

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
February 12, 2002

PENDING APPROVAL

The meeting of the Florida Building Commission was called to order by Chairman Raul Rodriguez at 8:33 a.m., on Tuesday, February 12, 2002, at the Rosen Plaza Hotel, Orlando, Florida.

Commission Members Present:	Doug Murdock, Adjunct Member
Raul Rodriguez, Chairman	Commission Members Absent:
Nick D'Andrea	Leonard Lipka
Jim Mehlretter	John Calpini
Ed Carson	Suzanne Marshall
Karl Thorne	Michael McCombs
Christ Sanidas	Steven Bassett
Dan Shaw	Stephen Corn
Peggy Patterson	Bob Leonard
Sam Walthour	
Craig Parrino	Others Present:
Francisco Quintana	Kathy Butler, Legal Advisor
George Wiggins	Jim Richmond, Legal Advisor
Richard Browdy	Rick Dixon, Executive Director
Med Kopczynski	Jeff Blair, FCRC
Diana Richardson	Ila Jones, Program Administrator

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WELCOME INTRODUCTIONS

Chairman Rodriguez welcomed the Commission and gallery to the February 12, 2002 meeting of the Florida Building Commission. He offered a brief overview of the meeting topics that would be covered and recognized with appreciation the Commission members as well as those involved in the process in their commitment in developing the Code and encouraged everyone to continue in the consensus building process for Code related activities.

AGENDA REVIEW AND APPROVAL

Mr. Blair outlined the Commission meeting agenda stating there would be Accessibility Waiver considerations, an Education Ad Hoc report, an Accessibility Ad Hoc report, an additional Hearing on the Proposed Product Approval Rule, a Product Approval Ad Hoc report, public comments on the Product Approval rule the move to proceed with Notice of Proposed Changes on the Product Approval. Mr. Blair continued there would be a Structural TAC report and a Plumbing TAC report both related to Declaratory Statements. He then noted there would be a series of five or six Declaratory Statements the Commission will consider with legal staff providing a Legislative update. He furthered there would be comments from JAPC on the Manufactured/Prototype Building Rule for Commission consideration. Mr. Blair then stated there would be the annual workplan revision discussion prioritizing the tasks for the coming year.

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

REVIEW AND APPROVAL OF JANUARY 8, 2002 MEETING MINUTES

Commissioner Wiggins motioned approval of the January 8, 2002 Commission meeting minutes. Commissioner D'Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

EDUCATION AD HOC COMMITTEE REPORT AND RECOMMENDATIONS

Commissioner Browdy presented the Education Ad Hoc Committee report and recommendations. (See *Education Ad Hoc Committee Report February 11, 2002* Attachment.)

Commissioner Sanidas motioned approval of the updated version of 1.1 subject to review by the technical staff of DCA. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

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

ACCESSIBILITY TAC REPORT AND RECOMMENDATIONS

Commissioner Richardson presented the Accessibility TAC report and recommendations. (See *Accessibility Technical Advisory Committee Report of February 11, 2002 Committee meeting Attachment.*)

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

ADDITIONAL HEARING ON PRODUCT APPROVAL RULE

Mr. Blair offered a brief overview of the additional hearing process stating the hearing would be opened, public comments on the proposed rule would then be invited, Commission questions through the Chairman would be considered, then the hearing will be closed. He stated there would be no discussion on issues during the hearing. Mr. Blair continued once the hearing is closed, the Chairman will then turn back to the Commission for discussion phase regarding comments heard or any other relative considerations, then proceeding with rule adoption or Notice of Proposed Changes as in the case with Product Approval.

Mr. Richmond opened the hearing on Rule 9B-72.

PRODUCT APPROVAL AD HOC COMMITTEE REPORT AND RECOMMENDATIONS

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

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

Public Comment

Dennis Braddy,

Mr. Braddy offered comment stating the \$300 fee would not be near enough to cover the reality of the product approval system. He expressed concern regarding the requirement for third party quality assurance entity for local approval. He offered an example of Orange County's product approval system for local approval with other counties joining the free system. He stated all the evaluations and reports will be entered into the Orange County system and all other counties, as well as the builders, can access their information there. He urged the Commission to remove the words "third party quality assurance" out of the local approval and consider the Orange County Product Approval System without the state being involved.

