



STATE OF FLORIDA

# DEPARTMENT OF COMMUNITY AFFAIRS

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

**JEB BUSH**  
Governor

**COLLEEN CASTILLE**  
Secretary

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

**PLENARY SESSION  
April 8, 2003**

### **PENDING APPROVAL**

The meeting of the Florida Building Commission was called to order by Chairman Raul Rodriguez at 8:30 a.m. on Tuesday, April 8, 2003, at the Rosen Plaza Hotel, Orlando, Florida.

#### **COMMISSIONERS PRESENT:**

Raul Rodriguez, Chairman  
Dan Shaw  
Peggy Patterson  
Craig Parrino  
Herminio Gonzalez  
George Wiggins  
John Calpini  
Christ Sanidas  
Richard Browdy  
Stephen Corn  
Dale Greiner  
Paul Kidwell  
Do Y. Kim  
Ed Carson  
Steven Bassett

#### **COMMISSIONERS ABSENT:**

Hamid Bahadori  
Michael McCombs  
Leonard Lipka  
Karl Thorne  
Nick D'Andrea  
Bob Leonard  
Suzanne Marshall  
Dr. Diana Richardson  
Doug Murdock, Adjunct Member

#### **OTHERS PRESENT:**

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

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#### **FLORIDA KEYS**

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### **WELCOME**

Chairman Rodriguez welcomed Commissioners, staff, and members of the public to the meeting. He announced active Commission participant Bob McCormack has recently undergone heart by-pass surgery and the Commission would be sending regards via a card which would be circulated during the meeting.

Chairman Rodriguez stated the meeting would cover committee reports and declaratory statements, as well as the state facility licensing agencies issue. He continued stating the Rule 9B-72 rule adoption hearing would be held as well as public comment on any declaratory statements or on other Code related issues. Chairman Rodriguez then directed the Commission to Mr. Blair for a review of the meeting agenda.

### **REVIEW AND APPROVAL OF AGENDA**

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

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

### **REVIEW AND APPROVAL OF FEBRUARY 25, 2003 MEETING MINUTES**

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

Commissioner Wiggins moved approval of the February 25, 2003 meeting minutes. Commissioner Bassett seconded the motion. Vote to approve the motion was unanimous. Motion carried.

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

Mr. Dixon conducted a review of the Commission 2003 workplan as it appeared in each Commissioner's agenda packet.

Commissioner Browdy moved approval of the Commission's workplan. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

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

Mr. Long addressed the waiver applications as they appeared in the Commissioner's agenda packets.

#1 AmStar Stadium Cinemas at Colonial Town Park

Mr. Long stated the applicant was requesting waiver for providing accessibility to all rows of seating in a twelve-screen movie theatre complex. He continued stating the Council recommended approving the waiver with the condition that additional wheelchair seating in accordance with the Florida Code would be provided.

Commissioner Browdy moved approval of the Council's recommendation to approve the waiver. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

#2 Sysco Food Service of Jacksonville

Mr. Long stated the applicant requested waiver for providing vertical accessibility to a mezzanine containing two offices, a toilet, and beverage storage. He continued stating the Council recommended denial of the waiver based on no hardship being demonstrated.

Commissioner Browdy moved approval of the Council's recommendation. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

#3 Lebac, Inc.

Mr. Long stated the request was for waiver for providing vertical accessibility to the second and third floor of a single-family dwelling being converted to a bed and breakfast. He continued stating the Council recommended approving the waiver based on the historic nature of the building as well as technical infeasibility.

Commissioner Browdy moved approval of the Council's recommendation. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

#4 Trump International Golf Club

Mr. Long stated the applicant requested waiver for providing an accessible path from a public street to a club house in a private golf facility. He continued stating the Council recommended granting the waiver request based on technical infeasibility.

Commissioner Browdy moved approval of the council's recommendation. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

**STATE AGENCY AND LOCAL JURISDICTION ENFORCEMENT OF FACILITY LICENSING STANDARDS**

Mr. Dixon reminded the Commission of the presentation made by Mr. Gregory, AHCA, during the February meeting. He explained discussions relating to the issue

resulted in staff being directed to work with AHCA, other state agencies with facility licensing regulations, and with BOAF to determine a position concerning dual enforcement which could be supported by the Florida Building Commission. Mr. Dixon stated meetings and discussions had resulted in two proposed options. (See *State Facility Licensing Regulation Enforcement, Interpretation, Waiver, and Determination of Alternate Methods and Materials* Attachment.)

Ronnie Spooner, President, Building Officials Association of Florida

Mr. Spooner first thanked the Commission for their concern for Mr. McCormack and delivered an update on his condition. He then stated BOAF would have a preference for Option #2 with the Note as indicated on the handout. He explained Option #1 creates a conflict between the building departments and state agencies in terms of interpretations.

Commissioner Shaw raised an issue of concern regarding medical gas. He stated medical gas is conducted primarily by the plumbing contractor or mechanical contractor yet has usually been inspected through AHCA. He then asked what would happen to the medical gas issue under the provision.

Mr. Spooner responded the special occupancy sections need to be reviewed and sections which should be part of the Code should then be moved, leaving the other sections for AHCA to determine.

Commissioner Shaw stated the medical gas issue is one of the few physical construction inspections performed by an AHCA representative. He asked if that type of provision would be transferred to the building department.

Mr. Spooner replied if AHCA wishes to continue performing those inspections and there is no issue with it, then the section on medical gas should be left in Chapter 4 and AHCA should continue performing the inspections.

Commissioner Greiner asked if BOAF's Option #2 selection was because it is similar to current fire and building regulations.

Mr. Spooner offered an affirmative reply.

Mr. Dixon interjected Mr. Gregory was not present at the meeting and the AHCA representatives were also not present then stated all concurred with BOAF and Mr. Spooner in selecting Option #2.

Commissioner Bassett explained more inspections are performed by AHCA than just medical gas. He stated they inspect fire damper installations, alarm systems and how fire alarm operations effect mechanical equipment. He continued stating AHCA used to perform many inspections which still need to be performed. Commissioner Bassett stated he would rather see one group perform all the required inspections.

Mr. Richmond spoke in favor of Option #1 stating Option #2 would involve adding a provision in Chapter 553 that would read as it appears on the handout in the first sentence. He stated one problem has been in defining Chapter 4's special facility requirements as well as defining the life safety requirements in the rest of the Code. He continued stating Option #1 would give the state agency the authority to adjust its rules provided they submit in writing their adjustments to the building official. Mr. Richmond stated the primary benefit to Option #1 is that it can be implemented as a simple provision of law; Option #2 would leave several interpretation problems and potential future conflicts involving re-opening chapters of Florida law to adjust the relative authorities of the building official and the state agency.

Commissioner Bassett restated he is in favor of Option #1 because his desire is that all inspections be performed by one authority leaving AHCA to issue the variances.

Commissioner Sanidas stated he has found it better for one department to provide inspections for construction in order for the Certificate of Occupancy to be appropriately issued. He continued stating there may be too much specificity in attempting to assign the regulating authority. He stated the issues may vary from job to job and the system has been working just the way it is with the building departments and state agencies working together.

Mr. Dixon stated a situation which occurred last year brought the issue to the forefront. He continued stating in that particular case, an agency could vary the requirement of 9 feet but the building official had no authority to vary the requirement. Mr. Dixon stated the determination was that the agency consequently was unable to use the facility. He further stated the agency then requested authority to give the waiver of requirements interpretation resulting in two conflicting interpretations with an unusable facility.

