STATE OF FLORIDA FLORIDA
BUILDING COMMISSION

IN RE: DS 2023-037

THE PETITION FOR DECLARATORY
STATEMENT OF JACK BUTLER

BROWARD COUNTY BOARD OF RULES AND APPEALS
MOTION FOR LEAVE TO INTERVENE

The Broward County Board of Rules and Appeals Florida ("BORA") hereby moves the Florida Building Commission ("FBC") for leave to intervene with regard to the Petition for Declaratory Statement of Jack Butler, numbered DS 2023-037, filed August 29, 2023, published on September 12, 2021, and amended on September 20, 2023. In support thereof, BORA states as follows:

I. Introduction.

The Petition seeks a Declaratory Statement from the Florida Building Commission on a total of seven (7) questions pertaining to local amendments to the Florida Building Code that were adopted by Broward County under the authority of Chapter 71-575, Special Acts, Laws of Florida and derived under statutory authority which pertains to local, highly specialized conditions. *See* Florida Statutes §553.73(4)(a), Campbell v. Monroe County, 426 So.2d 1158 (Fla. 3d DCA 1983) (*The Florida Building Code allows local governments to enact local amendments that are more stringent than the minimum standards where there is a determination that local conditions require.*). *See also* Greenberg v. Martin County, 2014 WL 12970296.

The local amendments address the need to implement more stringent standards for building plans in a legislatively recognized High Velocity Hurricane Zone ("HVHZ") and Broward County may properly require that construction plans are prepared and bear the impress seal

of an Architect or Engineer or their authorized representative. *See* Florida Building Code, Broward County Edition at §107.3.4 et.al., *See also* Florida Building Code §107.1.1, §1616 et.al, FBC Broward County Amendments §107.1, §553.73(4)(a) and F.S.§553.899.

II. Jurisdiction and Standing

BORA acknowledges that Florida law requires the establishment of certain statutory elements to determine jurisdiction and standing. For the reasons set forth herein, BORA denies that Petitioner has standing or that the Commission has jurisdiction.

III. 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. BORA shows the Commission that it's entitled to participate in these proceedings where BORA is an administrative, quasi-judicial body created by Special Act of Legislature 71-575. (R. 26-28). On March 9, 1976, the voters of Broward County recognized the need for a single autonomous agency to write, modify, and interpret a uniform body of building Codes applicable throughout the County. BORA's authority to interpret the Code and oversee the enforcement agencies (municipal building departments) is thus legislatively granted. The County Charter was amended by the Charter Review Commission, to establish the Broward County Board of Rules and Appeals as an arm of county government.

The purpose of BORA is set forth in Broward County Charter section 9.02 which states *inter alia*:

9.02 (a) Purpose

(1) It shall be the function of the Broward County Board of Rules and Appeals to exercise the powers, duties, responsibilities, and obligations as set forth and established in Chapter 71-575, Laws of Florida, Special Acts of 1971, ...as amended by Chapter 2000-141, Laws of Florida, or any successor building Code to the Florida Building Code applicable to the County, as amended.

(2) The provisions of the Florida Building Code shall be amended only by the Board of Rules and Appeals and only to the extent and in the manner specified in the Building Code...

(3) The Board of Rules and Appeals shall conduct a program to monitor and oversee the inspection practices and procedures employed by the various governmental authorities charged with the responsibility of enforcing the Building Code.

In so saying: 1) the Florida Building Code ("FBC") Broward County Amendments ("BCA") which Petitioner challenges, and for which Petitioner seeks a Declaratory Statement, were created and promulgated by BORA after public notice and hearing, 2) the Code sections at issue directly affect BORA's responsibilities and duties to the legislative authority as well as its obligations to protect the persons and property in Broward County; 3) the Petition for Declaratory Statement questions/challenges the interpretation under which BORA, as governing authority, and all building departments, as enforcing agencies under the authority of BORA, operate countywide. As such, BORA is substantially affected.

Question 1

Petitioner asks, "Do the professional practice exemptions provided in §§§471.003, 481.229, and 489.103, Fla. Stat., pre-empt local governments from requiring construction documents for building permits seeking to construct or modify one- and two-family residences, townhouses, and domestic outbuildings appurtenant to any one- or two-family residence, regardless of cost, be prepared by registered design professionals?"

1. Petitioner's question arises from misunderstanding or misrepresentation of codes and statutes.

i. Statutes and codes are to be read *in para materia.*

Petitioner first cites to FBC Building §101.2 wherein is stated "*Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress, and their accessory structures not more than three stories above grade plane in height, shall comply with the Florida Building Code, Residential-* **and are otherwise exempt from the scope of FBC Building.**" The last portion of that statement in **bold font is not found anywhere in Florida Statutes, the FBC or the Broward County Amendments to the FBC** and is based on Petitioner's misrepresentation of same.

Petitioner mistakenly states that "this is the equivalent to the licensed practice of architecture exemptions in Chapter 481." However, statutes and codes are to be read *in para materia*, i.e., those of like nature and pertaining to the same subject matter are to be read together. It is necessary that laws should be construed together with any other laws relating to the same purpose such that they are in harmony. Wakulla County v. Davis, 395 So.2d 540 (Fla.1981); Garner v. Ward, 251 So.2d 252 (Fla.1971). Courts should avoid a construction which places in conflict statutes or codes which cover the same general field. *See* Howarth v. City of Deland, 117 Fla. 692, 158 So. 294 (1934). The law favors a rational, sensible construction. Realty Bond & Share Co. v. Englar, 104 Fla. 329, 143 So. 152 (1932).

Petitioner's effort to mislead the Commission fails where its premise assumes the truth of its conclusion. In this case the attempt at erroneous conclusion is obvious by the additional language attached by Petitioner. However, a subsection of a code or statute cannot be read in

isolation; instead, it must be read "within the context of the entire section in order to ascertain legislative intent for the provision" and each statute "must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts." *See* Fla. Dep't of Envtl. Prot. v. Contract Point Fla. Parks, LLC, 986 So.2d 1260, 1265 (Fla.2008).

The Florida Building Code, Broward County Edition states:

> **Exceptions**
> 1. Detached one- and two-family dwellings and multiple single-family dwellings (town houses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the FBC, Residential **and Broward County Amendments, Chapter 1.**

And;

> **107.1.1 Submittal documents.** Submittal documents consisting of construction documents, statement of special inspections, geotechnical reports, structural observation programs, and other data shall be submitted in two (2) or more sets of plans and/or specifications as described in Section 107.3 with each application for a permit. The construction documents shall be prepared by a registered design professional where required by Chapter 471, Florida Statutes or Chapter 481, Florida Statutes. **Where special conditions exist, the Building Official is authorized to require additional construction documents to be prepared by a registered design professional.**

The verbiage is supported by Florida law where Section 107.1 of the Florida Building Code specifically states:

> **Submittal Documents**
> **[A]107.1General.**
> Submittal documents consisting of construction documents, statement of special inspections, geotechnical report and other data shall be submitted in two or more sets with each permit application. The construction documents shall be prepared by a registered design professional where required by Chapter 471, Florida Statutes or Chapter 481, Florida Statutes. **Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.**

It is readily understandable why Petitioner would not want to show the Commission the Florida Building Code sections which defeat its position however, the Broward County Amendments (BCA) which Petitioner challenges/questions, state essentially the same thing as the state version of the Code where Broward County requires that plans and specifications for one- and two- family dwellings and townhouses be prepared and stamped by an architect or engineer.

The fact that the Broward County Amendments specifically states the words "architect' and/or "engineer" is inconsequential where the state code specifies the word "professional."

ii. Words may not be added or removed from statutes

The courts are not at liberty to add words to statutes or codes that were not placed there by the Legislature. *See* Germ v. St. Luke's Hosp. Assn., 993 So.2d 576, 578 (Fla. 1st DCA 2008) ("If a statute's plain language is clear and unambiguous, courts should rely on the words used in the statute without involving rules of construction or speculating as to the legislature's intent. *See also* Caceres v. Sedano's Supermarkets,138 So.3d 1224 (Fla. 1st DCA 2014); Gretna Racing, LLC v. Department of Business and Professional Regulation,178 So.3d 15 (Fla. 1st DCA 2015).

In the case of the Florida Building Code, the courts have stated that the Code is a statute. BORA first shows the Commission, Florida Statutes §553 which is titled:

"CHAPTER 553: BUILDING CONSTRUCTION STANDARDS"

BORA next shows the Commission, Florida Statutes §553.73 which is called "The Florida Building Code" and states:

§553.73. Florida Building Code

> (1)(a) **The commission shall adopt, by rule pursuant to ss. 120.536(1) and 120.54, the Florida Building Code** which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.

BORA next shows the Commission Cadillac Fairview of Florida, Inc. v. Cespedes, 468 So.2d 417 (Fla. 3d DCA 1985) which states:

> Furthermore, **the South Florida Building Code is a statute regulating the construction of buildings**. Its purpose is for the protection of the public, not construction workers like Cespedes. Grand Union Co. v. Rocker, 454 So.2d 14 (Fla. 3d DCA 1984); §553.72, Florida Statutes (1979). Emphasis added.
>
> *See* Cadillac Fairview at 421. *See also* Grand Union Co. v. Rocker, 454 So.2d 14 (Fla. 3d DCA 1984)("That protection is extended to the general public by the building code is evidenced by **the intent expressed in Chapter 553, Florida Statutes, (1979), mandating that Florida adopt building codes** to provide a mechanism for the promulgation, adoption, and enforcement of state minimum building codes…").

