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March 22, 2021

W. Justin Vogel
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Florida Building Commission, Office of Codes & Standards
Department of Business and Professional Regulation
2601 Blair Stone Road
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Emailed to: wjustin.vogel@myfloridalicense.com

RE: DS 2021-005 (ID # 24227125)

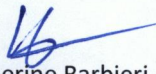
Dear Mr. Vogel:

St. Lucie County ("St. Lucie" or the "County") has received CL Contractors Corp's ("CL") March 15, 2021 correspondence (the "Correspondence") in response to the position paper filed by Douglas Harvey, the County's Building Official. The Correspondence demonstrates that CL's petition (the "Petition") relates to a completed structure, and thus is not a petition seeking a prospective declaration or interpretation for a planned project. Thus, we urge the Department of Business and Professional Regulation ("DBPR") to take appropriate action against the Petition, including issuing a recommendation that the Florida Building Commission (the "Commission") refrain from entertaining its merits.

A declaratory statement serves to clarify the application of laws or regulations to a petitioner's specific circumstances, so that the petitioner may select a proper course of action. See Fla. Stat. § 120.565(2); *Carr v. Old Port Cove Prop. Owners Ass'n, Inc.*, 8 So. 3d 403, 404 (Fla. 4th DCA 2009). A declaratory statement requires that the petitioner have a concrete need for guidance – one which poses an imminent risk of administrative litigation if not met. *National Association of Optometrists & Opticians v. Fla. Department of Health, Fla. Bd. of Optometry*, 922 So. 2d 1060, 1063 (Fla. 1st DCA 2006) (neither section 120.565 nor rule 28-105.001 contemplated petitioner's need to receive guidance as to legality of certain term in potential future agreements; petitioner could only receive declaration whilst she negotiated an agreement containing problem term). A declaratory statement is *not* an "appropriate means for determining the conduct of another person." Fla. Admin. Code r. 28-105.001. It is also not a proper method for "seek[ing] approval or disapproval of conduct which has already occurred." *Novick v. Department of Health, Bd. of Med.*, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002).

St. Lucie respectfully encourages the DBPR to refrain from issuing a declaration related to completed structures. A dismissal of the Petition is, respectfully, the proper course of action.

Respectfully,


Katherine Barbieri
Assistant County Attorney

cc: Daniel S. McIntyre, County Attorney
Douglas Harvey, Building Official
Anthony Lanza, Esq.