Commissioner Shaw added the agencies in the case under discussion appeared to be more flexible providing more latitude than the building official would provide. He then asked if Option #1 would be a better option in terms of flexibility.

Mr. Dixon responded Option #2 would be more flexible leaving the agency sole authority to enforce, interpret, waive, or determine the issue.

Commissioner Greiner stated he had always found AHCA to be cooperative. He continued stating he would never issue a Certificate of Occupancy without AHCA's approval. He then expressed concern that the building official may be given the authority to interpret certain issues for which only the agency has the background, understanding, and experience. Commissioner Greiner entered a motion in support of Option #2. Commissioner Wiggins seconded the motion.

Commissioner Parrino requested clarification regarding which options for appeal would be in place during the process.

Mr. Dixon responded the Chapter 120 appeal process would probably be the

option in the form of an informal agency appeal or a formal Chapter 120 which would go through a hearing officer or administrative law judge.

Commissioner Calpini asked how either option would effect the state fire marshal and their responsibilities to the state agencies.

Mr. Dixon responded the Code currently defers to the Uniform Fire Safety Standards in Chapter 4.

Mr. Richmond interjected one problem would be when the application of the state agency regulations would conflict with the Florida Fire Prevention Code. He stated the mechanism in place is for a determination between a local building official and a local fire authority, leaving no mechanism in place for conflict between state agencies and the fire prevention code which may require an additional section of law.

Chairman Rodriguez called for a vote on the motion. The vote resulted in 12 in favor, 3 opposed. Motion carried.

Chairman Rodriguez call for a motion to reconsider one of the accessibility waivers, Sysco Food Service of Jacksonville, stating the item was discussed prior to the stipulated time.

Commissioner Browdy moved to reconsider Accessibility Waiver Application Item #2, Sysco Food Service of Jacksonville. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

### **BREAK**

Chairman Rodriguez called a five-minute break at 9:25 a.m.

### **RULE DEVELOPMENT WORKSHOP FOR RULE CHAPTER 9B-72, PRODUCT APPROVAL**

Mr. Richmond stated Rule 9B-72 has been duly noticed in the Florida Administrative Weekly. He then opened the hearing.

Chairman Rodriguez called for public comment. No one approached to speak to Rule 9B-72.

Commissioner Carson reported the POC had met at least four times regarding the approximately twenty-one proposed changes. He stated the committee had also reviewed editorial changes which were proposed by staff. Commissioner Carson then stated the committee unanimously recommended the amended Rule 9B-72 be approved by the Commission.

Chairman Rodriguez again called for public comment.

Ted Burman, Miami Dade County

Mr. Burman stated his comments were not relating to the editorial changes discussed recently at the POC meeting. He continued stating he did not agree with all the changes which had been previously submitted including the requirements for professional licensure of entities, requirements of liability insurance of the entities, and the lack of specific resources for a building official to reject a product approval submission to his department.

Mr. Richmond addressed Mr. Burman's comment regarding his proposed changes not being considered. He stated Mr. Burman's proposed changes were considered but were not incorporated into the rule.

Commissioner Greiner asked if Mr. Burman was endorsing the rule.

Mr. Burman responded there is no objection to the discussions regarding the changes to the rule which took place at the recent POC meeting. He stated there is objection to the previous approvals in terms of the changes he submitted not being accepted into the rule. He continued stated he does oppose the rule in its entirety.

Mr. Dixon then presented a summary of the changes recommended by the POC as stated by Commissioner Carson and distributed to each Commissioner. (See *Proposed Changes, Rule 9B-72 Product Approval, April 7, 2003 Attachment.*)

Commissioner Wiggins asked what the impact of the proposed Legislation would be in terms of the product rule.

Mr. Dixon responded stating the issue would be addressed during the next agenda item then stated according to the proposal, standards and criteria for local approval which currently exist would continue. He continued stating there are questions regarding implications within the proposed legislation in terms of who would authorize approvals for local regulatory agencies. Mr. Dixon further stated the primary differences are the elimination of the option for statewide approval resulting in manufacturers being required to be locally approved, and the approvals would be for all products not just the seven for which the building officials are currently responsible.

Commissioner Browdy referenced 9B-72-050, Product Approval by Local Jurisdiction and Acceptance, then asked if the local jurisdiction is entitled to approve only products under the rule that are site-specific or can they approve a product one time as jurisdictionally specific.

Mr. Dixon responded stating the rule attempts to clarify the law which implies that the local approval option for the manufacturer is to go to the building official with documentation demonstrating compliance or general acceptance used in his jurisdiction. He continued stating the building official is still responsible for approving products used within a specific project. Mr. Dixon illustrated his response using an example of a selected window which was approved for up to 110 mph windspeed and had been

generally accepted for part of the jurisdiction, however was not adequate for a specific location on a specific building at a given geographical location, perhaps closer to the coast, the building official would have to reject the use of the window through the plans review and inspection process.

Commissioner Carson moved approval to draft and publish a Notice of Proposed Change for Rule 9B-72 with a subsequent hearing to be held at the July 2003 meeting of the Florida Building Commission. Commissioner Wiggins seconded the motion.

Chairman Rodriguez called for public comment.

Commissioner Parrino asked when the appropriate time would be to introduce the equivalency of standards issue as discussed and considered by the Structural TAC.

Mr. Richmond responded stating that issue could be considered in a subsequent rule making opening only the section pertaining to the issue. He continued stating the equivalency of standards section was not opened within the current rule making but could be opened at a separate rule making. Mr. Richmond further stated the appropriate time for introduction of equivalency of standards would be upon conclusion of the current rule making.

Commissioner Gonzalez asked what would happen to the rule if the majority of the Commissioners were not comfortable with the rule and voted against it.

Mr. Richmond replied the rule has been published for rule adoption hearing stating the changes that are identified in the Commission packets, Tab 4, would not go forward and the existing rule would remain in effect without the submitted amendments.

Dennis Braddy

Mr. Braddy expressed concern regarding Commissioner Parrino's question regarding the NAFs asking if now the Commission would go through an entirely new rule making.

Mr. Richmond stated the rule would be adopted within 9B-72 subject to amendment. He continued stating the equivalency of standards section has not been opened during the current rule making resulting in requirement of a separate proceeding. He then closed the hearing for adoption of rule 9B-72.

Commissioner Carson restated his motion to draft and publish a Notice of Proposed Change for Rule 9B-72 with a subsequent hearing to be held during the July 2003 meeting of the Florida Building Commission. Commissioner Wiggins seconded the motion. Vote to approve the motion resulted in 14 in favor, 1 opposed. Motion carried.

**CHAIR'S DISCUSSION ISSUES AND RECOMMENDATIONS**

Chairman Rodriguez stated there were six Chair issues for discussion. He stated



the first issue concerns changes to the amendment proposal section of the Florida Building Code Information System, BCIS. He continued stating staff has requested the Commission address the need to modify the electronic code amendment form in order to facilitate the linking of the rationale for the proposed Code amendments with the declaratory statements within the database of the BCIS. Chairman Rodriguez explained in order to make the modifications the Commission will need to initiate rule making and amend the Commission rules and procedures.

