

**STATE OF FLORIDA  
BUILDING COMMISSION**

In the Matter of

PALM BEACH COUNTY,  
BUILDING DIVISION,

Case #: DCA04-DEC-069

Petitioner.

**SUPPLEMENTAL DECLARATORY STATEMENT**

The foregoing proceeding came before the Florida Building Commission (the "Commission") by a petition from Robert Boyer of PALM BEACH COUNTY -- BUILDING DIVISION (the "Petitioner"), which was received on March 22, 2004, and subsequently amended on May 13, 2004. Based upon the statements in the Petition, the materials subsequently submitted and the proceedings before the Commission, it is hereby ORDERED:

**Findings of Fact**

1. The petition is filed pursuant to section 120.565, Florida Statutes, and must conform to the requirements of Rule 28-105.002, *Florida Administrative Code*.
2. Petitioner, Palm Beach County Building Division is an authority having jurisdiction to enforce the Florida Building Code and implement the requirements of the statewide system of product approval adopted by the Florida Building Commission in Rule 9B-72, Florida Administrative Code.
3. The Petitioner tendered several questions pertaining to local implementation of the statewide system of product approval requesting that the Commission respond such that the

Petitioner may appropriately enforce the rule. The Commission responded to the majority of the questions by prior order. The remaining questions for resolution are:

(a) Whether an architect and engineer may have a financial interest when performing a validation, which is prohibited for evaluations?

(b) Whether a local building official validation of an evaluation for a local product approval request, as required in Rule 9B-72.045, is an administrative review or a technical review?

(c) Whether rational or comparative analysis can justify a change the performance level of a product and conditions or limitations of use for a window with state approval?

#### **Conclusions of Law**

4. The Florida Building Commission has the specific statutory authority to interpret the provisions of Section 553.842, Florida Statutes (2003), and Rule 9B-72, Florida Administrative Code by entering a declaratory statement.

5. Independence of Validating Engineer or Architect. Section 553.842(9), F.S., provides that those performing validation “including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest.” Rule 9B-72.110, Florida Administrative Code, requires that “[a] certification of independence shall be provided by a Florida registered architect or professional engineer as applicable . . . .” Rule 9B-72.110(4), Florida Administrative Code, an architect or engineer performing an evaluation certify that he or she “does not have nor will acquire, a financial interest in any other entity involved in the approval process of the product.”

On the basis of the foregoing, the Rule is clear that an engineer or architect conducting an evaluation cannot have financial interest in a validation entity or validating engineer or architect; and, therefore, a validating engineer or architect cannot have financial interest in an engineer or architect conducting the evaluation. National standards of independence or no conflict of interest which are prescribed by statute, prohibit an engineer or architect conducting a validation from having any financial interest in the manufacturer of a product.

6. Nature of Building Official Validation. Rule 9B-72.045, Florida Administrative Code, requires a building official to perform:

- (1) Verification that the testing, evaluation and quality assurance requirements established by Rule 9B-72.040, F.A.C., are met and that all documentation required by Rule 9B-72.040, F.A.C., is in order.
- (2) Validation of the method of compliance using the validation checklist in subsection 9B-72.130(5), F.A.C.

§553.842(3), Florida Statutes (2003), states:

"Products...., that have standardized testing or comparative or rational analysis methods established by the code, and that are certified by an approved product evaluation entity, testing laboratory, or certification agency as complying with the standards specified by the code shall be approved for local or statewide use by one of the methods established in subsection (6) without further evaluation.

On the basis of the foregoing, products covered by rule 9B-72 and for which the Florida Building Code establishes performance criteria and standard methods for evaluation, test, or rational or comparative analysis, building officials should verify that all documentation and submittals required by rule 9B-71.040, F.A.C., have been submitted and are complete including statements of compliance with the respective standards of the Code. For products covered by

rule 9B-72 and for which the Florida Building Code does not establish a standard method of evaluation, building officials may require verification reviews of documentation for all products evaluated by Florida licensed engineers and architects. Verification that testing, evaluation and quality assurance requirements are met will require review of reports to determine the information required by Rule 9B-72.040(5), Florida Administrative Code, is included. Such verification is administrative in nature. Verification of listings by approved certification agencies is administrative in nature.