The determination of FBC as statute has been made in the First District where the court in Florida Bldg. Com'n v. Florida Pool and Spa Ass'n, Inc.,871 So.2d 936, 939 (Fla. 1st DCA 2004) stated:

> A basic tenet of statutory interpretation is that **a 'statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts**." [in reference to the Florida Building Code].

See Florida Building Commission at 939

The same determination has been made in the Fourth District where the court in Brown v. South Broward Hospital Dist., 402 So.2d 58 (Fla. 4th DCA 1981) stated

> **The statute in question is the South Florida Building Code made applicable in Broward County by Chapter 71-575, Special Laws of the State of Florida**.)"

Codes are a subject-based compilation of the enacted laws of the state and the First, Third, and Fourth District Courts of Appeal, specifically hold that the Florida Building Code

is a statute. Even if one were to challenge the determinations of the First, Third and Fourth District Courts of Appeal, it is a fact that the Florida Building Code is incorporated into the Florida Statutes by legislative mandate so that it is a direct expression of legislation.

iii. Efforts to impart new meaning to legislation must not be attended

Petitioner begins its attempt to impart new meaning to legislation by showing that the FBC - Residential includes a listing for the term "Design Professional" that does not appear in FBC- Building. Petitioner then incorrectly states that ***"[b]y inference***, §R202 defines the term "Design Professional" as "someone who provides design services but is not registered or licensed by the State." This statement is nothing short of spectacular where the term "Design Professional" refers the reader to "Registered Design Professional" which in turn states:

> **An individual who is registered or licensed to practice their respective design profession as defined by the statutory requirements of the professional registration laws** of the state or jurisdiction in which the project is to be constructed. This includes any registered design professional **so long as they are practicing within the scope of their license, which includes those licensed under Chapters 471 and 481,** Florida Statutes.

See FBC- Residential §202

Petitioner mistakenly states "[t]he references to Chapters 471 and 481 implicitly includes their exemptions to registration." BORA states that there is no evidence of implied exemption to registration where the plain language explicitly addresses persons "who are registered or licensed to practice their profession as defined by the professional registration laws of the state" and includes "any **registered design professional** so long as they are practicing within the scope of their license, which includes **those licensed** under Chapters 471 and 481." Although §481 contains an exemption from licensure, that portion of §481 is

not applicable because the language of FBC- Residential §202 refers specifically to registered and licensed design professionals. **There is no discussion of the exemptions from registration and licensure under §481 and Petitioner cannot torture such an interpretation from the Code.**

If the statute were meant to include those persons exempt from licensure under §481.229 it would say so. But it doesn't. It only addresses those persons who are licensed professionals. Even Petitioner admits that its preferred definition is "implied" and thereby creates a need for extrapolation but neither the courts nor this Commission is at liberty to add words to statutes that were not placed there by the legislature; to do so, would be an abrogation of legislative power. *See* Bay Holdings, Inc. v. 2000 Island Blvd. Condo. Ass'n, 895 So.2d 1197 (Fla. 3rd DCA 2005); Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co.,18 So.3d 1079 (Fla. 2d DCA 2009). *See also* Bradford By and Through Bradford v. Florida Birth-Related Neurological Injury Compensation Ass'n, 667 So.2d 401(Fla. 4th DCA 1995)("*The courts cannot and should not undertake to supply words purposely omitted. When there is doubt as to the legislative intent or where speculation is necessary, then the doubts should be resolved against the power of the courts to supply missing words.*")

The inability of this Commission to add words to statutes or change the clear language of state codes is also well established. In R.C. v. Department of Agriculture and Consumer Services, Division of Licensing, 323 So.3d 275 (Fla. 1st DCA 2021) the petitioner appealed from decision in which the Department of Agriculture and Consumer Services, Division of Licensing, denied his application for license to carry a concealed weapon without an

not applicable because the language of FBC- Residential §202 refers specifically to registered and licensed design professionals. **There is no discussion of the exemptions from registration and licensure under §481 and Petitioner cannot torture such an interpretation from the Code.**

If the statute were meant to include those persons exempt from licensure under §481.229 it would say so. But it doesn't. It only addresses those persons who are licensed professionals. Even Petitioner admits that its preferred definition is "implied" and thereby creates a need for extrapolation but neither the courts nor this Commission is at liberty to add words to statutes that were not placed there by the legislature; to do so, would be an abrogation of legislative power. *See* Bay Holdings, Inc. v. 2000 Island Blvd. Condo. Ass'n, 895 So.2d 1197 (Fla. 3rd DCA 2005); Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co.,18 So.3d 1079 (Fla. 2d DCA 2009). *See also* Bradford By and Through Bradford v. Florida Birth-Related Neurological Injury Compensation Ass'n, 667 So.2d 401(Fla. 4th DCA 1995)("*The courts cannot and should not undertake to supply words purposely omitted. When there is doubt as to the legislative intent or where speculation is necessary, then the doubts should be resolved against the power of the courts to supply missing words.*")

The inability of this Commission to add words to statutes or change the clear language of state codes is also well established. In R.C. v. Department of Agriculture and Consumer Services, Division of Licensing, 323 So.3d 275 (Fla. 1st DCA 2021) the petitioner appealed from decision in which the Department of Agriculture and Consumer Services, Division of Licensing, denied his application for license to carry a concealed weapon without an

evidentiary hearing and based on an interpretation of the laws which required the addition of words to statutes. In reversing the decision of the DACS the District court stated:

> Just as a court cannot add words to this statute, neither may the Department add words that were not enacted by general law. To do so would violate the state's strict separation of powers under
>
> article II, section 3 of the Florida Constitution. *See* B.H. v. State, 645 So. 2d 987, 994 (Fla. 1994).

See R.C. at 280.

Petitioner is not permitted to torture new meanings from Florida Statutes through extrapolation, creative writing, or verbal gymnastics. The language **specifically addresses those persons who are "registered design professionals"** who are actually licensed and **"practicing within the scope of their license."**

iv. Petitioner's improper extrapolation of "professional" is contrary to law.

Petitioner makes another run at the Florida Statutes with its attempt to impart a new definition to the term "professional." The Florida Supreme Court has ruled that in order to be considered a profession, the work in question can only be performed by a person with a minimum of four (4) years of college education. More specifically, in Garden v. Frier, 602 So.2d 1273 (Fla. 1992) the Court stated:

> Accordingly, in harmony with the central thrust of Pierce, we hold that a "profession" is any vocation requiring at a minimum a four-year college degree before licensing is possible in Florida. There can be no equivalency exception.
>
> *See* Garden v. Frier at 1276 citing Pierce v. AALL Insurance Co., 531 So.2d 84 (Fla.1988). *See especially* Sunset Beach Investments, LLC v. Kimley–Horn and Associates, Inc., 207 So.3d 1012 (Fla. 4th DCA 2017) (*The designation of "professional" requires a four year degree, requisite training, and the requisite state license*). Broward County v. CH2M Hill, Inc.,302 So.3d 895 (Fla. 4th DCA 2020).[1]

[1] The case of Sunset Beach Investments, LLC v. Kimley–Horn and Associates, Inc., 207 So.3d 1012 (Fla. 4th DCA 2017) is

There is no four (4) year, or graduate degree requirements to become a draftsman in the state of Florida, and there is no state license or registration, hence **drafting is not a"profession" as a matter of law**. Neither this forum nor any court can turn a draftsman into a professional in

the legal sense of the word and all of Petitioner's attempts to travel forward under the guise of "draftsman as a professional" are foreclosed.

Petitioner cites FS §553.77(2) for the premise that the legislature recognized that "non-registered design professionals interact with the FBC." The truth is that F.S. §553.77(2) provides direction to the Commission for educational and public information purposes and there is nothing contained in FS §553.77(2) from which Petitioner could assert recognition of any "non-registered design professional" as a "professional" as matter of law. The fact that legislation provides for an informational and explanatory document for educational purposes does not change the words in FBC §107.1.1,FBC BCA §107.1, F.S. §553.73(4); FBC- Residential §202; or F.S. §553.77(2) and it doesn't change the fact that neither Petitioner, nor his client(s) is/ are not, a licensed, professional architect or engineer with a minimum four (4) year degree and the requisite experience. **There can be no designation by inference of the term "professional."**

Petitioner mistakenly claims that with respect to Broward County, "the term "residential designer" identifies a design professional, such as Petitioner, who is not registered in the State of Florida "*but may nevertheless provide design services for the types*

---

particularly instructive where the court ruled that not only is a 4 year degree required, but that a person must have the requisite experience to be considered a professional. Petitioner has none of those qualifications and the courts are moving in the opposite direction. **There can be no designation by inference of the term "professional."**

of residential construction listed as being exempt from licensure as an architect in §481.229(1)(b)." This is a classic example of pyramiding of inferences where a party builds on speculation or supposition to arrive at its point, while ignoring the facts. Petitioner's claims are based on misrepresentation of code, misinterpretations of statutory language, and ancillary but irrelevant statutes regarding information pamphlets. *See* Garden v. Frier, 602 So.2d 1273 (Fla. 1992).

