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Binding Interpretation - Petition #317 petitioned by Mark Ebelini

Petitioner:

The local interpretation requires each unit in the Whitecaps South Condominium to have full ADA accessibility features not required by Florida law, which will cost the unit owners hundreds of thousands of dollars, including partial demolition of brand new modular building interiors.

The Building Official has relied upon the definition of a place of lodging and other definitions and provisions of the Florida Building Code rather than solely on the Federal ADA definitions of a "place of public accommodation" and a "place of lodging" as set forth in 28 CFR 36.104 when reviewing Whitecaps' building permit applications for ADA compliance.

The City of Sanibel Building Official should apply solely the Federal ADA definitions of a "place of public accommodation" and a "place of lodging" as set forth in 28 CFR 36.104 when reviewing Whitecaps' building permit applications for ADA compliance, not the definition in the 2023 Florida Building Code, which contains additional and obsolete provisions not authorized by the Florida Legislature.

Building Official:

The permits for the build back of the Sanibel Island Whitecaps development 2907 West Gulf Dr which includes **four duplex structures** (permits # BLDR-2024-017219, 017228, 017232, 017233) and one 1 family structure (not yet permitted) were submitted in September 2024 and were issued in July 2025 and are currently under construction.

The proposed development is in the Sanibel resort housing district which allows transient rentals of the properties for less than 1 month. These structures are not owner occupied and will be offered as transient rentals when completed. The owners were provided with code requirements for transient rentals at the time of permitting including the requirements for fire suppression systems and Florida Accessibility Compliance. The premanufactured units were purchased prior to permitting and are single family constructed modular homes combined to create a duplex structure. The units were constructed without any accessibility features. The development is in flood zones AE10, AE11, and VE12. The structures are in AE10 requiring them to be raised to BFE plus 1-foot 11NAVD. The existing old structures were separately constructed at grade in the 1950's and were destroyed by Hurricane Ian in 2022. Sanibel zoning allows the structures to be built back in the same square footage for a certain time after a major disaster as the site coverage for this development is non-compliant with current land development code.

The existing permits were issued with required sprinkler systems, vertical accessibility, and accessibility features required by code. In November the developer submitted a revision that removed the sprinkler systems, vertical accessibility, and accessibility features which were rejected by the Building Official and the Fire Marshal. The owners did unsuccessfully appeal the Building Officials decision to the Sanibel Board of Appeals on November 20, 2025.

During the review process the owners were provided with and refused the option to remove the ability to transient rent these structures in their owner's association documents and Sanibel zoning ability to rent for less than one month. Based on the transient nature of these rental units not owner occupied, the structures were deemed to be R-1 transient occupancy per Section 310.3.

Based on Sections 310.3 and 455/461 these units are designated Transient R-1 Occupancy and Transient Public Lodging Establishments.

8th Edition (2023) Florida Building Code, Building

310.3 Residential Group R-1. Residential Group R-1 occupancies containing sleeping units where the occupants are primarily transient in nature, including:

Boarding houses (transient) with more than 10 occupants
Congregate living facilities (transient) with more than 10 occupants
Hotels (transient)
Motels (transient)

310.5 Residential Group R-3. Residential Group R-3 occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I, including: -

SECTION 455 PUBLIC LODGING ESTABLISHMENTS

455.2 Definitions.

PUBLIC LODGING ESTABLISHMENT. See Section 509.013, Florida Statutes.

(4)(a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 consecutive days or which is advertised or held out to the public as a place regularly rented to guests for periods of less than 30 consecutive days.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 consecutive days or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 consecutive days.

