

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

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Governor

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Secretary

**BOARD MEETING
OF THE
FLORIDA BUILDING COMMISSION**

**PLENARY SESSION
May 18, 2001**

PENDING APPROVAL

The meeting of the Florida Building Commission was called to order by Chairman Raul Rodriguez at 8:00 a.m., on Wednesday, May 18, 2001, at the Renaissance Resort, World Golf Village, Florida.

BOARD MEMBERS PRESENT:

Raul Rodriguez, Chairman

Suzanne Marshall

Stephen Bassett

Craig Parrino

Michael McCombs

Ed Carson

Karl Thorne

Leonard Lipka

Nick D' Andrea

John Calpini

Peggy Harris

Stephen Corn

George Wiggins

Christ Sanidas

Francisco Quintana

Dan Shaw

Richard Browdy

Medard Kopczynski

Jim Mehlretter

Dr. Diana Richardson

BOARD MEMBERS ABSENT:

Sam Walthour

Bob Leonard

OTHERS PRESENT:

Rick Dixon, Executive Director

Ila Jones, Program Administrator

Jim Richmond, Legal Advisor

Kathy Butler, Legal Advisor

Jeff Blair, FCRC

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FLORIDA KEYS

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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*.)

Commissioner Wiggins motioned to approve agenda. Commissioner D'Andrea seconded the motion. Vote to approve was unanimous. Motion carried.

REVIEW AND APPROVAL OF APRIL 10 & 11, 2001 MEETING MINUTES

Commissioner D'Andrea moved approval of April meeting minutes. Commissioner Thorne seconded the motion. Vote to approve the minutes was unanimous. Motion carried.

PUBLIC COMMENT

No participants.

CHAIR'S DISCUSSION ISSUES AND RECOMMENDATIONS

Code dissemination and implementation date updates
Legislative key issues overview
Rule development workshops schedule (code, product approval, rules of procedure, education, prototype buildings)

Commissioner D'Andrea motioned to approve. Commissioner Wiggins seconded the motion. Vote to approve was unanimous. Motion carried.

LEGISLATIVE SESSION KEY ISSUES OVERVIEW AND Q & A

Ms. Schmith presented a Legislative Session summary. (See *Florida Building Commission Legislative Session Summary*)

Attachment.)

**ANNUAL COMMISSION ASSESSMENT AND WORKPLAN
PRIORITIZATION WORKSHOP**

Review Assessment Survey Results
Identify Legislative Issues for Workplan Inclusion
Review Workplan and Identify Any Additional Tasks for Commission
Consideration
Prioritize Commission Tasks

Mr. Blair conducted a facilitated review, discussion, and ranking exercise prioritizing workplan tasks. (See *Florida Building Commission Effectiveness Assessment Results for April 2000 - March 2001* Attachment.)

Chairman Rodriguez announced the appointment of Mr. J.R. Harding and Commissioner Lipka to the Accessibility Technical Advisory Committee.

EDUCATION AD HOC REPORT AND RECOMMENDATIONS

Commissioner Browdy presented the Education Ad Hoc report and recommendations. (See *Education Ad Hoc Report and Recommendations* and *Memorandum From Ila Jones* Attachments.)

Commissioner Browdy posed a motion to approve the ITN for the Florida Building Code Training Program Development to the University of Florida's Rinker School of Building Construction. Commissioner Corn seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Lipka motioned to approve the Committee's recommendation to delete the Equivalency Exam from the training program. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner D'Andrea entered a motion to approve proposed changes to the Education Rule 98-70-001. Commissioner Lipka seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Lipka entered a motion to approve the Education Ad Hoc Report and Recommendations. Commissioner Thorne seconded the motion. Vote to approve the report and recommendations was unanimous. Motion carried.

**PRODUCT APPROVAL AD HOC REPORT AND
RECOMMENDATIONS**

Chairman Rodriguez presented the Product Approval Ad Hoc report and recommendations. (See *Product Approval Ad Hoc Report and Recommendations* Attachment.)

