

CALIFORNIA COMMISSION ON DISABILITY ACCESS MEETING MINUTES

October 19, 2009

1. CALL TO ORDER

Mr. Dave Walls called the inaugural meeting to order at approximately 9:35 a.m. at the State Capitol, Room 437, Sacramento, California.

ROLL CALL

Commissioners Present: James Abrams
Tom Ammiano, Assembly Member
Rocky Burks
Connie Conway, Assembly Member
Ellen Corbett, Senate Member
Michael Dean
Margaret Jakobson-Johnson
Richard Luehrs
Mark Martinez
Mitchell Pomerantz
Anthony Seferian, Attorney General's Office
Dave Thorman, State Architect
Pierce Welch
Betty Wilson

Commissioners Absent: Catherine Campisi
Thomas Harman, Senate Member
Lilibeth Navarro

Also Present: CA Building Standards Commission Staff
Dave Walls, Executive Director
Stephanie Davis, Executive Assistant
Jim McGowan, Asso. Construction Analyst
Michael Nearman, Architectural Assistant
Venus Sharifi, Staff Services Analyst

Pledge of Allegiance:

Not performed as there was no flag present.

Housekeeping Items:

California Building Standards Commission (CBSC) staff provided information on available facilities during the meeting, accommodations being provided, process for the public to speak. Dave Walls read the purpose in establishing the California Commission on Disability Access (CCDA).

2. INTRODUCTIONS

a) Commissioners introduced themselves.

b) California Building Standards Commission (CBSC) Staff Presentations

i) CBSC staff's role

Mr. Walls introduced himself, CBSC staff, and provided information as to the assigned task to assist in the development of and make-up of the Commission (CCDA) as to voting members (11 public members having been appointed) and non-voting ex-officio members (6 legislative and state agency representatives).

ii) Documents for files & travel expense packets

Ms. Stephanie Davis provided information necessary to request reimbursement of travel expenses and per diem for Commission meetings.

Commissioner Ellen Corbett, Senate Member, arrived. Commissioner Corbett introduced herself and the background that lead to the establishment of the CCDA.

Ms. Venus Sharifi provided information regarding the importance of the Fair Political Practices Commission's Form 700, Statement of Economic Interest to help avoid any potential conflicts of interest.

3. Selection of Chairperson and Vice-Chairperson

Motion by Commissioner Corbett and seconded by Commissioner Ammiano that, at this time, we select an interim Chair and Vice-Chair. Discussion ensued as to establishing the timeframe for the interim appointments. **Commissioner Corbett requested the motion to be held over to allow discussion of Item 5 – General Business Items. Commission members agreed.**

4. Bagley-Keene Open Meeting Act Presentation

Mr. Ted Prim, Attorney General's Office, provided necessary information to assist Commissioner's in knowing who, what, when and how to ensure the Act is complied with so that the public can participate. In essence, any quorum, as low as three members, of the Commission should avoid private discussions outside the public view, thereby preventing "serial meetings" or any meeting that is not formally noticed to allow the public to participate.

Commissioner Thorman asked if it makes any difference that there are voting and non-voting Commissioners? Mr. Prim was not sure; but understands all Commission members are able to discuss and provide opinions regardless of voting status. As such, it could be problematic as to any serial meetings. Commissioner Burks expressed concern about potential serial meetings due to other official capacities that Commission members may have beyond the actual Commission role; **perhaps a legal opinion is warranted to address Commissioner Thorman's question.**

5. General Business Items

Initial discussion occurred about the short notice room change that created challenges with teleconferencing. CBSC staff expressed it was working but not sure how effective it will be because of the room change. Several Commissioners expressed the need to assure the widest public participation possible.

a) Parliamentary Procedures – Robert's Rules of Order is process to follow and books will be distributed to Commissioners.

b) Conflict of Interest – See submitted DRAFT – will need to develop CCDA's policy that will need to go through proper rule making process.

c) Future Meetings – Ms. Davis assessed several meeting location possibilities in the Sacramento area. Difficulty is accommodating the 17 member Commission. Some will charge for use, some will not.

