

MINUTES
CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS
February 11, 2010
2:00 PM

1. CALL TO ORDER

The Chairman, Duane Drawdy called the meeting to order at 2:05 pm in the Vista Center 1st Floor Conference Room 1W-47, Palm Beach County Planning, Zoning & Building Department, 2300 North Jog Road, West Palm Beach, Florida.

A. ROLL CALL

MEMBERS PRESENT

Duane Drawdy, Chair
Ron Dixon, Vice Chair
Bart Rasper
Marc Wiener
Peter A. Dzenutis
Arnie Rich (Alternate)

MEMBERS ABSENT

Albert Godfrey
Michael Walker

OTHERS PRESENT

Rebecca D. Caldwell, Building Official
Dawn Wynn, Asst. County Attorney
Felicia Everett, Recording Secretary
Brad Brown Asst. Deputy B.O. –
Large Projects
Bruce Myers, CIC

Daniel Katz
David Feldan, Hillel Day School
Michael Siracvia, Butters Construction
Mark Butters, Butters Construction

B. Approval of Minutes. Motion was made to approve the minutes of February 11, 2010. Motion was seconded and passed unanimously.

C. Ms. Everett swore in the witnesses prior to testimony.

2. ADDITIONS & DELETIONS – NONE

3. NEW BUSINESS

A. Motion was made to nominate a new chair and vice chair. Marc Weiner was elected chair and Ron Dixon was elected vice chair. Motion was seconded and passed unanimously.

4. OLD BUSINESS- Case # 09-01 Hillel Day School of Boca Raton-2004 FBC, Administration 104.11 Alternate Methods 106.1, Construction Documents and 106.3.3 Product Approvals

- Ms. Caldwell informed the Board that there are three issues all relating to the requirement that the designer of record review and approve documents relative to the construction of the Hillel School Gymnasium relating to the Fire Rated Joint System, Through Penetration Systems, and Product Approval for doors. The Joint Systems, and Through Penetration Systems are requirements of the Florida Building Code (FBC) for fire rated assemblies and have been part of the code even before the FBC. The requirement for the designer of record approval for appropriateness of Product Approval is a local amendment to the FBC and has been in place since October 1 of 2006. These requirements are not new ones, the County will admit to some shared responsibility for contributing to a delayed requirement for the exterior 2 hour rated wall, which triggered the requirement for the Fire Rated Joint System. That plans examiner is the same one who is responsible for the last experience that came before this board. He is no longer employed with the County, in part due

to the fact that he had demonstrated lack of attention to necessary detail. However, the delayed requirement for the 2 hour wall is not the source of the scenarios that bring us here today. We have consistently stated that the difficulties of this job could be resolved in multiple ways. One of them is to have an agreement with the current designer of record to provide his services and the other alternative would be to have successor designer of record for the job. The Building Division is neutral in its appeal today neither supporting nor opposing any decision that the board may make. Regarding the variance or the overturn of the Building Officials decision on interpretation of the code, we did support the last variance on this project due to our involvement on those issues. Today, we feel that we have reached the limit of our authority and have made the correct decision; and so suggested to the appellant to come to a Board hearing. Our endeavor will be to present full disclosure to the series of events that led to this hearing and our goal today is that the Board should have all relevant facts upon which to base a decision.

