

MINUTES
BUILDING CODE ADVISORY BOARD
July 18, 2012

I. The Chairman, William Ray Higgins, called the meeting to order at 2:00 p.m. in the Vista Center 1st Floor Conference Room 1W-47, Palm Beach County Planning, Zoning & Building Department, 2300 North Jog Road, West Palm Beach, Florida.

A. **MEMBERS PRESENT:**

William Ray Higgins, Chair
Michael Fichera, Vice Chair
Steven Kennedy
Bette Lowe
Jacek Tomasik

Andrew Mack
Joe Byrne
Scott Worley
Doug Wise
Maury Jacobson

MEMBERS ABSENT:

Gary Kozan
Greg Miller
Howarth Lewis

OTHERS PRESENT:

Sherita White, Recording Secretary
Michael Fox, PBC, CPT Supervisor
Richard Gathright, Deputy Building Official

Shannon Fox, Asst. County Attorney
Bob Boyer, PBC, CPT Coordinator
Anne Helfant, Asst. County Attorney

B. A motion was made to approve the minutes of the May 16, 2012 meeting. The motion was seconded and carried unanimously.

II. **ADDITIONS & DELETIONS – NONE**

III. **COMMITTEE REPORTS**

A. **Code Interpretation – Bob Boyer**

- Mr. Boyer gave an update that window change-outs would be the topic of discussion on August 5th and 6th at the Florida Building Commission meeting and that they have scheduled a seven hour day on Monday the 5th to argue all sides of what pertains to this. The Energy TAC had discussed it at their last meeting, but they did not have enough committee members present to have a quorum, so therefore, there was no action taken at that time. Mr. Boyer stated that he did not know which way the decision was going to go, and that he had previously suggested at a Commission meeting that an interpretation of the Statutes by the Attorney General might be useful, but the staff attorney felt it would be inappropriate. He stated that he did not see anything wrong with asking the Attorney General's opinion, but he could see where everybody has heart burn with the issue, so we would just have to stay tuned for the outcome next month.
- Chairman Higgins asked if they were talking about the screens that go in the windows.
- Mr. Boyer stated that he was talking about the window change-outs.
- Chairman Higgins asked about percentage of value.
- Mr. Boyer stated that it is the percentage of the proposed work's value as compared to the assessed value of the structure. One interpretation is that if the value of the work doesn't exceed the thirty percent threshold, then the new thermal efficiency standards don't apply. He noted that currently PBC is following that thirty percent threshold viewpoint. He stated that there were two factions involved and that there were a lot of heavy hitters playing the game and that there might be a lawsuit no matter which side 'wins'. He expects that decision to be made on the 6th.
- Chairman Higgins asked if we were in a position where we are not going to get sued.
- Mr. Boyer stated that we are, because currently we are following the law.
- Mr. Jacobson asked if they were referencing only existing buildings, not new buildings.
- Mr. Boyer stated that they were only talking existing structures.
- Mr. Worley asked Mr. Boyer to define who "We" and "They" were.

- Mr. Boyer stated that the main players are the Energy Code proponents vs. several window manufacturers.
- Mr. Boyer stated that some window manufacturers have brought all of their products up to one-hundred percent Energy Code compliance. However, there are other large manufacturing companies that have not upgraded their entire product line yet. While their older products could be used in new construction (due to the "overall energy code compliance calculation" method), their primary market is currently for 'window change outs' in existing buildings. They will lose sales if every replacement window is required to meet the new Energy Code requirements.
- Mr. Worley asked if most Building Departments in Palm Beach County are currently interpreting that the new standards have to be met only if the work exceeds thirty percent of the structure's assessed value.
- Mr. Fox noted that a lot of these issues were covered in the Minutes from the last meeting, and that it would be useful to use those Minutes as a reference during this discussion. He also stated that in the last meeting that West Palm, Boca Raton, Wellington, Delray and the County all said they were currently using the thirty percent threshold interpretation, pending a formal interpretation from the Florida Building Commission.
- Mr. Kennedy added that Palm Beach Gardens had also decided to follow the same interpretation as the other jurisdictions.
- Mr. Worley asked if the decision at the Commission level could go either way.
- Mr. Boyer stated that the final interpretation by the Commission was definitely up in the air at this time, and could easily go either way.
- Mr. Gathright stated that one of the very principle foundations of the debate is that FSS 553.906 states thermal efficiency standards only apply to portions of a structure that are being renovated. By definition, a job is considered a "renovation" when the value of the work exceeds thirty percent of the value of the structure. In the Florida Building Code, you have the same definition for renovation; however, there are sections that also seem to require compliance with the Energy Code for all replacement windows. The basic debate is over which one takes precedence. Do the Statutes or does the Building Code, which is adopted by Rule which is authorized by Statute?
- Mr. Worley asked if the decision is made that all replacement windows have to meet the new code, could that affect other renovation requirements (ie: upgraded electrical receptacles, etc).
- Mr. Gathright stated that was possible.
- Chairman Higgins asked if we were talking non-energy code and energy code and if we were saying the cost was greater for the energy code.
- Mr. Boyer stated that the cost of manufacturing energy code compliant windows was more than the cost for non-compliant ones. He stated that you could make the argument that a window change out on a house from 1950 would represent an increase in efficiency either way. Any window today is going to be much more efficient than an older existing one.
- Chairman Higgins asked if we had situations where the higher efficiency windows would be a waste of their money.
- Mr. Boyer stated that he would never say that it would be a waste of their money.
- Chairman Higgins went on to say that he wasn't sure if the general public understood the difference between energy compliant and non-compliant windows. He stated that wasn't it a part of their (the Board's) job to let the public know so that they could be an informed purchaser.
- Mr. Boyer stated that we are here to protect the welfare and the safety of our citizens.
- Chairman Higgins stated that he would like to pass a motion that Palm Beach County will only allow windows that meet the new energy code standards. He asked if we had the power to do that in Palm Beach County.
- Mr. Fox stated that he did not think the Board could really do that. He went on to discuss the green side of the debate and that one of their biggest arguments is that the windows are

a huge factor in the energy efficiency of the structure. Therefore, they feel like any opportunity to impact the efficiency of a window should be utilized whether all or just one is being replaced.

