost benefit.

Commissioner Bahadori asked who would conduct the cost benefit analysis.

Mr. Richmond responded the Commission is required to conduct the cost benefit under the proposal.

Mr. Dixon added the issue is a policy issue and there are many varied interests so he would recommend the Commission hold public hearings throughout the state for input.

Ralph Hughes

Mr. Hughes offered comment stating the decisions made in developing the requirements of the Florida Building Code should be made by those capable of understanding and dealing with the issues which would be the Florida Building Commission, not the Florida Legislature. He stated the revisions to the product approval system would eliminate the Commission's authority to develop guidelines for local approval for the seven product categories. He stated there is no justification for asking the Legislature to deal with a longstanding decision of the Commission's.

Mr. Dixon interjected the proposal did not alter the Commission's authority to establish uniform rules for local approval. He added the decisions which resulted from staff negotiations did not alter the Commission's authority but merely called for a study and added the ICC.

Carrie Hebranki

Ms. Hebrank addressed the original product approval process stating she was the proponent of that section. She stated the current law was maintained by what was originally submitted to the Legislature. She continued stating all the steps local building officials would use were retained; i.e., a certification mark label, a listing, a test report, a product evaluation report, or an architect or engineer's report based on comparative rational analysis. Ms. Hebrank added the system was refined by adding language to require the test report to indicate pass or fail criteria or a performance rating, tying the test report to the product which was tested, as well as adding language to the architect and engineer's section that they must be qualified in the work represented by the product. She then stated current rule language was included relevant to products that show approval with a batch ticket or a bill of lading, and the structural component products approved by the U.S. Department of Commerce. She noted ICCES was included as an approval entity and most importantly strengthened disciplinary actions by requiring a Notice to Product Manufacturer's and the approval entities when a local building official denies the use of a product.

Ms. Hebrank expressed serious concerns with the current rule which takes effect in October 2003 and strongly recommended changes need to be made.

Lorraine Ross

Ms. Ross offered comment stressing the importance of adding ICCES to the product approval entity list legislatively. She stated currently SBCCI-ES no longer exists, ICBO-ES no longer exists, BOCA-ES no longer exists because they have all merged into a new entity identified as ICC-ES.

Ms. Ross then addressed the cost benefit analysis stating the rule is still open with comments continuing to be received. She stated Mr. Richmond recommended the rule would have to be closed and then re-opened. She then expressed concern regarding accreditation bodies being approved for testing laboratories such as NAVLAB, a federally operated organization that the State of Florida does not recognize. Ms. Ross stressed the importance of time constraints on these issues.

Mr. Hughes added the statewide product approval system is ready for implementation October 1, 2003 and even August 1, 2003. He stated he has no issue with ICC-ES being an approved as an evaluation entity. He then offered comment regarding "qualified architects or engineers" stating it had been discussed previously and agreed that all architects and engineers are qualified.

Ms. Ross responded stating \$300,000 had been spent not including the purchase of three servers, issuance of an RFP for maintenance for the system, and the costs associated with staff time on the system. She concluded that the total cost has not yet been received.

Ms. Jones offered clarification stating the total for the original contract for the development of the system was \$300,000. She stated by the end of the year the actual total including all of the required enhancements according to the new rule. She continued stating they are in the process of purchasing three new servers covering product approval as well as the entire Building Code Information System. Ms. Jones added staff time would need to be added and the overhead as part of DCA.

Chairman Rodriguez asked if Ms. Ross was correct in stating the final cost has not yet been determined.

Ms. Jones replied the total is not yet determined. She stated the system for product approval will be completed by June 30, 2003. She added the final cost can be determined after June 30, 2003 for this fiscal year.

Commissioner Bassett again offered comment which was not audible.

Commissioner Wiggins asked what the major objections or advantages are in terms of product approval and the proposed Legislation.

Mr. Hughes responded stating the advantage would be to postpone no longer than has already been delayed. He then stated that cost benefit is to the general public with

only \$300 to million dollar companies.

