

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

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JEB BUSH
Governor

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Secretary

**BOARD MEETING
OF THE
FLORIDA BUILDING COMMISSION**

**PLENARY SESSION
July 9 - 11, 2001**

PENDING APPROVAL

The meeting of the Florida Building Commission was called to order by Chairman Raul Rodriguez at 8:30 a.m., on Tuesday, July 10, 2001, at the Rosen Plaza Hotel, Orlando, Florida.

Commission Members Present:

Raul Rodriguez, Chairman

Dan Shaw

Peggy Harris

Sam Walthour

Michael McCombs

Craig Parrino

George Wiggins

John Calpini

Leonard Lipka

Christ Sanidas

Karl Thorne

Richard Browdy

Nick D'Andrea

Stephen Corn

Medard Kopczynski

Jim Mehlretter

Bob Leonard

Ed Carson

Stephen Bassett

Dr. Diana Richardson

Commission Members Absent:

Suzanne Marshall

Francisco Quintana

Others Present:

Al Bragg, Legal Advisor

Kathy Butler, Legal Advisor

Jim Richmond, Legal Advisor

Rick Dixon, Executive Director

Jeff Blair, FCRC

Ila Jones, Program Administrator

Doug Murdock, Adjunct Member

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CONSIDERATION OF ACCESSIBILITY WAIVER APPLICATIONS

Chairman Rodriguez welcomed the Commission members, Accessibility Council members, and gallery then explained that the meeting was the first joint Commission and Council meeting. He stated that the Commission and the Council were trying to work together on the waiver applications and if the Commission and Council votes are different on a particular application request, there is no lack of confidence or disrespect. He furthered that accessibility was a matter of law and that no one was trying to short cut the process of the waiver applications.

Chairman Rodriguez introduced to the Commission Al Bragg, Senior Attorney with the Department of Community Affairs, to explain the criteria that has been established by law for considering and granting waivers and modifications.

Mr. Bragg stated that he had the opportunity to sit with the Council and TAC thus could make his comments to the Commission. He explained that everyone would like to see agreement between the Council and the Commission, but that is an ideal that has never been achieved. He furthered that the two could come closer to that reality if it is made certain that the Council and the Commission are applying the same criteria to every application for waiver.

Mr. Bragg continued that the language of Section 553.512 explains the criteria. He then stated that the first issue is to determine whether a hardship is present. Mr. Bragg expressed that in determining whether a hardship exists, neither the Council nor the Commission was tied to a dictionary definition, rather, an element of subjectivity and substantial discretion. He explained further that once it has been determined that there is no hardship present, then there is no entitlement to a waiver. Mr. Bragg continued that if there has been a hardship determined, then it must be decided whether the hardship meets any one or more of the three additional tests listed in Section 553.512: Is the hardship unnecessary? Is it unreasonable? Or is it extreme? He stated that if the answer to any of those questions is yes, then the waiver should be allowed.

Mr. Bragg reiterated that there is no dictionary definition in deciding the meaning of unnecessary, unreasonable, or extreme, rather the Commission and Council members must use their life experience and judgement, professional and personal, to make that determination. He explained that the fact that the Council and Commission may not agree on

a particular waiver does not denote the rightness or wrongness of the decision.

Chairman Rodriguez introduced Bunny Armstrong, and congratulated her on being the new Council Chair. He then called on Ms. Armstrong to present the waiver application requests and the Council's recommendations.

Ms. Armstrong began with #9, Little River Daycare. The Council voted unanimously to grant the waiver.

Commissioner Wiggins motioned to approve. Commissioner Shaw seconded the motion. Vote to approve was unanimous. Motion carried.

Commissioner Shaw asked if there was a consent agenda.

Ms. Butler responded that #9 was the first of the consent agenda.

Commissioner Richardson commented that due to the nature of the meeting, perhaps taking each consent agenda item individually would be appropriate.

Ms. Armstrong presented #13, the Denunsio Building. Council recommended dismissal on the first part of the waiver, then voted to grant the second part of the waiver.

Commissioner Wiggins motioned to approve granting the waiver. Commissioner Calpini seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Richardson moved to dismiss for lack of jurisdiction. Commissioner Wiggins seconded the motion. Vote to approve the motion to dismiss was unanimous. Motion carried.

Ms. Armstrong presented #15, Dixie Stampeed. Council voted to grant the waiver.

Commissioner Wiggins moved approval. Commissioner Calpini seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Ms. Armstrong presented #4, Tropicana Juice Processing Facility. Council recommended to grant the waiver with conditions that only five or fewer employees would be allowed into the area and that the area would not be open to the public.

Commissioner Walthour motioned to approve the recommendation. Commissioner Wiggins seconded the motion.

Commissioner Browdy suggested that if the conditions mentioned exist, then a waiver would not be required. He then requested that legal advise whether it would be appropriate to condition a waiver to comply with the Code when there was no waiver needed.

Ms. Butler agreed that that was the exception in the statute. She stated that building officials would often send those requests for waivers to the Commission and that the Commission in the past had voted to grant the waivers.

Commissioner Browdy suggested that the Commission encourage building officials to read the Code and to use the exceptions only when they apply. He further stated that the only reason he thought the waiver should granted is if in the original petition the petitioner did not convey to the building official that the space would only be occupied by five people or less and that it wouldn't have public access. Mr. Browdy stated that the load should be minimized on the Commission and the Council when those conditions are met and that the building officials should use the exceptions that are in the Code. He then suggested that rather than granting the waiver, the Commission write a letter to the building official indicating that a waiver is not necessary provided that the conditions are met.

Commissioner Sanidas stated that the building officials send the conditions to the Commission in order to get them on paper and binding. He continued that if the conditions were merely written on the permit, they would be lost, and bringing them before the Commission locks the conditions in.

Chairman Rodriguez stated that he has a tremendous amount of respect for building officials but people were sometimes so shy about taking on responsibility and making decisions which is symptomatic of our culture, thus pushing all the decisions upstairs. Chairman Rodriguez agreed with Commissioner Browdy that the Commission's time is better spent on issues that are not clear. He stated that a message needed to be sent to building officials that it's okay to make decisions.

Commissioner Leonard, while in favor of granting the waiver, expressed doubt about only five people occupying the break room area when, according to the plan, there are twelve chairs around the table.

Commissioner Corn agreed with Commissioner Browdy and stated

that the building officials should make the decision and establish locally how it would be set up. He furthered that while he doesn't want to commit staff to more work, perhaps a staff member could have recognized this request then consulted the local building official to resolve the request without ever bringing it before the Commission.

Ms. Armstrong stated that the Council also noticed the twelve chairs and made suggestions in order to accommodate their employees. She then stated that the Council made its recommendation for a conditional waiver to ensure that only five people would occupy the area. Ms. Armstrong expressed concern over how the condition would be enforced.

Ms. Butler stated that Mr. Bragg advised her that the Final Order could be worded in such a way that to the extent that a waiver is necessary, it would be subject to the condition that five or less people and not open to the public.

Mr. Bragg stated that this issue had been raised before and the Commission, acting on the need to both educate the building official and to make sure that the conditions of the waiver were observed, worded it the way it is to communicate to the building official the exemption in the Code.

Mr. Bassett commented that he, too, had a difficult time with only five people occupying the area when, in fact there are twelve chairs as well as twenty-six lockers in the area. He stated that he doesn't see how a waiver could be granted even if the owner confirmed that only five employees would occupy the space at any given time.

Neil Melick interjected that the applicant described to the Council how the employee shifts would work where there would actually only be two employees on the floor, and one shift supervisor, at any given time. He stated that the applicant also described that occasionally maintenance would come in to make repairs as necessary. Mr. Melick continued that during the day, there could be more than five people in and out of the building, but not more than five occupying the space under discussion, which is why the Council decided to condition the waiver based on no more than five occupants. Mr. Melick furthered that he could see how a building official, based on the plans alone, would send the request to the Commission. He then stated that the Council felt comfortable with a conditional waiver after hearing the applicant described the use of space.

Commissioner Wiggins commented that as a building official and a plans examiner, when he reviews the plan under discussion with twelve

seats and multiple lockers, it would require vertical accessibility. He continued that to achieve otherwise would require a waiver. Commissioner Wiggins described that it was up to the owner and the designer to meet the law, and that they provide a plan that shows occupancy of five or less, then it would be approved at the building department level as not requiring vertical accessibility. Commissioner Wiggins furthered by stating that it is a totally unenforceable provision to put a condition that no more than five people occupy a space. He stated that once a C.O. is issued, the building official doesn't go back to check the facility.

Pam Dorwarth, Council member, stated that the area is a very small area within a huge plant. She stated that only three people would be working in that area adding calcium to the juice being produced. She described that throughout the plant, there are many break areas as well as bathrooms and there would be no cause for any people other than those working in the immediate area to use the break room.

Johnny Long stated that the Council was never informed that they had the authority to request amendments to the drawings or the way in which they wish to use their buildings. He furthered that the Council was instructed that the applicant could design the building in any way they wished to use it as long as it was lawful.

Nick Psaltis, with the Dennis Group, and Design Architect for the project, offered comment on behalf of Tropicana stating that the building in question is a 10,000 square feet processing plant for manufacturing juice and adding calcium to the product. He stated that the amenities that were added to the building were for the convenience of the people who would be using the building. He furthered that throughout the 275 acre facility, there were many accessible break areas and locker rooms, however they are remote to this area. He described the three shifts that would be operating throughout the day. Mr. Psaltis continued that the reason for twelve seats was to provide room so that the employees wouldn't all have to sit at one table, to have their own space. He then stated that the lockers were not even to be installed during the first phase of construction.

Commissioner Richardson asked the applicant how many people were on any given shift and where would they have lunch.

Mr. Psaltis replied that there were two operators and one supervisor on one shift. He stated that on the first floor there was a control room and that the operators would stay on the first floor and monitor the equipment via CRTs.

Commissioner Bassett asked about steps entering into the area and if there were other means of getting into the building.

