



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

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Secretary

**BOARD MEETING
OF THE
FLORIDA BUILDING COMMISSION**

**PLENARY SESSION
June 15, 2004**

PENDING APPROVAL

The meeting of the Florida Building Commission was called to order by Chairman Raul Rodriguez at 8:30 a.m., Central Time, on Tuesday, June 15, 2004, at the Marriott Bayfront Resort, Panama City Beach, Florida.

COMMISSIONERS PRESENT:

Raul Rodriguez, Chairman
Christopher P. Schulte
Randall J. Vann
Michael C. McCombs
Hamid J. Bahadori
Craig Parrino
Herminio Gonzalez
George J. Wiggins
John Calpini
Christ T. Sanidas
Leonard N. Lipka
Peter Tagliarini
Richard Browdy
Dale Greiner
Paul D. Kidwell
Do Y. Kim
Jeffrey Gross
Joseph "Ed" Carson

Steven C. Bassett
Diana B. Richardson

COMMISSIONERS ABSENT:

Nicholas "Nick" D'Andrea
Stephen Corn
Suzanne A. Marshall, Adjunct Member
Doug Murdock, Adjunct Member

OTHERS PRESENT:

Rick Dixon, Executive Director
Ila Jones, DCA Prog. Admin.
Jim Richmond, Legal Advisor
Richard Shine, Legal Advisor
Jeff Blair, FCRC

WELCOME

Chairman Rodriguez called the meeting to order at 8:30 a.m., Central Time. He welcomed the Commission members and the attending public. Chairman Rodriguez then

REVIEW AND APPROVAL OF AGENDA

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

Commissioner Greiner moved approval of the meeting agenda. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

REVIEW AND APPROVAL OF APRIL 19 & 20, 2004 MEETING MINUTES

Chairman D'Andrea called for additions or corrections to the minutes from the April 19 & 20, 2004 Commission meeting.

Commissioner Bassett directed the Commission to page 9 of the April Commission meeting minutes. He referenced declaratory statement DCA04-DEC-034 stating he had requested a comment be entered into the record regarding the high velocity hurricane zone and the wording does not appear in the minutes.

Commissioner Greiner moved approval of the April 19 & 20, 2004 Commission meeting minutes as amended. Commissioner Lipka seconded the motion. Vote to approve the motion was unanimous. Motion carried.

REVIEW AND UPDATE OF COMMISSION WORKPLAN

Chairman Rodriguez announced there were no changes to the Commission workplan therefore no need to review and update.

CHAIR'S DISCUSSION ISSUES AND RECOMMENDATIONS

Chairman Rodriguez stated there was a telephone conference call meeting of the Budget TAC. He continued stating Commissioners Browdy, Parrino, Calpini, D'Andrea, and DCA staff were in attendance. He announced the TAC was satisfied with the department's negotiations with ICC while some concerns were expressed in terms of the aggregate cost of the Code versus the independent cost. Chairman Rodriguez then directed the Commission to Ms. Jones for further discussion.

Ms. Jones stated the Budget TAC met via conference call in May. She stated there were discussions regarding the cost of the Code books provided by ICC. Ms. Jones

continued stating the committee set a goal for the five Code books, i.e., Building, Plumbing, Mechanical, Fuel Gas, and Residential, to be priced at \$175.00. She reported ICC had been contacted and a proposal was received for the books to be priced at \$173.00 thus meeting the goal.

Commissioner Wiggins offered comment stating there was a major issue during the Legislative session that was part of the proposed building code bill for which BOAF had concerns in terms of product approval. He requested through the Chair that a proposal from BOAF be included as part of the workplan and that a representative be permitted to speak on behalf of BOAF regarding the issue.

Chairman Rodriguez acknowledged Commissioner Wiggins request stating there has been time allotted on the agenda concerning product approval which will include a synopsis of a five-page letter from Senator Constantine regarding the issue.

Commissioner Bassett expressed concern regarding the excessive price of the Code books stating the books could have been made available for less cost to the citizens of Florida if an in-house or an in-state agency had been used for the publications.

Ms. Jones responded there had been an RFP submitted for the publication and distribution of the Code books. She stated ICC's proposal was significantly lower than other bidder who proposed to charge \$780,000.00 for 1,600 books.

Chairman Rodriguez informed the Commission a letter had been received from Senator Lee Constantine who has been a staunch supporter of the Florida Building Commission in the Legislature first in the House and now in the Senate. Chairman Rodriguez continued stating the Senator has written the Commission requesting the Commission "look into" the issues as stated. He further stated the first concern of Senator Constantine's was embodied in Senate Bill 1190 relating to fire protection and control. He explained the concern deals with the regulation of indoor pyrotechnic displays. Chairman Rodriguez stated the primary jurisdiction for the issue is the Office of the State Fire Marshal. He recommended the Commission review the issue with the Joint Building and Fire TAC and requested Commission Calpini provide assistance with the review to ensure the response to Senator Constantine includes professional guidance.

Chairman Rodriguez stated the second issue presented by the Senator in the letter related to the attempt to include Hospice facilities within the provisions of the Florida Building Code. He stated the Commission had made the recommendation to the Legislature in the Florida Building Commission Report to the 2003 Florida Legislature and suggested the Commission re-enter the recommendation for the 2004-2005 Legislative session.

Chairman Rodriguez the addressed the third issue from Senator Constantine. He stated there are three issues involved the first being the creation of a new Swimming Pool and Solar Technical Advisory Committee. He stated he would write a letter to the Florida

Pool and Spa Association requesting they make a recommendation to the Chair then to be brought before the Commission for discussion and consideration. Chairman Rodriguez continued stating the second part of the third issue relates to product approval. He stated Senator Constantine requests the Commission conduct a review of the existing product approval practices in place for local governments and consider making changes that would make the process more efficient and productive. Chairman Rodriguez stated there are ongoing workshops concerning product approval and there would be a report submitted to the Senator as well as the Legislature at large. He then addressed the third part of the Senators concerns stating the section relating to space limitation requirements for mezzanines in buildings classified as "S" occupancy. Chairman Rodriguez stated staff is currently reviewing the issue with a proponent and may have already resolved the issue as part of the 2004 update which will take effect in January.

Chairman Rodriguez further stated the fourth issue concerns the current practices of builders and inspectors and make quality control recommendations for construction and the effectiveness of home inspections. He stated the Commission has a responsibility to educate consumers in matters of regulatory quality. He added the Commission workplan would be reviewed and updated if necessary to accommodate response to the Senator's requests.

Commissioner Wiggins stated one of the major issues discussed during the Legislative session was product approval and requested the Chair permit a representative from BOAF to present before the Commission.

Ronnie Spooner, Immediate Past President, Building Official's Association of Florida

Mr. Spooner stated BOAF president, Joe Crum, could not appear before the Commission then explained BOAF's position concerning product approval. He stated the organization requests the Commission review the bill that was presented to the Legislature during the past session in terms of language relating to product approval. He continued stating BOAF would appreciate the opportunity to become more involved in the product approval process. Mr. Spooner stated the wording of the bill was "to create a work group" very similar to the Alternate Plans Review workgroup that has already been created and will hold a final meeting very soon.

Mr. Blair responded stating his recommendation would be to create a workgroup of stakeholders to review the issues and make recommendations either back to the POC or the Commission.

Commissioner Greiner expressed support for Mr. Blair's recommendation and stated it is very important to get BOAF involved in the process as much as possible.

Commissioner Bassett stated he had spent a couple of months trying to assist an engineer in understanding how to enter his approval. He suggested the Commission

review the wording and instructions for entering approvals. Commissioner Bassett stated the instructions are unclear in terms of how to obtain the forms and the process from there.

Commissioner Browdy offered comment suggesting the workgroup focus on the problems that exist and their agenda specifically address the system as it is in place, categorize the problems, and attempt to resolve each aspect on a problem by problem basis. He offered support for the workgroup if it could be problem-solving oriented led by BOAF's task group.

Chairman Rodriguez asked if BOAF representatives would be available for a meeting prior to the August Commission meeting in order to provide a report to the Commission.

Mr. Spooner responded there would be people available from BOAF.

Commissioner Parrino expressed concern regarding the method that would be pursued in order to solve the product approval problems. He stated the Commission had been informed numerous times the local jurisdictions could handle the product approval on their own without a state component. He continued stating there were never objections from building officials during that time. He urged the Commission to move forward not backward in terms of product approval. Commissioner Parrino concurred that Mr. Spooner had presented valid issues concerning product approval but the Commission needed to continue to move ahead.

Commissioner Lipka offered comment stating the forms and the procedure must be user friendly rather than complicated. He stated the Commission was careful to retain certain districts' ability to provide product approval but the statewide approvals must be more user friendly.

