

**BOARD OF RULES AND APPEALS**

**AUGUST 10, 2017**

**MEETING MINUTES**

**Call to order:**

Chair Jeffrey Lucas called a published meeting of the Broward County Board of Rules and Appeals to order at 7 p.m. The roll was called and the following members were present:

**Present:**

Jeffrey Lucas, FM, CFI, CFEI, Chair  
Kenneth Wynn, Vice Chair  
Ron Burr  
Jeff Falkanger  
Shalanda Giles-Nelson  
Daniel Lavrich, P.E.  
Robert A. Kamm, P.E.  
David Rice, P.E.  
Daniel Rourke  
Robert Taylor  
James Terry  
Dennis A. Ulmer

After the roll call, the presence of a quorum was announced by Chair Lucas.

**Approval of Minutes** – June 9, 2017

**MR. LAVRICH MADE A MOTION AND MS. GILES-NELSON SECONDED THE MOTION TO APPROVE THE MAY 11, 2017 MEETING MINUTES. THE MOTION CARRIED BY UNANIMOUS VOTE OF 12-0.**

**CONSENT AGENDA**

**1. Certifications – Staff Recommended**

**MR. LAVRICH MADE A MOTION AND MS. GILES-NELSON SECONDED THE MOTION TO APPROVE ALL SUBMITTED CERTIFICATIONS. THE MOTION PASSED BY UNANIMOUS VOTE OF 12-0.**

**1.a. Request of Mr. Otto Letzelter to be certified as Chief Structural Inspector with the Town of Pembroke Park.**

**a. Staff Report**

Mr. Cris Fardelmann, Chief Structural Code Compliance Officer, explained Mr. Otto Letzelter, an applicant is well if not overly qualified to be a plans examiner. His career has been mostly in government, for example, he is the Building Official for Broward College. His credentials do not fit into the certification requirements, which call for experience through a municipality or a private entity contracted with a municipality. Although staff recommends approval, it was thought his application should be presented to the Board. He went on to outline Mr. Letzelter's duties for Broward College that also include construction management. He does inspections and plan review.

**b. Mr. Otto Letzelter Request – no further discussion**

**c. Board Action**

**MR. LAVRICH MADE A MOTION AND MR. TERRY SECONDED THE MOTION TO APPROVE THE CERTIFICATION APPLICATION FOR CHIEF STRUCTURAL INSPECTOR FOR THE CITY OF PEMBROKE PARK. THE MOTION PASSED BY UNANIMOUS VOTE OF 12-0.**

2. **Changes to Broward County Administrative Provisions 5<sup>th</sup> Edition (2014) FBC – Building, Section 104.10.1; relating to the Structural Plans Examiner certification requirements, as follows: “An Architect or an Engineer in the discipline requested and having practiced for a minimum of five (5) years, two (2) years of which shall have been within the HVHZ”; which would allow Architects and Engineers to be certified as Structural Plans Examiners without having prior experience as Inspectors. Other subsections of 104.10.1 are also changed for consistency and clarity.**

**a. Staff Report**

Mr. Rolando Soto, Chief Mechanical Code Compliance Officer, recalled the Board recently approved a changed to Chapter 1, relating to M.E.P. (mechanical, electrical and plumbing) plans examiners, allowing an engineer with five years of experience to be a plans examiner without first being an inspector. This is the same concept for a structural plans examiner. There are some additional tweaks to the language (noted in the staff's memorandum of August 10, 2017 provided to the Board).

**b. Public Hearing**

Chairman Lucas opened the public hearing but there was no one wishing to speak.

**c. Board Action**

**A MOTION WAS MADE BY MR. RICE AND SECONDED BY MR. LAVRICH TO APPROVE THE RECOMMENDED CODE AMENDMENT. THE MOTION**

**PASSED BY UNANIMOUS VOTE OF 12-0.**

**3. Proposal to Stay or Abate Proceedings.**

**a. Reports of Administrative Director and General Counsel**

Chairman Lucas handed the gavel to Vice Chairman Wynn and was not present during this item.

