PETITION FOR HEARING BEFORE THE
FLORIDA BUILDING COMMISSION
Agency Case No.: _____
BORA Appeal No. 25-03

JACK A BUTLER, an individual,
Petitioner,
vs.
BROWARD COUNTY BOARD
OF RULES AND APPEALS,
Respondent.
_____/

RESPONSE BY THE BROWARD COUNTY BOARD OF RULES AND APPEALS TO PETITION FOR HEARING UNDER F.S. §553.73(4)(g)

COMES NOW, Defendant, THE BROWARD COUNTY BOARD OF RULES AND APPEALS, (hereinafter "BORA") by and through undersigned Counsel, and files this, its Response to Jack A. Butler's "Petition for Hearing under § 553.73(4)(g), Florida Statutes."

BRIEF SUMMARY

Petitioner urges the Florida Building Commission ("Commission") to do two things the Legislature never contemplated:

1. **Treat an administrative staff letter issued solely because Petitioner's filing was facially deficient as though it were a formal "decision of the countywide compliance review board,"** and
2. **Conduct a de novo merits review of Broward County's 2023 administrative amendments to the Florida Building Code ("FBC") without the predicate local proceeding that § 553.73(4) requires.**

Put simply, the petition asks the Commission to act as a *trial court of first instance* in a matter over which the statute grants it only **appellate** jurisdiction. That request should be rejected as will be shown below.

ANALYSIS, REVIEW AND RESPONSE

I. Petitioner's Petition Failed to Meet Condition Precedent as Stated in BORA's Declination of Review as Based on the Dismissal of Petitioner's Suit filed against BORA

A. Petitioner's claims were initially set forth in the lawsuit filed in the 17th Judicial Circuit on April 30, 2024 which was dismissed by the Court.

On April 30, 2024 Petitioner filed his sixty-seven (67) page lawsuit (the "Complaint") against BORA and a copy of the suit is attached hereto as **Exhibit "A."** The lawsuit asks for essentially the same relief as sought in the present action before the Florida Department of Business and Professional Regulation.

On 1, 2024, Defendant, BORA, filed its thirty-one (31) page Motion to Dismiss the Complaint for Failure to State a Cause of Action where Petitioner/ plaintiff failed to comply with conditions precedent set forth in F.B.C. Section 113.9.1 which clearly states:

> **113.9 Duties.**
>
> **113.9.1 Appeal from decision of Building Official, Assistant Building Official or Chief Inspector.**
>
> **The Board shall hear all appeals from the decisions of the Building Official, Assistant Building Official or Chief Inspector wherein such decision is on matters regulated by this Code from any person, aggrieved thereby, and specifically as set forth in Section 104.32,** "Alternate Materials, designs and methods of Construction and equipment." Application for Appeal shall be in writing and addressed to the Secretary of the Board.

See F.B.C. Section 113.9.1.

On July 1, 2024, Defendant (BORA) filed its Motion to Dismiss sdfa copy of which is attached hereto as **Exhibit "B."**

On July 5, 2024, Petitioner filed a twenty-one (21) page Statement in Opposition to BORA's Motion to Dismiss to which BORA filed a thirty-nine (39) page Reply' to Statement in Opposition on August 27, 2024.

On September 3, 2024, Petitioner filed a six (6) page Motion for Summary Judgment and at the same time, filed a seventeen (17) page Supplemental Statement in Opposition to Motion to Dismiss and Request for Judicial Notice. After review of Petitioner's pleadings, Counsel for BORA determined that there was nothing in the way of new, dispositive argument, and did not file any responsive pleadings.

On September 7, 2024, Petitioner filed a total of six-hundred and eighty-seven (687) pages of Exhibits in Support of Pleadings and on September 9, 2024, Petitioner filed his eighteen (18) page Statement of Facts. After review of Petitioner's pleadings, Counsel for BORA determined that there was nothing in the way of new, dispositive argument, and did not file any responsive pleadings.

On November 18, 2024 a one (1) hour special set hearing took place in the 17th Judicial Circuit before the Honorable Martin J. Bidwell, Circuit Court Judge, and the Court thereupon Granted BORA's Motion to Dismiss. Despite Petitioner's combined total of eight-hundred and sixteen (816) pages of argument and exhibits, versus BORA's combined total of seventy (70) pages of response and rebuttal, the Court granted BORA's Motion to Dismiss and entered its Order accordingly.

The Order was entered on November 22, 2024 which states inter alia:

> ORDERED AND ADJUDGED that Defendant's [BORA] Motion to Dismiss is: GRANTED **The Court finds that the claims set forth by Plaintiff [Jack Butler] fail to set out the requirements to establish a current, justiciable controversy sufficient for the Court to issue a declaration**; 2**. The Court finds that Plaintiff has failed to sufficiently plead compliance with conditions precedent through exhaustion of administrative remedies;** Plaintiff shall have thirty (30) days from November 18, 2024 to file an Amended Complaint if he so chooses.

See Order attached hereto as **Exhibit "C."**

Petitioner/ plaintiff did NOT file an Amended Complaint by the required thirty (30) days and the case remained active. On January 27, 2025, Defendant filed it Motion for

Dismissal with Prejudice and on January 30, 2025, Petitioner/ plaintiff filed its Response in Opposition to the Motion to Dismiss with Prejudice.

On January 30, 2025 and while the case was still active in the 17th Judicial Circuit Petitioner/ plaintiff filed his Appeal to BORA thereby attempting to split causes of action. As a result of same. BORA was initially unable to review, the Appeal due to principles of comity where the first action was filed with the Circuit Court and BORA must respect the Coun's right to review the matter until the matter is dismissed. or otherwise resolved by the Court at which time it would become a matter of *res judicata*.

Plaintiff/ Petitioner being made aware of same then voluntarily dismissed his Complaint in the 17th Judicial Circuit and filed essentially the identical claims in the form of an appeal to BORA. Petitioner makes numerous false representations as to what proceedings in the underlying Court action including misrepresenting the rulings of the Judge however, Defendant/defendant had retained a court reporter who transcribed the proceedings making it easy to see where Petitioner/ plaintiff attempted to take creative liberty and engage in a revisionist history of the Court's rulings. Defendant made record of all these items in its Review of Appeal 25-03, including an excerpt of the Court's ruling which is included in Defendant's **Exhibit "D."**

It must be noted that BORA's declining to review the Appeal by Petitioner, Butler was not a denial. Instead, BORA noted, just as the Judge did in the 17th Circuit, that Butler was free to file an appeal with BORA **after compliance with conditions precedent- as was Ordered by the 17th Circuit Court.**

B. Petitioner still fails to establish threshold standing

The April 28, 2025 declination letter issued by the Broward County Board of Rules and Appeals ("BORA") explained that under Florida law a party must be "substantially affected"

in order to invoke administrative review of a local technical amendment to the Florida Building Code stating *to wit*:

> "Under Florida law, a "substantially affected party" in the context of appealing a compliance review board's determination regarding technical amendments to the Florida Building Code is defined as an individual or entity whose substantial interests are directly impacted by the regulation, law, ordinance, policy, amendment, or land use or zoning provision in question. This includes owners or builders subject to the regulation or an association of such owners or builders whose members are affected."

Further providing

> "The term "substantially affected" is further clarified under Florida law to require a showing of (l) a real or immediate injury in fact and (2) that the interest affected falls within the zone of interest protected or regulated by the statute or rule. The injury must not be speculative or conjectural, and the interest must align with the purpose of the regulation or statute being challenged."

See Review of Appeal 25-03 attached hereto as Exhibit "."

The letter clearly outlines to the Petitioner how substantial interests require a party to suffer a concrete, non-speculative injury. Calder Race Course. Inc. v. SCF. Inc .,326 So.3d (Fla. 1st DCA 2021) Petitioner admitted he never submitted plans, never had plans rejected, and never received any code enforcement notice; his interests therefore remain "inchoate" and "conjectural," which Florida courts hold inadequate to confer standing. Village of Key Biscayne v. Department of Environmental Protection, 206 So.3d 788 (Fla. 3rd DCA) A party without a concrete stake in the application of a rule lacks standing, and this issue must be resolved before any administrative tribunal or reviewing authority can reach the merits. Florida Soc. of Ophthalmology v. State Bd. of Optometry, 532 So.2d 1279 (Fla.1st DCA 1988).

Even if Petitioner could manufacture standing, he never triggered BORA's statutory jurisdiction. Section 113.9.1 of the Broward Amendments to the Florida Building Code makes clear that BORA's authority is strictly limited to reviewing "decisions of the Building Official, Assistant Building Official, or Chief Inspector." The statute is not a general grant of authority

to entertain abstract complaints about local law; rather, it is a narrowly drawn remedial channel designed to afford administrative appeal to a party aggrieved by a permitting decision in a specific case.

> **113.9.1 Appeal from decision of Building Official, Assistant Building Official, or Chief Inspector**. The Board shall hear all appeals from the decisions of the Building Official, Assistant Building Official, or Chief Inspector wherein such decision is on matters regulated by this Code from any person, aggrieved thereby, and specifically as set forth in Section 104 32. Alternate materials, designs, and methods of construction and equipment application for appeal shall be in writing and addressed to the Secretary of the Board."

See Florida Building Code, Broward County Amendments 8th Edition

This requirement is not discretionary. It is jurisdictional. Florida courts are unambiguous in that failure to pursue that precise steps compliant with administrative processes requires dismissal for lack of subject-matter jurisdiction. City of Coconut Creek v. City of Deerfield Beach, 840 So. 2d 389 (Fla. 4th DCA 2003) Under Florida law, the failure to properly follow administrative procedure is a defect that precludes further judicial or administrative review. Raben-Pastal v. Coconut Creek, 573 So. 2d 298 (Fla. 1990)

Because Petitioner never applied for a permit, never received an adverse decision, and therefore never filed a proper appeal, BORA could not lawfully review his appeal on the unprovided merits its and neither can the Commission. The 28 April declination reminded Petitioner that this is the exclusive administrative remedy for contesting an ordinance in the local setting, and that exhaustion of this remedy is a mandatory prerequisite to seeking further review. As failure to comply with a statutory condition precedent, administrative remedies must be pursued and exhausted before seeking relief in court or before other administrative bodies. McKane Fam. Ltd. P'ship v. Sacajawea Fam. Ltd. P'ship, 211 So. 3d 117 (Fla. 4th DCA 2017), Kohl v. Blue Cross & Blue Shield of Fla., Inc., 988 So. 2d 654 (Fla. 4th DCA 2008).

It should be noted that Petitioner's continued attempts to circumvent or run over common sense safety requirements are akin to water attempting to find a crack in a dam. His continued digging is a blatant attempt to find a way to unearth redemption in post hoc litigation tactics. What appears to have occurred is a procedural sleight: Petitioner, having suffered an adverse ruling in circuit court, pivoted to BORA in the hopes of a more favorable venue. But no amount of forum shifting can cure his failure to first invoke BORA jurisdiction correctly. He cannot bootstrap standing or jurisdiction from the outcome of an improper court action. As BORA correctly observed, the appeal Petitioner filed was substantively unsupported and procedurally void from inception.

C. Petitioner's failure to comply with protocol for review.

Secondly, even if standing and statutory jurisdiction had hypothetically been present, neither of which are conceded, Petitioner's appeal remains incurably deficient because it was never properly filed under Board Policy 95-01. That policy, adopted by the Broward County Board of Rules and Appeals in 1995 and continuously in force to this day, establishes the minimum procedural requirements for initiating a valid appeal. It provides, without ambiguity, that the appeal form "**SHALL be filled out in its entirety. An incomplete form will not be accepted for processing.**" This mandate is not aspirational. It is a mandatory, jurisdictional prerequisite to administrative action. Petitioner's defective submission did not trigger the administrative process at all. His filing was invalid as submitted, was never docketed, and was expressly declined on that basis. There is no action for the Commission to review because no appeal ever came properly before BORA. This procedural failure is not remediable by later argument or legal theory; it is dispositive.

Petitioner's filing failed to meet even the basic threshold for consideration. The record confirms that in each of the fields BORA designates as essential to invoke jurisdiction

specifically, the **permit number**, **project address**, **date of official decision**, and **identity of the building official, Etc.** Petitioner instead inserted the placeholder "N.A." to each of the required parts of the appeals form not as a mistake but as a clear showing that no permit had been sought, no decision rendered, and no official involved.

The result is fatal. As BORA stated in its April 28, 2025 declination, this filing was "**facially deficient and non-docketable**." Under longstanding Florida law, **administrative agencies may not waive mandatory filing requirements that define their jurisdictional reach**. Bank of Port St. Joe v. State, 362 So. 2d 96 (Fla. 1st DCA 1978); Cann v. Dep't of Child. & Fam. Servs., 813 So. 2d 237 (Fla. 2d DCA 2002); Schmidt v. JJJTB, Inc., 357 So. 3d 208 (Fla. 2d DCA 2023).

Petitioner's defective submission did not trigger the administrative process at all. His filing was invalid as submitted, was never docketed, and was expressly declined on that basis. There is no action for the Commission to review because no appeal ever came properly before BORA. This procedural failure is not remediable by later argument or legal theory; it is dispositive.

The Petitioner is attempting to argue that any procedural defect is rendered irrelevant by his broader legal theory namely, that certain administrative amendments adopted after 2001 lack legal effect. But even if that theory were accepted for the sake of argument, it has no bearing on the enforceability of Policy 95-01. The policy was adopted in 1995, six years before the legislative changes Petitioner now contests and remains in continuous operation. It is a procedural framework, not a substantive regulation. As such, it is wholly unaffected by Petitioner's entire basis to challenge to post-2001 amendments. Florida courts have long held that procedural rules promulgated by administrative bodies, particularly those governing initial filings and docketing, are essential to the integrity of agency operations and must be strictly enforced. Cann v. Dep't of Child. & Fam. Servs., 813 So. 2d 237 (Fla. 2d DCA 2002).

Indeed, without a valid appeal on file, there is nothing before BORA no pending matter, no reviewable action, and no decision capable of reaching this Commission. Petitioner's failure to complete the form as required by BORA Policy 95-01 therefore not only defeats his administrative appeal it precludes the very existence of a "board decision" for purposes of review under § 553.73(4)(g) as procedural deficiencies can preclude the initiation of an appeal process. Cann v. Dep't of Child. & Fam. Servs., 813 So. 2d 237 (Fla. 2d DCA 2002), Walker v. State, 457 So. 2d 1136 (Fla. 1st DCA 1984).

Thirdly, BORA's April 28, 2025 declination of review properly invoked a separate and independent jurisdictional bar: Petitioner's attempt to prosecute the same underlying claims simultaneously in both judicial and administrative forums. When Petitioner submitted his purported administrative appeal on January 30, 2025, he was actively litigating the same challenge to the validity of Broward County's local building code amendments in the Seventeenth Judicial Circuit, Case No. CACE-24-005922. The filing in circuit court squarely contested the same provisions, relied upon the same factual assertions, and sought essentially the same relief namely, the invalidation of specific local amendments to the Florida Building Code on pre-emption and statutory compliance grounds.

Under Florida law, such duplicative litigation is impermissible. The doctrine against splitting causes of action prohibits a party from simultaneously prosecuting two actions arising from the same operative facts or seeking substantially identical relief in different venues. Leahy v. Batmasian, 960 So. 2d 14 (Fla. 4th DCA 2007), AMEC Civil, LLC v. DOT, 41 So. 3d 235 (Fla. 1st DCA 2010), Dep't of Agric. & Consumer Servs. v. Mid-Florida Growers, 570 So. 2d 892 (Fla. 1990). The rule against such forms of litigation exists to preserve judicial economy, protect against inconsistent results, and prevent parties from manipulating process to forum-shop.

BORA properly applied that doctrine in its declination letter, which notes that the issue, before BORA (procedural deficiencies aside), in the administrative appeal is identical to the issue before the Circuit Court. It further observed that the simultaneous filing of an administrative appeal and a judicial complaint on the same matter violates Florida's doctrine against splitting causes of action. Dep't of Agric. & Consumer Servs. v. Mid-Florida Growers, 570 So. 2d 892 (Fla. 1990); This reasoning is consistent with long-settled administrative law: when a party chooses to pursue judicial review of an agency action or challenges an agency's authority in court they must see that process through to conclusion. Commodores Point Terminal Corp. v. Fla. Towing Corp., 280 So. 2d 509 (Fla. 1st DCA 1973) Parallel pursuit of identical claims in administrative venues is not only disfavored but jurisdictionally improper. AMEC Civil, LLC v. DOT, 41 So. 3d 235 (Fla. 1st DCA 2010)

Importantly, BORA's declination was not framed as a permanent bar. The letter provided that administrative review may still be available once the judicial matter is resolved, provided the Petitioner satisfies the applicable procedural prerequisites. In this way, BORA acted with caution and comity, declining to engage on the merits not out of hostility to judicial review, but out of respect for the integrity of forum boundaries.

However, Petitioner's failure to cure the jurisdictional defects, such as the absence of a permit-level decision and the incomplete appeal form, before the statutory filing window closed, independently barred his administrative appeal. The rule against splitting causes of action does not override procedural requirements or jurisdictional prerequisites. In this case, the simultaneous litigation issue was resolved when Petitioner voluntarily dismissed his circuit court case and consequently the barrier created by simultaneous litigation was lifted only after the administrative filing had already lapsed on separate, unrectified grounds. Leahy v. Batmasian, 960 So. 2d 14 (Fla. 4th DCA 2007), AMEC Civil, LLC v. DOT, 41 So. 3d 235 (Fla.

1st DCA 2010), Dep't of Agric. & Consumer Servs. v. Mid-Florida Growers, 570 So. 2d 892 (Fla. 1990).

D. Petitioner's misrepresentations cannot be ignored.

Petitioner goes to great lengths to misrepresent the law by deliberately attempting to equate a legal determination of lack of standing with a Board decision. Petitioner's attempts to mislead the Department by numerous statements which are designed to mislead this Board, to wit:

> It was anticipated that Kramer, as general counsel to BORA, would represent the opposing party in that the issues presented in the challenge were legal in nature. Kramer and Petitioner would present their opinions, and then the BORA Board would decide the matter. What actually happened was Kramer provided his legal opinion to Barbosa, who then decided the matter as agency head. The question was never put before the BORA Board. So, even though the BORA Board did not formally act on the challenge, Barbosa's decision to deny the challenge petition and preclude a hearing on the matter serves as a final agency action with regard to processing the challenge at the local level under section 553.73(4)(f), Florida Statutes, and thereby makes the challenge ripe for appeal to the Commission under section 553.73(4)(g), Florida Statutes.

See Petition at pages 4-5

The statement that Petitioner's lack of standing serves as a "final agency decision" is a blatant misrepresentation of law. A lack of standing does not act as an adjudication on the merits of a case. See McCarney v. Ford Motor Co., 657 F.2d 230, 233 (8th Cir. 1981) ("[A] dismissal based on standing is not "on the merits" and therefore will not act as a bar to a later suit."); Batterman v. Wells Fargo Ag Credit Corp., 802 P.2d 1112, 1118 (Colo.App.1990) (noting that dismissal of a suit for lack of standing is also not "on the merits" of the underlying substantive claim and thus does not bar relitigation of cause of action previously asserted based on res judicata); Brown v. M & T Bank, 183 So.3d 1270 (Fla. 5th DCA 2016) citing Gilbert v. Nampa Sch. Dist. No. 131, 104 Idaho 137, 657 P.2d 1, 4 (1983) (holding that prior dismissal for lack of standing was not an adjudication on the merits under language identical to rule 1.420(b); subsequent suit not barred by res judicata.

> BORA rejected the challenge by ruling that Petitioner did not have standing. (Notably, BORA did not deny that it was the appropriate venue to hear the challenge; i.e., the countywide compliance review board required in section 553.73(4)(f), Florida Statutes.) **Petitioner asserts that there is no functional distinction between the agency's order that precluded the challenge hearing and the outcome had such a hearing been conducted.**

See Petition at page 9-10

Defendant, BORA didn't deny that it was the "appropriate venue to hear the challenge" however Petitioner's lack of standing makes it impossible to hear the case. Both the 17th Judicial Circuit and BORA recognize that the Florida Building Code is very clear and as previously noted, the requirements to establish standing are not discretionary, they are jurisdictional, i.e. mandatory, and BORA is prohibited from making exceptions. BORA is bound by the same laws as the Courts and it cannot confer standing when standing doesn't exist. *See* Kumar Corp. v. Nopal Lines, Ltd., 462 So.2d 1178(Fla. 3rd DCA 1985) (S*tanding is treated as "an element of the constitutional requirement that there be a 'case or controversy'; when thus applied, it acts as a limitation on the subject matter jurisdiction of the courts. In this context,* ***objections to standing, unlike [real party in interest] objections, cannot be waived*** *and may be raised by a federal court sua sponte*).

Petitioner cites an opinion drafted by BORA counsel , Charles Kramer on January 2, 2021 which concerns Florida Statutes 481.229 (exemptions from architecture licensing) and addresses the "home rule" authority of local municipalities to make local amendments to the building code so long as they are not in conflict with previously enacted state legislation. *See* Masone v. City of Aventura, 147 So.3d 492, 503 (Fla. 2014) ([with respect to the Home Rule Powers Act] "the Legislature "intended for municipal governments to have the power to enact local legislation on the same subjects and to the same extent as the state government, except in narrow circumstances where the Legislature has preempted a specific area of law to the state or where the local law conflicts with state law." At the time, the Statutes were mute as to the

necessity of plans submittals to be prepared by a licensed architect and Broward County required drawings of an architectural nature to be prepared by a licensed professional. With the publication of the Eighth Edition of the Florida Building Code, local municipalities cannot prohibit an unlicensed person from submitting architectural drawings as part of the permitting process. BORA recognized this and has enacted steps to modify its local code accordingly. Petitioner Butler is aware of this and was present at the most recent monthly BORA Meeting where the item was addressed on the Agenda. See BORA Agenda item 3 from July 19, 2025, attached hereto as **Exhibit "E."**

E. Petitioner is NOT substantially affected where Section 553.73(4)(g), does not Authorize Commission Review Absent a Decision

Petitioner predicates his petition to the Florida Building Commission on the theory that BORA's April 28, 2025, declination of review constitutes a final decision within the meaning of § 553.73(4)(g), Florida Statutes. That section provides, in relevant part, that:

> "A substantially affected person may appeal to the commission the local government's interpretation of technical provisions of the Florida Building Code **after the local board has ruled** on the interpretation."

This statutory language is plain. **it requires a "ruling" on the merits by the local compliance review board as a condition precedent to invoking the Commission's appellate jurisdiction.** BORA's declination letter, however, is not such a ruling. It is not a quasi-judicial determination of the legal validity of a local amendment. It is rather an administrative communication declining to docket the matter due to procedural and jurisdictional defects namely, the absence of a permitting decision, the lack of standing, and the incomplete appeal form. This determination was made in accordance with the ruling of the 17th Judicial Circuit which clearly recognized Petitioner's lack of standing so that there could be no Board decision.

Florida administrative law draws a sharp and well-settled distinction between **final agency actions** and **non-final procedural dispositions**. In Florida only final agency actions that

adjudicate the legal rights or obligations of parties are subject to judicial (or Commission) review., Philbrick v. Cty. of Volusia, 668 So. 2d 341 (Fla. 5th DCA 1996) instead, the threshold issue in determining whether a declination or communication is reviewable turns on whether it reflects a conclusive resolution of the party's substantive rights based on the agency's interpretation of applicable law. Fla. Stat. § 120.68(1); A & S Entm't, LLC v. Fla. Dep't of Rev., 282 So. 3d 905 (Fla. 3d DCA 2019)

BORA's declination does no such thing. The letter explicitly states that BORA cannot docket or hear an appeal unless, and until, it receives a complete appeal form and the appeal identifies an adverse decision by the Building Official. It further emphasizes that the Board has not reached the merits and expresses no opinion regarding the substance of the amendment in question. This is dispositive: where no adjudication occurred, and no agency findings or interpretations were issued, there is no "decision" to appeal.

Petitioner's invocation of § 553.73(4)(g) is not salvaged by analogy to situations in which agencies issue final decisions that are procedurally flawed. Florida courts have repeatedly held that procedural or jurisdictional rejections such as dismissals for untimely or incomplete filings as they do not qualify as final agency actions unless they resolve a party's substantive legal entitlements. Philbrick v. Cty. of Volusia, 668 So. 2d 341 (Fla. 5th DCA 1996) see also Fla. R. App. P. 9.030(b)(1)(C) (restricting appellate jurisdiction to decisions "that determine" a cause). That principle applies with full force here. BORA did not interpret any technical provision of the Code, nor did it determine the validity of any local amendment. It merely concluded that Petitioner had not satisfied the necessary prerequisites to trigger Board jurisdiction.

F. Petitioner's reliance on Florida Statues Section 120 is misplaced.

Petitioner states that:

> BORA is an agency of general government in a charter county operating under the authority of section 9.02 of the Broward County Charter with jurisdiction throughout Broward County. Section 553.73(4)(g), Florida Statutes, says filings, such as the instant Petition challenging BORA's local Code amendments, are governed by chapter 120. Thus, BORA meets the requirements for agency under chapter 120 as it is a governmental entity having jurisdiction in one county that is expressly made subject to chapter 120 in section 553.73(4)(g), Florida Statutes, when a challenge petition appeal is filed with the Commission.

See Appeal at page 9.

However, a review of Florida Statues Chapter 120 shows:

> 120.52 Definitions.—As used in this act:
>
> (1**) "Agency" means the following officers or governmental entities if acting pursuant to powers other than those derived from the constitution**:
>
> (a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chapters 163, 373, 380, and 582 and s. 186.504.
>
> (b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.
>
> (c) Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this chapter by general or special law or existing judicial decisions.
>
> **This definition does not include a municipality or legal entity created solely by a municipality;**

Petitioner's reliance on Florida Statutes Sec 120 is misplaced where BORA is an entity which was created by local ordinance 74-21 a copy of which is attached hereto as **Exhibit "F."** Where BORA is a legal entity created by a municipality (Broward County) Petitioner's argument fails *ab initio* because BORA is not an agency under authority misstated by Petitioner. Petitioner's arguments as to the adoption of local code amendments being subject to review as an "agency" action fail accordingly.

To hold otherwise and to treat BORA's legally correct refusal to entertain an incomplete appeal as if it were a decision by the Board would eviscerate the statutory framework. Section 553.73(4)(f)–(g) imposes a clear sequence: (1) a local permitting decision must issue; (2) the aggrieved party must timely appeal that decision to the compliance review board; (3) the board must rule on the Code interpretation; and only then (4) may the matter be reviewed by the Commission. Petitioner seeks to collapse this sequence by asserting Commission jurisdiction in the absence of any adjudicatory step. But the Commission's authority is appellate, not original. It may affirm, reverse, or modify decisions rendered below, it cannot create a record where none exists.

BORA's declination cannot and does not qualify as a final agency action. The Florida Supreme Court has set forth a tripartite standard: (1) whether procedural due process was accorded; (2) whether the essential requirements of law were observed; and (3) whether the decision is supported by competent, substantial evidence. Philbrick v. Cty. of Volusia, 668 So. 2d 341 (Fla. 5th DCA 1996) A declination issued due to a procedurally deficient and jurisdictionally defective filing, where no substantive record was created and no interpretation issued, fails this test categorically. The declination did not result from a weighing of evidence, an application of law to fact, or the resolution of a disputed legal right it was a threshold rejection based on facial insufficiency.

II. Petitioner's Statutory Theory Under § 553.73(4)(a) Misrepresents the Scope of Local Amendment Authority and Seeks Pre-Enforcement Review in Violation of Florida Law

Petitioner misinterprets § 553.73(4)(a) by claiming that local governments may only adopt "technical" amendments to the Florida Building Code, and that BORA's administrative provisions particularly those involving submission requirements, digital stamps, and permit prerequisites fall outside that authority. This argument finds no support in the statutory text, legislative history, or applicable precedent. To the contrary, F.S. § 553.73(4)(a) expressly

recognizes that local governments may adopt administrative provisions to "implement the Florida Building Code," so long as those provisions do not conflict with statewide technical standards. The statute provides in relevant part:

> "Local governments may adopt amendments to the administrative provisions of the Florida Building Code which are more stringent than the minimum standards contained in the Code, **provided such amendments are not less stringent than the Code and do not conflict with state law**."

BORA's administrative amendments fall squarely within this grant of authority. The requirements for digital plan submission, electronic seals, permit documentation, and other process-based mechanisms do not modify technical construction standards. Rather, they serve to structure the procedural framework through which compliance with those standards is verified and enforced. Florida law has long acknowledged that local governments require discretion in tailoring administrative rules to the scale and complexity of their jurisdictions. Miami-Dade Cty. v. Miami Gardens Square One, Inc., 314 So. 3d 389 (Fla. 3d DCA 2020)

Petitioner's position collapses these categories by treating administrative process requirements as if they were building methods and then argues that any procedural regulation not found verbatim in the Model Code must be struck. That interpretation would render F.S. § 553.73(4)(a) meaningless and override the Legislature's clear intent to preserve local enforcement discretion. D'Agastino v. City of Miami, 220 So. 3d 410 (Fla. 2017)

Petitioner's argument also fails to account for the structure of the Florida Building Code adoption process. F.S. §553.73(4)(a) provides that all entities authorized to enforce the Florida Building Code shall comply with the Code and enforcement shall be through the applicable local enforcement agency, implicitly affirming that the form and substance of enforcement including documentation, format, and pre-permitting submissions are local matters so long as they do not undermine technical uniformity. The BORA provisions Petitioner challenges such as the requirements for electronically sealed plans, designated architects of record, or pre-

permit documentation are precisely the types of administrative procedures this section contemplates.

Furthermore, the Florida Supreme Court has made clear that preemption is not presumed, particularly where the Legislature expressly authorizes concurrent or supplementary regulation. The text of F.S. § 553.73(4)(a) not only allows but encourages local amendments to administrative procedures where justified by need and where not in conflict with technical mandates.

Finally, the Petitioner's appeal to F.S.§ 163.211 (municipal preemption) is inapposite. That statute concerns *land use* and *zoning preemption*, not the procedural enforcement of the Florida Building Code. The Legislature has never extended F.S. § 163.211's preemptive effect to Ch. 553, which governs building codes. Nor would it make sense to do so, as the Legislature has already provided a comprehensive field-based framework for building regulation that expressly preserves local enforcement flexibility. See F.S. § 553.72(2), Fla. Stat. ("It is the intent of the Legislature that local governments have the power to inspect all buildings and structures in their jurisdictions and to enforce the Florida Building Code.").

III. BORA's Authority to Adopt Administrative Amendments Is Explicitly Recognized Under Section 553.73, Florida Statutes, and Is Not Limited by the Absence of Technical Amendment Language (claim 1)

Petitioner's opening argument asserts that BORA, as a county-level agency, lacks authority to adopt local administrative amendments to the Florida Building Code because F.S. §553.73(4), enumerates only the authority to adopt "local technical amendments." According to Petitioner, this enumerated authority acts as a limitation by omission, prohibiting the adoption of any administrative provisions not explicitly authorized in subsections (4)(b) and (4)(c). This argument misrepresents the structure of the statute, misquotes its operative language, and relies on a flawed premise that administrative amendments fall outside the scope

of F.S. §553.73 altogether. In fact, the express language of section 553.73(4)(a) provides a clear and affirmative grant of authority to local governments to adopt more stringent administrative provisions, provided they do not conflict with state law.