- Ms. Caldwell called Mr. Brad Brown, Palm Beach County Assistant Deputy Building Official – Large Projects.
- Ms. Caldwell asked Mr. Brown if he held his position during the time period when the Hillel School Gymnasium was permitted and inspected.
- Mr. Brown stated yes, he did.
- Ms. Caldwell asked Mr. Brown to explain generally what his position entailed.
- Mr. Brown stated that he supervised plans examiners of large projects and Construction Inspection Coordinators to do the inspections on these jobs.
- Ms. Caldwell asked Mr. Brown what date the permit was issued.
- Mr. Brown stated that the permit was issued August 5, 2008.
- Ms. Caldwell asked Mr. Brown, if there were any plan review notes or stamps on the plans when originally issued regarding Product Approval.
- Mr. Brown stated that there was.
- Ms. Caldwell asked Mr. Brown what the notes or stamps said.
- Mr. Brown stated the following product approvals meeting rule 9B-72 must be submitted for review and approved prior to fabrication or installation: exterior doors, windows, panel walls, roofing products, shutters, skylights, structural components, other.
- Ms. Caldwell asked Mr. Brown when was the stamped utilized.
- Mr. Brown stated that it is typically utilized when your product approval has not been submitted.
- Ms. Caldwell asked Mr. Brown if the stamp is utilized to allow a permit to be issued prior to having all the product approvals submitted.
- Mr. Brown stated that was correct.
- Ms. Caldwell asked Mr. Brown if there were any plan review notes or stamps on the plans as originally issued regarding the joint systems or fire penetration.
- Mr. Brown stated no, not that he was aware of.
- Ms. Caldwell asked Mr. Brown why would there be no notes on fire penetration?
- Mr. Brown stated that typically the inspectors inspecting the job ask for that information and it is provided by the contractor, and typically gets through penetration systems to be reviewed and approved by the designer of record.
- Ms. Caldwell asked Mr. Brown if there were different penetration seals for all the different trades that may be involved, and if there could be quite a thick stack of documents and that may be variable during the construction phase.
- Mr. Brown stated yes, absolutely.
- Ms. Caldwell asked Mr. Brown why there would be no notes on the plans as issued, on the joint system.
- Mr. Brown stated that apparently the plans examiner failed to review the plans per requirements for rated walls in respect to separation form other buildings.

- Ms. Caldwell called Mr. Bruce Myers, Palm Beach County Construction Inspection Coordinator (CIC).
- Ms. Caldwell asked Mr. Myers if he held his position during the construction of the Hillel School Gymnasium.
- Mr. Myers stated yes, he did.
- Ms. Caldwell asked Mr. Myers to give the Board a brief explanation of the role of a Construction Inspection Coordinator, referred to as CIC.
- Mr. Myers stated that he oversees the inspection process of large projects and threshold buildings, and provides inspection services after completion of the shell.
- Ms. Caldwell asked Mr. Myers that as a coordinator of the inspections on a project, if it was standard procedure to hold a pre-construction meeting with the contractor and other parties involved with project that fall under the purview of the CIC.
- Mr. Myers stated, yes it is.
- Ms. Caldwell asked Mr. Myers if he held a pre-construction meeting for the Hillel School Gymnasium.
- Mr. Myers stated yes he did.
- Ms. Caldwell asked Mr. Myers if he could tell the Board the date of that meeting.
- Mr. Myers stated that the meeting was August 18, 2008.
- Ms. Caldwell asked Mr. Myers if a permit was issued on August the 5th, and the pre-construction meeting was held on August 18, that means thirteen days after the permit was issued you had a pre-construction meeting?
- Mr. Myers stated yes.
- Ms. Caldwell asked Mr. Myers if he could recall which parties were in attendance at the pre-construction meeting.
- Mr. Myers stated that there were two representatives from the general contractor, a representative from the threshold inspection company, and the architect.
- Ms. Caldwell asked Mr. Myers how he could be so sure of those in attendance, almost year and a half later.
- Mr. Myers stated that he had a sign-in sheet.
- Ms. Caldwell asked Mr. Myers if he recalled discussing the items being considered today, specifically, product approval, the fire rated joint system, and the fire rated through penetration system.
- Mr. Myers stated yes.
- Ms. Caldwell asked Mr. Myers if he could tell the Board of that discussion.
- Mr. Myers stated that they discussed the requirement that any substitution or missing Product Approval and any rated wall penetration or other wall details of the system would be required to be provided at the time of inspection and would need to be approved by the architect.
- Ms. Caldwell asked Mr. Myers that in the immediate time period following that pre-construction meeting if he were aware of the designer of record or the contractors responding to those discussions.
- Mr. Myers stated yes, that on September 10, 2008 he had a meeting with the contractor on the job-site at which time I was provided with two or three booklets he was told were compiled by the architect, containing penetration systems and other details.
- Ms. Caldwell asked Mr. Myers if there were any other responses that he immediately recalled during the pre-construction meeting.
- Mr. Myers state, no.
- Ms. Caldwell asked if he was subsequently provided with an engineering judgment on an alternative joint system in the field.