Mr. Richmond explained the intention with regard to commentary was to rely on the rationale for the Code amendments that are adopted. He stated what is needed is the specific section on the Code amendment form where the proponent of an amendment would express in detail what the rationale is behind the amendment. Mr. Richmond continued stating with this system there would be a means of tracking the amendments and maintain an ongoing database.

Commissioner Greiner moved approval for the Commission to direct staff to modify the electronic form for tracking purposes. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Chairman Rodriguez continued opening discussion item two, clarification and discussion of the accessibility code commentary. He stated staff has requested clarification of the Commission's policy of the Code commentary which was established during the February 2003 Commission meeting. He further stated staff had reviewed and analyzed the Commission's decisions regarding Code commentary and recommended the Commission limit referrals of accessibility code commentary to those documents endorsed by the Department of Justice. He then directed the Commission to Mr. Dixon for further explanation.

Mr. Dixon stated the Florida Building Code has gone through the Department of Justice certification process creating a presumption of compliance with ADA. He explained the law directs the Commission to maintain all rules, laws, policies, etc., in a manner which will ensure continued DOJ certification. Mr. Dixon continued stating staff's recommendation in terms of referencing commentary documents is to refer individuals to those documents which have been endorsed by DOJ, keeping the Code certification in tact and remaining in compliance with DOJ.

Commissioner Shaw expressed disappointment with producing a document which now cannot be used. He urged the Commission to be more careful in terms of what assignments are placed on the TACs. He referenced an example stating the Plumbing TAC conducted extensive research regarding corrosion issues of which none of the material will be used.

Mr. Dixon noted staff has been consistent since 1993 in recommending that the TACs should use information and documentation that has been endorsed by the Department of Justice. He stated the current approach of the committee is to reference a commentary document developed by the Architecture and Transportation Barriers Access Board, who write the ADAG adopted by DOJ, which has also been endorsed by the

Department of Justice.

Commissioner Shaw requested clarification regarding the document which has been developed over a period of time by the Accessibility Council and the Accessibility TAC, asking whether it will be used by the Commission for reference.

Mr. Long interjected as a member of the TAC stating the committee and Council had specifically developed a document which addressed the accessibility issues of Florida. He explained that because the Florida requirements are more stringent than ADA and ADAG, it creates confusion regarding a number of issues. He then asked if an individual who is seeking clarification of the difference between the requirements would be sent to the federal authorities.

Mr. Dixon offered clarification stating the Florida Accessibility Code is primarily ADAG and referrals should be restricted to DOJ-specific documents. He continued stating the Commission had determined no commentaries would be adopted by rule meaning any documents developed by committees will not be legal without being adopted by administrative rule.

Mr. Long continued stating the Accessibility TAC had not developed the document as a legal document, rather as an assisted document citing particular situations common to the public for better understanding of the differences in the codes. He explained the TAC had not been made aware of the policy until after the work on the document had already been done.

Mr. Dixon stated the policy on commentaries was established more than a year ago. He continued stating if the Commission is going to serve as a state of Florida governmental entity then the rules of Chapter 120 must be followed.

Commissioner Bassett moved approval to make an exception to policy and adopt by rule the commentary being developed by the Accessibility TAC. Commissioner Shaw seconded the motion for discussion.

Mr. Long interjected because the Accessibility Act is a separate entity from the Code which is why the committee was developing the document.

Mr. Richmond concurred the Accessibility Code has independence from the Florida Building Code, then stated the only authority to generate a commentary is because of its relationship to the Florida Building Code.

Mr. Dixon offered clarification stating in the 1973 revision of the law, there were claims that the Florida Board of Building Codes and Standards had eliminated portions of the Florida Accessibility Code by interpretation. He stated an interpretative document had been developed in an attempt to assist with the implementation of requirements. Mr. Dixon explained there had been three separate investigations of the Florida Board of Building Codes and Standard's actions in "reducing the Florida Accessibility Code." He further stated legislation was then enacted authorizing the Florida Building Codes and

Standards to waive the only specific requirements on a case by case basis. He continued stating the 1998 Florida Building Code Act incorporates the Accessibility Code with some authority granted, specifically on commentaries. He noted there is no authority to consider commentaries under the separate Accessibility Code Act.

Commissioner Wiggins asked if it is possible that the work of the Accessibility TAC could be reassigned to a non-public entity or organization to accommodate the commentaries outside the purview of the State of Florida.

Mr. Richmond responded there would be no problem with reassigning to an outside organization. He stated as example PVA or any other advocacy groups for circulation as their advisory. Mr. Richmond continued stating the problem occurs when it appears that the Florida Building Commission is seeking to endorse any documents other than by rule.

Mr. Dixon interjected there may be certain policy considerations to explore with regard to the private entity issue.

Commissioner Browdy expressed the importance of focusing on the intent of the commentaries. He stated it has been difficult for individuals involved with accessibility issues to communicate compliance to the design professional community and to the public. He continued stating the commentary appeared to be an essential element in achieving compliance, understanding, and sensitivity to the Code. Commissioner Browdy expressed his support, provided there is no strenuous legal objection, for Commissioner Bassett's effort to incorporate by rule the work product of the Accessibility TAC and the Accessibility Advisory Council.

Mr. Richmond interjected staff attorney Tim Dennis primarily works with the Council and the Accessibility TAC and asked that either the issue be tabled until Mr. Dennis can be present for consult, or that the commentary be limited to address only the Florida-specific requirements. He then recommended the issue be deferred or the current motion be tabled until the next Commission meeting.

Commissioner Greiner reminded the Commission it was agreed there would be no commentaries and to list nationally known commentaries and commentaries with specific connection to the base codes. He continued stating none of the commentaries are binding and can still be used outside administrative rule.

Mr. Richmond responded stating if a commentary is developed by the Commission or comes through the Commission it would have to be adopted by rule.

Commissioner Corn stated he was a member of the Accessibility TAC and is familiar with the commentaries that were developed. He expressed support for any method necessary to publish the commentaries noting they were excellent work.

Commissioner Bassett expressed concern regarding several issues in particular if the commentaries were published by an independent entity and issues related to waivers. He then moved to table the issue until the next Commission meeting. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Dixon brought forth the initial issue which concerned ADAG-specific portions of the Code and that they be referred to DOJ endorsed documents.

Commissioner Bassett moved approval to refer individuals seeking compliance with ADAG-specific requirements only to DOJ endorsed documents. Commissioner Browdy seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Chairman Rodriguez then reminded the Commission of the TAC's role versus the role of the Commission by reading the following:

“The Florida Building Commission is an appointed and representative body whose function is to develop consensus on policy issues. The Commission's policy decisions provide guidance on how the Commission will address the myriad of key issues before us such as amending the Code . In contrast, the Technical Advisory Committee and the Program Oversight Committee's role is to provide technical recommendations on how to implement the Commission's policies. As such, if policy questions or issues arise as a result of your deliberations in the TAC or a POC, the chair should bring up the issue before the Commission for the Commission's full consideration.”

He stated technical opinions should be sought at the TAC level and policy opinions at the Commission. He summarized by stating the Commission will make policy decisions, the TAC makes the recommendations to inform those policies, and the Florida Building Commission assigns the policy issue under consideration to the appropriate TAC. He assured the Commission there was no attempt to limit the TAC's authority, merely the issues that are considered and at what level.

Chairman Rodriguez addressed the issue of Commission meeting preparation. He invited the Commission to avail staff to assist in preparing for the Commission meetings to result in saving time during the meetings, as well as producing better public policy by better informed decision making.