Ralph Hughes, Cast Crete Corporation

Mr. Hughes opposed eliminating the third party quality assurance entity approval. He stated it is extremely important that the third party quality assurance program is in place. He stated there was approval from Miami-Dade now and expressed comfort in knowing they follow through and implement a quality assurance program. Mr. Hughes stated without the third party quality assurance program there could be problems. (See *Ralph Hughes Public Comment Attachment.*)

Kari Hebrank, Florida Building Materials Association

Ms. Hebrank expressed concern regarding the stakeholders and others who have not seen the Product Approval Rule. She stated there needed to be more time for everyone to get the chance to look at the rule. Ms. Hebrank continued expressing concern regarding quality assurance and language added to certain sections of the Code. Her final issue was regarding certification agency listings and language that had been changed. She stated there may be a need for Legislative clarification. (See *Carrie Hebrank Public Comment Attachment.*)

Jim Rogers, Building Official in Opalacka, Executive Director of the South Florida Building Official's Council

Mr. Rogers expressed concern regarding the phrase "local approval". He stated the state of Hawaii has accepted Dade County approval.

Mr. Richmond closed the rule making hearing on 9B-72 at 9:02 a.m.

COMMISSION DISCUSSION/DECISION ON PUBLIC HEARING COMMENTS AND APPROVAL OF NOPC FOR PRODUCT APPROVAL RULE

Mr. Blair referenced the matrix and explained the purpose of the meeting was to provide additional time before the Commission moved forward with the Notice of Proposed Changes. He stated the Product Approval Ad Hoc had reviewed the single-text document to ensure the intent of the Commission's decisions were reflected accurately. He continued stating the Committee approved it unanimously as a consent document for review. Mr. Blair then offered a brief explanation and review of the consent agenda process. He conducted a review of changes made during the Committee meeting and invited the Commissioners to bring any topic up for discussion. (See *12/01 Rule 9B-72 Comments February 6, 2002* and *Interim Working Draft February 6, 2002 Attachments*.)

Commissioner Wiggins asked if it would be possible to add a fee schedule which would be left to be determined by the Commission based on the activity generated.

Mr. Richmond responded the number was the result of testimony and discussion among the Commission as well as the TAC members. He stated adopting a rule leaving the fee schedule blank would not be within the Commission's authority. Mr. Richmond continued stating the fee schedule could always be adjusted through rule amendment.

Commissioner Wiggins then asked how long administrative rule change adjustments would take.

Mr. Richmond replied from Noticing the workshop to filing the rule, on a fast track, 120 days assuming there are no challenges.

Commissioner Wiggins continued with discussion regarding the third party quality assurance for local approvals. He asked if the law required that a third party quality assurance be incorporated for local approval.

Mr. Richmond responded it would be an optional element that was approved by the Commission.

Mr. Dixon interjected he would check the law. He stated there may have been some reference in the commissions recommendation to the Legislature last year.

Commissioner Wiggins stated it may be an issue for re-examination in light of Mr. Braddy's comments or hear other discussion.

Mr. Richmond reminded the Commission by opening up for further discussion, it expanded the scope of what the Commission voted the meeting to be which was a review of the language.

Mr. Blair conducted a straw poll to determine discussion and decisions on third party quality assurance. The straw poll resulted in 4 Commissioners indicating interest in discussing the third party quality assurance issue during the current meeting. He then began the review of the changes made as reflected in the matrix and interim draft documents.

Commissioner Shaw asked if Orange County's developing a product approval would become a "quasi" state approval.

Commissioner Sanidas stated Orange County is not actually establishing a product approval of their own, rather merely recording any approved products submitted from other local areas. He stated it is strictly informational.

Commissioner Wiggins stated Orange County's action regarding product approval relates strictly to Orange County and records filed with Orange County.

Commissioner Kopczynski requested two items be removed from the consent agenda for discussion. He referenced the items on page three of the matrix, as well as the last proposed change relating to certification agency exemption on page twenty-eight of the matrix.

Mr. Blair overviewed the proposed changes according to the matrix.

Commissioner D'Andrea motioned approval of the consent agenda with two items removed for discussion. Commissioner Browdy seconded the motion. Vote to approve the consent agenda as amended was unanimous. Motion carried.

Mr. Richmond referenced page three of the matrix, changes indicated for 9B-72.0403a, adding language "indication of compliance

shall be by certification to standards adopted by the Code.” He stated the language does not appear in the consolidated rule document interim working draft and clarified if it is to be added, it should be added on page five following line three.