Possibilities are:

1) Cal EPA – Can accommodate 17 members Commission, room charges apply, could be bumped for other Cal EPA needs, web-casting & multi-media capabilities.

2) State Capitol Rooms 4202 & 437 are only rooms to accommodate 17 members, no room charges, legislator has priority – January through September legislature in session when rooms in high demand.

3) Various local hotels – charges will vary – some being very expensive, web-casting possible.

4) Provided information regarding AT& T teleconferencing options.

5) Other alternative formats/accommodations discussed, web-casting, real time captioning, interpreters, Braille transcription services, large print.

Mr. Walls indicated that the California Building Standards Commission (CBSC) meeting costs around \$6K to \$7K each. As an independent Commission, not under any current state agency, cost will probably be greater.

6) Caltrans & the Division of the State Architect (DSA) has meeting space. Additionally, Department of General Services (DGS) may have meeting space available too.

d) Website – Development and content was by-passed due to Commissioners wanting to initiate discussion of next item.

e) Future funding – Current available funding of \$80K is available from July 1, 2009 through June 30, 2010. Several Commissioners shared concerns how Commission is going to exist with \$80K; Commissioner Wilson identified the necessity to develop a public/private means of funding.

Mr. Walls identified the CBSC budget to be about \$1.2 million. CCDA is a similar size so it may be possible to use CBSC as an example. Important to note the CCDA will need to create a very austere budget to obtain the Legislature and Governor's support given current state funding conditions. Discussions centered on having Commissioners attend meetings at locations nearer their home community to save travel expenses. Commissioner Burks' rough assessment of costs for current meeting will be around \$10K to \$15K. It was the general understanding that wherever a Commissioner attends an official CCDA meeting, that location must be properly noticed to the public and the meeting place must be accessible. **Commissioner Pomerantz expressed there may be a court case that provides further clarification on the specific subject.**

d) Website – Development and content. There are specific requirements necessary for websites and posting of information and notices. While CCDA does not have a current site, CBSC has placed CCDA information and notices within its site. This is being done on an interim basis with the support of DGS and CBSC staff.

f) Future staffing – CCDA will need to determine what type of staffing requirements will be necessary to meet its statutory obligations. That may be in the form of permanent staff, consultants, or a combination of both.

g) Legal Counsel – CCDA representation; legislation did not stipulate who would provide legal counsel – checked with the Attorney General's Office and it was determined that no funding was made available to support the CCDA. Commissioner Corbett requested clarification as to how costs are covered by the Attorney General's Office. Mr. Walls explained that through DGS, CBSC may be able to assist but believes the current charge would be around \$190 - 200/hour; Commissioner Seferian concurred.

6) CCDA Authority & Responsibilities

a) Projects - Commissioner Luehrs identified whatever work to be accomplished will be limited to the available funding and based on Commissioner Burks' analysis of the costs incurred for the current meeting we will not be able to meet even monthly – so we're not going to be able to get very far along. Commissioner Corbett identified that SB 1608 was only able to secure the initial \$80,000 without raising further controversy on the merits of the proposed legislation. As the CCDA develops and delivers its

work products we will be able to demonstrate the necessity and viability of CCDA.

Commissioner Abrams expressed that the Commission needs to develop a number of ad hoc committee(s) such as financing, budget, logistics, and operations of the CCDA. Additionally, committee(s) that will address the substantive programmatic pieces such as what the disability and business community feels they need to make things better and easier to comply with accessibility requirements; furthermore, perhaps an education committee to look at what's going on in the litigation area. That all being said, in essence, given the fiscal constraints, we all will be working for free as far as the CCDA is concerned. We will need to use the resources and support from individual commissioners and other state agencies/departments.