Mr. Psaltis responded that there are also two ramps into the building.

Commissioner Calpini asked what had been decided about Commissioner Browdy's comments.

Chairman Rodriguez replied that the recommendation from legal was to make a motion stating that even though there was exception, "to the degree that a waiver is necessary", it would be granted. He called on Mr. Bragg to restate the recommendation.

Mr. Bragg stated that usually a Final Order would be entered citing the information for the building official that under the Code, no waiver would be needed based on the representation by the applicant concerning the number of occupants, that to the extent the waiver is needed, it is granted.

Commissioner Calpini recommended that staff take a closer look at the technical options at the local level and to make sure that building officials are aware that they can exercise their options.

Chairman Rodriguez asked if staff could send a request back to the building official.

Mary Kathryn Smith commented that local building officials are frequently calling the office requesting assistance regarding applications and the Code. She stated that they are aware that the answers from DCA are advisory and carry no enforcement authority. She continued that even though it would appear the conditions exist that would allow an exception to be used.

Commissioner Walthour asked if it would be appropriate to ask the applicant to post the occupant load for the space on the mezzanine, stating that the maximum occupancy is five.

Ms. Butler stated that it could be used as a condition of the waiver.

Commissioner Shaw motioned to deny the waiver. Commissioner

McCombs seconded the motion.

Commissioner Richardson asked if applicants who had been asked to redraw their plans had to come back to the Commission to resubmit.

Commissioner Calpini asked Commissioner Shaw what would be acceptable with regard to the plan.

Commissioner Shaw stated that the testimony he had heard today stated that the area was open to the entire plant if they were close to that break room and the lockers indicate that there would be multiple people using the locker room. He stated that his position that the break room should be reconfigured to a first floor level or provide vertical accessibility.

Mr. Psaltis interjected that not granting the waiver may force Tropicana to delete the break room and the locker room from the mezzanine making it less convenient for their employees.

Commissioner Richardson stated that the plan should be redrawn and submitted at a later time.

Commissioner Corn commented that the purpose of the Commission meeting was to have clarifications. He stated that the Commission should not disregard the testimony of the applicant and furthered that he could not support the motion to deny the waiver.

Commissioner Harris stated that if the twelve lockers were the issue, then divide the twelve by four people per shift, giving the plant the option of hiring one more person. She then offered her support in favor of the applicant.

Chairman Rodriguez called for a vote on the motion to deny. 8 in favor of denial; 10 against denying the waiver. Motion failed.

Commissioner Bassett motioned to grant the waiver with the conditions established by the Council. Commissioner Browdy seconded the motion. Vote to approve the motion resulted in 13 in favor of granting the waiver; and 4 against. Motion carried.

Commissioner Bassett asked if the manufacturer, in an industrial application such as Tropicana's, can state in their job requirements that due to safety concerns a handicapped person would not be appropriate.

Commissioner Richardson responded that an employer could not

word it exactly like Commissioner Bassett, however they could suggest that the person could not completely fulfill the requirements of the job. She furthered that based on a job description requiring physical abilities, they would have to hire a person, with or without reasonable accommodations, who could meet the job requirements.

Mr. Long stated that according to ADA the employer would be required to modify the worksite if the person could meet the requirements and need a modification. He furthered that for an employer to state that they would not hire a handicapped individual, could place that employer in jeopardy of discriminating.

Ms. Armstrong presented #8, the 1878 Tavern & Grille. Council voted to grant with the condition that within eighteen months the applicant provides vertical accessibility.

Commissioner Wiggins motioned to approve the Council's recommendation to grant the waiver. Commissioner Shaw seconded the motion.

Commissioner Richardson suggested that Ms. Armstrong elaborate on the hardship the applicant had expressed.

Ms. Armstrong stated that the Council asked the applicant what he would do if the waiver was denied and he replied that he would go to the bank and get more money. She then stated that the cost of the project is \$40,000 and the lift was \$12,000, and the applicant agreed that he could manage it. Ms. Armstrong furthered that if the applicant states that vertical accessibility could be accomplished, then the hardship does not exist.

Commissioner Thorne asked how many people are on the second level, he has no drawings accompanying his application.

Mr. Long stated that the applicant had expressed an extreme hardship situation due to his wife having serious health problems which resulted in depleting a great deal of his funding. He continued that the Council was trying to be compassionate by allowing him more time to meet the requirements. Mr. Long also stated that the applicant agreed to providing vertical accessibility within eighteen months without question.

Commissioner Harris asked if the application would be listed under historical building. She stated that it was not noted that it was listed, however the building was listed as being built in 1878.

Chairman Rodriguez responded by stating that it was not listed on the national or local historical registers.

Commissioner Wiggins stated that he had also noticed that the building was located in an historic district and was built in the 1800's. He asked if the applicant had applied to the Department of State for a declaration for an historic building.

Commissioner Leonard asked if the added unisex bathroom is accessible.

Chairman Rodriguez called for a vote to approve the motion to grant the waiver with conditions. 16 in favor; 2 opposed. Motion carried.

Ms. Armstrong presented #10, Main Street Pier Rebuild. Council recommended granting a two-year waiver.

Commissioner Wiggins motioned to approve the Council's recommendation to grant the waiver. Commissioner Shaw seconded the motion.

Commissioner Wiggins sought further clarification that the pier is a declared historic structure and can go through the Department of State and is not required to come before the Commission.

Ms. Butler responded that the applicant could do that and that they could obtain a letter from the state Historic Preservation Council.

Commissioner Wiggins asked why the applicant would not have already appealed to the Historic Preservation Council when the structure is in fact historic.

Ms. Butler replied that she did not have the answer to that question.

Mr. Long stated that damage had been caused by a hurricane and the work is already in progress by the owner. He then stated that there was a letter from the developer along with the application stating that they would make the pier totally accessible as per ADA. He expressed that if too much work was done on the structure, the historical significance would be totally lost.

Mr. Melick stated that the applicant wanted for business purposes to make the accommodations. He continued that the applicant did not wish to be granted a waiver to avoid the accommodations, rather, just an extension of time. He indicated that the applicant thought it was good

business practices to do it and the city would prefer it as well.

Ms. Armstrong addressed again the historical aspect of the pier. She stated that the applicant indicated that the pier had been damaged several times by hurricanes and rebuilt so that the historical integrity has already been compromised.

Ms. Smyth responded to Commissioner Wiggins question regarding the historical nature of the structure. She stated that regardless of whether or not it was designated as an historical building, it would still be required to provide an accessible entrance, which could be achieved by the construction of the ramp. Ms. Smyth continued that the project was further complicated by being seaward with coastal construction control line requiring permits and permission to construct a structure, and that it is also in a designated turtle nesting area, meaning there is a limited amount of time in which construction could be accomplished. She concluded by stating that based on all of the information, and the factors involved with the building, the Council thought two years was a reasonable amount of time.

Chairman Rodriguez called for a vote. 17 in favor of approval. 1 opposed. Motion carried.

Ms. Armstrong presented #11, St. John's Viennese School. Council recommended granting the waiver based on the use of ADAAG guidelines.

Commissioner Shaw requested a status on the "kiddie code."

Commissioner Richardson replied that currently there are proposed guidelines and until they are formally adopted by the Department of Justice (DOJ), the Council recommends using the proposed guidelines. She continued that she is confused about the state department using a kiddie code which is different from the proposed guidelines, and which one should actually be observed.

Mr. Dixon clarified by stating that the Florida law authorizes the Commission to update the Accessibility Code when DOJ has updated the ADAAG. He stated that until the children's guidelines are adopted by DOJ, they cannot be added to the Florida Accessibility Code.

Commissioner Richardson stated that there are two different codes available, the kiddie code and what the Commission has been using for recommendations. She then asked if that would change when the new Code is put into effect.

Mr. Dixon responded by stating that the Governor and Cabinet approved the children's guidelines for public schools, which is the only occupancy for which those guidelines are mandatory. He furthered that the Council and the Commission had pointed to those requirements for public schools as guidelines to be used for children's facilities in the private sector. Mr. Dixon then stated that either one is a guidance that provides relief from applying the adult-sized configurations to the facilities.

Commissioner Richardson asked if the kiddie code is solely used by the school system, then how could the Council recommend to use the proposed ADAAG children's guidelines.

Mr. Dixon responded by stating that neither is mandatory for private sector schools, so either would be appropriate to recommend.

Commissioner Corn moved to approve the Council's recommendations. Commissioner Shaw seconded the motion. Vote to approve was unanimous. Motion carried.

Ms. Armstrong presented #14, Parrot Jungle and Gardens. She stated that this was a three part waiver. The waiver involves a serpentarium, the Parrot Bowl, and the Jungle Theatre.

Ms. Armstrong stated that the Council recommended granting the waiver for the serpentarium with conditions.

Commissioner Richardson motioned to approve the Council's recommendation to grant the waiver with conditions. Commissioner Wiggins seconded the motion. Vote to approve was unanimous. Motion carried.

Council recommended to grant the waiver for the Parrot Bowl.

Commissioner Wiggins moved to approve the Council's recommendation to grant. Commissioner Corn seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Larry Schneider, representing Parrot Jungle and Gardens, provided an explanation for the request for waiver for the Jungle Theatre using overhead visuals.

Chairman Rodriguez asked Mr. Schneider if the correct motion should be to grant the waiver inasmuch as it may be necessary because

under the Code their request is allowed.

Mr. Schneider offered correction by stating that under the Code they were not allowed to do what they were requesting in the waiver because under the Code it is a requirement to provide vertical accessibility to every level of seating.

Chairman Rodriguez asked about the statement referring to the ability to group the accessible seating.

Mr. Schneider responded by stating that under the Code they were allowed to group the accessible bleacher seating as long as it is greater than five percent. He explained that according to Florida law, it is a requirement to provide vertical accessibility to every level.

Chairman Rodriguez then asked what was the basis of the hardship.

