

**FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD**

**The Bohemian Celebration Hotel  
700 Bloom St  
Celebration, FL 34747  
407.566.6000**

**July 11 – 13, 2012**

**MEETING MINUTES  
Unapproved**

**Board Members Present**

Jerry Hussey, Chair  
Robert Moody, Vice Chair  
William Sheehan  
James Evetts  
Richard Kane  
Roy Lenois  
Jacqueline Watts  
Paul Del Vecchio  
Ed Weller  
Kristin Beall  
Aaron Boyette  
Christopher Cobb  
William "Brian" Cathey  
Albert Korelishn  
Carl Engelmeier

**Board Members Absent**

Michelle Kane  
Mark Pietanza

**Others Present**

Drew Winters, Executive Director, DBPR  
G.W. Harrell, Director of Professions, DBPR  
Amanda Wynn, Government Analyst, DBPR  
David Spingler, Government Analyst, DBPR  
Daniel Biggins, Legal Advisor, AGO  
Paul Waters, Chief Prosecuting Attorney, DBPR

## **ADDITIONAL BUSINESS ENTITIES REVIEW**

***Division I board members met for Additional Business Entities Review on July 11, 2012, from 2:02 pm to 3:17 pm. Ms. Beall led the meeting. Of the 20 applications scheduled for review, 12 were approved, 1 was denied, 4 were continued, and 3 were withdrawn.***

### **APPROVED (12)**

Bowe, Kenneth  
Candreva, Mark  
Carles, Reinaldo  
Carroll, Lee  
Harbour, Kenneth  
Meyer, Yvonne  
Myers, Ralph  
Nelson, Joseph  
Ossi, Charles  
Radford, Charles  
Velasquez, Jose  
Villar, Edel

### **DENIED (1)**

Galascio, Luigi

### **CONTINUED (4)**

Donton, Jason – 60 days  
Laurie, Justin – 60 days  
Laurie, Justin – 60 days  
McLeod, Loren – 30 days

### **WITHDRAWN (3)**

Holden, Edward  
Jacoby, Tyran  
Lemus, Idania

***Division II Board members met for Additional Business Entities Review on July 12, 2012 from 3:32 pm to 4:36 pm. Mr. Pietanza led the meeting. Of the 13 applications scheduled for review, 6 were approved, 3 were conditionally approved, 2 were continued, 1 was denied, and 1 was pulled.***

### **APPROVED (6)**

Andrew, Ralph  
Cavalcanti, Denis  
Ho Shin, Hugh  
Hughes, Gregory  
Litenski, Jose  
Stine, Kevin

### **CONTINGENT APPROVALS (3)**

Chaves, Ricardo – *Contingent upon submitting proof of W2 employment or 20% ownership within 30 days*

Sinotte, Richard - *Contingent upon submitting proof of W2 employment or 20% ownership within 30 days*

White, Timothy - *Contingent upon submitting proof of W2 employment or 20% ownership within 30 days*

CONTINUED (2)

Harrell, Roger – 30 days

Richau, Paul – 90 days

DENIED (1)

Classon, Dolores

PULLED (1)

Dollar, Melinda

**APPLICATION REVIEW**

***Division I Board members met for Application Review on July 11, 2012 from 3:32 pm to 5:18 pm. Mr. Cathey led the meeting. Of the 24 applications scheduled for review, 3 were approved, 1 was conditionally approved, 3 were continued, 12 were denied, 1 was pulled, and 4 were withdrawn.***

APPROVED (3)

Marra, Ronald

Martinez, Sergio

Thomas, Paul

CONDITIONAL APPROVALS (1)

*Gover, Gregory – Application approved with 6 years probation. Prior to each probation appearance licensee is required to submit a criminal history report showing no new criminal convictions. Applicant is also required to show proof of a credit score of 660 or submit a licensing bond.*

CONTINUED (3)

Berman, Scott – 90 days

Egg, Michele – 30 days

Plaszewski, Robert – 30 days

DENIED (12)

Allard, John

Batt, Randolph

Chen, Stanley

Cius, Robert

Falciani, Frank

Givens, Dale

Kohn, Thomas

Patel, Gautam

Rolin, Shawn  
Strickland, John  
Sweet, Maurice  
Valente, Richard

PULLED (1)

Lyon, Caleb

WITHDRAWN (4)

Armas, Carlos  
Blount, Darryl  
Cannon, Stephen  
Ritz, Gene

***Division II Board members met for Application Review on July 12, 2012 from 9:32 am to 9:42 am and again from 4:53 pm to 6:34 pm. Ms. Watts led the meeting. Of the 35 applications scheduled for review, 22 were approved, 2 were withdrawn, 7 were denied, 1 was continued, and 3 were pulled.***

APPROVED (22)

Baker, John  
Bohm, John  
Cummings, Michael  
Densberger, Thomas  
Duggan, Gregory  
Eskew, Christopher  
Farrer, James  
Gres, James  
Jenkins, Randall  
Jones, Wayne  
Kapo, Gregory  
Martinez, Sergio  
McLaughlin, Clive  
Mills, Jeremy  
Mohrfeld, Warren  
Morris, Mitchell  
Nieto, Jose  
Palacios, Yanlys  
Piazza, Felipe  
Raffensberger, Michael  
Repko, Gary  
Southard, Gary

DENIED (7)

Aranda, Michael  
Hersey, Troy  
Johnson, Joel  
MacDonald, Kyle  
Matinelli, Dominick

Shoda, Michael  
Wilson, Errol

CONTINUED (1)

Deming, Ronald – 30 days

WITHDRAWN (2)

Gregory, Gregory  
Irr, Kristian

PULLED (3)

Cordero, Joseph  
Marcelin, Joseph  
Williams, Steven

*Division I voted unanimously to ratify the list of financially responsible officer applications.*

*Division II voted unanimously to ratify the list of financially responsible officer applications.*

**PROBATION**

***The Division I Probation Committee convened on July 12, 2012 from 1:02 pm to 2:25 pm. Mr. Kane led the meeting.***

**Daniel Acevedo, CGC1506071**  
Result: Unsatisfactory

**Jannie Badger, CRC1330503**  
Result: Unsatisfactory

**Kevin Boyer, CGC1515032**  
Result: Satisfactory

**Robert Chacon, CGC009564**  
Result: Unsatisfactory

**Chadwyck Clark, CBC1257934**  
Result: Satisfactory

**Dario Camuzzi, CGC1505306**  
Result: Satisfactory

**Michael Conroy, CBC1258828**  
Result: Stay of Suspension Lifted

**Terry Davis, CGC1512982**  
Result: Satisfactory

Request for early termination of probation **denied**.