Chairman Rodriguez requested a motion that the Commission authorize the Chair to convene a meeting with BOAF and bring back recommendations to the Commission on how to better streamline the local product approval process.

Commissioner Greiner entered the motion as stated by the Chair. Commissioner Lipka seconded the motion.

Commissioner Bassett asked if the workgroup would consist of members other than BOAF representatives.

Chairman Rodriguez responded stating the workgroup would be made up of representatives from organizations other than BOAF.

Commissioner Bassett stated the Florida Engineering Society would appreciate being invited to participate in the workgroup.

Commissioners Tagliorini and Greiner expressed interest in participating in the workgroup.

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

CONSIDERATION OF ACCESSIBILITY WAIVER APPLICATIONS

Mr. Harding, Vice Chairman of the Accessibility Advisory Council, presented the waiver applications which were deferred at the request of the applicant:

Stock Exchange Restaurant

Club Deep

Commissioner Richardson moved approval to defer the waiver applications until the August Commission meeting. Commissioner Bassett seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Harding then presented the waiver applications which had been approved by the Council:

Health and Life Sciences Building, Florida International University

Cobb Lakeside 18 Theatre, Lakeland

Southland Mall Regal 16 Cinemas, Miami

Commissioner Richardson moved approval of the Council recommendation to approve the waiver requests. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Harding continued by presenting the waiver applications which had been conditionally approved by the Council:

Premiere Cinema at Orlando Fashion Square

Mr. Harding stated theatre 12 of the 14 theatres does not provide adequate companion seats and theatre 13 requires one additional accessible seat and two additional companion seats. He stated the applicant agreed to redesign the facility to provide the correct number of seats and relocate the accessible seats away from the aisle. Mr. Harding further stated the Council recommended approving the waiver provided the seating reconfiguration is met.

Commissioner Richardson moved approval of the Council recommendation to approve the waiver request subject to provisions as stated. Commissioner Carson seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Regal Cinemas at Gulf Coast Town Center, Ft. Myers

Mr. Harding explained theatres 1 and 16 must move all accessible seats away from the aisles and down one row. He continued stating theatres 8 and 11 require one additional companion seat. Mr. Harding stated the applicant agreed to provide the revised plan to staff with the Council recommending approval of the waiver application subject to approval of the revised plan.

Commissioner Richardson moved approval of the Council recommendation to approve the waiver subject to conditions. Commissioner Browdy seconded the motion. Vote to approve the motion was unanimous. Motion carried.

The Loop, Kissimmee

Mr. Harding stated theatres 1 and 16 require reconfiguration ensuring the accessible seats are not adjacent to the aisles. He stated the applicant agreed to provide revised plans to staff and the Council recommended conditional approval of the waiver request.

Commissioner Richardson moved approval of the Council's recommendation to approve the waiver subject to conditions. Commissioner Bassett seconded the motion. Vote to approve the motion was unanimous. Motion carried.

City of Lake Mary Fire Department

Mr. Harding explained the applicant desires individual toilet use in the firefighter living quarters that are not accessible. He stated the Council recommended approval of one accessible toilet room to be available for each gender occupying the living area. Mr. Harding explained the approval is contingent on the facility's use remaining as a fire station.

Commissioner Richardson moved approval of the Council's recommendation to conditionally approve the waiver request. Commissioner Carson seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Harding presented then the remaining two requests which were recommended for deferral:

Sutra Lounge, Fort Lauderdale

Mr. Harding stated the Council requests that the applicant provide additional

clarification regarding the toilet areas.

Commissioner Richardson moved approval of the Council's recommendation to defer until the August meeting. Commissioner Carson seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Anna Maria City Hall

Mr. Harding explained the facility is an assembly area requiring four accessible seats with two companion seats for each accessible seat. He stated the applicant may also install an electrical outlet for a future chairlift should it be required. He continued stating the Council recommended requiring the wiring be installed and deferred the waiver request until the August meeting.

Commissioner Richardson moved approval of the Council's recommendation to defer the request. Commissioner Carson seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Harding then directed the Commission to Mr. Shine to address an item that has been brought back to the Commission.

Mr. Shine explained the Flagler Holding Group waiver request had been heard first at the January meeting when it was deferred to the March meeting and has subsequently been denied. He stated counsel for Flagler Holding Group has appealed the denial to the 3rd District Court of Appeal. Mr. Shine continued stating it has been discovered through conversations with staff that a legal memorandum may have been omitted and based on the oversight, a recommendation of limited remand would be entered to the appellate court and a joint petition would be filed requesting the court allow the Commission to again review the waiver application during the August meeting. Mr. Shine stated he had received a recommendation of conditions from Mr. Mellick, President of the Accessibility Advisory Council, which he read as follows:

Please convey my recommendation to the Council to remand the Flagler Holding case back to the Council and Commission based on the issues raised by Robert Fine. Also, this recommended remand is contingent upon Mr. Fine providing correspondence from the fire marshal, building official in reference to the requirement of the additional stair as a means of egress, and a detailed cost breakdown of all the work to be performed.

Chairman Rodriguez asked if Mr. Fine had indicated acceptance of the conditions as recommended by Mr. Mellick.

Robert Fine, Representing Flagler Holding Group

Mr. Fine stated he did not agree to the conditions and explained he thought

conditions were inappropriate under the circumstances. He stated both sides could spend an enormous amount of time in the court system which will more than likely bring the case back to the Commission anyway.

Chairman Rodriguez interjected the Commission would prefer to consider and decide all cases without getting into the court system.

Mr. Fine stated he would take the conditions into account and prepare his submittals accordingly.

Mr. Shine noted the issue was brought before the Council for consideration during the most recent meeting and the Council was in full agreement with the Council Chair in terms of the conditions and made a recommendation as such.

Commissioner Lipka moved approval of the Council's recommendation concerning the conditions. The motion was seconded. Vote to approve the motion was unanimous. Motion carried.

Mr. Harding then presented a final item which was not included on the Council's agenda but was entered as new business. He stated the State of Florida and its agencies has an obligation to host meetings in accessible areas. He explained the access at the current hotel has caused great discomfort for many members of the Council. He stated the issue was discussed with staff at length with the Council concluding the Florida Building Commission has a higher obligation under the state law to not only meet the needs of its members but to meet the needs of the public as well in terms of accessibility particularly since the Commission holds members accountable in meeting the required levels of accessibility. Mr. Harding stated the Council is seeking the Commission's vote of confidence and efforts in working with staff to ensure accessibility needs are surpassed for members of the Council as well as members of the public.

Chairman Rodriguez concurred and stated the issue would be taken under advice.

Commissioner Lipka offered comment stating the facilities are not being adequately inspected for accessibility. He stated the facility under question has no handrails which creates problems for individuals requiring accessibility.

Commissioner Richardson concurred then added it seems that staff is limited to three selections for meeting facilities through CMC, a meeting planning group.

Chairman Rodriguez stated CMC should notify the facilities where the Commission meets that they will be held to a high standard of accessibility and any misrepresentation would result in action being taken through nonpayment or legal means.

Commissioner Richardson stated it is a problem which creates fear for the safety of the members staying at the facilities. She continued stating the correct action would be

contractual recourse as well as leaving the facility, not requiring members to remain in a facility that is not adequately accessible.

Mr. Dixon stated the accessibility issue is not a new problem and has been dealt with in a variety of ways. He stated a staff person had been sent around to different locations and there is no 100% compliant facility in the state. He continued stating there are better options in different areas of the state but cost is a factor as well.

Chairman Rodriguez stated there should be no compromise with regard to accessible facilities. He continued stating if a facility is not accessible, the Commission should not meet at that facility.

Commissioner Richardson stated Florida has more advocacy groups than many others and there are many hotels that have been sued and have improved their facilities. She expressed frustration in not finding hotels that are accessible and suggested staff obtain a list of accessible hotels and choose from the list.

Chairman Rodriguez ensured the Commission there would be no future meetings in hotels that do not meet accessibility requirements.

Commissioner Bassett noted one cellular telephone company provides no service in the panhandle and recommended not meeting in the area again.

Mr. Harding then stated the issue of corrective matter in terms of the meeting facility had not been discussed. He asked if DCA and the Commission could take action on behalf of the injured members of its Council.

Mr. Richmond responded the affected members and public should provide written statements for submittal to the department to determine any action that can be taken.

Mr. Harding concluded the Consideration of Accessibility Waiver Applications portion of the agenda.

RULE ADOPTION HEARING ON RULE 9B-1, MANUFACTURED BUILDINGS

Chairman Rodriguez directed the Commission to Mr. Shine serving as hearing officer.