Commissioner D'Andrea entered a motion to approve the Product Approval Ad Hoc report and recommendations. Commissioner Corn seconded the motion. Vote to approve the motion was unanimous. Motion carried.

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

Commissioner D'Andrea presented the Rules of Procedure Ad Hoc report and recommendations. (See *Florida Building Commission Rules of Procedures Ad Hoc Committee Report* Attachment.)

Commissioner Lipka entered a motion to approve the Rules of Procedure Ad Hoc Committee's report and recommendations. Commissioner Wiggins seconded the motion.

Commissioner Bassett reminded the Commission that they had only correlated the Building Code nor the mechanical, plumbing, or gas codes with the fire code and suggested that it be reviewed. He then asked whether the results in the Energy TAC report regarding the changes to the Energy Code based on air handlers in the attic had to be changed through a Rule change.

Commissioner D'Andrea responded that everything in the Florida Building Code would be looked at as in correlation with the State Fire Marshall.

Vote to approve the motion was unanimous. Motion carried.

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

Commissioner Parrino presented the Manufactured/Prototype Building Ad Hoc Committee's report and recommendations. (See *Manufactured/Prototype Building Ad Hoc Committee Report and Recommendations* Attachment.)

Commissioner D'Andrea moved to accept the report and recommendations. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

ACCESSIBILITY TAC REPORT AND RECOMMENDATIONS

Commissioner Richardson presented the Accessibility TAC report and recommendations. (See *Accessibility TAC Report and Recommendations*.)

Commissioner D'Andrea motioned to approve the recommendations and report. Commissioner Lipka seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner D'Andrea entered a motion to approve the workshop recommended by the committee. Commissioner Lipka seconded the motion.

Commissioner Shaw expressed concern that the issue may not be resolved in a workshop. He explained that a polarization could occur and it would effect movement in the TAC and the council while other issues are still on the table.

Commissioner Richardson requested that a facilitator be present at the workshop.

Chairman Rodriguez encouraged Commissioners to attend and asked if a date had been scheduled.

Commissioner Richardson stated that the date would appear on the July agenda.

Chairman Rodriguez confirmed with Commissioner Richardson that a workshop would be appropriate.

Commissioner Richardson stated that she had mixed feelings. She stated that she understood, like some other Commissioners, that it could polarize, and that it had already done so to a degree. She furthered that the Commissioners should go into the workshop with respect for other members and reflect that in every thought and comment so the entire committee could work together. Commissioner Richardson concluded her thoughts by confirming that if Commissioners would attend with those thoughts in mind, she could recommend a workshop.

Vote to approve the motion was unanimous. Motion carried.

SPECIAL OCCUPANCY TAC REPORT AND RECOMMENDATIONS

Commissioner Thorne presented the Special Occupancy TAC report and recommendations. (See *Special Occupancy TAC Report and Recommendations* Attachment.)

Commissioner Thorne entered a motion to approve Special Occupancy be limited to construction issues only and a meeting in Tallahassee. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Lipka entered a motion for the elevators section to remain in Special Occupancy. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

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

ENERGY TAC REPORT AND RECOMMENDATIONS

Commissioner Lipka presented the Energy TAC report and recommendations. (See *Energy TAC Report and Recommendations*

Attachment.)

Commissioner D'Andrea entered a motion to approve the committee's report. Commissioner Wiggins seconded the motion.

Commissioner Harris suggested that the presentation that was made to the Energy TAC be presented to the full Commission for verification that there is a problem with air handlers in the attic.

Chairman Rodriguez stated that he would entertain that suggestion.

Commissioner Lipka stated that the presentation was rather technical and that it wouldn't be helpful to the full Commission.

Commissioner Bassett recommended that the presentation appear as a report at the end of the study rather than just having the Energy TAC review it.

Commissioner Harris then stated that once the report is completed the presentation would give everyone a better understanding of the issue.

Vote to approve the motion was unanimous. Motion carried.

Commissioner Bassett suggested a motion to begin rulemaking procedures for the change to the Energy Code penalty for the air handlers in the attic.