Mr. Schneider stated that the hardship is that they cannot provide access to every level, explaining that it was a financial hardship to provide the number of seating that is being proposed, and to meet the requirements from an accessible route to accessible seating would reduce all seating. Mr. Schneider furthered that it would be impossible to construct bleacher/stadium/theatre seating to literally comply with the Florida law.

Mr. Long stated that when the Council heard the application they were not given sufficient information from the presenter to justify why they could not provide accessible seating to the middle section. He furthered that the Council was told that there was \$47 million being spent and they did not see that as a financial hardship. Mr. Long also stated that the Council was told that the applicants simply did not desire to provide accessible seating to the middle. He stated that he could not see any reason within the law to grant the waiver.

Commissioner Shaw stated that there had been other applications dealing with this type of bleacher seating and that technical and feasibility factors come into play. He furthered that he understood Mr. Schneider elude to structures underneath which would prevent accessibility. He then asked if the Council had considered the technical merits of the installation and found that there was a technical way it could be accomplished.

Ms. Armstrong responded that the Council had not because Mr. Schneider had said that anything was possible. She continued that at this point, they could redesign their plan to provide disbursement.

Commissioner Wiggins asked how many accessible locations are provided on the upper and lower levels, and also what is the total seating capacity.

Mr. Schneider replied that there are six on the lower level and eight on the upper level. He also stated that the total seating capacity is 800.

Commissioner Thorne asked the height from the first level to the top level.

Mr. Schneider replied that eighteen feet is the gray differential, and that the middle level would have a differential of nine feet. He furthered that due to the salt water environment, a ramp would be approximately 140 feet, as well as maintenance free. He continued that if a lift was provided, it would be for a total of four seats only. Mr. Schneider explained that it had been acknowledged in the past that with bleacher seating, it is impossible to provide accessible seating to every row, rather it was a matter of which row for which to provide the accessible seating.

Commissioner Thorne requested clarification that it would be a hardship to provide accessible seating to the middle section.

Mr. Schneider stated that it would be.

Mr. Long stated that in Mr. Schneider's application he shows an elevator which moves from the ground level to the top level. He asked why the elevator could not facilitate an opening in the middle section.

Mr. Schneider illustrated all of the seating which would be lost by providing access from the elevator.

Commissioner Leonard asked the distance of the proposed four seats in the middle to the performance area.

Mr. Schneider replied that it was approximately forty-five feet away and nine feet above.

Commissioner Richardson asked Mr. Schneider if a lift could be put in conjunction to the vomitory(?).

Mr. Schneider explained that it would not be possible because the lift would actually be higher than the seating behind it.

Commissioner Richardson confirmed that the seating behind the

shaft would be blocked. She then asked if the waiver was not granted, how the applicant would go about providing access to the middle section.

Mr. Schneider replied that he did not know.

Commissioner Wiggins asked what waivers had been granted and where was seating placed in an identical scenario concerning stadium theatres.

Chairman Rodriguez asked if anyone could answer. He then asked Ms. Armstrong the vote count regarding granting the waiver.

Ms. Armstrong responded by stating that the Council voted to defer the waiver to come before the Commission. She explained that the Council discussed providing accessibility to the middle section and that they did not find it technically infeasible because the project is still in the planning stages. She furthered that the Council found it difficult to find it a financial hardship because the project is a \$47 million project still under design.

Chairman Rodriguez stated that legal had advised that a recommendation must be made by the Council before the Commission can vote on the waiver.

Mr. Melick made a motion to deny the waiver for the Jungle Theatre based on no legitimate hardship and the fact that another theatre in the same park was able to accommodate on all levels. Mr. Long seconded the motion. Ms. Armstrong called for a Council vote. Vote to approve the motion to deny resulted in 5 in favor of the motion, and 1 opposed. Motion carried.

Commissioner Wiggins stated that he never received an answer to his question. He stated that the typical disbursement that had been granted to theatres was by sloped access to the middle portion of theatres. He asked if it would be appropriate to have sloped or ramped access to the middle portion of one size of this theatre.

Mr. Schneider responded by stating that theatres provided ramped access to both sides by sloping up from the entry door to a cross aisle with seating at that level and on a lower level. He furthered that most theatres they researched were for less than 300 total seating capacity. Mr. Schneider continued that for larger scale theatres, an elevator would move to the upper level. He stated that the issue in this case is if it is

acceptable to have the accessible seating in the places indicated, and if not, how many rows up would constitute the center section.

Commissioner Wiggins motioned approval of the waiver with conditions. Commissioner Browdy seconded the motion.

Commissioner Shaw asked if the motion would be supported by the Council.

Ms. Armstrong agreed.

Chairman Rodriguez called for a vote. Vote to approve the motion resulted in 13 in favor, 5 opposed. Motion carried.

BREAK

Chairman Rodriguez called for a five minute break.

CONTINUATION OF CONSIDERATION OF ACCESSIBILITY WAIVER APPLICATIONS

Ms. Armstrong presented #16, Grillworks. The Council recommended granting the provision for vertical accessibility for two years provided that during that time there is no change of occupancy in the restaurant.

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

Ms. Armstrong presented the deferrals beginning with #3, Bethune Cookman Performing Arts Theatre. The Council deferred the recommendation seeking clarification on the site lines into the theatre as well as aisle seating. She then called on the applicants to explain their application request.

Charlie Brown, Architect, and Scott Eisman, Architect, were present to discuss the request. Mr. Brown described the auditorium that is planned for 2,400 seats with their plan and calculation for accessibility based on 2,500 seats. He stated that they are requesting a waiver from the requirement to have vertical access from every level of the building. Mr. Brown explained that the design of the auditorium provides for 29 accessible seats, which is four more than is required by ADAAG. He

furthered that every lower and upper orchestra level, as well as a box seating space has been designed for accessibility. He then explained that a determined number of aisle seats will have removable armrests so that they would also be accessible, making the number of accessible seating much more than Florida law requires.

Commissioner Richardson inquired about the types of performances in the auditorium.

Mr. Brown replied that there would be symphony performances and other musical performances.

Commissioner Richardson stated that it would make a difference what type of performances would be held in the auditorium and could effect line of sight for the accessible seats. She furthered that means of egress in and out of the seats is also a factor with the type of performance and possible breaks between performances.

Mr. Eisman (not audible)

Chairman Rodriguez clarified that the question is how many seats are at that level and what is the elevator capacity.

Mr. Eisman replied that there are four accessible seats at that level and that two wheelchair persons can occupy the elevator.

Commissioner Richardson that the elevators are very important when considering accessibility.

Chairman Rodriguez clarified that the question is how high is the stage with respect to the first row of seats.

Mr. Eisman replied that it is approximately four feet.

Commissioner asked what the angle of the line of sight would be from the seats.

Mr. Eisman replied that the line of sights from each level ranges from -19 degrees to 21 degrees.

Commissioner Richardson asked what the total capacity of the seating area is.

Mr. Eisman replied that they were designing it for 2,500.

Commissioner Richardson asked where the "suite spots" in the theatre would be.

Mr. Eisman replied that they would be anywhere in the forward orchestra section.

Commissioner Richardson asked how they would go about providing accessible seating in the suite spots.

Mr. Eisman responded by pointing out an entire row which is accessible and is part of the suite spot.

Commissioner Richardson asked how many rows were between the front and the accessible row.

Mr. Eisman replied that there are twelve rows between, with thirteen total.

Commissioner Richardson asked how a bathroom would be accessed from that level.

Mr. Eisman replied that the exit to a bathroom would be all on one level and straight out the door.

Commissioner Richardson commented that there are so many variables when considering a theatre including the disbursement for people with visual impairments or hearing impairments and seating for those people.

Mr. Eisman responded by stating that they planned fifty percent of their seating within fifty feet of the stage for that very reason.

Mr. Brown interjected that people with other physical challenges can use other seats in the same area and confirmed that an FM assisted listening system is being provided.

Mr. Long commented that the current discussion contained different information than the discussion before the Council and based upon the new information, it would be within the realm of possibility that the accessible seating could be placed in the first row rather than disbursed all over the theatre because of the problem with the elevator. He furthered that wheelchair occupants require sixty inches which did not

appear possible with the current elevator and that he would not personally prefer any seating that required use of the elevator. Mr. Long stated that the elevator is limiting the actual seating. He furthered that the seating on the lower level was too close to the stage putting the occupants at a disadvantage. He suggested placing accessible seating somewhere closer to the middle of the theatre to improve the line of sight.

Chairman Rodriguez agreed with Mr. Long regarding the seating requiring the elevator.

Commissioner Richardson expressed concern that there may be problems with ADA in terms of disbursed seating based on ticket pricing. She asked if the elevator could be enlarged to accommodate a larger number of people.

Mr. Brown replied that at the current stage of the design, it would be difficult to do without extreme costs. He stated that the foundation and the footings for the elevator were already in place.

Commissioner Richardson suggested that caution should be taken when coming before the Council and the Commission with a request for waiver when construction had already begun due to problems with compliance.

Commissioner Walthour asked for the dimensions of the elevator.

Mr. Eisman replied that it was six feet eight inches wide by five feet and some inches deep.

Commissioner Shaw requested the Council's recommendation on this application for waiver.

Commissioner Wiggins asked for a description of the twenty-nine accessible locations on the plan.

Mr. Eisman pointed out the locations according to the plan.

Chairman Rodriguez asked about the number in the balcony and if they were accessible by elevator.

Mr. Eisman confirmed the number in the balcony and the accessibility by elevator.

Commissioner Richardson commented that in the bathrooms it didn't appear that there was the needed stall required by Florida.

Mr. Brown stated that all Florida requirements would be complied with and that they were only requesting a waiver on the requirement for accessibility to every level.

Chairman Rodriguez asked for a recommendation from the Council. He then offered an architect's point of view suggesting that the applicant should be careful about accessible seating disbursement and problems associated with accessible seating. Chairman Rodriguez then commented that an important issue is with the accessible seating requiring the elevator.

Ms. Dorwarth asked if the cost of the seats up front is the same as the seats four rows back.