Commissioner Browdy motioned reflecting the approved language in both locations, page three and page five. Commissioner D’Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Richmond then referenced page twenty-eight of the matrix. He recommended the change to the language should be made as indicated, striking “are deemed” and changing it to “shall be,” and to strike the foregoing procedures to the section moving it from 9B-72.090 to 9B-72.080.

Commissioner Kopczynski moved to approve the changes to the language as stated. Commissioner D’Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Mr. Blair called for a motion to approve the interim working draft as amended, and to proceed with Notice of Proposed Changes on the draft proposed rule.

Commissioner Browdy moved to approve the interim working draft as amended. Commissioner D’Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

CONSIDERATION OF JAPC COMMENTS ON RULE 9B-74, PROTOTYPE BUILDINGS

Mr. Richmond referenced a letter from the JAPC relating to Rule 9B-74 in each packet, located at tab 18. He stated the JAPC expressed concern regarding the Commission’s designation of a building official as the administrator of the program. Mr. Richmond continued stating a building official, as defined in Chapter 468, is an employee of municipal or county government and that JAPC would prefer the official be an employee of the JAPC and state government, or a contractor of JAPC. Mr. Richmond offered recommendation to strike the section, taking direction from JAPC who they would prefer to be administrating the program for use in the contracting process.

Commissioner D’Andrea motioned approval of with the inclusion of line #2 which states, “The Commission is to direct staff to utilize professional licensure as a prerequisite to entering a contract

for administration.” Commissioner Sanidas seconded the motion. Vote to approve the motion was unanimous. Motion carried.

BUILDING/STRUCTURAL TAC REPORT AND RECOMMENDATIONS

Commissioner D’Andrea presented the report and recommendations of the Building/Structural TAC. (See *Report of the Building/Structural Technical Advisory Committee* Attachment.)

Commissioner Sanidas questioned the procedure of the TAC. He stated the committee appears to be re-writing the Code rather than hearing appeal. He continued stating the appeal should first be submitted to the building official, then to the local Board of Appeals, and at that time come before the Commission.

Chairman Rodriguez offered clarification it is merely a report from the committee.

Commissioner D’Andrea offered further explanation stating the individual in question is considering constructing buildings in the two areas and did not understand the difference between the non-high velocity hurricane zone and the high velocity hurricane zone as it relates the stated items. He explained the individual was asking the Commission for guidance as it relates to Code compliance.

Commissioner Sanidas suggested the Code was being rewritten through declaratory statements rather than through the usual procedure and the individual was bypassing the local authority.

Commissioner D’Andrea stated the law allows anyone to submit for a declaratory statement for a particular instance who has a question in what the Code means and the Commission is obligated to respond to those inquiries.

Mr. Richmond explained there is an appeals process in place and serves as a mechanism in which the Building Commission can interpret the Code and decide who’s right in that appeal. He continued stating a declaratory statement is also another means of interpreting the Code as it applies to a specific circumstance, and it is specifically envisioned to occur before a building official gets involved. He furthered a declaratory statement cannot be issued, after a building official is involved, to override local ruling.

Commissioner Wiggins asked if the Commission is allowed to contact local authorities when particular questions are submitted.

Mr. Richmond responded the Commission's process is to send requests to the TAC and then bring it before the Commission for action.

Commissioner Wiggins expressed concern regarding the Commission making an interpretation for one particular question and no other contractors or building officials being aware that the interpretation was made unless they happened to know the request came before the Commission.

Mr. Richmond concurred Commissioner Wiggins' concerns were valid and suggested they could be the basis for Commission action when the actual substantive declaratory statement is brought before the Commission.

Commissioner Shaw interjected declaratory statements are an elusive item and suggested there would be many variations of the definition of declaratory. He suggested the Commission establish a workshop to foster in depth knowledge of how a declaratory statement system works, how to file the papers correctly.

Chairman Rodriguez stated the process could be explained in writing to each Commissioner for reference for anyone who may request information.

Mr. Richmond stated there is an explanatory document on the website detailing the requisites for a proper declaratory statement. He then offered to make a presentation at the next Commission meeting and answer any questions from the Commission.

Commissioner Quintana stated he has visited the website regarding declaratory statements and there are two legal opinions represented, one being over a year old. He continued stating one of the opinions indicates that in order for a declaratory statement to be entertained, it must be a site specific request. He then asked for clarification.

