

BROWARD COUNTY BOARD OF RULES & APPEALS
AUGUST 12, 2021
MEETING MINUTES

Call to Order

Chairman Daniel Lavrich called a published virtual meeting of the Broward County Board of Rules and Appeals to order at 7:12 p.m.

Present:

Daniel Lavrich, Chair
Stephen E. Bailey, Vice-Chair
Gregg D'Attile
Jeff Falkanger
John Famularo
Robert Kamm
Sergio Pellecer
David Rice
Daniel Rourke
Robert Taylor
David Tringo
Dennis Ulmer

A quorum was present.

Mr. Tringo made a motion and Mr. Kamm seconded the motion to approve the agenda posted. The motion carried by unanimous vote of 12-0.

Approval of Minutes – May 13, 2021

Mr. Rice made a motion and Mr. Taylor seconded the motion to approve the minutes as submitted. The motion carried by unanimous vote of 12-0.

CONSENT AGENDA

1. Certifications - Staff Recommended.

CITY OF DEERFIELD BEACH

SULLIVAN, LAWRENCE K., CHIEF ELECTRICAL INSPECTOR

CITY OF FORT LAUDERDALE

LAHENS, PHILLIPE, FIRE PLANS EXAMINER
GOLLAN, STEPHEN, FIRE PLANS EXAMINER

CITY OF HOLLYWOOD

CHEW, JOHN, STRUCTURAL INSPECTOR – PROVISIONAL
LONG, RUSSELL, BUILDING OFFICIAL

CITY OF LAUDERDALE LAKES

DEVEAUGH, PETE, CHIEF ELECTRICAL INSPECTOR
SANCHEZ, ROMAN, CHIEF MECHANICAL INSPECTOR

CITY OF LAUDERHILL

JOHNSON, SHENIQUA L., FIRE PLANS EXAMINER

CITY OF OAKLAND PARK

BENITOA, ANTONIO, CHIEF PLUMBING INSPECTOR
MARLOWE, EDWARD, FIRE INSPECTOR
RICHARDSON, PATRICK, CHIEF ELECTRICAL INSPECTOR

CITY OF PEMBROKE PINES

DESO, DAVID STANLEY, JR., CHIEF MECHANICAL INSPECTOR

CITY OF POMPANO BEACH

MAHLER, HAROLD, PLUMBING INSPECTOR (TEMPORARY 120-DAY)

CITY OF SUNRISE

ROBULOCK, CHRISTOPHER, CHIEF PLUMBING INSPECTOR

CITY OF TAMARAC

ANTINELLI, FRANK J., CHIEF ELECTRICAL INSPECTOR
PALACIOS, OTONIEL, CHIEF MECHANICAL INSPECTOR

COUNTYWIDE

ALBORES, ALEXANDER, STRUCTURAL PLANS EXAMINER
BROWER, JAMES, ELECTRICAL INSPECTOR
COPIL, KLAUS, STRUCTURAL PLANS EXAMINER
CORRALES, ALEJANDRO D., STRUCTURAL INSPECTOR
DESHARNAIS, GEORGE, JR., STRUCTURAL PLANS EXAMINER
DESO, DAVID STANLEY, JR., MECHANICAL INSPECTOR
DESO, DAVID STANLEY, JR., MECHANICAL PLANS EXAMINER
GARCIA, ERIC, MECHANICAL PLANS EXAMINER
MANSOR, SIMO, PLUMBING PLANS EXAMINER
NAGLER, FREDRIC, STRUCTURAL INSPECTOR
NAGLER, FREDRIC, STRUCTURAL PLANS EXAMINER
NEIBERG, JOEL D., STRUCTURAL PLANS EXAMINER – LIMITED
PENEVOLPE, ANTHONY J., MECHANICAL INSPECTOR
ROBULOCK, CHRISTOPHER, PLUMBING INSPECTOR
ROBULOCK, CHRISTOPHER, PLUMBING PLANS EXAMINER
RODRIGUEZ, ELMER, ELECTRICAL INSPECTOR
TEDIM, JOSE, MECHANICAL PLANS EXAMINER
THOMAS, JAMES F., STRUCTURAL PLANS EXAMINER

Mr. Tringo made a motion and Mr. Pellecer seconded the motion to approve the certifications as recommended. The motion carried by unanimous vote of 12-0.

