

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA BUILDING COMMISSION**

IN RE: PETITION FOR DECLARATORY
STATEMENT BY JACK A BUTLER

Agency Clerk No. DS 2023-037

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RESPONSE TO STAFF MEMORANDUM

Petitioner Jack A. Butler hereby submits this Response to the Staff Memorandum on his Petition for Declaratory Statement before the Florida Building Commission (“Commission”).

CLARIFICATIONS FOR THE RECORD

The staff memorandum prepared for the Code Administration Technical Advisory Committee (“Committee”) contains multiple misstatements regarding the Petition filed in this matter. Petitioner seeks through this Response to provide clarifications for the record and to reduce the Committee’s workload in providing answers to the questions posed.

Petitioner does not seek a declaratory statement from the Commission that the local amendments referenced in the Petition and its supporting memorandum “conflict with state licensing law,” nor does Petitioner ask the Commission to “rule that Broward County improperly adopted their local administrative amendments.” Petitioner is also not “requesting the Commission assist him in formulating a legal strategy” or “attempting to litigate the validity of Broward County’s local amendments.” Petitioner only seeks useful answers to legitimate questions of interpretation of relevant Florida Statutes and the Florida Building Code (“FBC”).

Petitioner will reinforce his actual intent by asking the Commission to strike Questions 1 and 6 from the Petition. Through his research in preparing the previously submitted supporting memorandum, Petitioner has already found the answer from authoritative sources regarding the answer to Question 1: No, local governments may not alter state laws. Similarly, Petitioner found the answer to Question 6: Through its triennial review of all local amendments to the FBC, the Commission has already declared the Broward County amendments to be in conflict with the statutory requirements for such amendments, and has done so repeatedly, as has the Committee, which has never recommended that even one of the Broward County amendments be included in the FBC. This means the answer to Question 6 is also No.

What remains are three tasks that seek formal declaration of answers that should already exist informally, as they relate directly to the functions of the Commission:

1. Provide a definition for the following terms used in Chapter 553, Fla. Stat., and/or the FBC:
 - a. Technical Amendment;
 - b. Administrative Amendment;
 - c. Special Conditions; and
 - d. Additional Construction Documents.
2. Clarify the requirements enumerated in §553.73(4), Fla. Stat., that apply to local administrative amendments.
3. List those portions of FBC-Building that apply to FBC-Residential.

With regard to the reason for asking the Commission to define the first two listed terms, Florida Statutes provide three different mechanisms for an effected party to seek redress regarding local FBC amendments. One is for administrative amendments; another is for technical

amendments; and a third is for administrative amendments that may actually be technical amendments. Florida Statutes, Florida Administrative Code, and the FBC provide no guidance as to how local FBC amendments are classified into the two types. Since these redress mechanisms include the Commission in the resolution process, it is reasonable to expect the Commission to already have a definition that it applies for itself when fulfilling its statutory obligations. Petitioner seeks to know what those definitions are, and for the answer to be provided in the manner prescribed by law.


The second two terms for which definitions are sought are contained in the FBC, which was adopted by the Commission through the administrative rulemaking process. It is reasonable that the Commission has also already formed an opinion as to the meaning of these terms since they form an “If, then” cause of action in the FBC; i.e., If special conditions exist, then additional construction documents may be required. Again, Petitioner seeks to know what those definitions are, and for the answer to be provided in the manner prescribed by law.

The second task relates to the need for a clarification regarding the process by which local governments are to adopt FBC amendments. The Commission, by staff’s own admission, has the duty to issue nonbinding opinions regarding whether a local government has properly followed the statutory process; therefore, the Commission must know what that process is. Petitioner seeks clarity as to the requirements of the local amendment adoption process—information the Commission should already have in some form—and for the answer to be provided in the manner prescribed by law.

The third and final task presented is for the Commission to explain how it expects users of the FBC to utilize Chapter 1 of FBC-Building in conjunction with Chapter 1 of FBC-Residential. Both of these documents were adopted by the Commission through the

administrative rulemaking process, and the Commission clearly expects persons using the FBC to understand how the code is to be applied in specific situations. Thus, it is reasonable for Petitioner to expect that the Commission has already formed an opinion as to how users are to apply relevant portions of FBC-Building for residential construction projects. Petitioner simply seeks to know how the Commission wants FBC-Residential users to apply Chapter 1 of FBC-Building, and for the answer to be provided in the manner prescribed by law.

Petitioner appreciates the efforts by staff, the Committee, and the Commission to provide a meaningful response to the questions posed.

A handwritten signature in cursive script, appearing to read "Jack A. Butler", is written over a horizontal line.

October 2, 2023

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