Mr. Richmond stated the law requires a declaratory statement be rendered on a specific set of facts and circumstances. He continued stating the specificity may be determined by the question that is asked.

Commissioner D'Andrea continued with the report.

Commissioner Wiggins moved approval of the report. Commissioner Thorne seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Commissioner Patterson offered comment regarding the Building/Structural TAC report in terms of a workshop. She strongly urged the Commission to direct staff to contact the manufacturers of air conditioning units and hold a workshop with the Mechanical TAC as well as with the Commission in terms of how their equipment is going to comply with the Code relating to wind load requirements.

Mr. Dixon suggested the first step may be a letter from the Commission to the American Refrigeration Institute (ARI) raising the issue to encourage future equipment designs that will withstand wind speeds.

CONSIDERATION OF ACCESSIBILITY WAIVER APPLICATIONS

Ms. Armstrong introduced the first waiver application which was on the consent agenda.

#4 The Learning School

Ms. Armstrong stated the Council's recommendation was to grant the waiver based on extreme financial hardship.

Commissioner Browdy moved approval of the Council's recommendation to approve the waiver. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

#6 Peter Baquolia

Ms. Armstrong stated the Council recommended granting the waiver with the condition that vertical accessibility be installed within two years.

Mr. Baquolia, Owner of Building at 2006 Vernon Place

Mr. Baquolia stated the tenant made improvements at their own discretion without a permit which triggered the vertical accessibility requirement. He then distributed a letter from his architect reflecting the financial hardship. (See *Terence L. Myers Architect, Inc. Memorandum February 7, 2002 Attachment.*)

Commissioner Browdy asked the term length of the current tenant's lease.

Mr. **Baquolia** responded two years.

Commissioner Browdy stated the Waiver Council recommended two years to comply with vertical accessibility. He then asked if Mr. **Baquolia** agreed with the terms.

Mr. **Baquolia** stated he did not really understand the process. He then explained what he envisioned as possible in terms of vertical accessibility and requested more flexibility.

Ms. Armstrong offered comment stating the Council had suggested alternative means of accessibility other than an elevator and that he research prices and structural options for such. She continued stating the services rendered on the first floor were not comparable to the second floor services.

Commissioner Richardson moved approval of the Council's recommendation to grant the waiver with conditions. Commissioner Browdy seconded the motion.

Commissioner D'Andrea commented the Commission was not limiting the applicant to installing an elevator within two years. He stated there are other means of vertical accessibility which could be investigated.

Mr. **Baquolia** stated anything that would be done would be constructed on the outside of the building due to structural obstructions.

Commissioner Shaw asked what the \$7,000 of renovations on the second floor entailed and if the \$7,000 in renovations could be removed in order to resolve the situation.

Mr. **Baquolia** responded the second floor was one large room and the tenants had constructed a conference room and computer rooms.

Commissioner Browdy stated issue wouldn't have come up if the tenant hadn't done the work. He continued stating an option would be to reapply after the two years is met. Commissioner Browdy then stated the two year window available to Mr. **Baquolia** should be adequate time for him to evaluate all of his options in terms of providing accessibility.

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

7 Wahab Construction

Ms. Armstrong stated the Council recommended to grant the waiver with the condition that vertical accessibility would be installed within eighteen months.

Commissioner Browdy asked if the petitioner agreed to the Council's recommendation.

Ms. Armstrong replied she believed he did and stated there was much discussion regarding options in terms of vertical accessibility.

Commissioner Browdy moved approval of the Council's recommendation to grant with conditions. Commissioner Sanidas seconded the motion. Vote to approve the motion was unanimous. Motion carried.

2 Palmetto Beach Child Care Center

Ms. Armstrong stated the Council recommended to deny the waiver based on insufficient information in the application.

Commissioner Shaw moved to approve the council's recommendation to deny the waiver. Commissioner Carlson seconded the motion. Vote to approve the motion was unanimous. Motion carried.

[REDACTED]

Ms. Armstrong stated the Council recommended to defer the waiver until the next Commission meeting.

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

3 McFarland Cassidy Law Firm

Ms. Armstrong stated the Council recommended to defer the waiver to give the applicant an opportunity to attend the next Commission meeting.

