26 October, 2017

Recap of the FHBA Fall Board Meeting

Governmental Affairs Committee Meeting

Ponte Vedra Beach, FL of 20 October, 2017

1. **Construction Defect - Right to Cure:**

Bill Sponsors: Kathleen Passidomo (senate)

Jay Trumbull (house member)

This bill will be seeking to correct some glitch issues in the current law, which has opened the door to trial lawyers to abuse the process, drive up fees, as well as claims against subcontractors and builders.

* Mandatory notice to subcontractors on the filing of 558 claims.
  + At this time, subcontractors are not being noticed until they are served with a claim, many times for defects that don’t apply to their portion of the work. i.e.: leaks in plumbing or roofs dragging in window contractors. One window contractor received over 25 claims last year in Orlando for building defects that had nothing to do with his scope of work, resulting in his premiums increasing to over 45,000.00 per yr. from less than 16,000.00. Insurance companies are settling these claims rather than defending them. By noticing the subcontractors, they will be able to respond sooner to a claim.
* The claimant will be *required*, under the bill to sign a notice of either acceptance or rejection of a right to cure offer to repair.
  + This should insure that a consumer has heard about an offer to repair. Currently, some attorneys are withholding offers from clients in order to guarantee litigation or settlements from insurers.
* Mandate mediation as a first step

Other actions being undertaken by FHBA include arranging meetings with the large Volume Builders to discuss their sub-contract language which leaves the subs vulnerable to inclusion in claims beyond their work scope, by demanding they hold the builder harmless against all claims. FHBA will also be seeking to add language to the bill which caps a subcontractor (or builder) liability for a claim not to exceed the original contracted cost of the work.

1. **Building Code and Florida Building Commission Issues:**

FHBA code consultant Joe Belcher reports there is a 64-page list of code changes in this cycle that will be posted on the FHBA website. Most of these are changes in the FBC from the ICC.

The FBC three-year work schedule will also be posted on-line for the upcoming 2020 version of the code.

The FBC has created a Construction Cost Analysis working group, consisting of 11 seats including a chair and vice-chair.   
This group will analyze code changes for cost impact to construction and housing, and make recommendations to the commission. This is the first time that cost is a code consideration, and an important step to control special interests on issues other than life safety which can drive up costs

HB 299 reduces the number of members on the Florida Building Commission to either 11 or 17 members from the current 27 members. In addition, it removes the position of Chairman. I am not sure if this will get any legs, as a similar bill died last year and this year’s version has no declared sponsors. Further, the position of Chair of the FBC is a gubernatorial appointment, and it is not clear if this bill has the authority to change that.

1. **Permit extensions:**

For any developer or builder who may require an extension of time for a permit, either development permitting or building permitting may do so by issuing a letter to the permitting jurisdiction, informing them that they will be seeking an extension. This is not a request, but a notification under a Governor’s decree for any state of emergency. (i.e.: Hurricane, Zeca virus, or any other notice of emergency). The genesis of this was during the downturn, the governor mandated permit extensions in the manner described (notice to the JOA). It has since been extended to any emergency decree.

1. **Affordable Housing Workgroup:**

The Florida Housing Finance Corporation has established a workgroup to explore the dearth of affordable housing in Florida, and is planning meetings around Florida, with upcoming meetings being arranged for Miami, and Tallahassee. No dates. Like all Affordable housing initiatives, it will be watched.

1. **Workforce Development:**

Legislation is pending, and a workgroup has started meetings. Details and information is available on the NCCER website.

1. **Federal Issues:**

* Due to the large amount of incorrect information on the FEMA flood maps, local counties are getting involved and have started supplying FEMA with actual, verified data points to improve the federal maps. So far this is being met with enthusiasm.
* Federal Income tax policy: Mortgage interest deduction will likely continue, but if there is push back on that time-honored income tax deduction, a federal tax credit may be substituted for homeowners. There is no final, or even substantive movement on this at this time.

1. **Other Legislative Issues:**

* *Workers Compensation* costs fell 9.3% last year from the previous 2 yrs. of experience.

However, there are two cases (US Supreme Court cases) which will affect rates next year. (The Castellanos and Westphal cases). It is unlikely that a bill for Workers comp. can be run this year.

* *Statute of Repose* Large general contractors are seeking the start of this statute be measured at the *completion of contracted services*. We are studying how this affects us as developers. Further, the Bill this year will seek to apply the statute to all warranties and punch lists. Sponsors: Kathleen Passidomo and Tom Lee are the sponsors in the Senate. I am not aware of a companion bill in the House yet.
* *Lien Law* a potential bill on Lien Law might be filed details are scarce at this time.
* *Electrical contractors’* requirement for a journeyman on projects over 50,000 sf is being sought to be removed. No bill number or sponsors announced at this time.
* *Property rights (SB 362, Keith Perry, Sponsor)* will require that property rights be considered as part of any comprehensive plan. (As developers we love this one!) “Growth Management; Requiring local governments to address the protection of private property rights in their comprehensive plans; requiring the comprehensive plan to include a private property rights element that sets forth principles, guidelines, standards, and strategies to achieve certain objectives; providing a deadline by which each local government must adopt a private property rights element; requiring the state land planning agency to approve the private property rights element adopted by each local government if it is substantially in a specified form”
* *Assignment of benefits:* Benefit payments from insurance companies have not been making their way to the contractors after repairs due to storms or other insurable events, and there are changes to the process being suggested to correct the current abuses.
* *Impact fee Bill* (SB 324 sponsored by Dana Young) will seek to prevent the collection of impact fees prior to C.O. “Specifying the earliest time of collection that a local government may require for impact fees.”
  + Will also prevent localities from using impact fee revenue to fund bond debt, which has become a widespread problem across the state.
* *HOA Bill*: HB 377 (sponsors, Stone and Watson) Comes under DBPR authority in this bill. “Homeowners' Associations; Revises uses of Florida Condominiums, Timeshares, & Mobile Homes Trust Fund; increases damages to which member of homeowners' association is entitled for denial of access to official records; provides cause of action for member against community association manager or management firm; prohibits reimbursement to community association manager or management firm for certain fines; provides & revises reporting requirements; provides that fine may not become lien against parcel; revises provisions relating to election of officers; provides pre-suit mediation for election & recall disputes; provides for binding arbitration by DBPR for certain disputes between parcel owner & homeowners' association; requires DBPR to provide training & educational programs (for members, directors, and officers); authorizes DBPR to enforce & ensure compliance with Homeowners' Association Act & specified rules; provides DBPR with jurisdiction to investigate certain complaints; provides cause of action against developers by HOA or non-developer members of HOA”. NB: this bill will contain the FHBA language on reserves.

End of report