Chairman Rodriguez addressed the next issue which was non-binding advisory opinions. He stated it was brought to the Commission's attention that in some cases non-binding advisory opinions may contradict clear language in the Code based on the

actual intent of the Code. He explained this situation demonstrates a need for policy development dealing with errors and unintended consequences and related advisory opinions.

Mr. Dixon reminded the Commission of discussion regarding whether or not the Commission should be granted authority to waive Florida Building Code requirements. He explained since the Code was adopted by Chapter 120 rule adoption procedures, the waiver authority is automatically delegated to the agency. He stated the Commission made the decision not to have the waiver authority in order to prevent individuals from coming before the Commission requesting waivers for specific projects, thus the Legislature was asked to write an exception in Chapter 120 eliminating waiver authority for the Commission with respect to the Code. Mr. Dixon continued stating in developing such a complex documents there will be errors made even when extreme efforts have been made to further refine the Code prior to adopting it. He stated there have been deadlines missed as well as the public being noticed that complete rule making in the Code will be available, which will have detrimental effects. He further stated staff recommends that the Commission request authority to stay any provision of the Code providing a mechanism to delay any requirement until rule making has been done.

Mr. Richmond added there are literal requirements in the Code which make no sense and common sense must be applied. He stated there may be building officials who attempt to apply the literal requirements even after declaratory statements have been entered. Mr. Richmond explained the stay authority would provide building officials authority not to enforce certain provisions in the Code until they are refined.

Chairman Rodriguez explained the proposed motion to be entered by the Commission to be approving staff's recommendation to request authority to stay requirements of the Code.

Commissioner Bassett moved approval for staff to request authority to stay requirements of the Code. Commissioner Shaw seconded the motion for discussion.

Commissioner Bassett then asked if requirements of the Code are stayed if it applies to the entire section or just the offending verbage.

Mr. Richmond responded the intention would be to draft a stay addressing only that issue which is a problem.

Commissioner Kim asked how local amendments would be affected with the stay authority and how the Commission would review local amendments. He noted local amendments are a great concern to the insurance industry.

Mr. Richmond answered stating the Commission is authorized to conduct non-

binding reviews and opinions of amendments in general. He continued stating there is also free standing non-binding opinion as well as the actual authority to challenge locally adopted technical amendments to the Code.

Commissioner Kidwell stated he is aware of a number of local administrative and technical amendments which have not been placed on the website. He then asked where enforcement becomes necessary and how.

Mr. Richmond responded stating the enforcement is with private industry challenging the application of those amendments. He added the ultimate authority would be every three years when the amendments are repealed as a matter of law then entered into the Code or subject for adoption.

Commissioner Shaw asked if the provision would allow for the non-enforcement portions of the Code which have been amended but are waiting for implementation.

Mr. Richmond replied the provision being amended could be stayed but no amendment could be put into place.

Commissioner Wiggins addressed Commissioner Kidwell's issue stating if local government has an amendment which is not reflected on the website, they must have a county-wide compliance board to which individuals may appeal amendments in order to meet the criteria in the Code.

Commissioner Browdy expressed concern regarding the Commission taking action at this time. He stated there may be extraordinary implications if the Commission is able to stop any provision of the Florida Building Code. He continued stating that a stay is in fact taking action even though the stay intent is to stop action. He then recommended deferring action until the implications of the Commission can be considered.

Mr. Dixon offered clarification stating staff is not recommending the Commission have the ability to stay any part of the Code without a finding in error, rather the ability to stay a portion of the Code that is found to be in error.

Chairman Rodriguez called for a vote on the motion to request authority to stay requirements of the Code that are found to be in error. The vote resulted in 8 in favor, 6 opposed. Motion failed.

Commissioner Parrino concurred with Commissioner Browdy regarding deferring action stating he would be more comfortable with taking more time to consider the issue.

Commissioner Browdy requested clarification regarding the definition of an

“error” which would constitute a stay of Code requirements.

Commissioner Bassett pointed out if no action is taken during the current meeting the issue would then be postponed for a year due to the Legislature, which is in session, having to grant authority.

Commissioner Shaw stated this particular issue may require a super-majority vote to avoid taking incorrect action which may negatively affect the industry and the home builder for a year.

Chairman Rodriguez stated as reflected by the vote on the motion, the Commission is divided in terms of action regarding the stay issue. He reminded the Commission of the authority which was granted and was voluntarily surrendered for good reason. He posed whether the Commission would prefer having some of the authority back, specifically relating to the stay issue.

Mr. Blair explained the stay issue has been voted down with a divided Commission. He stated Commissioner Shaw offered a more explicit alternative so that any requested action requiring a stay would come before the Commission for consideration for a super-majority decision making threshold in reviewing and deciding the issue. He then conducted a straw poll for Commissioner Shaw’s alternative in concept. The poll vote resulted in 11 in support and 3 with minor reservations.

Commissioner Kidwell expressed concern regarding how the errors would be presented to the Commission.

Commissioner Browdy stated staff is suggesting the only way to effectively stop an action quickly because there is no other legal venue in place to do so.

Commissioner Parrino expressed support for the super-majority concept but expressed concern regarding unknowns and the consequences which could result.

Commissioner Sanidas expressed concern regarding changes that may be sought by developers for quick action.

Mr. Blair interjected the stay is designed to address only unintended consequences or errors in the Code. He stated the requests must be very narrow in scope and related to errors or unintended consequences only.

Commissioner Shaw added a caveat for the Chair suggesting the issues must be brought to the floor by the Chair for consideration by the Commission stating it would limit individuals seeking stays through public comment.

Commissioner Corn stated there have been times when common sense has dictated other than how the Commission voted because of legal issues. He suggested

the stay authority may be an opportunity to put common sense into play.

Mr. Blair suggested a motion be made to reconsider in order to entertain Commissioner Shaw's recommendation.

Commissioner Greiner illustrated what the stay authority would accomplish. He stated during last month's meeting a case came before the Commission dealing with hallways in a school. He continued stating the Fire Code had certain requirements and the Florida Building Code had different requirements with the Commission knowing the table was typographically in error. He further stated there was no legal means to correct what was known to be in error and suggested the stay authority may be the means to stay the requirement until corrections can be made.

Commissioner Carson moved to reconsider. Commissioner Kim seconded the motion. Vote to approve the motion resulted in 14 in favor and 1 opposed (Browdy).

Commissioner Shaw moved approval for the Commission to seek authority to stay Code requirements based on the issues being submitted to the Commission Chair as well as the motion to stay being unanimously passed by all Commission members present at the time voting occurs. Commissioner Wiggins seconded the motion.

Commissioner Parrino offered a friendly amendment stating if the Chairman brings the issue before the Commission a super-majority vote must be achieved in order to consider the issue with an additional super-majority vote required to approve the stay.

Commissioner Shaw accepted Commissioner Parrino's super-majority requirement for Commission consideration on the issues, then stated he would suggest a unanimous vote to approve a stay.

Commissioner Browdy asked if the intention of the maker of the motion is that the stay would be indefinite.

Commissioner Bassett offered a friendly amendment that the stay would be valid through the next opportunity to revise the Code.

Commissioner Shaw accepted the friendly amendment as consistent with the intent of the motion.

Chairman Rodriguez called for a vote on the motion. Vote to approve the motion resulted in 13 in favor and 2 opposed. Motion carried.