The relevant statutory text reads:

> "Local governments may adopt amendments to the administrative provisions of the Florida Building Code which are more stringent than the minimum standards contained in the Code, provided such amendments are not less stringent than the Code and do not conflict with state law." § 553.73(4)(a)

This subsection stands as an independent and sufficient basis for BORA's adoption of the local administrative provisions at issue here. It imposes only three conditions: the amendments must be (1) "administrative" in nature, (2) "more stringent" than the baseline Code, and (3) "not in conflict with state law." Nothing in subsection (4)(a) limits this authority to cities or excludes counties, nor does it impose the same evidentiary or triennial review requirements associated with technical amendments under subsections (4)(b) through (4)(f). Indeed, the Legislature's decision to create a separate grant of authority for administrative amendments in (4)(a), distinct from the technical amendment process of (4)(b), must be given legal effect under settled principles of statutory construction. See State v. Mark Marks, P.A., 698 So. 2d 533, 541 (Fla. 1997) ("The use of different language in closely related statutory provisions is presumed to be intentional.").

Petitioner's attempt to suggest that the lack of administrative amendment language in subsection (4)(b) renders all administrative amendments unlawful is particularly misplaced. Subsection (4)(b) governs only local technical amendments and contains procedural prerequisites such as findings of local need, anti-discrimination provisions, and Commission review designed to ensure consistency in the technical standards of construction across Florida. It does not displace or subsume the more flexible provisions of (4)(a), which expressly accommodate procedural and enforcement-related adaptations at the local level. These

adaptations include by way of longstanding practice submission protocols, form requirements, digital signature mandates, designated agents of record, and similar procedural mechanisms that facilitate code enforcement without modifying underlying technical criteria. Moreover, F.S. §553.72(2), which articulates the legislative intent behind the Florida Building Code, makes clear that the Code is not intended to preempt all local authority, particularly as to enforcement. It states:

> "It is the intent of the Legislature that local governments shall have the power to inspect all buildings, structures, and facilities within their jurisdictions to enforce the Florida Building Code, subject to the limitations set forth in this part."§ 553.72(2), Fla. Stat. (2025).

To hold that BORA is without authority to adopt administrative procedures for enforcing the Code such as rules governing submission formats, stamping requirements, or permit review documentation would directly undermine this legislative directive and render section 553.73(4)(a) meaningless. Phantom of Clearwater, Inc. v. Pinellas Cty., 894 So. 2d 1011 (Fla. 2d DCA 2005)

Petitioner's claim is further undermined by the fact that the Florida Building Code itself anticipates the existence of local administrative provisions. Chapter 1 of the Florida Building Code, which is not adopted by the Commission and is instead reserved for local enforcement procedures, exists for the express purpose of allowing local jurisdictions to tailor procedural and permitting frameworks to their local conditions. In this context, BORA's administrative amendments such as those governing digital seal requirements, architectural plan formatting, or the designation of responsible parties are not only authorized but expected as part of the Code's implementation scheme. 2003 Fla. Div. Adm. Hear. LEXIS 564, 2003 Fla. Div. Adm. Hear. LEXIS 564

To the extent Petitioner relies on the legislative revisions contained in Chapter 2021-201, Laws of Florida, to argue that administrative amendments must now be treated identically to

technical amendments, this reading is unsupported. The 2021 revisions reorganized subsection (4) and added procedural clarifications, but they did not repeal or alter the independent grant of authority contained in subsection (4)(a). The Commission has not interpreted these changes to require that administrative amendments be justified through the evidentiary showing of local need required by (4)(b), nor has any Florida court held as much. The Legislature could have collapsed these subsections had it intended to impose uniform procedures across amendment types. It did not. D'Agastino v. City of Miami, 220 So. 3d 410 (Fla. 2017); Miami-Dade Cty. v. Miami Gardens Square One, Inc., 314 So. 3d 389 (Fla. 3d DCA 2020)

IV. Petitioner's Preemption Argument Misstates the Scope of State Law and Mischaracterizes BORA's Amendment Authority under the Florida Building Code (claim 2)

Petitioner's second claim rests on a mischaracterization of BORA's role under § 553.73(4), Florida Statutes, a strained reading of the relevant licensing statutes, and, critically, a reliance on outdated legal commentary that pertained to a prior version of the Florida Building Code no longer in force.

At the heart of this claim is Petitioner's contention that BORA's amended version of Section 107.1 improperly removes his ability, as a non-licensed residential designer, to submit construction documents for residential projects exceeding $30,000. He asserts that this violates F.S. §481.229(1)(b), which exempts certain residential work from architectural licensure, and that the amendment constitutes a prohibited form of local occupational licensing under F.S. § 163.211. These arguments are legally inaccurate and procedurally inapposite. 2003 Fla. Div. Adm. Hear. LEXIS 564, 2003 Fla. Div. Adm. Hear. LEXIS 564; Miami-Dade Cty. v. Malibu Lodging Invs., LLC, 64 So. 3d 716 (Fla. 3d DCA 2011)

To begin, the local amendment in question is not a licensing requirement. It does not purport to restrict who may engage in a profession or require an occupational credential to perform residential design work. Rather it operationalizes the discretion afforded under unamended

Section 107.1 of the model FBC-Building, which provides that "[w]here special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional." BORA's amendment merely provides criteria specifically a cost threshold under which those "special conditions" are deemed to exist. This is a construction safety standard, not an occupational license issue. As such, it falls squarely within the authority granted to local jurisdictions to amend the Florida Building Code under F.S. § 553.73(4)(c).

Petitioner's further argument that these local requirements amount to unlawful occupational licensing under F.S.§163.211 is a categoric error. Florida Statutes §163.211 preempts local governments from imposing new *licensing schemes*, not from administering building code standards within the framework authorized by state law. Petitioner fails to appreciate that preparing documents for submission to a building department is not the same as practicing a profession in the regulatory sense addressed by Chapter 481. Indeed, the exemptions in F.S. § 481.229(1)(b) are not unlimited where they excuse certain residential design services from licensure, but they do not insulate such work from all regulatory oversight particularly not from code-based documentation requirements linked to project valuation and engineering requirements set forth in F.S. § 471. Fla. Const. Art. VIII, § 2; D'Agastino v. City of Miami, 220 So. 3d 410 (Fla. 2017)

Petitioner also relies heavily on a 2021 legal memorandum authored by BORA's counsel regarding the applicability of certain home rule principles and the coexistence of local and state law. However, that memorandum was explicitly issued in the context of the *Seventh Edition* of the Florida Building Code. The current edition in force is the *Eighth Edition*. The legal effect of any advisory memorandum tied to a prior edition of the Code is, at best, historical. Any argument that hinges on interpretations of a superseded version of the Code lacks legal relevance, particularly in the absence of any continuing reliance interest or formal

incorporation into the current administrative framework. Miami-Dade Cty. v. Malibu Lodging Invs., LLC, 64 So. 3d 716 (Fla. 3d DCA 2011)

To be clear, the 2021 memorandum provided a good-faith interpretation of the authority conferred on BORA by its charter and the **then current Code**. That memorandum made no assertion of local supremacy over state law, and in any case, it no longer reflects the operative legal landscape. Petitioner's continued invocation of this obsolete opinion especially to suggest overreach by BORA is misplaced and inappropriate. BORA is not invoking that memorandum to justify its present actions, and its amendments to Section 107 stand or fall on the authority granted by the *current* version of the Florida Building Code and applicable statutes not on outdated legal commentary.

Further, Petitioner's argument that the $30,000 valuation threshold is arbitrary or unequal fails to appreciate the purpose of cost-based triggers within the Florida Building Code. Valuation thresholds are routinely used to stratify regulatory oversight based on the complexity and scale of a project. The Code employs valuation metrics not as a licensing tool, but as a risk stratification mechanism. These are policy judgments the Code and its local amendments are entitled to make so long as they are rationally related to legitimate government interests, such as safety, efficiency, and uniformity in permit review. D'Agastino v. City of Miami, 220 So. 3d 410 (Fla. 2017)

Lastly, Petitioner's assertion that BORA is not a "local board or agency" authorized to administer or interpret the Florida Building Code under § 553.73(1)(e) is flatly contrary to the governing documents of Broward County and the Commission's historical recognition of BORA's authority under F.S. §553.73(4). BORA acts as the centralized code interpretation and appeals body for the county and its municipalities. Its role is precisely the type of delegated

local authority contemplated by Florida's Building Code structure. Miami-Dade Cty. v. Malibu Lodging Invs., LLC, 64 So. 3d 716 (Fla. 3d DCA 2011)

Accordingly, none of Petitioner's arguments under Claim 2 demonstrate legal error or statutory conflict. The challenged amendments are authorized by F.S. §553.73(4), do not constitute prohibited licensure, and are not invalidated by the 2021 memorandum, which predates the current edition of the Florida Building Code and holds no operative force in this proceeding. The Commission must decline to indulge this attempt at confabulation and the efforts to fabricate legal error and statutory conflict where none exist and reject Claim 2 in its entirety.

V. BORA's Adoption of Local Amendments Was Lawful and in Full Compliance with Section 553.73(4), Florida Statutes (Claim 3)

Petitioner alleges that the Broward County Board of Rules and Appeals ("BORA") failed to adhere to the statutory process required for adopting local amendments to the Florida Building Code as set forth in F.S. §553.73(4), Florida Statutes. This allegation is not only factually unsubstantiated but is premised on a fundamental misreading of the statutory framework, a misunderstanding of BORA's longstanding legal and functional status within Broward County, and a strained construction of legislative text. When the governing statute is properly interpreted in context, and when BORA's 2023 proceedings are reviewed in light of the actual record, it becomes evident that Petitioner's claim lacks merit in both law and logic.

To begin, the threshold claim that BORA is not a lawfully constituted compliance review board because it was not created by interlocal agreement ignores both the plain statutory text and the historical operation of BORA within the framework of Florida law. Florida Statutes §553.73(4)(f) provides that:

> "Local technical amendments to the Florida Building Code may not be rendered effective until they have been reviewed and found not to conflict with the Florida Building Code by a compliance review board established through an interlocal agreement among local governments within the county."

Petitioner interprets this provision to mean that unless the compliance review board was created by a formal interlocal agreement under F.S. §163.01, it lacks jurisdiction to review or ratify local technical amendments. That position is unfounded. The statute does not operate retroactively to nullify existing charter-based or ordinance-based countywide boards that already function in this role. BORA was adopted as an Ordinance in 1974 by Broward County. Ordinance No. 74-21 and operates under express county charter authority. It has since that time been universally recognized by local jurisdictions within the county and by the Commission itself as the entity responsible for coordinating countywide technical code review and adjudication. Petitioner's suggestion that BORA must dissolve and reform under a new interlocal agreement in order to remain statutorily valid is not grounded in law and, if taken seriously, would invalidate dozens of long-standing regional administrative bodies across the state. The function of F.S. §553.73(4)(f) is to ensure that counties without an existing compliance board coordinate to form one. It is not a legislative trapdoor to disqualify boards already lawfully constituted and long-operational. The statute requires function, not form. 2003 Fla. Div. Adm. Hear. LEXIS 564, 2003 Fla. Div. Adm. Hear. LEXIS 564

Petitioner next argues that BORA failed to comply with the procedures for adopting technical amendments under F.S. §553.73(4)(b). Once again, the claim is premised on a misunderstanding of what the statute actually requires. The relevant language is as follows:

> "Local governments may, subject to the limitations in this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Florida Building Code. A local government may adopt technical amendments that address local needs if:
>
> 1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before

> the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need."

Petitioner's argument assumes that this subsection imposes an evidentiary standard akin to a trial or quasi-judicial hearing. It does not. This is a legislative determination made in the ordinary course of local government lawmaking. BORA provided proper notice of its public hearing; the hearings were held in compliance with open government requirements; and the determination of need was made legislatively by the voting members of the Board after receiving staff reports and legal guidance. Florida law has long recognized that such legislative findings are presumed valid and do not require formal evidentiary development unless specifically required by statute. There is no such requirement here. Petitioner fails to identify any specific amendment that lacked an articulated local need, nor do they provide any credible basis to suggest that BORA exceeded the bounds of its discretion in determining that the proposed amendments were necessary to address local enforcement realities.

Petitioner further contends that BORA failed to include a fiscal impact statement as required by F.S. § 553.73(4)(h), which provides:

> "An amendment adopted under this subsection must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and the impact to property and building owners and industry relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance."

This provision, as Petitioner acknowledges, expressly prohibits the use of a fiscal impact statement or its contents as a ground for challenging the legal validity of a local amendment. Petitioner attempts to circumvent this restriction by arguing that the absence of a fiscal impact statement, as opposed to its substance, is a fatal procedural defect. This

interpretation not only ignores the plain meaning of the statute, but also undermines its purpose. If the Legislature intended to make the fiscal impact statement a jurisdictional prerequisite, it would have said so. Instead, it expressly prohibited any challenge "for compliance" on the basis of the statement. The statutory command does not distinguish between a flawed statement and an absent one. Moreover, the record demonstrates that BORA staff did in fact provide analysis of enforcement impact and implementation feasibility analysis which satisfies the purpose of the fiscal impact requirement, even if not labeled as a standalone document. Petitioner's claim fails both in law and on the administrative facts.

Petitioner also misrepresents the legal consequence of the Florida Building Commission's decision not to incorporate BORA's earlier local amendments into the 8th Edition of the Code. This omission is not a finding of illegality, nor is it a judgment of noncompliance. F.S. §553.73(4)(e) makes clear that inclusion in the next edition of the Code is governed by rule and is a discretionary act of codification. The relevant provision reads:

> "An amendment to the Florida Building Code shall be adopted by the commission by rule pursuant to chapter 120."

The triennial review process does not render advisory or adjudicative findings on the validity of local amendments. It is instead a rulemaking function within the Commission's broader responsibility to maintain a current and integrated Code. Local amendments that are not adopted into the statewide Code are not invalid; they are simply required to be re-adopted locally to remain in force. That is precisely what BORA did in 2023. Petitioner's suggestion that the Commission's silence somehow annuls BORA's authority is unfounded and would contravene both the home rule structure of the Florida Building Code and the text of the statute itself.

Finally, Petitioner's insistence that BORA violated the statute by adopting its amendments in grouped packages rather than one-by-one is not grounded in law. Section

553.73(4)(b) contains no requirement that amendments be passed individually or debated separately. The only statutory requirement is that they be adopted after a public hearing and a legislative finding of local need. That standard was met. BORA members received the proposed amendments in full, reviewed accompanying reports and revisions, and adopted them after public comment. The law does not prohibit collective adoption. Petitioner's suggestion that legislative amendments must proceed as discrete items has no textual foundation and conflicts with the realities of local government procedure.

Taken as a whole, Claim 3 offers no legal or factual basis to overturn or question the validity of BORA's 2023 amendment process. The allegations reflect a policy disagreement rather than a procedural violation. The Commission should decline to indulge this attempt to convert legislative discretion into a procedural trap, and should reject Claim 3 in its entirety.

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. Mail: Broward County Board of Rules and Appeals, I N. University Dr., Ste 35008, plantation, FL 33324. Email: ABarbosa@broward.org; and Petitioner, Jack Allison Butler, 301 Avalon Road. Winter Garden Florida 34787, abutler@mpzero.com on this 25th day of July, 2025.

BY /s/ Charles M. Kramer.
Charles M. Kramer, Esq., B.C.S.
Florida Bar No.: 133541
Broward County Board of Rules and Appeals
2900 N. University Drive, Suite 36
Coral Springs, Florida 33065
P: (954) 340-5955 F: (954) 340-6069
cmk@ckramerlaw.com
tinas@ckramerlaw.com

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

Case No.: _____

Division: Civil

JACK A BUTLER, an individual,
Petitioner,

vs.

BROWARD COUNTY BOARD
OF RULES AND APPEALS,
Respondent.
_____/

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

/s/ Jack A Butler
Plaintiff, *pro se*
301 Avalon Road
Winter Garden, FL 34787
(407) 717-0247
abutler@mpzero.com

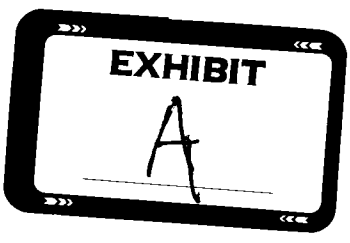


TABLE OF CONTENTS

TABLE OF CITATIONS

Cases (The cases cited here do not include those appearing in quotes from cited cases.)

Note: All Fla. Bldg. Comm'n rulings on petitions for declaratory statement listed above are available at https://www.floridabuilding.org/bc/bc_list.aspx.

Florida Statutes (All references in this Complaint are to sections in the 2023 version unless otherwise noted.)

- §553.72
- §553.73
- §553.74
- §553.77
- §553.775
- §553.79
- §553.80
- §553.898

Laws of Florida

- Ch. 71-575, Special Acts of 1971
- Ch. 72-483, Special Acts of 1972
- Ch. 74-437, Special Acts of 1974
- Ch. 98-287
- Ch. 2000-141
- Ch. 2021-201

Other Citations

- 44 C.F.R. 60.6
- BORA amendments to the Florida Building Code, available at https://www.broward.org/CodeAppeals/Pages/AmendmentsInterpretations.aspx
- BORA Minutes of the Board's Oct. 12, 2023, available at https://www.broward.org/CodeAppeals/Documents/Oct_12.pdf
- BORA Minutes of the Board's Nov. 9, 2023, available at https://www.broward.org/CodeAppeals/Documents/Nov_9.pdf
- BORA Minutes of the Board's Dec. 14, 2023, available at https://www.broward.org/CodeAppeals/Documents/Dec_14v2.pdf
- BORA, *Response to Petition for Non-Binding Advisory Opinion by Jack A Butler*, in Fla. Bldg. Comm'n Non-Binding Advisory Opinion No 001, available at https://www.floridabuilding.org/fbc/commission/FBC_1223/Code_Admin_Response_to_Petition_for_nonbinding.pdf
- *Broward County Board of Rules and Appeals Motion for Leave to Intervene before the Florida Building Comm'n* in Fla. Bldg. Comm'n Case No DS 2023-037
- *Broward County Board of Rules and Appeal Motion for Leave to Intervene* in Fla. Bldg. Comm'n Case No DS 2023-53, available at https://www.floridabuilding.org/fbc/commission/FBC_0124/Code_Admin_Response_to_Petition_for_Declaratory_Statement.pdf
- City of Miami Ord. 08-14, adopted Feb. 5, 2008
- City of Miami Ord. 12-57, adopted July 3, 2012
- City of Miami Ord. 23-70, adopted Sep. 6, 2023
- Florida Building Code, 7th Edition (2020)
- Florida Building Code, 8th Edition (2023)
- Informal opinion issued by Christopher R. Reeves, P.E., Director, Architectural & Engineering Services, International Code Council on Nov. 27, 2023 (Exhibit A)
- Miami-Dade County Ord. 08-14, adopted Feb. 5, 2008

- Op. Att'y Gen. Fla. 94-84 (1994), available online at https://www.myfloridalegal.com/ag-opinions/regulation-of-construction-by-ownerbuildercontractor
- Op. Att'y Gen. Fla. 94-105 (1994), available online at https://www.myfloridalegal.com/ag-opinions/municipalitys-auth-re-proposed-landscape-plans-
- Respondent's online statement of purpose, available at https://www.broward.org/Intergovernmental/pages/boardofrulesandappeals.aspx
- Section 9.02 of the Broward County Charter, available at https://www.broward.org/Charter/Documents/Charter.pdf

Notes:

1. The statewide version of the Florida Building Code (all editions) is available online at https://codes.iccsafe.org/codes/florida.
2. All local amendments to the Florida Building Code are available online at https://www.floridabuilding.org/bc/bc_lst.aspx.

SUMMARY OF THE CASE

Plaintiff, JACK A BUTLER ("Butler" or "Plaintiff"), acting as his own attorney *pro se*, hereby files this Complaint for Declaratory Judgment and Injunctive Relief against Respondent, the Broward County Board of Rules and Appeals ("BORA," "Board," or "Respondent"), and alleges:

1. Plaintiff is an unregistered residential designer and certified residential builder practicing in the State of Florida. Petitioner does not use the work title of 'architect' and does not hold himself out to be one. He is a residential designer operating under the exemptions provided in Florida law; e.g., section 481.229, Florida Statute.

2. Respondent is an agency of Broward County, Florida, government established by section 9.02 of the County Charter for the purpose of aiding enforcement of the Florida Building Code.

3. The 2023 Version (8th Edition) of the Florida Building Code was adopted by the Florida Building Commission through rulemaking under the authority of sections 553.73 and 553.76, Florida Statutes, for statewide enforcement by county, municipal, and other building safety agencies.

4. Section 553.73(4), Florida Statutes, authorizes local governments to adopt amendments to the Florida Building Code under certain enumerated circumstances and in accordance with a prescribed process. That prescribed process includes a requirement for local amendments to be adopted by ordinance.

5. Plaintiff seeks a declaratory judgment that the local amendments adopted by BORA in an attempt to modify the 2023 Florida Building Code, allegedly under the authority of section 553.73(4), Florida Statutes, are null and void on the grounds that they: (1) were adopted in violation of Plaintiff's due process and equal protection rights; (2) are not supported by

competent and substantial evidence; (3) were not adopted in conformance with the requirements of Florida law; (4) conflict in significant ways with Florida law governing the licensing of various professions and the State's pre-emption thereof; and (5) vest unfettered power in a single administrative position without any substantive guidance on how decisions are to be made.

6. Plaintiff further seeks injunctive relief to remove the local amendments from the Florida Building Code, as it is enforced within Broward County and the included municipalities.

7. Because Plaintiff alleges that one or more of the grounds for which a declaratory statement is sought are based on violations of the U.S. and Florida constitutions by Respondent, the notice requirements of section 86.091, Florida Statutes, and Rule 1.071 apply.

8. Although Respondent describes itself as "an administrative, quasi-judicial body created by Special Act of Legislature 71-575 (R. 26-28)" [*Broward County Board of Rules and Appeals Motion for Leave to Intervene before the Florida Building Comm'n* in Case No DS 2023-037, p. 2], adopting an ordinance, rule, or policy for the purpose of amending the Florida Building Code is a legislative action.

9. This Complaint is not an appeal of a prior administrative order. It is an action seeking declaratory and injunctive relief related to legislative action by a unit of local government.

10. Venue is proper in this Court pursuant to section 47.011, Florida Statutes.

11. Declaratory judgment is authorized pursuant to sections 86.011 and 86.021, Florida Statues.

12. Upon this Court's determination that the actions of Respondent for the purpose of amending the Florida Building Code were improper, Plaintiff prays this Court will issue an order for supplemental injunctive relief, as authorized pursuant to section 86.061, Florida Statutes.

13. This Complaint is timely filed.

PARTIES, STANDING, JURISDICTION, AND VENUE

14. Plaintiff Jack A. Butler is a Florida Certified Residential Contractor holding Certificate No. CRC1328041 and co-owner and managing member of Butler & Butler, LLC, a Florida-registered for-profit company organized in March 2002 and in continuous operation since then.

15. Broward County, Florida is a charter county and a general-purpose local government.

16. Article VIII, section 1(g) of the Florida Constitution includes the statement, "The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law."

17. Respondent is an entity of Broward County government initially created by chapter 71-575, Laws of Florida, Special Acts of 1971.

18. Section 2 of chapter 71-575, Laws of Florida, Special Acts of 1971, established the South Florida Building Code as applying "to all municipalities and unincorporated areas of Broward County, Florida."

19. Section 6 of chapter 71-575, Laws of Florida, Special Acts of 1972, decreed that "Neither the [Broward County] Board of County Commissioners nor any municipality may pass any laws in conflict with this act, specifically but not limited to raising or lowering any standards in the South Florida Building Code."

20. Section 7 of chapter 71-575, Laws of Florida, Special Acts of 1971, amended Section 203 of the South Florida Building Code to create the Board of Rules and Appeals in Broward County "[i]n order to determine the suitability of alternative materials and types of construction, to provide for reasonable interpretation of the provision of the code and to assist in the control of the construction of buildings and structures...." This mission was subsequently restated in

section 3 of chapter 74-437, Laws of Florida, Special Acts of 1974, which also modified the Board's membership.

21. As a means of fulfilling this mission, section 15 of chapter 71-575, Laws of Florida, Special Acts of 1971, amended section 203.4(d)(2) of the South Florida Building Code to say, "The board of rules and appeals shall make any desired amendments or revisions to the code."

22. Chapter 72-483, Laws of Florida, Special Acts of 1974, among other things, granted the power to the Board of Rules and Appeals "to sue and be sued."

23. Section 136 of chapter 2000-141, Laws of Florida, repealed all special acts establishing the powers and duties of BORA when it said, "...this act is intended as a comprehensive revision of the regulation by counties and municipalities of the design, construction, erection, alteration, modification, repair and demolition of public and private buildings. Therefore, any sections or provisions of any special acts governing those activities by any general purpose local government are hereby repealed."

24. The Broward County Charter was subsequently amended in a manner that affected the Broward County Board of Rules and Appeals through section 9.02 of the Charter, which notably said, "Effective January 1, 2003, there shall be a Broward County Board of Rules and Appeals, 'Board of Rules and Appeals,' composed of thirteen (13) members and nine (9) alternates...." This means the current version of Respondent came into existence on January 1, 2003, and that any powers and duties that may have remained from earlier legislative authorities not repealed by chapter 2000-141, Laws of Florida, were no longer in effect.

25. Section 9.02 (A)(1) of the Charter says:

> It shall be the function of the Broward County Board of Rules and Appeals to exercise the powers, duties, responsibilities, and obligations as set forth and established in Chapter 71-575, Laws of Florida, Special Acts of 1971, as amended by Chapter 72-482 and 72-485, Laws of Florida, Special Acts of 1972; Chapter

73-427, Laws of Florida, Special Acts of 1973; Chapters 74-435, 74-437, and 74-448, Laws of Florida, Special Acts of 1974; and Chapter 98-287, as amended by Chapter 2000-141, Laws of Florida, or any successor building code to the Florida Building Code applicable to the County, as amended.

26. Section 9.02 A(2) of the amended Charter declares that "The provisions of the Florida Building Code shall be amended only by the Board of Rules and Appeals and only to the extent and in the manner specified in the Building Code. The County Commission or a Municipality shall not enact any ordinance in conflict with Chapters 98-287 and Chapter 2000-141, Laws of Florida, as may be amended from time to time."

27. Respondent is not a "local enforcement agency," as that term is defined in section 553.71(5), Florida Statutes. BORA's website (as of April 2, 2024) says the following (from https://www.broward.org/Intergovernmental/pages/boardofrulesandappeals.aspx):

> **Purpose**
> Conduct a program to monitor and oversee the inspection practices and procedures employed by the various governmental authorities charged with the responsibility of enforcing the Building Code.
>
> Organize, promote and conduct training and educational programs designed to increase and improve the knowledge and performance of those persons certified by the Board of Rules and Appeals pursuant to the Building Code; may require the completion of certain minimum courses, seminars or other study programs as a condition precedent to the issue of certificates by the Board of Rules and Appeals pursuant to the Building Code.

28. Plaintiff is motivated to file this Complaint by his uncertainty regarding a key requirement in the Florida Building Code ("FBC" or "Code") related to construction documents. Among other services, Plaintiff, through his company, provides residential design and construction services to clients in Florida. The design services are permitted under Florida Statutes that allow exemptions from licensure as an architect for persons who design one- and two-family homes, townhouses, and other structures listed in section 481.229, Florida Statutes. However, Plaintiff is prohibited from providing residential design services in Broward County by

operation of the local amendments to the Code adopted by Respondent. The difference between Florida Statutes that allow him to provide residential design services and the BORA-amended version of the Code that prohibits his providing the same services in Broward County creates a controversy regarding Plaintiff's rights and legal relations.

29. Plaintiff is in doubt as to his rights that are affected by various statutes and ordinances, as stated herein. The current controversy raised in this Complaint is a bona fide, actual, and present issue where Plaintiff has a present, practical need for a declaration of his rights to resolve uncertainties. Such a declaration deals with a present, ascertained set of facts. Plaintiff contends that the controversy calls into question his rights and privileges of doing business in Broward County, which is dependent on the law applicable to the facts. As a result, Plaintiff is a substantially affected person with regard to the subject matter of this Complaint.

30. Plaintiff asks the Court to take notice that at no time during the precedent administrative proceedings related to the subject controversy did any of the quasi-judicial bodies involved in those proceedings find that Plaintiff lacked standing to bring the action.

31. Through its adoption of the local amendments to the Code that created the controversy and its participation in recent and related administrative processes, as described below, Respondent has an actual, present, adverse, and antagonistic interest in the subject of this Complaint.

32. The relief sought by this Complaint is not merely the giving of legal advice or answering questions propounded by curiosity. There is a true and present controversy based on a documented set of facts by which Plaintiff seeks this Court's determination of how the law applies to those facts in order to ascertain Plaintiff's powers, privileges, and rights.

33. Respondent is located in Broward County, Florida, and this Complaint alleges constitutional and other civil violations by Respondent that impact Plaintiff's ability to provide design services and construction documents to clients within Broward County and its included municipalities. These facts establish venue and jurisdiction in the civil division of the Circuit Court for the 17th Judicial Circuit, which covers Broward County, Florida.

34. This Court has jurisdiction to enter declaratory and injunctive relief pursuant to section 86.011, Florida Statutes, and article V, section 20(c)(3) of the Florida Constitution. This action is brought to enforce the guarantees of substantive due process of law and prohibition against vagueness and arbitrary and irrational legislation that is discriminatory and does not bear a rational relationship to a legitimate governmental purpose. The prohibitions against such legislation are guaranteed by the 5th and 14th Amendments to the U.S. Constitution and article I, section 9 of the Florida Constitution. Relief is sought pursuant to Florida laws authorizing declaratory relief and injunctive relief and Title 42 U.S. Code, sections 1983 and 1988.

FACTS COMMON TO ALL COUNTS

35. The Florida Building Code is established by Part IV of chapter 553, Florida Statutes. The legislature declared in section 553.70, Florida Statutes, that this part should be referred to as the "Florida Building Codes Act."

36. The Florida Building Codes Act is contained in chapter 2000-141, Laws of Florida. It modified the then-existing statutory mandate for local governments to adopt a building code of their choosing by imposing a single, unified Code for statewide application. As provided in section 553.73(6), Florida Statutes, no action is required by local governments to adopt the Florida Building Code. Thus, the State of Florida is the jurisdiction adopting the Code.

37. Chapter 2000-141, Laws of Florida repeatedly refers to the legislature's desire for there to be a single, statewide building code. As a clear statement of intent to establish a new regulatory regime for building construction, section 136 of the Act established section 553.898, Florida Statutes (2023), which has not been modified since that time:

> Chapter 2000-141, Laws of Florida, does not imply any repeal or sunset of existing general or special laws governing any special district that are not specifically identified by chapter 2000-141. However, chapter 2000-141 is intended as a comprehensive revision of the regulation by counties and municipalities of the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings. Therefore, any sections or provisions of any special act governing those activities by any general purpose local government are hereby repealed.

38. The intent of the Act is further declared in section 553.72, Florida Statutes, as establishing a uniform statewide building code. Virtually all the language now in section 553.72 – Intent, Florida Statutes, was derived from section 71 of chapter 2000-141, Laws of Florida, which amended the original (and much shorter language) of section 38 of chapter 98-287, Laws of Florida. The legislative intent is best illustrated by the first three subsections:

> (1) The purpose and intent of this act is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code, to be called the Florida Building Code, which consists of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state and to the enforcement of such requirements and which will allow effective and reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer. The Florida Building Code shall be organized to provide consistency and simplicity of use. The Florida Building Code shall be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. The Florida Building Code shall provide for flexibility to be exercised in a manner that meets minimum requirements, is affordable, does not inhibit competition, and promotes innovation and new technology. The Florida Building Code shall establish minimum standards primarily for public health and lifesafety, and secondarily for protection of property as appropriate.
> (2) It is the intent of the Legislature that local governments shall have the power to inspect all buildings, structures, and facilities within their jurisdictions in

> protection of the public health, safety, and welfare pursuant to chapters 125 and 166.
> (3) It is the intent of the Legislature that the Florida Building Code be adopted, modified, updated, interpreted, and maintained by the Florida Building Commission in accordance with ss. 120.536(1) and 120.54 and enforced by authorized state and local government enforcement agencies.

