

Summary of Issue:

Petitioner alleges that Broward County has adopted local administrative amendments to the Florida Building Code which contravene various provisions in the chapters of Florida Statutes that deal with the practice of architecture, engineering, and construction contracting. Petitioner further alleges that Broward County's local amendments were improperly adopted.

Petitioner seeks a declaratory statement from the Florida Building Commission which would i) declare Broward County's local administrative amendments to be in conflict with state licensing law; ii) prophylactically prohibit local authorities from interpreting Florida Building Code provisions in such a way as to violate state licensing law; iii) create a definition for the term "administrative amendment," iv) state whether local governments must provide a fiscal impact statement when adopting a local administrative amendment; v) rule that Broward County improperly adopted their local administrative amendments, and vi) resolve an alleged paradox between the provisions of section 101.2, Florida Building Code, Building, 7th Edition (2023), and section R101.2.1, Florida Building Code, Residential, 7th Edition (2023).

Relevant Provisions:

Rule 28-105.001, Florida Administrative Code, states that "[a] petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person."

Petitioner's Questions:

Petitioner presents the following questions:

1. 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?
2. 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?
3. 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?

4. What 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?
5. Are 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?
6. Were the subject Broward County amendments adopted in compliance with the requirements of §553.73, Fla. Stat.?
7. 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”?

Staff’s Suggested Answer:

The Commission has the specific statutory authority pursuant to section 553.775(3)(a), Florida Statutes (2023) to “issue declaratory statements pursuant to s. 120.565 relating to the enforcement or administration of the Florida Building Code or the Florida Accessibility Code for Building Construction.”

Rule 28-105.001, Florida Administrative Code, specifies that

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner’s particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

(emphasis provided).

With respect to Petitioner’s inquiries about the provisions in chapters 471, 481, and 489, Florida Statutes, and whether Broward County’s local ordinances are in violation of those chapters, the Florida Building Commission is not the agency charged with enforcing or interpreting those statutes, and has no jurisdiction to do so.

Section 553.73(4)(a), Florida Statutes, provides, rather than “[l]ocal governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection.” The Florida Building Commission does not promulgate or enforce local amendments to the Florida Building Code. Local amendments are not part of the statewide Florida Building Code, and the Commission has no authority to interpret them.

Petitioner demands that the Commission declare Broward County’s local amendments invalid, and rule that the County failed to follow appropriate procedures for adopting the amendments. However, as stated by rule 28-105.001, F.A.C., “[a] declaratory statement is not the appropriate means for determining the conduct of another person.” Furthermore, Petitioner’s inquiries regarding the validity of the amendments is not prospective in nature, and the courts have stated that “a petition for a declaratory statement which seeks approval or disapproval of conduct which has already occurred is properly denied.” *Novick v. Dep’t of Health*, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002) (citing *Chiles v. Dep’t of State, Div. of Elections*, 711 So. 2d 151 (Fla. 1st DCA 1998)).

The Legislature provided other avenues to address issues with local amendments to the Florida Building Code. Paragraphs 553.73(4)(f)-(g), Florida Statutes, provide a means for challenging and invalidating certain local amendments. Paragraph 553.73(4)(i), Florida Statutes, permits the Commission to review local amendments and make nonbinding recommendations related to their compliance with the requirements of subsection 553.73(4), Florida Statutes. Pursuant to the provisions of rule 61G20-2.003(3), Florida Administrative Code, these nonbinding recommendations may be sought by a local government. Finally, paragraph 553.73(4)(l), Florida Statutes, provides a means for any substantially affected person to seek a nonbinding advisory opinion from the Florida Building Commission regarding whether a local government’s regulation, law, ordinance, policy, amendment, or land use or zoning provision constitutes a technical amendment to the Florida Building Code. These processes are clearly separate and distinct from declaratory statements, which are not meant to be vehicles for challenging the validity of local laws and ordinances.

With respect to Petitioner’s request to prophylactically restrict possible future interpretations of certain Florida Building Code provisions by local jurisdictions in the event that their local amendments are found to violate state licensing law, Petitioner’s request is both entirely speculative in nature and directed at possible future actions that *other* entities may take. The Legislature created a specific process for the review of local enforcement authority interpretations of the Florida Building Code in section 553.775(3)(c), Florida Statutes (2023):

The commission shall review decisions of local building officials and local enforcement agencies regarding interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction after the local board of appeals has considered the decision, if such board exists, and if such appeals process is concluded within 25 business days.

After any local appeal process has been exhausted, section 553.775(3)(c)1., Florida Statutes (2023), provides that “the commission shall coordinate with the Building Officials Association of Florida, Inc., to designate a panel composed of seven members to hear requests to review decisions

of local building officials.” The interpretation issued by that panel may subsequently be appealed to the Florida Building Commission. *See* section 553.775(3)(c)7., Florida Statutes (2023). Pursuant to section 553.775(3)(c)9., Florida Statutes, this process “provides the exclusive remedy for addressing requests to review local interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction and appeals from review proceedings.”

Petitioner states that he “seeks guidance on the general identifying characteristics of each type [of local amendment],” so that he can better “inform [his] future actions regarding any objection he may have” regarding Broward County’s amendments. The purpose of a declaratory statement is to inform an individual how an agency would enforce a statute, rule, or order over which it has authority against that individual in a given set of circumstances. *See* Rule 28-105.001, Florida Administrative Code. Petitioner is essentially requesting that the Commission assist him in formulating a legal strategy to challenge actions taken by a local enforcement authority, which is not the proper purpose of a declaratory statement.

With respect to Petitioner’s questions regarding whether local administrative amendments are subject to the requirements of subsection 553.73(4), Florida Statutes, and are required to include a fiscal impact statement, Petitioner is again attempting to litigate the validity of Broward County’s local amendments through the declaratory statement process, and is asking the Commission to state how the law applies to the actions of other entities.

Finally, Petitioner’s assertion that there is a “paradox” presented by sections R101.2.1, Florida Building Code, Residential, 7th Edition (2020), and 101.2, Florida Building Code, Building, 7th Edition (2020), and his request to explain their interaction to him is general in nature and not tied to any specific set of plans or circumstances to which the Commission can properly apply the provisions.

For all of the foregoing reasons, the Commission declines to answer the petition.