Mr. Shine stated the purpose and effect of Rule 9B-1, Manufactured Buildings, specifically titled Schedule of Fees, is to reduce the insignia fees charged to reflect decreasing budgetary requirements for the program. He stated the change to the rule is a minor change to the rule at this time. Mr. Shine stated the insignia fee for factory built schools is being reduced from \$30.00 to \$20.00, manufactured buildings less than 720 square feet insignia fee is being reduced from \$10.00 to \$7.00, and all other manufactured buildings fees are being reduced from \$60.00 to \$55.00. He then opened

discussion to the public.

No one approached for public comment.

Chairman Rodriguez called for Commission comments. No Commissioners offered comment on the issue.

Commissioner Browdy moved to proceed with rule adoption for Rule 9B-1, Manufactured Buildings, adopting the approved changes including publication of notice in the Florida Administrative Weekly. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

REVIEW BUILDING CODE LEGISLATION

Mr. Richmond stated there are three rules currently in process. He explained the more pertinent are Rule 9B-72, Product Approval quick fix issues, and 9B-3.047, Florida Building Code update. Mr. Richmond stated a letter had been received from the Joint Administrative Procedures Committee making an innocuous although important comment on the Commission's submittal. He then explained the comment was relating to the addition of the specific statutory provision for Code updates to the law implemented under Section 553.73(6). Mr. Richmond stated since the Code is undergoing its first update the provision for Code updates has never been enacted. He called for a motion to implement Code updates.

Commissioner Wiggins moved approval of legal's recommendation. Commissioner McCombs seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Richmond announced the Department of Community Affairs has a new Secretary, Mr. Thaddeus Cohen, Architect, member of AIA, from Delray Beach. He stated Secretary Cohen would be reading the rules and may have questions leaving clarity and accuracy vital to his understanding and participation in the process. Mr. Richmond stated the rules will be published in the Florida Administrative Weekly June 16. He continued stating Rule 9B-72 is appearing for rule adoption which will require a hearing. Mr. Richmond recommended the Commission, in the form of a motion, authorize a process to accelerate the adoption of the rule holding the hearing in Tallahassee with a hearing officer present prior to the August Commission meeting. He then stated a telephonic Commission meeting could be held following the hearing for a report from the hearing officer so the Commission could take necessary action.

Commissioner Bassett moved approval of legal's recommendation. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

**LEGAL REPORTS AND CONSIDERATION OF PETITIONS FOR
DECLARATORY STATEMENT:**

Mr. Richmond first brought before the Commission a declaratory statement, DCA04-DEC-064, Miami-Dade County Building Department, which did not appear on the meeting agenda and was dismissed. (See *Final Order, Case # DCA04-DEC-064* attachment.)

Mr. Richmond explained the issue raised in the petition related to the building department performing a shop drawing review and inspections of fire suppression systems based on requirements in Chapter 9 of the Florida Building Code and Chapters 3, 5, and 6 of the Mechanical Code. He stated the petition cites sections of the Code may be viewed as duplicative of provisions in the Florida Fire Prevention Code under Chapter 633 and under jurisdiction of the State Fire Marshal's office. Mr. Richmond advised the Commission does not have authority to issue a declaratory statement on issues with conflicts in requirements between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code of the state.

Commissioner Browdy moved approval to dismiss declaratory statement DCA04-DEC-064. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Chairman Rodriguez directed the Commission to Mr. Shine for discussion and Commission action regarding declaratory statements.

Second Hearings-

DCA03-DEC-325 by Art Kamm, P.E. of KAMM Consulting, Inc.

Mr. Shine presented the request for declaratory statement as it appeared in each Commissioner's packet. (See *Draft Order, Case # DCA03-DEC-325* attachment.)

Mr. Shine stated the petitioner proposes to build a single-family home in the high velocity hurricane zone located in Parkland, Broward County, Florida. He explained the petitioner requests interpretations of Sections 2326.3.2.2, 13-202, and 13-606.1(a)(b)(c) of the Florida Building Code. Mr. Shine stated the declaratory statement was recommended for approval.

Commissioner Wiggins moved approval of the declaratory statement. Commissioner Greiner seconded the motion. Vote to approve the motion resulted in 1 opposed (Schulte). Motion carried.

DCA-04-DEC-040 by Ralph Ward of Sarasota County

Mr. Shine explained the petitioner's request as it appeared in each Commissioner's

packet. (See *Draft Final Order, Case # DCA04-DEC-040* attachment.)

Mr. Shine stated the petitioner, Ralph Ward, is employed with the Sarasota County Environmental Services and the Cross Connection Control Program, Utilities Division. He stated the petitioner is in the process of writing a replacement ordinance for a 1989 ordinance for cross connection control for Sarasota County. Mr. Shine reviewed the details of the declaratory statement and the TAC recommendation.

Commissioner Greiner moved approval of the TAC recommendation. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA04-DEC-051 by Al Roettger of Broward Hurricane Wrol-UP

Mr. Shine presented the petition as it appeared in each Commissioner's packet. He explained the petitioner requested clarification regarding applicability of a previously obtained state approval for roll form storm panels and other hurricane shutter protection systems. Mr. Shine stated Section 553.842(3) F.S. states, "products or methods or systems of construction required to be approved and certified by an approved product evaluation entity as complying with the standards specified by the Code shall be permitted to be used statewide without further evaluation or approval. " He continued stating Section 553.842(4) states, "statewide approval shall preclude local jurisdictions from requiring further testing, evaluation, or submission of other evidence as a condition of using the product so long as the product is being used consistent with the conditions of its approval."

Mr. Shine then concluded the petitioner's question was answered as follows: Local jurisdictions are only authorized to obtain proof of state approval of products that have obtained statewide approval and which are being used in a manner that is consistent with the limitations of use and installation instructions identified by the state approval. The petitioner is not required to submit signed and sealed drawings for such products.

Commissioner Wiggins moved approval of the TAC recommendation. Commissioner Carson seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA04-DEC-066 by Lisa Blackstone of Close It!, L.L.C.

Mr. Shine presented the declaratory statement petition as it appeared in each Commissioner's packet. (See *Draft Final Order, Case # DCA04-DEC-066* attachment.)

Mr. Shine explained the petitioner manufactures a device that is designed to be retrofitted on sliding doors to meet the Code requirements for swimming pool barriers found in Section 424.2.17 of the Florida Building Code. He then reviewed the petitioner's request for interpretation and the TAC's recommendation.

Commissioner McCombs moved approval of the TAC recommendation. Commissioner Carson seconded the motion. Vote to approve the motion was unanimous.

DCA04-DEC-067 by John K. McCall, Ph.D., P.E.

Mr. Shine presented the declaratory statement petition as it appeared in each Commissioner's packet. (See *Draft Final Order, Case # DCA04-DEC-067* attachment.)

Mr. Shine explained the petitioner requests clarification relative to a single-family dwelling in Long Boat Key more specifically an interpretation of Section 1606.1.4 Florida Building Code, Building Volume, and asks the Commission to determine whether window shutters are required for a single-family structure located at 612 Ranger Lane, Long Boat Key, a barrier island located offshore from Manatee and Sarasota Counties. He reviewed the petition and the TAC recommendation.

Commissioner Wiggins moved approval of the TAC recommendation. Commissioner Carson seconded the motion.

Commissioner Bassett noted a typographical error in the attachment referencing page 2, item number 2. He stated ASTNE E 1996 should read ASTME 1996. It was also noted ASTME E 1886 should read ASTME 1986.

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

DCA04-DEC-069 by Bob Boyer of Palm Beach County – Building Division

Mr. Richmond presented the petition as it appeared in each Commissioner's packet. (See *Final Order, Case # DCA04-DEC-069* attachment.)

Mr. Richmond stated the petition has been organized differently due to the number of questions. He then reviewed the petition and the TAC response and recommendation.

Commissioner McCombs moved approval of the TAC recommendation. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA04-DEC-070 by Jimmy Worley of Ruffin Building Systems

Mr. Shine presented the petition for declaratory statement as it appeared in each Commissioner's packet. (See *Draft Final Order, Case # DCA04-DEC-070* attachment.)

Mr. Shine reviewed the petition for declaratory and the TAC's response and

recommendation.

Commissioner Carson moved approval of the TAC recommendation. Commissioner Kidwell seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA04-DEC-~~Was not part of recording~~

Mr. Shine stated the petitioner is a manufacturer of large metal buildings consisting of a specifically designed integrated set of components and assemblies that function as a complete building shell. He stated Section 2203.1 of the Florida Building Code states, "the design, fabrication, and erection of structural steel for buildings shall conform to the requirements of either AISC Specifications for Structural Steel Buildings, Allowable Stress Designs, and Plastic Design, or AISC Load and Resistance Factor Design Specifications. He continued stating Section 553.842(11) F.S. states, "products other than manufactured buildings which are custom fabricated or assembled shall not require separate approval under this section provided the component parts have been approved for the fabricated or assembled product use and components meet the standards and requirements of the Florida Building Code which apply to the products intended use."