Commissioner D'Andrea motioned to defer the waiver application based on the Council's recommendation. Commissioner Wiggins seconded the motion. Vote to approve the motion was unanimous. Motion carried.

5 Cape Cement and Supply Company

Ms. Armstrong stated the Council recommended to dismiss the waiver application based on lack of jurisdiction stating the size of the bathroom is a federal requirement.

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

PLUMBING TAC REPORT AND RECOMMENDATIONS

Commissioner Shaw presented the report of the Plumbing TAC. (See *Plumbing Technical Advisory Committee February 11, 2002 Report* Attachment.)

Commissioner Wiggins moved approval of the report. Commissioner D'Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

**LEGAL STAFF REPORTS / DISCUSSIONS /
RECOMMENDATIONS / APPROVAL**

PETITIONS FOR DECLARATORY STATEMENT: DCA02-DEC-002-unisex toilet rooms; DCA01-DEC-252-toilets in guard houses; DCA01-DEC-248-window retrofits; DCA02-DEC-022-termite baiting system; DCA02-DEC-024-restroom venting; DCA02-DEC-023-swimming pool perimeter

LEGISLATIVE UPDATE

Mr. Richmond presented the following declaratory statements for action and discussion before the Commission:

60237-02-SP-Miami Dade County Fire Department-fire safety inspection of 1 & 2 family residential dwelling units

Commissioner Wiggins moved approval of the request for declaratory statement. Commissioner D'Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA02-DEC-002-Unisex toilet rooms

Commissioner D'Andrea moved approval of the declaratory statement. Commissioner Walthour seconded the motion.

Commissioner Shaw offered clarification regarding the aggregate of men's and women's restrooms totalling six, or if the number represented twelve, stating the recommendation of the TAC is the aggregate or total of six fixtures would trigger the requirement for family restrooms.

Commissioner Wiggins asked if the request was applying to a specific building or if the declaratory statement would be issued as a blanket interpretation of the plumbing code.

Mr. Richmond responded the petitioner is identified as an engineering firm currently designing a mercantile building to the Florida Building Code and has raised the question in that context, which provided factual information on which to base a decision. He stated the decision would be limited to one building being designed by the specific firm. Mr. Richmond continued stating other building departments around the state could refer to the decision in relation to their own situation and if the situation is consistent with that included in the determination, they could then apply in similar manner.

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

DCA01-DEC-252-Toilets in guard houses

Commissioner Wiggins moved approval of the declaratory statement. Commissioner D'Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

DCA01-DEC-248-Window retrofits

Commissioner D'Andrea moved approval of the declaratory statement deferring item #4. Commissioner Walthour seconded the motion. Vote to approve the motion resulted in 1 opposed (Sanidas). Motion carried

Commissioner Sanidas clarified his negative vote stating there was not enough information to make a determination. He continued stating there was no information regarding when the buildings were built or under what code they were constructed.

DCA02-DEC-022- Termite baiting system

Commissioner Sanidas moved approval of the declaratory statement. Commissioner Wiggins seconded the motion.

Commissioner Shaw stated the systems were installed without termiticide, rather they wait to determine whether termites are present then termiticide is added. He continued stating there was a risk if the owner was unaware of the system being in place at the time of purchase because they would have no way of knowing it should be monitored, therefore, having no protection. Commissioner Shaw furthered there is no current termiticide with long lasting effects and asked if there would be a provision of notification to the owner.

Commissioner Sanidas asked if there was protection while buildings were under construction and expressed concern regarding the time frame for the system going into effect.

Mr. Richmond offered clarification stating the determination of the TAC was that whether the systems would be approved would be subject to local building officials' approval.

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

DCA02-DEC023- Swimming pool perimeter

Commissioner Shaw presented the case stating the issue is the definition of the deck. He referenced Section 4242.17.1.12, requiring that "...a barrier must be placed around the pool and must be separate from any fence, wall, or other enclosures unless the fence, wall, or enclosure, or portion thereof, is situated on the perimeter of the pool, is being used as part of the barrier, and meets the barrier requirements of this section." He continued stating it further requires "the barrier must be placed a minimum of 20 inches from the water's edge," defining pool perimeter as "a pool perimeter is defined by the limit of the pool deck and any dwelling or non-dwelling wall, and any combination thereof, which completely surrounds the pool." Commissioner Shaw stated the Code does not define "pool deck" and does not specify a maximum width for the pool deck.