2. Correspondence between BORA's counsel and Petitioner's client

i. Response to Petitioner's client, B. David Frank

On January 12, 2023, General Counsel for BORA was contacted by a person named B. David Frank who sought clarification on his perceived discrepancy between F.S. §481.229 and FBC §107.3 where he was not allowed to submit unsealed, unsigned plans to the city of Lighthouse Point for the construction of a home. On February 2, BORA's counsel responded to Mr. Frank and advised that the city of Lighthouse Point was correct in not accepting plans which were not prepared and signed/sealed by an architect. BORA's counsel heard nothing for seven (7) months until September 10, 2023, when it was learned that a Petition for Declaratory Relief had been filed which cited the communications between BORA's counsel (Charles Kramer) and Mr. Frank from February 2, 2023. Notably, neither BORA nor BORA's counsel were notified by Petitioner or Petitioner's client, B. David Frank, that a Petition for Declaratory Statement had been filed with the Commission or that this proceeding would take place.

In its Petition for Relief, Petitioner notes that BORA's counsel stated in his letter to Mr. Frank:

> We state that local municipalities located in Broward County have the authority to require that architectural plans submitted for permitting are prepared, signed, and sealed by a licensed architect.

Further,

> Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection. Local amendments must be more stringent than the minimum standards described in this section.

BORA and BORA's counsel both stand by these statements however Petitioner mistakenly claims that BORA cannot rely on F.S. §553.73(4) where local amendments can only address FBC content because of the words "minimum standards describe in **this section**" so that the local amendments don't apply to Florida Statute §471, §481, and §489 because they are not contained in the FBC.

Florida Statutes §553.73(4) states:

§553.73 Florida Building Code.—

> (4)(a) All entities authorized to enforce the Florida Building Code under s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. **Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection. Local amendments must be more stringent than the minimum standards described in this section** and must be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format…

See FBC §553.73(4)(a)

However, the limitations to F.S. §553.73(4) are specifically set forth in the statue itself at sections 4(a) through(l) and all subsections attendant thereto. *See* §553.73(4)(a)-(l) attached hereto as **Exhibit "A."**

Petitioner mistakenly claims that BORA's counsel is in error because "local

amendments can only address FBC content; i.e. the subject of "this section" and that "because Florida Statute Chapters §471,481, and 489 are not contained in the FBC, they are not topics which can be addressed by local amendments." The problem with Petitioners rationale is that Broward County Amendments to FBC Building §107 et.al. are a part of the Building Code and a binding, valid expression of legislative intent. See FBC §107.1.1, FBC BCA §107.1, F.S. §553.73(4); FBC- Residential §202; or F.S. §553.77(2) .

Petitioner states that the statutes limit local governments from requiring that construction documents be prepared, signed and sealed by a Florida Licensed Architect and cites to §481.231. Any apparent conflict is readily resolved by review of legislation and the history of same.

ii. Review of legislative language.

Legislative intent is the polestar that guides a court's statutory construction analysis, and "[t]o discern legislative intent, a court must look first and foremost at the actual language used in the statute. *See* Scherer v. Villas Del Verde Homeowners Ass'n, Inc., 55 So.3d 602 (Fla. 2nd DCA 2011); Larimore v. State, 2 So.3d 101, 106 (Fla. 2008), Even if we are to reject the determinations of the First, Third, and Fourth District Courts of Appeals, it is uncontested and incontestable that the Florida Building Code is incorporated into the Florida Statutes at F.S.§553.73(1)(a) wherein is stated:

> The commission shall adopt, by rule pursuant to §§120.536(1) and 120.54, the Florida Building Code which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.

F.S. §553.73(3) states:

> The commission shall incorporate within the Florida Building Code **provisions that address regional and local concerns and variations.**

Contrary to Petitioner's position, there is no language of limitation prohibiting Broward County from requiring that plans be prepared, signed, and sealed by an architect. The FBC is either a Statute, or incorporated into the Florida Statues, but in any case is an expression of legislative intent.

Petitioner provides two (2) examples of statutes which he states are commonly misapplied the first of which is §481.231(1) where Petitioner admits that a local ordinance

may require architects to have additional credentials for special projects such as preparation of plans for a high-rise.[2] The second is §553.79(4) which Petitioner incorrectly believes to determine that local amendments which are "more stringent than the minimum standards described in this section" only applies to more stringent application of what is contained in the FBC, and "does not set the standard for whom may prepare documents."

With respect to Petitioner's citation of §553.79(4), BORA shows the Commission that this is another red herring where §553.79(4) pertains to "technical" amendments, while §553.73(4) pertains to "administrative" amendments **such as who shall prepare construction documents**. This is made clear by the "Definitions" section of that statute wherein is stated:

> **Definitions** 553.791(1)(a):
> (1) As used in this section, the term:
> (a) "Applicable codes" means the Florida Building Code and any local technical amendments [***but <u>not Administrative Amendments</u>**] to the Florida Building Code but does not include the applicable minimum fire prevention and fire-safety codes adopted pursuant to chapter 633.

[2] How does this admission of Petitioner, in and of itself, not fly directly in the fact of Petitioner's underlying argument?

Petitioner is mistakenly relying on statutory language which is not applicable to the case at bar. F.S. §553.79 pertains to modification of technical provisions of the FBC such as material thickness, material composition, tensile strength, etc. Conversely §553.79(4) pertains to administrative provisions such as supervisory requirements, or the professional qualifications of the person(s) preparing construction documents.

Petitioner cites the FBC, e.g., §101.2 and §R202, when it suits him, but when it suits him otherwise, derides the FBC and claims that his "preferred" Florida Statutes preclude reliance on the FBC.

In further example, Petitioner shows F.S.§§481.229 and 481.231 wherein is stated:

> **§481.229 Exceptions; exemptions from licensure.—**
> (1) No person shall be required to qualify as an architect in order to make plans and specifications for, or supervise the erection, enlargement, or alteration of:
> ...
> (b) Any one-family or two-family residence building, townhouse, or domestic outbuilding appurtenant to any one-family or two-family residence, regardless of cost;

and,

> **§481.231 Effect of part locally.—**
> ...
> (2) Counties or municipalities which issue building permits shall not issue permits if it is apparent from the application for the building permit that the provisions of this part have been violated; provided, however, that this subsection shall not authorize the withholding of building permits in cases involving the exceptions and exemptions set out in s. 481.229.

Petitioner mistakenly claims that the language of these two (2) statutes determine that Broward County cannot implement more stringent requirements as are permitted under §553.73(4)(a) because it is an impermissible attempt to expand the authority of the FBC.

> **The FBC and Chapter 553, Fla. Stat., do not set the standard for who may prepare construction documents.** That standard is set in other Florida Statutes. The requirement that local amendments be more stringent than what is contained in the FBC does not mean that local amendments must be more stringent than other Florida laws. It means, for instance, that a county or city may adopt a local administrative amendment to, say, reduce the time for responding to a building permit application from the statutory 10 days to seven days.

Contrary to Petitioner's claims, the FBC specifically states:

> **Florida Building Code**
> **Submittal Documents**
> **[A]107.1General.**
> Submittal documents consisting of construction documents, statement of special inspections, geotechnical report and other data shall be submitted in two or more sets with each permit application. The construction documents shall be prepared by a registered design professional where required by Chapter 471, Florida Statutes or Chapter 481, Florida Statutes. **Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.**

See Florida Building Code at Section 107.1

Clearly, and contrary to Petitioner's statements, the facts are that the FBC ***does*** set the standard for who may prepare construction documents. The Broward County Amendments requiring that an architect or engineer prepare, sign and seal documents are furthermore based on special conditions which exist nowhere else in the state of Florida, and those local, special circumstances from which the Florida Legislature recognizes the need for more stringent codes and more stringent standards.

a. Conflicting language in state Statutes

Perhaps Petitioner's position might be helped by claiming that a conflict exists between F.S. §481.231 and both §553.73(4) and FBC §107.1.

In the case of conflicting statutes, the general rule is that a specific statute covering a

particular subject area controls over a statute covering the same and other subjects in more general terms when the statutes are in conflict with each other. *See* DMB Investment Trust v. Islamorada, Village of Islands, 225 So.3d 312 (Fla. 3rd DCA 2017); Fla. Virtual Sch. v. K12, Inc., 148 So.3d 97, 102 (Fla. 2014) ("*When reconciling statutes that may appear to conflict, the rules of statutory construction provide that a specific statute will control over a general statute...*")

In this case, §481.231 pertains to "[C]ounties or municipalities which issue building permits" and further references §481.229 with respect to "[a]ny one-family or two-family

residence building, townhouse, or domestic outbuilding appurtenant to any one-family or two-family residence, regardless of cost." The statute is so broad as to seemingly include every one of the sixty-seven (67) counties in the state of Florida.

