**BROWARD COUNTY**

Board of Rules & Appeals

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**BOARD OF RULES AND APPEALS**

**May 8, 2014**

**Meeting Minutes**

**Call to order:**

Chair Ron Burr called a published meeting of the Broward County Board of Rules and Appeals to order at 7:00 p.m.

**Roll Call**

Gregg D’Attile

John Famularo

Allan Kozich

Jeff Lucas

Shalanda Giles Nelson

Dave Rice

John Sims

Richard Smith

Kenneth Wynn

Don Zimmer

Ron Burr - Chair

After roll call, the presence of a Quorum was announced by Chair Ron Burr.

**Approval of Minutes**

Mr. Kozich made a motion to approve the January 9, 2014 meeting minutes. The motion was seconded, and the minutes were approved as submitted.

**CONSENT AGENDA**

1. **Certifications – Staff Recommended**

**MR. KOZICH MADE A MOTION TO APPROVE AND THE MOTION WAS SECONDED BY MRS. GILES NELSON.**

**THE MOTION PASSED UNANIMOUSLY WITH A VOTE OF 11 – 0.**

**REGULAR AGENDA**

**1. a Request of Mr. Jeffrey Massie to be certified as Structural Inspector with the City of Pompano Beach**

Staff report was given by Bill Dumbaugh – Chief Structural Code Compliance Officer. Mr. Dumbaugh said that based on the letter and the affidavit Mr. Massie submitted; he was able to answer questions posed to him about the industry very well. Based on that information, Mr. Dumbaugh recommended the Board approve Mr. Massie’s certification.

Mr. Massie was sworn in, and was represented by his attorney, Mr. Johnnie McCrae, Jr., of Pompano Beach, who addressed the Board. Mr. McCrae attested that based upon the requirements of 104.16.32 Mr. Massie meets and satisfies the qualifications and the criteria. He has five years of construction experience in the structural discipline in a supervisory capacity. At least two years of that has been within the jurisdiction HVHZ and his experience falls within that framework of Pompano Beach.

After answering questions from Board member, Mr. Richard Smith, Mr. McCrae went on to further describe Mr. Massie’s position with the City of Pompano Beach. Following additional discussion among Board members a motion was made.

**MR. SMITH MADE A MOTION TO APPROVE AND THE MOTION WAS SECONDED BY MR. KOZICH.**

**THE MOTION PASSED UNANIMOUSLY WITH A VOTE OF 11 – 0.**

**2. Appeal #14-01 – 4715 NW 9th Avenue, Oakland Park**

Board Member, Mr. Gregg D’Attile had a conflict of interest and recused himself from the vote. Mr. D’Attile left the room.

Rolando Soto – Chief Code Compliance Officer Mechanical presented the staff report to the Board. The appeal refers to a fiber glass duct that was painted and rejected by the local inspector. My recommendation is that the Board approves the appeal with the following note that using water based paint that meets ASTME-84 or UL 723 may be allowed as long as these actions are not prohibited by the manufacturer of the fiber glass or flexible ductwork. The rough inspection made by the authority having jurisdiction (AHJ) can be painted labels showing listing cannot be painted. The Appellant has good reason to challenge this installation. The sections he quoted in the violations are the same that refer to the listing of products. The paint does not adhere well to aluminum or plastic surfaces, so while it may not look good, the paint may begin peeling off, the manufacturer notwithstanding, does not prohibit the painting of duct work. At the end of the letter they raise a concern about the flame spread and flammability. We are saying that it has to be a paint that meets ASTME-84. We are not using this for life safety, this is an air-conditioning unit. The Board may also choose to forward the appeal to the Mechanical Committee for review and recommendation.

Board member, Mr. Richard Smith noted that the manufacturer says that the reason they do not want it painted is that the paint will peel off. Mr. Soto commented that there is a basic belief among the inspectors that you follow UL Listings. Mr. Soto stated he believes that we can make the logical, rational and good faith analysis that is not going to damage the product and that is why he is supporting the Appellant and not the City.