Commissioner Shaw stated staff had provided definitions for "pool deck" as being "a stable flat area, floor, which includes a flat surface such as concrete slab, wood deck, etc. Based on the definition of a pool perimeter stated above, the pool perimeter can be defined as one of the following: a pool deck, flat surface that is not

less than 20 inches; a non-dwelling wall or a combination of a pool deck, yard fence, as long as defined perimeter completely surrounds the pool; private swimming pool consists of both the requirements of the 1997 Standard Swimming Pool Code and the requirements of Chapter 515-Residential Swimming Pool Act. Chapter 515 Florida Statutes allow for 4 pool safety feature options: 1) the pool must be isolated from access to the home by an enclosure that meets the pool barrier requirements of 515.29 FS; 2) The pool must be equipped with an approved safety pool cover; 3) All doors and windows providing direct access from the home and pool must be equipped with exit alarms at a minimum sound pressure 85db at 10 feet; 4) All doors providing direct access from the home to the pool must be equipped with self-closing, self-latching device, a release mechanism placed lower than 54 inches from the floor.”

Commissioner Shaw stated the staff recommendation is that the proposed project meets the intent of Section 4242.17 of the Florida Building Code, provided the fence and the alarm comply with the specific requirements of Section 4242.17 as stated.

Mr. Richmond offered a brief overview of the legal analysis.

Commissioner D’Andreas motioned approval of the declaratory statement. Commissioner Wiggins seconded the motion.

Public Comment

Kenneth Pfiefer, Petitioner

Mr. Pfiefer stated the way the Florida Building Code is currently worded under Section 424.2.6.1, it states that “...design and construction and workmanship shall be in conformity with ANSE NSPI-5 1995...” He then referred to ANSE NSPI-5 1995, Section 7.1, “...there is no requirement for a pool deck...” He offered examples from a variety of areas in Florida involving different interpretations of the Code stating the wording is too vague. (See *Ken Pfiefer Public Comment Attachment*.)

Mr. Richmond offered clarification regarding the petition reference to an alarm system on the applicable portions of the residence and asked if the alarm system complies with the 85db requirements at 10 feet sound pressure.

Mr. Pfiefer responded his plans comply with the alarm system requirements.

John Bednerick, Executive Director, Florida Pool & Spa Association

Mr. Bednerick brought to the Commission's attention a typographical error on the last page of the declaratory statement stating the word "no" should be added before "lower than 54 inches." He then raised another point regarding "pool deck" would contemplate a yard or landscaped area as well as wooden deck or concrete, suggesting on the second page, paragraph 5, those words be included to read: "...a stable, flat area which includes a surface such as concrete slab, wooden deck, grass or landscaping, etc..." then deleting the source Dictionary of Engineering... (See *John Bednerick Public Comment Attachment.*)

Mr. Richmond interrupted stating Mr. Pfiefer was recommending amendments to a staff analysis and not to the declaratory statement. He reminded Mr. Pfiefer the discussion is limited to specific facts and circumstances presented by the petition.

Mr. Bednerick urged the Commission to be as comprehensive as possible within the limitations of the request.

Mr. Richmond stated the petition, as proposed, proposes an alarm system complying with the requirements of the Code, not self-locking, self-latching windows and doors, therefore, according to the law, the Commission is prohibited from answering questions in that context.

Commissioner Quintana asked where the barrier would be required if there is a 4-foot deck around the pool and the rest of the area is grass.

Commissioner Shaw responded the definition of deck is being discussed from the water's edge to a non-residential perimeter fence including grass and landscaping. He then expressed concern with the word flat and stated grass is included in the deck.

Mr. Madani added during analysis he considered the definition of perimeter of a pool. He stated the Code provides a minimum from the water's edge, but not a maximum.

Commissioner Sanidas suggested a committee be appointed to review the requirements of pool safety.

Irv Chazen, Government Liaison for the Greater Chapter of the National Spa & Pool Institute (NSPI) and the Associated Swimming Pool Industries of Florida (ASPI)

Mr. Chazen offered comment regarding pool safety and preventing incidents of child drownings. (See *Irv Chazen Public Comment Attachment.*)

Mr. Richmond recommended if the proposed project is in conformity with the requirements of the Florida Building Code, the Commission, with reservation, issue a supplemental declaratory statement containing the rationale.

