

THE FLORIDA BUILDING COMMISSION SPECIAL REPORT

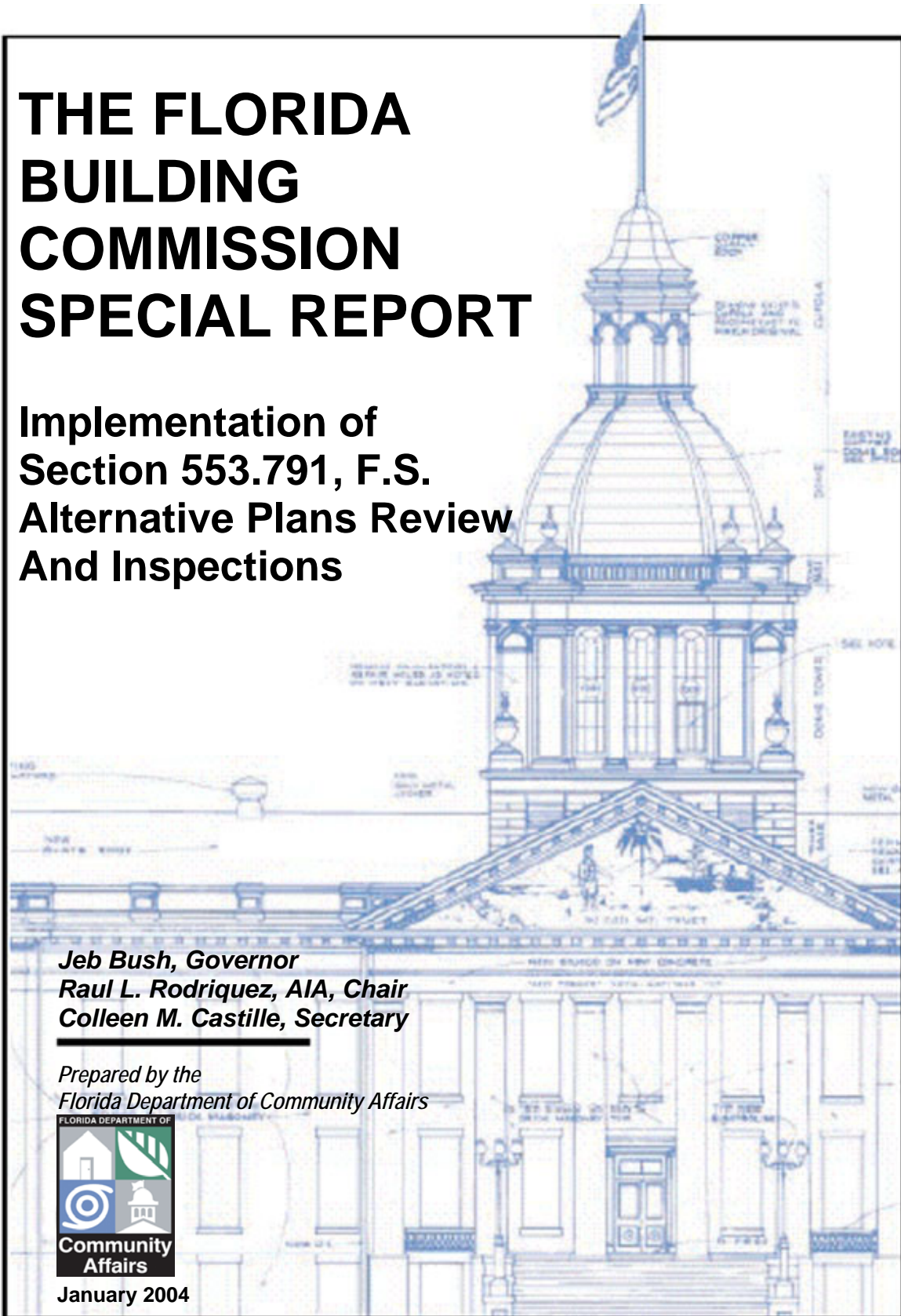
Implementation of
Section 553.791, F.S.
Alternative Plans Review
And Inspections

Jeb Bush, Governor
Raul L. Rodriguez, AIA, Chair
Colleen M. Castille, Secretary

*Prepared by the
Florida Department of Community Affairs*



January 2004



FLORIDA BUILDING COMMISSION

REPORT ON

**THE IMPLEMENTATION OF SECTION 553.791, F.S.-
ALTERNATIVE PLANS REVIEW AND INSPECTIONS**

JANUARY 1, 2004

TABLE OF CONTENTS

<u>Section</u>		<u>Page</u>
Summary		
Assessment Methodology		1
Survey Results		1
Public Workshop Comments		2
Conclusions		2
Recommendations		3
Appendices		
A	Section 553.791, Florida Statutes	4
B	Final Report: Assessment of Implementation of s. 553.791, F.S.	11
C	Florida Building Commission Workshop on Private Plans Review And Inspections – Discussion Transcription	25
D	Comments Given before the Florida Building Commission – The Building Inspections Division, Duval County/City of Jacksonville	30
E	Comments Given before the Florida Building Commission – Universal Engineering Science, Inc.	39

SUMMARY

In 2002 the Florida Legislature passed a modification of Title XXXIII - Regulation of Trade, Commerce, Investments, and Solicitations, Chapter 553 - Building Construction Standards. Specifically, the Legislature created Section 553.791, Florida Statutes, titled *Alternative plans review and inspection* (see Appendix A). Paragraph (19) of Section 553.791 directed the Florida Building Commission to submit a report to the Legislature on the implementation of this section of law on or before January 1, 2004.

Assessment Methodology

Investigation of the implementation of Section 553.791 began with a survey assessment conducted under contract with the University of Florida, Center for Affordable Housing. The contractor first conducted a telephone survey to identify jurisdictions where private providers had been employed (as defined under paragraph (1) (g)). Over two hundred responses were received from local building departments. The thirteen jurisdictions that reported having experienced construction projects that employed private providers were then interviewed more thoroughly to investigate the implementation process. The survey further included interviews with the trade/professional associations whose memberships are impacted by the legislation (Building Officials Association of Florida, Florida Home Builders Association, Associated General Contractors, Associated Builders & Contractors) and corporations serving as active private providers. A final report of the survey activity (see Appendix B) was distributed to Commission members and the public for review and comment. The Commission then held a public workshop at its October 2003 meeting to solicit additional public comment. A summary transcription of the workshop discussion is presented as Appendix C. Specific written comments from the workshop submitted by Duval County and by Universal Engineering Science, Inc., a private provider, are presented as Appendices D and E respectively.

Survey Results

There was no strong consensus evidenced by the survey between local jurisdictions and industry on the benefits of the private provider option. The differing perspectives reported during the interviews are described in the contractor's report (Appendix B). Potential benefits reflected in the report include:

- In high growth areas the private provider option can supplement the plans review and inspection resources of the local jurisdiction.
- The private provider system provides for additional oversight of plans review and inspections. Local jurisdictions are authorized to audit private provider services and to cause remedy of any deficiency found. Licensed architects or engineers must perform or oversee all private provider plans review and inspections.
- The private provider system provides the consumer with a “remedy” by way of the insurance provision in the statute should the provider's services be deficient in addition to remedy by way of civil action against the contractor. The municipal system provides for

remedy only by action against the contractor. Local governments are shielded by sovereign immunity.

- Though some jurisdictions provide similar services, commercial and residential construction may benefit by having a private inspector on call for special tasks or for evening or weekend inspections. Such on-demand service can provide for improved scheduling and efficiency in the construction process. Some contractors indicated a willingness to pay private provider fees in addition to normal building department fees to obtain this flexibility.

The survey consultant reports that comments by Building Officials regarding benefits to the building departments were generally negative. Three responding Building Officials indicated their workload had increased due to the need to re-inspect every project. One respondent had assigned one inspector to this task full time. Building Officials also point out that building departments are responsible for steps in the enforcement of a number of non-building-code related land development regulations. Enforcement of these regulations is out of the authorized scope of services of private providers so local jurisdiction personnel must still perform these functions when a private provider is used for building code enforcement.

Public Workshop Comments

Input from the public workshop included:

- Duval County has integrated private provider inspections into building code enforcement but has documented concerns about the quality of private inspections. Its administrators advise the development of effective oversight authorities for building officials is essential to ensuring that private inspections become a real asset rather than a burden on local jurisdictions.
- The experience and concern of one private provider were that oversight measures adopted by some local jurisdictions are being used to prevent the adoption and implementation of the private provider inspections option.
- A private provider and engineer who was involved in the development of the original legislation suggests that stakeholders should be reconvened to further consider the major issues essential to acceptance and effective implementation of the private provider option.

Conclusion

The survey and public comment before the Commission indicate little consensus on the realized benefits of the private provider option and the problems which must be resolved to improve implementation. The survey report indicates considerable divergence between what the Building Officials report versus what builders/contractors report as realized benefits. Builders/contractors

are generally reporting a substantial time savings that results in considerable cost reductions. Some Building Officials are reporting no benefit either to the building department or to the fee owner. They cite duplicative costs and little improvement in response times. One respondent pointed out contractors in high volume markets may find quicker response times, but under normal circumstances the response times are claimed to be about the same. Public comment before the Commission indicates that a major local jurisdiction which has integrated private provider inspections into enforcement considers more building official oversight authority is necessary while the private provider believes building officials are misusing current oversight authorities to prevent implementation of the private provider option.