**James Della-Pietra, CGC1520294**

Result: Satisfactory

**Tammy Fajardo, CBC1257929**

Result: Satisfactory

**Jorge Garcia, CGC1520275**

Result: Continuance Granted

**Brandon Gilley, CRC1327329**

Result: Satisfactory

**Samuel Gray, CBC1257234**

Result: Continuance Granted

**Neyza Guzman, CBC1255705**

Result: Satisfactory

**Thomas Hage, CBC003185**

Result: Satisfactory

**Ronnie Hoggins, CBC1258203**

Result: Continuance Granted

**Phillip Johnson, CGC1520263**

Result: Stay of Suspension Lifted

**David Kalthoff, CGC1505581**

Result: Stay of Suspension Lifted

**Charles King, CBC1257841**

Result: Satisfactory

**Kevin Morris, CGC1504217**

Result: Satisfactory

**Michael Morrison, CGC1518076**

Result: Satisfactory

**Hector Obregon, CGC041565**

Result: Satisfactory

**Mark Orman, CGC1506674**

Result: Unsatisfactory

**John O'Toole, CBC1258829**

Result: Continuance granted

**Miguel Perez, CGC1517294**

Result: Satisfactory

**Samuel Poag, CGC1518138**

Result: Satisfactory

**William Poole, CGC1518449**

Result: Satisfactory

**Isiah Robeson, CRC1330126**

Result: Unsatisfactory

**Loren Spies, CGC009176**

Result: Satisfactory

**Marshall Stark, RB0053106**

Result: Unsatisfactory

**Steve Theriault, CBC1257847**

Result: Satisfactory

**Michael Thomas, CGC1519751**

Result: Satisfactory

**David Tollman, CBC046667**

Result: Satisfactory

**Scott Vincent, CGC1506949**

Result: Satisfactory

**Marlowe Walker, CGC1515787**

Result: Satisfactory

***The Division II Probation Committee convened on July 12, 2012 from 2:40 pm to 3:17 pm. Mr. Korelishn led the meeting.***

**Daniel Acevedo, CCC1326888**

Result: Satisfactory

**Jesus Amoro, CAC1814250**

Result: Satisfactory

**Tracy Cantley, CCC1329608**

Result: Satisfactory

**David Carlson, CCC1329604**

Result: Satisfactory

**Luis Coronado, CAC1816445**

Result: Satisfactory

**Frank Delgado, CCC1329758**

Result: Satisfactory

**William Erney, CCC1328936**

Result: Satisfactory

Request for early termination of probation was **denied**.

**Mason Fleming, CCC1328560**

Result: Satisfactory

**Melvin Gideon, CPC1458148**

Result: Satisfactory

**Raymond Johnson, CVC056788**

Result: Satisfactory

**James Parker, CAC057732**

Result: Satisfactory

**Keithon Patterson, CFC1428164**

Result: Satisfactory

**Christopher Patti, CCC1328749**

Result: Unsatisfactory

**Daniel Petro, CFC058047**

Result: Satisfactory

**Dean Scharn, CCC1327771**

Result: Satisfactory

**Mark Sinclair, CCC1329649**

Result: Stay of Suspension Lifted

**Brad Taylor, CGG13114970**

Result: Unsatisfactory

**Leroy Wilkerson, RF11067527**

Result: Continuance Granted

**Adrian Williams, RA13067475**

Result: Continuance Granted

**GENERAL SESSION**



The meeting was called to order by Jerry Hussey, Chair, at 9:04 am. Mr. Lenois gave the Invocation. Mr. Evetts led the Pledge of Allegiance.

## **REVIEW OF MINUTES**

The board voted unanimously to approve the following minutes:

- June 2012 Meeting Minutes

## **EXECUTIVE DIRECTOR'S REPORT – DREW WINTERS**

Mr. Winters gave the following report:

Mr. Winters thanked the Board for their hard work for this particular meeting.

Mr. Winters brought up the concern about the Fort Myers investigative office and that, at this point in time, the Fort Myers investigative office will remain open and operating.

Mr. Winters distributed some information and paraphernalia from the Unlicensed Activity Program including magnets, cards, literature, etc. Mr. Winters explained that these kinds of things are distributed to local building departments on a regular basis and that if any board member would like some of these things to let him know and he would provide them with whatever they needed.

Mr. Winters addressed the request by the board to have a meeting in Tallahassee in the first quarter of next year. Mr. Winters mentioned that they are in the process of scheduling that meeting and will have some more information to provide about that in the near future. Mr. Weller requested the board members be taken on a brief tour of the Department and Mr. Winters stated that something like this would probably need to be noticed since it would be an organization of all the board members together. But Mr. Winters stated that this is certainly a possibility.

Mr. Winters stated the implementation of the glass & glazing license is going well.

Mr. Winters distributed some information regarding the amount of applications processed by the Division of Service Operations, and introduced Mr. Harrell to go over that information as well. Mr. Winters informed the board that the Division of Service Operations processes roughly 500-600 initial applications per month. Mr. Winters informed the board that Mr. Cathey did come to the Department and took a tour of the application processing unit, and actually sat down with a processor to work through the processing of some applications. Mr. Cathey stated that some of the boards concerns with the processing are well founded, however, he felt a lot more comfortable with the application process. Mr. Cathey stated that the processors probably needed more tools to more effectively process the applications. Mr. Cathey suggested that the board could probably draft some ideas and perhaps tweak some of the processing guidelines to rectify some of their main issues. Overall, Mr. Cathey stated he felt comfortable with the amount of scrutiny that applications go through during their review, but felt there was still room for improvement. Mr. Hussey indicated he would pay a visit to the Department in the near future as well to take a look at the application processing unit. Mr. Sheehan

requested that Mr. Hussey take notes so that at the next meeting perhaps some ideas could be discussed regarding the board's concerns. Mr. Harrell indicated that the Department is very interested in what the board thinks about this issue, and reminded the board that if something needed to be done that is not currently in Statute or Rule, then the board would need to promulgate a rule that would address the issue. Mr. Harrell also stated that the issues with applicant's experience has been a long running issue and was previously addressed with the implementation of the pre-licensure education alternatives to experience. Mr. Harrell reiterated the infeasibility of bringing every application before the board and instead suggested starting with an audit of applications. This could potentially generate some disciplinary cases for fraudulent applications which could prove to be a deterrent for fraudulently submitted applications.

Mr. Harrell thanked the board for inviting him down to this meeting, and also passed on the information that the state of Florida is tied with Virginia for #1 in the nation for code enforcement and construction licensure.

Mr. Winters also requested the following absences be excused:

Mr. Pietanza  
Ms. Kane

The board voted unanimously to excuse these absences.

With nothing further to report the board voted unanimously to approve this report.

#### **CHAIRMAN'S REPORT – JERRY D. HUSSEY**

Mr. Hussey gave the following report:

Mr. Hussey thanked Mr. Harrell for attending this month's meeting and requested that it happen more often. Mr. Hussey also appointed Ms. Watts to be the representative responsible for looking into the new applications for CE providers and to possibly provide some recommended changes to the applications.

With nothing further to report the board unanimously to approve this report.

#### **PROSECUTING ATTORNEY'S REPORT – PAUL WATERS**

Mr. Waters gave the following report:

For the month of June 2012, the overall case load was 269, up from 256 in May of 2012, and down from 588 in June of 2011.

There were 36 cases currently in Legal to be reviewed, 32 cases set for probable cause, and 38 cases where probable cause had been found/administrative complaints filed. 0 settlement stipulations had been approved, 1 informal hearing had been requested, and 14 cases were awaiting outside action. 2 cases were ready for default, 7 had requested formal hearings, and 2 cases were referred to DOAH. 6 cases were in settlement negotiations, 17 cases were pending board dates, and 56 cases were set for board

presentation. 58 cases were awaiting final orders. 0 cases were under appeal and 0 cases had been reopened.

For the month of June 2012, 74 cases were closed.

With nothing further to report the board voted unanimously to approve this report.

## **ATTORNEY GENERAL'S REPORT – DANIEL BIGGINS**

### **B.K. SEALCOATING & STRIPING – PETITION FOR DECLARATORY STATEMENT**

A representative from B.K. Sealcoating & Striping was present.