Ms. Hebrank stated there are several problems with the current rule. She stated it is \$300 per subcategory of product and represents manufacturers which produce thousands of products. She then stated there are costs to manufacturers who do not have quality assurance in place because it was never required such as shutter manufacturers.

Ms. Ross stated the advantage for delaying until 2004 is to ensure that the rule is finally closed.

Commissioner Parrino offered comment to clarify the ICC-ES issue. He stated it is very important to have ICC-ES recognized as an evaluation entity legislatively then asked if the language will allow other entities to be recognized through the rule.

Mr. Richmond replied the language will allow other evaluation entities to be recognized through the rule.

Commissioner Sanidas expressed concern regarding the wording "not until after" rather than "by" the date. He stated there had been a similar issue five years ago which is a private issue the Commission is being pulled into. Commissioner Sanidas suggested if a date is set, then the parties involved will meet that date.

Mr. Dixon added the is Commission acting as a governmental entity imposing deadlines on private companies who do not have programs in place to meet the requirements by those deadlines is unfair regulation. He stated there are industries who do not have a certification program or quality assurance entities available to them.

Commissioner Parrino offered comment regarding quality assurance stating by statute, quality assurance is only required for the development of the guidelines for the quality assurance programs operations. He added if any manufacturer has a hardship in terms of quality assurance the Commission has rulemaking authority to hear and consider those hardships to offer assistance.

Mr. Blair then called for a straw poll vote on the comfort level regarding the compromise recently negotiated with the system which is currently in rule with two additional items; the ICC-ES added in the statute as an evaluation entity, and the issue of optional statewide product approval being delayed until at least January 1, 2004 pending cost benefit analysis. Vote resulted in 8 comfortable; 3 minor reservations; 5 major reservations.

Mr. Blair re-addressed the Commission support staff privatization issue requesting brief statements from those Commissioners with major and minor reservations.

Commissioner D'Andrea expressed reservation with the structure of staff

involvement and the role the Commission would assume in terms of the organizational structure.

Commissioner McCombs concurred with Commissioner D'Andrea stating it is the desire of the Commission to retain the current staff and has reservations concerning any new staff and how they would fit into the Commission structure.

Commissioner Sanidas stated staffing was the principle reservation. He expressed concern that through privatization control of staff would be through the contractor, not through the Commission. He stated the contractor may send different staff members at different times and it is the desire of the Commission to have those staff members who are familiar with the Commission's activities to continue providing support services.

Commissioner Wiggins expressed concern stating the Commission is a more diverse regulatory body than the engineering group representing twenty-two to twenty-three different stakeholders, regulating a state administrative law, the Florida Building Code. He continued stating a private corporation should not be regulating a statutory or administrative law because of the possibility of less objectivity.

Commissioner Parrino addressed two issues stating he supports all privatization provided it saves money. He stated he is not aware of any savings by privatizing the Commission support staff. He expressed great comfort with the current staff members and would support retaining them.

### **Revisions of the Building Code Training Program**

Mr. Blair stated staff was successful in negotiations to include this recommendation in the bill. He then opened for discussion or clarifying questions.

Mr. Blair called for a straw poll vote for the Commission's level of comfort with the recommendation. Vote resulted in 15 comfortable; 1 minor reservation.

Commissioner Bahadori requested clarification regarding specific language which was approved in 2002.

Mr. Richmond offered clarification stating the language deferred to the boards to approve courses and monitor the delivery of those courses.

Commissioner Sanidas expressed reservation in terms of confusion regarding what will occur in June 2003 when each building official issuing permits would be required to certify whether the contractor seeking the permit has taken the core courses.

### **Facility Permits**

Mr. Blair stated the facility permits issue was not pursued when it was determined

there would no bill advanced. He continued stating legal had advised there are non-statutory options to accomplish the goal intended.

Mr. Richmond offered clarification stating the request in the report was for the Commission to provide the means to allow building departments to issue maintenance permits, referred to as facility permits, to factory or industrial occupancies. He stated statutory clarification would be the simplest form of implementation with no major objections anticipated.

Mr. Blair stated the facility permits issue was addressed in the 2003 Report to the Legislature then called for a straw poll vote for the Commission's position. Vote resulted in 12 comfortable (unanimous).

