

STATE OF FLORIDA  
**DEPARTMENT OF COMMUNITY AFFAIRS**

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

**JEB BUSH**  
Governor

**STEVEN M. SEIBERT**  
Secretary

**BOARD MEETING  
OF THE  
FLORIDA BUILDING COMMISSION**

**PLENARY SESSION  
March 6, 2001**

**PENDING APPROVAL**

The meeting of the Florida Building Commission was called to order by Chairman Raul Rodriguez at 10:05 AM, on Tuesday, March 6, 2001, at the Radisson Mart Plaza Hotel, Miami, Florida.

**BOARD MEMBERS PRESENT:**

Raul Rodriguez, Chairman  
Suzanne Marshall  
Stephen Bassett  
Craig Parrino  
Michael McCombs  
Ed Carson  
Karl Thorne  
Leonard Lipka  
Bob Leonard  
Peggy Harris  
Stephen Corn  
George Wiggins  
Christ Sanidas  
Francisco Quintana  
Dan Shaw  
Richard Browdy

Dr. Diana Richardson

**BOARD MEMBERS ABSENT:**

Sam Walthour  
Jim Mehlretter  
Nick D' Andrea  
Medard Kopzcynski  
John Calpini

**OTHERS PRESENT:**

Rick Dixon, Executive Director  
Ila Jones, Program Administrator  
Suzanne Schmith, Legal Advisor  
Jim Richmond, Legal Advisor  
Kathy Butler, Legal Advisor  
Jeff Blair, FCRC

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### **WELCOME, INTRODUCTIONS**

Chairman Rodriguez called the meeting to order and briefly discussed the outline and objectives of the meeting.

### **AGENDA REVIEW AND APPROVAL**

Mr. Blair conducted a facilitated review of the agenda. (See *Facilitator's Report Attachment*.)

Mr. Wiggins entered a motion to approve the agenda. Mr. Leonard seconded the motion. Vote was unanimous. Motion carried.

### **REVIEW AND APPROVAL OF JANUARY 21-22, 2001 MEETING MINUTES**

Mr. Browdy stated that grammatical corrections should be made relative to his comments regarding the implementation of the Code. He noted that those corrections could be found on page 15. He referred to the sentence which begins "Mr. Browdy stated he would like to speak against the motion . . . ," stating that "far" should be omitted and replaced with "more than." He also referred to the sentence beginning "He continued that the true test of the Commission's work product . . . ," stating that "after it" should be replaced with "when the Code." He further stated that on page 16, the sentence reading "He did offer that he would rely on . . . ," noting that "Council" was misspelled and should be "Counsel" referring to the attorney.

Chairman Rodriguez asked if there were additional corrections or additions to the minutes.

Mr. Wiggins entered a motion for approval of the minutes. Mr. Lipka seconded the motion. Vote was unanimous.

### **REVIEW AND APPROVAL OF COMMISSION'S UPDATED WORKPLAN**

Mr. Blair conducted a facilitated review of the Commission's Updated Workplan, referencing page 12 of the Agenda Packet. (See *Facilitator's Report Attachment*.)

Mr. Shaw stated that he thought that "O" was included in "N."

Mr. Blair responded that was correct. He stated there are separate tasks listed inside that group. He further stated that on page 9, under the Rules of Procedure Ad Hoc, items "N," "O," and "R" are included here and also, under the task, it was noted that it had been referred to the Rules and Procedure.

Mr. Lipka entered a motion to approve the Updated Workplan. Mr. Wiggins seconded the motion. Vote was unanimous. Motion carried.

### **PUBLIC COMMENT**

#### **RALPH HUGHES, FLORIDA ENGINEERS CONSTRUCTION PRODUCTS CORPORATION, TAMPA, FLORIDA**

Mr. Hughes offered comments on the recommendations that the Commission forwarded to the legislation. He commented that he felt these would be an embarrassment if they were not modified during this session. He listed these recommendations as his concern:

- 1) Local jurisdictions are not allowed to evaluate products for local use.
- 2) Qualified architects licensed in the state Florida should be recognized as approved evaluation entities and that should be stipulated in the same paragraph listing other national evaluation entities and Miami-Dade.
- 3) Evaluation entities are listed in the recommendations, but validation entities were not.
- 4) Quality assurance programs are mandated for approved products, but which manufactures will require third party inspections is to be considered later.
- 5) State law indicates that the products which will have to be approved on a statewide basis are to be determined by the Florida Building Commission.

#### **RICK WATSON,**

Mr. Watson stated that from the construction association

perspective, the thrust of the Commission for the next six months should be in the area of education. He continued that the two topics he would like to discuss both deal with education and are as follows: 1) The transfer of the Building Construction Industry Advisory Council, which is now housed in the Department of Education, and the Draft bill provides for the transfer of that Council and its funding sources to the Commission. He stated that the funding source for the Council comes from a four-dollar charge on the license of electrical and other contractors. He further stated that it was established fifteen or twenty years ago to provide a funding source for research and studies on construction issues. He continued that the fund generates approximately 200,000 dollars per year through the 100,000 licensed contractors in the state. He stated that the Council consists of the stakeholders, i.e., building officials, engineers, and contractors. He further stated that the industry has been dissatisfied for years, because the qualities of the studies were much too academic. He continued that the industry has felt like more practical studies should be done. He stated that the transfer to the Florida Building Commission makes sense. He offered a suggestion that the Council, which has been appointed in the past by the Commissioner of Education, be allowed to be a sub-council of the Commission, which will advise on educational issues. 2) The proposal that was made by fourteen different trade associations to the Educational TAC. The TAC endorsed, in concept, a delivery system for the continuing education mandatory courses. He stated that the enacting legislation required architects, engineers, and all contractors have a four-hour mandatory continuing education course on the new Building Code. He continued that last month, the Education TAC asked them to work with the Building Code Officials Association to determine if they could offer some assistance in getting the training done in the short time frame available. He stated that the Construction Coalition met with representatives of architects, engineers, and building code officials. He further stated that the Coalition has offered to work with the building code officials. He continued that the Building Officials Association would act as the coordinator for the presentation of the courses around the state. He added that the fourteen associations who made this proposal represent all of the major core education groups. He stated that the group feels like there is a better chance in reaching out to those other licensees who are not members of the association to provide the training. He concluded that he felt this would be one of the recommendations by the Education TAC and he feels the delivery system is the sound way to approach the challenge of training more than 100,000 licensees in the state of Florida.

DAVE OLMSTEAD, PGT INDUSTRIES

Mr. Olmstead stated that for more than twenty years his company has tested products to every requirement the state of Florida has ever had. He presented the issue concerning him is the Miami-Dade product approval. He stated that his company does business all over the world and most places require Miami-Dade product approval. He noted that Texas, although it has its own product approval, will accept Miami-Dade. He emphasized the importance that this product approval be written into law as an acceptable document statewide to clear the air. He stated that he realizes there are still issues with some building departments not accepting it or requiring special engineering. He further stated that he believes that product approval covers every issue a building inspector would need to deal with. He reiterated that, as a manufacturer, they would like to see this written in. He continued that they did not have any quarrel with a level-playing field or SBCCI testing, but they do feel the Miami-Dade approval is a valid document, probably the most thorough process in place in the United States today. He concluded that he wanted to mention that they are going on record, through Senator Carlton as supporting rule-making authority for the Florida Building Commission.

TRULY BURTON, BUILDERS ASSOCIATION OF SOUTH FLORIDA

Ms. Burton stated there were two issues she would like to raise from their members. She first addressed the issue of foundation only permits. She explained that, currently, in the South Florida Building Code there is flexibility for any builder who wants to submit his structural foundation plans for a high-rise structure to do that in advance, get approval, and begin working on the foundation in advance of the rest of the building. She stated that the statute is not particularly clear in this regard at the state level. She further stated, because of the vagueness, Council has not felt comfortable giving them the nod to go ahead with the foundation only permits. She stressed that these foundation permits are desperately needed and that they are wonderful tools, not only for the building departments, but for their inspectors, as well as the builders themselves. She continued that it gets the most complicated part of the building done quickly or up front and then it would be just a matter of phasing the rest. She asked the Commission for support of this and with its concurrence, there will be an amendment that will be included in the legislative package, with good luck and

assistance from staff. She stated that they are very hopeful about this as it is a critical issue for the high-rise Council.

Ms. Burton stated that the second issue she would like to discuss is relative to Product Approval. She continued that the workshop met and the issue was raised to ensure that implementation guidelines are set forth for building officials as to how they are going to handle the proposed requirement that all products now must be approved. She stated that the plans review system in Dade County is very overburdened and slow, at best. She further stated that if there is a requirement that all products be approved without implementation guidelines, she believes that it will be a "free-for-all" for the building officials, as well as the customers. She continued that she believes the building officials and the customers would look forward to the guidance. She concluded that a recommendation for implementation be included in the actual package of product approval recommendations to ensure that there is a smooth sagway from the six products that are now required to receive product approval in Dade County to all.

BOB TANENBAUM, GOLD COAST SCHOOL

Mr. Tanenbaum stated that he was from Gold Coast School of Construction, which is for profit, professional school offering free and post licensing. He continued that he had come before the Commission previously to affirm his belief that the private sector has an important role to play in the delivery process of the process that is unfolding. He stated that there would be a motion coming forward later from the Education Ad Hoc Committee. He further stated within that motion there is great wisdom in having the associations and building officials viewed as a leadership role in the process of the education delivery. He continued that in the proposal is the statement that the private sector is not to be excluded from the process. He stated that they are thankful for that statement and appreciate it, but hope as the process unfolds that the interpretation of what that means would lean in the direction of what the staff had actually recommended. He commented that this was that all Departments of Business and Professional Regulation approved providers should be able to teach the courses. He stated that as the need to disseminate the information grows closer there is an infrastructure in place in terms of the private sector and also the Department of Department of Business and Professional Regulation who has invested six years, through its boards of sorting through and

qualifying delivery systems instructors. He further stated that as classes are defined it that should be an important part of the process. He continued that if he read the statute correctly, it indicates that the existing systems should be utilized to the fullest extent possible. He concluded by thanking the Commission for it's hard work and the opportunity to have his comments heard.

DENNIS BRADY, ARCHITECTURAL MANUFACTURING  
ASSOCIATION OF FLORIDA

Mr. Brady offered reaffirmation that his association will work at the Legislature to advance rule-making authority to this body. He stated that relative to the Product Approval, he would urge everyone to quickly move along this process. He explained that thing that scares most manufacturers is not knowing where they will be two years down the road. He stated that whatever the process will be needs to be decided, put in place and then manufacturers will know what to shoot for. He further stated that even if it takes two years to implement, they need to know where they will be heading.

Commissioner Shaw stated that he had two comments based on public comment that he would like clarified. He continued that the first was relative to Mr. Hughes' comment that the building officials do not have the authority to evaluate products. He did not believe that was correct, in his understanding. He requested, secondly, for confirmation that all products require product approval. He continued that he understood that to be a voluntary process within the state and only those products that wish to be evaluated must be evaluated because it is not mandatory.

PETE BILLINGS, AMA, BUILDING CODE CONSULTANT  
SARASOTA, FL

Mr. Billings stated that regarding Mr. Hughes' comment, specifically related to the example he had given regarding windows, Chapter 17 has criteria in it that all windows must bear a label indicating compliance with AHMA and WDMA101IS2. He continued that these labels could be either AHMA, WDMA, or any other approved agencies. He stated that the example given, in his opinion, is not necessarily accurate, because window manufacturers that utilize a program that indicates that the product has been manufactured and tested is appropriate and does address the issues.

