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April 21, 2014

Florida Building Commission
Florida Department of Business & Professional Regulation
Building Codes and Standards
1940 North Monroe Street
Tallahassee, FL 32399

DS 2014-057

Attn: Mr. Mo Madani
Email: mo.madani@myfloridalicense.com
Phone: (850) 717-1825

**RE: *Petition for Declaratory Statement Before Florida Building Commission
David G. Karins, PE, Petitioner
KEG File # 14RS-0038***

Dear Mr. Madani:

The purpose of this letter is to request a declaratory statement from the Florida Building Commission. I am a professional engineer licensed in the State of Florida specializing in structural design with projects throughout the state. Several of our clients have been faced with conflicting interpretations and applications of the code provisions by local Building Officials related to construction seaward of the Coastal Construction Control Line (CCCL). The Florida Building Code (FBC) provisions in question are contained in Section 3109.1.1.

QUESTION PREFACE:

A. Petition Information

This petition concerns a project on Longboat Key that is seaward of the Coastal Construction Control Line, was constructed at various times between 1950 and 1974 and is non-compliant as to current flood elevation requirements. The project includes buildings of the earlier vintage that are constructed on reinforced masonry piers. These piers are weathered, in some cases cracked and their connections to the wood framing above are in various stages of deterioration including fully compromised. The buildings of the later vintage (early 1970's) that are constructed on spread footings under reinforced concrete columns/piers below the first living level. The reinforced concrete columns/piers are spalled and cracked due to corrosion of the reinforcing steel but are readily repairable in accordance with International Concrete Repair Institute guidelines and the American Concrete Institute Repair Code (ACI 562). All of the required repairs are readily achievable without any appreciable impact on the existing coastal system.

B. Recitations

Prior to March 1, 2002, the Florida Department of Environmental Protection (DEP) Bureau of Beaches and Coastal Systems enforced and interpreted the standards for coastal construction on Florida's sandy beaches as governed by Chapter 161 Florida Statutes and Rule 62B-33 Florida Administrative Code.

After the implementation of the Florida Building Code March 1, 2002, the inclusion of then-Section 3107 caused the local building officials to also interpret and enforce aspects of coastal construction previously outside their jurisdiction, namely the provisions contained in current Section 3109 FBC. The Florida Building Code Commentary has acknowledged that in addition to the local building officials' interpretation and enforcement,

review and enforcement by the Florida DEP remains a requirement and further directs the reader to Chapter 161 FS and 62B-33 FAC.

C. Regulatory Scheme and Precedents

Declaratory Statement DCA09-DEC-347 "Conclusions of Law" #6 indicates that the provisions of Section 3109.1.1, 3109.3, and 3904.1.1 were transferred into the Code from a regulatory scheme within the jurisdiction of the Florida DEP as contained in Chapter 161 FS and 62B-33 FAC and are to be implemented consistent with historical applications of those DEP regulations.

FBC Section 3109.1.1 Exception is transferred nearly verbatim from 161.053 (11) (a) FS. However, the transfer of the regulatory scheme is not complete or sufficient. 161.053 (11) (a) FS provides an exemption to the permitting requirements of the statute (and therefore applicability of the construction standards) for existing buildings, but not the only exemption. The work on foundations caveat apparently is present because such work must be evaluated to determine whether or not it has a measurable interference with the coastal system. If not, then the other provisions of the regulatory scheme provide means of exemption. Based on DCA09-DEC-347, these other provisions should be considered when evaluating a project relative to FBC 3109. The regulatory scheme also includes:

161.053 (11)(b) Activities seaward of the coastal construction control line which are determined by the department not to cause a measurable interference with the natural functioning of the coastal system are exempt from the requirements of subsection (4).

161.053 (11) (c) The department may establish exemptions from the requirements of this section for minor activities determined by the department not to have an adverse effect on the coastal system. Examples of such activities include, but are not limited to:

- 1. Boat moorings;*
- 2. Maintenance of existing beach-dune vegetation;*
- 3. The burial of seaweed, dead fish, whales or other marine animals on the un-vegetated beach;*
- 4. The removal of piers or other derelict structures from the un-vegetated beach or seaward of mean high water;*
- 5. Temporary emergency vehicular access, if the affected area is immediately restored;*
- 6. The removal of any existing structures or debris from the upland, if there is no excavation or disturbance to the existing topography or to beach-dune vegetation;*
- 7. Construction of new roof overhang extending no more than 4 feet beyond the confines of the existing foundation during modification, renovation, or reconstruction of a habitable structure within the confines of the existing foundation of that structure which does not include any additions to or modification of the existing foundation of that structure;*
- 8. Minor and temporary excavation for the purpose of repairs to existing subgrade residential service utilities (e.g., water and sewer lines, septic tanks and drain fields, electrical and telephone cables, and gas lines), if there is minimal disturbance and the grade is restored with fill compatible in both coloration and grain size to the onsite material and any damaged or destroyed vegetation is restored using similar vegetation;*
- 9. Any other minor construction that has an effect similar to the above activities.*

62B-33.004 (1) Any structures under construction prior to the establishment of a coastal construction control line (CCCL) in a particular county are exempt from the provisions of Section 161.053, F.S., and this rule chapter except as noted in Sections 161.053(8) and (11) F.S.