### **ICC ES Recognition as Evaluation Entity**

Mr. Blair stated there has been some discussion during the product approval issue then opened for further discussion or clarifying questions.

#### Lorraine Ross

Ms. Ross added to her previous comment there was no accrediting body for evaluation entities which is why the TAC made the recommendation to the Legislature that the groups must be identified legislatively.

Mr. Blair then called for a vote on the Commission's position. Vote resulted in 15 comfortable (unanimous).

### **Alternative Plans Review System Evaluation Report Delay**

Mr. Blair stated the Commission had previously indicated comfort with the language. He further stated staff was successful in negotiations for inclusion in the bill. He then called for a straw poll vote on the Commission's position. Vote resulted in 13 comfortable; 1 minor reservation; 1 major reservation.

Mr. Blair then concluded the discussion regarding Legislative issues then called for a motion to request that they be presented to the Legislature.

Chairman Rodriguez stressed to the Commission the importance of the support of Mr. Hughes. He then directed the Commission to Mr. Hughes for comment.

#### Ralph Hughes

Mr. Hughes responded stating he would not ask the Legislature to consider anything pertaining to Commission business unless it would be items beyond the Commission's authority to do.

Doug Buck

Mr. Buck respectfully stated it is imperative to have the support of Mr. Hughes. He continued stating during session in 2002, every industry group supported the bill. He furthered by stating Mr. Hughes was the individual who opposed the bill and made telephone calls to key Legislators to stop it.

Lorraine Ross

Ms. Ross stressed the need for the items included in the bill in order to have proper implementation of the Florida Building Code bill. She identified 56 professional organizations and professional companies who support the provisions of SB 518. [See *Organizations Supporting the Provisions of SB 518 (and its companion bill HB 1375) Attachment.*] She urged the Commission to remember who they represent and asked for support in the form of a motion to support SB 518 in the special session.

Carrie Hebrank

Ms. Hebrank stated all industry representatives involved worked tirelessly on SB 518. She continued stating the bill had unanimous support and if passed, it allows the industry to get more comfortable with product approval and all the issues identified.

Ted Berman, Miami-Dade County

Mr. Berman stated Miami-Dade County was referenced earlier as discussing the bill, he declared the County Commission never had any position on any issue of the Building Code. He added Miami-Dade County is not in support of the bill and stated the product approval system should be implemented in Florida as scheduled.

Ralph Hughes

Mr. Hughes addressed the issue of the 56 industry representatives supporting the bill stating the 56 entities do not fully understand the contents of the bill.

Chairman Rodriguez called for a motion on the presentation of the bill to the Legislature during special session.

Commissioner Kim stated there are many issues which haven't had the opportunity for review at the Commission level. He continued stating the industry, Commission, and the state needs to improve the process and make it more efficient. He then moved approval to request the governor to consider the bill during special session. Commissioner D'Andrea seconded the motion.

Commissioner Parrino stated he would not support the motion then offered

comment stating the Commission sent seven issues to the Legislature and other interests added their issues onto the bill which forced the Commission to enter negotiation. He continued stating the seven issues did not get passed because of the special interests and in the future the Legislature should have the Commission look at any items which concern the Florida Building Code or the Commission.

Chairman Rodriguez offered clarification stating there was no bill representing the seven recommendations.

Commissioner Corn offered comment stating there are a number of items that have been discussed and to have full consensus on all the items may not occur. He stated the Commission recommendation package as a whole would benefit the industry and offered his support for the motion.

Commissioner Wiggins stated there are issues that were not discussed which are included in the bill. He offered support for the majority of the bill and the items that were discussed, however he stated there two items for which the cities and counties expressed concern as well as an issue for which BOAF has expressed concern. He suggested the motion amend the motion to include only the items which received strong Commission support.

Chairman Rodriguez offered clarification stating issues seven and eight would then be eliminated from the recommendations. He stated those issues are the issue of privatization and the revisions to the product approval system.