Commissioner Wiggins moved approval of staff recommendation with the condition that the project, as diagrammed by the petitioner, complies with the requirements of 424.2 and Chapter 515, and reserve jurisdiction to issue a supplementary declaratory statement with the rationale following the March Commission meeting. Commissioner D'Andreas seconded the motion.

Commissioner Shaw expressed concern with the potential ongoing problem of the definition of pool deck in terms of design criteria.

Jim Rogers,

Mr. Rogers offered comment stating he serves as expert witness involving pool drownings and exemplified cases having nothing to do with barricades. He then offered statistical data regarding child drownings. (See *Jim Rogers Public Comment Attachment.*)

Kenneth Gregory, President, Central Florida Chapter of Florida Pool & Spa Association

Mr. Gregory offered comment stating he had spoken to many area building officials regarding the new Code. He continued there has always been a requirement for a structure, fence, barrier around a swimming pool with self-closing, self-latching gates. He further stated under the new requirement, an additional fence, barrier, wall must be installed and is not differentiated from the previously required fence, barrier, wall. (See *Kenneth Gregory Public Comment Attachment.*)

Chairman Rodriguez thanked Mr. Gregory for his very important point. He stated the Senator's intent was a fence to restrict

access to the pool from the people in the dwelling. Chairman Rodriguez stressed Senator Wasserman-Schultz did not want swimming pools that were not protected by a fence from the people in the dwelling, which has been legislated and it must be written in comprehensible terms.

Mr. Gregory then offered support on behalf of his association for the new requirements and stated they will continue to do so. He then stated the association would appreciate clarification to strengthen their support.

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

Mr. Crum offered comment addressing the concern regarding the yard fence. He stated when 515 was released, it was vague and he requested specificity in terms of the yard fence serving as the pool perimeter fence.

Tony Lata, President, Greater Miami Chapter of the NSPI

Mr. Lata offered support for the staff recommendation and for Mr. Pfiefer's request for a declaratory statement.

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

DCA02-DEC-024-Restroom venting

Commissioner Wiggins moved approval of the declaratory statement. Commissioner D'Andreas seconded the motion. Vote to approve the motion was unanimous. Motion carried.

Public Comment

Dave Alstead,

Mr. Alstead addressed Declaratory Statement DCA01-DEC-248-Window retrofitting. He stated he had issues which were not clarified at the TAC meeting and posed them to the Commission. (See *Dave Alstead Public Comment Attachment.*)

Carrie Hebrank, Florida Building Materials Association

Ms. Hebrank offered comment stating the need for a process for the public to have input regarding the declaratory statements. She stated it may be valuable to establish a TAC to deal with specific issues which may initiate Code changes.

Mr. Richmond offered an update of the Legislative issues and activity. He stated Pinellas County submitted a bill for recognition of the Pinellas County Licensing Board as the countywide compliance review board for the operation of Code maintenance in Pinellas County. He stated the elevator key issue has been forwarded. He furthered Representative Benson had requested language from DCA regarding the Rehabilitation Code issues. Mr. Richmond continued stating the Department of Transportation had filed a bill, prior to their appeal to the Commission seeking exemption of their Turnpike facilities from local enforcement of the Code. He stated the bill is going through committee and the Commission had received the advice and counsel from the governor's staff the toll plazas were unique construction and to try to work with DOT to allow them to enforce the Code on toll plazas only.

Ms. Butler presented three petitions for declaratory statements for dismissal. The declaratory statements dismissed were: DCA01-DEC-242- Lauderdale Tennis Club; DCA01-DEC-226- TECO BGA, Inc.; DCA01-DEC-240-Carrier Florida. No action was required by the Commission.

Ms. Butler continued stating an appeal of a denial of an application for waiver during the October meeting for the Plaza Hotel and Spa on Daytona Beach has been filed. She stated the applicants stated they did not receive sufficient notice to attend the meeting in October and the Commission's decision may have been based on misinformation. Ms. Butler recommended the Commission vote to ask the First District Court of Appeal to remand the case back to the Commission for consideration at the March Commission meeting.

Commissioner Wiggins moved approval of legal's recommendation. Commissioner D'Andrea seconded the motion. Vote to approve the motion was unanimous. Motion carried.

CHAIR'S DISCUSSION ISSUES AND RECOMMENDATIONS

Chairman Rodriguez opened discussion with an overview of the technical advisory committees and members of those committees. (See *Technical Advisory Committee Chart* Attachment.)