Commissioner Shaw stated that his question was "Can building officials evaluate a product, as well as validate it for use in his local jurisdiction?"

Mr. Billings answered that the building official has the authority to approve a product for its use and he can do that based on different sorts of information. He stated that an evaluation, as looked upon by the product approval process is a written evaluation that is performed by an outside entity. He continued that the building officials can take that same information and approve the product without providing a written evaluation of the product, but he cannot approve it based on the information that he receives, which at this point does not require a full written evaluation report.

Commissioner Parrino commented relative to the local authorities having the authority to approve products. He stated that, in reviewing the report to the legislature, he believes it is clear that local authorities are allowed to validate and approve products for local use, but they are not explicitly allowed to evaluate products for local use. He stated that he feels this is unreasonable. He entered a motion to amend the report to the legislature by adding specific statutory language which allows local jurisdictions to evaluate products for local use.

Commissioner Shaw seconded the motion for discussion purposes.

Mr. Dixon stated that it really does depend on the product whether or not the building official can do what is called an evaluation. He offered, for instance, products for which there are testing standards established by the Code. He explained that the testing laboratory conducts those tests, not the building official. He continued that in the recommendations, that testing laboratory has to be an accredited testing laboratory approved by the state. He further stated that, under Method 2, the building official has the authority to take that testing report, which is the evaluation, and determine whether or not it is adequate, i.e., if all of the criteria the Commission requires have been set. He elaborated validation means, was it an approved laboratory that performed the test, was the test done to the correct standard, and is the testing report still valid. He stated, under Method 1, the building official has the responsibility of doing the evaluation because he looks at the product for which there are prescriptive criteria established by the Code and the official determines whether or not the product meets those prescriptive criteria. He further stated that products for which there is



no standardized method adopted by the Code, for evaluating or demonstrating performance where the building official may not have the authority to do the evaluation. He offered an example that for a new innovative product, the Code has established some performance criteria, but has no standardized method for testing or evaluating that performance. He continued that under the recommendation to the legislature the manufacturer must take the product to a Florida-registered architect, an engineer or to an approved evaluation agency to be evaluated. He stated that this work is presented to the building official for his acceptance. He concluded that the answer to the question of whether or not local jurisdictions can evaluate product compliance, i.e., depends on the product and the way that the Code treats the product, whether or not there is a standardized method for evaluating it's performance.

Commissioner Parrino stated that there is a prohibition there which would prevent the local jurisdiction from evaluating a product, should they choose to do so. He further stated that this is what he is trying to overcome. He stated that local jurisdictions should be able to evaluate products if they choose, if they are allowed to validate and approve a product.

Commissioner Shaw stated that in discussing this for the last week, he has thought that the position is if the building official in a local jurisdiction employs an architect or engineer within the staff, does that not allow them to do the evaluation under the architect or engineer seal. He further stated this is assuming they are in-house, like Miami-Dade. He continued that he assumes that Miami-Dade's theory is they have in-house architects and engineers who are doing the evaluation.

Chairman Rodriguez stated that this is a good point, as they would obviously be able to do that.

Mr. Dixon offered clarification that when using the term architect or engineer, the recommendation states that it be a state-registered architect or engineer. He stated that this would mean the local jurisdiction would have to have a state-registered architect or engineer in-house.

Commissioner Shaw stated that he would like to hear from Mr. Sanidas relative to his plans review staff, who are engineers, if they would have the ability to review a product and have it validated from the

building official.

Chairman Rodriguez reminded Mr. Shaw that it must be a state-registered architect or engineer.

Mr. Sanidas stated that he has three architects, maybe four, that are state-registered and engineers who are not registered yet. He explained that he lets them evaluate the methods for what is going on, because a determination has to be made. He commented that he does not believe that it is the building department's responsibility to have a plans' examiner, who is an engineer on staff, as long as the knowledge is there. He added that sometimes it works better without the plans examiner.

Commissioner Lipka stated that he does not have a problem with it, as long there is a stamp of some kind or that it follows the procedure. He continued that if there is no one who is an architect or an engineer who would hold the liability for any given official to say this product can be used, because it works, in his opinion. He commented that if the official does not have the knowledge to do a thorough test and some building collapses or something happens to it, who would hold the liability for that.

Commissioner Sanidas responded that his department does not take any product "off the floor." He stated that something would be taken from the manufacturer indicating that product has already been tested in-house or otherwise. He continued that they do not run the test, but he does look at them. He added that he has taken compliance reports and found that they were wrong, which indicates there is no sure thing either way you look at this.

Commissioner Lipka stated that he had no problem with Mr. Sanidas' explanation, but he had concerns with some of the other comments that were made, such as a building official approving something on his own cognisance.

Commissioner Quintana stated that he wanted to establish the difference between the old building components to have approval as opposed to the seven mandatory assemblies that protect the envelope. He continued that in the case of all items having product approval, he believes most building departments currently do that with reference to a standard. He stated that for the six or seven mandatory product

approval items to be given by the state that is the part of the system of the usual permitting process. He further stated that building departments do not normally have the expertise to be able to evaluate these things. He commented that he feels that they should be done by currently, Miami-Dade County approval or through another evaluation entity, but it should not be done as part of the permitting process, as it becomes too involved.

CHARLIE EVERLY

Mr. Everly offered comment that the discussion appeared to be regarding the difference of whether the evaluation is spelled with a little "e" or a capital "e." He stated that he does not know how anything could be approved without an evaluation. He further stated that in that context the "e" is a small "e." He continued that if the evaluation process is being discussed with a formalized process that results in a report on a product that would be a capital "e." He stated that is what he hears the Commission discussing. He further stated that building officials approve products every day and spend a large portion of their time doing so, which would be considered the small "e." He continued that he did not see the necessity of putting Evaluation in front of product approval, but he also did not see any harm in doing so.

Commissioner Harris asked if a building official or building department approves a product or evaluates a product and it gets on some approved list, would it be considered the little "e" or the big "e."

Ralph Hughes stated that he believed that some were missing the point. He further stated the point is that the recommendations that went forward preclude local jurisdictions from evaluating products. He continued that if the local jurisdictions cannot be trusted to know whether or not they have the ability or capability to evaluate a product, then there are big problems. He reiterated that local jurisdictions should not be precluded from evaluating products if they choose to do so. He added if they have the ability to validate and approve, they also have the ability and capability to evaluate. He summarized by asking if they should be closed out or will they be permitted to evaluate products if they choose to do so.

LORRAINE ROSS, FLORIDA BUILDING CODE ALLIANCE

Ms. Ross reiterated that this has been covered and what has been

written in the statewide system, dated March 1<sup>st</sup>, is clear. She stated that for Method 2, which is where many products will fall, the manufacturer has five different choices of showing compliance with the standard that is in the Code. She further stated that three of those involve giving test reports, showing certification marks or batch tickets to the code official. She continued that the code official would make sure that everything is there. She stated that if that will be called the active evaluation, it would be acceptable to her because it is found in Section 4, Product Evaluation for Local Approval. She stated that there are two other options that do involve evaluation reports coming from the evaluation entities. She mentioned that whether or not the language that went from the Commission to the State Legislature is explicit enough, in that regard, is something that could be discussed. She stated, however, that conceptually as it is written here, the local code official is given the authority to do that sort of thing. She commented that whether all, some, or what products and whether it is mandatory or voluntary refer back to the document that has been in development for two years. She reviewed that it states that all products, systems, and methods construction covered by the Code must comply with the Code and be approved for their use. She stated, therefore, that all products at the local level have to show compliance and be approved for their use.

Chairman Rodriguez stated that there was a motion on the floor by Commissioner Parrino. He asked Commissioner Parrino to restate the motion so the Commission could proceed with the vote.

Commissioner Parrino stated the motion was to amend the report to the legislature by adding specific statutory language that allows local jurisdictions to evaluate products for local use.

Commissioner Shaw stated, as the maker of the second of the motion, he would like to offer a friendly amendment that it is clarified by stating when the building department employs a state registered architect or engineer that they are then capable of doing that evaluation.

Commissioner Parrino accepted the friendly amendment.

Commissioner Sanidas stated that he would like the motion further amended by leaving off the state-licensed engineer and replace it with a state licensed building official. He added that the building official will be the one who will have to approve it and, therefore, be responsible for

it. He continued that, otherwise, all of these cities and counties will have to start having to hire state licensed architects and engineers, which will be extra expense that is not necessary.

Commissioner Quintana requested that the motion be repeated.

Commissioner Parrino stated that the amended motion would read that the report to the legislature be amended by adding specific statutory language that allows local jurisdictions to evaluate products for local use when the local jurisdictions have on staff or is contracted to a Florida-registered architect or engineer.

Mr. Dixon asked the Commission if it would accept changing the word "report" to "recommendation" and staff will make the changes to the bill based on the recommendation rather than amending the report and sending it to the legislature.

Chairman Rodriguez stated for clarification that what needs to be amended is the bill, because the report has already gone out.

Commissioner Parrino stated that if this is an issue of legalese, then that would be fine.

Commissioner Corn stated that since he has been on the Product Approval Committee this issue has come up at almost every meeting. He continued that it has been voted down because of the way the Code has been written and stands right now. He stated that building inspectors make decisions all of the time as to whether or not a product is properly being submitted for use in a certain condition. He further stated that whether it is called an evaluation or validation, they are looking at reports on the products and deciding whether or not that product is being used in the proper place. He continued that they are doing it now and they will do it when the new Code is adopted. He stated that he feels that saying they can evaluate a product in the way that he thinks the Code is now written is for a broader use statewide, not for local use. He further stated that right now they can read reports on a product and make a decision on whether it is being used properly. He concluded that he did not feel a change was necessary and that it would just cause a delay, therefore he would vote against it.

Commissioner Bassett stated that he was concerned with the haste

in which the Commission is trying to craft this amendment. He further stated that he sees several flaws in it, including: 1) the Commission is asking the State Legislature for rule-making authority to do our product approval system, yet this motion has specific statutory language included in it. He stated that he is not sure if what is being done has been thought out enough to prevent doing something that would later prevent a building department, who does not have a registered plans examiner or architect, from approving products for any use. He reiterated that he feels this is rushed and feels that it should not be done because the Commission is asking for rule-making authority to develop this process. He stated that he believes the Commission is playing with semantics and he will also vote against it.

Chairman Rodriguez stated that he believes that Commissioner Bassett made a good point. He continued that when asking for rule-making authority, the Commission is accepting the responsibility for these kinds of refinements, but if it keeps sending this type of material to the legislature it just further confuses them. He also stated that on the embarrassment issue, mentioned by Mr. Hughes, he believes that it is easy to embarrass the Commission before a body that does not fully understand what the Commission does. He reiterated his belief that it is in the best interest of the industry as a whole to have a strong Building Code and to have that Building Code reviewed and amended by a very strong Building Commission with rule-making authority, regardless who serves on the Commission or who chairs it.

Commissioner Shaw stated, based on Chairman Rodriguez' comment, with rule-making authority eminent he would want to defer those final minutia decisions until that point.

