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Department of Business and Professional Regulation
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File #

**PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA BUILDING COMMISSION**

Petitioner/Company: Axis Management Inc.
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DS 2022-014

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Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on which the Declaratory Statement is sought:

Section 553.791, Florida Statutes
2017 Florida Building Code, Building, Section 110.1

Background:

Petitioner is a licensed general contractor currently operating in Northeast Florida. Petitioner routinely utilizes the alternative plans review and inspection procedures provided under Section 553.791, Florida Statutes, by hiring private providers for plans review and inspections, with the goal of increasing efficiency for itself and its customers and decreasing the burden on local building departments, particularly in smaller jurisdictions that do not have large building departments.

Petitioner is seeking clarification on certain of the inspection and audit provisions of Section 553.791, Florida Statutes, and Building Code Section 110.1 to ensure that such efficiencies can be realized and that potential duplication of efforts between private providers and local building departments may be reduced.

Section 553.791(1)(b)- Definition of "Audit":

"Audit" means the process to confirm that the building code inspection services have been performed by the private provider, including ensuring that the required affidavit for the plan review has been properly completed and submitted with the permit documents and that the minimum mandatory inspections required under the building code have been performed and properly recorded. ***The local building official may not replicate the plan review or inspection being performed by the private provider, unless expressly authorized by this section.*** (emphasis added)

Section 553.791(19), Florida Statutes:

“(19) Each local building code enforcement agency may audit the performance of building code inspection services by private providers operating within the local jurisdiction. ***However, the same private provider may not be audited more than four times in a month unless the local building official determines a condition of a building constitutes an immediate threat to public safety and welfare.*** Work on a building or structure may proceed after inspection and approval by a private provider if the provider has given notice of the inspection pursuant to subsection (9) and, subsequent to such inspection and approval, the work shall not be delayed for completion of an inspection audit by the local building code enforcement agency.” (emphasis added).

2017 Florida Building Code, Building, Section 110.1, General:

“Construction or work for which a *permit* is required shall be subject to inspection by the *building official* and such construction or work shall remain exposed and provided with access for inspection purposes until *approved*. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid. It shall be the duty of the owner or the owner’s authorized agent to cause the work to remain exposed and provided with access for inspection purposes. Neither the *building official* nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.”

Question:

If, in accordance with the provisions Section 553.791, a private provider performs building inspection services on a building project that has multiple permits in the same jurisdiction, and assuming the local building official does not identify a condition constituting an immediate threat to public and safety and welfare, then:

(a) Is the local building code enforcement agency limited to auditing a maximum of four (4) individual permit inspections (on a per permit basis) performed by the same private provider per month?

Or

(b) Does the local building code enforcement agency have the right to audit *all* of the private provider’s permit inspections for *all* of the permits issued for a building project in the jurisdiction up to four (4) times per month?

Summary:

Petitioner respectfully believes the answer to Question (a) above is “YES” and the answer to Question (b) above is “No”. Petitioner believes that, absent an immediate threat to public and safety and welfare, the local building code enforcement agency should not be able to audit a private provider’s inspections more than four (4) times per month on a “per permit” basis.

Section 553.791(19), Florida Statutes, specifically provides that “the same private provider may not be audited more than four times in a month unless the local building official determines a condition of a building constitutes an immediate threat to public safety and welfare.” Section 553.791(1)(b) specifically

provides that “the local building official may not replicate the plan review or inspection being performed by the private provider, unless expressly authorized by this section.” Code Section 110.1 for the Florida Building Code indicates that a separate inspection is required for the work that corresponds to *each* permit. When read together, Petitioner believes that the Statute and Building Code are clear that an audit of a private provider’s inspection must be limited to the specific permit that is the basis for the inspection, and the local building official should not overutilize the audit procedure (more than 4 times per month), which would be tantamount to “replicating” the inspections that were already performed by the private provider.

Petitioner believes the intent of Section 553.791 is, in part, to increase efficiency and decrease duplication of efforts between building departments and private providers. The alternative plan review and inspection procedure also provides work for private building inspectors, and the cost of the private inspections are borne by the project owner or general contractor. Furthermore, pursuant to Section 553.791, the fee owner of a project must indemnify, defend, and hold harmless the local government and local building official from any and all claims arising from the use of a private provider to perform building code inspection services, and the local government and local building official shall be immune from liability to any person or party for any action or inaction by a fee owner of a building, or by a private provider, in connection with building code inspection services. So, the project owner accepts additional liability for private provider inspections, while the local building department has no liability for the same. If a local building code enforcement agency is able to audit every single inspection for every single permit conducted by the private provider up to four (4) times per month, then it defeats the purpose of Section 553.791 and increases time and costs for all parties, including the local building department and taxpayers, and it improperly enables the building official to “replicate” the inspections performed by the private provider.

Respectfully Submitted,

Axis Management Inc.



William Gibbs, Esq.

Sodl & Ingram PLLC

Attorney for Petitioner

March 9, 2022