FLORIDA BUILDING COMMISSION

ALTERNATIVE PLANS REVIEW AND INSPECTIONS WORK GROUP

FACILITATOR’S REPORT OF THE JUNE 17, 2004 MEETING IV (PHASE II)

Ocala, Florida

Meeting Design & Facilitation By

Florida Conflict Resolution Consortium

Report By Jeff A. Blair

jblair@fsu.edu
http://consensus.fsu.edu

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OVERVIEW OF WORK GROUP’S KEY ACTIONS

THURSDAY, JUNE 17, 2004

Agenda Review and Approval
The Work Group voted unanimously, 8 - 0 in favor, to approve the agenda as presented. Following are the key agenda items approved Meeting III:

✓ To approve regular procedural matters
✓ To review consensus recommendations by issue
✓ To consider amendments to consensus recommendations by issue
✓ To test for consensus on a package of recommendations for submittal to the Florida Building Commission
✓ To consider public comment
✓ To identify needed next steps

Member Attendance
The following members attended Meeting IV:


DCA Staff Attendance
Rick Dixon and Jim Richmond.

Facilitation
The meeting was facilitated by Jeff Blair.

Review and Approval of June 3, 2004 Meeting Report
The Work Group voted unanimously, 8 - 0 in favor, to approve the summary report as amended. (Amendments were editorial and not substantive)

Amendments
Page 3: §553.791 §4553.794

Approval of Consensus Package of Recommendations

Work Group Actions:
Motion— The Work Group voted unanimously, 8 – 0 in favor, to approve the package of consensus recommendations for submittal to the Florida Building Commission. The Work Group’s recommendations are included in the next section.
RESULTS OF AMENDMENTS PROPOSED TO CONSENSUS RECOMMENDATIONS

NOTE: Exact language and citations within the statute (§553.791) will be prepared by DCA legal staff.

A. INSURANCE

Work Group Consensus Recommendation
Require private provider to submit to the local jurisdiction a certificate of their insurance coverage (certificate of insurance), pursuant to the requirements found in F.S. 553.791 (15) prior to providing services within the jurisdiction.

Work Group Actions:
There were no amendments proposed to this issue.

B. APPEAL RIGHTS OF PRIVATE PROVIDERS

Work Group Consensus Recommendation
The Work Group unanimously agreed to recommend adding a new section to 553.791 that clarifies the law does not limit the authority of the local jurisdiction to stop work as authorized by provisions of other law or local ordinance.

Work Group Actions:
There were no amendments proposed to this issue.

C. AUDIT REQUIREMENTS

Work Group Consensus Recommendation as Amended
Revise. F.S. 553.79 (17) “Each local building code enforcement agency shall develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction. Work may proceed after inspection and approval by the private provider provided that notice is given pursuant to 553.791(8).

Proposed Amendments
Add the following language to above…553.791(8) and any Q/A deficiencies are cleared by the jurisdiction having authority

Work Group Actions:
Motion—The Work Group voted 1 – 7 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.
Motion— The Work Group voted unanimously, 8 – 0 in favor, to change can to may.

Motion— The Work Group voted unanimously, 8 – 0 in favor, to change once inspected and approved to after inspection and approval.

Motion— The Work Group voted unanimously, 8 – 0 in favor, to change consistent with the notice to provided that notice is.

L. DOCUMENTATION REQUIREMENTS

Work Group Consensus Recommendation as Amended

Revise F.S. §553.791(9) “Upon completing the required inspections at each applicable phase of construction, the private provider shall record such inspections on a form acceptable to the local building official. These inspection records shall reflect those inspections required by the applicable codes of each phase of construction for which permitting by a local enforcement agency is required. The private provider, before leaving the project site, shall post each completed inspection record, indicating pass or fail, at the site and provide the record to the local building official within 2 business days. The Building Official may waive the requirement for a written record of each inspection within the time frame indicated provided that a copy is posted at the building site and they are submitted with the Certificate of Compliance. Records of all required and completed inspections shall be maintained at the building site at all times and made available for review by the local building official. The private provider shall report to the local enforcement agency any condition that poses an immediate threat to public safety and welfare.” Revise F.S. §553.791 (10) Upon completion of all required inspections, the private provider shall prepare a certificate of compliance, on a form acceptable to the local building official, summarizing the inspections performed and including a written representation, under oath, that the stated inspections have been performed and that, to the best of the private provider’s knowledge and belief, the building construction inspected complies with the approved plans and applicable codes. The statement required of the private provider shall be substantially in the following form:

Work Group Actions:
Motion— The Work Group voted unanimously, 8 – 0 in favor, to approve this proposal as the Work Group’s substitute recommendation.