REGULAR AGENDA

2. **Request of Mr. James Hollingsworth for a third extension of ninety days to close out open and ongoing permits**

a. Staff Report

Mr. Jack Morell, Chief Structural Code Compliance Officer, indicated this is the third extension request. Mr. Hollingsworth has given assurance that the permits will be completed by this requested September date. Mr. James DiPietro, Administrative Director, advised that there are only two open permits at this time.

- b. Request of Mr. Hollingsworth
- c. Board Questions
- d. Board Action

Mr. D'Attile made a motion and Mr. Famularo seconded the motion to approve the requested extension. The motion carried by unanimous vote of 12-0.

3. **Local amendments for 1st reading**
Amendment to the Florida Building Code, 7th Edition (2020) Chapter 1, Section 118, entitled Emergency Responders Communications Enhancement System (ERCES)

- a. Staff Report

Mr. Bryan Parks, Chief Fire Code Compliance Officer, indicated these amendments were recommended by the BDA Committee by a vote of 14-0. He went on to highlight the changes as presented in the agenda memorandum.

- b. Board Questions - none
- c. Public Comment - none
- d. Board Action

Mr. Rice made a motion and Mr. Pellecer seconded the motion to approve the amendments on first reading as recommended. The motion carried by unanimous vote of 12-0.

4. **Formal Interpretation of the Florida Building Code, 7th Edition (2020), Existing Building, Sections 706.8 through 706.8.1.7 Windstorm Loss Mitigation, concerning the retrofitting roof to wall connections**

- a. Staff Report

Mr. Jack Morell, Chief Structural Code Compliance Officer, noted this issue was raised at the May Board meeting by Board Member Giles-Nelson. He explained if the cost of the improvements for the roof to wall connections are greater than 15% of the cost of the reroofing, improvements of the wall to roof connections are not required.

- b. Board Questions
- c. Board Action

Mr. Famularo made a motion and Mr. D'Attile seconded the motion to approve the interpretation as presented. The motion carried by unanimous vote of 12-0.

5. **Revision to Formal Interpretation that was initially effective on June 30, 2015, related to "recessed Low Height Air Handlers" for the Florida Building Code, 7th Edition (2020)**

- a. Recommendation of Energy Committee

Mr. Rice indicated the Energy Conservation Committee voted unanimously to present this revision to the Board.

Mr. Tim de Carion, Chief Energy Code Compliance Officer, explained as the efficiency requirements of air conditioners increased, there became a problem with space. Replacement equipment would not fit. Pancake units were added an exception to the interpretation. They did not have to meet the efficiency requirements of the U.S. Department of Energy because of the space constraint. Some manufacturers have now introduced new units that meet the efficiency requirements within the existing spacing. Alternative methods are contained in the proposed revision if compatible equipment is not possible.

- b. Board Questions - none
- c. Board Action

Mr. Rice made a motion and Mr. D'Attile seconded the motion to approve the revision to Formal Interpretation #8 as recommended. The motion carried by unanimous vote of 12-0.

6. **Proposed Board of Rules and Appeals Residential Energy Guidelines for the 7th Edition (2020) of the Florida Building Code**

- a. Recommendation of the Energy Committee

Mr. Rice outlined composition of the newly formed Energy Conservation Committee membership. One of the first tasks was to look at the residential codes. Almost every city had different interpretations. The proposed guidelines were developed and are being presented for approval. The guidelines themselves are not mandatory but each one cites a code section. The goal is uniform energy interpretation and enforcement.