Mr. Eisman replied that usually they are the same price.

Commissioner Richardson asked if there was V.I.P. seating or suites.

Mr. Eisman replied that only the box seats.

Commissioner Richardson asked how many box seats are accessible.

Mr. Eisman replied that one of the seven box seats are accessible.

Commissioner Richardson asked how the box seats are sold.

Mr. Brown answered that he was not certain how the owners were planning to sell the box seats.

Commissioner Richardson suggested that policies and procedures had to be developed to accompany the seating plans in order to allow for the implementation in the proper manner.

Chairman Rodriguez asked if the symmetrical box on the opposite would be accessible.

Mr. Eisman stated that it would be if the elevator had not been removed by engineering.

Mr. Melick motioned approval of the waiver with the conditions that the front accessible seats are moved four rows back and that the elevator is made large enough to accommodate a minimum of two wheelchairs and their companions. Ms. Dorwarth seconded the motion.

Mr. Long interjected that the elevator would need to accommodate four people other than the wheelchair occupants when attendants are required.

Commissioner Richardson suggested stating a dimension for the elevator.

Chairman Rodriguez asked Mr. Schneider if he had any knowledge with regard to elevator size.

Mr. Schneider (inaudible).

J. R. Harding stated that Commissioner Richardson raised a very important issue with how the seating is sold to the public. He used the Final Four games in the Atlanta Arena as an example of how accessible seating would be sometimes unavailable.

Ms. Armstrong agreed that policies and procedures must be established when designs are being implemented. She then called for a vote from the Council on the motion to approve the waiver with conditions. Vote to approve was unanimous. Motion carried.

Commissioner Shaw motioned to approve the Council's recommendation to approve the waiver. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Richardson asked if there was access to the orchestra pit.

Mr. Eisman replied that there was an elevator that moves down to the pit.

Mr. Long asked that the applicant submit to DCA a final drawing illustrating where the seats will be moved.

Chairman Rodriguez offered clarification by stating that the plans indicated where the accessible seating is including the front seats that

are to be moved four rows back.

Ms. Armstrong presented #5, Terraza. Council voted to dismiss the first part of the waiver based on jurisdiction.

Commissioner Wiggins moved to approved the Council's recommendation. Commissioner Walthour seconded the motion. Vote to approve was unanimous. Motion carried.

Ms. Armstrong presented the second part of the Terraza's request for waiver and the problems encountered with the application. The Council deferred to the Commission.

Sherry Kline, Consultant representing Terraza approached for comment. She explained that the owner purchased the property "ready to go" at the first of the year. Ms. Kline continued that the owner then decided to lease the restaurant to a new restaurant owner, as well as the retail property on the other side of the restaurant. She then explained the request for waiver by providing an overhead illustration.

Chairman Rodriguez responded to Ms. Kline by stating that it will be difficult to grant a waiver based on grandfathering it in because it was permitted in 1997 because it states that there are no official records pertaining to the roof terrace and that it was never permitted. He furthered that at the time it was constructed, toilet facilities were installed that do not meet Code requirements. Chairman Rodriguez suggested that if the applicants wished to use the terrace, they would need to seek permitting.

Ms. Kline stated that they have been through a temporary conditional use permit from their local building official until they either comply by providing vertical access to the upstairs or obtain a waiver from the Commission.

Commissioner Harris asked if the restrooms on the second level are accessible.

Chairman Rodriguez stated that establishing a period of time to permit the terrace and make it accessible may be the route to take.

Commissioner Wiggins asked what the occupancy load of the rooftop terrace.

Ms. Kline responded that the total occupancy is 225. She furthered that approximately 100-110 upstairs.

Chairman Rodriguez asked Ms. Armstrong to have the Council make a recommendation.

Ms. Armstrong called Council members to make a motion.

Mr. Long stated that the Council had asked the applicant what a reasonable amount of time would be to get the terrace permitted and accessible, however they never got an answer.

Ms. Kline responded that since the property is a new property at least six months to one year would be reasonable.

Mr. Long moved to grant the waiver with the condition that accessibility will be provided in one year. Ms. Dorwarth seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Richardson motioned to approve the recommendation. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Ms. Armstrong presented #7, Paul J. Sherrick. The Council recommended deferral to Commission.

Mr. Sherrick, General Contractor, offered comment that his building is a fifteen year old, 9,000 square feet two-story building. He stated that he intends to occupy the second floor for his office operations and then lease the first floor entirely to a security systems equipment installer whose requirements do not allow him to use the second floor. Mr. Sherrick continued that his office includes six employees and some storage area with their primary business being commercial general contracting with limited exposure to the general public.

Commissioner Harris asked how many subcontractors would be in a position to come by to negotiate a contract or pick up payment.

Mr. Sherrick replied that his projects are scattered throughout the southeastern U.S. and they do business with subcontractors via mail, telephone, faxes, etc. He stated that the number of visitors to the office is very limited and that their clients are out-of-town clients with very limited personal contact.

Commissioner Walthour asked about the additional spaces other than the six offices occupied by employees; i.e., receptionist space, conference room, etc.

Mr. Sherrick replied that there was an entry foyer that would be occupied by an employee and explained that the conference room would be for group meetings or client, subcontractor, architect meetings.

Commissioner Wiggins sought clarification regarding the price of installing a lift.

Mr. Sherrick explained that there were costs involved in preparing the building in addition to installing the lift.

Andrea Williamson motioned to recommend denial of the waiver on behalf of the Council. Mr. Long seconded the motion. Vote to defer the motion unanimous. Motion carried.

Commissioner Richardson motioned to approve the recommendation of the Council. Commissioner Wiggins seconded the motion.

Commissioner Corn commented that it is a \$60,000 job and \$19,000 is installing a lift meaning that modifications are one third of the cost. He stated that he would not be in support of the motion to deny the waiver.

Chairman Rodriguez called for a vote. Vote in favor of the motion resulted in 11 in favor with 6 opposed. Motion carried.

Ms. Armstrong presented #12, Office and Shops at 200 First Street. The Council voted to deny based on no apparent financial hardship and no technical infeasibility.

Edward Jones, Owner, offered an explanation for his request for waiver by providing a visual presentation.

Ms. Armstrong commented that the Council did understand the nature of the buildings.

Mr. Jones continued his illustration.

Commissioner Wiggins asked about the purpose of the mezzanine.

Mr. Jones stated that it was built to house the mechanical room with additional space left over for a retail store supplement.

Commissioner Wiggins asked about the area on the first floor underneath the mezzanine and its square footage.

Mr. Jones stated it is a retail store with about 700 square feet, and the loft is 375 square feet.

Commissioner Wiggins stated that under the Code the addition does not qualify as a mezzanine.

Mr. Jones stated that the building official has granted a license for the use of the second floor for employees only and storage, pending the approval of a waiver for vertical accessibility from the Commission.

Ms. Armstrong called for a motion from the Council.

Mr. Jones stated that his hardship is that he has an old building with a second story roof line in the middle that was used for storage. He continued that he had best utilized the space by providing a small second story loft.

Mr. Melick explained that lifts do not take more than 40 square feet of space resulting in a gain of floor space. He then motioned to recommend denial of the waiver. Ms. Williamson seconded the motion. Vote to recommend denial resulted in 5 in favor and 1 opposed. Motion carried.

Mr. Harding commented that although it was appalling that there would be no access to the loft area, the real issue is that there is a small business owner trying to sell clothing in a small space and would appreciate an extra 300 square feet. He continued by asking how the Commission could enforce the requirement to provide accessibility.

Ms. Armstrong pointed out that Mr. Melick had explained how it would be technically feasible and there would be no burden on the tenant to provide the lift.

Commissioner Richardson commented that there are five bathrooms that are not accessible. She then moved for approval of the Council's recommendation. Commissioner Walthour seconded the motion.

Commissioner Corn asked about the cost involved in the installation of the lift.

Mr. Melick explained that the lifts installed in his jurisdiction are between \$15,000 and \$18,000 including the electrical and installation costs. He continued that alterations could be required to the existing loft which are not known.

Commissioner Corn asked if \$15,000 to \$18,000 is a practical cost to gain an additional 375 square feet.

Commissioner Leonard stated that sometimes practicality must be considered. He furthered that he is also a landlord and last year had to spend \$27,000 on a lift installed at the request of Dade County, and to date, no one has ever used the lift. He continued by stating that lifts should be installed where they are needed and wanted, not where nobody wants them or needs them.

Commissioner Sanidas stated that there is some question whether the second floor should have ever been allowed to be constructed considering exits, etc.

Chairman Rodriguez called for a vote on the motion to deny. Vote to approve the motion to deny the waiver resulted in 9 favoring denial, with 9 opposed. Motion failed.

Commissioner Mehlretter motioned to grant the waiver for the current tenant. Commissioner Corn seconded the motion. Vote resulted in 10 in favor of approval, with 8 opposed. Motion carried.

Ms. Armstrong presented #1, Copier Depot. The Council recommended denial of the waiver.

Commissioner Shaw motioned to approve the Council's recommendation. Commissioner Wiggins seconded the motion. Vote to deny the waiver was unanimous. Motion carried.

Ms. Armstrong presented #2, Master's Title Services, Inc. The Council recommended denial of the waiver.

Commissioner Wiggins motioned to approve the Council's recommendation to deny. Commissioner Walthour seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Ms. Armstrong presented #6, Sandbar Restaurant and Grill. The Council recommended to deny.

Mr. Long stated that he took particular note to the application. He had contacted the building officials in the area and was advised that ninety percent of the work had been completed without a permit prior to submitting the request for waiver.

Commissioner Shaw motioned to approve the Council's recommendation to deny. Commissioner Wiggins seconded the motion. Vote to deny the waiver resulted in 1 opposed. Motion carried.

Commissioner Shaw offered comment that he enjoyed having the Council present for the waiver considerations. He furthered that he had discussed the consent agenda with Commissioner Browdy and asked if he wouldn't mind sharing his viewpoint with the entire Commission.