In opposition to §481.231 we see that §553.73 pertains to local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection and "that local amendments must be more stringent than the minimum standards described in this section and must be transmitted to the commission within 30 days after enactment." It is clear that §553.73 pertains to only local governments which adopt stricter standards so that the statutes are more specific than the generalized target of §481.231.

Further to that end, FBC §107.1 determines that:

> "[w]here special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional."

See FBC §107.1 and Broward County Amendment §107.1.1

Not only are the general statutory provisions of §481.231 superseded by §553.73, they are further superseded by FBC §107.1.1 and Broward County Amendment §107.1 because of

FBC BCA §107.1 is properly incorporated into the local, Broward County, HVHZ (High Velocity Hurricane Zone) version of the Florida Building Code by virtue of F.S. Sec §553.73(4)(a). BCAP §107.1 was not drafted out of thin air but established under the authority of a specific Statute (§553.73(4)(a)) pertaining to administrative amendments so that Plaintiff's repeatedly asserting preemption of administrative provisions is baseless. It is based on Statute.

b. Resolving conflicts in separate statutes

Alternatively, Petitioner might be assisted by a showing that §481.231 was promulgated after FBC §107.1 where the law states that when two statutes are in conflict, the more recently enacted provision may be viewed as the clearest and most recent expression of legislative intent. *See* Palm Beach County Canvassing Bd. v. Harris, 72 So.2d 1273 (Fla. 2007). **However, that is not the case.**

The legislative records show that §481.229 and §481.231 were enacted on August 31, 1979, and that FBC §107.1 was first published in the 2010 FBC which was effective March 15, 2012. The statute upon which Petitioner relies predates the original Florida Building Code (created in 2002) by twenty-three (23) years, and predates the current code (Seventh Edition) by forty-one (41) years. The clearest and most recent expression of legislative intent is set forth in FBC 107.1 and Broward County Amendment s.107.1.1

It is axiomatic that the Florida Legislature recognizes the increase in frequency and severity of hurricanes which impact south Florida, particularly Broward and Miami-Dade counties. In addition, the legislature has recognized the need for greater regulation of the construction industry as a whole since the terrible events of June 24, 2021, when the Champlain Towers collapsed taking the lives of ninety-eight (98) persons. More specifically, the legislature

amended PART IV FLORIDA BUILDING CODE with respect to F.S. §553.899 for mandatory structural inspections for condominium and cooperative buildings which now states *inter alia*:

> (1) The Legislature finds that maintaining the structural integrity of a building throughout its service life is of paramount importance in order to ensure that buildings are structurally sound so as to not pose a threat to the public health, safety, or welfare.

See F.S. §553.899(1)

While the example pertains to condominiums and Petitioner's challenge pertains to one- and two- family dwellings and townhouses, the issue of safety in a High Velocity Hurricane Zone is no less of a concern for a single-family residence. How does Petitioner explain that the authority of a Building Official was amended in the 2010 FBC so that the B.O. could require that plans be prepared, signed and sealed by a design **professional**? *See also* FBC §101.3

(Purpose of the FBC is to safeguard the public health, safety and welfare).

c. Special conditions in Broward County.

It is well established that Broward and Miami-Dade Counties are legislatively recognized to be in locations which require special consideration for construction. Due to damage caused by Hurricane Andrew in 1992, the Florida legislature created a more demanding Building Code system for Miami-Dade and Broward counties. Broward County and Miami-Dade have a legislatively recognized status as High Velocity Hurricane Zones ("HVHZ") which includes a much more stringent code than the other 65 counties in the state of Florida.[3]

The Florida Building Code, Building 2020 Chapter 2 specifically designates Broward and Miami-Dade Counties as High Velocity Hurricane Zones and Chapter 16 contains specific

[3] See HVHZ designations as shown on **Exhibit "B,".**

provisions for any structural work to be performed in the high velocity wind zones of Broward and Miami-Dade Counties. See FBC Chapter 2, Definitions and Chapter 16 at Sec.1616. Petitioner has cited the definitions associated with a completely different statute (§553.79 – technical provisions) as controlling in its determination that local code amendments conflict with state law when in fact, the state and local codes are essentially the same. That Broward County was given the right to promulgate more stringent administrative sections (§553.74) of the Building Code which address the need for additional safety and security to the life, health and safety of the persons and property, is the very definition of "special conditions" set forth in FBC §107.1.1, §553.73(4)(a), and BCAP §107.1.

3. Review of Petitioner's cited authority

Petitioner states that its misstatement of facts "should be dispositive of the issues with a conclusion that local FBC amendments cannot modify Florida Statutes" and proceeds to cite authority but none of the authority cited by Petitioner is applicable in the present case.

Starting with AGO 94-84 Petitioner states that "a local government through its building code may not prohibit that which is allowed or allow that which is prohibited by state law."

Before revieing the cited Attorney General Opinions BORA notes opinions of the Attorney General are not statements of law. *See* Beverly v. Division of Beverage of the Dept of Bus. Regulation, 282 So.2d 657, 660 (Fla. 1st DCA 1973). *See also* Bunkley v. State, 882 So.2d 890 (Fla. 2014)("***Bunkley's reliance on the Attorney General's opinion as a statement of 1989 law is misplaced because opinions of the Attorney General are not statements of law.***").

Notwithstanding the fact that the cited AGO was written thirty (30) years ago, and that the Opinion is not binding in any court of law, the referenced Opinion deals with construction of a single-family residence by a homeowner in Monroe County - which is not in a legislatively

recognized HVHZ zone so that there are no "special conditions" as there are in Broward County. The most recent expression of legislative intent states that a Building Official may require preparation of documents by a registered design professional. *See* FBC §107.1.1,

Broward County is located in the HVHZ zone thus unquestionably a "special condition" yet Petitioner never once addresses the singular status of Broward and Miami-Dade counties and the language of FBC §107.1.1 which determines that "where special conditions exist, the building official is authorized to require that construction documents be prepared by a registered design professional. **There is no "registration" for draftsmen in Florida**. Only architects and engineers. *See* Osorio v. Board of Professional Surveyors and Mappers, 898 So.2d 188 (Fla, 5th DCA 2005) (*occupation not requiring a four-year degree is vocational, not professional*).

While both Petitioner and BORA agree that "a local government through its building code may not prohibit that which is allowed or allow that which is prohibited by state" **there is 0.5**

> The State has authorized persons other than registered architects to prepare the construction documents needed to secure a building permit for constructing or modifying a one- or two-family residence or townhouse, including the direction that a local government cannot withhold a building permit because the construction documents were prepared under the provisions of a statutory exemption.

See Petition for Declaratory Statement at pg. 13.

But Rinzler is a fifty-two (52) year old case and written thirty (30) years before the Florida Building Code even existed. It is not an accurate expression of the law in Broward County nor an accurate representation of the Florida Building Code. *See* FBC §107.1.1, §553.73(4)(a), and BCAP §107.1.[4]

[4] BORA notes that Petitioner states "The State has authorized persons other than registered architects to prepare the construction documents needed to secure a building permit for constructing or modifying a one- or two-family residence or townhouse,

Petitioner cites AGO 94-105 in which the Florida Attorney General stated that landscape architecture plans could be prepared by someone other than a licensed architect. Again, this case which is advisory only, non-binding in any court of law, and written **twenty-six (26) years before the current FBC**, addresses landscaping. The first FBC did not even exist until 2002 and the FBC sections which address the authority of the Building Official to require that plans be prepared, signed and sealed by a registered architect were published in 2010 and were effective on March 15, 2012. This is another Attorney General Opinion which is interesting from a historical perspective but has no bearing on the present matter.

Petitioner cites Feldman v. Florida Department of Business & Professional Regulation, 351 So.3d 1280 (Fla. 1st DCA 2022) wherein the appellant was charged with the unlicensed practice of architecture by the Architectural Board. Although the appellant was unlicensed, he claimed that §481.229 and §481.231 the Architectural Board stated:

> [A]nyone—whether a non-architect or architect—is permitted to 'make plans and specifications for, or supervise the erection, enlargement, or alteration' of the types of listed structures. Feldman may provide such services. But doing so doesn't transform him, as the service provider, into an architect; to the contrary, the subsection merely carves out a subset of specified services that don't require a qualified architect.

See Feldman at 1280.

BORA states that this case, cited by Petitioner, goes directly against Petitioner's position with respect to his earlier claims of implied designation as a "registered design professional." In both cases the words- and the training and education- aren't there. Petitioner is not an architect, Petitioner is not a "registered design professional," most importantly, Petitioner is not allowed to prepare construction documents in Broward County. *See* FBC §107.1.1, §553.73(4)(a), and BCAP §107.1

---

including the direction that a local government cannot withhold a building permit because the construction documents were prepared under the provisions of a statutory exemption." That is correct everywhere EXCEPT Broward and Miami-Dade Counties.

Petitioner cites Florida Statutes §553.73(2) which states *inter alia*: DS 2023-037

> Provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code…

From this, Petitioner mistakenly claim that "the Florida Legislature explicitly forbids the Commission and local governments from including anything regarding professional qualifications in the FBC."

