

City of Winter Park Declaratory Statement Request
Florida Building Code, Energy Conservation 6th Edition

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**PETITION FOR DECLARATORY STATEMENT BEFORE
THE FLORIDA BUILDING COMMISSION
Submitted via email on April 20, 2018**

Petitioner: Ashley Ong
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DS 2018-034

Code Section on which the Declaratory Statement is sought:

Florida Building Code-Energy Conservation, 6th Edition
Section R405.4.2.2 Compliance report for certificate of occupancy.

Property for which the Declaratory Statement is sought:

New single-family residence (SFR) @ 1750 Walnut Ave – Building Permit # 18-321. This will be the 1st SFR that will be regulated under the new provision of Section R405.4.2.2 Compliance report for certificate of occupancy. Multiple inspections have already been performed on this project and no change so far was made to the *proposed design*. The purpose of this Declaratory Statement petition is to seek guidance on how this new provision will be implemented.

Background:

Since its inception in 1977, the Florida Thermal Efficiency Code (commonly called the Energy Code) has demonstrated compliance using a performance-based calculation methodology, that compares a standard design to a proposed design. If the energy budget of the proposed design is less than or equal to the standard design, then the proposed house is considered to pass. The calculation is subsequently confirmed through the inspection process by building department as the house is actually built. More than 90% of new residential housing permits utilize this performance path found in Section R405.

The Florida Building Commission approves materials, including software, that support compliance for the Energy Code, with the intent that this approval continues the intent of maintaining uniformity in the building code:

R101.5.1 Compliance materials. The Florida Building Commission shall approve specific computer software, *worksheets*, compliance manuals and other similar materials that meet the intent of this code. Commission approved code compliance demonstration forms can be found in Table R101.5.1.

Section R101.5.1 cites permitting paperwork that meets the criteria found in Section R405.4.2. This paperwork has been generated by energy code software since the inception of the Uniform Building code in the early 2000. Florida's approval of such software is more detailed and advanced than other states who use the International Energy Conservation Code (where R405 has growing popularity).

With the 6th Edition, R405.4.2 has expanded base code language to reflect the need for more detailed instructions for executing performance path compliance. Current R405 software paperwork meets the criteria set out in R405.4.2.1

R405.4.2.1 Compliance report for permit application.

A compliance report submitted with the application for building permit shall include the following:

1. Building street address, or other building site identification.
2. A statement indicating that the *proposed design* complies with Section R405.3.
3. An inspection checklist documenting the building component characteristics of the *proposed design* as indicated in Table R405.5.2(1). The inspection checklist shall show results for the *proposed design* with user inputs to the compliance software to generate the results.
4. A site-specific energy analysis report that is in compliance with Section R405.3.
5. The name of the individual performing the analysis and generating the report.
6. The name and version of the compliance software tool.

However, the 6th edition also includes an additional Certificate of Occupancy Compliance report in Section R405.4.2.2.

R405.4.2.2 Compliance report for certificate of occupancy. A compliance report submitted for obtaining the certificate of occupancy shall include the following:

1. Building street address, or other building site identification.
2. A statement indicating that the as-built building complies with Section R405.3.
3. A certificate indicating that the building passes the performance matrix for code compliance and listing the energy saving features of the buildings.
4. A site-specific energy analysis report that is in compliance with Section R405.3.
5. The name of the individual performing the analysis and generating the report.
6. The name and version of the compliance software tool.

While most of the information in R405.4.2.1 and R405.4.2.2 is very similar, three important differences are apparent:

- a) R405.4.2.2 Item 2 requires a statement that the as-built building complies with the proposed design.
- b) R405.4.2.2 Item 3 requires a certificate indicating that the building passes the performance matrix. Please note that the term "performance matrix" is not defined within the code and its sole occurrence is at R405.4.2.2 Item 3.
- c) There is no prohibition that R405.4.2.1 submittal documents accepted at permitting

can carry through to meet the requirements in R405.4.2.2

Currently, the Technical Assistance Manual for code compliance software includes suggested paperwork for R405.4.2.1 (at permit) but not for R405.4.2.2 (at certificate of occupancy).

Consequently, software approved for the 6th edition R405 does not include the second set of compliance paperwork.

A Declaratory Statement is requested to answer the following questions:

1. Is "indicating that the building passes the performance matrix" (referenced in R405.4.2.2 Item 3) the same task as confirming the as-proposed design from R405.3 (referenced in R405.4.2.2 Item 2)?

The petitioner concludes the answer is YES

1a) If the answer is no, what is the reference for tasks/provisions/requirements in the 'performance matrix'?

2. Can the paperwork (as printed out from FBC approved software) submitted for R405.4.2.1 also be used to meet R405.4.2.2?

The petitioner concludes the answer is YES, as building departments have used this paperwork to confirm as-built code compliance before R405.4.2.2 was expressly written as such.

2a) If the answer is no, must the Florida Building Commission approve the certificate of occupancy compliance report worksheet a jurisdiction develops in accordance with R101.5.1?

3. If there is no change to the proposed design during the course of the construction and all required inspections to verify compliance are performed, is there a need for the building department to request the as-built compliance report per Section 405.4.2.2 prior to the issuance of the certificate of occupancy?

The petitioner concludes that the answer is NO, building department confirms compliance with the code through its inspection duties.

4. If there are changes to the proposed design during the course of the construction and the compliance report is amended; and submitted for review and approval prior to conducting the required inspections, is there a need for the building department to request the as-built compliance report per Section 405.4.2.2 prior to the issuance of the certificate of occupancy?

The petitioner concludes that the answer is NO, building department confirms compliance with the code through its inspection duties.

**Florida Building Code, Building
Section 107 Submittal Documents**

107.4 Amended construction documents.

Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

As an option, the petitioner also concludes builders are allowed to submit a certificate of occupancy compliance report that meets the provisions of R104.4:

R104.4 Approved inspection agencies. The *code official* is authorized to accept inspection reports in whole or in part from either individuals as defined in Section 553.993(5) or (7), *Florida Statutes* or *third-party inspection agencies not affiliated with the building design or construction*, provided such agencies are *approved* as to qualifications and reliability relevant to the building components and systems they are inspecting.

R201.3 Terms defined in other codes.

Terms that are not defined in this code but are defined in the Florida Building Code, Building; Florida Fire Prevention Code; Florida Building Code, Fuel Gas; Florida Building Code, Mechanical; Florida Building Code, Plumbing or the Florida Building Code, Residential shall have the meanings ascribed to them in those codes.

Florida Building Code-Residential, Chapter 2

[RB]THIRD PARTY CERTIFIED. Certification obtained by the manufacturer indicating that the function and performance characteristics of a product or material have been determined by testing and ongoing surveillance by an *approved* third-party certification agency. Assertion of certification is in the form of identification in accordance with the requirements of the third-party certification agency.


To avoid duplicative requirements and costs, the building official is permitted to accept the certificate from an approved inspection agency as substitute for the departmental inspections, under the authority indicated in FS 553.998

FS 553.998 Compliance. The local enforcement agency may accept inspections in whole or in part by individuals as defined in s. 553.993(5) or (7).

The City of Winter Park thanks the Florida Building Commission and the Energy Technical Advisory Committee in advance for their efforts in clarifying these enforcement questions.

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Sincerely,

 4/30/18
Ashley Ong
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City of Winter Park