39. The Florida Building Commission ("Commission") is established by section 553.74, Florida Statutes, and is administratively assigned to the Department of Business and Professional Regulation.

40. Section 553.73(7)(a), Florida Statutes, requires the Commission to adopt a new version of the Code every three years. In order to provide time for distribution and understanding of each newly adopted Code edition, section 553.73(7)(e), Florida Statutes, requires a period of at least six months between publication of the final document(s) and its effective date.

41. The current (8th) edition of the Florida Building Code (a.k.a., the 2023 Code) was adopted by the Commission through rulemaking in the manner prescribed in section 553.73, Florida Statutes, with an effective date of midnight on December 31, 2023.

42. As required by section 553.73(3), Florida Statutes, the Florida Building Code is based on "International Codes published by the International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes and standards for updates to the Florida Building Code." Additional details as to the model codes to be used as the basis of the Florida Building Code are provided in section 553.73(7)(a), Florida Statutes. The current (8th Edition) of the Florida Building Code is primarily based on the 2018 Edition of the model codes published by the International Code Council ("ICC").

43. The Florida Building Code currently consists of a set of nine component documents identified by the following subtitles: Accessibility, Building, Energy Conservation, Existing Building, Fuel Gas, Mechanical, Plumbing, Residential, and Test Protocols for High Velocity

Hurricane Zones. (This Complaint adopts the common format of abbreviating the Florida Building Code as "FBC" and appending the subtitle separated by a dash.) By reference in chapter 27 of FBC – Building, the adopted electrical code includes the 2020 Edition of NFPA 70, a.k.a., the National Electrical Code.

44. FBC – Building is the primary document of the Florida Building Code. The other documents generally supplement or extend the content in FBC – Building (e.g., FBC – Accessibility and FBC – Plumbing) or revise the contents of FBC – Building (e.g., FBC – Existing Building and FBC – Residential).

45. Chapter 1 of FBC – Building is titled "Scope and Administration." This chapter provides overall guidance for the administration of local government building safety operations, including permitting and inspection of new construction.

46. Multiple sections of FBC – Building contain specific guidance on the construction of buildings in areas frequently subject to high-velocity winds and hurricanes, which are referenced in the document as the "High Velocity Hurricane Zone" (HVHZ). Broward County is a declared HVHZ through the definition provided for the term in FBC – Building, chapter 2 - Definitions. That definition also declares Miami-Dade County to be in the HVHZ.

47. The inclusion of HVHZ content applicable only to Broward and Miami-Dade counties is an example of the Commission's fulfilling the legislative mandate contained in section 553.73(3), Florida Statutes, which relevantly says, "The commission shall incorporate within the Florida Building Code provisions that address regional and local concerns and variations." This language was added by section 40 of chapter 2000-141, Laws of Florida, which also deleted references to the South Florida Building Code from Section 553.73, Florida Statutes.

48. Section 553.73(4), Florida Statutes, permits local governments to amend the original content of the Florida Building Code using a prescribed process. Subordinate paragraph (a) of the section authorizes local amendments to the administrative portions of the Code. This paragraph also relevantly says, "Local amendments must be more stringent than the minimum standards described in this section and must be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format."

49. Subordinate paragraph (b) of section 553.73(4), Florida Statutes, authorizes local amendments to the technical portions of the Code and includes a description of the required adoption process in a series of three numbered subparagraphs:

> (b) Local governments may, subject to the limitations in this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Florida Building Code. A local government may adopt technical amendments that address local needs if:
>
> 1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.
>
> 2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.
>
> 3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.

50. Subordinate paragraph (h) of section 553.73(4), Florida Statutes, mandates that all local amendments be examined on the basis of their economic costs and benefits: "An amendment adopted under this subsection must include a fiscal impact statement that documents the costs

and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and the impact to property and building owners and industry relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance."

51. Prior to considering any local technical amendments to the Florida Building Code, subordinate paragraph (f) of section 553.73(4), Florida Statutes, requires that a countywide compliance review board be established through an interlocal agreement by all local governments in that county:

> Each county and municipality desiring to make local technical amendments to the Florida Building Code shall establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is adopted by a local government within the county under this subsection and that is challenged by a substantially affected party for purposes of determining the amendment's compliance with this subsection. If challenged, the local technical amendments are not effective until the time for filing an appeal under paragraph (g) has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

52. Subordinate paragraphs (f) and (g) of section 553.73(4), Florida Statutes, collectively describe the adjudication process to be conducted by the countywide compliance review board for a substantially affected party who challenges a local amendment.[1] The countywide compliance review board may conclude that the challenged amendment is or is not in compliance with the requirements of section 553.73(4), Florida Statutes. Decisions of the countywide compliance review board may be appealed to the Florida Building Commission.

53. Paragraph (g) of section 553.73(4), Florida Statutes, includes the directive, "The local government adopting the amendment that is subject to challenge has the burden of proving that

[1] Although the desire to adopt a local technical amendment is the trigger act that mandates establishing the countywide compliance review board, the paragraph grants this body the responsibility to review *any* local amendment, including one of an administrative nature, for procedural conformity. Local administrative amendments are not held in abeyance pending resolution of the challenge.

the amendment complies with this subsection in proceedings before the compliance review board and the commission, as applicable."

54. As provided in subordinate paragraph (e) of section 553.73(4), Florida Statutes, most local amendments eventually expire after going through a review process conducted by the Florida Building Commission ("Commission") to determine whether the amendment needs to be incorporated into the statewide Florida Building Code. Any local amendment that is not added to the statewide Code is rescinded at the time such a decision is made:

> An amendment to the Florida Building Code adopted by a local government under this subsection is effective only until the adoption of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under the provisions of this subsection.

55. BORA conducted the first reading of its technical amendments to the 8th Edition of the Florida Building Code on October 12, 2023. According to the minutes of that meeting, the amendment package was unanimously approved by the 12 BORA members present as a single action. No ordinance designation was provided.

56. BORA conducted the second reading of its technical amendments to the 8th Edition of the Florida Building Code on November 9, 2023. A public hearing was also held at this time. According to the minutes of that meeting, the amendment package was unanimously approved by the 13 BORA members present as a single action. No ordinance designation was provided.

57. BORA also conducted the first reading of its amendments to Chapter 1 of to the 8th Edition of the FBC – Building on November 9, 2023. According to the minutes of that meeting,

the amendment package was unanimously approved by the 13 BORA members present as a single action. No ordinance designation was provided.

58. BORA conducted the second reading of its amendments to Chapter 1 of the 8th Edition of the FBC – Building on December 14, 2023. A public hearing was also held at this time. According to the minutes of that meeting, the amendment package was unanimously approved by the 11 BORA members present as a single action. No ordinance designation was provided.

59. A staff report from BORA's Administrative Director, Dr. Ana C Barbosa, was provided to the members of BORA to transmit the text of the FBC – Building, chapter 1 Code amendments as part of the agenda package for the December 14, 2023 meeting. The one-sentence recommendation it included says, "It is recommended that the Board of Rules and Appeals adopt, by vote, the revised Chapter 1 of the 8th Edition (2023) of the Florida Building Code (FBC)." Under the following heading of "Reasons," it says:

> "The 8th Edition of the Florida Building Code will become effective on December 31,2023. The staff [of BORA] has reviewed BORA's current Chapter, revised the Code or Florida Statute references when needed, and made necessary changes. An effort was made to correct grammatical issues and make Chapter 1 more reader-friendly without changing the meaning of the code sections. The changes have been reviewed by BORA's legal counselor, Mr. Charles Kramer, Esq., and his recommended corrections were included."

60. The only additional information in the agenda package provided to BORA's members and the public was the revised language of the prior BORA amendment adopted to modify the 7th Edition of the Florida Building Code in accordance with a set of strikethrough deletions and underlined additions to that version of Chapter 1, which was being used as the basis for the 8th Edition version. There was no reference to the original language of the 8th Edition of the Florida Building Code that was actually being revised through the proposed local amendments. The action essentially sought to revise the earlier 7th Edition's amendments adopted by BORA.

61. A similar staff report was provided by Dr. Barbosa to the members of BORA and the public as part of the agenda package for the November 9, 2023 meeting at which the second reading and public hearing was held for the four sets of technical amendments to the 8th Edition of the Florida Building Code. However, for these amendments, the strikethrough deletions and underlined additions were to the language contained in the 8th Edition rather than the language of BORA's prior technical amendments to the 7th Edition.

62. No agenda package for any local amendments to FBC – Building, Chapter 1 or the technical amendments to the 8th Edition of the Florida Building Code included any review of local conditions relevant to the proposed amendment, evidence or data that exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation already addressed by the Florida Building Code, a description of how the local need is addressed by the proposed local amendment, or justification that the amendment is no more stringent than necessary to address the local need.

63. No agenda package conveying or describing any of the proposed local amendments included a fiscal impact statement to document the cost of the amendments to property owners and the construction industry, the value of any benefits flowing from the amendments, or the cost of enforcement of the proposed amendment.

64. As evidenced by the record, BORA considered and approved the entire set of local administrative amendments to chapter 1 of FBC – Building as a single item without separate consideration of each included amendment. BORA took a similar approach to the group of technical amendments affecting four separate component documents included in the 8th Edition of the Florida Building Code (Building, Mechanical, Plumbing, and Residential).

65. Among the local amendments adopted by BORA are changes to Code section 107 – Submittal Documents such that the amended version enforced throughout Broward County contains the following instructions regarding who must prepare construction documents (this text is quoted verbatim, including errors, from the amended chapter posted on the BORA website as of April 2, 2024):

107.1 General

107.1.1 Submittal documents. Submittal documents consisting of construction documents, plans, specifications, statement of special inspections, geotechnical reports, structural observation programs, and other data shall be submitted in two (2) or more sets of plans and specifications as described in section 107.3 or in digital format when approved by the Building Official with each application for a permit. The construction documents shall be prepared by a registered design professional shall prepare construction documents where required by Florida Statutes, Chapter 471, or Chapter 481 [*sic*]. Where special conditions exist, the Building Official is authorized to require additional construction documents to be prepared by a registered design professional.

Exception: The Building Official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that a review of the construction documents is not necessary to obtain compliance with this Code.

107.1.2 Where required by the Building Official, Fire Marshall/Fire Code Official, a third copy of the plan showing parking, landscaping, and drainage shall be provided.

...

107.3.4 Requirements for Professional Design.

107.3.4.0.1 Other than Single-Family Residences. The plans and specifications for new construction, alterations, repairs, improvements, replacements, or additions costing fifteen thousand dollars ($15,000.00) or more, shall be prepared by, and each sheet shall bear the signature and seal of an Architect or Engineer.

Exception: Roofing as set forth in FBC, Chapter 15.

107.3.4.0.2 Single-Family Residences. The plans and specifications for new construction, alterations, repairs, improvements, replacements, or

additions costing thirty thousand dollars ($30,000.00) or more, shall be prepared by an Architect or Engineer. Each sheet shall be signed and sealed by the Architect or Engineer.

107.3.4.0.3 Plans and specifications for work that is preponderantly of an architectural nature shall be prepared by a Registered Architect, and work that involves extensive computation based on structural stresses shall, in addition, be prepared by a Professional Engineer.

107.3.4.0.4 Plans and specifications for work that is preponderantly of a mechanical or electrical nature shall, at the discretion of the Building Official, be prepared by a Professional Engineer.

107.3.4.0.5 Compliance with specific minimum requirements of this Code shall not be deemed sufficient to assure that a building or structure complies with all of the requirements of this Code. It is the responsibility of the architect or engineer of record for the building or structure to determine through rational analysis what design requirements are necessary to comply with this Code.

107.3.4.0.6 For any work involving structural design, the Building Official may require that plans, calculations, and specifications be prepared by a Professional Engineer, regardless of the cost of such work.

107.3.4.0.7 Electrical plans and specifications for new construction shall be prepared by a Professional Engineer competent in the appropriate field of expertise for all buildings or structures having electrical services or systems as follows:

a. Residential systems requiring an aggregate electrical service capacity of more than 600 amperes or more than 240 volts.
b. Commercial or industrial systems requiring more than 800 amperes or more than 240 volts.
c. An electrical system having a cost value greater than one hundred twenty-five thousand dollars ($125,000.00).
d. An electrical system for an assembly area having an area greater than five thousand (5,000) square feet
e. A fire alarm or security alarm system that costs more than five thousand dollars ($5,000.00)

107.3.4.0.8 Signatures and Seals. All plans, specifications, and other construction documents required to be prepared by an Architect or Engineer, shall be signed, dated, and sealed, either original signed wet seal, embossed seal, or digital seal, according to the requirements of Chapters 471 and 481 of the Florida Statutes.

66. The original FBC – Building, chapter 1, section 107 content for the above-quoted portions of the Code adopted by the Commission reads, as follows (Note: Within the context of the Code, italicized terms are defined in Chapter 2 of FBC – Building):

> **107.1 General.**
>
> Submittal documents consisting of *construction documents*, statement of *special inspections*, geotechnical report and other data shall be submitted in two or more sets with each *permit* application. The construction documents shall be prepared by a *registered design professional* where required by Chapter 471, *Florida Statutes* or Chapter 481, *Florida Statutes*. Where special conditions exist, the *building official* is authorized to require additional *construction documents* to be prepared by a *registered design professional*.
>
> **Exception:** The *building official* is authorized to waive the submission of *construction documents* and other data not required to be prepared by a *registered design professional* if it is found that the nature of the work applied for is such that review of *construction documents* is not necessary to obtain compliance with this code.
> ...
>
> **107.3 Design professional in responsible charge.**
>
> Reserved.

67. Section 101.2.2 – Definitions was added by BORA to its amended version of FBC – Building chapter 1. This section includes a definition for Registered Design Professional, which "means a Florida Registered Architect or a Florida Licensed Professional Engineer."

68. Section 202 of FBC – Building includes definitions for registered design professional and registered design professional in responsible charge:

> **REGISTERED DESIGN PROFESSIONAL.** An individual who is registered or licensed to practice their respective design profession as defined by the statutory requirements of the professional registration laws of the state or *jurisdiction* in which the project is to be constructed. This includes any registered design professional so long as they are practicing within the scope of their license, which includes those licensed under Chapters 471 and 481, *Florida Statutes*.
>
> **REGISTERED DESIGN PROFESSIONAL IN RESPONSIBLE CHARGE.** A *registered design professional* engaged by the owner or the owner's authorized agent to review and coordinate certain aspects of the project, as determined by the

building official, for compatibility with the design of the building or structure, including submittal documents prepared by others, deferred submittal documents and phased submittal documents.

69. Chapter 2, section 202 of FBC – Building includes a listing, but no definition, for the term 'Design Professional'.

70. Chapter 2, section 202 of FBC – Building includes a definition for construction documents, which says they are "[w]ritten, graphic and pictorial documents prepared or assembled for describing the design, location, and physical characteristics of the elements of a project necessary for obtaining a building *permit*."

71. BORA did not amend Chapter 2 of FBC – Building in the current Code cycle. This results in there being two different definitions for *registered design professional* in BORA's amended version. The definition added by BORA in section 101.2.2 excludes registered interior designers—a profession included in chapter 481, Florida Statutes, and, by reference to that chapter, in the definition found in chapter 2 of FBC – Building.

72. The BORA-amended version of the 8th Edition of FBC – Building, chapter 1, section 107.1.1 makes a distinction between construction documents, plans, and specifications that does not exist in the original version of that subsection adopted by the Florida Building Commission as part of the statewide 8th Edition.

73. Chapter 125, Florida Statutes, among other things, describes the powers of county governments. Section 125.01 of that chapter lists enumerated powers and duties. Paragraph (l)(bb) of that section says county governments have the power and duty to "[e]nforce the Florida Building Code as provided in s. 553.80 and **adopt and enforce local technical amendments to the Florida Building Code** as provided in s. 553.73(4)." This provision comes from section 2 of chapter 2000-141, Laws of Florida [emphasis added].

74. Section 3 of chapter 2000-141, Laws of Florida, also created section 125.56(1), Florida Statutes, which says:

> **125.56 Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.—**
> (1) The board of county commissioners of each of the several counties of the state may enforce the Florida Building Code and the Florida Fire Prevention Code as provided in ss. 553.80, 633.206, and 633.208 and, at its discretion, **adopt local technical amendments to the Florida Building Code as provided in s. 553.73(4)** and local technical amendments to the Florida Fire Prevention Code as provided in s. 633.202 to provide for the safe construction, erection, alteration, repair, securing, and demolition of any building within its territory outside the corporate limits of any municipality. Upon a determination to consider amending the Florida Building Code or the Florida Fire Prevention Code by a majority of the members of the board of county commissioners of such county, the board shall call a public hearing and comply with the public notice requirements of s. 125.66(2). The board shall hear all interested parties at the public hearing and may then amend the building code or the fire code consistent with the terms and purposes of this act. Upon adoption, an amendment to the code shall be in full force and effect throughout the unincorporated area of such county until otherwise notified by the Florida Building Commission under s. 553.73 or the State Fire Marshal under s. 633.202. This subsection does not prevent the board of county commissioners from repealing such amendment to the building code or the fire code at any regular meeting of such board. [emphasis added]

75. To identify who has the responsibility to ensure compliance with the provisions of the Florida Building Code, section 32 of chapter 2000-141, Laws of Florida, amended section 468.604(1), Florida Statutes, to add the underlined text:

> It is the responsibility of the building code administrator or building official to administrate, supervise, direct, enforce, or perform the permitting and inspection of construction, alteration, repair, remodeling, or demolition of structures and the installation of building systems within the boundaries of their governmental jurisdiction, when permitting is required, to ensure compliance with the Florida Building Code and any applicable local technical amendment to the Florida Building Code. ...

76. Section 471.003(2)(a), Florida Statutes, provides an exemption from licensure as an engineer for "[a]ny person practicing engineering for the improvement of, or otherwise affecting,

property legally owned by her or him, unless such practice involves a public utility or the public health, safety, or welfare or the safety or health of employees."

77. Part I of chapter 481, Florida Statutes, provides the statutes governing the professions of architect and interior designer. Section 481.229(1), Florida Statutes, lists exceptions and exemptions from licensure as a registered architect:

> (1) No person shall be required to qualify as an architect in order to make plans and specifications for, or supervise the erection, enlargement, or alteration of:
> (a) Any building upon any farm for the use of any farmer, regardless of the cost of the building;
> (b) Any one-family or two-family residence building, townhouse, or domestic outbuilding appurtenant to any one-family or two-family residence, regardless of cost; or
> (c) Any other type of building costing less than $25,000, except a school, auditorium, or other building intended for public use, provided that the services of a registered architect shall not be required for minor school projects pursuant to s. 1013.45.

78. Section 481.229(4), Florida Statutes, provides for the overlap of practice among architects and engineers:

> Notwithstanding the provisions of this part or of any other law, no registered engineer whose principal practice is civil or structural engineering, or employee or subordinate under the responsible supervision or control of the engineer, is precluded from performing architectural services which are purely incidental to his or her engineering practice, nor is any registered architect, or employee or subordinate under the responsible supervision or control of such architect, precluded from performing engineering services which are purely incidental to his or her architectural practice. However, no engineer shall practice architecture or use the designation "architect" or any term derived therefrom, and no architect shall practice engineering or use the designation "engineer" or any term derived therefrom.

79. Section 481.231(2), Florida Statutes, explicitly prohibits a local government from trying to modify the requirements for licensure related to the preparation of construction documents associated with a building permit application in a manner contrary to the exemptions contained in Subsection 481.229(1), Florida Statutes: "Counties or municipalities which issue building

permits shall not issue permits if it is apparent from the application for the building permit that the provisions of this part have been violated; provided, however, that this subsection shall not authorize the withholding of building permits in cases involving the exceptions and exemptions set out in s. 481.229."

80. Section 471.003(2)(a), Florida Statutes, notably includes an exemption from licensure for:

> Any person practicing engineering for the improvement of, or otherwise affecting, property legally owned by her or him, unless such practice involves a public utility or the public health, safety, or welfare or the safety or health of employees. This paragraph shall not be construed as authorizing the practice of engineering through an agent or employee who is not duly licensed under the provisions of this chapter.

81. There is also a provision that recognizes the potential for crossover between the professions of engineering and architecture, whereby any person licensed in one of these professions may provide "incidental" services normally part of the other profession.

82. As with the statutes governing the practice of architecture in chapter 481, chapter 471 includes section 471.037(2), Florida Statutes, which prohibits a local government from "the withholding of building permits in cases involving the exceptions and exemptions set out in s. 471.003."

83. The Florida legislature recognized that there were non-registered design professionals who were authorized by law to prepare construction documents, not only in the professional practice chapters of Florida Statutes, but also in the enabling legislation for the Florida Building Code. For example, the legislature directed the Florida Building Commission to "develop and publish an informational and explanatory document which contains descriptions of the roles and responsibilities of the licensed design professional, residential designer, contractor, and local building and fire code officials" in section 553.77(2), Florida Statutes.

84. In the context of the Code and the exemptions given in Section 481.229, Florida Statutes, the term "residential designer" identifies a design professional, such as Plaintiff, who is not registered in the State of Florida but may nevertheless provide design services for the types of residential construction listed as being exempt from licensure as an architect in section 481.229(1)(b), Florida Statutes.

85. Section 489.115(4)(b)2, Florida Statutes, establishes an exemption from licensure as a design professional for attestations by certain certified contractors to be equivalent to signed and sealed calculations by an engineer related to wind resistance:

> In addition, the board may approve specialized continuing education courses on compliance with the wind resistance provisions for one and two family dwellings contained in the Florida Building Code and any alternate methodologies for providing such wind resistance which have been approved for use by the Florida Building Commission. Division I certificateholders or registrants who demonstrate proficiency upon completion of such specialized courses may certify plans and specifications for one and two family dwellings to be in compliance with the code or alternate methodologies, as appropriate, except for dwellings located in floodways or coastal hazard areas as defined in ss. 60.3D and E of the National Flood Insurance Program.

86. The above-quoted statutory provision is reflected in the original section 107.3.4.2 of the 8th Edition of FBC – Building, which says:

> Certifications by contractors authorized under the provisions of Section 489.115(4)(b), Florida Statutes, shall be considered equivalent to sealed plans and specifications by a person licensed under Chapter 471, Florida Statutes, or Chapter 481, Florida Statutes, by local enforcement agencies for plans review for permitting purposes relating to compliance with the windresistance provisions of the code or alternate methodologies approved by the Florida Building Commission for one- and two-family dwellings. Local enforcement agencies may rely upon such certification by contractors that the plans and specifications submitted conform to the requirements of the code for wind resistance. Upon good cause shown, local government code enforcement agencies may accept or reject plans sealed by persons licensed under Chapters 471, 481 or 489, Florida Statutes.

87. The version of this paragraph modified by Respondent through a local amendment deletes the text of the original Code and substitutes, "**Certification by contractors.** Reserved."

PLAINTIFF'S EFFORTS TO SEEK RELIEF VIA ADMINISTRATIVE PROCESS

88. Plaintiff sought relief through multiple administrative processes prior to filing this Complaint.

89. In accordance with the provisions of section 553.775, Florida Statutes, Plaintiff filed a petition for declaratory statement with the Florida Building Commission, Case No. DS 2023-037. Among other things, that petition sought declaratory statements from the Commission that the BORA amendments to Chapter 1 of FBC – Building in the 2020 (7th) Edition of the Florida Building Code conflicted with state licensing provisions found in chapters 471, 481, and 489, Florida Statutes, and had been adopted in a manner other than that prescribed in Subsection 553.73(4), Florida Statutes.

90. BORA, through its attorney Charles M Kramer, stated in its motion to intervene in Case No. 2023-037, "That Broward County was given the right to promulgate more stringent administrative sections (§553.74) of the Building Code which address the need for additional safety and security to the life, health and safety of the persons and property, is the very definition of 'special conditions' set forth in FBC §107.1.1, §553.73(4)(a), and BCAP §107.1" (BORA, *Motion for Leave to Intervene*, Oct. 3, 2023, p. 21). ('BCAP' is BORA's abbreviation for its amended version of the Code.)

91. In its order denying an answer to the petition in Case No. DS 2023-037, the Commission found, as a conclusion of law in reference to conflicts between the BORA amendments and state licensing laws, that the Commission "is not the agency charged with enforcing or interpreting those statutes, and has no jurisdiction to do so" (Fla. Bldg. Comm'n., *Order Denying Petition for Declaratory Statement*, ¶7, Oct. 25, 2023). The Commission additionally pointed to the provisions of section 553.73(4)(l), Florida Statutes that provide for any substantially affected

person to seek a nonbinding advisory opinion from the Commission regarding the actions of a local government ordinance or regulation (*Id*, at ¶10).

92. As a result of the Commission's findings and subsequent order, Plaintiff filed a petition for a nonbinding advisory opinion with the Commission (Nonbinding Advisory Opinion Case No. 001) and a petition for declaratory statement with the Florida Board of Architecture and Interior Design (Case No. DS 2023-048). The nonbinding advisory opinion sought by Plaintiff was to solicit the Commission's opinion as to whether the local amendments implemented by BORA were adopted in the manner prescribed by statute. The declaratory statement from the Board of Architecture and Interior Design sought that body's declaration regarding Plaintiff's rights relative to the conflict between chapter 481, Florida Statutes, and BORA's local amendments.

93. With regard to the nonbinding advisory opinion petition, the Commission found that BORA's amendments to Chapter 1 of FBC – Building 7th Edition were administrative in nature and thereby invoked its statutory discretion not to provide an opinion as to the claims raised in the petition (Fla. Bldg. Comm'n., *Nonbinding Advisory Opinion No. 001*, Dec. 18, 2023).

94. With regard to the petition for declaratory statement submitted to the Board of Architecture and Interior Design, which was subsequently amended, the Board found that it did not have jurisdiction over the actions of a local government. It therefore declined to answer the petition (Board of Arch. & Int. Design, *Final Order Declining to Answer Amended Petition for Declaratory Statement*, Feb. 14, 2024).

95. Two key phrases are found in the 7th and 8th editions of FBS – Building, section 107.1, which includes the statement, "Where special conditions exist, the building official is authorized

to require additional construction documents to be prepared by a registered design professional." Those key phrases are "special conditions" and "additional construction documents."

96. The standard construction documents for a typical new residential construction project are listed in Subsections 107.2 and 1603.1 of the 8th Edition of FBC – Building. Additional construction documents would be supplemental to these standard documents. Such additional documents could include details regarding certain unusual design elements and calculations imposed by the construction site or the nature of the planned construction; i.e., aspects of the contemplated construction that are outside the guidance contained in the Code. In addition to requiring supplemental construction documents, the building official, acting under the authority granted in the exception found in section 107.1 of FBC – Building, may remove the requirement for some of the standard documents. For example, the site plan and exterior wall section normally required for new construction may be omitted for interior remodeling projects.

97. Because the language of section 107.1 in the prior and current editions of FBC – Building appears to be derived from the 2018 International Building Code issued by the ICC, Petitioner sought an informal interpretation from the ICC regarding the meaning of that section via an email sent to the ICC's code opinion request email address on November 16, 2023. The ICC assigned the task of responding to Christopher R. Reeves, P.E., Director, Architectural & Engineering Services. His answer was provided in an email to Petitioner on November 27, 2023:

> This email is in response to your email correspondence regarding "special conditions" and the need for "additional construction documents". All comments are based on the 2018 International Building Code (IBC) unless noted otherwise.
>
> As noted in Section 107.1, the building official is authorized to require "additional construction documents" to be prepared by a registered design professional where "special conditions" exist. Admittedly, while the code doesn't define what constitutes "special conditions", such conditions are typically matters not provided for or addressed by the code or proposed design alternatives to the basic provisions in the code as regulated by Section 104.11. For example, the code does

> not specifically address how to construct a chemical refinery or other special hazardous occupancies which may require unusual height or area limitations due to a specific process or equipment. Extremely large buildings may also warrant a specific egress design study to justify an additional exit access travel distance beyond basic code limitations. "Special conditions", as alluded to in your correspondence, is not, in my opinion, necessarily related to the cost of the project or other local amendments.
>
> As noted, "additional construction documents" could include drawings, structural calculations, research reports, test data or additional studies, prepared by a registered design professional, to substantiate equivalent compliance with the intent of the code with final approval subject to the building official.

98. With the ICC response in hand, Plaintiff again sought a declaratory statement from the Florida Building Commission regarding its understanding of section 107.1 in the 7th and 8th editions of FBC – Building. The initial filing, Case No. DS 2023-046, was withdrawn and closed by the Commission. A revised petition on the same subject was subsequently resubmitted as Case No. DS 2023-053. This petition sought a declaratory statement by the Commission regarding the meaning and appropriate application of the phrases 'special conditions' and 'additional construction documents.'

99. The petition was formed around the parameters of a proposed residential construction project and asked a series of questions regarding such a project as they relate to those phrases. The petition asked whether size, cost, and geographic location of the planned residence were special conditions, and whether the basic construction documents required for all permit applications of this type were separate from the additional construction documents that may be required by the building official upon his/her demand.

100. BORA, through its attorney Charles M Kramer, stated in its motion to intervene in Case No. DS 2023-053, "The opinion of BORA established through language of statute and code is that special conditions include the size, cost, and location of a structure" (BORA, *Motion for Leave to Intervene*, Jan. 24, 2024, p. 3). The motion additionally declared, "BORA states that

pursuant to legislative authority, it is within the sound discretion of the Building Official to determine whether or not the cost of a construction project, including that of a single-family residence, constitute 'special condition' [*sic*] (*Id*, p. 5).

101. In its order issuing a declaratory statement in response to the petition in Case No. DS 2023-053, the Commission found that "there is no prescribed provision of the Florida Building Code, Building, 8th Edition (2023), which characterizes square footage of a project in question as a 'special condition'" (Fla. Bldg. Comm'n., *Declaratory Statement*, Feb. 28, 2024, ¶11). The Commission additionally found, with regard to the other questions regarding cost of the project, the project being located in a high velocity hurricane zone, and what documents are standard for such projects (i.e., not additional construction documents) that "an answer is not possible" (*Id.*, ¶12).

102. Given Respondent's reliance on the section 107.1 of FBC – Building (2023) that special conditions authorize the building official to require additional construction documents to be prepared by a registered design professional and submitted to the building official in order to secure a building permit, the text of section 107.3 of Chapter 1 of FBC – Building (2023) added by BORA's local amendment is based on the special condition of a project's estimated cost of construction exceeding a threshold value and the project being located in Broward County.

103. Plaintiff asks this Court to take judicial note that a project's cost of construction is the trigger for all construction documents to be prepared by an architect or engineer in order to secure a building permit in Broward County. Rather than apply this "special condition" to require only *additional* construction documents to be prepared by registered design professionals, as stated in section 107.1 of FBC – Building (2023), BORA's amended Code requires *all* construction documents to be the work product of such persons. Cost is also the one of three

project parameters the Florida Building Commission said were impossible to quantify in Case No. 2023-053, although the Commission was able to provide an answer to the question as to whether the size of the project—a parameter not employed by BORA—is a special condition by finding that it was not.

