

**BEFORE THE NORTH CAROLINA BUILDING CODE COUNCIL  
RALEIGH, NORTH CAROLINA**

**Docket No. 2015-4**

**IN THE MATTER OF AN APPEAL            )**  
**BY SEASCAPE AT HOLDEN                )**  
**PLANTATION POA, INC.                 )**  
**REGARDING WHETHER AN                )**       **ORDER**  
**ADA-COMPLIANT RAMP IS                )**  
**REQUIRED AT MARINA                    )**

THIS MATTER was heard on October 26, 2015 by the North Carolina Building Code Council (“Council”) in Raleigh, North Carolina on appeal by Petitioner SeaScape at Holden Plantation Property Owners Association, Inc. (“POA” or “Petitioner”) from the July 21, 2015 interpretation (“Interpretation”) by the North Carolina Department of Insurance (“NCDOI”) regarding whether the North Carolina Building Code (“Code”) requires the POA to install a ramp compliant with the Americans with Disabilities Act (“ADA”) to the western walkway (“Western Walkway”) of the SeaScape at Holden Plantation Marina in Holden Beach, North Carolina (“Marina”).

The hearing was properly noticed, and a quorum of the members of the Council was present. The POA was represented at the hearing by Ryal W. Tayloe of the firm of Ward and Smith, P.A., Wilmington, North Carolina. The NCDOI was represented at the hearing by Assistant Attorney General Robert D. Croom. The Council heard sworn testimony from POA Board Member Curtis Bolden and NCDOI Chief Accessibility Code Consultant Laurel Wright.

Based on the testimony of the witnesses, those trial exhibits accepted by the Council, the arguments of the parties and the record as a whole, the Council makes the following:

**FINDINGS OF FACT**

1. The Western Walkway first runs from the western edge of the Marina’s boat ramp in a westerly direction and then turns and runs in a southerly direction along the western side of the Marina toward the Intracoastal Waterway.
2. In its Interpretation, the NCDOI stated that the Code requires the POA to install an ADA-compliant ramp to the Western Walkway.

3. The Chief Building Inspector for Brunswick County, North Carolina (“Brunswick Inspector”) has relied on the NCDOI’s opinion in the Interpretation. Specifically, the Brunswick Inspector has declined to issue a permanent Certificate of Compliance and Occupancy for recent repairs to the Marina by Andrew Consulting Engineers and TD Eure Construction Company until the POA installs the ADA-compliant ramp to the Western Walkway required by the Interpretation.

Based on these Findings of Fact, the Council makes the following:

**CONCLUSIONS OF LAW**

1. The Code does not require the POA to install an ADA-compliant ramp to the Marina’s Western Walkway. Accordingly, the NCDOI’s Interpretation is in error.

2. Likewise, it is also erroneous for the Brunswick Inspector to require the POA to install the ADA-compliant ramp to the Western Walkway addressed in the Interpretation, including as a precondition for the issuance of a permanent Certificate of Compliance and Occupancy for the recent repairs to the Marina by Andrew Consulting Engineers and TD Eure Construction Company.

**ORDER**

Based on the above Findings of Fact and Conclusions of Law, the July 21, 2015 interpretation by the NCDOI that the Code requires the POA to install an ADA-compliant ramp to the Western Walkway is OVERTURNED, REVERSED and RESCINDED. The Code does not require the POA to install an ADA-compliant ramp to the Western Walkway, and the Brunswick Inspector shall not require such a ramp as a precondition for the issuance of a permanent Certificate of Compliance and Occupancy for the Marina.

The Council instructs the NCDOI to transmit a copy of this Order immediately upon its issuance to the Brunswick Inspector.

Additionally, the Council instructs the NCDOI to post this Order prominently on its website(s) within 10 days by following the standards of 2015 N.C. Sess. Law 145 (effective October 1, 2015), which reads in pertinent part:

SECTION 6.1. G.S. 143-141 is amended by adding a new subsection to read:

“(c1) Posting on Department Web Site. – The Department of Insurance shall post and maintain on that portion of its Web site devoted to the Building Code Council all appeal decisions, interpretations, and variations of the Code issued by the Council within 10 business days of issuance.”

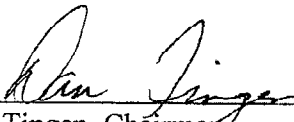
SECTION 6.2. G.S. 143-138.1(b) reads as rewritten:

“(b) The Department of Insurance shall post and maintain on that portion of its Web site devoted to the Building Code Council written commentaries and written interpretations made and given by staff to the Council and the Department for each section of the North Carolina Building Code within 10 business days of issuance.”

Finally, the Council instructs the NCDOI to remove any interpretation underlying this appeal from its website(s) within 10 days.

SO ORDERED, this the 18th day of November, 2015.

NORTH CAROLINA BUILDING CODE COUNCIL

By:   
Dan Tingen, Chairman

**NOTICE OF APPEAL RIGHTS**

This Order may be appealed to Superior Court within 30 days of receipt of the same as set out in Chapter 150B of the North Carolina General Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing ORDER ALLOWING APPEAL upon counsel for Petitioner and counsel for Respondent via first class mail to the following persons at the following addresses:

Ryal W. Tayloe  
Ward and Smith, P.A.  
Post Office Box 7068  
Wilmington, NC 28406-7068

Robert D. Croom  
North Carolina Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699-9001

This the 20<sup>th</sup> day of November, 2015.

ROY COOPER, ATTORNEY GENERAL



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