Commissioner Wiggins offered for a point of clarification, based on the report as is, without this motion, these items can still be addressed through rule-making. He agreed, as Commissioner Shaw suggested, that this minutia is unnecessary micro management at this point.

Vote to amend the recommendation to Legislature with specific language allowing the local jurisdiction authority to evaluate products with a state licensed architect or engineer on staff resulted in 2 in favor (Parrino, Browdy), 15 opposed. Motion failed.

Commissioner Shaw offered clarification that his vote against the

motion was not against the concept, but against allowing the details be dealt with by this Commission until the appropriate time.

### **STATUS UPDATE ON CODE DISSEMINATION**

Mr. Dixon presented a status update of the Code Dissemination. He explained that the following sets of Code Books and explained why they were grouped as they were:

Building Volume - SBC/FL Modified, HVHZ, Energy Code, Accessibility Code & State Agencies Regulation

Plumbing Volume - IPC/FL Modified Chapter 1 of Building Volume & Accessibility Code

Mechanical Volume - IMC/FL Modified Chapter 1 of Building Volume & Energy Code

Fuel/Gas - IFGC/FL Modified Chapter 1 of Building Code

Volume Set - Accessibility Code, Energy Code, & State Agencies Regulation

Code Set - Building Volume

Plumbing Volume

Mechanical Volume

Fuel Gas Volume

Note: Energy Code and Accessibility Code provided in Building Volume only.

Commissioner Shaw stated, relative to the Plumbing Code, that he was not sure why there was a need for the Accessibility Code to accompany it. He further stated that they were very concise in making sure that all of the appropriate accessibility issues were entered into the Plumbing Code. He continued that he did not know what else the plumbers would want based on the Plumbing Code other than what has already been provided for them.

Commissioner Bassett stated, unless the Plumbing Code was modified to include it, there are some things in the Energy Code that should be referenced by the Plumbing department and therefore the Energy Code should be a part of it. He also referred to a letter that was sent out from SBCCI last week that discussed some "wind term" that was not familiar to him, but adds \$20. He asked what that \$20 was for.

Mr. Dixon explained that there was a misunderstanding. He stated that the High Velocity Hurricane Zone Protocol is provided in a separate binder but is part of the Building Volume and there would not be an extra cost for it. He reported there had been a discussion which created some confusion with regard to that being a separate book. He stated that Building Volume would be a two-book set because of the number of pages and resulting thickness.

Commissioner Bassett asked if SBCCI would give credit for the first binder, as he would not think the difference in cost would be that great.

Mr. Dixon stated that he personally feels that SBCCI is printing a lot of additional materials that they do not have to and incurring costs that they do not normally incur.

Commissioner Richardson asked if the Accessibility Code was to have been available as a separate book.

Mr. Dixon explained that the Accessibility Code would be located in a volume which also includes the Energy Code and State Agencies Regulation.

Commissioner Quintana asked for clarification that the High Velocity Hurricane Protocol would be located in the Building Code.

Mr. Dixon responded that was correct.

Commissioner Harris asked if the binders would be a hard back or paper back.

Mr. Dixon answered the Code volumes would be 3-ring binders.

Commissioner Lipka stated that there is some sense to the Accessibility and Plumbing combination. He further stated that most



Plumbing contractors and Mechanical contractors will buy both. He continued that in buying both, the Accessibility Code and the Energy Code and they are not redundant in both volumes. He added that he could not imagine someone who is a plumber not having the Mechanical Code or vice-versa because the two go together. He stated that he believed that packaging is fine the way it is.

Commissioner Wiggins asked if there was a projected printing date.

Mr. Dixon responded the first week of April.

Chairman Rodriguez asked when DCA is scheduled to get the blue lines.

Mr. Dixon responded that he needed to go to Birmingham to look at those and sign off on them?

Chairman Rodriguez asked if the Codes would be ready by April 1<sup>st</sup>.

Mr. Dixon stated that the first week of April is an optimistic guess.

Chairman Rodriguez asked for the best guess.

Mr. Dixon responded that the best guess would be the that the first codes will be ready by the first week of April and SBCCI will be sending them to the local jurisdictions. He stated that it has been the department's practice in the past to send an average of three code books to each jurisdiction. He continued that every local jurisdiction will do the same this year. He stated that they would provide Dade and Broward County offices with the codes to be distributed in their areas.

Chairman Rodriguez stated that he just wanted to offer the reminder that the reason October 1, 2001 was selected was to make sure the code books were printed and in people's hand six months prior to implementation. He stressed the importance of sticking as close to April 1<sup>st</sup> as possible or there would have to be a recommendation other than October 1<sup>st</sup>.

Commissioner Wiggins asked if it has been anticipated to put the wording of the Final Draft on the Internet website and how soon would that be.

Mr. Dixon responded that he had not talked directly with SBCCI. He stated that in previous discussions what was indicated to them was that as soon as the final copy is ready to go to print, it would go on the website also. He further stated that this would be a limited downloadable format.

Chairman Rodriguez suggested that when that happens, we should try to get the word out. He continued that he would just want the industry to be aware that the Final Draft has been approved, that the Code is in printing and that it is available on the Internet. He concluded that any additional time that the public can be allowed would be welcomed.

#### ED WALTERS, AMERICAN CONSTRUCTION SCHOOL

Mr. Walters stated that he presently sells code books to the trade, architects, engineers, etc. He asked if this code book would be available to schools and businesses and would it be close to the same date of April 1<sup>st</sup>.

Chairman Rodriguez confirmed that it would be available to schools and close to that same date.

#### STATUS UPDATE ON COMMISSION'S REPORT TO THE LEGISLATURE

Chairman Rodriguez discussed that he reviewed the report before it was sent to the Legislature. He stated that he believed it to be consistent with the Commission's recommendations and actions. He further stated that DCA did disseminate the Commission's report on Friday, February 23, 2001 to the Legislature. He offered that if any Commissioners had any questions either now or later, after they have had the opportunity to review the document, that Mr. Dixon or Mr. Blair would be available for those.

#### STATUS UPDATE ON COMMISSION'S LEGISLATIVE RECOMMENDATIONS AND ADDITIONAL LEGISLATIVE ISSUES

Ms. Schmith stated that she would begin with Bill numbers and sponsors to bring everyone up to speed. She further stated that the Commission's legislation this year is going to be sponsored by Senators Clary and Constantine. She continued that Senator Clary has filed Senate Bill 190 and Senator Constantine has filed Senate Bill 336. She

explained that both of those are shell bills, filed with the intent to sponsor Building Code Legislation. She stated that the Commission's report was delivered to the Legislature last Friday and they now have the draft legislation that was submitted which is now in Bill drafting. She explained that what the Commission would probably see happen will be these two bills get mirrored up together in a committee substitute. She stated that the numbers that the Commission will be looking for to follow the bills through the session will probably be a committee substitute for Senate Bills 190 and 336. Ms. Schmith reported that on the House side, Representative Mario Diaz-Balart has offered to sponsor the bill. She explained that in the House, they are not allowed to file shell bills, so they have to wait until the bill drafting office in the House is finished with the legislation. She stated it would be assigned a number at that point and come out. She continued that the Commission may hear rumors or discussion about a second sponsor in the House. She reported that Representative Trevelyan has expressed an interest in also sponsoring the Commission's legislation this year. She stated that there has been a lot of interest in that and she knows that Senator Constantine has expressed an interest in working with him.

Ms. Schmith stated that there are issues that have come up so far in the Commission's recommendations. She continued that there was a lot of interest in the effective date itself. She explained that there were initially some concerns coming from Senator Clary about the effective date and the need to delay the effective date of the Code even further, to January 1, 2002. She stated that it is her understanding that this concern was primarily coming from Florida AIA. She further stated that she, Mr. Dixon, and Ms. Marshall met with Senator Clary and with Scott Shally of the AIA two weeks ago. She continued that she believed that everyone is comfortable with the effective date of October 1<sup>st</sup>. She commented that most of the issues of concern were training issues. She reported that some issues have risen that the Commission did not put directly into its' report. She commented that issues will always come up during a session, but she wanted to go ahead and give the Commission an overview just to let them know of some of the issues that have come up since then. She stated that Representative Bennett, a new member of the House this year, from Bradenton, is an electrical contractor who does a lot of development. She related that he is very interested in a Building Rehabilitation Code. She continued that he expressed an interest to her in setting up a Study Commission to study whether or not a rehab code should be promulgated for the state of Florida, modeled on the New Jersey rehab code, and get a report back in the fall. She

explained that he was steered toward the Commission as the more appropriate place to take a look at a rehab code, rather than setting up a whole new Commission and he seemed interested in that. She stated that, it is her understanding that this issue is already on the workplan, but the representative will probably want to see some language on it anyway, which might appear as an amendment to the Commission's bill, directing staff to take up the issue of the rehab code and report back to the Legislature. She further stated that if anyone had any questions on that, to contact her later.

Ms. Schmith stated that another issue that will possibly be dealt with this session is the Swimming Pool Safety Issues, the pool barriers. She further stated that she would defer any discussion of this topic until the report is presented from that Ad Hoc committee.

Ms. Schmith reported that another issue that may come up is the composition of the Accessibility Advisory Council. She explained that staff has requested the department kick that issue to the Accessibility TAC itself and get a recommendation from them. She continued that it was her understanding that this is scheduled for one of its future meetings. She stated that the issue is whether or not the statute itself lists out the particular entities that must be represented on the Advisory Council. She further stated that it would be evaluated to determine if that needs to be changed to make membership more flexible.

Mr. Richmond stated that Senator Clary has also introduced legislation this year that would enable architects and engineers, under certain circumstances, to perform plans review and inspection. He further stated that last year's bill required the Commission to add back in the permitting by affidavit sections. He continued that those sections allowed the building official the discretion to accept affidavits by licensed professionals in lieu of actually performing plans review and inspection themselves. He explained that this would place that option with the property owner, as opposed to the building official. He stated that if an engineer or architect submitted plans that he had certified as complying with the Code, the building official would have ten days to contest that certification, under this statute. He further stated that if he certifies an inspection, reveals work to be compliant with the Code, he would have two days to contest that. He continued that appeals on that decision would be taken to the local Board of Adjustments and Appeals and then to this Commission. He stated that the Commission would be required to develop forms for the certification compliance.

Mr. Dixon stated that this is an issue that has resulted in a lot of phone calls to himself and other staff members at DCA. He reported that this is one of those responsibilities the Commission was assigned in 1998. He recounted that the 1998 law said that the Commission will develop voluntary guidelines for privatization of Building Code enforcement. He stated that it had been on the workplan but unfortunately, other issues have been drawn out that were of a higher priority to the Commission.

Chairman Rodriguez stated that he believes what the Commission should do on this bill, as well as other matters like it, is ask the Legislature to refer it to the Commission so it can act on it. He further stated that it is within the Commission's venue and is the best forum for the industry to meet and discuss these things. He explained that in this instance rather than support or oppose Senator Clary on this, the Commission is asking the Legislature to send it to the Commission. He added that the Commission may gain Senator Clary's support on that, if it is already in the workplan.

Commissioner Shaw asked if the Commission would be able to ascertain the intent of the legislature by determining whether this is the direction or basic format that they would like to see us follow or what would the Commission do with the information here.

Chairman Rodriguez stated that if Commissioner Shaw is referring to the Bill, all the Commission would ask is that the Legislature send it back to the Commission because it is already on the workplan.

