



BROWARD COUNTY

# Board of Rules & Appeals

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<http://broward.org/codeappeals.htm>

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## **BOARD OF RULES AND APPEALS**

**JUNE 8, 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  
Gregg D'Attile  
Abbas H. Zackria  
Bill Flett  
Daniel Lavrich, P.E.  
Shalanda Giles-Nelson  
Stephen E. Bailey, P.E.  
Dennis A. Ulmer  
Daniel Rourke

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

### **Approval of Minutes** – May 11, 2017

**MR. LAVRICH MADE A MOTION AND MR. D'ATTILE SECONDED THE MOTION TO APPROVE THE MAY 11, 2017 MEETING MINUTES. THE MOTION CARRIED BY UNANIMOUS VOTE OF 11-0.**

## **CONSENT AGENDA**

### **1. Certifications – Staff Recommended**

**MR. LAVRICH MADE A MOTION AND MR. WYNN SECONDED THE MOTION TO APPROVE ALL SUBMITTED CERTIFICATIONS. THE MOTION PASSED BY UNANIMOUS VOTE OF 11-0.**

**2. Appeal #17-02 – 4645 Bougainvillea Dr. Lauderdale-By-The-Sea**

**a. Staff Report**

Everyone wishing to testify was sworn in.

Mr. Cris Fardelmann, Chief Structural Code Compliance Officer, explained that the Appellant is contesting the Town of Lauderdale-By-The-Sea Building Official's decision that the Appellant's property, by definition in Section 106 of the Florida Accessibility Code, is a "Place of Public Accommodation", and as such would be required to add handicapped parking space when applying for a permit to reseal and restripe the parking. It is staff's opinion that this property does not meet the place of public accommodation definition and is therefore exempt from the accessibility code. Staff recommends that the appeal be approved. He referred to Exhibit A to his report of June 8, 2017, indicating that in order for a facility to be considered a place of public accommodation, it must meet one of twelve categories listed. Only one is a possibility, that is, places of lodging. There are only three units in this facility and according to the Property Appraiser records, it is owner-occupied. The places of lodging language indicates that except for an establishment that contains not more than five rooms for rent and that is occupied by the proprietor of the establishment as the residence of the proprietor. Staff has concluded that this is not a place of lodging or public accommodation and is not subject to the accessibility code. He went on to explain why it also does not meet Sections (i) An inn, hotel, or motel; or (ii) A facility that provides guest rooms for sleeping for stays that primarily are short-term in nature (generally 30 days or less) where the occupant does not have the right to return to a specific room or unit after the conclusion of his or her stay; and provides guest rooms under conditions and with amenities similar to a hotel, motel, or inn, including the following (1) on- or off-site management and reservations services; (2) rooms available on a walk-up or call-in basis; (3) availability of housekeeping or linen service; and (4) acceptance of reservations for a guest room type without guaranteeing a particular unit or room until check-in, and without a prior lease or security deposit.

In response to Mr. D'Attilio, Mr. Fardelmann indicated this is a triplex where the owner lives in one unit and rents the other two. He pointed out that the definition specifies it is not a place of public accommodation if there is less than five units and the property owner resides on the property, which fits this situation. Staff believes there is no reason to delve any further because it is exempt according to the definition alone. Although it fits some conditions in Section (ii), the language indicates it must fit all.

**b. Appellant Request**

Mr. Joseph Vogl, Appellant, advised that he resides at 4645 Bougainvillea Drive in Lauderdale-By-The-Sea. He is requesting approval of this appeal based on the information presented. He has provided a copy of his homestead exemption to the Town in his initial permit request.

Mr. Vogl responded to questions raised by the board as follows. His letter of May 15, 2017 to the Board indicates this property is listed on HomeAway (VRBO.com). It is a seven day minimum rental. There are three units. His family resides in the two-bedroom unit and the front other two units are rented out. Both of those units are short-term rental.

