

Greenberg Traurig

Robert S. Fine
Tel. 305.579.0826
Fax 305.579.0717
finer@gtlaw.com

January 25, 2007

VIA FEDEX

Paula Ford, Agency Clerk
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

Re: TRG-BLOCK ONE

Dear Paula:

Please file the enclosed Petition for Declaratory Statement in the above referenced matter. We have provided a second copy for you to date stamp and return to us in the enclosed self-addressed stamped envelope. Also enclosed is a cd-rom containing a copy of the Petition. Upon receipt of this package, please email me a confirmation that you have received it.

If you have any questions please feel free to call me at (305) 579-0826.

Very truly yours,



Robert S. Fine

RSF

Encls.

cc: James Richmond, Esq.

(1) that accompanied
this is in Clerk's File

Paula Ford

DCAD07-DEC-017
FILING AND ACKNOWLEDGEMENT
FILED, on this date, with the designated
Clerk, receipt of which is hereby
acknowledged.

Paula P. Ford 1/26/07
Paula P. Ford
Commission Clerk Date

FLORIDA BUILDING COMMISSION

IN RE:

TRG-BLOCK ONE, LTD., a Florida
limited partnership

DCA07-DEC-017
FILING AND ACKNOWLEDGEMENT
FILED, on this date, with the designated
Clerk, receipt of which is hereby
acknowledged.
CASE NO. *Paula P. Ford* *12/26/07*
Paula P. Ford
Commission Clerk Date

PETITION FOR DECLARATORY STATEMENT

TRG-BLOCK ONE, LTD., a Florida limited partnership (TRG), files this
petition for declaratory statement and states as follows:

Jurisdiction

1. The Florida Building Commission (the Commission) has jurisdiction
to issue declaratory statements pursuant to section 120.565, Florida Statutes,
relating to an agency's interpretation and enforcement of the specific provisions of
the Florida Building Code (FBC), which the agency is authorized to enforce. *See*
§ 553.775(3)(e), Fla. Stat.¹

¹ All references to Florida Statutes shall be to the 2006 edition unless
otherwise indicated.

2. Section 553.775, Florida Statutes, provides two mechanisms by which a substantially affected person may obtain an interpretation of a provision of the FBC. One of these mechanisms is to invoke the Commission's jurisdiction over "decisions of local building officials and local enforcement agencies regarding interpretations of the Florida Building Code after the local board of appeals has considered the decision, if such board exists, and if such appeals process is concluded within 25 days." § 553.775(c), Fla. Stat. The other mechanism is to request that the Commission "issue a declaratory statement pursuant to s. 120.565 relating to an agency's interpretation and enforcement of the specific provisions of the Florida Building Code which the agency is authorized to enforce." § 553.775(e), Fla. Stat. While the Miami-Dade County Code (County Code) provides for a Board of Rules and Appeals (BORA) to interpret or clarify provisions of the FBC, the County Code does not provide a right for substantially affected persons to seek an interpretation of a provision of the FBC from the BORA – it provides solely that the "Secretary of the Board" or "any Building Official" may seek such an interpretation of the FBC. *See* § 8-4(d)(2), County Code.

The Petitioner

2. TRG's address is 315 South Biscayne Boulevard, 3rd Floor, Miami, Florida 33131. Its telephone number is (305) 460-9900.

3. TRG is a developer of multifamily housing in Miami-Dade County, which is located in the high-velocity hurricane zone (the Zone) as defined in the FBC and its authorizing statutes. TRG constructs, and then sells (or rents) to the public, dwelling units, typically in high-rise structures. The buildings that TRG construct typically have numerous balconies that are not the buildings' top surfaces.² In addition, these buildings typically include multilevel parking garages.

4. TRG owns land in Miami-Dade County on which it plans to build a high-rise residential building. TRG has retained and paid an architect to design the building and plans to apply for building permits during the time period that the 2006 amendments to the 2004 edition of the FBC (2006 Amendments) will be in effect. TRG intends this building to have numerous balconies and also parking garage deck levels that are not a part of the top surface of the building.

² Generally, a building's "top surface" would be the uppermost surface of the structure that is continuously exposed to the elements. *See* Footnote 9.

The Code Provision and its effect on TRG

5. TRG seeks a declaratory statement regarding the applicability of section 1519.16 of the 2006 Amendments (Section 1519.16).

