

**Issue: DS 2021-050:** The petitioner Thomas Smith, managing member of Classic Florida Dream Homes, LLC is seeking a declaratory statement on whether section 107.6.1 Building permits issued on the basis of an affidavit applies to Private Providers as authorized by Section 553.791, Florida Statutes?

Petitioner seeks clarification of the following question:

Question: Per the 2020 Florida Building Code, does section 107.6.1 Building Permits issued on the basis of an affidavit apply to Private Providers per F.S. 553.791?

**Background:**

As per the Petitioner, Classic Florida Dream Homes, LLC has been successfully using Private Provider services for both plans review and construction inspections for many years. They are under contract to construct a single family home along the beach community of Indian Rocks Beach. Specific to this petition for a declaratory Statement, they will be constructing a project consisting of a two-story single-family home on Harbor Drive, Indian Rocks Beach. This home is not in permitting now. This 3,800sf home is in flood zone "AE". The lot address is 435 Harbor Dr. N, Indian Rocks Beach, FL.

Various government agencies have determined that Private Providers are not allowed to perform their services in flood prone areas. Yet after reviewing the law, large municipalities in Florida have determined that Private Provider services are allowed in flood prone areas, specifically, Tampa and Sarasota to name two.

It is of course very important to insure that at final inspection a home in a flood prone area meets all requirements of FEMA. That is provided for by an independent surveyor at projects end, issuing a signed and sealed Elevation Certificate, whether inspected by the municipality or Private Provider, to certify that required floor elevations meet the required FEMA and local codes, and flood vents have been properly installed. Also, whether the home was inspected by a municipal inspector or Private Provider, each municipality assigns an employee to review the final Elevation Certificate signed and sealed by the independent surveyor, to ensure that it meets the requirements of the National Flood Insurance Program. Additionally, F.S. 553.791 allows a jurisdiction to audit Private Provider plans review and inspections. Many fail safes are in place to provide for proper conformance to federal FEMA regulations.

The Petitioner believes that a properly licensed Private Provider, as defined by Florida Statute 553.791, is not to be considered by a municipality as an "affidavit" inspector. Private Providers should be allowed to provide plans review and inspection services in all areas, including flood prone areas. The intent of the law is clear, FBC 107.6.1 require a "Review" by the government agency, and this could easily be accomplished

by having the government inspector and Private Provider co-inspect for the final inspection, before the governments FIRM inspector review the Elevation Certificate for compliance

## 7<sup>th</sup> Edition (2020) Florida Building Code, Building

### CHAPTER 1 SCOPE AND ADMINISTRATION

**105.14 Permit issued on 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 which, 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. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, *Florida Statutes*.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the *Florida Building Code*.

#### 107.6 Affidavits.

The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. The building official may without any examination or inspection accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure, electrical, gas, mechanical or plumbing systems a certification that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and

that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

#### **107.6.1 Building permits issued on the basis of an affidavit.**

Pursuant to the requirements of federal regulation for participation in the National Flood insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the *building official* to issue permits, to **rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the Florida Building Code.**

### **2021 Florida Statutes**

#### **553.791 Alternative plans review and inspection**

(1) As used in this section, the term:

(e) “Deliver” or “delivery” means any method of delivery used in conventional business or commercial practice, including delivery by electronic transmissions.

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

**(3)** A private provider and any duly authorized representative may only perform building code inspection services that are within the disciplines covered by that person’s licensure or certification under chapter 468, chapter 471, or chapter 481, including single-trade inspections. A private provider may not provide building code inspection services pursuant to this section upon any building designed or constructed by the private provider or the private provider’s firm.

(17) A private provider may perform building code inspection services on a building project under this section only if the private provider maintains insurance for professional liability covering all services performed as a private provider. Such insurance shall have minimum policy limits of \$1 million per occurrence and \$2 million in the aggregate for any project with a construction cost of \$5 million or less and \$2 million per occurrence and \$4 million in the aggregate for any project with a construction cost of over \$5 million. Nothing in this section limits the ability of a fee owner to require additional insurance or higher policy limits. For these purposes, the term “construction cost” means the total cost of building construction as stated in the building permit application. If the private provider chooses to secure claims-made coverage to fulfill this requirement, the private provider must also maintain coverage for a minimum of 5 years subsequent to the performance of building code inspection services. The insurance required under this subsection shall be written only by

insurers authorized to do business in this state with a minimum A.M. Best's rating of A. Before providing building code inspection services within a local building official's jurisdiction, a private provider must provide to the local building official a certificate of insurance evidencing that the coverages required under this subsection are in force.

(18) When performing building code inspection services, a private provider is subject to the disciplinary guidelines of the applicable professional board with jurisdiction over his or her license or certification under chapter 468, chapter 471, or chapter 481. All private providers shall be subject to the disciplinary guidelines of s. [468.621\(1\)\(c\)-\(h\)](#). Any complaint processing, investigation, and discipline that arise out of a private provider's performance of building code inspection services shall be conducted by the applicable professional board.

### **Staff Analysis**

**Question:** Per the 2020 Florida Building Code, does section 107.6.1 Building Permits issued on the basis of an affidavit apply to Private Providers per F.S. 553.791?

**Answer:** The answer to the Petitioner's question is no. Section 107.6.1 Building permits issued on the basis of an affidavit of the 7<sup>th</sup> Edition (2020) Florida Building Code, Building is limited in scope to affidavits issued as per sections 105.14 and 107.6 of the 7<sup>th</sup> Edition (2020) Florida Building Code, Building and therefore, section 107.6.1 does not apply to services performed by private providers as authorized by section 553.791, Florida Statutes.