Mr. Dixon stated that one of the Rule changes identified earlier were the modifications to the Florida Building Code to make it consistent with the law and with the terms and conditions of the settlement agreement with the two organizations, and changes to Chapter 4, and that it had already been voted on.

Chairman Rodriguez reviewed the balance of the agenda and directed the Commission to Mr. Blair for a review of the ranking sheets to be voted on by the Commission so the results could be heard at this meeting.

Commissioner Bassett asked if there was a date that the Code would be available on CD Rom.

Mr. Dixon replied that they would be available June 30.

Commissioner Shaw reminded the Commission that the Plumbing Association's convention would be approaching soon and asked when the course CD Roms and the documentation for the courses would be available and how.

Ms. Jones replied that the courses could be purchased over the Internet and the CDs would have the information on them. She stated that the first CD would contain three courses and the fourth, Building and Fire, would be sent by the end of May. She furthered that the individual provider would be responsible for having the information printed to give to the attendees.

Commissioner Shaw asked how the attendees receive the master copy and if there was a single fee to be paid for the CD.

Ms. Jones stated that it would be available on CD and that each provider would be charged \$25 for initial registration, \$103 for the CD, \$5 for government, and \$10 for non-government.

Mr. Shaw confirmed that each CEU credit issued would be for each course.

Mr. Blair explained the process of completing the ranking exercise.

BREAK

Chairman Rodriguez called for a 40-minute break at 11:10 am.

REVIEW RESULTS OF WORKPLAN TASKS PRIORITIZATION EXERCISE

Mr. Blair presented a facilitated review of the results of the prioritization exercise. (See *Facilitator's Report* Attachment.)

PRESENTATION TO JEAN EASOM

Commissioner Harris presented gifts on behalf of the Commission to Ms. Easom as she embarks on her retirement from Department of Community Affairs.

CONSIDERATION OF ACCESSIBILITY WAIVER APPLICATIONS

Ms. Butler explained her June 6, 2000 Memorandum dealing with disproportionate costs. She stated that the Federal Disproportionate Cost Exception could not be used to avoid the Duty to Provide Accessibility. She stated that Disproportionate Cost is a federal exception which applies when complying with a path of travel requirement. Ms. Butler furthered that when an alteration is made, it must be made so that the path of travel leading to the alteration is fully accessible including the restrooms, water fountains, and telephones along that path. She continued that the path of travel accessible to the extent that it is not disproportionate to the cost of the entire alteration. She then explained that Federal Disproportionate Cost is defined as disproportionate if it exceeds 20% of the cost of the overall alteration.

Ms. Butler stated that the only way to avoid providing vertical accessibility is by falling under one of the three exceptions set forth in Florida law which are: elevator pits, mechanical rooms, unoccupiable spaces, storage spaces that are not designed for human occupancy, and occupiable spaces in rooms that are not open to the public and are used for five or fewer people.

Ms. Butler continued that the only other option would be to come before the Commissioner and be granted a waiver. She then briefly reviewed the criteria for granting waivers.

Commissioner Kopczynski asked the Commission if they really understood the impact of that opinion to this Commission and to the state of Florida.

Commissioner Bassett commented that in the federal regulation 20% is used as a disproportionate cost. He stated that in Florida there are no guidelines as to what percentage is excessive then asked if that meant any percentage could be used.

Chairman Rodriguez replied that he didn't believe any percentage less than the federal regulation could be used.

Commissioner Richardson stated that part of the problem is that the state and federal don't always have the same triggers.

Commissioner Sanidas commented that he has found in his district that for most people asking for the waivers it's a self-imposed dilemma. He gave an example of people buying a two-story house and using it for commercial purposes then not wanting to provide access to the second floor.

Ms. Butler stated that it would be the Commission's decision in those instances as to whether to grant the waiver or not.

Commissioner Richardson stated that the Commission would have to look at the cost of the buildout in relation to providing the access. She furthered that other issues to be considered would be how open to the public the building is; i.e., a shopping mall would make a difference rather than whether it is just an office building.

