

**STATE OF FLORIDA
FLORIDA BUILDING COMMISSION**

IN RE:

DS 2021-007

THE PETITION FOR DECLARATORY STATEMENT OF
SDII GLOBAL CORPORATION

FRSA’S MOTION FOR LEAVE TO INTERVENE

Florida Roofing & Sheet Metal Contractors Association, Inc. (“FRSA”) hereby moves the Florida Building Commission (“FBC”) for leave to intervene with regard to the Petition for Declaratory Statement of SDii Global Corporation, numbered DS 2021-007, filed February 23, 2021, and published in the Florida Administrative Register on March 1, 2021 (the “Petition”). In support thereof, FRSA states as follows:

I. Introduction.

The Petition seeks the agency's opinion as to the applicability of section 706.1.1, Florida Building Code, Existing Building, 7th Edition (2020) (the “Code”), as it applies to SDii Global Corporation (“Petitioner”).

Specifically, section 706.1.1 provides: “Not more than 25 percent of the total roof area or roof section of any existing building or structure shall be repaired, replaced or recovered in any 12-month period unless the entire existing roofing system or roof section is replaced to conform to requirements of this code.” Petitioner presents the following question: When determining if a roof repair exceeds the 25 percent threshold specified in Section 706.1.1, should work on non-damaged components still be omitted from the repair area calculation?

The Petition should be granted because the Petition is within the substantial interest and activity of the Petitioner and the Petitioner's rights, status, and other equitable or legal relations are in doubt.

II. Standing.

Persons substantially affected by a rule or regulation in Florida may seek a declaratory statement. § 120.565(1), Fla. Stat. A petition for declaratory statement must describe the potential impact of statutes, rules, or orders upon the petitioner's interests and set forth the required content of a petition seeking a declaratory statement. Fla. Admin. Code R. 28-105.001 and 28-105.002.

Petitioner, FRSA, and FRSA's members are substantially affected persons with respect to section 706.1.1. Petitioner is a forensic engineering firm, which as part of its professional duties, opines on whether the Code permits repair, or requires replacement, of damaged roofing systems in Florida under section 706.1.1. *Petition* at P. 1. FRSA is the Florida statewide roofing association with more than 800 members across the State of Florida. FRSA's roofing contractor members' services are "unlimited in the roofing trade," and include, without limitation, the installation, maintenance, and repair of roofing systems throughout Florida. § 489.105(3)(e), Fla. Stat.

The scope of the Petition is within the substantial interest and activity of the Petitioner and FRSA's members. Therefore, Petitioner and FRSA's members are subject to determination of, and will be affected by, the Petition. Petitioner has properly alleged standing with respect to the Petition and FRSA should be granted permission to intervene in these proceedings on behalf of its contractor members.

III. The FBC should issue a declaratory statement regarding DS 2021-007.

"The purpose of a declaratory statement is to resolve a controversy or answer questions concerning the applicability of statutes, rules, or orders which an administrative agency enforces,

adopts or enters.” *Citizens of State ex rel. Office of Pub. Counsel v. Florida Pub. Serv. Com'n & Utilities, Inc.*, 164 So. 3d 58, 59 (Fla. 1st DCA 2015); *Fla. Dep't of Bus. & Pro. Regul., Div. of Pari-Mutuel Wagering v. Inv. Corp. of Palm Beach*, 747 So. 2d 374, 382 (Fla. 1999). A declaratory statement of an agency's position may help a party “avoid costly administrative litigation by selecting the proper course of action in advance.” *Chiles v. Dep't. of State, Div. of Elections*, 711 So.2d 151, 154 (Fla. 1st DCA 1998).

In the present matter, issuance of a declaratory statement is proper because the Petitioner’s rights, status, and other equitable or legal relations are in doubt. *See Sutton v. Dep’t of Environmental Protection*, 654 So. 2d 1047, 1049 (Fla. 5th DCA 1995). Section 706.1.1 is seemingly ambiguous with regard to whether work on non-damaged components of a roof should be computed within the 25 percent threshold contained in the Code. As reflected in the Petition, this question of law affects Petitioner’s ability to advise its clients regarding the requirements of the Code within its professional duties as a licensed engineer. *Petition* at 1-2. Similarly, this question of law affects FRSA members’ ability to ascertain the requirements of the Code when contracting for and performing roof repairs throughout the state.

Consequently, the requirements of section 553.775(3)(a), Florida Statutes, have been met and the FBC should issue a declaratory statement regarding the question specified in the Petition in order to resolve Petitioner’s question regarding the enforcement or administration of section 706.1.1.

IV. FBC should adopt Petitioner’s interpretation of section 706.1.1 because it follows naturally from the Code and constitutes the only reasonable interpretation of the Code.