Recommendations

The Commission recommends that it work with stakeholders to clarify the intent and requirements of the current law and to develop consensus recommendations for revisions to law governing the alternative plans review and inspections system.

The system took effect October 2002 so there was little experience with its implementation prior to the collection of data for this report. The study conducted under contract with the Shimberg Center for Affordable Housing and public comment at the Commission workshop indicate problems but little consensus among stakeholders on either the problems or their solutions. The Commission will work with stakeholders during the coming year to identify and develop consensus on issues that must be resolved to improve implementation of the system. Issues that can be addressed through interpretation of current law will be addressed using the Commission's authority to issue declaratory statements. Issues that would require changes to current law will be addressed through development of consensus recommendations for presentation to the 2005 Legislature.

APPENDIX A

Section 553.791, Florida Statutes

Alternative Plans Review and Inspection

(1) As used in this section, the term:

(a) "**Applicable codes**" means the Florida Building Code and any local technical amendments to the Florida Building Code but does not include the applicable minimum fire prevention and fire safety codes adopted pursuant to chapter 633.

(b) "**Building**" means any construction, erection, alteration, demolition, or improvement of, or addition to, any structure for which permitting by a local enforcement agency is required.

(c) "**Building code inspection services**" means those services described in s. 468.603(6) and (7) involving the review of building plans to determine compliance with applicable codes and those inspections required by law of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

(d) "**Duly authorized representative**" means an agent of the private provider identified in the permit application who reviews plans or performs inspections as provided by this section and who is licensed as an engineer under chapter 471 or as an architect under chapter 481 or who holds a standard certificate under part XII of chapter 468.

e) "**Local building official**" means the individual within the governing jurisdiction responsible for direct regulatory administration or supervision of plans review, enforcement, and inspection of any construction, erection, alteration, demolition, or substantial improvement of, or addition to, any structure for which permitting is required to indicate compliance with applicable codes and includes any duly authorized designee of such person.

f) "**Permit application,**" means a properly completed and submitted application for:

1. The requested building or construction permit.
2. The plans reviewed by the private provider.
3. The affidavit from the private provider required pursuant to subsection (5).
4. Any applicable fees.
5. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(g) "**Private provider**" means a person licensed as an engineer under chapter 471 or as an architect under chapter 481. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square feet or less to residential

buildings, the term "private provider" also includes a person who holds a standard certificate under part XII of chapter 468.

(h) "**Request for certificate of occupancy or certificate of completion**" means a properly completed and executed application for:

1. A certificate of occupancy or certificate of completion.
2. A certificate of compliance from the private provider required pursuant to subsection (10).
3. Any applicable fees.
4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(2) Notwithstanding any other provision of law, the fee owner of a building may use a private provider to provide building code inspection services with regard to such building and may make payment directly to the private provider for the provision of such services. All such services shall be the subject of a written contract between the private provider, or the private provider's firm, and the fee owner. The fee owner may elect to use a private provider to provide either plans review or required building inspections. The local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner who desires to use a private provider to use the private provider to provide both plans review and required building inspection services.

(3) A private provider and any duly authorized representative may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification under chapter 468, chapter 471, or chapter 481. A private provider may not provide building code inspection services pursuant to this section upon any building designed or constructed by the private provider or the private provider's firm.

(4) A fee owner using a private provider to provide building code inspection services shall notify the local building official at the time of permit application on a form to be adopted by the commission. This notice shall include the following information:

- (a) The services to be performed by the private provider.
- (b) The name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform such services, his or her professional license or certification number, qualification statements or resumes, and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section.
- (c) An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide building code plans review and/or inspection services on the building that is the subject of the enclosed permit application, as authorized by s. 553.791, Florida Statutes. I understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the applicable codes, except to the extent specified in said law. Instead, plans review and/or required building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building that is the subject of the enclosed permit application.

If the fee owner makes any changes to the listed private providers or the services to be provided by those private providers, the fee owner shall, within 1 business day after any change, update the notice to reflect such changes.

(5) A private provider performing plans review under this section shall review construction plans to determine compliance with the applicable codes. Upon determining that the plans reviewed comply with the applicable codes, the private provider shall prepare an affidavit or affidavits on a form adopted by the commission certifying, under oath, that the following is true and correct to the best of the private provider's knowledge and belief:

(a) The plans were reviewed by the affiant, who is duly authorized to perform plans review pursuant to this section and holds the appropriate license or certificate.

(b) The plans comply with the applicable codes.

(6)(a) Within 30 business days after receipt of a permit application, the local building official shall issue the requested permit or provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 30-day period, the permit application shall be deemed approved as a matter of law, and the permit shall be issued by the local building official on the next business day.

(b) If the local building official provides a written notice of plan deficiencies to the permit applicant within the prescribed 30-day period, the 30-day period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (12) or to submit revisions to correct the deficiencies.

(c) If the permit applicant submits revisions, the local building official has the remainder of the tolled 30-day period plus 5 business days to issue the requested permit or to provide a second written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections. If the local building official does not provide the second written notice within the prescribed time period, the permit shall be issued by the local building official on the next business day.

(d) If the local building official provides a second written notice of plan deficiencies to the permit applicant within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to subsection (12) or to submit additional revisions to correct the deficiencies. For all revisions submitted after the first revision, the local building official has an additional 5 business days to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections.

(7) A private provider performing required inspections under this section shall inspect each phase of construction as required by the applicable codes. The private provider shall be permitted to send a duly authorized representative to the building site to perform the required inspections, provided all required reports and certifications are prepared by and bear the signature of the private provider. The contractor's contractual or legal obligations are not relieved by any action of the private provider.

(8) A private provider performing required inspections under this section shall provide notice to the local building official of the date and approximate time of any such inspection no later than the prior business day by 2 p.m. local time or by any later time permitted by the local building official in that jurisdiction. The local building official may visit the building site as often as necessary to verify that the private provider is performing all required inspections.

(9) Upon completing the required inspections at each applicable phase of construction, the private provider shall record such inspections on a form acceptable to the local building official. These inspection records shall reflect those inspections required by the applicable codes of each phase of construction for which permitting by a local enforcement agency is required. The private provider, before leaving the project site, shall post each completed inspection record, indicating pass or fail, at the site and provide the record to the local building official within 2 business days. Records of all required and completed inspections shall be maintained at the building site at all times and made available for review by the local building official. The private provider shall report to the local enforcement agency any condition that poses an immediate threat to public safety and welfare.

(10) Upon completion of all required inspections, the private provider shall prepare a certificate of compliance, on a form acceptable to the local building official, summarizing the inspections performed and including a written representation, under oath, that the stated inspections have been performed and that, to the best of the private provider's knowledge and belief, the building

construction inspected complies with the approved plans and applicable codes. The statement required of the private provider shall be substantially in the following form:

To the best of my knowledge and belief, the building components and site improvements outlined herein and inspected under my authority have been completed in conformance with the approved plans and the applicable codes.

(11) Within 2 business days after receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance and approval of all other government approvals required by law, the local building official shall issue the certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections. If the local building official does not provide notice of the deficiencies within the prescribed 2-day period, the request for a certificate of occupancy or certificate of completion shall be deemed granted and the certificate of occupancy or certificate of completion shall be issued by the local building official on the next business day. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (12) or to submit a corrected request for a certificate of occupancy or certificate of completion.

(12) If the local building official determines that the building construction or plans do not comply with the applicable codes, the official may deny the permit or request for a certificate of occupancy or certificate of completion, as appropriate, or may issue a stop-work order for the project or any portion thereof, if the official determines that such noncompliance poses a threat to public safety and welfare, subject to the following:

(a) The local building official shall be available to meet with the private provider within 2 business days to resolve any dispute after issuing a stop-work order or providing notice to the applicant denying a permit or request for a certificate of occupancy or certificate of completion.

(b) If the local building official and private provider are unable to resolve the dispute, the matter shall be referred to the local enforcement agency's board of appeals, if one exists, which shall consider the matter at its next scheduled meeting or sooner. Any decisions by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the commission pursuant to s. 553.77(1)(h).

(c) Notwithstanding any provision of this section, any decisions regarding the issuance of a building permit, certificate of occupancy, or certificate of completion may be reviewed by the local enforcement agency's board of appeals, if one exists. Any decision by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the commission pursuant to s. 553.77(1)(h), which shall consider the matter at the commission's next scheduled meeting.

(13) For the purposes of this section, any notice to be provided by the local building official shall be deemed to be provided to the person or entity when successfully transmitted to the facsimile number listed for that person or entity in the permit application or revised permit application, or, if no facsimile number is stated, when actually received by that person or entity.

