

1/8/09

STATE OF FLORIDA  
BUILDING COMMISSION

In the Matter of

CITY OF WEST PALM BEACH, FLORIDA,  
BUILDING SERVICES DEPARTMENT,

Case #: DCA08-DEC-205

Petitioner.

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**DECLARATORY STATEMENT**

The foregoing proceeding came before the Florida Building Commission (the Commission) by a Petition from Neil Melick of the City of West Palm Beach, Florida, Building Services Department, which was received on July 17, 2008, and subsequently amended on August 1, 2008. Based on the statements in the petition and the material subsequently submitted, 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. At the time of the Petition, the Petitioner directed the Building Services Department for the City of West Palm Beach, Florida, and enforced the requirements of the Florida Building Code on construction within the City of West Palm Beach.
3. The Petitioner has received a permit application for a proposed, new, five-story, 165 room hotel with an integral parking garage in which application, no supporting information for the wind resistance of mechanical equipment has been supplied. The applicant asserts that it has been unable to find any manufacturer of mechanical equipment with wind design information available.

4. The Petitioner asks that the Commission interpret Section 301.13, Florida Building Code, Mechanical Volume (2004 as amended 5/21/07), and specifically:

(a). Whether the Florida Building Code, Mechanical Volume, requires that appliances be designed to resist wind pressures even if the permit applicant is unable to find an appliance manufacturer who will provide supporting wind resistance documentation;

(b). Whether it is the responsibility of the appliance manufacturer to design their outdoor appliances to resist wind pressures since the manufacturer is the designer of the appliance;

(c). Whether all mechanical appliances and equipment, including package units, condensing units and fans that are exposed to wind be designed and installed to resist wind pressures in accordance with section 1609 of the Florida Building Code, Building Volume;

(d). Whether a standard other than that required by Section 1609 applies to mechanical appliances, equipment and their supports due to the use of the word “resist” in Section 301.13 of the Florida Building Code, Mechanical Volume, rather than the use of the word “withstand” as stated in Section 1609.1 of the Florida Building Code, Building Volume; and

(e). Whether the Code authorizes a building official to withhold a certificate of occupancy if a permit holder fails to demonstrate that mechanical equipment is not designed to withstand the appropriate wind forces?

## 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 301.13, Florida Building Code, Mechanical Volume (2004 as amended 5/21/07), states:

Mechanical equipment, appliances and supports that are exposed to wind shall be designed and installed to resist the wind pressures on the equipment and the supports as determined in accordance with the Florida Building Code, Building. This may be accomplished by design or by application of Section 301.13.1. Roof-mounted mechanical units and supports shall be secured to the structure. The use of wood “sleepers” shall not be permitted.

3. The Commission has addressed similar circumstances in case numbers DCA07-DEC-182 and DCA07-DEC-183, both of which applied explicitly to cooling towers.

4. The answer to the Petitioner’s first question is yes, mechanical equipment exposed to wind is required to be designed for wind resistance regardless of whether manufacturers of that equipment are willing to provide design information and documentation.

5. The Commission is without authority to answer the Petitioner’s second question pertaining to design responsibility. Although the Code would clearly envision that the mechanical equipment be designed for wind resistance by its manufacturer, its design for wind resistance be confirmed by an appropriate design professional, or that the equipment be housed within a structure that is designed for wind resistance.

6. The answer to the Petitioner’s third question is yes, despite the fact that the two previous declaratory statements were limited to cooling towers, the Code contains no

language that limits the application of the explicit requirement of design for wind resistance to any particular piece of mechanical equipment. All the mechanical equipment exposed to the wind in the proposed project is subject to this requirement.

7. The answer to the Petitioner's fourth question is no, there is no difference between the use of the word "resist" in Section 301.13 of the Mechanical Volume and "withstand" in Section 1609 of the Building Volume.

8. Section 110.2, Florida Building Code, Building Volume (2004 as amended 5/21/07) provides that. [a]fter 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 . . . ."

9. Section 110.4, Florida Building Code, Building Volume (2004 as amended 5/21/07), states:

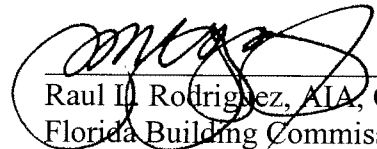
The building official is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

10. On the basis of the foregoing, the Code explicitly authorizes the building official to withhold or revoke the Certificate of Occupancy for violation of the provisions of the code.

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

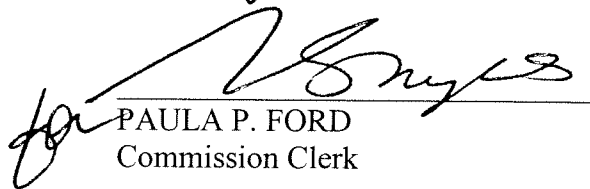
Appeal must be filed with Paula P. Ford, Clerk of the Commission, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100, and with the appropriate District Court of Appeal no later than thirty days after this Order is filed with the Clerk of the Commission. A Notice of Appeal filed 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 6 of January, 2009, in Coral Gables, Miami-Dade County, State of Florida.

  
Raul I. 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 8th day of Jan, 2009.

  
PAULA P. FORD  
Commission Clerk

**Via U.S. Mail**

Neil K. Melick, CBO  
200 2<sup>nd</sup> Street, 3<sup>rd</sup> Floor  
West Palm Beach, Florida 33401

**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