Commissioner Browdy explained that it was the determination of the Florida Board of Building Codes and Standards that the expertise and credibility of the Accessibility Waiver Council be acknowledged, thus establishing the consent agenda format. He furthered that the Florida Board of Building Codes and Standards, now the Florida Building Commission, does in fact acknowledge the expertise of the Accessibility Waiver Council and within the consent agenda format, states that if the applicant and the Waiver Council can come to some agreement on concessions or waivers that the Commission will approve it unless it is taken off the agenda by a committee or special interest. Commissioner Browdy continued by stating that it has been the history of the Commission is that it respects the Council and the members of the Waiver Council and have shown that by creating the consent agenda. He stated that the meeting today demonstrates that respect. He concluded by stating that it is important that the Council nor the Commission discriminate against applicants who are not present to argue their request. He stated that it is not a requirement for them to be present.

Commissioner Shaw stated that when the applicant is not present, he assumes that the Council has reviewed the application and is not penalizing them for not being present, then stated that it is difficult to supercede the Council's recommendation when no one gives additional testimony.

ACCESSIBILITY TAC REPORT AND RECOMMENDATIONS

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

Mr. Blair explained that a motion to approve the committee's report is required first, then a motion to accept the committee's recommendation.

Commissioner Wiggins motioned to approve the report. The motion was seconded. Vote to approve the report was unanimous. Motion carried.

Commissioner Richardson motioned to accept the committee's recommendations. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Rick Watson approached to extend an invitation on behalf of the Florida Association of Plumbing, Heating and Cooling Contractors to a hospitality suite between 7:00pm and 9:00pm at the Radisson Universal.

LUNCH

Chairman Rodriguez called for a break at 12:32pm.

PRODUCT APPROVAL AD HOC COMMITTEE AND RULE DEVELOPMENT WORKSHOP

Opening

Chairman Rodriguez welcomed industry representatives and members of the public to the Rule Development Workshop which is being held concurrently with the Product Approval Ad Hoc Committee. He reminded the Commission that it was unanimously voted to adopt a package of recommendations for developing and implementing a statewide product approval system. He furthered that this year the Legislature accepted the Commission's recommendations and reauthorized the Commission's rulemaking authority for implementing the system.

Chairman Rodriguez stated that earlier this year the Ad Hoc Committee had identified the issues that still need refinement and over the past couple of months the Ad Hoc has been attempting to resolve the differences on the issues, and the recommendations should be

completed for submittal to the full Commission at the Plenary Session. He furthered that last month the committee had provided a comment window and now that window was closed, and no new issues would be considered in Rule Development Workshop. Chairman Rodriguez stated that he would consider consensus building options designed to bridge differences between options and address the concerns of the stakeholders if entered through the Chair.

Chairman Rodriguez reminded the Commission that the final rule did not need to be wordsmithed at the Rule Development Workshop. He stated that the system's key concepts needed to be agreed upon then staff would draft the final language consistent with the Commission's intent. He also stated that the committee would submit a consensus document to the Commission at the Plenary Session along with a recommendation to proceed with the initiation of rulemaking. He furthered that Mr. Blair would be facilitating and assisting with ranking exercises and other consensus building options as necessary.

Agenda Review and Approval

Chairman Rodriguez began a review of the process. He stressed that the adoptive process stipulates that only Ad Hoc members may speak at the meeting. He stated that the committee wanted stakeholders and affected parties to have access to the process in providing the Commission with feedback. Chairman Rodriguez stated that first the topic or issue would be introduced, then options would be presented and discussion would ensue, open to stakeholders limiting comments to one brief statement. He continued that the options would then be ranked by the Commission members only and then the top ranked option would be refined. Chairman Rodriguez then stated that a motion would be entertained with Commissioners comments limited to clarifications, then a vote to approve, then to adopt a complete package of rules and recommendations for the product approval system.

Chairman Rodriguez reminded the Commission of the meeting guidelines that were approved unanimously; i.e., 75% requiring 8 of 10; 7 of 9; or 6 of 8 votes. He stressed that the committee was in the problem-solving mode and trying to acknowledge different views and perspectives.

Chairman Rodriguez offered a review of product approval rule development and adoption timelines. He stated that recommendations would be completed at the workshop; the Commission adopts

recommendations at the Plenary Session; the Commission conducts rule adoption hearing at the August meeting; the Commission files for adoption of the rule in September 2001; and the rule becomes effective in October of this year. (See *Product Approval Ad Hoc Committee and Rule Development Workshop July 10, 2001 Objectives and Agenda Attachment.*)

Review and Approval of May 17, 2001 Committee Minutes

Commissioner Corn motioned approval of May 17, 2001 minutes. Commissioner Kopczynski seconded the motion. Vote to approve the minutes was unanimous. Motion carried.

Review Outstanding Product Approval Issues and DCA Staff and Legal Recommendations

Review Product Approval Rule 9B-72 Draft Document

Mr. Blair conducted a facilitated review and discussion of the Product Approval Rule 9B-72 Draft Document. Mr. Dixon introduced each Section of the document individually for action by the Commission. (See *Florida Product Evaluation and Approval System Florida Administrative Code Rule 9B-72 Draft July 2, 2001 and Facilitator's Report Attachments.*)

Section 1

Commissioner Bassett motioned to approve Section 1 based on staff review the body of text and correct as requested. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Section 2

Commissioner Bassett motioned for approval of Section 2 - Definitions provided that staff makes the appropriate corrections. Commissioner Parrino seconded the motion. Vote to approve motion was unanimous. Motion carried.

Section 3

Commissioner Bassett motioned to remove the checklist in

Appendix C. Commissioner Browdy seconded the motion. Vote to approve the motion resulted in 6 in favor with 2 opposed. Motion carried.

Commissioner Bassett motioned to remove Section 3.2.1. Commissioner Wiggins seconded the motion. Vote to approve the motion resulted in 3 in favor and 5 opposed. Motion failed.

Commissioner Bassett motioned to accept the recommendations and changes for Section 3 - Local Product Approval provided staff makes the appropriate corrections. Commissioner Wiggins seconded the motion. Vote to approve Section 3 resulted in 6 in favor and 2 opposed. Motion carried.

Section 4

Commissioner Bassett motioned to approve the changes to Section 4. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carries.

Section 5

Commissioner Corn motioned to approve Section 5 with changes. The motion was seconded. Vote to approve the motion was unanimous. Motion carried.

BREAK

Chairman Rodriguez called for a five-minute break at 4:07pm.

CONTINUATION OF PRODUCT APPROVAL AD HOC COMMITTEE AND RULE DEVELOPMENT WORKSHOP

Section 6

Commissioner Corn motioned to approve Section 6. Commissioner Kopczynski seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Section 7

Commissioner Bassett motioned to approve Section 7. Commissioner Wiggins seconded the motion. Vote to approve was unanimous. Motion carried.

Sections 8, 9, 10

Commissioner Corn motioned to approve Sections 8, 9, and 10 as amended. Commissioner Kopczynski seconded the motion. Vote to approve the motion was unanimous.

Section 11

Commissioner Bassett moved to approve Section 11. Commissioner Corn seconded the motion. Vote to approve the motion was unanimous.

Section 12

Commissioner Kopczynski moved to approve Section 12. Commissioner Bassett seconded the motion. Vote to approve was unanimous. Motion carried.

Section 13

Commissioner Bassett motioned to approve Section 13. Commissioner Corn seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Section 14

Commissioner Bassett motioned approval for Section 14 with stipulation that payment be made by credit card. Commissioner Wiggins seconded the motion.

Commissioner Browdy suggested an amendment to the motion to approve Section 14 by stipulating that it would be subject to staff evaluating on a comparative analysis competitive costs with other national approval entities. Commissioner Bassett accepted Commissioner Browdy's friendly amendment. Vote to approve was unanimous. Motion carried.

Section 15

Commissioner Bassett motioned to approve Section 15. Commissioner Wiggins seconded the motion. Vote to approve was unanimous.

Appendix A

Commissioner Leonard motioned to approve Appendix A. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Appendix B

Commissioner Wiggins motioned approval for Appendix B. The motion was seconded. Vote to approve the motion was unanimous.

Appendix D

Commissioner Kopczynski motioned to approve Appendix D. Commissioner Mehlretter seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Mehlretter motioned to reconsider 3.2. Commissioner Corn seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Mehlretter motioned to delete Sections 3.2.1, 3.2.2, and 3.2.3 and replace 3.2.2 with language stating: Product Approval by Local Jurisdiction. Approval of a product for local use shall be performed by the building code official or his designee by verifying that the product complies with the Code in accordance with Method 1, Section 3.1.3, Method 2, Section 3.1.4, or Method 3, Section 3.1.5. Commissioner Browdy seconded the motion. Vote to approve was unanimous. Motion carried.

Mr. Blair called for a motion to approve Product Approval Rule 9B-72 Draft Document and make a recommendation to the Building Commission to proceed forward with rule development.

Commissioner Corn motioned to approve the draft document with the recommendation. Commissioner Bassett seconded the motion. Vote to approve was unanimous. Motion carried.

Mr. Blair reminded the Commission of the written comments and opened for discussion.

Commissioner Bassett motioned for adjournment.

ADJOURN

Chairman Rodriguez called for recess to Plenary Session until 8:30am Wednesday, July 11, 2001.

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

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**BOARD MEETING
OF THE
FLORIDA BUILDING COMMISSION**

**PLENARY SESSION
July 9 - 11, 2001**

PENDING APPROVAL

The meeting of the Florida Building Commission was called to order by Chairman Raul Rodriguez at 8:45 a.m., on Wednesday, July 11, 2001, at the Rosen Plaza Hotel, Orlando, Florida.

WELCOME, INTRODUCTIONS

Chairman Rodriguez called the meeting to order and briefly

discussed the outline and objectives of the meeting.

EDUCATION RULE DEVELOPMENT WORKSHOP

Chairman Rodriguez welcomed Commissioners and the gallery. He explained the rules and procedures for the workshop.