Mr. Biggins presented this case stating B.K. Sealcoating & Striping filed a petition for a declaratory statement on June 8, 2012. The petition was noticed in the Florida Administrative Weekly on July 6, 2012. Mr. Biggins noted the petition requests the Board to interpret Section 489.113 (3)(a), and whether the Petitioner is required to obtain a general contractor's license for sealcoating asphalt parking lots and/or striping parking lots. Mr. Biggins asked the board to consider whether or not the petition meets the criteria for a declaratory statement, and to dismiss or answer as appropriate.

After discussion the board voted the petitioner had standing. After further discussion the petitioner requested to withdraw the petition.

### **J. RONALD BLOUNT – PETITION FOR DECLARATORY STATEMENT**

Mr. Blount was not present.

Mr. Biggins presented this case stating Mr. Blount filed a petition for a declaratory statement on May 24, 2012. The petition was noticed in the Florida Administrative Weekly on June 22, 2012. Mr. Biggins noted the petition appears to be requesting an interpretation of Section 489.105, Florida Statutes, and whether a license is required for "Program Management" in advising owners on the best way to secure and assist in monitoring the actual design or construction of their facilities. Mr. Biggins asked the board to consider whether or not the petition meets the criteria for a declaratory statement, and to dismiss or answer as appropriate.

After discussion the board voted that the petitioner did not have standing and denied the petition.

### **CARL EXLINE – REQUEST FOR INFORMAL HEARING**

Mr. Exline was present.

Mr. Biggins presented this case stating Mr. Exline's application for initial licensure as a certified general contractor was denied at the April 2012 meeting of the board for failure to demonstrate the required experience. The Notice of Intent to Deny was filed in May of 2012. Mr. Exline timely requested board reconsideration.

After discussion applicant requested to withdraw the application.

### **JOSEPH GIBBONS – REQUEST FOR INFORMAL HEARING**

Mr. Gibbons was present with Counsel.

Mr. Biggins presented this case stating Mr. Gibbons application to qualify an additional business was denied at the March 2012 meeting of the Board for failure to sufficiently demonstrate financial stability and responsibility, because it appeared the applicant engaged in or aided unlicensed activity, and because it appears the application materials provided conflicting information regarding the ownership and control of the business to be qualified, preventing the Board from ascertaining whether proper supervision of the construction activities would occur. The Notice of Intent to Deny was filed in April of 2012. Mr. Gibbons timely requested board reconsideration.

After discussion the board voted to approve the application.

### **JEREMY HAUFF – PETITION FOR VARIANCE AND WAIVER**

Mr. Hauff was present.

Mr. Biggins presented this case as a petition for a variance and waiver of Rule 61G4-16.005, Florida Administrative Code, to extend the duration of the validity of his certified general contractor's exam scores. The petition was filed on June 1, 2012. The petition was noticed in the Florida Administrative Weekly on July 6, 2012.

After discussion the board voted to deny the petition. Additionally, the board voted to continue the corresponding application 120 days to allow the application to take the exam again.

### **HOMESURE OF AMERICA, INC. d/b/a CROSS COUNTRY HOME SERVICES, INC. – RECONSIDERATION OF DECLARATORY STATEMENT 2011-084**

The petitioner was represented by Counsel.

Mr. Biggins presented this case stating Homesure of America, Inc., d/b/a Cross Country Home Services, Inc., filed a petition for a declaratory statement on October 24, 2011. The petition was noticed in the Florida Administrative Weekly on November 10, 2011. Mr. Biggins noted the petition seeks the agency's opinion as to the applicability of Sections 489.103 (9) and 489.105 (3), Florida Statutes, and whether a licensed home warranty association and service warranty association must obtain an air conditioning or mechanical contractor's license to market and sell a program to provide minor routine air conditioning preventative maintenance services using CCHS' network of licensed contractors to provide the services, where the aggregate contract price for labor, materials, and all other items provided to each customer will be less than \$1,000.00. The petition was heard at the January 2012 meeting and the board rendered an opinion that a contractor's license is required to contract for the maintenance of air conditioners and that a contractor's license is required to perform the services described in the petition. Homesure of America, Inc., d/b/a Cross Country Home Services, Inc. filed a an

appeal of this order with the District Court of Appeals but is requesting the Order appear back in front of the Board as a proposed settlement as it appears there was some misunderstanding about who the homeowner paid for contracted services.

After discussion the board voted to adopt the amended Final Order.

#### **DAVID JOHNSON – REQUEST FOR INFORMAL HEARING**

Mr. Johnson was present with Counsel.

Mr. Biggins presented this case stating Mr. Johnson's application to qualify an additional business entity was denied at the March 14, 2012 meeting of the Board for failure to demonstrate the qualifying agent would properly supervise the construction work and business activities. The Notice of Intent to Deny was filed in April of 2012. Mr. Johnson timely requested board reconsideration.

After discussion the board voted to approve the application.

#### **DANIEL JOSEPH – REQUEST FOR INFORMAL HEARING**

Mr. Joseph was present.

Mr. Biggins presented this case stating Mr. Joseph's application for initial licensure as a certified general contractor was denied at the April 2012 meeting of the board for failure to demonstrate the required experience and failure to sufficiently demonstrate financial stability and responsibility. The Notice of Intent to Deny was filed in May of 2012. Mr. Joseph timely requested board reconsideration.

After discussion the board voted to approve the application as an inactive contractor. Mr. Biggins wanted to remind the board that when the time came for Mr. Joseph to activate the license, he would need to submit the required credit report, etc.

#### **BRUCE LEBEDUN – PETITION FOR DECLARATORY STATEMENT**

Mr. Lebedun was present with Counsel.

Mr. Biggins presented this case stating Mr. Lebedun filed a petition for a declaratory statement on March 19, 2012. The petition was noticed in the Florida Administrative Weekly on June 15, 2012. Mr. Biggins noted the petition seeks the Board to interpret Section 489.103 (9), Florida Statutes, and whether licensure for a Plumbing Contractor is required to change and replace plumbing fixtures such as toilets when petitioner does not advertise as a contractor and the total cost of the fee does not exceed \$1,000.00. Mr. Biggins asked the board to consider whether or not the petition meets the criteria for a declaratory statement, and to dismiss or answer as appropriate.

After discussion the board voted that the petitioner did not have standing and denied the petition.

#### **ANGUS MCSWEEN – REQUEST FOR INFORMAL HEARING**

Mr. McSween was present with Counsel.

Mr. Biggins presented this case stating Mr. McSween's application for initial licensure as a certified building contractor was denied at the April 2012 meeting of the board for failure to demonstrate the required experience. The Notice of Intent to Deny was filed in June of 2012. Mr. McSween timely requested board reconsideration.

After discussion the board voted to approve the application as a downgrade to a certified residential contractor's license.

#### **ADOLFO REUTLINGER – MOTION TO RECONSIDER**

Mr. Reutlinger was not present.

Mr. Biggins presented this case stating Mr. Reutlinger's application to qualify an additional business entity was denied at the June 2012 meeting of the Board for failure to appear as required by Rule 61G4-15.0021, Florida Administrative Code. The applicant requested a motion to reconsider the board's decision prior to the filing of the Notice of Intent to Deny.

After discussion the board voted to deny the motion to reconsider.

