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M E M O R A N D U M

TO: Doug Murdock, Chair, and
Members of the State Agency Review Ad Hoc Subcommittee

FROM: Suzanne H. Schmith
Staff Attorney, Florida Building Commission

SUBJECT: October 31st meeting

DATE: October 28, 1999

I am unable to be in Orlando for the subcommittee meeting on Sunday. Staff has asked me for input on certain items on the agenda for that meeting because there seems to be some confusion among committee members and state agency representatives. I will be in Orlando for the TAC meetings the following day and will try to address any questions which are relayed to me by staff at that time. I would like to take this opportunity to address three issues.

First, the agenda indicates that the subcommittee is tasked with determining how to implement the "split responsibilities" between particular state agencies and the Florida Building Commission. The agenda lists particular programs within specified agencies which the Ad Hoc committee recommended, at its meeting in Gainesville on October 4th, should retain standards writing and enforcement for the environmental and/or health aspects of its standards, while the commission should have the authority to write construction standards and local governments should enforce those standards.

Perhaps characterizing this recommendation as a "split" of responsibilities has lead to some confusion about

the subcommittee's task. The committee's recommendation is really no different than the statute's direction to include only construction standards in the code. The law presumes that state agency construction regulations which are incorporated into the code will become the enforcement responsibility of the local jurisdictions, unless specifically exempted therein. Rather than splitting responsibilities, this can be characterized as determining what portions of the agency regulations actually contain construction codes, as opposed to housing codes, or environmental and

health standards. It is my understanding that SBCCI, the contractor for compiling the code, has produced a report which recommends elimination of many of the state agency provisions which are not true building construction provisions. Perhaps the subcommittee should review this report. I understand that some agencies are concerned that the construction regulations which are to be incorporated into the building code are an integral part of the regulations which are relied upon for ongoing health and/or environmental inspections within the agency's jurisdiction. I suggest that the issue be resolved by reference to the appropriate section of the building code within the agency's rules or enabling statute. That way the agencies' retain their authority to inspect existing facilities for those code-related issues.

Second, the report of the Ad Hoc committee indicates that for certain agencies, there is a need to better coordinate with local jurisdictions for issuing permits and performing inspections on special occupancies. My notes show that this issue was raised with regard to school construction, elevators and hospitals. The issue is that local jurisdictions need notification from applicable state agencies when their environmental or health inspection has been completed so that the local certificate of occupancy is issued timely and does not conflict with the state agency's regulations. This is the issue that should be addressed in the administrative chapter of the Florida Building Code as raised in the agenda.

Third, staff has requested that I clarify which agency regulations can be included in the first adopted draft of the code and which ones must await legislative amendment. The subcommittee may want to prioritize its work according to this summary.

Regulations which must be in the adopted code:

*DOE and BOR educational facilities construction regulations (HB 4181 authorizes state universities, community colleges and school districts to retain their enforcement authority)

*DCA manufactured buildings construction regulations (HB 4181 authorizes DCA to retain plans review authority; the Ad Hoc committee has recommended that all enforcement remain with DCA – this will require legislative amendment)

DMS construction regulations for state-owned buildings

*DOC construction regulations for correctional facilities (the Ad Hoc committee has recommended that enforcement remain with DOC – this will require legislative amendment)

DOT construction regulations for rest areas, toll booths, etc. (this falls under the legislature's direction to include provisions for state-owned buildings)

*DBPR construction regulations for elevators (the Ad Hoc committee has recommended that enforcement

should remain with the DBPR – this will require legislative amendment)

DBPR, DOH & DACS construction regulations for restaurants and food service establishments (the subcommittee should determine which of the submitted regulations are construction-related, rather than health or program related. Agreement has been reached that the Food Code itself is not to be incorporated)

DBPR construction regulations for hotels & motels

*AHCA construction regulations for hospitals and nursing homes. Again, the committee should determine which regulations are construction-related, rather than health related, and incorporate those. (HB 4181 authorizes AHCA to retain authority for plans review and construction surveys).

DEP coastal construction regulations

DOH public swimming pool construction regulations

DOS regulations for renovations to historic buildings

Regulations which may be in the adopted code:

AHCA construction regulations for Assisted Living Facilities, Adult Family Homes & Adult Day Care – the committee has asked me for direction on whether there is authority to incorporate these regulations and I am still researching the issue. The legal question to be resolved is whether these are "health care facilities" within the meaning of HB 4181.

Water wells - only those regulations newly drafted (by the association?) to cover those portions of wells which currently do not fall under DEP's jurisdiction. These regulations are more appropriately incorporated into the plumbing section of the code because they are not truly a "special occupancy" as are the other state agency programs.

AC return wells, well heads and storage tanks – Only regulations not under the control of DEP could be included in the code without further legislative action.

DBF (Dept. of Banking & Finance) construction regulations for mausoleums and columbaria. The statute authorizes the commission to determine whether these newly-drafted regulations are appropriate for inclusion in the code.

Regulations which may not be included in the adopted code (need legislative amendment):

DMV installation standards for mobile homes – Ad Hoc committee has recommended these be adopted by reference only within the code. The committee asked me whether the DMV regulations include sewer and water connections. This is a licensing issue. DMV installers' license includes authority to make the sewer and water connections. However, these connections are governed by the applicable jurisdiction's building code, not HUD or a special DMV code.

DEP regulations for AC return wells, well heads and storage tanks – These are marked for review by the subcommittee for a determination of whether true construction regulations exist therein. Again, if the committee proposes to incorporate any portion of these regulations, legislation is needed.

WMD regulations for water well construction – same as above.

DOH septic tank regulations.

DOH regulations for migrant camps, mobile home parks, community-based residential facilities and control radiation hazards (each of these is marked to review for construction code issues; however, incorporation of any portion of these codes requires legislative action).

DOH regulations for drinking water systems – the committee has referred to the Plumbing and Special Occupancy TACs for a recommendation. Again, if the recommendation is to incorporate any

Doug Murdock memo

October 28, 1999

Page 4

part of the agency's rules, legislation is required.

DOH regulations for Sanitation Facilities/Public Employment – The department has indicated that these regulations are obsolete and should be repealed. I am attempting to verify this with the agency general counsel's office.

I hope this information is helpful to the subcommittee in accomplishing its work on Sunday.

* Indicates a program where either the Legislature has established, or the Ad Hoc committee has recommended, that one state agency maintain the regulations (retain rule-writing and amendment authority), while another state agency has enforcement authority. As I have stated before, this is not recommended from an administrative procedures viewpoint. It will be very difficult to inform the public as to which agency they should appeal for interpretations of, amendments to and challenges to, those rules. If local governments are not going to be given the authority to enforce, why put the regulations in the code at all?