DS 2022-014 Axis Management Inc.

Summary of Issue:

Petitioner seeks clarification about the authority of local building enforcement agencies to audit the services of private providers.

Relevant Provisions:

553.791(1)(b): “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.

553.791(1)(d): “Building code inspection services” means those services described in s. 468.603(5) and (8) involving the review of building plans as well as those services involving the review of site plans and site work engineering plans or their functional equivalent, to determine compliance with applicable codes and those inspections required by law, conducted either in person or virtually, of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

553.791(1)(k): “Local building official” means the individual within the governing jurisdiction responsible for direct regulatory administration or supervision of plans review, enforcement, and inspection of any construction, erection, alteration, demolition, or substantial improvement of, or addition to, any structure for which permitting is required to indicate compliance with applicable codes and includes any duly authorized designee of such person.

553.791(1)(n): “Private provider” means a person licensed as a building code administrator under part XII of chapter 468, as an engineer under chapter 471, or as an architect under chapter 481. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square feet or less to residential buildings, the term “private provider” also includes a person who holds a standard certificate under part XII of chapter 468.

553.791(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.

Rule 28-1.001, Florida Administrative Code, states that “[a] petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner’s particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.”

Petitioner’s Question:

If, in accordance with the provisions of 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 safety and welfare, then:

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

Staff’s Suggested Answer:

Petitioner states that it is a licensed general contractor that routinely hires private providers for plans review and inspections, with the goal of increasing efficiency for itself and its customers. Petitioner states that it is “seeking clarification 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.”

Petitioner is neither a private provider of building code inspection services which would be subject to audit, nor a building code enforcement agency which would be performing such an audit. The purpose of a declaratory statement is to resolve a party’s questions about the applicability of a statute, rule, or order to its particular circumstances, so that it may select a proper course of action in advance. *See Chiles v. Dep’t of State, Div. of Elections,* 711 So. 2d 151, 154 (Fla. 1st DCA 1998). Courts have noted that “[d]eclaratory statement proceedings are not appropriate when the result is an agency statement of general applicability interpreting law or policy.” *Mental Health Dist. Bd., II B v. Fla. Dep’t of Health & Rehab. Servs.*, 425 So. 2d 160, 162 (Fla. 1st DCA 1983).

Because Petitioner seeks a statement which would determine the conduct of persons other than itself, and because the question is one of general applicability and not tied to any specific set of circumstances involving the Petitioner’s own potential conduct, the Commission declines to answer.