In support of this conclusion Petitioner cites §489.103(11), Fla. Stat., which exempts from licensure under that Chapter "any person exempted by the law regulating architects and engineers, including persons doing design work as specified in §481.229(b)"; i.e., residential designers." Petitioner deduces inferentially that "such an exemption recognizes that non-registered design professional can be considered as part of a contractor's workforce."

Building construction standards are established by chapter 553, which adopts the building codes, however the language of the statute is limited to contractors or their "workforce." The unrelated statute, F.S. §489.103(11), arises from chapter 489, Florida Statutes (2002), which regulates the construction industry as a matter of "public health, safety, and welfare." §489.101.

It is well established that Petitioner or any other draftsman is not a "professional." Florida Statutes §553.73(2) does not refer to "contractors and non-registered, unlicensed draftsmen" but specifically references "contractors or their workforce." Given the "plain language rule", the term "workforce" would generally mean a labor pool or subcontractors.

All that F.S. §489.103(11) is saying is that registered architects and engineers, or persons exempt from licensure under §481.29, while in the course of performing design work for a contractor, are exempt from those statutory obligations required from a state licensed contractor such as continuing education, payment of fees, workers compensation insurance, qualifications for practice as a contractor, etc. so long as they are not actively engaged in contracting. *See* F.S.

§489. It does not inferentially expand or create a new definition of the term "workforce."

Petitioner is attempting to combine two different statutes on two wholly separate subjects to arrive at its preferred conclusion. Legislative intent should be determined from language of the statute and if language is clear and not entirely unreasonable or illogical in its operation, the Commission has no power to go outside statute to arrive at a different meaning. *See* Kirby Center of Spring Hill v. State, Dept. of Labor and Employment Sec., Div. of Unemployment Compensation, 650 So.2d 1060 (Fla. 1st DCA 1995).

One of the statutes pertains to professional qualifications of a workforce while the other pertains to exemption from statutory duties of a contractor. These are two completely unrelated topics and akin to the "apples and oranges" idiom or asking if one thing is as long as another thing is heavy and Petitioner's attempt to combine multiple statutes fails.

v. Rejection of plans

Petitioner states that:

For exempt residential projects, Florida law does not permit the building official to reject the application simply because of who prepared the construction documents.

BORA states: "Yes it does" and shows Petitioner FBC §107.1.1, §553.73(4)(a), BCAP §107.1, and F.S. §468.604(1)(2)(3).

Petitioner's citation of F.S. §468.604(3) is of no avail where it fails to address the specific language of the very code it cites.

F.S. §468.604(3) states:

> (3) It is the responsibility of the plans examiner to conduct review of construction plans submitted in the permit application to assure **compliance with the Florida Building Code and any applicable local technical amendment** to the Florida Building Code. The review of construction plans must be done by the building code administrator or building official or by a person licensed in the appropriate plans

> examiner category as defined in s. 468.603. The plans examiner's responsibilities must be performed under the supervision and authority of the building code administrator or building official without interference from any unlicensed person.

See F.S. §468.604(3)

The truth is that the code requires the plans examiner to review and assure compliance with **BOTH the Florida Building Code AND applicable local technical amendments**.

Where the Florida Building Code determines that: 1) "[w]here special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional"; 2) the term "professional" requires a four (4) year degree and; 3) there is no state registration for draftsmen, the road is clear.

To quote Petitioner "these facts should be dispositive of the issue with a conclusion of law by the Commission."

a. Unauthorized practice of engineering and exemptions foreclosed

Petitioner claims that the Florida Statutes provide exemptions from licensure for the improvement of property owned by her or him but once again, Petitioner fails to read or at least present the statue in its entirety. More specifically F.S. §471.003(2)(a) states:

> (a) Any person practicing engineering for the improvement of, or otherwise affecting, property legally owned by her or him, **unless such practice involves a public utility or the public health, safety, or welfare** or the safety or health of employees. This paragraph shall not be construed as authorizing the practice of engineering through an agent or employee who is not duly licensed under the provisions of this chapter.

See F.S. §471.003(2)(a).

The stated purpose of the Florida Building Code is to safeguard the public health, safety and welfare insofar as they are affected by the repair, alteration, change of occupancy, addition and relocation of existing buildings. *See* FBC §101.3 Intent. In a High Velocity Hurricane Zone such as Broward County, issues of structural integrity, cohesion, and building strength are of

paramount importance where wind velocity has a direct impact on structural calculations. Section FBC §1620 provides parameters for wind resistance calculations as follows:

FLORIDA BUILDING CODE CHAPTER 16

...

CHAPTER 16 STRUCTURAL DESIGN

1620.2
Wind velocity (3-second gust) used in structural calculations shall be as follows:
Miami-Dade County

- Risk Category I Buildings and Structures: 165 mph
- Risk Category II Buildings and Structures: 175 mph
- Risk Category III Buildings and Structures: 186 mph
- Risk Category IV Buildings and Structures: 195 mph

Broward County

- Risk Category I Buildings and Structures: 156 mph
- Risk Category II Buildings and Structures: 170 mph [5]
- Risk Category III Buildings and Structures: 180 mph
- Risk Category IV Buildings and Structures: 185 mph

It is these special conditions that were specifically considered in designating Miami-Dade and Broward Counites as HVHZ and FBC §107.1.1 allows the Building Official to address these conditions.

Petitioner's citation of F.S. §489.115(4)(b)2 misses the mark where the language of the Statute undoes Petitioner's argument. *To wit*:

> 2. In addition, the board may approve specialized continuing education courses on compliance with the wind resistance provisions for one and two family dwellings contained in the Florida Building Code and any alternate methodologies for providing such wind resistance which have been approved for use by the Florida Building Commission. Division I certificate holders or registrants who demonstrate proficiency upon completion of such specialized courses may certify plans and specifications for one and two family dwellings to be in compliance with the code or alternate methodologies, **as appropriate**, except for dwellings located in floodways or coastal hazard areas as defined in ss. 60.3D and E of the National Flood Insurance Program.

See F.S. § 489.115(4)(b)2 (Emphasis added)

[5] Detached one- and two- family dwellings and multiple single-family dwellings are in Risk Category II

Petitioner has apparently read everything in the statue with the exception of the qualifying words "**as appropriate**." The words leave the determination of plans and specifications for one and two family dwellings to be in compliance with the code or alternate methodologies, **as appropriate. "AS APPROPRIATE."**

BORA states that with design criteria requiring address of wind loads for Risk Category II Buildings and Structures of 170 mph gusts, it is not appropriate to have anything less than a licensed, "registered design professional", preparing construction plans and Broward County Building Officials are authorized to require same. *See* Garden v. Frier, 602 So.2d 1273 (Fla. 1992); citing Pierce v. AALL Insurance Co., 531 So.2d 84 (Fla.1988). *See* especially Sunset Beach Investments, LLC v. Kimley–Horn and Associates, Inc., 207 So.3d 1012 (Fla. 4th DCA 2017). *See especially* School Bd. of Palm Beach County v. Survivors Charter Schools, Inc., 3 So.3d 1220 (Fla. 2009) ("***Courts are not required to abandon either their common sense or principles of logic in statutory interpretation***.")

Florida Statues pertaining to the same general area of law should be construed so as to be in harmony with one another and this presents a problem for Petitioner. More specifically F.S. §553.73(1) (e) states:

> Subject to the provisions of this act, responsibility for enforcement, interpretation, and regulation of the Florida Building Code shall be vested in a specified local board or agency, and the words "local government" and "local governing body" as used in this part shall be construed to refer exclusively to such local board or agency.

It is undisputed and indisputable that BORA is the "local board or agency" with which "responsibility for enforcement, interpretation, and regulation of the Florida Building Code "shall be vested."

Unum sequitur alterum-- one thing follows the other. The responsibility for enforcement, interpretation, and regulation of the Florida Building Code is thus vested with BORA. *See also* Broward County Charter Broward County Charter Section 9.02(A)(1)(2)(3) and (4).

It is also a fact that pursuant to Special Act of Legislature 71-575, the Broward County Charter, Broward County Charter, and Florida Statutes §553.73(4)(a), that all amendments to the Florida Building Code including the administrative including the administrative provisions, are drafted by BORA, publicly noticed for hearing and then pursuant to Florida Administrative Code sections 61G2061G20-2.0032.003-Local Amendments to the Florida Building Code, and Florida Administrative Code 9B-3.050-Statewide Amendments to the Florida Building Code, the amendments are sent to the Florida Building Commission in Tallahassee, for review and final approval.[6] After acceptance by the Building Commission the Code Amendments are then published in each municipality's local amendments. For Broward County it is set forth in the BCAP. See Florida Administrative Code 61G2061G20--2.003 Local Amendments 2.003

QUESTION 2

> Petitioner asks: "Is the phrase "special conditions," as used in the FBC-Building §107.1, limited to the specific elements of the planned construction or site characteristics included in the permit application?"