6. Section 1519.16 involves the application of waterproofing over sloped or horizontal decks specifically designed for pedestrian and/or vehicular traffic. TRG, through its architect and counsel, has been informed that the Miami-Dade County Building Code Compliance Office (Code Compliance), a regulatory agency having jurisdiction, interprets the provision of Section 1519.16 to apply to balconies and parking garages in the types of buildings that TRG constructs.³ Applying the requirements of Section 1519.16 would add considerable expense to the construction of the building(s) TRG plans to build.

Nature of Declaratory Statement Sought

7. TRG seeks a declaratory statement declaring that the requirements set forth in Section 1519.16 do *not* apply to balconies or parking garage decks *when such balconies and decks are not part of the top surface of the building.*

³ TRG's architect and counsel were informed of this position of Code Compliance in a meeting with Code Compliance staff at Code Compliance's offices on December 21, 2006.

**MEMORANDUM OF LAW IN SUPPORT OF TRG'S
REQUESTED DECLARATORY STATEMENT**

Introduction

In December 2006, undersigned counsel, along with an architect for TRG, met with the staff of the Miami-Dade County Building Code Compliance Office (Code Compliance) to discuss a set of guidelines locally adopted in 2002 relating to the waterproofing of plazas, terraces, balconies, etc. (the Local Amendments).⁴ Because TRG took the position that the Local Amendments were, in effect, local technical amendments to the FBC that were not adopted in accordance with section 553.73(4)(b), Florida Statutes, TRG informed Code Compliance staff that it would, in all likelihood, file a petition with the Countywide Compliance Review Board challenging the locally adopted guidelines. At that meeting, Code Compliance staff said that even if such a challenge were successful, the success would be short-lived because a provision in the 2006 Amendments (Section 1519.16), as interpreted by Code Compliance, would require such waterproofing to be provided on *all* balconies and garage decks, including those that are not the top surface of the building.⁵

⁴ The Local Amendments are attached hereto as Exhibit A.

⁵ Inasmuch as Miami-Dade County is a home rule county, Code Compliance has oversight authority over all of the separate municipal building departments in Miami-Dade County. In fact, all of the municipal building
(continued . . .)

Subsequent to the meeting, TRG filed a petition with the Countywide Compliance Review Board (Review Board) challenging the 2002 Local Amendments. On January 18, 2006, the Countywide Compliance Review Board ruled that it did not have jurisdiction because the Local Amendments had never completed the process to become a local technical amendment to the FBC, that the Local Amendments were, and are, not mandatory, are not technical amendments to the FBC, and cannot be imposed by a building official on a project subject to the 2001 or 2004 FBC. The Countywide Compliance Review Board instructed its staff to issue a memorandum to that effect to be sent to building officials in Miami-Dade County. TRG now independently invokes its right under section 120.565, Florida Statutes, and files this petition for declaratory statement.⁶

(. . . continued)

officials in Miami-Dade County are licensed by Code Compliance and BORA, for which Code Compliance serves as staff. As a result, building officials in Miami-Dade County typically consider notices and interpretations from Code Compliance to be binding on them.

⁶ Because several building officials in Miami-Dade County have taken the position that they are bound by the Local Amendments with respect to buildings and structures permitted under both the 2001 and 2004 editions of the FBC, TRG filed a second petition with the Review Board challenging the application of the Local Amendments to the 2004 edition of the FBC. This second petition is currently pending.

Argument

The plain language of Chapter 15 of the 2004 edition of the FBC (FBC 2004), the title of Section 1519, and Section 1519.16 itself refute Code Compliance's contention that Section 1519.16 imposes waterproofing requirements on balconies and parking garage decks that are not part of the top surface of the building. The Florida Supreme Court has observed: "Our courts have long recognized that the rules of construction applicable to statutes also apply to rules." *Brown v. State of Florida*, 715 So. 2d 241, 243 (Fla. 1998).⁷ "Thus, when the language to be construed is unambiguous, it must be accorded its plain and ordinary meaning." *Id.*

Section 1519.16 amends Chapter 15 of FBC 2004. Chapter 15 is entitled "Roof Assemblies and Rooftop Structures." Section 1519 is titled: "HIGH-VELOCITY HURRICANE ZONES—*ROOF COVERINGS WITH SLOPES LESS THAN 2:12.*" (Emphasis added). Section 1501.1 of FBC 2004 states as follows:

The provisions of this chapter shall govern the design, materials, construction and quality of *roof assemblies and rooftop structures*.