- Mr. Myers stated yes he was.
- Ms. Caldwell asked Mr. Myers what his response was to receiving the engineering judgment.
- Mr. Myers stated that the engineering judgment needed to be submitted as a revision, sealed by a Florida license engineer, with the approval of the designer of record.
- Ms. Caldwell asked Mr. Myers if as the CIC, he had any reservations about the appropriateness of the products, as they have been installed.
- Mr. Myers stated that he did not.
- Ms. Caldwell called Mr. Brown.
- Ms. Caldwell asked Mr. Brown when was he first aware of the fire joint system needing to be addressed.
- Mr. Brown stated December 2008.
- Ms. Caldwell asked Mr. Brown how that was brought to his awareness.
- Mr. Brown stated that at that time, the contractor submitted a revision and at that time, the original plans examiner was found to have made an error in the rating of the exterior wall.
- Ms. Caldwell asked Mr. Brown that as a result of that the discovery, did the designer of record specify a joint system.
- Mr. Brown stated that he did.
- Ms. Caldwell asked if the system was ultimately installed.
- Mr. Brown stated that it was not.
- Ms. Caldwell asked Mr. Brown why not.
- Mr. Brown stated that as he understood it, it was tilt wall construction and the joints and exterior walls of the building had been caulked; and at that time they would have had to remove all that caulk to install the proposed joint system.
- Ms. Caldwell asked Mr. Brown if the specified system installation was an impracticality at that stage of construction.
- Mr. Brown stated that, that was correct.
- Ms. Caldwell asked Mr. Brown if the designer of record proposed an alternate method for fire rated and tested system, would we have asked them to provide concurrence from the manufacturer of that system, on the acceptable installation in an alternate manner.
- Mr. Brown stated yes.
- Ms. Caldwell asked Mr. Brown who the engineered judgment was provided by.
- Mr. Brown stated that it was provided by the manufacturer, but it was signed and sealed by a licensed Florida P.E.
- Ms. Caldwell asked Mr. Brown if he knew the logic behind the local amendment requiring the designer of record to review and approve product approvals.
- Mr. Brown stated yes, and that before the amendment was adopted by the county there were numerous product approvals being submitted by contractors that did not meet minimum code requirements such as design pressures and limitations of use. So the requirement for designer of record was put into our amendments requiring the designer to approve the product for acceptance prior to submitting, and we did find that there was substantial improvement in product approvals that were submitted after that.
- Ms. Caldwell asked Mr. Brown, other than the joint system that was impractical for the stage of construction, if there were other difficulties or conflicting reports regarding the responsibilities of the designer of record.
- Mr. Brown stated yes, there was. We received a letter on March 6 from the architect informing us he was rescinding his seal from the approved plan, and the following day we received another letter from the architect with the same date, March 6, asking us to rescind his previous letter.

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- Ms. Caldwell asked Mr. Brown if he received a copy of an email intended for, but not received by herself, dated 4/22/09 where the architect stated that he had not abandoned the job, but would not extend any further services.
- Mr. Brown stated yes.
- Ms. Caldwell asked Mr. Brown if the architect had visited him that same morning and stated that he was rescinding his seal on the job.
- Mr. Brown stated yes.
- Mr. Caldwell asked if in light of these and other incidents, were the architects and owners advised of the Building Division's position in such contractual matters?
- Mr. Brown stated yes, they were.
- Ms. Caldwell asked Mr. Brown to relay what that position entailed.
- Mr. Brown stated that they were told that the conflict between the designer and the owner was a civil matter. That our position was that we would allow the job to progress, providing there were no required revisions to the plan.
- Ms Caldwell asked Mr. Brown if revisions or changes to the plan were required, what were the options presented to the owners as alternatives.
- Mr. Brown stated they were informed they could retain a successive architect, or reestablish the relationship with the current designer.
- Ms. Caldwell asked Mr. Brown if he were aware of subsequent correspondence from the architect resulted in our securing the confirmation of the Building Division's position of legality from the County Attorney's Office.
- Mr. Brown stated yes, he was.
- Ms. Caldwell asked Mr. Brown if the Hillel School Gymnasium issued a Temporary Certificate of Occupancy on June 10, 2009.
- Mr. Brown stated yes, it was.
- Ms. Caldwell asked if all life safety issues code compliant at that time.
- Mr. Brown stated, yes.
- Ms. Caldwell asked Mr. Brown if submittal of the designer verification of the product approval, fire joint and free penetration system were included as conditions of the T.C.O.
- Mr. Brown stated yes.
- Ms. Caldwell asked Mr. Brown if both the contractor and owner submitted letters agreeing with the conditions of the T.C.O.
- Mr. Brown stated yes, they did.
- Ms. Caldwell asked Mr. Brown if the Hillel School proposed a resolution to these conditions of the T.C.O.
- Mr. Brown stated yes, they did.
- Ms. Caldwell asked what was their proposal.
- Mr. Brown stated that they were going to continue to try and resolve the conflict with the designer, but they had also contacted another designer and had suggested using a limited successive architect.
- Ms. Caldwell asked Mr. Brown what was our response was to the proposal of the limited successor architect.
- Mr. Brown stated that we told them that we did not know if that was appropriate, and that they should go to DBPR for verification.
- Ms. Caldwell asked Mr. Brown if he had any reservations about the appropriateness of the of the products as they were installed.
- Mr. Brown stated no, he did not.