(14) No local enforcement agency, local building official, or local government may adopt or enforce any laws, rules, procedures, or standards more stringent than those prescribed by this section.

(15) A private provider may perform building code inspection services under this section only if the private provider maintains insurance for professional and comprehensive general liability with minimum policy limits of \$1 million per occurrence relating to all services performed as a private provider, including tail coverage for a minimum of 5 years subsequent to the performance of building code inspection services.

(16) When performing building code inspection services, a private provider is subject to the disciplinary guidelines of the applicable professional board with jurisdiction over his or her license or certification under chapter 468, chapter 471, or chapter 481. All private providers shall be subject to the disciplinary guidelines of s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of a private provider's performance of building code inspection services shall be conducted by the applicable professional board.

(17) Each local building code enforcement agency shall develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction.

(18) The local government, the local building official, and their building code enforcement personnel shall be immune from liability to any person or party for any action or inaction by a fee owner of a building, or by a private provider or its duly authorized representative, in connection with building code inspection services as authorized in this act.

(19) The Florida Building Commission shall report on the implementation of this section to the Legislature on or before January 1, 2004, as part of the report required by s. 553.77(1)(b).

APPENDIX B

Final Report

Assessment of the Implementation of s. 553.791 F. S.

FINAL REPORT

Assessment of the Implementation of 553.791, F.S.

Prepared for:

Florida Department of Community Affairs
Housing & Community Development
2555 Schumard Oak Blvd
Tallahassee, FL 32399-2100

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Prepared by:

Shimberg Center for Affordable Housing
Rinker School of Building Construction
College of Design, Construction & Planning
University of Florida
P. O. Box 115703
Gainesville, FL 32611-5703

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TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
Introduction	15
Technical Approach	15
Building Official Survey	16
Incidence of Use	16
Plan Review vs. Building Inspection	16
Performance Auditing	17
Validate Qualifications	17
Thirty-day Permitting	18
Certificate of Occupancy	18
Board of Appeals	18
Building Official Perspective	19
Contractor/Builder Survey	19
Individual Companies	19
Homebuilder Perspective	20
Commercial Contractor Perspective	20
Private Provider Survey	21
Benefits of Private Provider Provision	22
Recommendations	23
Appendices (Available on request)	
A Section 553.791, Florida Statutes	25
B Step 1 Interview Protocol – Building Official Screening	25
C Step 2 Interview Protocol – Building Official Interview	25
D Building Code Commission, Workshop on Private Plans Review and Inspections, Discussion Notes	25

INTRODUCTION

In 2002 the Florida Legislature passed a modification of Title XXXIII - Regulation of Trade, Commerce, Investments, and Solicitations, Chapter 553 - Building Construction Standards. Specifically, the legislature produced Section 553.791 titled *Alternative plans review and inspection*. (See Appendix A) Section 553.791, paragraph (19), called for the Florida Building Commission to report on the implementation of this section to the Legislature on or before January 1, 2004.

In response to this mandate, the Department of Community Affairs (DCA) issued Purchase Order S5200-020146, dated 21 July 2003, to the Shimberg Center for Affordable Housing at the University of Florida. The purchase order directed the Shimberg Center to assess the implementation of 553.791, F.S. This report summarizes that assessment.

TECHNICAL APPROACH

The methodology employed by the Shimberg Center for collecting information about the implementation of 553.791 involved attempting direct contact with the Building Departments in the 267 cities and 67 counties in Florida. Assisting this process, the Department of Community Affairs provided its Building Official database of 134 contact points; the Building Officials Association of Florida provided contacts in 17 additional cities, and the Florida League of Cities provided contact information in 153 small Florida cities. All telephone numbers on all lists were called. Up to four attempts were made to reach the building official in each jurisdiction. In all, 206 surveys were completed.

Collecting information from Building Officials across the state was a two-step process. The first contact was made by the Florida Survey Research Center and served as a screening mechanism to identify those Building Departments that had experienced use of the private provider option. The second step involved re-contacting those jurisdictions that had experience with construction projects that had chosen to employ a private provider for either plan review or inspection.

During step one, an interview protocol, which had been reviewed and approved by the University of Florida's Institutional Review Board (IRB), guided the conversation (see Appendix B). The primary objective of this step was to identify jurisdictions that had experienced fee owners or contractors that had chosen to notify the Building Official that either their plan review or their construction inspection would be handled by a private provider. Four attempts were made to contact each jurisdiction. Ultimately, 206 interviews with the building official or his/her representative were completed.

During the second step of the assessment process, the Building Officials in jurisdictions reporting that they had experienced construction projects that employed private providers for plan review and/or inspection were interviewed again to delve into the nuances of the process and the general success (or failure) of the private provider option from the Building Official's

standpoint. The protocol that guided the interview was reviewed and approved by the University of Florida's Institutional Review Board (See Appendix C).

After completing the survey of Building Officials, the Shimberg Center conducted interviews with the associations representing the building officials and the associations representing contractors/builders in Florida. These interviews provided a broader perspective on the implementation of the private provider option. They also provided contact information for companies that were known to have utilized the private provider process as well as contact information for organizations that were actively serving as private providers. Interviews were conducted with each of these private firms.

BUILDING OFFICIAL SURVEY

Incidence of Use

The initial survey of Building Officials successfully contacted 206 jurisdictions across Florida. Of that number, 18 jurisdictions or 8.7% of the cities and counties contacted in Florida reported that alternative plans review and inspection provisions of Chapter 553.791 had been employed for at least one project.

Five Building Departments misinterpreted the question about using a private provider to conduct plan reviews and/or building inspections. The source of the confusion stemmed from the fact that these jurisdictions routinely employ an outside contractor to do plan reviews and building inspections on behalf of the local government. This "out sourcing" of a government function was identified during the follow-up survey and was not the object of this implementation study.

The remaining 13 jurisdictions (6.3%) had, in fact, experienced projects that employed the private provider option described in 553.791, Florida Statutes. The numbers of construction projects cited ranged from one to six. Two jurisdictions reported that two projects had planned to use the private provider option but did not follow through. Three jurisdictions reported that "several" projects had employed the option.

Plan Review vs. Building Inspection

All jurisdictions reported that they offered the option for the permit applicant to use a private provider for either plan review or building inspection. Six of the 13 reported that even though both options were open, only the building inspection option had been taken. The most common reason given for limiting the private provider activity to inspections was that the plan review option involves departments outside the Building Department that address many site development issues not related to the building code. Seven of the 13 Building Officials interviewed indicated that the plan review option was not selected by the permit applicants because of the processing delays associated with the non-building-code-related reviews: zoning, concurrency, health, environment, etc.

Performance Auditing

All thirteen of the jurisdictions in the follow-up interview group had some form of performance auditing process in place. In one case the process had not been formally documented.

Ten of the thirteen jurisdictions had defined a procedure in which 95-100 percent of the plans reviewed by a private provider would be subjected to a similar plan review by the Building Department. The same level of auditing performance was reported by the ten jurisdictions for private-provider-performed inspections.

The audit procedures for both the plan review and building inspection tasks found that private provider performance was variable – some did an excellent, thorough job while others performed very poorly. In one instance the Building Official considered reporting the private inspector to the licensing board. Another private inspector was found to produce a punch list of things to be corrected but never confirmed that the work was performed. However, most of the reports were more positive. In general, the technical oversights of the private providers were minor in nature.

Two of the thirteen Building Officials pointed out that the Building Department is responsible for documenting all aspects of the construction project. Their work is not limited to the structural requirements of the Florida Building Code. In order to be complete the file on a given project the documentation must contain certification of compliance with tree ordinances, setback requirements, lot grading, house numbering, and a variety of other non-building-code items. Unfortunately, the private provider of construction inspection services does not address these items. The result is that the Building Department staff must perform the inspection that addresses these items. In one jurisdiction, the Building Official reported that his office performs all final inspections whether or not a private provider is involved. Based on this input, it appears that the private providers will have to become more aware of the administrative role that they have assumed if the Building Department is to realize maximum benefit.

Validate Qualifications

Ten of the thirteen jurisdictions indicated that they use professional registration (e.g., Professional Engineer, Registered Architect), Threshold Inspector Certification, ex-Building Official with 468-Certification, or (in one jurisdiction) listed on the Department of Business & Professional Regulation web site. Experience resumes and proof of appropriate insurance coverage were also reported as being required.

Even with this documentation in place, most of the respondents indicated that they tend to check very thoroughly on the performance of reviewers and inspectors until the building office gains confidence in their work. In general, the technical review and inspection work of the private providers was considered to be good, but less than perfect.

No single, standardized approach for validating qualifications was identified during the study. This situation may stabilize as more fee owners and contractors choose to use private providers for their plan review and/or inspection. One jurisdiction has established a database of private

providers that have submitted all necessary qualification and insurance documentation. If the Notice to Building Official lists a private provider not in the database, the application is rejected.

Thirty-day Permitting

Section 553.791, F.S., allows a Building Department a 30-day window of time to issue a permit following Permit Application submittal. This 30-day period begins when the department receives the application package. Four of the thirteen jurisdictions indicated that their normal turn-around time for a residential permit was 5-7 days. Four other jurisdictions simply reported “no problem” meeting the 30-day requirement.