Commissioner Burks recommended members look at Government Code 8299.05 et seq, as they provide some of the CCDA duties, responsibilities and deliverables that are date specific; the first deliverable being, "a master checklist for disability access compliance that may be used by building inspectors" due July 1, 2010. Some of the work may already be in progress such as DSA's efforts to develop a building checklist. Commissioner Thorman concurred efforts are under way to achieve an accessibility building code that meets the federal requirements and it would be a good idea to assess what other agencies/departments are already doing to assist in CCDA's efforts. Mr. Walls reminded everyone of the residential accessibility requirements under the purview of Housing and Community Development (HCD) that should be included in the master checklist. Commissioner Johnson concurred and also identified effort to address the Certified Accessibility Specialist Program (CASp) effectiveness as well as report on the state of disability access in California; also, the 20th Anniversary of the Americans with Disabilities Act is July 26, 2010 and should be something the CCDA involves itself to celebrate this milestone.

Motion by Commissioner Burks, seconded by Commissioner Pomerantz to establish an ad hoc committee, that reports back to CCDA as soon as possible, to address the requirement of Government Code 8299.06 which says, "The commission, as soon as practicable, but no later than July 1, 2010, shall develop, in consultation with the staff of the California Building Standards Commission, a master checklist for disability access compliance that

may be used by building inspectors to ensure it includes Chapters 11A & 11B of Title 24, California Building Code.

Extensive discussion ensued by Commissioners, Corbett, Johnson, Abrams, Thorman, Pomerantz, and Burks.

Public Comments:

Bob Marshall, Building Official, Santa Maria – He and Chief Building Inspector just passed CASp exam. He sees a big difference between CASp activities and how he enforces requirements of the building codes. Believes checklist is to be based on the CASp needs and requirements under SB1608. Furthermore, he won't be doing CASp inspections and will leave those up to the accessibility consultants; his staff's responsibility is to enforce compliance with Title 24, Chapters 11A & 11B. He believes if the building is properly built and inspected under existing codes, the checklist and CASp are irrelevant. Lastly, he recommends scraping Chapter 11A & 11B and use the ADA Accessibility Guidelines as the Model Code and then incorporate California Amendments.

Jay Salazar, Board Member, California Building Officials – CALBO has written a letter to the Commission earlier this year. CALBO has an accessibility committee and would be interested and willing to assist the Commission in any way possible.

Motion above passed unanimously.

Commission recessed at 12:30 p.m.

Commission reconvened at approximately 1:10 p.m.

Mr. Walls identified what other projects the CCDA has under its authority per Government Code 8299.05 et seq, specifically, 8299.05 (a) (4). Whether training and continuing education requirements should be enacted for landscape architects, professional engineers, and contractors to provide these professionals with sufficient knowledge of the state and federal disability access laws and regulations. This study and report shall be completed and delivered to the Legislature no later than January 1, 2011.

b) Reports

Mr. McGowan identified a minimum of four reports CCDA shall provide the Legislature per Government Code 8299.05 et seq.

Commissioner Abrams provided his initial assessment of what ad hoc committees should be developed and their respective deliverables per SB 1608. They are:

- 1) Financing, staffing, operations & logistics
- 2) Master Checklist per Government Code 8299.06
- 3) Covering requirements in Government Code 8299.05 (a) (2); (3); (4); & CASp
- 4) Covering requirements in Government Code 8299.05 (a) (1) access compliance problem areas; 8299.05 (b) (1) information center & (2) coordination with other state entities; 8299.05 (c) materials, etc; 8299.05 (d) technical materials
- 5) Covering requirements in Government Code 8299.07; civil litigation issues

Perhaps pending legislation would be another but that would evolve with the CCDA.

Commissioner Johnson was looking at a similar approach but was also not sure about the legislation portion. Commissioners Corbett & Wilson felt legislation activity would eventually flow out from the CCDA activities.