Commissioner Wiggins revisited Mr. Bassett's issue of disproportionate cost by stating that it was not his understanding that the percentage of disproportionate cost could be different from the federal regulation. He furthered that it was his understanding that any remodeling would initiate the requirement for vertical accessibility regardless of the cost.

Commissioner Shaw stated that the cost then becomes a factor for the Commission to grant or deny a waiver.

Ms. Butler stressed that disproportionate cost could not be used to avoid vertical accessibility. She stated that disproportionate cost exception was still being used in relation to the federal path of travel requirement.

Commissioner Shaw sought clarification by stating that disproportionate cost is still reason for a waiver, however it may not be sent to the Commission as such, rather the Commission would review the application and if it is then determined that the cost to provide vertical accessibility was disproportionate to the cost of the project, the Commission could then grant a waiver based on disproportionate cost.

Ms. Butler concurred.

Commissioner Shaw suggested that an analysis of a certain building structure and include the cost of an elevator in that structure so

that the Commissioners would have an idea of what elevator costs are throughout the state in proportion to the structure.

Commissioner Quintana requested clarification regarding a change of use or occupancy, from residential to commercial, there is no cost consideration for the new use.

He asked whether alterations would be considered new construction when a building is being converted from residential to commercial, where vertical accessibility is concerned.

Mr. Dixon responded that it would depend on the alterations being made. He stated that if alterations were being made that would impact the accessibility or usability of space, then the alterations criteria would have to be applied. He furthered that the alterations criteria would refer back to the new construction criteria with certain exceptions due to technical infeasibility. Mr. Dixon also stated that the path of travel to the altered area would have to be upgraded to the federal level, at least, and the Florida vertical accessibility, which is full accessibility, would be required as well.

Commissioner Calpini interjected that on an alteration for the conversion from residential to commercial, it doesn't matter whether there is a particular amount of money spent, the fact is that the alterations section of the Code, which triggers vertical accessibility, must be complied with. He furthered that another issue is when a building is going from commercial to another occupancy in commercial, if no alterations are made, vertical accessibility is not triggered.

Commissioner Lipka made comment regarding Commissioner Shaw's concern stating that elevator installers will seek the highest price possible which creates a judgement issue on the part of the Commission. He then stated that the Commission has been making that judgement all along and that nothing has changed regarding that fact.

Commissioner Harris asked, considering the Commission's deliberation regarding an elevator or a chair lift, when a petitioner appeals to the Commission for a variance stating that an elevator would cost a certain amount of money, for example a 10,000 square foot restaurant with a mezzanine, if maximum occupancy numbers trigger requirements for a lift or an elevator.

Ms. Butler responded that either a lift or an elevator could be used according to vertical accessibility requirement.

Commissioner Kopczynski commented that it is important that the Commission really understand the issue being discussed. He stated that the ability of the local building official to screen the renovation projects based on disproportionate cost and vertical accessibility has been eliminated. He furthered that there is a considerable amount of renovation occurring in the state of Florida. Mr. Kopczynski continued by stating that if a building does not presently provide vertical accessibility, any type of alteration would trigger a variance appeal to the Commission which would result in halting renovations and alterations in the state of Florida with the Commission meeting excessively to make decisions on the appeals.

Commissioner Bassett suggested that the Commissioners should consider not using the term disproportionate cost when deciding on vertical accessibility waivers, rather, it would be financial hardship not having anything to do with the total cost of the project.

Commissioner Corn agreed with Commissioner Kopczynski's comments and asked whether the Commission would be initiating any sort of change with regard to the number of appeals that may be presented to the Commission.

Commissioner Browdy reminded the Commission that in the general council's report, the TAC recommended that disproportionate cost be reinstated into Florida law and correct the situation so that building officials could make that determination. He furthered that on page 2 of the report, it states "authorize local officials to apply the federal disproportionate cost exemption to Florida's specific requirements for vertical accessibility to all levels of a facility," with the response being, "the department was unable to obtain gubernatorial support for this legislative change, it is our understanding that the Building Owners and Managers Association and the International Council of Shopping Centers are separately seeking legislative clarification of this issue." Commissioner Browdy stated that the Commission was on record as trying to resolve this issue.