M. BUILDING OFFICIALS’ OVERSIGHT AUTHORITY

The Work Group did not achieve consensus on any changes to this issue. No recommendations for changes to current provisions in §553.791.

Proposed Amendment
See minority report.
F. PRIVATE PROVIDERS’ RESPONSIBILITY TO BUYER

The Work Group did not achieve consensus on any changes to this issue. No recommendations for changes to current provisions in §553.791.

Proposed Policy Statement

Private providers should be responsible for negligence or intentional misconduct in the performance of their duties.

1. The task force believes that under current law private providers may already be liable; however, some members believe that explicit verbiage should be added to Section 553.791.
2. Private providers should not be protected by sovereign immunity; however, the task force is unable to reach a consensus on whether legislation is necessary to achieve this goal.
3. Private providers should be required to be financially sound to protect the public by means of insurance & other criteria.

Work Group Actions:
Motion—The Work Group voted 2 – 6 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.

G. CONTRACTOR LIABILITY

The Work Group did not achieve consensus on any changes to this issue. No recommendations for changes to current provisions in §553.791.

Work Group Actions:
There were no amendments proposed to this issue.

H. CONFLICTS OF INTEREST

The Work Group did not achieve consensus on any changes to this issue. No recommendations for changes to current provisions in §553.791.

Proposed Amendment
The Building Commission should study whether section 112.313, F.S., should and can apply to private providers.

Work Group Actions:
Motion—The Work Group voted 3 – 5 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.
I. LOCAL QUALIFICATIONS FOR THE PRIVATE PROVIDER

Work Group Consensus Recommendation as Amended
Revise 553.791 (14)  
No local enforcement agency, local building official, or local government may adopt or enforce any laws, rules, procedures, qualifications, or standards more stringent than those prescribed by this section. Local enforcement agencies, local building officials, local governments, or other authorities having jurisdictions may establish a system of registration for the Private Providers and Duly Authorized Representatives working within their jurisdiction, whereby staff verifies statutory compliance with the insurance requirements of 553.791 (15) and the licensure requirements of 553.791 (1) (e) & (g).

Work Group Actions:
Motion— The Work Group voted 6 – 2 in favor, to approve this proposal as the Work Group’s substitute recommendation.

J. BUYER’S CHOICE AND DISCLOSURE TO BUYER

Work Group Consensus Recommendation
The Commission recommend to the Legislature a statutory change authorizing the Commission to adopt by rule a jobsite notice form.
In addition, the Work Group recommends the Commission determine and adopt by rule who the viewer should be directed to regarding contacting a provider.

Work Group Actions:
Motion— The Work Group voted 7 – 1 in favor, to approve this proposal as a Work Group recommendation.

Proposed Amendments

Any contract provision which prohibits or unreasonably restricts the ability of a home purchaser from inspecting an existing home, or inspecting the construction of a new home to verify compliance with the minimum requirements of the Florida Building Code is against public policy and void.

Work Group Actions:
Motion—The Work Group voted 2 – 6 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.
K. RE-INSPECTION/S ON THE SAME DAY AND NOTIFICATION ISSUES

The Work Group did not achieve consensus on any changes to this issue. No recommendations for changes to current provisions in §553.791.

Work Group Actions:
There were no amendments proposed to this issue.

L. TIME FOR PRIVATE PROVIDERS TO NOTIFY THEIR INTENT TO CONDUCT INSPECTIONS ON A PROJECT

Work Group Consensus Recommendation
Revise F.S. 553.791 (4) “A fee owner using a private provider to provide building code inspection services shall notify the local building official at the time of permit application on a form to be adopted by the commission. This notice shall include the following information:...
(4)(a) Exception: A fee owner using a private provider to provide only the inspection portion of the building code inspection services shall notify the local building official at the time of permit application or seven (7) business days prior to the first scheduled building department inspection.”

PROPOSED AMENDMENTS
See minority report.

M. JOB SIZE RESTRICTIONS FOR CHAPTER 468 PRIVATE PROVIDERS

Work Group Consensus Recommendation
Change definition of “Private provider” to allow any person licensed under Chapter 468 as a Building Code Administrator to perform services as a private provider subject to the limitations of the license/s they hold.