Public Comments:

Terelle Terry, Californians for Disability Rights, Inc. (CDR), not to be confused with Disability Rights California. CDR would like to recommend that California comply and get an ADA Coordinator per requirements of the 1973 Rehabilitation Act and the Americans with Disabilities Act of 1990. Perhaps the CCDA should be the location for this statewide ADA Coordinator to assist in achieving accessibility compliance.

7) Selection of Members for Ad Hoc Sub-Committees

Motion by Commissioner Johnson, seconded by Commissioner Wilson, to create the sub-committees, (1) (3) (4) & (5) above as

described by Commissioner Abrams. Commissioner Burks requested a friendly amendment that we make sure we have captured all CCDA duties and responsibilities in sub committees. Amendment accepted by maker and commissioner seconding the motion.

Commissioner Corbett agreed to assess the sub-committees to ensure that all CCDA duties and responsibilities are covered per SB 1608 and report back at the next full CCDA meeting.

Commissioner Burks requested we obtain a legal interpretation of the requirements as to non-voting members participation so we don't violate the serial meeting requirement should there be three (3) CCDA participants. Commissioner Thorman will request DSA's legal council to respond.

Public Comments:

Kevin Sparks, DSA Inspector and CASp – checklist needs to include both federal and state accessibility requirements. Commissioners encouraged Mr. Sparks to continue his participation.

Kurt Cooknick, Director of Regulation & Practice, American Institute of Architects, California Chapter (AIACC) – wants to make sure that the code requirements and interpretations are correct between what the Title 24 and ADAAG requires. Mr. Cooknick and AIACC was encouraged to participate.

Commissioner Thorman wanted to follow up that DSA has the Academy so when the CCDA committees begin their activities the DSA Academy is another resource to draw on.

Motion above passed unanimously.

Commissioner Thorman requested reconsideration of the tabled motion in selecting the CCDA Chair and Vice-Chair.

Motion by Senator Corbett, seconded by Commissioner Abrams, to nominate Commissioner Johnson as interim Chair to serve until May 1, 2010, or the nearest CCDA meeting after May 1st.

Mr. Walls requested other nominations from the floor. Hearing none; motion called.

Motion passed unanimously.

Chair Johnson, requested nominations for Vice-Chair.

Motion by Commissioner Pomerantz, seconded by Commissioner Burks, to nominate Commissioner Abrams as interim Vice-Chair to serve until May 1, 2010, or the nearest CCDA meeting after May 1st.

Mr. Walls identified that Commissioner Luehrs had expressed interest. However, Commissioner Luehrs yielded to others willing to serve.

Chair Johnson requested nominations from the floor. Hearing none; motion called.

Motion passed unanimously.

a) Assignments for Sub-Committees

Chair Johnson first requested volunteers to participate in the identified sub committees.

Vice-Chair Abrams asked if Commissioners don't volunteer today if it would be possible for them notify CBSC staff of their desires. Mr. Walls indicated that would not be a problem. Vice-Chair Abrams wanted a memo to be sent to other Commissioners and interested public to express their desires to participate on the sub-committees.

Master Checklist Committee:

Commissioners Burks, Pomerantz, and Commissioner Thorman volunteered DSA staff member Aaron Noble

Administration/Finance Committee:

Commissioners Burks, Johnson, Abrams, and Martinez

CASp and Education Committee:

Commissioner Burks, Senator Corbett, and Johnson

Compliance, Information Center & Materials Committee:

Commissioners Assembly Member Ammiano, Luehrs, and Welch

Litigation & Enforcement:

Commissioners Pomerantz, Dean, Corbett, Seferian, Luehrs, Martinez, and Johnson

Commissioner Abrams requested information as to how the outreach will work to inform the public regarding the availability to participate in these sub committees. CBSC staff shared information regarding the database and web information methods being widely broadcast.