Mr. Shine explained the petitioner's question was answered by the TAC as follows: The buildings in question are custom fabricated buildings in accordance with Sections 553.482(11) F.S. Separate approval for individual buildings per Rule 9B-72 is not required, however, steel deck diaphragms, siding, sheathing, windows, doors, and other structural components listed in Rule 9B-72 are subject to the requirements of Rule 9B-72.

Commissioner Carson moved approval of the TAC recommendation. Commissioner Kidwell seconded the motion. Vote to approve the motion was unanimous.

First Hearings-

DCA04-DEC-072 by James M. Fowler, National Engineering Corp.

Mr. Richmond presented the petition stating there were two questions pertaining to sewage regulations. He stated the first question asked whether Section 1003.5 of the Florida Building Code, Plumbing Volume, pertained to both onsite sewage disposal systems and central municipal systems. Mr. Richmond continued stating the TAC recommendation was yes that section applies to both. He then addressed the second question stating it asked, "can an exception be granted for this project to allow the use of two 4,000 gallon grease interceptors in lieu of six or seven 1,250 gallon interceptors. Mr. Richmond stated the TAC recommendation was the issue should be referred back to the alternate methods and materials authority of the local building official since the Code has a limitation of 1,250 gallons, however an equivalent could be allowed at the local official's discretion. He concluded, therefore, the answer was yes the exception can be granted.

Commissioner Greiner concurred the local building official would determine equivalency and moved approval of the TAC recommendation. Commissioner Vann seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA04-DEC-074 by Gill Hyatt, Gil Hyatt Construction

Mr. Richmond stated the petition was a conflict determined by the local appeal board and was subject to dismissal.

DCA04-DEC-077 by Charles W. Edwards, Building Code Solutions

Mr. Richmond presented the petition stating it pertained to the threshold height of the sliding glass doors to lanais and balconies in high rise condominiums in various areas of the state. He stated the petition asked five questions and reviewed the questions as follows: Whether Section 1012.1.3 applies to doors that are not egress doors used as an exit, such as sliding glass doors or side hinged doors opening onto a lanai when the lanai does not exit to grade. Mr. Richmond stated the TAC recommendation was yes. He further stated when considering doors onto the lanai the TAC recommendation was Section 1012.1.3 addresses the height of thresholds that are not located in high velocity hurricane zones as well as those that are. Mr. Richmond stated the next question does not apply because the previous answer was yes. He continued stating the next question asked whether Section 1012.1.3 limits the method of designing waterproofing to the tested thresholds or provides a difference of floor surface levels as outlined in the chart only. He stated the TAC recommendation was Section 1012.1.3, specifically exception 2, provides for two options; i.e., the height of the threshold is as per the water resistance test; or providing a differential of floor surface levels as outlined in the chart. Mr. Richmond then addressed the last question stating it asked whether Section 1012.1.3 is applicable to doors serving lanais that are not exit doors or if the section applies, would an appeal to a local building official or appeals board for acceptance for the curb design as an alternate method of construction be appropriate under Section 103.7. He stated the TAC recommendation was yes.

Charles W. Edwards, Proponent

Mr. Edwards first noted the information available on the DCA website was worded improperly stating "doors used as exit doors." He clarified the questions were for doors that were not used as exit doors. He stated near every section in Section 1012 deals with egress doors used as exits or required doors that are used for exiting the building. Mr. Edwards explained the doors in his petition are not used for egress doors to an exit, rather opening to a lanai only. He continued stating the subsection does not specify what doors are being addressed until the chart is read. Mr. Edwards further stated the wording is very general and ambiguous and does not provide specific definition and clarity. He then stated the second question relates to the section of the Code posing whether it belongs where it is currently located. He stated there are two different requirements in one Code section in terms of equal floor levels on each side of the door as well as

threshold limitations.

Mr. Edwards further stated the answers to the questions depend on which jurisdiction is involved. He explained the jurisdiction adjacent to the petition's jurisdiction provides a different requirement relating to threshold heights. He stated his petition seeks uniformity for the application on Section 1012 for consistency throughout the state.

Wiley Parker, Senior Construction Manager, WCI Communities, High Rise Division

Mr. Parker offered brief comment regarding the practical considerations relating to the petition. He stated the Code exemption for the height of the manufacturer's sliding glass door seal to pass the water and air infiltration test allows whatever height necessary to pass the test. He then discussed examples in construction where the curb works very well and how not using the curb creates difficulty in forming step downs and cable placement.

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

DCA04-DEC-090 by Jack E. Mitchell, Mitchell & Associates

DCA04-DEC-099 by Jack E. Mitchell, Mitchell & Associates

Mr. Richmond stated the declaratory statements were procedurally insufficient and were subject to dismissal at a future date.

DCA04-DEC-108 by James G. Dular, Tamtech Services Inc.

Mr. Richmond presented the petition explaining it concerned a residential swimming pool covered by Section 424.2.6.6.4 of the Florida Building Code. He stated the petitioner asked whether a single main drain on the floor of the pool and a skimmer on the wall as the required suction inlets with a drain line and a skimmer line joined together at the skimmer with a single suction line from the skimmer to the pump complies with the requirements of the Code. Mr. Richmond stated the TAC recommendation was no, the skimmer and the main drain are not connected to a common line, which is required by Section 424.2.6.6.4 of the Code.

Commissioner McCombs moved approval of the TAC recommendation. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA04-DEC-109 by George A. Hegedus, P.E., Structural Systems Inc.

Mr. Richmond presented the petition stating it pertained to whether a particular

property is in Exposure B or Exposure C. He stated the TAC recommendation was the property is in Exposure Category B because it is outside 1,500 feet of the Coastal Construction Control Line, unless the property is located within 1,500 feet of the mean high tide line.

Commissioner Wiggins moved approval of the TAC recommendation. Commissioner McCombs seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA04-DEC-110 by C.W. McComber, Palm Beach County

Mr. Richmond presented the petition stating it concerned offset closet flanges in Sections 405.4 and 420.4 of the Florida Building Code, Plumbing Volume. He stated the petition asked two questions: whether offset closet flanges restricted from being used to change direction of flow in sanitary drainage systems. He continued stating the TAC recommendation was no. Mr. Richmond addressed the next question which asked whether offset closet flanges make the connection between a water closet and a sanitary drainage pipe if approved by the local building official. He stated the TAC recommendation was yes, they are not prohibited by the Code and all pipe fittings shall meet the applicable standards prescribed by the Code.

Commissioner McCombs moved approval of the TAC recommendation. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA04-DEC-116 by C. W. McComber, Palm Beach County

Mr. Richmond presented the petition stating it asked whether the prescriptive requirement in Section 301.13.1 of the Florida Building Code, Mechanical Code, require three individual straps per side with one screw in each strap or one strap per side with three screws in it. He stated the TAC recommendation was no straps are required; should the designer choose to use straps instead of a flange on the air conditioning unit, the strapping system shall be permitted to be used as an alternate method of construction approved by the building official under Section 103.7 of the Florida Building Code as meeting the windload criteria in Section 1606 of the Code.

Commissioner Wiggins offered comment stating he served on the Structural Committee during discussion relating to the petition and asked if the last word "straps" to "straps or other fastening device," explaining the common method of attachment is angle clips.

Commissioner Greiner concurred with Commissioner Wiggins in terms of the angle clip attachment, he expressed concern regarding whether the Commission can address anything other than what was requested in the petition.

Mr. Richmond advised the Commission would be limited to questions as presented.

Commissioner Bassett expressed concern that the question the petitioner asked was not answered in terms of how to apply the exception.

Mr. Madani offered clarification stating the questions were answered in terms of the scope of the Code. He stated strapping was not required by the Code but was included as a recommendation.

Commissioner Lipka stated the answer should pertain directly to the question that was asked.

Commissioner Bassett added the question asked how to interpret the exception or recommended method and the question was not answered.

Commissioner Kim stated the problem lies in the section where the prescriptive requirement is contained. He continued stating in the Commission's haste through the Code changes the prescriptive requirement section is incomplete. He furthered the section provides a limited prescriptive but not the complete prescriptive detail necessary to implement the prescriptive requirement.

Commissioner Bassett concurred with Commissioner Kim and added the TAC response should include in its statement the wording cannot be changed therefore interpretation would be required.

C. W. McComber, Petitioner

Mr. McComber expressed appreciation for Commissioner Bassett's concerns then stated the question may not have been structured properly. He stated the question could be wordsmithed to arrive at the answer as expressed by Commissioner Kim.

Commissioner Lipka moved approval for required engineering to be designed for review and approval by the local building official due to the incomplete nature of the prescriptive requirement language in the Code. Commissioner Calpini seconded the motion.

Commissioner Wiggins asked if the petitioner could defer the request then submit a letter to the local building official substituting strapping for the angle clips attachment.