#### **WINSTON RICKETTS – REQUEST FOR INFORMAL HEARING**

Mr. Ricketts was present.

Mr. Biggins presented this case stating Mr. Rickett's application for initial licensure as a certified general contractor's license was denied at the March 2012 meeting of the Board for failure to demonstrate the required experience and failure to sufficiently demonstrate financial stability and responsibility. The Notice of Intent to Deny was filed in April of 2012. Mr. Ricketts timely requested board reconsideration.

After discussion the board voted to uphold the denial.

#### **WILLIAM ROGERS – REQUEST FOR INFORMAL HEARING**

After discussion the board voted to continue this hearing until the November 2012 meeting of the board.

#### **JEFFERY WARREN – DOAH REQUEST, MOTION TO RECONSIDER**

Mr. Warren was present with Counsel.

Mr. Biggins presented this case stating Mr. Warren's application for a change of status of his certified Class A air conditioning contractor's license was denied at the January 2012 meeting of the Board for failure to sufficiently demonstrate financial stability and responsibility. The Notice of Intent to Deny was filed in February of 2012. Mr. Warren timely requested a formal hearing before an Administrative Law Judge with the Division

of Administrative Hearings. Mr. Biggins stated this was being presented to the board as a motion to reconsider in an attempt to resolve the issues prior to appearing in front of DOAH.

After discussion the board voted unanimously to approve the application.

With nothing further to report the board voted unanimously to approve this report.

## **COMMITTEE REPORTS**

### **EXAMS/CE/PUBLIC AWARENESS COMMITTEE – ROY LENOIS**

Mr. Lenois gave the following report:

#### **AIA Florida American Institute of Architects**

1<sup>st</sup> Course: Advanced FBC Water Intrusion Issues with Exterior Walls – **approved**

2<sup>nd</sup> Course: Significant Changes to the Windload Provision of ASCE 7-10 – **approved**

#### **Alabama Associated General Contractors, Inc.**

1<sup>st</sup> Course: Building Information Modeling (BIM) – **approved** (*1 hour Business Practice, 5 hours General, no Workers Compensation*)

2<sup>nd</sup> Course: Florida Stormwater, Erosion, and Sedimentation Control Training and Certification Program – **approved** (*No Business Practice, no Workers Compensation, 8 hours General*)

#### **BRB Code Educators, Inc.**

1<sup>st</sup> Course: Florida Building Code, Plumbing and Fuel Gas with 2010 Revisions – **approved**

#### **Building Trade Education Services**

1<sup>st</sup> Course: Planning for Profit – **approved**

#### **Florida Association of Plumbing, Heating, and Cooling Contractors**

1<sup>st</sup> Course: Internet Marketing and SEO Techniques for your Plumbing or Business – **approved**

2<sup>nd</sup> Course: The Art of Better Selling – **approved**

#### **Gray Systems, Inc.**

1<sup>st</sup> Course: Financial Management for the Construction Industry – **approved**

2<sup>nd</sup> Course: Insurance for the Construction Industry – **approved**

3<sup>rd</sup> Course: Marketing for the Construction Industry – **approved**

4<sup>th</sup> Course: Project Management for the Construction Industry – **approved**

5<sup>th</sup> Course: Resolving Disputes for the Construction Industry – **approved**

#### **Home Builders Association of Metro Orlando**

1<sup>st</sup> Course: 6 Hour OSHA Safety Compliance Training – **approved**

#### **Mike Holt Enterprises, Inc.**

1<sup>st</sup> Course: Business Skills – **approved**

2<sup>nd</sup> Course: Changes to the NEC 2011 – **approved**

**Northeast Florida Builders Association**

1<sup>st</sup> Course: Capitalize on New Business Opportunities – **approved** (*contingent upon submitting info on qualified instructor*)

**Plumbing, Air Conditioning Contractors Industry Fund**

1<sup>st</sup> Course: Fundamentals of Backflow – **approved**

2<sup>nd</sup> Course: Mechanical Code Review – **approved**

3<sup>rd</sup> Course: Plumbing Code Review – **approved**

**Seminar Group**

1<sup>st</sup> Course: American with Disabilities Act Title III Update – **approved**

**Training Licensing Center, Inc.**

1<sup>st</sup> Course: 14 Hours FL Contractor Life Safety – **approved**

**University of Florida / Program for Resource Efficient Communities**

1<sup>st</sup> Course: 2010 Florida Building Code – Advanced Accessibility – **approved**

Mr. Lenois mentioned that, since the current rules allow for an individual to get CE credit without having to take a CE course (i.e., assisting in development of an exam, etc.), Mr. Lenois suggested a possible amendment to the rule to allow the board members who sit on the CE Committee to also get CE credit, as well as attending probable cause meetings. Mr. Biggins stated the phrasing of this rule would have to be closely examined, and that the stipulation would have to be for any board member who attended the CE Conference call. Ms. Watts disagreed with this idea stating that board members needed to set an example to license holders by attending CE courses.

With nothing further to report the board voted unanimously to approve this report.

**RULES/PUBLIC/LEGISLATIVE COMMITTEE – MARK PIETANZA**

Mr. Biggins gave the following report:

The following Rules required no further action:

61G4-18.001 Continuing Education Requirements for Certificateholders and Registrants

The following Proposed Rules have been **Noticed**:

61G4-15.018 Certification of Glass & Glazing Contractors

The following Rules have been proposed for development:

61G4-12.011 Definitions

**AD HOC COMMITTEE**



The Ad Hoc Committee convened on Wednesday, July 11, 2012 at 5:27 pm for discussion regarding creation of voluntary specialty licenses. Those present included:

Diana Ferguson, Representative from the Florida Irrigation Society  
Matt Eaton, President, Florida Irrigation Society  
Tom Super, Vice President, Florida Irrigation Society  
Frederick Dudley, Esq.  
John Joseph  
Scott King  
Adam Jones  
Bill Hagen  
Judy Benson, Clearwater PSI

Mr. Eaton gave a brief history of the Florida Irrigation Society ("FIS") and mentioned the report of October 2011 published by the Senate's Regulated Industries Committee which outlined two possible routes that could be taken regarding licensure of irrigation contractors; the first being a voluntary license and the second being a mandatory license. Mr. Eaton reiterated the point that the FIS specifically wanted to make this a voluntary license and thanked the Board for allowing this to be brought before them.

Ms. Ferguson provided a draft to the board of the Rule language and asked for input from the board on how improvements could be made. Ms. Ferguson stated that the Rule was modeled after the current language for the voluntary specialty licenses, and gave a brief rundown of the different sections of the Rule.

Mr. Winters brought up his concern that an anticipated number of people who would obtain this license has not been made clear. Mr. Winters stated that this is important because the costs that would be incurred by developing this license needs to be offset by the amount of people who will obtain the license. Mr. Eaton responded that there are roughly 2,100 to 2,200 locally licensed irrigation contractors in the state of Florida. About 35-40% of those contractors hold registrations in multiple counties, meaning about 35-40%, or 700 licensees, would benefit from the creation of this license. Mr. Winters expressed concern over some of the ambiguity of local licensing requirements and the cost, both in money and in manpower, that the Department will have to undertake to create this license.

Mr. Lenois expressed concern that even of those 700 people who hold registrations in multiple counties, the amount of contractors that actively work in more than one county could be substantially lower than that.