Commissioner Shaw stated that the question he has would be that Senator Clary has determined that this is the format that he would like to see. He further stated that if the Commission has the general feeling that the Legislature, as a whole, had this as it's feeling, would the Commission then enact it.

Chairman Rodriguez stated that it is difficult to predict the outcome. He continued that what the Commission would say, with all due respect to Senator Clary, is that the Commission would like to have the opportunity to review this at this Commission.

Mr. Blair stated that what is needed is a motion to approve the chair's recommendation, which is to make a recommendation that the

legislature refers this task of privatization of prototype buildings back to the Commission for its recommendations and actions utilizing the consensus-building process.

Commissioner Sanidas entered a motion to approve the chair's recommendation.

Commissioner Wiggins seconded the motion.

Commissioner Corn stated that when he looks at a bill like this, he knows there are going to be two sides, the building inspectors are going to be against it and the industry will be for it. He further stated that, after looking at this bill, he was grateful for Senator Clary for introducing it. He continued that he was hoping that it would not have to be taken up at this board and that the Commission could stay out of it. He stated that it would be given to the industry and there would not be any arguments between the two sides. He continued that if there was some minor tweaking to be done after it was adopted, then the Commission could just make some recommendations.

Chairman Rodriguez stated that the issue has to be that at the Legislature, it may be who can prevail that year politically. He further stated that he would like to believe that, for this Commission, there will be enough time and enough efforts at consensus building that the Commission will be again the right forum to discuss these issues. He continued that this is a difficult issue and there is always the issue of public versus private, but the bottom line is that people should be qualified wherever the sector ends up. He stated that the Commission may be able to provide the industry, building officials and the private sector, the best forum to fully discuss these issues.

Commissioner Corn stated that Chairman Rodriguez is probably right that it is the proper protocol, but the Commission does not need another product approval issue.

Commissioner Wiggins reiterated that the Building Officials' Association is obviously against such a bill. He stated that this is the very reason the Florida Building Commission was created, representing a multitude of industries so that it can properly and fairly evaluate something, without having it slammed through the Legislature and cutting the legs off the enforcement of the Florida Building Code by having some other method.

Commissioner Lipka stated that he has a problem telling the Legislature what to do. He continued that if the Commission has a position and does not like the position, it does not take it, but to tell the Legislature that it disapproves of the act.

Chairman Rodriguez interjected that the commission is not doing that. He explained that the Commission is asking that it be referred to them rather than decided this year by the Legislature. He stated that it is a simple argument, because the expertise level of the Legislature, with all due respect, may not be equivalent to that of the Commission.

Commissioner Lipka stated that he was not sure if Legislature would understand what is being asked. He continued that he thinks this would be opening a door that he was not sure the Commission would want to go down.

Commissioner Parrino stated that he respected the Legislature's right to submit legislation, but to have the document placed before the Commission today in search of a decision is not reasonable.

Chairman Rodriguez reiterated that is not what is being asked. He explained that the bill is already there, Ms. Schmith is tracking the process, and it is being shared with the Commission. He stated that there is no decision to be made today relative to the merits of the issue that the bill outlines. He explained that the motion on the floor is to ask the Legislature, as the Commission has asked before, to refer this issue back to the Commission, where the proper time will be taken to review it in the proper balance before making a decision.

Commissioner Parrino stated that he could not support taking this recommendation to the Legislature without thoroughly reviewing the document.

Chairman Rodriguez asked for clarification that Commissioner Parrino was referring to the recommendation to refer the issue to the Commission.

Commissioner Parrino confirmed that was correct. He stated that he would feel more comfortable with just a request at this meeting to Senator Clary to withdraw his bill and allow the Commission to take up this issue. He continued that, perhaps after reading over the document, he might support the motion.

Commissioner Bassett stated that he would like to speak in support of the motion. He further stated that he feels that the Commission is doing exactly what Commissioner Parrino is asking for, which is asking the Legislature the time to do this and is it consistent with the Commission's report to the Legislature requesting rule-making authority for the Commission. He continued by stating that he feels this is the way every bill that comes up should be handled, rather than by statute. He stated that the Commission is trying to protect the fact that this is where the Building Code and every aspect of the Building Code should come before an open forum for agreement by consensus.

Vote to request from Legislature that this issue be referred back to the Commission, where it will be reviewed, debated and decided on resulted in 15 in favor, 2 opposed (Parrino, Lipka). Motion carried.

Ms. Schmith stated that she would like clarification when she reports back to Representative Bennett on the Rehab Code issue, whether or not his body is willing to accept an amendment to its legislation this year that directs the Commission to take up the issue of the Rehab Code and report back in the fall. She continued that she needs to be able to let him know if the Commission supports that or not.

Commissioner Bassett entered a motion that the Commission makes the same recommendation to Representative Bennett that he would refer this question to the Commission for deliberation.

Commissioner Corn seconded the motion.

Commissioner Wiggins requested the name of the representative.

Ms. Schmith responded that it was Representative Bennett.

Vote to recommend to Representative Bennett that he would refer this question to the Commission for deliberation was unanimous. Motion carried.

#### **SWIMMING POOL SAFETY ISSUES AD HOC COMMITTEE REPORT AND RECOMMENDATIONS**

Chairman Rodriguez stated that the Swimming Pool Safety Issues Ad Hoc Committee met on February 26<sup>th</sup> in Ft. Lauderdale. He reported that it was able to reach a consensus recommendation that was acceptable to Senator Wascherman-Schultz. He reminded the



Commissioner that Senator Wascherman-Shultz was the sponsor of the bill, which is now part of the law in Chapter 515 of the Florida Statutes. He stated that the main issue that was discussed was how to provide building officials with clear guidelines for ensuring consistent interpretation and enforcement of the Swimming Pool Safety Requirement of the Code that would be consistent with statutory intent. He further stated that the Senator and her staff had already received multiple inquiries relative to this issue. He continued that the Senator was quite articulate in stating that she was looking to prevent something that had reached epidemic proportions in the state of Florida with more than 80 children dying each year in swimming pool related accidents. He stated that the Senator welcomed the Florida Building Commission's willingness to provide these guidelines to the local building officials to achieve a uniform interpretation. He related that there are two vehicles through which this can be accomplished: 1) The Code can be referred to Chapter 515 or 2) Chapter 515 can be amended. He stated that she originally showed some timidity at reopening that chapter and possibly inviting opponents of the safety act to come back, but before leaving she promised that she would speak with Senator Constantine, who is the Chairman of the Senate Committee, and would report back to the Commission. He reiterated that what was most productive about the meeting was that the Senator welcomed the Commission's involvement in providing the guidelines to the local building officials to establish a uniform interpretation. He stated that she indicated most eloquently that she was in favor of anything that would save lives. He concluded that the only thing remaining was whether, in conference with Senator Constantine, it is decided to amend 515 or just reference 515 in chapter 553 and go ahead and issues these guidelines.

Commissioner Sanidas entered a motion to accept the report. Commissioner Lipka seconded the motion. Vote was unanimous. Motion carried.

### **EDUCATION AD HOC REPORT AND RECOMMENDATIONS**

Commissioner Browdy stated that Education Ad Hoc Committee met with seven members present, which represented a quorum. He reported that the agenda was approved, as circulated. He discussed the first item on the agenda was with Pierce Jones, University of Florida, updating the committee on the delivery of the transition training courses. He stated that Professor Jones indicated that the courses would be delivered and ready starting on April 1<sup>st</sup>, with the Building

Structural Course and the delivery of those courses would be completed by the middle of May. He continued that Legal Staff discussed issues relating to a translation of the training into Spanish and it was determined that the committee would not be involved in doing an alternate version of the courses in Spanish. He stated that there was further discussion later in the meeting of the actual Code being in Spanish and, again, the committee reaffirmed its previous position that the Code would be published in the English version and any alternative methodology or delivery system in Spanish would be done if permitted by the private sector. He continued that there was discussion relative to enhancing these transition courses with information on the high velocity hurricane zone, which would provide people with an understanding of the Building Code. He stated that members of the committee were requested to give their comments to Professor Jones within seven days of the meeting regarding this issue. He reported that more discussions of the training courses ensued and whether or not they were intended to replace the core training course or, more specifically, whether or not the courses were going to be given to be in lieu of the core training and individuals, for licensing purposes, would be able to take the transition courses as opposed to their requirement to take the core training. He stated that there was a great deal of discussion regarding that and that the Ad Hoc Committee had intended to make the recommendation to the Florida Building Commission. He continued that the staff recommendations were: 1) That all Department of Business and Professional Regulations approved providers should be able to teach the courses, 2) All approved providers that issue continuing education credits would be required to have an instructor that is licensed in the discipline that they are instructing in, and 3) That the Department of Community Affairs would install the Code Comparison on the Internet and could be downloaded free of charge. He stated that this would allow quick access to anyone interested in the comparisons of the Code to obtain the information, but only approved providers could give the courses and individuals could receive continuing education credits.

Commissioner Browdy stated that the committee was given a copy of an ITN that is being executed by the Secretary for the position of Administrator for education services for the Florida Building Code and that ITN is supposed to go out very shortly. He continued that, at the request of the Ad Hoc Committee from last month, there was a proposal received by the Florida Construction Industry Association, led by the Building Officials' Association, the Florida Home Builder's Association, the Air-conditioning Association and multiple trade associations. He

stated that the proposal put forward was to deliver the transition courses and to adequately address the need to train more than 100,000 licensees in the state of Florida. He further stated that there was a motion, which passed unanimously, utilizing the Florida Construction Industry Association as a primary vehicle for delivering transition training, pursuant to and consistent with the purchasing procurement requirements in Florida law. He also stated that the motion would not be exclusionary, and it would include private entities and other training entities from participating in the training program. He stated that the Education Ad Hoc approved the recommendation of the Structural TAC to create the development of a technical advance module focusing on Chapters 16, with regard to wind and water design modules, utilizing the existing dollar resources for development. He explained that the course would target an identified audience which would have identified topics related to wind, water, and storm issues. He stated that it would be developed into a two-part training for discussion. He further stated that the Education Ad Hoc validated the request and the recommendation of the Structural TAC. He stated that the Education Ad Hoc restated its intention to make the transition courses equivalent to the four-hour core curriculum requirement by passing the following motion: The Education Ad Hoc recommends to the Florida Building Commission that the development of technical transition modules that would combine transition components with key administrative components from the core and that the technical modules for them be recognized as an equivalent to the Commission-approved core course. He further stated that these technical modules may be taken in lieu of the existing core. He concluded that the Education Ad Hoc would like to ask that the Florida Building Commission approve two motions. He stated the first as the approval of the recommendation of the Structural TAC regarding the development of the technical advance module focusing on Chapter 16.

Commissioner Wiggins entered a motion to approve the motion to develop technical advance modules focusing on Chapter 16 as recommended by the Structural TAC. Commissioner Lipka seconded the motion. Vote was unanimous. Motion carried.

Commissioner Browdy continued stating that the second request of the Education Ad Hoc of the Commission would be the approval of the recommended motion for the development of the technical transition modules that would combine the transition components with the key administrative components of the core and that they be recognized as equivalent to the Commission's approved four-hour core course. He

continued that these technical modules could be taken in lieu of the existing core, subject to the requirements as articulated over the next 30 days or sooner by Legal and by staff.