BORA first states that Petitioner has failed to show, or even claim that any "anecdotal evidence" applies to Petitioner's particular situation. *See* Florida Administrative Code –Chapter 28-105. *See* State v. Florida Consumer Action Network, 830 So.2d 148 (Fla. 1st DCA

[6] Even though the ultimate underlying issue here pertains to local amendments to the Administrative portion of the Code, portions of the Building Code, the Florida Rules of Administrative Procedure also permit local technical amendments in the interest of life, health and safety. See 9B9B--3.050 3.050 Statewide Amendments to the Florida Building Code. *See also* Florida Statutes §553.73(4)(a).

2002)("While one may seek a declaration of his or her rights without an allegation of actual injury, an aggrieved party must nonetheless make some showing of a real threat of immediate injury, rather than a general, speculative fear of harm that may possibly occur at some time in the indefinite future.") *See also* F.S.A. §86.01 et seq.

Confession of lack of standing and failure to show a present concern notwithstanding, BORA first states that after Petitioner's declarations that BORA and Broward County's position is erroneously based on a "local ordinance," no less than six (6) times in the prior portion of its Petition, it appreciates Petitioner acknowledging the existence of FBC §107.1.1.

Second, Petitioner is asking the Commission to arrive at an interpretation of §§481.229(1)(a) and (b) where no language supporting same is contained in the statute, or any other Florida Statutes including the FBC. The Petitioner is not asking the Commission to interpret the law so much as it is asking the Commission to create a new rule. A declaratory statement is used to obtain an interpretation of a statute, rule, or order from a state agency as applicable to a petitioner's particular set of circumstances. It is a means of resolving a controversy or addressing questions or doubts about the applicability of statutes, rules, or agency orders. *See* Chiles v. Department of State, Div. of Elections, 711 So.2d 151(Fla. 1st DCA 1998); Florida Optometric Association; Agency for Health Care Administration v. Wingo, 697 So.2d 1231 (Fla. 1st DCA 1997). Lennar Homes, Inc. v. Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes, 888 So.2d 50 (Fla. 1st DCA 2004). *See also* F.S.A. §§ 120.52(14), 120.54, 120.54(1), 120.565.

The term "special conditions" as set forth in FBC §107.1.1 states no more than that because it was clearly intended to apply to conditions: 1) not typically found in the construction setting; 2) in HVHZ designated counties, and 3) otherwise not readily definable or identifiable.

It is in the best interests of the people and property in Broward County that preparation of documents is done, signed and sealed by a registered design profession as the term "professional" is defined under Florida Law. That local specialized conditions in Broward County exist, and are legislatively recognized, the requirement for preparation and signing of plans or other documents by a "registered design professional" comports with the language of FBC §107.1.1 and the intent of the Code as well as the language of the Florida Statutes. *See* FBC §101.3.

The enforcement of building codes and ordinances is for the purpose of protecting the health and safety and welfare of the public, not the personal or property interests of individual citizens. *See* Detournay v. City of Coral Gables, 127 So.3d 869 (Fla. 3rd DCA 2019). In Broward County, BORA is the governing agency, the local building departments are the enforcing agencies. It is not for the Commission to promulgate, interpret, or enforce any of the FBC local amendments. While Petitioner clearly has a financial interest in the Commission's determination, his speculative interests do not warrant an Opinion where the Commission is not empowered to express one, and certainly not engage in rulemaking.

QUESTION 3

> Petitioner asks "Does the phrase "additional construction documents," as used in FBC-Building §107.1, mean that the standard content and requirements for construction documents are unaffected by the special conditions, and that any such special conditions that may exist for the project or construction site are to be addressed in separate documents required solely due to those special conditions?"

BORA states that Question 3 asks the Commission to improperly address infinite hypotheticals which cannot be, and are not meant to be, addressed by a Declaratory Statement. More specifically, the term "special conditions" may pertain to innumerable possibilities, yet

Petitioner is asking the Commission to place a limitation on those possibilities where none was imposed by the legislature. For that matter, not even suggested by Petitioner.

The fact of the matter is that it is impractical, if not impossible, for anyone to definitively ascertain what special conditions may arise requiring the submission of additional documents, including but certainly not limited to the examples provided by Petitioner, e.g., "height of a high-rise, poor soils or steep slopes, or the particular design elements of the proposed structure, such as a fenestration that exceeds the proscriptive provisions of a header table in the FBC."

A party seeking a declaratory statement must show that there is an "actual present and practical need" for the requested declaratory statement, and that the declaration addresses a "present controversy." *See* Sutton v. Dept of Environ Protection, 654 So. 2d 1047, 1048 (Fla. 5th DCA 1995); In Re: Request for Declaratory Statement by Tampa Electric Company Regarding Territorial Dispute with City of Bartow in Polk County, Docket No. 031017-EU, Order No. PSC-04-0063-FOF-EU (Jan. 22, 2004) 2004 WL 239416. A declaratory statement should not be issued if it "amounts to an advisory opinion at the instance of parties who show merely the possibility of legal injury on the basis of a hypothetical 'state of facts which have not arisen' and are only 'contingent, uncertain [and] rest in the future."

Under the Administrative Procedure Act, "[a]ny substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances." §120.565(1), Fla. Stat. (2006). The question seeks to limit, without any clear set of parameters, a Building Official's authority to require additional documents. If the facts are not ascertainable, then under what scenarios will the facts arise? How can Petitioner claim they might arise in the future if Petitioner cannot even state the facts in the present?

QUESTION 4

> Petitioner asks: "[w]hat is the definition of an administrative amendment to the FBC? In other words, what are the distinguishing characteristics that subdivide local amendments into the administrative and technical classes?"

BORA states that Question 4 is improper for declaratory relief in that it asks the Commission for a bright line rule on how to determine whether a Broward County Amendment is administrative or technical where the underlying strategy is to formulate theories of litigation as specifically stated in its Memorandum. *See* Memorandum in Support of Petition at pg. 23.

The purpose of a declaratory statement by an administrative agency is to allow a petitioner to select a proper course of action in advance. F.S.A. §120.565(1). *See also* Novick v. Department of Health, Bd. of Medicine,816 So.2d 1237 (Fla. 5th DCA 2002). This is not a request for clarification as to meaning, or the proper means and methods of code enforcement, so much as it is a request for assistance in subsequent challenges at the trial or appellate level.

The impropriety of Petitioner's question notwithstanding BORA states that a technical change is defined under F.S. §553.71(6) as:

> 6) "Local technical amendment" means an action by a local governing authority that results in a technical change to the Florida Building Code and its local enforcement.

The process for adoption of technical amendments is set forth in Article IX, BORA Policy 95-02 and attached hereto as **Exhibit "C."**

The process for administrative amendments is set forth in BORA policy and the form for adoption of administrative amendments is attached hereto as **Exhibit "D."**

QUESTION 5

> Petitioner asks "[a]re local administrative amendments to the FBC subject to the adoption process described in §553.73(4), Fla. Stat., except for those subsections specifically addressing local technical amendments? For

example, are local administrative amendments subject to the requirement in §553.73(4)(h), Fla. Stat., which include producing a fiscal impact statement that documents the costs and benefits of each proposed amendment?

BORA states that Question 5 is improper for declaratory relief in that it:1) asks the Commission to opine on prior actions by Broward County and:2) seeks a bright line rule on how to determine whether the process used by Broward County in adopting amendments might create a basis for litigation. This is not a present controversy which affects Petitioner so much as it is asking the Commission to provide litigation support.

"Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.' Petitioner fails to state how he is "substantially affected" The Commission may not provide a declaratory which seeks to affirm or condemn past actions of a party nor provide a declaratory statement for inchoate actions. *See* Novick v. Department of Health, Bd. of Medicine, 816 So.2d 1237 (Fla. 5th DCA 2002). *See also* F.S.A. §120.565(1).

QUESTION 6

Petitioner asks "Were the subject Broward County amendments adopted in compliance with the requirements of §553.73, Fla. Stat.?"

BORA states that Question 6 is improper for declaratory relief in that it seeks a Declaratory Statement with respect to alleged prior action by Broward County. *See* Novick v. Department of Health, Bd. of Medicine, 816 So.2d 1237 (Fla. 5th DCA 2002). *See also* F.S.A. §120.565(1).

QUESTION 7

> Petitioner asks "How does the Commission resolve the paradox between the statement in 2020 FBC-Residential §R101.2.1 that says, "The provisions of Chapter 1, Florida Building Code, Building, shall govern the administration and enforcement of the Florida Building Code, Residential" and the statement in FBC-Building §101.2 that says the scope of that entire document (implicitly including Chapter 1) does not apply to "Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress, and their accessory structures not more than three stories above grade plane in height"?

BORA states that Question 7 is improper for declaratory relief in that it seeks a question of such broad generality that it would constitute rulemaking.

Declaratory statements and rules serve clearly distinct functions under the scheme of Chapter 120. Although the line between the two is not always clear, it should be remembered that declaratory statements are not to be used as a vehicle for the adoption of broad agency policies. Nor should they be used to provide interpretations of statutes, rules or orders which are applicable to an entire class of persons. When an agency is called upon to issue a declaratory statement which would require a response of such a general and consistent nature as to meet the definition of a rule, the agency should either decline to issue the statement or comply with the provisions of Section 120.54 governing rulemaking. *See* Lennar Homes, Inc. v. Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes, 888 So.2d 50 (Fla. 1st DCA 2004); Florida Optometric Association; Agency for Health Care Administration v. Wingo, 697 So.2d 1231 (Fla. 1st DCA 1997). *See also* Chiles v. Department of State, Div. of Elections,711 So.2d 151(Fla. 1st DCA 1998).

