

**Issue: DS2018-012.** The Petitioner, Robert Czyszczon, The Plaza Beach Motel, Inc., and represented by petitioner’s attorney, Katie E. Cole of Hill Ward Henderson, P.A., is requesting clarification with regard to a Chickee hut located on hotel property, which is currently utilized to sell beer, wine, soda, pre-packaged ice cream, and t-shirts.

**Background:** Petitioner owns a chickee in connection with its resort and hotel on St. Pete Beach. Petitioner constructed the chickee using the exemption from the Florida Building Code, which is found in Florida Statute 553.73(10)(i) and Florida Building Code 102.2(h). These provisions define a chickee, for purposes of the exemption, as follows:

“Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Indians of Florida. As used in this paragraph, the term “chickee” means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical plumbing, or other non-wood features.”

Petitioner’s chickee (i) is built by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida; (ii) is an open-sided wooden hut; (iii) has a thatched roof of palm or palmetto; (iv) and does not otherwise incorporate electrical, plumbing, or non-wood features into its structure. The chickee also currently has various wood tables and chairs underneath it.

Petitioner would like to remove the wood items and place various non-wood items underneath the chickee. Specifically, aluminum or plastic chairs and tables, and a tiled, counter-top height bar underneath the chickee.

### **2017 6<sup>th</sup> Edition Florida Building Code, Building:**

#### **SECTION 102 APPLICABILITY**

##### **102.2 Building.**

The provisions of the Florida Building Code shall apply to the construction, erection, alteration, modification, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every public and private building, structure or facility or floating residential structure, or any appurtenances connected or attached to such buildings, structures or facilities. Additions, alterations, repairs and changes of use or occupancy group in all buildings and structures shall comply with the provisions provided in Chapter 34 of this code. The following buildings, structures and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the legislature and provided by law:

(a) Building and structures specifically regulated and preempted by the federal government.

(b) Railroads and ancillary facilities associated with the railroad.

(c) Nonresidential farm buildings on farms.

(d) Temporary buildings or sheds used exclusively for construction purposes.

(e) Mobile or modular structures used as temporary offices, except that the provisions of Part II (Section 553.501-553.513, Florida Statutes) relating to accessibility by persons with disabilities shall apply to such mobile or modular structures.

(f) Those structures or facilities of electric utilities, as defined in Section 366.02, Florida Statutes, which are directly involved in the generation, transmission, or distribution of electricity.

(g) Temporary sets, assemblies, or structures used in commercial motion picture or television production, or any sound-recording equipment used in such production, on or off the premises.

(h) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term “chickee” means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.

(i) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.

(j) Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.

6. Petitioner also indicated in the preface of his request for declaratory statement, a reference to conflicting opinion of the term “incorporated” as used in the exemption.

7. Petitioner included copies of two Informal Interpretations, (Report Number 6848 and Report Number 7006) as written by the Building Officials Association of Florida.

## **DS2013-031**

The Petitioner seeks clarification, for permitting purposes, as to whether a Chickee hut loses its exemption from permitting under 102.2(h), Florida Building Code, Building, (2010), if non-wood items, such as sinks and electrical outlets, are later installed. Specifically, Petitioner requests answers to the following questions:

- (1)(a) By adding (sinks, electrical outlets, etc.)..., does that mean that the status of the exemption used to construct the Chickee without permit is null and void?
- (1)(b) If the answer to question 1(a) is yes, does that mean that the Chickee structure must get a building permit and comply with the current codes?
- (2) Does the fact of whether the utility services, electric; plumbing; propane or natural gas appliances are attached or not attached to any part of the structure/Chickee change the interpretation of Question (1)(a) or (1)(b)?

In response to Petitioner's first question, part a, the answer is yes, adding elements such as sinks, electrical outlets, or other non-wood items to the Chickee in question would mean the Chickee as a structure is no longer in compliance with the literal requirements of section 102.2(h), Florida Building Code, Building (2010) and therefore would no longer be exempted from compliance of the FBC.

In response to Petitioner's first question, part b, the answer is yes, since the Chickee in question should not be considered to fall under the exception found in section 102.2(h), Florida Building Code, Building (2010), the Chickee would be required to demonstrate compliance with the current FBC as applicable.

In response to Petitioner's second question, the answer is no, the definition of the term Chickee does not differentiate or provide for allowance to whether the utility service, (electric, plumbing, propane, national gas appliances) are attached or not attached to any part of the structure/Chickee.

## **CHAPTER 2 DEFINITIONS**

### **SECTION 201 GENERAL**

201.4 Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

The American Heritage Dictionary of the English Language

Incorporate:

To unite with or blend indistinguishably into something already in existence

To admit as a member to a corporation or similar organization

To cause to merge or combine together into a united whole

To cause to form into a legal corporation

To give substance or material form to; embody; substantiate

To become united or combined into an organized body

Combined into one united body

**Staff analysis:**

**Question1:**

To be exempt under the Florida Building Code, a chickee must not “incorporate any...nonwood features.” Would merely placing non-wood items underneath a chickee – including aluminum or plastic chairs and tables, a tiled countertop-height bar, and food/beverages – mean that Petitioner is incorporating nonwood features into its chickee so as to lose its exemption under Florida Statue 553.73(10)(i) and Florida Building Code 102.2(h)?

**Answer:**

**Option #1/Petitioner:**

Petitioner respectfully believes that the answer to Question 1 is “No.” Incorporating non-wood features into a chickee only refers to the makeup of the chickee’s structure. Indeed, when describing the various exemptions to the Florida Building Code, the language refers to “the following buildings, structures, and facilities.” Nothing in the language of the statute or the Florida Building Code purports to regulate what may or may not be brought inside and placed underneath the chickee. Such items would not makeup or constitute part of the structure itself.

**Option #2/Staff:**

For the level of work in question, the answer is “No.” Adding the items (aluminum or plastic chairs and tables, and a tiled, counter-top height bar) within the footprint of the “chickee” in question will not void its exemption status as per section 102.2(h) of the 6th Edition (2017) Florida Building Code, Building .

**Question 2:**

Does the Florida Building Commission consider the use of a chickee for purposes of determining whether a chickee may be exempt under Florida Statue 553.73(10)(i) and Florida Building Code 102.2(h)?

**Answer:**

**Option #1/Petitioner:**

Petitioner respectfully believes that the answer to Question 2 is “No.” Nothing in the language of the exemption purports to regulate the use of a chickee. The exemption only specifies how a chickee is to be built, i.e. a wooding hut with a thatched roof of palm or palmetto and no other nonwood features. Accordingly, Petitioner believe that issues relating to the use of a chickee is not a matter within the jurisdiction of the Florida Building Commission for purposes of the exemption.

**Option #2/Staff:**

Answer to question 2: No; neither section 553.73(10)(i), F.S., nor section 102.2(h), Florida Building Code, Building (2017), condition the exemption of chickees from the Florida Building Code based upon their use. Note that this does not preclude the possibility that other legal authority may restrict the possible uses of chickees.