

STATE OF FLORIDA  
BUILDING COMMISSION

In the Matter of

HILLSBOROUGH COUNTY BUILDING  
SERVICES DIVISION,

Case #: DCA08-DEC-142

Petitioner.

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**DECLARATORY STATEMENT**

The foregoing proceeding came before the Florida Building Commission (the Commission) by a Petition from Jerry Sparks, AIA, CBO, Director of the Hillsborough County Building Services Division, which was received on May 8, 2008, and subsequently amended on June 21, 2008. Based on the statements in the petition and amendment thereto and the material subsequently submitted by the Petitioner, it is hereby ORDERED:

**Findings of Fact**

1. The petition is filed pursuant to, and must conform to the requirements of Rule 28-105.002, Florida Administrative Code.
2. Petitioner is the authority having jurisdiction to enforce the Florida Building Code for Hillsborough County, Florida.
3. Hillsborough County, Florida, has adopted land development regulations [LDRs] pursuant to its authority under Chapter 163, Florida Statutes. The Petitioner reports that the LDRs expressly restrict the issuance of a certificate of occupancy in circumstances where a developer has failed to comply with conditions of development imposed pursuant thereto, such as on and off site roadway, storm water, and natural

resources improvements. The County has requested that the Petitioner withhold issuance of certificates of occupancy pending compliance with said conditions for buildings that have undergone final inspection and have been found to comply with the Code's technical requirements with regard to a particular subdivision within the County.

4. The Petitioner inquires whether the Florida Building Code allows a certificate of occupancy in the circumstances described?

### **Conclusions of Law**

1. The Florida Building Commission has the specific statutory authority to interpret the provisions of the Florida Building Code by entering a declaratory statement.

2. Section 110.1, Florida Building Code, Building Volume (2004 as amended 7/06) states:

No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefore as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

3. Section 110.2, Florida Building Code, Building Volume (2004 as amended 7/06) provides in pertinent part:

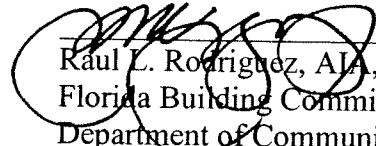
After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the department of building safety, the building official shall issue a certificate of occupancy . . . [requirements for contents of certificate omitted].

4. Based on the foregoing, the Building Code explicitly permits withholding a certificate of occupancy for enforcement of other laws and ordinances enforced by the

Hillsborough County Building Department. Furthermore, Chapter 553, Florida Statutes, and the Code contain nothing that would restrict or prohibit enforcement of LDRs by the department of building safety, in this case the Petitioner. However, the Florida Building Commission lacks jurisdiction to interpret the provisions of Hillsborough County's LDRs and determine their means of enforcement.

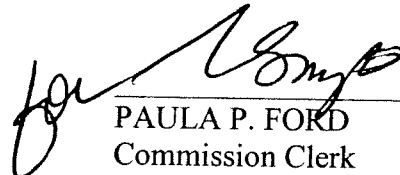
Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with Section 120.68(2)(a), Florida Statutes, and with Fla. R. App. 9.030(b)(1)(C) and 9.110(a). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, Clerk of the Commission, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100, and with the appropriate District Court of Appeal no later than thirty days after this Order is filed with the Clerk of the Commission. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Florida Statutes.

DONE AND ORDERED this 21 of October, 2008, in Coral Gables,  
Miami-Dade County, State of Florida.

  
Raul L. Rodriguez, AIA, Chair  
Florida Building Commission  
Department of Community Affairs  
Sadowski Building  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent to the  
following by the method indicated on this 23 day of Oct, 2008.

  
PAULA P. FORD  
Commission Clerk

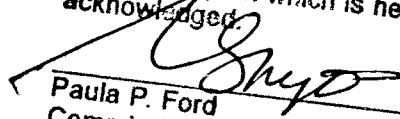
**Via U.S. Mail**

Sheri A. Murphy,  
Assistant County Attorney  
Hillsborough County  
Office of the County Attorney  
601 East Kennedy Boulevard, Floor 27  
Tampa, Florida 33601  
Attorney for the Petitioner

**Via Hand Delivery**

Mo Madani, C.B.O. Manager  
Codes and Standards Section  
Department of Community Affairs  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100

**FILING AND ACKNOWLEDGEMENT**  
FILED, on this date, with the designated  
Clerk, receipt of which is hereby  
acknowledged.

  
Paula P. Ford  
Commission Clerk  
Date 10/23/08