104. Sections 553.73(4)(f) and (g), Florida Statutes, provide a mechanism for a substantially affected person to challenge any local amendment upon an accusation that it was not adopted in accordance with the requirements of section 553.73(4), Florida Statutes. This challenge mechanism requires a countywide compliance review board to exist in order to hear the challenge. There is no such board in Broward County, so no local challenge may be made.

105. Plaintiff has exhausted the administrative processes for relief and, therefore, properly brings the matter to this Court for adjudication and relief.

COUNT I: COMPLAINT FOR DECLARATORY RELIEF

106. As demonstrated above, Plaintiff is a party with substantial interests in the questions placed before the Court for resolution with regard to the validity, meaning, and application of certain statutory and Florida Building Code requirements and is, thus, a substantially affected person. Plaintiff further asserts that the circumstances giving rise to the Complaint are current and continuing, and apply directly to Plaintiff.

Claim 1: Respondent Did Not Follow the Statutory Process to Adopt Local Amendments to the Florida Building Code.

107. Plaintiff alleges that BORA failed to comply with multiple statutory requirements imposed by section 553.73(4), Florida Statutes, when it adopted local amendments to the Florida Building Code. This allegation applies to the so-called administrative amendments to chapter 1 in FBC – Building (2023) and to the technical amendments to other chapters of that document.

108. Plaintiff alleges that BORA failed to form a countywide compliance review board through an interlocal agreement prior to considering any local amendments to the Code, as mandated by section 553.73(4)(f), Florida Statutes.

109. Plaintiff alleges that Respondent cannot serve as the countywide compliance review board for its own legislative actions to adopt local amendments in the manner required by section 553.73(4), Florida Statutes, not only because it would be self-dealing to do so, but because it was not created by interlocal agreement. A county charter that administratively assigns some county powers and duties to a subordinate agency cannot authorize said agency to modify the general laws of the state when the county itself does not have that power.

110. Plaintiff alleges that, beyond the requirements of section 553.73(4), Florida Statutes, for evidence to support a finding of need for a local amendment to the Code, the courts have long held that virtually any governmental action must be supported by competent substantial evidence. (*See*, e.g., *Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).) The courts have a long history of stating the requirements for competent substantial evidence. For example, in *DeGroot v. Sheffield* (95 So. 2d 912, 915 (Fla. 1957)), a case that dealt with the actions of an administrative board similar to BORA, the Court said:

> We have used the term "competent substantial evidence" advisedly. Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. *Becker v. Merrill*, 155 Fla. 379, 20 So.2d 912; *Laney v. Board of Public Instruction,* 153 Fla. 728, 15 So.2d 748. In employing the adjective "competent" to modify the word "substantial," we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. *Jenkins v. Curry*, 154 Fla. 617, 18 So.2d 521. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the "substantial" evidence should also be "competent." Schwartz, *American Administrative Law*, p. 88; The Substantial

Evidence Rule by Malcolm Parsons, *Fla. Law Review*, Vol. IV, No. 4, p. 481; *United States Casualty Company v. Maryland Casualty Company*, Fla. 1951, 55 So.2d 741; *Consolidated Edison Co. of New York v. National Labor Relations Board*, 305 U.S. 197, 59 S.Ct. 206, 83 L.Ed. 126.

111. Plaintiff alleges that BORA failed to collect, evaluate, and consider competent substantial data and other evidence that the geographical jurisdiction it governs exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variations addressed by the Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need, as required by section 553.73(4)(b)1, Florida Statutes.

112. Plaintiff alleges that Respondent did not prepare and consider a fiscal impact statement, as required by section 553.73(4)(h), Florida Statutes, when it knew such statement was required. In its answer to Plaintiff's petition for a nonbinding advisory opinion regarding BORA's amendments to the 7th Edition of the Code, which was in effect at the time of filing the petition, BORA said, "The fact of the matter is that the amendments in question were drafted in 2019 and 2020, then properly incorporated into Broward County Amendments in March of 2020. At the time of the drafting and the time of incorporation there was no requirement for fiscal impact statements to be submitted with administrative amendments. On July 1, 2021, the Florida legislature passed HB 402-2021 into law which changed the language of the previous statute." (*Response to Petition for Non-binding Advisory Opinion by Jack A. Butler*, Nov. 16, 2023, p. 25) [The reference to HB 402 should actually be to section 2 of chapter 2021-201, Laws of Florida, which renumbered section 553.73(4)(b)9, Florida Statutes, to section 553.73(4)(h), Florida Statutes.] This change in organizational hierarchy made all local Code amendments, including administrative ones, subject to the requirement for a fiscal impact statement. The previous organizational structure made only local technical Code amendments subject to this requirement. Reflecting this intent, the act also relevantly

modified section 553.73(4)(a), Florida Statutes, as shown here: "Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in ~~of~~ this subsection ~~paragraph~~." The effective date of the law was July 1, 2021. The salient point is, with the adoption of the subject local amendments occurring in the Fall or 2023, BORA was clearly aware that the statutory requirement for a fiscal impact statement was in effect.

113. With regard to the sentence in section 553.73(4)(h), Florida Statutes, that says, "The fiscal impact statement may not be used as a basis for challenging the amendment for compliance," Plaintiff alleges that the meaning of this restriction is that the monetary values and the balance of costs versus benefits in the statement may not be used to challenge an amendment. It does not mean that the absence of a fiscal impact statement cannot be used as the basis for a challenge, as the test for adjudicating a challenge in the forum of the countywide compliance review board is to see if the local agency followed the prescribed process, which includes a mandatory fiscal impact statement.

114. Plaintiff alleges that BORA was aware that each Code modification constituted a separate amendment. In its Answer to Plaintiff's petition for a nonbinding advisory opinion before the Florida Building Commission, when responding to Question 1, BORA's attorney Kramer quoted sections 107.3.4.0.1, 107.3.4.0.3, and 107.3.4.0.4, which had been added by BORA to FBC – Building (2020) through a local amendment, and referred to them as "three (3) subject amendments" (*Id.*, p.19) and "three (3) code amendments" (*Id.*, p.20). Those same amendments, adopted again by BORA along with others to modify the 8th Edition of the Code, are the subject of this Complaint.

115. Plaintiff further alleges that BORA adopted all the numerous amendments to chapter 1 of FBC – Building (2023) as a single action, without individual consideration, as required by section 553.73(4), Florida Statutes. BORA also adopted all the technical amendments to multiple

chapters of the Code as a single action, even though they covered a number of construction components and subjects. In neither of these actions did BORA demonstrate a governmental purpose being served by adopting the local amendments.

116. According to Florida law (§553.73(4)(e), Fla. Stat.), the Florida Building Commission is directed to consider adding each local amendment adopted over the prior three years when crafting the next triennial version of the Florida Building Code. Any local amendment not included in the next edition of the Code is rescinded. The Commission is also commanded to "incorporate within the Florida Building Code provisions that address regional and local concerns and variations" in section 553.73(3), Florida Statutes.

117. Plaintiff alleges that he could find no evidence to suggest that any BORA amendment to any version of the Code has ever been incorporated into any subsequent statewide version. Plaintiff further alleges that none of the BORA-adopted local Code amendments to the 7th Edition was considered for inclusion in the 8th Edition of the Code.

118. Plaintiff alleges that the publication and adoption of any edition of the Florida Building Code signifies that the Commission is satisfied it has met its statutory duty to address regional differences, including those of HVHZ counties, like Broward. BORA has adopted similar modifications to chapter 1 of FBC – Building as local amendments to several prior versions of the statewide code, yet the Commission has never modified the adopted statewide code to include them. In doing so, Plaintiff alleges that the repeated decisions by the Commission to reject the BORA amendments demonstrate that the subject local amendments are not necessary to meet the purposes of the Code. Thus, Plaintiff alleges that the BORA amendments to chapter 1 of FBC – Building (2023) do not meet a legitimate governmental purpose, which is a mandatory element of any ordinance.

119. Plaintiff alleges that his April 2, 2024, search of the Commission's webpage that lists all adopted local amendments reported to it by local jurisdictions, as required by section 553.73(4), Florida Statutes, (https://www.floridabuilding.org/bc/bc_lst.aspx) found two other jurisdictions in the HVHZ that have adopted local Code amendments. The City of Miami has adopted three: two technical amendments for water conservation (Ordinance 08-14, adopted Feb. 5, 2008, amending FBC – Plumbing, chapter 6; and Ordinance 23-70, adopted September 6, 2023, amending FBC – Residential, chapter 29), as specially authorized in section 553.73(4)(k), Florida Statutes, and one administrative amendment for flood plain management administration (Ordinance 12-57, adopted July 3, 2012, delegating responsibility for flood plain regulation to the appropriate city and county agencies), as specially authorized by section 553.73(5), Florida Statutes. In addition, Miami-Dade County also adopted a technical amendment on water conservation (Ordinance 08-14, adopted February 5, 2008, amending FBC – Plumbing, chapter 6). The absence of any local Code amendments of the type and number adopted by BORA in the other county included in HVHZ strongly suggests that those building safety agencies consider the statewide Code's regional accommodation of HVHZ requirements to be sufficient. Such an inference supports Plaintiff's allegation that the BORA local amendments to chapter 1 of FBC – Building (2023) do not meet a legitimate governmental purpose

120. Because the local amendments adopted by BORA are unsupported by any competent substantial evidence, they raise a substantive due process claim under the 5th and 14th Amendments of the U.S. Constitution and article I, section 9 of the Florida Constitution, which protect people from arbitrary and capricious government actions that affect property rights. (See, e.g., *Chicago Title Ins. Co. v. Butler*, 770 So. 2d 1210, 1215-20 (Fla. 2000).) In the instant case, Plaintiff has property rights associated with the plans, specifications, and other construction

documents he has and may prepare. Those property rights include enjoying the value of marketing and conveying those documents to property owners and contractors located in Broward County, who may use them to seek a building permit.

121. Plaintiff additionally asserts that the subject local amendments violate his vested rights by precluding his reliance upon the exemptions in section 481.229, Florida Statutes, that should allow him to practice the residential design profession on a statewide basis. Wind loads and other design parameters that may have a geographic variance are well documented in the Code, so they can be anticipated when providing services on a statewide basis. However, the BORA local amendments imposing requirements for the preparation of construction documents by registered design professionals are unique. These amendments do not just alter the content of construction documents, they also alter the contractual relationship between Plaintiff and his clients based on where they are located within the state.

122. Subsection 553.73(4), Florida Statutes, requires local amendments to the Florida Building Code be adopted as ordinances. BORA has not done so.

123. In summary of this claim, Plaintiff alleges that Respondent performed none of the statutory requirements to adopt the local administrative or technical amendments except for conducting two readings and a public hearing prior to the final vote. Respondent did not even place the amendments into an ordinance, such that it might have included the normal "Whereas" clauses to provide justification to the amendments.

Claim 2: Respondent Is Precluded from Adopting Most Local Amendments to the Administrative Portions of the Florida Building Code.

124. Plaintiff alleges that BORA, as a result of being a county agency, is prohibited by Florida law from adopting almost all administrative amendments to the Florida Building Code, the

exceptions being special provisions regarding water conservation and flood plain regulation, as noted in Claim 1, both of which were made available by legislative acts after chapter 2000-141, Laws of Florida, was effective. In multiple places, Florida Statutes explicitly permit counties to adopt only technical amendments. For example, in section 125.01(1)(bb), Florida Statutes, the legislature directed that counties may "adopt and enforce local technical amendments to the Florida Building Code as provided in s. 553.73(4)." There is no listed power for counties to adopt administrative amendments. Similarly, section 125.56(1), Florida Statutes (2023) limits the ability of counties to modify the Florida Building Code to technical amendments, with no mention of any power to adopt administrative amendments. Both of these statutory provisions were enacted as parts of chapter 2000-141, Laws of Florida, as were the elements of section 553.73(4), Florida Statutes, that describe how local amendments are to be adopted.

125. Plaintiff alleges the legislature was satisfied, at the time chapter 2000-141, Laws of Florida, was approved, that the provisions authorizing only technical amendments by counties was consistent with the separate provision allowing local governments to amend the Florida Building Code. This is because the language of section 40 of chapter 2000-141, Laws of Florida only permitted technical amendments by local governments. The power to make local amendments to the administrative portions of the Code was only granted by the legislature at a later date, notably without removing the county amendment restrictions.

126. Plaintiff alleges that section 136 of chapter 2000-141, Laws of Florida, explicitly repealed "any sections or provisions of any special act governing those activities by any general purpose local government," of which Broward County is one, so any power BORA may have had to adopt whatever building code amendments it desired ended on the effective date of the act. In the quoted passage, "those activities" refers to "the regulation by counties and

municipalities of the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings."

127. The charter amendment that gave rise to the current incarnation of BORA through section 9.02 of the Broward County Charter explicitly says the agency is subject to the provisions of chapter 2000-141, Laws of Florida. Plaintiff alleges that even though this amendment referenced a long list of special acts and other acts adopted by the Florida legislature, only chapters 98-297 and 2000-141, Laws of Florida, have any current effect on the agency, as the latter act repealed all prior special acts affecting BORA's formation, powers, and duties as they relate to the Code.

128. The Broward County Charter language in section 9.02(A)(2) relevantly says, "The provisions of the Florida Building Code shall be amended only by the Board of Rules and Appeals and only to the extent and in the manner specified in the Building Code." Plaintiff alleges that since the local amendment language contained in section 553.73(4), Florida Statutes, was already in place at the time this charter amendment was approved, the apparent intent was to limit the ability of BORA to adopt only local technical amendments by referencing the acts that did so. Supporting this conclusion is the language in various portions of the Code, such as section 104.11 of the 8th Edition of FBC – Building, that permit local governments to adopt policies that let local construction use alternative materials, designs, and methods of construction and equipment than those enumerated in the Code. Adopting such policies was part of the original and consecutively stated intent of the state legislature and the voters of Broward County.

129. Plaintiff alleges there is no provision in the Florida Building Code for amendments to the Code by local governments, so the language of section 9.02 of the Broward County Charter authorizing BORA to adopt Code amendments "in the manner specified in the Building Code" fails to provide the power to alter the Code's language.

130. Since BORA is subject, through its latest charter language, to the provisions of chapter 2000-141, Laws of Florida, Plaintiff alleges that any ability Respondent may have had at one time to adopt administrative amendments was eliminated by the language of that chapter, which granted counties—indeed, all local governments—only the authority to adopt local technical amendments since it also repealed all prior special acts governing building codes statewide.

131. There are, however, some very limited instances where BORA may be authorized to adopt a local amendment to the administrative provisions of the Code. Section 553.73(5), Florida Statutes, authorizes counties to adopt administrative and technical amendments to the Code in order to comply with the National Flood Insurance Program. This authorization is limited by the language of this section, which says, "Specifically, an administrative amendment may assign the duty to enforce all or portions of flood-related code provisions to the appropriate agencies of the local government and adopt procedures for variances and exceptions from flood-related code provisions other than provisions for structures seaward of the coastal construction control line consistent with the requirements in 44 C.F.R. s. 60.6." Plaintiff alleges this exception, given its limited authority and subject matter, does not alter the general claim made herein.

132. Although section 553.73(4)(a), Florida Statutes, includes the provision, "Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection," Plaintiff alleges this authority is not without restrictions, as documented above. 'Local government' is a general term applying to multiple entity types. The general authority granted to local governments in one statute can be restricted as applying to only certain types of local government by other statutes, where the specific controls over the general. Plaintiff alleges that is the case here. No legislative act ever removed

or modified the restrictions in chapter 125, Florida Statutes, limiting the power of counties to amend the Code through only technical amendments.

133. In addition, Plaintiff alleges that the county charter amendment creating the current agency limits it chronologically to the powers provided in chapter 2000-141, Laws of Florida, which allows only local technical amendments. By referencing chapter 2000-141, Laws of Florida, rather than section 553.73, Florida Statutes, section 9.02(A)(1) of the Broward County Charter precludes the evolution of BORA's powers to embrace the later addition of any possible statutory power to adopt local administrative amendments.

134. Finally, with regard to this Claim, Plaintiff notes that the "Purpose" statement on Respondent's website—which was crafted by the agency itself—says nothing about its regulation of the Code. The only way to reconcile all these facts is to conclude that Respondent lacks the power to adopt local administrative amendments.

Claim 3: Respondent is Precluded by State Pre-emption from Removing the Exemptions and Exceptions of Florida Statutes Governing the Licensed Practice of Engineering, Architecture, and Construction Contracting.

135. Plaintiff alleges that Respondent impermissibly removed statutory exemptions from licensure as a registered design professional when it modified the original text of chapter 1, FBC – Building, particularly by deleting the provision for certified contractors who had received specialized training from and adding requirements for licensure to prepare construction documents in section 107.3.4 of that chapter.

136. Plaintiff alleges that Respondent's removal of the text found in the original version of section 107.3.4.2 of FBC – Building (2023) seeks to alter the regulation of the profession of building contractor. In this instance, the original text repeats a specific exemption to the licensing laws enacted as section 489.115(4)(b)2, Florida Statutes (2023). While deleting this provision of

Code that implements a state law does not render that law void, it does suggest that Respondent has the intent to not recognize the exemption in practice.

137. Plaintiff alleges that the BORA local amendments that impose requirements for construction documents to be prepared by a registered design professional are also contrary to the provisions of Florida law permitting owners to be the contractors for their own property under various prescribed conditions. Such persons may also prepare construction documents under the exemptions provided in chapters 471 and 481, Florida Statutes.

138. Plaintiff alleges that Respondent is barred from modifying the requirements, exceptions, and exemptions of professional practice regulated by the state, which has pre-empted the subject.

139. Plaintiff alleges that the pre-emption is express in that the legislature clearly intended to pre-empt any local regulation on the subject. Professions are expressly regulated at the state level. Variations from jurisdiction to jurisdiction are untenable and precluded by Florida law.

140. Plaintiff alleges the question to be settled under this Claim is whether such a local amendment frustrates the intent or purpose of the state law. (See, e.g., *Hernandez v. Coopervision*, 691 So. 2d 639 (Fla. 2d D.C.A. 1997).) The work products of architects—plans and specifications—are almost always created in preparation to build a structure subject to the requirements of the Florida Building Code. Why would the legislature provide exemptions in licensure listing the projects for which licensure is not required, and then permit local governments to remove those exemptions at their whim?

141. There are relevant Attorney General Opinions and precedent Florida court cases that support Plaintiff's assertion that a local ordinance cannot modify the language of chapters 471, 481, and 489, Florida Statutes. The first of these is Opinion 94-84, which responded to a series of related questions posed by Monroe County regarding its ability to place restrictions on

owner/builders. In that opinion, the Attorney General concluded that while a local government may regulate the quality and character of work performed by a contractor—including an owner/builder—through a system of permits, fees, and inspections intended to ensure conformance with State and local building regulations, the county could not alter the licensing requirements or exemptions provided in statute. In answer to one of the specific questions posed, the Attorney General wrote that "a local government through its building code may not prohibit that which is allowed or allow that which is prohibited by state law."

142. Supporting this conclusion was a case reference in Footnote 3 of the Opinion, which said: "*City of Miami Beach v. Rocio Corp.*, 404 So. 2d 1066, 1070 (Fla. 3d DCA 1981), pet. for rev. den., 408 So. 2d 1092 (Fla. 1981)." Under the heading of "Conflict," the Court in that case found that when a local ordinance conflicted with the provisions of a state statute, the local ordinance must be stricken. It provided the following legal foundation for this conclusion:

> One impediment to constitutionally derived legislative powers of municipalities occurs when the municipality enacts ordinances which conflict with state law. *City of Miami Beach v. Fleetwood Hotel, Inc.*, supra; see Fla. St. U. L. Rev. 137, 148-49 (1975); cf. *City of Miami Beach v. Frankel*, 363 So.2d 555 (Fla. 1978) (Authority granted by general law can be restricted by general law). Municipal ordinances are inferior to state law and must fail when conflict arises. *Rinzler v. Carson*, 262 So.2d 661 (Fla. 1972); *City of Miami Beach v. Fleetwood Hotel*, Inc., supra; *City of Wilton Manors v. Starling*, 121 So.2d 172 (Fla. 2d DCA 1960); 1979 Op. Att'y Gen. Fla. 079-71 (August 10, 1979); 1975 Op. Att'y Gen. Fla. 075-164 (June, 9, 1975); 3 Fla. St. U.L. Rev. 137, 148-49 (1975). Contra 1976 Op. Att'y Gen. Fla. 076-212 (November 10, 1976).

143. Another applicable Attorney General Opinion is 94-105, which relevantly says:

> This office in Attorney General Opinion 73-263 (interpreting the predecessor statutes to section 481.231 and section 471.037, Florida Statutes) concluded that a local government's building code could be more restrictive with respect to the services provided by registered architects and registered engineers, only to the extent that the provisions thereof are not in conflict with general law regulating such professions and do not operate to deny any rights granted to such a profession by the licensing statute. Thus, **in the case of a statutory exemption from the licensure requirements for an architect or engineer for a specified**

project, the city could not require such licensure before issuing a building permit. However, this does not preclude the city from requiring the project to meet the building and safety standards that would otherwise be applicable. [emphasis added]

144. In *Rinzler v. Carson,* 262 So. 2d 661 (Fla. 1972), referenced in Attorney General Opinion 94-84, the court declared:

> Municipal ordinances are inferior in stature and subordinate to the laws of the state. Accordingly, an ordinance must not conflict with any controlling provision of a state statute, and if any doubt exists as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute. **A municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.** 23 Fla. Jur., *Municipal Corporations*, Section 93, p. 116; State ex rel. *Baker v. McCarthy* (1936) 122 Fla. 749, 166 So. 280; *Wilton Manors v. Starling* (1960, Fla.App.), 121 So.2d 172; *Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376. In order for a municipal ordinance to prohibit that which is allowed by the general laws of the state there must be an express legislative grant by the state to the municipality authorizing such prohibition. McQuillin, *Municipal Corporations*, Vol. 5, Section 15.20. [emphasis added]

145. In *City of Miami Beach v. Fleetwood Hotel, Inc.,* 363 So. 2d 558 (Fla. 1978), the court declared, "Municipal ordinances are inferior in status and subordinate to the laws of the State and must not conflict therewith. If doubt exists as to the extent of a power attempted to be exercised which may affect the operation of a State statute, the doubt is to be resolved against the ordinance and in favor of the statute. *City of Wilton Manors v. Starling*, 121 So. 2d 172 (Fla.App. 1960), *City of Coral Gables v. Seiferth*, 87 So. 2d 806 (Fla. 1956)"

146. Plaintiff alleges the rulings in *Rinzler* and *City of Miami Beach* apply equally to a charter county government agency, like BORA, and provide caselaw support for Plaintiff's allegation that section 481.231(2), Florida Statutes, explicitly tells local governments that they cannot overcome the exceptions and exemptions provided in section 481.229(1), Florida Statutes, when issuing building permits. The state has specifically authorized persons other than registered

architects to prepare the construction documents needed to secure a building permit for constructing or modifying a one- or two-family residence or townhouse. There is no express legislative grant by the state to authorize Respondent to modify the licensure exemptions. Indeed, the law specifically prohibits such an action.

147. Less than a year ago, the appellate decision in *Feldman v. Fla. Dep't of Bus. & Prof'l Regulation*, No. 1D21-2997 (Fla. Dist. Ct. App., Dec. 12, 2022) confirmed the exemption in section 481.229(1)(b), Florida Statutes, for designing and supervising the construction of one- and two-family homes. In this case, which appealed a finding of unlicensed practice by the Board of Architecture and Interior Design, Plaintiff Enrique Feldman claimed that the exemption in section 481.229(1)(b), Florida Statutes, meant he was entitled to provide architectural services so that he could truthfully advertise that he is an "architect" even though he was not licensed by the State as such. While the court upheld the Board of Architecture's finding that Feldman was guilty of the unlicensed practice of architecture, it confirmed that the statutory exemption for one- and two-family homes does not require the design service provider to be registered as an architect. Specifically, the court found:

> Subsection (1) [of §481.229, Fla. Stat.] clearly states that the listed services in (a)-(c) of that subsection do not require the service provider to be qualified as an architect. As such, anyone—whether a non-architect or architect—is permitted to "make plans and specifications for, or supervise the erection, enlargement, or alteration" of the types of listed structures. Feldman may provide such services. But doing so doesn't transform him, as the service provider, into an architect; to the contrary, the subsection merely carves out a subset of specified services that don't require a qualified architect.

148. In addition to the exemptions in Florida Statutes, chapters 471, 481, and 489, Plaintiff alleges that the Florida legislature explicitly forbids the Florida Building Commission and local governments from including anything regarding professional qualifications in the Code:

> Provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code, and subsections (4), (6), (7), (8), and (9) are not to be construed to allow the inclusion of such provisions within the Florida Building Code by amendment. This restriction applies to both initial development and amendment of the Florida Building Code. (from §553.73(2), Fla. Stat.)

149. Plaintiff alleges it is common in the construction industry for production builders to employ licensed and unlicensed residential designers to develop their stock plans and to customize them for selected customers. Florida law explicitly permits design-build projects where the contractor employs the designer. In this context, Plaintiff asserts that the phrase "contractor or their workforce" includes unlicensed design professionals and others involved in preparing construction documents for a contractor to seek a building permit. Supporting this conclusion is section 489.103(11), Florida Statute (2023), which exempts from licensure under chapter 489 (construction contractors) "any person exempted by the law regulating architects and engineers, including persons doing design work as specified in s. 481.229(1)(b)"; i.e., unlicensed residential designers. Plaintiff contends that such an exemption explicitly recognizes that non-registered design professionals can be considered as part of a contractor's workforce.

150. Plaintiff alleges that no provision in a county charter can grant that county the power to revise state laws. As noted above, Broward County and its agency BORA are subject to the same legislative constraints as any other county in the state. In fact, the various provisions of the charter, particularly as they apply to BORA, explicitly state it is subject to the same duties and obligations as all other counties, which must comply with Florida laws and those portions of Florida Statutes they create or modify. BORA's local amendments imposing new requirements for professions regulated by the state are inconsistent with general law and cannot stand.

151. Even if one Florida law allowed the local administrative amendments adopted by Respondent to require signed and sealed construction documents, another Florida law says a check for evidence of such cannot be the subject of plan review. BORA's local administrative amendments requiring signed and sealed drawings means a plans examiner would have to look for them on the plans. Plaintiff asserts that Florida law precludes a plans examiner from applying local administrative amendments to the Code when evaluating construction documents for conformance with the Code. In section 468.604(3), Florida Statutes (2023), addressing the duties of a plans examiner, the Legislature declared, "It is the responsibility of the plans examiner to conduct a review of construction plans submitted in the permit application to assure compliance with **the Florida Building Code and any applicable local technical amendment to the Florida Building Code**" [*emphasis added*]. Local administrative amendments are thus explicitly excluded in the scope of plans review by law. As a result, even if a local government could adopt a local administrative amendment requiring that plans and other construction documents be prepared only by a registered design professional, which Petitioner asserts it cannot, the plans examiner would not be able to reject the documents due to the absence of such a certification (sign and seal stamp). Such a conclusion is illogical. Plaintiff alleges the way to remove this conflict is to reconcile the two by concluding the law does not allow any administrative local amendment that affects anything subject to plan review; i.e., appearing in construction documents.

152. The term 'administrative' means something operational, not substantive. It does not include anything a local government might want to put into chapter 1 of the Code just because it has the title of "Administration and Scope." The regulation of professions should not be an element of the Code, regardless of how such a subject may be classified. There should be no

references to who prepares construction documents anywhere in the Code, as that is a subject for the legislature, which has already addressed it.

153. Plaintiff alleges that regulation of professions at the state level is necessary to ensure that persons in similar situations are treated consistently across the state. If Respondent's amendments are to stand, then a set of construction drawings prepared by a person qualified to produce such documents through the exemption provided in section 481.229(1), Florida Statutes, could be acceptable in Miami-Dade County but not in Broward County, even though both counties operate under the same HVHZ requirements for plan review and compliance with the Code. As the legislature repeatedly stated in chapter 2000-141, Laws of Florida, the intent is to have one statewide Code, not a collection of city and county codes. Local amendments should be rare, which is why the legislature included a difficult local amendment adoption process. Subject to differences in wind load requirements, Code-compliant construction documents for a given residential structure should be acceptable in all Florida counties regardless of who prepared them. When state professional practice legislation is enacted, deprivation of rights under the 5th and 14th Amendments to the U.S. Constitution and the freedom for a residential designer to contract for his/her services are at stake when local governments seek to alter such legislation.

154. Plaintiff further alleges that the legislative intent in requiring a single Florida Building Code is clearly stated in section 553.72, Florida Statutes. Section (1) of that statute explicitly declares, "The Florida Building Code shall be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. The Florida Building Code shall provide for flexibility to be exercised in a manner that meets minimum requirements, is affordable, does not inhibit competition, and promotes innovation and new technology." The local amendments adopted by BORA that modify chapter 1 of the 8th Edition of FBC – Building frustrate this stated

purpose by removing uniformity and consistency between the local government jurisdictions of this state, going beyond minimum requirements, increasing the cost of securing a building permit, and inhibiting competition by restricting who may prepare construction documents.

155. Plaintiff alleges that, based on a plain reading of the relevant Florida Statutes, applying the clearly stated Legislative intent, and following the published opinions of the Florida Attorney General and caselaw established by superior Florida courts, the only possible conclusion is that local ordinances removing or modifying the licensure exemptions provided in section 481.229(1), Florida Statutes, are prohibited by State law.

Claim 4. Provisions of Chapter 1 of FBC – Building Are Void Due to Vagueness

156. Plaintiff alleges that the original and BORA-amended versions of the 8th Edition of FBC – Building chapter 1 suffer from being vague in that they give unfettered discretion to the building official to decide what construction documents may be required to receive a building permit. Admittedly, part of the offending language is contained in the original statewide Code, but that does not thereby render it constitutionally acceptable.

157. Plaintiff alleges the general test for vagueness in this matter is whether the ordinance references clear, determinable criteria. In other words, the terms used must be sufficiently definitive to tell the permit applicant or other involved party what must be done to qualify for the desired building permit. (*See*, e.g., *Park of Commerce Associates v. City of Delray Beach*, 606 So. 2d 633, 635 (Fla. 4th DCA 1992); *aff'd*, 636 So. 2d 12 (Fla. 1994) and *City of Lauderdale Lakes v. Corn*, 427 So. 2d 239, 242-43 (Fla. 4th DCA 1983).) A person with common intelligence must be able to understand the requirements.

158. Plaintiff alleges there are multiple examples where the requirement for a specific act to be taken precedent to receiving a building permit is completely at the discretion of the building

official. Here are some examples contained in the as-amended version of BORA's FBC – Building chapter 1 [emphasis added where shown]:

> **102.6 Existing structures.** The legal occupancy of any structure existing on the date of adoption of this Code shall be permitted to continue without change, except as is specifically covered in this Code, the FBC, Existing Building, the Fire Protection Provisions of this Code, or the FFPC, **or as is deemed necessary by the Building Official** for the general safety and welfare of the occupants and the public.
>
> **104.35.2** The Building Official, Fire Marshal, Or Fire Code Official shall approve such alternate types of construction, materials, or methods of design if it is clear that the standards of this Code are at least equal or greater. If, **in the opinion of the Building Official** Fire Marshal, or Fire Code Official, the standards of this Code will not be satisfied by the requested alternate, they shall refuse approval.
>
> **105.2.3 Public Service Agencies/Other Approvals.** ... The Building Official shall require such evidence, **as in their opinion is reasonable**, to show such other approvals. ...
>
> **105.3.2.6** Work shall be considered to have commenced and be in active progress when the permit has received an approved inspection within ninety (90) days of being issued or if, **in the opinion of the Building Official**, the permit has a full complement of workers and equipment is present at the site to diligently incorporate materials and equipment into the structure, weather permitting.
>
> **105.14 Permit issued on the basis of an affidavit.** Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions that, **in the opinion of the Building Official**, are hazardous or complex, the Building Official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. ...
>
> **107.3.4.0.6** For any work involving structural design, **the Building Official may require** that plans, calculations, and specifications be prepared by a Professional Engineer, regardless of the cost of such work.

