

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA BUILDING COMMISSION**

**In re: Petition for Declaratory Statement filed by
Joe Belcher, AWP Windows and Doors, LLC,
and Aluminum Association of Florida.**

DS 2012-021

**PETITION FOR LEAVE TO INTERVENE IN
DECLARATORY STATEMENT PROCEEDINGS
(Belcher)**

Custom Windows Systems, Inc. (“CWS” or “Intervener”), pursuant to Rule 28-105.0027, Florida Administrative Code, requests leave of the Florida Building Commission (“FBC”) to INTERVENE in this proceeding as a full party with all rights and privileges thereof and *in opposition* to the Petition for Declaratory Statement filed herein by Joe Belcher, AWP Windows and Doors, LLC and Aluminum Association of Florida (collectively as “Petitioner”). In support of this request, CWS states:

PARTIES

1. The name and address of the agency affected is the Florida Department of Business and Professional Regulation, Florida Building Commission (“FBC”), 1940 N. Monroe Street, Tallahassee, Florida 32399-2202.

2. The name and address of the Intervenor is Custom Windows Systems, Inc., and for purposes of this matter its address is that of its outside legal counsel:

Frederick R. Dudley, Esq.
Lawrence Sellers, Esq.
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3. CWS is a Florida for-profit corporation with 300 employees that has been engaged in the manufacture and sales of windows and doors in Ocala, Florida, since 1986.

4. CWS is one of the largest such manufacturers in the State of Florida, manufacturing a wide range of aluminum, composite and vinyl-framed windows, and was one of the first such manufactures in Florida to meet the Energy Star requirements for its aluminum-framed windows.

5. CWS windows and doors are rated and labeled for energy efficiency in accordance with the standards of the National Fenestration Rating Council (“NFRC”) and the fenestration labeling requirements of the 2010 edition of the Florida Building Code (“Code”).

6. For more than twenty (20) years, CWS has been a member of one of the Petitioners in this matter, the Aluminum Association of Florida (“AAF”), but disagrees with the position that Petitioner has taken in this matter and believes that AAF does not accurately represent the views of its membership.

STATEMENT OF SUBSTANTIAL INTERESTS AFFECTED

7. In preparation for the effective date of the Code on March 15, 2012, which by a 2008 legislative mandate includes as a base code the ICC Energy Conservation Code, CWS incurred substantial expenses for research and development to adjust its manufacturing processes in order to have its fenestration products comply with the Code's energy conservation standards and with NFRC labeling standards.

8. Accordingly, CWS has a substantial interest in the enforcement of these new energy conservation standards, and its interests are substantially affected by the Petition filed by Petitioner.

9. The Petition filed in this matter would, if granted, weaken the application of these energy conservation standards by allowing the continued manufacture, sale and installation of fenestration units that: (1) fail to meet these standards; (2) are not rated by NFRC; and, (3) would not disclose any of the energy efficiency factors to consumers and building officials.

10. A party whose interests are substantially affected by a proceeding for declaratory statement may intervene as a matter of right. *See* §120.565(3), Fla. Stat. (2011). *See also Chiles v. Department of State*, 711 So.2d at 151(Fla. 1st DCA 1998).

11. Rule 28-105.0027, Florida Administrative Code, provides that intervention in proceedings for declaratory statement are to be allowed if filed at least ten (10) days before the final hearing; the final hearing in this case cannot occur prior to August 2012.

12. CWS's interests are also substantially affected by this declaratory statement proceeding because it may place CWS at a strong competitive disadvantage with other manufacturers or sellers of fenestration units, by allowing the continued manufacture, sale and installation of window that do not meet the Code's energy conservation standards or labeling requirements.

STATEMENT REGARDING NOTICE OF AGENCY ACTION

13. Intervener received notice of the Petition for Declaratory Statement by publication of notice of the filing of same, which appeared in the March 23, 2012, edition of Florida Administrative Weekly.

STATEMENT OF ULTIMATE FACTS

14. Petitioner asserts that replacement fenestration units are not required to be utilized unless the improvement meets the definition of a "renovated building" as set forth in section 553.902(3), Florida Statutes (2011). However, section 553.903, Florida Statutes (2011) provides as follows:

553.903 Applicability. 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. The provisions of this part shall constitute a statewide uniform code.

[Emphasis added]

15. Petitioner has failed to assert that there is some dispute regarding the use of replacement fenestration units, and, instead, seeks a declaratory statement of general application about what others need to do in order to comply with the Code, including local building code officials. As such, Petitioner seeks a determination regarding the conduct of persons other than itself, contrary to Rule 28-105.001, Florida Administrative Code, which provides as follows:

28-105.001 Purpose and Use of Declaratory Statement

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to **how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.** [Emphasis added]

16. Petitioner has failed to provide information in its Petition as required by Rule. 28-105.002, such as a description of how the statutes, rules, or orders may substantially affect the Petitioner in the petitioner's particular set of circumstances.

17. Petitioner is seeking from FBC a broad statement of general applicability that appears to affect a large number of persons as well as every county and city building official in Florida, which should only be made, if at all, in the form of a rule; however, the Board has already adopted the 2010 edition of the

Florida Building Code, by incorporation by reference in Rule 61G20-1001 (formerly Rule 9N-1.001), Florida Administrative Code, the Energy Conservation portion of which address replacement fenestration units in section 402.3.6 thereof, as follows:

402.3.6 Replacement fenestration. When some or all of an existing fenestration unit is replaced with a new fenestration product, including sash and glazing, the replacement fenestration unit shall meet the applicable requirements for U-factor and SHGC in Table 402.1.1 [Emphasis added]

18. This provision has been part of every edition of the IECC since 2000, and was adopted as part of the 2010 edition of the Code without modification, effective March 15, 2012.

STATEMENT OF SPECIFIC APPLICABLE RULES AND STATUTES

19. The specific rules or statutes that apply are cited herein and include: Chapter 553, Florida Statutes, regarding Florida Building Commission and the Florida Building Code, Chapter 61G20 (formerly Chapter 9N), Florida Administrative Code, and Chapter 28, Florida Administrative Code regarding these proceedings.

STATEMENT OF RELIEF SOUGHT

WHEREFORE, CWS respectfully requests that this Petition for Leave to Intervene in these proceedings as a full party and in opposition to the Petition for Declaratory Statement filed herein be granted, and that, after hearing, the Board

enter an Order: (1) denying the issuance of a declaratory statement; or, (2) dismissing the petition as improper; or, (3) responding to the petition with a declaratory statement that all fenestration units must meet the Code's energy conservation requirements.

Respectfully submitted,



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*Attorneys for Movant,
Custom Windows Systems, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 13th day of May, 2012 a true and correct copy of the foregoing has been provided by hand-delivery to the Agency Clerk, Department of Business and Professional Regulation, 1940 N. Monroe Street, Tallahassee, Florida 32399-2202, by hand-delivery to Leslie Anderson-Adams, Esq., Asst. General Counsel, Office of the General Counsel, Department of Business and Professional Regulation, 1940 N. Monroe Street, Tallahassee, Florida 32399-2202, and by E-mail to Jim Richmond, Executive Director, Florida Building Commission.



Fred R. Dudley