Mr. Super stated that there is going to be difficulty in determining the number of people that could benefit from this license while separating those numbers from the people that could also benefit from grandfathering. Mr. Super stated that if grandfathering is not allowed with this license and current license holders are required to take another exam to obtain a certified license, there is a distinct possibility that nobody would obtain this license. On the contrary, if grandfathering is allowed, Mr. Super predicted that 35-40% of the current license holders would attempt to obtain the state license. Mr. Super stated the main goal of grandfathering, and thus creating a large segment of state licensed irrigation contractors, is to institute the CEU requirements. Mr. Super stated irrigation

contractors are the largest users of water in the state and that something needs to be done to educate the contractors and to ensure proper water conservation methods are being employed. Mr. Winters responded with concern that the licensing and examination requirements in each individual county are different, and that the Department can't be expected to keep track of the requirement of each local jurisdiction in order to be able to grandfather these licenses. Mr. Eaton responded by saying that not many counties publish the license issue dates for the local jurisdictions, but roughly 2% of the 2,100-2,200 had their licenses issued within the last 5 years. Additionally, only one jurisdiction in the entire panhandle, Escambia County, issues licenses for irrigation contractors. Mr. Eaton stated the point being that there are more than enough license holders who do not qualify for grandfathering to make it financially viable to create an examination.

Mr. Kane stated that the Board might as well make it a mandatory licensing requirement. Mr. Winters stated that is not within the power of the Board; that mandatory licensing requirements can only be mandated by the Legislature. Mr. Winters further clarified that nothing from a regulatory standpoint would change with the creation of this voluntary license; it would only make state wide licensing an option for those who choose to pursue it. Ms. Ferguson stated she agrees with everything Mr. Winters said, but that their ultimate goal is mandatory licensing and that the first step in this process was to come before the board, create some dialogue and get some language down and establish a base of voluntary licensees, and then eventually go the Legislature to discuss creating a mandatory licensing provision. Mr. Winters provided an estimate given to him by the Bureau of Education and Testing that the development of an exam could cost upwards of \$7,000. That cost is recouped by the Department making \$80 per person who takes the exam. Mr. Harrell stated that in the past the Board was always somewhat cautious about establishing specialty licenses and would only agree to proceed if a substantial number of people demonstrated need of the license. Mr. Harrell mentioned the Cell Tower Specialty License and that the existing general contractor's examination was used for this license, which circumvented the cost of developing an examination. Mr. Harrell stated that the verbiage for the irrigation license seems to substantially correspond to the scope of work of a plumbing contractor, so as an alternative to developing an exam, using the current examination given to plumbing contractors might be an option.

Mr. Del Vecchio stated he understands the numerical issues that are being brought about, but that some of the language in the Rule draft is somewhat troublesome to him, specifically the issue of the installation of a backflow preventer and how that could affect potable water. Mr. Del Vecchio expressed concern over the fact that an irrigation contractor could tap into a potable water line and he believes that the only license that should allow an individual to tap into potable water is the plumbing license. Mr. Korelishn then provided a brief rundown of work often performed by an irrigation contractor and further expressed concern over some of the work he's personally seen performed by irrigation contractors. Mr. Joseph stated that a lot of the municipalities that license irrigation contractors allow irrigation contractors to install backflow preventers per the local code, and that they have not had problems with the local governments over the past 15-17 years. Mr. Harrell further clarified that there are two issues here: the first being the examination issue, which Mr. Harrell stated is most easily solved by having these individuals take and pass the plumbing examination. The second issue is then the

scope of work that can be performed under that license, which will take much more discussion. Mr. Sheehan stated that if these individuals were required to pass the plumbing examination, nobody would obtain the license because none of the irrigation contractors would be able to pass the plumbing examination. Mr. Super indicated this negative connotation of an irrigation contractor is one of the main reasons they are attempting to create a statewide license for irrigation contractors. Mr. Eaton further clarified that almost all of the local municipalities either use the Block exam or the Experian exam, and as far as he knows, the information contained in the test is standardized across all of the counties. Mr. Winters stated that the most important step at this juncture is to determine which exam would be used; if one needed to be developed; or if the current plumbing exam would be used. Once that has been established they can go about determining the scope of work for the license.

Mr. King stated that the main objective of this is to get a minimum standard with which to judge their industry by. He further stated that the current trend in the industry is that it seems to reinvent itself every 5 years. Mr. King stated that without the continuing education requirements that come with state licensure, a lot of the current irrigation contractors are not staying informed on the latest technologies that have given irrigation contractors the ability to drastically reduce the amount of water being used; that the irrigation industry uses roughly 80% of all the water being used in the state, and that about 50% of that water is being wasted. Mr. King stated that the creation and implementation of a state test is the first step to improving what could be a dire situation in the near future. He stated that being able to grandfather these licenses is equally as important to ensure that the contractors who have been doing it for such a long time do indeed have a desire to obtain the license, and thus take CE courses to better understand the industry. Ms. Beall stated there needs to be some sort of number that would indicate how many people would obtain this license if it were to be created and asked the FIS if a petition or anything of the sort had been passed around just to try and get a rough estimate. Ms. Ferguson said they have done quite a bit of research which has revealed that they can realistically expect 200-300 people to sit for the state examination, regardless of whether or not a grandfathering clause is put into place.

Mr. Jones stated that within 3 years, through his own company, he can expect to have at least 80 people sit for the exam. Mr. Evetts asked if there is some sort of national examination that can be used and as long as a person can provide proof of having passed that exam with a certain score that qualifies them to submit the application.

Mr. Dudley brought up several of his concerns. His first issue was that an irrigation contractor being able to manipulate piping that deals with potable water. Mr. Dudley stated that the definition should address this. Mr. Dudley also mentioned a previous experience that board had with backflow preventers and the Fire Marshall's Office. Mr. Dudley brought up that the definition of an irrigation contractor should mention the types of things being irrigated. And finally, Mr. Dudley stated that grandfathering should require an individual to prove that they've taken an appropriate exam.

Mr. Winters rehashed the main points of discussion; the extensive discussion that's taken place on which exam will be used and the substantial amount of concern regarding the scope of work listed in the propose Rule language. Mr. Winters stated that there does appear to be a need for the license, so that particular requirement has been

met. The remaining issues are related to the exam, the grandfathering clause, and detailing the scope of work that an irrigation contractor can perform. Mr. Harrell suggested that the definition should include what an irrigation system is and what an irrigation contractor is not allowed to work on, since there could be potential issues with the Fire Marshall's office related to backflow preventers. Mr. Eaton indicated that irrigation contractors always use the worst water source available to them, but sometimes the only source is potable water. Mr. Eaton further explained that 12 counties already have backflow preventer installation listed in the scope of work for irrigation contractors and that another 30 or so allow irrigation contractors to install backflow prevention devices on irrigation systems. This is mainly because when a permit is issued, the only thing that is inspected by the building department is whether or not a backflow preventer is installed and whether or not a rain shutoff valve is installed. Mr. Eaton stated that the whole point of creating this license is to institute CEU requirements on these contractors to ensure that everyone is doing things, including installing backflow preventers, the right way.

Mr. Korelishn brought up Appendix F of the Florida Plumbing Code which relates to the application of irrigation systems and water consumption. Mr. Korelishn indicated that Broward County has adopted this and inquired if they are aware of any other counties which have adopted it as well. A member of the audience indicated that Dade, Palm Beach, and Marion County have fully adopted it, and Hillsborough, Orange, Sarasota, Volusia, Pasco, and Hernando counties have partially adopted it. It was also clarified that often times cities have their own regulations. Mr. Eaton further reiterated that a lot of the conservation issues will be addressed with the creation of this license. Mr. Super stated that of those 30+ counties that issue licenses, only 5 or 6 actually require those contractors to take CEUs.