Chairman Rodriguez reminded the Commission of the motion to reconsider concerning an accessibility waiver request by Sysco Food Service of Jacksonville. He then asked for a motion to defer the item until the next Commission meeting.



Commissioner Wiggins moved to defer the application for waiver from accessibility requirements entered by Sysco Food Service of Jacksonville. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Chairman Rodriguez opened discussion concerning the procedural guide for a Florida Building Code update. He stated the process for updating the Code is an important policy decision developed through consensus of the Commission. He continued stating the Commission needs to reach agreement on a procedure to implement the policy. Chairman Rodriguez further stated staff had developed a process implementation proposal based on a good Code development policy as well as on the statutes which define the procedures.

Mr. Dixon conducted an overview of the procedures adopted currently in statute 5573. (See *Procedural Guide for the 2004 FBC Update* Attachment.) He then presented the procedures in more detail through overhead presentation.

Commissioner Corn asked if a local amendment is not adopted by the Commission whether the local authority can pass it at the local level.

Mr. Dixon responded stating for any local amendment to be legal it must be posted with the Commission for thirty days prior to becoming effective. He continued stating the Commission should review all local amendments at time of the three year update. Mr. Dixon explained if the Commission does not adopt a local amendment, the local jurisdiction must be notified that the amendment has been repealed. He further stated the local authority may adopt the amendment again with the Commission having authority to overturn any local amendment on appeal. He then continued the overview of the Procedural Guidelines for the 2004 Code update.

Commissioner Wiggins moved approval to adopt all or parts of the changes to the policy for updating the Florida Building Code. Commissioner Browdy seconded the motion.

Commissioner Kim requested clarification regarding annual technical amendments and how they are affected by the three-year updates.

Mr. Dixon responded stating s.553.73(6) states the Commission considers changes between different editions of model codes. He continued stating the section also states the Commission "shall further consider declaratory statements, appellant decisions, approved local amendments, and approved statewide amendments." Mr. Dixon explained the process for approving any of those is through s.553.73(7) Technical Amendment Procedure which states "approved and then adopt". He stated the Technical Amendment Procedure must be followed for any proposed amendment or modification which has not previously been approved through the same process.

Mr. Blair restated the motion as follows: To approve the Procedural Guidelines for the 2004 Code Update as presented.

Commissioner Shaw asked for clarification regarding changing the rule. He asked if after the procedures have been adopted and the rule being changed, would public hearings then be required before the new changes are adopted.

Mr. Dixon responded by stating exposing the updates to the beginning and following the procedures as presented, the public is being given a minimum of three formal opportunities for comments, requesting changes, or lobbying their positions.

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

### **REVIEW AND DISCUSSION OF LEGISLATIVE ISSUES IMPACTING THE COMMISSION**

Mr. Richmond opened discussion regarding Legislative issues which affect the Commission. He directed the Commission to material which was distributed to each Commissioner. (See *Senate Committee On Regulated Industries Attachment*.) Mr. Richmond explained the referenced document is an amendment to SB 518 which passed through the Committee on Regulated Industries. He then requested the Commission authorize the Chair to participate in the negotiations and approve staff positions in the negotiations.

Commissioner Greiner entered a motion to authorize the Commission Chair to represent the Commission's intent and interest on the proposed Legislation that affects the Commission including the review and approval of any staff negotiations as they proceed during this process. Commissioner Browdy seconded the motion.

Commissioner Corn expressed concern regarding the Legislature writing the Code. He stated there should be a motion on the policy due to the Legislature being unable to consider all of the ramifications involved in the process.

Commissioner Greiner added the intent of his motion was to allow the Commission through the Chair to address procedural items and following the vote on that, determine a direction for the Chair.

Mr. Blair explained the motion allows the Chair to represent the Commission's interest and intent on various issues. He stated following the vote on the motion there will be a process to determine the Commission's opinion regarding the issue as proposed and if there is opposition other options will be explored.

Commissioner Parrino offered a substitute motion that the Commission develop a

resolution opposing any and all building code system Legislation currently being considered. (See *Resolution Attachment.*) Commissioner Carson seconded the motion.

Mr. Blair interjected the two motions are not mutually exclusive and in order to satisfy procedural issues a vote must be taken on both motions.

Commissioner Greiner stated he does not disagree with Commissioner Parrino then added the resolution motion does not change any of the Legislation currently on the table. He urged the Commission to address the issues involved in the first motion before moving on to the resolution.

Commissioner Bassett stated opposition to the substitute motion then added he would consider it as a separate motion.

Commissioner Parrino explained the resolution sends the message to the Legislature that the Commission was given specific tasks and responsibilities. He continued stating it should be clear to special interests the Commission is the appropriate forum to best address building code systems issues rather than the political arena.

Mr. Richmond stated the Legislative process has specifically recognized the existence of the Commission and has actively sought the Commission's position regarding related issues. He continued stating HB 1375 which is the equivalent of SB 518 was intended to be heard in committee but was postponed for one week to allow for the Commission's input. Mr. Richmond added it would be his preference to deliver to the Legislature useful information from the Commission and to be an active participant in the process. He stated adopting hard and fast positions prohibits alternative ways to meet the goals and intent of the Commission.

Commissioner Wiggins offered support for the resolution stating it is accurate in terms of the Florida Building Commission's position. He continued stating there is always an opportunity to make Legislative changes and added in this particular case, changes have been submitted abruptly without opportunity for due deliberation by all involved parties which creates frustration and confusion in trying to deal with the issues at hand.

Chairman Rodriguez reminded the Commission the issue to be decided is first a procedural issue then the conceptual issue can be addressed.

Mr. Blair then explained the process is a parliamentary procedure requiring first a vote to determine whether or not the Commission's desire is to accept Commissioner Parrino's substitute motion for the motion currently on the table.

Chairman Rodriguez noted there was an issue which has not been discussed.

He posed to the Commission what would happen if the Legislature does not follow the recommendation to first bring issues before the Commission.

Commissioner Calpini stated he does not want the Commission to send a message that could be perceived as a power issue. He recognized the Commission's broad effect over the state of Florida then stated the Legislature has a much broader authority which is less technically specified.

Mr. Blair offered clarification stating there are two ways to address the issue. He noted the first would be voting on whether to accept the substitute motion instead of the original motion. He then stated the second option would be for Commissioner Parrino to withdraw his substitution and since it does not contradict the original motion, it could be entered as a motion on its own merit for discussion and decision.

Commissioner Parrino stated he presented the substitute motion to be considered by the Commission according to Robert's Rules of Order as a substitute motion. He then asked that the Commission consider his motion.

Chairman Rodriguez offered clarification stating if Commissioner Parrino's motion is accepted as a substitute replacing the original motion and the Legislature denies the resolution, then it will leave the Commission totally out of the process for the year until the next Legislative session.

Commissioner Parrino stated he would like to see his resolution adopted and amended as deemed appropriate by the Commission.

Commissioner Bassett offered a third course of action in the form of a friendly amendment to the substitute motion suggesting the original motion remain on the table with the approved resolution attached as the Commission's primary desire for the Legislature.

Commissioner Parrino accepted the friendly amendment to his substitute motion.

Mr. Blair offered clarification stating the combined motions as follows: To approve the Commission Chair to negotiate various issues before the Legislature on behalf of the Commission as well as submitting the resolution to represent the primary position in terms of the Legislature.