There are four parking spaces. During resealing of the driveway, the Town's code enforcement cited him for doing work without a permit. When he submitted plans with the parking space dimensions, the accessibility issue was raised by the Town. According to the definition in the Florida Accessibility Code, there are two exceptions which Mr. Fardelmann described.

### **c. City Response**

Mr. Jack Morell, Town of Lauderdale-By-The-Sea Building Official, referred to the 2012 Florida Accessibility Code provisions provided to the board in his response dated May 25, 2017 and noted that the Accessibility Code uses the ADA law as a base. The blue highlighted text is ADA provisions that the State has added to which is where the problem lies. When there are conflicts in the code, more stringent provisions apply. He read Sections 201.2.1.1 and 201.2.2.2, When a commercial facility or place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this subpart, but that portion used exclusively in the operation of the commercial facility or that portion used both for the commercial facility and for residential purposes is covered by the new construction and alterations requirements of this subpart. The portion of the residence covered under paragraph (b)(1) of this section extends to those elements used to enter the commercial facility, including the homeowner's front sidewalk, if any, the door or entryway, and hallways; and those portions of the residence, interior or exterior, available. He also read Florida Statute 509.242(1)(c), Public lodging establishments; classifications, (1) A public lodging establishment shall be classified as a hotel, motel, nontransient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental if the establishment satisfied the following criteria: (c) Vacation rental. A vacation rental is any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project. When the Accessibility Code was developed by the State of Florida, their intent was to maintain their provisions. They made one exception having to do with vertical accessibility. If only the ADA was applied, the definition would be briefer and there would be no need for this evening's discussion. He believed that Florida statute includes the situation before the board in that statute includes three-family houses in their vacation rental definition under Section 509.242 for public lodging establishments. He concluded by recommending the matter be tabled and a declaratory statement be sought.

Mr. Zackria asked if seal coating is considered an improvement. Mr. Morell indicated that the ADA guidelines provide that the parking must be brought up to compliance with the accessibility requirements. Mr. Burr questioned if there is a Florida Building Code permit requirement for sealing a driveway. Mr. Morell advised that a permit is required for anything covered by the code. Mr. Lavrich questioned Mr. Morell's statement that seal coating is reconfiguring the pavement. Mr. Morell explained when the seal coating is completed, the striping has to be re-applied according to length and width requirements and accessibility requirements. It would not apply to single family. Mr. Lavrich did not see that seal coating and restriping is a reconfiguration or alteration under the building code. It is maintenance. Mr. Zackria felt this property would be exempt based on Section 201.1, Scope. It is specifically exempted as part of the definition. Mr. Morell believed the

intent of the Advisory 201.1 is to require an accessible route for the two units but not the owner's unit. Mr. Zackria pointed out that there is a reason for an advisory and an exemption. It does not make sense to go around the exemption, then there is no purpose for it.

In response to Mr. D'Attile, Mr. Charles Kramer, Board Attorney, indicated that he came to the same conclusion as Mr. Zackria and Mr. Fardelmann as to Section 201 of the Accessibility Code and the Florida Statute. There is an exception under places of lodging and one has to get through that exception in order to go further. There are less than five units.

Mr. Lavrich referred to Chapter 1 of the Accessibility Code to note the purpose of the requirements has to do with accessibility to sites, facilities, buildings and elements by individuals with disabilities. The requirements are to be applied during the design, construction, additions to, and alteration of sites, facilities, buildings, and elements. He pointed out that nothing is being constructed, designed or altered. He did not consider seal coating as an alteration. Mr. Morell agreed that there is nothing in the general building code relating to seal coating. If there is no provision, Mr. Burr questioned why a permit is needed. Mr. Morell indicated it has to do with the Town's ordinance on size requirements. He also confirmed that the citation was issued by the Town Code Enforcement. He was uncertain whether there is a Town ordinance relating to pulling a permit for seal coating.

