

May 7, 2012

Mr. Jim Richmond, Executive Director
Florida Building Commission
Department of Business & Professional Regulation
1940 North Monroe Street
Tallahassee, FL 32399

RE: Petition for Declaratory Statement DS 2012-021 before the Florida Building Commission,
Florida Department of Business & Professional Regulation

Dear Mr. Richmond,

The purpose of this letter is to illustrate our strong support of the original position of the Energy Technical Advisory Committee (Energy TAC) supporting the staff recommendation for approval of Declaratory Statement DS 2012-021 relating to application of the *2010 Florida Building Code* to replacement fenestration and to share our concerns should the Energy TAC reverse their initial unanimous approval consistent with the Commission staff recommendation.

The crux of the issue is whether replacement fenestration must meet the provisions of the *2010 Florida Building Code—Energy Conservation*, Section 402.3.6 Replacement Fenestration, when a window replacement project does not exceed 30 percent of the assessed value of the structure cumulative over a one-year period or where the window replacement is not a part of a renovation exceeding such value. We maintain that window replacements in existing homes and buildings that do not exceed the 30 percent threshold are not required to meet the higher standard set forth in Section 402.3.6.

As you well know, Florida Statutes override agency rule and the Florida Building Code is adopted by rule. Furthermore, it is well-recognized that Florida Statutes cannot be changed or modified by an agency rule. Hence, the provisions of Florida Statutes, Section 553.902, supersede *2010 Florida Building Code—Energy Conservation*, Section 402.3.6 requiring any replacement fenestration to meet the requirements of new construction. Section 553.902, Florida Statutes, which defines “renovated buildings” to include “*a residential or nonresidential building undergoing alteration that varies or changes insulation, HVAC systems, water heating systems, or exterior envelope conditions, **provided the estimated cost of renovation exceeds 30 percent of the assessed value of the structure**” (Emphasis added.) **supersedes** any conflicting code (i.e., agency rule) provisions and should be strictly followed as the Legislature intended when the law was initially enacted in 1978.*

Furthermore, consistent with the legislative directive and statutory definition of “renovated buildings,” the *2010 Florida Building Code* also incorporates provisions that reference the 30 percent threshold for renovations of existing buildings, including the following:

- The definition of “renovations” in Chapter 2, *2010 Florida Building Code- Energy Conservation*;

“RENOVATION. Any structural repair, reconstruction or restoration to a structure, the costs of which equals or exceeds, over a 1-year period, a cumulative total of 30 percent of the assessed value of the structure when that value is assessed, either:

Before the improvement or repair is started; or
 Before the damage occurred, if the structure has been damaged.

For the purposes of this Code, renovation occurs when the first alteration of any wall, ceiling, floor, or other structural part or mechanical system of the building commences, whether or not that alteration affects the external dimensions of the structure.”

- Chapter 1, *2010 Florida Building Code-Energy Conservation*, Section 101.4.1, Table 101.4.1, footnote d

**TABLE 101.4.1
NONEXEMPT EXISTING BUILDINGS^a**

Date-Related		
	Permitted before March 1979	Permitted after March 1979
Not previously conditioned	Minimum efficiency levels shall be met for components being changed: Envelope: Section 402 or 502 Equipment: Section 403 or 503, 504 Lighting: Section 404 or 505	Considered an addition, meet current code
Occupancy type change	Minimum efficiency levels shall be met for components being changed. Envelope: Section 402 or 502 Equipment: Section 403 or 503, 504 Lighting: Section 404 or 505	Meet current code ^c
Not Date-Related		
Addition	Meet code for addition ^{b,c}	
Renovation ^d	Minimum code envelope, equipment and lighting efficiency levels shall be met for components being changed. Envelope: Section 402 or 502 Equipment: Section 403 or 503, 504 Lighting: Section 404 or 505	
New building systems (HVAC, service hot water or pool heating, lighting, motors)	New products installed or replaced in existing buildings shall meet the minimum efficiency allowed for that system. Equipment: Section 403 or 503, 504 Lighting: Section 404 or 505 HVAC indoor and outdoor units ≤ 65,000 Btu/h that are not designed to operate together shall be matched. HVAC equipment sizing is required per Section 403 or 503.	

^a An existing building or portion thereof shall not be altered such that the building becomes less energy efficient than its existing condition.
^b Minimum equipment efficiencies shall be met only when equipment is installed to specifically serve the addition or is being installed in conjunction with the construction of the addition.
^c If an existing building is unable to meet one or more current prescriptive code minimum requirements, it may be exempt from those minimum requirements if the entire building is brought into compliance by Section 405 or Section 506, as applicable.
^d Buildings undergoing alteration that vary or change insulation, HVAC systems, water heating systems, or exterior envelope provided that the estimated cost exceeds 30 percent of the assessed value of the structure (see Ch. 2, Definitions).