Mr. Tim de Carion, Chief Energy Code Compliance Officer, indicated that building departments wanted guidelines. There are useful tools in the guidelines for developers in submitting plans. It will make that process smoother including plan review amongst the various disciplines. It will also facilitate Board of Rules and Appeals' staff in supporting the building departments and achieving uniformity.

- b. Board Questions - none
- c. Public Comment - none
- d. Board Action

Mr. Rice made a motion and Mr. Tringo seconded the motion to approve the guidelines as recommended. The motion carried by unanimous vote of 12-0.

7. **Report regarding Florida Building Code, 7th Edition (2020), Chapter 1, Section 110.3.13, Virtual Inspections (adopted March 2021)**

- a. Staff Report

Mr. Jack Morell, Chief Structural Code Compliance Officer, summarized the results of a survey (90-day trial period) on use of virtual inspections by Broward County building departments. Thirty jurisdictions have responded. Eleven are using virtual inspections. Eighteen are not and favor limiting such inspections to the categories approved by the Board of Rules and Appeals.

Ten are not in favor of virtual inspections whatsoever. Two reported difficulty using virtual inspections and nine reported no difficulty. Fifteen indicated inapplicable to the question of difficulty using virtual inspections. Ten reported no difficulty with using virtual inspections. Two indicated budget constraints. One commented that there should not be any restrictions on virtual inspections. One wanted to add pipe lining to the Board's list of virtual inspections.

- b. Board Questions - none
- c. Public Comment - none
- d. Board Action

Mr. Tringo made a motion and Mr. Pellecer seconded the motion to accept the report. The motion carried by unanimous vote of 12-0.

8. **Updates to Board of Rules and Appeals Policy #21-01 entitled “Delegation of Board of Rules and Appeals authority to establish the number of employees working at one time, when physically at the office due to Covid-19 concerns, and to further establish written reporting requirements for employees who are working remotely.”**

- a. Director’s Request

Mr. James DiPietro, Administrative Director, advised the update would be to increase the number of employees working at one time when physically at the office to 67% and the entire policy would end on September 30th.

- b. Board Questions

In response to Mr. D’Attile, Mr. DiPietro explained that since the Board approved the initial policy it would be appropriate to request a Board vote for updates. In response to Mr. Rice, Mr. DiPietro indicated that the County has already brought all employees back, but the federal government has a date of September 15th in some cases.

- c. Board Action

Mr. Rice made a motion and Mr. Famularo seconded the motion to approve the policy update as recommended. The motion carried by unanimous vote of 12-0.

9. **Disposition and Disposal of Personnel Records – Supplemental Documentation (Fiscal Year 1983-2013) and Disposal of Litigation Case File (Anniversary Year 1983-1984)**

- a. Staff Report

Mr. DiPietro, Administrative Director, indicated that these are very old records. The State minimum retention required is far exceeded. The request will also be processed through the appropriate County department.

- b. Board Questions

Mr. D’Attile felt this could be handled administratively. Mr. DiPietro and the remaining Board members had no objection.

- c. Board Action – no action taken

10. **Director’s Report**

Building Safety Inspection Program Audit

Mr. DiPietro advised that a communication was sent to building officials (before Champlain Towers) on May 24, 2021, inquiring about the status of the program. Twelve responses were received and as of today, there are twenty-three responses with nine not responding. In general response to the 2020 audit, which was the year of COVID, was poor. A decision was made to conduct a third audit for 2019 which was before COVID. In this audit all buildings were included along with eleven questions whereas in 2020, it was only six stories and higher. The deadline for the 2019 audit is August 16th, and that report will be provided to the Board next week. At the Board's September meeting, there will be recommendations on how to improve the current system.

Mr. Bailey asked about the Board's accountability. Chairman Lavrich noted that the initial inquiry was made in May. The program clearly indicates it is the cities' responsibility. It is unknown that the collapse of Champlain Towers had anything to do with this program or the building maintenance. Mr. Bailey indicated his question has to do with liability. Mr. Charles Kramer, Board Attorney, explained that the Board of Rules and Appeals' function is administrative oversight. The Board of Rules and Appeals is a governing body, not an enforcement one and it does not take a hand in performing these investigations. As far as individual or group liability, the answer is no. Moreover, there is sovereign immunity. The function is administrative, not operational.