Mr. James DiPietro, Administrative Director, noted that the Probable Cause Committee met on this matter. What has changed is that Mr. Madden was previously a Structural Chief, Plans Examiner and Inspector, but is no longer a chief anywhere in the county. That being the case, there is no longer reason to pursue the case. If he was to ever apply to become a Building Official or chief, a probable cause hearing would be automatically triggered. There would be no objection to Mr. Madden serving as a plans examiner or inspector because the allegations have to do with supervision.

Mr. Charles Kramer, Board Attorney, clarified this is not a dismissal, but merely a stay or abatement.

**b. Board Action**

**A MOTION WAS MADE BY MR. LAVRICH AND SECONDED BY MR. RICE TO APPROVE THE RECOMMENDED PROPOSAL TO STAY OR ABATE PROCEEDINGS. THE MOTION PASSED BY UNANIMOUS VOTE OF 11-0. CHAIRMAN LUCAS WAS NOT PRESENT. CHAIRMAN LUCAS ABSTAINED FROM DISCUSSION AND VOTING. A MEMORANDUM OF VOTING CONFLICT, DATED AUGUST 10, 2017, WAS FILED BY CHAIRMAN LUCAS AND IS ATTACHED TO THESE MINUTES.**

**4. Acceptance of price quote from Mike Gambino for a two-day floodplain class and a written examination from the Association of State Floodplain Managers (ASFPM). Expenditure in the amount not to exceed \$4,200.00 for up to a total of 30 Board of Rules and Appeals Certified Chiefs and Building Officials.**

**a. Staff Report**

Mr. Michael Guerasio, Chief Structural Code Compliance Officer, explained if this program goes well, staff hopes to expand it to plans examiners and inspectors. He summarized the two-day class and drew attention to the fact that a written examination will also be administered. He also went on to outline the cost, discount being offered by the Board and requirement to be eligible for the discount that the individual become a member of the Association of State Floodplain Managers (ASFPM).

**b. Public Comment**

Chairman Lucas opened the floor for public comment but there was no one wishing to speak.

**c. Board Action**

**A MOTION WAS MADE BY MR. LAVRICH AND SECONDED BY MR. TERRY TO APPROVE STAFF'S RECOMMENDATION AS SUBMITTED. THE MOTION PASSED BY UNANIMOUS VOTE OF 12-0.**

**5. Acceptance of price quote from Michael Hadley for a four-hour Medical Gas NFPA 99 2015 Edition Refresher Review based on new 2015 NFPA 99 code that will be effective December 31, 2017 – Expenditure in the amount of \$2,000.00.**

**a. Staff Report**

Mr. Otto Vinas, Chief Plumbing Code Compliance Officer, advised that this class was offered in 2015. There are many newcomers that will benefit. It is limited to one hundred seats. Participants will receive 4 educational credit points. Roughly forty people have expressed an interest in attending.

**b. Public Comment**

Chairman Lucas opened the floor for public comment but there was no one wishing to speak.

**c. Board Action**

Chairman Lucas commented that he has spoken to individuals around the country and was not aware of any other area where such educational opportunities are offered at a county level.

**A MOTION WAS MADE BY MR. LAVRICH AND SECONDED BY MR. ROURKE TO APPROVE STAFF'S RECOMMENDATION AS SUBMITTED. THE MOTION PASSED BY UNANIMOUS VOTE OF 12-0.**

**6. Request to Amend Existing Board Policy 15-02, Entitled: Delegation of Board of Rules and Appeals to the Administrative Director of the Board's authority to Obtain Goods and Services up to and including \$9,500 (current policy is \$4,000) per year per vendor for the Purpose of Funding of Duties as Contemplated under the Florida Building Code, Special Act 71-575, and Broward County Code 9.02, and to assist Carrying out those Duties as Reasonable and as Legislatively Contemplated.**

**a. Staff Report**

Mr. James DiPietro, Administrative Director, explained this is a request to increase the administrative director's purchasing authority from \$4,000 to \$9,500 per vendor per year. Currently three price quotes or Board authorization are necessary for anything above the \$4,000 limit. He explained the cumbersome process required to assist participants in a masonry construction and inspection certification workshop class by discounting the price but not being able to cover the entire class cost, which is illustrated in the backup for this item. It would allow for a more practical process mainly for education classes.