The review and approval of the plans, however, involves more than just the Building Department. Some of the other departments or organizations that may be involved in the review of plans before a building permit can be issued are zoning, fire, health, concurrency, environmental protection, and the water management district. The consensus by the Building Officials interviewed was that the review of plans within the Building Department for compliance with the provisions of the Florida Building Code is routinely handled within the 30-day time period. Four of the respondents stated specifically that they had no problem complying with the 30-day turn-around time for permitting but they added the caveat: “excluding site development review.” It is the time required for review by other departments and agencies that takes the process out of the Building Official’s control. Once out of the Building Official’s control, there is no guarantee that a building permit can be issued in the allotted time.

In order to comply with the 30-day requirement, Building Departments have refused to “officially” log the receipt of the permit application materials until the applicant has obtained all other approvals. Unfortunately, in one jurisdiction the Building Department had served as the coordinator of plan reviews with the other involved organizations. This one-stop service had to be stopped in order to comply with the 30-day requirement. In the absence of the Building Department’s shepherding of the application through the process, the total time required for site plan review has been extended.

Certificate of Occupancy

Only one jurisdiction reported that the 2-day requirement might not be met at the end of the month when they are particularly busy. All other jurisdictions reported that they had no difficulty in meeting the 2-day turn-around for issuing a Certificate of Occupancy once all paperwork had been completed.

Board of Appeals

No instance of a private provider requesting a Board of Appeals hearing was reported.

Building Official Perspective

The Building Officials Association of Florida (BOAF) served as the source of information on the general, rather than local, disposition of Building Officials in Florida with regard to the private provider option for plan review and construction inspection. The general attitude reported is that the Building Officials are reluctant to give up the task of plan review and construction inspection. Their attitude stems from the fact that s. 553.791, F.S., in no way relieves the Building Official of the responsibility of insuring that plans and construction materials and methods are in compliance with the Florida Building Code. When a fee owner or contractor notifies the Building Official that a private provider will conduct plan review and/or construction inspection, the initial reaction has been that a large proportion (sometimes 100%) of the reviews and inspections will be checked by Building Department personnel. The purpose of these redundant steps is to insure the public's safety. If or when the private provider option is employed more widely, it is likely that the Building Official will become familiar with the skill and knowledge of the private reviewers and inspectors and will adjust the frequency of their quality reviews accordingly. As noted during the interviews with local Building Officials some of the private providers do a good job while the performance of others is unacceptable. It was also pointed out that the scope of activity of the Building Department personnel extends beyond the provisions of the building code. Specifically, local Building Department personnel are concerned with local tree ordinances, house numbering, setback requirements, lot grading, and other non-building-code-related compliance verification. Private providers are not well prepared, if prepared at all, to perform these compliance checks.

CONTRACTOR/BUILDER SURVEY

After completing fact-finding interviews with individual Building Offices across the state, the Shimberg Center spoke with individual builders/contractors that had experience with the private provider provision as well as representatives of the various professional associations serving the builders and contractors in the construction industry. The purpose of these interviews was to obtain the contractor/builder perspective on the implementation of s. 553.791, F.S.

Individual Companies

The builders/contractors indicated that the private provider option has the potential of making significant improvements in the plan review and construction inspection aspects of construction in Florida. At the present time the builders/contractors reported that the private provider option works well in this regard in some jurisdictions while not working well in others. The difference in the areas appears to be the degree to which the local Building Official accepts the provision and sees it as a benefit to his/her department and an improvement in the overall process. This is particularly true in areas with high volume construction activity. In these areas the building inspectors are called upon to make many (e.g., possibly 30 or more) inspections in a day. Not

counting travel time, this workload leaves about 15 minutes per inspection in an 8-hour workday. The private provider option is designed to absorb some of this workload.

The builders/contractors that are using the private provider system are aware that they must have all ancillary department reviews and approvals before submitting for the Building Department permit. Those companies familiar with the process make use of the plan review option only in jurisdictions where the municipal construction plan review associated with the structural, general building, and the MEP components have historically taken extended periods (e.g., several months) to complete.

Homebuilder Perspective

The Florida Home Builders Association (FHBA) has not conducted a formal survey of builder members, however, the informal feedback received from the statewide membership indicates that there is reluctance on the part of some local Building Department personnel to release plan reviews and construction inspection to a private provider. The original intent of the private provider option was to save time for the builder by expediting plan reviews and having inspections performed at any time the building is ready for inspection. The example cited was that a request made at 3:00 pm for an inspection by Building Department personnel would routinely have to be scheduled the next day.

Plan reviews involve site development issues that require reviews by departments outside the Building Department. These outside reviews take considerably longer than the Building Department's reviews. It was recognized by the builders that these reviews must be completed successfully before the Building Department plan reviews are begun. Accordingly, where the private provider option has been used, the builders have opted for construction inspection rather than plan review. The reason is that the builders feel that they can save time (and money) by having an inspector available on an "on-call" basis rather than having to provide advance notification to the Building Department. (Example: One builder reported that it costs \$60-\$80/house in interest for every day a home is in the process of construction. If they have 100 to 150 homes in process, a one-day delay can be costly.)

Under s. 553.791, F.S., the builder's responsibility is to "notify" the Building Official of a scheduled inspection by the private provider. It is then the Building Official's decision to conduct follow-up inspections of all, some, or none of the work. If Building Department inspectors are responsible for a variety of non-building-code-related compliance issues, it was pointed out that the building permit fees paid by the builders cover these costs for the Building Department.

Commercial Contractor Perspective

The Associated General Contractors (AGC) Council provided background on the original intent of the legislation and on the task force that was established to develop the legislative proposal. It was the Council's position that it was still quite early in the life of the private provider option to assess its implementation. An illustration of this point was that some of their constituency had reported occasions in which the local Building Department was not familiar with the provisions of the statute. For example, in some cases the local department had informed the permit

applicant that the private provider option was not accepted by the jurisdiction. Clearly, accepting or not accepting the private provider provision is not an option for the local jurisdiction under 553.791, F.S. According to the AGC Council, one of the primary objectives of the statute was to relieve the workload of Building Departments, particularly in areas with an active construction market.

PRIVATE PROVIDER SURVEY

Active private providers were interviewed to provide the perspective of the organizations that perform the plan reviews and inspections. The lack of awareness of the provisions of 553.791, F.S. on the part of local Building Departments was reaffirmed by the private providers as well as a lack of familiarity with the intent and procedures outlined in the statute. The private provider suggested that site plan submittal be separated from building plan submittal to allow the site plan to proceed through its reviews while the building plans are being finalized. Separation of the submittals in this manner would allow the Notice to the Building Official of private provider construction inspection to be submitted either at the time of construction plan submittal or at any time prior to the first inspection.

A private provider must be able to document his/her qualifications. In order to simplify the Notice to the Building Official and the Building Official's task of reviewing the material submitted by a specific private provider, industry representatives suggested that a registry of qualified private providers be established either within a jurisdiction or at the state level.

The private providers believe that the consumer is afforded a higher degree of protection under the private provider provision as well as remedial recourse should the private provider's services be deficient in any way. Their rationale is based on the fact that the private plans examiner and inspector must be a licensed engineer or architect and must provide the insurance coverage required by the statute. In contrast, municipal plans examiners and construction inspectors are protected from recourse by the consumer through sovereign immunity in the event that the services provided are deficient.

A system of pre-qualifying Private Provider firms may be helpful. A private provider firm may place on file with a jurisdiction a copy of their qualifications and insurance certificates so as to allow for a more timely review of the Notice to Building Official. However, it is not in the authority of the jurisdiction to approve or deny a private provider firm if that firm has sufficiently demonstrated compliance with the statutory requirements.

The private providers also noted that the insurance requirements of 553.791, F.S., should be revisited. The issue deals with the difference between a claims-made policy and an occurrence-based policy. As it currently stands, a minimum of \$1 million in professional and comprehensive general liability with a 5-year tail is required. Under such a policy, a claim may be filed up to five years after the project is completed. The alternative that should be considered is the occurrence-based policy. This type policy does not require the 5-year tail.