Commissioner Shaw expressed concern that the Commission is

starting to trigger the same type of issue as previously with churches and other issues, creating a situation which could result in adverse reactions if forced to go to the Legislature with an emergency appeal that no renovations were occurring in the state of Florida causing extreme financial impact to the state. He stated that legislation could result that would dramatically weaken the vertical accessibility laws which currently exist. Commissioner Shaw stated that he hopes the Commission could find some remedy so that an extreme situation would occur.

Chairman Rodriguez acknowledged Commissioner Shaw's concerns and concurred that it was a further argument of having these issues debated at the Commission level and consensus reached, and then having the Legislature and the Governor follow the Commission's recommendations. He stated, however, that there are some political consequences. Chairman Rodriguez stated that he appreciated Commissioner Browdy's clarification because the Commission had been on record with regard to this issue. He continued that the question that remains for the Commission is whether it will be feasible to hear all of the requests. Chairman Rodriguez expressed belief that the issues, especially with respect to cost, would be better handled on the local level. He furthered that if the Commission is not able to develop consensus on this issue, it will be like the air handler in the attic issue, the pendulum will keep swinging from extreme to extreme, which doesn't benefit anyone and is not good public policy. Chairman Rodriguez stated that the Commission is also concerned that the demand will not be met on this issue.

Commissioner Richardson asked if it might be possible to develop an impact statement that relates back to this opinion and get the go ahead to review this issue.

Chairman Rodriguez stated that what is important is that the advocates for accessibility in this issue would have to be convinced of Commissioner Shaw's statement that if it prevails, creating an enormous hardship on so many people, then the pendulum swings back the other way. He continued that the question before the Commission, as a consensus building group, is how do we do that so that it is politically possible to have a law in the books that protects accessibility and does not stop cold any renovation on any building.

Commissioner Bassett entered a motion for the TAC to present a

proposal to modify the law, rather reword so that building officials use it as a local waiver.

Mr. Johnny Long, representing P.V.A., approached the microphone to offer comment stating that the ADA has been around for about 11 years. He stated that during that 11 years, they had suffered many unenforced laws which had not been caused by the disabled community, rather, it was caused by people who chose to ignore it. Mr. Long continued that it was difficult to hear individuals during the Commission meeting, making attempts to circumvent the law. He furthered that when he visits a doctor's office which is on the second floor, the doctor doesn't come down to the first floor to treat him. He stated that if that doctor is the only doctor in the HMO list, then how would he be able to see that doctor if not for vertical accessibility. Mr. Long stated that there is a disproportionate number of disabled individuals without jobs because most businesses are moving their offices to the second floors for security, so disabled people cannot be employed. He stressed that the issue at hand is about people, and they didn't want to stop construction, but the law has been on the books for 11 years.

Chairman Rodriguez reiterated Commissioner Bassett's point that the Commission is not trying to change the law, rather, if the Commission will be in the position to hear an inordinate number of cases, criteria may have to be developed and sent back to the local officials.

Commissioner Kopczynski concurred with Mr. Long with regard to enforcement of the ADA but requested clarification regarding the vertical accessibility issue, which is Florida law.

Linda McDurn, attorney, Gainesville, Florida, offered correction regarding comments made during this discussion. She stated that someone had commented that the Commission had a decision to be followed, then furthered that there is no decision, rather an opinion from the staff attorney interpreting the law. Ms. McDurn stated that the staff attorney's opinion does state that it will ultimately be up to a court to interpret the law if there is a problem. She continued that one gentleman's quote that "the law is the law and that vertical accessibility must be provided" is not correct. Ms. McDurn clarified that the provision in Florida Statutes states, "The proposed alteration or renovation of the building, structure, or facility will effect usability or accessibility to a degree that invokes the requirements of 303 of the Americans with

Disabilities Act.” Ms. McDurn suggested that the Act is invoked to a degree when the costs are less than 20%, less than the proportionate cost. She furthered that she did not see references “to a degree” in the June 3 memo. She stated that the wording is in the statute, statutory construction requires that the wording be complete from the entire statute. She suggested that the Commission may be able to obtain a further opinion, or get a Declaratory Statement from a court because it is obvious that the Commission is not comfortable with the interpretation that exists.

