

DS 2022-037 Leo Amos

Summary of Issue:

Petitioner states that they had a portion of the roof on their home replaced, and that the new roof leaks and has failed a wind mitigation inspection. Petitioner asserts they have suffered damages as a result of the repair work, and presents a number of questions pertaining to the oversight and approval responsibilities of local building officials.

Relevant Provisions:

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

Petitioner’s Questions:

Petitioner presents the following questions:

1. Under Florida Statutes 486.604 (1) f.s. does this give FBC the power to delete the need for plans on re roofs when the State Statute requires a plan?
2. Does FBC have the ability to delete review of plans, when the State Statutes states under 486.604 (1) f.s. that it’s the responsibility of the Building Official is to review plans before any permit is issued?
3. Does FBC 107.1 give the power to the building official to delete both the need for plans and the review of plans for re roof for residential property
4. Does FBC 107.1 give the power to a building official to use generic material names for materials used for re roofs?
5. Does FBC 107.1 give the power to the building official to allow the use of any building materials in a re roof that aren’t listed on his approval of so called material plans without knowing what the builder will use?
6. Can the building official approve of a flashing material that has no manufacture or installation instructions and still meet FBC?
7. Can my home be approved and Certified as meeting FBC and it fails to keep water out and fails to meet wind storm inspection can it still meet FBC and Certification?

Staff's Suggested Answer:

Petitioner's questions revolve around the powers and responsibilities of local building officials, in particular as the Petitioner feels they may have been applicable to the already-completed work that occurred on his roof.

Pursuant to Rule 28-1.001, F.A.C., "[a] declaratory statement is not the appropriate means for determining the conduct of another person." Furthermore, Petitioner's inquiry is not prospective in nature, and the courts have stated that "a petition for a declaratory statement which seeks approval or disapproval of conduct which has already occurred is properly denied." *Novick v. Dep't of Health*, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002) (citing *Chiles v. Dep't of State, Div. of Elections*, 711 So. 2d 151 (Fla. 1st DCA 1998)).

Because Petitioner seeks a statement which would determine the conduct of persons other than himself, and because this Petition involves conduct which has already occurred, the Commission declines to answer.