



**STATE OF FLORIDA
FLORIDA BUILDING COMMISSION**

IN RE:

DS 2021-039

THE PETITION FOR DECLARATORY STATEMENT OF
TIERRA, INC.

FRSA'S MOTION FOR LEAVE TO INTERVENE

Florida Roofing & Sheet Metal Contractors Association, Inc. ("FRSA") hereby moves the Florida Building Commission ("FBC") for leave to intervene with regard to the Petition for Declaratory Statement of Tierra, Inc., numbered DS 2021-039, filed July 12, 2021 and published on July 21, 2021. In support thereof, FRSA states as follows:

I. Introduction.

The Petition seeks the agency's opinion as to the applicability of section 706.1.1, Florida Building Code, Existing Building, 7th Edition (2020) (the "Code"), as it applies to Tierra, Inc. ("Petitioner").

Specifically, section 706.1.1 provides: "Not more than 25 percent of the total roof area or roof section of any existing building or structure shall be repaired, replaced or recovered in any 12-month period unless the entire existing roofing system or roof section is replaced to conform to requirements of "this code." Petitioner presents the following questions:

(1) Does a roof which was originally built and approved after October 1, 2005 (the date of the original Florida Building Code, Existing) need to be replaced to conform to the requirements of "this code."

(2) Can a roof which was permitted after October 1, 2005 and subsequently approved and conforms to the requirements of “this code” be repaired even if more than 25 percent of the roof has incurred storm damage.

The Petitioner argues that the answer to question 1 should be “no” and the answer to question 2 should be “yes.” Petitioner’s argument is based on an interpretation of 706.1.1 to define “this code” to mean the original version of the Florida Building Code, Existing as adopted on October 1, 2005. Under this interpretation, the rule requiring replacement in the event of damage to more than 25% of the roof’s area would not apply to a roof originally permitted and subsequently approved in 2007.

FRSA opposes the Petitioner’s position and seeks to intervene in this matter to present its opposing interpretation. FRSA urges the Commission to interpret “this code” as used in 706.1.1 to apply instead to the active code at the time of the permitting and approval of construction which would then require the rule requiring full replacement to roofs which have incurred damage to more than 25% of the area whether such roof was built before or after October 1, 2005.

II. Intervention.

Section 28-105.0027 of the Florida Administrative Code permits intervention in pending administrative proceedings by persons other than the original parties whose interests will be substantially affected by disposition of the declaratory statement. The presiding officer shall allow for intervention of persons meeting the requirements for intervention of this rule.

FRSA, and FRSA’s members are substantially affected persons with respect to section 706.1.1. FRSA is the Florida statewide roofing association with more than 800 roofing contractor members across the State of Florida. These roofing contractors’ services are “unlimited in the

roofing trade,” and include, without limitation, the installation, maintenance, and repair of roofing systems throughout Florida.

The scope of the Petition is within the substantial interest and activity of FRSA’s members. Therefore, FRSA’s members are subject to determination of, and will be affected by, the Petition. FRSA should be granted permission to intervene in these proceedings on behalf of its contractor members.

Importantly, as the publication of this Petition occurred on July 21, 2021, the deadline to move for intervention was August 11, 2021. Accordingly, this Motion is made beyond the prior-established time for such motions. Regardless of that fact, 28-105.0027 allows for motions made beyond the time for “good cause” shown. FRSA can show good cause sufficient to justify intervention in this matter. FRSA was not given notice of the publication date when it received a copy of the Petition which occurred on July 28, 2021. FRSA did not receive notice of the Petition through the Building Commission online noticing system but rather only via an E-mail. The lack of BCIS notice resulted in the Petition not being calendared in FRSA’s typical fashion and was not routed to counsel until after the motion deadline. Since discovering the publication date, FRSA ensured that counsel was retained and filed this Motion immediately. Further, granting this Motion will not prejudice any other parties to this matter and will allow for consideration of the position urged by FRSA’s members which includes a large portion of the roofing contractors throughout Florida whose interests should be considered by the Commission in such important matters.

III. The FBC should issue a declaratory statement regarding DS 2021-039.

“The purpose of a declaratory statement is to resolve a controversy or answer questions concerning the applicability of statutes, rules, or orders which an administrative agency enforces, adopts or enters.” *Citizens of State ex rel. Office of Pub. Counsel v. Florida Pub. Serv. Com'n &*

Utilities, Inc., 164 So. 3d 58, 59 (Fla. 1st DCA 2015); *Fla. Dep't of Bus. & Pro. Regul., Div. of Pari-Mutuel Wagering v. Inv. Corp. of Palm Beach*, 747 So. 2d 374, 382 (Fla. 1999). A declaratory statement of an agency's position may help a party “avoid costly administrative litigation by selecting the proper course of action in advance.” *Chiles v. Dep't. of State, Div. of Elections*, 711 So.2d 151, 154 (Fla. 1st DCA 1998).