Mr. McComber approached stating re-wording the request by using strapping rather than angle clips may not resolve the insufficiency of the prescriptive requirement language.

Commissioner Kim concurred stating there was not enough detail in the language.

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

DCA04-DEC-069 by Bob Boyer, Palm Beach County

Mr. Richmond presented the petition stating there were three questions: whether the failure of Rule 9B-72.110, Sections (3) and (4) to include performing a validation mean that an architect or an engineer may have a financial interest when performing a validation which is prohibited for evaluations. He stated the POC recommendation was no. He stated the next question asked when a local building official validates an evaluation for local product approval requests as required by Rule 9B-72.045, is he doing an administrative or technical review. Mr. Richmond stated the recommendation was it would depend on the specific situation involved for products covered by the rule and for which the Code establishes performance criteria and standard evaluation tests or rational or comparative analysis, building officials should verify that all documentation and submittals required by Rule 9B-72.040 have been submitted and are complete including statements of compliance with respect to standards of the Code. He continued stating for products covered by the rule that the Code does not establish a standard method of evaluation, building officials may require verification reviews which constitutes engineering technical review of documentation for all products evaluated by Florida licensed engineers and architects. Mr. Richmond then addressed the final question stating it concerned whether rational or comparative analysis can be allowed to change the performance level of a product in conditions or limitations of use for a window with state approval. He stated the recommendation was yes, building officials should be able to allow the use of products covered by the rule, outside the conditions and limitations established by the state approval by requiring a demonstration that the product will comply with the requirements of the Code specific to a project by requiring demonstration of compliance by the appropriate method recognized by Chapter 553.842(6) and Rule 9B-72.040 of the Florida Administrative Code.

Commissioner Carson moved approval of the POC recommendations. Commissioner Kim seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA04-DEC-117 by Dennis Braddy, Fenestration Manufacturers Association

Mr. Richmond presented the petition stating there were several parts pertaining to issues as follows: Whether quality assurance entities are approved to issue labels or listings for windows, sliding glass doors, and glass patio doors under 9B-72.010(19)(20) and Section 1707.4.2 of the Florida Building Code. He stated the POC submitted two recommendations one pertaining to the Code and one pertaining to the rule. He continued stating the answer according to the rule is no, it does not approve quality assurance entities to issue labels for exterior windows, sliding glass doors, and glass patio doors. He further stated the referenced section of the Code requires an approved

label and approved, where not specifically addressed, means by the building official, accreditation to ISO/IEC Guide TR 17020: 1998 General Criteria for the Operation of Various Types of Bodies Performing Inspections, and state approval of quality assurance entities may be used as criteria for determining nationally recognized. Mr. Richmond addressed the next question which asked whether rules 9B-72.010(19)(20) and their definitions for labeled and listed allow for a nationally recognized test lab, inspection agency, or other organization concerned with product evaluation that maintains periodic inspection of the production of the above labeled items and by whose label the manufacturer attests to compliance with nationally recognized standards, more specifically, what criteria or accreditation requirements are used to approve a quality assurance agency, test lab, evaluation entity, or a Florida licensed engineer or architect to issue a label, seal or symbol, or other identifying mark, and are quality assurance entities, test labs, evaluation entities, or licensed engineers or architects approved by Rule 9B-72 to issue a label, seal or symbol, or other identifying mark and if so, what accreditations, requirements apply for approval. He stated the POC recommendation was Rule 9B-72 authorizes recognition of the certification mark of an approve certification agency for demonstrating compliance with the Code by method 1 and Section 553.842(6)(a) is consistent in that respect and does not require labeling of products by other entities and does not establish minimum requirements for quality assurance agencies, test labs, evaluation entities, or Florida licensed engineers and architects to be approved to issue a label, seal or symbol, or other identifying mark.

Mr. Richmond then addressed the next question under 9B-72.070(1)(c)(d) and Rule 9B-72.070(2)(a)(b) which asked if engineers or architects permitted to evaluate products to standards other than those required by the Code. He explained the POC recommendation stated under 9B-72.070(1), where the Code adopts or specifies a standard method for evaluation a product's compliance, that standard method must be used, other methods of evaluation cannot be used unless demonstrated to be the equivalent to the required standard method. He then stated under 9B-72.070(2), where the Code does not adopt or specify a standard method for evaluating a product's compliance, engineers and architects may exercise in good professional judgment or sound engineering practices may use a closely related standard method or other method. Mr. Richmond stated the next question asked if the intent of the language in 9B-72.040(3) and 9B-72.070(2) states method 2, products for which there are no specific standardized tests or comparative or rational analysis methods of evaluation established as required by the Code shall demonstrate compliance with the intent of the Code through one of the following: to allow windows and doors to use comparative or rational analysis methods that are not listed or referenced in the Florida Building Code performed in accordance with accepted engineering practice. He continued stating the POC recommendation stated specific to 9B-72.040(3), yes, the building official may use the alternate methods authority of Section 103.7 of the Code. Mr. Richmond stated the next question asked whether 9B-72.030 and 9B-72.040 directly contradict and conflict with the Florida Statute 553.842(5) by eliminating the option for approval of windows and doors through the plans review and inspection process. He continued stating the POC recommendation was no stating Chapter 553.842(6) limits the means by which the products can be approved to

those specified in the subsections.

Mr. Richmond addressed the next question which asked whether installation instructions for windows and sliding glass doors are required to be submitted to the authority having jurisdiction for local product approval when using 9B-72.040(2). He stated the POC recommendation was yes for submissions using evaluation reports and no for submissions using certification listing or label. He stated the next question asked whether engineers and architects are allowed to function as quality assurance agencies and if yes, would they be required to meet the ISO standards under 9B-72.100(5) and additionally are they exempt from the record keeping requirements. Mr. Richmond stated the POC recommendation stated engineers and architects are allowed to function as architects are allowed to function as quality assurance agencies provided they obtain accreditation for quality assurance per 9B-72.100(5)(a) and they can apply to the Florida Building Commission for approval to perform quality assurance audits. Mr. Richmond stated they are required to meet ISO requirements under 9B-72.100(5) and they are not exempt from the record keeping requirement. He then addressed the next question which asked whether architects and engineers are required to meet all the requirements under Rule 9B-72.100(2). He stated the POC recommendation stated under Rule 9B-72 engineers and architects are approved to provide validation for statewide approval and are not required to meet the additional requirements under Rule 9B-72.100(2) but must be registered in the online system. He continued stating the exemption for records keeping applies to their activities as quality assurance agencies and does not apply to validation leaving engineers and architects subject to the records keeping requirement. Mr. Richmond concluded addressing the final question which asked whether engineers and architects are permitted to evaluate windows and doors for compliance with the Florida Building Code using the test report from another manufacturer on a different product. He stated the POC recommendation was no, there are no provisions allowing the use of test reports from different manufacturers.

Dennis Braddy, Proponent

Mr. Braddy stated he had no disagreement with the majority of the POC recommendations. He continued by expressing concern with the timing in the process. Mr. Braddy explained the POC endured an all day session, a "marathon" session for 11 ½ hours of highly technical discussion. He stated meetings that long concerning such highly technical material is not acceptable. He recommended better scheduling for future POC meetings to relieve the members of the POC from such long and technical meetings.

Commissioner McCombs moved approval of the POC recommendations. Commissioner Kidwell seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Bassett asked why declaratory statements DCA04-DEC-090 and 099 were dismissed.

Mr. Richmond stated DCA04-DEC-090 concerned plans which were denied a permit, seeking a declaratory statement to override the denial and is subject to appeal. He stated DCA04-DEC-099 involved the same factual circumstances of a denied permit which establishes the foundation for an appeal through the local board.

