

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

IN RE: PETITION FOR DECLARATORY
STATEMENT BY JACK A BUTLER

Agency Clerk No. DS 2023-037

PETITIONER’S OBJECTION TO BORA’S MOTION FOR LEAVE TO INTERVENE

Petitioner Jack A. Butler hereby submits this Objection to the Motion for Leave to Intervene by the Broward County Board of Rules and Appeals (“BORA”) in the matter of his Petition for Declaratory Statement before the Florida Building Commission (“Commission”).

In its Motion, potential intervenor BORA claims that the purpose of the subject Petition is to seek an opinion from the Commission regarding local amendments to the Florida Building Code (“FBC”) that were adopted by BORA. This is not the purpose of the Petition—a fact stated multiple times within the supporting memorandum filed with the Petition and in a more recent response to staff’s analysis and recommendation to the Commission. In particular, BORA seeks to improperly litigate the answer to Question 1, which has been struck from the Petition by Petitioner’s own request, as was Question 6, which was the only one addressing BORA’s actions. There is no longer any need to consider BORA’s activities at all.

BORA further asserts on Page 12 of its Motion that submission and pursuit of answers through the subject Petition is a service being performed by Petitioner for Mr. B. David Frank, a residential designer based in Boynton Beach, Florida. Petitioner completely denies this claim. Mr. Frank is not a client of Petitioner and has not provided any payment to Petitioner for any reason. Mr. Frank’s only role in this matter was to bring the situation regarding BORA’s local

amendments to Petitioner’s attention. All actions by Petitioner related to the Petition are completely and solely at Petitioner’s own initiative and for his own personal needs as a residential designer, licensed residential contractor, and local government consultant.

With regard to the remaining questions posed in the Petition, BORA’s motion argues Petitioner does not have standing to ask the questions due to a lack of existing controversy, but then presents evidence of the existence of such controversies. For example, in the text of its own Motion, BORA offers its definition for “special conditions,” which, in its opinion, includes “HVHZ designated counties.” By the very structure of the FBC, which has specific content for HVHZ designated counties, the existence of a proposed construction project in such a county cannot be a special condition—it is a condition that is already accommodated in the FBC. The Motion then concludes, on Page 32, that Petitioner’s true reason for asking Question 3 is to “limit ... a Building Official’s authority to require additional documents.” Petitioner asked the question solely to ascertain the existing meaning of the term, not to restrict or expand any authority granted to local building officials who enforce the FBC. If BORA believes that the answer will change its behavior, then it is saying a controversy exists.

BORA also protests several questions posed in the Petition on the grounds that the Petitioner seeks a “bright line rule” that would clarify the meaning of a term used in the FBC. Providing the clarity of intent and application of a requirement in the FBC through a bright-line rule is precisely why an answer should be provided to a question posed in a petition for declaratory statement. The FBC itself is a collection of bright-line rules. It does not say, for example “Attach stud to plate.” It says to take this action using exactly which fastener and how many. Clarity of meaning ensures consistent application of the FBC and benefits everyone. How does continuing the present ambiguity of meaning benefit anyone?

In stating the reasons for its opposition to the Commission's answering Question 7 regarding the interaction of FBC-Building and FBC-Residential, BORA says that providing such an answer "would constitute rulemaking" [pp. 35-36]. Petitioner disagrees. The necessary rulemaking has already occurred. The Commission must have expected some explicit relationship to exist between these two documents when it adopted them through a rulemaking process. Petitioner asserts only that the present wording of these documents obscures this relationship and seeks to know what the intended interaction may be. In addition, the Florida Supreme Court has ruled that the mere discovery of a need for rulemaking in providing a declaratory statement is not a reason to avoid making the statement. [See *Florida Dep't of Bus. and Professional Regulation, Div. of Pari-mutuel Wagering v. Investment Corp. of Palm Beach*, 24 Fla. Law Weekly S250, 1999 WL 1018661 (Fla. 1999).]

As a final point to the objection, intervention is not necessary for BORA to participate in the process, which occurs through open meetings that allow participation and comment by interested parties.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Mr. Charles M. Kramer, Benson, Mucci & Weiss, P.L., 5561 North University Avenue, #102, Coral Springs, FL 33067, ckramer@BMWlawyers.net via electronic mail and/or U.S. Certified Mail.



October 4, 2023

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