Ms. Ferguson indicated that they would continue to develop language for a potential rule and that she would be in communication with Drew on when they could appear back in front of the board for further discussion.

Mr. Hussey moved the discussion to the other item on the agenda; the creation of a voluntary license to deal with the Power Generation and Industrial Facilities Specialty Contractors.

Mr. Winters introduced the issue stating that there have been several instances in the past where contractors have applied for certified general contractor's licenses using experience on industrial facilities as a basis to obtain the license. Mr. Winters stated those contractors have not been issued the general contractors license because they did not have experience on "habitable" structures. Mr. Winters indicated this is being presented to the board as the first step in possible rule development to accommodate these individuals.

Mr. Dudley indicated he liked that the board is open to the creation of these specialty licenses as a way to accommodate particular subsets of contractors who otherwise don't qualify for an existing license. Mr. Dudley did express concern that this license appears to be trying to combine into one license two distinctly separate fields of construction. Mr. Dudley indicated he would like to see these two separated and treated as two different licenses and he would like the rule language to define what a Power Generation Facility

is and what an Industrial Facility is. Mr. Dudley offered his services to assist in the definition of these facilities. Mr. Dudley further suggested that if the board wishes to proceed with this, they should also amend Rule 61G4-15.001 to add a subsection which requests experience in X of Y areas which are specific to Power Generation and Industrial facilities. Otherwise, experience will have to be established using the general contractor criteria, which will not be sufficient for this license.

Mr. Biggins mentioned there is another issue with the definition of “accessory use” which would need to be defined further. Mr. Del Vecchio agreed with Mr. Dudley and expressed concern on “Power Generation Facility” and how it relates to the CILB. Mr. Hussey agreed and stated that most power generation facilities are government entities and are exempt from CILB licensing requirements. Mr. Winters reminded the board that this was brought before the board just to gauge the board’s interest in creating such a license and that if the board decided to proceed on the creation of this license, significant development of the Rule would still need to take place.

Steve McLaughlin, a representative from Pan American Hydrogen, brought up a couple points. Mr. McLaughlin mentioned that a good amount of power generation facilities are actually not commissioned by public entities and asked the board to consider that in discussing the creation of this rule. Mr. McLaughlin also stated that he anticipates there will be a substantial boom in the very near future related to natural gas processing, and the creation of this license will go hand in hand with facilitating the construction of natural gas processing facilities. Mr. Dudley also mentioned that there could be issues with Federal agencies who wield a lot of regulatory oversight over power generation facilities.

Mr. Winters clarified that the real purpose in this is to accommodate contractors who build industrial complexes and who don’t meet the experience requirements for “habitable” structures under the current Division I requirements. Mr. Winters stated he would coordinate with Mr. Dudley on continuing to develop this language.

With nothing further to discuss the board voted unanimously to adjourn.

## **AD HOC COMMITTEE**

The Ad Hoc Committee convened again on Thursday, July 12, 2012 at 6:42 pm for the CILB Committee on Joint CILB/DOT Rule Coordination.

The following individuals were present:

Mr. Fred Dudley

Mr. David Sadler – Counsel for the Florida Department of Transportation

Mr. Bob Burleson – Representative from the Florida Transportation Builders Association

E. Clay McGonagill, Jr. – General Counsel for the Florida Department of Transportation

Mr. Winters informed the board that the Ad Hoc Committee is convening to discuss, with the Department of Transportation (“DOT”), a possible amendment to Rule 61G4-12.011 (9), Florida Administrative Code, and its related subsections. Mr. Winters introduced Mr. McGonagill, who had a short presentation to discuss the issues at hand.

Mr. McGonagill thanked the board for sitting with them and discussing these issues. Mr. McGonagill stated they were present in front of the board because an extensive period of time had passed since the implementation of the original rule and the present, and that new legislation has been effected which is going to require a change of the rule. Mr. McGonagill indicated that substantive changes were not being proposed, but that certain clarifications needed to be made within the existing rule. Mr. McGonagill indicated that the focus is with the subsection that defines, "services incidental thereto". He pointed to the lead in sentence of that subsection which has added a reference to Section 334.03 (31), Florida Statutes, which is not in the current version of the rule. This change simply recognizes that the Statutes reflect a broader scope of work for transportation contractors than the current rule indicates. Mr. McGonagill then went on to state that subsections (9)(a) would also need to be modified to make it clear that when it comes to the construction of transportation facilities, the workers performing the work are either licensed by DOT or are in compliance with their subcontracting authority. With regard to (9)(b), the changes would be the same as the changes for (9)(a), but in relation to the certified underground utility contractor's license. Mr. McGonagill also indicated that a specific line has been removed from (9)(b) relating to work on tunnels.

Mr. Dudley commented that licensure under Ch. 489, Florida Statutes is required, unless that contractor is working under the exemption specified in Section 489.113 (2), Florida Statutes. Mr. Dudley stated that this particular rule needs clarification in the worst way and that he agrees with Mr. McGonagill in that this issue has needed clarification for the past 3 years. Mr. Dudley stated he has been troubled for quite a while regarding the phrase, "services incidental thereto" in the exemption listed in S. 489.103, but that statute also provides that the board, in agreement with DOT, define "services incidental thereto". Mr. Dudley that the language in the proposed rule adds two things that are very important; the first being the specific inclusion of, "storm drainage and excavation work necessary for those transportation projects" which is problematic because it excludes a lot of other things that take place in road construction projects, things like street lights, which is outside the scope of contractors licensed under Ch. 489, Part I; curbs, gutters, railings, etc. The current rule doesn't really seem to address that and it probably should. Mr. Dudley stated he personally feels that the rule should be expanded, and not just clarified. Mr. Dudley also mentioned the suggested change to (9)(b), which states, "...where underground utility and excavation construction other than tunnels or storm sewer collections systems consists of more than fifty (50) percent of the total contract amount of a contract for work on bridges, roads, streets, highways, railroads, and other transportation facilities, the vendor or other entity directly contracting for such work must be licensed under Section 489.105 (3)(n)", acknowledges that there is some point in that contract amount which would require licensure under Ch. 489, Part I. Mr. Dudley expressed concern that it might not be possible to quantitate "services incidental thereto" in the overall contract price. Mr. Dudley mentioned additional language that was being proposed in the rule, "drilling, jacking, boring or trenchless technologies", which is already included in the scope of work for an underground utility and excavation license. Mr. Dudley mentioned a previous declaratory statement issued by the board in which the board determined that a license was not required for that work if it was under the supervision of a Division I license, pursuant to S. 489.113 (2). Mr. Dudley stated that the rule should be expanded to clarify all of these issues. Mr. Dudley mentioned another issue, which he says is the most troubling to him as a construction attorney, and that is the use of the term "prime contractor" in the rule language, because

there is not a definition of that term in the statutes. Mr. Dudley brought up a scenario in which a licensed road contractor is acting as the prime contractor for the job and subcontracts out the construction of a building which is not allowed under Ch. 489. Mr. Dudley concluded stated these are the things that need to be polished up in these rule changes and that he would volunteer to assist in the developing the language for the rule.