CONSIDERATION OF APPLICATIONS FOR PRODUCT AND ENTITY APPROVAL

Mr. Blair conducted a review of the process of Commission action for each consent agenda group of applications or individual applications as presented. He then presented the application numbers for specific products in the four consent agenda groups:

Recommended Approval

Product # 's: 2452, 2477, 2493, 2520, 2521, 2522, 2526, 2527, 2550, 2552, 2553, 2654, 2656, 2657, 2674, 2680, 2684, 2745, 2746, 2747, 2760, 2761, 2762, 2763, 2764, 2766, 2769, 2439, 2456, 2464, 2478, 2482, 2483, 2486, 2487, 2540, 2628, 2629, 2630, 2633, 2652, 2653, 2659, 2668, 2669, 2715, 2728, 2732, 2734, 2765, 2768, 2395, 2705

Commissioner Browdy moved approval of the POC recommendation to approve the consent agenda. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Recommended Conditional Approval

Product # 's: 2707, 2709, 2712, 2717, 2720, 2721, 2722, 2725, 2727, 2750, 2751, 2755, 552, 1766, 1768, 1769, 1979, 2181, 2211, 2219, 2266, 2274, 2334, 2350, 2355, 2419, 2484, 2485, 2501, 2502, 2533, 2534, 2545, 2581, 2602, 2620, 2621, 2623, 2625, 2637, 2650, 2651, 2678, 2681, 2683, 2736, 2738, 2739, 2756, 2770, 1064, 1621, 1670, 1868, 1878, 1892, 2199, 2495, 2499, 2524, 2554, 1642, 1734, 1795, 1796, 1797, 1798, 1971, 2559, 2569, 2570, 2698, 2753, 2773, 1268, 1831, 2106, 2356, 2359, 2377, 2378, 2385, 2386, 2387, 2388, 2398, 2400, 2402, 2403, 2405, 2406, 2407, 2410, 2411, 2418, 2430, 2442, 2472, 2475, 2576, 2596, 2599, 2601, 2603, 2604, 2606, 2631, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2670, 2675, 2691, 2693, 2699, 2701

Commissioner Wiggins moved approval of the POC recommendation to approve the consent agenda. Commissioner Browdy seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Recommended Deferral

Product #'s: 1925 (not included in matrix), 1757, 1870, 2009, 2122, 2230, 2460, 2489, 2491, 2500, 2503, 2561, 2571, 2580, 2583, 2586, 2587, 2595, 2608, 2611,

2616, 2689, 2690, 2695, 2708, 2710, 650, 1654, 1945, 2382, 2420, 2432, 2511, 2517, 2523, 2537, 2538, 2551, 2555, 2556, 2558, 2589, 2591, 2593, 2597, 2600, 2607, 2609, 2612, 2613, 2614, 2626, 2627, 2635, 2641, 2662, 2664, 2686, 2700, 2726, 77, 2030, 2039, 2408, 2435, 2436, 2437, 2440, 2461, 2494, 2515, 2532, 2640, 2661, 2775, 1655, 2265, 2282

John McFee, Window & Door Manufacturers Association

Mr. McFee stated there were seven products he would request be pulled from the consent agenda for consideration: 2491, 2580, 2583, 2587, 2595, 2611, 2616, all with Marvin Windows and Doors, and 2647 with Veluxe America.

Commissioner Bassett requested clarification regarding conditionally approved and deferred.

Commissioner Carson responded stating the POC had attempted to bring consistency to the process and have prepared a list of guidelines used for determining approval status which may be provided to members of the Commission upon request. He continued stating every attempt was made for consistency in determining conditional approvals versus deferrals.

Mr. Richmond added conditional approvals have been limited to more administrative matters where a glitch in documentation has occurred which can be easily corrected. He stated deferrals involve more technical matters requiring more discretion.

Mr. Blair then stated there had been much public comment which is not reflected in the staff analysis provided for review. He continued stating the information received from those comments during the POC meeting may have been compelling enough to change the approval status of the product.

Commissioner Carson moved approval of the consent agenda as amended. Commissioner Vann seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Kidwell interjected a matter of disclosure. He stated Ralph Hughes of FECP had contracted Alvarez Homes to construct a new home for him. He stated FECP is a competitor to Power Steel Lentil, Application 2700. Commissioner Kidwell stated he is the engineer of record for the new home being constructed by Alvarez Homes for Mr. Hughes.

2491, 2580, 2583, 2587, 2595, 2611, 2616, 2467

Mr. McFee complimented staff on the quality of details available in terms of the products matrix. He expressed concern with the year of standards referenced and referencing the section numbers in the Code. Mr. McFee stated Rule 9B-72.07 Method 1,

Item A, states, "indication of compliance shall be by certification to standards adopted by the Code," linking the reference to the standard rather than the section of the Code. He noted referencing section numbers could lead to confusion for building officials or the general public. Mr. McFee then addressed his concern with the year of standards referenced, which appear in the 2004 Code to be adopted in January 2005. He stated the manufacturers tested to the most recent standard in good faith to comply with current requirements. He requested the items be changed from deferral to conditional approval to work with staff on refining the language. Mr. McFee stated if the items remain deferred, it will delay the products' approvals until the August meeting.

Mr. Madani responded stating the reference to Code sections requirement is obtained from the application form which was adopted by rule and must be in compliance. He continued stating all the products which have been approved must be subject to a second review for compliance with the new Code. Mr. Madani stated the manufacturers will be informed that the products must be reviewed for compliance with the new Code.

Commissioner Greiner requested clarification regarding Mr. Madani's response. He stated all of the products which are currently approved must have revisions made after January 1, 2005. He then asked if there is a process in place for simple revisions to be made in the most expeditious manner possible.

Mr. Madani replied staff is preparing to notify all the manufacturers that the products must be reviewed prior to the implementation of the new Code. He assured Commissioner Greiner that staff is working on a solution to deal with the process.

Commissioner Kim expressed concern with the manufacturers being required to go through the validation or evaluation process again due to editorial updates to the Code.

Mr. Madani stated the manufacturers must certify to the Commission that the products still meet the Code.

Commissioner Greiner expressed concern with the manufacturers certifying their own products then asked if the products would have to be reviewed by the validation entities again.

Commissioner Browdy suggested a committee be created to develop a certification form to be in place which would facilitate the re-certification of the products for compliance with the new Code.

Chairman Rodriguez asked Commissioner Carson if he would work with staff to find a solution and bring a report back to the Commission during the next meeting.

Commissioner Greiner asked if the request concerning reference of standards is that the correct standard be referenced and only that standard.

Mr. McFee responded the two issues were identified in the section number of the Code and the year of the standard, being equivalent to current Code as opposed to what is referenced in the new Code.

Commissioner Greiner entered a motion for approval to conditionally approve the items pulled from the consent agenda. Commissioner Wiggins seconded the motion. Mr. Blair interjected the issue is more complicated.

Mr. Madani stated the 1997 Standard Building Code, the base document for the existing Code, contains standards that are outdated. He continued stating products on the market are being tested to new standards so the request is that applicants provide an equivalency of standards to avoid technical problems.

Commissioner Greiner stated the old standards will disappear in 2005 and the equivalent has been voted into the Code for January 2005.

Mr. Richmond advised the law pertaining to the Code contains specific language stating the Commission shall not enforce, or urge the enforcement, new standards until they have been adopted into the Code. He stated Rule 9B-72 allows the Commission to make a finding of equivalence of standards. Mr. Richmond stressed the Commission would not be advised to accept standards adopted into the new Code as equivalents.

Commissioner Kim stated products had been conditionally approved with the stipulation that a letter be submitted from their evaluator providing equivalency.

Mr. Madani interjected those that were conditionally approved on that basis were for products that were already tested to equivalent standards.

Commissioner Kim then asked if a letter was submitted from an evaluator or design professional stating the two standards are equivalent would it meet the requirement.

Mr. Madani responded the applications were deferred because they require additional validation.

Mr. McFee added as a certification agency he would work with the standards writers, WDMA, AAMA, and ASTM to identify the equivalency.

Mr. Madani recommended the equivalency be determined by the POC or by the Commission rather than staff determining the equivalency.

Mr. Braddy urged the Commission to consider the issue carefully to avoid products being stuck in limbo for months that have already been approved for use.

Commissioner Greiner asked if the equivalency is submitted by a validation entity

on which the Commission relies for compliance, would staff not be able to document the submittal and move along with the process.

Mr. Dixon explained the current procedure for determining equivalency is to amend Rule 9B-72, which is too cumbersome a procedure for the upcoming transition. He stated if the equivalency cannot be determined from an action already taken, it puts the Commission at risk. He continued stating it is a specific Commission action that must determine equivalency.

Commissioner Bassett offered comment stating asking a product manufacturer to wait seven months for approval of their product which has already been approved in the new Code is unreasonable.

Chairman Rodriguez offered clarification stating the Commission can consider the equivalency during the next meeting so it would not be a seven month process.

Commissioner Bassett suggested the issue could be considered during the scheduled telephonic Commission meeting during July rather than waiting until August.

Chairman Rodriguez stated the difference in time between the conference call meeting and the August meeting is less than thirty days so in consideration of time and expense the August Commission meeting would serve a better venue.

Commissioner Lipka moved approval for the POC recommendation to defer the product numbers 2491, 2580, 2583, 2587, 2595, 2611, 2616, and 2647. Commissioner Greiner seconded the motion.

Commissioner Kidwell noted product 2647 was conditionally approved already.

Mr. McFee removed 2647 from his list of items.

Commissioner Lipka amended his motion to include product numbers 2491, 2580, 2583, 2587, 2595, 2611, and 2616.

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

Mr. McFee expressed appreciation to the Commission for their consideration and complimented staff on the level of detail available and for looking into the process to avoid problems in the future.

Commissioner Parrino entered a disclosure issue regarding a product in his industry stating he voted to defer the item during the POC.