Mr. Kamm raised an issue wherein there are electrical installations of 40 to 50 years ago that do not pose a safety hazard but also do not comply with current code. There are jurisdictions indicating the electrical installations must be replaced. Mr. DiPietro indicated that the intent of the program is to comply with the code at the time the structure was built. Mr. Ken Castronovo, Chief Electrical Code Compliance Officer, confirmed that to be accurate. The goal is safety. Chairman Lavrich pointed out that the Building Safety Inspection Program policy is very clear on this point.

11. **Attorney's Report** - none

12. **Committee Report**

Structural Committee meeting of July 12, 2021

Chairman Lavrich advised that a report was provided to the Committee concerning the Champlain Towers investigation status. The Miami-Dade Director of Board and Code Administration reported on what Miami-Dade is doing and what they knew at the time about the collapse. It is unknown why the collapse occurred. There is no evidence at this time that it had or did not have to do with the building's maintenance. The Committee was informed of the audit being conducted by the Board's staff. The Committee consensus was that no further action is warranted until there is more information available. He noted that he is participating in a committee formed by Broward County Mayor Geller relating to these issues. There will be additional meetings held. There will be a meeting next week in Palm Beach by the International Code Council (ICC) and he will be participating. He noted that along with the Administrative Director he had a virtual discussion with two City of Dallas, Texas, commissioners interested in the Board's Building Safety Inspection Program. For the ICC meeting next week, he received a proposal for a building safety inspection program in Palm Beach County that looked like exactly like the Broward County Board of Rules and Appeals' program.

13. **General Board Member Discussion**

14. Public Comment (3-minute limit per person) and written communications

Ms. Sheila Oliver, Building Official, City of Deerfield Beach, noted the difficulties with compliance with the Building Safety Inspection Program in 2019 because of COVID-19. The City of Deerfield Beach followed the original advisory opinion of the Board of Rules and Appeals' attorney, dated March 27th. As to tolling where the Governor issued an extension and it was not possible to expire permits, the advisory opinion clearly indicated that the Building Safety Inspection Program is similarly considered with respect to deadlines for compliance, extensions for compliance are permissible pursuant to written notice to the issuing authority of the intent to exercise tolling and the extension granted. However, some fifteen months later that same advisory opinion was revised on June 30th there is no mention of the Building Safety Inspection Program (Florida Building Code, Section 110.15) is similarly considered with respect to deadlines for compliance, and extensions for compliance are permissible pursuant to written notice to the issuing authority of the intent to exercise tolling and the extension granted. However, the revised opinion (June 30th) does not mention of the Building Safety Inspection Program and the four instances where tolling is statutory under Florida Statute. Further, the opinion states that based on review of case law and statute, tolling of time for compliance with FBC 110.15 is not permitted and reliance on any prior opinion should be addressed forthwith. Deerfield Beach followed the original opinion and on June 30th they were told it was never meant to mean that. However, the Governor's executive order had already expired, and they had already re-sent out letters to property owners who had not complied reminding them they had to comply. She questioned the position that cities were put in with the retraction fifteen months after the original opinion.

Mr. Charles Kramer, Board Attorney, advised that the initial advisory opinion was drafted with considerations to the Florida Building Commission. It was something being examined prior to the Champlain Towers collapse. When the error was discovered, it was republished. Expiration of the Governor's executive order had nothing to do with the revision. Until the opinion was revised, Deerfield Beach was in compliance in their actions. At this point, it is improper to rely on it. He assured her that Deerfield Beach is still considered to be in compliance based on the original advisory opinion. Mr. James DiPietro, Administrative Director, indicated it was not 15 months in that the Governor's tolling period was around March 9th to November 1st.

15. Adjournment

There being no further business, the meeting adjourned at 8:22 p.m.



Daniel Lavrich, P.E. - Chair