Exception: Buildings and structures located within the high-velocity hurricane zone shall comply with the provisions of Section 1503.6 and Sections 1512 through 1525.

⁷ The FBC is an administrative rule. See § 553.73(1)(a), Fla. Stat. ("The commission shall adopt, by rule pursuant to ss. 120.536(1) and 120.54, the Florida Building Code....").

(Emphasis added). Therefore, with the exception of section 1503.6, which is titled “Protection against decay and termites,” the provisions of Chapter 15 that govern buildings and structures in the Zone⁸ are found in sections 1512 through 1525.

Section 1512: High-Velocity Hurricane Zones – General states as follows:

1512.1 Scope.

Sections 1512 through 1525 set forth minimum requirements for the installation of *roofing components, roofing systems, roofing assemblies and the waterproofing thereof.*

1512.2 Application.

These high-velocity hurricane zone *roofing* requirements with associated *roofing* application standards (RAS) and testing application standards are solely to be implemented in areas of high basic wind speeds, and where the jurisdiction having authority has adopted their use.

1512.2.1

All roofing components, roofing systems and roofing assemblies for construction regulated by this code shall comply with this chapter. All *roofing components, roofing systems and roofing assemblies* shall have a valid and current Product Approval. In the event that the manufacturers published literature or instructions are in conflict with those of the Product Approval, the Product Approval shall prevail. Where items specifically and expressly addressed in this chapter are in conflict with the Product Approval, the provisions of this chapter shall prevail.

(Emphasis added). Based on these provisions, it is clear that sections 1512 through 1525 govern roofing components, roofing systems, roofing assemblies (as opposed

⁸ Miami-Dade and Broward Counties comprise the Zone.

to other parts of buildings) and the waterproofing thereof for structures located in the Zone.

Furthermore, Section 1513 (High-Velocity Hurricane Zones – Definitions) provides the following definition:

ROOF COVERING. An assembly of multiple field-applied components or a single component *designed to weatherproof a building's top surface*. A roof covering may be a roofing assembly or form a portion thereof.

§ 1513.1, FBC 2004 (emphasis added). Therefore, sections 1512 through 1525 of the 2004 FBC (within which Section 1519.16 is found) relate to weatherproofing a building's *top* surface.⁹

The plain and unambiguous language of Chapter 15 and sections 1512 through 1525 (for the Zone), as well as the title of Section 1519 plainly indicate that these sections provide requirements applicable solely to roofs and roofing components, and the definition of “roof covering” makes clear that these requirements are intended to relate to a building's *top* surface. Section 1519.16 cannot be interpreted to impose waterproofing requirements on lower, intermediate

⁹ The designation of a surface as a “top” surface also plainly indicates that it is the highest surface of the structure, and not an intermediate surface below the uppermost surface, such as a balcony or garage deck. See Merriam-Webster's Online Dictionary, <http://www.m-w.com/dictionary/top>, last accessed January 24, 2007 (defining “top” as “the highest point, level, or part of something.”).

surfaces such as balconies and parking garage decks that do not form part of a building's uppermost surface.

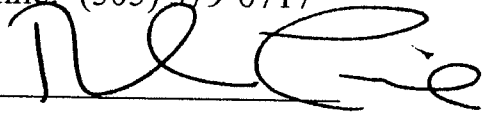
Conclusion

TRG respectfully requests that the Commission issue a declaratory statement holding that the requirements of Section 1519.16 of the 2006 Amendments to the 2004 edition of the Florida Building Code do not apply to balconies and parking garage decks that are not part of a building's top or uppermost surface.

Respectfully submitted,

Robert S. Fine, Esq.
Florida Bar No. 0155586
Edward G. Guedes, Esq.
Florida Bar No. 768103
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0717

By: _____



Counsel for TRG

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a courtesy copy of the foregoing by U.S. Mail upon:

Hugo Benitez, Esq.
Assistant County Attorney
Miami Dade County
111 N.W. First Street
Suite 2700
Miami, FL 33128

This 25 day of January, 2007.

By: 
Robert S. Fine
Counsel for Petitioner, TRGs