Mr. McGonagill stated that when the legislature enacted the exemption, they did so with the clear intention that the term “services incidental thereto” would be defined in cooperation and agreement of both agencies, not exclusive of one another. Mr. McGonagill stated that for purposes of the exemption the legislative intent of cooperation needs to be abided by, and not solely determined by the CILB. Mr. McGonagill stated that prior to the above rule being implemented, DOT was doing the same kind of contracting that it is doing now. All parties that are involved were aware of the interplay between the CILB and the DOT, so despite what Mr. Dudley said, there needs to be cooperation in defining “services incidental thereto”, and any amendment made to the definition of “services incidental thereto” cannot limit what DOT currently has statutory authority to perform. Mr. McGonagill stated that what Mr. Dudley is proposing imposes restrictions on transportation contractors and would require them to obtain licensure through the CILB when they currently operate under the authority of the Transportation Code. Mr. McGonagill stated that things should continue under the existing rule and that significant changes of the scope proposed by Mr. Dudley could cause a lot of issues.

Mr. Harrell clarified that he thinks that if over 50% of a transportation project requires a license under Ch. 489, Florida Statutes then that the particular entity performing the work needs to be licensed under Ch. 489. Mr. McGonagill and Mr. Burleson stated that is how their Department currently operates and they are not proposing changes to this requirement. Mr. Dudley mentioned the DOT rule 7-1 of the “Standard Specifications for Road and Bridge Construction”, which clearly states that the DOT requires that an individual has the appropriate license issued by the CILB should one be required for the work contracted for. Mr. Dudley stated that the DOT laws require the appropriate licensure for construction work, and individuals who don’t have that licensure run the risk of being in violation of Sec 489.128, which states work performed by an unlicensed individual is unenforceable. Mr. Dudley stated the current language is too ambiguous in what is defined in “services incidental thereto” and could potentially leave both contracting parties vulnerable. Mr. McGonagill stated that the belief that the Department would withdraw on a contract under such a technical argument is unfounded. Mr. McGonagill stated that the Florida Transportation Code is not bound by Ch. 489, Florida Statutes, but that a specific one of their Statutes guarantees the rights to sue by both contracting parties. Mr. McGonagill stated that Mr. Dudley is not looking at the Transportation Code when looking at the rule changes and wants everything to fall under Ch. 489. Mr. McGonagill stated that the point of this hearing is not to satisfy Mr. Dudley’s analysis of any future situation that may arise, but is rather is hearing between the Board and DOT to determine the best course of action. Mr. Burleson stated when he was involved in this discussion 20 years ago he assisted in writing the verbiage regarding the storm drainage and that legislation was passed at that time that stated any DOT prequalified contractor qualified in underground utility construction would be automatically grandfathered in under Ch. 489, Florida Statutes for a period of one year. Mr. Burleson stated there has never really been an issue before; that most of the

contractors he works with understand that if a building is being constructed in conjunction with a DOT project, that builder must have a contractor's license, and if certain sewer/gas lines are being laid, that individual must have an underground utility contractor's license. Mr. Burleson stated he feels the language being proposed here is simply a clarification of what is already understood and practiced; that it ensures that any work requiring licensure under Ch. 489 requires an appropriately licensed person to perform that work.

Mr. Harrell pointed out some flaws in the rule. The first one is the work that is being defined as "services incidental thereto", the scopes of work listed there are already defined in the practice act in the scopes of work of the contractors. The additional verbiage that is listed goes on to say that if 51% of the work being contemplated is within CILB scopes of work then a contractor licensed by Ch. 489 has to be the prime contractor on the job. However, if 51% of the work being contemplated is within the scope of work of a road building contractor, then a DOT contractor has to be the prime contractor. But, according to 489.113 (9), Florida Statutes, any contractor can be a prime contractor if 51% of the work is within the scope of their license. Mr. McGonagill stated that the reason DOT proposed that language in the proposed rule is because that's what DOT already does and has been doing, and that they might as well go ahead and list that demarcation line clearly. Mr. McGonagill stated that if the CILB did not want that reference in there then they would have no problem removing it, but it was put in there to provide comfort to the contractors regulated under Ch. 489. Mr. Weller asked how the 51% is determined? Mr. Sadler stated it is based on estimates for the work. Mr. Dudley stated that it is actually listed as "51% of the contract amount". Mr. McGonagill stated that normal DOT processes include doing an estimated breakdown of the work. Mr. Weller stated the reason he asked this is because it leaves it too open for interpretation for either side. Mr. McGonagill stated it is the DOT's determination that decides the 51% and that if they determine that 51% of work is building construction, then they only accept bids from properly licensed contractors under Ch. 489. Mr. Weller stated another concern, that being that most of Mr. McGonagill's justification for proposing this language is that they've been "operating this way for years", which does not sit well with him. Mr. Weller gave the example that if a house was built in the 1930's and that it's survived since the 1930's doesn't necessarily mean that is currently acceptable under the Florida Building Code. Mr. Weller stated that that particular argument does not weigh all that heavily. Mr. McGonagill stated that he has been making this reference over and over because DOT and the CILB had an understanding, and that it was consistent with the way both Departments looked at it. Mr. McGonagill stated that language served both Departments well for a number of years, but recent issues have come about that is necessitating change to current language. Mr. McGonagill is stating that nothing has changed since the time the rule was implemented. Mr. Del Vecchio stated that there seems to be a difference in philosophy. Whereas the CILB operates under the rule that any person contracting or attempting to contract needs to possess a license, the DOT does not operate that way. Mr. McGonagill stated that DOT respects that. Mr. Del Vecchio continued saying that the exemption needs to be clear on their end because there are other statutes that the CILB deals with that intersects with Ch. 489 which could cause issues. Mr. Del Vecchio stated that if someone did appear before them the board would consider the DOT exemption but a case of aiding and abetting unlicensed activity would still be a possible punishment. Mr. Del Vecchio stated the CILB can't just abandon that philosophy for purposes of this one



exemption. Mr. Del Vecchio stated that they are not looking to change the exemption, but that the two bodies need to find something that's clear enough to understand and accommodating to both entities as well as clear enough to head off potential legal challenges in the future. Mr. McGonagill stated that if both sides can agree on the substance, the rule can be drafted to appease both sides. Mr. McGonagill stated that the Secretary of DOT feels that his Department had to take the initiative in getting these changes implemented because of recent issues that have come up. Mr. McGonagill stated that, in reference to the extent that Mr. Dudley or others want to go further, he and his Department are comfortable with the language as is and doesn't feel the need to really expand the language beyond what is currently there. Mr. McGonagill stated modifying the rule to include or exclude specific scopes of work, as Mr. Dudley suggested, is only going to cause problems in the future.