7. Performance of State Approved Products Altered by Analysis. §553.842(3), Florida Statutes, provides that:

[p]roducts...., that have standardized testing or comparative or rational analysis methods established by the code, and that are certified by an approved product evaluation entity, testing laboratory, or certification agency as complying with the standards specified by the code shall be approved for local or statewide use by one of the methods established in subsection (6) without further evaluation.

§553.842(4), Florida Statutes, states that:

products or methods or systems of construction requiring approval under s. 553.77 must be approved by one of the methods established in subsection (5) or subsection (6) before their use in construction in this state. Products may be approved either by the commission for statewide use, or by a local building department for use in that department's jurisdiction only. Notwithstanding a local government's authority to amend the Florida Building Code as provided in this act, statewide approval shall preclude local jurisdictions from requiring further testing, evaluation, or submission of other evidence as a condition of using the product so long as the product is being used consistent with the conditions of its approval.


Rule 9B-72.050(2), Florida Administrative Code, requires:

Acceptance of a product, material or system of construction is specific to a project and requires approval by a local jurisdiction pursuant to Rule 9B-72.050, F.A.C., or statewide approval by the Commission pursuant to Rule 9B-72.090, F.A.C., and verification that the product is being used consistent with the approved evaluation and limitations of use established by the approved evaluation as required by the design specifications.

On the basis of the foregoing, building officials are only precluded from requiring further evaluation when a product is being used consistent with the conditions of its State approval, is evaluated to a standard method adopted by the Code and its compliance is certified by an approved evaluation entity, testing laboratory or certification agency. However, the law does not preclude a building official from allowing further evaluation to demonstrate a product's compliance with Code requirements for a specific to a project. The foregoing provisions require demonstration of compliance for covered products using the appropriate method identified by Code and §553.842, Florida Statute, and Rule 9B-72.040, Florida Administrative Code.

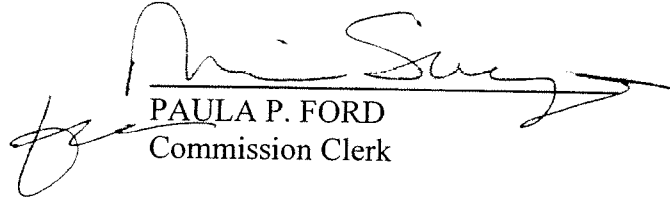
Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with section 120.68(2)(a), Fla. Stat. (1999), and with Fla. R. App. P. 9.030(b)(1)(C) and 9.110(a). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, Clerk of the Commission, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Commission. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Fla. Stat. (1999).

DONE AND ORDERED this 28 of SEPTEMBER 2004, in Coral Gables,  
Miami-Dade County, State of Florida.

  
Raul L. Rodriguez, AIA, Chair  
Florida Building Commission  
Department of Community Affairs  
Sadowski Building  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent to the following by the method indicated on this 30 day of Sept, 2004.

  
PAULA P. FORD  
Commission Clerk

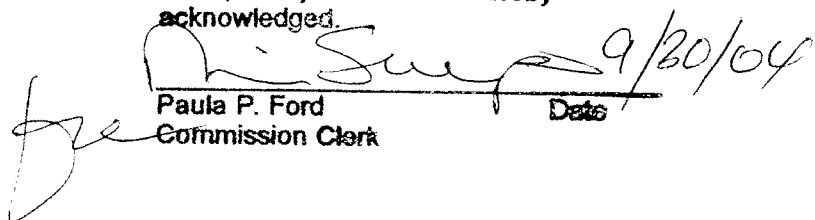
**Via U.S. Mail:**

Robert Boyer  
Palm Beach County, Building Division  
100 Australian Avenue  
West Palm Beach, Florida 33406

**Via Hand Delivery:**

Mo Madani, CBO  
Codes and Standards Section  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

**FILING AND ACKNOWLEDGEMENT**  
FILED, on ~~this~~ date, with the designated  
Clerk, receipt of which is hereby  
acknowledged.

  
Paula P. Ford  
Commission Clerk

9/30/04  
Date