***The Appellant and all other parties wishing to speak were sworn in.***

The Appellant, Bryan Englert, a Project Manager with Gil Hyatt Construction addressed the Board. Mr. Englert informed that Board that he ran the day to day operations and oversaw the project. The issue has become whether a non-combustible surface could become more combustible by merely painting it, in this case with a latex paint. He further stated that the testing results that we found from paint suppliers actually proved that you cannot increase a non-combustible product’s combustibility by putting a paint on the surface. Mr. Englert made reference to pages 16, 18, and 19 of the appeal packet, where the manufacturer’s testing was part of that detail and says “it meets ASTM-E84, it is Class A rated”. Page 18 and 19 is from Sherwin-Williams and Porter Paints which states that they have tested their paints. They have conducted tests on substrates. They tested epoxy paints and polyurethanes, and latex paints as well, and found that all of these paints fall into the category where they do not pose an additional risk to a non-combustible product.

Mr. Englert went on to say that this issue is not equally applied from municipality to municipality, and we agree that there is a long taboo issue of painting ductwork, but with the new paints you don’t have the issue. There are nowhere near the flammability issues as in the past, even with the oil based paints.

Chair Ron Burr asked if there were questions and went on to ask for the City’s response.

The Building Official from the City of Oakland Park, Don Fardleman asked his Mechanical Inspector to address the Board. Inspector Greg Kijanka stated that we are all here for the protection of the citizens and their property. If the paint meets the criteria of the flame spread and fire rating, then he would be fine with it, as long as it meets the criteria. Mr. Kijanka continued that no one has done that, and he would like to see a test report that he could be comfortable with.

Board member Allan Kozich stated that based upon the evidence and information that has been provided to the Board in the packet and also based upon the testimony given he would like to make a recommendation that the Board approve the appeal.

Board member Mrs. Giles Nelson had a question for staff on the type of paint used by the Appellant, and Mr. Soto explained that we are not trying to substitute the standard to which the duct is listed, but that we say just because the testing was not done with paint on the surface – that does not prohibit the fact that it will meet this standard. We are not replacing the duct standard with another one. UL-181 is the standard that they use to test fiberglass ducts. A similar case can be seen in drywall, although it has been said that it is not the same, drywall is not tested with paint. Drywall is tested bare, and then it is painted. The argument against that is that you have to use special tapes and sealants, and my argument is that this paint goes on top of the tapes and sealants.

After further discussion, it was determined that in the future ASTM-E84 be included in the requirements.

**MR. KOZICH MADE A MOTION TO SUPPORT THE RECOMMENDATION AND APPROVE, WITH THE AMENDMENT TO INCLUDE ASTM-E84. THE MOTION WAS SECONDED BY MRS. GILES NELSON.**

**THE MOTION PASSED WITH A VOTE OF 10 – 0.**

Board member, Mr. D’Attile was brought back into the chambers.

**3. Amendment to Chapter One of the Florida Building Code Section 110.10 Special Inspector for Smoke Control Systems**

Rolando Soto – Chief Mechanical Code Compliance Officer presented the staff report. Simply stated this is to amend Chapter One to reflect what currently exists in the Mechanical Code and the Building Code in regard to smoke control systems. The Mechanical Code and the Building Code require a special inspector for smoke control systems. Our Chapter One when it speaks about Special Inspectors, only addresses structural items. All we are adding is the Special Inspector for the smoke control systems.

The Director added that this is meant to be a glitch bill and we are just making a technical correction in the code. There is no intent to change anything except to clarify Chapter One.

***At this time, the Chair opened up the Public Hearing. Having no speakers from the public, the Public Hearing was closed.***

**MR. ZIMMER MADE A MOTION TO APPROVE AND THE MOTION WAS SECONDED BY MR. SMITH.**

**THE MOTION PASSED UNANIMOUSLY WITH A VOTE OF 11 – 0.**

**4.** **Proposed BORA Policy #14-02. Policy/Affidavit to Ensure Compliance with Chapter 71-575,**

**Paragraph 4(b), Laws of Florida**

Administrative Director, Mr. DiPietro addressed the Board and said that two actions are requested from the Board this evening, in the following order: First to accept by motion the Board attorney’s legal opinion (if you accept it by motion it makes the opinion stronger). The second action would be to authorize the affidavit by motion that inspectors, when they are promoted or come up for renewal would execute. They would agree to not use their licenses. The language has been reworked and we would like to use this new form going forward. The intent is not to have a conflict of interest with the use of licenses.

After Board discussion and dialogue with the Board attorney a motion was made.