IV. Conclusion

Petitioner is asking the Commission to render a Declaratory Statement which is contrary

to well established Florida law contained in the Florida Statutes, including the Florida Building Code, and well-established precedent and the Petition must be denied.

Petitioner improperly asks the Commission to engage in rulemaking or substitute its judgment for that of the local governing authority, a task which is strictly forbidden under F.S.A. §120.565 and the Petition must be denied.

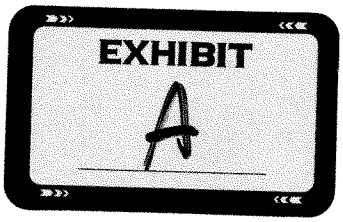
Petitioner asks the Commission to engage in speculation as to possible factual scenarios, which even Petitioner himself cannot specifically articulate and the Petition must be denied.

BORA states that for all of the reasons cited herein above, the Commission should decline Petitioner's Petition for Declaratory Statement.

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: **Agency Clerk's Office**, Department of Business and Professional Regulations, 2601 Blair Stone Rd., Tallahassee, FL 32399 (AGC.Filing@myfloridalicense.com), **Mo Madani**, Building Codes and Standards Office, Department of Business and Professional Regulations, (mo.madani@myfloridalicense.com), **W. Justin Vogel,** Office of the General Counsel, Department of Business and Professional Regulation (wjustin.vogel@myfloridalicense.com) this 3rd day of October, 2023.

BY /s/ Charles M. Kramer.
Charles M. Kramer, Esq., B.C.S.
Florida Bar No.: 133541
BENSON, MUCCI & WEISS, P.L.
5561 North University Drive, #102
Coral Springs FL 33067
954-323-1023/954-323-1013 Facsimile
ckramer@BMWlawyers.net
joann@BMWlawyers.net



Select Year: 2023 Go

The 2023 Florida Statutes

Title XXXIII	Chapter 553	View Entire Chapter
REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND SOLICITATIONS	BUILDING CONSTRUCTION STANDARDS	

553.73 Florida Building Code.—

(1)(a) The commission shall adopt, by rule pursuant to ss. 120.536(1) and 120.54, the Florida Building Code which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.

(b) The technical portions of the Florida Accessibility Code for Building Construction shall be contained in their entirety in the Florida Building Code. The civil rights portions and the technical portions of the accessibility laws of this state shall remain as currently provided by law. Any revision or amendments to the Florida Accessibility Code for Building Construction pursuant to part II shall be considered adopted by the commission as part of the Florida Building Code. Neither the commission nor any local government shall revise or amend any standard of the Florida Accessibility Code for Building Construction except as provided for in part II.

(c) The Florida Fire Prevention Code and the Life Safety Code shall be referenced in the Florida Building Code, but shall be adopted, modified, revised, or amended, interpreted, and maintained by the Department of Financial Services by rule adopted pursuant to ss. 120.536(1) and 120.54. The Florida Building Commission may not adopt a fire prevention or lifesafety code, and nothing in the Florida Building Code shall affect the statutory powers, duties, and responsibilities of any fire official or the Department of Financial Services.

(d) Conflicting requirements between the Florida Building Code and the Florida Fire Prevention Code and Life Safety Code of the state established pursuant to ss. 633.206 and 633.208 shall be resolved by agreement between the commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of lifesafety or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction. If the commission and State Fire Marshal are unable to agree on a resolution, the question shall be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest lifesafety, or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.

(e) Subject to the provisions of this act, responsibility for enforcement, interpretation, and regulation of the Florida Building Code shall be vested in a specified local board or agency, and the words "local government" and "local governing body" as used in this part shall be construed to refer exclusively to such local board or agency.

(2) The Florida Building Code shall contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, hospice residential and inpatient facilities and units, and facilities for the control of radiation hazards, public or private educational facilities, swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements. Further, the Florida Building Code must provide for uniform implementation of ss. 515.25, 515.27, and 515.29 by including standards and criteria for residential swimming pool barriers, pool covers, latching devices, door and window exit alarms, and other equipment required therein, which are consistent with the intent of s. 515.23. Technical provisions to be contained within the Florida Building Code are restricted to

requirements related to the types of materials used and construction methods and standards employed in order to meet criteria specified in the Florida Building Code. Provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code, and subsections (4), (6), (7), (8), and (9) are not to be construed to allow the inclusion of such provisions within the Florida Building Code by amendment. This restriction applies to both initial development and amendment of the Florida Building Code.

(3) The commission shall use the International Codes published by the International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission may approve technical amendments to the code as provided in subsections (8) and (9), subject to all of the following conditions:

(a) The proposed amendment must have been published on the commission's website for a minimum of 45 days and all the associated documentation must have been made available to any interested party before consideration by a technical advisory committee.

(b) In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds vote of the members present at the meeting. At least half of the regular members must be present in order to conduct a meeting.

(c) After the technical advisory committee has considered and recommended approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before consideration by the commission.

(d) A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with chapter 120.

The commission shall incorporate within the Florida Building Code provisions that address regional and local concerns and variations. The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)(a) All entities authorized to enforce the Florida Building Code under s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection. Local amendments must be more stringent than the minimum standards described in this section and must be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Florida Building Code. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.

(c) The enforcing agency shall make readily available, in a usable format, all amendments adopted under this section.

(d) Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are not effective until 30 days after the amendment has been received and published by the commission.

(e) An amendment to the Florida Building Code adopted by a local government under this subsection is effective only until the adoption of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under the provisions of this subsection.

(f) Each county and municipality desiring to make local technical amendments to the Florida Building Code shall establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is adopted by a local government within the county under this subsection and that is challenged by a substantially affected party for purposes of determining the amendment's compliance with this subsection. If challenged, the local technical amendments are not effective until the time for filing an appeal under paragraph (g) has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g) If the compliance review board determines such amendment is not in compliance with this subsection, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is in compliance with this subsection, any substantially affected party may appeal such determination to the commission. Any such appeal must be filed with the commission within 14 days after the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered. Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) An amendment adopted under this subsection must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and the impact to property and building owners and industry relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i) In addition to paragraphs (f) and (g), the commission may review any amendments adopted under this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) Any amendment adopted by a local enforcing agency under this subsection may not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under this subsection is not void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code under this paragraph is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to be a technical amendment to the Florida Building Code, then the substantially affected person may submit a petition to the commission for a nonbinding advisory opinion. If a substantially affected person submits a request in accordance with this paragraph, the commission shall issue a nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision may be initiated by any substantially affected person. A substantially affected person includes an owner or builder subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

2. In order to initiate a review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name of the local government that enacted the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel or administrator.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

d. A statement explaining why the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of the Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

3. The petitioner shall serve the petition on the local government's general counsel or administrator by certified mail, return receipt requested, and send a copy of the petition to the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, and send a copy of its response to the commission, within 14 days after receipt of the petition, including Saturdays, Sundays, and legal holidays.

4. Upon receipt of a petition that meets the requirements of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. Before issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by the technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code within 30 days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's advisory opinion is nonbinding and is not a declaratory statement under s. 120.565.

Question about the High Velocity Hurricane Zone (HVHZ)

High Velocity Hurricane Zone (HVHZ)

The High Velocity Hurricane Zone (HVHZ) is sometimes called The Dade County Code. If you are in Broward County or Miami-Dade County you are in the High Velocity Hurricane Zone (HVHZ). In this area, you must have HVHZ approved products. The wind pressure required or "design pressure" (DP) is higher and the anchoring method is a little more stringent.
For the rest of the State of Florida, the governing authority is Florida Building Code (FBC). All products must have FBC approval. The approval required will depend on which area or zone you are in.

Florida Product Approval

By Florida state law, building envelope components such as roofing, shutters, doors and windows are required to have a Florida Product Approval that provides evidence that the product is suitable for use in the state of Florida based on standards set in the current Florida Building Codes. Specific limitations of use are provided that limits the approved product's use to rated
structural loads.

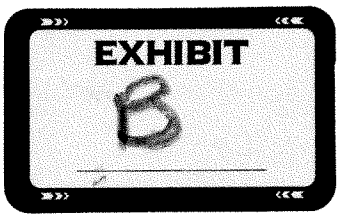
Miami-Dade Notice Of Acceptance

A Miami-Dade Notice Of Acceptance (NOA) is a local product approval to meet the code criteria in the High Velocity Hurricane Zone (HVHZ) as defined by the Florida Building Codes (FBC).

Product Testing

With regards to the Florida Building Code requirements, the testing is the same. The same evaluation protocols are followed and the same performance and quality assurance criteria are required. A product with a statewide Florida Product Approval that shows "Approved for use in the HVHZ" has met the same testing standards as a product with a Miami-Dade NOA in compliance with the Florida Building Codes for

both impact and non-impact rated products.