Mr. Blair offered procedural clarification stating the amendment requires a second. Bahadori seconded the amendment to the motion.

Mr. Richmond interjected issues seven and eight could be still be considered even if not included in the recommendations.

Commissioner Sanidas recommended including those issues which were unanimously approved. He then expressed disapproval of the Commission advising the Legislature to consider any issues stating he would not support the motion.

Commissioner Carson stated issue three would not meet the 75% support criteria.

Commissioner Parrino stated by supporting the amendment to the motion it would then allow everything to be presented to the Legislature again and open for unpredictable results.

Chairman Rodriguez explained the Commission had asked the Legislature for seven issues to be considered with no bill resulting to present it. He stated there is currently no bill and asked Commissioner Parrino if he would forego all seven issues for fear the special interest issues will be brought to the table again.

Commissioner Parrino stated the special interest issues will come to the table again.

Commissioner Bassett offered comment which was not clear for recording.

Chairman Rodriguez called for a vote on the amendment to the motion. Vote resulted in 3 in favor; 13 opposed. Amendment failed.

Chairman Rodriguez called for a vote on the original motion request the governor to present the issues to the special session. Vote resulted in 10 in favor; 5 opposed. Motion failed.

Ms. Ross requested clarification regarding the percentage of votes required to pass the motion.

Mr. Blair responded it is a substantive matter requiring 75% support.

### **RULE ADOPTION HEARING FOR RULE CHAPTER 9B-1, MANUFACTURED BUILDINGS**

Chairman Rodriguez directed the Commission to Commissioner Carson.

Commissioner Carson stated there are no changes to the rule.

Chairman Rodriguez then called for public comment. No one approached to speak on the issue.

Mr. Richmond stated the hearing is primarily to refine items that are included in the Code. He then closed the hearing.

Commissioner Parrino moved approval to proceed with rule adoption and file the rule with the Department of State. Commissioner McCombs seconded the motion. Vote to approve the motion was unanimous. Motion carried.

### **RULE ADOPTION HEARING FOR RULE CHAPTER 9B-3.054, NON-BINDING OPINIONS**

Mr. Richmond stated the hearing pertains to the non-binding interpretations of the Florida Building Code which was noticed in the Florida Administrative Weekly. He opened for public comment. He then stated there had been received a written comment requesting inclusion of the website address, [www.floridabuilding.org](http://www.floridabuilding.org), in the first sentence of subparagraph 2f. Mr. Richmond stated there was an additional comment at the workshop which was not incorporated in the rule as published; that subparagraph 2d required the response to include a statement that it is the response of the association and not that of the Commission. He then closed the hearing.

Commissioner Bassett moved approval of publication of a Notice of Proposed Change for the rule with noted changes as well as the JAPSE change. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

**LEGAL REPORTS:**

**Petitions for Declaratory Statement:**

**Second Hearings-**

**DCA03-DEC-040 by Steven Felices, Sunrise Pools & Spas**

Mr. Richmond stated the request pertains to a screened enclosure on three sides of a pool that has a typical mesh barrier between the home and the pool and whether the enclosure can be less than 20" from the water's edge. He stated the Commission's recommendation was yes.

Commissioner Greiner moved approval of the declaratory statement. Commissioner Carson seconded the motion. Vote to approve the motion was unanimous. Motion carried.

**DCA03-DEC-047 by Anne Mason, Mason Law**

Mr. Richmond stated the request pertains to the predatory mites means of termite protection. He reminded the Commission it was previously recommended for dismissal.

No further action required.

**DCA03-DEC-063 by Wendell Haney, Commonwealth Engineering**

Mr. Richmond stated the issue raised concerns the correct load combination method to determine ultimate load requirement of products whose design strength is determined by laboratory tests of full-scale specimens. He stated the Commission's recommendation was interpreted as follows: combining factored loads using strength design is not the correct load combination method to determine the ultimate load requirement of products whose design strength is determined by laboratory tests of full-scaled specimens. He continued stating load combinations are only applicable for structures or products designed using rational engineering analysis. He cited Section 1707.4.2 stating the ultimate load requirement for the door in question is 1.5 times the design wind pressure.