Mr. Braddy noted item 2647 may not have received Commission action since it

was pulled from the consent agenda.

Commissioner Kidwell stated 2647 was included in the conditionally approved consent agenda items and had received Commission action.

Recommended to Deny

2428

Mr. Blair stated the reason for denial was there were two NOA's that were not applicable.

Commissioner Wiggins moved approval of the POC recommendation to deny. Commissioner McCombs seconded the motion. Vote to approve the motion was unanimous. Motion carried.

1317

Mr. Blair stated the item was denied based on the validation provided by the entity was outside the scope of their accreditation as well as the absence of a required signed and sealed evaluation report and a certificate of independence. He continued stating the year and edition of the standards were not consistent with the Code and it did not support the reference standards or the installation instructions.

Commissioner McCombs moved approval of the POC recommendation to deny. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous.

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Mr. Blair explained the POC recommended denial based on the following issues: certification of independence from an evaluation entity; year and edition of standards was not consistent with the Code; the report provides for standards that are not listed in the Code; ASTM G53 is not listed in the Code; needs to be in compliance with applicable standards not tested for impact resistance with 19 psf; and it does not comply with TAS114 in its entirety.

Commissioner Wiggins moved approval of the POC recommendation to deny. Commissioner Gonzalez seconded the motion. Vote to approve the motion was unanimous. Motion carried.

1994

Mr. Blair stated the POC recommended denial based on the following issues: needs certificate of independence because the engineers are from the same company;

needs to listed in the standards as provided in the evaluation report; the test standards are listed in the report but not on the application; and various structural aspects.

Commissioner Lipka moved approval of the POC recommendation to deny. Commissioner Gonzalez seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Bassett requested clarification regarding the two engineers working for the same company.

Mr. Madani responded stating there is a conflict of interest when two engineers are working for the same company providing the validation and the evaluation.

Mr. Richmond explained there is no financial independence when the same company is issuing their paychecks. He stated the engineers would share a common financial interest and the POC established it should not be approved on that basis.

Mr. Carson then presented nine entity approvals as follows:

APA – The Engineered Wood Association, Certification Agency

Commissioner McCombs moved approval of the POC recommendation. Commissioner Parrino seconded the motion. Vote to approve the motion was unanimous. Motion carried.

PFS Corporation, Certification Agency

Commissioner McCombs moved approval of the POC recommendation. Commissioner Parrino seconded the motion. Vote to approve the motion was unanimous. Motion carried.

NTA Incorporated, Quality Assurance Entity

Commissioner Parrino moved approval of the POC recommendation. Commissioner McCombs seconded the motion. Vote to approve the motion was unanimous. Motion carried.

NTA Incorporated, Testing Laboratory

Commissioner Parrino moved approval of the POC recommendation. Commissioner McCombs seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Stork Twin City Testing Corp, Testing Laboratory

Commissioner Parrino moved approval of the POC recommendation. Commissioner McCombs seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Wiley Laboratories Inc., Testing Laboratory

Commissioner Parrino moved approval of the POC recommendation. Commissioner McCombs seconded the motion. Vote to approve the motion was unanimous. Motion carried.

NTA Incorporated, Validation Entity

Commissioner Parrino moved approval of the POC recommendation. Commissioner McCombs seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Terrapin Testing Incorporated, Validation Entity

Commissioner Parrino moved approval of the POC recommendation. Commissioner McCombs seconded the motion. Vote to approve the motion was unanimous. Motion carried.

COMMITTEE REPORTS AND RECOMMENDATIONS:

ACCESSIBILITY TAC

Commissioner Richardson stated the committee presents no action items for the Commission. (See *Accessibility Technical Advisory Committee Meeting Report June 14, 2004* Online.)

EDUCATION TAC

Commissioner Browdy presented the report of the Education Technical Advisory Committee stating a quorum was not present. (See *Education Technical Advisory Committee Meeting Report June 14, 2004* Online.)

Commissioner Browdy then presented items for Commission action which resulted from the meeting. He stated the Education TAC recommends the Commission to authorize a 4-hour Mechanical and Plumbing Core Course subject to public comment on June 23, 2004.

Commissioner Wiggins moved approval of the TAC recommendation. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Browdy recommended the Commission approve a 1-hour Mechanical and Plumbing Advanced Course subject to additional information and comments prior to June 23, 2004.

Commissioner Greiner moved approval of the TAC recommendation. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous.

Commissioner Browdy recommended the Commission approve a 1-hour Building Structural Report, commercial concept based on an outline provided to the Structural TAC allowing comments through June 23, 2004.

Commissioner Lipka moved approval of the TAC recommendation. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Browdy recommended the Commission approve a 2-hour Indoor Environmental Quality Overview Course allowing comments until June 23, 2004.

Commissioner McCombs moved approval of the TAC recommendation. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Browdy recommended the Commission approve an RFP for an entity to coordinate the publication and dissemination of information relating to current topics of interest as prioritized by the Education TAC.

Commissioner Wiggins moved approval of the TAC recommendation. Commissioner McCombs seconded the motion. Vote to approve the motion was unanimous. Motion carried.

FIRE TAC

Commissioner Greiner presented the report of the Fire Technical Advisory Committee meeting. He stated there was not a quorum and the committee worked in a workshop mode. (See *Fire Technical Advisory Committee Meeting Report June 14, 2004* Online.)

PLUMBING TAC

Commissioner Greiner presented the report of the Plumbing Technical Advisory Committee meeting. (See *Plumbing and Swimming Pool Technical Advisory Committee Meeting Report June 14, 2004* Online.)

STRUCTURAL TAC

Commissioner Parrino stated there was no Commission action required. (See *Structural Technical Advisory Committee Meeting Report June 14, 2004* Online.)

PRODUCT APPROVAL / PROTOTYPE BUILDING / MANUFACTURED BUILDINGS PROGRAMS OVERSIGHT COMMITTEE (POC)

Commissioner Carson presented the report of the Product Approval / Prototype Building / Manufactured Buildings Programs Oversight Committee. (See *PAPBMB Programs Oversight Committee Meeting Report June 14, 2004* Online.)

Commissioner Carson stated the POC received and reviewed the proposed RFP for validation services for the state product approval system and recommend the Commission authorize the solicitation and final approval of the successful contractor during the next Commission meeting.

Commissioner Gonzalez moved approval of the POC recommendation. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Greiner requested clarification regarding the RFP.

Commissioner Carson stated during the last Commission meeting he had requested an RFP for validation services from an outside source to relieve the POC from lengthy and technical meetings in the future.

Mr. Dixon stated the Commission had heard complaints regarding information being entered into the information system and being approved by the Commission. He stated a consultant had been contracted to provide a sampling and the complaints were confirmed. He stated the findings revealed a high level of failure based on the sampling. Mr. Dixon continued stating Mr. Madani and his staff spent a tremendous amount of time reviewing the applications for product approval. He stated the department cannot sustain the level of time and consideration involved in the process due to lack of staffing. He further stated the only avenue is outsourcing and hopefully move through the product approvals more rapidly by cutting down on the deferrals and such.

PUBLIC COMMENT

Chairman D'Andrea called for public comment.

Ralph Hughes, FECP, Tampa

Mr. Hughes stated he was involved in the state Legislative process recently pertaining to matters including the Florida Building Code and the Florida Building Commission. He continued stating he had advised the leadership of both the Senate and

the House that he had been an active participant in the development of the annual updating of the Standard Building Code subsequent to Hurricane xxxxxx, that struck Florida in September of 1960, then becoming an active participant in the formulation and development of the Florida Building Code. Mr. Hughes further stated the Florida Building Code was developed by the Florida Building Commission pursuant to being mandated by state law.

Mr. Hughes explained he had stated that the SBCCI was unduly influenced by various product manufacturers whose agenda was to sell their products through the Code. He stated the International Code Congress, promulgators of the International family of codes is unduly influenced by the same entities and SBCCI subsequently merged with the ICC. Mr. Hughes continued stating he had advised the Legislators that the undue influence factor no longer exists because the Florida Building Code is now controlled by the Florida Building Commission, made up of experts representing every segment of the construction industry throughout Florida.

Mr. Hughes stated he advised the Legislature that certain proposed legislation would change the make-up of the Commission and the Florida Building Code and place the state back in the same situation that existed prior to Hurricane Andrew, which struck Florida in August of 1992. He explained the proposed legislation would grant special interest groups certain powers that are currently vested only in elected officials and/or the Florida Building Commission.