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

Commissioner Wiggins asked which Code refinements would be considered.

Mr. Blair explained that the only refinements coming out of committees are the issues that are part of the procedures that the Chair indicated, those that are legislatively mandated, settlement agreements, and state agency issues or pool safety issues.

Mr. Blair then facilitated the direction of the rule development workshop. He turned the workshop over to Mr. Richmond who explained Rule 9B-70.001 (See *9B-70.001 Building Code Training Program* Attachment.)

EDUCATION AD HOC REPORT AND RECOMMENDATIONS

Commissioner Browdy presented the Education Ad Hoc Committee report and recommendations. (See *Education Ad Hoc Report, July 9, 2001* Attachment.)

Commissioner Shaw motioned to approve the Education Ad Hoc Report. Commissioner Lipka seconded the motion.

Commissioner Wiggins asked for clarification regarding the \$5.00 difference in the charge for the course.

Commissioner Browdy replied that the difference depends on the individual entity. He explained that if it was a public entity, it would be \$5.00 per student and if it was a private entity giving the course, it would cost \$10.00 per student. Commissioner Browdy continued that there was resistance to a difference in the fee, so the fee, which remains undetermined, will be the same for either public or private entities.

Commissioner Wiggins asked if the cost is for the entire course.

Commissioner Browdy explained that the fee was a sort of “wholesale” fee so that it would be affordable for those wishing to teach the course.

Ila Jones commented that the charge of \$5.00 or \$10.00 would be the DCA’s charge to the vendor per seat for each course and the vendor would be allowed to charge whatever they deem necessary to offer the course.

Commissioner Sanidas stated that he remembered the Commission voting on a \$7.00 fee.

Commissioner Browdy agreed that there was discussion about the fee and the \$7.00, then it became \$7.50. He explained that the fee was predicated on a cost recovery basis and there were assumptions made when the \$5.00 and \$10.00 amounts were discussed based on the numbers of people from the private and public sectors who would take the course. Commissioner Browdy continued that Ms. Jones was given the authority to inform the Commission if the fee should be adjusted. He stated that it was the intent of the Education Ad Hoc to make certain the cost was covered and to keep the fees the same. He then stated that he didn’t believe it had been decided that it had to be \$7.00 or \$7.50 at that time.

Commissioner Wiggins stressed that the courses need to be in place right away but the fee decision will now be delayed for another six weeks, until the next Commission meeting.

Commissioner Browdy responded by stating that the Commission may be able to make a decision immediately if a ceiling was established not to be more than \$10.00, and to be available to the public and private sector.

Commissioner Wiggins reiterated that he did not wish to delay any courses or wait for fee analyses. He stated that he thought the courses would be available within the next few weeks.

Commissioner Harris commented that the Commission discussed the core course being delayed until August and that the \$5.00 or \$7.00 would be addressing that issue.

Commissioner Browdy replied that it was for all DCA courses and asked Ms. Jones if she would object to a motion that would give her the

authority provided it was available at the same price to public and private sectors and didn't exceed \$10.00.

Ms. Jones agreed that it would be appropriate.

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

Commissioner Wiggins motioned for authorization for DCA to go forward with establishing a fee not to exceed \$10.00 per student. Commissioner Sanidas seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Dixon pointed out that the fees for the courses are the primary method of funding the Building Code training program as well as the revenue source to provide funding for the outside administrator for the program and for the development of the advanced technical modules. He explained that it is a \$10.00 fee per person each time an individual takes the course and it is paid by the course provider as a registration fee when the registrant's name is entered into the system. Mr. Dixon stated that \$10.00 is the amount staff had already established and the \$10.00 maximum is probably what the fee will be, so the persons who have already given courses and those who will be giving courses will integrate the \$10.00 into the charge they charge each student.

Mr. Blair directed the Commission back to the Education Rule asking for any other comments or discussion. He then conducted a facilitated discussion regarding the Education Rule. (See *Facilitator's Report* Attachment.)

Commissioner Browdy motioned to proceed with the adoption of the Education Rule. Commissioner Wiggins seconded the motion. Vote to approve motion was unanimous. Motion carried.

CODE REFINEMENTS RULE DEVELOPMENT WORKSHOP

Mr. Blair began discussion for the Code Refinements Rule Development Workshop and reminded the Commission of the process. He stated that the Special Occupancy TAC Report and Recommendations would be heard first, then the Pool Safety Issues Ad Hoc Report and Recommendations would be discussed, and then staff will review all the Code refinements, including the Special Occupancy and Pool Safety Issues, review without questions, then open discussion for public

comment, and finally back to the Commission for consideration of any items to be pulled from the consent agenda. Mr. Blair continued that requested items would then be removed from the consent agenda and the Commission could approve the consent agenda, then proceed to rule adoption for all the Code refinements.

Mr. Blair then conducted a facilitated workshop for Code Refinements Rule Development including committee reports and recommendations. (See *Facilitator's Report* Attachment.)

SPECIAL OCCUPANCY TAC REPORT AND RECOMMENDATIONS

Commissioner Thorne presented the Special Occupancy TAC report and recommendations. (See *Special Occupancy TAC Report of the June and July, 2001 meeting* Attachment.)

Commissioner Wiggins motioned to approve the report and recommendations. Commissioner Browdy seconded the motion. Vote to approve the motion was unanimous. Motion carried.

POOL SAFETY ISSUES AD HOC REPORT AND RECOMMENDATIONS

Chairman Rodriguez presented the Pool Safety Issues Ad Hoc report. (See *Report of the Pool Safety Issues Ad Hoc Committee* Attachment.)

Commissioner Wiggins motioned for approval of the report and recommendations. Commissioner Calpini seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Blair explained that the Ad Hoc report and the series of recommendations would be integrated into the Code refinements and there will be an opportunity for public comment at that time. He continued that the Ad Hoc has a motion for Commission action, a motion to approve a series of recommendations and to approve proceeding with rule adoption.

Mr. Blair then conducted a facilitated discussion beginning with the recommendations that are not statutorily required, then identifying clarifications submitted by the public and by building officials such as BOAF. (See *Facilitator's Report* Attachment.)

Commissioner Shaw stated that he had been in communication with Senator Washerman-Shultz's office and learned that after reviewing her notes, she felt that there was an omission that she would like to see included that she felt was part of the intent of the legislation. He identified Section 424.2.17.1.2 which discusses the barrier. Commissioner Shaw stated that the Senator would like included in that barrier, "permanently affixed at one end," meaning that the barrier would be there and stored out of the area.

Commissioner Lipka motioned to approve the additional wording. Commissioner Sanidas seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Blair then conducted a facilitated discussion regarding changes to the "Swimming Pools and Bathing Places" section of the Code. (See *Proposed Changes to the Florida Building Code 2001 and Facilitator's Report Attachments.*)

Commissioner Browdy motioned for approval of the recommendations and proceed with the adoption. Commissioner Wiggins seconded the motion. Vote to approve was unanimous. Motion carried.

Mr. Blair directed the Commission to Mr. Dixon and Mr. Modani for review of the proposed changes to the Florida Building Code.

Mr. Dixon opened by expressing gratitude to Mr. Modani and his staff for the work being accomplished in compiling all the information going into the Code. He then conducted a review of the proposed changes to the Florida Building Code. (See *Proposed Changes to the Florida Building Code 2001 Attachment.*)

Public Comment

Joe Belcher, JDB Code Services

Mr. Belcher requested some latitude from staff to work on Section 1003.2.7, changes in elevation. He stated that the section should state, "if there is a change in elevation greater than 21", a stair or a ramp must be used, if 12" or less, a ramp must be used, and if it's between 12" and 21" and a stair is used, a 13" tread must be in place on the stair." Mr. Belcher stated that he could work with Mr. Modani on correcting the language in that section if the Commission concurs.

Mr. Belcher then identified Table 1019.11.10.3 and stated that there should be two tables. He explained that there should be one table for 6,000 or more, and one table for 6,000 or less. He stated that the table for 6,000 or more is not included.

Mr. Belcher directed the Commission to Section 1203.Q.6, ceiling heights and single family dwellings. He stated that in all the 1203 sections, there is an exception that refers to Section 1203.Q.6. Mr. Belcher stated that there are no changes in the section other than to add at the beginning, "in one or two family dwellings." He then stated that another element that needs to be added is to allow for fans to project into the clear area, the 6'8" area.

*John Bednerick, Executive Director
Florida Pool & Spa Association*

Mr. Bednerick thanked the committee and Senator Washerman-Shultz for their work and stated that his association agrees with all of the recommended changes. He stated that the current edition for NSPI ANSI #4 is 1999. The ANSI NSPI #5 is correctly cited as 1995. He continued stating that with regard to the change made in the committee deleting the recommended language on BOAG with regard to the definition of pool perimeter, the association would urge the Commission to restore the language, "or other adjacent open space as determined by the building official." Mr. Bednerick continued stating that regarding the definition of barriers: "may not have any gaps, openings, indentations, protrusions, or structural components," the association urges the Commission to make reference to a standard so it's not left to discretion. He furthered that the current standard for the barrier code is ANSI NSPI #8, 1996 edition. Mr. Bednerick then stated that with regard to the inlet/outlet question, it is commonly referred to as a pump. He continued that regarding the added language, "permanently affixing one end," of the pool barrier, the association recommends: "one end of which shall not be removable without the aid of tools."

Mr. Bednerick concluded with discussion of alarms. He stated that at the time of the legislation passage, then Representative Debbie Washerman-Shultz stated that the inexpensive alarms readily available at Home Depot and other outlets meet the requirements of her law. Mr. Bednerick stated that he believed her legislation would not have passed if it had included the requirement of a hardwired alarm system in existing dwellings. He stated that the association would agree that a barrier is a preferred method in preventing drowning and near drowning. Mr. Bednerick stressed that it would be an economic hardship to ask a

homeowner with an existing dwelling to retrofit their home with a hardwired alarm system for the pool area. He urged the Commission to go back to what the Senator stated at the time of passage and to what actually appears in the statutory language. He agreed that the language passed recently requiring UL 2017, which most battery-powered alarms meet, is sufficient and provides for the temporary deactivation for a pass through.