- Mr. Gathright stated that he did a little study on Forest Hill Village. He stated that a typical house out there has eleven windows in it. Using price comparisons from Home Depot, he said using the energy compliant windows would cost approximately \$2800 as opposed to the cost of \$1200 for the non-compliant ones. Discussion continued amongst the Board.
- Mr. Worley responded to the Chairman that this was a code interpretation issue that was already being worked on and that he did not think the Board should consider action until a higher decision was made.
- Mr. Wise stated that he thought they had the power to make recommendations, but that he also thought any action should be deferred until a decision had been reached at the FBC level. He also noted that any action taken would have to first be blessed by the County Administrator and County Commission, and even then, any mandates would only be enforceable in unincorporated County.

B. Code Amendments – NONE

C. Product Evaluation – NONE

D. Regulatory Climate Oversight Committee – Doug Wise

- Mr. Wise stated that he did not have an opportunity to send out the letter that was discussed in the last meeting but he requested permission to draft a letter on behalf of the Board, for the Chairman's signature, to encourage all jurisdictions to adopt the use of the County-wide Permit Application, and that if any of them felt there were changes that would make the application more user friendly for them, that they should suggest those changes through this body.
- Mr. Wise discussed the County-wide Contractor Registration letter that Kurt Eismann sent out and that he thought it was a good letter. He also stated that the Building Officials needed to speak out in support of it. Discussion continued amongst the Board.
- Mr. Jacobson made a motion to draft a letter for the Chairman's signature asking communities to adopt the County-wide Universal Permit Application. Motion was seconded.
- The Board continued discussion on the Universal Contractor Registration.

IV. OLD BUSINESS

1. University of Florida Roof Testing – Joe Byrne

- Mr. Byrne stated that he would postpone discussion on this until the September 19 meeting because he had just received the report and that there were some discrepancies with the results.

V. NEW BUSINESS

1. DCA Certification - Chairman Higgins

- Chairman Higgins informed the Board that he had a job at the old Albertson's on the corner of Military and Lake Worth road to install a generator, and that his Engineer refused to do it for him because he did not have a DCA sticker on his generator enclosure. He then provided documentation showing that FSS 553.844(4) states "mechanical equipment or appliances...installed...in compliance with the code...are deemed to comply with the wind resistance requirements of the Florida Building Code *through* the effective date of the 2013 Florida Building Code." Therefore, equipment enclosures of an approved product assembly are not required to obtain DCA Certification under the Manufactured Buildings program.

VI. FUTURE BOARD MATTERS FOR SEPTEMBER

1. Global Disaster Housing-Future Containerized Housing

- Mr. Boyer stated that he made another phone call to them today for about the 6th or 7th time and he left a message and that if he did not hear from them today that it would disappear from the Agenda.

2. Rental Properties - Unlicensed Maintenance Employees - Future Follow-up-Kurt Eismann

- Chairman Higgins stated that unlicensed workers are out competing with him and that they feel no threat from Contractor Licensing or Code Enforcement. He stated that he believed at least eighty percent of the work is being done by unlicensed contractors. He continued to give examples of the situation.
- Mr. Fox stated that Mr. Eismann's primary focus at this time was on Property Management Companies that are using their unlicensed maintenance workers to do work without the proper permits or licenses. He reported that Mr. Eismann intended to provide the Board with updates regarding his progress towards obtaining compliance from these companies.

VII. BOARD MEMBER COMMENTS

1. Mr. Byrne referenced a prior advisory that went out by the Board regarding the change-out of air conditioning systems and whether an existing curb could be allowed to remain until the building gets reroofed. He stated that there are some jurisdictions where A/C companies are replacing air conditioner units and are being told that they have to remove the existing curbs. This creates a costly situation where an engineer has to design a roof repair tie-in, and, a roofer has to try to complete the repair while maintaining the integrity of the entire roof.
2. Mr. Wise stated that subsequent to the advisory there was a declaratory statement that came down from the Florida Building Commission that says a code compliant stand is to be installed. He stated that he doesn't know if everyone is enforcing it because not everyone agrees with that interpretation, but it is what the Code, Florida Building Commission, and legislative action have determined. He stated that what came out of the legislation was that if you replace equipment then you have to put it on an approved stand. He further stated that it does not address the impact such action has on the roofing aspect.
3. Mr. Wise stated that on August 23rd the Building Official Association of Palm Beach County is having their annual joint meeting with industry from 12:00 to 2:00 p.m. It is a luncheon meeting at the City of West Palm Beach lake front pavilion. He stated that they have AGC, ABC and FHBA on board and there are also people coming from Birmingham and Orlando and that hopefully they get a board certified attorney from Gunster who is going to talk about local changes in the development law. RSVP can be done at the BOAPBC website or send an email to rmcdougal@wpb.org.
4. Next meeting – September 19, 2012

VIII. STAFF COMMENTS – None

The meeting was adjourned at 3:20 p.m.


William Ray Higgins, Chair

Respectfully submitted,
Sherita White, Recording Secretary