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M E M O R A N D U M

TO: Members of the Florida Building Commission
and the Plumbing/Gas TAC

FROM: Suzanne H. Schmith
Staff Attorney

SUBJECT: Inclusion of Septic Tank Regulations in the Florida Building Code

DATE: June 23, 1999

The purpose of this memorandum is to finalize my opinion on the inclusion of septic tank regulations, which fall under the jurisdiction of the Department of Health, in the Florida Building Code. This memorandum should be considered along with my memorandum to the Education Task Group, dated June 17, 1999, regarding the inclusion of septic tank contractors in the Florida Building Code Training Program.

As you are aware, I verbally advised the Plumbing/Gas TAC last fall that the Florida Building Commission has no authority to include those regulations. I also advised that the TAC could recommend that the full commission seek legislative authority for inclusion of those regulations during the 2000 session. As many TAC members felt that these regulations impact residential construction, they recommended that the regulations be included as an appendix to the Florida Building Code so that the contractor would have all applicable regulations in one place. Some commissioners have referred to this as a "seamless code" approach, the purpose being to have everything that affects the construction of buildings, structures and facilities in one book. It is my understanding that the appendix would not be referenced within the body of the code.

The basis for my advice not to include septic tank regulations within the Florida Building Code is chapter 98-287, Fla. Laws, the law which this commission is charged to implement. That law substantially amends section 553.73(2), Florida Statutes, to read as follows:

(2) The Florida Building Code shall contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, **existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, public or private educational facilities, swimming pools, and correctional facilities** and enforcement of and compliance with such provisions or requirements.

Section 553.73(2), Fla. Stat. (1998 Supp.). Each of the facilities highlighted in the above quoted text is a facility for which construction is regulated by a **state agency**, rather than local jurisdictions. The legislation directs that these facilities be included in addition to the more general building systems which are commonly included in building codes and enforced by local jurisdictions.

It is a general principle of statutory interpretation that when a law expressly describes particular situations in which something should apply, an inference must be drawn that what is not included by specific reference was intended to be omitted or excluded. *See Gay v. Singletary*, 700 So.2d 1220 (Fla. 1997); *D.A.O. v. Department of Health and Rehabilitative Services*, 561 So.2d 380 (Fla. 1st DCA 1990). This is known as the doctrine of *inclusio unius est exclusio alterius*, or express mention and implied exclusion. Based upon this doctrine, I conclude that if the Legislature had intended for any other construction regulations enforced by a state agency to be included in the Florida Building Code, those regulations would be specifically referenced in section 553.73(2), Florida Statutes. However, as I stated during the June plenary session, if septic tank construction has historically been considered part of plumbing systems governed by building codes, then those regulations may be included in the Florida Building Code, Plumbing Chapter.

I hope this clarifies the basis on which I have concluded there is insufficient statutory authority to include septic tank regulations in the Florida Building Code. If the commission determines that these regulations have an impact on construction in Florida which merits their inclusion in the code, I recommend that legislative authority be sought during the 2000 session.