159. The most glaring example of a provision suffering from being vague is the sentence in Section 107.1 of the 8th Edition of FBC – Building that says, "When special conditions exist, the building official is authorized to require additional construction documents to be prepared by a

registered design professional." There are multiple elements of this one sentence that violate the prohibition against vagueness.

160. First, there is no definition, constraint, or explanation of the term 'special conditions.' As demonstrated in earlier paragraphs presenting the facts common to the elements of this Complaint, the ICC, the Florida Building Commission, and BORA have very divergent and conflicting opinions as to what this term means. The Commission went so far as to say in its order in Case No. DS 2023-53 that it is impossible to determine whether certain criteria incorporated into the BORA amendments can even be quantified. Thus, the term 'special conditions' has been formally adjudged as neither clear nor determinable in a recent administrative hearing. Accordingly, special conditions may be anything the building official judges it to be in his or her unrestricted discretion, which the courts have judged to be improper. As noted in *City of Miami Beach v. Fleetwood Hotel, Inc., supra*:

> Unrestricted discretion in the application of a law without appropriate guidelines and determining its meaning may not be delegated by the City Council to an agency or to one person. ... In other words, the legislative exercise of the police power should be so clearly defined, so limited in scope, that nothing is left to the unbridled discretion or whim of an administrative agency charged with enforcing the act.

161. Second, there is no constraint on the building official's decision-making process as to what additional construction documents may be required. As worded, this portion of Code section 107.1 is vulnerable to subjective discretion on the part of the building official and can thereby be arbitrary and discriminatory in application. This one sentence portends that Plaintiff and others similarly situated may produce a set of plans and other construction documents that conform fully to the Code provisions for the applicable type of construction, and then have their permit application rejected because the building official modifies the requirements at his or her sole discretion.

162. Third, there is the issue of equitable estoppel. In the subject case, Florida Statutes say that Plaintiff is exempt from the regulations governing the practice of architecture when providing services within prescribed exemptions, such as when designing a one-family residence. Plaintiff could sell plans for such a building that were accepted for construction elsewhere in the state to a person who intends to build a residence in Broward County; however, when Plaintiff's client applies for the building permit, it would be rejected because Plaintiff is not a registered architect in the State of Florida. This rejection, due to the local administrative amendment adopted by BORA, would present a number of issues regarding the contractual performance of the Plaintiff relative to his obligations to his client to provide a product suitable for use.

163. Fourth, the vague wording of the subject sentence in section 107.1 violates the 5th and 14th Amendments to the U.S. Constitution and Article I, Section 9 of the Florida Constitution by setting the stage for arbitrary and capricious governmental actions that affect property rights through a violation of due process requirements. In *Chicago Title Ins. Co. v. Butler*, *supra*, the court said:

> The test to be applied in determining whether a statute violates due process is whether the statute bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare and is not discriminatory, arbitrary, or oppressive. *See Lane v. Chiles*, 698 So.2d 260, 263 (Fla. 1997); *Lite v. State*, 617 So.2d 1058, 1059 (Fla. 1993); *Belk-James, Inc. v. Nuzum*, 358 So.2d 174, 175 (Fla. 1978); *Lasky v. State Farm Ins. Co.*, 296 So.2d 9, 15 (Fla. 1974); *Stadnik v. Shell's City, Inc.*, 140 So.2d 871, 874 (Fla. 1962).

164. Actions affecting property rights are subject to stricter substantive due process scrutiny (*Id.*). As demonstrated in previous paragraphs of this Complaint, and alleged by Plaintiff here, the amendments adopted by BORA to chapter 1 of the 8th Edition of FBC – Building fail to demonstrate any legitimate legislative purpose, as there has been no showing by evidence that the construction documents prepared by unlicensed persons, where permitted by state law,

produce less safe buildings, pose a hazard to the public, or even generate more negative plan review comments during the application consideration process. Indeed, as clearly demonstrated by the records, BORA failed to consider *any* evidence at all for the so-called local administrative amendments it has adopted. Plaintiff again asks the Court to take notice of the fact that no other HVHZ jurisdiction has adopted any local amendments except for water conservation and flood plain regulation, both topics for which there are separate statutory authorizations from the one falsely used by BORA.

165. Fifth, the sentence in section 107.1 of the Code improperly says any such additional construction documents the building official may require before awarding the desired building permit must, without exception, be prepared by a registered design professional. As with Claim 3, above, this provision of the Code is impermissibly modifying Florida law governing the practice of the engineering, architecture, and building contracting professions by mandating that any such documents may not be prepared by persons permitted by law to do so through exemptions and exceptions to those regulated professions. This mandate applies even when the BORA-amended language of the Code allows the standard construction documents to be prepared by anyone.

166. Sixth, such vague requirements and the excessive discretion they afford a ministerial functionary, such as a building official, can serve not only for that person to arbitrarily discriminate against an applicant by demanding additional documents, but also by imposing excessive delays to beginning construction, which is its own form of arbitrary discrimination. Although the legislature has attempted to place some deadlines on the permitting process for certain types of construction, such as those contained in section 553.79, Florida Statutes (2023), the process remains relatively unconstrained for these sources of discrimination.

167. Taken together, both the original Chapter 1 in the 8th Edition of FBC – Building and the version amended by BORA contain multiple instances of unbridled discretion granted to the building official, thereby violating not only federal and state constitutional provisions, but also a long history of Florida courts striking such offending requirements from law.

Claim 5. BORA's Amendments to Chapter 1 of FBC – Building Violate Plaintiff's Equal Protection Rights.

168. When a local government action treats one person differently than another person who is similarly situated without any rational basis, Plaintiff alleges the government action violates the first person's constitutional guarantee of equal protection under the law. (See, e.g., *Bannum, Inc. v. City of Fort Lauderdale*, 901 F. 2d 989, 997-99 (11th Cir. 1990).) Plaintiff's equal protection rights are granted by article I, section 2 of the Florida Constitution and the 14th Amendment to the U.S. Constitution. Action to preserve such rights are properly brought before this Court under chapter 86, Florida Statutes.

169. Plaintiff alleges the violation of his equal protection right is a result of the arbitrary threshold values selected by Respondent to trigger the need for construction documents to be prepared by a registered design profession and, thereby, preclude Plaintiff from producing them. As demonstrated above in Claim 1, no evidence was presented or considered by BORA to justify any aspect of the amended language. Thus, the selection of $30,000 as a triggering threshold value for residential construction is completely arbitrary and places the person who proposes to do the work at a cost below that threshold in a different situation than someone who proposes to do the same work at a higher price.

170. Plaintiff alleges the result of Respondent's amendments can violate his equal protection rights even when he is the same person in both situations. It is entirely possible for one set of

plans prepared by Plaintiff to be subjected to two different treatments merely as a result of the differing cost of materials or labor. For example, Plaintiff could legitimately prepare the plans for a kitchen remodel for a client where the construction cost estimate is $29,900, which would not reach the $30,000 threshold and, therefore, not trigger the BORA requirement for the construction documents to be prepared by a registered design professional. If the same plans are used one month later, when inflation or a different selection of, say, the kitchen sink has increased the price of construction to $30,100, the threshold of $30,000 would be crossed and the construction documents would no longer be acceptable in Broward County.

171. Plaintiff argues there is no threshold value of construction that can resolve the violation of equal protection rights. Any and all choices are arbitrary.

Prayer for Relief: Declaratory Judgment

172. This case presents the doubts Plaintiff has about his rights relative to providing residential design services in Broward County and the included municipalities, which are within the jurisdiction of Respondent and this Court. Plaintiff affirms that there is a bona fide, actual, and present practical need for this Court to declare Plaintiff's rights in this matter. Plaintiff further affirms that the controversy is described in a clearly stated set of facts; that the uncertainty regards powers, privileges, and rights of Plaintiff depend on the application of law to those facts; that Respondent is antagonistic toward Plaintiff enjoying and exercising those powers, privileges, and rights; that all antagonistic parties are present before the Court through proper process, including notice to the State Attorney for the 17th District; and that the relief sought is genuinely needed to settle the controversy. Accordingly, Plaintiff seeks a declaratory judgment from this Court, under the provisions of chapter 86, Laws of Florida, based on:

a. Claim 1 – Respondent did not comply with the statutory process to adopt local amendments to the Florida Building Code. The relevant declaration should state that BORA:

    i. Failed to form the countywide compliance review;

    ii. Did not conduct the fiscal impact analysis required for each proposed local amendment to the Code;

    iii. Did not conduct a review of local conditions, which is required to demonstrate the need for local technical amendments;

    iv. Did not state the specific need for any local amendment;

    v. Failed to determine that any proposed local amendment addressed a local need it had identified through consideration of competent substantial evidence;

    vi. Did not find that any proposed local technical amendment was no more stringent than required to meet the local need;

    vii. Adopted the local amendments as a group without individual consideration;

    viii. Failed to properly adopt the local amendments as county ordinances; and

    ix. Did not offer any competent substantial evidence showing the amendments serve a clearly stated and permitted governmental purpose.

b. Claim 2 – Respondent is prohibited by statute from adopting most administrative amendments to the Florida Building Code. The relevant declaration should state that BORA, as an agency of county government, is precluded by Florida law from adopting almost all local administrative amendments to the Code. Respondent's organization, powers, and duties are now provided solely by section 9.02 of the Broward County

Charter, as constrained and defined by chapters 98-287 and 2000-141, Laws of Florida, and relevant Florida Statutes.

c. Claim 3 – The Court should issue a declaration that Respondent is precluded by state pre-emption of the subject matter from altering the rules and regulations governing the professions of engineer, architect, and construction contractor.

d. Claim 4 – The Court should declare that multiple provisions of the 8th Edition of FBC – Building, chapter 1, in both its original and amended forms, violate the prohibition against vagueness and thereby violate various federal and state constitutional protections. The declaration should include a finding that the noted passages leave unfettered discretion in the hands of a functionary, usually the building official, and are, therefore, unconstitutional because they violate the protections of the 5th and 14th Amendments of the U.S. Constitution and article I, section 9 of the Florid Constitution. In particular, a sentence found in section 107.1 of the original and BORA-amended versions of the 8th Edition of FBC – Building, "When special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional," includes two undefined and ambiguous terms ('special conditions' and 'additional construction documents') and omits any guidance as to how they are to be identified. As stated in the original legislative intent, some degree of flexibility in applying the Code to unusual situations suggest that, instead of striking the entire sentence, this Court should strike only the requirement for registered design professionals to prepare such additional documents and issue definitions for *special conditions* and *additional construction documents* that can be used immediately while the entire

document is edited to remove vague language of this type in preparation for the next publication cycle (2026 Code). The proposed definitions are:

i. ***Special Condition*** means an element of the construction site and/or design that is outside the parameters upon which the Florida Building Code is based or exceeds the prescriptive guidance found in the Code, and that is unique to the proposed construction rather than generally applicable within the local jurisdiction. *Examples:* (1) Soils within the area of construction that do not provide the minimum bearing strength on which prescriptive design tables are based; (2) Window openings that exceed the maximum width in a prescriptive design table for the selected header material.

ii. ***Additional Construction Documents*** means one or more construction documents beyond those standard documents that are normally needed for construction of the contemplated type and intended to address the special conditions presented by the project. *Examples*: (1) An engineer's opinion letter stating that the proposed foundation design accommodates the poor soils found on the construction site; (2) an engineered design to support the overbearing weight for an opening width that exceeds the maximum span listed in the Code.

e. Claim 5 – The Court should declare that the construction cost thresholds of $30,000 for residential projects and $15,000 for other project types, as established by the BORA amendments that created sections 107.3.4.0.1 through 107.3.4.0.8 in chapter 1 of FBC – Building, are completely arbitrary and violate the 14th Amendment's Equal Protection Clause.

173. Should the Court find that any one of the five claims presented in Count 1 is well founded, the Court should declare the local amendments adopted by BORA to be null and void. No other legal remedy is available to Plaintiff to settle the controversy.

COUNT 2: INJUNCTIVE RELIEF

174. After due consideration, and after having declared all or part of the BORA-adopted local Code amendments null and void, the Court should grant injunctive relief as supplemental to such a declaration in order to provide complete relief. Plaintiff seeks a permanent injunction to bar Respondent from enforcing any and all local Code amendments this Court finds to violate the law. Such supplemental relief is authorized by section 86.061, Florida Statutes.

175. An often-cited case that establishes a four-pronged test for deciding whether a permanent injunction provides appropriate equity relief is *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982). To receive a permanent injunction as equitable relief following a favorable declaratory ruling by the court, a plaintiff must pass all four prongs of the test.

176. The first prong is that the plaintiff has suffered an irreparable injury. In the instant case, that irreparable injury is the loss of business income generated by providing design services and products to clients located in Broward County. Injuries also include the loss of guaranteed constitutional rights at the federal and state levels.

177. The second prong is that remedies available at law, such as monetary damages, are inadequate to compensate for the injury. In the instant case, it is not possible to determine the monetary value of business losses incurred by Plaintiff, as well as the losses incurred by property owners and contractors who had to pay higher prices to receive services from registered design professionals they otherwise would not have needed except for Respondent's improperly adopted local Code amendments.

178. The third prong seeks to balance the relative benefits and costs to Plaintiff and Respondent so that the remedy in equity is warranted by the preponderance of hardships on the plaintiff. In the instant case, there are no hardships flowing to Respondent as a result of barring it from enforcing the impermissible local Code amendments it improperly adopted. Given the complete absence of competent substantial evidence supporting Respondent's adoption of the local Code amendments, there is no way for the Court to perceive any hardships flowing to BORA as a result of this Court issuing the requested prohibitive permanent injunction.

179. The fourth prong is that the permanent injunction being sought would not hurt public interest. Plaintiff alleges that granting the requested relief will not injure the public interest. In fact, it is actually in the public's interest and to its benefit for the Court to ensure that all citizens' constitution rights are protected by this Court, and that local governments are held to comply with the laws and regulations of this state. Finding for Plaintiff under any one of the five claims raised in Count 1 should immediately justify a permanent injunction barring Respondent from enforcing its local Code amendments. To do otherwise would be a violation of the public's trust in the judicial system as the final protector of its rights and privileges guaranteed by the U.S. and Florida constitutions.

180. Some courts alternatively apply a three-pronged test for injunctive relief. Plaintiff alleges that he has a clear legal right to relief, has an inadequate remedy at law, and will suffer irreparable harm if the injunctive relief is not provided. Plaintiff has a legitimate business interest that is permitted by Florida law but confounded by Respondent's existing local Code amendments. As evidenced above, there is no available remedy at law to provide relief other than to remove the offending language from the amended Code. Lastly, there is no way to mitigate the

harm imposed on Plaintiff from continued application of regulations and requirements this Court has found to be improperly adopted.

181. In addition to applying a multi-prong test common to all demands for a permanent injunction, the Court should look at Respondent's abuse of process. The record clearly demonstrates that Respondent willfully made illegal, improper, and perverted use the local Code amendment process. It did so because it knew it could not satisfy the statutory requirements and thereby ignored them. A presumption of an ulterior motive or purpose is justified by the many process violations documented by the record, which shows Respondent knew, by its own statements in other venues, about the statutory amendment adoption process and purposefully chose to ignore not just one, but all requirements.

182. Should this Court determine that the offending local Code amendments are null and void, Plaintiff prays that this Court issue an immediate mandatory injunctive order directing Respondent to cease enforcement of the amendments found in violation of law, remove them from the agency's website, and notify the Florida Building Commission of this action in a request for the Commission to remove them from their website of active local Code amendments.

183. Granting the permanent injunction relief sought here will not bar Respondent from adopting future local Code amendments in accordance with the prescribed statutory process and the declaratory judgments of this Court, except for those declared by this Court as improper.

184. In addition to the order commanding Respondent to remove the improper local Code amendments it has adopted, Plaintiff asks this Court to grant a mandatory injunction imposing the definitions listed in any declaration it issues regarding the terms "special conditions" and "additional construction documents" within the jurisdiction of this Court. Although such an

injunction will not resolve the issue throughout the state, it will serve as motivation for the ICC and the Florida Building Commission to look more closely at Code provisions where complete, unfettered discretion is placed in the hands of a single person, usually the building official. Accordingly, this injunction should remain in place until the next version of the Code is issued by the Commission in 2026.

CERTIFICATE OF SERVICE

This Petition for Declaratory Statement is hereby filed on April 30, 2024, with the Clerk of the 17th Judicial Circuit for Civil Division 50 through the online e-filing portal in accordance with the Rules of Civil Procedure and via email to Respondent's attorney of record, Mr. Charles M Kramer, Benson, Mucci & Weiss, P.L., 5561 North University Ave, #102, Coral Springs, FL 33067, ckramer@BMWlawyers.net.

The required notice to the Broward State's Attorney Office for the 17th Circuit regarding the constitutional challenges to a local government ordinance or regulation raised in this Complaint is being filed through the online e-filing portal at courtdocs@sao17.state.fl.us, as required by that office, to meet the notice requirements of section 86.091, Florida Statutes, and Rule 1.071.

/s/ JACK A BUTLER
PLAINTIFF *PRO SE*
301 Avalon Road
Winter Garden, Florida 34787
407-717-0247
abutler@mpzero.com

EXHIBIT A

NOVEMBER 27, 2023, EMAIL FROM ICC STAFF

abutler@mpzero.com

From:	Christopher Reeves <jira@icc-ts.atlassian.net>
Sent:	Monday, November 27, 2023 5:21 PM
To:	abutler@mpzero.com
Subject:	ICCTO-1865 Meaning of the terms 'special conditions' and 'additional construction documents'

Re: [illegible]

Christopher Reeves has commented on your request:

Jack Butler,

This email is in response to your email correspondence regarding "special conditions" and the need for "additional construction documents". All comments are based on the 2018 International Building Code (IBC) unless noted otherwise.

As noted in Section 107.1, the building official is authorized to require "additional construction documents" to be prepared by a registered design professional where "special conditions" exist. Admittedly, while the code doesn't define what constitutes "special conditions", such conditions are typically matters not provided for or addressed by the code or proposed design alternatives to the basic provisions in the code as regulated by Section 104.11. For example, the code does not specifically address how to construct a chemical refinery or other special hazardous occupancies which may require unusual height or area limitations due to a specific process or equipment. Extremely large buildings may also warrant a specific egress design study to justify an additional exit access travel distance beyond basic code limitations. "Special conditions", as alluded to in your correspondence, is not, in my opinion, necessarily related to the cost of the project or other local amendments.

As noted, "additional construction documents" could include drawings, structural calculations, research reports, test data or additional studies, prepared by a registered design professional, to substantiate equivalent compliance with the intent of the code with final approval subject to the building official.

If you would like to discuss this further, I can be reached directly at (888) 422-7233, X4309.

Sincerely,

Chris Reeves

Christopher R. Reeves, P.E.
Director, Architectural & Engineering Services
International Code Council, Inc.
Central Regional Office
888-ICC-SAFE (422-7233), x4309
creeves@iccsafe.org

You may reply to this email to add comments to your request.

Christopher Reeves resolved this as Answered.

Filing # 201698292 E-Filed 07/01/2024 02:51:06 PM

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

JACK A BUTLER, an individual,

Petitioner,

vs.

BROWARD COUNTY BOARD OF RULES AND APPEALS,

Respondent.

CACE: 24005922 (5/27)

MOTION TO DISMISS

COMES NOW, Defendant, THE BROWARD COUNTY BOARD OF RULES AND APPEALS, (hereinafter "BORA") by and through undersigned Counsel pursuant to Fla. R. Civ P. 1.420 and files this, its Motion to Dismiss and states as follows:

THE PARTIES

THE BROWARD COUNTY BOARD OF RULES AND APPEALS ("BORA")

1. BORA is an administrative, quasi-judicial body created by Special Act of Legislature 71-575, which first met on January 10, 1971. On March 9, 1976, the people of Broward County approved the special act making the South Florida Building Code, Broward County Edition, a county-wide standard. The voters of Broward County recognized the need for a single autonomous agency to write, modify, and interpret a uniform body of building codes applicable throughout the County. On January 1, 2003, the Broward County Charter was then amended, as proposed by the Charter Review Commission, to establish the Broward County Board of Rules and Appeals as an arm of county government.

2. The purpose of BORA is set forth in Broward County Charter section 9.02. More specifically:

9.02 (a) Purpose.

(1) It shall be the function of the Broward County Board of Rules and Appeals to exercise the powers, duties, responsibilities, and obligations as set forth and established in Chapter 71-575, Laws of Florida, Special Acts of 1971, as amended by Chapter 72-482 and 72-485, Laws of Florida, Special Acts of 1972; Chapter 73-427, Laws of Florida, Special Acts of 1973; Chapters 74-435, 74-437, and 74-448, Laws of Florida, Special Acts of 1974; and Chapter 98-287, as amended by Chapter 2000-141, Laws of Florida, or any successor building code to the Florida Building Code applicable to the County, as amended. See Special Act 71-575 attached hereto as Exhibit "A."

(2) The provisions of the Florida Building Code shall be amended only by the Board of Rules and Appeals and only to the extent and in the manner specified in the Building Code. The County Commission or a Municipality shall not enact any ordinance in conflict with Chapter 98-287 and Chapter 2000-141, Laws of Florida, as may be amended from time to time.

(3) The Board of Rules and Appeals shall conduct a program to monitor and oversee the inspection practices and procedures employed by the various governmental authorities charged with the responsibility of enforcing the Building Code.

(4) The Board of Rules and Appeals shall organize, promote and conduct training and educational programs designed to increase and improve the knowledge and performance of those persons certified by the Board of Rules and Appeals pursuant to the Building Code and may require the completion of certain minimum courses, seminars or other study programs as a condition precedent to the issuance of certificates by the Board of Rules and Appeals pursuant to the Building Code.

3. Pursuant to legislative authority and the County Charter, BORA is the governing agency as to matters pertaining to the Florida Building Code, and the individual cities are the enforcing agencies.

PARTIES, STANDING, JURISDICTION, AND VENUE

JACK BUTLER

4. The Complaint states that:

> 14. Plaintiff Jack A. Butler is a Florida Certified Residential Contractor holding Certificate No. CRC1328041 and co-owner and managing member of Butler & Butler, LLC, a Florida- registered for-profit company organized in March 2002 and in continuous operation since then.

See Complaint at ¶18

5. Despite the style of the case characterizing Plaintiff as "an individual," it is clear that the claims set forth in the Complaint pertain to the inability of Plaintiff, through his corporate entity "Butler & Butler LLC" to engage in the unauthorized practice of engineering or architecture where Broward County is legislatively recognized as a "High-Velocity Hurricane Zone" under Chapter 16 the Florida Building Code thus creating a special condition as further set forth in Florida Building Code at §107.1. which states:

> 107.1 "Submittal documents consisting of construction documents, statements of special inspections, geotechnical reports, and other data shall be submitted in two or more sets with each permit application. The construction documents shall be prepared by a registered design professional where required by Chapter 471, Florida Statutes, or Chapter 481, Florida Statutes. **Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professiona**l.")

See also Florida Building Code, Chapter 16.

6. The first twenty-four (24) pages of the Complaint provide the Court with a review of legislation pertaining to the Florida Building Code, including the Florida Building Code, State and Broward County Amendments, the Broward County Charter, Florida Statutes §47.01,§86.011,

§86.021, §86.061, §86.091,§125.01, §125.56, §418.229, §468.604, §471.003, §471.037, §481.229, §481.231, §489.103, §489.115, §553.70, §553.71, §553.72, §553.73, §553.74, §553.77, §553.775, §553.79, §553.80, §553.898, Laws of Florida Ch. 71-575, Special Acts of 1971, Ch. 72-483, Special Acts of 1972, Ch. 74-437, Special Acts of 1974, Ch. 98-287, Ch. 2000-141, and Ch. 2021-201.

7. While providing an almost encyclopedic review of statutes and codes, Plaintiff provides no citations of precedent from which the Court or Respondent may review the applicability of same to Plaintiff's argument where Plaintiff fails to show a present controversy on a justiciable issue. The lack of precedent notwithstanding, nowhere in the first twenty-three (23) pages and eighty-seven (87) paragraphs does Plaintiff show or even allege how he has been harmed so as to demonstrate a present controversy or justiciable issue which would trigger his right to a Declaratory Judgment or Injunctive Relief.

CLAIMS OF INCHOATE CONTROVERSY OR HARM CANNOT BE ADDRESSED THROUGH DECLARATORY RELIEF

Count 1

8. Plaintiff mistakenly claims that the issues presented in his Complaint present a cognizable claim, to wit:

> 28. Plaintiff is motivated to file this Complaint by ***his uncertainty*** regarding a key requirement in the Florida Building Code ("FBC" or "Code") related to construction documents. Among other services, Plaintiff, through his company, provides residential design and construction services to clients in Florida. The design services are permitted under Florida Statutes that allow exemptions from licensure as an architect for persons who design one- and two-family homes, townhouses, and other structures listed in section 481.229, Florida Statutes. However, Plaintiff is prohibited from providing residential design services in Broward County by operation of the local amendments to the Code adopted by Respondent. The difference between Florida Statutes that allow him to provide residential design services and the BORA-amended version of the Code that prohibits his

providing the same services in Broward County creates a controversy regarding Plaintiff's rights and legal relations.

29. ***Plaintiff is in doubt as to his rights*** that are affected by various statutes and ordinances, as stated herein. The current controversy raised in this Complaint is a bona fide, actual, and present issue where Plaintiff has a present, practical need for a declaration of his rights to resolve uncertainties. Such a declaration deals with a present, ascertained set of facts. Plaintiff contends that ***the controversy calls into question his rights and privileges of doing business in Broward County*, which is dependent on the law applicable to the facts**. As a result, Plaintiff is a substantially affected person with regard to the subject matter of this Complaint.

30. Plaintiff asks the Court to take notice that at no time during the precedent administrative proceedings related to the subject controversy did any of the quasi-judicial bodies involved in those proceedings find that Plaintiff lacked standing to bring the action.

See Complaint at ¶¶28,29,30.

9. Without straying beyond the four corners of the Complaint, BORA shows this Honorable Court that Plaintiff admits that he sought three (3) declaratory statements and one (1) non-binding advisory opinion from the Florida Building Commission and the Florida Board of Architecture and Interior Design in four (4) prior proceedings to wit: 1) Florida Building Commission, Case No. DS 2023, Petition for Declaratory Relief (***Declined to answer on jurisdictional grounds***, Fla. Building Commission, October 25, 2023); 2) Florida Building Commission, Case No. 001, Petition for Nonbinding Advisory Opinion (***No Opinion (invoking discretion of the Commission***) Fla. Building Commission, December 18, 2023); 3) Florida Board of Architecture and Interior Design Petition for Declaratory Statement (***Declined for lack of jurisdiction***) February 14, 2024); 4) Florida Building Commission, Case No. DS 2023-053, Petition for Declaratory Relief (***Answered in part, declined to answer as to all remaining counts***, Fla. Building Commission, March 28, 2024). *See* Complaint at ¶¶ 89-102.

10. In all instances, the Florida Building Commission declined to answer where it does not have jurisdiction in such matters. *See* Complaint at ¶¶ 89-102.

11. The fact of the matter is, and as determined from the four corners of the Complaint, the previous proceedings before administrative bodies (the Florida Building Commission and the Florida Board of Architecture and Interior Design)- not BORA- are now closed with no opinions rendered. Plaintiff has failed to show or even claim that he has been harmed by a ruling from BORA or denial of a permit application by a municipality so that no present controversy exists.

12. Further to that end, Plaintiff states:

> Plaintiff is motivated to file this Complaint ***by his uncertainty*** regarding a key requirement in the Florida Building Code ("FBC" or "Code") related to construction documents...
>
> ...
>
> ***Plaintiff is in doubt as to his rights...***
>
> ...
>
> Plaintiff contends that the controversy ***calls into question his rights and privileges of doing business in Broward County***, which is dependent on the law applicable to the facts.

13. What Plaintiff is stating is that his right to do business in Broward County *might* be affected should he ever attempt to do business in Broward, but that he can't point to a single instance where BORA or the building department of any municipality within Broward County has ever actually stopped him from doing so.

14. Respondent, BORA notes that Plaintiff has never once brought an appeal to BORA with respect to ANY of the allegations which he presents to the Court and admits:

> 9. This Complaint is not an appeal of a prior administrative order. It is an action seeking declaratory and injunctive relief related to legislative action by a unit of local government.

15. Plaintiff states that "*at no time during the precedent administrative proceedings related to the subject controversy did any of the quasi-judicial bodies involved in those proceedings find that Plaintiff lacked standing to bring the action.*" *See* Complaint at ¶ 30. However, Plaintiff states that the Florida Building Commission and the Florida Board of Architecture and Design declined to render either Advisory or Declaratory Statements because both administrative boards acknowledged that they did not have jurisdiction.

16. When a judicial or administrative body does not have jurisdiction, it cannot render an opinion, enter judgment, nor grant or deny relief. The fact that there was no finding that Plaintiff lacked standing by an administrative body that didn't have jurisdiction in the first place does not mean that Plaintiff does have standing. Plaintiff's statement is irrelevant and immaterial, and Plaintiff does not have standing in the case at bar. *See* Hensley v. Punta Gorda, 686 So.2d 724 (Fla. 1st DCA 1997). *See also* Pruden v. Herbert Contractors, Inc., 988 So.2d 135 (Fla. 1st DCA 2008) ("*Unlike a court of general jurisdiction under article V of the Florida Constitution, administrative boards and officers are limited in jurisdiction and do not have inherent judicial power, but have "only the power expressly conferred by chapter 440*" citing McFadden v. Hardrives Constr., Inc., 573 So.2d 1057, 1059 (Fla. 1st DCA 1991).

17. The route of administrative remedy commences with F.B.C. Section 113.9.1, which clearly states:

> 113.9 Duties.
>
> 113.9.1 Appeal from decision of Building Official, Assistant Building Official, or Chief Inspector. The Board shall hear all appeals from the decisions of the Building Official, Assistant Building Official, or Chief Inspector wherein such decision is on matters regulated by this Code from any person, aggrieved thereby, and specifically as set forth in Section 104.32, "Alternate Materials, designs and methods of Construction and

equipment." Application for Appeal shall be in writing and addressed to the Secretary of the Board. [1]

Procedures for appeals, notice, protocol for scheduling, format, and filing requirements with BORA are further set forth in the same section.

18. Plaintiff, Butler must comply with the condition precedent (i.e., the administrative remedy) of appealing a decision of the Building Official, Assistant Building Official, or Chief Inspector. City's decision as part of the process administrative process before filing an action in the courts. *See* City of Coconut Creek v. City of Deerfield Beach, 840 So.2d 389, (Fla. 4th DCA 2003) (in suit for declaratory judgment where pre-suit requirements are not met, "the case law is clear and the action should be dismissed"). Failure to comply with conditions precedent is grounds for dismissal. *See* Dunmar Estates Homeowner's Association, Inc. v. Rembert, 383 So. 2d 857, (Fla. 5th DCA 2024); Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So.2d 1376 (Fla. 4trh DCA 1997); "**A reviewing court may not entertain a suit when the complaining party has not exhausted available administrative remedies.**" *See* Florida High School Athletic Ass'n v. Melbourne Central Catholic High School, 867 So.2d 1281(Fla. 5th DCA 2004); Agency for Health Care Administration v. Best Care Assurance, LLC, 302 So.3d 1012 (Fla. 1st FCA 2020); Florida Dept. of Agriculture & Consumer Services v. City of Pompano Beach, 792 So.2d 539 (Fla. 4trh DCA 2001). *See especially* My Amelia, L.L.C. v. City of Hollywood, 377 So.3d 137 (Fla. 4th DCA 2023).

