

FILED
Department of Business and Professional Regulation
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File #

**AMENDED
PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA BUILDING COMMISSION**

Name: John C. Thomas
Title: President/CEO
Telephone: (727) 531-8913, X1109
Facsimile: (727) 536-8066
E-Mail: JThomas@pinchapenny.com
Company: Pinch A Penny, Inc. & The Cepcot Corporation, d/b/a Pinch A Penny
Address: 6385 – 150th Ave. N.
Clearwater, FL 33760

DS 2012-038

Petitioner's Attorney or Representative: Karen McLead
Director of Legal and Administrative Affairs
Pinch A Penny, Inc.
Telephone: (727) 531-8913, X1127
Facsimile: (727) 536-8066
E-Mail: kmclead@pinchapenny.com

Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on which the Declaratory Statement is sought:

2010 Florida Building Code, Existing Building
Portions of Chapters 2, 3, 4, 5 and 6

Background:

As a licensed swimming pool contractor and on behalf of the Pinch A Penny, Inc. franchise swimming pool system, I am seeking clarification on certain sections of the 2010 Florida Building Code, Existing Building. Specifically, there are several definitions, scopes and applications set forth in Chapters 2, 3, 4, 5 and 6 of the 2010 Florida Building Code, Existing Building, that require clarification so that I can determine which Chapter or Chapters of the Code I must follow for compliance. Outlined below are various subsections of the Code that appear to address repairs to existing pools and their ancillary component parts.

Section 202 – General Definitions:

Alteration. Any construction or renovation to an existing structure other than a repair or addition. (emphasis added) Alterations are classified as Level 1, Level 2, and Level 3.

Repair. The patching, restoration and/or minor replacement of materials, elements, components, equipment and/or fixtures for the purposes of maintaining such materials, elements, components, equipment and/or fixtures in good or sound condition. (emphasis added)

Chapter 3- Prescriptive Compliance Method

Section 301-General

301.1 Scope. The provisions of this chapter shall control the *alteration, repair, addition and change of occupancy* of existing structures, including historic and moved structures as referenced in Section 101.5.1.

301.1.1 Compliance with other methods. Alterations, repairs, *additions* and changes of occupancy to existing structures shall comply with the provisions of this chapter or with one of the methods provided in Section 101.5.

301.2.2 New and replacement materials. Except as otherwise required or permitted by this code, materials permitted by the applicable code for new construction shall be used. Like materials shall be permitted for repairs and alterations, provided no hazard to life, health or property is created.

304.1 General. Buildings and structures, and parts thereof, shall be repaired in conformance with this section and with Section 301.2. Work on nondamaged components shall be considered part of the repair and shall not be subject to the requirements for alterations in this chapter. Routine maintenance required by Section 301.2, ordinary repairs exempt from permit in accordance with Section 105.2, and abatement of wear due to normal service condition shall not be subject to the requirements for repairs in this section.

Chapter 4 – Classification of Work

Section 402 Repairs

402.1 Scope. *Repairs*, as defined in Chapter 2, include the patching or restoration or replacement of damaged materials, elements, equipment or fixtures for the purpose of maintaining such components in good or sound condition with respect to existing loads or performance requirements.

402.2 Application. *Repairs* shall comply with the provisions of Chapter 5.

402.3 Related work. Work on nondamaged components that is necessary for the required *repair* of damaged components shall be considered part of the *repair* and shall not be subject to the provisions of Chapter 6,7,8 9 or 10. (emphasis added)

Section 403

Alteration—Level 1

403.1 Scope. Level 1 alterations include the removal and replacement or the covering of existing materials, elements, equipment, or fixtures using new materials, elements, equipment or fixtures that serve the same purpose. Level 1 alterations shall not include any removal, replacement or covering of existing materials, elements, equipment or fixtures undertaken for purpose of repair as defined in Chapter 2 and described in Section 402. (emphasis added)

403.2 Application. Level 1 *alterations* shall comply with the provisions of Chapter 6.

Chapter 5 – Repairs

Section 502

Building Elements and Materials

502.2 New and replacement materials. Except as otherwise required or permitted by this code, materials permitted by the applicable code for new construction shall be used. Like materials shall be permitted for repairs and alterations, provided no *dangerous* or *unsafe* condition, as defined in Chapter 2, is created. (emphasis added)

Chapter 6 - Alterations – Level 1

Section 613 – Residential Swimming Pools and Spas

613.2 Pool or Spa Suction Fittings. Pool or spa circulation systems or components undergoing alteration shall comply with Section 6, Existing Pools and Spas, of the ANSI/APSP-7 Standard references in Section R4101.6.1 of the *Florida Building Code, Residential*.

