

Petition # 217

Submitted By Thomason Scott

Date Submitted 05/20/2021

Comment The petitioner submitted and alleges that "Fla. Stat. § 553.79(5)(a) mandates the enforcing agency to require a special inspector to perform structural inspections on a threshold building. Fla. Stat. § 553.791(2)(a) provides fee owners the option to contract with provide providers for building code inspection services. Neither Fla. Stat. § 553.79, Fla. Stat. § 553.791, nor any other section of the Florida Statutes restricts a private entity's ability to perform private provider services and threshold inspection services on the same building." While there is no specific restrictions as mentioned by the petitioner they seem to have cherry picked through the statutes. FS 553.79 (5)(a) The special inspector may not serve as a surrogate in carrying out the responsibilities of the building official, the architect, or the engineer of record. (FBC-B 110.8.1). "the special inspector may not serve as a surrogate in carrying out the responsibilities of the building official" being key language in that if the special inspector was to perform all inspections they would take complete control from the Building Official who bears the sole responsibility of enforcement of the building codes. This is a position I would not willingly place anyone in, nor would I want to be in it. There has to come a point where doing what is best is for those we serve is more important than money, where protecting lives is more important than making another dollar, and where those tasked with protecting lives and property are able to do their job without having to deal with BS like this. Imagine if security guards at condominiums or gated communities decided they didn't need city or county EMS, Fire or Law Enforcement, because they are already there. How would that turn out? It's a similar scenario and if allowed a real slippery slope we don't want to go down.

Submitted By Michael Peter

Date Submitted 05/21/2021

Comment FBCB 110.8.1 "The special inspector may not serve as a surrogate in carrying out the responsibilities of the building official, the architect, or the engineer of record". Using the word "may" renders the code permissive and not a mandatory, additionally, the alternative plans review, or inspection service provided by the threshold inspector in accordance with FS 553.791 are alternative (not surrogate) to the service provided by the building official. One entity can assume the dual roles of threshold inspector and private provider if the statutory requirements for both roles are met.

Submitted By Michael Peter

Date Submitted 05/21/2021

Comment FBCB 110.8.1 "The special inspector may not serve as a surrogate in carrying out the responsibilities of the building official, the architect, or the engineer of record". Using the word "may" renders the code permissive and not a mandatory, additionally, the alternative plans review, or inspection service provided by the threshold inspector in accordance with FS 553.791 are alternative (not surrogate) to the service provided by the building official. One entity can assume the dual roles of threshold inspector and private provider if the statutory requirements for both roles are met.

Submitted By Michael Savage

Date Submitted 05/21/2021

Comment While FBCB 110.8.1 states that "The special inspector may not serve as a surrogate in carrying out the responsibilities of the building official, the architect, or the engineer of record", special attention has been paid to the term "may" and not the wording "may not". As defined the term "may" is a permissible term allowing an action or activity to take place, thusly not mandating the action, but permitting it. Conversely the wording in the statute as adopted is "may not", this has the exact opposite effect than what has been mentioned in a previous statement. "May not" by all legal standards means

that an action is placed under a "mandatory prohibition", it can not take place. The duty of a Building Official is to protect the public health, safety and welfare in the built environment, this does and many times includes the reviewing of licensing, qualifications and such, to ensure only qualified people are constructing said projects, whether contractor or Private Provider (PP) as noted in FL Statute 553. To allow a PP to act in the compacity of an trades inspector and a threshold inspector would on the surface appear to be a conflict as the PP company could have the propensity of benefiting from their official actions or influence on said projects, otherwise known as a "conflict of interest". This is an interesting situation that needs to be addressed via a commission interpretation based on it's far reaching effects in other jurisdictions around the state and not just Gainesville.

Submitted By Thomas Sputo

Date Submitted 05/23/2021

Comment I am a licensed Professional Engineer with a specialization in structural engineering, and a licensed Threshold Inspector. Since 1987, by practice has been located either in Alachua County or within Gainesville, I am a directly and materially affected party in this matter, as the ruling by the City of Gainesville limits my ability to perform threshold inspection services. In reading the memo issued by the City, the only rational given is in the first paragraph where they say that the building official interprets the code. That is true, but the City have to interpret some clause in the code, not make rules where none exist. The rest of the memo does not support the decision. It only states that inspections have to be made and who is responsible to whom. The State Legislature, in enacting the Building Code Act, specifically retained the ability to alter the code to itself, by requiring that any local amendment must be approved by the Florida Building Commission. This memo from the City has not met this criterion. Additionally, any amendment

must serve a public purpose. The City has not submitted any information to substantiate a public purpose. Their memo could be considered to question, without any grounds whatsoever, the professional ethics of any licensed professional engineer who would provide both threshold and private provider inspections. The City cannot provide any evidence that having the same entity provide both services has caused any public harm, nor that the level of inspection service provided has been lower than the prevailing legal standard of care. This practice by the City of Gainesville has the effect of restraining free and open trade and places undue restraint upon individuals and businesses doing business in the City. This is contrary to the goals of the State Legislature which seek to remove unnecessary barriers to business. I ask that this memo by the City of Gainesville be ruled illegal.

