

STATE OF FLORIDA
BUILDING COMMISSION

In the Matter of

MADSEN, KNEPPERS & ASSOCIATES, INC.,

Case #: DCA08-DEC-216

Petitioner.

_____ /

DECLARATORY STATEMENT

The foregoing proceeding came before the Florida Building Commission (the Commission) by a Petition from Vincent Vaulman of Madsen, Kneppers & Associates, Inc., which was received on July 28, 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. Petitioner is a construction consulting and engineering firm that performs work on projects throughout the State that are subject to the requirements of the Florida Building Code.
3. The Petitioner has been consulted with regard to a hotel in Ormond Beach, Florida that was damaged in the hurricanes of 2004. Damage sustained from the hurricanes included a loss of the roof membrane, broken windows and guest room water damage. The scope of work would include replacement of broken windows, the removal and replacement of drywall throughout, the replacement of some exterior doors, replacement of carpeting, replacement of fan coil PTAC units, limited structural repair

and the installation of a new roof membrane. The repairs would not require any reconfiguration of any interior rooms or spaces..

4. The Petitioner poses four questions concerning the Florida Building Code, Existing Building Volume and its effect in relation to the instant project. Specifically, the Petitioner asks:

(a). That the Commission explain, by declaratory statement, the differences between alteration levels identified within the Code;

(b). That the Commission identify the significance, relative to the Existing Buildings Volume, of the fact that repairs were required encompassing more than 50% of the building's area if there is no change to room layout or arrangement;

(c). Whether pre-existing conditions like deteriorated metal studs in addition to hurricane damage bears any relation to the determination of alteration level if there is no change to room layout or arrangement; and

(d). What alteration level would the Commission would consider work including only the removal and replacement of materials of like kind to return a property to pre-existing condition with no change to wall assembly/layout or floor plan?

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. The law restricts this authority, however, to an interpretation of the Code in the context of Petitioner's particular facts and circumstances, and the Commission is prohibited from making general statements of policy by entry of a declaratory statement.

2. Chapter 2, Florida Building Code, Existing Buildings Volume (2007), provides the following definitions:

ALTERATION. Any construction or renovation to an existing structure other than repair or addition. Alterations are classified as Level 1, Level 2, and Level 3.

...
REPAIR. The patching, restoration and/or minor replacement of materials, elements, components, equipment and/or fixtures for the purposes of maintaining such materials, elements, components, equipment and/or fixtures in good or sound condition.

3. Section 302.1, Florida Building Code, Existing Buildings Volume (2007), states that “[r]epairs, as defined in Chapter 2 , include the patching or restoration of materials, elements, equipment, or fixtures for the purpose of maintaining such materials, elements, equipment, or fixtures in good or sound condition.”

4. Section 303.1, Florida Building Code, Existing Buildings Volume (2007), states:

Level 1 alterations include the removal and replacement or the covering of existing materials, elements, equipment, or fixtures using new materials, elements, equipment, or fixtures that serve the same purpose. Level 1 alterations shall not include any removal, replacement or covering of existing materials, elements, equipment or fixtures undertaken for purpose of repair as defined in Chapter 2 and described in Section 302.

7. Based on the foregoing, the Commission responds to the Petitioner’s inquiry as follows:

(a). The Commission is not authorized to provide, by declaratory statement, a general delineation of the alteration levels defined within the Florida Building Code, Existing Building Volume. The Code itself contains the information sought.

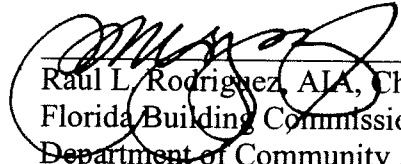
(b). The percentage of area within a building subject to work such as that described in the Petition bears no relation to the Code's delineation of that work as repair or alteration, therefore the fact that repairs encompassed more than 50% of the building's area is irrelevant.

(c). The existence of conditions in a building prior to that to building sustaining hurricane damage bears no relation to the classification of the work to be performed as repair or alteration. The nature of the work to be performed as described in the definitions for the terms in the Code are determinative.

(d). The work described in the Petition appears to fall under the classification of an Alteration, Level 1.

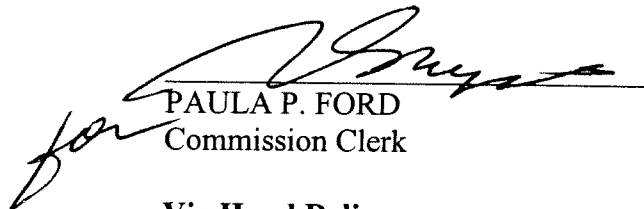
Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with Section 120.68(2)(a), Florida Statutes, and with Fla. R. App. 9.030(b)(1)(C) and 9.110(a). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, 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 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 8th day of Jan, 2009.


PAULA P. FORD
Commission Clerk

Via U.S. Mail

Vincent Vaulman
Madsen, Kneppers & Associates, Inc.
425 Amwell Road, Suite 101
Hillsborough, New Jersey 08844

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