FLORIDA BUILDING COMMISSION

ALTERNATIVE PLANS REVIEW AND INSPECTIONS WORK GROUP

FACILITATOR’S REPORT OF THE FEBRUARY 18, 2004 PHASE I MEETING

Orlando, Florida

Meeting Design & Facilitation By

Florida Conflict Resolution CONSORTIUM

Report By Jeff A. Blair
Florida State University
jblair@fsu.edu
http://consensus.fsu.edu

This document is available in alternate formats upon request to Dept. of Community Affairs, Codes & Standards, 2555 Shumard Oak Blvd., Tallahassee, FL 32399, (850) 487-1824.
OVERVIEW
In 2002 the Florida Legislature passed legislation (Section 553.791, F.S.) authorizing the use of private providers to conduct plans review and inspections services. The Legislation also directed the Florida Building Commission to submit a report to the Legislature on the implementation of this section of law on or before January 1, 2004.

In response to this reporting mandate, the Department of Community Affairs issued a purchase order, to the Shimberg Center for Affordable Housing at the University of Florida (The Center), directing an efficacy assessment of the implementation of Section 553.791.

In order to solicit additional feedback, The Commission held a public workshop at the October 13, 2003 Commission meeting. During the workshop the Center reported to the Commission that the results of their survey and interviews indicated there was no strong consensus between local jurisdictions and industry on the benefits of the private provider option. In addition, there were public comments ranging from total support to total rejection of the private provider option.

As a result of the assessment report and public comment, on November 18, 2003 the Commission voted to recommend to the 2004 Florida Legislature that the Florida Building Commission work with stakeholders to clarify the intent and requirements of Section 553.791 and develop consensus recommendations for revisions to the law governing the alternative plans review and inspections system.

As a first step in developing recommendations to the Legislature, on January 13, 2004, The Florida Building Commission voted to convene a work group tasked with reviewing issues related to the implementation of legislation (Section 553.791, F.S.) authorizing the use of private providers to conduct plans review and inspections. The Commission adopted a plan that will address the issue in phases, with Phase I focusing on identifying and agreeing on consensus recommendations to enhance the system’s efficacy in the short-term. Phase I recommendations will be presented to the Commission at the March 2, 2004 meeting for consideration of submittal to the 2004 Legislature.

Additional phases of the process will focus on longer-term issues and recommendations for submittal to the Commission in time for their consideration and submittal to the 2005 Legislature.
OVERVIEW OF WORK GROUP’S KEY DECISIONS

WEDNESDAY, FEBRUARY 18, 2004

Agenda Review and Work Group Plan Overview
The Work Group voted unanimously, 9 - 0 in favor, to approve the agenda as presented. Following are the key agenda items approved for Phase I consideration:

✓ To Review and Adopt Work Group Procedures and Guidelines
✓ To Hear an Overview of APRI Implementation Issues (Report)
✓ To Identify Issues Requiring Clarification and/or Revision
✓ To Propose Options for Identified Issues
✓ To Evaluate and Discuss Issues Enjoying A High Level of Agreement
✓ To Agree on Phase I Consensus Recommendations to Submit to the Commission
✓ To Consider Public Comment
✓ To Identify Needed Next Steps and Agenda Items For Next Meeting

Member Attendance
The following members attended the Phase I meeting:


DCA Staff Attendance
Rick Dixon, Mo Madani, and Jim Richmond.

Facilitation
The meeting was facilitated by Jeff Blair.

Work Group’s Decision-Making Procedures
Jeff Blair, Work Group facilitator, reviewed proposed consensus-building and decision-making procedures for the Work Group. These recommendations emphasis the Work Group’s commitment to work to achieve consensus on proposals, and only after thorough discussion will the Work Group vote, utilizing the 75% in support threshold requirement for favorable recommendations.

Work Group action:
Motion—The Work Group voted 9 – 0 in support to approve the proposed procedures as presented.

Overview of APRI Implementation Issues (Report)
Rick Dixon provided a brief overview of the issues identified in the Commission’s implementation report to the Legislature.
Issue Identification and Process Scope

Work Group members were asked to identify, without evaluation, all of the issues they felt required clarification and/or refinements. In addition, members of the public were invited to add to the list of issues. All of the issues were captured on flipchart paper as well as captured electronically and projected by use of an LCD. Once members agreed all of the issues were identified, they were asked to review the list and combine any they agreed were either the same issue or closely related. Following is the list of issues as combined:

A. Audit issue – Inspection Audit Procedure. Scope of audit procedure. The relationship of the local government’s inspection process on the private provider.

B. Legal responsibility of private providers relative to the buyer. Attorney fees for private providers. Recovery of Attorney fees.