Mr. Hughes stated he spoke to the Legislature concerning several specific issues that were included in the proposed legislation. He continued by listing those issues as follows: the adoption of the International family of codes would be mandated thereby restricting the Florida Building Commission from considering any other codes or portions of codes that may be in the best interest of the state; associations and special interest groups would be given preferential consideration for recommended gubernatorial appointments to the Commission; the Commission would be mandated to coordinate with the Building Officials Association of Florida to establish appeal panels; it would suspend local product approval for a period of one year and mandate a new study by a product approval study committee yet to be appointed; it would mandate the revision of a product approval system that has been developed over a four year period by the Commission after an inordinate number of public hearings conducted by the Commission throughout Florida; it would restrict the use of permit fees by local jurisdictions; it would empower DCA staff to reject proposed Code amendments under certain circumstances.

Mr. Hughes further stated certain items were never presented before the Legislature but he noted the special interest groups never dropped the local product approval issue. He stated the Commission faces the challenge from the special interest groups to resolve the problem by taking action to implement the envelope products be approved by the Florida Building Commission only.

Joe Belcher, Institute for Business & Home Safety

Mr. Belcher presented information which potentially poses serious problems to the Commission at the request of the Institute for Business & Home Safety. (See *Institute for Business & Home Safety Letter to Raul Rodriguez, AIA, Chairman, Florida Building Commission dated June 11, 2004* Attachment.)

Allen Cooper, Certified Pool Contractor, Member, Florida Pool & Spa Association

Mr. Cooper expressed appreciation to Chairman Rodriguez regarding drafting a letter to Senator Constantine concerning a Swimming Pool TAC that was proposed. He requested the Chairman explain in the letter the procedure of establishing a TAC and how members are appointed to ensure proper review of the document and report back to the Commission.

Carrie Hebrank, Florida Building Materials Association

Ms. Hebrank offered comment concerning product approval. She stated she had submitted to the Commission a memorandum which outlines some of the issues involved in the existing product approval rule and the proposed changes. She continued stating clarity would be necessary on some of the issues and stressed the product approval issue is a very important issue. Ms. Hebrank stated 90% of jurisdictions are not implementing the new law so the impact has not yet been observed. She then addressed Mr. Hughes comments relating to the Legislature and the special interest groups by stating Mr. Hughes also represents a company which would be considered a special interest with respect to promoting his agenda.

Dennis Braddy

Mr. Braddy expressed concern with individuals in committee meetings asking technical questions that appear on applications. He stated when an individual questions the technical or engineered information included in an application they should present supportive material showing the information is incorrect. He requested the Commission review the process and possibly make a change in the requirement. Mr. Braddy commended Mr. Madani for adding comments to the matrix which was available during the meeting and requested the matrix with the comments be available before the meeting in order to print it out for review. He addressed the issue of the RFP for product validation expressing concern regarding the term validation, i.e., whether validation is technical or clerical terminology. He suggested whomever makes a bid on the RFP should be informed of the intent of the word validation.

COMMISSION MEMBER COMMENTS AND ISSUES

Commissioner Bassett moved approval of the recommendation by the Institute of Business & Home Safety to make revisions to the Residential Code, Section 301.2.1.1.

Mr. Richmond stated such a motion would not be in order. He explained in order to consider the revisions an additional public hearing on the notice of proposed change would have to be re-noticed, hold the hearing thirty days later to accept the comment, delaying the adoption of the 2004 Code until October.

Commissioner Kim stated the Structural TAC received the letter just two days before the Commission meeting. He stressed if the issue is ignored all residential construction from Orlando north would be substantially compromised.

Commissioner Lipka concurred stating the oversight poses danger to the residents of Florida.

Commissioner Bassett asked what the correct motion would be to address the issue.

Mr. Richmond replied a motion to establish an additional rule adoption hearing on Rule 9B-3.047 would be appropriate.

Commissioner Bassett then changed his previous motion to reflect approval of legal counsel's language. Commissioner Kim seconded the motion then explained he was aware the Code would be delayed for several months. He reminded the Commission the Code was delayed three to four months for a very minor change related to oven hoods. He stressed the issue brought forth is substantially more important in terms of life safety issue for the citizens of Florida.

Commission Carson asked how much delay would result from approving the motion on the floor.

Mr. Dixon responded under the law three months is required for notice, however, the Commission policy allows six months providing time for training and redesigns. He stated implementation would most likely occur April 1, 2005. Mr. Dixon explained the IRC is an international model code. He acknowledged IBHS's perspective that it establishes a reduction in standards from what currently exists. He posed whether the standards are indeed a reduction and if so it poses a safety issue for the residents of Florida.

Commissioner Greiner expressed concern that the Commission would jeopardize the implementation date of the Code based on a letter with no additional research by staff or consultants. He recommended the Commission consider further research and take action during the next Commission meeting.

Commissioner Wiggins concurred stating there has been no technical analysis on the issue. He stated some areas of the state may be greatly effected and others not. He recommended further analysis.

Commissioner Browdy echoed the remarks of Commissioners Greiner and

Wiggins. He urged the Commission not to take precipitous action on the issue until further clarification and facts have been entered at which time there would be an appropriate venue for Commission consideration and action. He expressed opposition for any motion which would change the Code or delay the implementation of the Code, or to change the rule at this time.

Commissioner Bassett asked if the Commission could open just one portion of the rule for change.

Mr. Richmond responded all the codes are adopted under the same rule thus in order to open the Residential Code it would require opening the entire rule for comment which would subject to the restraint of the public.

Commissioner Sanidas offered comment which was inaudible.

Chairman Rodriguez posed if the rule is adopted as it exists what would be the proper response to the issue at hand which was brought before the Commission at this eleventh hour.

Commissioner Kim suggested consulting Jack Glenn for expert advice regarding the content of the letter.

Commissioner Browdy recommended continuing with the Commission rules and procedures which would require information of this kind to be referred to the Structural TAC, inviting interested parties to address the issue including representatives of the IRC.

Chairman Rodriguez asked Mr. Richmond for an estimated timeframe for moving forward with the Code and also considering the issue at hand.

Mr. Richmond responded it may be the next annual amendment cycle.

Commissioner Kim stated the amendment cycle would probably be Spring 2005 before it begins.

Mr. Dixon added the plan was if there were problems or errors in the Code that could not be resolved through interpretation, the one year amendment cycle could be started for correcting any error in the Code. He stated it could take eight months to completion and possibly shorter considering all notices and requirements that must be considered. Mr. Dixon added the amendment process could start in September or October of 2004 which would be prior to the implementation of the new Code.

Chairman Rodriguez asked if the TAC could review and consider the issue during the August meeting. He stated the issue should be dealt with immediately so when the new Code is implemented in January the process is already in place for revision or correction.

Commissioner Greiner stated the issue would be presented before the Structural TAC during the August meeting then recommended for action possibly beginning in October then remedied as soon as June 2005. He continued stating an informational notice could be submitted on the web and to all affected jurisdictions until the correction is implemented.

Chairman Rodriguez expressed regret that apparently everybody missed the technical material which has been revealed in the letter but if the information has technical merit, then it must be reviewed and considered through a process to be in place as quickly as possible.

Mr. Belcher stated the issue is serious enough for the Commission to be made aware of. He continued stating the un-reinforced masonry is a serious problem. He added the bulleted items were developed by Eric Stafford who is highly qualified to make the analysis. He expressed support for the motion to delay the Code if necessary to avoid the problems which may result from the material.

Open discussion continued regarding the possible avenues for resolving the issue brought forth in the IFHS letter.

Mr. Dixon interjected a possible avenue stating the issue could be considered during the telephonic Commission meeting if it were confirmed by staff that a substantial reduction in construction standards. He stated during the conference meeting another hearing could be noticed under the rulemaking if it were determined it was necessary. Mr. Dixon continued stating it could mean the August meeting would need to be moved to September due to required notices.

Commissioner Bassett moved approval to table his previous motion until the telephonic Commission meeting which is scheduled for July. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Chairman Rodriguez expressed appreciation to the Commission for taking time to discuss and deal with the issue. He stated there is a great amount of responsibility that goes with serving on the Commission which has been taken seriously by each member.

Commissioner Bassett stated a letter had been distributed regarding the Energy Code in terms of the Commission's authority maintain the ability to administer Florida's Energy Code. (See *Department of Community Affairs Letter to Mr. David K. Garman dated June 30, 2004 Attachment.*)

Commissioner Bassett moved approval for the letter to be issued. Commissioner Carson seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Parrino requested in the form of a motion that the engineers and architects serving on the Commission be granted credit for continuing education by their service, to include members of the TACs, and requested staff contact the Board of Engineers as well as AIA concerning the issue. Commissioner Bahadori seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Greiner extended appreciation to staff for their tireless work and for the addition of the laptops issued to each Commission member.

**REVIEW COMMITTEE ASSIGNMENTS AND ISSUES FOR JUNE 2004
COMMISSION MEETING**

Mr. Blair called for TAC chairs to state whether they need to meet during the August 2004 Commission meeting.

ADJOURN

No further business was discussed, Florida Building Commission Plenary Session adjourned at 1:00 p.m.