19. In addition to the requirement that a party complies with conditions precedent, it is well established that before any proceeding for declaratory relief can be entertained, it should be clear that there is a bona fide, actual, present practical need for the declaration; that the declaration

[1] It must be noted, and perhaps not just parenthetically, that despite Petitioner's voluminous recitation of Code and Statutes, Florida Building Code §113.9.1 is never addressed.

should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity. *See* May v. Holley, 259 So.2d 636 (Fla. 1952).

20. At the onset, Respondent shows this Court that Plaintiff, Butler has failed to comply with conditions precedent by 1) failing to exhaust administrative remedies and is therefore without standing and 2) failing to present this court with a bona fide, actual, present practical need for the declaration.

Claim I

21. Plaintiff attempts to take aim at BORA in Claim I of its Complaint by declaring that BORA "failed to comply with multiple statutory requirements imposed by section 553.73(4), Florida Statutes, when it adopted local amendments to the Florida Building Code" and then sets forth an alleged list of transgressions including 1) failure to form a countywide compliance review board; 2) failure to collect, evaluate, and consider competent substantial data and other evidence that the geographical jurisdiction it governs; 3) failure to prepare and consider a fiscal impact statement, as required by section 553.73(4)(h), Florida Statutes; and 4) adopted all the numerous amendments to chapter 1 of FBC – Building (2023) as a single action, without individual consideration, as required by section 553.73(4).

22. BORA shows that Plaintiff's summary of Count I is set forth in paragraph 123 of the Complaint, which states:

> 123. In summary of this claim, Plaintiff alleges that Respondent performed none of the statutory requirements to adopt the local

> administrative or technical amendments except for conducting two readings and a public hearing prior to the final vote. Respondent did not even place the amendments into an ordinance, such that it might have included the normal "Whereas" clauses to provide justification to the amendments.

See Complaint at ¶123.

23. Plaintiff's misdirected allegations of wrongdoing entirely fail to show, or even claim, any bona fide, actual, present practical need for the declaration or that the declaration deals with a present, ascertained, or ascertainable state of facts or present controversy as to a state of facts, vis-à-vis BORA and Plaintiff. The best that Plaintiff can muster is that "*the controversy calls into question his rights and privileges of doing business in Broward County, which is dependent on the law applicable to the facts*"[2] and that "*Plaintiff is in doubt as to his rights*" and that "*the controversy calls into question his rights and privileges.*" *See* Complaint at ¶¶28,29.

24. Plaintiff fails to state that there is a bona fide, actual, present practical need for the declaration; that the declaration deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity. *See* May v. Holley, 259 So.2d 636 (Fla. 1952).

Claim II

25. In Claim II, Plaintiff states that "BORA is prohibited by Florida law from adopting almost all administrative amendments to the Florida Building Code, the exceptions being special provisions regarding water conservation and flood plain regulation, as noted in Claim I, both of

[2] No facts are alleged which are sufficient to support an action for Declaratory Relief.

which were made available by legislative acts after chapter 2000-141, Laws of Florida, was effective.

26. Plaintiff goes on to allege that:

> 1) "the provisions authorizing only technical amendments by counties was consistent with the separate provision allowing local governments to amend the Florida Building Code"; 2) "any power BORA may have had to adopt whatever building code amendments it desired ended on the effective date of the act [section 136 of chapter 2000-141, Laws of Florida]"; 3) "only chapters 98-297 and 2000-141, Laws of Florida, have any current effect on the agency, as the latter act repealed all prior special acts affecting BORA's formation, powers, and duties as they relate to the Code"; 4) "since the local amendment language contained in section 553.73(4), Florida Statutes, was already in place at the time this charter amendment was approved, ***the apparent intent*** was to limit the ability of BORA to adopt only local technical amendments by referencing the acts that did so"; 5) "the county charter amendment creating the current agency limits it chronologically to the powers provided in chapter 2000-141, Laws of Florida, which allows only local technical amendments"; 6) "Finally, with regard to this Claim, Plaintiff notes that the "Purpose" statement on Respondent's website—which was crafted by the agency itself—says nothing about its regulation of the Code. The only way to reconcile all these facts is to conclude that Respondent lacks the power to adopt local administrative amendments."

See Complaint at ¶¶ 124-134.

27. To be entitled to a declaratory judgment, "the dispute must be justiciable in the sense that it is based upon some definite and concrete assertions of right, the contest thereof involving the legal or equitable relations of parties having adverse interests with respect to which the declaration is sought." *See* Apthorp v. Detzner, 162 So.3d 236 (Fla. 1sdt DCA 2015).

28 Claim II is merely a recitation of actions allegedly taken by BORA, under statute and code, speculation as to legislative intent (to wit: "*the **apparent intent** was to limit the ability of BORA to adopt only local technical amendments* by referencing the acts that did so") from both of which Petitioner never claims to have suffered abrogation, nor even infringement of any right(s) or

interest(s). Rather, the action has been brought on ***the possibility*** that he may someday be affected by a BORA ruling ***if*** he ever chooses to do business in Broward County.

29. Plaintiff fails to state that there is a bona fide, actual, present practical need for the declaration; that the declaration deals with a present, ascertained, or ascertainable state of facts or present controversy as to a state of facts; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity. *See* Guttenberg v. Smith & Wesson Corp. 357 So.3d 690 (Fla. 4th DCA 2023) citing May v. Holley, 259 So.2d 636 (Fla. 1952).

Claim III

30. In Claim III, Plaintiff alleges that BORA impermissibly removed statutory exemptions from licensure as a registered design professional when it modified the original text of Chapter 1, FBC – Building, particularly by deleting the provision for certified contractors who had received specialized training from and adding requirements for licensure to prepare construction documents in section 107.3.4 of that chapter. Plaintiff fails to state how he has been harmed or that there is a present controversy in the form of a justiciable issue.

31. Plaintiff alleges that:1) Respondent's removal of the text found in the original version of section 107.3.4.2 of FBC – Building (2023) seeks to alter the regulation of the profession of building contractor; 2) the BORA local amendments that impose requirements for construction documents to be prepared by a registered design professional are also contrary to the provisions of Florida law; 3) that BORA is barred from modifying the requirements, exceptions, and exemptions of professional practice regulated by the state; 4) "the question to be settled under this Claim is

whether such a local amendment frustrates the intent or purpose of the state law." (See, e.g., Hernandez v. Coopervision, 691 So. 2d 639 (Fla. 2d D.C.A. 1997). *See* Complaint at ¶¶ 135-141. Plaintiff fails to state how he has been harmed or that there is a present controversy in the form of a justiciable issue.

32. Plaintiff is mistaken where the Hernandez case was not a question of local amendments frustrating the purpose of state law. Rather, it was a question of whether federal law preempts state law to the extent that the state law actually conflicts with or frustrates the purpose of federal law.

33. Further to that end, in Hernandez, the plaintiff **suffered an injury** to his eye when the Coopervision hydrophilic extended wear contact lens inserted into his eye by an optometrist created tiny holes in the corneal surface of his eye and permanently damaged his eyesight. The plaintiff, Mr. Hernandez, asserted causes of action against Coopervision for strict liability in tort for defective manufacture (count two), negligent design and manufacture of the contact lens (count three), breach of implied warranties of merchantability and fitness (count four), strict liability in tort for unfitness for intended use (count five), negligence and breach of duty of care in distribution and sale of product (count six), and breach of implied warranties of merchantability and fitness for failure to comply with FDA-approved manufacturing processes (count seven).*See* Hernandez at 640.

34. Although the Hernandez case was a question of federal pre-emption over state law, the more relevant difference between Hernandez and the case at bar is that the plaintiff, Hernandez suffered actual harm whereas, Plaintiff, Butler has alleged and, at this stage can only ***allege-*** that, the controversy *calls into question his rights and privileges of doing business* in Broward County, which is dependent on the law applicable to the facts if he ever decides to try and do business in Broward County.

35. Plaintiff, Butler cannot show this court how he has been adversely affected because he has suffered no actual harm. That is not sufficient to establish a present controversy by which the Court can render a Declaratory Judgment. *See* Guttenberg v. Smith & Wesson Corp. 357 So.3d 690 (Fla. 4th DCA 2023).

36. Plaintiff has cited seven (7) cases in support of its claims set forth in Count III. To wit: City of Miami Beach v. Rocio Corp., 404 So. 2d 1066, 1070 (Fla. 3d DCA 1981)(*Plaintiff's property owners and developers brought suit against city of Miami where newly enacted ordinance enjoined them from converting apartments to condominiums*); City of Miami Beach v. Fleetwood Hotel, Inc., 261 So.2d 801(Fla. 1972) (*Lessors actually and directly affected by rent control ordinance creating present controversy and justiciable issue*); City of Miami Beach v. Frankel, 363 So.2d 555 (Fla. 1978) (*Group of taxpayers and owners of rental apartment buildings brought action to have rent control ordinance declared illegal and referendum thereon enjoined.*) Rinzler v. Carson, 262 So.2d 661 (Fla. 1972)(*Owner brought replevin action against sheriff seeking return of submachine gun which sheriff had seized*); City of Wilton Manors v. Starling, 121 So.2d 172 (Fla. 2d DCA 1960)(*Action by owner of restaurant for declaratory decree that ordinance requiring restaurant bars to use their facilities for serving alcoholic beverages only as service bars at which no stools were permitted was invalid AFTER HE HAD BEEN ARRESTED*); Baker v. McCarthy, 122 Fla. 749, 166 So. 280 (Fla. 1936)(*Petitioner brought writ of error for review a judgment in habeas corpus remanding the petitioner to the custody of the sheriff AFTER HE WAS INCARCERATED for running a slot machine parlor*); City of Coral Gables v. Seiferth, 87 So. 2d 806 (Fla. 1956).

37. Every single case cited by Plaintiff establishes a present controversy and justiciable issue where a party suffered harm so as to present a justiciable issue. The distinction between Plaintiff, and the plaintiffs in the cited cases, are that Plaintiff, Butler's claims are based on an assertion that

"*the controversy* ***calls into question his rights and privileges of doing business*** *in Broward County.*" Plaintiff, Butler was not arrested nor incarcerated, nor did he attempt a conversion of an apartment building to condominiums for which he was enjoined, nor was he prevented from raising rents as the result of rent control, nor suffered any of the other actual harms set forth in the cases cited in the Complaint as dispositive to Count III. Truthfully, he has sustained no harm at this point and only ponders the question of possible harm.

38. Plaintiff cites Attorney General Opinions 94-84 and 73-263; however, Attorney General opinions do not have binding effect in court. *See* Gretna Racing, LLC v. Department of Business and Professional Regulation, 178 So.3d 15 (Fla. 2d DCA 2015). *See also* Bunkley v. State, 882 So.2d 890, 897 (Fla.2004) (recognizing that "opinions of the Attorney General are not statements of law"); State v. Family Bank of Hallandale, 623 So.2d 474, 478 (Fla.1993) ("*The official opinions of the Attorney General, the chief law officer of the state, are guides for state executive and administrative officers in performing their official duties until superseded by judicial decision.*"); Comm'n on Ethics v. Sullivan, 489 So.2d 10, 13 (Fla.1986) (*noting that although the attorney general has the ability pursuant to section 16.01(3), Florida Statutes, to issue advisory opinions, "such power alone, and without any other constitutional demand, would not make the attorney general a part of the judicial branch*"); Browning v. Fla. Prosecuting Attorneys Ass'n., 56 So.3d 873, 876 n. 2 (Fla. 1st DCA 2011) ("*Attorney General opinions are not binding on Florida courts and can be rejected.*") and; Ocala Breeder Sales Co. v. Div. of Pari–Mutuel Wagering, Dep't of Bus. Regulation, 464 So.2d 1272, 1274 (Fla. 1st DCA 1985) ("*Our holding is contrary to the cited opinion of the attorney general, but that opinion is not binding upon the court.*").

39. Plaintiff acknowledges that:

> "151. One Florida law allow[s] the local administrative amendments adopted by Respondent to require signed and sealed construction documents, yet another Florida law says a check for evidence of such cannot be the subject of plan review"

And then states:

> "Plaintiff alleges the way to remove this conflict is to reconcile the two by concluding the law does not allow any administrative local amendment that affects anything subject to plan review, i.e., appearing in construction documents."

Plaintiff is thus asking for declaratory relief in the form of statutory construction where there is no present controversy. This Court cannot render declaratory relief for an inchoate claim of harm.

40. Petitioner cites Feldman v. Florida Department of Business & Professional Regulation, 351 So.3d 1280 (Fla. 1st DCA 2022), wherein the appellant was charged with the unlicensed practice of architecture by the Architectural Board. Although the appellant was unlicensed, he claimed that §481.229 and §481.231 relieved him of any charges for unlicensed practice. The Architectural Board stated:

> [A]nyone—whether a non-architect or architect—is permitted to 'make plans and specifications for, or supervise the erection, enlargement, or alteration' of the types of listed structures. Feldman may provide such services. But doing so doesn't transform him, as the service provider, into an architect; to the contrary, the subsection merely carves out a subset of specified services that don't require a qualified architect.

See Feldman at 1280.

41. The case is irrelevant as to the aspect of Plaintiff's Complaint for Declaratory Relief where Plaintiff fails to show this Court how the Feldman case, with the Defendant in Feldman **actually being charged with a violation of practicing architecture without a license**, has any bearing on his inchoate claims which only "*question his rights and privileges of doing business in Broward County.*"

42. Plaintiff states that Florida law "explicitly permits design-build projects where the contractor employs the designer. In this context, Plaintiff asserts that the phrase "contractor or their workforce" includes unlicensed design professionals and others involved in preparing construction documents for a contractor to seek a building permit." While BORA states that the phrase "contractor or their workforce" does NOT include unlicensed design professionals because 1) the words "unlicensed design professionals" are not in the statute and 2) the common sense application to the term "workforce" refers to sub-contractors or laborers, it remains clear that Plaintiff has never submitted a building permit so that he never could've been denied a permit. This is not a present controversy; this is speculation, and Plaintiff is asking this Court ***to speculate as to what might happen*** if he ever chooses ***to try*** and do business in Broward County.

43. Paragraph 153 of the Complaint states *inter alia*:

> 153. Plaintiff alleges that regulation of professions at the state level is necessary to ensure that persons in similar situations are treated consistently across the state. If Respondent's amendments are to stand, then a set of construction drawings prepared by a person qualified to produce such documents through the exemption provided in section 481.229(1), Florida Statutes, could be acceptable in Miami-Dade County but not in Broward County, even though both counties operate under the same HVHZ requirements for plan review and compliance with the Code.

See Complaint at ¶ 153.

44. The fact of the matter is that Miami-Dade county also has a Board of Rules and Appeals which operates under the same legislative authority with the same powers as the Broward County Board of Rules and Appeals. A ruling on the unsubstantiated issues presented in the case at bar would have an equal effect on the Miami-Dade County BORA thus making Miami-Dade County BORA a party with substantial interests. The Complaint must be dismissed for failure to join necessary parties. *See* Greater Miami Expressway Agency v. Miami-Dade County Expressway

Authority --- So.3d ----2023 (Fla. 3d DCA 2023) WL 7006355 ("*An "indispensable party" is one whose interest in the controversy makes it impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action.*")

Claim IV

45. Plaintiff states that:

> 156. [T]he "the original and BORA-amended versions of the 8th Edition of FBC – Building chapter 1 suffer from being vague in that they give unfettered discretion to the building official to decide what construction documents may be required to receive a building permit. Admittedly, part of the offending language is contained **in the original statewide Code**, but that does not thereby render it constitutionally acceptable."

Further:

> 157. Plaintiff alleges the general test for vagueness in this matter is whether the ordinance references clear, determinable criteria. In other words, the terms used must be sufficiently definitive to tell the permit applicant or other involved party what must be done to qualify for the desired building permit. (See, e.g., Park of Commerce Associates v. City of Delray Beach, 606 So. 2d 633, 635 (Fla. 4th DCA 1992); aff'd, 636 So. 2d 12 (Fla. 1994) and City of Lauderdale Lakes v. Corn, 427 So. 2d 239, 242-43 (Fla. 4th DCA 1983).) A person with common intelligence must be able to understand the requirements.

See Complaint at ¶¶ 156, 157.

46. With respect to the cases cited by Plaintiff, Respondent BORA shows this Court that Park of Commerce Associates v. City of Delray Beach, 606 So. 2d 633, 635 (Fla. 4th DCA 1992); aff'd, 636 So. 2d 12 (Fla. 1994) was an action where:

> Florida Power and Light (FPL), an electric utility company, bought a parcel of land in the City of Delray Beach from Park of

> Commerce Associates, for the purpose of building a customer service center, a use compatible with the existing zoning classification. The purchase was conditioned upon city approval of the service center. FPL submitted a site plan to the Planning and Zoning Board. The Board rejected it, provisionally, subject to FPL's making a number of technical changes. FPL made all the requested changes and submitted the plan to the city council. The council denied the plan for no apparent reason other than neighborhood opposition. [lawsuit followed]

See Park of Commerce at 634.

47. The fact of the matter is that in Park Commerce Associates, Appellant, Park Commerce had an actual agreement with FPL for the sale of realty, and multiple submissions of plans were rejected. FPL then made all the required revisions and changes to the plans and resubmitted, but the plans were rejected again for no apparent reason, and the purchase/sale of the property could not be consummated, so Park Commerce brought suit. Both Park Commerce and FPL had incurred engineering fees and costs associated with the plans and resubmissions, as well as the loss of profits resulting from the rejection of plans, and in so saying, there was a present controversy and an issue of justiciable rights where the appellant had suffered actual harm.

48. Plaintiff, Butler fails to address any present controversy. There are no pending real estate transactions and no plans have been submitted by Butler, much less no plans have ever been rejected by any building authority (much less BORA) in Broward County.

49. Plaintiff, Butler also cites City of Lauderdale Lakes v. Corn, 427 So. 2d 239, 242-43 (Fla. 4th DCA 1983) in which the Appellant had acquired a parcel of land and, pursuant to applicable ordinances, filed a permit application with a proposed set of plans. The various city departments processed the site plans, and after certain amendments, recommendations, resubmissions, and the expenditure of over one hundred thousand ($100,000.00) dollars by the property owner to ensure compliance with the then applicable codes, the site plan along with the Planning and Zoning

Board's recommendation of approval was presented to the City Council. After discussions at Council meetings in May, June, and July, the city tabled the matter and then decided to change the zoning code to eliminate mini-warehouses as a use permitted on the property and, further, to change the classification of appellee's parcel in its entirety and thereby impose a building moratorium on appellee's property. After adoption of the two ordinances the council took up the matter of appellee's preliminary site plan. The council voted unanimously to deny approval, and the appellee filed suit. *See* Corn at 241,242.

50. The Corn court held for appellee, however Plaintiff, Butler's case bears no resemblance where there is no present controversy or justiciable issues presented. Plaintiff Butler has failed to allege anything more than concern over the possibility of his inability to do business. Plaintiff has no claim of equitable estoppel nor a single instance of actual harm suffered, and his Complaint must be dismissed.

51. Plaintiff cites City of Miami Beach v. Fleetwood Hotel, Inc., 261 So.2d 801(Fla. 1972) for the premise that *"[m]unicipal ordinances are inferior in status and subordinate to the laws of the State and must not conflict therewith."* However, Fleetwood Hotels involved claims by Lessors actually and directly affected by rent control ordinance, creating present controversy and justiciable issue. With respect to Fleetwood Hotels, the Florida Supreme Court stated specifically:

> Several lessors who were directly affected by rent control ordinance, filed complaints seeking a declaratory judgment and injunctive relief and attacking the validity of the ordinance on constitutional grounds.

See Fleetwood Hotels at 801, 803.

52. Plaintiff has not provided this Court with proof or even a claim that he has been directly affected, only that *"the controversy calls into question his rights and privileges of doing business*

in Broward County, which is dependent on the law applicable to the facts," and that "*Plaintiff is in doubt as to his rights,*" and that "*the controversy calls into question his rights and privileges.*" *See* Complaint at ¶¶28,29.

53 Respondent, BORA states that it might be that "the controversy calls into question rights and privileges which are dependent on the law applicable to the facts," but at the same time, shows this court that Plaintiff, Butler cannot show this court how he has been adversely affected because he has suffered no actual harm. "Calling into question of rights and privileges" is not sufficient to establish a present controversy by which the Court can render Declaratory Judgment. *See* Guttenberg v. Smith & Wesson Corp., 357 So.3d 690 (Fla. 4th DCA 2023).

54. In Imperial Fire & Casualty Insurance Company v. Acosta, 337 So.3d 89 (Fla. 3rd DCA 2021) the court stated:

> A viable complaint for declaratory relief must allege, at a minimum, (1) that there is a bona fide dispute between the parties; (2) the plaintiff has a justiciable question as to the existence or nonexistence of some right, status, immunity, power or privilege, or as to some fact upon which existence of such a claim may depend; (3) the plaintiff is in doubt as to the claim; **and (4) there is a bona fide, actual, present need for the declaration**. Ribaya, 162 So. 3d at 352.
>
> **These elements are necessary "to maintain the status of the proceeding as being judicial in nature and therefore within the constitutional powers of the court**." Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991) (quoting May v. Holley, 59 So. 2d 636, 639 (Fla. 1952)). **This is because our legislature "never intended, and lacks the power to, allow declaratory judgment procedures as a vehicle for obtaining advisory opinions**." Mandarin Lakes Cmty. Ass'n, Inc. v. Mandarin Lakes Neighborhood Homeowners Ass'n, Inc., 322 So. 3d 1196, 1199 (Fla. 3d DCA 2021).

See Imperial Fire at 92

55. The Complaint for Declaratory Relief is specifically asking this Court to act in direct contravention of well-established precedent and provide the Plaintiff with an advisory opinion on matters of building code, legislative authority, and statutory interpretation with no bona fide, actual, present need for the declaration.

56. In paragraph 160 of the Complaint., Plaintiff repeats his citation of Feldman v. Florida Department of Business & Professional Regulation, 351 So.3d 1280 (Fla. 1st DCA 2022), which he first cited in paragraph 145. Respondent states that nothing has changed in the 15 interim paragraphs and eight (8) pages of pleadings so that Respondent repeats the same position it took in paragraphs 35 and 36(*supra*) of this Motion to Dismiss. The *Feldman* case remains irrelevant as to the aspect of Plaintiff's Complaint for Declaratory Relief where Plaintiff fails to show this Court how the Feldman case, with the Defendant in Feldman actually being charged with a violation of practicing architecture without a license, has any bearing on his inchoate claims which only "question his rights and privileges of doing business in Broward County." *See* Okaloosa Island Leaseholders Ass'n, Inc. v. Okaloosa Island Authority, 308 So.2d 120 (Fla. 1st DCA 1975)("***Complaint for declaratory relief was invalid where the issue posed in the complaint involved only a mere possibility of dispute in the future.***")

57. Paragraph 167 of the Complaint states:

> 167. Taken together, both the original Chapter 1 in the 8th Edition of FBC – Building and the version amended by BORA contain multiple instances of unbridled discretion granted to the building official, thereby violating not only federal and state constitutional provisions but also a long history of Florida courts striking such offending requirements from law.

See Complaint at §167

58. The duties of the Florida Building Commission are set forth in Florida Statutes §§553.76 and 553.77, which state *inter alia*:

F.S. §553.76 General powers of the commission.—The commission is authorized to:

(1) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

(2) Issue memoranda of procedure for its internal management and control. The commission may adopt rules related to its consensus-based decision-making process, including, but not limited to, supermajority voting requirements. However, the commission must adopt the Florida Building Code and amendments thereto by at least a two-thirds vote of the members present at a meeting.

...

(4) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of the Florida Building Code and the provisions of this chapter.

(5) Adopt and promote, in consultation with state and local governments, other boards, advisory councils, and commissions, such recommendations as are deemed appropriate to determine and ensure consistent, effective, and efficient enforcement and compliance with the Florida Building Code, including, but not limited to, voluntary professional standards for the operation of building departments and for personnel development. Recommendations shall include, but not be limited to, provisions for coordination among and between local offices with review responsibilities and their coordination with state or regional offices with special expertise.

And:

§553.77 Specific powers of the commission.—

(1) The commission shall:

(a) Adopt and update the Florida Building Code or amendments thereto, pursuant to ss. 120.536(1) and 120.54.

(b) Make a continual study of the operation of the Florida Building Code and other laws relating to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities, including manufactured buildings, and code enforcement, to ascertain their effect upon the cost of building construction and determine the effectiveness of their provisions. Upon updating the Florida Building Code every 3 years, the commission shall review existing provisions of law and make recommendations to the Legislature for the next regular session of the Legislature regarding provisions of law that should be revised or repealed to ensure consistency with the Florida Building Code at the point the update goes into effect. State agencies and local jurisdictions shall provide such

> information as requested by the commission for evaluation of and recommendations for improving the effectiveness of the system of building code laws for reporting to the Legislature annually. Failure to comply with this or other requirements of this act must be reported to the Legislature for further action. Any proposed legislation providing for the revision or repeal of existing laws and rules relating to technical requirements applicable to building structures or facilities should expressly state that such legislation is not intended to imply any repeal or sunset of existing general or special laws governing any special district that are not specifically identified in the legislation.
>
> ...
>
> (g) Appoint experts, consultants, technical advisers, and advisory committees for assistance and recommendations relating to the major areas addressed in the Florida Building Code.

59. Thus, Plaintiff's claims that both the local amendments and the original state version of the Building Code are in violation of both state and federal constitutional provisions determines that the Florida Building Commission is an indispensable party that Plaintiff has failed to join. Plaintiff's Complaint must be dismissed for failure to set forth a present controversy, a justifiable issue, and failure to join an indispensable party. See State, Dept. of Health & Rehabilitative Services v. State, 472 So.2d 790 (Fla. 1st DCA 1985).[3] *See also* Greater Miami Expressway Agency v. Miami-Dade County Expressway Authority --- So.3d ----2023 (Fla. 3d DCA 2023) WL 7006355 ("An "indispensable party" is one whose interest in the controversy makes it impossible

[3] ("An indispensable party is generally defined as one whose interest is such that a complete and efficient determination of the cause may not be had absent joinder. See Kephart v. Pickens, 271 So.2d 163 (Fla. 4th DCA 1973). Appellees' 42 U.S.C. § 1983 claim is essentially directed to the reclassification plan which had the effect of terminating contact pay. Pursuant to § 110.207, Florida Statutes, the Department of Administration is statutorily charged with responsibility for the establishment, coordination, review, and maintenance of a uniform classification plan for career service positions. Insofar as appellees' challenge is directed to such classification plan, the Department of Administration's presence as a party in the action is essential for a complete and efficient determination of the claim. The Department of Administration is thus an indispensable party with regard to the 42 U.S.C. § 1983 action, and appellees' equal protection claim was therefore subject to dismissal upon their failure to join an indispensable party. See State, Dept. of Health & Rehabilitative Services v. State, 472 So.2d 790, 792

to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action.")

CLAIM V

60. Plaintiff's Claim V is a claim for equal rights protection as set forth under article I, section 2 of the Florida Constitution and the 14th Amendment to the U.S. Constitution. Plaintiff alleges the actions by BORA violates the first person's constitutional guarantee of equal protection under the law as a result of the threshold values selected by Respondent to trigger the need for construction documents to be prepared by a registered design profession and, thereby, preclude Plaintiff from producing them. Plaintiff cites Bannum, Inc. v. City of Fort Lauderdale, 901 F. 2d 989, 997-99 (11th Cir. 1990) as dispositive on the issue.

61. The Bannum case presented the court with an actual case or controversy where the operator of a supervised residential program for ex-offenders brought suit against the city of Ft. Lauderdale as well as certain city administrators individually requesting a declaratory judgment and injunctive relief after approval of the program was withdrawn and the operator was unable to relocate the program. The lower (federal) court granted summary judgment, and the operator appealed.

62. While the summary judgment as to individual administrators was affirmed, the dismissal of claims against the city of Ft. Lauderdale was overturned and remanded for consideration of constitutional issues and pendent state claims that had not been addressed.

63. Bannum does not apply to the case at the bar where the plaintiff in Bannum was operating a prisoner "halfway house" type of operation and actually had people in the residence. Not only

was the plaintiff's business halted, but the lives of all the supervised persons were up-ended by removing them from their residence.

64. Claims of due process or equal protection and other civil rights or §1983 claims are no different than any other claims with respect to standing for declaratory relief. *See* Scott v. Francati, 214 So.3d 742 (Fla. 1st DCA 2017) (Suit was brought by nursing home residents alleging violation of equal protection and the court stated that "[e]ven though the legislature has expressed its intent that the declaratory judgment act should be broadly construed, there still must exist some justiciable controversy between adverse parties that needs to be resolved for a court to exercise its jurisdiction over an action challenging the constitutionality of a statute; otherwise, any opinion on a statute's validity would be advisory only and improperly considered in a declaratory action.")

65. Plaintiff, Butler cannot show this court how he has been adversely affected because he has suffered no actual harm. That is not sufficient to establish a present controversy by which the Court can render Declaratory Judgment. *See* Guttenberg v. Smith & Wesson Corp. 357 So.3d 690 (Fla. 4th DCA 2023).

RELIEF SOUGHT CANNOT BE GRANTED FOR FAILURE TO MEET CONDITIONS PRECEDENT, FAILURE TO JOIN INDISPENSABLE PARTIES

66. Plaintiff summarizes his grounds for Declaratory Relief where he states:

> 172. This case presents the doubts Plaintiff has about his rights relative to providing residential design services in Broward County and the included municipalities, which are within the jurisdiction of Respondent and this Court. Plaintiff affirms that there is a bona fide, actual, and present practical need for this Court to declare Plaintiff's rights in this matter...

67. Despite Plaintiff's misunderstanding as to what constitutes a "bona fide, actual, and present practical need for this Court to declare Plaintiff's rights in this matter." the fact of the matter is that

Plaintiff has not presented the court with a single instance where there is an actual, present need for a declaratory action. *See* May v. Holley, 259 So.2d 636 (Fla. 1952); Guttenberg v. Smith & Wesson Corp., 357 So.3d 690 (Fla. 4th DCA 2023); Imperial Fire & Casualty Insurance Company v. Acosta, 337 So.3d 89 (Fla. 3rd DCA 2021); Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991) and; Okaloosa Island Leaseholders Ass'n, Inc. v. Okaloosa Island Authority, 308 So.2d 120 (Fla. 1st DCA 1975)("Complaint for declaratory relief was invalid where the issue posed in the complaint involved only a mere possibility of dispute in the future.")