- Ms. Caldwell stated that as the Building Official, she felt that the products that were installed are appropriate and she wanted to reiterate that she felt her decision is also correct based on the code requirements, and that we had given the alternative for a successor designer of record as allowed by the Florida Administrative Code throughout all of the conversations that we have had at this point and time.
- Board Members asked questions regarding which items required an alternate method and which did not, and whether the rated wall was due to building separation or occupancy separation. Ms. Caldwell responded that the rated joint system proposed by the manufacturer's engineer was the only item that was an alternate method. The doors and through penetration systems were Florida Product Approved and UL certified. She also stated that the required fire-rated walls involved were necessary due to building separation.
- There was further discussion by the Board members on whether the intent of the PBC Amendment was satisfied since all Building Division staff felt the product installations were appropriate. Also discussed were other precedence where products were approved by entities other than the designer of record.
- The Board asked what the proponent had done to resolve the situation with a successor architect or with the original designer.
- Mr. David Feldman, the owner's representative, stated they had spoken with and spent monies with other architects who wanted a significant amount of money, and that the original designer was unhappy he wasn't awarded a subsequent contract, and that was why he wasn't cooperating on this job.
- The Board asked if the original architect had any objection to the submitted appeal.
- Keith Chambers stated the project went from educational to assembly. He also stated the building separation required a four hour wall unless the modular building is remodeled. He stated he had made expenditures that were supposed to be, but were not compensated.
- There was further discussion among Board Members regarding the separation and Ms. Caldwell stated the plans were originally submitted without these walls having fire rated joint systems.
- Mr. Feldman and Mr. Chambers made further statements regarding money offered and money owed.
- Mr. Chambers shared a concern of signing off on a 2 hour rated joint system when the modular structure is still in place.
- Rabbi Levine, head of the school, stated that it was not a safety issue, but money issue that brought them here. The school does not have money to spend on letters, etc. When the building is safe, the children will suffer for the loss of funds.
- The Board discussed the possibility of granting a variance from Table 600 to allow the 2 hour wall for some specific time period.
- Dawn Wynn cautioned that any such variance should be requested by the proponent, not instigated by the Board.
- The Board broke for 10 minutes to allow the proponents and their original architect to discuss the possibility of resolving their differences.
- Upon recommencement, it was reported that the owner and architect did not resolve their differences.
- Michael Siracvia, Project Manager for Butters Construction, stated he had taken the documents to the architect, was told he could pick them up, but when he arrived, the architect had changed his mind and crossed off his approval. As the contractor, these actions are very frustrating.
- Mark Butters, Vice Presidents of Butters Construction, stated he wanted to clarify the architect had approved the documents and then withheld them, due to what he believed were financial reasons only.

- Daniel Katz, School President, stated they paid their bills.
- Mr. Brown stated that he reviewed the site plan during the break and found there was a covered walkway on the front that allows the lower fire rating on the proposed building, but creates a non-conformity on the existing building.

- **Mr. Drawdy made a motion that the Board accept the certification of a registered Florida engineer or architect for the three items, the doors, the penetration and joint seals, and to accept an alternate to allow a registered engineer or architect to approve those three items. Mr. Dixon seconded the motion. Discussion. A condition of the motion is that it be accomplished in 30 days. The motion carried unanimously 6-0.**

5. **BOARD MEMBER COMMENTS -Mr. Drawdy asked Ms. Wynn to get the Board more information on the new Code of Ethics.**

6. **STAFF MEMBER COMMENTS - NONE**

7. **ADJOURNMENT**

The Chairman, Duane Drawdy, adjourned the meeting at 3:45 p.m.

Duane Drawdy, Chair

Respectfully submitted,
Sherita White
Recording Secretary