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M E M O R A N D U M

TO: Commissioner Charles Danger

FROM: Suzanne H. Schmith
Staff Attorney

SUBJECT: First Draft of the Florida Building Code

DATE: May 27, 1999

This memorandum is in response to your request during the May 11th Plenary Session that legal investigate whether the first draft of the code accomplishes the directive in HB 4181 to incorporate provisions addressing regional and local concerns. Section 553.73(3), Florida Statutes (1998 Supplement), contains the following directive codified from the house bill: "The commission shall incorporate within sections of the Florida Building Code provisions which address regional and local concerns and variations." This provision applies to the code as originally adopted by the commission because it is located within the same subsection which directs the commission to choose a base code and modify it as necessary to meet the specific needs of the state. The statute does not specify the "regional and local concerns and variations" which the commission should consider. However, the commission is directed to consider the recommendations of the Final Report of the Governor's Building Codes Study Commission in implementing the act. *See* Chapter 98-287, Laws of Florida, Intent Section.

Recommendation I-3 of that report contains the following guidance with respect to the Florida Building Code as the foundation for a new statewide regulatory system:

To ensure The Code effectively and efficiently protects all of Florida's citizens and

the general welfare of the entire State, The Code shall address regional and local concerns and variations, *such as but not limited to, climatic conditions, soil types, termites, weather related events, risks associated with coastal development, life safety issues, and code compliance maintenance programs.*

This recommendation assists in our understanding of what types of "regional and local concerns and variations" the legislature had in mind. Given that understanding, I answer your question in the affirmative: Yes, the first draft of the Florida Building Code contains provisions which address regional and local concerns and variations. The commission has accomplished much of this through the incorporation of specialty codes. For example, Section 443 provides for testing of different types of contaminants, based upon mapping of delineated areas, prior to construction of new wells; Section 447 contains different design standards for HUD manufactured homes and park trailers located in Exposure D and Wind Zones II and III; Chapter 13 incorporates the Florida Energy Efficiency Code which differentiates between, and has varying requirements for, eight different climate zones within the state; and Chapter 31 (Section 3107) contains provisions specifically for controlling construction in coastal areas. These provisions are within the body of the code, rather than an appendix, and reflect regional differences within the state.

The first draft also contains provisions addressing regional concerns outside of the specialty codes areas -- mainly in chapter 16. As you are well aware, Section 1606 contains provisions for calculating the wind pressures which a buildings' structural components must be designed to withstand based upon Figure 1606, a map depicting wind speeds by region. Certainly these are provisions which address regional differences. Whether this is the most appropriate or accurate delineation of regional wind speeds is a determination for the commission to make based on available scientific, regional or other data.

Further, the statute contemplates that regional differences should continue to be incorporated into the Florida Building Code upon the three-year update schedule, as determined by the commission. The local amendment process is not, as some have advocated, a procedural barrier to keep the codes' provisions static, but rather is a mechanism for incorporating into the body of the code provisions which local governments have demonstrated are necessary to address regional or local concerns. In describing the relationship of local amendments to the three year update cycle, the statute states, "At such time, the commission *shall adopt such amendment as part of the Florida Building Code* or rescind the amendment." Section 553.73(4)(b) 6., Florida Statutes (1998 Supp.).

Only those amendments which have not been demonstrated as necessary to address a regional or local concern should be rescinded. This section does not, as others have advocated, justify deferring the incorporation of regional and local provisions to the local amendment process. As noted earlier, the statute clearly directs the commission to incorporate such provisions within the document first adopted as the Florida Building Code. The provisions on local amendments demonstrate an intent that the code revision process respond to emerging regional and local needs.

I hope this opinion is helpful to you in considering and debating changes for the second and final drafts of the Florida Building Code. Please contact me at (850) 488-0410 if I can be of further assistance.