Commissioner Wiggins entered a motion to approve the Education Ad Hoc's recommendation. Commissioner Lipka seconded the motion.

Commissioner Bassett asked if the Commission could have an explanation of what happens to the people that took the trainer course. He questioned whether those people would be allowed to teach the module courses or have they wasted their time in taking that course.

Commissioner Browdy responded that inherent in the motion to proceed with the transition courses was not to cancel the core, but to put the core on hold. He stated that the core will be ultimately developed and used on an ongoing basis for everyone. He further stated that the core will continue on long after the transition courses, which are specifically designed for the transition between the existing code and the Florida Building Code. He concluded that those people did not waste their time because once the core is developed it will be an ongoing delivery requirement and licensure requirement to take the core course. He reiterated that what is being discussed now is the opportunity during the transition period to substitute the transition courses for the core course.

Commissioner Bassett also questioned whether the times that people spend in TACs can be considered as "effectively" taking the course and do not have to take it again.

Commissioner Browdy answered that had not really been discussed. He stated that there was some discussion months ago resulting in a letter written by Ms. Jones and Chairman Rodriguez which requested the Department of Business and Professional Regulation to consider giving Commission members be given credit for their participation in the Commission hearings and the work of the Commission. He further stated he believed that it was determined that would occur, but not during this licensing period. He clarified that he never received a firm decision on that.

Chairman Rodriguez stated that it would take rule-making authority to give the Commissioners credit.

Commissioner Browdy stated that there was never any discussion other than the TAC credits that were already given in CEUs, which was two hours last year if serving on a TAC.

Vote to approve the motion for the development of the technical transition modules that would combine the transition components with the key administrative components of the core and that they be recognized as an equivalent to the Commission's approved four-hour core course. He continued that these technical modules could be taken in lieu of the existing core, subject to the requirements as articulated over the next 30 days or sooner by Legal and by staff was unanimous. Motion carried.

Commissioner Browdy reported that he had also received a note that the committee agreed that consistent with the requirements of the statute that fees could be collected for transition course modules. He further stated that he mentioned this for information purposes only, so that the Commissioners would not be anticipating additional charges as a result of the action of the Ad Hoc.

Commissioner Shaw stated, with the exception that some discussion that some funds be returned to DCA or to the Commission for that course as it would have been for the original core curriculum, for the ongoing educational component.

Mr. Dixon stated that he believed that was Commissioner Browdy's intent. He further stated that the department had scheduled to charge a fee for the core course, even when provided by private providers, and also charge a fee for taking the course over the Internet. He continued that when the transition core is put together it would be requested that the same fee structure be permitted for that course as well.

Commissioner Browdy stated that there was another recommendation from the Ad Hoc regarding the proposal from FCIA that would make them the primary deliverer of the transition courses subject to Florida Law procurement and the fact that there would be no existing state funds being used for that delivery system. He restated that the motion had passed unanimously in the AD Hoc and he would ask the Commission to approve the motion as well.

Commissioner Wiggins entered a motion to approve the proposal from FCIA. Commissioner Thorne seconded the motion. Vote was

unanimous. Motion carried.

Mr. Dixon offered clarification, for the audience, that the committee acted and the Commission affirmed that the FICA proposal be approved in concept and that it was not approved for contract.

Commissioner Shaw stated, relative to the ITN that was mentioned, he wanted to bring everyone's attention to the fact that the legislature assigned the BCIAC to the DCA and to this Commission. He explained that the BCIAC is the Building Construction Industry Advisory Council, from the University of Florida, and it comes funded through licensing fees that fund it. He continued that because it comes attached to the Commission, it would appear that it should be considered as an entity to provide that educational component. He concluded that he could envision it as a Technical Advisory Committee to the Commission that would be chaired by an appointment from the Commission Chairman. He reiterated that as it is already in place and established and the Commission should keep in mind that it is going to be attached to the Commission.

Chairman Rodriguez stated that the suggestion is that be done through the Rules Ad Hoc and then bring it back to the Commission.

Commissioner Shaw stated that his point was that there is an ITN that might not be necessary, because there may already be an entity that could do that for us.

Commissioner Wiggins entered a motion to approve the report. Commissioner Quintana seconded the motion. Vote was unanimous. Motion carried.

### **PRODUCT APPROVAL AD HOC REPORT AND RECOMMENDATIONS**

Chairman Rodriguez stated that he was on his way back from Chicago and could not attend the committee meeting, nor could Commissioner Mehlretter, who was called away due to a family member hospitalization. He continued that in their absences Mr. Blair facilitated the workshop and will present the report.

Mr. Blair presented a report from the Product Approval Ad Hoc Committee meeting. (See *Facilitator's Report Attachment*.)

Commissioner Wiggins entered a motion to approve the report. Commissioner Thorne seconded the motion. Vote was unanimous. Motion carried.

### **RULES OF PROCEDURE AD HOC REPORT AND RECOMMENDATIONS**

Commissioner Corn presented a report from the Rules of Procedure Ad Hoc Committee. (See *Rules of Procedure Ad Hoc Committee Report* Attachment.)

Commissioner Wiggins entered a motion to approve the report. Commissioner Lipka seconded the motion. Vote was unanimous. Motion carried.

### **MANUFACTURED/PROTOTYPE BUILDING AD HOC REPORT AND RECOMMENDATIONS**

Commissioner Parrino presented a report from the Manufactured/Prototype Building Ad Hoc Committee, which met on January 21<sup>st</sup> and January 23<sup>rd</sup>, which ended after the Commission's plenary session. He explained that this was the reason for his presentation of the report at this time. He stated that the committee had previously identified 39 development issues with respect to the Prototype Building Program. He further stated that the committee took these 39 issues and broke them down into three categories: policy, administrative, and local authority. He continued that the committee took each one of these issues and discussed them one by one. He stated, on the subject of plans review requirements, the committee agreed there should be no difference between prototype buildings and conventional buildings. He continued that prototype building programs should comply with the requirements of Chapter 1, Administration. He stated, on the issue of documents to be approved on the prototype building program, the committee felt it should be the same requirement as conventional buildings. He also stated the committee discussed that there would need to be a building official in this program, as there is a building in the manufactured buildings' program. He further stated that the committee agreed that the program administrator would need to function in this capacity.

Commissioner Thorne entered a motion to approve the report. Commissioner Lipka seconded the motion. Vote was unanimous. Motion

carried.

### **SPECIAL OCCUPANCY TAC REPORT AND RECOMMENDATIONS**

Commissioner Thorne stated that the committee met yesterday, but did not have a quorum. He stated that a workshop occurred with the several committee members present and many interested parties. He reported that the purpose was to create a workshop product to be presented to the Commission at this session. He stated that the committee decided to advise that the Special Occupancy transition training module be put on hold. He further stated that the transition training now should be directed toward the Fire Prevention/Life Safety Joint TAC. He continued that the Special Occupancy TAC will identify fire prevention life safety code issues within Chapter 4 of the FBC and invite potentially impacted agency members not attending to give their input at the Joint Fire TAC meeting, to be held in Ocala on March 16, 2001. He reported that the following fire related issues were identified at the Special Occupancy TAC workshop:

1) Education, Section 423 of SREF, 1999, Volume Two of Two, which is to be included with the identified issues related to the Fire Prevention Code. He stated, more specifically that the following suggestions that were identified for change: a) fire extinguishers connected to fire alarms so they would sound would the extinguisher is removed. b) closes to corridor doors are not required because teachers close them during fire alarm practice. c) gas cut off, Plumbing TAC would review these for areas for consistency, industry standards, and child life safety standards d) cost of schools limited to set price by 235.4356 of the Florida Statutes.

2) Health Care Facilities, Sections 419,420, 421, and 422. Fire issues needed identification by the agency and they were not present.

3) Public Lodging Establishments, Section 425. He stated that a member attended, who is also a member of the Joint Fire Safety TAC, and he reported on the sections related to the Fire Code, but no areas were identified for change.

Commissioner Thorne continued with the report of the Special Occupancy TAC stating that the following specific sections of Chapter 4 of the Florida Building Code, regarding buildings related to state agencies should be reviewed by the Joint Fire TAC at the meeting in



March: Sections 424, 426, 427, 428, 429, and 430; additional chapters relevant to Chapter 4 would be Chapters 31, 30 and 34; additional sections within Chapter 4 to be reviewed after the following are Sections 403 through 418.

Commissioner Thorne stated that additional business not related to the transition training was the swimming pool issue, Section 424.2, which will be addressed and brought back at the next meeting.

Commissioner Wiggins entered a motion to approve the report. Commissioner Harris seconded the motion. Vote was unanimous. Motion carried.

Commissioner Wiggins stated that before the Code is implemented, there are various items that affect local government, as well as designers and contractors. He suggested that it would be helpful for the Commission, whether done by a committee or by staff, to develop a comprehensive laundry list of outstanding voluntary or mandatory actions that need to be taken by local governments or state agencies in preparation for the implementation of the Florida Building Code, October 1<sup>st</sup>. He offered, for example, various items mentioned with regard to countywide compliance review boards, local ordinances, in Chapter 16, establishing wind lines that need to be in place, local administrative amendments, local technical amendments, as well as anything that may come about as a result of the Legislative Session. He asked if the Commission or staff could put together this type of document so that it can be circulated and made clear to certain cities and interested parties.

Chairman Rodriguez asked for clarification that Commissioner Wiggins is aware and is concerned recognizing that there are a number of steps that the local jurisdictions have to take prior to the adoption of the Code. Commissioner Wiggins stated that legislation has taken care of some of these, such as local administrative amendments. He continued that they still need to be in the posture to prepare themselves should they want to make amendments and there are certain requirements in the Code that have to be in place by ordinance, such as the wind lines. He explained that would have a major impact on an industry.

Chairman Rodriguez asked if the Commission could ask staff to prepare a list of these issues that must be done, as a reminder or

checklist.

Commissioner Wiggins volunteered that he would be happy to transmit that information to the league of Cities, Association of Counties and other interested parties.

Chairman Rodriguez stated that he felt this was a very good suggestion. He further stated that the Commission wants to be as helpful as it can in the hopes of a smooth transition. He also thanked Commissioner Wiggins for his courtesy in offering to help staff develop this.

### **ACCESSIBILITY TAC REPORT AND RECOMMENDATIONS**

Commissioner Richardson explained that for the first part of the Accessibility TAC meeting a quorum was present, but for the later part, some members had conflicting schedules, resulting in part of the meeting functioning as a workshop only. She stated the following items were discussed by the committee:

1) The Florida Accessibility Code Training Commentary - She further stated that it was the committee's recommendation to do with this document is to make it part of the commentary that accompanies the Code once that authority is given by the legislature. She continued that the committee would like to emphasize that this commentary is simply advisory in nature, as opposed to interpretive. She also wanted to note that the copy that has been distributed is a draft copy and would request that it not be distributed to anyone. She added that a lot of work has gone into this document over the last year and one half and there is a lot of information contained within the document that the TAC feels is very important and beneficial to individuals receiving Accessibility training. (See *Florida Accessibility Code Training Commentary - Draft Copy - September 14, 1998 Attachment.*)

2) Access Code Review Product - the TAC decided to defer this item until the April or May TAC meeting.