BENEFITS OF PRIVATE PROVIDER PROVISION

Presented below are the various benefits of the private provider option cited by building officials, contractors/builders, or private providers during the interviews:

- Typically in jurisdictions where significant growth is being experienced local building inspectors and plan examiners have workloads that make thorough inspections and reviews nearly impossible. The private provider system will take a significant load off the municipal building department and will result in an improved process on both the public and private side
- The private provider system lends itself to a more in-depth and thorough inspection and review process particularly in high-volume construction areas. This statement is based on the fact that in high volume construction areas the local Building Department must meet the workload with existing staff.
- In high growth areas where there is a very active construction market, Building Departments can become inundated with plan reviews and field inspections. The private provider system can play a key role in meeting this high demand.
- The private provider option, by statute, has additional layers of checks and balances by virtue of the fact that a private provider's licensed engineer or architect must oversee the duties of the FS 468 certified inspectors and examiners that he employs. This is a higher standard of care and an additional layer of oversight.
- The private provider system, unlike the municipal system, provides the consumer with a "remedy" by way of the insurance provision in the statute should the services provided be deficient in anyway. Such a remedy is not available in the municipal system. In fact, the municipal system is protected by "sovereign immunity".
- Commercial and residential construction may benefit from having an inspector essentially on call for special tasks or for evening or weekend work (e.g., for a large concrete pour). Some Building Officials, however, disagreed with this claim because they have and are willing to make arrangements to have an inspector available whenever necessary. In either case, the contractor can schedule their work better if they can dictate at what time during the day they need the inspection.
(Example: If a contractor needs to start a concrete placement on a major structural component at 9AM, he can schedule the Private Provider Inspector for 7 or 8 AM. If the work is not 100% complete at the time of the inspection, the private provider inspector can stay until satisfactory completion is achieved. This is either extremely difficult or can not be done with a municipal inspector.)
- Developers and contractors are willing to pay twice for the inspection and review process if they can shave valuable time off their construction schedules. The result is in a considerable benefit to over-stretched building departments since they can still generate the same permit revenue and have a decreased workload.
- There seems to be a considerable divergence between what the Building Departments are reporting and what builders/contractors are reporting. Some Building Departments are reporting no benefit either to the Building Department or to the fee owner/contractor in either private provider plan review or construction inspection. The problems cited centered on the duplicate cost to the contractor and the expectation of faster response time even though normal response times are about the same. One respondent pointed out

how contractors in high volume building market may find quicker response times, but under normal circumstances the response times are claimed to be about the same. However, builders/contractors are reporting a substantial timesavings that results in considerable cost reduction. Additional time may be needed to truly quantify the cost/benefit ratio.

The comments about benefit for the Building Department made by Building Officials were all negative. The most negative comment referred to the private provider option as “a disaster.” Three of the responding Building Officials indicated that their workload actually increased due to the need to re-inspect nearly every project. One respondent had assigned one inspector to this re-inspection task full time. There is also the need to document all aspects of the project by the Building Department, including non-building-code-related items, which are not part of the private provider’s assignment but are the responsibility of the Building Department.

RECOMMENDATIONS

The following recommendations are presented on the basis of the observations made during this assessment of the implementation of s. 553.791, F.S.:

- The Building Officials in the jurisdictions within which the private provider option has been implemented reported that the construction inspection option was the preferred choice. The reason for this preference is that the review of the site development plan can take weeks – routinely exceeding the 30-day time frame within which the local Building Department is given by 553.791 to issue the building permit. As a result, Building Departments have chosen to not “officially” record receipt of the building permit application until all site development reviews are completed and the plan accepted. One jurisdiction that functioned as a “one-stop” entry point for building permit application submittal, terminated the one-stop service because of the time required to conduct site development plan reviews even though this jurisdiction takes only 5 to 10 days to review the construction plans. If the private provider option is to be more widely adopted for plan review, it will be necessary to separate the time required for site development plan review from the construction plan review. The solution should consider a process that allows the Building Department to shepherd the site development plan reviews through the various departments and agencies involved.
- Revise the 30-day deadline to read 30 calendar days.

Although the construction inspection option is currently the more popular option in the few jurisdictions that have experienced the use of the private provider option, it too can be improved such that Building Departments are more willing to welcome its use. A number of potential areas for improvement were identified:

- Documentation of the inspections, punch-list items to be corrected/completed, and follow-up final inspections performed by the private provider must be signed by the licensed engineer or architect cited on the Notice to Building Official for the project’s building permit.

- Modify the deadline for submission of the Notice to Building Official for Inspections to be either: (1) at the time of construction plan submittal or (2) at the time that the first inspection is to occur.
- Modify the insurance provisions to read “A private provider may perform building code inspections and plan reviews under this section only if the private provider maintains insurance for professional liability with minimum policy limits of \$1 million per occurrence relating to all of the services performed as a private provider, including tail coverage for a minimum of 5 years for claims-made type policies only. Occurrence-based policies are not required to have a 5-tail policy.
- Provide for the private provider firm may place on file with a jurisdiction a copy of their qualifications and insurance certificates so as to allow for a more timely review of the Notice to Building Official. However, it is not in the authority of the jurisdiction to approve or deny a Private Provider Firm if that firm has sufficiently demonstrated compliance with the statutory requirements.
- When a fee owner or contractor employs the private provider option, the statute should be modified to state that the Building Official is relieved of all liability for those portions of the planning and construction process that were handled by the private provider.

Finally, Florida Statute 553.791 imposes changes to a long-standing process. In order to insure that the intended benefits are derived, an educational program should be organized for all parties to the construction process: Building Officials, Fee owners/contractors, and private providers.

APPENDIX A

Section 553.791, Florida Statutes
Alternative Plans Review and Inspection
(Available on request)

APPENDIX B

Step 1 Interview Protocol
Building Official Screening
(Available on request)

APPENDIX C

Step 2 Interview Protocol
Building Official Interview
(Available on Request)

APPENDIX D

Florida Building Commission
Workshop on Private Plans Review & Inspections
(Discussion Notes)
(Available on request)

APPENDIX C

Florida Building Commission Workshop on Private Plans Review & Inspections

Discussion Transcription

WORKSHOP ON PRIVATE PLANS REVIEW AND INSPECTIONS

Chairman Rodriguez directed the Commission to Mr. Stroh for an overview and discussion of the research from the Shimberg Center for Affordable Housing at the University of Florida.

Bob Stroh, University of Florida, College of Design, Construction & Planning

Mr. Stroh presented the findings resulting from research in written form. (See *FINAL REPORT, Assessment of the Implementation of 553.791, F.S.*) He explained the center had attempted to contact every jurisdiction in the state of Florida to identify areas that had received applications for private inspectors or plans reviewers. He stated all jurisdictions were not successfully contacted resulting in 206 jurisdictions available for inquiry. Mr. Stroh continued stating that of the 206 jurisdictions, only 13 had received applications for private plans review or inspections and had projects underway or completed.

Mr. Stroh stated there had also been industry segment contacts, i.e., ABC, AGC, the Building Officials Association of Florida, and the Florida Home Builders Association. He continued stating that private providers had been contacted including Capri Engineering, Independent Inspections Ltd., and Universal Engineering. Mr. Stroh reported the findings were as follows:

GENERAL FINDINGS:

- The most common use of 553 is for inspection rather than plans review.
- Performance auditing of most work is performed by building departments.
- All jurisdictions had a method of validating qualifications of private inspectors, however no consistent technique.
- The thirty-day turn around requirement from application to building permit under normal circumstances in most jurisdictions was satisfactory.
- No difficulty was reported in issuing Certificates of Occupancy following completion of Final Inspection.
- Home builders in the residential sector feel the quick response inspector will result in economic savings.
- Commercial builders indicated the private provider option was not preferred.
- Private providers recommended separating site development plans from building plans.
- Private provider option provides the consumer with a remedy option whereas the municipal system is protected by sovereign immunity.
- Clarify or define thirty days, i.e., calendar or business.
- Inspection documents must be signed by the P.E. of record.
- Modify insurance requirements to maintain the \$1 million requirement with continued five-year coverage or occurrence-based policy with seven year statute of limitations.
- Incorporate language to relieve municipal workers of all liability for those

projects that utilize a private provider option.

-Initiate educational program to inform all concerned parties what the statute is defining.

Commissioner Wiggins referenced *FINAL REPORT – Assessment of the Implementation of 553.791, F.S.* requesting clarification of the fourth bulleted item (page 12): “Modify the deadline for submission of the Notice to Building Official for Inspections, to be submitted only prior to the first inspection and not at the time of Permit Application.”

Mr. Stroh responded stating the current system is designed so the application for permit specifying a private provider is submitted as the entire package with site plans, building plans, etc., resulting in a long delay. He explained the recommendation was to separate the site development plan to get it into the system prior to building plans review to prevent unnecessary delays.

Commissioner Wiggins then offered comment regarding the second bulleted item (page 11): “Revise the 30-day deadline to read 30 calendar days.” He stated the 30-day deadline was specifically created to be 30 business days to allow the jurisdiction adequate time for review.

Commissioner Greiner requested clarification regarding inspections and the time frame required to conduct the inspections. He asked if there were problems with inspections in all 13 jurisdictions interviewed.

Mr. Stroh replied the general guideline was a 24-hour notice requirement. He reported a number of cases involving tunnel-form applications that are being used in a residential project where the agreement was that a private provider was being used to inspect all structural work and the local jurisdiction provided the MEP inspections. Mr. Stroh then stated in some areas of the state the inspection process is very smooth while in others the inspection process is was described as a “disaster”.

Commissioner Kim stated one important factor of the task force findings was the insurance and service providers. He referenced the fifth bulleted item (page 12): “Modify the insurance provisions to read...” recommending specific language reflecting the standardized professional liability which can be tailored to the individual needs with varying sunset periods.