PROPOSED AMENDMENTS
In addition to adding Building Code Administrators, strike Architect from the definition of Private Provider.

Work Group Actions:
Motion—The Work Group voted 3 – 5 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.
N. LOCAL FEES/REFUNDS WHEN A PRIVATE PROVIDER IS USED

The Work Group did not achieve consensus on any changes to this issue. No recommendations for changes to current provisions in §553.791.

PROPOSED AMENDMENTS
See minority report.

(2) Notwithstanding any other provision of law, the fee owner of a building may use a private provider to provide building code inspection services with regard to such building and may make payment directly to the private provider for the provision of such services. The fees normally being paid to the local building department shall not be reduced. All such services shall be the subject of a written contract between the private provider, or the private provider’s firm, and the fee owner. The fee owner may elect to use a private provider to provide either plans review or required building inspections. The local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner who desires to use a private provider to use the private provider to provide both plans review and required building inspection services.

**Work Group Actions:**
**Motion**—The Work Group voted 3 – 5 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.

(2) Notwithstanding any other provision of law, the fee owner of a building may use a private provider to provide building code inspection services with regard to such building and may make payment directly to the private provider for the provision of such services. The fees normally being paid to the local building department may be used for education and training. All such services shall be the subject of a written contract between the private provider, or the private provider’s firm, and the fee owner. The fee owner may elect to use a private provider to provide either plans review or required building inspections. The local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner who desires to use a private provider to use the private provider to provide both plans review and required building inspection services.

**Work Group Actions:**
**Motion**—The Work Group voted 1 – 6 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.
ADDITIONAL PROPOSALS CONSIDERED AND ADOPTED

Recommend that the respective licensing boards shall adopt rules to facilitate better communication, uniform interpretation & enforcement of the laws regarding plan review and inspections, and training for both building officials and private providers. The Building Commission should further this effort by publishing applicable rules, interpretations & enforcement actions on its website.

Work Group Actions:
Motion— The Work Group voted unanimously, 8 – 0 in favor, to approve this proposal as a Work Group recommendation.

553.791(5) third line
The private provider shall stamp each sheet of all plans reviewed and approved. The Commission should seek authority to establish the minimum information required on the stamp by rule.

Work Group Actions:
Motion— The Work Group voted unanimously, 8 – 0 in favor, to approve this proposal as a Work Group recommendation.

POLICY STATEMENTS ADOPTED BY WORK GROUP

The Building Commission should implement an education program to inform consumers, local governments, contractors and industry of the purposes & limitations of plan review & inspections, the role of local building officials, private providers and their respective regulatory bodies, and the procedures.

This education program should include specific information informing consumers, local governments, contractors and industry as to the proper implementation of building code inspection services, what additional steps they may take to assure that construction meets building code requirements and what steps an owner may take to resolve a grievance or file a complaint.

Work Group Actions:
Motion— The Work Group voted unanimously, 8 – 0 in favor, to approve this proposal as a Work Group policy statement recommendation.
MINORITY REPORT

(Proposals achieving at least a 50% favorable vote)

E. BUILDING OFFICIALS’ OVERSIGHT AUTHORITY

Revise F.S. §553.791 (2) Notwithstanding any other provision of law, the fee owner of a building may use a private provider to provide building code inspection services with regard to such building and may make payment directly to the private provider for the provision of such services. All such services shall be the subject of a written contract between the private provider, or the private provider’s firm, and the fee owner. The fee owner may elect to use a private provider to provide either plans review or required building inspections. The local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner who desires to use a private provider to use the private provider to provide both plans review and required building inspection services.

Work Group Actions:
Motion—The Work Group voted 5 – 3 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.

F. PRIVATE PROVIDERS’ RESPONSIBILITY TO BUYER

Add explicit liability provision similar to §553.84
Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of the private provider’s negligence in accordance with applicable law and the applicable codes shall have a cause of action.

Work Group Actions:
Motion—The Work Group voted 6 – 5 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.
Add explicit liability provision similar to §553.84
Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of the private provider’s failure to perform building code inspection services in accordance with applicable law and the applicable codes. The insurance required to be maintained by the private provider shall be for the benefit of such persons or parties. The prevailing party in any such action will be entitled to recover their reasonable attorney’s fees and costs.