Commissioner D'Andrea moved approval of the declaratory statement.

Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA03-DEC-073 by Joseph Hetzel, DASMA

Mr. Richmond stated the petition requested clarification Code requirements for garage door minimum steel thickness applicable in the high velocity hurricane zone. He stated the Commission's recommendation found the provisions of 1626.4(3) of the Code do not apply to a 9' X 7' garage door with 26-gauge non-insulated door sections successfully tested to TAS 201, 202, and 203 demonstrating compliance through those TAS provisions meet the minimum requirements of the Code and complies with 1626.4(3) of the Code is not required. He added Section 2605.3.2.7.1 stated where doors are permitted without a fire resistance rating foam plastic having a flame spread rating of 75 or less may be used as core material when the door facing is metal, having minimum thickness of .032" aluminum or .0160" sheet steel applies to all doors including garage doors. Mr. Richmond continued stating Section 2603.5.1.9 is not applicable to the high velocity hurricane zone having been superceded by 2605.3.2.7.1.

Commissioner Bassett moved approval of the declaratory statement. Commissioner D'Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA03-DEC-083 by Joseph Hetzel, DASMA

Mr. Richmond stated the request pertains to in-house testing in terms of a clarification. He stated the Commission's recommendation was the certificate of independence as required by 9B-72.110 requires that a testing laboratory execute a certificate of independence when such laboratory is also the entity issuing the test report demonstrating compliance. Mr. Richmond added the rule does not necessarily apply to entities witnessing the test. He stated Sections 9B-72.040 and 070 list the requirements for documentation of evaluation reports and test reports including the requirement to provide technical documentation supporting the compliance statement. He continued stating an evaluation from an approved evaluation entity or Florida registered architect or professional engineer may determine compliance with Code based on data obtained from testing at a manufacturer's in-house facility using a test report that doesn't certify Code compliance.

Commissioner D'Andrea moved approval of the declaratory statement. Commissioner Parrino seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Richmond stated DCA03-DEC-079 was recommended for dismissal.

No further action required.

**First Hearing-**

DCA03-DEC-078 by Vince LaPorta, County of Charlotte

Mr. Richmond stated the request pertains to Section 1606.1.8, exposure category C and whether it designates exposure category C as the area only along the Gulf of Mexico where the coastal construction control line is defined or to include an area within 1,500 feet of mean high tide line to be any area with a tide such as Charlotte Harbor, the Peace and Mayaca Rivers. He stated the Commission's recommendation is that exposure category C applies to areas within the prescribed distances of the coastal construction control line or the mean high tide line including any area with a tide such as the bodies specifically referenced.

Mr. Madani expressed concern on behalf of Commissioner Kidwell expressing concern regarding the declaratory statement. He stated Commissioner Kidwell stated exposure C in this case would only be applicable where you have the two lines, the tide lines and the coastal construction line. He continued stating Commissioner Kidwell recommended the specific areas should be exposure B not exposure C.

Commissioner Parrino offered support for Mr. Madani's comments and reminded the Commission this declaratory statement was deferred during the last meeting. He stated the issue was discussed again at the TAC with the same results. Commissioner Parrino stressed that the areas are referring to the exposure C that the Legislature defined and the Commission interprets. He expressed disagreement with the TAC recommendation stating it violated the Legislative intent as well as being contrary to the informal interpretation of BOAF.

Commissioner D'Andrea concurred with Commissioner Kidwell's concerns and agreed with Commissioner Parrino in his interpretation.

Commissioner Parrino added ASCE-7 exposure C would require the specified areas to be exposure C however the Florida Building Code exposure C would not apply.

Commissioner Kim stated there was disagreement with Commissioner Kidwell in terms of the standard practice of ASCE-7's and the specific language adopted by the Legislature. He then moved approval of the TAC's recommendation. Commissioner Bassett seconded the motion. Vote to approve the motion resulted in 7 in favor; 6 opposed. Motion carried.