Swimming Pool Industry “Common Practice” definitions:

Pump: A complete piece of equipment that is used to move water. Pumps may be used in conjunction with filters or by themselves for fountains, therapy jets, or for other non-filtration purposes.

Motor: A part of a pump that is used to provide rotational movement of other components so that the pump may provide movement of water. Without such part, the pump is no longer a pump.

Issue 1:

I have a customer with a residential swimming pool with a 1 horsepower pump that is no longer operating because of a broken motor. To properly repair the pump, the motor needs to be replaced with a new motor. I would like to replace the motor with a new 1 horsepower motor to repair the pump. The estimated cost of the new motor with installation is \$300.00. The assessed value of the swimming pool is \$10,000. I need to determine if the replacement motor is considered a repair, or it is a replacement, thereby classifying it as an alteration.

Issue 2:

I have a customer whose 1 horsepower residential swimming pool pump is no longer operating and cannot be repaired. The customer wants to purchase a new 1 horsepower swimming pool pump to repair the swimming pool. The estimated cost of the new pump with installation is \$1,000. The assessed value of the swimming pool is \$10,000. I need to determine if replacing a swimming pool pump is deemed a "minor" repair as defined by Chapter 2, or whether it is a replacement, thereby classifying it as an alteration.

Issue 1

Question #1

Using the Work Area Compliance method, is the replacement of a 1 horsepower residential swimming pool motor with a new 1 horsepower motor a “repair” as defined in Chapter 2, or is it a “Level 1 Alteration” as outlined in Chapter 4?

Petitioner respectfully submits that replacing a comparable pump-motor on an existing pump should be a “repair” to the pump, and the swimming pool structure, not a “Level 1 Alteration”.

Issue 1

Question #2

Using the Work Area Compliance method, as is stated in Section 502.2, like materials shall be permitted for repairs and alterations, provided no dangerous or unsafe condition is created. Does the replacement of a swimming pool motor of the same horsepower or lesser horsepower create a dangerous or unsafe condition?

Petitioner respectfully submits that replacing a motor with a comparable motor of equal or lesser horsepower would not create a dangerous or unsafe condition.

Issue 2

Question #3

Using the Work Area Compliance method, is the replacement of a 1 horsepower pump valued at \$2,000 on a residential swimming pool with an assessed value of \$10,000 deemed a minor replacement of materials as defined by Section 202? If no, then what numerical percentage should be used when trying to determine if the replacement of materials (pump) is minor? Or, is replacing a residential swimming pool pump not deemed a repair of the swimming pool and therefore must be considered a Level 1 Alteration without exception?

Petitioner respectfully submits that replacing a residential swimming pool pump should be deemed a minor replacement of materials.

Issue 1

Question #4

Using the Prescriptive Compliance method under Chapter 3, is the replacement of a 1 horsepower motor with a new 1 horsepower motor on an existing residential swimming pool a “repair” to the swimming pool or is it an “Alteration” as defined in Chapter 2?

Petitioner respectfully submits that the above is a “repair.”

**Issue 2
Question #5**

Using the Prescriptive Compliance method under Chapter 3, is the replacement of a 1 horsepower pump with a new 1 horsepower pump on an existing residential swimming pool a “repair” to the swimming pool or is it an “Alteration” as defined in Chapter 2?

Petitioner respectfully submits that the above is a “repair.”

**Issue 1 and 2
Question #6**

Using the Prescriptive Compliance method, is the replacement of a pump or pump-motor on an existing residential swimming pool an ordinary repair as defined by Section 304.1 exempt from permit in accordance with Section 105.2?

Petitioner respectfully submits that since Section 105.2 of the code has been reserved and not written, that in the absence of any guidance from Section 105.2, that it is exempt.


**Issue 1 and 2
Question #7**

Using the Prescriptive Compliance method, when repairing the swimming pool by replacing a 1 horsepower motor or pump with a new 1 horsepower motor or pump (like for like), and with no other changes or repairs being made, is a “dangerous condition” being created?

Petitioner respectfully submits that this repair does not alter the safety of an existing residential swimming pool, and any safety concerns that may have existed before the repair are unchanged. Therefore the repair is neither creating a safety concern nor is it mitigating any potential safety concerns.

Summary

Because there are three new 2010 Florida Building Codes that affect the residential swimming pool and spa industry (Residential, Existing Building and Energy Conservation), which codes are additionally affected by various national ANSI/APSP standards, it is imperative that a clear and concise interpretation by the Commission be made as to the intent and application of the codes as it relates to repairs, replacements and Level 1 alterations.

Respectfully submitted,


John C. Thomas
License #CPC057226