Submitted By	Paul Myers
Date Submitted	05/24/2021
Comment	Local building officials should have control over the inspection process within their jurisdictions to meet the legislative intent in FS 553.72 (2). It's not about controlling the free market; it's about maintaining the integrity of the inspection process. At the end of the project, the building official is mandated to issue a CO within 2 business days, placing their name and reputation on the line for a project that they or their inspectors had limited access to or participation in. It is critical the local building official has the confidence in the 3rd party inspections, both private provider and threshold, to issue the CO with integrity and confidence. Requiring the private provider and the threshold inspectors to be separate entities is a responsible and solid inspection decision by the building official, ensuring quality inspections in a demanding and fast paced construction industry and this decision should be upheld by the FBC. If our Threshold Inspection Program is to be diluted by this questionable practice, it's time to revisit this statutory requirement. There is no true necessity in requiring

threshold inspections on buildings of Construction Type VB, VA, IIIB, IIIA, or IV that are 5 stories or less and designed as conventional platform framing. These buildings are constructed, MEP rough-ins completed, and all this before any inspections are performed by the jurisdiction or 3rd party inspectors; there is NO opportunity to proactively prevent a building failure. The critical buildings are those requiring shoring and re-shoring as part of the construction process and those where inspections, testing, and structural performance is important in maintaining the structural integrity of the building during the construction process. There are no checks & balances in the same entity performing both private provider and structural threshold inspections on critical buildings, and this practice must be reviewed by the FBC.

Submitted By John Freeland

Date Submitted 05/25/2021

Comment Central to the issue is that it is established documented practice for the engineering company to send the same "designated representative" to somehow function simultaneously as responsible to the jurisdiction as well as responsible to the developer as a private provider at the same time. It is my understanding that the requirement for the threshold inspector was created to address a need for independent inspections separate from what is specified as the minimum in the FBC. I am conflicted when being asked to approve a special inspection plan when I know there will be no independence from any work that is being done as a the private provider. We need clarification as to whether or not a local jurisdiction has to accept this practice. If so we need to evaluate the efficacy of the threshold requirement. Without independence it only serves to increase overall construction costs by establishing a requirement for multiple inspection methodologies when in practicality only one is being provided.

Submitted By Drew Peeler

Date Submitted 05/25/2021

Comment It appears there is an assumption that private providers are a replacement for building officials. F.S. § 553.79(5)(a) and § 110.8.1 of the FBC read that the "special inspector may not serve as a surrogate in carrying out the responsibilities of the building official, the architect, or the engineer of record." However, the private provider is not a replacement for the building official. There is nothing in F.S. § 553.791, addressing alternative plans review and inspection, which says or implies that a private provider is a surrogate or substitute for the building official. In fact, private providers and building officials have separate and distinct roles with separate duties and responsibilities under § 553.791. The fee owner hires a private provider solely to provide building code inspection services with regard to that specific building. § 553.79(2), Florida Statutes. While building officials often perform those services, a local building official is "the individual within the governing jurisdiction responsible for direct regulatory administration or supervision of plans review, enforcement, and inspection..." § 553.791(g), Florida Statutes (emphasis added). Under § 553.791(9), even when a private provider has been hired by the fee owner, the private provider must provide notice to the local building official of the date and time of any inspections and the local building official may visit the building site as often as necessary to verify that the private provider is performing all required inspections. Therefore, a special inspector cannot be said to be serving as "a surrogate in carrying out the responsibilities of the building official" when that special inspector is also the private provider. Nothing in § 110.8 of the FBC restricts an otherwise qualified professional from assuming the roles of a special inspector and private provider on the same project. In both roles, the professional owes his or her duty to the AHJ.

Submitted By Paul Danforth

Date Submitted 05/26/2021

Comment

I am a Registered Engineer in FL since 1991 and a Special Inspector for threshold buildings since 1996. I have qualified hundreds of threshold inspection projects AND Private Provider (third-party) projects throughout the state, even before the Private Provider law went into effect in 2002. In almost all cases where Private Provider projects meet the criteria of a threshold building (any building which is greater than 3 stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons), I qualify BOTH the threshold inspections and Private Provider inspections for that project through the same firm. In some of those cases, my duly authorized representative(s) fill out both a private provider inspection form and a threshold inspection form since the scope of the inspections can vary. This issue is more about the inspector(s) than it is the firm providing the services. A firm can provide both services as long as the requirements for the building inspector and threshold inspector are being met. While the City tries to make a point that the functions of the Building Inspector and Special Inspector are completely separate and therefore cannot be performed by the same person (firm), this is completely contrary to what is allowed under Section 110.8.6 of the Florida Building Code - Building (7th edition): FBC 110.8.6, "The building department may allow a special inspector to conduct the minimum structural inspection of threshold buildings required by this code, Section 553.73, Florida Statutes, without duplicative inspection by the building department. The building official is responsible for ensuring that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes, or certified as a special inspector under Chapter 471 or 481, Florida Statutes (1 of 3)