DCA03-DEC-005 by Edward Riley, Collier County Fire Control

Mr. Richmond stated the issue pertains to cook ranges in public schools. He explained the petitioner asked several questions most of which the Commission is not authorized to respond. He stated the TAC recommended response in part stating

according to 423.15.3 it is the intent of the Code to allow the use of residential-type hoods when mechanically exhausted to the outside in the two specific cases depicted. He then stated response to a second question stating the TAC recommended it is the intent of the Florida Building Code Section 423.1 and 423.8.1 to require compliance with uniform fire safety standards in addition to the Florida Building Code. He added with regard to the two cases referenced, cooking on residential ranges in schools is not single-family use stating 423.15.3 allows the use in Home Economics instructional spaces, faculty lounges and similar areas where small residential-type hoods are mechanically exhausted to the outside.

Commissioner Greiner moved approval of the TAC's recommendation.  
Commissioner D'Andrea seconded the motion.

Commissioner Bassett offered comment but was inaudible.

Commissioner Bahadori offered clarification stating the issue is the extinguishing system which falls under NFPA-96.

Chairman Rodriguez called for a vote on the motion. Vote to approve the motion resulted in 1 opposed (Bassett). Motion carried.

DCA03-DEC-086 by Robert LoPiano, United Fire Spray

Mr. Richmond stated the request for declaratory statement concerns FlameBar BW11 ductwork system asking the Commission to approve the duct system. Mr. Richmond stated it was a product approval issue which prohibits entering a declaratory statement and recommended dismissal.

Bassett moved approval for dismissal. Commissioner D'Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA03-DEC-091 by Paul A. Zilio, Bliss & Nitray, Inc.

Mr. Richmond stated the request pertains to the allowable stress increase of one-third when designing masonry walls on a project located in the high velocity hurricane zone as well as being the subject of an amendment which was included in each Commissioner's packet. He continued stating the recommendation is that the load reduction is permitted provided the load reduction of ASCE7-98 Section 2.4.3 is not applied.

Commissioner D'Andrea moved approval of the declaratory statement.  
Commissioner Kim seconded the motion. Vote to approve was unanimous. Motion carried.

Mr. Richmond informed the Commission there had been a second local technical

amendment appeal filed in Broward County. He stated the second appeal along with the appeal filed for three cities in Volusia County will be coming before the Commission for consideration of a recommended order issued by an administrative law judge in July. Mr. Richmond provided the Commissioners a copy of the Broward County petition which was most recently filed.

### **REVIEW AND UPDATE OF THE COMMISSION WORKPLAN**

Mr. Dixon directed the Commission to the workplan as presented in each Commissioner's agenda packet. He noted additions to the workplan appearing on page 5, page 7, and page 8 of the agenda packet which was provided to each Commissioner.

Commissioner D'Andrea moved approval of the workplan. Commissioner Bassett seconded the motion. Vote to approve the motion was unanimous. Motion carried.

### **COMMITTEE REPORTS AND RECOMMENDATIONS**

#### **Accessibility TAC**

No Commission action needed. Commissioner Richardson did state the committee is awaiting appointments which would be appreciated as soon as possible. (See *Accessibility TAC Report Attachment.*)

#### **Education TAC**

No Commission action needed. (See *Education TAC Report Attachment.*)

#### **Electrical TAC**

No Commission action needed. (See *Electrical TAC Report Attachment.*)

#### **Mechanical TAC**

No Commission action needed. (See *Mechanical TAC Report Attachment.*)

#### **Plumbing TAC**

No Commission action needed. (See *Plumbing TAC Report Attachment.*)

#### **Structural TAC**

No Commission action needed. (See *Structural TAC Report Attachment.*)

#### **Product Approval / Prototype Buildings / Manufactured Buildings Programs**

**Oversight Committee (POC)**

Commissioner Carson stated there were five Commission actions required. He listed the action items as follows:

Exterior Research & Design, LLC for approval as a testing laboratory

Commissioner Gross moved approval of Exterior Research & Design as a testing laboratory. Commissioner /D'Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Farrabaw Engineering & Testing, Inc. for approval as a testing laboratory

Commissioner Gross moved approval of Farrabaw Engineering & Testing as a testing laboratory. Commissioner Kim seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Fenstration Testing Lab for approval as a testing laboratory

Commissioner D'Andrea moved approval of Fenstration Testing Lab as a testing laboratory provided the engineer of record is verified to be current. Commissioner Calpini seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Farrabaw Engineering & Testing, Inc. for approval as a validation entity

Commissioner D'Andrea moved approval of Farrabaw as a validation entity. Commissioner Calpini seconded the motion. Vote to approve the motion was unanimous. Motion carried.