Chairman Rodriguez thanked Ms. McDurn for her comments then stated that the Commission was not uncomfortable with the interpretation by staff attorneys, rather, the Commission is not comfortable with the ability to be able to take on the responsibility this issue requires of the Commission. He continued by agreeing that it may be a good idea to consider a Declaratory Statement from a court.

Commissioner Richardson entered a motion to request a Declaratory Statement from court. Commissioner Bassett seconded the motion.

Commissioner Browdy interjected that there must be a suit filed in order to get a Declaratory Statement from a court.

Mr. Richmond stated that Declaratory judgements are available from a court in the event that an entity is in doubt as to the legal status. He stated that legal had reviewed the memo, which was a product of review by all three staff attorneys, and there is no doubt with regard to the propriety of the legal result. He furthered that if any of the applicants have doubt as to the propriety, they have the authority to get a Declaratory Judgement. Mr. Richmond continued that given the nature and controversies around the issue, there may be difficulty obtaining authorization to go to court on this issue. He asked that the Commission refrain from asking for that authority. He stated that there is the power in the community that if anyone wished to take this issue to court, they could.

Commissioner Corn stated that he would be against the motion and that he is comfortable with the information staff has provided. He further commented that all the Commission is asked to do is use judgement and stated that he is comfortable with using his judgement in each individual case.

Chairman Rodriguez offered clarification that the Commission was not uncomfortable with the burden of judgement, rather the numbers which may be overwhelming.

Vote against the motion was unanimous. Motion failed.

Commissioner Bassett entered a motion to table discussion of the Declaratory Statement issue and return to the agenda. Commissioner Shaw seconded the motion. Vote to return to the agenda was unanimous.

Commissioner Richardson presented the Accessibility Waiver Applications for consideration by the Commission.

Item #1: Removed - Building burned down.

Item #2: Flamingo Park of Commerce - Council recommended denial. Vote was unanimous.

Commissioner D'Andrea asked when the original renovation was done in 1997 stating that if it was done prior to October 1, 1997, it would be under the 1994 accessibility code which did not separate vertical accessibility from disproportionate cost. He then asked if the applicant showed proof that installing an elevator would have violated the 20% threshold, thus would not be required.

Hank Trent, Architect, appealed to the Commission stating that the project had been submitted by the chief building official, the building department, etc., and was reviewed and approved and constructed. He stated that the construction at that time was only 1,960 square feet. Mr. Trent continued that the waiver denial was based on the architect not providing an elevator in the warehouse or the industrial building, which was not required. He furthered that the council felt that the architect was discriminating against the handicapped, which he resented and denied. Mr. Trent stated that as an architect, he has clients and has to work for those clients, and the clients make the final decisions. He stated that to locate an elevator in a shallow building of some 23,900 square feet is impossible. Mr. Trent stated that he stood behind all the data in the application stating that the technical costs of installing an elevator did not include the cost of tearing up the floor, providing the pits, tearing large sections out of the roof for the piston to be installed, and in the final analysis the cost of installing an elevator was 80% of the total

construction cost and thus is the basis for this submittal.

Commissioner Lipka expressed confusion upon seeing a space of 23,900 square feet originally built and should have had accessibility.

Mr. Trent disagreed stating that the original construction was only 1,960 square feet.

Commissioner Bassett offered clarification that the original building was built as a warehouse with no second floor. The second floor was built for 1,900 square feet and this is for an additional 2,000 square feet, a second floor in one of the bays, of this large warehouse.

Commissioner Kopczynski expressed confusion regarding times and dates and asked when the building was originally built.

Mr. Trent replied that while he didn't have the data with him but the time the plans were completed was in the early part of 1997 but the exact day the permit was issued he was not certain.

Commissioner Corn stated he was lost as to which provision of the law they were seeking the waiver.