3) Membership on the Accessibility TAC - She reported that some of the vacancies on the TAC were discussed. She further stated that the TAC is recommending a replacement for John Malenowski, who represents the Consumer Group. She explained that his attendance has almost been a total no-show.

4) Training - She stated that DCA staff will be presenting a two-part Accessibility training, which would be two hours at the April meeting and two hours at the May meeting. She further stated that the training would be conducted by DCA staff and the audience will be the Accessibility Council, Accessibility TAC, and members of the Commission who are interested in attending the training. She asked the Commissioners to take a look at that and if they would like to attend.

5) Disproportionate Cost Issue - She stated that Legal informed the TAC that the proposed changes to this issue were removed from the legislative package.

6) Parking Space Design - She stated that this was discussed briefly, but will be continued at the April meeting.

7) April Agenda Items - She reported that items to be discussed at the April TAC meeting, thus far, will include:

- A) TAC membership
- B) Accessibility Training - the two-hour module
- C) Access Code Review
- D) Continued Discussion on Parking

Chairman Rodriguez stated that the Commission needed a motion to authorize the committee to find a replacement for Mr. Malenowski.

Commissioner Lipka entered a motion to authorize the TAC to find a replacement for Mr. Malenowski. Commissioner Wiggins seconded the motion.

Commissioner Shaw stated that he participated in the TAC meeting and a great deal of time was spent on the positioning for membership on the TAC. He further stated that he believed this was inappropriate. He continued that he believed that the Chair appoints those positions to the TAC and he felt that the Commission could limit those types of discussions by individuals making recommendations to staff and then staff making recommendations to the Chair, who will make the appointment to maintain a consensus group. He explained that when recommendations come from the TAC to the chair, sometimes the consensus concept is lost.

Chairman Rodriguez stated that he feels that the concern is that

there are representations there of the different groups within the TAC.

Commissioner Shaw stated that he thinks the concept is that representation becomes a political animal. He further stated that it was his understanding that all the TAC's were based on a consensus group, which is not necessarily a political animal. He continued that he felt that the Chair, being impartial individual, was capable of making those TAC assignments.

Chairman Rodriguez asked for clarification whether Commissioner Shaw was still suggesting that there be a channel for which these names could come up to the chair from the committee.

Commissioner Shaw stated that he does not know that the individuals making recommendations to the Chair, do not become more appropriate than the committee making recommendations. He concluded that when the committee makes a recommendation it becomes more political.

Chairman Rodriguez asked Commissioner Richardson if she was okay with that recommendation.

Commissioner Richardson stated that this was beaten around a lot during the TAC meeting. She stated that she did not believe that as a group the TAC has been able to come to any consensus among themselves in what it would like to see. She continued that it is an ongoing battle, in terms of what the membership of the TAC should be. She stated that it has always been that way, from the perspective of those individuals with a disability that want to have an equal balance. She further stated that those individuals are seen as consumers.

Chairman Rodriguez stated, from experiencing polio as a child in being in a wheelchair for four months, that he felt that it was important that just because a person has a disability on that they do not have a monopoly on suffering. He further stated that, frankly, this is a compassionate country and what Commissioner Shaw is suggesting is that if it takes up too much of the committees' time and the committee forwards these to the Chair, he will commit to be sensitive to the balance, which would enable the committee to do more important things.

Commissioner Richardson stated that she did not believe that the issue was having a monopoly on suffering, but more a balance on

insight. She further stated that insight has to do with the fact that people do have a disability.

Chairman Rodriguez stated that people are wanting to serve, clearly the right thing is being done. He further stated that the difficulty is usually with the other, trying to find people to serve, if the committee can recruit people to serve.

Commissioner Richardson stated that she did not believe that there would be any argument that everyone would want the most qualified individuals possible. She stated her concern as what comprises a qualified individual for this TAC.

Chairman Rodriguez stated that certainly having a disability would give an individual the sensitivity to it, but the opposite is not true, that if a person does not have a disability that they are not sensitive to those who do.

Commissioner Richardson agreed and stated that she would trust these issues to act on their behalf.

Chairman Rodriguez stated that Commissioner Shaw had a suggestion that could turn into a motion that individuals refer names to the Chair of the Commission and that he would appoint someone as quickly as possible. He further stated that if there was no disagreement to that, the Commission could act on it, unless there is a substitute motion.

Commissioner Richardson asked for clarification that this motion would not just be for the Accessibility TAC.

Chairman Rodriguez confirmed that was correct.

Commissioner Shaw stated, from what he observed, it became a non-positive portion of that meeting. He continued that he did not believe that was good.

Chairman Rodriguez asked for Commissioner Shaw's answer relative to this being for all TAC appointments.

Commissioner Shaw stated that in his understanding, all TAC appointments are made by the Chair, from recommendations. He further

stated that all he is suggesting is that the recommendation come from individuals to the Chair, rather than from the committee to the Chair.

Commissioner Corn stated that he thinks that the setting up of the TAC's and how they are appointed and that sort of thing will be part of what the Rules committee is going to be getting into. He continued, in the same way the Commission deferred to the Legislature to have it sent back to the Commission, perhaps the Commission should defer this to the Rules Committee and it will be worked out there.

Chairman Rodriguez asked Mr. Corn if he wanted to make that motion.

Commissioner Corn entered a motion to defer this issue to the Rules committee.

Mr. Blair reminded the Commission that there is already part of the rules.

Chairman Rodriguez stated that if the Commission does not have to vote, that was fine, but the issue still is to fill that position and right now Commissioner Shaw's suggestion is that it come to the Chair from individuals, and the individual members of the TAC would make a lot of sense because they are both very familiar with the issues being discussed.

He further stated that this would be more beneficial than taking the TAC's time in working out consensus for one person. He continued that this would enable the TAC's time to be used more productively, by having the names go to the Chair, based on the names submitted to him. He stated that Commissioner Corn's motion was to have this deferred to the Rules Committee. He asked the facilitator if a motion is needed at all. He commented that the position definitely needs to be filled because it is difficult to reach a quorum.

Mr. Blair offered a suggestion, for the processor's sake, that the intent is that all TAC's follow the same process and procedures, the Rules and Procedure Ad Hoc Committee will be reviewing that and trying to codify the system in place now or refine based on the recommendation which will still come back to the Commission. He stated that this would be the proper venue for the larger scale issue. He continued that for the single issue, the committee's request that the Commission agree to replace Mr. Malenowski and that for the specific fulfillment of his

position, individuals can submit names to the Chairman for consideration and discussion by the Commission.

Commissioner Shaw restated the motion as “the TAC should request from the chair that it needs a replacement and the Chair will find the proper replacement by using the consensus criteria.

Commissioner Bassett stated that there was a motion on the floor. He was not sure if it required a vote or not.

Chairman Rodriguez stated that it was the same motion.

Ms. Watson stated that she has been on that TAC for some time and she wanted the Commission to be aware that she has been the only individual with a disability who has shown up for the majority of almost a year. She further stated that the Commission believes that it is getting a consensus, but there has only been one individual on that committee. She explained that on the subcommittee she is up against four architects and is consistently outvoted. She continued that the recommendation that the Commission is getting from the TAC, on the code review committee for a while is not a consensus of the balance that was supposed to be on there. She concluded that she believes that is why the conversation generated originally.

Chairman Rodriguez stated that some of the Commissioners are aware of that, which is why he stated earlier that in his opinion getting someone to want to serve is admirable. He further stated that the question becomes the finding of those people, because of the people known by word-of-mouth and referrals. He continued that he believed that Commissioner Shaw’s comment is rather than having the TAC struggle with it (under the same current composition) trying to decide who the next appointment would be, that if the names, until such time as the rule’s committee finds otherwise. He concluded that these names would be forwarded to the Chair and the Chair will appoint it and the TAC will not be wasting its time.

Ms. Watson stated that there is currently a very interesting situation, as there are more applicants than openings for the general interest category representing people with disabilities.

Chairman Rodriguez remarked that was great, but once the individual is appointed will they be able to attend.

Commissioner Corn stated that there are a couple of motions on the floor.

Mr. Blair stated that there was only one motion on the floor, because he thought Commissioner Corn had indicated earlier that he would withdraw his.

Commissioner Corn stated that he withdrew his motion. He asked that the motion made by Commissioner Shaw be repeated.

Mr. Blair restated the motion as "To replace TAC member John Malenowski and to use a process where nominees are submitted to the Chair for review and decision for appointment."

Commissioner Richardson requested that it be clarified that this does not apply exclusively for the Accessibility TAC, but to all TACs.

Chairman Rodriguez responded that was correct until the Rules Committee decides otherwise to recommend to the Commission and the Commission decides otherwise.

Commissioner Harris asked if there are more general interest people that can fill this slot, but not people who are in the other categories. She asked if that participation could be opened up to anyone other than just general interest categories.

Chairman Rodriguez replied that was correct. He stated that he did not believe that there was any question that the TACs are open for participation. He further stated that the question sometimes comes down to votes. He reiterated that the intent is to reach a consensus, so the official membership that is a voting member is based on balance. He continued that Ms. Watson has pointed out to the Commission that there has not been a balance there because some of the individuals appointed have not been able to attend. He stated that he was happy to hear that there is interest and all that is needed is to replace Mr. Malenowski and then ensure that the replacement is able to attend and not take it for granted.

Commissioner Thorne asked for clarification regarding the matter of Council versus TAC, because references made to the fact that Ms. Watson is up against four architects, because he does not believe that exists in a TAC, but rather in the Council.



Ms. Watson stated that she was referring to a group called the Code Review Committee, which is a subcommittee of the TAC.

Vote to approve the motion to replace Mr. Malenowski and to use a process where nominees are submitted to the Chair for review and decision for appointment was unanimous. Motion carried.

Chairman Rodriguez requested that Commissioner Richardson or Ms. Watson send names of the people who are interested and ready to serve and an appointment will be made as quickly as possible. He concluded that this would aid in achieving a quorum and also the necessary balance for consensus.

#### **LEGAL STAFF REPORTS / DISCUSSION / RECOMMENDATIONS / APPROVAL**

Ms. Schmith stated that the Commission has received two more Declaratory Statements since the last meeting. She explained that those could be found in the Commissioner's packet, as they were received in time to be included. She related that one, the matter of Don T. Scroggs, DCA-01, DEC statement 24, is being dismissed for insufficiency with leave to amend within thirty days. She stated that this just needs to be entered into the record. She continued, relative to the second one, Ward Gold with Go-Bolt, Incorporated, that Legal has requested that the Structural TAC take that up at the next meeting for a recommendation back to the full Commission.

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

Ms. Watson presented the applications for accessibility waivers. She informed the Commission there were three items, as follows:

Item #1, Williams-Leroy House, the Council requested a motion to defer for further clarification on historical classification. She explained that it would like to know what methods of vertical accessibility can be allowed within the historic section. She offered that the applicant had made a phone call to a staff member, who stated in his opinion, it covered the entire building, but the applicant stated that the back kitchen would not be included under the historical classification. She stated, because this was unclear, the Council felt further clarification was necessary. There was a representative present to speak on behalf of the issues of the applicant.

ROBERT FINE, AIA, GREENBERG TRAUERIG, PA

Mr. Fine stated that he was representing Southcare Nursing Centers. He explained the actual representatives of Southcare could not be here because the weather in the Northeast prevented them from flying down. He continued that his group apposed the motion for deferral. He stated that this item was before the Commission in August for the same waiver. He further stated that the Commission had denied it in part because the building was historic and there had been no correspondence from the State Historic Preservation Office. He explained that the client went to the SHPO and obtained a threaten or destroy letter, which is provided for under the Accessibility Code.