Section 706.1.1 specifies a threshold which limits repair, replacement, or recovery of an existing roofing system to not more than 25 percent of the total **roof area** or **roof section** within

any 12-month period. *Id.* However, section 706.1.1 does not clearly address whether this threshold encompasses work on non-damaged components of the roof required to implement such repairs.¹ Thus, section 706.1.1 is seemingly ambiguous regarding Petitioner's question of law.

However, petitions for declaratory statements are analogous to petitions for declaratory judgments, where Florida courts are guided by canons of legal interpretation to clarify purportedly ambiguous statutes and rules. *See B Citizens of State ex rel. Office of Pub. Counsel*, 164 So. 3d at 63 (Noting similarities between proceedings). Thus, Florida agencies are guided by the courts' canons of interpretation when construing seemingly ambiguous regulations.

One canon applicable in the present matter holds that, even though a legal provision may seem ambiguous "in isolation," it should be given meaning by reading the rest of the statute or rule. *Alonso v. State*, 17 So. 3d 806, 808 (Fla. 3d DCA 2009). Similarly, "[t]he doctrine of *in pari materia* is a principle of statutory construction that requires statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." *Taylor Morrison Servs. v. Ecos*, 163 So. 3d 1286, 1291 (Fla. 1st DCA 2015).

For the Petition at hand, Section 202 of the Code resolves any ambiguity in section 706.1.1 by defining *Roof Section* as: "A separating or division of a roof area . . . ***not including the roof area required for a proper tie-off with an existing system.***" Section 202, Florida Building Code, Existing Building (7th Edition) (emphasis added). In the context of roofing repairs, a non-damaged area which must be replaced merely to ***connect*** repaired areas to unrepaired areas constitutes a "roof area required for a proper tie-off" with the "existing system." Thus, under section 202, these

¹ As noted by Petitioner, the previous version of the Code specified: "Work on nondamaged components that is necessary for the required repair of damaged components shall be considered part of the repair and shall not be subject to the provisions of Chapter 7, 8, 9, 10 or 11." *Petition* at P. 2 (citing § 502.3, Florida Building Code, Existing Building (6th Edition)). However, in a reorganization of the Code for its Seventh Edition, this provision was seemingly removed from the Code without specific intention or due consideration.

components do not constitute a part of the “Roof Section” and are not computed within the percentage of the Roof Section which is to be repaired. *See Id.*

While the Code provides no definition for the term *Roof Area*, the term must be read consistently with the Code’s definition of *Roof Section*, leading to the same result. *Deen v. Wilson*, 1 So. 3d 1179, 1182 (Fla. 5th DCA 2009) (“*[P]ari materia* is a principle of statutory construction that requires [laws] relating to the same subject to be construed together” to develop consistent meaning). Thus, when calculating repair percentages, replacement of non-damaged areas required merely to *tie-off* into existing systems should not be computed as a part of the total *Roof Area* either. *See Id.*

Finally, the FBC is guided by the Florida courts’ “absurdity doctrine,” a principle that ambiguous laws should not be read in a manner which leads to absurd results. *See e.g., Maddox v. State*, 923 So. 2d 442, 448 (Fla. 2006). As Petitioner points out here, failing to read section 706.1.1 as Petitioner does would create an absurd result: “a relatively small roof repair could trigger a complete roof section replacement, depending on the area of the non-damaged roofing components removed and installed as part of the repair.” *Petition* at P. 3. This absurd result would require the demolition of otherwise viable roofing systems, resulting in massive economic waste, and as Petitioner notes, would unnecessarily burden homeowners across the state. *Id.* at 3. Therefore, an interpretation contrary to Petitioner’s view would likely conflict with the principles of legal interpretation handed down by Florida’s highest court. *See Maddox v. State* at 448.

WHEREFORE, Florida Roofing & Sheet Metal Contractors Association, Inc. hereby requests that the Florida Building Commission grant its motion to intervene and issue a declaratory statement consistent with the forgoing in relation to DS 2021-007.

Dated: March 16, 2021.

/s/ Travis S. McConnell

Travis S. McConnell, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following recipients via electronic mail and/or U.S. Certified Mail: **Agency Clerk's Office**, Department of Business and Professional Regulation, 2601 Blair Stone Rd., Tallahassee, FL 32399 (AGC.Filing@myfloridalicense.com), **Mo Madani**, Building Codes and Standards Office, Department of Business and Professional Regulation (mo.madani@myfloridalicense.com), **W. Justin Vogel**, Office of the General Counsel, Department of Business and Professional Regulation (wjustin.vogel@myfloridalicense.com), this 17th day of March, 2021.

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