SECTION 461 TRANSIENT PUBLIC LODGING ESTABLISHMENTS

461.1 Any transient public lodging establishment, as defined in Chapter 509, Florida Statutes, and used primarily for transient occupancy as defined in Section 83.43(10), Florida Statutes, or any timeshare unit of a timeshare plan as defined in Chapters 718 and 721, Florida Statutes, which is of three stories or more and for which the construction contract has been let after the effective date of this code,

8th Edition (2023) Florida Building Code, Accessibility Code

106 DEFINITIONS

106.5 Defined Terms.

Place of Public Accommodation. A facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories:

(1) Places of lodging. Except for an establishment located within a facility that contains not more than five rooms for rent or hire and that actually is occupied by the proprietor of the establishment as the residence of the proprietor. For purposes of this part, a facility is a “place of lodging” if it is—

- (i) An inn, hotel, or motel; or
- (ii) A facility that—

(A) Provides guest rooms for sleeping for stays that primarily are short-term in nature (generally 30 days or less) where the occupant does not have the right to return to a specific room or unit after the conclusion of his or her stay; and

(B) Provides guest rooms under conditions and with amenities similar to a hotel, motel, or inn, including the following—

- (1) On- or off-site management and reservations service;
- (2) Rooms available on a walk-up or call-in basis;
- (3) Availability of housekeeping or linen service; and
- (4) Acceptance of reservations for a guest room type without guaranteeing a particular unit or room until check-in, and without a prior lease or security deposit.

Resort condominiums **are considered to be public lodging establishments pursuant to Section 509.242, F.S.;**

Resort Condominium. (Section 509.242, F.S.). A resort condominium **is any unit or group of units in a condominium, cooperative, or time-share plan which is rented more than three times a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or one calendar month, whichever is less (see also, Places of Lodging).**

[Note: This definition no longer exists in section 509.242, F.S.; it was removed in 2011.]

Transient Lodging. A building or facility containing one or more guest room(s) for sleeping that provides accommodations that are primarily short-term in nature. Transient lodging does not include residential dwelling units intended to be used as a residence, inpatient medical care facilities, licensed long-term care facilities, detention or correctional facilities, or private

buildings or facilities that contain not more than five rooms for rent or hire and that are actually occupied by the proprietor as the residence of such proprietor.

201.1.1 Vertical accessibility. Sections 553.501-553.513, F.S., and the ADA Standards for Accessible Design do not relieve the owner of any building, structure or facility governed by those sections from the duty to provide vertical accessibility to all levels above and below the occupiable grade level regardless of whether the Standards require an elevator to be installed in such building, structure or facility, except for:

- (1) Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks and automobile lubrication and maintenance pits and platforms.
- (2) Unoccupiable spaces, such as rooms, enclosed spaces and storage spaces that are not designed for human occupancy, for public accommodations or for work areas.
- (3) Occupiable spaces and rooms that are not open to the public and that house no more than five persons, including, but not limited to equipment control rooms and projection booths.
- (4) Theaters, concert halls, and stadiums, or other large assembly areas that have stadium-style seating or tiered seating if sections 221 and 802 are met.
- (5) All play and recreation areas if the requirements of chapter 10 are met.
- (6) All employee areas as exempted by 203.9.
- (7) Facilities, sites and spaces exempted by section 203. Buildings, structures and facilities must, at a minimum, comply with the requirements of the ADA Standards for Accessible Design.

224 TRANSIENT LODGING GUEST ROOMS 224.1 General. Transient lodging facilities shall provide guest rooms in accordance with 224.

Notwithstanding the requirements of this section, section 201.1.1 shall apply.

224.6 Places of Lodging. Places of lodging shall comply with the requirements for transient lodging guest rooms in sections 224 and 806.

EXCEPTION: Alterations to guest rooms in places of lodging where the guest rooms are not owned or substantially controlled by the entity that owns, leases, or operates the overall facility and the physical features of the guest room interiors are controlled by their individual owners are not required to comply with § 36.402 or the alterations requirements in section 224.1.1 of the 2010 Standards.

224.6.1 Guest rooms. Guest rooms with mobility features shall be provided as follows: (i) Facilities that are subject to the same permit application on a common site that each have 50 or fewer guest rooms may be combined for the purposes of determining the required number of accessible rooms and type of accessible bathing facility in accordance with table 224.2; (ii) Facilities with more than 50 guest rooms shall be treated separately for the purposes of determining the required number of accessible rooms and type of accessible bathing facility in accordance with table 224.2.