Mr. Trent replied that in accordance with the application with request for waiver, reason 8, identifying the area under bay 6, second floor addition, occupied by a tenant with a long term lease, and no adjacent unleaseable area is available adjacent to bay 7, and bay 7 cannot be changed without completely destroying the entire operation.

Commissioner Lipka asked if it was going to become a 4,000 square foot second floor.

Mr. Trent stated that it would be specifically 3,960 square feet and the area being discussed is included for storage facilities to the adjacent areas that already exist. He stated that it was the developer's area of the building.

Commissioner Bassett motioned to approve the waiver based on financial hardship and the fact that it's a private office. Commissioner Wiggins seconded the motion.

Commissioner Shaw stated that based on information he had today,

it will now take overwhelming evidence of financial hardship to vote in favor of an elevator. He furthered that if he couldn't get overwhelming evidence, the law would not allow him to provide for that.

Commissioner Browdy offered clarification by stating that there is clearly economic feasibility that enters into the law, which has been used in the past as hardship. He stated that hardship does not necessarily mean that the applicant could not afford it, rather that the cost of the improvement versus the cost of the accessibility factor makes the project unfeasible or renders it a financial hardship as opposed to a hardship that deals with the owner's or the petitioner's ability to afford. Commissioner Browdy stated that a financial statement was not necessary to meet the threshold to grant a waiver under the terms of hardship.

Commissioner Bassett stated that another reason he felt it was a financial hardship was that the owner had no option to not build. He stated the project had been given a permit and had been built, then at the end the vertical accessibility question came up.

Vote in favor of the motion resulted in 13; with 7 against. Motion carried.

Item #3 - Ed Tillman Auto Sales - Council moved to grant the waiver with the condition that all the office spaces are downstairs and the warehouse storage only was on the second floor, which was agreeable with the applicant. Vote was unanimous in favor of the motion.

Commissioner Wiggins motioned for approval of the waiver with conditions. Commissioner D'Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Item #4 - Sun Center East, Gainesville, FL - Council recommended to deny the waiver. Vote was 5 in favor of the motion to deny, one opposed.

Ken McGurn, General Contractor, appealed to the Commission requesting a waiver based on financial hardship. Mr. McGurn stated that all permits had been obtained and the building is in full compliance. Mr. McGurn stated that their's is a substantial financial hardship under paragraph 6, subsection D. He furthered that in their application they had

asked the architect to complete the form stating that he does not believe it is feasible to install an elevator. He continued that the application included a statement from Doug Murdock, building official, recommending a waiver. Mr. McGurn stated that also attached were some costs for installing a two-story elevator, which exceeds \$30 to \$40,000.

Commissioner Wiggins observed that the application indicated 75% complete and asked Mr. McGurn the expected date of completion.

Mr. McGurn stated that no work has been done.

Commissioner Wiggins reiterated that the application states that the work is 75% complete and asked if that was not correct.

Mr. McGurn stated that there was no statement on his application indicating that the project was 75% complete. The building itself is a completed building.

Commissioner Wiggins asked Mr. McGurn if he had received a copy of the building requirements and saw the requirement for vertical accessibility.

Mr. McGurn responded by stating that they were involved in communication with the building department on a number of projects and the vertical accessibility came up in another situation.

Commissioner Corn motioned approval of the waiver. Commissioner Bassett seconded the motion. Vote to approve resulted in 18 in favor; 2 against. Motion carried.

Item #5 - 249 West University, Gainesville, FL - Council recommended to deny the waiver based on insufficient documentation regarding the cost of an elevator. Vote to deny was unanimous.

Mr. McGurn appealed again to the Commission stating that the building being discussed is in full compliance, has all permits, and has met all ADA requirements for the first floor. He stated that the project entails removing walls with the total cost being less than \$10,000. Mr. McGurn stated that there was no work being done on the second floor and that no work has been done on the building at this point.

Chairman Rodriguez asked about the total square feet and the occupancy on the second floor.

Mr. McGurn stated that the second floor is 2,700 square feet, and 7,000 on the first floor, then another 3,000 in a separate tent. He added that the walls will be removed from the first floor, the 7,000 square feet floor. Mr. McGurn stated that the second floor is occupied by a radio station with less than 10 employees.