Mr. Richmond interjected the issue has been discussed during the Legislature and the Commission last year. He stated he was not aware of any specific limitation in terms of occurrence-based policies in cases of covered events.

Gary Elzweig, Florida Engineering Society (FES)

Mr. Elzweig stated FES are strong advocates of F.S. 553.791 and have reviewed Mr. Stroh’s report. He continued stating on behalf of the society the report was an

excellent assessment of the first year's implementation of the statute. He explained only a number of jurisdictions had experience with private providers and attributed that to the following reasons: 1) the private provider system was never intended to work in jurisdictions that are able to service a community, and 2) the reluctance of some building departments to embrace the private provider statute. Mr. Elzweig stated there are jurisdictions imposing more stringent requirements for the private provider, which is specifically disallowed in the statute. He then referenced the "Benefits of Private Provider Provision" (page 10) and reviewed the benefits as they were listed in the document.

James R. Schock, P.E., C.B.O., Building Inspection Division, Duval County, City of Jacksonville

Mr. Schock presented comments to the *FINAL REPORT, Assessment of the Implementation of 553.791, F.S.* in a written document, which was distributed to each Commissioner. (See *Comments pertaining to the Final Draft report Regarding Assessment of the Implementation of 553.791, F.S.* Attachment.)

Commissioner Greiner asked if there had been a large number of inspection requests after hours.

Mr. Schock responded stating the time frames that were mandated were implemented so a Quality Assurance Program could be initiated. He stated there is software being developed currently which will automatically check time frames and allow them to be submitted directly into the system.

Thomas Goldsbury, P.E., C.B.O., Building Inspection Division, Duval County, City of Jacksonville

Mr. Goldsbury offered comment stating Duval County's Building Inspection Division is not against the private provider program. He stated their county has permitted private provider inspections since 1998 and 1999 for special projects and such. He continued stating the program needs to be refined and added the City of Jacksonville is currently involved in 100 to 150 private inspections being performed every day.

Mike Cozley, M.T. Cozley, Inc.

Mr. Cozley stated his company supplements building departments and manages building departments under contract. He continued stated M.T. Cozley, Inc. performs a limited number of private provider services. Mr. Cozley reiterated Mr. Goldsbury's comments stating the private provider program needed to be improved and the reason for the private provider program needed to be communicated to the building departments and the companies providing services. He added the language in the law should reflect services of a company and individuals rather than being directed to individuals.

Rick Watson, Association of Builders & Contractors

Mr. Watson offered support for the Legislation for private providers stating while the system is starting slow it seems to be working well. He stated as the building departments become more educated on the benefits of the program there will likely be an increase in the number of private provider services being performed.

Eric Woods, Director of Building Inspections, Universal Engineering & Sciences, Orlando

Mr. Woods offered comment stating the one-year anniversary of the implementation of 553.791 is fast approaching. He urged the Commission not to delay the Report to the Legislature concerning the implementation of the law. Mr. Woods stated the primary problem with the system thus far has been intimidation of the building officials. He continued stating the building officials do not support the private provider system and stated he had experienced belligerence as well as insults from building officials as he submitted applications for private services in the Central Florida area. He furthered by stating building officials have a tremendous amount of authority then expressed concern with some of the recommendations listed in the report from the Shimberg Center for Affordable Housing. Mr. Woods stated he would provide a written version of his comments for further staff and Commission review. (See *Public Comment Eric Woods* Attachment.)

Commissioner D'Andrea moved approval to accept the assessment. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

APPENDIX D

Comments Given before the
Florida Building Commission

The Building Inspection Division
Duval County/City of Jacksonville

Comments pertaining to the Final Draft report

Regarding

Assessment of the Implementation of 553.791 F.S.

Prepared By

**The Building Inspection Division
Duval County / City of Jacksonville**

Chief of The Building Inspection Division

Thomas Goldsbury P.E., C.B.O.

Building Inspection Division Manager

James R. Schock P.E., C.B.O.

Building Inspections Quality Assurance Inspector

Fred Estep BN 3589

**Date:
September 27, 2003**

Purpose:

The purpose of this report is to convey additional comments to the report on the implementation of Florida Statute 553.791 prepared by:

Shimberg Center for affordable Housing
Rinker School of Building Construction
College of Design, Construction and Planning
University of Florida
P.O. Box 115703
Gainesville, Florida 32611-5703
Dated September 2003

The referenced report consists of 22 pages only 10 of which actually address the implementation, the remaining 12 pages is a copy of F.S. 553.791 and the survey forms used in the study.

No factual backup was provided with this report supporting the opinions, comments or recommendations made there in. The report consisted entirely of statistical data and interview comments. We will attempt to provide actual backup data for the information provided with these comments.

First, we wish to say we are not opposed to the use of Private Providers and in-fact have encouraged their use on several complex projects such as large hospital renovations where the work is of a complex nature and the scheduling of much of the project involves complex tie-ins to existing work and work being performed around the clock. However these types of jobs typically have an owner who provides their own construction personnel or have a construction manager that the Private Provider is working for. This management team oversees the contractor.

As stated in the report, we agree that the Private Provider option does help relieve the workload of overloaded Building Departments in a time when down sizing of government is a popular course of action.

As one of the few jurisdictions that has Private Providers operating in it on a wide scale bases, we hope you apply the proper weight in the evaluation of these comments to the areas of the report which they address.

Attachment 1 of this report will show the workload of the local jurisdiction and the private provider for a typical inspection day (September 26th 2003). The local jurisdiction on this day shows 239 inspections requested and no rollover inspections from the previous day. This works out to an average of 12.5 inspections / man. (I will say this is a little low for us, we usually are at about 15 inspections / man) The Private Provider was scheduled for 88 inspections this day and they have 4 inspectors which is 22 inspections / man. This coupled with only 4 inspectors to

cover 842 square miles, while we have 19 inspectors covering 842 square miles. We can only wonder who performs the highest quality of inspections to protect the public.

Correction page 3 paragraph 2 of the report:

Complaints to the licensing boards was not only considered but also made. Four complaints in total were made, three on inspectors and one on a private provider. Attachment 2 describes the nature of the complaint, which ranges from unlicensed activity to filing false inspection reports. The problem is that these complaints were filed in February of 2003 and although probable cause has been established, these complaints still have not been resolved. During this time the citizens of our jurisdiction remain at risk. Although we do perform quality assurance inspections we do not have the time and manpower at this time to conduct a 100 percent audit of all inspections. A thorough quality inspection takes several hours to inspect, document, take pictures, notify all parties of any discrepancies, and follow up of the inspection.

The Building Official must have the ability to suspend the private inspection option. Waiting for the licensing boards to act is too long. We would recommend the use of the Appeals Board to provide for due process until such time that the licensing board takes any action on filed complaints.

Page3, Paragraph 3:

It was previously recognized in the Task Force report to the legislature that permitting delays are often out of control of the permitting agency. This is due to the requirements of Fire Marshal reviews as well as a barrage of other local and state approvals, and that this would not allow full effective implementation of the Private Provider alternative.

Conflict of Interest:

This report does not address conflict of interest, which is a major concern within our jurisdiction. Jim Schock was a member of the original Task Force, and in his opinion this law was intended for use on commercial projects where the owner has a permanent interest in the project and the Private Provider was to be hired and paid by the owner to oversee his construction project. Many members of the task force did not envision large track homebuilders utilizing this service.

What has happened is that the homebuilder is the owner at the time of permitting and therefore can hire his own inspectors and pay to inspect the work he constructs. This is an obvious conflict of interest. The homebuilder's objective is to complete the house as quickly as possible and transfer ownership to the buyer at time of closing. This coupled with a system that allows the builder to pay a fixed fee for the inspection process discourages failed inspections in order for all parties to make a profit. This sets up a dangerous situation with regards to public safety.

More often than not the buyer who is the final owner of the property does not even know that the builder is hiring and paying for the inspections on their new home. Attachment 3 shows some complaints we received from buyers with regard to their new home inspection process.

We would make the following recommendations:

- The buyer should have the right to select if they wish to use the private provider option and should pay the inspectors themselves under a separate contract.
- The buyer should have to provide this written choice to the local jurisdiction
- It should be required to identify if a private provider option is utilized and who the provider is, at the jobsite.

The conflict of interest described above also raises the question if the buyer after the sale of the property is protected by the insurance requirements of the law. The whole purpose of this law was also to provide additional protection to the owners by way of the tale requirements on the insurance policy. This protection is now in jeopardy and at the vary least would probably lead to extensive litigation at a cost which would more then likely be greater than the correction of the problem for most homeowners.

Homeowners:

This report also did not make any effort to contact or survey home buyers who's homes were inspected by private providers and determine their level of satisfaction or if they were even aware that the contractor utilized and paid for the inspectors which inspected their home.

Page 3 Paragraph 5:

We disagree with the statement that the technical review and the inspection performed by the private provider are considered to be good.