Ms. Watson stated that she should have stated that this is a vertical accessibility application for a Meals-on-Wheels facility, which is opening a restaurant on the second floor.

Mr. Fine stated that his client is requesting a waiver for vertical accessibility for the second floor of the Williams-Leroy House. He requested that the application, as submitted, including this letter, be made part of the record of this hearing. He stated that the Williams-Leroy House is a qualified historic structure, as provided for in 4.1.7(1) of the Florida Accessibility Code and 4.1.7(1) of the ADA Accessibility Guidelines. He continued that the historic significance designation of this house relates directly to the hardships upon which the waiver application is based. He stated that when the ADA was passed, Congress expressed, in Section 504(c), that there is a national interest in preserving historic structures. He further stated when the Department of Justice promulgated its ADA regulations, it stated that the intent was that historic defense only be applied in those rare situations where it is not possible to provide access to historic property using the Access provisions in the ADA Guidelines. He continued that the ADA regulations also provide that if it has been determined, under the procedures established in the ADA Guidelines, that it is not feasible to provide physical access to historical property that is a place of public accommodation in a matter that will not threaten or destroy the historic significance of the property, alternate methods shall be provided, pursuant to later parts of the regulations. He also noted that the State of Florida recognizes the importance of preserving historic properties balanced with the need to provide accessibility to places of public accommodation for persons with disabilities. He stated that the State provides the same standards in 4.1.7 of the Florida Accessibility Code

which exists in 4.7.1 of the ADA Guidelines. He also stated that a separate state agency, the Division of Historical Resources, was provided for in the Department of State to assist in carrying out this mandate. He listed the actual hardships existing for this waiver as follows:

1) Requiring the client to take steps that would threaten or destroy the historic significance of the Williams-Leroy House would require them to take action that would be contrary to public policy.

2) A requirement for vertical accessibility would create a financial hardship as an order to not threaten or destroy the historic significance of the building, might force Southcare to forego the use of the second floor as overflow seating of its restaurant and the associated loss of revenues.

3) If the client took steps to provide vertical accessibility, disregarding the fact that it would destroy the historical significance, it would risk losing the historic designation of the building and the unknown potential loss of the value of its asset as well as the loss to the city of Alachua as one of its most important historical landmarks.

Mr. Fine reiterated that when this came before the Commission in August, it had not been before the State Historic Preservation Officer. He reported that it now has been and a letter has been received. He stated in consulting with Counsel for the Commission, they felt that normally when a building has a problem with vertical accessibility and a threaten or destroy order has been obtained, they do not have to come to the Commission. He explained that the reason it is back before the Commission today is that Counsel felt more comfortable coming back and "undoing" the action of the Commission from August.

Ms. Butler stated that under normal circumstances a project owner, without coming to the Florida Building Commission, would go to the State Historic Preservation Officer and obtain a letter such as the one the client obtained and that would be sufficient for the building official to not require the vertical accessibility to the second level, if it threatens or destroys the historic significance of the building. She explained that, because the Commission had taken an action to deny the waiver of that, Counsel felt it would be best if the applicant came back before the group using the letter from the State Historic Preservation Officer as evidence of the hardship to justify the waiver of vertical

accessibility requirements.

Chairman Rodriguez stated that he thought the Commission had not denied it, but just did not want to act on it because it did not have correspondence from SHPO. He stated that since it had acted on it, is Ms. Butler recommending that the Commission rescind the denial.

Ms. Butler stated that the Commission could also just grant the waiver.

Chairman Rodriguez stated that the Commission is not in the business of granting waivers to historic buildings, as it is SHPO that deals with these, therefore he would rather not grant a waiver, but simply rescind the denial.

Mr. Fine stated that in the past, the Commission has granted waivers stating that they find that a waiver is not necessary, but in-as-much as a building official may require it, it is granting it, therefore stating it on the record what is found and for future reference it is okay. He stated that since the building official had requested a waiver, it would cut down on a lot of correspondence between the building department and the Commission staff.

Chairman Rodriguez stated he would still like Counsel to tell him what the motion should read.

Ms. Butler stated that legal counsel feels that the Commission should enter a new order based on the new evidence that is available that was not available last time, on which the hardship finding could be based. She further stated, in this case, the building official was not sure would take precedence, the Commission's order or the letter from SHPO. She explained that this was the reason he would rather it come back before the Commission for a decision.

Chairman Rodriguez restated that he would like to hear the language of the motion so the Commissioners could take a vote.

Ms. Butler stated that the motion could be just to grant the waiver.

Commissioner Corn entered a motion, based on the new information submitted from the Division of Historical Resources, to grant the waiver for the Williams-Leroy House.

Commissioner Leonard seconded the motion.

Ms. Watson stated that the maker of the motion is a building official and a council member is Neil Mellick and he would like to speak. She explained that he is visually impaired and asked him to raise his hand.

Chairman Rodriguez invited Mr. Mellick to come forward and state his name for the record.

NEIL MELLICK

Mr. Mellick stated that he was on the Advisory Council and that he is also a building official for the City of West Palm Beach. He explained that, as the maker of the motion, his concerns as a building official, are in dealing with the Historic Preservation buildings that are in his jurisdiction, both private and public sector renovations. He stated that the letter he read, which was submitted as evidence, basically talks about the structure, that putting an elevator in would probably damage the historical significance of the structure. He continued that his concerns and the reason for the motion to defer, is to get clarification from SHPO whether an interior lift alterations destroy the historic significance of the structure. He stated, in his opinion, it would not, based on some of the renovations to the existing building and the proposed renovations, it would be altering the interior, therefore why not altering to allow a lift to meet the intent of vertical accessibility. He stated that the applicant did call the office and it was the opinion of staff that it included the whole structure, but the Council felt there should be more clarification whether it concerned just the elevator and alterations to the exterior or also interior renovations that might destroy the historical significance. He simplified the question as does it designated in the interior as well as the exterior.

Chairman Rodriguez asked if there was no clarification on whether the interiors are designated.

Mr. Mellick responded that there was not.

Commissioner Richardson stated that she was confused because she thought the letter from the State Historic Preservation Officer did clarify that the entire structure was considered historic. She asked if she was incorrect.

Ms. Butler stated that Mr. Fine had called Phillip Wisely, an architect with the Department of State, who actually worked on this project, and he did verify that the entire structure was considered when he came up with the opinion of SHPO.

Mr. Fine stated that he had and that Mary Katherine Smith was on the phone with Mr. Wisely and relayed all of the questions to him. He explained that Mr. Wisely is the staff person who did the staff review for the SHPO and prepared the original letter for her signature, based on that.

Chairman Rodriguez stated the letter reads that it would threaten the significance.

Mr. Fine stated, in order to ensure that their client received the waiver, he requested and received a second letter from SHPO, which the Commission has not seen yet. He continued that he could also enter it into evidence. He stated that he was concerned that there is a question of jurisdiction here. He explained that there is a state agency that is empowered by statute to perform these duties. He continued that it is clear on who is designated to do that and that is their business. He asked if the Commission wanted to move toward the State Preservation Office.

Chairman Rodriguez stated that is not what has been discussed. He explained that the Commission took a previous action and denied the waiver when it should have been sent to SHPO.

Mr. Fine stated that he meant that the Council is questioning how the SHPO has done their job. He reminded the Commission that Mr. Mellick just referred to this as the basis of his motion. He clarified that he meant does the Commission want to be questioning a letter from a state agency which is independently empowered to make these final decisions.

Chairman Rodriguez responded that he did not believe that asking questions do any harm, if people did not understand fully. He stated that there is a motion on the floor from Commissioner Corn and a second that the Commission approves this based on the State Historic Preservation Officer's letter.

Ms. Watson offered clarification that the Council's concern is that

it had asked specifically what method of vertical accessibility could be applied to this structure that would not impact the historical significance. She explained that the area of concern in the letter was the section that referred to window sills and it stated that the decision was based on the way the applicant had presented it. She stated that the Council did not have anything showing the way it was presented. She further stated that the applicant had reported that there was a section at the back of the kitchen which was not designated as historic, which would allow for a method of vertical accessibility. He concluded, because there were a number of questions, the Council had wanted a specific on that.

Chairman Rodriguez stated that if it is a historic property, it goes to SHPO, not the Commission. He explained that when it came without a SHPO letter initially, the Commission should have referred it to them, but it denied it. He stated the Commission is now trying to correct an error.

Commissioner Bassett stated that he would like to amend the motion and have it referred back to SHPO since that it is what the Commission is asking Legislature to do.

Chairman Rodriguez stated that he had tried to do that, but Counsel has recommended that the Commission grant the waiver.

Commissioner Bassett stated that Counsel had stated that the Commission needed to rescind the previous action.

Chairman Rodriguez stated that the Counsel a motion to grant the waiver.

Ms. Butler restated the motion to grant the waiver based on new evidence, which is the hardship indicated in the SHPO letter by threatening to damage the historic significance of the building.

Chairman Rodriguez stated that the bottom line is that the Commission does not act on historic properties, because SHPO handles those. He explained that the last time it was acted on by denying it, because it did not have a SHPO letter. He continued that what should have been done was to refer it to SHPO and take no action. He further stated that because there was a "move to deny," the Commission now needs to "move to approve." He reiterated that the Commission would

not do that if there had been no "move to deny," because this is not an issue that should come before the Commission.

Ms. Butler confirmed that was correct.

Commissioner Leonard called the question.

Vote to grant the waiver based on the letter from SHPO was unanimous. Motion carried.

Item #2, Main Street Plaza Renovation, the Council recommended to dismiss for lack of jurisdiction. She explained that there is residential on the second floor and there is no jurisdiction for the residential.

Ms. Richardson stated that she would like to withdraw the motion for dismissal and would like to discuss it.

Chairman Rodriguez asked if she meant at the Commission level.

Commissioner Richardson responded that was correct.

Chairman Rodriguez stated that Commissioner Richardson could proceed.

Commissioner Richardson stated that the part that she wanted to discuss is that when this went to the local building department, the application did not list this as residential. She explained that it was listed as a conversion of a two-story hotel to business office use and it says it requires the issuance of a new certificate of occupancy and compliance of all codes. She stated that had this been put in originally as a residence, there could be no need for this item to have come before the Commission, but it was not put in that way. She further stated, that over the course of discussing this item, the Waiver Council has turned this into a residential issue. She stated that she needed to know where the facts are.

#### MIKE MAHONEY

Mr. Mahoney stated that he felt it should have been indicated as a mixed-use facility, because that is what was originally discussed with the building official. He stated that the City of Riviera Beach is encouraging the mixed-use occupancy on this. He continued that he did



not know why the building department did not state it as that. He commented that he had been fighting this for one year.

Commissioner Richardson asked what type of permit is he seeking.

Mr. Mahoney stated that some permits have been pulled for minor work, but it is a general permit that his contractor received after this letter stating "Application of Variance" was set. He continued that the other contractors, such as subcontractors, could pull from that. He reported that the upstairs was going to be two small occupied one-room apartments, basically, and the downstairs would be the small business rentals. He stated that the only reason he felt the building official did not state it differently was because the city is in the middle of a redevelopment project and the way the city has been performing its duties to us have been in question all along. He concluded that he feels there was a mix up or confusion in this city in the way that they are operating. He restated that the building will be used as residences upstairs and offices downstairs.