C. The private provider’s organizational structure. (Contract labor vs. direct employment insurance).

D. Additional qualifications imposed on private providers by some local governments.

E. Clarification: what constitutes a valid permit application?

F. Limitations of authority for a F.S. 468 licensee functioning as an individual private provider. Limitation of authority relative to project size limitations.

G. Building Official’s level of authority. What constitutes a jurisdiction—need to provide a definition.

H. The Liability of the Contractor under F.S. 553.84 when using a Private Provider. (Minimum standards of the code and the builder’s responsibility)

I. Potential conflict of interest when an owner/contractor hires a private provider. Potential conflict of interest between the builder and the private provider.

J. Clarification of the local appeal process for use of a private provider. The ability of the provider to make an appeal at the local level and the private provider’s appeal rights relative to a local jurisdiction refusing to allow the provider to perform services.

K. Insurance coverage issues.

L. Should there be a refund to the permit holder when a private provider is used. Refunds by the local government. Assuring finance resources for local government.
M. Posting on the Job site pertinent contact information on the private provider.

N. What is buyer’s ability to choose whether a private provider is used and/or to utilize a provider. Disclosure requirements to the end user if a private provider service is used.

O. When must a building official be notified that a private provider will be utilized for inspection services. Consider allowing this to occur after decision has been made to utilize plans review provisions.

P. Paper work reduction. Documentation of the inspection report to the local building department by the private provider. Retention of plans review and inspection records by the private provider.

Q. Review of 30 business days vs. 30 calendar days provision.

R. Clarify process for re-inspection/s on the same day of a failed inspection (by both private provider and the local government).

**Issues Prioritization Exercise for Importance**

Members were asked to prioritize each of the issues using a five-point scale, where 5 = highest priority and 1 = lowest priority. The members were asked to use the following considerations for prioritizing each of the issues:

A. Urgency—Needs to be resolved immediately (Phase I)
B. Reaching Consensus—Likelihood of achieving agreement today
C. Importance—From your stakeholder group’s perspective
D. Implementability—Likelihood recommendation will be implementable
E. Benefits—Benefits versus costs in terms of limited resources (time, economic, staff)

Members were told that the results would be used to prioritize issues for consideration during the course of the project, and an additional prioritization exercise would be conducted to determine which issues would be considered at today’s meeting (Phase I). Following are the results:
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Ranking Exercise for Phase I Discussions/Recommendations

Members were asked to raise their hands for each issue they believed there was a likelihood of reaching agreement on at today’s meeting (Phase I). The number of members who believed agreement was possible is indicated for each issue below:

<table>
<thead>
<tr>
<th>OPTION</th>
<th>Likelihood of reaching agreement today</th>
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<tbody>
<tr>
<td>a. Audit issue</td>
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<td>b. PP responsibility to buyer</td>
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<td>e. Valid permit application</td>
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<td>m. Job site contact info</td>
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<td>n. Disclosure Issue Only (Buyer’s choice)</td>
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<td>r. Re-inspection same day/notice</td>
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It was agreed that based on the results above, the group would only discuss those issues that enjoyed a 10 or an 8 in terms of possibility of achieving agreement at today’s meeting (Phase I).

The following six issues were identified for discussion:

- c. Direct versus contract labor
- m. Job site contact information
- q. 30 business/calendar days
- e. Valid permit application
- n. Disclosure
- k. Tail insurance coverage
It should be noted that the next highest ranked issue only received a 6, indicating little to no likelihood of achieving consensus in the short-term.
WORK GROUP’S PHASE I CONSENSUS RECOMMENDATIONS

It was agreed that the Work Group would provide conceptual recommendations and leave actual language to legal staff.

Direct versus Contract Labor (duly authorized representative)
Clarify in 553.791(7) that a duly authorized representative means an employee of the private provider as defined by the Fair Labor Standards Act and the Internal Revenue Service.

Rationale:
There is currently disagreement on what a duly authorized representative means, and whether the provider can use contract labor to satisfy this provision.

*The Work Group voted 10 – 0 in favor to support the above recommendation.*

Issue M—Job Site Notification
Amend 553.791 to require that a private provider must post contact information on the job site permit board. The permit holder shall be responsible to ensure the required information is posted.

Rationale:
There is currently no such provision in 553.791.

*The Work Group voted 10 – 0 in favor to support the above recommendation.*

Issue Q—30 Business Days versus 30 Calendar Days to start permit clock
Support legislative efforts to retain the 30 business day provision currently found in 553.791(6). The Work Group voted to recommend maintaining the existing provisions.

Rationale:
The Work Group felt there is a major difference in review time needed for different types of projects, and desired to leave sufficient time to cover review as allowed with the longer 30 day business day provision.