Quality assurance reviews of the plans received by private providers indicate 90 percent were rejected and returned to the provider for correction. Similarly inspection quality assurance reveals that 86.6 percent of the inspections that were passed by the private provider failed the quality check and required corrective action. (See Attachment 7)

See Attachment 4 for sample copies of our Q/A reports on Private Provider inspections. The photographs attached to these reports clearly identify code violations on passed inspections. We are not trying to say that jurisdiction inspectors don't also make errors, but clearly there is no proof of a hirer standard of care present by using Private Providers.

Page 4 Time Frames:

The time frames in the law were put there so the local jurisdiction could identify a window of time in which they could perform quality assurance activity with undue negative impact to the construction process.

Trying to monitor this longhand proved to be a difficult and cumbersome problem and created an extensive time commitment on our supervisors. So much so that we are writing a computer program that will automatically accept inspections from the private providers and check all required time frames. Each morning a report will be printed out to our Q/A inspector. We have had to reject several inspections because the Private Provider did not verify that trade rough inspections were made prior to the framing inspection as required by code or they would submit

final inspections without having all other required inspections complete. For example on October 1st, 2003 the Private Provider submitted 167 inspections, 134 (80.2%) were received late or not scheduled and 33 (19.8%) were received within the required time frames, for examples, (See Attachment 5).

This computer program will provide the same blocks in the system we have for our own inspections for example:

- Notice of Commencement must be filed
- Elevation Certificates required on the slab before a framing inspection
- All trade rough inspections be complete before a frame inspection
- A final can only be entered after all required inspections are complete

Page 4 Board of Appeals:

We recommend that the local board of appeals be utilized and empowered to hear any request from the Building Official to suspend the Private Provider option, when in the opinion of the Board, the Building Official has shown just cause. This suspension shall remain in effect for the length of time requested by the Building Official or until an appeal is heard by the Board of Building Code Administrators and Inspectors. It takes far to long to be resolved by the boards without any interim action.

Page 5 Last Paragraphs:

Builder / contractors may not use Private Providers; Owners use private providers. This statement illustrates the misconception of the construction industry and shows how the intent of this law is being skewed and mis-applied.

Page 6, Paragraph 1:

We disagree that the Private Inspector option saves any time as suggested in this paragraph. By law the local jurisdiction must be notified the day before the inspection so that the quality assurance inspector has an opportunity to perform a Q/A inspection. As already demonstrated this is a much-needed requirement that we cannot eliminate. Due to the conflict of interest that occurs, oversight of these inspections is critical. If the local jurisdiction does not rollover inspections as demonstrated in Attachment 1, and if the Private Provider and the contractor are following the law by providing the required notice, no time advantage can be gained.

Page 6, Paragraph 2:

Inspections may not be performed on call as stated in this report. The law requires one day notice be given to the jurisdiction for the reasons stated above. It is apparent from this comment that homebuilders do not understand the law. As stated above, the homebuilder can realize no savings. How the builder can save money is by not failing inspections, whether they are private inspections or government inspections, it makes no difference.

Page 7, Paragraph 3:

The nature and severity of the complaints filed in Attachment 2, the quality reports submitted in Attachment 4 and the percentage of failed reviews and inspections shown in Attachment 7, demonstrate beyond any doubt that a higher standard of care is not achieved by Architects and Engineers doing inspections and plan review. Further, remember the jurisdiction is performing these inspections full time every day and become quiet knowledgeable of the Code requirements where Architects and Engineers often have practices other than Private Provider services. Attachment 6 indicates that the Board of Engineers in their meeting of February 21-22, 2001 drafted a letter opposing the use of Engineers providing private inspection services.

The benefit of additional insurance is questionable when the home is sold immediately upon completion unless this insurance protection is transferable.

Page 7, Paragraph 5:

The Private Provider says in paragraph 3 the additional coverage in the statute is additional protection and is a plus, then in paragraph 5 they want to delete the tail coverage requirements.

Page 8, Bullet 1:

Building Departments are required by law to be funded by the permitting fees. If the workload increases the fund increases so additional staff can be hired. The Q/A reports and complaints already reviewed show that a more thorough review and inspection is not a function of Private Providers and does not increase the standard of care.

Page 8, Bullet 3:

There is no higher standard of care when utilizing the Private Provider option. This is clearly demonstrated when you consider collectively, the fact that errors in the inspection and plan review process are still made, the nature of the complaints already filed and a system of payment, where the inspections are paid for, by the contractor, on a single lump sum fee basis.

As licensed engineers, we will tell you that more often than not Architects and Engineers get very little if any formal Code training in college. The percent of plans and inspections failing our Q/A review show the design professionals submitting this work very often do not know the Codes as well as our plan reviewers and inspectors. Just last week we had a licensed Architect try to tell us that an industrial **zoning** classification automatically meant that the structure he designed was a factory occupancy. (He was designing storage units)

Page 8, Bullet 5:

Inspections may not be on-call, a one-day notice is required for the reasons stated earlier.

Page 8, Bullet 7:

We believe any claim of cost benefits is highly unlikely if the law is followed as required for the reasons stated previously.

Recommendations

Page 9, Bullet 5:

Elimination of the tail coverage will eliminate the very protection to the owner this law was met to provide. Language should be added to assure transferability to the home buyer.

Page 10, Bullet 2:

Paragraph 18 of Florida Statute 553.791 already provides for this.

Add the Following Recommendations:

- The Building Official with concurrence of the Appeals Board may discontinue the Private Providers inspection or plan review privileges. This will provide due process and is much faster than the Licensing Boards. Appeals shall be to the Licensing Boards.
- Homebuilders must disclose and have acceptance in writing from the buyer to utilize the Private Provider option. This signed disclosure must be submitted to the jurisdiction.
- The buyer must contract and pay for the Private Provider option.
- The homebuyer should have the right to choose the method of inspection.
- The construction project must be posted with the name and telephone number of the Private Provider when this option is utilized.

As one of only three jurisdictions that have wide spread experience in the use of the Private Provider option we hope this information is helpful and we wish to thank you for the opportunity to provide you with these comments on such a critical topic.

Attachment 1

Sample
Workload Analysis
(Available on request)

Attachment 2

Samples
Filed Complaints
(Available on request)

Attachment 3

Samples
Homeowner Complaints
(Available on request)

Attachment 4

Samples
Quality Assurance Inspection
Reports
(Available on request)

Attachment 5

Samples
Inspection Results That Could Not Be Accepted
(Available on request)

Attachment 6

Board of Engineers Meeting Review
(Available on request)

Attachment 7

Percentage of Failed Reviews And Inspections
(Available on request)

APPENDIX E

**Comments Given Before the
Florida Building Commission**

Universal Engineering Science, Inc.



UNIVERSAL ENGINEERING SCIENCE, INC.

3532 Maggie Boulevard

Orlando, FL 32811

Phone: 407-423-0504 Fax: 407-423-3106

PRIVATE PROVIDER VIEW POINT

COMMENTS GIVEN BEFORE THE COMMISSION

OCTOBER 13, 2003

FLORIDA BUILDING COMMISSION MEETING

THE ROSEN PLAZA HOTEL

ORLANDO, FLORIDA

Workshop On Private Plans Review And Inspections 553.791 F.S.

These comments are submitted per the request of the Chairman of the Florida Building Commission, Mr. Raul Rodriguez.

INTRODUCTION:

Universal Engineering Sciences, Inc. strongly recommends that the Florida Building Commission NOT delay the reporting of the problems associated with the implementation of 553.791 F.S. to the Florida Legislature by January 1, 2004. A delay will:

1. Negate the intent of the law to truly provide an alternative to plan review and inspections.
2. Serve to exacerbate confusion and strain working relationships between owners, developers, contractors engineers, architects, building officials, and building department staff who use of 553.781.
3. Continue the restraint of free trade.
4. Limit the legislature's ability to address the glitch problems associated with the implementation of 553.791

OVERVIEW:

In 2002, the Florida Legislature passed the Private Plan Review and Inspection Law modifying Title XXXIII - Regulation of Trade, Commerce, Investments and Solicitations, Chapter 553 - Building Construction Standards. The University of Florida, Shimberg Center was authorized to assess the implementation of 553.791 F.S. Their report summarizes the failure of implementation to date. An analysis of the report follows:

ANALYSIS:

The Final Report, Assessment of the Implementation of 553.791 is unreliable in that there is inadequate representation of statistically relevant material to offer a true assessment on the implementation of 553.791 to the Commission. Of 267 cities and 67 counties, 206 Building Officials were contacted. Of that number, 13 jurisdictions (6.3%) had experienced projects that employed the private provider option described in 553.791 F.S. The assessment is based on only 13 jurisdictions statewide, but even with just these 13, the Building Official Survey portion contains some startling admissions that are blatantly against the law. The following excerpts from the “final report” illustrate these admissions.