Mr. Ulmer questioned almost doubling the limit in a period of two years and asked how many expenditures come along that are over \$4,000. Mr. DiPietro recalled this class was offered probably three years ago with a subsidy in the same range of about half the cost. It is not a critical request. He felt it would help with efficiency. Mr. Ulmer was uncomfortable more than doubling the amount in a two-year period. Mr. Ulmer said he would support an amount of \$6,000.

**b. Public Comment**

Chairman Lucas opened the floor for public comment but there was no one wishing to speak.

**c. Board Action**

Chairman Lucas indicated that he contributed to the Administrative Director deciding upon the dollar amount when considering the upcoming training. Historically, staff has been very transparent with records and expenditures. He is comfortable with \$9,500. Mr. Terry pointed out that because the Board does not meet every month, it could be problematic for staff. Mr. Ulmer clarified that his position has nothing to do with his confidence in staff.

**A MOTION WAS MADE BY MR. LAVRICH AND SECONDED BY MR. TERRY TO APPROVE STAFF'S RECOMMENDATION AS SUBMITTED. THE MOTION PASSED BY UNANIMOUS VOTE OF 11-1, WITH MR. ULMER VOTING NO.**

**7. Director's Report**

Legal Advisory Opinion as to the Establishment of Positions of Engineering and Floodplain Plans Examiner and Inspector

Mr. James DiPietro, Administrative Director, noted that he recently attended a Fort Lauderdale Chamber of Commerce meeting. About two years ago the Building Official sent an email asking about the Board of Rules and Appeals establishing some new positions that would be certifiable (noted above). The legal opinion provided was issued at that time. At the recent Chamber meeting, he was asked to bring it to this Board. No other agency certifies for flood management. As floodplain is a recent addition to the building code, there is an argument for a floodplain (plans examiner) position but a further reach for an engineer.

Mr. Charles Kramer, Board Attorney, noted that the building code did not provide guidelines for floodplain until 2010. This Board has the authority to create the position of floodplain (plans examiner) manager. In reviewing case law, he believes that a local municipality or other authority having jurisdiction would have to make such a request of the Board. Only then is the Board free to make that decision. Mr. Kramer felt it should be a formal request. He cautioned against creating a position that would be redundant with other existing disciplines in the building code. Mr. DiPietro indicated that he would expect the municipality to spell out the percentage of time the individual would spend on building and fire code matters. With that information, there is an argument for justification. Mr. Burr questioned why this Board would not certify individuals who are reviewing plans

for a permit. Mr. DiPietro explained that everything is covered under electrical, plumbing, mechanical and structural now, which is the only way permits are issued. Perhaps, an individual working on the one-foot freeboard issue where buildings are not designed to properly meet what is now required in the building code could justify that percentage of their time relating to building code purposes. Some clarification and discussion ensued as to who would be authorized now to review floodplain matters wherein Mr. Cris Fardelmann, Chief Structural Code Compliance Officer, indicated that there are generally ordinances covering floodplain matters and the Building Official is authorized to designate who would be a reviewer.

Mr. Lavrich felt there is need for clarity as to the engineer position. Mr. Otto Vinas, Chief Plumbing Code Compliance Officer, believed the point might be that engineers are involved in site work.

Chairman Lucas asked Mr. DiPietro to discuss this further with Fort Lauderdale to clarify what they are looking for and have them make a better statement with documentation.