**MR. ZIMMER MADE A MOTION TO ACCEPT THE ATTORNEY’S LEGAL OPINION AND APPROVE FINAL VERSION OF AFFIDAVIT. THE MOTION WAS SECONDED BY MRS. GILES NELSON.**

**THE MOTION PASSED WITH A VOTE OF 10 – 1.**

**Dissenting vote:**

**Mr. Richard Smith**

**5. FBC Formal Interpretation – Retrofit of Windows, Doors, Garage Doors, Shutters and**

**Skylights – FBC Existing Building, Alteration Level I**

Rusty Carroll, Chief Structural Code Compliance Officer presented the item stating the formal interpretation on the agenda has already been adopted. Staff is requesting the word “mullbars” and paragraph 5 be added to the existing interpretation to make it clear there are no inspections required except for a final. Staff stated they have received the following recommendation from individuals:

1) Add the word “or” after the word window,

2) Place parenthesis around the word “townhouse” to match the table,

3) Change the code section referenced 1714.5.4.2 to 1715.5.4.2. , and Staff supports the code

section change and the adding of the parenthesis.

At this time, the Chair asked for Public Comments.

Shane Kittendorf, Structural Inspector and Plans Examiner from the City of Hallandale addressed the Board with comments on the item.

**MR. D’ATTILE MADE A MOTION TO APPROVE AS MODIFIED WITH BRACKETS AROUND THE WORD TOWNHOUSES. THE MOTION WAS SECONDED AND THE MOTION PASSED UNANIMOUSLY WITH A VOTE OF 11 – 0.**

**6. FBC Formal Interpretation – Retrofits required pursuant to Florida Building Code Existing Building**

**Section 611.8.1.3**

Rusty Carroll, Chief Structural Code Compliance Officer presented the interpretation stating the interpretation was previously adopted by the Board, however, has expired. Staff has received numerous calls from roofing contractors to reissue the interpretation. The interpretation establishes that a 1/8 x 1 strap with 3 16d nails complies with the 500 lb. requirement as specified in Florida Building Code Existing Building. The calculations to verify the compliance was performed by Mark Scala, P.E. and reviewed by the Board’s Structural Committee.

***At this time, the Chair asked for Public Comments. There were no comments from the Public.***

**MR. SMITH MADE A MOTION TO ACCEPT UPDATES AND THE MOTION WAS SECONDED BY MR. LUCAS.**

**THE MOTION PASSED UNANIMOUSLY WITH A VOTE OF 11 – 0.**

**7. Proposed BORA Policy# 14-03, Purchase of Hybrid Vehicles as Replacement Vehicles Become due,**

**and the Purchase of one Hybrid Car Replacement Vehicle in Fiscal Year 2014**

Mr. DiPietro addressed the Board and proceeded to give a run down on the current vehicle situation and what the Board hopes to accomplish in the near future.

Mr. DiPietro advised the Board that we need to have 100,000 miles to justify the purchase on a cost basis. Some justify it on environmental reasons. Presently, we are getting two cars, one through the County, and one which I am asking you to authorize tonight. The County car would be a standard gasoline car for someone with a lower mileage history, and the other using 10,000 miles per year would be the hybrid. Mr. DiPietro referred to his report in which he explains that if gasoline rises in the next few years to $3.84 per gallon or higher, it basically pays for itself.

There was brief discussion among the Board members, and a motion was made.

**MR. ZIMMER MADE A MOTION TO APPROVE AND THE MOTION WAS SECONDED BY MRS. GILES NELSON.**

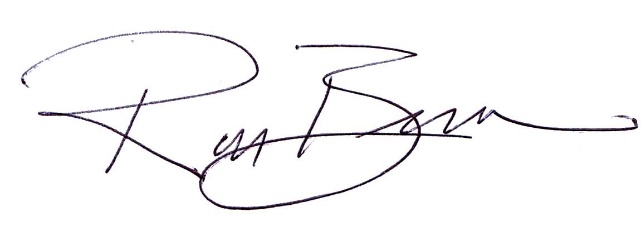
**THE MOTION PASSED UNANIMOUSLY WITH A VOTE OF 11 – 0.**

**8. Director’s Report**

Mr. DiPietro briefly discussed the status of committee membership. The first committee, Certification Review – Building, is doing well with several meetings this year and several meetings last year under the chairmanship of Mr. Allan Kozich.

The other certification committee is fire. The only reason this committee has not been activated is due to a conflict of interest issue to be resolved concerning two appointments. Either the City Manager or the Fire Official will have to act. We are close to appointing a new fire representative, and therefore we are close to activating the committee.

Having no further business to go before the Board, Mr. Kozich made a motion to adjourn. The meeting concluded at 9:00 p.m.



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Ron Burr – Chair