Mr. Dixon presented an outline and descriptions of the committees and subcommittees, and the areas addressed by those committees. He presented his outline via overhead assistance.

**FACILITATED WORKSHOP ON COMMISSION'S 2002
WORK PLAN**

Mr. Blair facilitated a discussion and review of workplan tasks for 2002. (See *I. Ongoing Review and Response to Legislative Mandates* and *Workplan Prioritization Ranking Process Attachments*.)

Mr. Dixon presented a schedule reflecting the deadlines and due dates of code amendment submittals and considerations. (See *IV. Commission Tasks To Be Prioritized Attachment*.)

Commissioner Shaw asked if the residential code would have to be adopted in order to deal with the sections which have been removed.

Mr. Dixon recommended referring to the International Residential Code to find the differences between the International Mechanical and plumbing code versus the International Residential Codes, then modify the Florida Building Code to be consistent with the requirements for commercial buildings in the mechanical and Plumbing Code and the residential plumbing requirements in the IRC.

Commissioner Shaw asked if there would be someone cross checking.

Mr. Dixon stated staff could work with the ICC. He continued there are Correlation Committees who work between the two codes during development to prevent conflicts. He then continued reviewing the *Tasks To Be Prioritized* document.

Mr. Blair began a prioritizing ranking process of the workplan tasks for 2002. (See *Workplan Prioritization Ranking Process* and *IV. Commission Tasks For Prioritization Attachments*.) He described in detail the process and key focus of the ranking exercise. Mr. Blair then began a straw poll ranking exercise to determine the tasks as prioritized by the Commission. The results of the ranking exercise were as follows:

Order of Priority	Task
1.	AA (I) Glitch/Update
2.	EE (J)FBC/IBC Transition

3. DD (K) Collaborative Initiatives
4. II (L) Joint Project w/ State Fire Marshal
5. HH (M) Bldg. Rating System
6. CC (N) Commentary
7. FF (O) Voluntary Standards
8. BB (P) Board of Appeals
9. GG () ISO Ratings

Commissioner Shaw asked if time had been considered in terms of length and involvement of discussion of issues.

Mr. Blair responded time had been considered but if particular items take too long, another method of consideration may need to be initiated.

REVIEW COMMITTEE ASSIGNMENTS AND ISSUES FOR MARCH'S COMMISSION MEETING

Mr. Blair briefly reviewed the tasks and committee assignments for the next Commission meeting in March. Commission discussion ensued.

PUBLIC COMMENT

Joe Crum, Building Officials Association of Florida

Mr. Crum thanked the Commission for their hard work and offered his association's support for the implementation of the Florida Building Code. He noted there were many scrivener's errors in the Code and recommended they be addressed and corrected.

Commissioner Browdy stated the Education TAC meeting were told the new Code with all the changes would be available to the Commission members by March 15th, and stated many of the scrivener's errors should be corrected.

Commissioner Sanidas asked if there would be free copies of the amendments distributed and to whom.

Ms. Jones responded staff has made free of charge amendments to Miami-Dade, Broward counties, those who purchased the Code from DCA, and all local governments who were initially given free Codes. She continued a telephone conference call was held with all concerned parties and BOAF was invited to participate however their schedule prevented their participation. Ms. Jones then stated

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free copies will be given to those who have purchased through DCA, and anyone who purchased through BOAF or SBCCI would be required to purchase the amendments.

SUMMARY REVIEW OF MEETING WORK PRODUCTS

Chairman Rodriguez offered a brief summary of the Commission's work products. He stated the Commission had decided or considered Accessibility Waiver Applications, Education Ad Hoc report, and the Accessibility TAC report. Chairman Rodriguez continued stating the Commission had held an additional hearing on the proposed product approval rule, decided on the Product Approval Ad Hoc report, Public Hearing Comments, Structural TAC report, and the Plumbing TAC report. He furthered the Commission had decided on Requests for Declaratory Statements, considered legal staff recommendations as well as the Chair's appointments, appointed TAC and POC Chairs and members, workshopped and prioritized the Commission workplan for 2002, and considered Public Comment and reviewed committee assignments and issues for the March Commission meeting.

ADJOURN

No further business was discussed. Chairman Rodriguez adjourned the meeting at 12:40 p.m.