68. Plaintiff is improperly seeking an advisory opinion which is something that this Honorable Court cannot accommodate. *See* Mandarin Lakes Cmty. Ass'n, Inc. v. Mandarin Lakes Neighborhood Homeowners Ass'n, Inc., 322 So. 3d 1196, 1199 (Fla. 3d DCA 2021); S. Riverwalk Invs., LLC, 934 So. 2d at 623. ***"[I]t is well settled that, 'Florida courts will not render, in the form of a declaratory judgment, what amounts to an advisory opinion at the instance of parties who show merely the possibility of legal injury on the basis of a hypothetical state of facts which have not arisen and are only contingent, uncertain, [and] rest in the future.'*** " Santa Rosa Cnty. v. Admin. Com'n, Div. of Admin. Hearings, 661 So. 2d 1190, 1193 (Fla. 1995); LaBella v. Food Fair, Inc., 406 So. 2d 1216, 1217 (Fla. 3d DCA 1981); *see also* Fla. Soc'y of Ophthalmology v. State, Dep't of Pro. Regul., 532 So. 2d 1278, 1279 (Fla. 1st DCA 1988) (**"[A] suit under the declaratory judgment act must allege an actual controversy based on real facts, not assumptions.... An action for declaratory judgment will not be permitted to give rise to a mere advisory opinion.**").

69. Plaintiff has also failed to comply with conditions precedent where the requirement to exhaust administrative remedies by first appealing a decision of the Building Official, Assistant Building Official or Chief Inspector. City's decision as part of the administrative process before

filing an action in the courts. *See* City of Coconut Creek v. City of Deerfield Beach, 840 So.2d 389, (Fla. 4th DCA 2003) (in suit for declaratory judgment where pre-suit requirements are not met, "the case law is clear and the action should be dismissed"). Failure to comply with conditions precedent is grounds for dismissal. *See* Dunmar Estates Homeowner's Association, Inc. v. Rembert, 383 So. 2d 857, (Fla. 5th DCA 2024); Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So.2d 1376 (Fla. 4trh DCA 1997); "*A reviewing court may not entertain a suit when the complaining party has not exhausted available administrative remedies.*" See Florida High School Athletic Ass'n v. Melbourne Central Catholic High School, 867 So.2d 1281(Fla. 5th DCA 2004); Agency for Health Care Administration v. Best Care Assurance, LLC, 302 So.3d 1012 (Fla. 1st FCA 2020); Florida Dept. of Agriculture & Consumer Services v. City of Pompano Beach, 792 So.2d 539 (Fla. 4trh DCA 2001). *See especially* My Amelia, L.L.C. v. City of Hollywood, 377 So.3d 137 (Fla. 4th DCA 2023).

70. Plaintiff's Complaint must be dismissed where he has failed to join indispensable parties. See ¶44, 59 (*supra.*) See also Greater Miami Expressway Agency v. Miami-Dade County Expressway Authority --- So.3d ----2023 (Fla. 3d DCA 2023) WL 7006355 ("An "indispensable party" is one whose interest in the controversy makes it impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action."); Insurance Co. of North America v. Braddon, 285 So.2d 634 (Fla. 3rd DCA 1973); Moore v. Leisure Pool Service, Inc.,412 So.2d 392 (Fla. 5th DCA 1982); and Marson v. Comisky, 341 So.2d 1040 (Fla. 4th DCA 1977).

71. For all the reasons cited herein and above, Plaintiff's Complaint for Declaratory Relief must be Dismissed.

COUNT 2: Injunctive Relief

72. "A party seeking a temporary injunction must prove: (1) that it will suffer irreparable harm unless the status quo is maintained; (2) that it has no adequate remedy at law; (3) that it has a substantial likelihood of success on the merits; (4) that a temporary injunction will serve the public interest." *See* Jouvence Ctr. for Advanced Health, LLC v. Jouvence Rejuvenation Ctrs., LLC, 14 So.3d 1097, 1099 (Fla. 4th DCA 2009)

73. A party seeking injunctive relief must also establish that it has a clear legal right to the relief sought, and the trial court must make 'clear, definite, and unequivocally sufficient factual findings' supporting each of the required elements before entering an injunction." *See* Wade v. Brown, 928 So.2d 1260, 1262 (Fla. 4th DCA 2006) (citation omitted).

74. In the case at bar, Plaintiff states:

> 175. An often-cited case that establishes a four-pronged test for deciding whether a permanent injunction provides appropriate equity relief is Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982). To receive a permanent injunction as equitable relief **following a favorable declaratory ruling by the court, a plaintiff must pass all four prongs of the test.**
>
> 176. The **first prong** is that the **plaintiff has suffered an irreparable injury.** In the instant case, that irreparable injury is the loss of business income generated by providing design services and products to clients located in Broward County. Injuries also include the loss of guaranteed constitutional rights at the federal and state levels.
>
> 177. The **second prong** is that remedies available at law, such as monetary damages, are inadequate to compensate for the injury. In the instant case, it is not possible to determine the monetary value of business losses incurred by Plaintiff, as well as the losses incurred by property owners and contractors who had to pay higher prices to receive services from registered design professionals they otherwise would not have needed except for Respondent's improperly adopted local Code amendments.

See Complaint at ¶¶ 175-177

75. Respondent, BORA states that with respect to Plaintiff's citation of Weinberger, Plaintiff cannot obtain a favorable declaratory ruling from this Court for all of the reasons set forth herein and above (supra), because Plaintiff is not entitled to a declaratory ruling in the first place. See ¶¶ 66-70 and citations.

76. With respect to Plaintiff's claims that it has somehow satisfied the "first prong" of the Weinberger test, Respondent BORA states that Plaintiff has satisfied nothing where it has sustained no injury, no harm, and there is no present, justiciable controversy. Plaintiff's speculation as to possible questions and uncertainty as to what might happen should he attempt to do business in Broward County do not qualify as either real or ascertainable in any sense of the word.

77. With respect to Plaintiff's claims of satisfying the second prong of the Weinberger test, Respondent BORA states that "it is not possible to determine the monetary value of business losses incurred by Plaintiff" because Plaintiff has not incurred any tangible business losses.

78. The failure to show this Court any bona fide, actual, present practical need for the declaration and that the relief sought is in truth, the giving of legal advice by the courts or the answer to questions propounded from curiosity requires that Plaintiff's demands for injunctive relief be denied.

CERTIFICATE OF SERVICE ON FOLLOWING PAGE

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. Mail: Broward County Board of Rules and Appeals, 1 N. University Dr., Ste 3500B, Plantation, FL 33324, Email: ABarbosa@broward.org; and Petitioner, Jack Allison Butler, 301 Avalon Road, Winter Garden Florida 34787, abutler@mpzero.com on this 1st day of July, 2024.

BY /s/ Charles M. Kramer.

Charles M. Kramer, Esq., B.C.S.
Florida Bar No.: 133541
Broward County Board of Rules and Appeals
2900 N. University Drive, Suite 36
Coral Springs, Florida 33065
P: (954) 340-5955
F: (954) 340-6069
cmk@ckramerlaw.com
tinas@ckramerlaw.com

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. **CACE24005922** DIVISION: **05** JUDGE: **Bidwill, Martin J. (05)**

Jack A Butler

Plaintiff(s) / Petitioner(s)

v.

Broward County Board of Rules and Appeals

Defendant(s) / Respondent(s)

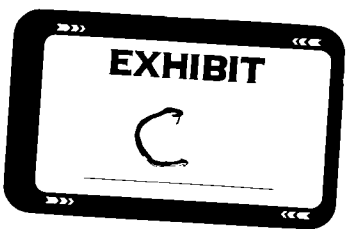
_____/

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE having come before the Court upon Defendant, BROWARD COUNTY BOARD OF RULES AND APPEALS' Motion to Dismiss the Complaint of Plaintiff, JACK A. BUTLER, and the Court having heard and carefully considered the arguments of both parties, and in accordance with Fla. R. Civ. P. 1.420 the Court giving its reasoned opinion with enough specificity to provide useful guidance to the parties it is hereby:

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss is: **GRANTED**

1. The Court finds that the claims set forth by Plaintiff fail to set out the requirements to establish a current, justiciable controversy sufficient for the Court to issue a declaration;
2. The Court finds that Plaintiff has failed to sufficiently plead compliance with conditions precedent through exhaustion of administrative remedies;
3. Plaintiff shall have thirty (30) days from November 18, 2024 to file an Amended Complaint if he so chooses.



DONE AND ORDERED in Chambers at Broward County, Florida on 21st day of November, 2024.

CACE24005922 11-21-2024 5:52 PM
Hon. Martin Bidwill
CIRCUIT COURT JUDGE
Electronically Signed by Martin Bidwill

Copies Furnished To:
Charles M. Kramer , E-mail : tinas@ckramerlaw.com
Charles M. Kramer , E-mail : cmk@ckramerlaw.com
Jack Allison Butler , E-mail : abutler@mpzero.com
Jack Allison Butler , E-mail : jack@butlershire.com

CONSTRUCTION LAW GROUP OF FLORIDA
Litigation Transactions Appeals

April 28, 2025

Dr. Ana Barbosa, B.S., MS., DBA Administrative Director
The Broward County Board of Rules and Appeals
1 N. University Drive, Suite #3500-B
Plantation Florida 33324

1.30.2025 Appeal of Jack Butler to the Broward County Board of Rules and Appeals

REVIEW OF APPEAL 25-03/ CHALLENGE TO FBC LOCAL AMENDMENTS

We have reviewed a document which was submitted by Petitioner, Jack Butler (hereinafter "Petitioner") and which you initially provided to our office on January 30, 2025 (hereinafter the "Appeal").[1] At the time when the Appeal was initially provided to us, Petitioner had an active case in the 17th Circuit which set forth essentially the same claims as set forth in the Appeal.[2] In so saying, Petitioner had concurrent causes of action with one being in the 17th Circuit Court and the second being with an administrative body and branch of Broward County Government, i.e. BORA.

Filing concurrent causes of action in separate venues is more commonly known as "splitting cause of action" and is forbidden due to the risk of conflicting adjudications. *See* DeCarlo v. Palm Beach Auto Brokers, Inc., 566 So.2d 318 (Fla. 4th DCA 1990). See also McKibben v. Zamora, 358 So.2d 866 (Fla. 3rd DCA 1978). As a result of same, BORA was unable to review the Appeal due to principles of comity where the first action was filed with the Circuit Court and BORA must respect the Court's right to review the matter until the matter is dismissed, or otherwise resolved by the Court at which time it would become a matter of *res judicata*.

[1] By referring to the document filed with BORA by Petitioner, Jack Butler, Counsel for BORA, and BORA, in no way are acknowledging that the document in any way establishes any right under the Florida Building Code, Broward County Edition or BORA Administrative Policy 95-01.
[2] CACE: 24005922 Jack Butler vs. the Broward County Board of Rules and Appeals

2900 N University Drive Suite 36 | Coral Springs, FL 33065
|O| 954 340-5955 x140 |C| 954 263-8985 |F| 954 340-6069
cmk@ckramerlaw.com

EXHIBIT
D

History of Proceedings in the Circuit Court

i. Initial proceedings, defective premises, and lack of standing absent present case or controversy

On April 30, 2024, Petitioner filed a sixty-seven (67) page Complaint against BORA in the 17th Circuit Court in and for Broward County. BORA responded on July 1, 2024 with a thirty-one (31) page Motion to Dismiss.

The substance of the Motion to Dismiss was that Petitioner Butler lacked standing to bring a claim where he had never submitted a set of plans for review, and in so saying, there was never a rejection of any plans. From a strictly legal perspective, Petitioner Butler had sustained no harm, no damages , and as a result of same the Court could not grant relief. Rather, Petitioner Butler's Complaint was based on inchoate claims or potential controversy.

To the point, BORA's Motion to Dismiss states *inter alia*:

> 11. The fact of the matter is, and as determined from the four corners of the Complaint, the previous proceedings before administrative bodies (the Florida Building Commission)- not BORA- are now closed with no opinions rendered and Plaintiff has failed to show or even claim that he has been harmed by a ruling from BORA or denial of a permit application by a municipality so that no present controversy exists.
>
> 12. Further to that end, Plaintiff states;
>
> > ***Plaintiff is motivated to file this Complaint by his uncertainty*** regarding a key requirement in the Florida Building Code ("FBC" or "Code") related to construction documents...
> > ...
> > ***Plaintiff is in doubt as to his rights***...
> > ...
> > Plaintiff contends that ***the controversy calls into question his rights and privileges of doing business in Broward County***, which is dependent on the law applicable to the facts.
>
> 13. What Plaintiff is stating is that his right to do business in Broward County ***might*** be affected ***should he ever attempt to do business*** in Broward, but that ***he can't point to a single instance where BORA or the***

building department of any municipality within Broward County has ever actually stopped him from doing so.

14. Respondent, BORA notes that ***Plaintiff has never once brought an appeal to BORA with respect to ANY of the allegations which he presents to the Court and admits***:

> 9. This Complaint ***is not an appeal of a prior administrative order.*** It is an action seeking declaratory and injunctive relief related to legislative action by a unit of local government.

Further,;

15. Plaintiff states that "at no time during the precedent administrative proceedings related to the subject controversy did any of the quasi-judicial bodies involved in those proceedings find that Plaintiff lacked standing to bring the action." See Complaint at ¶ 30. However, Plaintiff states that the Florida Building Commission and the Florida Board of Architecture and Design both declined to render either Advisory or Declaratory Statements because both of the administrative declined stated that they did not have jurisdiction.

16. When a judicial or administrative body does not have jurisdiction, it cannot render an opinion, enter judgment, nor grant or deny relief. The fact that there was no finding that Plaintiff lacked standing by an administrative body that didn't have jurisdiction in the first place, does not mean that Plaintiff does have standing. Plaintiff's statement is irrelevant and immaterial and Plaintiff does not have standing in the case at bar. See Hensley v. Punta Gorda, 686 So.2d 724 (Fla. 1st DCA 1997). See also Pruden v. Herbert Contractors, Inc., 988 So.2d 135 (Fla. 1st DCA 2008) ("Unlike a court of general jurisdiction under article V of the Florida Constitution, administrative boards and officers are limited in jurisdiction and do not have inherent judicial power, but have "only the power expressly conferred by chapter 440" citing McFadden v. Hardrives Constr., Inc., 573 So.2d 1057, 1059 (Fla. 1st DCA 1991).

17. The route of administrative remedy commences with F.B.C. Section 113.9.1 which clearly states:

> **113.9 Duties.**
> 113.9.1 Appeal from decision of Building Official, Assistant Building Official or Chief Inspector. The Board shall hear all appeals from the decisions of the Building Official, Assistant Building Official or Chief Inspector wherein such decision is on matters regulated by this Code from any person, aggrieved thereby, and specifically as set forth in Section 104.32. "Alternate Materials, designs and methods of Construction and

equipment." Application for Appeal shall be in writing and addressed to the Secretary of the Board.

Procedures for appeals, notice, protocol for scheduling, format, and filing requirements with BORA are further set forth in the same section.

18, Plaintiff, Butler must comply with the condition precedent (i.e., the administrative remedy) of appealing a decision of the Building Official, Assistant Building Official or Chief Inspector. City's decision as part of the process administrative process before filing an action in the courts. *See* City of Coconut Creek v. City of Deerfield Beach, 840 So.2d 389, (Fla. 4th DCA 2003) (in suit for declaratory judgment where pre-suit requirements are not met, "the case law is clear and the action should be dismissed"). Failure to comply with conditions precedent is grounds for dismissal. *See* Dunmar Estates Homeowner's Association, Inc. v. Rembert, 383 So. 2d 857, (Fla. 5th DCA 2024); Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So.2d 1376 (Fla. 4trh DCA 1997); "A reviewing court may not entertain a suit when the complaining party has not exhausted available administrative remedies." *See* Florida High School Athletic Ass'n v. Melbourne Central Catholic High School, 867 So.2d 1281(Fla. 5th DCA 2004); Agency for Health Care Administration v. Best Care Assurance, LLC, 302 So.3d 1012 (Fla. 1st FCA 2020); Florida Dept. of Agriculture & Consumer Services v. City of Pompano Beach, 792 So.2d 539 (Fla. 4trh DCA 2001). *See especially* My Amelia, L.L.C. v. City of Hollywood, 377 So.3d 137 (Fla. 4th DCA 2023).

19. In addition to the requirement that a party comply with conditions precedent, it is well established that before any proceeding for declaratory relief can be entertained it should be clear that there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity. *See* May v. Holley, 259 So.2d 636 (Fla. 1952).

20. At the onset, Respondent shows this Court that Plaintiff, Butler has failed to comply with conditions precedent by: 1) failing to exhaust administrative remedies and therefore without standing and; 2) failing to present this court with a bona fide, actual, present practical need for the declaration.

A copy of Petitioner's Complaint with the 17th Circuit and BORA's Motion to Dismiss (as well as all other pleadings in that case) are available for public viewing on the Broward County Clerk of Court's website with the style of the case being Jack Butler v. the Broward County Board of Rules and Appeals, CACE24005922 at:

https://www.browardclerk.org/Web2/CaseSearch/CACaseDetailView?

ii. Evolution and resolution of the case: Jack Butler v. The Broward County Board of Rules and Appeals CACE24005922

On July 5, 2024, Petitioner filed a twenty-one (21) page Statement in Opposition to BORA's Motion to Dismiss to which BORA filed a thirty-nine (39) page Reply to Statement in Opposition on August 27, 2024.

On September 3, 2024, Petitioner filed a six (6) page Motion for Summary Judgment and at the same time, filed a seventeen (17) page Supplemental Statement in Opposition to Motion to Dismiss and Request for Judicial Notice. After review of Petitioner's pleadings, Counsel for BORA determined that there was nothing in the way of new, dispositive argument, and did not file any responsive pleadings.

On September 7, 2024, Petitioner filed a total of six-hundred and eighty-seven (687) pages of Exhibits in Support of Pleadings and on September 9, 2024, Petitioner filed his eighteen (18) page Statement of Facts. After review of Petitioner's pleadings, Counsel for BORA determined that there was nothing in the way of new, dispositive argument, and did not file any responsive pleadings.

On November 18, 2024, the 17th Circuit Court in and for Broward County, Judge Martin Bidwell presiding, heard extensive argument from both parties on Defendant/ BORA's Motion to Dismiss. Despite Petitioner's combined total of eight-hundred and sixteen (816) pages of argument and exhibits, versus BORA's combined total of seventy (70) pages of response and rebuttal, the

Cort granted BORA's Motion to Dismiss and entered its Order accordingly. *See* **Exhibit "A"** attached hereto.

As can be seen from the language of the Order, Petitioner was given thirty (30) days to file an amended Complaint "if he so chooses."

On the same date as the hearing on BORA's Motion to Dismiss, the Court entered another Order for a Case Management Conference to take place on January 27, 2025. This was done in the event Petitioner chose to file an Amended Complaint- which he did not- and the Court rescheduled to February 3, 2025.

On January 27, 2025, BORA filed its Motion to Dismiss with Prejudice. Petitioner filed his Response in Opposition to BORA's Motion for Dismissal with Prejudice on January 30, 2025.

On February 2, 2025, BORA filed a copy of Petitioner's Appeal Application which Petitioner had filed with BORA on January 30, 2025. (aka the "Document"). This was done to make a record of the fact that Petitioner was attempting to split causes of action thereby "gaming the system" and seek adjudication in two (2) separate venues. The fact that Petitioner did so is indicative of an intent to obtain two separate judgments – one from BORA, and one from the Court- so that if one were more favorable to Petitioner's cause, to then sally forth with the verdict that suited him best.

At the Case Management Conference of February 3, 2025, the Court determined that there would be a need for another lengthy, special-set hearing on BORA's Motin to Dismiss with Prejudice and provided dates in May of 2025.

Petitioner voluntarily dismissed his Complaint in the 17TH Circuit on March 16, 2025.

REVIEW OF PETITIONER'S APPEAL TO BORA

1. Initial filing not compliant with procedural requirements

Upon review of Petitioner's Appeal, we note that the Appeal Application is defective on its face where it fails to include necessary and required information such as type of construction, height of building, square footage and most importantly, the permit number, permit application date. A screen shot of the Application is incorporated herein, below. To wit:

Project Information:

Address n.a.
Type of Construction n.a.
Hight of Building n.a.
Square Footage per Floor n.a.
Permit Number n.a.
Permit Application Date n.a.
Group Occupancy n.a.
Number of Stories n.a.

When asked to provide information with respect to the underlying challenge of the decision by a Building or Fire Official, Petitioner states "n.a." [not applicable] with respect to the name of the official. To wit:

I, the undersigned, appeal the decision of the Building/Fire Code Official of n a

as it pertains to Chapter 553 , Section 73 , of the (check one)

☐ South Florida Building Code ☐ Florida Building Code ☐ Florida Fire Prevention Code

☑ Other Florida Statutes & BC Charter s. 9.02 , as applicable to Broward County. (Attach copy of relevant Code sections)

Note: The Board shall base their decision upon the section(s) of the Code you have indicated above. If these are in error, you must re-submit your appeal. The Board is not authorized to grant variances from the Code.

Summary of appeal (attach additional sheets as necessary): Pursuant to s. 553.73(4)(f), F.S., I challenge the local building code amendments adopted by BORA for the 8th Edition of the Code as not adhering to the procedural and content requirements of state law and s. 9.02 of the Broward County Charter. As an agency of a county, BORA is prohibited from adopting administrative amendments.

Results desired (attach additional sheets as necessary): Repeal all local building code amendments adopted in violation of statutory requirements and limitations. Local governments to stop enforcement of local Code amendments.

Note: Under state law, enforcement of challenged technical amendments must be suspended until the challenge is settled.

BORA Policy 95-01 states *inter alia*:

> **APPEALS FROM DECISION OF BUILDING OFFICIAL:**
> **The Board of Rules and Appeals shall hear all appeals from the decision of the Building and/or Fire Code Official wherein such decision is on matters regulated by the Florida Building Code or South Florida Building Code from any person aggrieved thereby**, and specifically as set forth in Sec. 104.23, Alternate Materials and Types of Construction. The Board of Rules and Appeals is not authorized to grant variances from the Building Code.
> PROCEDURE FOR HANDLING APPEALS:
> 1. The person filing an appeal must do so on the form approved by the Board of Rules and Appeals.
> **2. <u>The form SHALL be filled out in its entirety</u>. An incomplete form will not be accepted for processing.**

In addition to BORA policy 95-01, Florida Building Code Sec 113.9.1 clearly states:

> **113.9.1 Appeal from decision of Building Official, Assistant Building Official or Chief Inspector.**
> **The Board shall hear all appeals from the from the decisions of the Building Official, Assistant Building Official or Chief Inspector wherein such Building Official or Chief Inspector decision is on matters regulated by this Code from any person, aggrieved thereby**, specifically as set forth in Section 104.32, Application for Appeal shall be in writing and addressed to the and addressed to the Secretary of the Board.

See FBC Sec 113.9.1

In so saying, the Appeal is defective on its face where Petitioner has:

1) Failed to fill out the form in its entirety
2) Failed to provide a permit number of permit application date.
3) Failed to identify the Building Official, Assistant Building Official or Chief Inspector wherein such Building Official or Chief Inspector decision is on matters regulated by the Florid Building Code.
4) Failed to provide a basis for appeal to BORA where it appears he is seeking a legislative change for which BORA is without authority to act or even review.

PETITIONER'S MISREPRESENTATIONS AS TO DIRECTION FROM THE CIRCUIT COURT

In addition to the failure to the failure to comply with BORA Policy 95-01, and clear non-compliance with Florida Building Code 113.9.1, Petitioner Butler has made numerous misrepresentation as to claims with respect to directives from the 17th Circuit Court.

Petitioner states that:

> The challenge provision of section 553.73(4)(f), Florida Statutes, which was specifically included in the case record and in the various arguments offered by the parties, is the only administrative remedy available to adjudicate the issue raised herein at the administrative level. **Thus, this challenge is brought before BORA in furtherance of the Court's guidance.**
> ...
> **The 17th Circuit Court did not indicate in its order that its guidance was limited to any one of the two available administrative avenues, the other being an appeal of a building official's decision.**

See Petitioner's Appeal at pgs. 2 and 3.

Neither of these statements are truthful or correct. The fact of the matter is that the Court made a reasoned determination, and BORA had the foresight to retain a court reporter, so that a record was made of the Court's actual, elaborated reasoning, and the transcript is attached hereto as **Exhibit "B."**

The transcript clearly shows that the Court's ruling was based on the fact that Petitioner did not have standing to bring the Complaint for failure to comply with conditions precedent. More specifically the Circuit Court stated:

> Page 3
> The -- having considered all of the arguments, respectfully, I -- I'm not convinced that this pleading sets out a sufficient need for a declaration. **I think that the pleading fails to set out that there is a sufficient current controversy between the plaintiff and BORA that would provide the Court the authority to issue a declaration.**

The Court stated further:

> Page 4
> THE COURT: -- **at this point, what I'm going to do is grant the motion to dismiss for failure to state a claim on the dec count. The injunctive count, obviously, is dependent upon the existence of the dec count. It would fail for the same -- for that same reason.**
> And I'll afford Mr. Butler -- I think I'll give him a chance to -- to amend and see if he can find something else out there.
> MR. KRAMER: Thank you, Your Honor.
> THE COURT: To the extent there's -- you know, nobody really talked about it, but
>
> Page 5
> Mr. Kramer's argument is that, you know, exhaustion wasn't done here. Part of Mr. Butler's response is, well, that would have been a waste of time. I don't -- you know, words to that effect. That's not what he said --
> MR. KRAMER: Exactly.
> THE COURT: -- obviously, but it sounded like a futility argument.
> I don't know if there's exceptions to the exhaustion requirement. I haven't done that research lately.But I would think that if you're contending that exhaustion is futile or

words to that effect, I think you've got to plead around that, in all honesty. So, at this point in time, that will be the ruling. **I'll grant the motion to dismiss. Mr. Butler, how long would you need to file an amended complaint, if you so choose?**

MR. BUTLER: Thirty days will be plenty of time.

THE COURT: Okay. Thirty days will be it. And, Mr. Kramer, would you be kind enough, as the prevailing party, to send me an order that grants the motion to dismiss for the

Page 6

reasons stated on the record and affords Mr. Butler 30 days to file an amended complaint?

MR. KRAMER: I certainly will, Your Honor.

See Hearing Transcript attached hereto as **Exhibit "B."**

Turning back to the Court's Order attached hereto as exhibit "A," we note that the Order specifically states;

> 1. The Court finds that **the claims set forth by Plaintiff fail to set out the requirements to establish a current, justiciable controversy sufficient for the Court to issue a declaration**;
>
> 2. The Court finds that **Plaintiff has failed to comply with conditions precedent through exhaustion of administrative remedies**;

As can be seen from the transcript, there is absolutely nothing which would determine that the Court ordered Petitioner to file an appeal with BORA. to the contrary, Petitioner was graciously granted an addition thirty (30) days to file an Amended Complaint with the Court, to which he agreed, and then filed his Notice of Voluntary Dismissal a copy of which is attached hereto as **Exhibit "C."**

PETITIONER'S FAILURE TO ESTABLISH STANDING CONTINUES

Petitioner attempts to state that a second avenue for relief, and direct appeal to BORA is available, because the Court didn't specify in its Order as to whether Petitioner Butler's Complaint was dismissed based on: 1) failure to obtain an adverse decision by a Budling Official or; 2) proper procedures contained in subsection 553.73(4), Florida Statutes, weren't followed when a local government adopted a local Code amendment.

The flaw in both lines of argument is the failed first step, i.e., Petitioner fails to establish standing.

Under Florida law, a "substantially affected party" in the context of appealing a compliance review board's determination regarding technical amendments to the Florida Building Code is defined as an individual or entity whose substantial interests are directly impacted by the regulation, law, ordinance, policy, amendment, or land use or zoning provision in question. This includes owners or builders subject to the regulation or an association of such owners or builders whose members are affected.

The term "substantially affected" is further clarified under Florida law to require a showing of (1) a real or immediate injury in fact and (2) that the interest affected falls within the zone of interest protected or regulated by the statute or rule. **The injury must not be speculative or conjectural, and the interest must align with the purpose of the regulation or statute being challenged.** See Calder Race Course, Inc. v. SCF, Inc., 326 So.3d (Fla. 1st DCA 2021); Village of Key Biscayne v. Department of Environmental Protection, 206 So.3d 788 (Fla. 3rd DCA 2016); Office of Ins. Regulation and Financial Services Com'n v. Secure Enterprises, LLC, 124 So.3d 332 (Fla. 1st DCA 2013); Florida Soc. of Ophthalmology v. State Bd. of Optometry, 532 So.2d 1279 (Fla. 1st DCA 1988).

When a judicial or administrative body does not have jurisdiction, it cannot render an opinion, enter judgment, nor grant or deny relief. The fact that the Court has already ruled that Petitioner lacks standing must not be lost on the Board of Rules and Appeals. Petitioner didn't have standing when he sued BORA and he doesn't have standing now. *See* Hensley v. Punta Gorda, 686 So.2d 724 (Fla. 1st DCA 1997). *See also* Pruden v. Herbert Contractors, Inc., 988 So.2d 135 (Fla. 1st DCA 2008) ("Unlike a court of general jurisdiction under article V of the Florida Constitution, administrative boards and officers are limited in jurisdiction and do not have inherent judicial power, but have "only the power expressly conferred by chapter 440" citing McFadden v. Hardrives Constr., Inc., 573 So.2d 1057, 1059 (Fla. 1st DCA 1991).

The overarching failure in Petitioner's appeal is the failure to comply with conditions precedent, i.e., the defined course of administrative remedy requiring appeal of an adverse decision of the Building Official, Assistant Building Official, or Chief Inspector. *See* City of Coconut Creek v. City of Deerfield Beach, 840 So.2d 389, (Fla. 4th DCA 2003) (in suit for declaratory judgment where pre-suit requirements are not met, "the case law is clear and the action should be dismissed"). Failure to comply with conditions precedent is grounds for dismissal. *See* Dunmar Estates Homeowner's Association, Inc. v. Rembert, 383 So. 2d 857, (Fla. 5th DCA 2024); Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So.2d 1376 (Fla. 4trh DCA 1997); "A reviewing court may not entertain a suit when the complaining party has not exhausted available administrative remedies." See Florida High School Athletic Ass'n v. Melbourne Central Catholic High School, 867 So.2d 1281(Fla. 5th DCA 2004); Agency for Health Care Administration v. Best Care Assurance, LLC, 302 So.3d 1012 (Fla. 1st FCA 2020); Florida Dept. of Agriculture & Consumer Services v. City of Pompano Beach, 792 So.2d 539

(Fla. 4trh DCA 2001). *See especially* My Amelia, L.L.C. v. City of Hollywood, 377 So.3d 137 (Fla. 4th DCA 2023).

Whether it be in a Complaint for declaratory and injunctive relief, or as here, in a code challenge, it is well established that before any proceeding for relief can be entertained, it must be clear that: 1) there is a bona fide, actual, present practical need for the declaration;2) that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts;3) that the antagonistic and adverse interests are all before the reviewing body by proper process or class representation and; 4) that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity. *See* May v. Holley, 259 So.2d 636 (Fla. 1952).

Review of supplemental documentation

Counsel for BORA has reviewed extensive documentation submitted by Petitioner, Butler including Section 9.02 of the Broward County Charter; legislative history of Florida Statutes Sec 553.73 (House Bill No. 4181, excerpts from Chapter 98-287); excerpts from Chapter 2000-141and House Bill No. 219 including amendments to F.S. Sec. 125.01, 125.56, 468.604, 553.71, 553.72, 553.73, excerpts from Chapter 2021-201;Committee Substitute for Committee Substitute for House Bill No. 2401(containing amendments to FS. 553.73); and 2024 revisions to Florida Statutes 125.01, 125.56, 163.211, 469.604, 553.71, 553.72, 553.73, 553.75, 553.79, 553.791, 553.80, 553.898, and the November 9, 2023 BORA meeting transcript with exhibits.

None of the supplemental documentation referenced above has any effect on Petitioner's lack of standing and BORA cannot create standing where none exists.