**Work Group Actions:**
- **Motion**— The Work Group voted 5 – 5 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.

**N. TIME FOR PRIVATE PROVIDERS TO NOTIFY THEIR INTENT TO CONDUCT INSPECTIONS ON A PROJECT**

(4)(a) Exception: A fee owner using a private provider to provide only the inspection portion of the building code inspection services shall notify the local building official at the time of permit application or five (5) business days prior to the first scheduled building department inspection."

**Work Group Actions:**
- **Motion**— The Work Group voted 4 – 4 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.

**M. JOB SIZE RESTRICTIONS FOR CHAPTER 468 PRIVATE PROVIDERS**

Change definition of “Private provider” to allow any person licensed under Chapter 468 as a Building Code Administrator to perform services as a private provider.

**Work Group Actions:**
- **Motion**— The Work Group voted 8 – 3 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.
N. LOCAL FEES/REFUNDS WHEN A PRIVATE PROVIDER IS USED

(2) Notwithstanding any other provision of law, the fee owner of a building may use a private provider to provide building code inspection services with regard to such building and may make payment directly to the private provider for the provision of such services. The fees normally being paid to the local building department shall not be reduced below that necessary to support the required audit program. All such services shall be the subject of a written contract between the private provider, or the private provider’s firm, and the fee owner. The fee owner may elect to use a private provider to provide either plans review or required building inspections. The local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner who desires to use a private provider to use the private provider to provide both plans review and required building inspection services.

Work Group Actions:
Motion—The Work Group voted 5 – 3 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.

Allocate a portion of fees when private providers are used for audit and training purposes, but do not reduce the fees.

Work Group Actions:
Motion—The Work Group voted 5 – 5 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement. There was one abstention.

ADDITIONAL PROPOSALS CONSIDERED

Commission conduct a statistically viable efficacy study of the private provider system after implementation of the Work Group’s current package of recommendations.

Work Group Actions:
Motion—The Work Group voted 4 – 4 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.
MINORITY POLICY STATEMENTS

The integrity of the private provider program requires oversight by both the local building official and by the respective licensing boards for the private providers.

1. Local building officials should use the audit process under existing law to monitor compliance and protect the public, but not to discourage the legitimate use of private providers who are performing review or inspection services in accordance with the law and applicable professional standards.

2. If the auditing performed by local building officials reveals either a pattern of negligence or misconduct by a private provider then the local building official should be encouraged to notify the applicable licensing board(s).

3. The respective licensing boards should be encouraged to adopt rules to expedite the audit by a local building official, and where circumstances warrant suspend the licensee’s authority to perform plan review or inspections under Section 553.791 pending final adjudication of the complaint.

Work Group Actions:

Motion—The Work Group voted 5 – 3 in support for this proposal. Motion fails to reach consensus as a result of not achieving the 75% approval requirement.
0 MEANS TOTALLY DISAGREE AND A 10 MEANS TOTALLY AGREE.

1. Please assess the overall meeting.

8.14  The background information was very useful.
9.00  The agenda packet was very useful.
9.85  The objectives for the meeting were stated at the outset.
9.00  Overall, the objectives of the meeting were fully achieved.
9.28  Consideration of amendments to consensus recommendations by issue.
9.28  Approval of consensus package of recommendations.
8.16  Public comment.
9.80  Next steps and agenda items for next meeting.

2. Please tell us how well the facilitator(s) helped the participants engage in the meeting.

8.85  The participants followed the direction of the facilitator.
9.71  The facilitator made sure the concerns of all participants were heard.
9.00  The facilitator helped us arrange our time well.
9.71  Participant input was documented accurately.

3. What is your level of satisfaction with the meeting?

8.85  Overall, I am very satisfied with the meeting.
8.85  I was very satisfied with the services provided by the facilitator.
8.28  I am satisfied with the outcome of the meeting.

4. What progress did you make?

9.83  I know what the next steps following this meeting will be.
9.83  I know who is responsible for the next steps.

5. Comments

None
ATTACHMENT 2

MEETING ATTENDANCE

WORK GROUP MEMBERS

Barry Ansbacher  Public Consumer Interests
Allen Douglas    General Contractors’ Interests
Gary H. Elzweig  Florida Engineers’ Interests
Jack Glenn       Home Builders’ Interests
Robert Nagin     Building Officials’ Interests
Jim Schock       Florida Building Commission’s Interests
Ronnie Spooner   Building Officials’ Interests
George Wiggins   League of Cities Interests

PUBLIC

Frank O’Neil
Mike Krann
John Miles
Tom Helle
John O’Conner