PSI Pittsburgh Testing Laboratory for approval as a validation entity

Commissioner D'Andrea moved approval for PSI as a validation entity. Commissioner Calpini seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Carson announced the Prototype Building Program has been implemented as of May 12, 2003.

Commissioner Bassett suggested clarification regarding the IRC. Comments were inaudible for recording.

Mr. Dixon responded stating the procedures and policies for the update adopted by the Commission is included in each Commissioner's packet. He stated Commissioner D'Andrea's approved motion was to review the chapters of the IRC for adoption into the Florida Building Code.

Commissioner Shaw offered comment regarding the report of the PA/PB/MB POC. He stated he had been involved in a permitting process for prototype buildings and stated it was his understanding that a building would be permitted from Pensacola to Key West with a variation of windloads considered. He advised the Commission that architectural review has a major role in prototype approvals with 20% of municipalities in the state requiring architectural review. Commissioner Shaw offered support for the overall concept then noted there is still work to be done in terms of prototype buildings.

Commissioner Sanidas added most of the members of the committees were not aware that the administrator for the prototype is a private individual who was appointed by the contracted company, has the authority to accept alternate materials and methods which was not the intent of the Commission.

Commissioner Greiner offered clarification stating he had discussed the administrator's authority with him and he realizes any alternate materials and methods must be authorized only by the local jurisdiction.

Commissioner Parrino requested staff research the alternate methods and materials issue and report back to the Commission. He noted the Ad Hoc had guidelines for the use of alternate methods and materials. He addressed the architectural review issue stating there was discussion regarding the issue and it was determined when a prototype building is placed in an area with architectural controls it is no longer a prototype building.

### **PUBLIC COMMENT**

Chairman Rodriguez called for public comment.

*Jim Puckett, Kinco Ltd.*

Mr. Puckett offered comment regarding the Florida Building Code and in particular building component requirements. He stated building component requirements are outlined in the Code and are in effect and must be enforced regardless of the status of any future product approval systems or pending product approval rules or Legislation. Mr. Puckett recognized that local building officials must enforce the Code as it applied to building component compliance in order to ensure life safety and structural integrity then stated in some cases there is a general belief that there are no building component requirements in effect until the statewide system goes online. He recommended the Florida Building Commission should whenever possible provide unambiguous guidance regarding the current requirements for building component requirements.

Mr. Richmond noted for clarification the document pertaining to Broward County's local technical amendment appeal is the petition of the individual questioning the amendment stating the allegations are merely allegations and should not be construed as true.

### **SUMMARY REVIEW OF MEETING WORK PRODUCTS**

Chairman Rodriguez stated the Commission had reviewed and updated the Commission workplan; had considered and decided on accessibility waiver applications and the Chair's discussion issues. He continued stating the Commission had conducted a rule adoption hearing for Rule 9B-1 Manufactured Buildings and for Rule 9B-3.054 Non-binding Opinion. Chairman Rodriguez stated the Commission had heard and considered legal counsel's report and recommendations and had accepted into the record the TAC reports with action taken on the five Prototype Building/Manufactured Buildings Program Oversight Committee (POC) issues as well as having reviewed committee assignments and issues for the July meeting.

Commissioner Sanidas asked what alternative is in place for those individuals who have not completed core courses by June 31, 2003.

Mr. Dixon stated the only profession requiring verification of core curriculum courses is professional engineers. He stated the requirements are different for engineers than for other licensed individuals.

Commissioner Bassett offered comment which was again inaudible.

### **ADJOURN**

No further business discussed, meeting adjourned at 1:22 p.m.