Mr. Vinas indicated that each discipline addresses floodplain matters, but there could also be a floodplain manager. Mr. DiPietro added that some smaller cities do not have a certified floodplain employee. Mr. Vinas explained how the floodplain certification process is handled on a national level.

#### South Florida Homes Will Now Require Solar Panels in South Miami, a First in Florida

Mr. James DiPietro, Board Administrator, noted information on this matter in the agenda packet shows that one city in Miami Dade County imposing this requirement. He indicated in Broward County a municipality cannot either strengthen or weaken the building code. It must be done county-wide.

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Mr. James DiPietro, Board Administrator, referred to a work group formed composed of the Broward County department that handles asbestos, City of Pompano Beach, and Board of Rules and Appeals' staff, to move forward voluntarily to enhance permitting between Pompano Beach and the County. The results would be a model or prototype. There may be ways to expedite communication between the municipality and the County. There was no objection.

## **8. Attorney's Report**

### Legal Advisory Opinion as to Code Enforcement Personnel Relying on Chapter 1 of the Florida Building Code to Enforce Code Violations Outside of their Area of Certification

Mr. Charles Kramer, Board Attorney, explained that a code enforcement officer should notify the local authority and the permit holder, job representative or posted onsite any code violations he or she may discover during the course and scope of their duties. This is a correction to an earlier opinion and was brought to his attention by the Chief Mechanical Code Compliance Officer.

Chairman Lucas asked that this updated opinion be distributed to the cities.

Mr. James DiPietro, Administrative Director, indicated this legal opinion is helpful to staff in following up on complaints that are received.

Legal Advisory Opinion as to Exemption from Duct Sizing Calculations for Sealed Engineer or Signed AC Contractor Drawings

Mr. Kramer indicated that the Board previously approved Formal Interpretation No. 20 and determined that duct sizing calculations are not necessary to be submitted to the authority having jurisdiction as part of the permitting process if the design documents showing duct sizes is signed and sealed by the engineer of record or signed by the mechanical or air conditioning contractor as allowed by Florida Statutes 471 and 489. A complaint was made by an architect alleging discrimination by the Board against architects versus engineers. He reviewed this matter from the perspective of the constitutional right to make a living and how an architect could be prejudiced by this. He could not find any way that this hurts an architect. One is still required to perform the calculations. The penalties are the same. There is no less work being done by an engineer. He concluded that the Board's opinion should stand. He wanted to avoid a slippery slope.

Legal Advisory Opinion regarding Amendments to Job Value Thresholds Triggering Design Professional Requirements

Mr. Kramer advised that the proposed modifications are \$15,000 for commercial and \$30,000 for single-family residential compared to the old standard of \$5,000 and \$10,000 respectively. There cannot be a presumption that just because it costs more means there is greater work depending on the building code. For example, work could include marble instead of formica. Materials cost more today.

Mr. DiPietro explained that staff is in the process of revisiting Chapter 1 which occurs periodically to correspond with the new building code. This topic will be presented to the Board at a later date because it is in Chapter 1. The Board Attorney was asked whether the Board has the legal authority to change the thresholds and the answer was that the Board does has that legal authority. Mr. Kramer added that the building code does not permit the Board to weaken the code. The plans should be examined as opposed to simply the dollar amount.

Mr. Lavrich believed the concept originated to allow work of an insignificant nature without requiring drawings and a threshold was set with that thinking at the time, with structural being the exception and based upon the Building Official's discretion. He did not see any reason to change the numbers. Mr. Rolando Soto, Chief Mechanical Code Compliance Officer, clarified that these are thresholds for professional design; plans are required and could be prepared by the homeowner or contractor.

- 9. **Committee Report** - none
- 10. **General Board Member Discussion** - none
- 11. **Public Comment (3 minute limit per person) and written communications** – none

12. **Adjournment**

Having no further business to go before the Board, the meeting adjourned at 7:59 p.m.

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Jeffrey Lucas, FM, CFI, CFEI – Chair