Mr. Harrell suggested just adding a line to the current rule which explains the 51% consideration that's being discussed. Mr. Harrell stated that would prevent DOT or the board from itemizing the scopes of work and allows contracts to be reviewed on a case by case basis, and if any litigation in the future comes up, it will be up to the judge to decide the 51% scope of work. Mr. McGonagill stated that the issue is really not 51%, but that the DOT is not going to structure a contract that, based on their assessments of the work, is going to be buildings, and if they do proceed with such a project, it will be with the requirement that a licensed contractor will perform the building construction. Mr. Harrell stated that there are other governmental entities that contract to build streets and roads, and that this rule will give those other agencies confidence that they won't run afoul of Ch. 489. Mr. McGonagill countered saying they're not going to allow an estimate for a scope of work that's primarily a building from firms that don't possess the appropriate construction license. Mr. Burleson said this is tricky because often times contractors who submit bids estimate the percentages on their own, and they experience this already on certain projects that require both bridge and road work. Mr. McGonagill stated the CILB is looking at the DOT as if they are somehow not holding up the proper standards of practice. Mr. Harrell responded saying that there are more agencies than just DOT involved, which include city government, county governments, etc. Mr. McGonagill stated that is not something that needs to be addressed at this meeting. Mr. Kane stated that he disagrees with the proposed language being presented because it is too ambiguous in certain respects, and that they need to come back with more clearly defined language. Mr. McGonagill stated that was possible. Mr. Kane stated that the "contract amount", regarding the 51%, is what needs to be changed. Mr. Moody suggested that DOT, in all future solicitations for contracts, state that "the contractor is hereby notified that should the value of the work required under Ch. 489 exceed 50% of the contract price, than that contractor must be duly licensed". Mr. Moody stated that would solve some of the ambiguity as the contractor would know then and there that they would need to have the proper qualifier in place before bidding on the project. Mr. McGonagill stated that using the contract amount was not what was originally intended; that what they usually go off of is if a contract is primarily a building contract the DOT sets it up that way. Mr. McGonagill stated that the issues with the counties and cities would probably have to be addressed in some other way.

Mr. Burleson then asked if the CILB is proposing that in order to bid on a project that individual must have a contractor's license. Mr. Dudley confirmed that Ch. 489 specifically states that the act of contracting includes the bidding process. Mr. Burleson

stated that Federal Law, which includes most of his contracts, indicates that there cannot be a state licensing requirement just to bid. Mr. McGonagill confirmed this. Mr. Dudley responded by stating another issue that has arisen is that DOT states that, regardless of the percentage of the job, if a job requires the construction of a building, whether that be 1% of the contract price or 99% of the contract price, DOT requires a licensed contractor to perform that portion of the work, whether that be the prime contractor or sub contractor. Mr. Dudley stated this is why a rule change needs to be implemented; because under the definition of contractor, if any part of a job requires a state licensed contractor, that contractor has to be the prime contractor. Mr. Dudley stated that if this is incorrect, then a change to the statute needs to be made. Mr. Del Vecchio stated that there is a specific exemption in the statutes for DOT which gives specific authority to write a rule to clarify that. Mr. Del Vecchio stated the exemption can then adapt to DOT's practice; that way there is no risk of running afoul of the federal government and the CILB is not put in a precarious position. Mr. Dudley stated that adopting this rule can create a statutory problem by DOT's practice of subcontracting building work to a contractor, which is in violation of the definition of the term "contractor". Mr. Harrell responded by saying that S. 489.113 (9), Florida Statutes, already makes reference to this.

Mr. McGonagill stated DOT's view is that that type of interpretation simply looks at Ch. 489 without taking into account the current exemptions and without looking at the Florida Transportation Code and the DOT's Standard for Road and Bridge Construction. Mr. McGonagill stated it was not the legislature's intent to make the CILB the primary arbiter in situations like this. No where in the exemption is it listed that all transportation contracts have a licensed contractor licensed pursuant to Ch. 489. If a contract has 1% of building construction and 99% of road/bridge construction, the CILB should not exercise ultimate authority in a situation like that.

Mr. Del Vecchio asked if there is any anticipated backlash from the Joint Administrative Procedures Commission ("JAPC") and the Governor's Office with this rule change. Mr. Del Vecchio stated he's concerned about the attorney's in JAPC looking at this rule language and having problems with it. Mr. Biggins stated that, in a vacuum, he doesn't anticipate a problem arising, but that if everyone in the room can't agree on the rule language, there very well could be a problem. Mr. Dudley responded by saying that, based on what he's heard, there was a time when the two agencies came together and reached an agreement on the definition of "services incidental thereto". Apparently that was done at that time, some years ago, and the two things that were added as a result of that process were the terms "storm drainage" and "excavation". Mr. Dudley went on to say that times and circumstances have changed and that his view is that both agencies need to get back together and agree to the necessary changes. Mr. Dudley stated that if the rule is changed, then the two agencies need to come together and define what the statutes require them to define, and that's the definition of "services incidental thereto".

Mr. Winters informed them that at this time the committee members would have to make a recommendation to the rules committee to develop this further. Mr. Del Vecchio made a motion that this rule needs to be opened at the following day's rule committee and development of the language needed to begin. Mr. Winters indicated that, from what he gathered from the meeting, both sides are relatively close but that a determination would

need to be made. Mr. Winters stated that one issue has been clarified, which is that the two sides are not so far apart that an agreement can't be reached, but that, for the most part, they have reached a fairly good consensus. The second issue is proceeding with rule development and the proper procedure would need to be followed. Mr. Biggins stated that the authority within the rule is to define "services incidental thereto", and so if that is kept in mind, then he doesn't know if a certain percentage can be listed, especially at 51%, because "services incidental thereto" implies a smaller portion of a larger project. Mr. McGonagill stated that the governmental agency has to determine the percentage breakdown and to let them take the responsibility. A licensed contractor is still performing the work, but it's put into the rule for transparency reasons. Mr. Harrell reiterated that the primary issue that DOT appears to be concerned about is that building projects should be able to be performed by unlicensed individuals so long as that building project comprises less than 50% of the contract price. Mr. Del Vecchio stated that he can envision situations in which DOT enters into contracts wherein a building is included in the contract, but that DOT wouldn't want to preclude from being part of their contract because of a conflict with the CILB in the way the statute/rule is written. Mr. Weller indicated that he thinks DOT wants to comply with anything that has to do with Ch. 489 and the CILB wants to hear that they don't want to see DOT doing work that would require Ch. 489 licensure by an entity that is not licensed by Ch. 489, whether it be a sewage connection, a ten story building, etc. Mr. McGonagill reiterated that DOT was under the impression that is how things have always been understood and was agreed to, and that there has never been an issue. Mr. Del Vecchio stated that all parties would need to get together and determine language that everyone could be reasonably confident would get through JAPC without being kicked back over and over again, which could significantly delay the process. Mr. Biggins stated he does not envision that being a problem unless it appears the two sides are attempting to go outside the realm of "services incidental thereto". Mr. Burleson stated that if language could be developed to determine the terms "prime contractor" and "subcontractor" a fair amount of issues could be resolved off the bat. Mr. Burleson stated he wasn't sure how much doing something like that go beyond the statutory authority. Mr. Del Vecchio stated that he would really like to avoid having to go the legislature. Mr. McGonagill stated that when the exemption is interpreted, it is understood by the legislature that the Florida Transportation Code is also in effect and that the Florida Transportation Code applies not only to DOT, but cities, counties, and any other public entity who engages in road construction, and that if the DOT has prequalified somebody, then they are prequalified to perform any work under the Florida Transportation Code. Additionally, the Florida Transportation Code states that any public entity that is not DOT must follow the codes and standards set by DOT.

Mr. Winters informed the board that at this point a motion would need to be made for approval to begin rule development. The board voted unanimously to approve this motion.

With nothing further to discuss the board voted to adjourn.

## **OLD BUSINESS**

Removal of old materials from laptops.

## **NEW BUSINESS**

No New Business was discussed.

With no further business the meeting was adjourned at 11:21am