Commissioner Parrino added he would support the amendment as a friendly amendment because it sends the message that the Commission would like to see the issues brought before the Commission first. He then withdrew his substitute motion then offered the resolution as a friendly amendment to Commissioner Greiner's initial motion.

Commissioner Greiner then accepted the resolution as a friendly amendment.

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

Mr. Richmond then conducted an overview of additional Legislative issues which may affect the Commission. (See *Addition of Hospice Facilities Attachment*.)

Mr. Dixon interjected staff is reticent with regard to making qualitative decisions in terms of whether a submittal is complete or not. He stated no matter whom the staff may be composed of, i.e., government or politically driven entity or an independent corporation approach, the Commission will have two appointees to the independent corporation as well as the Chair who serves directly under the governor to ensure no one entity or interest group gains control of the process for their own benefit.

Mr. Blair stated in order to get a sense of the Commission's position on the issue there were two methods available. He first asked if the Commission is comfortable with the Bill as it is currently articulated. He then took a straw poll vote to gain a sense of the Commission's comfort level. Mr. Blair asked if the Commissioners were more comfortable having an appeal process to the Commission Chair. The result of the straw poll votes revealed there were reservations with both options by many of the Commission members.

Commissioner Browdy requested clarification regarding the turnaround time asking if an individual submitted an application for an amendment which has been rejected, shouldn't there be a requirement for the application to be returned to the petitioner with a thirty day opportunity to appeal to the Chair with a completed application.

Commissioner Parrino stated the issues are complex which have merit. He suggested the issues should be brought back to the Commission for further deliberations and discussions for a recommendation to then be made to the Legislature. Commissioner Parrino added the political arena is not the appropriate place for consideration of the implications of the issues.

Mr. Blair summarized the proposal stating the process will require thirty days to get the process into order or thirty days to appeal to the Chair asking the comfort level of the Commission. He took a straw poll and vote resulting in the majority of the Commission supporting the proposal as amended.

Mr. Richmond continued his overview of the Legislative issues impacting the Commission. Open discussion ensued concerning the issues as presented on the document beginning with *Addition of Hospice Facilities*.

Chairman Rodriguez recommended the Commission direct staff and himself (the Chair) to not support any of the Legislative issues listed. Mr. Blair then conducted straw polls in terms of comfortable, minor reservations, or major reservations with each issue

as Mr. Richmond presented them.

Mr. Richmond introduced an issue concerning language in SB 518 which was inserted by Senator Constantine and that did not appear on the bulleted document. He stated the language addresses updates and specifically removes the authority for the Commission to adopt a successor model code. Mr. Richmond explained the language would additionally eliminate the Commission's authority to adopt updates as a package requiring individual consideration for each change that was made by the model code entity. He stated the language is inconsistent with the language which was previously reviewed and approved in terms of update procedural guidelines. Mr. Richmond stated he would seek to ensure that procedural guidelines for updates to the Code are protected.

Mr. Richmond then addressed another issue which did not appear on the bulleted handout. He stated outsourcing or privatization of the Commission administrative staff also made it into the Bill. He explained the department has reviewed the issue and in view of the workload would oppose outsourcing the Commission's administrative staffing for the current year.

Chairman Rodriguez added the outsourcing issue had been discussed at length during the February Commission meeting and the Commission had authorized the Chair to draft a letter to the governor expressing the Commission's position. (See *Letter From Chairman Raul L. Rodriguez to Governor Jeb Bush Dated April 3, 2003 Attachment.*)

Commissioner Patterson proposed adding language to the letter "not to interrupt the three-year cycle" or language to that effect. It was agreed to add language stating "to be consistent with our cycle."

Commissioner Corn moved approval to authorize the Chair to send the letter as modified to the governor on behalf of the Commission. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Richmond stated the final issue raised by the Bill is an amendment to 553.842 of the Product Approval section. He then directed the Commission to Mr. Dixon for discussion regarding product approval.

Mr. Dixon opened discussion regarding the public safety and industry benefits of product approval. He explained there had been major reservations in the first version of the Bill resulting in discussions with proponents of the changes to the law to determine the impact of the proposed changes and their intent. He stated the proposed changes required an evaluation of the protections and benefits for the public as well as the benefits to the industry under the current system versus what the proposed changes would present. Mr. Dixon stated the additions which have been made to the Product Approval System is the national accreditation of the evaluators and the Commission approval of those evaluators. He continued stating the law requires the Commission to

ensure that the products which must be approved under the PA system must have quality assurance provided by a third party entity.

Mr. Dixon further stated if a Commission-approved evaluator performs the evaluation, then local government must accept it without requiring further testing or documentation. He added the current rule provides the option for an entity to come before the state for approval which then must be accepted by each local jurisdiction.

Mr. Dixon addressed changes which may affect the Commission. He stated the Commission approval of all evaluators is still in place as well as the quality assurance requirement written in law. He continued stating the Bill is taking away appellant protection with the industry giving up statewide options for approval. He noted ancillary differences stating under the proposed change to the law, every product would require approval rather than just seven. Mr. Dixon stated for local approval, the implication is the evaluating entity approves the product with the building official approving the product at the time it is used in a specific building or project. He informed the Commission Mr. Richmond had commented to the Legislature that local jurisdictions being responsible for both the general approval into their jurisdiction as well as product use determination is an unlawful delegation of authority.

Commissioner Shaw requested clarification regarding what was lost in terms of product approval at the state level.

Mr. Dixon responded by stating there are uniform rules which pre-empt current authorities of local jurisdictions. He explained if a manufacturer had a listing with Underwriter Laboratories, the jurisdiction must accept that product. He further stated it requires local jurisdictions to recognize evaluations performed by Commission approved entities.

Commissioner Browdy asked how a statewide prototype building program can be in place in the absence of a statewide product approval system.

Mr. Dixon replied whoever acts as building official for the prototype building also acts as a local jurisdiction.

Mr. Blair offered clarification stating the Commission has gone through an extensive rule adoption process and unanimously agreed to accept the proposed changes. He then conducted a straw poll vote to determine the comfort level of the Commission in terms of what is currently in place. The straw poll resulted in 12 Commissioners with no reservations.

Commissioner Shaw expressed reservation regarding the proposal that appears to be going forward. He stated the proposal seems to have a dramatic cost reduction in terms of the Commission not being asked to maintain anything.

Mr. Dixon stated the implementation of statewide product approval is going to be a six-figure development in the information system as well as staff cost impact. He explained in order to save money the development of the system has been postponed until the Legislative outcome is know. He stated statewide product approval will not be gong online October 1 and uniform procedures for local approval will be in place and will go online as scheduled.

Commissioner Parrino requested clarification regarding the postponement in the development of the information system. He stated that decision should have come before the Commission for a decision.

Mr. Dixon explained the Commission is attached to the Department of Community Affairs for administrative purposes. He stated when the state spends money on the behalf of the Commission it is appropriated to the department thus providing the department independent authority to make those administrative decisions.

Chairman Rodriguez added it is important that the Commission be informed about administrative matters in an appropriate time frame.

Commissioner Shaw requested clarification regarding the who made the decision.

Mr. Dixon further explained he would claim responsibility for the actions taken whether it was his individual decision or an administrative decision.

Commissioner Bassett stated the system was supposed to be self-supporting and requested clarification in terms of spending the state's money.