Petitioner's status insofar as "without standing" determines that there was no present, actual controversy before the Court and similarly, Petitioner's lack of standing determines that there is no present or actual controversy upon which BORA may review and opine.

CONCLUSION

Petitioner's lack of standing determines that BORA is without authority to enter a ruling or even opine on the merit or lack thereof of Petitioner's Appeal. *See* Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So.2d 1376 (Fla. 4trh DCA 1997); "A reviewing court may not entertain a suit when the complaining party has not exhausted available administrative remedies." *See* Florida High School Athletic Ass'n v. Melbourne Central Catholic High School, 867 So.2d 1281(Fla. 5th DCA 2004); Agency for Health Care Administration v. Best Care Assurance, LLC, 302 So.3d 1012 (Fla. 1st FCA 2020); Florida Dept. of Agriculture & Consumer Services v. City of Pompano Beach, 792 So.2d 539 (Fla. 4trh DCA 2001). *See especially* My Amelia, L.L.C. v. City of Hollywood, 377 So.3d 137 (Fla. 4th DCA 2023).

BY /s/ Charles M. Kramer.

Charles M. Kramer, Esq., B.C.S.
Florida Bar No.: 133541
Broward County Board of Rules and Appeals
2900 N. University Drive, Suite 36
Coral Springs, Florida 33065
P: (954) 340-5955
F: (954) 340-6069
cmk@ckramerlaw.com
tinas@ckramerlaw.com

Filing # 211512839 E-Filed 11/21/2024 09:02:06 PM

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. CACE24005922 DIVISION: 05 JUDGE: Bidwill, Martin J. (05)

Jack A Butler

Plaintiff(s) / Petitioner(s)

v.

Broward County Board of Rules and Appeals

Defendant(s) / Respondent(s)

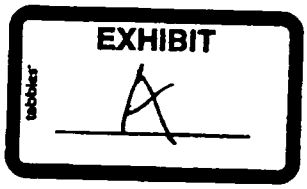
_____/

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE having come before the Court upon Defendant, BROWARD COUNTY BOARD OF RULES AND APPEALS' Motion to Dismiss the Complaint of Plaintiff, JACK A. BUTLER, and the Court having heard and carefully considered the arguments of both parties, and in accordance with Fla. R. Civ. P. 1.420 the Court giving its reasoned opinion with enough specificity to provide useful guidance to the parties it is hereby:

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss is: **GRANTED**

1. The Court finds that the claims set forth by Plaintiff fail to set out the requirements to establish a current, justiciable controversy sufficient for the Court to issue a declaration;
2. The Court finds that Plaintiff has failed to sufficiently plead compliance with conditions precedent through exhaustion of administrative remedies;
3. Plaintiff shall have thirty (30) days from November 18, 2024 to file an Amended Complaint if he so chooses.



DONE AND ORDERED in Chambers at Broward County, Florida on 21st day of November, 2024.

CACE24005922 11-21-2024 5:52 PM
Hon. Martin Bidwill
CIRCUIT COURT JUDGE
Electronically Signed by Martin Bidwill

Copies Furnished To:
Charles M. Kramer , E-mail : tinas@ckramerlaw.com
Charles M. Kramer , E-mail : cmk@ckramerlaw.com
Jack Allison Butler , E-mail : abutler@mpzero.com
Jack Allison Butler , E-mail : jack@butlershire.com

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. **CACE24005922** DIVISION: **05** JUDGE: **Bidwill, Martin J. (05)**

Jack A Butler

Plaintiff(s) / Petitioner(s)

v.

Broward County Board of Rules and Appeals

Defendant(s) / Respondent(s)

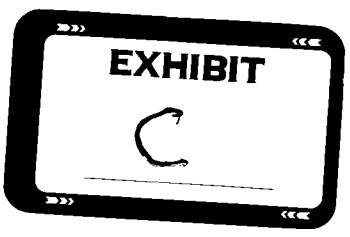
_____/

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE having come before the Court upon Defendant, BROWARD COUNTY BOARD OF RULES AND APPEALS' Motion to Dismiss the Complaint of Plaintiff, JACK A. BUTLER, and the Court having heard and carefully considered the arguments of both parties, and in accordance with Fla. R. Civ. P. 1.420 the Court giving its reasoned opinion with enough specificity to provide useful guidance to the parties it is hereby:

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss is: **GRANTED**

1. The Court finds that the claims set forth by Plaintiff fail to set out the requirements to establish a current, justiciable controversy sufficient for the Court to issue a declaration;
2. The Court finds that Plaintiff has failed to sufficiently plead compliance with conditions precedent through exhaustion of administrative remedies;
3. Plaintiff shall have thirty (30) days from November 18, 2024 to file an Amended Complaint if he so chooses.



DONE AND ORDERED in Chambers at Broward County, Florida on 21st day of November, 2024.

CACE24005922 11-21-2024 5:52 PM
Hon. Martin Bidwill
CIRCUIT COURT JUDGE
Electronically Signed by Martin Bidwill

Copies Furnished To:
Charles M. Kramer , E-mail : tinas@ckramerlaw.com
Charles M. Kramer , E-mail : cmk@ckramerlaw.com
Jack Allison Butler , E-mail : abutler@mpzero.com
Jack Allison Butler , E-mail : jack@butlershire.com

CONSTRUCTION LAW GROUP OF FLORIDA
Litigation Transactions Appeals

April 28, 2025

Dr. Ana Barbosa, B.S., MS., DBA Administrative Director
The Broward County Board of Rules and Appeals
1 N. University Drive, Suite #3500-B
Plantation Florida 33324

1.30.2025 Appeal of Jack Butler to the Broward County Board of Rules and Appeals

REVIEW OF APPEAL 25-03/ CHALLENGE TO FBC LOCAL AMENDMENTS

We have reviewed a document which was submitted by Petitioner, Jack Butler (hereinafter "Petitioner") and which you initially provided to our office on January 30, 2025 (hereinafter the "Appeal").[1] At the time when the Appeal was initially provided to us, Petitioner had an active case in the 17th Circuit which set forth essentially the same claims as set forth in the Appeal.[2] In so saying, Petitioner had concurrent causes of action with one being in the 17th Circuit Court and the second being with an administrative body and branch of Broward County Government, i.e. BORA.

Filing concurrent causes of action in separate venues is more commonly known as "splitting cause of action" and is forbidden due to the risk of conflicting adjudications. *See* DeCarlo v. Palm Beach Auto Brokers, Inc., 566 So.2d 318 (Fla. 4th DCA 1990). See also McKibben v. Zamora, 358 So.2d 866 (Fla. 3rd DCA 1978). As a result of same, BORA was unable to review the Appeal due to principles of comity where the first action was filed with the Circuit Court and BORA must respect the Court's right to review the matter until the matter is dismissed, or otherwise resolved by the Court at which time it would become a matter of *res judicata*.

[1] By referring to the document filed with BORA by Petitioner, Jack Butler, Counsel for BORA, and BORA, in no way are acknowledging that the document in any way establishes any right under the Florida Building Code, Broward County Edition or BORA Administrative Policy 95-01.
[2] CACE: 24005922 Jack Butler vs. the Broward County Board of Rules and Appeals

2900 N University Drive Suite 36 | Coral Springs, FL 33065
|O| 954 340-5955 x140 |C| 954 263-8985 |F| 954 340-6069
cmk@ckramerlaw.com

EXHIBIT
D

History of Proceedings in the Circuit Court

i. Initial proceedings, defective premises, and lack of standing absent present case or controversy

On April 30, 2024, Petitioner filed a sixty-seven (67) page Complaint against BORA in the 17th Circuit Court in and for Broward County. BORA responded on July 1, 2024 with a thirty-one (31) page Motion to Dismiss.

The substance of the Motion to Dismiss was that Petitioner Butler lacked standing to bring a claim where he had never submitted a set of plans for review, and in so saying, there was never a rejection of any plans. From a strictly legal perspective, Petitioner Butler had sustained no harm, no damages , and as a result of same the Court could not grant relief. Rather, Petitioner Butler's Complaint was based on inchoate claims or potential controversy.

To the point, BORA's Motion to Dismiss states *inter alia*:

> 11. The fact of the matter is, and as determined from the four corners of the Complaint, the previous proceedings before administrative bodies (the Florida Building Commission)- not BORA- are now closed with no opinions rendered and Plaintiff has failed to show or even claim that he has been harmed by a ruling from BORA or denial of a permit application by a municipality so that no present controversy exists.
>
> 12. Further to that end, Plaintiff states;
>
> > ***Plaintiff is motivated to file this Complaint by his uncertainty*** regarding a key requirement in the Florida Building Code ("FBC" or "Code") related to construction documents...
> > ...
> > ***Plaintiff is in doubt as to his rights***...
> > ...
> > Plaintiff contends that ***the controversy calls into question his rights and privileges of doing business in Broward County***, which is dependent on the law applicable to the facts.
>
> 13. What Plaintiff is stating is that his right to do business in Broward County ***might*** be affected ***should he ever attempt to do business*** in Broward, but that ***he can't point to a single instance where BORA or the***

building department of any municipality within Broward County has ever actually stopped him from doing so.

14. Respondent, BORA notes that ***Plaintiff has never once brought an appeal to BORA with respect to ANY of the allegations which he presents to the Court and admits***:

> 9. This Complaint ***is not an appeal of a prior administrative order.*** It is an action seeking declaratory and injunctive relief related to legislative action by a unit of local government.

Further,;

15. Plaintiff states that "at no time during the precedent administrative proceedings related to the subject controversy did any of the quasi-judicial bodies involved in those proceedings find that Plaintiff lacked standing to bring the action." See Complaint at ¶ 30. However, Plaintiff states that the Florida Building Commission and the Florida Board of Architecture and Design both declined to render either Advisory or Declaratory Statements because both of the administrative declined stated that they did not have jurisdiction.

16. When a judicial or administrative body does not have jurisdiction, it cannot render an opinion, enter judgment, nor grant or deny relief. The fact that there was no finding that Plaintiff lacked standing by an administrative body that didn't have jurisdiction in the first place, does not mean that Plaintiff does have standing. Plaintiff's statement is irrelevant and immaterial and Plaintiff does not have standing in the case at bar. See Hensley v. Punta Gorda, 686 So.2d 724 (Fla. 1st DCA 1997). See also Pruden v. Herbert Contractors, Inc., 988 So.2d 135 (Fla. 1st DCA 2008) ("Unlike a court of general jurisdiction under article V of the Florida Constitution, administrative boards and officers are limited in jurisdiction and do not have inherent judicial power, but have "only the power expressly conferred by chapter 440" citing McFadden v. Hardrives Constr., Inc., 573 So.2d 1057, 1059 (Fla. 1st DCA 1991).

17. The route of administrative remedy commences with F.B.C. Section 113.9.1 which clearly states:

> **113.9 Duties.**
> 113.9.1 Appeal from decision of Building Official, Assistant Building Official or Chief Inspector. The Board shall hear all appeals from the decisions of the Building Official, Assistant Building Official or Chief Inspector wherein such decision is on matters regulated by this Code from any person, aggrieved thereby, and specifically as set forth in Section 104.32. "Alternate Materials, designs and methods of Construction and

equipment." Application for Appeal shall be in writing and addressed to the Secretary of the Board.

Procedures for appeals, notice, protocol for scheduling, format, and filing requirements with BORA are further set forth in the same section.

18, Plaintiff, Butler must comply with the condition precedent (i.e., the administrative remedy) of appealing a decision of the Building Official, Assistant Building Official or Chief Inspector. City's decision as part of the process administrative process before filing an action in the courts. *See* City of Coconut Creek v. City of Deerfield Beach, 840 So.2d 389, (Fla. 4th DCA 2003) (in suit for declaratory judgment where pre-suit requirements are not met, "the case law is clear and the action should be dismissed"). Failure to comply with conditions precedent is grounds for dismissal. *See* Dunmar Estates Homeowner's Association, Inc. v. Rembert, 383 So. 2d 857, (Fla. 5th DCA 2024); Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So.2d 1376 (Fla. 4trh DCA 1997); "A reviewing court may not entertain a suit when the complaining party has not exhausted available administrative remedies." *See* Florida High School Athletic Ass'n v. Melbourne Central Catholic High School, 867 So.2d 1281(Fla. 5th DCA 2004); Agency for Health Care Administration v. Best Care Assurance, LLC, 302 So.3d 1012 (Fla. 1st FCA 2020); Florida Dept. of Agriculture & Consumer Services v. City of Pompano Beach, 792 So.2d 539 (Fla. 4trh DCA 2001). *See especially* My Amelia, L.L.C. v. City of Hollywood, 377 So.3d 137 (Fla. 4th DCA 2023).

19. In addition to the requirement that a party comply with conditions precedent, it is well established that before any proceeding for declaratory relief can be entertained it should be clear that there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity. *See* May v. Holley, 259 So.2d 636 (Fla. 1952).

20. At the onset, Respondent shows this Court that Plaintiff, Butler has failed to comply with conditions precedent by: 1) failing to exhaust administrative remedies and therefore without standing and; 2) failing to present this court with a bona fide, actual, present practical need for the declaration.

A copy of Petitioner's Complaint with the 17th Circuit and BORA's Motion to Dismiss (as well as all other pleadings in that case) are available for public viewing on the Broward County Clerk of Court's website with the style of the case being Jack Butler v. the Broward County Board of Rules and Appeals, CACE24005922 at:

https://www.browardclerk.org/Web2/CaseSearch/CACaseDetailView?

ii. Evolution and resolution of the case: Jack Butler v. The Broward County Board of Rules and Appeals CACE24005922

On July 5, 2024, Petitioner filed a twenty-one (21) page Statement in Opposition to BORA's Motion to Dismiss to which BORA filed a thirty-nine (39) page Reply to Statement in Opposition on August 27, 2024.

On September 3, 2024, Petitioner filed a six (6) page Motion for Summary Judgment and at the same time, filed a seventeen (17) page Supplemental Statement in Opposition to Motion to Dismiss and Request for Judicial Notice. After review of Petitioner's pleadings, Counsel for BORA determined that there was nothing in the way of new, dispositive argument, and did not file any responsive pleadings.

On September 7, 2024, Petitioner filed a total of six-hundred and eighty-seven (687) pages of Exhibits in Support of Pleadings and on September 9, 2024, Petitioner filed his eighteen (18) page Statement of Facts. After review of Petitioner's pleadings, Counsel for BORA determined that there was nothing in the way of new, dispositive argument, and did not file any responsive pleadings.

On November 18, 2024, the 17th Circuit Court in and for Broward County, Judge Martin Bidwell presiding, heard extensive argument from both parties on Defendant/ BORA's Motion to Dismiss. Despite Petitioner's combined total of eight-hundred and sixteen (816) pages of argument and exhibits, versus BORA's combined total of seventy (70) pages of response and rebuttal, the

Cort granted BORA's Motion to Dismiss and entered its Order accordingly. *See* **Exhibit "A"** attached hereto.

As can be seen from the language of the Order, Petitioner was given thirty (30) days to file an amended Complaint "if he so chooses."

On the same date as the hearing on BORA's Motion to Dismiss, the Court entered another Order for a Case Management Conference to take place on January 27, 2025. This was done in the event Petitioner chose to file an Amended Complaint- which he did not- and the Court rescheduled to February 3, 2025.

On January 27, 2025, BORA filed its Motion to Dismiss with Prejudice. Petitioner filed his Response in Opposition to BORA's Motion for Dismissal with Prejudice on January 30, 2025.

On February 2, 2025, BORA filed a copy of Petitioner's Appeal Application which Petitioner had filed with BORA on January 30, 2025. (aka the "Document"). This was done to make a record of the fact that Petitioner was attempting to split causes of action thereby "gaming the system" and seek adjudication in two (2) separate venues. The fact that Petitioner did so is indicative of an intent to obtain two separate judgments – one from BORA, and one from the Court- so that if one were more favorable to Petitioner's cause, to then sally forth with the verdict that suited him best.

At the Case Management Conference of February 3, 2025, the Court determined that there would be a need for another lengthy, special-set hearing on BORA's Motin to Dismiss with Prejudice and provided dates in May of 2025.

Petitioner voluntarily dismissed his Complaint in the 17TH Circuit on March 16, 2025.

REVIEW OF PETITIONER'S APPEAL TO BORA

1. Initial filing not compliant with procedural requirements

Upon review of Petitioner's Appeal, we note that the Appeal Application is defective on its face where it fails to include necessary and required information such as type of construction, height of building, square footage and most importantly, the permit number, permit application date. A screen shot of the Application is incorporated herein, below. To wit:

Project Information:

Address n.a.
Type of Construction n.a.
Hight of Building n.a.
Square Footage per Floor n.a.
Permit Number n.a.
Permit Application Date n.a.
Group Occupancy n.a.
Number of Stories n.a.

When asked to provide information with respect to the underlying challenge of the decision by a Building or Fire Official, Petitioner states "n.a." [not applicable] with respect to the name of the official. To wit:

I, the undersigned, appeal the decision of the Building/Fire Code Official of n a

as it pertains to Chapter 553 , Section 73 , of the (check one)

☐ South Florida Building Code ☐ Florida Building Code ☐ Florida Fire Prevention Code

☑ Other Florida Statutes & BC Charter s. 9.02 , as applicable to Broward County. (Attach copy of relevant Code sections)

Note: The Board shall base their decision upon the section(s) of the Code you have indicated above. If these are in error, you must re-submit your appeal. The Board is not authorized to grant variances from the Code.

Summary of appeal (attach additional sheets as necessary): Pursuant to s. 553.73(4)(f), F.S., I challenge the local building code amendments adopted by BORA for the 8th Edition of the Code as not adhering to the procedural and content requirements of state law and s. 9.02 of the Broward County Charter. As an agency of a county, BORA is prohibited from adopting administrative amendments.

Results desired (attach additional sheets as necessary): Repeal all local building code amendments adopted in violation of statutory requirements and limitations. Local governments to stop enforcement of local Code amendments.

Note: Under state law, enforcement of challenged technical amendments must be suspended until the challenge is settled.

BORA Policy 95-01 states *inter alia*:

> **APPEALS FROM DECISION OF BUILDING OFFICIAL:**
> **The Board of Rules and Appeals shall hear all appeals from the decision of the Building and/or Fire Code Official wherein such decision is on matters regulated by the Florida Building Code or South Florida Building Code from any person aggrieved thereby**, and specifically as set forth in Sec. 104.23, Alternate Materials and Types of Construction. The Board of Rules and Appeals is not authorized to grant variances from the Building Code.
> PROCEDURE FOR HANDLING APPEALS:
> 1. The person filing an appeal must do so on the form approved by the Board of Rules and Appeals.
> **2. <u>The form SHALL be filled out in its entirety</u>. An incomplete form will not be accepted for processing.**

In addition to BORA policy 95-01, Florida Building Code Sec 113.9.1 clearly states:

> **113.9.1 Appeal from decision of Building Official, Assistant Building Official or Chief Inspector.**
> **The Board shall hear all appeals from the from the decisions of the Building Official, Assistant Building Official or Chief Inspector wherein such Building Official or Chief Inspector decision is on matters regulated by this Code from any person, aggrieved thereby**, specifically as set forth in Section 104.32, Application for Appeal shall be in writing and addressed to the and addressed to the Secretary of the Board.

See FBC Sec 113.9.1

In so saying, the Appeal is defective on its face where Petitioner has:

1) Failed to fill out the form in its entirety
2) Failed to provide a permit number of permit application date.
3) Failed to identify the Building Official, Assistant Building Official or Chief Inspector wherein such Building Official or Chief Inspector decision is on matters regulated by the Florid Building Code.
4) Failed to provide a basis for appeal to BORA where it appears he is seeking a legislative change for which BORA is without authority to act or even review.

PETITIONER'S MISREPRESENTATIONS AS TO DIRECTION FROM THE CIRCUIT COURT

In addition to the failure to the failure to comply with BORA Policy 95-01, and clear non-compliance with Florida Building Code 113.9.1, Petitioner Butler has made numerous misrepresentation as to claims with respect to directives from the 17th Circuit Court.

Petitioner states that:

> The challenge provision of section 553.73(4)(f), Florida Statutes, which was specifically included in the case record and in the various arguments offered by the parties, is the only administrative remedy available to adjudicate the issue raised herein at the administrative level. **Thus, this challenge is brought before BORA in furtherance of the Court's guidance.**
> ...
> **The 17th Circuit Court did not indicate in its order that its guidance was limited to any one of the two available administrative avenues, the other being an appeal of a building official's decision.**

See Petitioner's Appeal at pgs. 2 and 3.

Neither of these statements are truthful or correct. The fact of the matter is that the Court made a reasoned determination, and BORA had the foresight to retain a court reporter, so that a record was made of the Court's actual, elaborated reasoning, and the transcript is attached hereto as **Exhibit "B."**

The transcript clearly shows that the Court's ruling was based on the fact that Petitioner did not have standing to bring the Complaint for failure to comply with conditions precedent. More specifically the Circuit Court stated:

> Page 3
> The -- having considered all of the arguments, respectfully, I -- I'm not convinced that this pleading sets out a sufficient need for a declaration. **I think that the pleading fails to set out that there is a sufficient current controversy between the plaintiff and BORA that would provide the Court the authority to issue a declaration.**

The Court stated further:

> Page 4
> THE COURT: -- **at this point, what I'm going to do is grant the motion to dismiss for failure to state a claim on the dec count. The injunctive count, obviously, is dependent upon the existence of the dec count. It would fail for the same -- for that same reason.**
> And I'll afford Mr. Butler -- I think I'll give him a chance to -- to amend and see if he can find something else out there.
> MR. KRAMER: Thank you, Your Honor.
> THE COURT: To the extent there's -- you know, nobody really talked about it, but
>
> Page 5
> Mr. Kramer's argument is that, you know, exhaustion wasn't done here. Part of Mr. Butler's response is, well, that would have been a waste of time. I don't -- you know, words to that effect. That's not what he said --
> MR. KRAMER: Exactly.
> THE COURT: -- obviously, but it sounded like a futility argument.
> I don't know if there's exceptions to the exhaustion requirement. I haven't done that research lately.But I would think that if you're contending that exhaustion is futile or

words to that effect, I think you've got to plead around that, in all honesty. So, at this point in time, that will be the ruling. **I'll grant the motion to dismiss. Mr. Butler, how long would you need to file an amended complaint, if you so choose?**

MR. BUTLER: Thirty days will be plenty of time.

THE COURT: Okay. Thirty days will be it. And, Mr. Kramer, would you be kind enough, as the prevailing party, to send me an order that grants the motion to dismiss for the

Page 6

reasons stated on the record and affords Mr. Butler 30 days to file an amended complaint?

MR. KRAMER: I certainly will, Your Honor.

See Hearing Transcript attached hereto as **Exhibit "B."**

Turning back to the Court's Order attached hereto as exhibit "A," we note that the Order specifically states;

> 1. The Court finds that **the claims set forth by Plaintiff fail to set out the requirements to establish a current, justiciable controversy sufficient for the Court to issue a declaration**;
>
> 2. The Court finds that **Plaintiff has failed to comply with conditions precedent through exhaustion of administrative remedies**;

As can be seen from the transcript, there is absolutely nothing which would determine that the Court ordered Petitioner to file an appeal with BORA. to the contrary, Petitioner was graciously granted an addition thirty (30) days to file an Amended Complaint with the Court, to which he agreed, and then filed his Notice of Voluntary Dismissal a copy of which is attached hereto as **Exhibit "C."**

PETITIONER'S FAILURE TO ESTABLISH STANDING CONTINUES

Petitioner attempts to state that a second avenue for relief, and direct appeal to BORA is available, because the Court didn't specify in its Order as to whether Petitioner Butler's Complaint was dismissed based on: 1) failure to obtain an adverse decision by a Budling Official or; 2) proper procedures contained in subsection 553.73(4), Florida Statutes, weren't followed when a local government adopted a local Code amendment.

The flaw in both lines of argument is the failed first step, i.e., Petitioner fails to establish standing.

Under Florida law, a "substantially affected party" in the context of appealing a compliance review board's determination regarding technical amendments to the Florida Building Code is defined as an individual or entity whose substantial interests are directly impacted by the regulation, law, ordinance, policy, amendment, or land use or zoning provision in question. This includes owners or builders subject to the regulation or an association of such owners or builders whose members are affected.

The term "substantially affected" is further clarified under Florida law to require a showing of (1) a real or immediate injury in fact and (2) that the interest affected falls within the zone of interest protected or regulated by the statute or rule. **The injury must not be speculative or conjectural, and the interest must align with the purpose of the regulation or statute being challenged.** See Calder Race Course, Inc. v. SCF, Inc., 326 So.3d (Fla. 1st DCA 2021); Village of Key Biscayne v. Department of Environmental Protection, 206 So.3d 788 (Fla. 3rd DCA 2016); Office of Ins. Regulation and Financial Services Com'n v. Secure Enterprises, LLC, 124 So.3d 332 (Fla. 1st DCA 2013); Florida Soc. of Ophthalmology v. State Bd. of Optometry, 532 So.2d 1279 (Fla. 1st DCA 1988).

When a judicial or administrative body does not have jurisdiction, it cannot render an opinion, enter judgment, nor grant or deny relief. The fact that the Court has already ruled that Petitioner lacks standing must not be lost on the Board of Rules and Appeals. Petitioner didn't have standing when he sued BORA and he doesn't have standing now. *See* Hensley v. Punta Gorda, 686 So.2d 724 (Fla. 1st DCA 1997). *See also* Pruden v. Herbert Contractors, Inc., 988 So.2d 135 (Fla. 1st DCA 2008) ("Unlike a court of general jurisdiction under article V of the Florida Constitution, administrative boards and officers are limited in jurisdiction and do not have inherent judicial power, but have "only the power expressly conferred by chapter 440" citing McFadden v. Hardrives Constr., Inc., 573 So.2d 1057, 1059 (Fla. 1st DCA 1991).

The overarching failure in Petitioner's appeal is the failure to comply with conditions precedent, i.e., the defined course of administrative remedy requiring appeal of an adverse decision of the Building Official, Assistant Building Official, or Chief Inspector. *See* City of Coconut Creek v. City of Deerfield Beach, 840 So.2d 389, (Fla. 4th DCA 2003) (in suit for declaratory judgment where pre-suit requirements are not met, "the case law is clear and the action should be dismissed"). Failure to comply with conditions precedent is grounds for dismissal. *See* Dunmar Estates Homeowner's Association, Inc. v. Rembert, 383 So. 2d 857, (Fla. 5th DCA 2024); Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So.2d 1376 (Fla. 4trh DCA 1997); "A reviewing court may not entertain a suit when the complaining party has not exhausted available administrative remedies." See Florida High School Athletic Ass'n v. Melbourne Central Catholic High School, 867 So.2d 1281(Fla. 5th DCA 2004); Agency for Health Care Administration v. Best Care Assurance, LLC, 302 So.3d 1012 (Fla. 1st FCA 2020); Florida Dept. of Agriculture & Consumer Services v. City of Pompano Beach, 792 So.2d 539

(Fla. 4trh DCA 2001). *See especially* My Amelia, L.L.C. v. City of Hollywood, 377 So.3d 137 (Fla. 4th DCA 2023).

Whether it be in a Complaint for declaratory and injunctive relief, or as here, in a code challenge, it is well established that before any proceeding for relief can be entertained, it must be clear that: 1) there is a bona fide, actual, present practical need for the declaration;2) that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts;3) that the antagonistic and adverse interests are all before the reviewing body by proper process or class representation and; 4) that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity. *See* May v. Holley, 259 So.2d 636 (Fla. 1952).

Review of supplemental documentation

Counsel for BORA has reviewed extensive documentation submitted by Petitioner, Butler including Section 9.02 of the Broward County Charter; legislative history of Florida Statutes Sec 553.73 (House Bill No. 4181, excerpts from Chapter 98-287); excerpts from Chapter 2000-141and House Bill No. 219 including amendments to F.S. Sec. 125.01, 125.56, 468.604, 553.71, 553.72, 553.73, excerpts from Chapter 2021-201;Committee Substitute for Committee Substitute for House Bill No. 2401(containing amendments to FS. 553.73); and 2024 revisions to Florida Statutes 125.01, 125.56, 163.211, 469.604, 553.71, 553.72, 553.73, 553.75, 553.79, 553.791, 553.80, 553.898, and the November 9, 2023 BORA meeting transcript with exhibits.

None of the supplemental documentation referenced above has any effect on Petitioner's lack of standing and BORA cannot create standing where none exists.

Petitioner's status insofar as "without standing" determines that there was no present, actual controversy before the Court and similarly, Petitioner's lack of standing determines that there is no present or actual controversy upon which BORA may review and opine.

CONCLUSION

Petitioner's lack of standing determines that BORA is without authority to enter a ruling or even opine on the merit or lack thereof of Petitioner's Appeal. *See* Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So.2d 1376 (Fla. 4trh DCA 1997); "A reviewing court may not entertain a suit when the complaining party has not exhausted available administrative remedies." *See* Florida High School Athletic Ass'n v. Melbourne Central Catholic High School, 867 So.2d 1281(Fla. 5th DCA 2004); Agency for Health Care Administration v. Best Care Assurance, LLC, 302 So.3d 1012 (Fla. 1st FCA 2020); Florida Dept. of Agriculture & Consumer Services v. City of Pompano Beach, 792 So.2d 539 (Fla. 4trh DCA 2001). *See especially* My Amelia, L.L.C. v. City of Hollywood, 377 So.3d 137 (Fla. 4th DCA 2023).

BY /s/ Charles M. Kramer.

Charles M. Kramer, Esq., B.C.S.
Florida Bar No.: 133541
Broward County Board of Rules and Appeals
2900 N. University Drive, Suite 36
Coral Springs, Florida 33065
P: (954) 340-5955
F: (954) 340-6069
cmk@ckramerlaw.com
tinas@ckramerlaw.com

Filing # 211512839 E-Filed 11/21/2024 09:02:06 PM

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. CACE24005922 DIVISION: 05 JUDGE: Bidwill, Martin J. (05)

Jack A Butler

Plaintiff(s) / Petitioner(s)

v.

Broward County Board of Rules and Appeals

Defendant(s) / Respondent(s)

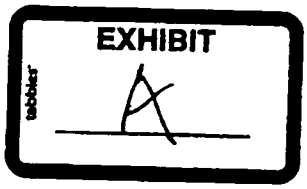
_____/

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE having come before the Court upon Defendant, BROWARD COUNTY BOARD OF RULES AND APPEALS' Motion to Dismiss the Complaint of Plaintiff, JACK A. BUTLER, and the Court having heard and carefully considered the arguments of both parties, and in accordance with Fla. R. Civ. P. 1.420 the Court giving its reasoned opinion with enough specificity to provide useful guidance to the parties it is hereby:

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss is: **GRANTED**

1. The Court finds that the claims set forth by Plaintiff fail to set out the requirements to establish a current, justiciable controversy sufficient for the Court to issue a declaration;
2. The Court finds that Plaintiff has failed to sufficiently plead compliance with conditions precedent through exhaustion of administrative remedies;
3. Plaintiff shall have thirty (30) days from November 18, 2024 to file an Amended Complaint if he so chooses.



DONE AND ORDERED in Chambers at Broward County, Florida on 21st day of November, 2024.

CACE24005922 11-21-2024 5:52 PM
Hon. Martin Bidwill
CIRCUIT COURT JUDGE
Electronically Signed by Martin Bidwill

Copies Furnished To:
Charles M. Kramer , E-mail : tinas@ckramerlaw.com
Charles M. Kramer , E-mail : cmk@ckramerlaw.com
Jack Allison Butler , E-mail : abutler@mpzero.com
Jack Allison Butler , E-mail : jack@butlershire.com