*Gary Van Tilberg, President
Florida Pool & Spa Association*

Mr. Van Tilberg commented also regarding the alarms. He stated that the Commission found it important to result to hardwiring due to one public comment when the members of his association deal daily with customers and installing the alarms, and most people attempt to remove them.

Chairman Rodriguez reminded the gallery that the goal is to try to encourage the use of pool barriers, the issues found to be unreasonable may be purposeful. He stressed that the Commission did not write the law, rather inherited it, and they will continue to refine and improve the law. Chairman Rodriguez stated that the Senator outlined clearly that the safest deterrent to accidents that have tragically taken the lives of children is the barrier, and any of the alarms, doors, enclosures, etc. are going to be seen as less than ideal. He encouraged writing to a local Senator for anyone who had further concern with the issue.

Kenneth Gregory, Florida Certified Pool Contractor

Mr. Gregory stated that he had been building pools for 25 years in the states of Florida, Nevada, California, and Arizona. He continued that he had checked with the Clark County Building Department officials and found that they do not allow removable fences of any kind. He stated that the fences must be permanently attached. Mr. Gregory furthered that in Phoenix, there is a similar code where removable barriers are not approved. Mr. Gregory finds it interesting the information available on the Internet. He stated that the U.S. Consumer Products Safety Commission states that fences should be 4 feet tall when installed around a pool, fence gates should be self-closing, self-latching, and the latch should be out of the reach of a small child. He furthered that document continued to state that if a house forms one side of the barrier to the pool, then doors leading to the house from the pool should be protected with alarms that produce an audible sound if the door is unexpectedly opened. He stated that the document doesn't mention barriers.

Mr. Gregory continued that the American Red Cross discusses layers of safety in a recent article. He explained that there are five layers of protection according to the American Red Cross. Mr. Gregory listed the layers and the number one protection is supervision. He furthered that studies show that 69% of drowning incidents occur when parental supervision failed and there were no other backups or layers of protection.

Chairman Rodriguez suggested that Mr. Gregory submit the report to the Commission for review.

Mr. Gregory continued that layer #2 is access to door or pool area be locked, #3 alarms, and #4 barrier safety fences. He furthered that Senator Washerman-Shultz stated she wouldn't be happy unless only barriers was in the Code. Mr. Gregory posed that there is documentation that other methods are available and recommended.

Chairman Rodriguez requested that Mr. Gregory leave the information with staff for review and use his discretion in making the Senator aware of the information.

Mr. Gregory closed by stating that currently he is working for a national homebuilder, though not representing that builder, and they are not aware of any hardwiring system that would comply with the auspices of a delayed pass through and protect it.

Dennis Braddy, AMAF

Mr. Braddy opened his comments discussing energy and the new Energy Gauge Program that AFSEC has created. He stated that there is an error between that program and what was approved by the Commission. He explained that the AFSEC program shows a .47 U factor for Central Florida when they were told that it was .74. He stated that a recent letter from AFSEC to the Efficient Windows Collaborator with a copy to Ann Stanton corrected that stating it is a .47. Mr. Braddy stated that there had been discussions with the department and ICC was used as the basis, and when ICC 2000 edition was checked it states that Central Florida is a .75. He urged the Commission to go back and have the TAC revisit this issue.

Chairman Rodriguez stated that it is scheduled for July 2002.

Mr. Braddy requested information on why it cannot be reviewed before that date.

Mr. Dixon responded by stating that the law is very specific in its language, conflict with law, new authorities, emergency rules, implementation of settlement agreement, and clarification of state agency. He stated that until 2002, the issue cannot be modified.

Commissioner Lipka suggested that Mr. Braddy submit the information to staff so at the next Energy TAC meeting it can get on the agenda to be clarified.

Commissioner Bassett offered correction of a misunderstanding regarding the settlement with the Florida Home Builders that a change cycle starts one year before the effective date of a change, therefore any change that will take place next July has a submission deadline at the end of this month. He commented that he hasn't seen any changes coming forward for the Commission's review next year.

Chairman Rodriguez stated that clarification would be sought concerning that issue.

*Joe Crum, Building Official, City of Port Orange
Representing Building Official's Association of Florida*

Mr. Crum addressed the issue of the definition of the perimeter of the pool. He stated that he heard it mentioned that an open garden area is to be considered a non-dwelling wall. Mr. Crum stated that most building officials would not recognize a garden area inside the pool perimeter as a non-dwelling wall. He then suggested refining the language to stipulate that garden areas can be allowed.

Chairman Rodriguez called for the Commissioners to remove any desired items from the consent agenda.

Mr. Blair conducted a facilitated discussion regarding any items to be removed from the consent agenda.

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

Mr. Blair conducted a facilitated discussion of the two items removed from the consent agenda. (See *Facilitator's Report Attachment*.)

Commissioner Wiggins motioned to approve the recommendation

for language in Section 424.2.17.1.12 to conform with Senator Shultz's intent. Language to read: "one end of which shall not be removable without the aid of tools." Commissioner Bassett seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Bassett motioned for reference standards to be the same in the Florida Building Code as it is in the Fire Prevention Code. Commissioner McCombs seconded the motion. Chairman Rodriguez called for a vote to approve the motion. Vote resulted in 2 in favor with 14 opposed. Motion failed.

Mr. Blair concluded the Code refinements and called for a motion to proceed with rule adoption for all the Building Code refinements.

Commissioner Lipka motioned to Commissioner to approve what is currently listed as item 13. Commissioner Sanidas seconded the motion. Vote to approve the motion resulted in 1 opposed. Motion carried.

Commissioner Lipka motioned to approve all the Code refinements as amended and proceed with rule adoption. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

REVIEW AND APPROVAL OF MAY 18, 2001 MEETING MINUTES

Motion was made and seconded to approve the minutes from the May 18 Plenary Session. Vote to approve the minutes was unanimous. Motion carried.

AGENDA REVIEW AND APPROVAL

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

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

REVIEW AND APPROVAL OF COMMISSION'S UPDATED WORKPLAN

Mr. Blair conducted a facilitated review of the Commission's

updated workplan. (See *Facilitator's Report* Attachment.)

Commissioner Browdy motioned to approve the updated workplan as amended. Commissioner Lipka seconded the motion. Chairman Rodriguez called for a vote on the motion. Vote was unanimous. Motion carried.

CHAIR'S DISCUSSION ISSUES AND RECOMMENDATIONS

Appoint Privatization Task Group members

Chairman Rodriguez reminded the Commission that the Legislature was considering developing law addressing the timelines and staffing of building construction permitting and inspections. He stated that the Legislature decided, at the Commission's recommendation, to defer the issue for further study and recommendation. He continued by stating that at one point legislation referred the study and recommendation to the Florida Building Commission, then to a special task force separate from the Commission.

Chairman Rodriguez stated that the Commission has on its task list to develop voluntary guidelines for privatization code enforcement functions since the privatization and plans review was a major component of what the Legislature was considering at that time. He furthered that after conferring with staff, it was decided to defer action on the Commission's task until after the task force completes its work to avoid the appearance of competing with the task force.

Chairman Rodriguez explained that the task force is made up of representatives from the State Engineering Society and Architectural Engineering Society, a state home builder and Commercial Building Contractor Association representative, four state building officials, and one insurance company association, and the Florida Building Commission has two members to appoint. He stated that he had reviewed the other appointments on the task force and decided not to appoint any one of the Commission members to serve on it, rather he had decided to appoint Doug Murdock to serve as a representative on the task force. Chairman Rodriguez announced that he had also asked building official representative Jim Shock to fill the spot that requires a professional engineer or an architect or contractor representative. He stated that Mr. Shock is a professional engineer as well as the Assistant Building Director of Jacksonville. Chairman Rodriguez stated that both appointees had agreed to serve on the task force.

Chairman Rodriguez stated that the task force is required to meet a

minimum of four times and the Legislature encumbered the Commission to its provide support. He stated that Rick Dixon had agreed to be their support staff and provide assistance as needed. He continued that the first meeting is scheduled for August.

Chairman Rodriguez furthered that it had been reported to the Commission that industry and building officials have had positive discussions during the legislative session and are nearing establishing a recommendation.

Commissioner Shaw asked whom would chair the task force.

Chairman Rodriguez replied that the task force would be electing their own chair.

Mr. Dixon stated that it would be suggested that the task force hold its meetings in a similar fashion as the Commission and that the meetings take place in different locations throughout the state, but ultimately its their decision.

Commissioner Harris asked if the meetings would conflict with the Commission's meetings.

Appoint Emergency Elevator Access Ad Hoc Committee

Chairman Rodriguez announced that the Emergency Elevator Access Ad Hoc Committee had been appointed and that Commissioner Calpini would serve as chair, Commissioner Sanidas and Commissioner Walthour would serve on the committee and coordinate with state Fire Marshall's office as well as DBPR. He stated that the two agencies would be asked to designate a representative to the Ad Hoc. He furthered that the Ad Hoc had been asked to hold its first meeting in August.

Assign Research Advisory Committee

Chairman Rodriguez stated that the Commission was appointing a Research Advisory Committee and reminded the Commission that BCIAC, Building Construction Industry Advisory Committee, falls under the Commission. He then stated that all 11 of the current committee members of the BCIAC who wished to continue in their role be reappointed for a one year appointment.

Chairman Rodriguez stated that there were recommendations relative to 8 projects that will be undertaken and after reviewing with staff

decided to approve 2 projects. He continued that one of the projects, R00-7 which deals with construction delays in Florida, is an empirical study to see exactly how the state is doing in terms of delays, etc. He furthered that the other study that was approved is R00-11, the development of a continuing education course resulting from the study of "no damage delay" clause. Chairman Rodriguez stated that the other projects did not appear to be within the Commission's mission and had not been requested by the Construction Industry Licensing Board or the Electrical Contractors Licensing Board. He also stated that the Commission recommended that DCA staff assume the administrative functions for the committee to eliminate the need to fund an administrator for the program.