Mr. Dixon responded the system has not garnered any money as of yet.

**LEGAL REPORTS:**

**Update on Appeal of Final Order on FSPA Challenge of Pool Alarm Standards,**

Mr. Richmond stated the administrative law judge entered the order that declared the rule under challenge as well as all of 424.2 invalid. He reported the order has been appealed and the challengers had filed a motion to lift a stay which was denied on Thursday. Mr. Richmond stated the provision is still in effect in the state of Florida and should be enforced throughout the state.

**Daytona and Port Orange Local Amendments Challenge and Other Issues,**

Mr. Richmond explained two local amendment challenges would be forthcoming at the May or July meeting. He stated the cities of Daytona and Port Orange had



adopted electrical amendments which have been challenged. He reported the administrative law judge has heard the case and the transcript has been filed with an order to be filed within the next twenty-five days. Mr. Richmond requested direction from the Commission whether to refer the issue to a Technical Advisory Committee for initial review. He stated the Commission's responsibility will be to review the recommended order and recommend a final order.

Commissioner Greiner moved approval to send the result to the Code Administration Technical Advisory Committee. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

**Petitions for Declaratory Statement:**

**Second Hearings-**

DCA02-DEC-370 by Michael Huey, Florida AIA

Mr. Richmond stated the declaratory statement regards the juxtaposition of the permit by affidavit and the alternate plan review and inspection services. He stated the Commission's recommendation is that the two systems can co-exist side by side.

Chairman Rodriguez called for public comment.

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

DCA03-DEC-007 by William Paul Myrick, Myrick Properties

Mr. Richmond stated the declaratory statement was deferred to the local appeal board and was dismissed by the Commission.

No action taken.

DCA03-DEC-008 by Juliana Salas, Miami-Dade County

Mr. Richmond stated the declaratory statement pertained to maximum travel distance in a low hazard storage occupancy. He stated the recommendation of the Commission was that Table 1004 of the Florida Building Code and Section 42.2.6.1 of the Florida Fire Prevention Code require the maximum travel distance to an exit in an unsprinklered low hazard storage building to be a maximum of two hundred feet.

Chairman Rodriguez called for public comment.

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

DCA03-DEC-025 by Robert A. Bullard, Absolute Engineering Group

Mr. Richmond stated the declaratory statement asked the question whether structures contemplated for use as supports for mechanical equipment required clear distance above roofs and whether they're intended to be specialty design products. He stated the recommendation of the Commission was that the Florida Building Code allows for both products, specialty design products and site-specific design products and both options are subject to review and approval of the building official.

Chairman Rodriguez called for public comment.

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

DCA03-DEC-028 by Andy Brill, MI Home Products

Mr. Richmond stated the question was whether the Code limited glass ratio to five to one. He stated the recommendation was no.

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

DCA03-DEC-032 by Cathy Spafford, Town of Indianlantic

Mr. Richmond stated the declaratory statement regards playground equipment and whether such is a structure subject permitting and plan review. He stated the recommendation was no. Mr. Richmond stated there was a written comment received dated April 2, 2003 submitted by Hubert C. Normile, Jr. which was included in the materials which were distributed to each Commissioner.

Chairman Rodriguez called for public comment.

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

**First Hearing-**

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

Mr. Richmond stated the declaratory statement asks the question whether 424.2.17.1.13 allows for the 48-inch fabric barrier between the pool and the dwelling to be 20 inches from the water's edge but the screen enclosure barrier on the other side of the pool to be less than 20 inches. He stated staff's recommendation was yes, it can be less than 20 inches for a screen enclosure or other dwelling wall.

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

DCA03-DEC-047 by Anne Mason, Mason Law

Mr. Richmond stated the declaratory statement asks whether other approved means of termite protection within the meaning of 1816.1 of the Florida Building Code may include treatment such as predatory mites that do not contain pesticides. He stated the second question is whether companies that provide pre-construction termite treatment with predatory mites may certify that they have done so and their certificate of compliance is required by 1817.1.7 of the Code even if they do not constitute pesticide. Mr. Richmond stated the TAC has declined to issue the declaratory statement due to the Commission having no authority to approve products. It was recommended the declaratory statement be dismissed.

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

Commissioner Bassett expressed concern stating the Commission had addressed the baiting systems issue previously but did not accept the recommendation from the Department of Agriculture. He cautioned the Commission to be mindful if the issue comes back to the Commission again in terms of how to treat the issue.

Commissioner Parrino interjected the issue deals with other approved methods of termite protection where the Department of Agriculture only deals with termiticides. He stated the petitioner was looking for product approval in order to use the product statewide.

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

DCA03-DEC-063 by Wendell Haney, Commonwealth Engineering

Mr. Richmond stated the petitioner is requesting clarification regarding load combinations as it relates to insulated steel doors. He stated the question is whether the following statement is correct: "Combining factored loads using strength design is

the correct load combination method to use for determining the ultimate load requirement of products whose design strength is determined by laboratory tests and full-scale specimens. He continued stating the recommended answer is no, load combinations are only applicable for structures or products designed using rational engineering analysis. Mr. Richmond further stated according to 1707.4.2 the ultimate load requirement for the door in question is one and a half times the design wind pressure.

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

DCA03-DEC-073 by Joseph Hetzel, DASMA

Mr. Richmond explained the issue is whether the Code requirements for garage door minimum steel's thickness, and whether the provisions of 1626.4(3) apply to noninsulated garage doors successfully tested to TAS 201, 202, and 203. He stated the answer was no demonstrating compliance through testing for the listed standards meets the minimum requirements of the Code in compliance with 1626.4(3) is not required.

Mark Wester.

Mr. Wester stated he is available if anyone has any questions.

Mr. Richmond continued stating there were two other questions and recommendations. He stated due to requirements of Section 2605.3.2.7.1 applied to garage doors, the recommended answer was yes. He further stated the third question is if the answer to question #2 is yes do the requirements supercede the requirement of 2603.5.1.9 for insulated garage doors successfully tested to TAS 201, 202, and 203, the recommended answer was yes.

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

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

Mr. Richmond stated the declaratory statement pertains to the exposure category C, pursuant to 1606.1.8 of the Florida Building Code and whether that exposure sea is limited to the area only along the Gulf of Mexico where the coastal construction control line is defined or whether it includes the area within 1,500 feet of the mean high tide line to be any area with a tide such as Charlotte Harbor, the Peace and Myaka Rivers, or canals where there is no coastal construction control line. Mr. Richmond stated the recommended answer is that exposure C applies to areas within the prescribed distances from the coastal construction control line or the mean high tide line including

any area with a tide such as Charlotte Harbor and the Peace or Myaka Rivers, or canals.

Chairman Rodriguez called for public comment.

Commissioner Parrino informed the Commission that the declaratory statement contradicts the BOAF informal interpretation that was issued on the statement. He noted there was a 6 in favor to 4 opposed vote in the Structural TAC on the issue due to the language interpretation.

Commissioner Shaw stated it appears that the declaratory statement had ramifications for the St. John's River through the city of Jacksonville since the river is effected by tides.

Commissioner Parrino stated the declaratory statement would only pertain to 1,500 feet from the shore of the St. John's River.

Commissioner Browdy stated the issue relating to Jacksonville would move certain categories within the .... coast line from a B to a C in addition to which there is a larger implication in terms of the BOAF opinion versus the declaratory statement opinion. He then recommended a deferral on the issue and if no deferral is sought he would oppose the TAC recommendation.