1. “In one jurisdiction, the Building Official reported that his office performs all final inspections whether or not a private provider is involved. “(p. 5). This is a violation of 553.791 making the private provider inspection process more stringent than what is provided under the law.
2. “The general attitude of the Building Officials Association of Florida is that the Building Officials are reluctant to give up the task of plan review and inspection. “(p. 7) This is a candid and reckless position that the professional organization representing Building Officials have in regard to 553.791 F.S. The “reluctance” takes the form of harassment, intimidation and obstruction and is clearly in violation of the law.
3. “When a fee owner or contractor notifies the Building Official that a private provider will conduct plan review and/or construction inspection, the initial reaction has been that a large proportion (sometimes 100%) of the reviews and inspections will be checked by Building Department personnel. The purpose of these redundant steps is to insure public safety.” There is no authority under the law for these “redundant inspections” except to deter the use of private providers. They are done under the guise of performance audits, undermine the authority of private provider inspectors and results in two statutory inspections being imposed on the builder.
4. “In order to comply with the 30 day requirement, Building Departments have refused to ‘officially’ log the receipt of the permit application materials until the applicant has obtained all other approvals. “ This is obviously a ploy to discourage use of 553.791 F.S. It is patently against the law and an example of the cavalier attitude exhibited by building officials who feel that they are above the law. There is no caveat in the law for extending the time frame. (p. 6) and shows callous disregard for the intent of 553.791.
5. “All thirteen of the jurisdictions had some form of performance auditing process in place. In one case the process had not been formally documented. (p.5) This is contrary to 553.791. Indeed our experience is that most jurisdictions do not have their performance audit procedures formalized in writing.

6. Under the Contractor/Builder Survey, the report states, “at the present time the builder/contractors reported that the private provider option works well in this regard in some jurisdictions while not working well in others. The difference in the areas appears to be the degree to which the local Building Official accepts the provision.” (p. 7) This ought not to be. Building Officials cannot selectively accept or reject laws they do not like. It is a restraint to free trade, a black eye to government, and a situation which cannot be allowed to continue. The statute should uniformly be administered statewide.
7. The Homebuilder Perspective states that “informal feedback received from statewide membership indicates that there is a reluctance on the part of some Building Department personnel to release plan reviews and construction inspection to a private provider.” (p. 8) Again, reluctance translates into negativity, intimidation, and coercion against the use of private provider inspectors.
8. Ignorance of the law is no excuse. The Associated General Contractors (AGC) Council reported that “some local Building Departments were not familiar with the provisions of the statute. For example, in some cases the local department had informed the permit applicant that the private provider option was not accepted by the jurisdiction.” (p. 9) The report rightly concludes “Clearly, accepting or not accepting the private provider provision is not an option for the local jurisdiction under 553.791.” By this time the damage is done. Intimidation by the Building Official has already taken effect. There is no remedy or relief for the private provider under these circumstances. This is further evidence of the need of consistent application of standards by building officials.

BENEFITS:

Cited benefits enumerated on page 10 are wide ranging. They point out the “win-win” aspect of the law for owners, builders, and building departments envisioned by the Florida Legislature. With all of the aforementioned benefits one fundamental question arises. Why are there only thirteen (13) jurisdictions in 267 cities and 67 counties where 553.71 is in use? The disconnect arises out of the last item under the “Benefits” section which states, “There seems to be a considerable divergence between what the Building Departments are reporting and what builders/contractors are reporting.” “Builder/Contractors are reporting a substantial time-savings that results in considerable cost reduction. Conversely, the comments about benefits for the Building Department made by the Building Officials were all negative.” Obviously, there is a need for this law but Building Officials are standing in the way of implementation.

CORPORATE EXAMPLE:

Universal Engineering Sciences, Inc. had a contract to perform private building inspection services for \$1400 per house. The builder planned to build 300 houses a year for 3 years in a municipality in Central Florida. The contract totaled \$420,000 per year. The actions of the Building Official made the private provider inspection process so cumbersome and overbearing for the builder, he eventually cancelled the contract causing Universal to lose

out on approximately half a million dollars per year. Some of the actions taken by the building official to break the contract were:

1. Abuse of the audit procedure by mandating 100% audit inspections
2. Instructing the builder that he cannot proceed to cover up any phase of construction until inspection by building department personnel.
3. Prohibition against correction of inspections and re-inspection the same day. Must wait an additional 24 hrs.
4. Required correction on mandatory inspections on items not in the code.
5. Refused to allow the use of alternate methods of compliance as outlined in the code.
6. Refused to provide formal performance audit procedure in writing.
7. Refused to respond to private provider regarding clarification of plans in a timely manner.
8. Abuse of Red Tag by issuance of Stop Work order for alleged 553.791 F.S. reporting deficiencies i.e., claims that 24 hr. notice fax not received.
9. Created dissention by initiating disputes on initiating on temporary electric pole installation on site.
10. Finally, the builder broke under the pressure and opted out of the contract.

SUMMARY:

The Florida Building Commission in its own words characterized 553.791 F.S. as a “new and significant change to conventional authority and practice.” Building officials steadfastly resist change and view 553.791 as a threat to their authority. To them it is still business as usual and will in no way change the way inspections and plan review are typically done.

RECOMMENDATIONS:

1. Install signage in building departments and advertisement in the electronic and print media alerting the public to the alternative plan review and inspection option to counteract the intimidation and negativity from municipal and county building departments.

2. Clarify the roles of private providers and building department personnel as suggested by the other presenters.
3. Clarify the issue that the Building Officials are alleviated from building code responsibility under 553.791. The law already indemnifies and negates any and all liabilities for the building official and building department staff. This is especially applicable when the engineering firm has a state licensed Building Code Administrator on staff as Universal Engineering Sciences, Inc., has.
4. Restrict contact of the Building Department to the private provider on questions or concerns during the audit inspection process to prevent frustration and confusion of who has responsibility for statutory building inspections under the law.
5. Delineate audit process parameters i.e., compliance with the requirements of jobsite posting, reporting requirements, use of properly licensed inspectors and Q/A performance verification.
6. Prohibit blanket 100% audit inspections by building departments. They are counterproductive and obstructionist in nature. Performance audits for quality assurance are suppose to be set up as unexpected inspections.
7. Issuance of the building permit upon private plan review approval stipulating plan revision for any deficiencies encountered later in the inspection process, similar to Palm Beach County.
8. Modify permit fees for private plan review and inspections. Building departments are not the statutory building inspection authority and are not required to perform inspections and plan review; therefore charging of full permit fees is not justified. A standard permit fee reduction formula should be promulgated statewide to "balance the playing field."

CONCLUSIONS:

It is abundantly clear that Building Officials are the stumbling block to the implementation of the law and must be taken to task for their arbitrary and heavy handed opposition to 553.791 F.S. Election of private provider is a choice solely in the hands of the fee owner. The Building Official cannot continue to call the shots on the use of private plan review and inspections but instead must respond to it in a legal, positive way. It is incumbent upon the

Florida Building Commission to take the lead in its recommendations to the Florida Legislature and set the ground rules for orderly implementation of 553.791 F.S. Inaction will inevitably lead to appeal to mayors, city managers, county commissioners, BCI Board, DBPR, the Attorney General, and lawsuits in the courts to enforce a much needed duly promulgated Florida Statute.

Respectfully submitted,

UNIVERSAL ENGINEERING SCIENCES, INC.

Eric J. Woods, B.A., M.C.P., B.C.A
Director, Building Inspection Department
Building Code Administrator No. BU 1314

R. Kenneth Derick, P.E.
Professional Engineer No. 37711
Senior Vice President

EJW/RKD:dsc

Doc No. 311524

Cc: Raul L. Rodriguez –Governor's Chair – rirodriguez@rodriguezquiroga.com
John Robert Calpirni, State Insurance Representative –
Steve C. Bassett, Mechanical Engineer - SteveBassett.FNSPE@comcast.net
Stephen Corn, General Contractor – shcorn@bellsouth.net
Herminio Gonzalez, Code Official
Hamid R. Bahadori, Fire Protection Technologist – bahadori@haifire.com
Dick Browdy, Residential contractor – rsbrowdy@aol.com
Ed Carson, Manufactured Buildings – ccicarson@aol.com
Nick D'Andrea – hs2y@ci.tampa.fl.us
Jeffrey Gross, Building Management Industry – jgaajg@bellsouth.net
Do Y. Kim, Insurance Industry – dokim@guardx.com
Suzanne Marshall, Public Education – smarshall@facil.dade.k12.fl.us
Doug Murdock, Adjunct Member – murdockdr@ci.gainesville.fl.us
Diana B. Richardson, Representative for Persons with Disabilities –
gonetonaples@hotmail.com
Christopher Schulte, Roof & Sheetmetal Contractor – dgreiner@co.lake.fl.us
Paul Kidwell, Structural Engineer – paul.kidwell@silcox-kidwell.com
Leonard N. Lipka, Mechanical Contractor – llipka@turner-austin.com
Michael C. McCombs, Electrical Contractor mccombselectric@bellsouth.net
Craig Parrino, Building Product Manufacturer – cparrino@castcrete.com
Christ Sanidas, Code Official – Christ.sanidas@co.orange.fl.us
Karl S. Thorne, Architect ksthorne@bellsouth.net
Randal Vann, Plumbing Contractor – rj@rjvannmech.com
George J. Wiggins, Municipality or Charter County Representative –
gwiggins@ci.winter-park.fl.us