In the present matter, issuance of a declaratory statement is proper because the rights, status, and other equitable or legal relations of FRSA’s many members are in doubt. *See Sutton v. Dep’t of Environmental Protection*, 654 So. 2d 1047, 1049 (Fla. 5th DCA 1995). Further, this question of law affects FRSA members’ ability to ascertain the requirements of the Code when contracting for and performing roof repairs throughout the state.

IV. The FBC should adopt FRSA’s interpretation of section 706.1.1 because it is consistent with the Code’s definition of the phrase “this code” and avoids rendering meaningless the various revisions made to the Code since 2005.

Petitions for declaratory statements are analogous to petitions for declaratory judgments, where Florida courts are guided by canons of legal interpretation to clarify purportedly ambiguous statutes and rules. *See B Citizens of State ex rel. Office of Pub. Counsel*, 164 So. 3d at 63 (Noting similarities between proceedings). Thus, Florida agencies are guided by the courts’ canons of interpretation when construing seemingly ambiguous regulations.

One canon applicable in the present matter holds that, even though a legal provision may seem ambiguous “in isolation,” it should be given meaning by reading the rest of the statute or rule. *Alonso v. State*, 17 So. 3d 806, 808 (Fla. 3d DCA 2009). Similarly, “[t]he doctrine of *in pari materia* is a principle of statutory construction that requires statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature’s intent.” *Taylor Morrison Servs. v. Ecos*, 163 So. 3d 1286, 1291 (Fla. 1st DCA 2015). Further, the FBC is

guided by the Florida courts' "absurdity doctrine," a principle that ambiguous laws should not be read in a manner which leads to absurd results. *See e.g., Maddox v. State*, 923 So. 2d 442, 448 (Fla. 2006).

Petitioner argues that the phrase "this code" is intended to relate back to the version originally adopted on October 1, 2005. The Petition fails to reference any language within the Code or any legal justification which would support that interpretation. Petitioner's reasoning appears to be based on the understanding that, once a permit is issued, the roof would already conform to the requirements of the Code and no further replacement to conform to the requirements of the Code would be necessary. This reasoning is flawed. The issuance of a permit is not any assurance that the work to be done will conform to the Code. Petitioner's interpretation would only require application of 706.1.1 to roofs which were built prior to 2005. Such an interpretation would be absurd as the number of roofs to which it would apply would reduce significantly over time.

FRSA interprets the phrase "this code" as used in 706.1.1 to mean all language, including all revisions made after 2005. Reading the phrase "this code" as FRSA would require application of the roof replacement provision of 706.1.1 to roofs built after October 1, 2005 if such roof has incurred damage to more than 25% of its area. This interpretation seems to be the most obvious interpretation considering the opening provision of Section 101. Section 101 of the Code provides that "These regulations shall be known as the *Florida Building Code, Existing Building* hereinafter referred to as "this code." The short form "this code" is referenced further throughout the Code. Section 101 references specifically "these regulations" which clearly means all language included in the current edition of the Code rather than the original version from 2005. Thus, the phrase "this code" must include any revised language which is included in the current, active version of

the Code. As is noted in the Petition, the roof replacement provision did not always exist in the Code and, even when first adopted, was not located in 706.1.1. The phrase “this code” however is used in many different provisions of the Code and should be interpreted consistently in all of its references. To interpret “this code” in any other way would be to ignore and render meaningless any revisions to the Code made since 2005 in direct contradiction to the basic canons of statutory construction. *Gomez v. Vill. Of Pinecrest*, 41 So.3d 180, 185 (Fla. 2010) (holding that Courts should “avoid readings which would render a part of a statute meaningless.” See also, *Alonso v. State*, 17 So. 3d 806, 808 (Fla. 3d DCA 2009).

Failing to read section 706.1.1 as FRSA does would create an absurd result, namely, to ignore all revisions made to the Code after 2005. See *Maddox v. State* at 448. FRSA’s interpretation conforms to the clear intention of the drafters to read “this code” to mean the current, active version of the Code rather than only the original. This reading would allow for inclusion of the revisions made to the Code and avoid rendering meaningless not only 706.1.1’s requirement for roof replacement but so many other added provisions. FRSA, including its over 800 members, urges the FBC to issue a declaratory statement consistent with this interpretation contrary to that provided by the Petitioner.

WHEREFORE, Florida Roofing & Sheet Metal Contractors Association, Inc. hereby requests that the Florida Building Commission grant its motion to intervene and issue a declaratory statement consistent with the foregoing in relation to DS 2021-039.

Dated: September 13, 2021.

/s/ Virgil Tray Batcher

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following recipients via electronic mail and/or U.S. Certified Mail: **Tierra, Inc.**, 7351 Temple Terrace Hwy., Tampa, Florida 33637, **Agency Clerk's Office**, Department of Business and Professional Regulation, 2601 Blair Stone Rd., Tallahassee, FL 32399 (AGC.Filing@myfloridalicense.com), and **Mo Madani**, Building Codes and Standards Office, Department of Business and Professional Regulation (mo.madani@myfloridalicense.com), this 13th day of September, 2021.

/s/ Virgil Tray Batcher
Virgil Tray Batcher