Mr. Burr questioned whether this board has authority over code enforcement. Mr. Zackria did not think so, if it has to do with the zoning code. After some discussion, Mr. Burr concluded that this is not a building issue. He questioned the need for a permit to seal coat a driveway.

#### **d. Board Action**

**A MOTION WAS MADE BY MR. LAVRICH AND SECONDED BY MS. GILES-NELSON TO APPROVE THE APPEAL. THE MOTION PASSED BY UNANIMOUS VOTE OF 11-0.**

### **3. Acceptance of Price Quote from the National Fire Protection Association (NFPA) for the Certified Fire Protection Specialists Program and Certification.**

#### **a. Reports of the Fire Code Compliance Officer and Administrative Director**

Chairman Lucas abstained from discussion and voting on this matter.

Mr. Bryan Parks, Chief Fire Code Compliance Officer, explained a new objective of the board is to provide the highest education to all disciplines within the building and fire departments. The first one being introduced is Certified Fire Protection Specialist Classification. He went on to describe some particulars of the program. It will be available to fire marshals and fire plans examiners. It is a two-day course at a cost of \$945 along with the ANSI test for \$300. Through negotiations with the National Fire Protection Association (NFPA), the cost per student will be \$807. The program does not pay for a second opportunity if one does not pass the test initially. Currently there are

eleven cities and thirty-five individuals who have applied. The ISO rating can be improved with more certifications within a department. The department's classification could also be upgraded. He drew attention to the list provided to the board of five courses he would like to offer going forward and noted that each of the building disciplines will also be offering programs. He would like to proceed next to certified fire inspector one before next year. NFPA has indicated that qualifications will be met to become a plans examiner or fire marshal even without a degree due to the extent of this education.

Mr. James DiPietro, Administrative Director, advised that there is surplus money in the current budget to cover this expense. He referred to a memorandum from the County Attorney, dated January 19, 2007, provided to the board, that indicates BORA (Board of Rules and Appeals) is an independent board which was not created by and does not report to the Board of County Commissioners and in summary that BORA is not required to comply with the County Procurement Code when obtaining goods and services. As to a check and balance, it can be done through the County Commission and their procurement division; or the Board of Rules and Appeals may exercise its authority to make this purchase based on the presentation or the Board of Rules and Appeals has delegated to the staff to spend a certain amount as up to \$4,000 is allowable. He went on to point out information from the NFPA provided to the board in a letter dated May 26, 2017, giving assurance that over the last twenty-four months no previous programs were provided at a lower price than what was presented in this proposal.

b. **Public Comment** – none

c. **Board Action**

**A MOTION WAS MADE BY MR. WYNN AND SECONDED BY MR. LAVRICH GILES-NELSON TO APPROVE THE REQUEST AND AUTHROIZE THE EXPENDITURE OF \$28,245 FOR TRAINING OF THIRTY-FIVE BOARD OF RULES AND APPEALS' CERTIFIED FIRE PLANS EXAMINERS AND FIRE CODE OFFICIALS (MARSHALS). THE MOTION PASSED BY UNANIMOUS VOTE OF 10-0. CHAIRMAN LUCAS ABSTAINED FROM DISCUSSION AND VOTING. A MEMORANDUM OF VOTING CONFLICT, DATED JUNE 8, 2017, WAS FILED BY CHAIRMAN LUCAS AND IS ATTACHED TO THESE MINUTES.**

4. **The Board will consider changes to Broward County Administrative Provisions Chapter I of the FBC 5<sup>th</sup> Edition (2014) – by adding new language to Code Sections 104.10.2 Certification of the Electrical Plans Examiner, 104.10.3 Certification of Mechanical Plans Examiner and 104.10.4 Certification of the Plumbing Plans Examiner which would allow for engineers to be certified as Electrical, Mechanical and Plumbing Plans Examiners without prior experience as an inspector, as follows:**

**“An Engineer in the discipline requested and having practiced for a minimum of five (5) years within the State of Florida”.**

a. **Staff Report**

Mr. Rolando Soto, Chief Mechanical Code Compliance Officer, explained that reference to architects in this amendment had to be removed because of issues with the high velocity hurricane zone. The amendment provides an additional path for engineers to become plans examiners in the electrical, plumbing and mechanical disciplines. The inspector experience criteria would be removed. This change matches what is done in Miami-Dade County. Staff will present a change with respect to structural at a future meeting.