224.6.2 Facilities With Residential Units and Transient Lodging Units. Residential dwelling units that are designed and constructed for residential use exclusively are not subject to the transient lodging standards.

224.6.3 Buildings, Structures, or Facilities Licensed as a Hotel, Motel, or Condominium

Pursuant to Chapter 509, F.S. All buildings, structures, or facilities licensed as a hotel, motel, or condominium pursuant to chapter 509, F.S., a number of rooms equaling at least 5 percent of the guest rooms minus the Total Number of Required (accessible) Rooms required by Table 224.2 shall provide special accessibility features of 806.4.

806 TRANSIENT LODGING GUEST ROOMS

806.1 General. Transient lodging guest rooms shall comply with 806. Guest rooms required to provide mobility features shall comply with 806.2. Guest rooms required to provide communication features shall comply with 806.3.

All buildings, structures, or facilities licensed as a hotel, motel or condominium pursuant to chapter 509, F.S., shall comply with 806.4.

806.4 Hotel, Motel and Condominium Special Accessibility Features. This section does not relieve the owner of the responsibility of providing accessible rooms in conformance with Section 224 and 806 of this code. In all buildings, structures and facilities licensed as a hotel, motel or resort condominium pursuant to Chapter 509, F.S., a number of rooms equaling at least 5 percent of the guest rooms minus the Total Number of Required (accessible) Rooms required by Table 224.2 shall provide the following additional special accessibility features: (i) Grab rails in bathrooms and toilet rooms which comply with Section 604.5. (ii) All beds in designed accessible guest rooms shall be open-frame type that allows the passage of lift devices. (iii) Water closets that comply with section 604.4.

509.242 Public lodging establishments; classifications.— Florida Statutes

(1) A public lodging establishment shall be classified as a hotel, motel, nontransient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental if the establishment satisfies the following criteria:

(a) Hotel.—A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.

(b) Motel.—A motel is any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, off street parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.

(c) Vacation rental.—A vacation rental is any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.

(e) Transient apartment.—A transient apartment is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.

Staff Analysis

Resort Condominium. (Section 509.242, F.S.). A resort condominium is any unit or group of units in a condominium, cooperative, or time-share plan which is rented more than three times a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or one calendar month, whichever is less (see also, Places of Lodging).

[Note: This definition no longer exists in section 509.242, F.S.; it was removed in 2011.]

Question #1:

Whether the Sanibel Building Official erred by determining that the Whitecaps South condominium units are “places of lodging” based on the definition of that term in the Florida Building Code Section 106.5, rather than applying the definition of a “place of lodging” in the federal standards, as adopted in 28 CFR 36.104.

Answer:

Notwithstanding the reference to a “resort condominium” in the definition of a “place of public accommodation” in Section 106.5 of the Florida Building Code (FBC), Accessibility, 8th Edition, a privately owned, non-owner-occupied property containing dwelling units that are rented to the public for periods of less than 30 days is generally classified as transient lodging. Accordingly, the projects in question are subject to the requirements of Sections 201.1.1 and 224 of the FBC, Accessibility.

Question #2:

Whether the Sanibel Building Official erred in using the definition of “transient public lodging” and “transient lodging” in the Florida Building Code as an additional basis to require all the Whitecaps South condominium units to be fully accessible under the ADA standards, despite Sections 554.503, 553.507, and 553.73 of the Florida Statutes, stating that only the Federal standards apply in determining applicability of the ADA to buildings.

Answer: See answer to question #1.

Question #3:

As Section 553.507 of the Florida Statutes, titled “Applicability,” states that the Florida Accessibility Code for Building Construction applies to “newly constructed buildings and facilities as determined by the Federal Standards as established and adopted pursuant to Section 553.503,” whether the Sanibel Building Official erred in applying the vertical accessibility requirements of Section 553.509 and the Florida Building Code before

determining whether the Whitecaps South condominium units are “places of lodging” under 28 CFR 36.104.

Answer: See answer to question #1.