*The Work Group voted 8 – 2 (80%) in favor to support the above recommendation*
**Issue E—Valid Permit Application**

Amend 553.791(1)(f) to read:

(f) “Permit Application,” means a properly completed and submitted application for the requested building or construction permit, and includes:

1. The plans reviewed by the private provider.
2. The affidavit from the private provider required pursuant to subsection (5).
3. Any applicable fees.
4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

**Rationale:**

The intent of this recommendation is to clarify that other government approvals must be obtained prior to the start of the 30 day review period provided for in subsection (5). There is no change to the current language. The only modifications are that the existing number 1 has been added to the introductory sentence, and the remaining issues have been re-numbered to reflect 4 instead of 5 items are required.

*The Work Group voted 10 – 0 in favor to support the above recommendation.*

**ADDITIONAL ISSUES DISCUSSED—NO CONSENSUS REACHED**

**Issue K—Insurance Tail Coverage**

(1) The Work Group discussed requiring 5 year tail coverage for claims made policies, and not requiring tail coverage for occurrence based policies. (2) The Work Group considered whether the insurance provisions should specify that the private provider is meant to be responsible to the owner for their services. (3) The Work Group discussed whether to clarify the private provider is not protected under sovereign immunity.

*The Work Group voted 7– 3 in favor (70% in favor, fails to meet the 75% requirement) on sub- issue 1 above. No consensus was achieved.*

A straw poll was taken on sub-issue 2 and the result was 5 – 5.

A straw poll was taken on sub-issue 3 and the result was 6 – 4.

**Issue N—Disclosure aspect of the buyer’s choice issue**

The Work Group discussed requiring disclosure to the buyer, when private provider services have been used for plans review and/or inspections of a residential property.

*The Work Group voted 5 – 5 in favor (50% in favor, fails to meet the 75% requirement) on the above issue. No consensus was achieved.*

**Next Meeting**

The next meeting will be held on Friday, April 2, 2004 from 9:00 – 4:00. Details to be announced.
# ATTACHMENT 1

## PUBLIC ATTENDANCE LIST

<table>
<thead>
<tr>
<th>Name</th>
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<tr>
<td>Robert McCormick</td>
<td>BOAF</td>
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<td>Paul Smith</td>
<td>PEICO</td>
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<td>Mike Krenn</td>
<td>Orange County Building Department</td>
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<td>Alan Plante</td>
<td>Orange County Building Department</td>
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<td>Sam Gerace</td>
<td>Berryman &amp; Henigar</td>
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<td>Christ Sanidas</td>
<td>Florida Building Commission</td>
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<td>John Miles</td>
<td>Orange County Building Department</td>
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<td>Arnold Gibbs</td>
<td>Universal Engineering Services</td>
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<td>Frank Oneill</td>
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ATTACHMENT 2

WORK GROUP’S ADOPTED CONSENSUS-BUILDING AND DECISION-MAKING GUIDELINES
(Adopted Unanimously February 18, 2004)

Decision-Making Process
The Alternative Plans Review and Inspections Task Group (APRITG) will seek consensus on a package of phase I and final recommendations to submit to the Florida Building Commission.

The Work Group’s Consensus building and decision making process is a participatory one whereby on matters of substance, the members jointly strive for agreements which all of the members can accept, support or at least agree not to oppose. In instances where, after vigorously exploring possible ways to enhance the members’ support for the final decision on an issue or package of recommendations, and where 100% acceptance or support is not achievable, final recommendations of the Work Group will require at least a 75% favorable vote of all members present and voting. This super majority decision rule underscores the Work Group’s view of the importance of seeking and developing agreements with the participation of all members and with which all can live with and support. In the event the Work Group can not reach consensus (100% in favor) on a decision, a minority report shall be requested immediately following the vote, articulating the rationales and preferences of those dissenting, and shall be included in the submittal of the package of recommendations. In order to enhance final consensus recommendations, an amendatory text process may used at some point in the process.

The Work Group will develop its recommendations using consensus-building techniques with the assistance of facilitators. Techniques such as brainstorming, ranking and prioritizing approaches will be utilized. Where differences exist that prevent the Work Group from reaching a final consensus decision (i.e. with support of at least 75% of the members) on a recommendation, the Work Group will outline the differences in its documentation.

The Work Group’s consensus process will be conducted as an open public work group process consistent with applicable law. Work Group members, staff, and facilitators will be the only participants seated at the table. Only Work Group members may participate in discussions and vote on proposals and recommendations. The facilitators, or a Work Group member through the facilitators, may request specific clarification from a member of the public in order to assist the Work Group in understanding an issue. Observers/members of the public are welcome to speak during the public comment period provided at each meeting, and all comments submitted on the public comment forms provided in the agenda packets will be included in the facilitator’s summary reports.