Mr. Lavrich noted a typographical error in the recommendation language where practice should be past tense. It was noted that the engineer would be required to be licensed in the State of Florida. Mr. Lavrich expressed a preference to specify in the language that the engineer be licensed in the State of Florida, however, Mr. Soto clarified that it is specified in the definitions section and there was a consensus that specifying in the definitions section would suffice.

**b. Public Hearing**

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

**c. Board Action**

**A MOTION WAS MADE BY MR. D'ATTILE AND SECONDED BY MR. ZACKRIA TO ACCEPT STAFF'S RECOMMENDATION AS SUBMITTED. THE MOTION PASSED BY UNANIMOUS VOTE OF 11-0.**

5. **Director's Report** - none
6. **Attorney's Report** - none
7. **Committee Report** - none
8. **General Board Member Discussion**

Certification Applications - Agenda Backup; Mr. James DiPietro, Administrative Director, provided a handout noting the board's policy in November of 2015, reducing the volume of paper in the agenda backup for certifications. Board Member Dave Tringo has expressed concern about there not being enough information in the agenda backup and asked that it be raised to the board this evening.

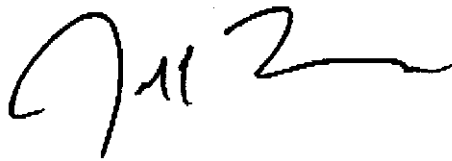
Mr. Zackria recalled when the issue was discussed, it was recognized that staff has already reviewed applications, therefore the board is acting on staff recommendations. If there is an issue, it becomes a separate item. An individual request for additional information is always available to members. Mr. DiPietro concurred and went on to say that staff has the obligation to bring to the board as a separate agenda item anything that does not look right. Mr. Lavrich agreed with the paperwork reduction approach. He was confident that staff is doing a proper job in reviewing the full application submittals.

Paperless Agenda Backup; Mr. D'Attile raised the idea of providing computer tablets to members for the agenda backup. Mr. DiPietro suggested a cafeteria plan of multiple options being offered in that there is at least one member that prefers paper. Mr. Lavrich pointed out that members need the information in advance for reviewing. Both Ms. Giles-Nelson and Mr. Lavrich were opposed to purchasing tablets from the board's budget.

9. **Public Comment (3 minute limit per person) and written communications** – none

10. **Adjournment**

Having no further business to go before the Board, the meeting adjourned at 8:09 p.m.



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Jeffrey Lucas, FM, CFI, CFEI – Chair

# FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>Lucas, Jeffrey</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>BORA</i>
MAILING ADDRESS <i>1511 SE 24 Ave</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input checked="" type="checkbox"/> OTHER LOCAL AGENCY
CITY      COUNTY <i>Pompano Beach      Broward</i>	NAME OF POLITICAL SUBDIVISION: 
DATE ON WHICH VOTE OCCURRED <i>6/8/17</i>	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input checked="" type="checkbox"/> APPOINTIVE

## WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

## INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

\* \* \* \* \*

### ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

\* \* \* \* \*

### APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

**IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:**

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)



**APPOINTED OFFICERS (continued)**

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

**DISCLOSURE OF LOCAL OFFICER'S INTEREST**

I, Jerry Lucas, hereby disclose that on 6/8, 20 17:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, \_\_\_\_\_;
- inured to the special gain or loss of my relative, \_\_\_\_\_;
- inured to the special gain or loss of \_\_\_\_\_, by whom I am retained; or
- inured to the special gain or loss of \_\_\_\_\_, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

6/8/17  
Date Filed

[Signature]  
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.