Commissioner Browdy stated that granting the waiver for vertical accessibility relieves the petitioner from the responsibility to make the second floor restrooms accessible unless a separate waiver is applied for. He stated that even if a waiver was granted for vertical accessibility on the second floor, the Code would still require that the restrooms on that floor be made accessible.

Mary Katherine Smith stated that if the restrooms served the area that was being altered that would be correct, however, since they are on an existing second floor and no work is being done on that floor, there's nothing to trigger vertical accessibility.

Mr. McGurn assured that nothing was being done to the second floor and that all the restrooms are federally compliant.

Commissioner Corn entered a motion to approve the waiver. Commissioner Wiggins seconded the motion. Vote to approve the motion resulted in 18 in favor; 2 against. Motion carried.

Item #6 - Copier Depot, Miami, FL - Council recommended denial.

Commissioner Sanidas entered a motion to deny. Commissioner Wiggins seconded the motion.

Commissioner Browdy asked Commissioner Richardson how the applicant responded when they were confronted with the requirement for documentation on the cost of vertical accessibility.

Commissioner Richardson replied that the applicant was using their best judgement on what they thought it would cost.

Commissioner Browdy asked if the Council considered deferring it

until documentation could be provided.

Commissioner Richardson replied that it was not discussed by the Council members.

Commissioner Kopczynski stated that there was a statement of cost estimates from the architect of \$65,000 which clearly exceeds the \$8,000 for the renovation.

Vote to deny the waiver resulted in 6 in favor of denying; 14 voted against the denial.

Commissioner Browdy moved to defer action until the next Code Accessibility meeting. Commissioner Wiggins seconded the motion.

Commissioner Bassett stated that the building official had not made his recommendation.

Commissioner Corn stated that he assumed that the reason for deferring was some sort of more formal cost.

Ms. Butler stated that it is in the instructions for application.

Commissioner Corn stated that an elevator would not be installed for less than \$20 - \$40,000 and it seems that the Commission is postponing the inevitable.

Commissioner D'Andrea expressed agreement with Commissioner Corn but stated that the Commission had gone through a lot of pain to get the application in a format which specifically requires someone to do something and they're asking for a waiver. He stated he would vote for approval because he knows what the costs would be. He then stated that the applicant should put more effort into the waiver application process by providing the documentation requested.

Vote to approve deferring action on the waiver resulted in 18 in favor; 2 against. Motion to defer carried.

Commissioner Richardson stated that concludes the Accessibility Waiver Application review.

Commissioner Shaw stated that one of the things that the Commission, Accessibility TAC, and the Accessibility Council needs to address is that all of the recommendations were for denial.

SUMMARY AND REVIEW OF MEETING WORK PRODUCTS

Chairman Rodriguez stated that Public Comment was considered and there were no speakers. He stated that the Commission had considered the Chair's discussion issues and recommendations and had a legislative session key issues overview by legal, and had reviewed the workplan and prioritized the tasks. He furthered that the Commission had just considered and decided on Accessibility Waiver Applications and considered the Education, Product Approval, Rules and Procedures, Manufactured/Prototype Buildings, Accessibility, Special Occupancy, and Energy. Chairman Rodriguez stated that the Commission had accepted those reports and reviewed the workplan prioritization ranking exercise and have reviewed the assignments and issues for next month. He announced that there is a public workshop following the plenary session today.

Pamela Door approached the microphone and stated that she would be replacing Mr. Warren on the Council. She stated she appreciated Commissioner Shaw's comment and stated that there needed to be better communication between the Commission and the Council. She furthered that there needed to be effective communication.

REVIEW COMMITTEE ASSIGNMENTS AND ISSUES FOR MAY'S COMMISSION MEETING

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

Commissioner Shaw entered a motion that TAC members be provided the portion of the Code they dealt with. Commissioner Harris seconded the motion.

Vote to approve the motion was unanimous. Motion carried.

ADJOURN PLENARY

Chairman Rodriguez called for adjournment at 12:30 pm.