Commissioner Kidwell stated he also opposes the TAC recommendation. He explained deals with seven or eight coastal communities and Charlotte County is the only one interpreting the issue in the way presented.

Commissioner Greiner asked if there was a BOAF representative present during the TAC meeting.

Commissioner Parrino responded stating Mr. Belcher was present and spoke on the issue. He stated Mr. Belcher referred to a map of Charlotte Harbor and stated he did not realize the extent of size of Charlotte Harbor and relating areas to which the declaratory statement is specific. He continued stating the Code refers to the coastal construction line and the mean high water mark, whatever is less.

Commissioner Wiggins moved to defer the declaratory statement. Commissioner Corn seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA03-DEC-079 by Dean Heminger

Mr. Richmond stated the declaratory statement had been deferred.

No action taken.

DCA03-DEC-083 by Joseph Hetzel, DASMA

Mr. Richmond stated the declaratory statement is an expansion of a previous statement regarding testing in a manufacturer's in-house facility. He stated the question is a three-part question asking if testing at an in-house facility acceptable provided such testing is witnessed by a Florida registered architect, professional engineer, or a representative of a testing agency. He stated the recommended answer is that such testing at an in-house facility is acceptable as long as the Code compliance certification test report, evaluation report, or certification listing is prepared by an evaluation entity's certification agency, approved testing laboratory, or a Florida registered architect or engineer. He stated the second question is if an entity witnessing such testing provide a certificate of independence attesting to conditions described in 9B-72.110(1). He continued stating the recommended answer is the certification as required by the reference rules applicable to a test lab when the lab is also the entity issuing the test report demonstrating compliance with the standards specified in the Code. Mr. Richmond stated the third question is if the entity will not release the report for Code compliance, can the data be used for product certification or evaluation report. He stated the answer is yes, Sections 9B-72.040 and 070 list the requirements for documentation of evaluation reports and test reports including the requirement to provide technical documentation supporting the compliance statement.

Chairman Rodriguez called for public comment.

Jaime Gascon,

Mr. Gascon reminded the Commission that the TAC that addressed the declaratory statement indicated the allowance is not particular to the high velocity hurricane zones and he hoped it remained as such.

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

**COMMITTEE REPORTS AND RECOMMENDATIONS:**

**Education TAC**

Commissioner Browdy presented the report of the Education TAC. (See *Education Technical Advisory Committee Minutes April 7, 2003 Attachment.*)

Commissioner Shaw moved approval of the TAC report. Commission Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

**Product Approval / Prototype Building / Manufactured Buildings Programs Oversight Committee (POC)**

Commissioner Kidwell presented the report of the Product Approval / Prototype Building / Manufactured Buildings Program Oversight Committee. (See *Product Approval/Prototype Buildings/Manufactured Buildings Oversight Committee Minutes, April 7, 2003* Attachment.) He introduced four Commission action items in the form of motions.

Commissioner Kidwell moved approval of Constuction Consulting Laboratory International as a testing laboratory. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Kidwell moved approval of Hurricane Engineering and Testing, Inc. as a testing laboratory. Commissioner Greiner seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Kidwell moved approval of PSF Corporation for approval as a testing laboratory. Commissioner Shaw seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Kidwell moved conditional approval of PSI/Pittsburgh Testing Laboratory as a testing laboratory based on verification of accreditation by staff.

Commissioner Shaw stated the form did not include an accreditation attached to it. He stated the Commission would have to decide whether to approve the testing laboratory subject to producing the documents.

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

Commissioner Browdy moved approval of the report. Commissioner Corn seconded the motion.

**Structural TAC**

Commissioner Parrino presented the report of the Structural Technical Advisory Committee. (See *Structural Technical Advisory Committee Minutes April 7, 2003* Attachment.)

Commissioner Parrino moved approval of the equivalency of standards for NAFS 02 to be equivalent to the current standard AHMA NWWDA101 IS2-97. Commissioner Wiggins seconded the motion.

Mr. Dixon added the equivalency of standards would be initiated upon completion of the open rule making.

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

Commissioner Corn moved approval to accept the report. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

### **PUBLIC COMMENT**

#### **Ralph Hughes**

Mr. Hughes stated he had spoken with Senator Constantine and was asked to deliver a message to the Commission. He explained Senator Constantine was the sponsor of SB 518 which was one and a half pages long. He stated the bill accomplished two things; 1) it made it clear that the Commission may adopt any part of any model code including the family of codes but the Commission could not adopt another model code to replace the Florida Building Code; 2) it made it clear that a product evaluation reports that are not based on tests or rational design analysis but evaluation reports that are opinion only are not equivalent to test reports. Mr. Hughes stated Senator Constantine was adamantly opposed to the committee's substitute for 518. He quoted Senator Constantine's exact words as: "I would never support any effort to ram anything down the Commissioner's throats." He stated Senator Constantine's position is that if the Legislature has concerns regarding any Code or product approval issue, it should ask the Commission to consider same.

Mr. Hughes urged the Commission to stay the course and oppose any proposed Legislation pertaining to revising any requirement of the Code or the product approval system. He suggested all be advised that the issues should never be placed in the hands of those who are simply not qualified to deal with it. He then expressed support for the resolution which was considered and unanimously approved stating the Commission should adhere to its content.

#### **Jack Glen,**

Mr. Glen offered comment concerning the IRC asking the Commission to revisit policy regarding the IRC. He stated the International Code Council had spent a great deal of time removing the residential requirements out of the International Building Code and creating a separate volume. Mr. Glen then asked the Commission to consider creating a new volume similar to the plumbing, mechanical, and fuel gas dealing specifically with residential construction.

#### **Dennis Braddy,**



Mr. Braddy expressed disappointment in not being given an opportunity to speak to the Commission about product approval and what was intended in 1375. He then stated he was also disappointed in a resolution being adopted without any comment from the public. Mr. Braddy urged the Commission to consider seriously holding a pre-meeting to discuss upcoming Code changes before the cycle starts in June.

Roland Temple.

Mr. Temple stated his intention was to thank the Commission for getting the NAFS document passed but instead, he asked what happens next. He wondered where does it go from here. He stated if the NAFS was included in the Florida Building Code it would eliminate some of the duplication of manufacturers.

Mr. Richmond interjected nothing can be added to the Code until 2004.

Mr. Temple then asked if 518 passes and becomes law whether the Commission's current actions remain in place.

Mr. Richmond responded by stating if Legislation passes that addressed the Commission's authority to adopt product approval system, then the Commission would be directed to withdraw from the current rule making as well as to immediately implement rule making reflecting the loss of authority.

**OTHER BUSINESS**

Commissioner Bassett expressed appreciation for Ann Stanton and her staff in preparing for the meeting.

Chairman Rodriguez announced the May meeting dates have been rescheduled for the plenary session to be held on May 14<sup>th</sup>.

Ms. Jones added a notice would be distributed announcing correct dates and location for the May meeting. She then offered clarification regarding the product approval issue in terms of the development of products on the information system being delayed. She stated prior to the delay she spoke with the contractors who are developing the system and was assured that the system would be online for products by October 2003. She assured the Commission there is every intention to have products online October 1<sup>st</sup> 2003.

**ADJOURN**

No further business discussed, meeting adjourned at 2:03 p.m.