Commissioner Wiggins motioned to approve the recommendations concerning BCIAC . Commissioner Lipka seconded the motion.

Commissioner Shaw stated that BCIAC had a budget and asked what happens to the funds that were originally designed for them.

Mr. Dixon replied that the Commission has the discretion to decide where those funds go, and the law still requires that the two licensing boards can request certain research projects to be conducted. He stated that historically the projects had funded both the research and then education to transfer the information that was obtained in the study. He continued by stating that the Commission would continue to spend the funds on research for Code development, other building construction industries identified by the two licensing boards, and on education of contractors.

Commissioner Shaw sought clarification regarding the funds and asked if the entire amount would be designated for research or might some of it fall into the general fund and the general budget.

Mr. Dixon replied that the funds would be designated for the Commission to use and do not go back into the general fund.

Commissioner Shaw asked if it then would have to be used for research or could it be used to fund travel or other items for the Commission.

Mr. Dixon stated that if there were studies that were needed for Code development purposes, the funds would be used for that purpose, then the rest would be used for the education program.

Commissioner Kopczynski commented that the committee working for the Commission is probably a change in direction and that there are members who had served for many years. He suggested that the Commission may wish to look into new appointees.

Chairman Rodriguez agreed and stated that he was considering appointments in the two available slots as well as for members who did not wish to continue to serve.

Chairman Rodriguez called for a vote on the motion to approve recommendations for the BCIAC projects and administration. Vote to approve was unanimous. Motion carried.

Assign Rehabilitation Code Ad Hoc

Chairman Rodriguez referred to item H on the workplan and stated that the committee will convene at the August meeting and complete recommendations by the December meeting in order to deliver them to the 2002 Legislature. He stated that the goal is to provide procedural recommendations for developing and implementing, not rewriting, a rehabilitation code. Chairman Rodriguez announced that the members of the committee are all TAC chairs, Commissioner Marshall and Commissioner Carson.

Chairman Rodriguez stated that there is a Technical Advisory Committee membership review and he asked each TAC chair to review their committee's membership for attendance and participation, and make recommendations to the Commission Chair in August for any possible changes. He continued that the Commission would conduct this TAC review every year in order to maintain active participation and also to provide opportunities for others to serve.

Assign Accessibility TAC

Chairman Rodriguez announced that he had appointed Neil Melick would serve on that TAC.

Rule development workshops schedule (code, product approval, rules of procedure, education, and prototype buildings)

Chairman Rodriguez stated that as a result of the Legislature early session start date next year and in order to effectuate Code refinements and rule prior to the Code implementation date, there are rule development workshops for product approval, education, rules of

procedure, prototype buildings and Code refinements, all currently being held. He continued that the Commission will hold rule adoption hearings in August with a September date to file the rules, and a target of October 2001 as the effective date. Chairman Rodriguez stated that prototype buildings may be one month behind the schedule to allow for additional public comment. He furthered that implementation of the program will not require any refinements of the Building Code Rule and is not on a critical time path as the others.

Mr. Blair explained that a motion to reconsider a Code refinement that is mandated by the law for inclusion in the Code was needed for a procedural matter that had been omitted.

Commissioner D'Andrea motioned to reconsider Code refinement mandated by law for inclusion in the Code. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Blair stated that the issue on the table, directly out of statute, "the Code shall set standards and criteria to authorize preliminary construction before completion of all building plans review including but not limited to special permits for the foundation only, and such standards shall take effect concurrent with the first effective date of the Florida Building Code." He explained that the motion would be to allow staff to draft language consistent with the requirement of the statute and include it in the Code refinements.

Commissioner Corn motioned to authorize staff to draft language consistent with statute requirements for inclusion in Code refinements. Commissioner Kopczynski seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Blair then called for a motion to proceed with rule adoption as refined.

Commissioner Wiggins motioned to proceed with rule adoption as refined. Commissioner Kopczynski seconded the motion. Vote to approve the motion 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 Committee and*

Rule Development Workshop Minutes Attachment.)

Commissioner Lipka motioned to approve the report.
Commissioner D'Andrea seconded the motion.

Commissioner Wiggins reminded the Commission that Commissioner Mehlretter had entered revised verbiage which is not reflected in Section 3.2 in the minutes of the committee meeting.

Chairman Rodriguez agreed with Commissioner Wiggins and asked that Commissioner Mehlretter's amended verbiage reflected in the minutes. He then called for a vote to approve the motion to approve the report and the minutes as amended. Vote to approve the motion was unanimous. Motion carried.

Commissioner Shaw reminded the Chair that he would need to assign the swimming pool code to a TAC.

Chairman Rodriguez acknowledged Commissioner Shaw's comment and opened for Public Comment on Product Approval.

Public Comment

Dennis Braddy, AMAF

Mr. Braddy expressed agreement with Commissioner Mehlretter's comments regarding Section 3.2. He stated that the changes were critical changes for the industry and furthered that without those changes his association could not support the Code. He furthered that there was particular concern regarding the fees. He stated that they are stated at \$50.00 per product and asked what determines a product. Mr. Braddy stated that there is a rumor that the Code, once it's complete, will be assigned to a private administrator and that the state would not be handling it. He requested clarification and asked if the outside administrator would be limited to the finalized fees. He stressed that these issues were of great concern to AMAF.

Chairman Rodriguez responded by stating that he met with the Governor and was instructed not to add staff to DCA and not to levy fees that are out of order.

Mr. Dixon responded to Mr. Braddy's concern by stating that the Commissioners are not certain about the workload involved which depends on the information systems that can be developed and on what

rules are established for how application will be made for approval, also how many manufacturer's would even come to the state to get state approval. He continued that all of the application processes would be conducted online so that the workload falls onto the applicant. He then stated that if staff had to accept paper applications and transfer the information there would be more workload on DCA staff. Mr. Dixon furthered that an answer to whether the department would be contracting out portions of projects could not be provided at this time.

Mr. Braddy stated that AMAF had been fighting for three years and while they remain in support the product approval system, details regarding costs and the possibility of an outside administrator is extremely important.

Chairman Rodriguez stated that DCA would have to be consulted to obtain answers to the questions Mr. Braddy asked.

Commissioner Lipka motioned to approve the Product Approval language. Commissioner D'Andrea seconded the motion.

Chairman Rodriguez read the draft as modified for approval and initiation of adoption through the formal rule proceedings entailing filing a Notice of Rulemaking to amend Rule 9B-3, to incorporate the requirements for the product approval system as a referenced document.

Commissioner Bassett stated that as it is currently drafted, the product approval system does not require any statewide approval of any product. He furthered that the number of people who do apply for statewide approval will effect the fee.

Chairman Rodriguez called for a vote on the motion to approve the product approval language. 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 Corn motioned to approve the report. Commissioner Lipka seconded the motion. Chairman Rodriguez called for a vote on the

motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner D'Andrea stated that a formal request to adopt the recommendation and to proceed with rule adoption for the Commission's rules of procedure.

Commissioner Wiggins motioned to accept the recommendations and to proceed with rule adoption. Commissioner Browdy seconded the motion. Vote to approve the motion was unanimous. Motion carried.

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

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

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

**REVIEW COMMITTEE ASSIGNMENTS AND ISSUES FOR
AUGUST'S COMMISSION MEETING**

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

SUMMARY AND REVIEW OF MEETING WORK PRODUCTS

Chairman Rodriguez stated that the Commission had considered and decided Accessibility Waiver Applications and he expressed appreciation for the Council's participation. He continued that the Commission had reviewed and adopted the updated workplan and have appointed Building Construction Permitting and Inspection Task Force members from this Commission. Chairman Rodriguez furthered that the Elevator Emergency Access Ad Hoc Committee had been appointed, the Research Advisory Committee has been appointed and the two BCIAC projects have been approved. He stated that the Commission has assigned a Rehabilitation Code Ad Hoc Committee's charge and delivery schedule and have assigned TAC chairs to review the membership as well as appointed a new member to the Accessibility TAC. Chairman Rodriguez then stated that the Rule Development Workshop schedule has

been reviewed; i.e., code refinements, product approval, rules and procedure, education, prototype buildings. He continued that an Education Rule Development Workshop had been conducted as well as a Code Refinement Rule Development Workshop. He also stated that the Product Approval Ad Hoc Report and Recommendations had been considered and decided as well as Rules of Procedure Ad Hoc Report and Recommendations, the Education Ad Hoc Report and Recommendations, and the Manufactured/Prototype Building Ad Hoc Report and Recommendations. Chairman Rodriguez concluded by stating that Pool Safety Issues Ad Hoc Report and Recommendations had been considered and decided, as well as Accessibility TAC Report and Recommendations, and Special Occupancy Ad Hoc Report and Recommendations.

Chairman Rodriguez announced that Commissioner Parrino had been appointed to chair the Manufactured/Prototype Building Ad Hoc Committee.

Commissioner Harris read a letter to the Commission from Jean Easom expressing her gratitude and respect for the Commission and her appreciation for being a part of such a "Grand Group."

Mr. Dixon stated that the Florida Board of Engineers has a rule and process to adopt continuing education requirements. He stated that a rule hearing was requested because it was evident in the draft rule that it was not requiring core course and certain other elements that would make it coincide with the law. He continued that the results of discussions with the Board representative at the public hearing left one item not addressed in their rule. He explained that the item was the allowance of credit for Commissioners to participate in the Code development activities, to have some of that time recognized for continuing education units. Mr. Dixon stated that he did not know the outcome but stated that an answer should be forthcoming soon. (See *Florida Board of Professional Engineers July 3, 2001 Letter Attachment*.)

Chairman Rodriguez reminded the Commission of a public workshop on the status of the Florida Building Code.

ADJOURN PLENARY

Chairman Rodriguez called for adjournment at 12:05 pm.