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Date Submitted 05/26/2021

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I am a Registered Engineer in FL since 1991 and a Special Inspector for threshold buildings since 1996. I have qualified hundreds of threshold inspection projects AND Private Provider (third-party) projects throughout the state, even before the Private Provider law went into effect in 2002. In almost all cases where Private Provider projects meet the criteria of a threshold building (any building which is greater than 3 stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons), I qualify BOTH the threshold inspections and Private Provider inspections for that project through the same firm. In some of those cases, my duly authorized representative(s) fill out both a private provider inspection form and a threshold inspection form since the scope of the inspections can vary. This issue is more about the inspector(s) than it is the firm providing the services. A firm can provide both services as long as the requirements for the building inspector and threshold inspector are being met. While the City tries to make a point that the functions of the Building Inspector and Special Inspector are completely separate and therefore cannot be performed by the same person (firm), this is completely contrary to what is allowed under Section 110.8.6 of the Florida Building Code - Building (7th edition): FBC 110.8.6, "The building department may allow a special inspector to conduct the minimum structural inspection of threshold buildings required by this code, Section 553.73, Florida Statutes, without duplicative inspection by the building department. The building official is responsible for ensuring that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes, or certified as a special inspector under Chapter 471 or 481, Florida Statutes (1 of 3)

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Comment

In other words, if the person conducting threshold inspections is qualified as a building inspector under Chapter 468, then the building department has the option to accept those inspections for those inspections done by their own building department. If the inspector is not qualified, then the building department MUST perform the structural inspections required by the FBC in addition to those performed by the threshold inspector. But if a firm is providing both Private Provider and Threshold Inspections, then the firm is performing both the FBC required structural inspections and threshold inspections. There is nothing for the building official to ensure other than to make sure the authorized representatives meet the respective requirements of 553.791 (for FBC) and FAC 61G15-35.004(2) (for threshold). The firm can then make the business decision as to whether to utilize; a) One (1) inspector who meets both requirements for the structural inspections, or b) two (2) inspectors, meeting the respective requirements of the Florida Building Code and FAC 61G15-35.004(2) for the structural inspections. No matter which option is chosen, the statutory requirements of both the Florida Building Code and Florida Statutes regarding building inspections and threshold inspections are being met by the firm and their authorized representative(s). So even though Section 110.8.6 of the FBC gives the building department the OPTION of allowing a special inspector to conduct the minimum structural inspection of threshold buildings required by the code without duplicative inspection by the building department, that DOES NOT apply when same firm is providing separate inspections for both the structural inspections required by the FBC and the structural inspections required by the Threshold Inspection Plan. These inspections can be done by the same person if that person meets the requirements of both the FBC and one of the requirements of FAC 61G15-35.004(2).
(2 of 3)

Date Submitted 05/26/2021

Comment Keep in mind that the requirements for the authorized THRESHOLD inspector are outlined in FAC 61G15-35.004(2) which states: 61G15-35.004(2) Special Inspectors utilizing Authorized Representatives shall ensure the Authorized Representative is qualified by education, licensure, or training to perform the duties assigned by the Special Inspector. Effective January 1, 2017, those qualifications shall include: (a) Licensure as a professional engineer or architect, or (b) Graduation from a four-year engineering education program in civil, structural or architectural engineering, or (c) Possession of a professional Architecture degree, or (d) Registration as a building inspector or general contractor, or (e) Four years of Threshold Building inspection training on non-Threshold Buildings performed under the supervision of a Special Inspector who was in responsible charge of the trainee's work, or (f) Possess certification(s) in the following area(s); 1. If inspecting concrete components, certification from the American Concrete Institute (ACI) in concrete construction special inspection, 2. If inspecting masonry components, certification from the International Code Council (ICC) in structural masonry special inspection 3. ... So an inspector qualified as a building inspector under Chapter 468 is qualified to do the FBC required structural inspections AND the threshold required structural inspections. As a result, there isn't an approval required by the Building Official under FBC 110.8.6 to allow the qualified inspector to perform both inspections NOR is there any requirement that the inspector work for different firms. At the completion of a project, the qualifying "Special Inspector" and "Private Provider" is still responsible for signing a Certificate of Completion for the Private Provider Scope and a separate Certificate of Completion for the Threshold Scope to meet the requirements of FS 553.79 and 553.791. (3 of 3)