Chairman Rodriguez asked if that is a permitted use.

Commissioner Richardson asked if this has to go in for commercial use, then a permit is obtained for that and if it is residential work that is required, then there is a different permit for that.

Chairman Rodriguez asked if some of the building officials could comment on that. He stated that he thought the question came because the zoning is mixed-use zoning and the applicant wanted to utilize that, but there is residential on the second floor and office space on the first.

Mr. Mahoney stated that it was originally a hotel.

Chairman Rodriguez stated that he was aware of that. He asked if Mr. Mahoney is seeking a mixed-use permit.

Mr. Mahoney stated that was correct. He stated that there would be two small residential units upstairs and approximately seven or eight commercial use units downstairs.

Commissioner Leonard stated that in reading the plans, he has a difficult time establishing that the second floor is residential. He further stated, realistically, that may have been a ploy and once he went in for

the permit, the plans are read, it would be fairly obvious that these are two future commercial offices upstairs. He entered a motion to deny the waiver on this, unless the applicant can clearly establish and reapply that this will be residential only and nothing for future use.

Commissioner Richardson seconded the motion.

Commissioner Sanidas asked if the motion is to approve it as residential or is the motion to deny the waiver unless it is permitted as a mixed-use facility.

Commissioner Leonard responded that the motion is to deny, because if this was changed and made residential they would not be here.

Commissioner Corn stated that the plans designate the second floor, is for "future." He asked how could what the plans state be proven. He continued that the Commission should approve the waiver based on what the applicant is stating. He stated that the city should get a copy stating the motion, which shows that it was approved based upon the fact that the second floor is for residential use only. He further stated that if the applicant tried to use it for anything other than residential, the city would be on notice that it would not be meeting the Code.

Commissioner Sanidas stated that it appeared to him as though the applicant is just putting two hotel units upstairs, because there are no kitchen facilities on the plans. He further stated that they could be offices, but it is clearly not single-family type operation or a duplex operation. He stated that he agreed that this should be taken back and bring something brought that guarantees the space upstairs is residential.

Commissioner Wiggins stated that the specificity needs to be added to the plans which occasionally not require compliance with accessibility if it is a two-family dwelling.

Commissioner Harris stated that she had never seen an office with a shower upstairs.

Chairman Rodriguez responded that in Miami there a number of offices with showers because it is hot.

Commissioner Harris asked if those showers were side by side.

Chairman Rodriguez responded he did not know that.

Mr. Mahoney stated that the showers were already in the building, so the applicant chose to leave them. He stated that his objection is why the City of Rivera Beach cannot handle this among themselves. He further stated that from what he has heard, this should not even be before the Commission. He reiterated that this has been waiting for the building officials of this city for the last year. He continued that it looks like something could be done legally, because if all that was needed was a statement that it was residential, why was he not told that. He stated that if someone had explained that to him, he would have done that a year ago, rather than continuing the waste of his time in trying to obtain a general permit for the last twelve months. He did not believe that was a way to run a city and he asked the Commission for it's help.

Chairman Rodriguez stated that the only thing the Commission can do is act on what was presented. He further stated that there is motion to deny based on the fact that it is not in the plans as residential units. He called the vote.

Vote to deny the waiver resulted in 10 in favor, 6 opposed (Bassett, Carson, Thorne, McCombs, Harris and Shaw). Motion carried.

Mr. Mahoney asked the Commission for some guidance to get the situation taken care of.

Chairman Rodriguez stated that if it is a residential use, it should not come before the Commission.

Commissioner Bassett stated that in the letter to be issued regarding the denial, can it be stated that if it were for residential use, it would not be required, so the building official does not have any question.

Ms. Butler stated that was not possible, because the Commission voted to deny it based on the plans that were submitted.

Chairman Rodriguez stated that someone had requested clarification on the motion.

Commissioner Leonard restated that the motion was to deny.

Commissioner Sanidas stated that there were not information available to make a decision. He continued that if it is a mixed-occupancy, it is not indicated if there is a occupancy separation or not. He explained that the building official does know and if there is not one there, the building has structural problems.

Item #3, Seminole Theater, the Council recommended to grant the waiver as long as there was no violation of Title II for the projection booth and the follow-spot booths. She explained that it is mixed use with both a Title II and a Title III.

Ms. Butler stated at the Council meeting she had advised the Council that they could vote to recommend that the Commission grant the waiver, as long as it did not violate Title II. She continued that on further reflection and consultation with other members of Legal Counsel, she would like to recommend that the Commission vote to dismiss this application for waiver for lack of authority. She stated that it is requesting a waiver of vertical accessibility to a projection booth which is specifically exempted in Section 553.509, as something that is exempt from the vertical accessibility requirement.

Commissioner Richardson stated that was true in the state code, but it was not true in the ADA Guidelines. She stated, reading from the Guidelines, Section 4.1.1(3), Areas Used Only By Employees As Work Areas, "areas that are used only as work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas."

Ms. Butler stated that is true, however, the Commission does not have any authority over Federal requirements. She explained that the applicant merely asked for a waiver of the Florida Vertical Accessibility Requirement.

Commissioner Wiggins entered a motion to dismiss for lack of authority. Ms. Harris seconded the motion.

Commissioner Shaw stated that there have been a number of discussions indicating when an applicant does not show up for their application it makes it very difficult for the Commission to act. He further stated that this does not mean the applicant could not be

represented by letter to the fact of what their intent was. He reiterated that when they are not present at all, it makes it very difficult to act. He continued that he feels the Commission should be consistent however those applicants are treated.

Chairman Rodriguez stated, in this case, the motion is to dismiss for lack of jurisdiction.

Ms. Watson expressed concern that the building code official had sent it to the Commission, knowing that the exemption does exist. She stated that in the Federal Law, it states that platform lifts, complying with 411 of this Code may be used in lieu of an elevator, where this section would require an elevator. She stated that she believed the applicant's question was whether or not an elevator is required under Title II. She further stated that if so, the exemption specifically allows for a platform lift to be used for a projection booth. She continued that if the waiver was granted, as long as follows Title II, that allows him to not issue the C.O. based on the Title II part of it. She also stated that if the Commission states that it is out of jurisdiction, the Department of Justice is the only body that can enforce the Federal Code, not the building official.

Ms. Butler stated that the waiver order does have a paragraph that states that the order does not absolve the responsibility of complying with the Federal ADA requirements. She continued that this would prevent the applicant from getting out of any Federal requirements.

Commissioner Sanidas stated that the way the motion is worded will appear to the building official that it is okay to do it.

Chairman Rodriguez stated that Counsel just stated that it was not okay to do it for lack of jurisdiction within the state does not exempt him from complying with Federal requirements.

Vote to dismiss the application for lack of jurisdiction was unanimous. Motion carried.

Commissioner Bassett asked if there was a requirement that these proceedings are to be covered by a stenographer.

Ms. Schmith stated that there is a requirement that there be a record made of the Accessibility Waivers. She further stated that the

Waiver Applications are recorded. She explained that, out of policy, a stenographer used to be hired for these meetings. She continued that now, if there were a challenge and someone wants to have a transcript, they would request the tape from us and have it transcribed.

Commissioner Richardson commented that she did not recall the Seminole Theater ever obtaining vertical accessibility on their seating requirements either.

### **REVIEW COMMITTEE ASSIGNMENTS AND ISSUES FOR APRIL'S COMMISSION MEETING**

Mr. Blair conducted a facilitated review of the assignments for next month's meeting. (See *Facilitator's Report* Attachment.)

Commissioner Harris asked if it was possible that the Commissioners would have a copy of the new Code by the next meeting. She stated, if they would, she wondered if each TAC may want to take a look at that printing at that meeting.

Chairman Rodriguez stated, from what he has heard, that they need a certain amount of time after review and that the review is scheduled to be completed the first week of April and the meetings are scheduled for the 10<sup>th</sup> and 11<sup>th</sup>. He continued that if everything works out, the optimistic version is that it will be available on-line.

Commissioner Harris stated that as the TAC chair she would like to discuss any issues, that printing may have brought to someone's eyes, with the TAC.

Mr. Dixon stated that he would only count on it being on-line. He further stated that he would not count on holding meetings with the Code being there in hand to give the Commissioners.

Commissioner Sanidas asked if the Building/Fire TAC would be meeting.

Mr. Blair responded that the Building/Fire TAC will be meeting on the 16<sup>th</sup> of March.

Commissioner Bassett asked for clarification of the meeting dates next month, because in one place it states the 10<sup>th</sup> and 11<sup>th</sup>, but in Jean

Easom's letter it states the 9<sup>th</sup> and the 10<sup>th</sup>.

Chairman Rodriguez stated that April 8<sup>th</sup> is Palm Sunday and Passover, which is why it was scheduled for the 10<sup>th</sup> and 11<sup>th</sup>.

Commissioner Bassett stated that he knew why it had been done specifically, but was not sure if it came back because of the dates listed in Jean Easom's letter regarding reservations.

### **SUMMARY AND REVIEW MEETING WORK PRODUCTS**

Chairman Rodriguez stated that the Commission reviewed and adopted the updated Commission Workplan. He further stated the Chair's discussion issues and recommendations were considered. He continued that the Commission considered public comment. He stated that status updates were heard for both the Commission's Report to the Legislature and the Commission's Legislative Recommendations. He further stated that the Commission considered additional Legislative Issues. He continued that a status update on Code Dissemination was heard. He stated that the Swimming Pool Safety Issues were considered. He further stated that reports, including any recommendations, were heard from the Swimming Pool Safety Issues Ad Hoc, the Education Ad Hoc, the Product Approval Ad Hoc, the Rules of Procedure Ad Hoc, the Manufactured/Prototype Building Ad Hoc, the Special Occupancy TAC, the Accessibility TAC and the Legal Staff. He continued that the Commission considered and decided on Accessibility Waiver Applications. He concluded stating that the assignments and issues for the April meeting had been reviewed.

Commissioner Wiggins requested clarification that in the Commission's Report to the Legislature and in it's bill, the 20% rule with regard to vertical accessibility did not go forward.

Ms. Schmith stated that the report still contains the Commission's recommendation on that issue. She further stated that the original draft of the bill which she had put together also had some language in there to implement the recommendation. She continued that, on word from the Governor to the Secretary, that issue is not supported by the Governor's office and therefore, cannot proceed in the Department's Legislative package, as a Governor's agency.

Commissioner Browdy stated that the action of the TAC and the

action of the Commission was very straightforward in trying to institute the understanding of that 20% rule. He further stated that he would not feel it inappropriate for members of the Commission who know advocates who particularly believe that this should be reinstated. He continued that it is unfortunate that the Governor has 100% veto power over the Commission in moving an issue forward. He encouraged the Commissioners, if they felt strongly about having the 20% rule reinstated, to urge advocates, such as the American Institute of Architects or BOMA and other organizations who are engaged in designing accessible structures, to move the issue forward and get a legislator to sponsor that change.

Mr. Dixon offered clarification on the issue of representation on the Advisory Council is to go to the TAC, not the Advisory Council, at the next meeting.

### **ADJOURN PLENARY**

No further business discussed, meeting adjourned at 1:21 PM.