Likewise, the Energy Code Report for Existing Building Replacement Systems developed by the staff of the Florida Building Commission references the definition of “renovated building” in Section 553.902, Florida Statutes, and the 30 percent threshold and specifically applies the 30 percent threshold to swimming pool filtration pumps as follows:

RENOVATIONS ^{1,5,7}	
Pool filtration pumps ⁶	If cost of job exceeds 30% of assessed value of pool structure, meet Sec. 403.9.4 requirements
	If cost of job does not exceed 30% of assessed value of pool structure, don't have to meet Energy Code requirements.

In general, Florida law trumps what's in the code. Florida law has been incorporated into the *FBC-Energy Conservation* in Table 101.4.1.

1. Section 553.903, *Florida Statutes*, Applicability, states: “This part shall apply to all **new and renovated buildings in the state, except exempted buildings**, for which building permits are obtained after March 15, 1979, **and to the installation or replacement of building systems and components with new products** for which thermal efficiency standards are set by the Florida Energy Efficiency Code for Building Construction.” [NOTE: 2 clauses]
5. Sec. 553.902, *Florida Statutes*, defines RENOVATED BUILDING as “a residential or nonresidential building undergoing alteration that varies or changes insulation, HVAC systems, water heating systems, or exterior envelope conditions, **provided the estimated cost of renovation exceeds 30 percent of the assessed value of the structure.**” Section 202 of the *FBC-Energy Conservation*, further clarifies that the cost shall be cumulative **over a 1 year period.**
6. Pool filtration pumps are not a pool heating system.
7. An existing building or portion thereof may not be altered such that the building becomes less energy efficient than its existing condition.

We believe this same logical application of the 30 percent threshold to swimming pool filtration pumps, consistent with the statutory and code provisions cited above, should also apply to replacement fenestration.

Additionally, on April 30, 2012, the Building Officials Association of Florida issued an informal interpretation (non-binding interpretation), Report Number 6981, that states that Section 403.2.6 does not apply if the work to the building envelope (i.e. fenestration) does not fall under the definition of renovation. This non-binding interpretation is compatible with the staff's recommendation and the Energy TAC's initial approval of Declaratory Statement DS 2012-021.

If Declaratory Statement DS 2012-021 is not approved to maintain the 30 percent threshold, we believe that the more expensive window as required by the *2010 Florida Building Code-Energy Conservation*, Section 402.3.6, Replacement Fenestration will have a chilling effect on many smaller window companies, contractors and construction companies specializing in window replacement around the state. Disenfranchising an entire class of products, such as residential aluminum windows and doors, will wreak havoc in an industry already struggling with depressed economic times brought about by the decline in the housing market.

Many consumers will determine that a more expensive, high-end window is cost-prohibitive and will simply decide not to replace their current inefficient window --resulting in zero

improvement in energy efficiency. Similarly, cost-recovery within a reasonable timeframe is an important factor for today's fiscally-constrained consumers and without adequate justification for spending 3 to 4 times the current price, consumers will just shun remodeling.

Another key concern is that an underground market will emerge for unlicensed contracting activity fostering the installation of windows that may never be inspected to ensure proper design and anchorage to meet design pressure requirements of the code as unlicensed contractors will circumvent the permitting process.

As for the argument that if approved, Declaratory Statement DS 2012-021 would eliminate the authority of the Florida Building Commission to set efficiency standards, this is simply not the case. Section 402.3.6, *2010 Florida Building Code-Energy Conservation* sets thermal efficiency standards for replacement fenestration projects in renovated buildings—projects whereby the cost of the renovation exceeds 30 percent of the assessed value of the structure. To reiterate, both the definition of “renovated buildings” and “renovations” include the application of the 30 percent threshold.

Lastly, it is important to keep in mind that the new window that would be installed in a home or building that is not a “renovation”—that is the replacement does not exceed 30 percent of the assessed value of the structure—was considered an energy-efficient window on March 14, 2012, prior to implementation of the *2010 Florida Building Code—Energy Conservation*.

In conclusion, we respectfully request that the Energy TAC and the Florida Building Commission approve Declaratory Statement DS 2012-021 consistent with the statutory and code provisions that allow for application of the 30 percent threshold for replacement fenestration.

Sincerely yours,

Joe Escribano, AWP Windows and Doors

Brent Slaton, Keymark Corporation

Tom Riscili, CGI Windows and Doors, Inc.

David Johns, President, Aluminum Association of Florida

Michael Moberly, Tropical Windows

Scott Myers, Lou Mac Distributors