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M E M O R A N D U M

TO: Commissioner Charlie Danger and
Members of the Code Enforcement/Administration TAC

FROM: Suzanne H. Schmith
Commission Staff Attorney

SUBJECT: Chapter One of the Florida Building Code

DATE: June 1, 1999

This memorandum is in response to Mr. Danger's request that legal staff review the provisions of the administrative chapter of the base code and report whether certain provisions are beyond the authority of the Florida Building Commission. These issues arose during our review of the proposed Administrative Appendix J and is consistent with that review. Having reviewed the provisions of Chapter 1, I recommend that the following sections be deleted, or otherwise modified, as follows:

Section 102 establishing the qualifications of building department employees, restrictions thereon, and requiring the keeping of certain records and issuance of reports. These provisions constitute the business practices of the local building department. Further, liability for actions of building department officials is governed by state statute and common law (judicial opinions). Please note that the commission has the authority to adopt recommendations, such as **voluntary** professional standards for the operation of building departments and for personnel development "to ensure consistent, effective and efficient enforcement and compliance with the Florida Building Code." Section 553.76(5), Florida Statutes. This authority does not allow the commission to include mandatory requirements within the text of the code.

Section 108 establishing a Construction Board of Adjustment and Appeals, and providing for its composition, powers and procedures for appeals. These requirements are beyond the authority of the Florida Building Commission. While chapter 98-287, Florida Laws, contemplates the formation of local administrative boards (section 553.73(9), Florida Statutes) and local boards of appeal (section 553.77(1)(h), Florida Statutes), it is clear that formation of such boards is at the discretion of the local governing body. Therefore, the Florida Building Commission cannot adopt a code which requires the formation of such boards. Further, the law provides that, if a local administrative board is formed, it should be composed of members with expertise in building construction and firesafety standards, and that its decisions shall be in writing (section 553.73(9)(d) and (e), Florida Statutes). The law does not authorize the commission to adopt additional requirements for such boards. References in other sections to the Board of Adjustments and Appeals should either be deleted or the words "if applicable" should be inserted thereafter.

Section 110 relating to violations and penalties; subsection 110.1 should be deleted. The commission does not have the authority to impose criminal sanctions for violations of the Florida Building Code. The memorandum issued to this TAC by Al Bragg on January 8, 1999 (attached) was very clear on this issue. Further, that memorandum provided suggested language regarding plans examination fees and inspection fees which is mandated by the legislation. If those penalties have not been incorporated into the code, they must be before the final draft. Perhaps either section 104 or 105 is an appropriate place for this language.

Subsection 104.7 relating to permitting and inspection fees. The law only provides that local governing bodies may charge reasonable permit fees. Most of the provisions of 104.7 are general in nature and do not preempt local authority to set fees. The only objectionable provision is that of 104.7.2 which requires that a "double" fee be charged for work commencing without a permit. Subsection 104.7 appears to be an appropriate place to incorporate the language regarding plans examination and inspection fees discussed in the above paragraph.

Section 104 generally should be revised to be consistent with the permitting requirements set forth in section 553.79, Florida Statutes, or to cross-reference that section. Similarly, subsection 104.3.1 should accurately reflect the plans review requirements of section 553.79(2), Florida Statutes, relating to the duty of the building official and fire official to review plans, and exemptions from plan review.

Section 111 regarding unsafe buildings is within the scope of the commission's authority except for those provisions relating to appeals. Subsections 111.5 through 111.10 should be eliminated as they are outside of the commission's authority.

Section 107 should refer to the product approval system established pursuant to section 553.842, Florida Statutes, either by cross-referencing the statute, or the administrative rule which will adopt that system. The product approval will be adopted as an administrative rule of the Florida Building Commission separate from the Florida Building Code.

Finally, there are cross-references within Chapter 1 to general and specific provisions of the Standard Codes. The contractor should assist in identification of those references and replacement with the correct reference to sections of the Florida Building Code.

I hope this information is helpful to the TAC in preparing the second draft of the Florida Building Code. Please contact me at (850) 922-1689 if I can be of further assistance in this matter.