Commissioner Welch wanted to know if he requests staff to do data collection or research would there be a cost to the CCDA by CSBC staff? CBSC staff would bill at the hourly rate. Mr. Walls asked that Commissioners could speak with him regarding the request and Mr. Nearman identified that CBSC does diverse functions so some data collection or research may have already been compiled. Commissioner Thorman expressed that DSA has perhaps achieved the same and encouraged Commissioners to contact him or Aaron Noble.

Commissioner Burks asked about other code promulgating agencies like Housing and Community Development (HCD), Office of Statewide Health Planning and Development (OSHPD), the State Fire Marshal (SFM) who should be at the table but are absent. The assessment and involvement of other state entities will probably be addressed in the Compliance, Information Center & Materials Committee process.

Mr. Walls wanted to clarify, that based on the law, CBSC staff will be assisting the CCDA with the development of the master checklist at no charge.

Ms. Stephanie Davis expressed that the meeting minutes have not been budgeted for this meeting and there would be a charge to have them transcribed.

8) Future Agenda Items

Next meeting to be Tuesday, February 2, 2010, from 10 a.m. to 5 p.m.
Backup date will be Wednesday, February 3, 2010.

Commissioner Pomerantz recommended that the public comment period be moved earlier on the agenda.

9 Comments from the Public on Issues not on this Agenda

Travis Hausauer, Owner of the Squeeze Inn and a member of local leadership council of citizens against lawsuit abuse – after SB 1608 was passed my business was sued by a professional litigant. As a small business owner there is a lot of confusion out there and we don't know where to go. There are a lot of consultants out there and we don't know who they are. How do we make sure we are protected once we are deemed compliant? What is the state doing to make sure we understand and comply with both federal and state accessibility requirements? We want to be compliant but we have limited budgets too. We hope this Commission will be the answer to help save small business from vexatious litigants. Something needs to be done and I thank you for any help you can provide to resolve these issues. Mr. Hausauer provided an Op Ed regarding the accessibility lawsuit.

Ida Claire, Architect & CASp – CASp members have gotten together and because of the various experience differences of those certified each is interpreting CASp law differently. As we are administering this law and there are problems with the various interpretations. The committee assigned to assess the CASp needs to address the multitude of problems within CASp. We want to improve this program but it is very ambiguous.

Kevin Scott, International Code Council (ICC) – we publish all the International Building Code, California Building Code, and ANSI 117 Standards on access. We would be willing to make a presentation on how to use the model code and California Building Code amendments. The 2009 International Building Code already is correlated with the new federal accessibility standards and would assist in achieving federal compliance. It assists architects licensed in multiple states get accessibility compliance right.

Laura Williams, Californians for Disability Rights – we agree that civil rights of persons with disabilities need to be addressed in this state. We have requested the state comes into compliance by appointing a statewide ADA Coordinator. Provided examples of various accessibility conflicts where the state fails to comply such as accessible web sites, purchase of inaccessible

public transit vehicles, intrusive request by the Department of Corrections (CDCR) for mobility impaired and the newly constructed Los Angeles Caltrans office where the elevators don't stop on every floor. We need to resolve these problems with state agencies and get them to comply as well.

Dave Peters, Attorney – works with several attorneys who attempt to resolve accessibility problems. There are a lot of inspectors that are not CASp who are being hired by owners who cannot afford to get bad advice from non CASp. There should be greater promotion of the CASp and the benefits associated with inspections performed by a CASp inspector. Appears judges and court staff don't have a lot of information on how to handle the Early Evaluation Conferences. Perhaps a web page could be developed to help inform property owners about accessibility compliance, maybe even have a web link on the secured property tax bills. Finally, deals with a lot of CASp inspectors who are interpreting differently the accessibility requirements. Furthermore, accessibility requirements are changing and owners really don't know they need to make these potential changes; as an example, noticed parking spaces are required to be painted blue due to new legislation, but owners don't know that the law has changed.

Chair Johnson requested motion to adjourn.

Motion by Commissioner (unintelligible), seconded by Commissioner (unintelligible), to adjourn meeting.

Motion passed unanimously.