161.053(8) This section does not apply to structures intended for shore protection purposes which are regulated by s. 161.041 or to structures existing or under construction before the establishment of the coastal construction control line if the structures are not materially altered except as provided in subsection (4).

Repair of foundations is explicitly contemplated by 62B-033.002 (52)

(52) "Repair" is the restoration of a portion of an existing structure, including the foundation of the structure, to its original design or an equivalent structural standard. Repair of a structure assumes that a significant portion of the structure, including its foundation, remains intact.

A certain level of repair of foundations is explicitly exempted from permit requirements by 62B-33.004(2) (c) 11. This exemption does not require the building or foundation to be otherwise conforming to permitting requirements.

11. Repairs to pile supported foundations which include replacing bolts, hurricane straps, secondary members and shore-normal cross bracing.

FDEP has made it clear that repair/additions to foundations are permissible within the regulatory scheme without triggering construction standards requirements even though they do not fall within the exception in 161.053 (11) (a), which is the source document for FBC3109.1.1 Exception. In this administrative review case, Exemption from DEP permitting requirements was ordered by the Secretary of the Florida Department of Environmental Protection for repairs and minor modifications to an existing structure, including its foundations, which had minor effect on the coastal system. The case (DEP #12-1171) concerned the application of Section 161.053 (11) (a) as basis for denial of an exemption when Section 161.053 (11) (b) was also applicable. The final ruling granted the exception even though there were foundation additions. In addition to the granting of the exception based on not having a measureable interference with the natural function of the coastal system, the order also noted that "...paragraph (a) of subsection 161.053(11) does not contain any language requiring or directing that the respondent Applicants obtain a permit." This is noteworthy in that it clearly expresses that the regulatory scheme does NOT mandate bringing into conformance with elevation and design requirements any work that involves repair, additions or modifications of the existing foundation.

Consistent with the above, the DEP has also issued exemptions for repairs to concrete piers/columns below the first living level as well as for repairs to columns directly supported by footings below grade at beachfront properties. Karins Engineering Group, Inc. similar projects on which such exemptions have been issued include: Gulf Place Condominium on Holmes Beach, FL, Fisherman's Cove Condominium on Siesta Key, FL, and Dunes Chalet Condominium on Boca Grande, FL.

Questions for Declaratory Action

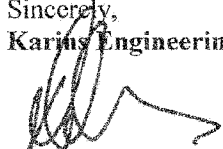
1. Does 3109.1.1 Exception prohibit (contrary to the regulatory scheme within the jurisdiction of the DEP) the repair work comprised of replacing hurricane straps, repairing cracks, repairing spalls or densifying concrete or masonry at above-grade foundation components of the subject existing buildings, which do not conform to FBC 3109.4 Construction Standards and which were constructed before the establishment of the CCCL requirements, assuming such repair work has no measurable interference with the coastal system and such work does not constitute "rebuilding" and is less than "substantial"?
2. Does 3109.1.1 Exception require (contrary to the regulatory scheme within the jurisdiction of the DEP) that the subject existing buildings constructed before the establishment of the CCCL



requirements be brought into conformance with FBC 3109.4 Construction Standards, if repair work is performed at above-grade foundation components comprised of replacing hurricane straps, repairing cracks, repairing spalls or densifying concrete or masonry, assuming such repair work has no measurable interference with the coastal system and such work does not constitute “rebuilding” and is less than “substantial”?

3. Can 161.053(11)(b) or 161.053(11)(c)9 FS be referenced in granting exceptions to FBC 3109.4 Construction standards for the subject existing structures, assuming they do not meet the requirements of 3109.1.1.1, 3109.1.1.2, 3109.1.1.3 or Exception.
4. Is repair work at the subject buildings seaward of the CCCL comprised of repairing cracks and spalls to existing columns/piers below the first living level in accordance with 62B-33.002(52) FAC and 161.053(11)(b) or 161.053(11)(c)9 FS that does not constitute substantial improvements or substantial structural repair and that does not involve correcting substantial structural damage permissible under Chapter 31 of the Florida Building Code, Building and the Florida Building Code, Existing Buildings?

Sincerely,
Karins Engineering Group, Inc.


David G. Karins, P.E.
President
Florida Registration # 52677