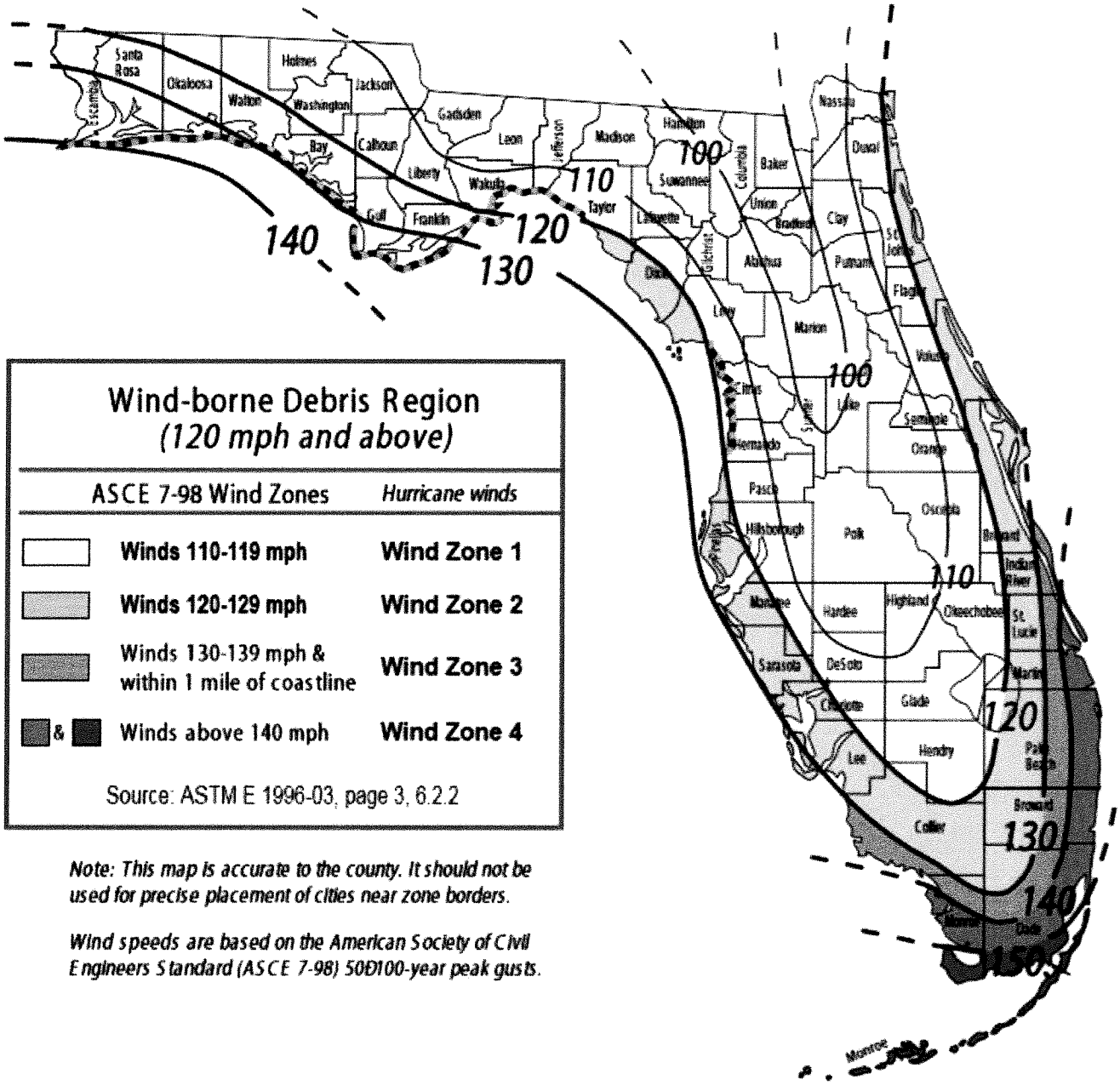
Miami-Dade or Florida Product Approval

You can use either a Miami-Dade NOA or a Florida Product Approval that includes the approval for use in the HVHZ. Only one is necessary.

Local Buidling Departments

Florida law allows for the option of either a statewide product approval or local product approval for use in the HVHZ. Products designated as approved by the Florida Department of Community Affairs (FDCA) on the department's Building Code Information System (http://www.floridabuilding.org) must be accepted as meeting the Florida Building Code within their specified limitation of use and such products are available for use immediately upon approval. Should you have any questions, please contact the Florida Department of Community Affairs at 850-487-1824.

High Velocity Hurricane Zone (HVHZ) map



Wind-borne Debris Region (120 mph and above)		
ASCE 7-98 Wind Zones		*Hurricane winds*
	Winds 110-119 mph	Wind Zone 1
	Winds 120-129 mph	Wind Zone 2
	Winds 130-139 mph & within 1 mile of coastline	Wind Zone 3
&	Winds above 140 mph	Wind Zone 4

Source: ASTM E 1996-03, page 3, 6.2.2

Note: This map is accurate to the county. It should not be used for precise placement of cities near zone borders.

Wind speeds are based on the American Society of Civil Engineers Standard (ASCE 7-98) 50D100-year peak gusts.

excluded.

Section 10. At the conclusion of the appeal hearing, the Board of Rules and Appeals shall, by motion and vote, either uphold the petitioner (plaintiff), uphold the respondent (defendant) or take other action as is appropriate.

Section 11. Within five working days the Administrative Director of the Board of Rules and Appeals shall, by certified mail, notify all parties involved of the decision rendered by the Board.

Section 12. Notwithstanding the provisions of Section 203.7 of the South Florida Building Code, Broward Edition, application for judicial review of any final order of the Board of Rules and Appeals shall be according to the Florida rules of appellate procedure.

Section 13. No Board member shall knowingly discuss any case with any interested party before the final resolution of the case by the Board.
REVISED 9/12/96

Section 14. Once an appeal has been scheduled to be heard, the Administrative Director may grant a continuation based upon the request of both parties involved in the appeal.

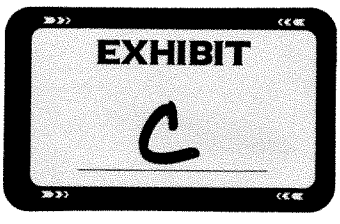
ARTICLE IX
PROCEDURES FOR AMENDING THE SOUTH FLORIDA BUILDING CODE, BROWARD EDITION

Section 1. The Board shall only amend the South Florida Building Code, Broward Edition, in even numbered years commencing in 1998. If the Board finds it necessary to amend the code at any other time to protect the life, safety, and welfare of the citizens of Broward County they shall do so as interim amendments. Interim amendments will only be in effect until the South Florida Building Code, Broward Edition, is officially amended because of the public hearing process conducted in September of the even numbered year. All official amendments to the code will become effective on January 1 of the next odd numbered year.
REVISED 9/12/96

Section 2. Proposed changes to the South Florida Building Code, Broward Edition shall be submitted in writing to the office of the Broward county Board of Rules and Appeals on the appropriate form with twenty copies of supporting data if applicable. The proposed change shall be referred to the appropriate technical committee for review, and the proponent notified of the time and date of the meeting.

Section 3. The technical committee shall take one of the following actions on each proposed code change.

1. Approved



2. Approved as revised
3. Disapproved
4. Table for further study
5. Assigned to subcommittee
6. Referred to another technical committee

Section 4. All proposed changes in which the technical committee(s) has concluded their review and taken a final action shall be forwarded to the Board along with the committee's recommendation. The Board at a regularly scheduled meeting shall review the recommendation of the technical committee, and take one of the following actions;

1. Approve for public hearing.
2. Approve for public hearing and issue Interim amendment.
3. Disapprove.
4. Table for further study.
5. Assign to any technical committee.

REVISED 9/12/96

Section 5. The executive committee shall review all proposed changes to chapters 1-3 of the code before being sent to the Board.

Section 6. In September of even numbered years the Board shall conduct a public meeting when any person may comment on the proposed amendment(s). The Board shall then review the proposed code amendments, comments, technical committee(s) recommendation(s), and take one of the following actions:

1. Approve and set an effective date of January 1.

2. Disapprove

REVISED 9/12/96

ARTICLE X NEW 9/12/96

INTERPRETATIONS AND OPINIONS

A. In response to a written inquiry or request setting forth a specific situation, or upon its own initiative, the Board may issue a formal interpretation to clarify provisions of the adopted code. Such formal interpretations shall be signed by the chairman and shall be binding in Broward County.

PROPOSED AMENDMENT TO
Broward County Administrative Provisions
Chapter I Florida Building Code

Submittal Date _____
Item Number _____
(Office Use only - Leave Blank)

SUBMIT TO: BROWARD COUNTY BOARD OF RULES AND APPEALS
One North University Drive - Suite 3500 B - Plantation, Fl. 33324

Page _____ Code Section _____ Date: _____

Name / Organization: _____

Address: _____

_____

Email: _____

Check One:

- Revise Section
- Add New Section
- Delete Section
- Delete Section and substitute with new Section
- Delete Section without substitution

NOTE: Underline material to be added
~~Line thru material to be deleted~~
Use additional pages as necessary

Proposed Change:

_____

_____

_____

_____

_____

EXHIBIT
D